

encouraging participation in the 2010 Census.

The information will be used to development and conduct pretesting of materials prior to placing them into production as well as to monitor and evaluate responses to communications. Research activities will involve one of the following methods: one-on-one interviews, focus groups, respondent debriefings, usability tests, or tracking surveys.

II. Method of Collection

Any of the following methods may be used: mail, telephone, face-to-face interviews; paper-and-pencil, CATI, CAPI or Internet.

III. Data

OMB Control Number: None.

Form Number: Various.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 13,000.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 13,000.

Estimated Total Annual Cost: \$0.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 141 and 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 15, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8-19346 Filed 8-20-08; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet September 9, 2008, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the Public.
3. Opening remarks by Bureau of Industry and Security.
4. Export Enforcement update.
5. Regulations update.
6. Working group reports.
7. Automated Export System (AES) update.

Closed Session

8. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at Yspringer@bis.doc.gov no later than September 2, 2008.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on July 17, 2008, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 §§ (10)(d)), that the portion

of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482-2813.

Dated: August 18, 2008.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. E8-19459 Filed 8-20-08; 8:45 am]

BILLING CODE 3510-JT-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-929]

Small Diameter Graphite Electrodes From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances, in Part

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

Effective Date: August 21, 2008.

SUMMARY: The Department of Commerce ("Department") preliminarily determines that small diameter graphite electrodes ("graphite electrodes") from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("Act"). The estimated dumping margins are shown in the "Preliminary Determination" section of this notice.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Drew Jackson, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482-4162 or (202) 482-4406, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 17, 2008, the Department received a petition concerning imports of graphite electrodes from the PRC filed in proper form by SGL Carbon LLC and Superior Graphite Co. (collectively "petitioners"). The Department initiated an antidumping duty investigation of graphite electrodes from the PRC on

February 6, 2008. *See Small Diameter Graphite Electrodes from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 8287 (February 13, 2008) (“*Initiation Notice*”). On February 13, 2008, the Department provided interested parties with U.S. Customs and Border Protection (“CBP”) data on U.S. imports of graphite electrodes from the PRC during the period of investigation (“POI”). Between February 19, 2008, and February 21, 2008, the Department requested quantity and value (“Q&V”) information from 81 of the 102 companies identified by the petitioners as potential exporters and/or producers of graphite electrodes from the PRC.¹ *See* Petition for the Imposition of Antidumping Duties Against Small Diameter Graphite Electrodes from the People's Republic of China, Exhibit General 3, Volume I (January 17, 2008) (“*Petition*”).

On March 3, 2008, the International Trade Commission (“ITC”) notified the Department that it had preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of graphite electrodes from the PRC. *See Small Diameter Graphite Electrodes From China, Investigation No. 731-TA-1143 (Preliminary)*, 73 FR 12461 (March 7, 2008).

Between March 7, 2008, and March 13, 2008, the Department received timely responses to its Q&V questionnaire from the following 13 companies: Fushun Jinly Petrochemical Carbon Co., Ltd. (“Fushun Jinly”); Fushun Carbon Co. Ltd. (“Fushun Carbon”); Shanghai Jinneng International Trade Co., Ltd.; Dalian Thrive Metallurgy Import and Export Co., Ltd.; GES (China) Co., Ltd.; Brilliant Charter Limited; Qingdao Haosheng Metals & Minerals Imp & Exp Co., Ltd.; Nantong River-East Carbon Joint Stock Co., Ltd.; Jilin Carbon Import and Export Company (“Jilin Carbon”); Xinghe County Muzi Carbon Co., Ltd.; Guangham Shida Carbon Co., Ltd.; Shenyang Jinli Metals & Minerals Imp & Exp Co., Ltd.; and Shijiazhuang Huanan Carbon Factory. On April 4, 2008, the Department selected Fushun Jinly and Fushun Carbon as mandatory respondents. *See* Memorandum to Stephen Claeys, Deputy Assistant Secretary for Import Administration, through Abdelali Elouaradia, Director, Office 4, and Howard Smith, Program Manager, Office 4, from Magd Zalok and

Rebecca Pandolph, International Trade Analysts, “Selection of Respondents in the Antidumping Investigation of Small Diameter Graphite Electrodes from the People's Republic of China,” dated April 4, 2008 (“Respondent Selection Memorandum”).

On April 14, 2008, the Department received separate-rate applications from Jilin Carbon; Guangham Shida Carbon Co., Ltd.; Nantong River-East Carbon Joint Stock Co., Ltd.; Xinghe County Muzi Carbon Co. Ltd.; Brilliant Charter Limited; Shijiazhuang Huanan Carbon Factory; Shenyang Jinli Metals & Minerals Imp & Exp Co., Ltd.; Shanghai Jinneng International Trade Co., Ltd.; Dalian Thrive Metallurgy Import and Export Co., Ltd.; GES (China) Co., Ltd.; and Qingdao Haosheng Metals & Minerals Imp & Exp Co., Ltd. (the mandatory respondents filed separate-rate applications in their responses to section A of the Department's questionnaire). The Department rejected an untimely filed separate-rate application from Shanxi Xinrong International Trade Co.

On April 7, 2008, the Department issued its antidumping questionnaire to the mandatory respondents. Fushun Jinly and the Fushun Carbon submitted timely responses to all sections of the Department's questionnaire during April and May 2008. Fushun Carbon, along with its affiliated companies, Fangda Carbon New Material Co., Ltd. (“Fangda Carbon”), Beijing Fangda Carbon Tech Co., Ltd. (“Beijing Fangda”), and Chengdu Rongguang Carbon Co., Ltd. (“Chengdu Rongguang”) (collectively “Fangda Group”) submitted a consolidated response to the Department's questionnaire. *See* “Affiliation” and “Single Entity” sections below. The Department issued supplemental questionnaires to, and received responses from, Fushun Jinly, the Fangda Group, and the separate rate respondents in May, June, and July 2008. The petitioners submitted comments to the Department regarding Fushun Jinly and the Fangda Group's questionnaire and supplemental questionnaire responses, and the separate rates response of Jilin Carbon in May, June, and July 2008.

