

September 6, 2011

**MEMORANDUM TO:** Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

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

**SUBJECT:** Small Diameter Graphite Electrodes from the People's Republic of  
China: Issues and Decision Memorandum for the Final Results of  
the First Administrative Review of the Antidumping Duty Order

**SUMMARY:**

We have analyzed the case briefs and rebuttal briefs submitted by Petitioners, the Fangda Group, and Fushun Jinly in the first administrative review of the antidumping duty order on SDGEs from the PRC. As a result of our analysis, we have made changes to the *Preliminary Results*. We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this antidumping duty administrative review for which we received comments. Immediately following the list of case issues is a list of abbreviations and acronyms used in this memorandum. Included at the end of this memorandum is an Appendix containing a complete list of the *Federal Register* Notices, litigation, and other documents cited in the discussion of the issues.

**Case Issues:**

- Comment 1: Whether To Apply Total Adverse Facts Available To the Mandatory Respondents
- Comment 2: Whether the Fangda Group and Fushun Jinly Properly Reported Their Universe of U.S. Sales
- Comment 3: Whether the Respondents Reported All of Their U.S. Selling Expenses
- Comment 4: Whether the Fangda Group Reported Accurate Energy & Labor Consumption
- Comment 5: Whether to Impute Reporting Failures of Fushun Carbon to the Other Fangda Group Producers
- Comment 6: Whether the Fangda Group Reported Accurate Supplier Distances
- Comment 7: Whether the Fangda Group Reported Accurate Market Economy Purchases
- Comment 8: The Fangda Group's By-Products
- Comment 9: Whether the Fangda Group Reported Complete and Reliable FOPs for Itself and Its Tollers

- Comment 10: Whether the Fangda Group Reported Accurate Sales Prices
- Comment 11: Surrogate Value for Natural Gas
- Comment 12: Whether Fushun Jinly Failed to Submit CONNUM-Specific Factor Data
- Comment 13: Whether Fushun Jinly's By-Product Offsets Should Be Rejected
- Comment 14: Whether Fushun Jinly Reported Accurate Electricity Consumption Factors and Whether the Department Incorrectly Valued Fushun Jinly's Coal Consumption
- Comment 15: Whether Fushun Jinly's Reported Market Economy Purchase Prices for Needle Coke Are Understated
- Comment 16: Whether Fushun Jinly Reported All Factor Data
- Comment 17: Whether to Reject Fushun Jinly's Tollers' Data Because It Included Non-Subject Merchandise in the FOP Allocations
- Comment 18: Whether Fushun Jinly's Graphitization Toller's FOP Data are Understated, Incomplete and Unreliable
- Comment 19: Whether Fushun Jinly's Accounting Records Can Be Reconciled to the Toller's Records With Respect to Quantities
- Comment 20: Whether Fushun Jinly's Toller #1's Data Are Incomplete
- Comment 21: Whether Fushun Jinly's Toller #2's Data Are Incomplete
- Comment 22: Fushun Jinly's Toller #2's Electricity Consumption
- Comment 23: Whether Fushun Jinly's Toller's Data Are Otherwise Understated
- Comment 24: Offsetting Negative Margins

**List Of Abbreviations And Acronyms Used In This Memorandum:**

<b>Acronym/Abbreviation</b>	<b>Full Name</b>
Act or Statute	Tariff Act of 1930, as amended
AD	Antidumping
AD/CVD	Antidumping and Countervailing Duty
AFA	Adverse Facts Available
AR	Administrative Review
Beijing Fangda	Beijing Fangda Carbon Tech Co., Ltd.
CAFC	Court of Appeals for the Federal Circuit
CEP	Constructed Export Price
CFR	Code of Federal Regulations
CIT or Court	U.S. Court of International Trade
CONNUM	Control Number
Customs or CBP	U.S. Customs and Border Protection
Department	Department of Commerce
EP	Export Price
FA	Facts Available
Fangda Carbon	Fangda Carbon New Material Co., Ltd.
Fangda Group	Beijing Fangda Carbon Tech Co., Ltd.
	Chengdu Rongguang Carbon Co., Ltd.
	Fangda Carbon New Material Co., Ltd.
	Fushun Carbon Co., Ltd.
	Hefei Carbon Co., Ltd.

**List Of Abbreviations And Acronyms Used In This Memorandum:**

<b>Acronym/Abbreviation</b>	<b>Full Name</b>
FOP(s)	Factor(s) of Production
Fushun Carbon	Fushun Carbon Co., Ltd.
Fushun Jinly	Fushun Jinly Petrochemical Carbon Co., Ltd
GAIL	Gas Authority of India Ltd.
HTS	Harmonized Tariff System
Hefei	Hefei Carbon Co., Ltd.
IDM	Issues and Decision Memorandum
Kg	Kilogram
ME	Market Economy
NME	Non-Market Economy
MT	Metric Ton
Muzi Carbon	Xinghe County Muzi Carbon Co., Ltd.
NV	Normal Value
Petitioners	SGL Carbon LLC and Superior Graphite Co.
POR	Period of Review
PRC	People's Republic of China
RMB	Renminbi
Rongguang	Chengdu Rongguang Carbon Co., Ltd.
Rs	Rupees
SDGEs	Small Diameter Graphite Electrodes from the People's Republic of China
SG&A	Selling General & Administration Expense
SQ	Supplemental Questionnaire
SV	Surrogate Value
URAA	Uruguay Round Agreements Act
VAT	Value Added Tax

**Background:**

The merchandise covered by the order is small diameter graphite electrodes, as described in the "Scope of the Order" section of the *Preliminary Results*. The POR is August 21, 2008, through January 31, 2010. In accordance with 19 CFR 351.309(c)(ii), we invited parties to comment on our *Preliminary Results*. On March 28, 2011, Petitioners submitted comments on an apparent discrepancy between the volume of subject merchandise sold and exported to the United States POR as (1) reported in the U.S. sales listings of the mandatory respondents (*i.e.*, Fushun Jinly and the Fangda Group) and (2) reported in the CBP data on the administrative record relating to entries of subject merchandise during the POR. On April 5, 2011, the Department requested new factual information from the mandatory respondents regarding their customers' import processes, including a description of any documents generated by the customer, the Fangda Group, and/or Fushun Jinly related to the importation process. On April 11, 2011, the mandatory respondents submitted new factual information as requested by the Department. On April 25, 2011, Petitioners provided comments on the mandatory respondents' April 11, 2011 new factual information submission. On April 28, 2011, the Department placed CBP data on the record.

Petitioners submitted comments on the CBP data on May 5, 2011, and the mandatory respondents rebutted Petitioners' comments regarding CBP data on May 16, 2011.

On May 23, 2011, Petitioners submitted a case brief and the mandatory respondents submitted a joint case brief. On May 31, 2011, the mandatory respondents submitted a joint rebuttal brief and Petitioners submitted a rebuttal brief; however, on June 2, 2011, the Department rejected Petitioners' rebuttal brief because it contained comments on arguments not raised in respondents' case brief. Petitioners submitted their redacted rebuttal brief on June 6, 2011. We did not receive briefs or rebuttal briefs from any other interested party to this review. On June 21, 2011, the Department published a notice in the *Federal Register* extending the time limit for the final results of review by the full 60 days allowed under section 751(a)(3)(A) of the Act to September 6, 2011.<sup>1</sup> On June 29, 2011, the Department released for comments Wage Rate Memorandum, which contained wage rate data for use in these final results. We did not receive any comments from interested parties pertaining to the Wage Rate Memorandum.

## DISCUSSION OF THE ISSUES

### Comment 1: Whether To Apply Total Adverse Facts Available To the Mandatory Respondents

- Petitioners argue that the Department should apply total AFA to the mandatory respondents because they failed to cooperate to the best of their ability in responding to the Department's request for information. According to Petitioners, the Department should find that respondents have: (1) failed to submit critical information requested by the Department in a timely manner and (2) submitted information that does not agree with data already placed into this record. Specifically, Petitioners' argument to apply total AFA is primarily based on their assertion that the mandatory respondents failed to provide a valid U.S. sales database during the course of this review and withheld critical information from the Department.<sup>2</sup> See Comment 2 below.
- Citing *Steel Authority (CIT 2001)*, as precedent, Petitioners claim that, for the reasons stated above and the reasons addressed below, the Department should apply total AFA. To support their argument, Petitioners also cite *CTL Plate/India (December 29, 1999)*, amended by *CTL Plate/Multiple Countries (February 10, 2000)*, affirmed by *Steel Authority (CIT 2001)*, 25 CIT at 487 (upholding the Department's decision to "reject a respondent's submissions *in toto* when flawed and unverifiable . . . data renders all price-to-price comparisons impossible") and sections 776(a) and (b) and 782(d) and (e) of the Act.
- Petitioners also allege the following with respect to the Fangda Group:
  1. Fangda Group did not report all of its U.S. selling expenses. See Comment 3.
  2. Fangda Group did not report all of its energy and labor FOPs. See Comment 4.
  3. Fangda Group did not report all of its labor hours. See Comment 5.
  4. Fangda Group's supplier distances were unverifiable. See Comment 6.
  5. Fangda Group's ME purchases do not reconcile to its accounting books. See

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<sup>1</sup> See *SDGEs/PRC (June 21, 2011)*.

<sup>2</sup> In support of application of total AFA, Petitioners cite to *Steel Authority (CIT 2001)*, 25 CIT at 487, and *SDGEs/PRC (January 14, 2009)*.

- Comment 7.
6. Fangda Group's by-product offsets are not properly reported to the Department. *See* Comment 8.
  7. Fangda Group's tolling data are incomplete and unusable. *See* Comment 9.
  8. Fangda Group's U.S. shipments do not reconcile to its accounting books. *See* Comment 10.
- Petitioners allege the following with respect to Fushun Jinly:
    1. Fushun Jinly failed to report all U.S. selling expenses. *See* Comment 3.
    2. Fushun Jinly failed to submit CONNUM-specific factor data. *See* Comment 12.
    3. Fushun Jinly's by-product offsets should be rejected. *See* Comment 13.
    4. Fushun Jinly failed to report accurate electricity consumption factors. *See* Comment 14.
    5. Fushun Jinly's reported market prices for needle coke are understated. *See* Comment 15.
    6. Fushun Jinly did not report all factor data. *See* Comment 16.
    7. Fushun Jinly's tollers included non-subject merchandise in their FOPs. *See* Comment 17.
    8. Fushun Jinly's graphitization tollers' FOP data are understated, incomplete and unreliable. *See* Comment 18.
    9. Fushun Jinly's accounting records cannot be reconciled to the tollers' records. *See* Comment 19.
    10. Fushun Jinly's tollers #1's data are incomplete. *See* Comment 20.
    11. Fushun Jinly's tollers #2's data are incomplete. *See* Comment 21.
    12. Fushun Jinly's tollers data are otherwise understated. *See* Comment 22.
  - In rebuttal to Petitioners' argument, respondents assert that there is no basis for the Department to apply AFA to the mandatory respondents for the final results and the Department should continue to rely upon the Fangda Group's and Fushun Jinly's verified databases for the final results.

**Department's Position:** Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to subsection 782(d) of the Act, apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, subject to subsection 782(i) of the Act.

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

that the Department “shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority” if the information is timely, can be verified, is not so incomplete that it cannot serve as a reliable basis, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

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

The Department has determined that the application of total AFA is not warranted in this case for either the Fangda Group or Fushun Jinly because both the Fangda Group and Fushun Jinly provided requested information by the deadlines established by the Department and did not otherwise impede the Department’s ability to conduct this administrative review. The Fangda Group and Fushun Jinly also cooperated in the Department’s verification of their respective factual information.<sup>3</sup> The Department conducted verification of both respondents and concludes based on the overall record including our verification findings that the information provided is sufficient to serve as a reliable basis for determining dumping margins for the Fangda Group and Fushun Jinly in this review, within the meaning of section 782(e) of the Act. Therefore, pursuant to sections 776 and 782(e) of the Act, the Department will not apply total AFA to determine the final margin for the Fangda Group and Fushun Jinly in this review.

For a detailed discussion on Petitioners’ specific data concerns, and our determination that the information is sufficient and reliable such that the Department need not apply total AFA, *see* the relevant discussion below for each of the referenced comments itemized above.

## **Comment 2: Whether the Fangda Group and Fushun Jinly Properly Reported Their Universe of U.S. Sales**

- Petitioners argue that the mandatory respondents did not know which of their reported U.S. sales actually entered the United States for consumption and which were re-exported without entering the United States for consumption. Petitioners assert that the “knowledge of destination” test requires that the exporter “knew or had reason to know that the merchandise was entered into the commerce of the United States,”<sup>4</sup> rather than simply shipped to a U.S. port.
- Petitioners contend the U.S. sales database should be based on the U.S. sales of respondents’ resellers because they are the ones with knowledge of the ultimate destination.<sup>5</sup>
- Petitioners assert that the Department should either 1) rescind the review or 2) apply the

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<sup>3</sup> See the Fangda Group’s Verification Report and Fushun Jinly’s Verification Report.

<sup>4</sup> Petitioners cite *OCTG/Argentina (March 19, 2003)* and accompanying IDM at Comment 7.

<sup>5</sup> Petitioners cite to *Fish Fillets/Vietnam (June 22, 2009)* and accompanying IDM at Comment 5; *SS Plate/Belgium (October 19, 2009)* and accompanying IDM at Comment 2; and *Torrington (CIT 1995)*, 19 CIT at 428-29.

- PRC-wide entity rate to the relevant entries because the resellers do not have their own rate.<sup>6</sup>
- Alternatively, Petitioners argue that, if respondents knew their merchandise was not entering the United States for consumption, the Department should 1) find that they failed to submit proper U.S. sales databases and thus failed to cooperate to the best of their ability, and 2) apply total AFA to the mandatory respondents.
  - Respondents argue that all of their sales destined for the United States were properly reported in their U.S. sales database, and that the Department should continue to use the Fangda Group's and Fushun Jinly's U.S. sales database for the final results.

**Department's Position:** As an initial matter, we disagree with Petitioners that total AFA is warranted with respect to the Fangda Group and Fushun Jinly. *See* the Department's Position to Comment 1 above. Additionally, we disagree with Petitioners' argument that, because the respondents did not know whether their U.S. shipments actually entered for U.S. consumption the Department should rescind the review or apply the PRC-wide rate to specific entries. Additionally, we find that Petitioners' assertion that the U.S. sales databases should be based on respondents' unaffiliated U.S. resellers' sales because respondents lacked specific knowledge of U.S. consumption is without merit in this case.

With respect to Petitioners' argument that the Department should apply the "knowledge test," we find that the knowledge test is a framework that is of use in identifying the first party in a transaction chain with knowledge of U.S. destination where there are multiple entities, other than the unaffiliated U.S. customer, involved in such chain prior to importation.<sup>7</sup> We find that this framework does not fit the fact pattern in this case. In this case, prior to importation, the only entities involved in each transaction chain were the respondent (the Fangda Group and Fushun Jinly, respectively), and the unaffiliated U.S. customer.<sup>8</sup> Thus, application of the knowledge test is neither necessary nor appropriate in these circumstances.

Section 772(a) of the Act defines export price as the price at which the subject merchandise is first sold before the date of importation by a producer or exporter of the subject merchandise outside of the United States "to an unaffiliated purchaser in the United States." We find that the sales in question clearly meet the statutory definition of export price sales. In the instant review, both respondents made sales to their unaffiliated U.S. customers on an FOB China port basis prior to importation into the United States.<sup>9</sup> In particular, the Department examined as part of respondents' verification sale trace packages, commercial invoices, packing lists, bills of lading, PRC customs declaration documents, and PRC broker invoices, and other items, all of which demonstrated that the merchandise in question was sold to a U.S. customer and bound for the United States.<sup>10</sup> Therefore we find that it was appropriate for the Fangda Group and Fushun Jinly to report these sales in their U.S. sales databases.

