



A-570-929

POR: 2/1/2016-1/31/2017

Public Document

E&C/VIII: JA, DM

DATE: July 10, 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: Issues and Decision Memorandum for the Administrative Review
of the Antidumping Duty Order on Small Diameter Graphite
Electrodes from the People's Republic of China; 2016-2017

SUMMARY

The U.S. Department of Commerce (Commerce) analyzed the comments submitted by the petitioner¹ and the mandatory respondent² in this administrative review of the antidumping duty order on small diameter graphite electrodes from the People's Republic of China (China). Following the *Preliminary Results*³ and based on the analysis of the comments received, we made no changes to the margin calculations for the final results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the list of the issues in this administrative review for which we received comments from interested parties:

Comment 1: U.S. Sales Process and Whether to Apply Total Adverse Facts Available (AFA)
Comment 2: Reliability of Factors of Production (FOP) and Sales Databases and Whether to Apply Total AFA

¹ Tokai Carbon GE LLC (the petitioner).

² Fushun Jinly Petrochemical Carbon Co., Ltd., a.k.a. Fushun Jinli Petrochemical Carbon Co., Ltd. (Fushun Jinly). See Petitioner's February 28, 2017 Request for Initiation of Antidumping Administrative Review at Attachment 1, p.11; see also *Small Diameter Graphite Electrodes from the People's Republic of China: Preliminary Results of the First Administrative Review of the Antidumping Duty Order; Partial Rescission of Administrative Review; and Intent to Rescind Administrative Review, in Part*, 76 FR 12324 (March 7, 2011) at n.7.

³ See *Small Diameter Graphite Electrodes from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016-2017*, 83 FR 10658 (March 12, 2018) (*Preliminary Results*), and accompanying Decision Memorandum (PDM).



BACKGROUND

On March 12, 2018, Commerce published the *Preliminary Results* of this administrative review. On April 11, 2018, the petitioner timely submitted its case brief.⁴ On April 13 and April 19, 2018, Commerce extended the time to file rebuttal briefs.⁵ On April 20, 2018, Fushun Jinly timely submitted its rebuttal brief.⁶ Commerce held a public hearing limited to issues raised in the case and rebuttal brief on June 21, 2018.

Commerce has exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. The revised deadline for the final determination of this review is now July 10, 2018.⁷

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

⁴ See Petitioner's Case Brief, "Small Diameter Graphite Electrodes from the People's Republic of China," dated April 11, 2018 (Petitioner's Case Brief).

⁵ See Commerce Letter re: First Extension of Time to Submit Rebuttal Brief, dated April 13, 2018 and Commerce Letter re: Small Diameter Graphite Electrodes from the People's Republic of China: Second Request for an Extension of Time to Submit Rebuttal Brief, dated April 19, 2018.

⁶ See Fushun Jinly's Rebuttal Brief, "Small Diameter Graphite Electrodes from People's Republic of China: Submission of Rebuttal Brief," dated April 20, 2018 (Fushun Jinly's Rebuttal Brief).

⁷ 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.

Schedule of the United States (HTSUS) subheadings 8545.11.0010,⁸ 3801.10,⁹ and 8545.11.0020.¹⁰ Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

CHANGES SINCE THE PRELIMINARY RESULTS

We reviewed and analyzed the comments received from the parties and made no changes to our preliminary margin calculations for these final results.

DISCUSSION OF THE ISSUES:

Comment 1: U.S. Sales Process and Whether to Apply Total AFA

Petitioner's Comments:

- Commerce should apply total AFA to Fushun Jinly because Fushun Jinly concealed the nature of its U.S. sales process by not reporting details about the involvement of a certain individual (individual Y) until its second supplemental questionnaire response,¹¹ and not explaining the role of individual Y as an “agent” of a certain U.S. customer (customer X) until its subsequent January 18, 2018 rebuttal comments.¹²
- Submission of timely, accurate, and complete information about the U.S. sales process impacts the net U.S. price calculation. The burden of placing timely, accurate, and complete information on the record is on the respondent because it has access to the information.¹³

⁸ 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.

⁹ 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 systems) that were 1) 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.

¹⁰ 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.

¹¹ See Petitioner's Case Brief at 7-8.

¹² *Id.* at 11.

¹³ *Id.* at 4 (citing *Hornos Electricos de Venezuela, SA v. United States*, 285 F.Supp 2d 1353, 1360 (Ct. Int'l Trade 2003) (*Hornos Electricos*) and *Fujitsu Gen. Ltd. v. United States*, 88 F.3d 1034, 1040 (Fed. Cir. 1996) (*Fujitsu Gen.*)).

