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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

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

SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the administrative review of the antidumping duty order on small diameter graphite electrodes from the People's Republic of China (PRC) for the period of review (POR) February 1, 2010, through January 31, 2011. Based on our analysis of the comments received, we have made changes in the margin calculations for Fushun Jinly Petrochemical Co., Ltd. (Fushun Jinly). Therefore, the final results differ from the preliminary results. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this review for which we received comments and rebuttal comments by parties:

- Comment 1: Market Economy Purchases
- Comment 2: Designation of a Power Level Product Characteristic
- Comment 3: Labor Costs
- Comment 4: Surrogate Value for Silicon Carbide
- Comment 5: Surrogate Value for Steel Strip
- Comment 6: Request for Entry-Specific CBP Data



BACKGROUND

On March 6, 2012, we published *Small Diameter Graphite Electrodes from the People's Republic of China: Preliminary Results and Partial Rescission of Administrative Review*, 77 FR 13284 (March 6, 2012) (*Preliminary Results*). We invited interested parties to comment on the *Preliminary Results*. On April 5, 2012, we received case briefs from Fushun Jinly and the petitioners, SGL Carbon LLC and Superior Graphite Co.. On April 13, 2012, we received rebuttal comments from both parties. No interested party requested a hearing.

DISCUSSION OF ISSUES

Market Economy Purchases

Comment 1: The petitioners assert that Fushun Jinly's reported purchases of needle coke from a market economy supplier constitute non *bona fide* transactions. The petitioners request that the Department refrain from using market economy needle coke prices reported by Fushun Jinly and, instead, rely on the Ukrainian surrogate value for the needle coke factor of production. Citing various publications concerning the practice¹ and case precedent,² the petitioners argue that market economy prices must reflect arms-length transactions and otherwise be free of distortions. Citing the Department's practice of relying on certain criteria in determining whether a U.S. sale is an arms-length, *bona fide* transaction,³ the petitioners argue that, in a similar fashion, the Department should examine the totality of circumstances to establish whether Fushun Jinly's market economy purchases of needle coke were based on normal commercial considerations and present an accurate representation of the company's normal business practices. The petitioners contend that the price and other circumstances associated with Fushun Jinly's market economy purchases of needle coke confirm that these transactions were not based on normal considerations and should be omitted from the Department's dumping margin calculations for Fushun Jinly.

¹ See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716 (October 19, 2006), *Market Economy Inputs Practice in Antidumping Proceedings Involving Non-Market Economy Countries*, 71 FR 14176 (March 21, 2006), and *Market Economy Inputs Practice in Antidumping Proceedings Involving Non-Market Economy Countries*, 70 FR 46816, 46817 (August 11, 2005).

² See *Wooden Bedroom Furniture from the People's Republic of China, Final Results of Antidumping Duty Administrative Review and New Shipper Review*, 73 FR 49162 (August 20, 2008) and accompanying Issues and Decision Memorandum (IDM) at Comment 32, and *Seamless Refined Copper Pipe and Tube from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 26716, 26724 (May 12, 2010).

³ See *Shandong Chenhe International Trading Co., Ltd. v. United States*, No. 08-00373, Slip Op. 10-129 at 7 (CIT 2010); *Hebei New Donghua Amino Acid, Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1339 (CIT 2005), and *Uncovered Innerspring Units From the People's Republic of China: Rescission of Antidumping Duty New Shipper Review*, 76 FR 80337 (December 23, 2011).

The petitioners assert that the needle coke market prices reported by Fushun Jinly are aberrational. To reach this conclusion, the petitioners compared monthly and the POR average export prices from Japan to the PRC (the source of Fushun Jinly's purchases) to the weighted-average price they calculated for Fushun Jinly's reported purchases from one supplier and to the purchase price that Fushun Jinly reported for a single purchase from another supplier.⁴ The petitioners assert that, given the limited sources of needle coke supplies worldwide and the narrow price band within which it trades, the significant price disparity as demonstrated by these comparisons proves that Fushun Jinly's purchases do not reflect arm's-length, *bona fide* transactions. Further, the petitioners assert that neither supplier is in the business of selling needle coke on the basis of the statements these entities make on their respective websites and other internet research. The petitioners conclude that neither party appears to have offered for sale needle coke to entities other than Fushun Jinly. Lastly, the petitioners point to a specific peculiarity concerning the business relationship between Fushun Jinly and its suppliers, arguing that it further raises questions regarding the authenticity of the reported purchase prices for needle coke and casts doubt that they were based on normal commercial considerations. Specifically, the petitioners point to a circular relationship between Fushun Jinly and its needle coke suppliers whereby the entities in question are also Fushun Jinly's customers for subject merchandise. The petitioners assert that such an arrangement provides the ability to manipulate the input needle coke price as well as the output price for subject merchandise.

