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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Preliminary Decision Memorandum for the Administrative Review
of the Antidumping Duty Order on Small Diameter Graphite
Electrodes from the People's Republic of China; 2014-2015

SUMMARY

In response to requests from interested parties, the Department of Commerce (the Department) is conducting this administrative review of the antidumping duty (AD) order on small diameter graphite electrodes (graphite electrodes) from the People's Republic of China¹ (PRC), covering the period February 1, 2014, through January 31, 2015. The Department preliminarily determines that during the period of review (POR), the Fangda Group² and Fushun Jinly Petrochemical Co., Ltd. did not make 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), unless extended.

¹ See *Antidumping Duty Order: Small Diameter Graphite Electrodes from the People's Republic of China*, 74 FR 8775 (February 26, 2009) (*SDGE Order*).

² 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: 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.), 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).



BACKGROUND

On February 26, 2009, we published in the *Federal Register* the AD order on graphite electrodes from the PRC.³ On February 2, 2015, we published a notice of opportunity to request an administrative review of this order.⁴ On February 25, 2015, we received timely review requests in accordance with 19 CFR 351.213(b) from Fangda Carbon New Material Co., Ltd., (a member of the Fangda Group), Fushun Jinly Petrochemical Carbon Co., Ltd. (Fushun Jinly), and Xuzhou Jianglong Carbon Products Co., Ltd. (Xuzhou Jianglong).⁵ On March 2, 2015, the Department also received a timely request for an administrative review of 196 companies (including the companies identified above) from SGL Carbon LLC and Superior Graphite Co. (the petitioners).⁶ On April 3, 2015, we initiated an administrative review of the AD order on graphite electrodes from the PRC with respect to 196 companies.⁷

On April 14, 2015, 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 April 29, 2015, we selected the Fangda Group and Fushun Jinly, the two companies accounting for the largest volume of imports subject to this review, for individual examination.⁹ On April 30, 2015, we sent the AD questionnaire to the Fangda Group and Fushun Jinly.¹⁰ On May 5, 2015, we received a separate-rate application from Xuzhou Jianglong.¹¹

On June 16, 2015,¹² pursuant to 19 CFR 351.213(d)(1), the petitioners timely withdrew their review requests with respect to all companies for which the Department initiated a review, with the exception of the Fangda Group and Fushun Jinly.¹³ Between June 9, 2015 and December 30, 2015, the Fangda Group and Fushun Jinly responded to the Department's original and supplemental questionnaires.

In response to the Department's May 14, 2015 request for comments on surrogate country

³ See *SDGE Order*.

⁴ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 80 FR 5509 (February 2, 2015).

⁵ See February 25, 2015, Letter from Kutak Rock LLP, legal counsel for all three companies, entitled "Small Diameter Graphite Electrodes from China; Requests for Administrative Reviews," and February 27, 2015, Letter entitled "Small Diameter Graphite Electrodes from China; Clarification of Requests for Administrative Reviews."

⁶ See Letter from the petitioners entitled "Small Diameter Graphite Electrodes from the People's Republic of China – Request for Initiation of Antidumping Administrative Review" dated March 2, 2015.

⁷ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 18202 (April 3, 2015) (*Initiation Notice*).

⁸ See the Department's memoranda to "All Interested Parties," dated April 14, 2015.

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 April 29, 2015 (Respondent Selection Memo).

¹⁰ See Letters from the Department releasing the questionnaire, dated April 30, 2015.

¹¹ See Letter from Xuzhou Jianglong entitled "Small Diameter Graphite Elect{r}odes from the People's Republic of China; Separate Rate Application of Xuzhou Jianglong Carbon Products Co., Ltd.," dated May 5, 2015 (Xuzhou Jianglong SRA); see also "Separate Rates" section below.

¹² See Letter from the petitioners entitled "6th Administrative Review of Small Diameter Graphite Electrodes from the People's Republic of China - Petitioners' Withdrawal of Certain Requests for Administrative Review" dated June 16, 2015.

¹³ See "Rescission of Administrative Review in Part" section below.

selection and surrogate values, the petitioners, the Fangda Group, and Fushun Jinly submitted comments and/or rebuttal comments to the Department in August 2015.