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<sup>6</sup> Petitioners cite to *GSA (CIT 1999)*, 23 CIT at 926-27, n.14, and *Atar Final Remand Determination/Italy (May 5, 2010)* at 5 and 12

<sup>7</sup> *See, e.g., CTL Plate/Italy (July 12, 2006)* and IDM at Comment 1.

<sup>8</sup> *See* Fangda Group's Verification Report at 8-12 and Fushun Jinly's Verification Report at 9-10.

<sup>9</sup> *See* Fushun Jinly's Sections C & D submission at C-13 and Appendix C-1; the Fangda Group's Section C submission at C-15 and Appendix C-1.

<sup>10</sup> *See* the Fangda Group's Verification Report at 17-21; Beijing Fangda's Verification Exhibits 7-10; Fushun Carbon's Verification Exhibits 12-14; and Fushun Jinly's Verification Report at 19 and Verification Exhibits 13-15.

Subsequent to Petitioners' allegation, one importer of subject merchandise exported by the Fangda Group and Fushun Jinly voluntarily submitted a company worksheet that showed certain of its imports of subject merchandise shipped to the United States did not enter the United States for consumption, but rather, were exported to a third country.<sup>11</sup> The assessment of AD duties is "restricted to merchandise 'entered, or withdrawn from warehouse, for consumption.'"<sup>12</sup> Because the importer's worksheet affirmatively establishes that the importer never entered these shipments for U.S. consumption but rather exported them to a third country, we have determined to exclude those sales from each respondent's margin calculation, where applicable.

With respect to Petitioners' citations to *Fish Fillets/Vietnam (June 22, 2009)* and *SS Plate/Belgium (October 19, 2009)*, contrary to Petitioners' assertion, we do not find that those cases stand for the proposition that the Department will only calculate dumping margins on sales that entered the United States for consumption. In both of those cases, the issue was whether there was any reason to exclude the respondent's sales, notwithstanding that they had entered the United States for consumption. In both cases the Department found that because these sales entered the United States for consumption, they should be reported in the respondent's U.S. sales database, notwithstanding other circumstances surrounding the sales. Thus, these cases do not stand for the proposition that the respondent must know that its merchandise that otherwise meets the definition of a U.S. sale entered the United States for consumption in order to include those transactions in its U.S. sales database. As discussed above, pursuant to Section 772(a) of the Act, the Department defines export price sales as merchandise that is first sold before the date of importation by a producer or exporter of the subject merchandise outside of the United States "to an unaffiliated purchaser in the United States." In the instant case, we find that the sales in question clearly meet the statutory definition of export price sales, and that the Fangda Group and Fushun Jinly properly reported these sales in their respective U.S. sales databases. Therefore, we have continued to use Fangda Group's and Fushun Jinly's reported U.S. sales in their respective margin calculations, except for the sales where record evidence establishes that they were exported to third countries.<sup>13</sup> Further, in concluding that certain sales should be included in the respondent's U.S. sales database, in *SS Plate/Belgium (October 19, 2009)*, the Department determined that the fact that certain merchandise may be ultimately transformed into a different product that is considered non-subject merchandise is not relevant to the Department's analysis of entries of subject merchandise that entered into U.S. Customs territory as such. In contrast, the Department is not concerned here with the transformation of a product from subject merchandise to non-merchandise, or vice versa. There is no question that the product in question is subject merchandise, and, as stated above, that the Fangda Group's and Fushun Jinly's sales were appropriately reported as export price sales.

### **Comment 3: Whether the Respondents Reported All of Their U.S. Selling Expenses**

- Petitioners contend that, based on Beijing Fangda's Verification Exhibit 7,<sup>14</sup> the Fangda Group did not report all U.S. selling expenses, and the Department should find that the

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<sup>11</sup> See Respondents' April 11, 2011 Submission at Exhibits 1 and 2.

<sup>12</sup> *Titanium (CIT 1995)*, 19 CIT at 1145 (citing section 733(d)(1) of the Act, which is Section 733(d)(2) in the current Act).

<sup>13</sup> See Fushun Jinly's Final Analysis Memo and The Fangda Group's Final Analysis Memo.

<sup>14</sup> See the Fangda Group's Verification Report at Exhibit 7.

Fangda Group either failed to report all U.S. selling expenses or reported inaccurate U.S. selling expenses.

- Based on certain verification exhibits,<sup>15</sup> Petitioners argue that Fushun Jinly did not report all U.S. selling expenses to the Department.
- Respondents did not comment on this issue.

**Department's Position:** In our *Preliminary Results*, we used EP methodology for each respondent in accordance with section 772(a) of the Act.<sup>16</sup> We based EP on the price to unaffiliated purchasers in the United States because respondents reported that all of their sales were to unaffiliated U.S. customers, and CEP methodology was not otherwise indicated.<sup>17</sup> In the original questionnaire, the Department instructed respondents that if they have CEP sales to report certain sales adjustments that were incurred in the United States.<sup>18</sup> Both respondents did not report any circumstances of sale adjustments because all their sales were EP.<sup>19</sup> Furthermore, in NME cases, the Department generally does not adjust EP sales for circumstance of sale adjustments because the comparable expense in NV, which is based on a surrogate value, is included in the selling expense component of the financial ratios, and, the Department cannot accurately calculate differences in circumstances of sale and, thus, makes no adjustment for such differences.<sup>20</sup> Thus, because both respondents reported only having EP sales transactions during the POR, we do not find that either respondent failed to report all U.S. selling expenses or reported inaccurate U.S. selling expenses. Accordingly, respondents were not required to report U.S. selling expenses, and the Department did not instruct them to do so.

#### **Comment 4: Whether the Fangda Group Reported Accurate Energy & Labor Consumption**

##### ***a. Fushun Carbon – Coal Gas:***

- Petitioners argue that respondents are required to report all energy consumption because energy costs are not captured in the surrogate financial ratio calculations. Specifically, Petitioners contend that the Department should find that the Fangda Group failed to report a certain amount of coal gas consumption related to equipment maintenance for Fushun Carbon.
- The Fangda Group did not comment on this issue.

**Department's Position:** We disagree with Petitioners that the Fangda Group's energy consumption is not accurately reported. Accordingly, we have not included coal gas consumption related to equipment maintenance in the Fangda Group's margin calculation, and we have continued to use the Fangda Group's submitted FOP data for the final results.

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<sup>15</sup> See Fushun Jinly's Verification Report at Exhibit 14.

<sup>16</sup> See *Preliminary Results* 76 FR at 12333.

<sup>17</sup> See the Fangda Groups section C submission and Fushun Jinly's Section C & D Submission.

<sup>18</sup> See Original Questionnaire at C-20

<sup>19</sup> See the Fangda Groups section C submission and Fushun Jinly's Section C & D Submission.

<sup>20</sup> See, e.g., *Hand Trucks/PRC* (May 25, 2010) and accompanying IDM at Comment 1; *Tires/PRC* (July 15, 2008) and accompanying IDM at Comment 52; *Hand Tools/PRC* (September 10, 2003) and accompanying IDM at Comment 11; *Foundry Coke/PRC* (July 31, 2001) and accompanying IDM at Comment 4; *Synthetic Indigo/PRC* (May 3, 2000) and accompanying IDM at Comment 13.

Consistent with our practice, in our *Preliminary Results*, we did not include Fushun Carbon's coal gas consumption related to equipment maintenance in the Fangda Group's margin calculation, nor did we instruct the Fangda Group to do so because we verified that this particular expense was not a direct cost associated with producing the subject merchandise.<sup>21</sup> Section 773(c)(1)(B) of the Act directs the Department to base its calculation of costs on the FOPs actually "utilized in producing the merchandise." Section 773(c)(3)(C) of the Act directs that this will include the amount of electricity and other utilities consumed as FOPs "utilized in producing merchandise." It is the Department's practice not to include "non-production" energy as an FOP, as this is more accurately captured as an overhead cost.<sup>22</sup> Additionally, it is the Department's practice not to value certain inputs if we find that these inputs are used in the maintenance of machines, but instead to classify them as overhead items.<sup>23</sup> During Fushun Carbon's verification, company officials explained that the difference between the consumption and production of coal gas was the amount of coal gas used in the company's equipment maintenance.<sup>24</sup> At verification, we reviewed Fushun Carbon's relevant supporting documents (e.g., general ledger, accounting vouchers, etc.) and found no irregularities.<sup>25</sup> Consistent with the Department practice, we find that the coal gas consumed by Fushun Carbon is not directly used in the production of subject merchandise, but rather for equipment maintenance. As a result, we have not included coal gas consumption related to equipment maintenance in the Fangda Group's margin calculation.

***b. Fushun Carbon- Electricity and Labor for Certain Workshops/Certain Months:***

- Petitioners argue that, because Fushun Carbon failed to report electricity for certain workshops for certain months during the POR, as evidenced by the Department's verification report, it necessarily failed to report the corresponding labor hours for those workshops and months.
- The Fangda Group did not comment on this issue.

**Department's Position:** With regard to the discrepancies in Fushun Carbon's reported consumption worksheet for electricity, we determined these to be minor differences which we addressed in the Fangda Group's verification report.<sup>26</sup> Subsequent to verification, we requested, and the Fangda Group reported, corrected electricity consumption data which we used in the *Preliminary Results*.<sup>27</sup> We have continued to use that corrected data for the final results of review as well. Further, we find no evidence on the record to support Petitioners' assertion that, because of errors the Department found at verification in Fushun Carbon's electricity consumption, similar errors exist with respect to Fushun Carbon's reported labor hours. In the

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<sup>21</sup> See the Fangda Group's Verification Report at 27-28; Fushun Carbon's Verification Exhibit 19. See also the Fangda Group's Preliminary Analysis Memo.

<sup>22</sup> See, e.g., *Tires/PRC* (April 25, 2011) and accompanying IDM at Comment 6.

<sup>23</sup> See, e.g., *CFS/China* (October 25, 2007), 72 FR at 60633 and accompanying IDM at Comment 6.

<sup>24</sup> See the Fangda Group's Verification Report at 27-28; Fushun Carbon's Verification Exhibit 19.

<sup>25</sup> See *id.*

<sup>26</sup> See the Fangda Group's Verification Report at 26-27.

<sup>27</sup> See the Fangda Group's Preliminary Analysis Memo. See also the Department's February 9, 2011, Post-Verification Supplemental Questionnaire (instructing the Fangda Group to revise and resubmit its FOP database and include in its database the unreported electricity consumption found at verification. See also the Fangda Group's February 16, 2011, response, in which it provided a revised FOP database ("Fangda's Exhibit S6-3 Revised FOP Database.xls") that the Department converted to a SAS dataset (fangdaus02.sas7bdat) and used in the Fangda Group's margin calculation. See the Fangda Group's Verification Report at 26-27.

Fangda Group's verification report, we stated that Fushun Carbon provided all necessary source documents that properly identified direct and indirect labor hours, correctly reported per-unit labor amounts, and provided records of payment for labor.<sup>28</sup> Additionally, we tied source documents (*e.g.*, labor hour tally sheets, general ledger accounts, accounting vouchers, *etc.*) to Fushun Carbon's FOP database, and we found no discrepancies.<sup>29</sup> Because the labor data that we reviewed at verification contained no discrepancies,<sup>30</sup> we determine that the information is complete and continue to find it appropriate to use the Fangda Group's verified labor consumption for the final results.

#### **Comment 5: Whether to Impute Reporting Failures of Fushun Carbon to the Other Fangda Group Producers**

- Petitioners argue that, because Fushun Carbon failed to report all of its appropriate electricity and labor hours, the Department should also find that the other Fangda Group producers (*i.e.*, Hefei Carbon, Fangda Carbon, and Rongguang) also understated their reported consumption of electricity and labor for certain months/workshops during the POR.
- The Fangda Group did not comment on this issue.

**Department's Position:** We disagree with Petitioners' assertion that an error in one producer's submission automatically implies that the same error exists in each of the other producer's submissions. Each of the four producers within the Fangda Group - Fushun Carbon, Hefei, Fangda Carbon, and Rongguang - provided a separate section D and cost reconciliation response, which included among other documentation, consumption and reconciliation worksheets.<sup>31</sup> For purposes of verification, we chose to limit our examination of the Fangda Group companies and spot check Fushun Carbon, one of the Fangda Group's four producers of subject merchandise.<sup>32</sup> At that verification, we found no evidence that the minor discrepancy we found in reported electricity consumption was systemic and would have been reflected in the FOP databases from the other Fangda Group producers.<sup>33</sup> Therefore, we have no basis to conclude that those databases are incorrect. Additionally, we have no record evidence that any of the four producers misreported labor hours, as discussed above in Comment 4. Accordingly, we have no basis to conclude that those companies did not comply with the Department's information requests or that they failed to cooperate by not acting to the best of their ability with respect to their reporting of electricity and labor consumption.

#### **Comment 6: Whether the Fangda Group Reported Accurate Supplier Distances**

- Petitioners argue that the Department should expand its verification finding and application of AFA to all of the Fangda Group's producers with respect to Fushun Carbon where it was

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<sup>28</sup> See the Fangda Group's Verification Report at 28-29; Fushun Carbon's Verification Exhibit 23.

<sup>29</sup> See *id.*

<sup>30</sup> See *id.*

<sup>31</sup> See the Fangda Group's Section D response at Exhibits DA-7, DB-7, DC-7, and DD-7; see also the Fangda Group's Fourth Supplemental Response at Exhibits 1-42.

<sup>32</sup> See the Fangda Group's Verification Report at 1-32. See also *Aluminum Extrusions/PRC (April 4, 2011)* and accompanying IDM at Comment 4 (explaining that "verification is a spot check, not an exhaustive examination of the respondent's business").

<sup>33</sup> See *id.*

not able to verify the accuracy of the supplier distance for a significant percent of Fushun Carbon's suppliers.

- The Fangda Group did not comment on this issue.

**Department's Position:** We disagree with Petitioners' argument because there is no record evidence to suggest that the other three Fangda Group producers – Hefei, Fangda Carbon, and Rongguang – did not properly report their supplier distances. Each of the four producers within the Fangda Group companies provided a separate section D response, which included a supplier distance worksheet.<sup>34</sup> We find no evidence on the record to suggest that errors in one producer's section D submission automatically imply that the same errors exist in each of the other producer's section D submissions.<sup>35</sup> For purposes of verification, we chose to limit our examination of the Fangda Group companies and spot check Fushun Carbon, one of the Fangda Group's four producers of subject merchandise.<sup>36</sup> At verification, the Department observed certain discrepancies in Fushun Carbon's supplier distances, which we addressed in our *Preliminary Results* and continue to find for these final results.<sup>37</sup> However, because there is no record evidence that these were more than minor errors by Fushun Carbon or that they were systemic errors that would apply to the other three producers, we have no record evidence to support a conclusion that Hefei Carbon, Fangda Carbon, and Rongguang misreported their supplier distances. We therefore have no basis to conclude that those companies did not comply with the Department's information requests or that they failed to cooperate by not acting to the best of their ability with respect to their reporting of supplier distances for purposes of applying FA or AFA under section 776 of the Act.

#### **Comment 7: Whether the Fangda Group Reported Accurate Market Economy Purchases**

- Petitioners contend that the Department should find that it could not verify the accuracy of the Fangda Group's ME purchases because the Department found at verification that the Fangda Group reported duplicate market economy purchases in some cases and failed to report certain other market economy purchases at all.
- The Fangda Group argues that Petitioners fail to recognize the Department's findings at verification where the Department stated that it tied "Fushun Carbon's raw material sub-ledger for imported needle coke, without exception" to information requested by the Department at verification.<sup>38</sup>

**Department's Position:** We disagree with Petitioners. For purposes of verification, we chose to limit our examination of the Fangda Group companies and spot check Fushun Carbon, one of the Fangda Group's four producers of subject merchandise.<sup>39</sup> During verification, the Department observed discrepancies in Fushun Carbon's reported ME purchases, which we

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<sup>34</sup> See the Fangda Group's Section D submission at Exhibits DA-4, DB-4, DC-4, and DD-4.