Fushun Jinly argues that the petitioners' claims are rebutted by substantial record evidence and that the Department rejected similar assertions in the previous review. Fushun Jinly asserts that the administrative record contains purchase contracts, sales invoices, and the bills of lading for each of its market economy purchases of needle coke during the POR. Fushun Jinly asserts that this evidence establishes that these transactions actually took place and reflect commercially significant volumes. Fushun Jinly argues that this documentation shows that it paid a range of prices for the input, some of which fall within the range of Japanese export prices. Further, Fushun Jinly argues that record evidence explains the existence of the range in the reported needle coke prices. Specifically, Fushun Jinly argues that the record clearly shows that Fushun Jinly purchased both higher and lower quality needle coke, determined on the basis of particle size. Further, Fushun Jinly asserts that the record also shows that Fushun Jinly used needle coke only in the production of higher grade subject merchandise and the recipes for those products illuminate the differences in the standard consumption rates of needle coke of various sizes among products.

Department's Position: We specifically addressed this issue in the *Preliminary Results*. See memorandum entitled "Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China: Preliminary Results Analysis Memorandum for Fushun Jinly Petrochemical Carbon Co., Ltd.," dated February 28, 2012 (Prelim Analysis Memorandum), at 4-6. In the Prelim Analysis Memorandum we stated

⁴ The petitioners allege that the Japanese export prices to the PRC are consistent with the average worldwide prices for needle coke, as cited in April 2010, by the industry sources. See the petitioners' July 28, 2011, submission at Enclosure 6.

that we did not find any of the petitioners' claims persuasive or substantiated, and preliminarily found that it was appropriate to value needle coke using Fushun Jinly's market economy purchase prices. *Id.* We continue to do so for these final results because there is no new factual information or argument. The petitioners' claims in this review are similar to the claims raised in the previous administrative review, which we rejected on the basis of record evidence that is similar in this review. *See Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order and Final Rescission of the Administrative Review, in Part*, 76 FR 56397 (September 13, 2011) (*SDGEs from PRC*) and accompanying IDM at Comment 15. Specifically, we find no evidence that the suppliers of needle coke are affiliated with Fushun Jinly or that Fushun Jinly's purchases of needle coke were not made at arm's length prices, or that the record contains any information that somehow casts doubt on the reliability of reported market-economy prices. *See* Prelim Analysis Memorandum at 4-6.

Fushun Jinly explained that the size of needle coke drastically affects the price, with larger size needle coke commanding a substantial premium over small size needle coke. *See* Fushun Jinly's August 16, 2011, response at S1-19 and S1-20. Fushun Jinly substantiated its assertion by providing needle coke purchase contracts and invoices. *See* Fushun Jinly's August 16, 2011, response at Exhibits S1-7 and S1-8. Fushun Jinly's reported purchase price for large size needle coke is in line with the average POR export price from Japan to the PRC, as cited by the petitioners. *See* Prelim Analysis Memorandum at 4-6. Japan may have primarily exported larger size needle coke to the PRC during the POR which could explain the difference between the POR average export price from Japan to the PRC and the prices Fushun Jinly paid for small size needle coke. As such, we continue to find that it is not appropriate, as the petitioners have done, to compare the POR average Japanese export value for needle coke to Fushun Jinly's prices for mostly smaller-size needle coke purchases. *Id.*

Although certain prices for needle coke reported by Fushun Jinly may differ from other values for needle coke on the record, there is no indication that the price differences are due to the alleged peculiar nature of Fushun Jinly's business relationship with its suppliers. There is no record evidence that Fushun Jinly's reported purchase prices of needle coke are aberrational due to the fact that its suppliers of needle coke were also Fushun Jinly's customers for SDGEs. *See SDGEs from PRC* and accompanying IDM at Comment 15. As explained above, Fushun Jinly has shown to our satisfaction that the price differences are, in fact, due to the size of needle coke. Lastly, we do not find persuasive the petitioners' claim that there is a further basis for rejecting the prices paid by Fushun Jinly to unaffiliated suppliers merely because the suppliers in question are not allegedly in the business of selling needle coke. There is no record evidence that the prices paid by Fushun Jinly to unaffiliated suppliers are unreliable or distorted because the merchandise was procured from these suppliers and not directly from a manufacturer of an input. To the contrary, and as discussed above, we find the prices to be reasonable. Accordingly, for the final results of this review, we continue to rely on market economy prices reported by Fushun Jinly in valuing needle coke.