- Fushun Jinly did not cooperate “to the best of its ability” because it did not put forth its maximum effort to provide Commerce with “full and complete” answers and significantly impeded this proceeding.¹⁴
- In its section A questionnaire response, Fushun Jinly reported that it negotiated sales directly with its customer X, and the sales documentation provided in support of its answer implied that individual Y was an employee of customer X.¹⁵ In its first supplemental questionnaire response, Fushun Jinly continued to assert that it directly negotiated with and sold subject merchandise to customer X.¹⁶ However, in its second supplemental questionnaire response, Fushun Jinly provided an explanation about the role of individual Y which was inconsistent with its two prior responses.¹⁷ Moreover, in its January 18, 2018 rebuttal comments, Fushun Jinly reported that individual Y was an “agent” of customer X, and this explanation was new and different from what was provided to Commerce by Fushun Jinly in this and in the *Sixth Administrative Review*.¹⁸
- Even if Commerce finds that Fushun Jinly made *bona fide* sales and information similar to the *Sixth Administrative Review* was placed on the record, Fushun Jinly’s delay in providing such an explanation of the agent’s role was unreasonable.¹⁹
- Commerce should apply total AFA to Fushun Jinly because Fushun Jinly’s uncooperative behavior is not similar to its behavior in the *Sixth Administrative Review* but more similar to its behavior in the *Fourth Administrative Review*,²⁰ when Commerce applied total AFA, within the meaning of section 776(a)(2)(A) of the Tariff Act of 1930, as amended (Act).²¹
- In the *Fourth Administrative Review*, Commerce stated that Fushun Jinly revealed for the first time in its second supplemental response that it made sales to a company other than initially reported, and that Fushun Jinly improperly described the sales process by making erroneous statements and by submitting misleading documentation.
- The U.S. Court of International Trade upheld Commerce’s decision in the *Fourth Administrative Review*, stating “the issue had ‘morphed’ over time during the administrative proceeding.”²²

¹⁴ See Petitioner’s Case Brief at 4-5 (citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003)).

¹⁵ *Id.* at 6-7.

¹⁶ *Id.* at 7.

¹⁷ *Id.* at 7-8.

¹⁸ *Id.* at 12 (citing *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), and accompanying Issues and Decision Memorandum at Comment 4 (*Sixth Administrative Review*)).

¹⁹ *Id.* at 9-11.

²⁰ *Id.* at 13-18 (citing *Small Diameter Graphite Electrodes from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*; 2012-2013, 79 FR 57508 (September 25, 2014), and accompanying Issues and Decision Memorandum (IDM) at Comment 1 (*Fourth Administrative Review*)).

²¹ *Id.* at 13-19.

²² *Id.* at 16 (citing *Fushun Jinly Petrochemical Carbon Co., Ltd. v. United States*, Slip Op. 16-25, Case no. 14-00287 (CIT 2016)).

- Purposefully withholding or providing misleading information is grounds for the application of facts available under section 776(a) of the Act and application of AFA under section 776(b) of the Act if record information has been shown to be generally unreliable.²³
- In *GOES from China*, Commerce found that the combination of delay in reporting and evasiveness in responses over the course of the proceeding heightens the egregiousness of the uncooperative behavior.²⁴
- Commerce cannot ignore prior misleading, incomplete, or false information provided by Fushun Jinly because the “purpose of a supplemental response is not to allow a respondent to come clean once its previous omissions have been discovered.”²⁵ Therefore, even if the true nature of the certain individual’s role in the sales process was disclosed in Fushun Jinly’s January 18, 2018 rebuttal comments, which Commerce cannot further question or verify at this point, that information was known to Fushun Jinly at the beginning of this review and should have been disclosed to Commerce.²⁶

Fushun Jinly’s Rebuttal Comments:

- Fushun Jinly properly explained its U.S. sales process. The petitioner’s assertion about the mischaracterization of individual Y’s role in Fushun Jinly’s sales to customer X is based on the petitioner’s own misperceptions and incorrect assumptions about individual Y’s role.²⁷
- Commerce should not apply AFA to Fushun Jinly because Fushun Jinly fully cooperated and replied to all of Commerce’s information requests.²⁸ No action by Fushun Jinly impeded this review.
- In its section A questionnaire response, Fushun Jinly properly reported that it directly negotiated with and sold subject merchandise to customer X and provided a sample set of sales documents.²⁹ The section A questionnaire did not request that Fushun Jinly provide information with respect to individual Y’s involvement.³⁰ Similarly, in its first supplemental questionnaire response, while Fushun Jinly provided additional supporting

²³ *Id.* at 17 (citing *Shanghai Taoen Int’l Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339, 1344-45, 1348 n.13 (Ct. Int’l Trade 2005),

²⁴ *Id.* at 17 (citing *Grain-Oriented Electrical Steel from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 79 FR 26936 (May 12, 2014), and accompanying PDM at 14 (*GOES Prelim Memo*)).