<sup>35</sup> See *id.*

<sup>36</sup> See the Fangda Group Verification Report at 1-32.

<sup>37</sup> See *Preliminary Results*, 76 FR at 12335-36. See also the Fangda's Preliminary Analysis Memo at 3-5.

<sup>38</sup> The Fangda Group cites the Fangda Group's Verification Report at 24-25.

<sup>39</sup> See the Fangda Group's Verification Report at 1-32. See also *Aluminum Extrusions/PRC (April 4, 2011)* and accompanying IDM at Comment 4 (explaining that "verification is a spot check, not an exhaustive examination of the respondent's business").

addressed in our *Preliminary Results*.<sup>40</sup> Specifically, at verification, we found that the Fangda Group double counted certain of its ME purchases, *i.e.*, purchases made by Beijing Fangda on behalf of Fushun Carbon were reported twice as purchases by both of these companies. Additionally purchases made by Fangda Carbon that were ultimately sent to Fushun Carbon were also reported by both of these companies.<sup>41</sup> We also found that Fushun Carbon had one ME purchase during the POR that had not been previously reported.<sup>42</sup>

To help reconcile these discrepancies, at verification we requested that the company provide a listing that showed what they reported, the importer, and the amount sent to Fushun Carbon. We reviewed this listing and tied the amounts to Fushun Carbon's raw material sub-ledger for imported needle coke, without exception.<sup>43</sup> Additionally, we were able to trace the worksheet figures to the books and records of Beijing Fangda and found no discrepancies.<sup>44</sup>

In our *Preliminary Results*, we relied on the ME purchase information obtained at verification in our ME purchase analysis for the Fangda Group.<sup>45</sup> While we found the aforementioned errors with respect to Fushun Carbon's ME purchases, we have no record evidence to support that there are also errors with respect to the other Fangda Group producers' ME purchases, especially in light of the fact that we found no errors in Beijing Fangda's ME purchase reporting. Therefore, we have no basis to conclude that those companies did not comply with the Department's requests for information or that they failed to cooperate by not acting to the best of their ability with respect to their reporting of ME purchases.

#### **Comment 8: The Fangda Group's By-Products**

- Petitioners argue that the Department should find that the Fangda Group has not accurately reported its claimed by-products because at verification the Department discovered that the Fangda Group reported waste metallurgical coke together with graphitized metallurgical coke scrap. Petitioners contend that the Fangda Group did not timely notify the Department of this error at the beginning of the verification.
- Petitioners claim that the problem with the Fangda Group combining waste metallurgical coke with graphitized metallurgical coke scrap is that these two by-products have very different SVs (*i.e.*, 13.859 Rs/kg and 211.441 Rs/kg, respectively) and, that in the *Preliminary Results*, the Department valued waste metallurgical coke at the higher value for graphitized metallurgical coke scrap of 211.441 Rs/kg, instead of the lower surrogate value for waste metallurgical coke of 13.859 Rs/kg.
- The Fangda Group did not comment on this issue.

**Department's Position:** First, we disagree with Petitioners regarding the valuation of the Fangda Group's waste metallurgical coke. Petitioners' argument that the Department valued

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<sup>40</sup> See the Fangda Group's Verification Report at 24-25; the Fangda Group's Preliminary Analysis Memo at 5 and Attachment 5.

<sup>41</sup> See the Fangda Group's Verification Report at 24-25.

<sup>42</sup> See *id.*

<sup>43</sup> See *id.* at 25; see also Fushun Carbon's Verification Exhibit 32 at 3.

<sup>44</sup> See *id.*

<sup>45</sup> See Fangda Group's Preliminary Analysis Memo at 5 and Attachment 5.

waste metallurgical coke at the higher value for graphitized metallurgical coke scrap of 211.441 Rs/kg, instead of the lower surrogate value for waste metallurgical coke of 13.859 Rs/kg is incorrect.<sup>46</sup> We find that the factual record in this review shows that we valued both of the inputs in question (graphitized metallurgical coke scrap and waste metallurgical coke) using the same Indian HTS category 2704.0090 at 13.859 Rs/Kg.<sup>47</sup> Furthermore, we received no additional SV information from either party subsequent to the *Preliminary Results* to suggest that we should depart from our treatment of these inputs in the *Preliminary Results*. Thus, for the final results, we will continue to value the Fangda Group's graphitized metallurgical coke scrap and waste metallurgical coke using the same Indian HTS category 2704.0090 and corresponding value of 13.859 Rs/Kg as reported in the Fangda Group's Section D response at Exhibit DA-3.

We also disagree with Petitioners' assertion that the record demonstrates the Fangda Group did not accurately report its claimed by-products. Due to the limited time at Fushun Carbon's verification, we narrowed our examination of source documents related to its by-product offsets.<sup>48</sup> During our review of Fushun Carbon's reported graphitized metallurgical coke scrap, we found that this input consisted of two separate by-products: graphitized metallurgical coke scrap and waste metallurgical coke.<sup>49</sup> Based on the documents provided by Fushun Carbon during verification, the Department concluded that there were no discrepancies between the Fangda Group's questionnaire responses and its books and records for this input.<sup>50</sup> Furthermore, the fact that the input of graphitized metallurgical coke scrap also contains some waste metallurgical coke does not affect the valuation of this input, because the Department's determination of how to value the individual inputs would be the same whether the inputs were separate or combined (*i.e.*, Indian HTS category 2704.0090 and corresponding value of 13.859 Rs/Kg).

#### **Comment 9: Whether the Fangda Group Reported Complete and Reliable FOPs for Itself and Its Tollers**

- Petitioners argue that the Fangda Group's reported tolling data are wholly incomplete and unreliable and should not be used for the final results.
- Petitioners also argue that: (1) the Fangda Group's submitted tolling data are not CONNUM-specific, (2) the Fangda Group failed to submit factor data for one of Fushun Carbon's tollers, and (3) the only information on the record regarding the quantity of tolled merchandise does not reconcile to Fangda Group's worksheet of toller production.
- Petitioners point to the original investigation of SDGEs where the Department assigned total AFA to the Fangda Group for its failure to submit factor data on a CONNUM-specific basis, among other reasons.
- The Fangda Group did not comment on this issue.

**Department's Position:** We disagree with Petitioners that the Fangda Group's reported tolling

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<sup>46</sup> See *id.* at Attachment 3; see also Preliminary Factors Memo at 5-6.

<sup>47</sup> See *id.* Indian HTS code 2704.0090, labeled as "Other," is a subcategory under the four-digit code labeled "Coke And Semi-Coke Of Coal, Of Lignite Or Of Peat, Whether Or Not Agglomerated; Retort Carbon."

<sup>48</sup> See the Fangda Group's Verification Report at 30-31.

<sup>49</sup> See *id.*

<sup>50</sup> See the Fangda Group's Preliminary Analysis Memo at Attachment 3.

data is wholly incomplete and unreliable. Accordingly, we have not applied total AFA to the Fangda Group and, we have continued to use the Fangda Group's submitted FOP data for the final results.

As summarized above in Comment 1, sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if the necessary information is not on the record, or an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested by the Department, subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the AD statute; or (D) provides such information but the information cannot be verified. Section 776(b) of the Act permits the Department to use an adverse inference in selecting from among the facts otherwise available should the Department determine that "an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information" from the Department. Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative form in which such party is able to submit the information," the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

The Fangda Group employed the services of more than 100 tollers during this POR. On December 8, 2010, the Department requested that the Fangda Group provide FOP data for all of its tollers.<sup>51</sup> On December 13, 2010, we advised the Fangda Group that we would reconsider our request.<sup>52</sup> However, as part of our reconsideration, we requested that each company within the Fangda Group complete a production worksheet by operation that shows the percentage of each operation performed by each company and its tollers.<sup>53</sup> On December 14, 2010, the Fangda Group submitted the requested worksheets.<sup>54</sup> Because most of the reported tollers serviced a very insignificant percentage of the respondent's production, we narrowed our request for reported tolling data by instructing Fushun Carbon to submit FOPs for a select number of specific tollers involved in baking operations.<sup>55</sup> In response, the Fangda Group reported the data as requested except for one toller, for which Fangda explained that it was unable to obtain raw material data.<sup>56</sup> Instead, the Fangda Group provided a letter from the toller stating that it would not provide its proprietary tolling information to the Fangda Group.<sup>57</sup> As this toller is unaffiliated with the Fangda Group and the Department determined that it had sufficient other data from another of the Fangda Group's tollers for this tolling operation, we did not pursue this data further. Petitioners have not provided any information to demonstrate that reliance on this other toller's data produced an inaccurate or unreasonable result. Accordingly, the Department continues to rely on information provided by the other toller for purposes of determining the

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<sup>51</sup> See the Department's December 8, 2010, Section A Supplemental Questionnaire to the Fangda Group.

<sup>52</sup> See the Department's December 13, 2010, Memorandum to the File.

<sup>53</sup> See *id.*

<sup>54</sup> See the Fangda Group's responses regarding the tolling companies used by the Fangda Group, dated December 14, 2010.

<sup>55</sup> See the Department's December 16, 2010, letter to the Fangda Group.

<sup>56</sup> See the Fangda Group's response regarding the Fangda Group's production worksheets included tolled production, dated December 30, 2010.

<sup>57</sup> See the Fangda Group's Verification Report and Fushun Carbon's Verification Exhibit 33 at 2-3.

value of the inputs/services supplied by the unaffiliated toller which would not provide its proprietary information to the Fangda Group.

We disagree with Petitioners that the Fangda Group's reported tolling data are wholly incomplete and unreliable because its submitted tolling data is not CONNUM-specific. Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In calculating the FOPs to report to the Department, the Fangda Group's toller first determined by weight the quantity of its raw material inputs used in its baking process to produce one MT of graphite electrodes during the POR. By calculating its FOPs in this manner, all inputs are accounted for because the total consumption of inputs is allocated over total production of graphite electrodes.<sup>58</sup> Therefore, we find that, because the Fangda Group's toller's FOPs are based on a ratio of inputs consumed per MT of graphite electrodes produced, the toller's reported FOPs are not incomplete and can be relied upon for the final results. Unlike the original investigation of SDGEs in which we applied total AFA upon finding that the Fangda Group had failed to identify its tollers and had withheld records that could have been used to report factor quantities on a CONNUM-specific basis,<sup>59</sup> we find in this review that the Fangda Group identified its tollers and complied with the Department's requests for information with respect to its tolling data. Accordingly, we have continued to rely on the Fangda Group and its tollers' reported data for these final results.

Additionally, regarding Petitioners' argument that the quantity of tolled merchandise recorded on the toller's documents does not reconcile to the Fangda Group's worksheet, Petitioners are attempting to reconcile two documents that report different information. Specifically, the Fangda Groups' documents represent what the Fangda Group producers sent to their tollers, while the tollers documents record everything processed in that specific operation, not just the Fangda Group companies' merchandise.<sup>60</sup> Accordingly, any lack of reconciliation is not related to a misreporting of data and does not demonstrate that the reported data should not be used.

The record demonstrates that Fangda Group submitted all requested information by the established deadlines and the information they provided was verifiable. Additionally, consistent with section 782(d) of the Act, the Fangda Group's submitted information was not so incomplete

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<sup>58</sup> See the Fangda Group's Fifth Supplemental Response at Appendix S5-part II-1.

<sup>59</sup> See *SDGEs/PRC (January 14, 2009)*, 74 FR at 2051-52 and accompanying IDM at Comment 3.

<sup>60</sup> See Fangda Group's Fifth Supplemental Response at Appendix S5-part II-1.

that it could not serve as a reliable basis for calculating a margin. Thus, we find that necessary information was available on the record for the Department to complete its analysis and that the Fangda Group acted to the best of its ability when responding to the Department’s questionnaire and supplemental questionnaires. As a result, we determine that reliance upon facts available or AFA is not warranted in the instant review and that the Fangda Group’s and its toller’s FOP data can be relied on for calculating a margin for these final results.

#### **Comment 10: Whether the Fangda Group Reported Accurate Sales Prices**

- Petitioners argue that, because sample VAT invoice values do not tie to the corresponding commercial invoice values, the Fangda Group’s reported U.S. sales prices are suspect.
- Petitioners argue that the Department should find that (1) the Fangda Group has not reconciled its reported U.S. shipments to its accounting books and records, (2) the Fangda Group has not reconciled the value reported on either its commercial invoice or its VAT invoice with the value recorded in its sales ledger, and (3) Beijing Fangda’s commercial invoices cannot be reconciled with their respective VAT invoices.
- Petitioners allege that the Department uncovered at verification that the Fangda Group has issued multiple commercial invoices for one U.S. sale, and that the Fangda Group told the Department that the VAT invoice “is the basis for the sales accounting voucher.”<sup>61</sup>
- Petitioners also argue that the amount of time between when Beijing Fangda and Fushun Carbon issue a commercial invoice and when the invoice is recorded in their respective general ledgers raises additional suspicions.
- The Fangda Group argues that the Department verified Fushun Carbon’s reported sales quantity and value and found no inconsistencies with previously reported information.

**Recommendation:** We disagree with Petitioners’ assertion that the record demonstrates that the Fangda Group did not accurately report its U.S. sales prices. Additionally, we find that Petitioners’ allegations that the Fangda Group has not reconciled its reported U.S. shipments to its accounting books and records are unfounded and unsupported by the facts. To the contrary, we find that the factual record in this review shows that the books and records presented to the Department, and relied upon by the Fangda Group for its questionnaire responses, support the conclusion that Beijing Fangda’s and Fushun Carbon’s records accurately reflect their commercial practices and that the company accurately reported its POR U.S. sales.

During our verification of the Fangda Group’s questionnaire responses, we relied on invoices provided by Beijing Fangda and Fushun Carbon to conduct the “Completeness Test” and “Quantity and Value Reconciliation” – procedures conducted to ensure that all sales were accurately reported.<sup>62</sup> Based on the documents provided by both companies during verification, the Department concluded that there were no discrepancies between the Fangda Group’s questionnaire responses and its books and records.<sup>63</sup> We verified that the Fangda Group’s commercial invoice prices tied to internal ledgers, financial statements, and independently generated bank source documents.<sup>64</sup> Additionally, Beijing Fangda provided a commercially

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<sup>61</sup> Petitioners cite to the Fangda Group’s Verification Report at 16.

<sup>62</sup> See the Fangda Group’s Verification Report at 15-21.