Designation of a Power Level Product Characteristic

Comment 2: The petitioners assert that the Department should adjust the power level product characteristic for all U.S. sales based on Fushun Jinly's publicly available technical specifications provided on its website and use appropriate factor data corresponding to the revised power level and, consequently, revised control numbers. The petitioners contend that the Department should not rely on Fushun Jinly's internal technical specifications, used in the normal course of business, in determining power levels of subject merchandise, as Fushun Jinly had done, because the two sets of internal technical specifications Fushun Jinly submitted on the record are inconsistent between themselves. The petitioners assert that the explanation offered by Fushun Jinly for its submission of two different sets of internal technical specifications is flawed and cannot be used by the Department to find that one set of the technical specifications is accurate, while the other is not. Specifically, Fushun Jinly explained that an inadvertent rounding of decimal values into whole numbers was the reason why the originally submitted technical specifications were in error. The petitioners argue that such an explanation is not substantiated because not all figures were rounded into whole numbers.

Fushun Jinly argues that the control numbers it reported to the Department incorporated correctly the power levels for the subject merchandise on the basis of Fushun Jinly's own proprietary internal specifications, which are more rigorous than the publicly available specifications. Fushun Jinly asserts that it corrected the inadvertent original submission of inconsistent technical specifications and alerted the Department that the proprietary internal technical specifications provided subsequently were correct, and that the previously provided specifications were not. Fushun Jinly contends that it explained to the Department that the originally submitted specifications were flawed because certain variables were inadvertently rounded to whole numbers, despite the fact that the technical specifications provided by Fushun Jinly to its U.S.-based legal counsel for submission, had decimal values. Accordingly, Fushun Jinly argues, its re-submitted technical specifications were not consistent, naturally, with the originally submitted specifications that reflected inadvertent rounding of decimal values. Fushun Jinly argues that, because it corrected the error and the Department was able to rely on correct information in the *Preliminary Results*, there is no basis for it to not continue to do so in the final results.

Department's Position: We specifically addressed this issue in the *Preliminary Results*. See Prelim Analysis Memorandum at 7. As we stated there, in its reply to the petitioners' comments, Fushun Jinly explained that the technical specifications it provided in Exhibit S2-9 of its September 21, 2011, response and in Exhibit S3-10 of its November 29, 2011, response should have been identical. *Id.* Fushun Jinly's counsel explained that although Fushun Jinly provided identical sets of information to its U.S.-based counsel for submission to the Department, the latter party's conversion of the received information caused the rounding of decimal values into whole numbers. *Id.* Consequently, incorrect internal technical specifications were reported inadvertently in Exhibit S2-9. *Id.* For the *Preliminary Results*, we compared the information in Exhibits S2-9 and S3-10 of Fushun Jinly's September 21, 2011, response, and found Fushun Jinly's explanation plausible. *Id.* We continue to find Fushun Jinly's explanation plausible

because it is conceivable that, for whatever technical reason, certain values for certain technical specifications were converted, inadvertently, to whole numbers while others remained in a decimal format. As such, we do not consider the internal technical specifications that were incorrectly presented in Exhibit S2-9 of Fushun Jinly's September 21, 2011, response, to undermine the validity of internal technical specifications it provided in Exhibit S3-10 of its November 29, 2011, response.

This conclusion is supported by our further review of the information submitted by Fushun Jinly. Specifically, we examined Fushun Jinly's internal specifications and found them to be generally consistent with the published industry technical specifications in the PRC used for subject merchandise. *See* Exhibit S3-12 of Fushun Jinly's November 29, 2011, response and Prelim Analysis Memorandum at 7. Further, we confirmed the accuracy of Fushun Jinly's assignment of power levels by referencing the information in the inspections reports and in Fushun Jinly's internal technical specifications. *Id.*

As such, because 1) Fushun Jinly offered an explanation for differences in submitted internal technical specifications, 2) Fushun Jinly's internal specifications generally appear to be consistent with the published industry technical specifications in the PRC, 3) Fushun Jinly stated repeatedly throughout this review that it relies on its internal technical specifications in the normal course of business, and 4) we have identified no record evidence specifically invalidating Fushun Jinly's internal technical specifications, we find no bases that warrant the reassignment of the power levels as reported by Fushun Jinly in this review.

