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September 4, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

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

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SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the administrative review of the antidumping duty order on small diameter graphite electrodes (SDGE) from the People's Republic of China (PRC) for the period of review (POR) February 1, 2011, through January 31, 2012. Based on our analysis of the comments received, we have made changes in the margin calculations for Fushun Jinly Petrochemical Co., Ltd. (Fushun Jinly) and the Fangda Group.[1] The final results do not differ from the preliminary results because the weighted average margins for both companies remain zero. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this review for which we received comments and rebuttal comments by parties:

Comment 1: U.S. Sales Attributable to Circumvention Determination
Comment 2: Tolling Data
Comment 3: Reconciliation of Factors of Production
Comment 4: Differential Pricing and Targeted Dumping Analyses

[1] The Fangda Group consists of 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. We refer to the Fangda Group as a single entity pursuant to 19 CFR 351.401(f)(1). *See Small Diameter Graphite Electrodes From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances, in Part*, 73 FR 49408, 49411-12 (August 21, 2008) (where we collapsed the individual members of the Fangda Group), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China*, 74 FR 2049, January 14, 2009.

Comment 5: Rate for Non-Selected Companies
Comment 6: Surrogate Financial Ratios

BACKGROUND

On March 8, 2013, we published *Small Diameter Graphite Electrodes from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission; 2011-2012*, 78 FR 14964 (March 8, 2013) (*Preliminary Results*). We invited interested parties to comment on the *Preliminary Results*. On April 8, 2013, we received case briefs from Fushun Jinly, the Fangda Group, and the petitioners, SGL Carbon LLC and Superior Graphite Co. On April 15, 2013, we received rebuttal comments from all parties. On April 8, 2013, the petitioners requested a hearing, but on May 7, 2013, withdrew their request. On July 3, 2013, we extended the time limit for the final results of review to September 4, 2013, pursuant to section 751(a)(3)(A) of the Act.[2] On July 26, 2013, we confirmed with U.S. Customs and Border Protection (CBP) that UKCG had no shipments of subject merchandise during the POR.[3]

SCOPE OF THE ORDER

The merchandise covered by the order includes all small diameter graphite electrodes of any length, whether or not finished, of a kind used in furnaces, with a nominal or actual diameter of 400 millimeters (16 inches) or less, and whether or not attached to a graphite pin joining system or any other type of joining system or hardware. The merchandise covered by the order also includes graphite pin joining systems for small diameter graphite electrodes, of any length, whether or not finished, of a kind used in furnaces, and whether or not the graphite pin joining system is attached to, sold with, or sold separately from, the small diameter graphite electrode. Small diameter graphite electrodes and graphite pin joining systems for small diameter graphite electrodes are most commonly used in primary melting, ladle metallurgy, and specialty furnace applications in industries including foundries, smelters, and steel refining operations. Small diameter graphite electrodes and graphite pin joining systems for small diameter graphite electrodes that are subject to the order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 8545.11.0010[4] and 3801.10.[5] The HTSUS numbers are provided for convenience and customs purposes, but the written description of the scope is dispositive

[2] *See* memorandum entitled "Small Diameter Graphite Electrodes from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review" dated July 3, 2013.
[3] *See* CBP inquiry message 3207305, dated July 26, 2013.
[4] The scope described in the order refers to the HTSUS subheading 8545.11.0000. We note that, starting in 2010, imports of SDGEs are classified in the HTSUS under subheading 8545.11.0010 and imports of large diameter graphite electrodes are classified under subheading 8545.11.0020.
[5] *See Small Diameter Graphite Electrodes From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 77 FR 47596 (August 9, 2012) (*Circumvention Determination*).

DISCUSSION OF ISSUES

Comment 1: U.S. Sales Attributable to Circumvention Determination

The petitioners question whether all U.S. sales that should have been included in this review have been properly reported to the Department. The petitioners note that, pursuant to the Department's recent affirmative final *Circumvention Determination*, shipments of unfinished SDGEs (*i.e.*, artificial graphite rods) from the PRC that were processed in the United Kingdom by UK Graphite and Carbon Co., Ltd. (UKCG) and exported by UKCG to the United States are subject to the antidumping duty order on SDGEs from the PRC. As a result, the petitioners contend that any such shipments of unfinished SDGE that were processed in the United Kingdom and exported by UKCG during the POR should have been reported in this review. The petitioners argue that, record evidence from the circumvention proceeding, which was placed on the record of this review, demonstrates that UKCG exported subject merchandise to the United States during the POR, and that respondents acted as suppliers for UKCG during the POR. Because the *Circumvention Determination* occurred during this review, the petitioners contend that both mandatory respondents were aware of the requirement to report any U.S. sales exported through the United Kingdom under the circumvention scheme. The petitioners also question UKCG's no shipments claim and request that the Department seek additional information from UKCG to verify its claim of no shipments. The petitioners allege that the inclusion of the circumventing entries in the margin calculations is critical to ensure that the full measure of dumping by the respondents is captured and, therefore, the Department must require Fushun Jinly and the Fangda Group to report as U.S. sales any shipments of merchandise exported through the United Kingdom. Alternatively, the petitioners argue, for the quantity of unreported U.S. sales, the Department should rely on facts available to calculate the dumping margin for each company. Specifically, the petitioners argue that, the Department should apply an adverse facts available (AFA) rate of 159.64 percent[6] to the respective quantity of unreported sales made by each respondent to UKCG and then weigh the results with the respective margins the Department calculated for the U.S. sales reported by respondents in this review.

The respondents argue that the Department found that it was UKCG that circumvented the antidumping duty order by exporting to the United States SDGEs that were further processed in the United Kingdom from artificial graphite components sourced from the PRC. The respondents assert that neither Fushun Jinly nor the Fangda Group was a party to or target of the anti-circumvention proceeding. The respondents argue that at no time during this review did the Department require that Fushun Jinly and the Fangda Group report as U.S. sales the companies' exports of unfinished graphite forms to the United Kingdom; and furthermore, neither company made any sales to the United Kingdom with the knowledge that its customer would export finished electrodes to the United States.

The respondents assert that once a final affirmative anti-circumvention determination is issued, the appropriate time to request a review of any unliquidated entries of the merchandise subject to

[6] The rate of 159.64 percent was first used as total AFA in the less-than fair value investigation. *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 (January 14, 2009).

the circumvention finding would be during the subsequent anniversary month of the antidumping duty order. The respondents assert that the effective period of review for such transactions is from the date of initiation of the anti-circumvention inquiry to the end of the regular administrative review period. Consequently, the respondents argue, the current review is not the appropriate segment of the proceeding in which to review and assess antidumping duties on the merchandise in question.

