
DEPARTMENT OF COMMERCE**International Trade Administration**

[A-570-929]

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

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

EFFECTIVE DATE: January 14, 2009.

SUMMARY: The Department of Commerce (the Department) has determined that small diameter graphite electrodes from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV) as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The final dumping margins for this investigation are listed in the "Final Determination Margins" section below. The period covered by the investigation is July 1, 2007, through December 31, 2007 (the POI).

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

SUPPLEMENTARY INFORMATION:**Background**

The Department published its preliminary determination of sales at LTFV on August 21, 2008. *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 (August 21, 2008) (*Preliminary Determination*). On August 25, 2008, the Department received ministerial error allegations from petitioners¹ and one

¹ The petitioners in this investigation are SGL Carbon LLC and Superior Graphite Co.

respondent, the Fangda Group.² On August 26, 2008, petitioners submitted a ministerial error allegation with respect to Fushun Jinly Petrochemical Carbon Co., Ltd. (Fushun Jinly), another respondent in the investigation. On August 28, 2008, in response to the Department's request, petitioners submitted information regarding the effect the alleged errors have on the dumping margin calculated for the Fangda Group. After reviewing the allegations, the Department determined that the *Preliminary Determination* included significant ministerial errors with regard to the Fangda Group. On September 22, 2008, the Department published its amended preliminary determination of sales at LTFV. See *Small Diameter Graphite Electrodes from the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 54561 (September 22, 2008) (*Amended Preliminary Determination*).

On September 22, 2008, M. Brashem, Inc. (Brashem), a U.S. importer of small diameter graphite electrodes, requested that the Department correct its amended preliminary determination by applying the Fangda Group's cash deposit rate to Hefei Carbon, one of the companies in the Fangda Group. See Brashem's September 22, 2008 submission to the Department. On October 8, 2008, the Department issued a memorandum stating that it would not further amend its *Preliminary Determination* because Brashem's allegation did not constitute a ministerial error. See Memorandum from Magd Zalok, International Trade Compliance Analyst, to Abdelali Elouaradia, Director, Office 4, dated October 8, 2008.

Between August 25, 2008, and September 18, 2008, the Department conducted verifications of the following companies in the Fangda Group: Fushun Carbon, Fangda Carbon, Chengdu Rongguang and Beijing Fangda. See the "Verification" section below for additional information.

On August 25, 2008, Fushun Jinly filed an untimely and unsolicited submission with the Department in which it made substantial revisions to its factors of production (FOP) database. In response to requests from the Department, on August 27, 2008, and September 3, 2008, Fushun Jinly filed submissions with the Department explaining the untimely revisions. In a

letter issued to Fushun Jinly on September 9, 2008, the Department rejected the untimely new database, as well as the August 27, 2008 and September 3, 2008 submissions, and informed Fushun Jinly of the Department's intention not to verify any of its information because the untimely submission raised serious questions as to the credibility of its previously reported information. See Letter to Fushun Jinly, dated September 9, 2008 (September 9, 2008 Letter).

On October 6, 2008, the petitioners requested that the Department issue an amended preliminary scope determination to include connecting pin joining systems (connecting pins) in the scope of the investigation.

In response to the Department's invitation to comment on the *Preliminary Determination*, on November 3, 2008, the petitioners, the Fangda Group and Fushun Jinly filed case briefs. The petitioners, the Fangda Group and Fushun Jinly filed rebuttal briefs on November 10, 2008. Upon requests from the petitioners, the Fangda Group and Fushun Jinly, on November 20, 2008, the Department held a public hearing.

Analysis of Comments Received

All of the issues raised in the case and rebuttal briefs submitted in this investigation are addressed in the "Issues and Decision Memorandum for the Final Determination in the Less-Than-Fair-Value Investigation of Small Diameter Graphite Electrodes from the People's Republic of China," dated January 5, 2009, which is hereby adopted by this notice (Issues and Decision Memorandum). Appendix I to this notice contains a list of the issues addressed in the Issues and Decision Memorandum. The Issues and Decision Memorandum, which is a public document, is on file in the Central Records Unit (CRU) at the Main Commerce Building, Room 1117, and is accessible on the Web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of the comments received, we have made the following changes to our preliminary determination:

1. We based our determination with respect to Fushun Jinly on total adverse facts available (AFA) because its questionnaire responses were not verifiable and because Fushun Jinly failed to cooperate to the best of its ability with this

investigation. As total AFA, we found Fushun Jinly to be part of the PRC-wide entity.