On May 30, 2008, the Department released to interested parties a memorandum which listed potential surrogate countries and invited interested parties to comment on surrogate country and factor value selection. *See* Letter to All Interested Parties from Howard Smith, Program Manager, Office 4, concerning “Antidumping Duty Investigation of Small Diameter Graphite Electrodes

from the People's Republic of China,” dated May 30, 2008. No party responded to the Department's invitation to comment on surrogate country selection. However, in June and July 2008, both the petitioners and the respondents submitted surrogate values for use in this investigation. All of the submitted surrogate data are from India.

On July 15, 2008, the petitioners alleged targeted dumping by Fushun Jinly.

On July 23, 2008, the petitioners requested that the Department make a finding that critical circumstances exist with respect to imports of graphite electrodes from the PRC. The Department issued questionnaires regarding critical circumstances to Fushun Jinly and the Fangda Group on July 24, 2008. Fushun Jinly and the Fangda Group submitted their responses to those questionnaires on July 30, 2008. *See* the “Critical Circumstances” section of this notice for additional information.

Period of Investigation

The POI is July 1, 2007, through December 31, 2007. This period comprises the two most recently completed fiscal quarters as of the month preceding the month in which the petition was filed (*i.e.*, January 2008). *See* 19 CFR 351.204(b)(1).

Scope of the Investigation

The merchandise covered by this investigation 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. 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 subject to this investigation are currently classified under the Harmonized Tariff 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.

Scope Comments

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of

¹ The Department did not send Q&V questionnaires to 21 companies listed in the petition due to incomplete addresses.

publication of that notice. *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997); *see also Initiation Notice*. The Department received no comments concerning the scope of the graphite electrodes antidumping duty investigation during the 20 day period set aside for such comments.

However, in response to a request from the Department for comments on whether graphite pin joining systems (connecting pins) are within the scope of the investigation, on July 25, 2008, and July 30, 2008, parties submitted direct and rebuttal comments, respectively. On August 6, 2008, the petitioners submitted additional comments regarding connecting pins and revised language to clarify the scope of the investigation.

According to the respondents, connecting pins are within the scope of the investigation when they are sold with electrodes (either attached to the electrode or unattached), but not when they are sold separately from the electrodes (*i.e.*, listed separately on an invoice). When there are more connecting pins than electrodes in a sale, the respondents believe the additional connecting pins are within the scope of the investigation if the connecting pins are part of the electrode sale and not listed as a separate line item on the invoice.

In contrast, the petitioners maintain that connecting pins are covered by the scope of the investigation, regardless of whether they are attached to, shipped with, or sold separately from, electrodes. According to the petitioners, the word “attached” in the scope language is to be read as “sold with,” and should not be interpreted as requiring the connecting pin to be physically attached to the electrode to be covered by the scope. Additionally, the petitioners maintain that the HTSUS number listed in the scope includes connecting pins and the U.S. domestic industry included connecting pin sales in the sales data reported to the Department and the ITC. Lastly, the petitioners note that if the Department does not include connecting pins in the scope of the investigation, foreign producers will begin selling electrodes at artificially high prices (to avoid dumping duties) while separately selling connecting pins at very low prices.

After reviewing the parties’ comments, we have preliminarily determined that all connecting pins are outside of the scope of the investigation. The description of the scope identifies only small diameter graphite electrodes as subject merchandise; it does not state

that both electrodes and connecting pins are subject merchandise. Furthermore, we do not agree that the word “attached” in the scope language conveys the meaning “sold with.” Even if the word “attached” is read as “sold with,” such a reading simply means that electrodes are covered by the scope whether or not they are sold with connecting pins; it does not indicate that connecting pins are subject merchandise. Furthermore, although the Petition notes that finished electrodes may be fitted with a threaded graphite pin joining system, the Petition consistently describes subject merchandise as small diameter graphite electrodes regardless of the type of joining system to which they are attached. The Petition does not state that connecting pins are also subject merchandise. Given the foregoing, we find that all connecting pins are outside the scope of the investigation, regardless of whether the connecting pin is sold or shipped with an electrode (either attached to the electrode or unattached), or sold or shipped separately from the electrode. Therefore, we have not considered sales of connecting pins in calculating the preliminary dumping margins.

Targeted Dumping

Pursuant to section 777A(d)(1) of the Act, in calculating dumping margins in investigations, the Department normally will compare U.S. prices and normal values using a weighted average-to-average or transaction-to-transaction comparison methodology. However, section 777A(d)(1)(B) of the Act allows the Department to compare transaction-specific export or constructed export prices to weighted-average normal values if there is a pattern of export or constructed export prices for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and the Department explains why such differences cannot be taken into account using the weighted average-to-average or transaction-to-transaction methods. *See* sections 777A(d)(1)(B)(i)–(ii) of the Act. Section 351.414(f)(1)(i) of the Department’s regulations allows the Department to apply a average-to-transaction method if “through the use of, among other things, standard and appropriate statistical techniques” there is a pattern of export or constructed export prices for comparable merchandise that differ significantly among purchasers, regions, or periods of time (“targeted dumping”). The regulations further state that targeted dumping allegations “must include all supporting factual information, and an explanation as to

why the average-to-average or transaction-to-transaction method could not take into account any alleged price differences.” 19 CFR 351.414(f)(3).

On July 15, 2008, the petitioners alleged that Fushun Jinly targeted certain sales of graphite electrodes for dumping. On July 28, 2008, the petitioners submitted additional information regarding targeted dumping in response to the Department’s July 22, 2008 supplemental questionnaire. According to the petitioners, targeted dumping is evidenced by differing export prices for comparable merchandise among U.S. purchasers. Specifically, in their July 15, 2008, allegation, the petitioners argued that, in most instances, the average net price of subject merchandise sold by Fushun Jinly to a particular customer in a particular month of the POI differed by more than two percent from the average net price of all sales of that merchandise in the same month to all other customers. The petitioners explain that they used the two-percent price difference as the threshold for a significant price difference based on: (1) The Department’s use of plus/minus two percent as the basis for determining whether sales to affiliated parties are at arm’s length prices; (2) the fact that a dumping margin of two percent is used as the threshold for a finding of dumping, and (3) the pricing pattern of Fushun Jinly’s sales to a particular customer compared to its other sales of the subject merchandise. The petitioners therefore argue that Fushun Jinly engaged in targeted dumping with respect to a particular customer.