We extended the time limit for the preliminary results of review to February 29, 2016, pursuant to section 751(a)(3)(A) of the Act.¹⁴

As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government on January 22, 2016, and January 25-27, 2016. Therefore, all deadlines in this segment of the proceeding have been extended by four business days.¹⁵ As a result, the revised deadline for these preliminary results is now March 4, 2016.

The Department conducted verifications of Fushun Jinly and the Fangda Group from January 4, 2016, through January 8, 2016, and from January 11, 2016, through January 15, 2016, respectively, in Fushun, Liaoning Province of the People's Republic of China.¹⁶

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 8545.11.0010,¹⁷ 3801.10,¹⁸ and

¹⁴ 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 20, 2015.

¹⁵ See Memorandum for the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, "Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm 'Jonas'" (January 27, 2016).

¹⁶ See Memorandum to the File from Dmitry Vladimirov, Case Analyst, "Verification of the Questionnaire Responses of Fushun Jinly Petrochemical Carbon Co., Ltd., in the Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China" dated February 1, 2016; and Memorandum to the File, from Michael Romani, Case Analyst, "Verification of the Questionnaire Responses of the Fangda Group in the Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China" dated February 10, 2016.

¹⁷ 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.

8545.11.0020.¹⁹ The HTSUS numbers are provided for convenience and customs purposes, but the written description of the scope is dispositive.

RESCISSION OF ADMINISTRATIVE REVIEW IN PART

In accordance with 19 CFR 351.213(d), the Department will rescind an administrative review in part “if a party that requested a review withdraws the request within 90 days of the date of the publication of notice of initiation of the requested review.” Subsequent to the initiation of the review, we received a timely withdrawal²⁰ of the request for the review of 189 companies listed in Appendix II of the accompanying *Federal Register* notice. Because no other party requested an administrative review of these companies, we are rescinding the administrative review with respect to these companies in accordance with 19 CFR 351.213(d)(1).

DISCUSSION OF THE METHODOLOGY

Non-Market Economy Country Status

The Department considers the PRC to be a non-market economy (NME) country.²¹ 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.²² None of the parties to this proceeding contested NME treatment for the PRC. Therefore, for the preliminary results of this review, we are treating the PRC as an NME country and applied our current NME methodology in accordance with section 773(c) of the Act.

¹⁸ HTSUS subheading 3801.10 was added to the scope of the *SDGE Order* based on a determination in *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) (first circumvention determination). The products covered by the first circumvention determination are SDGE (or graphite pin joining system) that were 1) produced by UK Carbon and Graphite Co., Ltd. (UKCG) from PRC-manufactured artificial/synthetic graphite forms, of a size and shape (e.g., blanks, rods, cylinders, billets, blocks, etc.), 2) which required additional machining processes (i.e., tooling and shaping) that UKCG performed in the United Kingdom (UK), and 3) were re-exported to the United States as UK-origin merchandise.

¹⁹ HTSUS subheading 8545.11.0020 was added to the scope of the *SDGE Order* based on a determination in *Small Diameter Graphite Electrodes from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order and Rescission of Later-Developed Merchandise Anticircumvention Inquiry*, 78 FR 56864 (September 16, 2013) (second circumvention determination). The products covered by the second circumvention determination are SDGE produced and/or exported by Jilin Carbon Import and Export Company with an actual or nominal diameter of 17 inches.

²⁰ See the petitioners' withdrawal of review request dated June 16, 2015.

²¹ See, e.g., *Fresh Garlic From the People's Republic of China: Preliminary Results of the 2009–2010 Antidumping Duty Administrative Review*, 76 FR 76375 (December 7, 2011), unchanged in *Fresh Garlic from the People's Republic of China: Final Results of the 2009–2010 Administrative Review of the Antidumping Duty Order*, 77 FR 34346 (June 11, 2012).

²² 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).

