



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-929]

Small Diameter Graphite Electrodes from the People's Republic of China: Preliminary Results and Partial Rescission of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting the administrative review of the antidumping duty order on small diameter graphite electrodes (graphite electrodes) from the People's Republic of China (PRC), covering the period February 1, 2010, through January 31, 2011. The Department has preliminarily determined that during the period of review (POR) respondents in this proceeding have made sales of subject merchandise at less than normal value (NV). If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. The Department is also rescinding this review for those exporters for which requests for review were timely withdrawn.¹ Furthermore, we determine that 16 companies for which a review was requested have not demonstrated entitlement to a separate rate.² As a result, we have preliminarily determined that they are part of the PRC-wide entity, and are subject to the PRC-wide entity rate.³

¹ See "Partial Rescission of the Administrative Review" section below.

² See "Separate Rates" section below.

³ See "PRC-Wide Entity" section below.

Interested parties are invited to comment on these preliminary results. We will issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: (Insert date published in the *Federal Register*)

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Minoo Hatten, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482-0665 or (202) 482-1690, respectively.

Background

On February 26, 2009, we published in the *Federal Register* the antidumping duty order on graphite electrodes from the PRC.⁴ On February 1, 2011, we published a notice of opportunity to request an administrative review of this order.⁵ On February 25 and February 28, 2011, we received timely review requests in accordance with 19 CFR 351.213(b) from Fushun Jinly Petrochemical Carbon Co., Ltd. (Fushun Jinly), Xinghe County Muzi Carbon Co., Ltd. (Muzi Carbon), Sichuan Guanghan Shida Carbon Co., Ltd. (Shida Carbon), and Beijing Fangda Carbon Tech Co., Ltd., Chengdu Rongguang Carbon Co., Ltd., Fangda Carbon New Material Co., Ltd., Fushun Carbon Co., Ltd., and Hefei Carbon Co., Ltd. (collectively, the Fangda Group). On February 25, 2011, the Department also received a timely request for an administrative review of 117 companies from SGL Carbon LLC and Superior Graphite Co. (the petitioners). On

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

⁵ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 76 FR 5559 (February 1, 2011).

March 31, 2011, we initiated an administrative review of the antidumping duty order on graphite electrodes from the PRC with respect to 160 companies.⁶

On April 4, 2011, we released to interested parties CBP data covering POR imports of graphite electrodes from the PRC and invited comments on the Department's selection of respondents for individual examination.⁷ On May 6, 2011, we selected Jilin Carbon Import and Export Company (Jilin Carbon) and Fushun Jinly for individual examination in this review.⁸

On May 11, 2011, we sent the antidumping duty questionnaire to Jilin Carbon and Fushun Jinly. On May 31, 2011, we received separate-rate certifications from the Fangda Group and Muzi Carbon, and a separate-rate application from Shida Carbon.⁹ On June 13, 2011, and June 14, 2011, the petitioners submitted comments concerning separate-rate certifications provided by Muzi Carbon and the Fangda Group, respectively. On June 14, 2011, and June 27, 2011, in response to our requests for information, Muzi Carbon clarified certain information in its separate-rate certification. On June 30, 2011, the petitioners submitted comments concerning the separate-rate application provided by Shida Carbon. On July 20, 2011, in response to our request for information, Shida Carbon clarified certain information in its separate-rate application.

⁶ In *Initiation of Antidumping Duty Administrative Reviews, Requests for Revocation in Part, and Deferral of Administrative Review*, 76 FR 17825 (March 31, 2011) (*Initiation Notice*), we listed additional names by which certain companies are also known, or were known formerly, as reflected in the petitioners' February 25, 2011, review request.

⁷ See the Department's memorandum to "All Interested Parties," dated April 4, 2011.

⁸ See the Department's memorandum entitled "Small Diameter Graphite Electrodes from the People's Republic of China: Selection of Respondents for Individual Examination," dated May 6, 2011 (Respondent Selection Memo).

⁹ See "Separate Rates" section below.

On June 29, 2011, the petitioners filed a timely request for rescission of review with respect to 134 of the 160 companies for which the Department initiated a review.¹⁰ Between June 15 and November 29, 2011, Fushun Jinly responded to the Department's original and supplemental questionnaires. Jilin Carbon did not respond to the Department's questionnaire.

On November 1, 2011, and February 7, 2012, we extended the time limit for the preliminary results of review by 120 days as allowed under section 751(a)(3)(A) of the Act to February 28, 2012.¹¹

Scope of the Order

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

¹⁰ See "Partial Rescission of the Administrative Review" section below.

¹¹ See *Small Diameter Graphite Electrodes From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 67411 (November 1, 2011), and *Small Diameter Graphite Electrodes from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 77 FR 6060 (February 7, 2012).

Schedule of the United States (HTSUS) subheading 8545.11.0000. The HTSUS number is provided for convenience and customs purposes, but the written description of the scope is dispositive.

Partial Rescission of the Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of the initiation notice.

For 152 of the companies for which the Department initiated an administrative review, the petitioners were the only party that requested the review. On June 29, 2011, the petitioners timely withdrew their review requests for 134 of those 152 companies. Further, on May 17, 2011, Muzi Carbon clarified its request for review in which Muzi Carbon was named erroneously as Xinghe Muzi Carbon Co., Ltd.¹² Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this administrative review with respect to 135 companies named as follows in the *Initiation Notice*:

1. 5-Continent Imp. & Exp. Co., Ltd.
2. Accelcarbon Co., Ltd.
3. Allied Carbon (China) Co., Limited
4. AMGL
5. Anssen Metallurgy Group Co., Ltd.
6. Beijing Xinchengze Inc.
7. Beijing Xincheng Sci-Tech. Development Inc.
8. Brilliant Charter Limited
9. Chang Cheng Chang Electrode Co., Ltd.
10. Chengdelh Carbonaceous Elements Factory
11. Chengdu Jia Tang Corp.
12. China Industrial Mineral & Metals Group
13. China Shaanxi Richbond Imp. & Exp. Industrial Corp. Ltd.
14. China Xingyong Carbon Co., Ltd.
15. CIMM Group Co., Ltd.
16. Dalian Carbon & Graphite Corporation
17. Dalian Hongrui Carbon Co., Ltd.