2. We assigned the Fangda Group a dumping margin based on total AFA because we found its FOP data to be unreliable and because the Fangda Group failed to cooperate to the best of its ability with this investigation. As total AFA, we assigned the Fangda Group the highest margin in this proceeding.
3. We have determined that critical circumstances exist with respect to the Fangda Group, the separate rate companies, and the PRC-wide entity, including Fushun Jinly.
4. We have assigned the separate rate companies a dumping margin equal to the simple average of the margins alleged in the petition. See the Antidumping Petition for Small Diameter Graphite Electrodes for the Peoples Republic of China, dated January 17, 2008, and amendment to Petition, dated January 30, 2008.
5. We determined that connecting pins are covered by the scope of the investigation.

Scope of Investigation

The merchandise covered by this investigation includes all small diameter graphite electrodes of any length, whether or not finished, of a kind used in furnaces, with a nominal or actual diameter of 400 millimeters (16 inches) or less, and whether or not attached to a graphite pin joining system or any other type of joining system or hardware. The merchandise covered by this investigation 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 this investigation are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 8545.11.0000. The HTSUS number is provided for convenience and customs purposes, but the written description of the scope is dispositive.

² The following companies comprise the Fangda Group: Fushun Carbon Co., Ltd. (Fushun Carbon), Fangda Carbon New Material Co., Ltd. (Fangda Carbon), Chengdu Rongguang Carbon Co., Ltd. (Chengdu Rongguang), Beijing Fangda Carbon Tech Co., Ltd. (Beijing Fangda), and Hefei Carbon Co., Ltd. (Hefei Carbon).

Scope Comments

In their October 6, 2008, submission, as well as their November 3, 2008, case brief, the petitioners argued that the scope of this investigation should include all connecting pins for small diameter graphite electrodes, whether or not they are sold separately from the graphite electrodes, and requested that the Department amend its preliminary determination to include connecting pins in the scope of the investigation. The respondents argued that connecting pins are within the scope of the investigation when they are sold with graphite electrodes (either attached to the electrode or unattached), but not when they are sold separately from the graphite electrodes (*i.e.*, when the connecting pins are not part of an electrode order). For the reasons discussed in the Issues and Decision Memorandum, the Department has determined that all connecting pins are included in the scope of this investigation. The scope description found in the "Scope of Investigation" section above reflects this determination. *See* Issues and Decision Memorandum at Comment 2.

Verification

As provided in section 782(i) of the Act, we conducted verifications of the Fangda Group's information. *See* the Department's verification reports for the Fangda Group, on file in the CRU. In conducting the verifications, we used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the respondent.

Adverse Facts Available

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Act allows the Department, subject to section 782(e) of the Act, to disregard all or part of a deficient or untimely response from a respondent.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is

not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(b) of the Act authorizes the Department to use an adverse inference with respect to an interested party if the Department finds that the party failed to cooperate by not acting to the best of its ability to comply with a request for information.

A. Total Adverse Facts Available for Fushun Jinly

On August 25, 2008, after the preliminary determination, and on the same day that the verification of the Fangda Group began, Fushun Jinly filed untimely and unsolicited new information consisting of substantial revisions to its FOP database, and other previously undisclosed information. In its untimely submission and subsequent submissions explaining the untimely submission, Fushun Jinly: (1) revealed for the first time that it sold by-products during the POI, although it had repeatedly stated that it reused its by-products; (2) admitted for the first time that the subcontractors who performed graphitization would not provide any documents to support the FOP data they had submitted; (3) reported substantial reductions to consumption quantities for major graphitization inputs consumed by the same subcontractors whose records could not be verified; (4) provided company records which call into question the number of subcontractors reportedly used in the graphitization process during the POI, and whether Fushun Jinly accurately and fully reported to the Department its FOP data for such a process; (5) provided production documents indicating that it could have reported the FOP data using control number (CONNUM) characteristics in addition to power level, which it had repeatedly denied it was able to do prior to the preliminary determination; and (6) reported FOP data for certain graphite electrodes and connecting pins separately, contrary to its repeated contention that it could not do so. On September 9, 2008, the Department rejected Fushun Jinly's untimely August 25, 2008, FOP submission. *See* September 9, 2008 Letter. In rejecting the untimely FOP database, the Department stated that the untimely database and subsequent related submissions: (1) indicated that Fushun Jinly had previously failed to properly report significant FOP data for one of the two types of electrodes sold during