The petitioners note that the Department has recently relied on a different methodology for purposes of determining whether targeted dumping has occurred. *See Certain New Pneumatic Off-The-Road Tires from the People’s Republic of China; Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485, 40487 (July 15, 2008) (“*Off-The-Road Tires*”). The petitioners also note that in *Off-The-Road Tires*, although the Department relied on a different methodology for calculating the final margin for purposes of initiating an investigation regarding targeted dumping, the Department accepted the petitioners’ allegation of targeted dumping in that case based on the methodology relied on by petitioners in the instant case. *See Off-The-Road Tires*, and accompanying Issues and Decision Memorandum at Comment 23.A. Accordingly, the petitioners maintain that the information submitted in

support of their targeted dumping allegation is, at a minimum, sufficient to initiate a targeted dumping analysis by the Department.

The petitioners point out that they disagree with the methodology used in *Off-The-Road Tires* to determine whether there is targeted dumping. Specifically, the petitioners claim that the methodology used in *Off-The-Road Tires* does not appropriately measure whether targeted dumping is occurring because it cannot detect obvious patterns of targeting and does not rely on an appropriate statistical technique to determine whether targeted dumping exists. Thus, the petitioners argue that the Department's method is inconsistent with the express statutory directive and regulatory requirement. Additionally, the petitioners contend that the Department's methodology is complex, redundant and difficult to satisfy, thereby limiting domestic industries' ability to obtain relief from unfair trading practices, in contravention of legislative intent. Nevertheless, in support of their allegation, the petitioners submitted a targeted dumping analysis based on the methodology used by the Department in the final determination of *Off-The-Road Tires*.

The Department has determined that the petitioners' analysis provides a basis for accepting their targeted dumping allegation and performing a targeted dumping analysis. After performing such an analysis, we have determined that targeted dumping was occurring with respect to the particular customer identified by the petitioners. However, because there are no negative transaction-specific dumping margins in this preliminary determination, it is not possible that the targeted dumping of sales is being masked by our normal calculation methodology. See Memorandum to the File from Magd Zalok, regarding "Transaction-specific Margins" dated August 14, 2008. Thus, the petitioners' claim that the observed price differences can only be taken into account using an average-to-transaction comparison is not supported. See *id.* As mentioned above, Section 777A(d)(1)(B)(ii) of the Act requires that, in order to use the average-to-transaction comparison methodology, the Department must explain why the average-to-average or transaction-to-transaction methodology cannot account for the price differences. See also *Statement of Administrative Action*, accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. I at 843 (1994) ("SAA"), reprinted in 1994 U.S.C.A.N. 4040 ("before relying on {the average-to-transaction

comparison} methodology, however, Commerce must establish and provide an explanation why it cannot account for such differences through the use of an average-to-average or transaction-to-transaction comparison."}). Hence, the Department preliminarily determines that the average-to-average comparison methodology does account for price differences and, therefore, finds that petitioners' allegation does not warrant the use of the average-to-transaction comparison methodology.

Critical Circumstances

After reviewing record information, the Department preliminarily finds that there is reason to believe or suspect that critical circumstances exist for imports of subject merchandise from the Fangda Group and the separate rate companies because: (A) In accordance with section 733(e)(1)(A)(ii) of the Act, the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) in accordance with section 733(e)(1)(B) of the Act, the Fangda Group and the separate rate companies had massive imports during a relatively short period. However, record evidence does not indicate that critical circumstances exist with respect to imports of subject merchandise from Fushun Jinly or the PRC wide entity. See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration from Abdelali Elouaradia, Director, Office 4, "Preliminary Affirmative Determination of Critical Circumstances," dated August 14, 2008.

Single Entity Treatment

Pursuant to 19 CFR 351.401(f)(1), the Department will treat producers as a single entity, or "collapse" them, where: (1) Those producers are affiliated; (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (3) there is a significant potential for manipulation of price or production.² In determining whether a significant potential for manipulation exists, 19 CFR 351.401(f)(2) states that the Department may consider various factors, including: (1) The level of common ownership; (2) the extent to

which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether the operations of the affiliated firms are intertwined through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.³

In proceedings involving non-market economy ("NME") countries, the Department begins with the rebuttable presumption that all companies within the country are subject to government control.⁴ Companies subject to government control are treated as part of the NME entity and assigned the same dumping rate.⁵ The Department, however, recognizes that NME companies may also be connected by means other than government control. Hence, even if certain companies are not part of the NME entity, it may be appropriate to treat the companies as a single entity and to determine a single dumping margin for the entity.⁶ Therefore, to the extent that the Department's practice does not conflict with section 773(c) of the Act, the Department has, in prior cases, treated certain NME exporters and/or producers as a single entity if the facts of the case supported such treatment.⁷

Moreover, the Department has determined that the factors listed in 19 CFR 351.401(f)(2) are not exhaustive and, in the context of an NME proceeding, other factors unique to the relationships between business entities within the NME country may lead the Department to determine that collapsing is warranted. The Court of International Trade has upheld the Department's practice of taking into account one such

³ See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From Taiwan, 62 FR 51427, 51436 (October 1, 1997).

⁴ See, e.g., *Off-The-Road Tires* (citing *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 amplified by *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"), and 19 CFR 351.107(d)).

⁵ See *id.*

⁶ See *Certain Steel Nails From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances and Postponement of Final Determination*, 73 FR 3928 (January 23, 2008) (unchanged in final determination, *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), and amended final determination, *Certain Steel Nails From the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 7254 (February 7, 2008)).