¹² The petitioners did not request a review on Xinghe Muzi Carbon Co., Ltd.

18. Dalian Honest International Trade Co., Ltd.
19. Dalian Horton International Trading Co., Ltd.
20. Dalian LST Metallurgy Co., Ltd.
21. Dalian Shuangji Co., Ltd.
22. Dalian Thrive Metallurgy Imp. & Exp. Co., Ltd.
23. Datong Carbon
24. Datong Carbon Plant
25. Datong Xincheng Carbon Co., Ltd.
26. De Well Container Shipping Corp.
27. Dewell Group
28. Dignity Success Investment Trading Co., Ltd.
29. Double Dragon Metals and Mineral Tools Co., Ltd.
30. Fangda Lanzhou Carbon Joint Stock Company Co. Ltd.
31. Foset Co., Ltd.
32. GES (China) Co., Ltd.
33. Guangdong Highsun Yongye (Group) Co., Ltd.
34. Haimen Shuguang Carbon Industry Co., Ltd.
35. Handan Hanbo Material Co., Ltd.
36. Hebei Long Great Wall Electrode Co., Ltd.
37. Heilongjiang Xinyuan Carbon Products Co., Ltd.
38. Heilongjiang Xinyuan Metacarbon Company, Ltd.
39. Henan Sanli Carbon Products Co., Ltd.
40. Hopes (Beijing) International Co., Ltd.
41. Huanan Carbon Factory
42. Hunan Mec Machinery and Electronics Imp. & Exp. Corp.
43. Hunan Yinguang Carbon Factory Co., Ltd.
44. Inner Mongolia QingShan Special Graphite and Carbon Co., Ltd.
45. Inner Mongolia Xinghe County Hongyuan Electrical Carbon Factory
46. Jiang Long Carbon
47. Jiangsu Yafei Carbon Co., Ltd.
48. Jiaozuo Zhongzhou Carbon Products Co., Ltd.
49. Jichun International Trade Co.Ltd. of Jilin Province
50. Jiexiu Juyuan Carbon Co., Ltd./Jiexiu Ju-Yuan & Coaly Co., Ltd.
51. Jilin Songjiang Carbon Co Ltd.
52. Jinneng Group
53. Jinyu Thermo-Electric Material Co., Ltd.
54. Kaifeng Carbon Company Ltd.
55. KASY Logistics (Tianjin) Co., Ltd.
56. Kimwan New Carbon Technology and Development Co., Ltd.
57. Kingstone Industrial Group Ltd.
58. L & T Group Co., Ltd.
59. Laishui Long Great Wall Electrode Co. Ltd.
60. Lanzhou Carbon Co., Ltd./Lanzhou Carbon Import & Export Corp.
61. Lanzhou Hailong Technology
62. Lanzhou Ruixin Industrial Material Co., Ltd.
63. LH Carbon Factory of Chengde

64. Lianxing Carbon Qinghai Co., Ltd.
65. Lianxing Carbon Science Institute
66. Lianxing Carbon (Shandong) Co., Ltd.
67. Lianyungang Jianglida Mineral Co., Ltd.
68. Lianyungang Jinli Carbon Co., Ltd.
69. Liaoyang Carbon Co. Ltd.
70. Linghai Hongfeng Carbon Products Co., Ltd.
71. Linyi County Lubei Carbon Co., Ltd.
72. Maoming Yongye (Group) Co., Ltd.
73. Nantong Falter New Energy Co., Ltd.
74. Nantong River-East Carbon Co., Ltd.
75. Nantong River-East Carbon Joint Stock Co., Ltd.
76. Nantong Yangtze Carbon Corp. Ltd., Orient (Dalian) Carbon Resources Developing Co., Ltd.
77. Peixian Longxiang Foreign Trade Co. Ltd.
78. Qingdao Grand Graphite Products Co., Ltd.
79. Qingdao Haosheng Metals & Minerals Imp. & Exp. Co., Ltd.
80. Qingdao Haosheng Metals Imp. & Exp. Co., Ltd.
81. Qingdao Likun Graphite Co., Ltd.
82. Qingdao Liyikun Carbon Development Co., Ltd.
83. Qingdao Ruizhen Carbon Co., Ltd.
84. Rt Carbon Co., Ltd.
85. Ruitong Carbon Co., Ltd.
86. Shandong Basan Carbon Plant
87. Shandong Zibo Contient Carbon Factory
88. Shanghai Carbon International Trade Co., Ltd.
89. Shanghai GC Co., Ltd.
90. Shanghai Jinneng International Trade Co., Ltd.
91. Shanghai P.W. International Ltd.
92. Shanghai Shen-Tech Graphite Material Co., Ltd.
93. Shanghai Topstate International Trading Co., Ltd.
94. Shenyang Jinli Metals & Minerals Imp. & Exp. Co., Ltd.
95. Shanxi Datong Energy Development Co., Ltd.
96. Shanxi Foset Carbon Co. Ltd.
97. Shanxi Jiexiu Import and Export Co., Ltd.
98. Shanxi Jinneng Group Co., Ltd.
99. Shanxi Yunheng Graphite Electrode Co., Ltd.
100. Shenyang Jinli Metals & Minerals Imp. & Exp. Co., Ltd.
101. Shijiazhuang Carbon Co., Ltd.
102. Shijiazhuang Huanan Carbon Factory
103. Sichuan 5-Continent Imp. & Exp. Co., Ltd.
104. Sichuan GMT International Inc.
105. SMMC Group Co., Ltd.
106. Tangshan Kimwan Special Carbon & Graphite Co., Ltd.
107. Tengchong Carbon Co., Ltd.
108. Tianjin (Teda) Iron & Steel Trade Co., Ltd.