the POI; (2) called into question the accuracy and verifiability of the FOP data reported for graphitization; (3) called into question claims regarding the number of subcontractors used during the POI and the level of product specificity to which FOP data could have been reported; (4) indicated that Fushun Jinly may have purchased graphitized semi-finished products in addition to the graphitized semi-finished products supplied by subcontractors. *See id.* Given the foregoing concerns, the Department stated that it would not be appropriate to verify any of the information reported by Fushun Jinly. *See id.*

Fushun Jinly's untimely FOP submission contained information that the Department had repeatedly sought throughout the investigation, yet Fushun Jinly repeatedly failed to provide the requested information by the deadlines established for submitting such information. Thus, we have determined that Fushun Jinly's actions significantly impeded the proceeding. Moreover, Fushun Jinly's untimely FOP submission and subsequent related submissions demonstrated that important elements of the FOP data on the record were either inaccurate, improperly reported, and/or could not be verified. Additionally, Fushun Jinly's actions demonstrate that it failed to cooperate by not acting to the best of its ability to comply with requests from the Department. Accordingly, pursuant to sections 776(a)(2)(A), (B), (C) and (D) and 776(b) of the Act, we have used AFA in reaching our final determination with respect to Fushun Jinly. Specifically, we have treated Fushun Jinly as part of the PRC-wide entity and assigned Fushun Jinly the PRC-wide rate of 159.64 percent.³ *See* the sections entitled "The PRC-Wide Rate" and "Corroboration," below, for a discussion of the selection and corroboration of the PRC-Wide rate. *See also* the accompanying Issues and Decision Memorandum at Comment 1 for details.

Total Adverse Facts Available for the Fangda Group

During verification of the Fangda Group's responses, the Department found that the Fangda Group: (1) failed to report FOP data for Hefei Carbon, one of the companies within the Fangda Group that produced small diameter graphite electrodes with characteristics that matched the CONNUM

³ The Department incorrectly listed 159.34 percent as the highest petition margin in the *Preliminary Determination*. In fact, the highest margin alleged in the Petition is 159.64 percent. *See* the Petition, and Enclosure 4 of petitioners' January 30, 2008, addendum to Petition.

characteristics reported for certain U.S. sales; (2) failed to identify the existence of, and report FOP data for, a number of tollers that performed significant processes on small diameter graphite electrodes with characteristics that matched the CONNUM characteristics reported for certain U.S. sales; and (3) had production records that could have been used to report factor quantities using more of the CONNUM criteria then were used, despite repeated claims to the contrary. The missing information noted above had been previously requested by the Department. Thus, the record shows that the Fangda Group withheld information requested by the Department and significantly impeded the proceeding. Moreover, given the importance of the missing information, we have determined that we lack reliable data to calculate normal value. Consequently, pursuant to sections 776(a)(2)(A), and (C) of the Act, we have determined that the Fangda Group's dumping margin should be based on total facts available.

Furthermore, the Fangda Group possessed the information needed to report FOP data for Hefei Carbon and the production records that could have been used to report factor quantities using more of the CONNUM criteria then were used. Thus, the Fangda Group could have reported to the Department the FOP data for Hefei Carbon and factor quantities that were more CONNUM-specific. Moreover, the Fangda Group never informed the Department of the existence of the unreported tollers, nor is there any indication on the record that the Fangda Group ever attempted to obtain any data from the unreported tollers. Accordingly, we find that the Fangda Group failed to act to the best of its ability in this investigation, and, pursuant to section 776(b) of the Act, the use of an adverse inference is warranted.