Department's Position: We disagree with the petitioners' claim that there are missing sales of subject merchandise that should have been subject to this review. On May 29, 2012, UKCG timely filed a "no shipment" certification stating that it had no entries of subject merchandise during the POR.[7] To dispute this claim, the petitioners placed on the record of this review certain factual information obtained and verified by the Department during the circumvention proceeding which revealed that UKCG made exports of SDGEs to the United States during the early part of the POR.[8] The factual information also reveals that, contrary to the petitioners' implied assertion, all exports of SDGEs to the United States made by UKCG during the POR (that were specifically identified by the petitioners) were sourced from PRC suppliers other than Fushun Jinly and the Fangda Group.[9] In its reply to the petitioners' July 24, 2012, letter, UKCG reiterated its no shipments claim by arguing that while there were some entries of SDGEs from the United Kingdom in February 2011 (*i.e.*, the first month of the POR), these entries were deemed liquidated by CBP without regard to duties because they were imports of non-subject merchandise.[10] UKCG argues that this is so because the entries in question occurred prior to March 18, 2011, the date of the initiation of the *Anti-Circumvention Inquiry*,[11] at which point all future UKCG entries would be subject to the order.[12] We subsequently confirmed with CBP that UKCG had no shipments of subject merchandise during the POR.[13]

Therefore, we find that the evidence from the circumvention proceeding, which was verified by the Department and which was placed on this record, and the confirmation we received from CBP on UKCG's no shipment claim, demonstrate there were no UKCG entries during the POR that were subject to the antidumping duty order on SDGEs from the PRC which we would consider as reviewable transactions in this POR.[14] During the circumvention proceeding, in accordance with 19 CFR 351.225(l)(2), we directed CBP to suspend liquidation and to require a cash deposit of estimated duties at the applicable rate on un-liquidated entries of SDGE produced and/or exported by UKCG that were entered, or withdrawn from warehouse, for consumption on or after March 18, 2011, the date of initiation of the *Anti-Circumvention Inquiry*.[15] As such, any

[7] *See* Letter from UKCG, dated May 29, 2012.
[8] *See* the petitioners' July 24, 2012, letter at Enclosure 1 and 2.
[9] *See id.*, at Enclosure 2 (containing sales reports "UKCG SALES 1 July 2010 - 30 June 2011" and "UKCG SALES 1 July 2011 – 31 Jan 2012," which identifies dispatch date, invoice number, and supplier identification).
[10] *See* Letter from UKCG dated July 27, 2012.
[11] *See Small Diameter Graphite Electrodes From the People's Republic of China: Initiation of Anti-Circumvention Inquiry*, 76 FR 14910 (March 18, 2011) (*Anti-Circumvention Inquiry*).
[12] *See* Letter from UKCG, dated July 27, 2012.
[13] *See* CBP inquiry message 3207305, dated July 26, 2013.
[14] *Id*.
[15] *See Small Diameter Graphite Electrodes From the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 77 FR 33405, 33418 (June 6, 2012).

exports of SDGEs to the United States by UKCG during the POR which occurred prior to March 18, 2011, were not subject to an administrative review under section 751(a)(1) of the Tariff Act (the Act) and would not have been suspended. As noted above, record evidence from the circumvention proceeding, which was verified by the Department, and our confirmation from CBP on UKCG's no shipment claim, demonstrate that UKCG had no entries of subject merchandise after March 18, 2011.[16] With respect to Fushun Jinly's and the Fangda Group's reporting of U.S. sales, the antidumping duty questionnaires issued in this review required the mandatory respondents to report sales of finished or unfinished SDGEs made to third countries in cases where respondents knew, at the time of sale, that such shipments of SDGEs were destined for the United States.[17] These would be the only sales involving UKCG that would be the subject of this administrative review of Fushun Jinly and Fangda Group. Neither respondent reported that any of its U.S. sales were made under such circumstances.[18] Record evidence also shows that the respondents did not act as suppliers for those few UKCG entries which occurred during the early part of the POR (*i.e.*, February 2011).[19] As a result, there is no factual or legal basis to find that either Fushun Jinly or the Fangda Group failed to report sales of subject merchandise that were destined for the United States during the POR.

Comment 2: Tolling Data

The petitioners contend that the factors of production (FOP) data submitted by the Fangda Group are incomplete and unreliable because they do not incorporate the FOP data for its tolling companies. The petitioners argue that because the tollers' involvement in the Fangda Group's production of SDGEs was extensive, an application of facts available to the Fangda Group is warranted under these circumstances. The petitioners assert that the Fangda Group was on notice since its participation in the less-than-fair value investigation, the first administrative review, and because of the general instructions provided in the original questionnaire issued in this review, that it had an obligation to provide toller data. The petitioners argue that, notwithstanding its understanding of this reporting requirement, the Fangda Group did not make any attempts to obtain the FOP data from any of its tollers prior to the Department's request to do so with respect to specific tollers that the Department had identified.

Citing *Nachi-Fujikoshi Corp. v. United States*, 890 F. Supp. 1106, 1111 (CIT 1995), among other cases, the petitioners assert that the burden of developing a complete and accurate administrative record, which they claim includes the tolling data, lies solely with the respondent. The petitioners argue that the Fangda Group was not exempt from submitting these data merely because the Fangda Group had acknowledged the tollers' refusal to reveal their business proprietary data to the Fangda Group. Similar to what a respondent has done in *Refrigerators*

[16] *See* CBP inquiry message 3207305, dated July 26, 2013.
[17] *See* item entitled "Exports Through Intermediate Countries" in Section A of the antidumping duty questionnaire, dated May 8, 2012.
[18] *See* Fangda Group's Section A questionnaire response, dated June 11, 2012, at 31, and Fushun Jinly's Section A questionnaire response, dated June 12, 2012, at 19.
[19] *See* the petitioners' July 24, 2012, letter at Enclosure 2.

from Mexico,[20] the petitioners argue that the Fangda Group could have instructed its tolling companies to submit their data to the Department directly.
Citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (CAFC 2003), the petitioners argue that the use of total AFA is appropriate because the record shows that the Fangda Group failed to cooperate fully with the Department's requests for the tollers' factor data. The petitioners argue that the Department cannot rely on the Fangda Group's FOP data because the tollers' data are missing, and where Fangda Group's own data is used in place of missing tollers' FOP data, the Department cannot ascertain whether such data are representative of the tolling companies' actual data. The petitioners urge the Department to assign an AFA rate of 159.64 percent to the Fangda Group.

The petitioners assert that if the Department does not find that application of total AFA is warranted, the Department should assign partial AFA to the Fangda Group. As partial AFA, the petitioners urge the Department to rely on the highest input value and the lowest reported offset value reported by either the Fangda Group or the other mandatory respondent, Fushun Jinly, for each factor to determine a single normal value for comparisons to all of the Fangda Group's U.S. sales. Citing *Activated Carbon from the PRC*[21] and *SDGEs First Review*[22] and accompanying Issues and Decision Memorandum (IDM) at Comment 9, the petitioners argue that the Department has a limited practice of assigning partial neutral facts available by relying on reported toller data as a proxy for a portion of the toller data that were not reported. The petitioners assert that because the Fangda Group did not submit any toller data, this review is distinguishable from the above-cited cases and, therefore, the application of partial neutral facts available is not the appropriate option.

The Fangda Group argues that the Department's reasoning for its application of neutral facts available in the *Preliminary Results* with respect to missing toller data is legally sound, fully supported by the administrative record, and should be followed in the final results. The Fangda Group argues that it identified all tollers used by each of the producing entities within the Fangda Group and documented, for each stage of production, the portions of output that were outsourced to each of the tollers. The Fangda Group asserts that it submitted on the record the letters it had written to the tollers identified by the Department, requesting their data and the responses from those tollers. The Fangda Group asserts that the petitioners' analysis of the extent of the tollers' involvement is greatly overstated. The Fangda Group asserts that the petitioners' analysis does not consider certain affiliated tollers' data, for which FOPs were reported in this review by one of the Fangda Group's producing entities. Further, the Fangda Group asserts that the proper analysis of the tollers' involvement in each production stage must be done on a company-wide basis, as the Department did in the *Preliminary Results*. The Fangda Group contends that under

[20] *See Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From Mexico*, 77 FR 17422 (March 26, 2012) (*Refrigerators from Mexico*).
[21] *See Certain Activated Carbon From the People's Republic of China: Preliminary Results of the Fourth Antidumping Duty Administrative Review, and Intent To Rescind in Part*, 77 FR 26496, 26500 (May 4, 2012) (*Activated Carbon from the PRC*).
[22] *See Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order and Final Rescission of the Administrative Review, in Part*, 76 FR 56397 (September 13, 2011) (*SDGEs First Review*).

this analysis, the Department's determination that the missing toller data accounted for a relatively small portion of the total FOPs, is supported by record evidence.