119. Tianjin Kimwan Carbon Technology and Development Co., Ltd.
110. Tianzhen Jintian Graphite Electrodes Co., Ltd.
111. Tianjin Yue Yang Industrial & Trading Co., Ltd.
112. Tielong (Chengdu) Carbon Co., Ltd.
113. UK Carbon & Graphite
114. United Carbon Ltd.
115. United Trade Resources, Inc.
116. Weifang Lianxing Carbon Co., Ltd.
117. World Trade Metals & Minerals Co., Ltd.
118. XC Carbon Group
119. Xinghe Muzi Carbon Co., Ltd.
120. Xinghe Xingyong Carbon Co., Ltd.
121. Xinghe Xinyuan Carbon Products Co., Ltd.
122. Xinyuan Carbon Co., Ltd.
123. Xuanhua Hongli Refractory and Mineral Company
124. Xuchang Minmetals & Industry Co., Ltd.
125. Xuzhou Carbon Co., Ltd.
126. Xuzhou Electrode Factory
127. Xuzhou Jianglong Carbon Manufacture Co., Ltd.
128. Yangzhou Qionghua Carbon Trading Ltd.
129. Yixing Huaxin Imp & Exp Co. Ltd.
130. Youth Industry Co., Ltd.
131. Zhengzhou Jinyu Thermo-Electric Material Co., Ltd.
132. Zibo Continent Carbon Factory
133. Zibo DuoCheng Trading Co., Ltd.
134. Zibo Lianxing Carbon Co., Ltd.
135. Zibo Wuzhou Tanshun Carbon Co., Ltd.

Non-Market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy (NME) country.¹³ In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment.

¹³ See, e.g., *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007).

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assigned a single antidumping duty rate.¹⁴ It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. The Department analyzes each entity exporting the subject merchandise under a test articulated in the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as further developed in the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). If the Department determines, however, that a company is wholly foreign-owned or located in a market economy (ME), then a separate-rate analysis is not necessary to determine whether it is independent from government control.

In order to demonstrate separate-rate status eligibility, the Department normally requires entities for whom a review was requested, and who were assigned a separate rate in a previous segment of this proceeding, to submit a separate-rate certification stating that they continue to meet the criteria for obtaining a separate rate.¹⁵ For entities that were not assigned a separate rate

¹⁴ See, e.g., *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 24892, 24899 (May 6, 2010), unchanged in *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 59217 (September 27, 2010).

¹⁵ See *Initiation Notice*, 76 FR at 17826.

in the previous segment of a proceeding, to demonstrate eligibility for such, the Department requires a separate-rate application.¹⁶

In this administrative review, of the 23 companies not selected for individual examination¹⁷ and for which the review has not been rescinded or for which the Department does not intend to rescind the review, only three entities, the Fangda Group, Shida Carbon, and Muzi Carbon, submitted separate-rate information. The remaining 16 companies under review provided neither a separate rate application nor separate rate certification, as applicable. Therefore, the Department preliminarily determines that there were exports of merchandise under review from 16 PRC exporters that did not demonstrate their eligibility for separate rate status. As a result, the Department is treating these 16 PRC exporters as part of the PRC-wide entity, subject to the PRC-wide rate.¹⁸ Additionally, we received a complete response to Section A of the NME antidumping questionnaire from Fushun Jinly, which contained information pertaining to the company's eligibility for a separate rate.¹⁹

Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative

¹⁶ See *id.*

¹⁷ These companies are the Fangda Group (comprising five collapsed companies), Shida Carbon, Muzi Carbon, Dechang Shida Carbon Co., Ltd., Fushun Carbon Plant, Fushun Jinli Petrochemical Carbon Co., Ltd., Guanghan Shida Carbon Co., Ltd., Jilin Carbon Graphite Material Co., Ltd., Lanzhou Hailong New Material Co., Liaoning Fangda Group Industrial Co., Ltd., Shida Carbon Group, Sichuan Dechang Shida Co., Ltd., Sichuan Shida Trading Co., Ltd., Sinosteel Anhui Co., Ltd., Sinosteel Corp., Sinosteel Jilin Carbon Co., Ltd., Sinosteel Jilin Carbon Imp. & Exp. Co., Ltd., Sinosteel Sichuan Co., Ltd., and Xinghe County Muzi Carbon Plant.

¹⁸ See "PRC-Wide Entity" section below.

¹⁹ See Fushun Jinly's Section A questionnaire response, dated June 15, 2011.

enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.²⁰

The evidence provided by the Fangda Group, Fushun Jinly, Muzi Carbon, and Shida Carbon supports a preliminary finding of *de jure* absence of government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of the companies.²¹

Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.²²

The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control over export activities which would preclude the Department from assigning separate rates. For the

²⁰ See *Sparklers*, 56 FR at 20589.

²¹ See Fushun Jinly's Section A questionnaire response, dated June 15, 2011; the Fangda Group's and Muzi Carbon's separate rate certifications, dated May 31, 2011, and Shida Carbon's separate rate application, dated May 31, 2011.

²² See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

Fangda Group, Fushun Jinly, Muzi Carbon, and Shida Carbon we determine that the evidence on the record supports a preliminary finding of *de facto* absence of government control based on record statements and supporting documentation showing that each respondent: (1) sets its own export prices independent of the government and without the approval of a government authority; (2) retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management.²³

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

Separate-Rate Comments

The petitioners assert that the Fangda Group and Shida Carbon do not qualify for separate-rate status because these entities did not have the requisite knowledge of destination of their respective sales. Specifically, the petitioners contend that because neither the Fangda Group nor Shida Carbon knew at the time of sale and shipment to U.S. ports whether their shipments would be entered for consumption in the United States during the POR, the Fangda Group and Shida Carbon did not have any U.S. sales, as defined in the statute.

