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March 5, 2018

**MEMORANDUM TO:** Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

**FROM:** James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Small Diameter Graphite Electrodes from the People's Republic of China; 2016-2017

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SUMMARY

In response to requests from interested parties, the Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on small diameter graphite electrodes (graphite electrodes) from the People's Republic of China (China) for the period of review (POR) February 1, 2016, through January 31, 2017. Commerce preliminarily determines that sales of the subject merchandise in the United States were not at prices below normal value (NV).

If these preliminarily results are adopted in the final results of this administrative review, Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. Commerce intends to issue the final results no later than 120 days from the date of publication of these preliminary results pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), unless this deadline is extended.

BACKGROUND

On April 10, 2017, Commerce published the notice of initiation of the eighth administrative review of graphite electrodes from China for the POR, February 1, 2016, to January 31, 2017.[1] Commerce initiated an administrative review of 194 exporters of subject merchandise.[2]

Section 777A(c)(1) of the Act directs Commerce to calculate an individual weighted-average dumping margin for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives Commerce discretion to limit its examination to a reasonable number of exporters or producers if it is not practicable to make individual weighted-average dumping margin determinations because of the large number of exporters and producers involved in the review.

On April 10, 2017, Commerce placed on the record of the review CBP data for imports made during the POR under the Harmonized Tariff Schedule of the United States (HTSUS) numbers listed in the scope of the order and requested comments on the data for use in respondent selection.[3] On April 20, 2017, the petitioners[4] submitted comments on respondent selection and timely withdrew their request for a review with respect to 191 companies.[5] No other party submitted respondent selection comments and no party submitted rebuttal comments. On May 3, 2017, we selected Fushun Jinly as the mandatory respondent because it was the only company for which a review was requested and not withdrawn that had entries of subject merchandise during the period of review. On June 6, 2017, Commerce rescinded the review for 191 of the 194 companies based on the timely withdrawal of the requests for review of these companies.[6] The remaining companies are Fangda Group,[7] Fushun Jinly Petrochemical Carbon Co., Ltd.[8] (Fushun Jinly), and Xuzhou Jianglong Carbon Products Co., Ltd. (Xuzhou Jianglong).

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[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 17188 (April 10, 2017) (*Initiation Notice*).

[2] *Id.* at 81 FR 36270-72.

[3] *See* Memo to The File, re: "Small Diameter Graphite Electrodes from the People's Republic of China: U.S. Customs and Border Protection Data Release for Respondent Selection," dated April 10, 2017.

[4] The petitioners are Tokai Carbon GE LLC and Superior Graphite Co. On January 2, 2018, we were notified that one of the petitioners changed its name from SGL Carbon to Tokai Carbon GE LLC.

[5] *See* Petitioners' letter re: "Small Diameter Graphite Electrodes from the People's Republic of China – Petitioners' Withdrawal of Certain Requests for Review and Respondent Selection Comments," dated April 20, 2017.

[6] *See Small Diameter Graphite Electrodes from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review; 2016-2017*, 82 FR 26048 (June 6, 2017).

[7] 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. In a prior administrative review Commerce determined, pursuant to sections 771(33)(F) and (G) of the Act, that these companies were affiliated. Additionally, Commerce determined, pursuant to 19 CFR 351.401(f) that it was appropriate to treat these companies as a single entity. *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), 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). Because there is no evidence on the record of this review that would require us to reevaluate this determination, we are continuing to treat these companies as part of the Fangda Group.

[8] In the *Initiation Notice,* the company name for this company was listed as Fushun Jinly Petrochemical Carbon Co., Ltd., a.k.a. Fushun Jinli Petrochemical Carbon Co., Ltd. (emphasis added).

On May 3, 2017, we sent the AD questionnaire to Fushun Jinly. On May 9, 2017, we received no shipment certifications from Fangda Group and Xuzhou Jianglong. Between June 13, 2017, and December 14, 2017, Fushun Jinly responded to Commerce's original and supplemental questionnaires. In response to Commerce's request for comments on surrogate country selection and surrogate country values, the petitioners and Fushun Jinly submitted comments to Commerce in July and August 2017.

On October 13, 2017, we extended the preliminary results deadline until February 28, 2018. On January 23, 2018, Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018.[9] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the preliminary results of this review is now March 5, 2018.

The petitioners submitted pre-preliminary comments on February 22, 2018.

## 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,[10] 3801.10,[11] and

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[9] *See* Memorandum for the Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

[10] The scope described in the order refers to the HTSUS subheading 8545.11.0000. We note that, starting in 2010, imports of small diameter graphite electrodes are classified in the HTSUS under subheading 8545.11.0010 and imports of large diameter graphite electrodes are classified under subheading 8545.11.0020.