The Fangda Group asserts that the record clearly demonstrates that the unavailability of unaffiliated toller data was beyond the Fangda Group's control and that the company fully cooperated in this review. The Fangda Group asserts that there is no basis to determine that the company did not act to the best of its ability to provide data that the Department requested.

Department's Position: We specifically addressed this issue in the *Preliminary Results*.[23] In the Prelim IDM, we concluded that the Fangda Group did not fail to cooperate with respect to obtaining the requested FOPs from its unaffiliated tollers and, accordingly, we did not draw an adverse inference.[24] The Fangda Group timely identified all its tollers and documented its unsuccessful attempts to obtain the requested FOP data from the tollers identified by the Department.[25] The Department did not request the Fangda Group to make further attempts to obtain the tollers' data. As such, for the final results of this review, we continue to find that the Fangda Group cooperated and acted to the best of its ability to comply with our request for information. On this point, none of the legal precedent the petitioners cite demonstrates that a lack of cooperation was imputed onto a party as a result of circumstances that were beyond that party's control, especially in cases when the record did not lack critical information necessary for the Department to complete its analysis.

We stated in the Prelim IDM that: (i) the Fangda Group voluntarily provided FOP information from a certain toller that performed one step in the production process that was outsourced entirely with respect to a certain producing entity within the Fangda Group; (ii) the FOP data of the non-reporting tollers account for a relatively small portion of the total FOPs during the POR; and (iii) there is usable FOP information on the record that can serve as a substitute for the missing FOP information.[26] We determined that, consistent with our practice in *Service Valves from the PRC*[27] and *SDGEs First Review* and accompanying IDM at Comment 9, we are applying neutral facts available.[28] Specifically, we used the Fangda Group's own FOPs and, where applicable, the FOPs of the toller that the Fangda Group submitted voluntarily for the production step that was outsourced in its entirety by one of the Fangda Group's producing entities.[29]

In the Preliminary Analysis Memorandum, we detailed the stages of production in which the tollers were involved and the portion of stage-specific production that was outsourced to

[23] *See Preliminary Results*, and accompanying Preliminary Decision Memorandum (Prelim IDM), at 14-15; *see also* Memorandum to the file entitled "Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China: Preliminary Results Analysis Memorandum for the Fangda Group" dated March 4, 2013 (Prelim Analysis Memorandum), at 4-5.
[24] *See Preliminary Results*, and accompanying Prelim IDM at 14-15.
[25] *Id*.
[26] *Id*.
[27] *See Frontseating Service Valves From the People's Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 76 FR 70706 (November 15, 2011) (*Service Valves from the PRC*), and accompanying IDM at Comment 12.
[28] *Id*.
[29] *Id*.

tollers.[30] Of importance, is that when the outsourced portions of production at those stages in which tollers were involved are considered for the Fangda Group as a whole (instead of considering the data for each of the four producing entities within the Fangda group individually, as the petitioners have done) the extent of tollers' involvement in the production of SDGEs is not as extensive as the petitioners claim.[31] We find that it is appropriate to aggregate the toller data for the Fangda Group as a whole because we treat the individual companies[32] within the Fangda Group as a single entity pursuant to 19 CFR 351.401(f)(1).[33]

The fact pattern present in this review with respect to the Fangda Group and the Department's decision to rely on neutral facts available for missing FOP data for tollers is similar to that in *Photovoltaic Cells from the PRC*.[34] There, the Department relied on the respondent's reported FOP data for the same processing that was performed by non-reporting tollers as neutral facts available for missing data from tollers, reasoning that "the respondent had a number of tollers, the impact of the unreported toller data was relatively small, and the respondent performed a process identical to that performed by the tollers."[35]

The petitioners confuse the factual scenarios present in *Activated Carbon from the PRC* and *SDGEs First Review* and the resultant outcomes therein as the basis for challenging the Department's application of neutral facts available to the Fangda Group in this review. In *Activated Carbon from the PRC*, the Department excused the reporting of certain unaffiliated suppliers' FOPs data for the subject merchandise purchased by the respondent, with the respondent only performing certain minor processing to the purchased product before the sale to the United States.[36] The situation in *Activated Carbon from the PRC* was markedly different from the instant case in that the respondent there purchased subject merchandise from unaffiliated suppliers instead of sub-contracting processing at certain stages of production as the Fangda Group has done with respect to SDGEs. In applying facts otherwise available in that proceeding, the Department has, nevertheless, employed the same principle as here – use comparable information available on the record if the preferred information is outside the reasonable control of the respondent. In *SDGEs First Review*, the Department used the data of the tollers that cooperated as a proxy for data of a toller that did not report FOPs with respect to a single stage of production (*i.e.*, baking) and with respect to one of four producing entities (*i.e.*,

[30] *See* Prelim Analysis Memorandum at 4 and Attachment 1.
[31] *Id*.
[32] These companies are 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.
[33] *See Small Diameter Graphite Electrodes From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances, in Part*, 73 FR 49408, 49411-12 (August 21, 2008) (where we collapsed the individual members of the Fangda Group), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China*, 74 FR 2049 (January 14, 2009).
[34] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012) (*Photovoltaic Cells from the PRC*), and accompanying IDM at Comment 19.
[35] *Id*.
[36] *See Activated Carbon from the PRC*, 77 FR at 26496, 26500.

Fushun Carbon) within the Fangda Group. For the portions of production at baking and other stages that were partially outsourced and for which the Department had no toller FOPs, the Department used the Fangda Group's own data.[37] Thus, the situation in the present review is very similar to that in *SDGEs First Review*.

For these reasons, we continue to find that the necessary information is available on the record for us to complete our analysis and, as a result, we determine that the application of an adverse inference is not warranted with respect to the Fangda Group in this review because the company cooperated to the best of its ability.

Comment 3: Reconciliation of Factors of Production

The petitioners contend that, in order for the Department to consider in its analysis the FOPs submitted by a respondent, the Department requires a reconciliation of such data to a company's accounting costs, as reflected in company's books and records. In support of their argument, the petitioners cite *Bedroom Furniture from the PRC*.[38] The petitioners assert that the information in the Fangda Group's normal books and records cannot be reconciled with the submitted FOPs data. The petitioners take issue with the differences between the per-unit total component costs for materials, labor, and energy, as reflected in one of the Fangda Group's company's (*i.e.*, Fangda Carbon New Material Co., Ltd.'s (Fangda Carbon's)) reconciliation, per cost accounting records, versus the corresponding values derived using the company's reported FOPs. The petitioners contend that the differences are significant and remain unexplained. Further, the petitioners assert that certain adjustments in Fangda Carbon's reconciliation are only supported by a spreadsheet and are not linked to any accounting ledger or journal. Citing *Stilbenic Agents from Taiwan,*[39] and accompanying IDM at Comment 6, the petitioners argue that on this basis alone, the Department cannot accept the adjustments and should consider them as un-reconciled items.

In addition, the petitioners take issue with certain reconciling items. First, the petitioners challenge the adjustment for the profit mark-up charged by the affiliate for its sales of SDGE pins to Fangda Carbon. Specifically, the petitioners question the reduction to the cost of manufacturing value for this item on the basis that purchased pins would not have been recorded as part of Fangda Carbon's cost of production in the first place – the purchases would normally be recorded directly as finished goods inventory.