⁷ See *id.*

² See, e.g., *Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 12764, 12774 (March 16, 1998).

unique factor, namely export decisions, in applying the collapsing provisions in NME proceedings.⁸ Thus, although the Department's regulations do not address the treatment of non-producing entities (e.g., exporters), where non-producing entities are affiliated, and there exists a significant potential for manipulation of prices and/or export decisions, the Department has considered such entities, as well as any other affiliated entities (where appropriate), as a single entity.⁹

We have preliminarily determined that the exporters and producers of the Fangda Group (*i.e.*, Beijing Fangda, Fangda Carbon, Fushun Carbon, Chengdu Rongguang, and Hefei Carbon) are affiliated pursuant to sections 771(33)(F) and (G) of the Act and that these companies should be treated as a single entity for the purposes of the antidumping duty investigation of graphite electrodes from the PRC. These companies have common ownership and are under common control, and therefore, are affiliated in accordance sections 771(33)(F) and (G) of the Act (which states that affiliated persons include two or more persons directly or indirectly controlling, controlled by, or under common control with, any person (subsection F); and any person who controls any other person and such other person (subsection G)).

Further, we find that the member companies of the Fangda Group that operate production facilities (specifically, Fushun Carbon, Fangda Carbon, and Chengdu Rongguang)¹⁰ produce similar or identical products that would not require substantial retooling of their facilities in order to

restructure manufacturing priorities. We have also determined that there is a significant potential for the manipulation of price or production among these companies as evidenced by the level of common ownership, the degree of management overlap, and the intertwined nature of the operations of these companies. See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, through Abdelali Elouaradia, Director, Office 4, and Howard Smith, Program Manager, Office 4, from Drew Jackson, International Trade Analyst, concerning "Small Diameter Graphite Electrodes from the People's Republic of China: Affiliation and Single Entity Status of Beijing Fangda Carbon Tech Co., Ltd.; Fangda Carbon New Material Co., Ltd.; Fushun Carbon Co., Ltd.; Chengdu Rongguang Carbon Co., Ltd.; and Hefei Carbon Co., Ltd.," dated August 11, 2008.

Non-Market Economy Treatment

The Department considers the PRC to be an NME country. 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. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 70488 (December 18, 2003). The Department has not revoked the PRC's status as an NME country. Therefore, in this preliminary determination, we have treated the PRC as an NME country and applied our current NME methodology.

Selection of a Surrogate Country

In antidumping proceedings involving NME countries, the Department, pursuant to section 773(c)(1) of the Act, will generally base normal value ("NV") on the value of the NME producer's factors of production. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of merchandise comparable to the subject merchandise.

The Department has determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries that are at a level of economic development comparable to that of the PRC. See Memorandum from Carol Showers, Acting Director, Office of Policy to Howard Smith, Program Manager, AD/CVD Operations, Office 4, concerning "Antidumping Duty Investigation of Small Diameter Graphite Electrodes (SDGE) from the People's Republic of China (PRC): Request for a List of Surrogate Countries," dated May 22, 2008. From among these economically comparable countries, the Department has preliminarily selected India as the surrogate country for this investigation because it determined that: 1) India is a significant producer of merchandise comparable to the subject merchandise; and 2) reliable Indian data for valuing the factors of production are readily available. See Memorandum to the File through Abdelali Elouaradia, Director, Office 4, and Howard Smith, Program Manager, Office 4, from Magd Zalok, International Trade Analyst, concerning "Antidumping Duty Investigation of Small Diameter Graphite Electrodes from the People's Republic of China: Selection of a Surrogate Country," dated June 25, 2008.

Separate Rates

In the *Initiation Notice*, the Department notified parties of the recent application process by which exporters and producers may obtain separate-rate status in NME investigations. See *Initiation Notice*. Pursuant to the Department's practice, exporters and producers are required to submit a separate-rate status application. See also *Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries*, (April 5, 2005) ("Policy Bulletin 05.1"), available at <http://ia.ita.doc.gov>.¹¹ However, the

⁸ See *Hontex Enterprises v. United States*, 342 F. Supp. 2d 1225, 1230–34 (CIT 2004).

⁹ See, e.g., *Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil; Notice of Final Determination at Sales at Less Than Fair Value*, 65 FR 5554 (February 4, 2000); *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 63 FR 55578 (October 16, 1998) and accompanying Issues and Decision Memorandum at Comment 2; *Automotive Replacement Glass Windshields from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 25545 (May 7, 2004); *Automotive Replacement Glass Windshields from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 69 FR 61790 (October 21, 2004); *Certain Preserved Mushrooms From the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review*, 69 FR 54635 (September 9, 2004) and accompanying Issues and Decision Memorandum at Comment 1. See also *Hontex Enterprises v. United States*, 248 F. Supp. 2d 1323, 1343 (CIT 2003).

¹⁰ The Fangda Group reported that Beijing Fangda is a sales entity, and does not produce subject merchandise.

¹¹ *Policy Bulletin 05.1* states: "while continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applied both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of 'combination rates' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in

standard for eligibility for a separate rate, which is whether a firm can demonstrate an absence of both *de jure* and *de facto* governmental control over its export activities, has not changed. *Id.*, at “Background.”

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 assessed a single antidumping duty rate. It is the Department’s policy to assign all exporters of merchandise subject to investigation 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* governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from *Sparklers*, as further developed in *Silicon Carbide*. However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control.

A. Separate Rate Applicants

All of the separate rate applicants, including the mandatory respondents Fushun Jinly and the Fangda Group, stated that they are either joint ventures between Chinese and foreign companies or are wholly Chinese-owned companies (collectively “PRC SR Applicants”). For one applicant, mandatory respondent Fushun Jinly, there is conflicting information on the record regarding its ownership status during the POI.