Labor Costs

Comment 3: The petitioners contend that, in calculating labor costs, it was inappropriate for the Department to rely on all manufacturing categories as reported by the International Labor Organization (ILO) Yearbook of Labor Statistics (Yearbook) under Chapter 6A. Citing *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*), the petitioners assert that the Department's methodology for valuing labor in non-market economy (NME) cases is to rely on industry-specific labor costs in Chapter 6A of the Yearbook. The petitioners contend that because SDGEs are refined petroleum products, the most appropriate category for subject merchandise in Chapter 6A is Category 23, "Manufacture of Coke, Refined Petroleum Products, and Nuclear Fuel," rather than Category 31, "Manufacture of electrical machinery and apparatus n.e.c.," relied upon in the *Preliminary Results*. Citing *Galvanized Steel Wire From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 76 FR 68407, 68419 (November 4, 2011), the petitioners allege that, since the pronouncement of its new NME labor methodology, the Department has consistently relied on industry-specific labor cost, except when the data are not available in Chapter 6A of ILO's Yearbook.

Fushun Jinly argues that a review of the industry-specific categories in ILO Chapter 6A reported for Ukraine establishes that none of them are specific to the SDGEs industry or the

production of subject merchandise. Fushun Jinly argues that, in the absence of industry-specific labor data, the Department properly relied on national labor cost data in valuing labor in the *Preliminary Results*. Fushun Jinly contends that the petitioners' suggestion that Category 23 in Chapter 6A of ILO's Yearbook is specific to SDGEs must be rejected. Fushun Jinly argues that, although coke is a primary raw material used in the production of SDGEs, the manufacturing process undertaken to produce SDGEs cannot be equated to the process undertaken in the refining of petrochemical products such as jet fuel, gasoline, heating oil, or production of nuclear fuels.

Department's Position: In *Labor Methodologies*, we explained that the preferred methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. *See Labor Methodologies*, 76 FR at 36093; *see also Preliminary Results*, 77 FR at 13292. Additionally, we determined that the best data source for industry-specific labor rates is Chapter 6A from the ILO Yearbook. *See Labor Methodologies*, 76 FR at 36093-94; *see also Preliminary Results*, 77 FR at 13292. In this review, we selected Ukraine as the primary surrogate country. *See Preliminary Results*, 76 FR at 13290-91. As we stated in the *Preliminary Results*, we could not identify Chapter 6A labor data for Ukraine pertaining to the industry specific to subject merchandise. *See Preliminary Results*, 77 FR 13292-93.

The ILO industry-specific data is based on the International Standard Industrial Classification of all Economic Activities (ISIC) code, which is maintained by the United Nations Statistical Division and is updated periodically. These updates are referred to as "Revisions." The labor data for Ukraine in Chapter 6A of the ILO Yearbook are available under ISIC Revision 3. In this review, we turned to the industry definitions contained in this revision to find the appropriate classification for SDGEs. Under the ISIC-Revision 3, the two-digit series most specific to SDGEs is Category 31, which is described as "Manufacture of electrical machinery and apparatus n.e.c." The explanatory notes for sub-classification 3190 state that this sub-classification includes "carbon or graphite electrodes," a description closely corresponding to the subject merchandise under review.⁵ Accordingly, we found that this category was the most appropriate category for SDGEs. In fact, we used this category in the previous segment of this proceeding (under our prior practice of using Chapter 5B data). *See 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) (unchanged in *SDGEs from PRC*). Chapter 6A of ILO Yearbook did not report, however, any labor data under Category 31. For this reason, we concluded in the *Preliminary Results* that there were no data for Ukraine pertaining to the industry specific to subject merchandise.

We do not agree with the petitioners that Category 23, "Manufacture of Coke, Refined Petroleum Products, and Nuclear Fuel" is appropriate for valuing labor costs in connection with the production of subject merchandise. SDGEs are made *from* refined petroleum products and

⁵ See <http://unstats.un.org/unsd/cr/registry/regcs.asp?Cl=2&Lg=1&Co=3190>. *See also* Memorandum to File, dated June 27, 2012.

the category in question pertains to the production of fuel products. Specifically, there are the following sub-classifications for Category 23: 231 – “Manufacture of coke oven products,” 232 – “Manufacture of refined petroleum products,” and 233 - Processing of nuclear fuel.”⁶ As such, we do not find it appropriate to value labor in the production of SDGEs using labor costs pertaining to the production of certain inputs consumed in the production of SDGEs, particularly when ISIC-Revision 3 includes a category that is more specific to SDGEs.