Second, the petitioners challenge the validity of adjustments to the cost of manufacturing value pertaining to subject merchandise. As a preliminary matter, the petitioners state that they do not understand why Fangda Carbon makes an adjustment for overhead expenses for products that share the same specifications as the goods sold to the United States during the POR, when the company has already fully adjusted for overhead expenses in the reconciling item preceding these adjustments.

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[37] *See SDGEs First Review*, and accompanying IDM at Comment 9.

[38] *See Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Reviews and Notice of Partial Rescission*, 72 FR 6201 (February 9, 2007) (*Bedroom Furniture from the PRC*).

[39] *See Certain Stilbenic Optical Brightening Agents From Taiwan: Final Determination of Sales at Less Than Fair Value*, 77 FR 17027 (March 23, 2012) (*Stilbenic Agents from Taiwan).*

Third, the petitioners assert that Fangda Carbon's reconciliation provides no explanation as to why the per-unit costs for the subject merchandise which did not share the same specifications as the goods sold to the United States (*i.e.*, subject merchandise not under consideration) are so different from the per-unit costs of the subject merchandise that share the same specifications as the goods sold to the United States (*i.e.*, subject merchandise under consideration). In making this assertion, the petitioners allege that the products included in the former category share the same power level and the same diameter as products included in the latter category, and only vary in length.

The petitioners argue that, because the submitted FOP data are not an accurate portrayal of the information contained in the company's books and records and its financial statements, the Department cannot rely on such data to establish normal value for the Fangda Group. As a result, the petitioners argue, the Department must apply total AFA to the Fangda Group. The petitioners urge the Department to assign an AFA rate of 159.64 percent. Alternatively, consistent with the Department's practice explained in *Stilbenic Agents fromTaiwan* and accompanying IDM at Comment 6, as partial AFA, the petitioners argue that the Department must adjust all of the Fangda Group's factor input data upward and all of the Fangda Group's offset data downward by the un-reconciled percentage difference between the normal books and records, and submitted costs.

The Fangda Group argues that the petitioners' assertions are inaccurate and that the Fangda Group reconciled its reported costs to its accounting records and provided the Department substantial supporting details. The Fangda Group asserts that Fangda Carbon reconciled the POR costs of subject products to its accounting records to within less than 0.25 percent and submitted all relevant cost accounting records that formed the basis of Fangda Carbon's cost reconciliation. The Fangda Group asserts that it provided detailed explanations for any apparent differences between the accounting costs and the submitted costs.

First, the Fangda Group reiterates that the cost values under the process costing method (requiring a series of weighted-average calculations in considering the movement of materials and semi-finished goods in all production stages and finished goods in the final production stage) will have a predictable difference from those calculated under a method that sums the multiplication of the POR average price of inputs by respective consumption quantities of inputs.

Second, the Fangda Group stresses that the mix of SDGEs and pins per accounting records versus the submitted FOPs will give rise to further differences in the total respective per-unit costs of subject merchandise versus the merchandise under consideration for which FOPs were submitted. This is so, the Fangda Group argues, because the proportion of production quantity of pins in relation to the production quantity of SDGEs is greater in the submitted FOPs versus that in the accounting records concerning subject merchandise.[40]

[40] The Fangda Group reiterates the explanation it provided in its responses that it reported the FOPs for all sizes of high power and ultra-high power pins and that the consumption of inputs in the production of SDGE pins is far greater than the consumption of inputs in the production of SDGEs.

Third, the Fangda Group states that it had already explained on the record the reason for the differences in total materials, labor, and energy cost, identified by the petitioners, between accounting records and submitted FOPs. Specifically, the Fangda Group argues, the "accounting cost" for direct materials in Fangda Carbon's reconciliation reflects the last stage's (*i.e.*, the machining stage's) aggregate cost of materials, labor, energy, and overhead of all stages and the materials cost of the machining stage, while the "accounting cost" for labor and energy in the reconciliation only reflects the machining stage's labor and energy costs. On the other hand, the total cost of materials, labor, and energy for the submitted FOPs reflects separate costs for materials, labor, and energy, simply aggregated for all production stages.

Concerning the petitioners' argument that the Fangda Group excluded in the reconciliation the profit mark-up on purchased pins from Fangda Carbon's production costs, the Fangda Group argues that the adjustment is justified because the entire value of purchased pins was booked into the company's semi-finished goods account first, and then carried over to the finished goods sub-ledger. As such, the Fangda Group asserts, because the profit mark-up on purchased pins was reflected in Fangda Carbon's cost, the adjustment for this item in the reconciliation was necessary.

Department's Position: We find that the Fangda Group provided a satisfactory reconciliation of its submitted FOP data and supported the reconciliation with source data. In this review, the Fangda Group provided FOP data separately for each producing entity within the Fangda Group, *i.e.*, Chengdu Rongguang Carbon Co., Ltd. (Chengdu Rongguang), Fangda Carbon, Fushun Carbon Co., Ltd. (Fushun Carbon), and Hefei Carbon Co., Ltd. (Heifei Carbon). In its initial questionnaire response, for each producing entity, the Fangda Group provided a reconciliation of the cost-of-sales value in the respective company's financial statements to the financial accounting system, and then to the monthly finished goods inventory, the monthly cost-calculation sheet, and the department subsidiary ledger for the last production stage.[41] For each producing entity, the Fangda Group then demonstrated how the production costs and production quantities get transferred from the first production stage into subsequent production stages by providing monthly cost-calculation sheets and department subsidiary ledgers for each stage of production and monthly statements of semi-finished goods inventory.[42]

Having determined that the reconciliation packages for all four companies remained incomplete at that time, we provided the Fangda Group with instructions for reconciling the submitted costs. Specifically, for all four companies, we requested a reconciliation of fiscal year 2011 total cost of goods sold per each company's financial statements to the POR cost of manufacturing for the merchandise under consideration, with further segregation into the separate values for total materials, total labor, and total energy expenses.[43] In addition, for two companies, Fangda Carbon and Fushun Carbon, the largest producers of SDGEs within the group, we requested a further reconciliation of the above to the total value of the extended per-unit FOPs, valued using

[41] *See* the Fangda Group's July 23, 2012, response at Appendix V-2-1, V-2-2, V-2-3, and V-2-4.
[42] *Id*.
[43] *See* the Department's requests for information, dated November 30, 2012, January 11, 2013, and January 24, 2013.

each company's books and records in the normal course of business.[44] The Fangda Group provided the requested information in full along with the supporting documents.[45] We observed that the sum of per-unit materials, labor, and energy costs for the submitted extended FOPs reported by both Fangda Carbon and Fushun Carbon closely mirrored the per-unit cost of materials, labor, and energy per the companies' respective reconciliations.[46] As an additional test, with respect to both Fushun Carbon and Fangda Carbon, we requested that the Fangda Group demonstrate how the monthly cost accounting records were used to compile the reported FOPs for calcined petroleum coke, imported needle coke, and coal tar pitch, inputs in the forming workshop, and baked semi-finished products and metallurgical coke powder, inputs in the graphitization workshop.[47] We also requested similar information with respect to silicon carbide, a by-product in the graphitization workshop, and graphite scrap, a recycled by-product/input in the forming workshop.[48] Again, the Fangda Group provided the requested information in full along with the supporting documents.[49]