²⁵ *Id.* at 18 (citing *Tianjin Magnesium Int’l Co. v. United States*, 844 F. Supp. 2d 1342, 1348 (Ct. Int’l Trade 2012)).

²⁶ *Id.* at 18-19 (citing e.g. *Finished Carobn Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying IDM at 26-27 (“{Commerce}, not the interested parties, determines whether a company is required to provide a response to its questions and which information is necessary for its analysis. Accordingly, to ensure that interested parties do not prevent {Commerce} from conducting an accurate and complete investigation, a respondent cannot unilaterally decide to withhold information from {Commerce} that may require further analysis.”)).

²⁷ See Fushun Jinly’s Rebuttal Brief at 1.

²⁸ *Id.* at 1.

²⁹ *Id.* at 2.

³⁰ *Id.*

documentation to show that no third party existed in the sales process between Fushun Jinly and customer X, the first supplemental questionnaire did not request any information with respect to individual Y's involvement.³¹

- Commerce had not requested information regarding individual Y's involvement in the sales process until the second supplemental questionnaire.³² Moreover, a submitted affidavit regarding individual Y's role in the sales process was submitted to correct, rebut, and clarify the petitioner's mistaken assertion in its comments to Fushun Jinly's second supplemental questionnaire response.³³
- Commerce properly preliminarily determined that Fushun Jinly's sales were *bona fide*, based on the totality of the circumstances, as it did in the *Sixth Administrative Review*. Further, Commerce's verification of Fushun Jinly's sales process in the *Sixth Administrative Review* was extensive, including both product and customer information. Additionally, Commerce had determined that customer X's activity with individual Y was "entirely prudent from the standpoint of what constitutes commercial reality."³⁴

Department's Position:

We disagree with the petitioner that use of AFA is warranted in this review. In determining whether the use of AFA is warranted under section 776(b) of the Act, the first question is whether the use of facts otherwise available is warranted. Section 776(a) of the Act requires Commerce to use facts otherwise available, subject to section 782(d) of the Act, if: (1) necessary information is not available on the record, or an interested party or any other person (2) withholds information that has been requested by Commerce, (3) fails to provide information by the deadlines or in the form and manner requested, (4) significantly impedes a proceeding, or (5) provides information that cannot be verified.

The circumstances in this review do not support a finding that the use of facts otherwise available under scenarios (3) and (5), because Fushun Jinly submitted its responses in a timely and acceptable manner, and we did not conduct a verification in this review. Thus, we must consider whether a finding can be supported under the remaining scenarios in section 776(a) of the Act, whether: (1) necessary information is missing from the record, (2) Fushun Jinly withheld information requested by Commerce, or (4) Fushun Jinly significantly impeded this proceeding. We find that with regard to the remaining three scenarios, the facts on the record of this investigation do not support the application of facts available pursuant to section 776(a) of the Act.

First, the petitioner has not identified any specific information that is necessary in this segment of the proceeding but is missing from the record. We find that the facts necessary to understand Fushun Jinly's sales process are on the record of this review, and accordingly, we can determine the appropriate sales database to use in the calculation of Fushun Jinly's dumping margin. Fushun Jinly provided this information before our preliminary margin calculations, and the

³¹ *Id.* at 2-3.

³² *Id.* at 4-5.

³³ *Id.* at 5.

³⁴ *Id.* (citing *Sixth Administrative Review* at Comment 4).

involvement of individual Y in the sales process bore no weight on our margin calculation. In this regard, nothing has changed since the *Preliminary Results*, and the petitioner has not identified how individual Y's involvement in the sales process might raise necessary questions for which the record does not provide the answers. Thus, we find that there is no information that is necessary but missing from the record.