²³ See Fushun Jinly's Section A questionnaire response, dated June 15, 2011; the Fangda Group's and Muzi Carbon's separate rate certifications, dated May 31, 2011, and Shida Carbon's separate rate application, dated May 31, 2011.

We preliminarily find that the petitioners' allegations with regard to the Fangda Group's and Shida Carbon's knowledge of destination are speculative and not supported by record evidence. It is the Department's policy to assign a separate rate to an exporter that can demonstrate that it is sufficiently independent from government control. *See Initiation Notice*, 76 FR at 17826. Moreover, 19 CFR 351.213(e)(1)(i) specifically instructs that an administrative review may cover "entries, exports or sales of the subject merchandise" during the POR. Because the Fangda Group and Shida Carbon were not selected as mandatory respondents, the companies were not required and did not report their U.S. sales information to the Department. Record evidence does indicate, however, that both the Fangda Group and Shida Carbon had reviewable U.S. transactions during the POR.²⁴ Because the Fangda Group and Shida Carbon had reviewable U.S. transactions during the POR, irrespective of their knowledge of U.S. entry, and because both companies also demonstrated their independence from the PRC government, we preliminarily conclude that the Fangda Group and Shida Carbon are both eligible to receive a separate rate.

The petitioners assert that the Department cannot consider Muzi Carbon's separate-rate request in this review. Specifically, the petitioners argue that because Muzi Carbon submitted a separate-rate certification instead of a separate-rate application, Muzi Carbon's submission is untimely. The petitioners assert that the Department's separate-rate instructions require the submission of a separate-rate application if an exporter underwent changes in corporate structure, ownership, or official company name. The petitioners also contend that Muzi Carbon had a

²⁴ See the Department's memorandum entitled "Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China: Identification of Reviewable Transactions for Certain Companies Under Review," dated concurrently with this notice. *See also Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order and Final Rescission of the Administrative Review, in Part*, 76 FR 56397 (September 13, 2011), and accompanying Issues and Decision Memorandum at Comment 2 (finding that, because respondents properly reported their sales as export price sales, the knowledge test did not apply).

change in ownership during the POR and, thus, was required to submit a separate-rate application. Information on the record indicates that Muzi Carbon's separate rate certification illuminated that the proprietor of Muzi Carbon acquired the remaining three percent of the value of outstanding shares that he did not already own from his nephew, thus becoming the sole shareholder of Muzi Carbon.²⁵ While this event established a change in the make-up of Muzi Carbon's shareholder structure, we find that it does not constitute a change in the company's ownership because the ownership stayed within the family and the control of the company remained with its proprietor. We therefore preliminarily find Muzi Carbon's filing of a separate-rate certification to be sufficient.

Rate for Non-Selected Companies

In accordance with section 777A(c)(2)(B) of the Act, the Department employed a limited examination methodology, as it did not have the resources to examine all companies for which a review request was made. We selected Fushun Jinly and Jilin Carbon as mandatory respondents in this review. *See* Respondent Selection Memo. As discussed above, the Fangda Group, Muzi Carbon, and Shida Carbon are exporters of graphite electrodes from the PRC that demonstrated their eligibility for a separate rate, but which were not selected for individual examination in this review. The statute and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for individual examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in cases involving limited selection based on exporters accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any

²⁵ *See* Muzi Carbon's submission, dated May 31, 2011, at 5.

zero or *de minimis* margins or any margins based entirely on facts available. Section 735(c)(5)(B) of the Act also provides that, where all margins are zero rates, *de minimis* rates, or rates based entirely on facts available, we may use “any reasonable method” for assigning the rate to non-selected respondents. In this instance, we have calculated a rate above *de minimus* for Fushun Jinly and determined a rate for Jilin Carbon based entirely on facts available.

Consistent with the Department’s practice, as the separate rate, we have established a margin for the Fangda Group, Muzi Carbon, and Shida Carbon based on the rate we calculated for the mandatory respondent, Fushun Jinly, excluding, where appropriate, any rates that were zero, *de minimis*, or based entirely on adverse facts available (AFA).²⁶

PRC-Wide Entity

We have preliminarily determined that 16 companies did not demonstrate their eligibility for a separate rate and are properly considered part of the PRC-wide entity.²⁷ As explained above in the “Separate Rates” section, all companies within the PRC are considered to be subject to government control unless they are able to demonstrate an absence of government control with respect to their export activities. Such companies are thus assigned a single antidumping duty rate distinct from the separate rate(s) determined for companies that are found to be independent of government control with respect to their export activities. We consider the influence that the government has been found to have over the economy to warrant determining a rate for the entity

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

²⁷ These companies are Dechang Shida Carbon Co., Ltd., Fushun Carbon Plant, Fushun Jinli Petrochemical Carbon Co., Ltd., Guanghan Shida Carbon Co., Ltd., Jilin Carbon Graphite Material Co., Ltd., Lanzhou Hailong New Material Co., Liaoning Fangda Group Industrial Co., Ltd., Shida Carbon Group, Sichuan Dechang Shida Co., Ltd., Sichuan Shida Trading Co., Ltd., Sinosteel Anhui Co., Ltd., Sinosteel Corp., Sinosteel Jilin Carbon Co., Ltd., Sinosteel Jilin Carbon Imp. & Exp. Co., Ltd., Sinosteel Sichuan Co., Ltd., and Xinghe County Muzi Carbon Plant.

that is distinct from the rates found for companies that have provided sufficient evidence to establish that they operate freely with respect to their export activities.²⁸

Use of Facts Available and AFA

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

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

Application of Total AFA to the PRC-Wide Entity

Jilin Carbon did not respond to the Department’s antidumping questionnaire. Accordingly, we preliminarily determine that this company withheld information requested by the Department in accordance with sections 776(a)(2)(A) and (B) of the Act. Furthermore, this company’s refusal to participate in the review significantly impeded the proceeding in accordance with section 776(a)(2)(C) of the Act. Specifically, had this company participated in the review, the Department would have been able to calculate an appropriate dumping margin.