<sup>63</sup> See *id.*

<sup>64</sup> See *id.*

sound explanation to account for the minor discrepancies in its sales amounts between its general ledger and its reported sales.<sup>65</sup>

Our verification of the Fangda Group's questionnaire and supplemental responses was based on tying the data it provided in its questionnaire responses to its books and records.<sup>66</sup> Despite Petitioners' allegation that the Fangda Group issued multiple commercial invoices for each U.S. sale, we found that Beijing Fangda's sales department issued only one commercial invoice to its U.S. customer, which we verified was the basis for payment by the U.S. customer and used as the basis for the company's reporting of its U.S. sales to the Department.<sup>67</sup> At verification, we learned that the accounting department also prepares a summary invoice, which resembled the commercial invoice except it did not contain product information, only total quantity and value, and that this invoice was used as the basis for recording Beijing Fangda's U.S. sales in its books and records and for PRC Customs purposes.<sup>68</sup> As noted in the Fangda Group's verification report, we reviewed the commercial and summary invoices in question as part of the verification procedure titled "Quantity and Value Reconciliation," which we used to test whether the total quantity and value of sales reported by the Respondent tied to its books and records.<sup>69</sup> As part of this exercise, we reviewed Beijing Fangda's reconciling items used in preparation of its financial statements, which included reconciliation for minor discrepancies between certain commercial and summary invoices. As detailed in the verification report, we selected sample transactions from Beijing Fangda's and Fushun Carbon's list of total sales and reviewed them to determine 1) if they were properly reported and 2) whether the list of total sales included all sales.<sup>70</sup> This list identified the total quantity and value for each transaction.<sup>71</sup> We compared selected invoices to the listing of total sales based on the total revenue and prices listed on the invoices.<sup>72</sup> Having matched the amounts on the invoices to the amounts on the listing of total sales, we then tied the list of total sales, including the quantity and value, to Beijing Fangda's and Fushun Carbon's financial statements.<sup>73</sup> Accordingly, we found that the Fangda Group's reported U.S. sales are consistent with the information in its accounting system.

While Petitioners allege that the amount of time between when Beijing Fangda and Fushun Carbon issue a commercial invoice and when the invoice is recorded in their respective general ledgers raises additional suspicions, those suspicions are never identified. As with their other arguments concerning the respondents' invoices, it appears Petitioners are alleging that the respondent did not accurately report its U.S. sales. As noted, however, the Department at verification conducted completeness testing procedures to ensure that all sales were accurately reported<sup>74</sup> and based on what the Department examined at verification the verifiers found no instances of unreported sales.<sup>75</sup> In light of our verification findings, we find that any time gap

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<sup>65</sup> See *id.* at 16.

<sup>66</sup> See *id.*

<sup>67</sup> See *id.*

<sup>68</sup> See *id.*

<sup>69</sup> See *id.*

<sup>70</sup> See *id.*

<sup>71</sup> See *id.*

<sup>72</sup> See *id.*

<sup>73</sup> See *id.*

<sup>74</sup> See the Fangda Group's Verification Report at 15-21.

<sup>75</sup> See *id.*

between when Beijing Fangda and Fushun Carbon issue a commercial invoice and when the invoice is recorded in their respective general ledgers does not bring into question the accuracy of the respondents' reported U.S. sales.

Regarding the Petitioners' argument that company officials explained that the "VAT invoice" is the basis for the sales accounting voucher, we disagree. In several places in our verification report, we inadvertently used the term "VAT invoice" to reference both the real VAT invoices and the "Unified Export Invoice" which is a summary invoice prepared for each export transaction detailing the total quantity (by weight) and value of all merchandise on the commercial invoice. These are distinct documents, prepared and used by the respondent for different purposes, as evidenced by the verification exhibits.<sup>76</sup> However, as we stated elsewhere in our verification report and referenced above, the summary commercial invoice (*i.e.*, the Unified Export Invoice) is the basis for recording Beijing Fangda's U.S. sales in its books and records, not its VAT invoice.<sup>77</sup> At verification, we found that the commercial invoices presented to the Department, and relied upon by the Fangda Group to support the reliability of its questionnaire responses, support the conclusion that Beijing Fangda's and Fushun Carbon's records accurately reflect its true commercial practices when recording its sales in its books and records.

With respect to the sample "VAT invoices" at issue for some of the Fangda Group's sales transactions, we note that the commercial invoices report the U.S. dollar value of the sale while the VAT invoice records an RMB value and has a different date.<sup>78</sup> In this case, we did not examine the exchange rates used to calculate the RMB value recorded on the VAT invoices because the VAT invoices served neither as the basis of the customer payment nor the source for recording respondent's sales in its own books and records. Accordingly, we are unable conclude whether the VAT invoices and commercial invoices report different value amounts. In addition, we also had already successfully verified that the respondent's reported sales prices corresponded to its invoices and internal books and ledgers, which tied to its financial statements.<sup>79</sup> On this basis and for the reasons articulated above, we have concluded that respondent has accurately reported their U.S. sales prices.

#### **Comment 11: Surrogate Value for Natural Gas**

- The respondents argue that the Department overstated the value of natural gas for the Fangda Group by using the Indian tariff code 2711.2900 because this category does not reflect the manner in which Fangda Group consumed natural gas. The respondents assert that the Department should use Indian gas prices as published by the Indian gas utility GAIL, which reports natural gas prices in cubic meters, the same manner in which these respondent companies purchase natural gas from the utility company.
- Petitioners rebut that the data submitted by the Fangda Group from the financial statements

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<sup>76</sup> See, e.g., the Fangda Group's Verification Exhibit 42.

<sup>77</sup> See the Fangda Group's Verification Report at 12.

<sup>78</sup> See Beijing Fangda's Verification Exhibits 8, 9, and 10.

<sup>79</sup> See the Fangda Group's Verification Report at 15-21 and Beijing Fangda's Verification Exhibits 8, 9, and 10. See also *Aluminum Extrusions/PRC (April 4, 2011)* and accompanying IDM at Comment 4 (explaining that "verification is a spot check, not an exhaustive examination of the respondent's business").

of GAIL do not represent a broad range of prices in India. Instead of GAIL, Petitioners argue that the Department should continue to use Indian import data for natural gas for the final results, arguing that these data are broader and overall more representative than values from individual companies.

**Department’s Position:** Three of the four Fangda Group producers (Fangda Carbon, Hefei Carbon and Chengdu Rongguang) reported using natural gas in their production process. Pursuant to section 773(c)(1) of the Act, we determine that the GAIL data provides the best available information on the record from which to derive the surrogate natural gas value for these companies for the final results of review. The Department normally determines surrogate values based upon publicly available information, taking into consideration the quality, specificity, and contemporaneity of the data.<sup>80</sup> The Department carefully considers the available evidence with respect to the particular facts of each case and evaluates the suitability of each surrogate value source on a case-by-case basis.<sup>81</sup> As there is no hierarchy for applying the above-mentioned principles (*e.g.*, quality, specificity, and contemporaneity), the Department must weigh available information with respect to each input and make a product- and case-specific decision as to what constitutes the “best” available surrogate value for each input.<sup>82</sup>

In the *Preliminary Results*, we valued the Fangda Group’s natural gas using import data from the Indian HTS under the category labeled “Petroleum Gases and Other Gaseous Hydrocarbons” in a gaseous state.<sup>83</sup> However, the Department’s practice in recent cases where India is the surrogate country is to value natural gas using Indian gas prices as published by GAIL because we find these data better meet our requirements for specificity and quality.<sup>84</sup> We disagree with Petitioners that the GAIL prices do not represent a broad range of prices in India. In *OCTG/PRC (April 19, 2010)*, we noted that the GAIL data are of high quality and that GAIL is the largest organization in India handling natural gas distribution and marketing.<sup>85</sup> As such, we found and continue to find that GAIL represents a broad range of market prices across India. We also find that GAIL’s pricing information is more specific to the type of product consumed by respondent companies because GAIL, unlike Indian import data, reports natural gas prices in cubic meters.<sup>86</sup> The record in this review establishes that respondent companies consumed natural gas in cubic meters.<sup>87</sup> Consistent with our practice, we conclude that GAIL data is the best available information on the record for valuing the Fangda Group’s natural gas input for the final results because it is more product-specific than Indian import data in addition to being representative of a broad-market average, publicly available, and exclusive of taxes and duties.

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<sup>80</sup> See, *e.g.*, *CLPP/PRC (September 8, 2006)* and accompanying IDM at Comment 3.

<sup>81</sup> See *Mushrooms/PRC (July 17, 2006)* and accompanying IDM at Comment 1; see also *Crawfish/PRC (April 22, 2002)* and accompanying IDM at Comment 2.

<sup>82</sup> See *Mushrooms/PRC (July 17, 2006)* and accompanying IDM at Comment 1.

<sup>83</sup> See *Preliminary Results*, 76 FR at 12334.

<sup>84</sup> See, *e.g.*, *OCTG/PRC (April 19, 2010)* and accompanying IDM at Comment 25; *PVA/PRC (May 15, 2006)* and accompanying IDM at Comment 2.

<sup>85</sup> See *OCTG/PRC (April 19, 2010)* and accompanying IDM at Comment 25.

<sup>86</sup> See Final Factors Memorandum.

<sup>87</sup> See the Fangda Group’s letter titled, “Small Diameter Graphite Electrodes from China: Section D Response of the Fangda Group Companies,” dated June 28, 2010, at DA-15 and Exhibits DB-6, DC-6, and DD-6.

## Comment 12: Whether Fushun Jinly Failed to Submit CONNUM-Specific Factor Data

- Petitioners contend that Fushun Jinly’s failure to adequately report its CONNUM-specific factor data constitutes failure to cooperate to the best of its ability, consistent with the Department’s findings in the original investigation. Petitioners also contend that Fushun Jinly included non-subject merchandise in its reported factor data allocations, resulting in distortions to the Department’s margin calculations. As such, Petitioners assert that the Department should base Fushun Jinly’s margin on total AFA.
- Throughout this review, Fushun Jinly has argued that it is unable to track production on a model-specific basis, other than by power level, and that its accounting system necessitates the reporting of FOPs on a more generalized basis. Despite Petitioners’ repeated arguments based on the original investigation, Fushun Jinly asserts that the Department’s observations at verification confirm that Fushun Jinly accurately reported its consumption data.

**Department’s Position:** We disagree with Petitioners’ claim that Fushun Jinly failed to cooperate to the best of its ability in this administrative review and determine that the application of AFA is not appropriate in this instance. For a further discussion on our determination not to apply AFA, *see* Comment 1. In responding to the Department’s information requests during this review, Fushun Jinly explained the manner in which it keeps its books and records.<sup>88</sup> Fushun Jinly fully responded to all of the questionnaires and supplemental questions in a timely manner, as well as, cooperated fully with the Department during the verification process.<sup>89</sup> As a result, we determine that we have the necessary factual information on the record to complete our analysis.

Petitioners state that “Fushun Jinly maintains the necessary records to report CONNUM-specific factor data early in the production process (starting with the burdening production process)”<sup>90</sup> and “keeps records in its inventory and issues commercial invoices for finished products with electrode nominal diameter, electrode nominal length, machining, and connecting pin system based on Jinly’s books and records.”<sup>91</sup> In response to our requests for information regarding whether Fushun Jinly is able to report FOPs on a CONNUM-specific basis, Fushun Jinly stated the following:

Jinly keeps records in its inventory and issues commercial invoice for finished products with electrode nominal diameter, electrode nominal length, machining, and connecting pin system based on Jinly’s books and records. However, Jinly does not keep such records in its cost accounting system. In Jinly’s books and records kept in the normal course of business, such as production reports, working recipes and accounting records, Jinly does not record material consumptions based on the diameter and the length of the product. Moreover, Jinly assigns an aggregate cost of manufacture to each power level only at the forming stage to record material consumptions. In the following production stages, Jinly allocates

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<sup>88</sup> *See* Fushun Jinly’s Fourth Supplemental Response at 12.

<sup>89</sup> *See* Fushun Jinly’s Verification Report at 21.

<sup>90</sup> Petitioners’ Letter titled, “Submission of Surrogate Value Information,” dated October 28, 2010, at 5.

<sup>91</sup> Fushun Jinly’s Fourth Supplemental Response at 12; *see also* Fushun Jinly’s Verification Report at 21 and Fushun Jinly’s Verification Exhibits 21 at 35 and 22 at 65.

cost on a total production, regardless of even power levels. Consequently, Jinly is not capable of reporting its POR consumption of FOPs on, power level, diameter and length as requested for each-specific CONNUM designed by the Department.

In order to follow Department's request to report FOP on specific CONNUM system, and to allocate the raw materials consumption on merchandise under consideration produced, Jinly has divided the total POR consumption of each workshop by the total production quantity of that workshop except for the forming workshop where the cost is allocated to each power level. The unit consumption of each workshop is then transferred to the next stage following the production process.

Fushun Jinly has always maintained, during both the initial investigation or in this current administrative review that it is unable to provide FOP based upon CONNUM characteristics beyond the power level of the electrode because Jinly does not keep cost records with respect to diameter and length.

The Department's belief in the initial investigation that Jinly should have been able to provide FOP's based upon product characteristics including the length and diameter of the electrodes is based solely upon sales documentation and inventory records that record product length and diameter. The administrative record of this proceeding, however, establishes that Jinly's cost system does not permit it to report FOPs based upon electrode diameter and length characteristics.<sup>92</sup>

We addressed this issue at verification and specifically asked company officials to describe Fushun Jinly's cost accounting system. As part of the verification procedure, we examined how Fushun Jinly tracks consumption and costs of inputs in its cost accounting system. As stated in the verification report, we observed that Fushun Jinly's cost accounting system only tracks input consumption based on the power level of the electrode, not the diameter and length.<sup>93</sup>

Petitioners argue that Fushun Jinly relied on records other than accounting records to report the CONNUM information for its U.S. sales based on verification exhibit 13, indicating that Fushun Jinly could have reported its FOPs using documentation that specifies the length and diameter of the electrode. However, we disagree with Petitioners. At Fushun Jinly's verification, company officials explained that they generated the U.S. sales database by manually compiling CONNUM-specific data; specifically, they obtained diameter and length information from the inventory warehouse-out slips and obtained power level information based on commercial invoices.<sup>94</sup> While these inventory records and sales documents may contain the diameter and length of the products, generally these documents do not record consumption of Fushun Jinly's inputs.<sup>95</sup> For that reason, Fushun Jinly was able to rely on inventory records and sales documents to report the physical characteristics in the U.S. sales database. However, Fushun Jinly did not rely on those documents to develop its FOP database, but rather on its cost

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<sup>92</sup> Fushun Jinly's Fourth Supplemental Response at 12 (original emphasis).

<sup>93</sup> See Fushun Jinly's Verification Report at 21.

<sup>94</sup> See *id.* at 12.

<sup>95</sup> See *e.g.*, Fushun Jinly's Verification Exhibit 21.

accounting system, which does not maintain the same level of product specificity.<sup>96</sup> It is in Fushun Jinly's cost accounting system that the quantity and value of its consumption of raw material inputs are actually tracked. As stated above, because Fushun Jinly's cost accounting system does not track consumption of inputs in a manner to allow for reporting of CONNUM-specific FOPs using physical characteristics other than power level, its FOPs are not reported using all the physical characteristics that make up the CONNUM. We confirmed at verification that Fushun Jinly's methodology to determine total overall costs and consumption is based on the books and records it maintains in the normal course of business and does not result in distortions when calculating the dumping margin as discussed further below.<sup>97</sup> Thus, we find that Fushun Jinly's questionnaire responses are supported by the Department's observations made at verification and as stated in Fushun Jinly's verification report.<sup>98</sup>

Petitioners also argue that Fushun Jinly included non-subject merchandise in its reported factor data allocations. We find that, despite Petitioners' concern that graphite electrodes with a diameter larger than 400 millimeters may be included in Fushun Jinly's reported factor data allocations, Fushun Jinly's FOPs are not distorted because of the inclusion of any such merchandise. In calculating the FOPs to report to the Department, Fushun Jinly determined by weight the quantity of its raw material inputs needed to produce one MT of the graphite electrode based on an allocation of total inputs consumed to total weight produced at each stage of production.<sup>99</sup> In this case, Fushun Jinly was only producing graphite electrodes. While it produces multiple sizes of this product, the only factor that it tracks in its books and records is the electrode power level in certain stages and it has reported input consumption consistent with how consumption reflects power level.<sup>100</sup> Additionally, as discussed earlier, because Fushun Jinly does not track the diameter or length of the electrode through production stages in its cost accounting system, it cannot allocate inputs on such a basis. However, because Fushun Jinly does not produce a wide variety of products, this does not result in distorted factor allocations. Specifically, we find that, because Fushun Jinly's FOPs are based on a ratio of inputs consumed per MT of graphite electrode at each stage of production, the characteristics of diameter and length are accounted for because weight varies in line with these two characteristics. As a result, we determine that Fushun Jinly's reported FOPs are not distorted by including the production and consumption of inputs for non-subject merchandise (*i.e.*, graphite electrodes outside the size parameters covered by the scope of the proceeding).<sup>101</sup>

With respect to Petitioners' argument that the Department applied AFA in the original investigation to Fushun Jinly stating that it could have reported the FOP data using all of the CONNUM characteristics in addition to power level, and that because Fushun Jinly refused to disclose this same data to the Department in this administrative review, the Department should apply total AFA to Fushun Jinly here, we disagree. In the original investigation, the Department had several reasons as to why it applied total AFA to Fushun Jinly in *SDGE/PRC (January 14,*

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<sup>96</sup> See Fushun Jinly's Fourth Supplemental Response at 12-13.