Section 776(b) of the Act authorizes the Department to use, as AFA: information derived from: (1) the petition; (2) the final determination from the LTFV investigation; (3) a previous administrative review; or (4) any other information placed on the record. In selecting a rate for AFA, the Department selects one that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." See *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909 (February 23, 1998). It is the Department's practice to select, as AFA, the higher of: (a) the highest

margin alleged in the petition or (b) the highest calculated rate for any respondent in the investigation. See *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From the People's Republic of China*, 65 FR 34660 (May 31, 2000) and accompanying Issues and Decisions Memorandum at Facts Available (*Cold-Rolled Flat-Rolled Steel From the PRC*). The highest margin alleged in the Petition is 159.64 percent. Since the highest dumping margin derived from the Petition is higher than the weighted-average margins calculated in this case, we have, as AFA, assigned the Fangda Group the highest margin alleged in the Petition, 159.64 percent. See the Petition, and Enclosure 4 of petitioners' January 30, 2008, addendum to Petition.

In addition, because the shipment data reported by the Fangda Group in connection with critical circumstances were not reported on the basis of shipment date as required by the Department, and could not be verified, we have found, as AFA, that imports were massive with respect to the Fangda Group. See the section of this notice entitled "Critical Circumstances," below, for a discussion of our critical circumstances determination and the section of this notice entitled "Corroboration," below, for a discussion of the corroboration of the highest petition rate. See, also, the accompanying Issues and Decision memorandum at Comment 3 for details.

Critical Circumstances

In the *Preliminary Determination*, the Department found that there was reason to believe or suspect that critical circumstances exist for imports of subject merchandise from the Fangda Group and the separate rate companies because: (1) in accordance with section 733(e)(1)(A)(ii) of the Act, the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (2) in accordance with section 733(e)(1)(B) of the Act, the Fangda Group and the separate rate companies had massive imports during a relatively short period. However, the Department did not preliminarily find that there was reason to believe or suspect that critical circumstances existed for imports of subject merchandise from Fushun Jinly or the PRC-wide entity. See *Preliminary Determination*. In their case briefs, the petitioners argued that because the

application of total AFA to both Fushun Jinly and the Fangda Group is warranted, the Department should find that critical circumstances exist with respect to these companies as well as the separate rate companies and the PRC-wide entity. If the Department does not apply total AFA to Fushun Jinly and the Fangda Group, the petitioners argue that, as partial AFA, the Department should find a massive increase in subject imports from these companies and determine the critical circumstances exist with respect to Fushun Jinly as well as the Fangda Group and the separate rate companies. Fushun Jinly and the Fangda Group contend that the Department's critical circumstances determination should be based on their reported export data, rather than AFA. If, however, the Department determines, as AFA, that massive imports exist, the respondents argue that the Department should not find critical circumstances for any party if the dumping margins are less than 25 percent for the Fangda Group and the separate rate companies, including Fushun Jinly. In any case, the respondents maintain that the Department should not rely upon import statistics for HTSUS number 8545.11.00.00 to determine whether massive subject imports exist since this HTSUS number includes imports of non-subject merchandise (*i.e.*, large diameter graphite electrodes).

As noted above, the Department was not able to verify the shipment data reported by the Fangda Group in connection with critical circumstances because the data were not reported on the basis of shipment date as required by the Department. Since the shipment data provided by the Fangda Group could not be verified, we find that the Fangda Group failed to cooperate by not acting to the best of its ability to provide the requested shipment data. Accordingly, we have based our determination of whether there were massive imports with respect to the Fangda Group on AFA (see section 776(a)(2)(D) and 776(b) of the Act). The Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1 (1994) at 870, notes that the Department may employ adverse inferences in selecting from among the facts available "to ensure that the party does not obtain a more favorable result by failing to cooperate fully." The SAA also instructs the Department to consider, in employing adverse inferences, "the extent to which a party may benefit from its own lack of cooperation." *Id.* Based on the shipment

data reported by the Fangda Group in connection with critical circumstances, in the *Preliminary Determination* the Department found massive imports with respect to the Fangda Group. To ensure that the Fangda Group does not obtain a more favorable result by failing to cooperate, for this final determination, we continue to find, as AFA, that imports of subject merchandise were massive for the Fangda Group.