²⁸ See *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China*, 71 FR 53079, 53082 (September 8, 2006).

Further, because there is no information on the record demonstrating this company's entitlement to a separate rate in accordance with section 776(a) of the Act, the Department has preliminarily treated Jilin Carbon as part of the PRC-wide entity.

Because Jilin Carbon did not respond to the Department's antidumping questionnaire, and is part of the PRC-wide entity, the PRC-wide entity's refusal to provide any information constitutes justifiable grounds under which the Department can conclude that less than full cooperation has been shown.²⁹ Hence, pursuant to section 776(b) of the Act, the Department has determined that, when selecting from among the facts otherwise available, an adverse inference is warranted with respect to the PRC-wide entity.

Selection of AFA Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. In reviews, the Department normally selects as AFA the highest rate determined for any respondent in any segment of the proceeding.³⁰ The Court of International Trade (CIT) and the Court of Appeals for the Federal Circuit (Federal Circuit) have consistently upheld the Department's practice.³¹ The Department's practice, when selecting an

²⁹ See *Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8911 (February 23, 1998); see also *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review*; *Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005), and *Uruguay Round Agreements Act*, Statement of Administrative Action, H.R. Doc. No. 103-316, vol. 1, at 870 (1994) (SAA).

³⁰ See, e.g., *Freshwater Crawfish Tail Meat from the People's Republic of China*; *Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504, 19507 (April 21, 2003).

³¹ See *KYD, Inc. v. United States*, 607 F.3d 760, 766-67 (Fed. Cir. 2010) (*KYD*); *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990) (*Rhone Poulenc*); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a less-than-fair-value investigation); *Kompass Food Trading Int'l v. United States*, 24 CIT 678, 684 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully

AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.”³² The Department's practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”³³ In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin reflects a “common sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the importer, knowing the rule, would have produced *current* information showing the margin to be less.”³⁴ Consistent with the statute, court precedent, and its normal practice, the Department has assigned 159.64 percent to the PRC-wide entity, including Jilin Carbon, as AFA, which is the PRC-wide rate determined in the investigation and the rate currently applicable to the PRC-wide entity.³⁵

The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA. The Department’s reliance on the

cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

³² SAA at 870.

³³ *Id.*; see also *Notice of Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil*, 69 FR 76910, 76912 (December 23, 2004), and *D&L Supply Co. v. United States*, 113 F.3d 1220, 1223 (Fed. Cir. 1997).

³⁴ *KYD*, 607 F.3d at 766 (citing *Rhone Poulenc*, 899 F.2d at 1190) (emphasis in original).

³⁵ See *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, 2054-55 (January 14, 2009) (*Graphite Electrodes Final Determination*).

PRC-wide rate from the original investigation to determine an AFA rate is subject to the requirement to corroborate secondary information.³⁶

Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall to the extent practicable, corroborate that information from independent sources that are reasonably at the Department's disposal. Secondary information is described in the SAA as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."³⁷ The SAA explains that "corroborate" means to determine that the information used has probative value.³⁸ The Department has determined that to have probative value, information must be reliable and relevant.³⁹ The SAA also explains that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.⁴⁰

³⁶ See section 776(c) of the Act and the "Corroboration of Secondary Information" section.

³⁷ SAA at 870.

³⁸ *Id.*

³⁹ See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

⁴⁰ See SAA at 870; see also *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada*, 70 FR 12181, 12183 (March 11, 2005).

As stated above, we are applying as AFA to the PRC-wide entity the highest rate from any segment of this administrative proceeding, which is the PRC-wide rate of 159.64 percent. The 159.64 percent is the highest rate on the record of any segment of the antidumping duty order. In the investigation, the Department relied upon our pre-initiation analysis of the adequacy and accuracy of the information in the petition.⁴¹ During our pre-initiation analysis, we examined the information used as the basis of export price and NV in the petition, and the calculations used to derive the alleged margins. Also, during our pre-initiation analysis, we examined information from various independent sources provided either in the petition or, based on our requests, in supplements to the petition, which corroborated key elements of the export price and NV calculations.⁴² Since the investigation, the Department has found no other corroborating information available in this case, and received no comments from interested parties as to the relevance or reliability of this secondary information. Based upon the above, for these preliminary results, the Department finds that the rates derived from the petition are corroborated to the extent practicable for purposes of the AFA rate assigned to the PRC-wide entity, including Jilin Carbon.

⁴¹ See *Graphite Electrodes Final Determination*, 74 FR at 2054, and *Small Diameter Graphite Electrodes from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 8287 (February 13, 2008) (*Graphite Electrodes Investigation Initiation*); see also *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970, 31972 (June 5, 2008) (where the Department relied upon pre-initiation analysis to corroborate the highest margin alleged in the petition).

⁴² See *Graphite Electrodes Investigation Initiation*, 73 FR at 8288-8290.

Because these are the preliminary results of review, the Department will consider all margins on the record at the time of the final results of review for the purpose of determining the most appropriate final margin for the PRC-wide entity.⁴³

Surrogate Country

When the Department conducts an antidumping duty administrative review of imports from an NME country, section 773(c)(1) of the Act directs the Department to base NV, in most cases, on the NME producer's factors of production (FOP), valued in a surrogate ME country or countries considered appropriate by the Department. In accordance with section 773(c)(4) of the Act, the Department will value FOPs using "to the extent possible, the prices or costs of the FOPs in one or more ME countries that are: (A) at a level of economic development comparable to that of the NME country, and (B) significant producers of comparable merchandise."⁴⁴ Once the Department has identified the countries that are economically comparable to the PRC, it identifies those countries which are significant producers of comparable merchandise. From the countries which are found to be both economically comparable to the PRC and significant producers of comparable or identical merchandise, the Department will then select a primary surrogate country based upon whether the data for valuing FOPs are both available and reliable.