[11] HTSUS subheading 3801.10 was added to the scope of the graphite electrodes order based on a determination in *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) (first circumvention determination). The products covered by the first circumvention determination are graphite electrodes (or graphite pin joining system) that 1) were produced by UK Carbon and Graphite Co., Ltd. (UKCG) from China-manufactured artificial/synthetic graphite forms, of a size and shape (*e.g.*, blanks, rods, cylinders, billets, blocks, *etc.*), 2) which required additional machining processes (*i.e.*, tooling and shaping) that UKCG performed in the United Kingdom (UK), and 3) were re-exported to the United States as UK-origin merchandise.

8545.11.0020.[12] Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

DISCUSSION OF THE METHODOLOGY

Preliminary Finding of No Shipments

Fangda Group and Xuzhou Jianglong reported that they made no shipments of subject merchandise to the United States during the POR.[13] To confirm Fangda Group's and Xuzhou Jianglong's no shipment claim, Commerce issued a no-shipment inquiry to CBP requesting that it review each company's no-shipment claim.[14] CBP did not report that it had information to contradict these companies' claims of no shipments during the POR.

Given that Fangda Group and Xuzhou Jianglong certified that they made no shipments of subject merchandise to the United States during the POR and there is no information on the record calling their claims into question, Commerce preliminarily determines that Fangda Group and Xuzhou Jianglong did not have shipments of subject merchandise during the POR. Consistent with Commerce's practice, Commerce will not rescind the review with respect to Fangda Group and Xuzhou Jianglong, but rather complete the review and issue assessment instructions to CBP based on the final results.[15]

Non-Market Economy Country

Commerce considers China to be a non-market-economy (NME) country.[16] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. No party has argued to

[12] HTSUS subheading 8545.11.0020 was added to the scope of the graphite electrodes order based on a determination in *Small Diameter Graphite Electrodes from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order and Rescission of Later-Developed Merchandise Anticircumvention Inquiry*, 78 FR 56864 (September 16, 2013) (second circumvention determination). The products covered by the second circumvention determination are graphite electrodes produced and/or exported by Jilin Carbon Import and Export Company with an actual or nominal diameter of 17 inches.

[13] *See* Fangda Group's May 9, 2017, submission regarding "Small Diameter Graphite Electrodes from China, 8th Administrative Review; Submission of Statement of No Shipments"; *see also* Xuzhou Jianglong's May 9, 2017, submission regarding "Small Diameter Graphite Electrodes from China, 8th Administrative Review; Submission of Statement of No Shipments" "Small Diameter Graphite Electrodes from China, 8th Administrative Review; Submission of Statement of No Shipments."

[14] No shipments inquiry for small diameter graphite electrodes from the People's Republic of China exported by Fangda Group and Xuzhou Jianglong (A-570-929), message number 7131303.

[15] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012-2013*, 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012-2013*, 79 FR at 51306 (August 28, 2014).

[16] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination,* 82 FR 50858, 50861 (November 2, 2017), and accompanying memorandum, *China's Status as a Non-Market Economy*; unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018).

change, or submitted evidence on the record calling into question, this determination. Therefore, Commerce continues to treat China as an NME country for purposes of these preliminary results.

Separate Rates

Commerce has the rebuttable presumption that all companies within an NME are subject to government control and, thus, should be assessed a single antidumping duty rate.[17] In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may obtain separate-rate status in NME proceedings.[18] It is Commerce's policy to assign all exporters of the merchandise subject to review in an NME proceeding a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, Commerce analyzes each exporting entity in an NME proceeding under the test established in *Sparklers*,[19] as amplified by *Silicon Carbide*[20] and further refined by *Diamond Sawblades*.[21] However, if Commerce determines that a company is wholly foreign-owned, then an analysis of the *de jure* and *de facto* criteria is not necessary to determine whether it is independent from government control.[22]

Commerce continues to evaluate its practice with regard to the separate-rates analysis in light of the *Diamond Sawblades* antidumping duty proceeding, and Commerce's determinations therein. In particular, in litigation involving the *Diamond Sawblades* proceeding, the U.S. Court of International Trade (CIT) found Commerce's existing separate-rates analysis deficient in the circumstances of that case, in which a government-owned and controlled entity had significant

[17] *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006).
[18] *See Initiation Notice*, 81 FR at 36268-69.
[19] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*).
[20] *See 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*).
[21] *See* Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People's Republic of China (May 6, 2013) in *Advanced Technology & Materials Co., Ltd. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), sustained, *Advanced Technology & Materials Co. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), aff'd, Case No. 2014-1154 (Fed. Cir. 2014) (*Advanced Technology II*). This remand redetermination is on the Enforcement and Compliance website at http://enforcement.trade.gov/remands/12-147.pdf; *see also Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013), and accompanying Preliminary Decision Memorandum (PDM) at 7; unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014) (*Diamond Sawblades*), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.
[22] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2011-2012 Antidumping Duty Administrative Review and New Shipper Reviews*, 79 FR 4327 (January 27, 2014), and *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

ownership in the exporter under examination.[23] Following the Court's reasoning, in recent proceedings, Commerce has concluded that where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over the company's operations generally.[24] This may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, Commerce would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profit distribution of the company.