In addition, based on our comparison of the unadjusted volume of imports of graphite electrodes from the PRC reported by the International Trade Commission's (ITC) DataWeb for the periods February 2008 through July 2008 and August 2007 through January 2008, we found that imports were massive for the separate rate companies and the PRC-wide entity, including Fushun Jinly. We did not reduce the ITC's DataWeb import volumes by shipment volumes reported by the Fangda Group and Fushun Jinly, or rely upon these companies' shipment volumes in determining whether massive imports exist for the separate rate companies because the shipment data submitted by Fushun Jinly and the Fangda Group were not verified. Thus, these data are no longer reliable for purposes of our final critical circumstances analysis. Moreover, because the dumping margins applied to all interested parties in this investigation exceed 25 percent, we find that importers should have known that graphite electrodes were being sold at LTFV. We also continue to find the ITC's preliminary injury determination in the instant investigation is sufficient to impute knowledge of material injury to the importers. Accordingly, the Department finds that critical circumstances exist for the Fangda Group, the separate rate applicants, and the PRC-wide entity, including Fushun Jinly. For further details, see Comment 4 of the Issues and Decision Memorandum.

Surrogate Country

In the *Preliminary Determination*, we selected India as the appropriate surrogate country noting that it was on the Department's list of countries that are at a level of economic development comparable to the PRC and that: (1) India is a significant producer of merchandise comparable to subject merchandise; and, (2) reliable Indian data for valuing factors of production are readily available. See *Preliminary Determination*. No party has commented on our selection of India as the appropriate surrogate country. For the final determination, we continue to find

India to be the appropriate surrogate country in this investigation.

Separate Rates

In proceedings involving non-market-economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. 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*), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*); see also 19 C.F.R. § 351.107(d).

In the *Preliminary Determination*, the Department granted separate-rate status to Fushun Jinly, Fushun Carbon, Fangda Carbon, Beijing Fangda, Chengdu Rongguang, and the following separate rate applicants: Jilin Carbon Import and Export Company (Jilin Carbon); Guanghan Shida Carbon Co., Ltd. (Guanghan Shida); Nantong River-East Carbon Joint Stock Co., Ltd. (Nantong River); Xinghe County Muzi Carbon Co. Ltd. (Muzi Carbon); Brilliant Charter Limited (Brilliant Charter); Shijiazhuang Huanan Carbon Factory (Huanan Carbon); Shenyang Jinli Metals & Minerals Imp & Exp Co., Ltd. (Shenyang Jinli); Shanghai Jinneng International Trade Co., Ltd. (Shanghai Jinneng); Dalian Thrive Metallurgy Import and Export Co., Ltd.; GES (China) Co., Ltd. (Dalian Thrive); and Qingdao Haosheng Metals & Minerals Imp & Exp Co., Ltd. (Qingdao Metal). As discussed above, the Department decided, as AFA, to treat Fushun Jinly as part of the PRC-wide entity. Moreover, we note that the information that Fushun Jinly provided to the Department to demonstrate the absence of *de facto* and *de jure* control was not verified. Consequently we have not granted Fushun Jinly a separate rate. Although we are basing the Fangda Group's margin on total AFA, the Department was able to verify the Fangda Group's separate rate information (e.g., ownership, selection of management process, etc.) for Fushun Carbon, Fangda Carbon, Beijing Fangda, and Chengdu Rongguang. Thus, we are continuing to find that the evidence placed on the record of this investigation by the Fangda Group

demonstrates both a *de jure* and *de facto* absence of government control, with respect to Fushun Carbon, Fangda Carbon, Beijing Fangda, and Chengdu Rongguang, exports of the merchandise under investigation and thus they are eligible for separate-rate status. Because no parties commented on its separate-rate status of the other separate-rate applicants, we continue to find the other separate-rate applicants are eligible for separate-rate status. Since we assigned the Fangda Group a dumping margin based on total AFA, and we are considering Fushun Jinly to be part of the PRC-wide entity, we do not have any mandatory respondents in this investigation whose dumping margin is not based on total AFA. Thus, we have assigned the other separate rate companies a dumping margin equal to the simple average of the margins alleged in the petition.