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

⁴³ See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 65 FR 1139, 1141 (January 7, 2000), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 65 FR 42669 (July 11, 2000).

⁴⁴ See the Department's Policy Bulletin No. 04.1, regarding, "Non-Market Economy Surrogate Country Selection Process," (March 1, 2004), available on the Department's website at <http://ia.ita.doc.gov/policy/bull04-1.html>.

comparable to the PRC.⁴⁵ Therefore, we consider all six of these countries as having satisfied the first prong of the surrogate-country selection criteria of section 773(c)(4) of the Act.

With respect to the Department's selection of a surrogate country, the petitioners commented that Ukraine is the appropriate surrogate country from which to derive surrogate factor values for the PRC because Ukraine is most economically comparable to the PRC and is also a significant producer of graphite electrodes.⁴⁶ The petitioners suggested we use the 2010 publicly available financial statements for JSC Ukrainsky Grafit, a major Ukrainian producer of graphite electrodes, in order to derive surrogate financial ratios and placed such financial statements on the record. The petitioners also comment that Ukraine is a major importer of the inputs consumed in the production of graphite electrodes and placed the relevant POR Ukrainian import statistics on the record.

Fushun Jinly commented that, consistent with the Department's determination in the original investigation and in the 2008-2010 administrative review, India should be selected as the surrogate country.⁴⁷ Fushun Jinly commented that although India is not one of the countries identified by the Department as economically comparable to the PRC, the list identified by the Department is neither exclusive nor exhaustive. Fushun Jinly commented that World Bank's 2011 World Development Report (the source of 2009 Gross National Income (GNI) data used by the Department) classifies both the PRC and India as "lower middle income countries," and while the PRC is at the higher end of the "lower middle income" scale and India is at the lower end of that scale, World Bank classifies both countries within the same economic grouping.

⁴⁵ See the Department's memorandum entitled "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China," dated August 29, 2011 (Surrogate Country Memo).

⁴⁶ See the petitioners' submission, dated September 22, 2011.

⁴⁷ See Fushun Jinly's submission, dated September 22, 2011.

Further, Fushun Jinly asserts that the economic growth trends shared by the PRC and India also support a finding that India is economically comparable to the PRC.

In *Steel Wheels*⁴⁸ we stated that, unless we find that all of the countries determined to be equally economically comparable are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data, or are unsuitable for use for other reasons, we will rely on data from one of these countries. Because we found that one of the six countries listed in the Surrogate Country Memo meets the selection criteria, as explained below, we are not considering India as the primary surrogate country.

Because we were unable to find the actual production data to evaluate the significance of production of subject merchandise with respect to potential surrogate countries, we relied on export data as a proxy for overall production data in this review. From the countries that we identified to be economically comparable to the PRC, only Ukraine and South Africa exported significant quantities of graphite electrodes during the POR based on Global Trade Atlas (GTA) data for exports under HTS 8545.11.00.⁴⁹ As such, we find that Ukraine and South Africa meet the “significant producer” requirement of Section 773(c)(4) of the Act.

Like the PRC, Ukraine has a broad and diverse production base, and we have reliable data from Ukraine that we can use to value the FOPs and derive surrogate financial ratios.⁵⁰ Unlike the data for Ukraine, we do not have the financial statements from the producers of graphite electrodes in South Africa or any data concerning certain freight expenses and

⁴⁸ See *Certain Steel Wheels From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 76 FR 67703 (November 2, 2011) (*Steel Wheels*).

⁴⁹ See the Department’s memorandum entitled “Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People’s Republic of China: Selection of Surrogate Values,” dated concurrently with this notice (Factor Valuation Memorandum), at Exhibit 1.

⁵⁰ See Factor Valuation Memorandum.

electricity. Therefore, we have determined that it is appropriate to use Ukraine as a surrogate country for the purposes of this administrative review, pursuant to section 773(c)(4) of the Act, based on the following: (1) it is at a comparable level of economic development to the PRC; (2) it is a significant producer of comparable merchandise, and (3) we have reliable data from Ukraine that we can use to value the FOPs. Accordingly, we have calculated NV using Ukrainian prices to value Fushun Jinly's FOPs.⁵¹

Fair Value Comparisons

To determine whether Fushun Jinly's sales of subject merchandise were made at less than NV, we compared the NV to individual export price transactions in accordance with section 777A(d)(2) of the Act. *See* "Export Price" and "Normal Value" sections of this notice, below.

Export Price

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

We based export price on the price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, where appropriate, we made deductions from

⁵¹ *See* Factor Valuation Memorandum; *see also* "Factor Valuations" section, below.

the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling. We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods from Ukraine. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport from Ukraine as reported in World Bank Group's *Doing Business 2011 – Ukraine; Trading Across Borders*.⁵²

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Under section 773(c)(3) of the Act, FOPs include but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used FOPs reported by Fushun Jinly for direct materials, energy, labor, packing and by-products.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by Fushun Jinly for the POR. In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate surrogate value (SV) to value FOPs, but when a producer sources an input from a ME and pays for it in ME currency, the

⁵²See Factor Valuation Memorandum.

Department normally will value the factor using the actual price paid for the input if the quantities were meaningful and where the prices have not been distorted by dumping or subsidies.⁵³ To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available SVs (except as discussed below). In selecting SVs, we considered the quality, specificity, and contemporaneity of the data.⁵⁴ As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to import SVs surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in accordance with the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997).