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 AD rate.²³ 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.²⁴ 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*,²⁵ as further clarified by *Silicon Carbide*.²⁶ 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.²⁷

In this administrative review, we received a complete response to Section A of the NME AD questionnaire from the Fangda Group and Fushun Jinly, which contained information pertaining to these companies' eligibility for a separate rate.²⁸ Additionally, Xuzhou Jianglong, the sole company which was not selected for individual examination and for which the review has not been rescinded, submitted separate-rate information.²⁹

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.³⁰

The evidence provided by the Fangda Group, Fushun Jinly, and Xuzhou Jianglong supports a preliminary finding of absence of *de jure* government control based on the following: (1) an

²³ 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).

²⁴ See *Initiation Notice*, 80 FR at 18202-18203.

²⁵ 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*).

²⁶ 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*).

²⁷ 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).

²⁸ See the Fangda Group's Section A questionnaire response, dated June 9, 2015, and a supplemental Section A questionnaire response, dated October 27, 2015; see Fushun Jinly's Section A questionnaire response, dated June 15, 2015, and supplemental Section A questionnaire responses, dated September 29, 2015, and October 6, 2015.

²⁹ See Xuzhou Jianglong SRA, dated May 5, 2015.

³⁰ See *Sparklers*, 56 FR at 20589.

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.³¹

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 (EP) 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.³²

The Department determines 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 Xuzhou Jianglong we determine that the evidence on the record supports a preliminary finding of absence of *de facto* government control based on record statements and supporting documentation showing that each respondent: (1) sets its own EPs 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.³³

In summary, the evidence placed on the record of this review by the Fangda Group, Fushun Jinly, and Xuzhou Jianglong 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 Xuzhou Jianglong each a separate rate.

³¹ See the Fangda Group's Section A questionnaire response, dated June 9, 2015, and a supplemental Section A questionnaire response, dated October 27, 2015; see Fushun Jinly's Section A questionnaire response, dated June 15, 2015, and supplemental Section A questionnaire responses, dated September 29, 2015, and October 6, 2015; and Xuzhou Jianglong SRA, dated May 5, 2015, and Xuzhou Jianglong's supplemental SRA response, dated July 10, 2015.

³² 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).

³³ See the Fangda Group's Section A questionnaire response, dated June 9, 2015, and a supplemental Section A questionnaire response, dated October 27, 2015; see Fushun Jinly's Section A questionnaire response, dated June 15, 2015, and supplemental Section A questionnaire responses, dated September 29, 2015, and October 6, 2015; and Xuzhou Jianglong SRA, dated May 5, 2015, and Xuzhou Jianglong's SRA supplemental response, dated July 10, 2015.

Rate for Non-Selected Company

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.³⁴ As discussed above, Xuzhou Jianglong 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 companies not selected for individual examination where the Department limits 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 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.³⁵

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).³⁶ 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 an individual rate to the non-selected company in the review in question, including when that rate is zero or *de minimis*.³⁷ However, the only prior rates for this proceeding that were not calculated using the methodology the Department abandoned in its *Final Modification for Reviews*,³⁸ pursuant to section 123 of the Uruguay Round Agreements Act, were in the 2012-2013 review. In the 2012-2013 review, we calculated a weighted-average dumping margin above *de minimis* for the Fangda Group and

³⁴ See Respondent Selection Memo.

³⁵ 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).

³⁶ 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.

³⁷ *Id.*

³⁸ 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) (where 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).

determined a rate for Fushun Jinly based entirely on facts available.³⁹ Based on this, and in accordance with the statute and practice, we find that a reasonable method for determining the weighted-average dumping margin for Xuzhou Jianglong in this review is to base it on the rate of 21.16 percent we calculated for the mandatory respondent, the Fangda Group, in the 2012-2013 review. This rate was originally used in determining the weighted-average dumping margins for non-selected companies that we found were eligible for a separate rate in the 2012-2013 review.⁴⁰

PRC-Wide Entity

The Department's change in policy regarding conditional review of the PRC-wide entity applies to this review.⁴¹ Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity in this review, the entity is not under review, and the entity's rate of 159.64 percent is not subject to change.⁴² With the exception of Fushun Jinly, the Fangda Group, and Xuzhou Jianglong, the Department is rescinding this review for all companies listed in the *Initiation Notice* and, as such, there are no remaining companies subject to the instant review that the Department considers to be part of the PRC-wide entity.