In this administrative review, Commerce received a complete response to the section A portion of the NME questionnaire from the mandatory respondent, Fushun Jinly,[25] which contained information pertaining to the company's eligibility for a separate rate.

a. Absence of *De Jure* Control

Commerce 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) any other formal measures by the government decentralizing control of companies.[26] The evidence provided by mandatory respondent Fushun Jinly supports a preliminary finding of the absence of *de jure* government control of export activities based on the following: (1) there is an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of the companies.[27]

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[23] *See, e.g., Advanced Technology I*, 885 F. Supp. 2d at 1349 ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); *id.*, at 1351 ("Further substantial evidence of record does not support the inference that SASAC's {state-owned assets supervision and administration commission} 'management' of its 'state-owned assets' is restricted to the kind of passive-investor *de jure* 'separation' that Commerce concludes.") (footnotes omitted); *id.*, at 1355 ("The point here is that 'governmental control' in the context of the separate-rate test appears to be a fuzzy concept, at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations,' including terms, financing, and inputs into finished product for export."); *id.*, at 1357 ("AT&M itself identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination.") (Footnotes omitted).
[24] *See Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying PDM at 5-9, unchanged in *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 79 FR 68860 (November 19, 2014).
[25] *See* Fushun Jinly's Section A questionnaire response, dated June 13, 201,7 at 2-11.
[26] *See Sparklers*, 56 FR at 20589.
[27] *See* Fushun Jinly's Section A questionnaire response, dated June 13, 2017, at 4-10.

b. Absence of *De Facto* Control

Commerce typically considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices (EPs) are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[28] Commerce has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude Commerce from assigning separate rates.[29]

The evidence provided by Fushun Jinly supports a preliminary finding of the absence of *de facto* government control based on the following: (1) the company sets its own export prices independent of the government and without the approval of a government authority; (2) the company has authority to negotiate and sign contracts and other agreements; (3) the company has autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on the company's use of export revenue.[30] Therefore, Commerce preliminarily finds that Fushun Jinly qualifies for a separate rate under the criteria established by *Diamond Sawblades*, *Silicon Carbide* and *Sparklers*.

Surrogate Country and Surrogate Value Data

On July 14, 2017, Commerce sent interested parties a letter inviting comments on: (1) the non-exhaustive list of countries that Commerce determined are at the same level of economic development as China based on annual per capita gross national income (GNI), (2) surrogate country selection, and (3) surrogate value (SV) data.[31] On July 28, 2017, the petitioners and Fushun Jinly submitted surrogate country selection comments.[32] On August 18, 2017, the petitioners and Fushun Jinly submitted SV comments.[33] The petitioners and Fushun Jinly

[28] *See Silicon Carbide*, 59 FR at 22586-87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).
[29] *Id.*
[30] *See* Fushun Jinly's Section A questionnaire response, dated June 13, 2017, at 2-11.
[31] *See* Commerce's Letter re: "Administrative Review of Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China: (1) Request for Economic Development, (2) Surrogate Country and (3) Surrogate Value Information," dated July 14, 2017 (SC Memo).
[32] *See* Petitioners' Letter re: "Small Diameter Graphite Electrodes from the People's Republic of China – Petitioners' Comments on Surrogate Country Selection," dated July 28, 2017 (Petitioners' SC Comments); and Fushun Jinly's Letter re: "Small Diameter Graphite Electrodes from China; Surrogate Country Selection Comments," dated July 28, 2017 (Fushun Jinly's SC Comments).
[33] *See* Petitioners' Letter re: "Administrative Reivew of Small Diameter Graphite Electrodes from the People's Republic of China – Petitioners' Submission of Surrogate Values," dated August 18, 2017 (Petitioners' SV Submission); and Fushun Jinly's Letter re "Small Diameter Graphite Electrodes from China: Submission of Surrogate Value Information," dated August 18, 2017 (Fushun Jinly's SV Submission).

submitted rebuttal SV comments, on August 22, 2017, and August 25, 2017, respectively.[34]

*Surrogate Country Selection*

When Commerce investigates imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production (FOPs), valued in a surrogate ME country or countries considered to be appropriate by Commerce. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, Commerce shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.[35] As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME country unless it is determined that none of the countries on the list are viable options because either (a) they are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or (c) are not suitable for use based on other reasons.[36] Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development.[37] To determine which countries are at the same level of economic development, Commerce generally relies on GNI data from the World Bank's World Development Report.[38] Further, Commerce has stated that it prefers to value all FOPs from a single surrogate country.[39]