On September 8, 2011, we invited all interested parties to submit publicly available information to value FOPs for our consideration in the preliminary results of this review. On September 22, 2011, and October 6, 2011, the petitioners and Fushun Jinly submitted, respectively, publicly available information to value FOPs for the preliminary results. *See* Factor Valuation Memorandum for a detailed description of all SVs used in this review.

For these preliminary results, in accordance with our practice, except where indicated below, we used data from the Ukrainian import statistics in the GTA and other publicly available Ukrainian sources in order to calculate SVs for Fushun Jinly's reported FOPs (*i.e.*, direct materials, energy, and packing materials) and certain movement expenses. In selecting the best

⁵³ *See* 19 CFR 351.408(c)(1); *see also* *Shakeproof Assembly Components, Div of Ill. Tool Works, Inc. v. United States*, 268 F.3d 1376, 1382-1383 (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value certain FOPs).

⁵⁴ *See, e.g., Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 6, and *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5.

available information for valuing FOPs in accordance with section 773(c)(1) of the Act, our practice is to select, to the extent practicable, SVs which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive.⁵⁵ The record shows that data in the Ukrainian import statistics, as well as those from the other Ukrainian sources, are contemporaneous with the period of investigation, product-specific, and tax-exclusive.⁵⁶ In those instances where we could not obtain publicly available information contemporaneous to the POR with which to value factors, we adjusted the SVs using, where appropriate, the Ukrainian Wholesale Price Index (WPI) or, where appropriate, Consumer Price Index (CPI), as published in the International Monetary Fund's *International Financial Statistics*.⁵⁷

As explained in the legislative history of the Omnibus Trade and Competitiveness Act of 1988, the Department continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the source data may be subsidized.⁵⁸ In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available,

⁵⁵ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).

⁵⁶ See Factor Valuation Memorandum.

⁵⁷ See, e.g., *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 9591, 9600 (March 5, 2009) (*Kitchen Racks Prelim*), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less than Fair Value*, 74 FR 36656 (July 24, 2009) (*Kitchen Racks Final*).

⁵⁸ Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590, reprinted in 1988 U.S.C.A.N. 1547, 1623-24.

non-industry specific export subsidies.⁵⁹ Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, we find that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies. Additionally, we disregarded prices from NME countries.⁶⁰ Finally, imports that were labeled as originating from an “unspecified” country were excluded from the import average value, because we could not be certain that they were not from either an NME country or a country with generally available export subsidies.⁶¹

Fushun Jinly reported that certain of its raw material inputs were sourced from an ME country and paid for in ME currencies. When a respondent sources inputs from an ME supplier in meaningful quantities, we use the actual price paid by respondent for those inputs, except when prices may have been distorted by dumping or subsidies.⁶² Where we found ME purchases to be of significant quantities (*i.e.*, 33 percent or more), in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs*,⁶³ we used the actual purchases of these inputs to value the inputs.

⁵⁹ See, *e.g.*, *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; *Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20; *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at 23.

⁶⁰ See, *e.g.*, *Kitchen Racks Prelim*, 74 FR at 9600, unchanged in *Kitchen Racks Final*.

⁶¹ See *id.*

⁶² See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

⁶³ See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717 (October 19, 2006) (*Antidumping Methodologies: Market Economy Inputs*).

Accordingly, we valued certain of Fushun Jinly's inputs using the ME prices paid for in ME currencies for the inputs where the total volume of the input purchased from all ME sources during the POR exceeds or is equal to 33 percent of the total volume of the input purchased from all sources during the period. Where appropriate, we added freight to the ME prices of inputs.⁶⁴

We valued truck freight expenses using a per-unit average rate we calculated from the data we obtained from budmo.org, as suggested by the petitioners. This website is an online provider of container shipping, logistics, and freight forwarding services. The website provides freight rates for transporting goods in containers by road from major ports in Ukraine to many large Ukrainian cities.⁶⁵ Because data reported in this source were current as of March, 2011, and, thus, not contemporaneous with the POR, we adjusted the value for inland truck freight using the Ukrainian WPI deflator.

We valued electricity using the electricity tariff data for corporate consumers, as published by the National Electricity Regulatory Commission of Ukraine, an administrative body of the government of Ukraine, at www.nerc.gov.ua. These electricity rates were furnished by major power distribution companies in Ukraine and represent actual, country-wide, publicly-available information on tax-exclusive basis.⁶⁶ We obtained electricity tariffs for each month of the POR and computed a single POR-average rate.⁶⁷

⁶⁴ For a detailed description of the actual values used for the ME inputs reported, *see* the Department's memorandum entitled, "Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China: Preliminary Results Analysis Memorandum for Fushun Jinly Petrochemical Carbon Co., Ltd.," dated concurrently with this notice.

⁶⁵ *See* Factor Valuation Memorandum.

⁶⁶ *See id.*

⁶⁷ *See, e.g., Wire Decking from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 32905 (June 10, 2010), and accompanying Issues and Decision Memorandum at Comment 3.

To calculate the labor input, we based our calculation on the methodology which the Department enunciated on June 21, 2011 in *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*). Prior to 2010, the Department used regression-based wages that captured the worldwide relationship between per capita GNI and hourly manufacturing wages, pursuant to 19 CFR 351.408(c)(3). On May 3, 2010, the Federal Circuit, in *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1372 (Fed Cir. 2010) (*Dorbest*), invalidated part of that regulation. As a consequence of the Federal Circuit's ruling in *Dorbest*, the Department no longer relies on the regression-based methodology described in 19 CFR 351.408(c)(3).

In *Labor Methodologies*, the Department explained that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country.⁶⁸ Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics.⁶⁹

We could not identify Chapter 6A labor data for Ukraine pertaining to the industry specific to subject merchandise. In *Labor Methodologies*, the Department explained that, “if there is no industry-specific data available for the surrogate country within the primary data source, *i.e.*, ILO Chapter 6A data, the Department will then look to national data for the surrogate country for calculating the wage rate.”⁷⁰ The latest year for which ILO Chapter 6A

⁶⁸ See *Labor Methodologies*, 76 FR at 36093.