Surrogate Country

When the Department conducts an AD 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."⁴³ Further, pursuant to 19 CFR 351.408(c)(2), the Department will normally value FOP in a single country.

On May 14, 2015, the Department issued a memorandum identifying six countries as being at the level of economic development of the PRC for the POR.⁴⁴ The six countries the Department

³⁹ See *Small Diameter Graphite Electrodes From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 57508 (September 25, 2014).

⁴⁰ *Id.*, 79 FR at 57509.

⁴¹ See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65970 (November 4, 2013).

⁴² See *Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 13825 (March 17, 2015).

⁴³ See Enforcement and Compliance Policy Bulletin No. 04.1, regarding, "Non-Market Economy Surrogate Country Selection Process," (March 1, 2004) (Policy Bulletin), available on the Department's website at <http://enforcement.trade.gov/policy/bull04-1.html>.

⁴⁴ See the Department's letter to all interested parties, dated May 14, 2015, at Attachment 1 (containing Memorandum entitled "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China ("China")" dated May 11, 2015).

identified are: Romania, Bulgaria, South Africa, Ecuador, Thailand, and Ukraine.⁴⁵ On the basis of updated gross national income data for 2014, which became available on July 1, 2015, the Department re-issued a memorandum identifying six countries as being at the level of economic development of the PRC for the POR.⁴⁶ The six countries the Department identified are: Romania, Bulgaria, South Africa, Ecuador, Thailand, and Mexico.⁴⁷

With respect to the Department's selection of a primary surrogate country, the petitioners and respondents (the Fangda Group and Fushun Jinly) commented that the Department should select Romania. Fushun Jinly and the Fangda Group also commented that the Department should add Ukraine to the list of potential surrogate countries, and use information from Ukraine, South Africa, and Mexico to the extent that information with respect to certain inputs or financial ratios from Romanian sources are not available, are aberrational, or are otherwise determined by the Department to be not usable.⁴⁸ The petitioners subsequently commented that the Department should select Mexico as the primary surrogate country.⁴⁹

Economic Comparability

Consistent with its practice, the Department identified a number of countries that are at the same level of economic development as the PRC. The Department determined economic comparability based on per capita gross national income, as reported in the most current annual issue of the World Development Report (The World Bank).⁵⁰ The countries the Department has identified, Romania, Bulgaria, South Africa, Ecuador, Thailand, and Mexico, are not ranked and are considered equivalent in terms of economic comparability.

Significant Producers of Identical or Comparable Merchandise

While the statute does not define "significant" or "comparable" the Department's practice is to evaluate whether production is significant based on characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics) and to determine whether merchandise is comparable on a case-by-case basis.⁵¹ Where there is no

⁴⁵ *Id.*

⁴⁶ See the Department's letter to all interested parties, dated August 21, 2015, at Attachment 1 (containing 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 20, 2015).

⁴⁷ *Id.*

⁴⁸ 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) for a more detailed discussion of the parties' comments.

⁴⁹ *Id.*

⁵⁰ See Policy Bulletin at 2 (endnotes omitted); see, e.g., *Utility Scale Wind Towers From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 75992 (December 26, 2012) and the accompanying Issues and Decision Memorandum at Comment 1.

⁵¹ See *Xanthan Gum from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 2252 (January 10, 2013) and accompanying Preliminary Decision Memorandum at 4-7, unchanged in *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013).

production information, the Department has relied upon export data from potential surrogate countries. With respect to comparability of merchandise, in all cases, if identical merchandise is produced in a country, the country qualifies as a producer of comparable merchandise. Where there is no evidence of production of identical merchandise in a potential surrogate country, the Department has determined whether merchandise is comparable to the subject merchandise on the basis of similarities in physical form and the extent of processing or on the basis of production factors (physical and non-physical) and factor intensities. Since these characteristics are specific to the merchandise in question, the standard for “significant producer” will vary from case to case.⁵²

A comparison of production quantities of the comparable merchandise from each potential surrogate country in relation to world production was not possible here because the record does not contain production quantities of comparable merchandise from each potential surrogate country. The Department next sought evidence of production of comparable merchandise in the form of export data, which is one of the factors we consider in determining whether a country is a significant producer of comparable merchandise. From the six countries that we identified to be economically comparable to the PRC, all, except Ecuador, had exports of graphite electrodes during the POR, based on the data we obtained from Global Trade Atlas (GTA) for entries made under Harmonized Tariff Schedule of the United States (HTSUS) sub-heading 8545.11 (applicable to the scope of the antidumping duty order because it incorporates subject merchandise reportable under HTSUS 8545.11.0010).⁵³ As such, we find that Romania, Bulgaria, South Africa, Thailand, and Mexico meet the “significant producer” requirement of section 773(c)(4) of the Act.