<sup>97</sup> See Fushun Jinly's Preliminary Analysis Memo at 3.

<sup>98</sup> See, e.g., *WBF/PRC (August 17, 2009)* and accompanying IDM at Comment 20 ("Verification is an opportunity for the Department to test the accounting and business systems of a respondent to a level of detail that gives the Department a reasonable indication as to the integrity of the respondent's questionnaire responses.")

<sup>99</sup> See Fushun Jinly's Fourth Supplemental Response at 13.

<sup>100</sup> See *id.*

<sup>101</sup> See, e.g., *Hand Trucks/PRC (May 15, 2007)* and accompanying IDM at Comment 11.

2009), one of which was our determination in the investigation that Fushun Jinly had the capability to report its FOP data using CONNUM-specific characteristics in addition to power level based on its production documents.<sup>102</sup> As a result, we determined that Fushun Jinly had not cooperated to the best of its ability, and thus, we determined not to conduct verification of Fushun Jinly's responses. In this administrative review, however, we conducted a verification of Fushun Jinly's books and records, which supported our finding that Fushun Jinly cooperated to the best of its ability in this segment in providing information to the Department. As noted above, although information on this record indicates that certain inventory/production documents list the length and diameter of the electrode, we confirmed while on verification that Fushun Jinly's cost accounting system does not track consumption of inputs on a CONNUM-specific basis other than by power level, which is what Fushun Jinly used as the basis for reporting its FOPs.<sup>103</sup> Moreover, the Department reviews the record of the current segment when making a determination, not the previous or subsequent segment because each administrative review is a separate segment of a proceeding with its own unique facts and record.<sup>104</sup> Therefore, we have not applied AFA to Fushun Jinly in this administrative review as discussed above.

### **Comment 13: Whether Fushun Jinly's By-Product Offsets Should Be Rejected**

- Petitioners argue that the Department should reject all by-products claimed by Fushun Jinly because of certain discrepancies between total quantities reported in a supplemental questionnaire response and reported total by-product quantities by month.
- Fushun Jinly rebuts Petitioners' argument by explaining that the Department's verification report stated that company officials "tied Fushun Jinly's production and consumption of the aforementioned by-products, where applicable, to production reports, and we tied sales of the by-products to invoices and payment documentation."<sup>105</sup>

**Department's Position:** We have used Fushun Jinly's reported by-product offset quantities from verification for the final results for certain of Fushun Jinly's reported by-products.<sup>106</sup> As stated by Fushun Jinly, in the Department's verification report we stated that we "tied Fushun Jinly's production and consumption of the aforementioned by-products, where applicable, to production reports, and we tied sales of the by-products to invoices and payment documentation."<sup>107</sup> During verification, due to the limited time allotted, we spot-checked the reported data for certain by-products for certain months. Because we found no discrepancies with these reported by-products in the months examined at verification, we disagree with Petitioners that we should reject all by-products claimed by Fushun Jinly due to certain discrepancies in total quantities between a supplemental response and the verified total by-product quantities by month. Our verification confirms that, although there were discrepancies between the production quantities of certain of the reported by-products, any such errors were small in scale and do not appear to be a systemic problem in how the by-product production

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<sup>102</sup> See *SDGE/PRC (January 14, 2009)*, 74 FR at 2051 and accompanying IDM at Comment 1.

<sup>103</sup> See Fushun Jinly's Verification Report at 20-22.

<sup>104</sup> See *Shandong (CIT 2005)*, 29 CIT at 491 and *SS Strip/Mexico (January 13, 2011)* and accompanying IDM at Comment 10.

<sup>105</sup> See Fushun Jinly's Verification Report at 28.

<sup>106</sup> Due to the proprietary nature of this issue, see Fushun Jinly's Final Analysis Memo for further discussion of the by-products in question.

<sup>107</sup> See Fushun Jinly's Verification Report at 28.

quantities were reported.<sup>108</sup> Accordingly, we find it appropriate to use Fushun Jinly's verified by-product offsets for the final results.

**Comment 14: Whether Fushun Jinly Reported Accurate Electricity Consumption Factors and Whether the Department Incorrectly Valued Fushun Jinly's Coal Consumption**

**a. Whether Fushun Jinly Reported Accurate Electricity Consumption Factors**

- Petitioners argue that Fushun Jinly provided inaccurate and understated electricity consumption at verification.
- The respondents argue that Petitioners failed to recognize that the Department requested Fushun Jinly to submit a revised database to correct its reported electricity consumption in accordance with the Department's findings at verification.

**Department's Position:** Based on our observations as set out in the verification report regarding Fushun Jinly's electricity factor data, we have continued to use for the final results Fushun Jinly's revised FOP database used in the *Preliminary Results*, which includes the corrected electricity consumption in accordance with the Department's findings at verification.

At verification, we observed that the electricity consumption chart submitted by Fushun Jinly for one of the electricity companies reported electricity usage in the invoiced month, rather than the actual month of consumption, which resulted in a lag time in reporting and the omission of one month's electricity consumption.<sup>109</sup> For the reported electricity consumption from the other electricity company, we used both invoices and meter readings to verify consumption quantities.<sup>110</sup> We observed that in certain instances, the electricity consumption on two invoices equaled the appropriate monthly line item in the accounts payable sub-ledger. As a result, the only reporting error with regard to this electricity company was the missing month's electricity consumption that we observed and that we asked Fushun Jinly to correct prior to the *Preliminary Results*.<sup>111</sup> For all these reasons, the Department finds that the reported electricity consumption factor, as corrected, was accurate and complete and can be relied on for the final results.

**b. Whether the Department Incorrectly Valued Fushun Jinly's Coal Consumption**

- Petitioners assert that the Department incorrectly valued Fushun Jinly's consumption of coal by using an inappropriate surrogate value for steam coal.
- Fushun Jinly did not provide a response to the coal issue.

**Department's Position:** We disagree with Petitioners' assertion regarding Fushun Jinly's coal consumption. Petitioners merely cite to Fushun Jinly's section C & D questionnaire response

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<sup>108</sup> See Fushun Jinly's Verification Report at 28. See also *Hangers/PRC (May 13, 2011)* and accompanying IDM at Comment 4e (explaining that "verification is a spot check, not an exhaustive examination of the respondent's business") (quoting *NTN (CIT 2002)*, 186 F. Supp. 2d at 1296) and Fushun Jinly's Final Analysis Memo for further discussion.

<sup>109</sup> See Fushun Jinly's Verification Report at 24-25.

<sup>110</sup> See Fushun Jinly's Verification Exhibit 17.

<sup>111</sup> See Fushun Jinly's Revised FOP Database.

that it “consumed electricity and coal in the production of graphite electrodes” as a basis for the Department’s alleged error.<sup>112</sup> Petitioners did make any attempt to explain how they determined that this statement indicated the specific manner in which coal was consumed for production. In its submission suggesting publicly available information with which to value its usage of inputs, Fushun Jinly provided prices for grade A non-coking steam coal.<sup>113</sup> Because we have no factual basis to conclude that Fushun Jinly submitted inappropriate surrogate values for the type of inputs used in its production of the subject merchandise, and absent other information on the record, we disagree with Petitioners’ unfounded assertion and will continue to value Fushun Jinly’s consumption of coal using the surrogate value for steam coal as reported in Fushun Jinly’s surrogate value submission.

**Comment 15: Whether Fushun Jinly’s Reported Market Economy Purchase Prices for Needle Coke Are Understated**

- Petitioners argue that the Department should reject the reported needle coke price reported by Fushun Jinly because the record shows that Fushun Jinly’s reported prices for needle coke purchases from its ME supplier, who is also its customer, are understated.
- The respondents assert that the Department found no discrepancies at verification.

**Department’s Position:** We find that Petitioners’ claims are unsubstantiated, and we continue to value needle coke using Fushun Jinly’s verified ME purchase prices. Based on company officials’ responses as reflected in the verification report and based on the information we reviewed at verification, we find no evidence on the record that supports the Petitioners’ assertion that Fushun Jinly and the customer in question are affiliated or that Fushun Jinly’s needle coke purchases were not made at arm’s length or that calls into question the reliability of the ME prices.<sup>114</sup> While the prices may differ from other prices for needle coke on the record of this review, there is no indication that the reason for the price differences is due to the nature of Fushun Jinly’s business relationship with its supplier. For further discussion, due to the proprietary nature of this issue, *see* Fushun Jinly’s Final Analysis Memo.

**Comment 16: Whether Fushun Jinly Reported All Factor Data**

- Petitioners claim that, as evidenced by Fushun Jinly’s verification exhibits, Fushun Jinly did not report all factor data.
- Fushun Jinly did not comment on this issue.

**Department’s Position:** We disagree with Petitioners’ claim that Fushun Jinly did not report certain factor data. Our observations from verification, as stated in the verification report, refute Petitioners’ argument.<sup>115</sup> In their case brief, Petitioners state that they found unreported factor data in the cost reconciliation verification exhibit and an indication in Fushun Jinly’s Fourth Supplemental Response that certain inputs were consumed in the production of subject

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<sup>112</sup> *See* Fushun Jinly’s Section C & D Submission at D-13.

<sup>113</sup> *See* Fushun Jinly’s Surrogate Value Submission at 4.

<sup>114</sup> *See* Fushun Jinly’s Verification Exhibit 25 (Market Economy Purchases) and Fushun Jinly’s Verification Report at 5.

<sup>115</sup> *See* Fushun Jinly’s Verification Report at 15.

merchandise, but were not reported.<sup>116</sup> Based on Petitioners' pre-verification submission,<sup>117</sup> we specifically asked Fushun Jinly's company officials during verification whether Fushun Jinly consumes these alleged inputs during the production of subject merchandise. Company officials explained that these inputs are not used in the direct production of SDGE.<sup>118</sup> Moreover, during our completeness testing, we reviewed the chart of accounts, spot checked these accounts, and found no information at that time or on the record subsequently to indicate that these inputs in question were used as direct material inputs in production of SDGEs.<sup>119</sup> Section 773(c)(1)(B) of the Act directs the Department to base its calculation of costs on the FOPs actually "utilized in producing the merchandise." Moreover, it is the Department's standard practice, when the respondent adequately demonstrates that the input in question is not used in the direct production of subject merchandise, to treat indirect materials as overhead, which are accounted for in NV as part of the surrogate overhead ratio.<sup>120</sup> For the final results, we find that Fushun Jinly adequately demonstrated that the inputs in question are not used in the direct production of SDGEs; and therefore, we find that Fushun Jinly properly reported all of its factor data.

#### **Comment 17: Whether to Reject Fushun Jinly's Tollers' Data Because It Included Non-Subject Merchandise in the FOP Allocations**

- Petitioners argue that Fushun Jinly's toller included non-subject merchandise in its reported FOPs allocations. Petitioners claim that the Department should reject the wrongful inclusion of non-subject merchandise in the FOP data.
- The respondents argue that Fushun Jinly's toller was subject to verification by the Department and that the Department found no discrepancies with respect to its FOPs.

**Department's Position:** We disagree with Petitioners and we are not rejecting Fushun Jinly's toller's reported FOPs for the final results. We confirmed at verification that this toller's cost accounting does not track consumption of inputs in its books and records in such a way to allow for reporting of CONNUM-specific FOPs. Therefore, the toller is unable to separate consumption between subject and non-subject merchandise.<sup>121</sup> Again, similar to Fushun Jinly, this toller processes graphite electrodes of various sizes, as demonstrated by the VAT invoices it issues to customers for processing services.<sup>122</sup> However, for the reasons stated in Comment 12, we do not find that this methodology results in distortions because the FOPs are also allocated on the basis of weight.<sup>123</sup>

To support their claim for the Department to reject the reported tolling data, Petitioners reference two cases where the Department applied total AFA to the respondents that provided incomplete and unreliable information concerning its FOPs and included non-subject merchandise in its

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<sup>116</sup> See Petitioners' letter titled, "Case Brief," dated May 23, 2011, pg. 31-32.

<sup>117</sup> See Petitioners' Pre-Verification Comments at 14.

<sup>118</sup> See Fushun Jinly's Verification Report at 15. For further detail on how these inputs are used by Fushun Jinly, see Fushun Jinly's Final Analysis Memo.

<sup>119</sup> See *id.* at 28; and Fushun Jinly's Verification Exhibit 8 at 10-11.

<sup>120</sup> See, e.g., *Tires/PRC (April 25, 2011)* and accompanying IDM at Comment 6.

<sup>121</sup> See Fushun Jinly's Toller #1's Verification Exhibit 3.

<sup>122</sup> *Id.*

<sup>123</sup> See also *Hand Trucks/PRC (May 15, 2007)* and accompanying IDM at Comment 11.

reported FOP data.<sup>124</sup> We find that Petitioners' reference to the first case, *Ironing Tables/PRC (January 20, 2010)*, where the Department assigned total AFA to a respondent for including non-subject merchandise in the a factor data is distinguishable from this case, as that case involved multiple reasons as to why the application of total AFA was appropriate with respect to respondent Foshan Shunde:

Foshan Shunde provided incomplete and unreliable information concerning its factors of production and the role which an affiliated party has played in the sale of the subject merchandise and, as a result, have applied total adverse facts available. Foshan Shunde's conduct in this review establishes that Foshan Shunde has withheld information requested by the Department and has significantly impeded the conduct of this proceeding in accordance with section 776 of the Act. Such conduct is evinced by Foshan Shunde's inaccurate reporting of steel inputs, its failure to completely provide "production notes" in a timely manner, and Foshan Shunde's failure to adequately detail and explain the role which an affiliated party has played in the sale of the subject merchandise.<sup>125</sup>

Specifically, one of the reasons the Department assigned AFA to Foshan Shunde is that Foshan Shunde used an allocation that assigned the same input cost for all types and models of subject merchandise.<sup>126</sup> Foshan Shunde's allocation also reflected the manufacturing costs incurred on a range of non-subject merchandise including ash trays, ladders, trolleys, racks, trash cans, sleeve racks and other ironing board accessories.<sup>127</sup> Here, Fushun Jinly's toller graphitizes one type of product, electrodes, of various sizes. Moreover, in the case of Fushun Jinly's toller, its accounting records used in its normal course of business, which were the basis for reporting its consumption of inputs to the Department, do not track this information on a CONNUM-specific basis, but rather tracks the total quantity consumed, regardless of the product consuming the input.<sup>128</sup> The toller calculated its FOPs by dividing the quantity (weight) of the inputs it consumes based on data contained in its sub-ledgers by the quantity (weight) of graphite electrodes compiled from its VAT invoices charging its clients for graphitizing services.<sup>129</sup> Because we verified that this is how Fushun Jinly's toller keeps its data in the normal course of business, and it does not distort the calculation of the dumping margin, we find that it is an appropriate methodology to report FOPs. Additionally, in this case, unlike the facts in *Ironing Tables/PRC (January 20, 2010)* the respondent provided all requested information in a timely manner. As a result, the comparison between *Ironing Tables/PRC (January 20, 2010)* and this proceeding with respect to the inclusion of non-subject merchandise is inapposite.