The petitioners challenge the validity of the reconciliations by arguing that the per-unit values of each cost component (*i.e.*, total materials cost (M), total labor cost (L), and total energy cost (E)), from the companies' respective cost accounting records, when considered individually (instead of the total per-unit MLE cost), must necessarily approximate those derived using the company's reported FOPs.[50] The petitioners ignore, however, that the Fangda Group provided a thorough explanation of factors that account for the differences. Specifically, the Fangda Group explained that by using the process method of costing, the overall cost for semi-finished products from a previous stage of production gets transferred as the starting raw material value into the next stage of production, such that, after a chain of such "roll-ins" for all processes, the raw materials of machining stage (the last stage of production) reflect all the costs that were rolled in step-by-step from all the previous stages of production.[51] The Fangda Group explained that because of this practice, the cost of materials value in the companies' respective reconciliations, per companies' cost accounting records (*i.e.*, monthly cost calculation worksheets for machining) already included materials, labor, energy, and manufacturing overhead from all previous stages, while the values for labor cost and energy cost in the reconciliations are only labor and energy for the machining stage.[52] On the other hand, the Fangda Group explained, the cost of materials value

[44] *Id*.
[45] *See* the Fangda Group's January 7, 2013, response at 4-9 and Appendix S3-4.1.1, S3-4.1.2, S3-4.2.1, S3-4.2.2, S3-4.3.1, S3-4.3.2, S3-4.4.1, S3-4.4.2, S3-5.1.1, S3-5.1.2, S3-5.1.3, S3-5.2.1, S3-5.2.2, and S3-5.2.3; January 25, 2013 response at 1-5; February 25, 2013 response of Fangda Carbon at 1-9 and Appendix FC-5-1, FC-5-2, FC-5-3, FC-5-4, FC-5-5, FC-5-6, FC-5-7, FC-5-8, FC-5-9, and FC-5-10; February 25, 2013 response of Fushun Caron at 1-9 and Appendix FS5-1, FS5-2.1, FS5-3.1, FS5-3.2, FS5-4.1, FS5-4.2, FS5-2.2, FS5-5, and FS5-6; and the Fangda Group's March 11, 2013 response.
[46] *See* the Fangda Group's February 25, 2013, response at 9 and Fushun Carbon's February 25, 2013 response at 9.
[47] *See* the Department's request for information, dated November 30, 2012, at 3.
[48] *See id.*, at 4.
[49] *See* the Fangda Group's January 7, 2013, response at 9-12 and Appendix S3-6.1.1, S3-6.1.2, S3-6.2.1, S3-6.2.2, S3-7.1.1, S3-7.1.2, S3-7.2.1, S3-7.2.2, S3-8.1, and S3-8.2.
[50] Although the petitioners' comments focus solely on the reconciliation provided by Fangda Carbon, this particular issue can also be extended to the reconciliation provided by Fushun Carbon because both companies maintain books and records in a similar fashion and undertook a similar methodology for reconciling their respective costs.
[51] *See* Fangda Carbon's February 25, 2013 response at 7-8 and Fushun Carbon's February 25, 2013 response at 7-8.
[52] *Id*.

derived using the company's reported FOPs reflects the true net quantity of material; material consumed without rolled-in labor, energy, and overhead of previous stages.[53] We find the explanation offered by the Fangda Group to be valid and supported by record evidence and the petitioners' argument on this point to be without merit.

The petitioners' other concerns are with respect to the way Fangda Carbon isolated MLE costs for the subject merchandise under consideration. The petitioners contend that the costs of merchandise that Fangda Carbon identified as subject merchandise not under consideration were not linked to any accounting ledger or journal. We disagree. Fangda Carbon explained that the source of the total company production records are monthly manufacturing cost calculation worksheets for the machining stage because machining is the final stage of production and the output from this stage represents the finished product.[54] Fangda Carbon explained that these reports form the basis of its reconciliation because they include production quantities and all production costs, and provide the product detail required to segregate costs for the subject merchandise under consideration.[55] Fangda Carbon submitted copies of the original manufacturing cost calculation worksheets for machining as maintained by its accounting department for two months of the POR and offered to submit to the Department, upon request, the remaining ten.[56] Fangda Carbon also provided a data file electronically containing the fully translated manufacturing cost calculation worksheets for machining for each of the 12 months of the POR with summary links that were used in the cost reconciliation.[57] Further, we observed that the production quantities and production costs for August 2011, as reflected in the inventory statements and inventory sub-ledger of finished products[58] closely approximate those in the August 2011 manufacturing cost calculation worksheets for machining.

The petitioners take issue with the reconciling item concerning the profit mark-up for SDGE pins that were sold to Fangda Carbon by the affiliated company. While the record does not contain Fangda Carbon's explicit explanation as to why it makes a reduction to its cost of production for purchases of SDGE pins, the documentation Fangda Carbon provided in support of this adjustment makes it clear that the purchased pin products were in billet or semi-finished form.[59] Therefore, record evidence demonstrates that purchased pins would more properly first enter semi-finished goods inventory (and not finished goods inventory as speculated by the petitioners) and, thus, it is reasonable that the cost of SDGE pins was recorded into production because the subsequent processing to pins will have to be performed.

The petitioners next question the adjustment to the cost of manufacturing value for overhead expenses pertaining to subject merchandise under consideration. The petitioners allege that this adjustment is redundant because Fangda Carbon already reduced the cost of manufacturing value for overhead expenses in the prior reconciliation steps. We disagree. Fangda Carbon's

[53] *Id*.
[54] *See id.*, at 1.
[55] *Id*.
[56] *See* id., at 1 and Appendix FC-5-1.
[57] *See* Excel file "Fangda Carbon Manufacturing Cost Calculation Database," filed on the record with Fangda Carbon's February 25, 2013, response.
[58] *See* the Fangda Group's July 23, 2012, response at Appendix V-2-3.
[59] *See id.*, at Appendix FC-5-3.

reconciliation first makes an adjustment for overhead expenses incurred at the machining stage of production with respect to all merchandise subject to the order.[60] Fangda Carbon's reconciliation then makes a second adjustment for overhead expenses incurred in all production stages prior to the machining stage for subject merchandise under consideration.[61] We find that both adjustments are warranted and were explained in sufficient detail. Specifically, because the purpose of the reconciliation was to arrive at the value of total MLE cost for subject merchandise under consideration, the overhead costs of all manufacturing stages in the production of merchandise under consideration needed to be removed from the respective cost of manufacturing value.[62]

Lastly, the petitioners question why the per-unit cost for subject merchandise not under consideration differs from the per-unit cost of subject merchandise under consideration, even though, the petitioners allege, the products in both categories share the same power levels and diameters and only vary in lengths. The petitioners' interpretation of record evidence is inaccurate. First, the record is clear that the products in the group of merchandise not under consideration varied not only in lengths but also in power levels.[63] Specifically, record evidence is clear that the subject merchandise under consideration contains only high power, super high power, and ultra-high power electrodes, and high power and ultra-high power electrode pins, whereas the subject merchandise not under consideration also contains regular power and high density electrodes and regular power electrodes pins.[64] Second, Fangda Carbon explained and the record evidence demonstrates that, because the manufacturing costs reflected in the manufacturing cost calculation worksheets for the machining stage do not segregate cost by product length, Fangda Carbon used production records to allocate materials, labor, and energy costs applicable to each unique power level and diameter of electrodes and each unique power level of electrode pins between merchandise under consideration and merchandise not under consideration.[65] Accordingly, the per-unit cost of subject merchandise under consideration for products that have the same power level and diameter as subject merchandise not under consideration is the same. The overall per-unit cost of the subject merchandise not under consideration is different from the per-unit cost of subject merchandise under consideration is, thus, because the former group contains two unique power levels of electrodes and one unique power level of electrode pins.