Data Availability

When evaluating surrogate value (SV) data, the Department considers several factors including whether the SVs are publicly available, contemporaneous with the POR, a broad-market average, tax and duty exclusive, and specific to the input.⁵⁴ The Department’s preference is to satisfy the breadth of these aforementioned factors.⁵⁵

Although the petitioners initially advocated that the Department select Romania as the primary surrogate country, they provided SV information, including GTA import data, for Mexico for all inputs of production, as well as the financial ratios derived using the financial statements from the Romanian producer of SDGEs, Electrocarbon, S.A.⁵⁶ Fushun Jinly and the Fangda Group provided GTA import data from Romania and the 2012, 2013, and 2014 financial statements from the Ukrainian producer of SDGEs, Ukrainsky Grafit. Noting that the 2013 and 2014 financial statements from Ukrainsky Grafit show a negative profit, the respondents commented

⁵² See Policy Bulletin at 1-2; see also, e.g., *Hardwood and Decorative Plywood From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013) and the accompanying Issues and Decision Memorandum at Comment 7.

⁵³ See Factor Valuation Memorandum at Exhibit 1.

⁵⁴ See, e.g., *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2010-2011*, 78 FR 17350 (March 21, 2013), and accompanying Issues and Decision Memorandum at Comment I(C).

⁵⁵ *Id.*

⁵⁶ See Factor Valuation Memorandum for more discussion.

that the Department should use Ukrainsky Grafit's 2012 financial statements to derive financial ratios in this administrative review, should the financial statements from a Romanian producer of comparable merchandise prove not available or not usable.⁵⁷ Subsequent to parties' rebuttal comments on surrogate values, the petitioners submitted Romanian surrogate values for water, truck freight, and electricity, while continuing to urge the Department to select Mexico as the primary surrogate country. The respondents submitted additional Romanian surrogate values for electricity, natural gas, truck and rail freight, and water.⁵⁸ No party submitted any data for any other potential surrogate country.

With respect to Romania and Mexico, we examined the data available on the record or otherwise obtainable from public sources, to determine which country provides the best available information for valuing the factors of production in this review. After our consideration of the availability and quality of the data, we determined that the selection of Romania as the primary surrogate country is warranted in this review.⁵⁹ We also have detailed and usable 2014 financial statements for a sole Romanian producer of identical or comparable merchandise on the record. Accordingly, we have reliable data from Romania that we can use to value all FOPs.⁶⁰ Therefore, we preliminarily determine that it is appropriate to rely on Romania as the primary surrogate country in accordance with 19 CFR 351.408(c)(2). A detailed description of the Romanian SVs selected by the Department is provided below in the "Normal Value" section of this notice.

Date of Sale

In identifying the date of sale of the merchandise under consideration, the Department will normally, in accordance with 19 CFR 351.401(i), "use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business." In *Allied Tube*, the CIT noted that a "party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisfy' the Department that 'a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'"⁶¹ Additionally, the Department may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁶² This normally includes the price, quantity, delivery terms and payment terms.⁶³

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ See Factor Valuation Memorandum for a more detailed discussion.

⁶⁰ *Id.*

⁶¹ See *Allied Tube & Conduit Corp. v. United States* 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) (*Allied Tube*).

⁶² See 19 CFR 351.401(i); see also *Allied Tube*, 132 F. Supp. 2d at 1090-1092.

⁶³ See, e.g., *Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007), and accompanying Issue and Decision Memorandum at Comment 1; *Notice of Final Determinations of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Comment 1.