With respect to the Department's treatment of the Fangda Group's tolling data in *SDGEs/PRC (January 14, 2009)*, the investigation segment of this proceeding, as compared to our treatment

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<sup>124</sup> See *SDGE/PRC (January 14, 2009)* and accompanying IDM at Comment 3c (where the Department assigned total adverse facts available for failing to exclude non-subject merchandise from the factor data); *Ironing Tables/PRC (January 20, 2010)* and accompanying IDM at Comment 2 (where the Department assigned total adverse facts available for including non-subject merchandise in the factor data).

<sup>125</sup> *Ironing Tables/PRC (January 20, 2010)* and accompanying IDM at Comment 2.

<sup>126</sup> See *id.*

<sup>127</sup> See *id.*

<sup>128</sup> See Fushun Jinly's Toller #1's Verification Exhibit 4.

<sup>129</sup> See Fushun Jinly's Toller #1's Verification Exhibit 3.

of Fushun Jinly’s tolling data in the instant review, we find Petitioners’ comparison to be inapposite as well. At verification in the investigation, the Department observed the following when verifying the Fangda Group:

The Fangda Group, however, reported its FOP data based on power level (*i.e.*, the Fangda Group’s “CONNUM-specific” consumption quantities did not vary by the length and diameter of the electrode). At verification, the Department found that the Fangda Group companies maintained production records that would have allowed it to report FOP data on a basis closer to CONNUM-specific that would have taken into account diameter and length. Further, at verification, with the exception of Fushun Carbon, the Department found that the Fangda Group failed to exclude data for larger diameter, non-subject merchandise from the FOP data reported to the Department.<sup>130</sup>

Unlike the verification findings with respect to the Fangda Group in the investigation, the Department observed while at verification for the instant review that Fushun Jinly’s toller could not report its FOP data based on a CONNUM-specific bases because its books and records maintained in the ordinary course of business do not contain the requisite level of detail, necessitating the reporting of FOPs on a more generalized basis.<sup>131</sup> Therefore, we find it appropriate to accept the toller’s data because record evidence establishes that this is how its data are kept in the normal course of business.<sup>132</sup> In addition, as described above, we find that in this review reliance on the toller’s data, in which the FOPs are allocated on the basis of weight, would not distort the calculation of the dumping margin. Accordingly, we conclude that Fushun Jinly’s toller provided the requested factual information and cooperated with the Department to the best of its ability.

**Comment 18: Whether Fushun Jinly’s Graphitization Toller’s FOP Data are Understated, Incomplete and Unreliable**

- Petitioners argue that Fushun Jinly incorrectly reported the same input and output weights for its graphitized semi-finished products, which ultimately understated the reported FOPs for graphitization. Petitioners claim that the record shows that Fushun Jinly could have reported the output weights for its graphitized semi-finished products because Fushun Jinly weighs the graphitized electrodes when those products leave to be graphitized and return to Fushun Jinly.
- Petitioners also claim that by reporting by-product offsets for Fushun Jinly’s tollers, the toller’s FOP data are understated.
- Fushun Jinly did not comment on this issue.

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<sup>130</sup> *SDGEs/PRC (January 14, 2009)* and accompanying IDM at Comment 3C.

<sup>131</sup> *See id.*

<sup>132</sup> *See id.* *See also WBF/PRC (August 17, 2009)* and accompanying IDM at Comment 20 (“Verification is an opportunity for the Department to test the accounting and business systems of a respondent to a level of detail that gives the Department a reasonable indication as to the integrity of the respondent's questionnaire responses.”).

**Department's Position:** We agree with Petitioners that Fushun Jinly reported understated FOPs for its graphitization tollers. In Fushun Jinly's Fourth Supplemental Response, Fushun Jinly stated the following:

During the POR, when it sent its semi-finished products to {its tollers} for graphitization, Fushun Jinly and its processors always weighed the semi-finished electrodes and pins and counted their numbers. {The tollers} would send back the same number of electrodes and pins after the graphitizing stage without recording their actual weight because these graphitized electrodes and pins are not their finished products and they do not have title of these products...The output weight on {the} processing invoice issued by {the} processor references to the weighing sheets of semi-finished electrodes and pins prior to the graphitization so the company like Jinly can only deem the finished graphitized products have the same weight prior to and after the graphitization process...Because the graphitized electrodes and pins are intermediates for machining stage that is the next and last production stage, any additional yield gain in the graphitization {stage} will be offset by additional yield loss in {the} machining stage.<sup>133</sup>

This information in the questionnaire response directly contradicts what Fushun Jinly stated at verification, when company officials stated that neither Fushun Jinly nor the toller weighs its semi-finished products leaving and returning to the warehouses during the graphitization process.<sup>134</sup>

Fushun Jinly's Verification Exhibit 19, which is a production worksheet that identifies the standard percent difference in product weight between production processes, indicates that the weights of the products differ before and after the graphitization process. By using the weight of the product prior to graphitization to allocate the FOPs consumed in the graphitization process, Fushun Jinly has under reported its FOPs because it calculated its per-unit consumption of inputs by taking the total consumption of inputs (by weight) divided by the total weight of products put into the graphitizing process, rather than the output weight, which would have been more appropriate.

As explained above, sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to

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<sup>133</sup> See Fushun Jinly's Fourth Supplemental Response at 15-16.

<sup>134</sup> See Fushun Jinly's Verification Report at 21-22; Fushun Jinly's Preliminary Analysis Memo at 3-4.

remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department “shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority” if the information is timely, can be verified, is not so incomplete that it cannot serve as a reliable basis, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

Because Fushun Jinly could have used the post-graphitizing standard weights (which it uses in its own books and records) as the basis to calculate its graphitizing FOPs, but did not, we find that Fushun Jinly impeded the proceeding. Thus, we find that Fushun Jinly did not cooperate to the best of its ability with respect to responding to the Department’s requested information; therefore, we are applying partial adverse facts available, in accordance with section 776(b) of the Act.

As AFA, we have adjusted the reported graphitizing FOPs by increasing the reported consumption of inputs used in the graphitization stage to reflect the largest difference between the weight of semi-finished products before graphitizing and the weight of semi-finished products after graphitizing based on Fushun Jinly’s Verification Exhibit 19.<sup>135</sup>

While we have adjusted the tollers’ graphitizing FOPs to account for errors with respect to the denominator of the per-unit consumption calculation, we disagree with Petitioners’ other argument that Fushun Jinly’s tollers understated their consumption by reporting by-product offsets. First, toller #1 did not report by-product offsets as detailed in Fushun Jinly’s Third Supplemental Response and verification exhibit.<sup>136</sup> Additionally, we confirmed at verification that toller #1’s reported FOPs are based on total consumption of inputs as reported in its sub-ledgers, which we verified were accurate.<sup>137</sup> With respect to toller #2, there is no evidence on the record indicating that toller #2 misreported its total consumption of inputs used as the numerator in its FOP allocation. Additionally, there is no record evidence that the by-product offset amounts reported by this toller are inaccurate. Accordingly, the record does not support Petitioners’ allegation that toller #2’s data are understated by virtue of the claimed by-product offset.

#### **Comment 19: Whether Fushun Jinly’s Accounting Records Can Be Reconciled to the Toller’s Records With Respect to Quantities**

- Petitioners argue that Fushun Jinly’s accounting records cannot be reconciled to the toller’s records, which calls into question the accuracy of the tolling factors reported by the toller and Fushun Jinly. Without the ability to reconcile these quantities, Petitioners argue that the

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<sup>135</sup> See Fushun Jinly’s Final Analysis Memo for further details concerning the application of AFA to the graphitizing FOPs.

<sup>136</sup> See Fushun Jinly’s Toller #1’s Verification Exhibit 3; Fushun Jinly’s Third Supplemental Response at Exhibit S3-1.

<sup>137</sup> *Id.*

Department cannot rely on the tolling graphitization factor data.

- Fushun Jinly did not comment on this issue.

**Department’s Position:** We disagree with Petitioners’ allegation that because they could not reconcile Fushun Jinly’s accounting records to the toller’s records, the accuracy of the reported tolling factors is questionable. Petitioners are attempting to reconcile two partial datasets that were taken as representative information during the respective verifications. Prior to verification, in the verification outline, and during verification, we did not request a reconciliation of total quantity graphitized between the toller and Fushun Jinly. However, we verified selected information from the respondent and the toller as reported and did not find any evidence that either party had mis-reported its quantities produced or processed.<sup>138</sup>

As acknowledged by the CIT, “Commerce was not required to use or verify all information it received from {the respondents}. It is enough for Commerce to receive and verify sufficient information to reasonably and properly make its determination.”<sup>139</sup> Also as noted by the CIT, “verification is an audit process that selectively tests the accuracy and completeness of a respondent’s submission.”<sup>140</sup> The court has also explained that “{a} verification is a spot check and is not intended to be an exhaustive examination of the respondent’s business. {Commerce} has considerable latitude in picking and choosing which items it will examine in detail.”<sup>141</sup> Similarly, in another case, the court found that “Congress has afforded Commerce a degree of latitude in implementing its verification procedures . . . . Moreover, ‘{t}he decision to select a particular {verification} methodology rests solely within Commerce’s sound discretion.”<sup>142</sup> We reviewed limited documentation during toller #1’s verification due to the narrow allotted time. As a result, we did not focus our verification on this type of reconciliation between the toller’s entire records and Fushun Jinly’s entire reported total quantity graphitized. However, based on what we reviewed, we did not find any discrepancies with the toller’s FOP data and thus are making no changes for these final results.

#### **Comment 20: Whether Fushun Jinly's Toller #1's Data Are Incomplete**

- Petitioners argue that the verified toller #1’s factor data is missing for certain months.
- The respondents did not comment on this issue.

**Department’s Position:** Petitioners have neither provided nor cited any record evidence to substantiate their claim that these data are incomplete and we disagree with Petitioners’ assertions. At verification, we found no discrepancies with toller #1’s reported factor data that we verified.<sup>143</sup> With regard to this toller, and the information we examined at verification, we were able to determine that, where there were no data reported for certain months, that particular

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<sup>138</sup> See Fushun Jinly’s Toller #1’s Verification Report at 5-6.

<sup>139</sup> *Hercules (CIT 1987)*, 673 F. Supp. at 470.

<sup>140</sup> *Floral Trade Council (CIT 1993)*, 822 F. Supp. at 771.

<sup>141</sup> *NTN (CIT 2002)*, 186 F. Supp. 2d at 1296.

<sup>142</sup> *PPG (CIT 1991)*, 781 F. Supp. at 787; see also *Hangers/PRC (May 13, 2011)* and accompanying IDM at Comment 4e (stating that verification is a “spot check” and noting the Department’s obligations at verification).

<sup>143</sup> See Fushun Jinly’s Toller #1’s Verification Report at 5-6.

processing step had not been performed by that toller for that month.<sup>144</sup> As discussed in Comment 20, above, verification is intended to be a process that selectively tests the accuracy and completeness of a respondent's submissions. In this case, although we did not verify the direct material input consumption for every month, we have no reason based on our verification findings to believe that toller #1 did not report accurate consumption of its inputs.

### **Comment 21: Whether Fushun Jinly's Toller #2's Data Are Incomplete**

- Petitioners contend that Fushun Jinly's toller #2, which was not subject to verification, submitted incomplete factor data for certain inputs.
- Fushun Jinly argues that the Department incorrectly assumed that certain inputs and by-products that were left blank represented missing information that the toller failed to report to the Department; whereby, the record establishes that the blank values represent zero values, not missing information. Fushun Jinly advises the Department to reverse its *Preliminary Results* decision to apply partial AFA and to value toller #2's blanks with zeroes. Moreover, Fushun Jinly argues that the Department verified that zero amounts in toller #1's data represented zero values. Consequently, facts available should not apply.

**Department's Position:** For the final results, we are continuing to apply partial AFA to toller #2's FOP data as set out in the *Preliminary Results*. In the *Preliminary Results*, we found that Fushun Jinly's Fourth Supplemental Response concerning missing data in toller #2's FOP data lacked an adequate explanation. As a result, we applied a partial AFA plug to toller #2's missing data of certain inputs using toller #1's highest reported monthly material input consumption.<sup>145</sup>

As explained above, sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if, inter alia, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

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

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<sup>144</sup> See *id.*; see also *Hangers/PRC (May 13, 2011)* and accompanying IDM at Comment 4e (stating that verification is a "spot check").

<sup>145</sup> See *Preliminary Results*, 76 FR at 12336; S3-1 Production and Consumption Chart of Graphitization V2 excel worksheet included in the BPI release of the *Preliminary Results*; and Fushun Jinly's Preliminary Analysis Memo at 4-5 for further detail on the partial AFA plug.

party and is necessary to the determination but does not meet all applicable requirements established by the administering authority” if the information is timely, can be verified, is not so incomplete that it cannot serve as a reliable basis, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

We continue to find that Fushun Jinly’s response in its Fourth Supplemental Response failed to provide such information by the deadlines, and in the form and manner requested by the Department. We requested this information on two separate occasions during the administrative review, providing Fushun Jinly with *two* opportunities, to accurately report its tollers’ consumption data. Specifically, we requested this information in our initial questionnaire and again in a supplemental questionnaire where we noted for Fushun Jinly the missing information and requested that it provide any missing data or explain why nothing was missing.<sup>146</sup> However, Fushun Jinly did not report these data for tollor #2 and did not adequately explain why there were missing consumption data with respect to that tollor.<sup>147</sup> Fushun Jinly only provided an explanation for by-products and failed to discuss the other data deficiencies. Thus, we find that Fushun Jinly did not cooperate to the best of its ability with respect to responding to the Department’s requested information; therefore, we are applying partial adverse facts available, in accordance with section 776(b) of the Act.

We disagree with Fushun Jinly’s argument that if tollor #1’s verified blank data were deemed as representative of zero values, then, in turn, tollor #2’s blank data should not be considered to be missing FOP data. Tollor #1 and tollor #2 are separate entities, with separate production processes and consumption quantities. We verified tollor #1’s reported FOP data and found no discrepancies with respect to its reported consumption quantities.<sup>148</sup> We did not verify tollor #2’s reported FOP data, and thus, we have based our determination on the responses submitted by Fushun Jinly with respect to this company’s data. Because Fushun Jinly did not adequately explain, in response to direct questions posed by the Department, why there was missing FOP data with respect to tollor #2, we find that the use of adverse inferences is appropriate pursuant to section 776(b) of the Act.

#### **Comment 22: Fushun Jinly’s Tollor #2’s Electricity Consumption**

- Fushun Jinly contends that, contrary to its stated intent, the Department in the *Preliminary Results* replaced tollor #2’s monthly consumption quantities of electricity with tollor #1’s monthly consumption. Because tollor #1 consumed more electricity during the POR than tollor #2, Fushun Jinly alleges that the Department overstated tollor #2’s electricity consumption ratio. To implement the Department’s stated intention, Fushun Jinly asserts that the Department should simply apply tollor #1’s consumption ratio of electricity consumed per MT of graphite electrodes produced to tollor #2 for the final results.
- While the Department applied partial facts available in the *Preliminary Results* to tollor #2’s understated electricity consumption data using tollor #1’s electricity data, Petitioners argue

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<sup>146</sup> See Original Questionnaire to Fushun Jinly at section D.I.D (“Reporting Requirements”); see also the Department’s Supplemental A, C, D Questionnaire to Fushun Jinly at 8.