Second, we do not find any basis to conclude that Fushun Jinly withheld any information that was requested by Commerce. While Fushun Jinly did not describe its U.S. sales process in detail in its initial questionnaire response,³⁵ the description it provided was nonetheless accurate, and it provided all requested information in its supplemental questionnaire responses, which were consistent with the information verified in the *Sixth Administrative Review*.³⁶ During the course of this review we asked numerous questions about Fushun Jinly's sales process, including questions related to: customer X's nature of business, how Fushun Jinly came to know customer X, Fushun Jinly's reasoning for doing business with customer X, individual Y's role in the sales process, and the relationships between Fushun Jinly, customer X, and individual Y.³⁷ Additionally, we asked for supporting documentation, including: communication records, written agreements, and other sales documentation between Fushun Jinly, individual Y, and customer X.³⁸ Fushun Jinly provided timely responses to our questionnaires, including all information requested by Commerce. Therefore, we do not find that Fushun Jinly withheld requested information.

Third, and finally, we find that Fushun Jinly did not significantly impede this proceeding, because we were able to calculate an accurate dumping margin in sufficient time for the *Preliminary Results*. We did not encounter any significant difficulties in this review that could be attributed to the way Fushun Jinly cooperated or provided information in its questionnaire responses. Fushun Jinly submitted timely responses to our questionnaires. Thus, we do not find any basis to conclude that Fushun Jinly significantly impeded this proceeding.

Accordingly, the petitioner has not identified, nor do we find, any grounds that would warrant the use of facts otherwise available pursuant to section 776(a) of the Act. Consequently, because this prerequisite has not been met, we do not find that there are sufficient grounds for the application of AFA pursuant to section 776(b) of the Act.

³⁵ See Fushun Jinly's June 13, 2018 Section A Response at 7.

³⁶ See Fushun Jinly's December 14, 2017 Section A, C, and D Second Supplemental Questionnaire Response at Appendix S2-AC-3 (Fushun Jinly's description of its sales process in the *Sixth Administrative Review*) and Appendix S2-AC-4 (verification report from the *Sixth Administrative Review*).

³⁷ *Id.* at 2-7.

³⁸ *Id.*

Comment 2: Reliability of FOP and Sales Databases and Whether to Apply Total AFA

Petitioner's Comments:

- Commerce should apply total AFA to Fushun Jinly because Fushun Jinly's U.S. sales and FOP databases are unreliable. Those databases are unreliable because Fushun Jinly reported inaccurate control numbers (CONNUMs).³⁹
- Fushun Jinly conceded that it did not use Commerce's designated power level characteristic in reporting CONNUMs and relied on its own self-defined power levels to report its CONNUMs.
- Commerce asked Fushun Jinly several times to explain how its own defined power levels reconciled to Commerce's CONNUM criteria; however, Fushun Jinly failed to provide an explanation. For instance, Fushun Jinly provided its technical brochure, but did not reconcile the brochure to Commerce's technical specifications. Furthermore, Commerce applied total AFA to Fushun Jinly in the investigation, partially because the production documents indicated that it could have reported the FOP data using CONNUM characteristics in addition to power level.⁴⁰
- Moreover, Fushun Jinly conceded that it does not provide its customers with subject merchandise at the requested power level.
- Fushun Jinly's customer specifications and Fushun Jinly's own power level classification system places the electrodes in power level categories different from what Fushun Jinly reported in its U.S. sales database. Moreover, the purpose of Commerce's model matching criteria is to analyze price and production cost on an apples-to-apples basis, across respondent companies and across administrative reviews.
- Aside from how Fushun Jinly and its customer(s) label the power level of an electrode, for the purposes of an antidumping case, the more important factors are whether an electrode was manufactured with coke inputs having a certain coefficient of thermal expansion (CTE), and whether it was impregnated and rebaked twice.
- Commerce requires accurately reported FOPs on CONNUM-specific bases to calculate normal value and a dumping margin in accordance with the statute.⁴¹
- Fushun Jinly intentionally withheld information requested by Commerce, which is grounds for the application of facts available and AFA.⁴²

³⁹ See Petitioner's Case Brief at 19.

⁴⁰ *Id.* at 4-5 (citing *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, 2051 (January 14, 2009)).

⁴¹ *Id.* at 27 (citing, *e.g.*, *Certain Biaxial Integral Geogrid Products Final Determination of Sales at Less Than Fair Value*, 82 FR 3284 (January 11, 2017), and accompanying IDM at Comment 1; and *Yantai Xinke Steel Structure Co. v. United States*, Ct. No. 10-00240, Slip Op. 2012-95, 2012 Ct. Intl. Trade LEXIS 96, 37-41 (Ct. Int'l Trade July 18, 2012)).