On July 14, 2017, Commerce identified Brazil, Bulgaria, Mexico, Romania, South Africa, and Thailand as countries that are at the same level of economic development as China based on per capita 2016 GNI data.[40] Both the petitioners and Fushun Jinly requested that Commerce select Romania as the primary surrogate country[41] and submitted data to value FOPs from that country.[42]

*Economic Comparability*

As explained in the SC Memo, consistent with its practice and section 773(c)(4) of the Act, Commerce considers Brazil, Bulgaria, Mexico, Romania, South Africa, and Thailand to be at the

[34] *See* Petitioners' Letter re: "Seventh {sic} Administrative Review of Small Diameter Graphite Electrodes from the People's Republic of China – Petitioners' Rebuttal Comments on Fushun Jinly's Surrogate Value Submission," dated August 22, 2017 (Petitioners' SV Rebuttal); and Fushun Jinly's Letter re: "Small Diameter Graphite Electrodes form China; Rebuttal Surrogate Value Comments of Fushun Jinly Petrochemical Carbon Co. Ltd.," dated August 25, 2017 (Fushun Jinly's SV Rebuttal).
[35] *See* Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1).
[36] *Id*.
[37] *See* SC Memo.
[38] *Id*.
[39] *See* 19 CFR 351.408(c)(2).
[40] *See* SC Memo at Attachment.
[41] *See* Petitioners' SC Selection Comments at 2, and Fushun Jinly's SC Selection Comments at 2.
[42] *See* Petitioners' SV Submission and Fushun Jinly's SV Submission.

same level of economic development as China.[43] Commerce treats each of these countries as equally comparable.[44] Therefore, Commerce considers all six countries identified in the SC Memo as having met this prong of the surrogate country selection criteria. Unless Commerce finds that none of these countries is a significant producer of comparable merchandise, does not provide a reliable source of publicly available surrogate data, or is unsuitable for use for other reasons, or Commerce finds that another equally comparable country is an appropriate surrogate within the GNI range, Commerce will rely on data from one of these countries.[45] Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development. As discussed below, Commerce preliminarily determines that one of these six countries is a significant producer of comparable merchandise and provides all of the required SV information.

*Significant Producers of Comparable Merchandise*

Section 773(c)(4)(B) of the Act requires Commerce, to the extent possible, to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor Commerce's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, Commerce looks to other sources such as Policy Bulletin 04.1 for guidance on defining comparable merchandise. Policy Bulletin 04.1 states "the terms 'comparable level of economic development,' 'comparable merchandise,' and 'significant producer' are not defined in the statute."[46] Policy Bulletin 04.1 further states, "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."[47] Conversely, if the country does not produce identical merchandise, then a country producing comparable merchandise is sufficient in selecting a surrogate country.[48] Further, when selecting a surrogate country, the statute requires Commerce to consider the comparability of the merchandise, not the comparability of the industry.[49] "In

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[43] *See* SC Memo.
[44] *See, e.g., Certain Steel Wheels from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 76 FR 67703, 67708 (November 2, 2011), unchanged in *Certain Steel Wheels from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances*, 77 FR 17021 (March 23, 2012).
[45] *Id.; see also, e.g., Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36168 (June 17, 2013), and accompanying IDM at Comment 5; and *Silica Bricks and Shapes from the People's Republic of China: Preliminary Determination of Antidumping Duty Investigation and Postponement of Final Determination*, 78 FR 37203 (June 20, 2013), unchanged in *Final Determination of Sales at Less Than Fair Value: Silica Bricks and Shapes from the People's Republic of China*, 78 FR 70918 (November 27, 2013).
[46] *See* Policy Bulletin 04.1.
[47] *Id.*
[48] Policy Bulletin 04.1 also states that "{i}f considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise." *Id.* at note 6.
[49] *See Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 65674 (December 15, 1997) ("{T}o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.").

cases where the identical merchandise is not produced, Commerce must determine if other merchandise that is comparable is produced. How Commerce does this depends on the subject merchandise."[50] In this regard, Commerce recognizes that it must do an analysis of comparable merchandise on a case-by-case basis:

> In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized, dedicated, or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, based on a comparison of the major inputs, including energy, where appropriate.[51]

Further, the statute grants Commerce discretion to examine various data sources for determining the best available information.[52] Moreover, while the legislative history provides that the term "significant producer" include any country that is a significant "net exporter,"[53] it does not preclude reliance on additional or alternative metrics.