Based on our analysis, the record evidence clearly shows that the Fangda Group satisfactorily reconciled the submitted FOP data to its books and records. Accordingly, the record does not support finding that the Fangda Group's information can't be used or should be adjusted upward

[60] *See* Fangda Carbon's February 25, 2013, response at Appendix FC-5-2.
[61] *See id.*, at Appendix FC-5-2 and FC-5-4.
[62] We observe that the overhead costs of all production stages (excluding machining) for subject merchandise products that do not share the same specifications with the products sold to the United States were included as "materials cost" of semi-finished inputs in the machining stage, and adjusted as such as shown in Fangda Carbon's reconciliation. *Id*.
[63] *See id.*, at Appendix FC-5-6, FC-5-7 and Excel file "Fangda Carbon Manufacturing Cost Calculation Database."
[64] *Id*.
[65] *See id.*, at 5-6, and Appendix FC-5-6, FC-5-7 and Excel file "Fangda Carbon Manufacturing Cost Calculation Database."

or that the Fangda Group failed to cooperate with the Department and we find no basis to resort to AFA in establishing normal value in this review.

Comment 4: Differential Pricing and Targeted Dumping Analyses

The petitioners request that the Department apply a differential pricing analysis in the final results with respect to Fushun Jinly and the Fangda Group. Citing *Polyester Staple Fiber From Taiwan: Preliminary Results of Antidumping Duty Administrative Review, 2011-2012*, 78 FR 17637 (March 22, 2013), the petitioners assert that in recent administrative reviews the Department has articulated that it will apply this new analysis in calculating the dumping margins.

In the absence of a differential pricing analysis, the petitioners argue that the Department must conduct a targeted dumping analysis. The petitioners argue that, in finding no targeted dumping in the *Preliminary Results* for both companies, the Department adhered to the strict confines of its *Nails*[66] test which, the petitioners assert, is not appropriate given the facts of this case and is prejudicial to the petitioners' interests. The petitioners contend that they explained in their targeted dumping allegations that, because the Department's standard methodology relies on a control number for price comparisons, in order for the *Nails* test to produce meaningful results, there needs to be a minimum number of sales in a control number for the analysis. The petitioners argue that it was precisely because there are a limited number of sales for control numbers reported by the respondents, redefining what constitutes a unique product, using limited product characteristics, is necessary to obtain a sufficient number of sales to test for a pattern of price differences. The petitioners argue that the limitation of the *Nails* methodology, as exposed by the circumstances in this case, should not prevent the Department from examining or the petitioners from alleging targeted dumping. The petitioners argue that the Department did not address in the *Preliminary Results* the fact that the standard *Nails* methodology cannot be applied to all antidumping cases, regardless of the number of U.S. sales comprising a control number. For the final results of this review, the petitioners urge the Department to conduct targeted dumping analysis by defining an identical product on the basis of a single product characteristic, power level.

The respondents argue that the Department was correct in rejecting the petitioners' targeted dumping allegations because they were not based on price comparisons of products having identical physical characteristics based on the control number. The respondents argue that the petitioners' insistence on identifying a unique product on the basis of a single product characteristic signals their view that the power level of electrode is the only relevant product characteristic. The respondents argue that this contradicts the petitioners' stance in prior reviews where, the respondents observe, the petitioners have argued successfully to require respondents to distinguish FOPs on a control number-specific basis. The respondents argue that if the Department follows the petitioners' suggestion to apply the differential pricing analysis in the final results, such analysis must take into account all product characteristics that affect price comparability and parties must be allowed to comment prior to the issuance of final results.

[66] *See Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Less Than Fair Value*, 73 FR 33985 (June 16, 2008) (*Nails*).

Department's Position: The Department has recently implemented its differential pricing analysis and has applied this analysis in preliminary determinations in investigations and preliminary results in administrative reviews signed and issued after March 4, 2013. In implementing the differential pricing analysis for the first time in the post-preliminary determination in *Xanthan Gum from the PRC*,[67] the Department chose to apply this new analysis in the context of an investigation first, before expanding its application to cover reviews. This approach is consistent with other situations where we have adopted a new or revised price methodology/analysis (*i.e.*, we ceased zeroing in investigations before we ceased zeroing in reviews, the *Nails* test originated in an investigation before being expanded to reviews). In *Xanthan Gum from the PRC*, we emphasized the importance of proceeding in a deliberate fashion with a new analysis, gaining experience applying the analysis incrementally in different factual circumstances and reflecting on parties' comments in response to the analysis.

After gaining experience in the *Xanthan Gum from the PRC* investigation, we have applied a differential pricing analysis for administrative reviews with preliminary results following the *Xanthan Gum from the PRC* post-preliminary determination. The *Nails* test, however, is still a statutorily-consistent and valid method for determining whether to apply an average-to-transaction comparison method as an alternative to an average-to-average comparison method.[68]

In response to the petitioners' request that we now apply differential pricing, we do not find that departing from the analysis that was used in the *Preliminary Results* is appropriate in this case. This would require the Department to perform a new analysis, issue post-preliminary results after briefing has been completed, and solicit and analyze comments pertaining thereto, all within the statutory deadline for completion of this review. Upon examination of the results of the *Nails* test in this case, we find that the issue of whether to apply an alternative comparison method is fully and properly addressed using the *Nails* test. In addition, as we noted above, the Department decided to implement differential pricing first in one proceeding, first to gain experience with the test. The Department selected the *Xanthan Gum from the PRC* investigation as the first test case. In a case such as this where neither the law nor the Department's regulations require a particular analysis, it is permissible for the Department to proceed first in one case pursuant to an Agency's ability to make changes to its practice or policy on a case-by-case basis, rather than broadly across all proceedings.[69] This permits the Department to gain experience with a new methodology before applying it more broadly.

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[67] *See Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) (citing "Less Than Fair Value Investigation of Xanthan Gum from the People's Republic of China: Post-Preliminary Analysis and Calculation Memorandum for Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.) and Shandong Fufeng Fermentation Co., Ltd.," dated March 4,2013; and "Less Than Fair Value Investigation of Xanthan Gum from the People's Republic of China: Post-Preliminary Analysis and Calculation Memorandum for Deosen Biochemical Ltd.," dated March 4, 2013) (*Xanthan Gum from the PRC*). The aforementioned documents were placed on the record of this review; *see* memorandum to file entitled "Placement of Certain Factual Information on the Record – Xanthan Gum," dated August 12, 2013, at Attachments 1 and 2.

[68] *See Mid Continent Nail Corp. v. United States*, 712 F. Supp. 2d 1370 (CIT 2010) (upholding various aspects of the *Nails* test as consistent with the statute).

[69] *See, e.g.*, Nakornthai Strip Mill Pub. Co. v. United States, 587 F. Supp. 2d 1303, 1307-08 (Ct. Int'l Trade 2008) ("Commerce has 'discretion to change its policies and practices as long as they are reasonable and consistent with their statutory mandate [and] may adapt its views and practices to the particular circumstances of the case at hand,

With respect to the petitioners' targeted dumping allegations, we specifically addressed this issue in the *Preliminary Results*.[70] The petitioners do not present any new argument that would cause us to revisit the conclusions we reached there.