<sup>147</sup> See Fushun Jinly’s Fourth Supplemental Response at 15.

<sup>148</sup> Fushun Jinly’s Tollor #1’s Verification Report at 5.

that the Department wrongly applied the same amount (by month) of electricity consumed by toller #1 to toller #2. Petitioners argue that the Department should have applied the highest quantity of electricity consumed by toller #1 to toller #2, at a minimum. To take any other measure, Petitioners assert, only serves to reward respondents for their failure to fully respond to the Department's request for information.

**Department's Position:** We agree with Fushun Jinly. In the *Preliminary Results*, the Department applied partial facts available to toller #2's understated electricity consumption data using toller #1's electricity data, by replacing toller #2's monthly consumption quantities with toller #1's monthly consumption quantities.<sup>149</sup> Fushun Jinly argues that the Department erred in our application of partial facts available in the *Preliminary Results* by inadvertently overstating its electricity consumption because toller #2's total graphitization output during the POR was overall much smaller than toller #1's graphitization output. Fushun Jinly proposes we apply toller #1's electricity consumption ratio for each month to calculate toller #2's monthly electricity consumption in lieu of our *Preliminary Results* determination. We agree that, because toller #2's total graphitization output during the POR was overall much smaller than toller #1's graphitization output,<sup>150</sup> we inadvertently overstated toller #2's electricity consumption. For the final results, lacking necessary information on the record, we are applying toller #1's electricity-consumption ratio (*i.e.*, amount of electricity consumed per MT of graphite electrodes produced) to toller #2 in our application of partial FA.<sup>151</sup>

With respect to Petitioners' argument that we should apply facts available with adverse inferences to toller #2's electricity, we disagree. In its supplemental questionnaire response with respect to its tollers' electricity consumption, Fushun Jinly stated that toller #2's consumption of electricity was understated because of this toller's affiliation with an electric company. Fushun Jinly thus suggested that the Department use as partial facts available the electricity usage of the other graphitization toller in place of the understated electricity consumption of toller #2. However, Fushun Jinly stated that this toller's electricity consumption was based on the "actual invoices issued to it by its affiliate,"<sup>152</sup> which we had no reason to question based upon record evidence. In this case, we find that Fushun Jinly cooperated to the best of its ability by originally reporting the toller's electricity consumption and acknowledging that one of its tollers by virtue of affiliation may have resulted in understated electricity consumption. Therefore, we disagree with Petitioners' claim that we should apply facts available with adverse inferences pursuant to section 776(b) of the Act.

### **Comment 23: Whether Fushun Jinly's Toller's Data Are Otherwise Understated**

- Petitioners contend that Fushun Jinly's toller data are otherwise understated for the following reasons: (1) Fushun Jinly failed to report material inputs, including coke powder, silica and coke given to tollers to be used in the graphitization process; (2) Fushun Jinly failed to report transportation distances from Fushun Jinly to the tollers for coke powder, silica and coke; (3)

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<sup>149</sup> See *Preliminary Results*, 76 FR at 12336.

<sup>150</sup> See Fushun Jinly's Fourth Supplemental Response at Exhibit 19.

<sup>151</sup> See Fushun Jinly's Final Analysis Memo for further detail on the change made to toller #2's electricity consumption.

<sup>152</sup> See Fushun Jinly's Fourth Supplemental Response at 15.

Fushun Jinly failed to report transportation of raw material between Fushun Jinly and its supplier, as well as, transportation distances between the tollers and the suppliers; (4) Fushun Jinly failed to report “factor data for packaging materials and labor for the graphitized product that was returned to Fushun Jinly.”<sup>153</sup>

- Fushun Jinly did not comment on this issue.

**Department’s Position:** We disagree with all the above arguments made by Petitioners and address each argument as follows:

(1) We disagree with Petitioners’ first argument that Fushun Jinly provided coke powder, silica, and coke to its tollers. As reflected in toller #1’s verification report company officials informed us that they do not receive any material inputs from Fushun Jinly for use in the processing the toller performs for Fushun Jinly.<sup>154</sup> Moreover, we found no evidence to the contrary at verification, and Petitioners identify no factual information to substantiate their claims. Therefore, because we continue to find no record evidence establishing that Fushun Jinly supplied material inputs to this toller, we do not find that Fushun Jinly failed to report these inputs or understated the consumption of these inputs, as alleged by Petitioners.

(2) Because there are no unreported material inputs received by toller #1 from Fushun Jinly, we find that Fushun Jinly did not fail to report transportation distances for any such inputs.

(3) Petitioners fail to point to any specific evidence on the record to substantiate their assertion that Fushun Jinly failed to report the transportation distances between suppliers and Fushun Jinly, or the toller’s suppliers and the toller. In the *Preliminary Results*, all direct materials were assigned an inland freight value, where we multiplied each direct material by its respective truck distance, measuring all of the distances between Fushun Jinly and its suppliers and between toller #1 and its suppliers by the surrogate value for truck freight.<sup>155</sup> Moreover, we find that Fushun Jinly accurately reported these supplier distances. For example, Fushun Jinly does not consume coke powder and silica; however, its toller consumes those raw material inputs. Based on the toller #1’s freight verification exhibit, we confirmed that Fushun Jinly accurately reported the coke powder and silica distances between the toller and the toller’s supplier in its FOP database for these raw material inputs.<sup>156</sup>

(4) It is not clear from Petitioners’ comment whether the labor component of their argument refers to labor incurred for packaging or labor incurred for the graphitization process; nevertheless, we respond with regard to both items. As an initial matter, while we agree with Petitioners that neither toller reported packaging material, we also find that there is no evidence on the record which indicates that either toller packaged the semi-finished products bound for Fushun Jinly. We reviewed labor consumption and material inputs at the verification of toller #1 and did not discover any unreported packaging labor or materials.<sup>157</sup> Additionally, there is no evidence on the record to suggest that toller #2 performed any packaging, and therefore no

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<sup>153</sup> See Petitioners’ May 23, 2011 Case Brief at 36.

<sup>154</sup> See Fushun Jinly’s Preliminary Analysis Memo at 4 and Fushun Jinly’s Toller #1’s Verification Report at 5.

<sup>155</sup> See Fushun Jinly’s Preliminary Analysis Memo and attached SAS log at Lines 906-938.

<sup>156</sup> See Fushun Jinly’s Toller #1’s Verification Report at 7-8 and Fushun Jinly’s Verification Exhibit 5.

<sup>157</sup> See *id.* at 7 and Fushun Jinly’s Verification Exhibit 3 at 25-26.

indication that it failed to report packaging material and labor. Therefore, we find no reason to conclude that Fushun Jinly withheld information with respect to packaging materials or labor incurred or consumed by its tollers.

Additionally, we find no evidence that the tollers failed to report their labor for graphitization. The graphitization output and consumption worksheet submitted to us in Fushun Jinly's Third Supplemental Response reports labor hours for both tollers. At verification, we reviewed toller #1's reported labor.<sup>158</sup> We reviewed toller #1's attendance sheet and we were able to tie September 2008's wage summary sheet to the labor sub-ledger, as well as, the general ledger. As stated in the verification report, we found no discrepancies.<sup>159</sup> Thus, we find no reason to conclude that Fushun Jinly failed to report its tollers' graphitization-related labor.

#### **Comment 24: Offsetting Negative Margins**

- The Fangda Group and Fushun Jinly assert that the Federal Circuit in *Dongbu (CAFC 2011)* recently rejected the Department's position that section 771(35)(A) of the Act, the statute governing the calculation of antidumping duties, could be interpreted to prohibit the zeroing methodology in investigations, but to require the zeroing methodology in administrative reviews.
- The Fangda Group and Fushun Jinly argue that, consistent with the Department's proposed regulation to eliminate zeroing in administrative reviews, the Department should not employ the zeroing methodology in the final results.
- Petitioners respond that the Federal Circuit in *Dongbu (CAFC 2011)* did not outright prohibit application of the zeroing methodology in administrative reviews, but merely remanded for the Department to provide additional explanation why it is reasonable to interpret the statute differently for investigations and administrative reviews.

**Department's Position:** We have not changed our calculation of the weighted-average dumping margins for these final results of review with respect to our zeroing methodology.

Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value *exceeds* the export price and constructed export price of the subject merchandise." (emphasis added). Outside the context of antidumping investigations involving average-to-average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when normal value is greater than EP or CEP. We disagree with the respondents that the Department's zeroing practice is an inappropriate interpretation of the Act. Because no dumping margins exist with respect to sales where normal value is equal to or less than EP or CEP, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The CAFC has held that this is a reasonable interpretation of section 771(35) of the Act.<sup>160</sup>

Section 771(35)(B) of the Act defines weighted-average dumping margin as "the percentage

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<sup>158</sup> See Fushun Jinly's Third Supplemental Response at Exhibit S3-1; Fushun Jinly's Toller #1's Verification Report at 7.

<sup>159</sup> See *id.*

<sup>160</sup> See, e.g., *Timken (CAFC 2004)*, 354 F. 3d at 1342, and *Corus I (CAFC 2005)*, 395 F.3d at 1347-49.

determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer.” We apply this section by aggregating all individual dumping margins, each of which is determined by the amount by which normal value exceeds EP or CEP, and dividing this amount by the value of all sales. The use of the term “aggregate dumping margins” in section 771(35)(B) of the Act is consistent with the Department’s interpretation of the singular “dumping margin” in section 771(35)(A) of the Act, as applied on a comparison-specific level and not on an aggregate basis. At no stage of the process is the amount by which EP or CEP exceeds the normal value permitted to offset or cancel the dumping margins found on other sales.

This does not mean that we disregard non-dumped sales in calculating the weighted-average dumping margin. It is important to recognize that the weighted-average margin will reflect any non-dumped merchandise examined during the POR; the value of such sales is included in the denominator of the weighted-average dumping margin while no dumping amount for non-dumped merchandise is included in the numerator. Thus, a greater amount of non-dumped merchandise results in a lower weighted-average margin.

The CAFC explained in *Timken (CAFC 2004)* that denial of offsets is a “reasonable statutory interpretation given that it legitimately combats the problem of masked dumping, wherein certain profitable sales serve to ‘mask’ sales at less than fair value.”<sup>161</sup> As reflected in that opinion, the issue of so-called masked dumping was part of the policy reason for interpreting the statute in the manner interpreted by the Department. No U.S. court has required the Department to demonstrate “masked dumping” before it is entitled to invoke this interpretation of the statute and deny offsets to dumped sales.<sup>162</sup>

In 2007, the Department implemented a modification of its calculation of weighted-average dumping margins when using average-to-average comparison in antidumping investigations.<sup>163</sup> With this modification, the Department’s interpretation of the statute with respect to non-dumped comparisons was changed within the limited context of investigations using average-to-average comparisons. Adoption of the modification pursuant to the procedure set forth in section 123(g) of the URAA was specifically limited to address adverse WTO findings made in the context of antidumping investigations using average-to-average comparisons. The Department’s interpretation of the statute was unchanged in other contexts.

It is reasonable for the Department to interpret the same ambiguous language differently when using different comparison methodologies in different contexts. In particular, the use of the word “exceeds” in section 771(35)(A) of the Act can reasonably be interpreted in the context of an antidumping investigation to permit negative average-to-average comparison results to offset or reduce the amount of the aggregate dumping margins used in the numerator of the weighted-average dumping margin as defined in section 771(35)(B) of the Act. The average-to-average comparison methodology typically applied in antidumping duty investigations averages together high and low prices for directly comparable merchandise prior to making the comparison. This

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<sup>161</sup> *Timken (CAFC 2004)*, 354 F.3d at 1342.

<sup>162</sup> *See, e.g., Timken (CAFC 2004)*, 354 F.3d at 1343, *Corus I (CAFC 2005)*, 395 F.3d at 1347-49, and *NSK (CAFC 2007)* 510 F.3d at 1381.

<sup>163</sup> *See Final Modification for Antidumping Investigations.*

means that the determination of dumping necessarily is not made for individual sales but rather at an “on average” level of comparison. For this reason, the offsetting methodology adopted in the limited context of investigation using average-to-average comparisons is a reasonable manner of aggregating the comparison results produced by this comparison method. Thus, with respect to how negative comparison results are to be regarded under section 771(35)(A) of the Act, it is reasonable for the Department to consider whether the comparison result in question is a product of an average-to-average comparison or an average-to-transaction comparison.

In *U.S. Steel (CAFC 2010)*, the CAFC considered the reasonableness of the Department’s interpretation not to apply zeroing in the context of investigations using average-to-average comparisons, while continuing to apply zeroing in the context of investigations using average-to-transaction comparisons pursuant to the provision at section 777A(d)(1)(B) of the Act. Specifically, in *U.S. Steel (CAFC 2010)*, the CAFC was faced with the argument that, if zeroing was never applied in investigations, then the average-to-transaction comparison methodology would be redundant because it would yield the same result as the average-to-average comparison methodology. The Court acknowledged that the Department intended to continue to use zeroing in connection with the average-to-transaction comparison method in the context of those investigations where the facts suggest that masked dumping may be occurring.<sup>164</sup> The Court then affirmed as reasonable the Department’s application of its modified average-to-average comparison methodology in investigations in light of the Department’s stated intent to continue zeroing in other contexts.<sup>165</sup> *Id.*

In addition, the CAFC in *SKF III (CAFC 2011)* recently upheld, as a reasonable interpretation of ambiguous statutory language, the Department’s continued application of zeroing in the context of an administrative review completed after the implementation of the *Final Modification for Antidumping Investigations*.<sup>166</sup> In that case, the Department had explained that the changed interpretation of the ambiguous statutory language was limited to the context of investigations using average-to-average comparisons and was made pursuant to statutory authority for implementing an adverse WTO report. We find that our determination in this administrative review is in accordance with the CAFC’s recent decision in *SKF III (CAFC 2011)*.

We disagree with respondents’ argument that the CAFC’s recent decision in *Dongbu (CAFC 2011)* requires the Department to change its methodology in this administrative review. The holding of *Dongbu (CAFC 2011)* and the recent decision in *JTEKT (CAFC 2011)* were limited to finding that the Department had not adequately explained the different interpretations of section 771(35) of the Act in the context of investigations versus administrative reviews, but the CAFC did not hold that these differing interpretations were contrary to law. Importantly, neither *Dongbu (CAFC 2011)* nor *JTEKT (CAFC 2011)* overturned prior CAFC decisions affirming zeroing in administrative reviews, including *SKF III (CAFC 2011)*, which we discuss above, in which the Court affirmed zeroing in administrative reviews notwithstanding the Department’s determination to no longer use zeroing in certain investigations. Unlike the circumstances examined in *Dongbu (CAFC 2011)* and *JTEKT (CAFC 2011)*, the Department here is providing additional explanation for its changed interpretation of the statute subsequent to the *Final*

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<sup>164</sup> See *U.S. Steel (CAFC 2010)*, 621 F. 3d at 1363.

<sup>165</sup> See *id.*

<sup>166</sup> See *SKF III (CAFC 2011)*, 630 F.3d at 1375.

*Modification for Antidumping Investigations* whereby we interpret section 771(35) of the Act differently for certain investigations (when using average-to-average comparisons) and administrative reviews. For all these reasons, we find that our determination is consistent with the holdings in *Dongbu (CAFC 2011)*, *JTEKT (CAFC 2011)*, and *SKF III (CAFC 2011)*.

With regard to respondents' reliance on the Department's proposed regulatory change as a basis for changing the Department's zeroing methodology in the instant administrative review, we find that the Department's proposal has not been finalized and therefore is not applicable to this pending case.<sup>167</sup> Further, proposed regulations by their very nature are not binding to an agency.<sup>168</sup> Lastly, the Department's *Proposed Modification for Antidumping Administrative Reviews* states that any changes in its zeroing methodology will be applicable in administrative reviews pending before the Department for which a preliminary results is issued more than 60 business days after the date of publication of the Department's final rule and final modification. Because we have not published a final rule and final modification, the Department's *Proposed Modification for Antidumping Administrative Reviews* is not applicable to the instant administrative review.