A comparison of production quantities or export data of the comparable merchandise from each potential surrogate country in relation to world production was not possible here because the record does not contain production quantities or export data of comparable merchandise from each potential surrogate country. However, parties unequivocally state that Romania is a producer of small diameter graphite electrodes.[54] As such, we find that Romania meets the "significant producer" requirement of section 773(c)(4) of the Act. Additionally, from the six countries that we identified to be at the same level of economic development as China, the only data on the record for a significant producer of comparable merchandise is data for Romania.[55]

<u>Date of Sale</u>

Pursuant to 19 CFR 351.401(i), Commerce normally will use the invoice date as the date of sale unless Commerce is satisfied that a different date better reflects the date on which the material terms of the sale are established. Fushun Jinly reported the invoice date as the date of sale because it claimed that for its U.S. sales of subject merchandise made during the POR, the material terms of sale were established based on the invoice date.[56] Therefore, in accordance with 19 CFR 351.401(i), and Commerce's long-standing practice in determining the date of

[50] *See* Policy Bulletin 04.1 at 2.
[51] *Id.* at 3.
[52] *See* section 773(c)(1) of the Act; *see also Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).
[53] *See* Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988) (OTCA 1988).
[54] *See* Petitioners' SC Comments; and Fushun Jinly's SC Comments.
[55] *See* Petitioners' SV Submission at Attachment 2 and Fushun Jinly's SV Submission at Exhibit 5.
[56] *See* Fushun Jinly's Section A Response at 15.

sale,[57] Commerce preliminarily finds that the invoice date is the most appropriate date to use as Fushun Jinly's date of sale.

Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether Fushun Jinly's sales of the subject merchandise to the United States were made at less than NV, Commerce compared the export price (EP) to the NV as described in the "Export Price" and "Normal Value" sections of this memorandum.

A. *Determination of Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (CEPs)) (*i.e.*, the average-to-average (A-A) method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce examines whether to compare weighted-average NVs with the EPs or CEPs of individual sales (*i.e.*, the average-to-transaction (A-T) method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern our examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.[58]

Commerce has applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.[59] Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of

[57] *See, e.g., Certain Polyester Staple Fiber from the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review, and Intent To Revoke Order in Part*, 76 FR 40329 (July 8, 2011), unchanged in *Certain Polyester Staple Fiber from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, and Revocation of an Order in Part*, 76 FR 69702 (November 9, 2011); *see also Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the First Antidumping Duty Administrative Review*, 75 FR 68758 (November 9, 2010), unchanged in *First Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 27994, 27996 (May 13, 2011).
[58] *See Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying IDM at Comment 1; *see also Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).
[59] *See, e.g., Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results was affirmed by the Court of Appeals for the Federal Circuit in *Apex Frozen Foods Private Ltd. v. United States*.[60] This analysis examines whether there exists a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the A-A method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip codes) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the A-T method to all sales as an alternative to the A-A method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration

[60] *See Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1337, 1350-51 (Fed. Cir. 2017).

of the application of an A-T method to those sales identified as passing the Cohen's *d* test as an alternative to the A-A method, and application of the A-A method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the A-A method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the A-A method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

B. *Results of the Differential Pricing Analysis*

For Fushun Jinly, based on the results of the differential pricing analysis, Commerce preliminarily finds that 57.9 percent of the value of U.S. sales pass the Cohen's *d* test,[61] and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Fushun Jinly.

[61] *See* the memorandum entitled "Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China: Preliminary Results Analysis Memorandum for Fushun Jinly Petrochemical Co., Ltd." dated concurrently with this memorandum (Preliminary Results Analysis Memorandum).

*Bona Fides of* U.S. Sales

The petitioners raised concerns regarding whether or not Fushun Jinly's U.S. sales to Customer X and Customer Y were *bona fide*.[62] Consequently, Commerce issued two comprehensive sections A, C, and D supplemental questionnaires which sought more information regarding the nature of Fushun Jinly's U.S. sales.[63] Based on this information, Commerce finds that Fushun Jinly's sales process during this POR is similar to the sales process it reported in the sixth administrative review of small diameter graphite electrodes from China.[64] In the *AR6 Final*, Commerce utilized the "totality of circumstances" test to examine whether the U.S. sales in question were "commercially reasonable" or "atypical" and considered such factors as "(1) the timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arm's-length basis."[65] In the *AR6 Final*, Commerce determined that these sales were *bona fide*. In this segment of the proceeding, record evidence establishes that Fushun Jinly's sales to Customer X were made following the same process as in *AR6 Final*, and neither the price, quantity, timing, resale value, or any other evidence on the record demonstrates that those sales were not *bona fide.* Additionally, record evidence demonstrates that Fushun Jinly's sales to Customer Y followed a process similar to the sales process it utilized in its sales to Customer X. Moreover, Fushun Jinly's sales documentation to Customer Y provides more details with respect to freight costs associated with the resale value, which demonstrate that the U.S. resale of the subject merchandise by the unaffiliated U.S. customer to the final U.S. customer was likely made at a profit.[66] There is no evidence on the record, including with respect to price, quantity, and timing of the sale, which would indicate that Fushun Jinly's sales to Customer Y were either commercially unreasonable or atypical. Therefore, based upon an analysis of the record evidence, Commerce preliminarily finds Fushun Jinly's sales to Customer X and Customer Y were *bona fide* and has used those sales in its calculations of the U.S. price.[67]