Fushun Jinly reported that it was established in 1987 as a collectively-owned enterprise (*i.e.* owned by Nianpan Township), known as the Fushun Carbon Products Plant, but that the plant was sold to the Factory Director in 2002. Despite the sale, Fushun Jinly reported that it did not change its legal status as a collectively-owned enterprise since suppliers were more willing to extend credit to a collectively-owned entity. However, according to Fushun Jinly, by 2007 most of the township’s collectively-owned enterprises had been sold and, thus, it decided it was time to officially change its status to a limited liability company. Thus, in June 2007, the Factory Director

began the process of changing the company’s legal status from a collectively-owned entity to a limited liability company. In order to make the transition, Fushun Jinly reported that it obtained contracts from the township, dated in June 2007, showing the sale of the plant. Fushun Jinly obtained a new business license identifying it as a limited liability company on November 1, 2007.

Given the above information, we have preliminarily determined that Fushun Jinly continued to be a collectively-owned enterprise until October 31, 2007, four months into the POI. Record evidence, namely Fushun Jinly’s business license, shows that the company legally remained a collectively-owned enterprise until October 31, 2007. Additionally, Fushun Jinly has provided conflicting information as to when the township sold the factory’s assets. Thus, we have considered Fushun Jinly to be a “collectively-owned enterprise” until October 31, 2007, and a limited liability company thereafter.

Since none of the separate rate or mandatory respondents are wholly foreign-owned (with no PRC control) or located in a market economy with no PRC ownership, we must analyze whether these respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

a. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter’s business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR 20589.

The evidence provided by the PRC SR Applicants supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) An absence of restrictive stipulations associated with the individual exporters’ business and export licenses; (2) applicable legislative enactments decentralizing control of the companies; and (3) and formal measures by the government decentralizing control of these companies.¹²

With respect to Fushun Jinly, the record indicates that while the company

was collectively owned, it was subject to the “Regulations on Rural Collectively-Owned Enterprises of the People’s Republic of China” (“Collectively-Owned Enterprise Regulations”), Order No. 59 of the State Council, Implemented on July 1st 1990.¹³ The Department has cited the Collectively-Owned Enterprise Regulations, together with a number of other laws, as a basis for finding an absence of *de jure* government control of respondents in a number of proceedings. *See e.g., Brake Rotors from the People’s Republic of China: Preliminary Results and Partial Rescission of the Sixth Administrative Review and Preliminary Results and Final Partial Rescission of the Ninth New Shipper Review*, 69 FR 10402 (March 5, 2004). Thus, our preliminary finding of an absence of *de jure* government control with respect to Fushun Jinly is consistent with the Department’s findings in prior determinations. *Id.*

b. Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental 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. *See Silicon Carbide*, 59 FR at 22586–22587; *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). 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 governmental control which would preclude the Department from assigning separate rates.

The evidence placed on the record of this investigation by the PRC SR Applicants demonstrate an absence of *de facto* government control with respect to each of the exporters’ exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon*

question and produced by a firm that supplied the exporter during the period of investigation.” *See Policy Bulletin 05.1* at 6.

¹² *See e.g.,* Shijiazhuang Huanan Carbon Factory’s April 15, 2008, submission at Exhibit 4, and Fushun Jinly’s July 8, 2008, submission at Appendices A–6 and A–11.

¹³ *See* Fushun Jinly’s July 8, 2008, submission at 4 and Appendix A–11.

Carbide. Thus, there is an absence of both *de jure* and *de facto* government control with respect to each of the PRC SR Applicants. Therefore, the Department has preliminarily granted separate rate status to the following companies: Fushun Jinly, Fushun Carbon, Fangda Carbon, Beijing Fangda Chengdu Rongguang, Jilin Carbon, Guangham Shida Carbon Co., Ltd., Nantong River-East Carbon Joint Stock Co., Ltd., Xinghe County Muzi Carbon Co. Ltd., Brilliant Charter Limited, Shijiazhuang Huanan Carbon Factory, Shenyang Jinli Metals & Minerals Imp & Exp Co., Ltd., Shanghai Jinneng International Trade Co., Ltd., Dalian Thrive Metallurgy Import and Export Co., Ltd., GES (China) Co., Ltd., and Qingdao Haosheng Metals & Minerals Imp & Exp Co., Ltd. The Department has calculated company-specific dumping margins for the two mandatory respondents, Fushun Jinly and the Fangda Group (*i.e.*, Fushun Carbon, Fangda Carbon, Beijing Fangda, and Chengdu Rongguang) and assigned the other companies that have been granted a separate rate a dumping margin equal to a simple average of the dumping margins calculated for the two mandatory respondents.

B. Companies Not Receiving a Separate Rate

The Department has determined that all parties applying for a separate rate in this segment of the proceeding have demonstrated an absence of government control both in law and in fact (see discussion above), and is, therefore, not denying separate rate status to any applicants.

The PRC-Wide Entity

Although PRC exporters of subject merchandise to the United States were given an opportunity to provide Q&V information to the Department, not all exporters responded to the Department's request for Q&V information.¹⁴ Based upon our knowledge of the volume of imports of subject merchandise from the PRC, we have concluded that the companies that responded to the Q&V questionnaire do not account for all U.S. imports of subject merchandise from the PRC made during the POI. We have treated the non-responsive PRC producers/exporters as part of the PRC-wide entity because they did not qualify for a separate rate.

Section 776(a)(2) of the Act provides that the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified.

As noted above, the PRC-wide entity withheld information requested by the Department. As a result, pursuant to section 776(a)(2)(A) of the Act, we find it appropriate to base the PRC-wide dumping margin on facts available. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003), unchanged in *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000); *see also "Statement of Administrative Action,"* accompanying the URAA, H.R. Rep. No. 103-316, 870 (1994) ("SAA") at 870. Since the PRC-wide entity did not respond to the Department's request for information, the Department has concluded that the PRC-wide entity has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

Section 776(b) of the Act authorizes the Department to use, as adverse facts available ("AFA"): (1) Information derived from the petition; (2) the final determination from the LTFV investigation; (3) a previous administrative review; or (4) any other information placed on the record. In selecting a rate for AFA, the Department selects one that is sufficiently adverse

"as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909 (February 23, 1998). It is the Department's practice to select, as AFA, the higher of: (a) The highest margin alleged in the petition or (b) the highest calculated rate for any respondent in the investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From the People's Republic of China*, 65 FR 34660 (May 31, 2000) and accompanying Issues and Decisions Memorandum at Facts Available. The highest margin alleged in the petition is 159.34 percent. Since the dumping margin derived from the Petition is higher than the calculated weighted-average margins for the mandatory respondents, we examined whether it was appropriate to base the PRC-wide dumping margin on the secondary information in the Petition.