⁴² *Id.* at 27 (citing sections 776(a) and (b) of the Act and *Nippon Steel*, 337 F.3d at 1381).

Fushun Jinly's Rebuttal Comments:

- Fushun Jinly reported the CONNUMs in the same manner as it has done since the original investigation.⁴³
- The five grades of electrodes in Fushun Jinly's brochure reconcile to the five power levels described by Commerce under the relevant CONNUM characteristic and follow industry practice.
- Fushun Jinly's technical specifications for the power levels are more detailed than Commerce's power level descriptions in the questionnaire. Fushun Jinly's specifications contain properties for electricity resistivity, bending strength, elastic modulus, bulk density, CTE, and ash content, while Commerce's description considers the CTE of the coke input and impregnation and baking.
- During the verification in the *Sixth Administrative Review*, Commerce obtained necessary documents to demonstrate that Fushun Jinly produced graphite electrodes with various power levels by using coke input without strict regard to the CTE specification.⁴⁴
- Fushun Jinly provided an explanation of its electrode classification and production process in its first supplemental questionnaire response.⁴⁵ Moreover, the logic of Fushun Jinly's production process is supported by the FOPs worksheet provided by Fushun Jinly in its Section D questionnaire response. In addition, it is impractical to reconcile the product descriptions in the product brochure with the forming recipes and specific production process with Commerce's CONNUMs because each producer's production experience is not based on Commerce's CONNUM system.
- The product brochures of certain producers of subject merchandise in China, already placed on the record of this proceeding, similarly do not contain a description for the CTE of coke input.⁴⁶
- Fushun Jinly's and its customers' standards for determining the power levels are different, and it would be inappropriate for Fushun Jinly to report the electrodes based on the customers' specifications because these could vary from customer to customer for the same product which could have gone through the same production process.
- There are no inconsistencies between the product specifications required by Fushun Jinly's customers, how those specifications translate to the power level labels in Fushun Jinly's brochure, and the power level reported by Fushun Jinly to Commerce.
- The standards for deciding the power level of electrodes were the same in the U.S. sales and FOP databases.

⁴³ See Fushun Jinly's Rebuttal Brief at 7-8.

⁴⁴ *Id.* at 10 (citing Fushun Jinly's December 14, 2017 Section A, C, and D Second Supplemental Questionnaire Response at Appendix S2-AC-4).

⁴⁵ *Id.* at 10-11 (citing Fushun Jinly's Section A, C, and D First Supplemental Questionnaire Response October 3, 2017 at 11-12).

⁴⁶ *Id.* at 12 (citing Fushun Jinly's Letter, "Submission of Rebuttal Comments and New Factual Information Relating to Fushun Jinly's Second Supplemental Response," dated January 18, 2018 at Attachment 4).

Department's Position:

We disagree with the petitioner's assertion that Commerce should apply total AFA because of how Fushun Jinly reported its CONNUMs in its sales and FOP databases. As discussed above, Commerce relies on using facts available when necessary information is not on the record, or an interested party or any other person withholds information that has been requested, fails to provide information within the deadlines established, or in the form and manner requested by Commerce, significantly impedes a proceeding, or provides information that cannot be verified, in accordance with section 776(a) of the Act. We find that Fushun Jinly accurately reported its product characteristics and corresponding CONNUMs in its sales and factors of production databases.

Consistent with section 773(c)(1)(B) of the Act, Commerce's policy is to value the FOPs that a respondent uses to produce subject merchandise. In the Initial Questionnaire, we requested that Fushun Jinly report its FOPs based on the same CONNUM assigned to the model in the U.S. sales file. We specifically requested:

Report the unique control number assigned to the model in the U.S. sales file in Section C of this questionnaire. Unless otherwise instructed by the Department, you should ensure that your factors computer file contains a separate record for each unique product control number contained in your U.S. sales file.⁴⁷

We ask parties to submit their FOP database in this manner to accurately match the party's reported FOPs to the products in its U.S. sales database. Fushun Jinly reported that it used the same CONNUM to report the FOPs as it used to report U.S. sales.⁴⁸

Moreover, we find that evidence on the record supports a finding that Fushun Jinly's reported power level for U.S. sales and FOPs reconciles to the five grades of electrodes in its product brochure. Furthermore, each of these power level names are listed by Commerce in the questionnaire.⁴⁹ We note that the description under the reporting requirement for power level states:

1. Ultra High Power (UHP), typically manufactured with coke inputs having a coefficient of thermal expansion (CTE) of 0.05-0.15 ppm/°C at 30-100°C, is impregnated and rebaked and may have a second impregnation and rebake.
2. Super High Power (SHP), typically manufactured with coke inputs having a CTE of 0.15-0.25 ppm/°C 30-100°C, is impregnated and rebaked.
3. High Power (HP), typically manufactured with coke inputs having a CTE of 0.25-0.40 ppm/°C at 30-100°C, is impregnated and rebaked.
4. High Density (also called Impregnated) (HD), typically manufactured with coke inputs having a CTE of 0.40-1.00 ppm/°C at 30-100°C, is impregnated and rebaked.

⁴⁷ See Commerce's Letter re: Antidumping Duty Questionnaire, dated May 3, 2017 (Initial Questionnaire) at D-6.

⁴⁸ See Fushun Jinly's June 30, 2017 Section D Questionnaire Response at D-9.

⁴⁹ See Fushun Jinly's June 13, 2017 Section A Questionnaire Response at Appendix A-13.

5. Normal Power (NP)/ Regular Power (RP), typically manufactured with coke inputs having a CTE greater than 0.40/°C at 30-100°C, with no impregnation and no second bake.⁵⁰

Fushun Jinly's product brochure notes that it produces Regular Power (or Normal Power), Regular Power with Impregnation (High Density), High Power, Super High Power, and Ultra High Power which reconciles to our Initial Questionnaire. Although the CTE of a party may be different than the description in the questionnaire, Commerce qualifies the description of each power level with the adjective "typically," indicating that the actual CTE of the coke inputs used in the production of a given electrode could differ from the range in Commerce's questionnaire. Furthermore, as noted by Fushun Jinly, the Fangda Group Companies do not include the requirement for the CTE of coke input and specific production process for each grade of electrodes in their product brochure.⁵¹

Furthermore, we previously verified the accuracy of Fushun Jinly's reported power level, which is the petitioner's primary concern raised in its case brief. In the final results of the *Sixth Administrative Review*, we stated that,

{w}e verified the accuracy of the reported power levels that Fushun Jinly reported in its U.S. sales list. We focused on confirming the power levels reported for electrodes (and not pins), given that: 1) the weight of pins accompanying the respective electrodes is miniscule, in relation to the weight of electrode, for any given U.S. sale and, more importantly; 2) the control numbers were constructed on the basis of the electrode power level only, in compliance with the instructions concerning the product characteristics established in the antidumping questionnaire. Upon reviewing eight complete sales traces (four pre-selected sales and four sales selected at verification), we concluded:

Fushun Jinly relied on the information contained in the purchase order, invoice, and packing list to report the power level, dimensional characteristics, and the type of connecting system... Using technical specifications Fushun Jinly maintained during the POR, Fushun Jinly demonstrated that, in order to qualify a product at a specific power level, all six electrical/mechanical properties must meet the lowest (or highest, where applicable) requirements for a given power level. Using the pre-selected and on-site selected U.S. transactions, we confirmed that the reported power level as stated in the sales documents are supported by the Inspection Report, the underlying Electrode Data Record and Nipple Data Record, and Fushun Jinly's technical specifications.⁵²

⁵⁰ See Initial Questionnaire at C-5 and C-6.

⁵¹ See Fushun Jinly's Letter, "Small Diameter Graphite Electrodes from the People's Republic of China: Submission of Rebuttal Comments and New Factual Information Relating to Fushun Jinly's Second Supplemental Response," dated January 18, 2018 at Attachment 4 for Fangda Group's product brochure.

⁵² See *Sixth Administrative Review* at Comment 3 (internal citations omitted).

As indicated in the final results for the *Sixth Administrative Review*, there was no indication during verification that Fushun Jinly improperly reported its data in the sales and FOP databases. We do not find that there is any information on the record of this review that would call into question our previous findings with respect to the reported power levels.

Therefore, based on our review of Fushun Jinly's questionnaire responses in this administrative review, as well as our review of its historical power level reporting within the context of this Order, we determine that Fushun Jinly accurately reported its sales and FOP databases in accordance with Commerce practice, and thus there is no basis to apply AFA.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions and not making any changes to the *Preliminary Results*. If accepted, we will publish the final results of review and the final dumping margins in the *Federal Register*.

☒

☐

Agree

Disagree

7/10/2018

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