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[62] *See* Petitioners' Letter re: "Seventh {sic} Administrative Review of Small Diameter Graphite Electrodes from the People's Republic of China – Petitioners' Comments on Fushun Jinly's Section A Questionnaire Response," dated June 29, 2017; Petitioners' Letter re: "Seventh {sic} Administrative Review of Small Diameter Graphite Electrodes from the People's Republic of China – Petitioners' Comments on Fushun Jinly Sections C and D Questionnaire Response," dated July 17, 2017; Petitioners' Letter re: "Eighth Administrative Review of Small Diameter Graphite Electrodes from the People's republic of China – Petitioners' Comments on Fushun Jinly Supplemental Sections A, C, and D Questionnaire Response," dated October 18, 2017; and Petitioners' Letter re: "Eighth Administrative Review of Small Diameter Graphite Electrodes from the People's republic of China – Petitioners' Comments on Fushun Jinly Second Supplemental Sections A, C, and D Questionnaire Response," dated January 4, 2018.

[63] *See* Commerce Letter re: First Supplemental Questionnaire for Fushun Jinly, dated August 31, 2017; and Commerce Letter re: Second Supplemental Questionnaire for Fushun Jinly, dated November 21, 2017.

[64] *See Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 62474 (September 9, 2016) (*AR6 Final*), and accompanying IDM at Comment 4.

[65] *See AR6 Final*, and accompanying IDM at 49.

[66] *See* Fushun Jinly's October 3, 2017 First Supplemental Questionnaire Response at Exhibit S1-C-8 and Fushun Jinly's December 14, 2017 Second Supplemental Questionnaire Response at Exhibit S2-AC-18.

[67] As much of the information regarding Fushun Jinly's sales process is business proprietary information, see Preliminary Results Analysis Memorandum for additional details.

U.S. Price

*Export Price*

In accordance with section 772(a) of the Act, EP is "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States," as adjusted under section 772(c) of the Act. Commerce calculated EP for the sales to the United States for Fushun Jinly because the first sale to an unaffiliated party was made before the date of importation and the use of CEP was not otherwise warranted.[68]

In accordance with section 772(c)(2)(A) of the Act, where appropriate, Commerce deducted from the starting price (gross unit price) to unaffiliated purchasers foreign inland freight, and foreign brokerage and handling incurred in China. For those expenses that were provided by a market economy (ME) provider and paid for in an ME currency, Commerce used the reported expense. For the expenses that were either provided by an NME vendor or paid for using an NME currency, Commerce used SVs as appropriate.[69] Additionally, in accordance with section 772(c)(2)(B) of the Act, Commerce also deducted any irrecoverable value-added tax (VAT) from the starting price as explained below. Due to the proprietary nature of certain adjustments to U.S. price, a detailed description of all adjustments made to U.S. price for Fushun Jinly is provided in the Preliminary Results Analysis Memorandum.

*Value-Added Tax*

Commerce's practice, in NME cases, is to subtract from EP or CEP the amount of any irrecoverable VAT, in accordance with section 772(c)(2)(B) of the Act. Where the irrecoverable VAT is a fixed percentage of EP, Commerce makes a tax-neutral dumping comparison by reducing the U.S. price by this percentage.[70] Thus, Commerce's methodology essentially amounts to performing two steps: (1) determining the amount (or rate) of the irrecoverable VAT tax included in the FOB price of the subject merchandise, and (2) reducing U.S. price by the amount (or rate) determined in step one.

The Chinese VAT schedule placed on the record of this review demonstrates that the VAT rate for graphite electrodes is 17 percent.[71] Fushun Jinly also reported that the VAT recovery rate applicable to subject merchandise is zero.[72] Thus, for the purposes of these preliminary results of review, for all Fushun Jinly's sales, Commerce reduced the price of each U.S. sale by the irrecoverable VAT rate of 17 percent of FOB value.[73]

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[68] *See* Fushun Jinly's Section A Response, at 1.
[69] *See* the memorandum entitled "Eighth Administrative Review of Small Diameter Graphite Electrodes from the People's Republic of China: Surrogate Values for the Preliminary Results" dated concurrently with this memorandum (Factor Valuation Memorandum).
[70] *See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings,* 77 FR 36481, 36483-84 (June 19, 2012).
[71] *See* Fushun Jinly's Sections C and D Questionnaire Response dated June 30, 2017, at C-32.
[72] *Id.*
[73] *See* Fushun Jinly's Preliminary Results Analysis Memorandum.

Normal Value

Section 773(c)(1) of the Act provides that Commerce shall determine the NV using an FOP methodology if the merchandise is exported from an NME country and the available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Commerce bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under Commerce's normal methodologies.