In this review, the Fangda Group and Fushun Jinly reported the invoice date as the date of sale, and consistent with 19 CFR 351.401(i), the Department preliminarily determines to use the invoice date as the date of sale.

Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether the Fangda Group's and Fushun Jinly's sales of the subject merchandise from the PRC to the United States were made at less than NV, the Department compared the EP to the NV as described in the "Export Price" and "Normal Value" sections of this memorandum.

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (CEP)) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.⁶⁴

In recent investigations, the Department applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.⁶⁵ The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time

⁶⁴ See *Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012) and the accompanying Issues and Decision Memorandum at comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (Ct. Int'l Trade 2014).

⁶⁵ See, e.g., *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer codes. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of review based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should

be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

B. Results of the Differential Pricing Analysis

For the Fangda Group, based on the results of the differential pricing analysis, the Department preliminarily finds that 52.8 percent of the value of U.S. sales pass the Cohen's *d* test,⁶⁶ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for the Fangda Group.

For Fushun Jinly, based on the results of the differential pricing analysis, the Department preliminarily finds that 64.0 percent of the value of U.S. sales pass the Cohen's *d* test,⁶⁷ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales

⁶⁶ See the 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 (Analysis Memorandum).

⁶⁷ See the 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 Fushun Jinly Petrochemical Co., Ltd." dated concurrently with this memorandum.

which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Fushun Jinly.

Export Price

In accordance with section 772(a) of the Act, EP 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 the Fangda Group and Fushun Jinly, we used EP methodology, because the first sale to an unaffiliated purchaser in the United States occurred prior to importation and the use of CEP was not otherwise warranted.

We based EP 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, distribution warehousing (for the Fangda Group only), and foreign brokerage and handling.

We valued foreign country distribution warehousing using pricing information for the rental of commercial warehousing space at the various locations throughout Romania that we obtained from <http://www.warehouseinfo.ro/>, an online portal providing a communication platform between landlords and lessors of warehouses in Romania (providing information on 144 warehouses in 26 cities).⁶⁸ From this source, we obtained current monthly warehousing rental costs in various locations in Romania and calculated an average daily weight-based warehousing rent (using the internal dimensions and the maximum payload of a standard 40 foot shipping container, obtained from www.foregin-trade.com, enabling the area-to-weight conversion). Because data reported in this source were current, we did not inflate the surrogate value for distribution warehousing using Romanian Wholesale Price Index (WPI).⁶⁹

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods from Romania. 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 Romania as reported in World Bank Group's *Doing Business 2015 – Romania; Trading Across Borders*.⁷⁰

In 2012, the Department announced a change of methodology with respect to the calculation of EP and CEP to include an adjustment of any un-refunded (herein irrecoverable) value-added tax (VAT) in certain non-market economies, in accordance with section 772(c)(2)(B) of the Act.⁷¹

⁶⁸ See Factor Valuation Memorandum.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ See *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36483 (June 19, 2012) (Methodological Change for Implementation of Section 772(c)(2)(B) of the Act).

The Department explained that when a non-market economy government imposes an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent's EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.⁷² Where the irrecoverable VAT is a fixed percentage of the EP, the Department explained that the final step in arriving at a tax neutral dumping comparison is to reduce the U.S. EP downward by this same percentage.⁷³ The Department's methodology essentially amounts to performing two basic steps: (1) determining the irrecoverable VAT tax on subject merchandise, and (2) reducing U.S. price by the amount (or rate) determined in step one.

Information placed on the record of this review by the Fangda Group and Fushun Jinly indicates that, according to the Chinese VAT schedule, the standard VAT levy is 17 percent, and the rebate rate for subject merchandise is zero percent. Accordingly, for purposes of these preliminary results, and consistent with our practice,⁷⁴ we removed from the U.S. prices that the Fangda Group and Fushun Jinly reported the difference between the rates (*i.e.*, 17 percent), which is the irrecoverable VAT as defined under the PRC tax law and regulation.

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 the Fangda Group and Fushun Jinly, respectively, for the POR by publicly available SVs as discussed below.

Factor Valuations

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 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

⁷² *Id.*, and *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014) and accompanying Issues and Decision Memorandum at Comment 5.A.