In the Prelim IDM, we stated that the petitioners' targeted dumping allegations are based on criteria that are contrary to the methodology developed by the Department in *Nails*.[71] We explained that, in defining a unique product on a basis of a single product characteristic, a finding of difference in U.S. prices may be explained by differences in physical characteristics that affect price, and not necessarily because certain U.S. sales were targeted.[72] We further explained that, because our margin calculations are performed by taking into account all relevant physical characteristics (*i.e.*, control number), any dumping margin calculations based on the alternative methodology under section 777A(d)(1)(B) of the Act would be inconsistent with how targeted sales are identified, were we to use the methodology that underlies the petitioners' allegations.[73]

We disagree with the petitioners' assertion that we did not address in the *Preliminary Results* the limitations of the *Nails* test. In the Prelim IDM, we stated that we have an established practice of using the *Nails* test to identify a pattern of export prices that differ significantly among purchasers, regions, or periods of time, pursuant to section 777A(d)(1)(B)(1) of the Act.[74] While we recognize that certain factual scenarios may impose limits on the effectiveness of the *Nails* test, the petitioners' proposed methodology is unacceptable because it contemplates comparing physically dissimilar products and a pattern of export prices may be identified because of physical differences that the Department has found affect price comparability.[75] In the *Preliminary Results*, we determined that there is no assurance that the price differences found under the petitioners' proposed methodology would be the price differences among purchasers, regions and periods of time of comparable merchandise, as contemplated by the statute.[76] Lastly, in the *Preliminary Results*, we stated that the petitioners did not cite, nor are we aware of, any precedent where the Department altered the standard *Nails* test criteria to accommodate a limited number of sales in a control number.[77]

For the final results of this review, we continue to find that it is not appropriate to modify our established *Nails* test, as suggested by the petitioners in their targeted dumping allegations for Fushun Jinly and the Fangda Group. As we stated in the *Preliminary Results*, because the

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so long as the agency's decisions are explained and supported by substantial evidence on the record.'") (quoting Trs. in Bankruptcy of N. Am. Rubber Thread Co. v. United States, 533 F. Supp. 2d 1290, 1297 (2007)); *United States Magnesium LLC v. United States*, 31 C.I.T. 988, 990-992 (2007) (upholding Commerce's discretion, to apply combination rates automatically in nonmarket economy antidumping investigations, but to proceed on a case-by-case basis in deciding whether to implement the policy in administrative reviews, where neither the statute nor the regulations required a particular practice).

[70] *See Preliminary Results*, and accompanying Prelim IDM at 15-16.

[71] *Id*.

[72] *Id*.

[73] *Id*.

[74] *Id*.

[75] *Id*.

[76] *Id*.

[77] *Id*.

petitioners' allegations using the appropriate *Nails* test show no targeted dumping with respect to either company, we have not conducted our own targeted dumping analysis. Therefore, we continued to rely on the standard comparison methodology for these final results.

Comment 5: Rate for Non-Selected Companies

The petitioners argue that, guided by section 735(c)(5)(A) of the Act in calculating the rate for companies that were not individually examined, the Department uses a rate from a prior segment of the proceeding if the mandatory respondents have *de minimis* margins. The petitioners cite, among other cases, *Fresh Garlic From the People's Republic of China: Final Results and Partial Rescission of the 14th Antidumping Duty Administrative Review*, 75 FR 34976 (June 21, 2010). Accordingly, the petitioners argue, in the final results of this review the Department should apply a rate for Xinghe County Muzi Carbon Co., Ltd. (Muzi Carbon), the sole separate rate company in this review, by using the rate calculated for non-reviewed companies in the last review.

Citing *Yangzhou Bestpak Gifts and Crafts Co. v. United States*, 783 F. Supp. 2d 1343, 1351 (CIT 2011), the petitioners argue that the Department must support with substantial evidence that the rate selected for a company not examined individually in the review reasonably reflects the company's potential dumping margin. Pointing to certain record evidence (*i.e.*, comparing the export average unit value, which can be calculated from CBP data, for Muzi Carbon's exports with those reported by the mandatory respondents), the petitioners argue that a rate of zero is not appropriate for Muzi Carbon because the company likely engaged in dumping during the POR. Further, the petitioners argue that Muzi Carbon did not provide any information supporting its entitlement to the rate of zero.

The petitioners argue that the Department's change in methodology for calculating margins (*i.e.*, allowing offsets for negative margins) in this review does not invalidate margins calculated in prior segments of this proceeding. The petitioners argue that the Department's use of a new calculation method is tantamount to a prospective change in procedure and should not affect the Department's use of prior segments' margins if they remain the best information available to the Department. The petitioners assert that no evidence on the record suggests that the margins calculated in prior segments would have been different under the new methodology of calculating dumping margins.

Muzi Carbon argues that, in cases such as here, where the margins for all mandatory respondents are *de minimis* or based entirely on AFA, section 735(c)(5)(B) of the Act directs the Department to use any reasonable method to calculate the all others rate, including averaging the estimated weighted-average dumping margins determined for individually examined exporters. Muzi Carbon argues that the Department no longer follows the administrative practice that the petitioners cite in cases where the calculated margins in previous segments incorporated the now abandoned zeroing methodology. Citing *Amanda Foods I and Amanda Foods II*,[78] Muzi Carbon

[78] *See Amanda Foods (Vietnam) Ltd. v. United States*, 647 F. Supp. 2d 1368, 1380 (CIT 2009) (*Amanda Foods I*) and *Amanda Foods (Vietnam) Ltd. v. United States*, 837 F. Supp. 2d 1338, 1345-46 (CIT 2012) (*Amanda Foods II*) (affirming the remand under decision in *Amanda Foods I*).

argues that the Department's approach with respect to selecting a rate for Muzi Carbon in this review is fully consistent with legal precedent.

Department's Position: In calculating the rate for companies that we did not examine individually, our practice has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any zero or *de minimis* margins or any margins based entirely on facts available. Accordingly, our usual practice has been to average the rates for the selected companies excluding zero, *de minimis*, and rates based entirely on facts available.

In this review, we have calculated zero weighted-average dumping margins for both companies selected as mandatory respondents. Section 735(c)(5)(B) of the Act states:

> If the estimated weighted average dumping margins established for all exporters and producers individually investigated are zero or de minimis margins, or are determined entirely under section 776, the administrative authority may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, ***including*** *averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated* (emphasis added).

Normally, in determining what constitutes a "reasonable method" under section 735(c)(5)(B) of the Act, the Department's practice has been to use the average of the most recently determined rates that are not zero, *de minimis*, or based entirely on facts available or, if more contemporaneous, the company's own calculated rate, even when the rate is zero or *de minimis.*[79] However, we could not follow this method in this review. As explained in the *Preliminary Results*, all prior rates for this proceeding were calculated using the methodology that the Department had abandoned, as announced in *Final Modification for Reviews*,[80] pursuant to section 123 of the Uruguay Round Agreements Act.[81] In reaching this conclusion for the *Preliminary Results*, we examined whether we denied offsets for negative margins in the calculation of the weighted-average dumping margins with respect to companies that were examined individually in previous segments of this proceeding. We found this to be the case which formed the basis for determining that our traditional approach does not constitute a "reasonable method" under the statute for purposes of this review. We disagree with petitioners' argument that no evidence on the record suggests that the margins calculated in prior segments would have been different under the new methodology of calculating dumping margins. In the previous administrative review, the margin calculations for Fushun Jinly (the only company examined in that review) reflected only positive transaction-specific margins (*i.e.*, those that were greater than zero) and did not consider (or allowed offsets for) negative transaction-specific

[79] *See Preliminary Results*, and accompanying Prelim IDM at 7.
[80] *See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*) (where we stated that we will not use the "zeroing" methodology found to be WTO-inconsistent in administrative reviews with preliminary determinations issued after April 16, 2012).
[81] *See Preliminary Results*, and accompanying Prelim IDM at 7.

margins (*i.e.*, those that were less than zero); record evidence demonstrates that not all transaction-specific margins were positive.[82]

It is for these reasons that, contrary to the petitioners' assertion, prior segments' margins do not constitute the best available information for use in this review. We agree that the margins from the prior segments are not invalidated as a result of our decision to discontinue the use of the methodology under which those margins were calculated. We find, however, that it is not appropriate to rely on such margins to establish a rate for Muzi Carbon in this review because they were calculated using a methodology that conflicts with the methodology we use in this review to calculate the weighted- average margins for the mandatory respondents.