Under section 773(c)(3) of the Act, FOPs include but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. To calculate NV, we multiplied the per-unit factor-consumption rates reported by Fushun Jinly, respectively, for the POR by publicly available SVs as discussed below.

*Factor Valuation Methodology*

In accordance with section 773(c) of the Act, Commerce calculated NV based on FOPs reported by the respondent for the POR. In accordance with 19 CFR 351.408(c)(1), Commerce will normally use publicly available information to find an appropriate SV to value a particular FOP. To calculate NV, Commerce multiplied the reported per-unit factor-consumption rates by publicly available SVs. Commerce's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.[74]

Commerce used Romanian import statistics from the Global Trade Atlas (GTA) and other publicly available Romanian sources to value Fushun Jinly's reported FOPs for raw materials, by-products, packing materials, and certain energy inputs.[75] The record shows that data from the Romanian import statistics and other Romanian sources are generally contemporaneous with the POR, product-specific, and tax-exclusive.[76]

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[74] *See, e.g., Fuwei Films (Shandong) Co. v. United States*, 837 F. Supp. 2d 1347, 1350-51 (CIT 2012) (citing *Certain Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 40485 (July 15, 2008), and accompanying IDM at Comment 10; *see also Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008), and accompanying IDM at Comment 2.
[75] *See* Factor Valuation Memorandum for a detailed description of all SVs used in this review.
[76] *Id.*

Furthermore, in accordance with section 773(c)(5) of the Act and the legislative history of the OTCA 1988, Commerce continues to apply its long-standing practice of disregarding certain prices as SVs if it has a reason to believe or suspect that these prices may have been dumped or subsidized.[77] In this regard, Commerce previously found that it is appropriate to disregard such prices from India, Indonesia, Republic of Korea (Korea), and Thailand because Commerce determined that these countries maintain broadly available, non-industry-specific export subsidies.[78] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, Commerce finds that it is reasonable to infer that all exporters from India, Indonesia, Korea and Thailand may have benefitted from these subsidies. Therefore, Commerce has not used average unit import values from these countries in calculating the Romanian import-based SVs. Additionally, Commerce disregarded prices from NME countries because those prices are not based on market principles.[79] Finally, imports that were labeled as originating from an "unspecified" country were excluded from the SVs, as Commerce could not be certain that they were not from either an NME country or a country with general export subsidies.[80]

As appropriate, Commerce adjusted input prices by including freight costs to render the prices delivered prices.[81] Specifically, Commerce added to the Romanian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*.[82] Where necessary, Commerce adjusted SVs for exchange rates, and converted all applicable items to a per-metric ton basis. For a detailed description of all SVs used for Fushun Jinly, *see* the Factor Valuation Memorandum.

We valued truck freight expenses using the information in the World Bank Group's publication entitled *Doing Business 2017 – Romania; Trading Across Borders.* This source provides the price list, including the cost of inland transportation and handling, based on a survey case study

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[77] *See* section 773(c) of the Act, as amended in section 505 of the Trade Preferences Extension Act of 2015; *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46795 (August 6, 2015); *see also* OTCA 1988, H.R. Rep. No. 100-576, at 590-91.
[78] *See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying IDM at 4-5; *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692 (August 8, 2005), and accompanying IDM at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying IDM at 17, 19-20; *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 50410 (October 3, 2001), and accompanying IDM at 23; *Certain Hot-Rolled Carbon Steel Flat Products from India, Indonesia, and Thailand*, 78 FR 16525 (March 14, 2013), and accompanying IDM at 5-7.
[79] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039 (September 24, 2008); *see also*, section 773(c) of the Act.
[80] *Id.*
[81] *See* section 772(c)(1)(A) of the Act.
[82] *See Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997).

of the procedural requirements necessary to export a standardized cargo of goods by ocean transit from Romania. Because data reported in this source were current as of 2017, and, thus, contemporaneous with the POR, we did not inflate the surrogate value for truck freight expenses.[83]

We valued electricity using the electricity tariff data for industrial end-users in Romania, published by Eurostat, the Statistical Office of the European Union. The electricity rates we obtained reflect bi-annual 2016 national prices for each classification of industrial users of electricity, and represent country-wide, publicly-available information on a tax-exclusive basis. We computed a single average rate across all classifications of industrial users of electricity. Because this value is contemporaneous with the POR, we did not inflate it.[84]

We valued water using the information we obtained from APA Nova Bucharest, a company the main business of which is the services of water supply and sewerage in the municipality of Bucharest, under a long-term concession agreement with the municipality. We obtained current tariffs for water, on a VAT-exclusive basis, for industrial end users. We calculated a single rate for water across all sources from which the water is obtained. Because it is not known when the current water tariffs became effective (*i.e.*, whether the tariffs were effective during the POR), we did not adjust the average water rate that we calculated.[85]