Accordingly and consistent with the Department's interpretation of the Act described above, in the event that any of the export transactions examined in this review are found to exceed normal value, the amount by which the price exceeds normal value does not offset the dumping found with respect to other transactions.

**RECOMMENDATION:**

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final results of this review and the final weighted-average dumping margins in the *Federal Register*.

AGREE\_\_\_\_\_

DISAGREE\_\_\_\_\_

\_\_\_\_\_  
Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date

<sup>167</sup> See *Proposed Modification for Antidumping Administrative Reviews*.

<sup>168</sup> See *Viraj (CIT 2002)*, 206 F. Supp. 2d at 1293 (rejecting plaintiff's reliance on a proposed rule as basis for receiving a zero margin).

<b><i>Antidumping/Countervailing Duty Proceeding Federal Register Cite Table</i></b> <b><i>All cites in this table are listed alphabetically by short cite</i></b>	
<b>Case Short Cite:</b>	<b>Case Full Cite:</b>
<i>Aluminum Extrusions/PRC (April 4, 2011)</i>	<i>Aluminum Extrusions From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 18524 (April 4, 2011)</i>
<i>CLPP/PRC (September 8, 2006)</i>	<i>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 (September 8, 2006)</i>
<i>Crawfish/PRC (April 22, 2002)</i>	<i>Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002)</i>
<i>CFS/China (October 25, 2007)</i>	<i>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)</i>
<i>CTL Plate/India (December 29, 1999)</i>	<i>Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products From India, 64 FR 73126 (December 29, 1999)</i>
<i>CTL Plate/Italy (July 12, 2006)</i>	<i>Certain Cut-to-Length Carbon-Quality Steel Plate Products From Italy: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 39299 (July 12, 2006)</i>
<i>CTL Plate/Multiple Countries (February 10, 2000)</i>	<i>Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and the Republic of Korea, 65 FR 6585 (February 10, 2000)</i>
<i>Final Modification for Antidumping Investigations</i>	<i>Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation, 71 FR 77722 (December 27, 2006)</i>
<i>Fish Fillets/Vietnam (June 22, 2009)</i>	<i>Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Third New Shipper Reviews, 74 FR 29473 (June 22, 2009)</i>
<i>Foundry Coke/PRC (July 31, 2001)</i>	<i>Final Determination of Sales at Less Than Fair Value: Foundry Coke Products From The People's Republic of China, 66 FR 39487 (July 31, 2001)</i>
<i>Hand Tools/PRC (September 10, 2003)</i>	<i>Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review of the Order on Bars and Wedges, 68 FR 53347 (September 10, 2003)</i>

<b>Antidumping/Countervailing Duty Proceeding Federal Register Cite Table</b> <i>All cites in this table are listed alphabetically by short cite</i>	
<b>Case Short Cite:</b>	<b>Case Full Cite:</b>
<i>Hand Trucks/PRC (May 15, 2007)</i>	<i>Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Administrative Review and Final Results of New Shipper Review, 72 FR 27287 (May 15, 2007)</i>
<i>Hand Trucks/PRC (May 25, 2010)</i>	<i>Hand Trucks and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 29314 (May 25, 2010)</i>
<i>Hangers/PRC (May 13, 2011)</i>	<i>First Administrative Review of Steel Wire Garment Hangers From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 76 FR 27994 (May 13, 2011)</i>
<i>Ironing Tables/PRC (January 20, 2010)</i>	<i>Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 3201 (Jan. 20, 2010)</i>
<i>Mushrooms/PRC (July 17, 2006)</i>	<i>Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review, 71 FR 40477 (July 17, 2006)</i>
<i>OCTG/Argentina (March 19, 2003)</i>	<i>Notice of Final Results and Rescission in Part of Antidumping Duty Administrative Review; Oil Country Tubular Goods, Other Than Drill Pipe, From Argentina, 68 FR 13262 (March 19, 2003)</i>
<i>OCTG/PRC (April 19, 2010)</i>	<i>Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping, 75 FR 20335 (April 19, 2010)</i>
<i>Preliminary Results</i>	<i>Small Diameter Graphite Electrodes From the People's Republic of China: Preliminary Results of the First Administrative Review of the Antidumping Duty Order; Partial Rescission of Administrative Review; and Intent To Rescind Administrative Review, in Part, 76 FR 12325 (March 7, 2011)</i>
<i>Proposed Modification for Antidumping Administrative Reviews</i>	<i>Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings, 75 FR 81533 (December 28, 2010)</i>
<i>PVA/PRC (May 15, 2006)</i>	<i>Polyvinyl Alcohol From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 27991 (May 15, 2006)</i>
<i>SDGEs/PRC (January 14, 2009)</i>	<i>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)</i>

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<b>Case Short Cite:</b>	<b>Case Full Cite:</b>
<i>SDGEs/PRC (June 21, 2011)</i>	<i>Small Diameter Graphite Electrodes From the People's Republic of China: Extension of Time Limit for the Final Results of the First Administrative Review of the Antidumping Duty Order, 76 FR 36092 (June 21, 2011)</i>
<i>SS Plate/Belgium (October 19, 2009)</i>	<i>Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review, 74 FR 53468 (October 19, 2009)</i>
<i>SS Sheet/Mexico (January 13, 2011)</i>	<i>Stainless Steel Sheet and Strip in Coils From Mexico; Final Results of Antidumping Duty Administrative Review, 76 FR 2332 (January 13, 2011)</i>
<i>Synthetic Indigo/PRC (May 3, 2000)</i>	<i>Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value, 65 FR 25706 (May 3, 2000)</i>
<i>Tires/PRC (July 15, 2008)</i>	<i>Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008)</i>
<i>Tires/PRC (April 25, 2011)</i>	<i>Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review, 76 FR 22871 (April 25, 2011)</i>
<i>WBF/PRC (August 17, 2009)</i>	<i>Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009)</i>

<b>Short Cite Table For Litigation</b> <i>All cites in this table are listed alphabetically by short cite</i>	
<b>Litigation: Short Cite</b>	<b>Litigation: Full Cite</b>
<ul style="list-style-type: none"> <li>• <i>Atar Final Remand Determination/Italy (May 5, 2010)</i></li> </ul>	<i>Atar, S.r.L. v. United States, Court No. 08-00004, Final Remand Determination (May 5, 2010)</i>
<ul style="list-style-type: none"> <li>• <i>Corus I (CAFC 2005)</i></li> </ul>	<i>Corus Staal BV v. Department of Commerce, 395 F.3d 1343 (CAFC 2005)</i>
<ul style="list-style-type: none"> <li>• <i>Dongbu (CAFC 2011)</i></li> </ul>	<i>Dongbu Steel Co. v. United States, 635 F.3d 1363 (CAFC 2011)</i>
<ul style="list-style-type: none"> <li>• <i>Floral Trade Council(CIT 1993)</i></li> </ul>	<i>Floral Trade Council v. United States, 822 F. Supp. 766 (CIT 1993).</i>

<b>Short Cite Table For Litigation</b>	
<i>All cites in this table are listed alphabetically by short cite</i>	
<b>Litigation: Short Cite</b>	<b>Litigation: Full Cite</b>
• <i>GSA (CIT 1999)</i>	<i>GSA, S.r.L. v. United States</i> , 23 CIT 920, 926-927 & n.14, 77 F. Supp. 2d 1349 (1999)
• <i>Hercules (CIT 1987)</i>	<i>Hercules, Inc. v. United States</i> , 673 F. Supp. 454 (CIT 1987)
• <i>JTEKT (CAFC 2011)</i>	<i>JTEKT Corp. v. United States</i> , 642 F.3d 1378 (CAFC 2011)
• <i>NSK (CAFC 2007)</i>	<i>NSK Ltd. v. United States</i> , 510 F.3d 1375 (CAFC 2007)
• <i>NTN (CIT 2002)</i>	<i>NTN Bearing Corp. of Am. v. United States</i> , 186 F. Supp. 2d 1257 (CIT 2002)
• <i>PPG (CIT 1991)</i>	<i>PPG Indus. Inc. v. United States</i> , 781 F. Supp. 781 (CIT 1991)
• <i>SKF III (CAFC 2011)</i>	<i>SKF USA Inc. v. United States</i> , 630 F.3d 1365 (CAFC 2011)
• <i>Shandong (CIT 2005)</i>	<i>Shandong Huarong Mach. Co. v. United States</i> , 29 CIT 484 (CIT 2005).
• <i>Steel Authority (CIT 2001)</i>	<i>Steel Authority Of India, Ltd. v. United States</i> , 25 CIT 482, 149 F. Supp. 2d 921 (2001)
• <i>Timken (CAFC 2004)</i>	<i>Timken Co. v. United States</i> , 354 F. 3d 1334 (CAFC 2004)
• <i>Titanium (CIT 1995)</i>	<i>Titanium Metals Corp. v. United States</i> , 19 CIT 1143 (1995)
• <i>Torrington (CIT 1995)</i>	<i>Torrington Co. v. Federal-Mogul Corp.</i> , 19 CIT 403, 428-29,881 F. Supp. 622 (1995).
• <i>U.S. Steel (CAFC 2010)</i>	<i>U.S. Steel Corp. v. United States</i> , 621 F. 3d 1351 (CAFC 2010)
• <i>Viraj (CIT 2002)</i>	<i>Viraj Forgings Ltd., v. United States</i> , 206 F. Supp. 2d 1288 (CIT 2002)
• <i>Wonderful Chemical (CIT 2003)</i>	<i>Wonderful Chemical Industrial, Ltd. v. United States</i> , F. Supp. 2d 1273 (CIT 2003)

<i>Short Cite Table For Memorandum/Reports &amp; Miscellaneous</i> <i>All cites in this table are listed alphabetically by short cite</i>	
<b>Memorandum/Letters: Short Cite</b>	<b>Memorandum/Letters: Full Cite</b>
Final Factors Memorandum	The Department's Memorandum to the File titled, "Factor Valuations for the Final Results of the First Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China" (dated concurrently with this memorandum)
Fushun Jinly's Section C & D Submission	Fushun Jinly's letter titled, "Small Diameter Graphite Electrodes form China: Sections C, D and Sales and Cost Reconciliations Response of Fushun Jinly Petrochemical Carbon Co., Ltd." (July 1, 2010)
Fushun Jinly's Surrogate Value Submission	Fushun Jinly's letter titled, "Small Diameter Graphite Electrodes form China: Submission of Surrogate Value Information." (October 28, 2010)
Fushun Jinly's Final Analysis Memo	Memorandum to the File titled, "First Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China: Analysis of the Final Results Margin Calculation for Fushun Jinly Petrochemical Carbon Co., Ltd." (dated concurrently with this memorandum)
Fushun Jinly's Fourth Supplemental Response	Fushun Jinly's letter titled, "Small Diameter Graphite Electrodes form China: Fourth Supplemental Response of Fushun Jinly Petrochemical Carbon Co., Ltd. ("Jinly")." (December 9, 2010)
Fushun Jinly's Preliminary Analysis Memo	Memorandum to the File titled, "First Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China: Analysis of the Preliminary Determination Margin Calculation for Fushun Jinly Petrochemical Carbon Co., Ltd." (February 28, 2011)
Fushun Jinly's Revised FOP Database	Fushun Jinly's letter titled, "Small Diameter Graphite Electrodes form China: Revised FOP Database of Fushun Jinly Petrochemical Carbon Co., Ltd." (February 14, 2011)

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<b>Memorandum/Letters: Short Cite</b>	<b>Memorandum/Letters: Full Cite</b>
Fushun Jinly's Third Supplemental Response	Fushun Jinly's letter titled, "Small Diameter Graphite Electrodes from China: Third Supplemental Response of Fushun Jinly Petrochemical Carbon Co., Ltd. ("Jinly")." (September 16, 2010)
Fushun Jinly's Toller #1's Verification Report	The Department's Memorandum to Wendy Frankel titled, "Verification of the Factors Response of Fushun Jinly Petrochemical Carbon Co., Ltd. for its Toller in the Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China" (February 28, 2011)
Fushun Jinly's Verification Report	The Department's Memorandum to Wendy Frankel titled, "Verification of the Sales and Factors 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" (February 28, 2011)
Petitioners' Pre-Verification Comments	Petitioners' Letter titled, "Small Diameter Graphite Electrodes from the People's Republic of China." (January 10, 2011)
Preliminary Factors Memorandum	The Department's Memorandum to the File titled, "First Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China: Selection of Factor Values" (February 28, 2011)
Respondent's April 11, 2011 Submission	Respondent's letter titled, "Small Diameter Graphite Electrodes from the People's Republic of China; Response to the Department's April 5, 2011 information Request" (April 11, 2011)
The Department's Supplemental A, C, D Questionnaire to Fushun Jinly	The Department's letter titled, "Supplemental A, C, D Questionnaire" (November 18, 2010)

<i>Short Cite Table For Memorandum/Reports &amp; Miscellaneous</i> <i>All cites in this table are listed alphabetically by short cite</i>	
<b>Memorandum/Letters: Short Cite</b>	<b>Memorandum/Letters: Full Cite</b>
The Fangda Group's Final Analysis Memo	The Department's Memorandum to the file titled, "1st Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China: Analysis of the Final Results Margin Calculation for the Fangda Group Companies" (dated concurrently with this memorandum)
The Fangda Group's Section C submission	The Fangda Group's letter titled, "Small Diameter Graphite Electrodes form China: Section C Response of the Fangda Group Companies" (June 28, 2010)
The Fangda Group's Section D response	The Fangda Group's letter titled, "Small Diameter Graphite Electrodes form China: Section D Response of the Fangda Group Companies" (June 28, 2010)
The Fangda Group's Preliminary Analysis Memo	The Department's Memorandum to the File titled, "1st Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China: Analysis of the Preliminary Determination Margin Calculation for the Fangda Group Companies" (February 28, 2011)
The Fangda Group's Fifth Supplemental Response	The Fangda Group's Letter titled, "Small Diameter Graphite Electrodes form China: Fifth Supplemental Response Part II (Question 1 and Revised Production Worksheets) of the Fangda Group Companies" (December 30, 2010)
The Fangda Group's Fourth Supplemental Response	The Fangda Group's Letter titled, "Small Diameter Graphite Electrodes form China: Fifth Supplemental Response Part II (Question 1 and Revised Production Worksheets) of the Fangda Group Companies" (December 30, 2010)
The Fangda Group's Verification Report	The Department's Memorandum to Wendy Frankel titled, "Verification of the Sales and Factors Responses of Beijing Fangda Carbon Tech Co., Ltd., Fushun Carbon Co., Ltd., Fangda Carbon New Material Co., Ltd., Chengdu Rongguang Carbon Co., Ltd., and Hefei Carbon Co., Ltd. (collectively "Fangda Group") in the Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China" (February 28, 2011)

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<b>Memorandum/Letters: Short Cite</b>	<b>Memorandum/Letters: Full Cite</b>
Original Questionnaire	The Department’s letters from Howard Smith to Fushun Jinly and the Fangda Group titled, “Original A, C, & D Questionnaire” (May 6, 2010)
Wage Rate Memorandum	The Department’s Memorandum to the File titled, “First Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China: Industry-Specific Surrogate Wage Rate and Surrogate Financial Ratio Adjustments” (June 29, 2011)
<b>Other/Miscellaneous Authorities</b>	<b>Other Authorities</b>
SAA accompanying Trade Agreements Act of 1979	Statement of Administrative Action accompanying the Trade Agreements Act of 1979, H.R. Rep. No. 4537, 388, reprinted in 1979 U.S.S.C.A.N. 665