When the Department relies on secondary information, rather than information obtained in the course of an investigation, section 776(c) of the Act requires it to, to the extent practicable, corroborate that information from independent sources reasonably at its disposal.¹⁵ The SAA also states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See SAA* at 870.

The SAA also clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See SAA* at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. *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*

¹⁴ The Department received only 13 timely responses to the requests for Q&V information that it sent to 81 potential exporters identified in the petition. With a few exceptions, the record indicates the questionnaires were received by the exporters. *See Respondent Selection Memorandum*.

¹⁵ 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 subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See SAA* at 870.

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).

To corroborate the Petition margin, we compared the range of control number-specific preliminary dumping margins calculated for the mandatory respondents to the dumping margin alleged in the Petition. Based on this comparison, we have preliminarily corroborated the 159.34 percent dumping from the Petition, which is within the range of control number-specific dumping margins calculated for the mandatory respondents. *See* Memorandum regarding “Corroboration of the PRC-Wide Facts Available Rate for the Preliminary Determination in the Antidumping Duty Investigation of Small Diameter Graphite Electrodes from the People’s Republic of China,” dated concurrently with this notice. The dumping margin for the PRC-wide entity applies to all entries of the merchandise under investigation except for entries of subject merchandise from Fushun Jinly, the Fangda Group, Jilin Carbon, Guangham Shida Carbon Co., Ltd., Nantong River-East Carbon Joint Stock Co., Ltd., Xinghe County Muzi Carbon Co. Ltd., Brilliant Charter Limited, Shijiazhuang Huanan Carbon Factory, Shenyang Jinli Metals & Minerals Imp & Exp Co., Ltd., Shanghai Jinneng International Trade Co., Ltd., Dalian Thrive Metallurgy Import and Export Co., Ltd., GES (China) Co., Ltd., and Qingdao Haosheng Metals & Minerals Imp & Exp Co., Ltd.

Fair Value Comparisons

To determine whether Fushun Jinly or the Fangda Group sold graphite electrodes to the United States at LTFV, we compared the weighted-average export price of the graphite electrodes to the normal value of the graphite electrodes, as described in the “U.S. Price” and “Normal Value” sections of this notice.

U.S. Price

Export Price

In accordance with section 772(a) of the Act, we based U.S. price on export price (“EP”) because the first sale to an unaffiliated purchaser was made prior to importation and the use of constructed export price was not otherwise warranted. In accordance with section 772(c) of the Act, we calculated EP by deducting, where applicable, the following expenses from

the starting price (gross unit price) charged to the first unaffiliated customer in the United States: Foreign movement expenses, marine insurance, international freight, and foreign brokerage and handling expenses.

We based these movement expenses on surrogate values where a PRC company provided the service and was paid in Renminbi. If market economy service providers, who were paid in a market economy currency, provided movement services for over 33 percent of subject merchandise shipments, by volume, we based the movement expenses on the actual price charged by the service provider. If market economy service providers, who were paid in a market economy currency, provided movement services for less than 33 percent of subject merchandise shipments, by volume, we calculated the movement expenses by weight-averaging surrogate values with the actual price charged by the service provider. *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717–18 (October 19, 2006).

For details regarding our EP calculation, *see* Memorandum to the File, through, Howard Smith, Program Manager, Office 4, from Drew Jackson, International Trade Analyst, “Investigation of Small Diameter Graphite Electrodes from the People’s Republic of China: Analysis Memorandum for Beijing Fangda Carbon Tech Co., Ltd., Fushun Carbon Co. Ltd., and Chengdu Rongguang Carbon Co., Ltd.,” dated August 14, 2008, and Memorandum to the File, through, Howard Smith, Program Manager, Office 4, from Magd Zalok, International Trade Analyst, “Investigation of Small Diameter Graphite Electrodes from the People’s Republic of China: Analysis Memorandum for Fushun Jinly Petrochemical Carbon Co., Ltd.,” dated August 14, 2008 (collectively, “Analysis Memoranda”).

Normal Value

In accordance with section 773(c) of the Act, we constructed normal value (“NV”) from the factors of production employed by the respondents to manufacture subject merchandise during the POI. Specifically, we calculated NV by adding together the values of the factors of production, general expenses, profit, and packing costs. We valued the factors of production using prices and financial statements from the surrogate country, India. In selecting surrogate values, we

followed, to the extent practicable, the Department’s practice of choosing values which are non-export average values, contemporaneous with, or closest in time to, the POI, product-specific, and tax-exclusive. *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). We also considered the quality of the source of surrogate information in selecting surrogate values.

We valued material inputs and packing materials by multiplying the amount of the factor consumed in producing subject merchandise by the average unit value of the factor. We derived the average unit value of the factor from Indian import statistics. In addition, we added freight costs to the surrogate costs that we calculated for material inputs. We calculated freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit’s decision in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). Where we could only obtain surrogate values that were not contemporaneous with the POI, we inflated (or deflated) the surrogate values using the Indian Wholesale Price Index (“WPI”) as published in the International Financial Statistics of the International Monetary Fund.

Further, in calculating surrogate values from Indian imports, we disregarded imports from Indonesia, the Republic of South Korea, and Thailand because in other proceedings the Department found that these countries maintain broadly available, non-industry-specific export subsidies. Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People’s Republic of China*, 69 FR 20594 (April 16, 2004) and

accompanying Issues and Decision Memorandum at Comment 7.¹⁶ Thus, we have not used prices from these countries in calculating the Indian import-based surrogate values.