On June 21, 2011, Commerce revised its methodology for valuing the labor input in NME antidumping proceedings.[86] In *Labor Methodologies*, Commerce determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, Commerce made a determination to use Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics as its primary source for industry-specific labor rates.[87]

However, for these preliminary results, ILO data is not on the record. Although Commerce decided in *Labor Methodologies* to change to the use of ILO Chapter 6A from the use of ILO Chapter 5B data on the rebuttable presumption that Chapter 6A data better account for all direct and indirect labor costs, Commerce did not thereby preclude all other sources for evaluating labor costs in NME AD proceedings.[88] In this case, the record contains only data from Eurostat for "manufacturing" in Romania in 2016 and labor statistics from the Romanian National Institute of Statistics (RNIS) submitted by Fushun Jinly. Commerce has calculated the labor input value using data from Eurostat for "manufacturing" in Romania in 2016.[89] In so doing, we continue to follow our practice of selecting the best available information to determine SVs for

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[83] *See* Factor Valuation Memorandum.
[84] *Id.*
[85] *Id.*
[86] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).
[87] *Id.*
[88] *Id.* at 36093.
[89] *See* Factor Valuation Memorandum.

inputs such as labor.[90] We find that the Eurostat data are the best available information for valuing labor for this segment of the proceeding because the Eurostat data are contemporaneous with the POR and reflect the total labor costs for manufacturing in Romania, which would include the electrodes industry. Thus, the Eurostat data are the closest match to all costs covered by the ILO Chapter 6A labor data.[91] Furthermore, we find the Eurostat data preferable to the RNIS labor statistics for the "Other Manufacturing" category submitted by Fushun Jinly. Specifically, Fushun Jinly has provided no evidence that the "Other Manufacturing" category they propose using is applicable to, or includes, the electrodes industry.[92] Indeed, "Other Manufacturing" appears to be a catch-all category for manufacturing not captured by the wide range of manufacturing categories provided by the RNIS.[93] Therefore, we find the best available information is the Eurostat data, which represents a broad market average for manufacturing in Romania that includes electrodes manufacturing, rather than the RNIS data submitted by Fushun Jinly, which represents a subset of manufacturing in Romania that may not include electrodes manufacturing. The calculated wage rate is provided in the Factor Valuation Memorandum. In addition, we made adjustments to certain labor costs in the surrogate financial ratios, because the financial statements used to calculate the surrogate financial ratios included an itemized detail of labor costs.[94]

Pursuant to 19 CFR 351.408(c)(4), Commerce valued factory overhead, selling, general and administrative expenses, and profit using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. For these preliminary results, we used ratios derived from the financial statements of Electrocarbon S.A., a Romanian producer of graphite electrodes, for the fiscal year ending December 31, 2014.[95] We find these statements to be the best available information on the record of this review because they are from the primary surrogate country and from a producer of comparable merchandise.

Fushun Jinly reported that it recovered certain by-products in its production of subject merchandise and successfully demonstrated that these by-products have either commercial value

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[90] *See Xanthan Gum from China,* and accompanying IDM at Comment 6-C; and *Drawn Stainless Steel Sinks from the People's Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013), and accompanying IDM at Comment 3.
[91] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2013 – 2014*, 81 FR 1397 (January 12, 2016) and accompanying IDM at Comment 4.
[92] *See* Fushun Jinly's Letter re: "Small Diameter Graphite Electrodes from the People's Republic of China: Submission of Additional Surrogate Value Information," dated February 5, 2018.
[93] *See* Petitioners' Letter re: "Eighth Administrative Review of Small Diameter Graphite Electrodes from the People's Republic of China – Petitioners' Rebuttal to Fushun Jinly's Additional Surrogate Value Submission," dated February 14, 2018, at Attachment. We note that the petitioners' rebuttal included rebuttal factual information relevant to FOP valuation. However, pursuant to 19 CFR 351.301(c)(3)(iv), information submitted to rebut, clarify, or correct factual information submitted pursuant to 19 CFR 351.408(c) will not be used to value FOPs. Moreover, while this information was timely submitted as rebuttal factual information under 19 CFR 351.301(c)(3)(iv), it was submitted after the deadline for submission of information to value factors under 19 CFR 351.408(c). Therefore, we have retained this information on the record for rebuttal purposes but have not considered it for purposes of FOP valuation.
[94] *See Labor Methodologies*, 76 FR at 36094.
[95] *See* Factor Valuation Memorandum.

or have been re-introduced into the production of electrodes.[96] Therefore, we granted a by-product offset for the quantities of Fushun Jinly's reported by-products produced during the POR. We valued the by-products using Romanian GTA data.[97]

Currency Conversion

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

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

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|---|---|
| ☒ | ☐ |
| ____________ | ____________ |
| Agree | Disagree |

3/5/2018

X

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

[96] *See* Fushun Jinly's response, at D-16 and Exhibit D-9.
[97] *See* Factor Valuation Memorandum.