In *Labor Methodologies*, we explained that, “if there is no industry-specific data available for the surrogate country within the primary data source, *i.e.*, ILO Chapter 6A data, we will then look to national data for the surrogate country for calculating the wage rate.” *See Labor Methodologies*, 76 FR at 36094, n.11; *see also Preliminary Results*, 77 FR at 13293. Absent ILO Chapter 6A labor data for Ukraine specific to subject merchandise, in accordance with our practice, we continue to find that the national ILO Chapter 6A data constitute the best available information on the record with which to value labor costs in this review. *See High Pressure Steel Cylinders from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 26739 (May 7, 2012) and accompanying IDM at Comment II.C.

Surrogate Value for Silicon Carbide

Comment 4: The petitioners contend that the Department valued a by-product of SDGEs production using a surrogate value that is higher than the surrogate value it used for the input consumed to generate the by-product in question. The petitioners assert that silicon carbide is a by-product of SDGEs production and is obtained when the electrode is heated in the furnace with silica in order to obtain the graphitized electrode. Citing *Certain Steel Nails from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008) (*PRC Nails*) and accompanying IDM at Comment 12, the petitioners assert that it is not in accordance with the Department’s practice to have assigned the value to a by-product, silicon carbide, that

⁶ Sub category 2310 pertains to: “... operation of coke ovens chiefly for the production of coke or semi-coke from hardcoal and lignite, of retort carbon and residual products such as coal tar or pitch. Agglomeration of coke.” *See* <http://unstats.un.org/unsd/cr/registry/regcs.asp?Cl=2&Lg=1&Co=2310>. *See also* Memorandum to File, dated June 27, 2012.

Sub category 2320 pertains to: “production of liquid or gaseous fuels (e.g. ethane, butane or propane), illuminating oils, lubricating oils or greases or other products from crude petroleum or bituminous minerals or their fractionation products. Included is manufacture or extraction of such products as petroleum jelly, paraffin wax, other petroleum waxes and such residual products as petroleum coke, petroleum bitumen, etc.” *See* <http://unstats.un.org/unsd/cr/registry/regcs.asp?Cl=2&Lg=1&Co=2320>. *See also* Memorandum to File, dated June 27, 2012.

Sub category 2330 pertains to: “extraction of uranium metal from pitchblende or other uranium bearing ores. Manufacture of alloys, dispersions or mixtures of natural uranium or its compounds. Manufacture of enriched uranium and its compounds; plutonium and its compounds; or alloys, dispersions or mixtures of these compounds. Manufacture of uranium depleted in U 235 and its compounds; thorium and its compounds; or alloys, dispersions or mixtures of these compounds. Manufacture of other radio-active elements, isotopes or compounds. Manufacture of non-irradiated fuel elements for use in nuclear reactors.” *See* <http://unstats.un.org/unsd/cr/registry/regcs.asp?Cl=2&Lg=1&Co=2330>. *See also* Memorandum to File, dated June 27, 2012.

exceeds the value that the Department assigned to an input, silica, that caused the by-product. The petitioners argue that for the final results, the Department should cap the surrogate value assigned to silicon carbide at the surrogate value assigned to silica.

Fushun Jinly argues that the petitioners do not allege or establish that the surrogate value the Department calculated for either silica or silicon carbide is aberrational or that any adjustments to the calculated surrogate values are necessary. Further, Fushun Jinly argues that the petitioners' reference to *PRC Nails* is not applicable to the case at hand. Fushun Jinly argues that in *PRC Nails* the Department determined that it was unreasonable to use a surrogate value for steel wire rod scrap that is higher than the surrogate value it used for steel wire rod, an input from which scrap was directly derived. Here, Fushun Jinly argues, silicon carbide is not wastage from silica but, rather, is a distinct product that is formed in a chemical reaction that incorporates both silica and carbon, and has its own value, distinct and independent from the value of either silica or carbon.