⁷³ *Id.*

⁷⁴ *See, e.g., Small Diameter Graphite Electrodes From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 57508 (September 25, 2014) and accompanying Issues and Decision Memorandum at Comment 7.

duties and taxes.⁷⁵ The Department used Romanian import statistics from the GTA and/or, as explained below, actual ME purchases, to value the mandatory respondents' reported FOPs for raw materials, by-products, packing materials, and certain energy inputs.⁷⁶ The record shows that data in the Romanian import statistics and other Romanian sources are generally contemporaneous with the POR, product-specific, and tax-exclusive.⁷⁷ In those instances where we could not obtain publicly available information contemporaneous with the POR, we adjusted the SVs using, as appropriate, the Romanian WPI or Consumer Price Index (CPI), as published in the International Monetary Fund's *International Financial Statistics*.⁷⁸

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 Romanian import-based SVs, we disregarded import prices that we have reason to believe or suspect may be subsidized. In particular, we disregarded import prices from India, Indonesia, South Korea, and Thailand because we found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies.⁷⁹ Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.⁸⁰ 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.⁸¹ Rather, the

⁷⁵ 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).

⁷⁶ See Factor Valuation Memorandum for a detailed description of all SVs used in this review.

⁷⁷ *Id.*

⁷⁸ 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).

⁷⁹ 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; and *Certain Frozen Warmwater Shrimp From Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013) (although our overall determination was negative, the Department found broadly available export subsidies existed in Thailand).

⁸⁰ 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.

⁸¹ 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 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). This practice has been codified. See Section 505 of the Trade Preferences

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.⁸²

Finally, the Fangda Group reported that certain of its raw material inputs were produced in and sourced from an ME country and provided evidence of ME purchases during the POR that were paid for in ME currency.⁸³ 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.⁸⁴ Where the Department finds ME purchases to be of significant quantities (*i.e.*, 85 percent or more), in accordance with our statement of policy as outlined in *Market Economy Inputs*,⁸⁵ the Department uses the actual purchase prices to value the inputs. Alternatively, when the volume of an NME firm’s purchases of an input from ME suppliers during the period is below 85 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 ME purchase price with an appropriate SV, according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption.⁸⁶ When a firm has made ME 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 ME purchases meet the 85 percent threshold.⁸⁷ Accordingly, consistent with 19 CFR 351.408(c)(1), we applied the Fangda Group’s reported ME purchase prices in valuing certain FOPs, either in whole or in part, based upon the share volume of purchases from ME sources.⁸⁸ Where appropriate, we added freight to arrive at delivered prices.

Extension Act of 2015, Pub. Law 114-27 (June 29, 2015) (amending Section 773(c)(5) of the Act to permit Department to disregard price or cost values without further investigation if it has determined that certain subsidies existed with respect to those values); *see also Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46795 (August 6, 2015).

⁸² *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, 75301 (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).

⁸³ *See* Factor Valuation Memorandum.

⁸⁴ *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).

⁸⁵ *See Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799 (August 2, 2013) (*Market Economy Inputs*).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *See* Factor Valuation Memorandum.

We valued truck freight expenses using the information in the World Bank Group’s publication entitled *Doing Business 2015 – Romania; Trading Across Borders*. This source provides the price list, including the cost of inland transportation and handling, based on a survey case study of the procedural requirements necessary to export a standardized cargo of goods by ocean transit from Romania. Because data reported in this source were current as of June 1, 2014, and, thus, contemporaneous with the POR, we did not inflate the surrogate value for truck freight expenses.⁸⁹

We valued rail freight using the rail cargo freight tariff information from the website of C.F.R. Marfa S.A., a state-owned company that is responsible for the largest rail freight operation in Romania. We obtained rail freight tariff schedules providing per-metric ton rates on the basis of shipping distances and shipment weight classes. We computed a single rail freight rate across all distance and weight segments. Because the data reported in this source were current as of April 15, 2014, and, thus, contemporaneous with the POR, we did not inflate the surrogate value for rail freight.⁹⁰