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India*, dated July 2006. These electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to industries in India. Since the rates are not contemporaneous with the POI, we inflated the values using the WPI. See Memorandum to the File regarding "Investigation of Small Diameter Graphite Electrodes from the People's Republic of China: Surrogate Values Selected" for Fushun Jinly and the Fangda Group, dated August 14, 2008 ("Factor Value Memorandum").

We valued natural gas using a value obtained from the Gas Authority of India Ltd.'s Web site, a supplier of natural gas in India. See <http://www.gailonline.com/gailnewsite/index.html>. The value relates to the period January through June 2002. Therefore, we inflated the value using the WPI. In addition, we added transportation charges to the value. See Surrogate Value Memorandum and *Polyvinyl Alcohol From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 27991 (May 15, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

For direct labor, indirect labor and packing labor, consistent with 19 CFR 351.408(c)(3), we used the most recently calculated regression-based wage rate, which relies on 2005 data. This wage rate can be found on the Department's Web site on Import Administration's home page. See Expected Wages of Selected NME Countries (revised May 2008) (available at <http://ia.ita.doc.gov/wages/index.html>). The source of these wage rate data on the Import Administration's Web site is the International Labour Organization, Geneva, Labour Statistics Database Chapter 5B: Wages in Manufacturing. Since this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to

all skill levels and types of labor reported by Fushun Jinly and the Fangda Group. See Factor Value Memorandum.

We valued truck freight expenses using a per-unit average rate calculated from data on the following Web site: <http://www.infobanc.com/logistics/logtruck.htm>. The logistics section of this Web site contains inland freight truck rates between many large Indian cities. Since this value is not contemporaneous with the POI, we deflated the rate using the WPI. See Factor Value Memorandum.

We valued rail freight expenses using a per-unit average rate from data obtained from the Web site of the Indian Ministry of Railways and distance data obtained from an Indian transportation company, InFreight Technologies India Limited. See <http://www.indianrailways.gov.in/> and <http://www.infreight.com/>. See Factor Value Memorandum.

We valued brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by Agro Dutch Industries Ltd. in the antidumping duty administrative review of certain preserved mushrooms from India, Kejirwal Paper Ltd. in the LTFV investigation of certain lined paper products from India, and Essar Steel in the antidumping duty administrative review of hot-rolled carbon steel flat products from India. See *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006); see also *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Certain Lined Paper Products From India*, 71 FR 19706 (April 17, 2006), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006) and *Certain hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018, 2021 (January 12, 2006) (unchanged in *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Antidumping Administrative Review*, 71 FR 40694 (July 18, 2006). Since the resulting value is not contemporaneous with the POI,

we inflated the rate using the WPI. See Factor Value Memorandum.

We valued marine insurance using a publicly available price quote from a marine insurance provider at <http://www.rjgconsultants.com/insurance.html>.

We valued factory overhead, selling, general, and administrative expenses, and profit, using the 2007–2008 audited financial statements of Graphite India Limited. Record evidence indicates that Graphite India Limited is an Indian company that produces subject merchandise. The financial statements of Graphite India Limited were placed on the record by both the petitioners and the respondents and are the only surrogate financial statements on the record. See Factor Value Memorandum.

In accordance with 19 CFR 351.301(c)(3)(i), interested parties may submit publicly available information with which to value factors of production in the final determination within 40 days after the date of publication of the preliminary determination.

Currency Conversion

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 of the United States.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. See *Initiation Notice*. This change in practice is described in *Policy Bulletin 05.1*:

(W)hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more

¹⁶In addition, we note that legislative history explains that the Department is not required to conduct a formal investigation to ensure that such prices are not subsidized. See H.R. Rep. 100–576 at 590 (1988). As such, it is the Department's practice to base its decision on information that is available to it at the time it makes its determination.

producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and

produced by a firm that supplied the exporter during the period of investigation.

Preliminary Determination

The weighted-average dumping margins are as follows:

Exporter & producer	Weighted-average margin (percent)
Fushun Jinly Petrochemical Carbon Co., Ltd. Produced by: Fushun Jinly Petrochemical Carbon Co., Ltd.	132.80
Fushun Carbon Co., Ltd. Produced by: Fushun Carbon Co., Ltd.	147.80
Fangda Carbon New Material Co., Ltd. Produced by: Fangda Carbon New Material Co., Ltd.	147.80
Beijing Fangda Carbon Tech Co., Ltd. Produced by: Chengdu Rongguang Carbon Co., Ltd.; Fangda Carbon New Material Co., Ltd.; or Fushun Carbon Co., Ltd.	147.80
Chengdu Rongguang Carbon Co., Ltd. Produced by: Chengdu Rongguang Carbon Co., Ltd.	147.80
Jilin Carbon Import and Export Company Produced by: Sinosteel Jilin Carbon Co., Ltd.	140.30
Guangham Shida Carbon Co., Ltd. Produced by: Guangham Shida Carbon Co., Ltd.	140.30
Nantong River—East Carbon Joint Stock Co., Ltd. Produced by: Nantong River—East Carbon Co., Ltd.; or Nantong Yangzi Carbon Co., Ltd.	140.30
Xinghe County Muzi Carbon Co. Ltd. Produced by: Xinghe County Muzi Carbon Co., Ltd.	140.30
Brilliant Charter Limited Produced by: Nantong Falter New Energy Co., Ltd.; or Shanxi Jinneng Group Co., Ltd.	140.30
Shijiazhuang Huanan Carbon Factory Produced by: Shijiazhuang Huanan Carbon Factory	140.30
Shenyang Jinli Metals & Minerals Imp & Exp Co., Ltd. Produced by: Shenyang Jinli Metals & Minerals Imp. & Exp. Co., Ltd.	140.30
Shanghai Jinneng International Trade Co., Ltd. Produced by: Shanxi Jinneng Group Datong Energy Development Co., Ltd.	140.30
Dalian Thrive Metallurgy Import and Export Co., Ltd. Produced by: Linghai Hongfeng Carbon Products Co., Ltd.; Tianzhen Jintian Graphite Electrodes Co., Ltd.; Jiaozuo Zhongzhou Carbon Products Co., Ltd.; Heilongjiang Xinyuan Carbon Products Co., Ltd.; Xuzhou Jianglong Carbon Manufacture Co., Ltd.; or Xinghe Xinyuan Carbon Products Co., Ltd.	140.30
GES (China) Co., Ltd. Produced by: Shanghai GC Co., Ltd.; Fushun Jinli Petrochemical Carbon Co., Ltd.; Xinghe County Muzi Carbon Plant and Linyi County Lubei Carbon Co., Ltd. Shandong Province	140.30
Qingdao Haosheng Metals & Minerals Imp & Exp Co., Ltd. Produced by: Sinosteel Jilin Carbon Co., Ltd.	140.30
PRC-Wide Entity	159.34