Department's Position: In this review, Fushun Jinly reported that silicon carbide is a by-product in the graphitization stage of SDGEs production. See Table A-10, Exhibit S3-13 of Fushun Jinly's November 29, 2011, response; see also Exhibit D-2 of Fushun Jinly's July 5, 2011, submission for a detailed description of a production process. Specifically, in this stage of production, the semi-finished baked and impregnated electrodes, along with metallurgical coke and silica are consumed as inputs in obtaining graphitized electrodes and two by-products, carborundum (*i.e.*, silicon carbide) and graphite gelatin powder. *Id.* At this point, the silicon carbide by-product has taken on the physical and chemical properties of carbonaceous inputs consumed in the production of semi-finished electrodes, such as petroleum coke, metallurgical coke, needle coke, coal, and coal tar pitch, as well as silica. Therefore, the value of silicon carbide is attributable not only to silica, as the petitioners have suggested, but also to all carbon or hydrocarbon-based products consumed in making the semi-finished and then graphitized SDGEs.

We find that the petitioners' reliance on *PRC Nails* is misplaced. In that case, we found that an unreasonable result was produced when the surrogate value for steel wire rod scrap exceeded the surrogate value for steel wire rod. This was so because 1) the steel wire rod is the major and the primary input in the production of nails, 2) steel wire rod scrap is identical, in terms of composition, to steel wire rod, and 3) steel wire rod scrap was obtained by a physical alteration of steel wire rod. In the instant case, as explained above, 1) silica is neither the major nor the primary input in the production of SDGEs, 2) silicon carbide is a vastly different product, in terms of composition, than silica, and 3) silicon carbide is produced by a high temperature electro-chemical reaction of silica and carbon. Thus, silicon carbide cannot be considered scrap. Instead, it is a distinct product that results from a joint production process, and it is not otherwise

separately identifiable as an individual product prior to its split-off point. Accordingly, capping the silicon carbide value by the silica value is not appropriate.⁷

Furthermore, the petitioners have not shown that the surrogate value for silicon carbide is aberrational. Therefore, we are not adjusting that value for these final results.

Surrogate Value for Steel Strip

Comment 5: Fushun Jinly asserts that the Department should adjust the calculation of the surrogate value for steel strip packing material to remove the quantity and value information for imports into Ukraine from Japan and Brazil. Fushun Jinly argues that the inclusion of these countries' statistics skews the accuracy of the calculation. With respect to imports from Japan, Fushun Jinly argues that an average import value (AUV) for Japan cannot be calculated because, while the reported value of imports is a positive number, the reported quantity is zero. With respect to imports from Brazil, Fushun Jinly asserts that the calculated AUV for Brazil is aberrational and is an outlier when compared to the AUVs of all the other countries. Fushun Jinly asserts that the AUV for steel strip imported from Brazil, corresponding to only three kilograms, is almost 40 times greater than the overall AUV of imports of steel strip into Ukraine under Harmonized Tariff System (HTS) classification 7312.90, and is eight times greater than the next highest AUV of imports from France. Alternatively, Fushun Jinly suggests that the Department may exclude from the surrogate value calculation all imports from those countries that have an import volume of less than 10 kilograms, which Fushun Jinly asserts is insignificant in relation to the total volume of imports.

The petitioners agree with Fushun Jinly that the Department should set the value of imports from Japan to zero because there is no associated quantity. The petitioners assert, however, that Fushun Jinly's provides no evidence that the other identified import data are aberrational or unrepresentative of the overall average AUV for the HTS in question. The petitioners assert that Fushun Jinly did not document a specific reason for its request to remove certain import data from calculations. Citing *PRC Nails* and accompanying IDM at Comment 19 and *Frontseating Service Valves From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 74 FR 10886 (March 13, 2009) and accompanying IDM at Comments 4 and 5, the petitioners contend that Fushun Jinly did not demonstrate that imports in question contained entries of merchandise that were not of the type used by Fushun Jinly in the production of subject merchandise, or were misclassified, or that the underlying data are not reliable or invalid. Citing, among others, *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 56158 (September 12, 2011) and accompanying IDM at Comment 2E and *Certain New Pneumatic Off-*

⁷ The Department faced a similar situation in *PRC Citric Acid*, and did not cap the factor value. See *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 74 FR 16838 (April 13, 2009) (*PRC Citric Acid*) and accompanying IDM at Comment 7.