Consistent with the statute and legislative history, given the circumstances in this review, we determined that a "reasonable method" for establishing a rate for Muzi Carbon in this review is to average the weighted-average dumping margins we calculated for mandatory respondents in this review, notwithstanding that they are zero.[83] We continue to find this method appropriate, and that this determination is supported by substantial evidence.

The record evidence does not refute Muzi Carbon's entitlement to a rate of zero. The petitioners allege that Muzi Carbon likely engaged in dumping, but the evidence that the petitioners use to bolster their claim (a comparison of Muzi Carbon's POR average export unit value to those of mandatory respondents), alone, is insufficient when, for example, nothing is known of what specific products comprised Muzi Carbon's exports. For these reasons, we continue to find that a rate of zero is appropriate for Muzi Carbon in the final results.

Comment 6: Surrogate Financial Ratios

The respondents argue that the Department made certain errors in calculating financial ratios using the 2011 fiscal year financial statements of a Ukrainian producer of SDGEs. Respondents argue that as a result of these errors, the calculated financial ratios are overstated. First, the respondents argue, the Department incorrectly calculated the overhead ratio by classifying "social charges" as part of overhead expenses rather than labor expenses. The respondents argue that the labor costs in Chapter 6A of International Labor Organization's (ILO's) Yearbook of Labor Statistics account for all direct and indirect labor costs. As such, they argue, when the surrogate financial statements itemize indirect labor costs, in order to avoid double counting, these expenses should be attributed as labor expenses in the ratio calculation, rather than

[82] *See* memorandum to file entitled "Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China: Final Results Analysis Memorandum for Fushun Jinly Petrochemical Carbon Co., Ltd.," dated July 3, 2012. The aforementioned document was placed on the record of this review; *see* memorandum to file entitled "Placement of Certain Factual Information on the Record – Fushun Jinly," dated August 12, 2013, at Attachment 1.

[83] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong. 2d Session, at 873 (1994) ("{S}ection 735(c)(5)(B) {} provides an exception to the general rule if the dumping margins for all of the exporters and producers that are individually investigated are determined entirely on the basis of the facts available or are zero or *de minimis*. In such situations, Commerce may use any reasonable method to calculate the all others rate. The expected method in such cases will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available.").

overhead expenses. In support, the respondents cite *Antidumping Methodologies in Proceedings involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Antidumping Methodologies*).

Second, the respondents argue, the Department incorrectly calculated the selling, general, and administrative (SG&A) expenses ratio and profit ratio by adjusting the respective denominator of each ratio calculation to reflect the change in finished goods inventory (*i.e.*, to arrive at the estimated cost-of-goods-sold value from the starting cost of manufacturing value). The respondents argue that such an adjustment is appropriate in the calculation of financial ratios only when the surrogate financial statements explicitly incorporate such an adjustment, or otherwise provide no information that creates an inherent conflict with the intent of the adjustment. In support, the respondents cite *Lifestyle Enterprises, Inc. v. United States*, 768 F. Supp. 2d 1286, 1312 (CIT 2011). The respondents allege that such is not the case here because the surrogate financial statements make no finished goods inventory adjustment and, that it was not necessary for the Department to unilaterally impute the finished goods inventory adjustment.

The petitioners do not contest the respondents' argument concerning the calculation of the overhead ratio. The petitioners challenge the respondents' claim that the SG&A and profit ratios are incorrect because they were calculated as a percentage of the cost of goods sold (including the change in finished goods inventory). First, the petitioners contend, the surrogate financial statements explicitly incorporate the adjustment in question, because the cost of goods value in the income statement includes the value attributable to the change in finished goods inventory. Second, citing *Wood Flooring from the PRC*,[84] the petitioners argue that the Department has confirmed that the denominator of the SG&A and profit ratio calculations must necessarily reflect the cost of goods sold, which includes the change in finished goods inventory. Third, the petitioners contend, the legal precedent cited by the respondents is misplaced because the issue there was the treatment of changes in the work-in-process inventory, not finished goods inventory.

Department's Position: We agree with the respondents that the calculation of an overhead ratio involved methodological errors. For the purposes of labor cost statistics compiled in ILO's Yearbook Chapter 6A, "the labor cost comprises remuneration for work performed, payments in respect of time paid for but not worked, bonuses and gratuities, the cost of food, drink and other payments in kind, cost of workers' housing borne by employers, employers' social security expenditures, cost to the employer for vocational training, welfare services and miscellaneous items, such as transport of workers, work clothes and recruitment, together with taxes regarded as labor cost."[85] Thus, the ILO's Yearbook Chapter 6A labor cost appears to include the type of expenses classified as social expenses in the surrogate financial statements and, therefore, already included in the labor rate that we used to value direct and indirect labor hours reported by respondents in this review. By including such expenses in the pool of overhead expenses we effectively double counted them. In *Antidumping Methodologies*, we stated that we will adjust

[84] *See Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) (*Wood Flooring from the PRC*), and accompanying IDM at Comment 2.
[85] *See* http://laborsta.ilo.org/applv8/data/c6e.html; *see also* Memorandum to File, dated May 3, 2013.

the surrogate financial ratios when the available record information, in the form of itemized indirect labor costs, demonstrates that labor costs are overstated.[86] Specifically, we stated that "…when the surrogate financial statements include disaggregated overhead and selling, general and administrative expense items that are already included in the ILO's definition of Chapter 6A data, the Department will remove these identifiable costs items."[87] Consistent with our practice, we adjusted the calculation of the financial ratios by classifying a portion of social expenses attributable to manufacturing activity as a labor expense item and the remainder as an item of selling, general, and administrative expenses.[88]

We disagree, in part, with the respondents that the calculation of the SG&A and profit ratios was methodologically wrong. Recognizing an inconsistency in practice between market and non-market economy cases, the Department expressed a preference in non-market economy cases for using the cost of goods sold (COGS) value (instead of the cost of manufacturing (COM) value) as the denominator in the SG&A and profit ratio calculations.[89] Because SG&A expenses for a given period are incurred for all products sold during that period, it is more appropriate to use COGS, which reflects the cost of goods that were sold during a period, as opposed to COM, which reflects the cost of goods that were produced during a period. That same rationale applies to the calculation of the profit ratio, as the profit realized during a certain period also relates to the sales made during that period.[90] Accordingly, we find that our practice supports the inclusion of the value associated with the change in finished goods inventory in the calculation of the SG&A and profit ratios.

Our calculation of the financial ratios in the *Preliminary Results* did, nevertheless, rely on the finished goods inventory adjustment that was imputed in the calculations. The record evidence indicates that the actual value for the change in finished goods inventory can be derived from the same surrogate financial statements that we use to derive financial ratios in this review. Accordingly, we recalculated the financial ratios to reflect the actual change in finished goods inventory.[91]

[86] *See Antidumping Methodologies*, 76 FR at 36093-36094.
[87] *See id.*, 76 FR at 36094.
[88] *See* Memorandum to File entitled "Small Diameter Graphite Electrodes from the People's Republic of China: Surrogate Factor Valuation for the Final Results" dated July 8, 2013 (Surrogate Values Memo).
[89] *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews* 74 FR 41374 (August 17, 2009), and accompanying IDM at Comment 15.
[90] *Id*.; *see also Wood Flooring*, and accompanying IDM at Comment 2.
[91] *See* Surrogate Values Memo.

RECOMMENDATION

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

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Import Administration

4 SEPTEMBER 2013
Date