Disclosure

We will disclose the calculations performed to parties in this proceeding within five days of the date of the public announcement of the preliminary determination in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

As noted above, the Department has found that critical circumstances exist with respect to imports of subject merchandise from the Fangda Group and the separate rate companies. Therefore, in accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of graphite electrodes from the Fangda Group and the separate rate applicants¹⁷ entered, or withdrawn

from warehouse, for consumption on or after 90 days prior to the date of publication of this notice in the **Federal Register**. For Fushun Jinly and the PRC wide entity, we will instruct CBP to suspend liquidation of all entries of graphite electrodes entered, or withdrawn from warehouse, for consumption upon the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds U.S. price, as indicated above. The suspension of liquidation will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of graphite electrodes, or sales (or the likelihood of sales) for importation, of the subject merchandise within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, no later than five days after the deadline for

¹⁷ As noted above, the separate rate applicants are Jilin Carbon; Guangham Shida Carbon Co., Ltd.; Nantong River East Carbon Co. Ltd.; Xinghe County Muzi Carbon Co. Ltd.; Brilliant Charter Limited; Shijiazhuang Huanan Carbon Factory; Shenyang

Jinli Metals & Minerals Imp & Exp Co., Ltd.; Shanghai Jinneng International Trade Co., Ltd.; Dalian Thrive Metallurgy Import and Export Co., Ltd.; GES (China) Co., Ltd.; and Qingdao Haosheng Metals & Minerals Imp & Exp Co., Ltd.

submitting case briefs. See 19 CFR 351.309(c)(1)(i) and 19 CFR 351.309(d)(1). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230, time and room to be determined. Parties should confirm by telephone the date, time, and room location of the hearing two days before the scheduled hearing date.

Interested parties that wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. See 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of hearing participants, and a list of the issues to be discussed in the hearing. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on July 30, 2008, Fushun Jinly and the Fangda Group, respectively, requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. At the same time, Fushun Jinly and the Fangda Group agreed that the Department may extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a 4-month period to a 6-month period. In accordance with section 733(d) of the Act and 19 CFR 351.210(b), we are granting the request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register** because (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no

compelling reasons for denial exist. Suspension of liquidation will be extended accordingly.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: August 14, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

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

EFFECTIVE DATE: August 21, 2008.

SUMMARY: The Department of Commerce ("Department") hereby publishes a list of scope rulings completed between April 1, 2008, and June 30, 2008. In conjunction with this list, the Department is also publishing a list of requests for scope rulings and anticircumvention determinations pending as of June 30, 2008. We intend to publish future lists after the close of the next calendar quarter.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen, AD/CVD Operations, China/NME Group, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: 202-482-1904.

SUPPLEMENTARY INFORMATION:

Background

The Department's regulations provide that the Secretary will publish in the **Federal Register** a list of scope rulings on a quarterly basis. See 19 C.F.R. 351.225(o). Our most recent notification of scope rulings was published on May 22, 2008. See *Notice of Scope Rulings*, 73 FR 29739 (May 22, 2008). This current notice covers all scope rulings and anticircumvention determinations completed by Import Administration between April 1, 2008, and June 30, 2008, inclusive, and it also lists any scope or anticircumvention inquiries pending as of June 30, 2008. As described below, subsequent lists will follow after the close of each calendar quarter.

Scope Rulings Completed Between April 1, 2008, and June 30, 2008:

People's Republic of China

A-570-868: Folding Metal Tables and Chairs from the People's Republic of China

Requestor: Ignite USA, LLC; the VIKA Twofold 2-in-1 Workbench/Scaffold is not within the scope of the antidumping duty order; April 18, 2008.

A-570-890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: AP Industries; convertible cribs (model nos. 1000-0100; 1000-0125; 1000-0160; 1000-1195/2195; 1000-2145; and 1000-2165) are not within the scope of the antidumping duty order; April 30, 2008.

A-570-891: Hand Trucks from the People's Republic of China

Requestor: WelCom Products, Inc.; its MCX Magna Cart is not within the scope of the antidumping duty order; May 12, 2008.

A-570-898: Chlorinated Isocyanurates from the People's Republic of China

Requestor: BioLab, Inc.; chlorinated isocyanurates originating in the People's Republic of China, that are packaged, tableted, blended with additives, or otherwise further processed in Canada by Capo Industries, Ltd., before entering the U.S., are within the scope of the antidumping duty order; April 9, 2008.

A-570-899: Artist Canvas from the People's Republic of China

Requestor: Tara Materials, Inc.; artist canvas purchased in the U.S. that has been woven, primed with gesso, and cut to size in the U.S. and shipped to the PRC for assembling (*i.e.*, wrapping and stapling to the wooden frame) and returned to the U.S. are not within the scope of the antidumping duty order; April 10, 2008.

Multiple Countries

A-549-821: Polyethylene Retail Carrier Bags from Thailand; A-557-813: Polyethylene Retail Carrier Bags from Malaysia; A-570-886: Polyethylene Retail Carrier Bags from the People's Republic of China

Requestor: Medline Industries, Inc.; certain hospital patient belongings bags and surgical kit bags (drawstring bags model nos. DS500C, DS400C, 38667, 25117, 28614, and 42817) are within the scope of the antidumping duty orders; certain hospital patient belongings bags and surgical kit bags (drawstring bags model nos. DONDS600, 7510, 42818, and rigid handle bag model no. 26900)