⁶⁹ See *id.* 76 FR at 36093-94.

⁷⁰ *Id.* 76 FR at 36094, n.11.

reports national data for Ukraine is 2006. We selected this monthly labor value, converted it to an hourly basis, and inflated it to 2010 (the majority of the POR) using the Ukrainian CPI.

We find that the ILO Chapter 6A data constitute the best available information on the record with which to value labor costs in this review on the basis that it accounts for all direct and indirect labor costs, such as, for example, wages, benefits, housing, training, *etc.*, and, thus, more accurately reflective of the actual labor costs in Ukraine.⁷¹ For more details on this calculation, *see* the Factor Valuation Memorandum.

Because the financial statements used to calculate the surrogate financial ratios do not include itemized detail of labor costs, we did not make adjustments to certain labor costs in the surrogate financial ratios.⁷²

To value factory overhead, selling, general and administrative expenses and profit, we used the ratios we derived using the 2010 publicly available financial statements for JSC Ukrainsky Grafit, a major Ukrainian producer of graphite electrodes.⁷³

Fushun Jinly reported that it recovered certain by-products in its production of subject merchandise and successfully demonstrated that all of them have commercial value. Therefore, we have granted a by-product offset for the quantities of Fushun Jinly's reported by-products. We valued the by-product using Ukrainian GTA data.⁷⁴

⁷¹ *See id.* 76 FR at 36093-94.

⁷² *See id.* 76 FR at 36094.

⁷³ *See* Factor Valuation Memorandum.

⁷⁴ *See id.*

Currency Conversion

Where appropriate, we made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

The Department has determined that the following preliminary dumping margins exist for the period February 1, 2010, through January 31, 2011:

<u>Company</u>	<u>Margin (percent)</u>
Fushun Jinly Petrochemical Carbon Co., Ltd.	36.87
Xinghe County Muzi Carbon Co., Ltd.	36.87
Sichuan Guanghan Shida Carbon Co., Ltd.	36.87
Beijing Fangda Carbon Tech Co., Ltd.	36.87
Chengdu Rongguang Carbon Co., Ltd.	36.87
Fangda Carbon New Material Co., Ltd.	36.87
Fushun Carbon Co., Ltd.	36.87
Hefei Carbon Co., Ltd.	36.87
PRC-wide entity [†]	159.64

* Part of PRC-wide entity

[†] The PRC-wide entity includes the following companies: Dechang Shida Carbon Co., Ltd., Fushun Carbon Plant, Fushun Jinli Petrochemical Carbon Co., Ltd., Guanghan Shida Carbon Co., Ltd., Jilin Carbon Graphite Material Co., Ltd., Jilin Carbon Import and Export Company, Lanzhou Hailong New Material Co., Liaoning Fangda Group Industrial Co., Ltd., Shida Carbon Group, Sichuan Dechang Shida Co., Ltd., Sichuan Shida Trading Co., Ltd., Sinosteel Anhui Co., Ltd., Sinosteel Corp., Sinosteel Jilin Carbon Co., Ltd., Sinosteel Jilin Carbon Imp. & Exp. Co., Ltd., Sinosteel Sichuan Co., Ltd., and Xinghe County Muzi Carbon Plant.

Disclosure and Public Comment

The Department intends to disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.⁷⁵ Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.⁷⁶ Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice.⁷⁷ Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington,

⁷⁵ See 19 CFR 351.224(b).

⁷⁶ See 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

⁷⁷ See 19 CFR 351.310(c).

DC 20230, at a time and location to be determined.⁷⁸ Parties should confirm by telephone the date, time, and location of the hearing.

Unless the deadline is extended pursuant to section 751(a)(2)(B)(iv) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after issuance of these preliminary results.

Deadline for Submission of Publicly Available Surrogate Value Information

In accordance with 19 CFR 351.301(c)(3), the deadline for submission of publicly available information to value FOPs under 19 CFR 351.408(c) is 20 days after the date of publication of these preliminary results. In accordance with 19 CFR 351.301(c)(1), if an interested party submits factual information less than ten days before, on, or after (if the Department has extended the deadline), the applicable deadline for submission of such factual information, an interested party may submit factual information to rebut, clarify, or correct the factual information no later than ten days after such factual information is served on the interested party. However, the Department notes that 19 CFR 351.301(c)(1), permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept in rebuttal the submission of additional, previously absent-from-the-record alternative SV information pursuant to 19 CFR 351.301(c)(1).⁷⁹ Furthermore, the Department generally will not accept business proprietary information in either the SV submissions or the rebuttals thereto, as the regulation regarding the submission of SVs allows only for the submission of publicly available information.

⁷⁸ See 19 CFR 351.310.

⁷⁹ See, e.g., *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

Assessment Rates

Upon issuing the final results of the review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*. However, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements, when imposed, will apply to all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Fushun Jinly, Muzi Carbon, Shida Carbon, and the companies comprising the Fangda Group will be the rate established in the final results of this administrative review; (2) for any previously reviewed or investigated PRC or non-PRC exporter, not covered in this administrative review, with a separate rate, the cash deposit rate will be the company-specific rate established in the most recent segment of this proceeding; (3) for all other PRC exporters, the cash deposit rate will continue to be the PRC-wide rate (*i.e.*, 159.64 percent); and (4) the cash-deposit rate for any non-PRC exporter of subject merchandise from the

PRC will be the rate applicable to the PRC exporter that supplied that exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

____ February 28, 2012 _____
Date

[FR Doc. 2012-5448 Filed 03/05/2012 at 8:45 am; Publication Date: 03/06/2012]