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) (*Tires*) and accompanying IDM at Comment 9, the petitioners argue that the Department does not automatically exclude high AUVs with low import volumes from its calculation of surrogate values and requires that parties provide specific evidence showing the value is aberrational. Lastly, the petitioners contend that the removal of the import data in question does not have a material impact on the surrogate value, which is further evidence that these data are not aberrational.

Department's Position: We agree with Fushun Jinly that the value of imports from Japan should not be included in the overall calculation of the AUV of imports into Ukraine of steel strip because the Global Trade Atlas does not report the associated volume of imports from that country. Accordingly, we adjusted the calculation of the surrogate value for steel strip to exclude the value of imports from Japan.

We disagree with Fushun Jinly that certain other countries' import statistics, including those for Brazil, should be excluded from the calculation of an AUV of imports into Ukraine under HTS 7312.90. While the Department has disregarded import data in cases where record evidence demonstrated the per-unit values were aberrational with respect to the product at issue or the time period in question, the determination whether data are aberrational must be made on a case-by-case basis after considering the totality of the circumstances. In making a determination as to whether data are aberrational, the Department has found the existence of higher prices alone does not necessarily indicate the price data are distorted or misrepresentative, and thus is not sufficient to exclude a particular surrogate value. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 844 (January 6, 2010) and accompanying IDM at Comment 2. Rather, the burden is on interested parties to provide factual evidence showing the value is aberrational. *Id.* As stated correctly by the petitioners, Fushun Jinly presented no evidence that supports its claim that the information corresponding to imports from countries with reported low volumes of steel strip constitute aberrational or unrepresentative data, or somehow distort the overall calculated AUV of imports into Ukraine of steel strip. Accordingly, we find no basis to modify the calculation of the surrogate value for steel strip by excluding import statistics corresponding to countries with low reported volumes of steel strip. *See, e.g., Tires* and accompanying IDM at Comment 9 (rejecting the claim that high price/low quantity data automatically qualify their exclusion from the Department's surrogate value calculations) and *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review*, 72 FR 52052 (September 12, 2007) and accompanying IDM at Comment 4 (finding that, "absent specific evidence that certain import data may be aberrational for a particular case, the Department will opt to include all import data in its {surrogate value} calculations because {no party} can have perfect knowledge of what may or may not constitute an aberrational value when presented with a range of values within a particular HTS category.")

Request for Entry-Specific CBP Data

Comment 6: The petitioners ask that the Department request and obtain detailed entry-by-entry data from U.S. Customs and Border Protection (CBP) for all POR entries to determine whether there are any unreported U.S. sales by Fushun Jinly or any entries where another company has wrongly used Fushun Jinly's identity. The petitioners request that such data be entered into the record and analyzed for the final results. The petitioners acknowledge that their requests are premised on the basis of the Department's uncovering of certain U.S. transactions during the course of the review that Fushun Jinly originally did not report as well as of a single instance where another entity used Fushun Jinly's identity to enter subject merchandise into the United States.

Department's Position: The petitioners have made no argument nor identified any factual information that would cause us to revisit our analysis of this issue for the *Preliminary Results*. See Prelim Analysis Memorandum at 8. Specifically, we provided a reconciliation of Fushun Jinly's POR reported shipment quantity and the POR entered quantity. *Id.* On the basis of this reconciliation, we observed that Fushun Jinly reported a greater quantity of shipments for entry during the POR than the quantity of its shipments that actually entered during the POR. *Id.* Further, because Fushun Jinly provided CBP forms 7501 for the majority of its reported U.S. sales but not for all U.S. sales, we determined that record evidence was not dispositive that all its reported POR shipments entered during the POR. *Id.* Accordingly, we found that all that the record showed is that certain sales reported by Fushun Jinly during the POR were either not entered during the POR or were entered under an HTSUS classification other than 8545110010 (for which CBP data was obtained and which was used in the reconciliation). *Id.* Therefore, we continue to find that there is no basis to conclude that Fushun Jinly may have underreported U.S. sales, as alleged by the petitioners, because the record shows the opposite. Lastly, there is no record evidence, such as third-party data, that supports the petitioners' claim of unreported sales or additional instances where other parties claimed Fushun Jinly's identity for purposes of entering subject merchandise into the United States. Accordingly, in the absence of record evidence that supports the petitioners' assertions, we do not find a reason to request additional entry-specific information from CBP.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of the review in the *Federal Register*.

Agree

Disagree

Paul Piquado
Assistant Secretary
for Import Administration

Date