We valued electricity using the electricity tariff data for industrial end-users in Romania, published by Eurostat, the Statistical Office of the European Union. The electricity rates we obtained reflect bi-annual 2014 national prices for each classification of industrial users of electricity, and represent country-wide, publicly-available information on tax-exclusive basis. We computed a single average rate across all classifications of industrial users of electricity. Because this value is contemporaneous with the POR, we did not inflate it.⁹¹

We valued water using the information we obtained from APA Nova Bucharest, a company the main business of which is the services of water supply and sewerage in the municipality of Bucharest, under a long-term concession agreement with the municipality. We obtained current tariffs for water, on a VAT exclusive basis, for industrial end users. We calculated a single rate for water across all sources from which the water is obtained. Because it is not known when the current water tariffs became effective (*i.e.*, whether the tariffs were effective during the POR), we did not deflate the average water rate that we calculated.⁹²

Regarding labor, we could not identify Chapter 6A labor data for Romania pertaining to the industry specific to subject merchandise.⁹³ In *Labor Methodologies*, the Department explained that, “{i}f 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.”⁹⁴ The latest year for which ILO Chapter 6A reports national data for Romania is 2007. We selected this hourly labor value and inflated it to the POR using the Romanian CPI.⁹⁵ Because the financial statements used to calculate the

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

⁹⁴ *Id.*, 76 FR at 36094, fn 11.

⁹⁵ See Factor Valuation Memorandum.

surrogate financial ratios include itemized detail of labor costs, we made adjustments to certain labor costs in the surrogate financial ratios.⁹⁶

To value factory overhead, selling, general and administrative expenses, and profit, we used the ratios we derived from the 2014 publicly available and audited financial statements of Electrocarbon S.A., a Romanian producer of graphite electrodes.⁹⁷ The Romanian financial statements cover the fiscal year ending December 2014 (a period overlapping the POR by 11 months).⁹⁸

The Fangda Group and Fushun Jinly reported, respectively, that they recovered certain by-products in their production of subject merchandise and successfully demonstrated that these by-products have either commercial value or have been re-introduced into production of electrodes.⁹⁹ Therefore, we granted a by-product offset for the quantities of certain of Fangda Group's and Fushun Jinly's reported by-products produced during the POR. We valued the by-products using Romanian GTA data.¹⁰⁰

Use of Facts Available for Certain Factors of Production

The Department may use facts available pursuant to Section 776(a) of the Act when necessary information is missing from the record of the proceeding. During the POR, the Fangda Group used numerous unaffiliated tollers for certain stages of the production process in the production of subject merchandise.¹⁰¹ The Fangda Group reported to the Department that it was unable to obtain the requested information from any of the unaffiliated tolling companies.¹⁰² As a result, we lack necessary FOP data and the application of "facts otherwise available" is warranted.

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 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 tollers identified by the Department.¹⁰³ Moreover, (i) the FOPs of the non-reporting tollers account for relatively small portion of the total FOPs during the POR,¹⁰⁴ and (ii) there is usable FOP information on the record that can serve as a substitute for the missing FOP information.¹⁰⁵ Therefore,

⁹⁶ See *Labor Methodologies*, 76 FR at 36094.

⁹⁷ See Factor Valuation Memorandum.

⁹⁸ *Id.*

⁹⁹ See the Fangda Group's response, dated June 24, 2015, at D-15 through D-18 and Exhibits D-16 and D-17 and Fushun Jinly's response dated June 30, 2015, at D-17 and Exhibit D-9.

¹⁰⁰ See Factor Valuation Memorandum.

¹⁰¹ See the Fangda Group's Analysis Memorandum.

¹⁰² See the Fangda Group's response, dated June 24, 2015, at D-4.

¹⁰³ *Id.*, at Appendix D-13. See also Fangda Group's response, dated December 2, 2015 at 8.

¹⁰⁴ See the Fangda Group's Analysis Memorandum.

¹⁰⁵ See the Fangda Group's submission, dated December 30, 2015, at Exhibit S3-16, S3-17, S3-18, and S3-20, Fangda Group's submission, dated December 2, 2015 at Exhibit SD-6, and SD-7.

consistent with our practice, we are applying neutral facts available.¹⁰⁶ 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 as facts available for the missing toller information.

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.

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

✓

Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance
2 MARCH 2016

Date

¹⁰⁶ 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.