The PRC-Wide Rate

In the *Preliminary Determination*, the Department considered certain non-responsive PRC producers/exporters to be part of the PRC-wide entity because they did not respond to our requests for information and did not demonstrate that they operated free of government control over their export activities. No additional information regarding these entities has been placed on the record since the publication of the *Preliminary Determination*. Since the PRC-wide entity did not provide the Department with requested information, pursuant to section 776(a)(2)(A) of the Act (which covers situations where an interested party withholds requested information), we continue to find it appropriate to base the PRC-wide rate on facts available. Moreover, given that the PRC-wide entity did not respond to our request for information, we continue to find that it failed to cooperate to the best of its ability to comply with a request for information. Thus, pursuant to section 776(b) of the Act, we have continued to use an adverse inference in selecting from among the facts otherwise available. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000) (a case in which the Department applied an adverse inference in determining the Russia-wide rate); *Final Determination of Sales at Less Than Fair Value: Certain Artists Canvas from the People's Republic of China*, 71 Fed. Reg. 16116, 16118-19 (March 30, 2006) (a case in which the Department applied an adverse inference in determining the PRC-wide rate).

Pursuant to section 776(b) of the Act, the Department may select, as AFA information derived from: (1) the petition; (2) the final determination from the LTFV investigation; (3) a previous administrative review; or (4) any other information placed on the record. As noted above, in order to induce respondents to provide the Department with complete and accurate information in a timely manner, the Department's practice is to select, as AFA, the higher of: (a) the highest margin alleged in the petition or (b) the highest calculated rate for any respondent in the investigation. See *Cold-Rolled Flat-Rolled Steel From the PRC*. The highest margin alleged in the Petition is 159.64 percent. Since the dumping margin derived from the Petition is higher than the weighted-average margins calculated in this case, we have continued to assign the PRC-wide entity a dumping margin of 159.64 percent. See the Petition, and Enclosure 4 of petitioners' January 30, 2008, addendum to Petition.

Since we begin with the presumption that all companies within an NME country are subject to government control and only the exporters listed under the "Final Determination Margins" section below have overcome that presumption, we are applying a single antidumping rate (*i.e.*, the PRC-wide rate) to all exporters of subject merchandise from the PRC, other than the exporters listed in the "Final Determination Margins" section of this notice. See, *e.g.*, *Synthetic Indigo from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706 (May 3, 2000) (applying the PRC-wide rate to all exporters of subject merchandise in the PRC based on the presumption that the export activities of the companies that failed to respond to the Department's questionnaire were controlled by the PRC government).

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. We have interpreted "corroborate" to mean

that we will, to the extent practicable, examine the reliability and relevance of the information submitted. See *Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 5554, 5568 (February 4, 2000); see, *e.g.*, *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996).

To corroborate the 159.64 percent margin used as AFA for the PRC-wide entity, we relied upon our pre-initiation analysis of the adequacy and accuracy of the information in the Petition. See *Small Diameter Graphite Electrodes from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 8287 (February 13, 2008) (*Initiation Notice*); see also *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970, 31972 (June 5, 2008) (where the Department relied upon pre-initiation analysis to corroborate the highest margin alleged in the petition). During the initiation stage, we examined evidence supporting the calculations in the petition and the supplemental information provided by petitioners to determine the probative value of the margins alleged in the Petition. During our pre-initiation analysis, we examined the information used as the basis of export price and normal value (NV) in the Petition, and the calculations used to derive the alleged margins. Also, during our pre-initiation analysis, we examined information from various independent sources provided either in the Petition or, based on our requests, in supplements to the Petition, which corroborated key elements of the export price and NV calculations. *Id.* Since the initiation, the Department has found no other corroborating information available in this case, and received no comments from interested parties as to

the relevance or reliability of this secondary information. Based on the above, for the final determination, the Department finds that the rates derived from the Petition are corroborated to the extent practicable for purposes of the AFA rate assigned to the PRC-wide entity and the Fangda Group.

Combination Rates

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

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

See *Policy Bulletin 05.1*, "Separate Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries."

Final Determination Margins

We determine that the following weighted-average dumping margins exist for the period July 1, 2007, through December 31, 2007:

Exporter & Producer	Weighted-Average Margin
Fushun Carbon Co., Ltd. Produced by: Fushun Carbon Co., Ltd.	159.64%
Fangda Carbon New Material Co., Ltd. Produced by: Fangda Carbon New Material Co., Ltd.	159.64%
Beijing Fangda Carbon Tech Co., Ltd. Produced by: Chengdu Rongguang Carbon Co., Ltd.; Fangda Carbon New Material Co., Ltd.; or Fushun Carbon Co., Ltd.	159.64 %
Chengdu Rongguang Carbon Co., Ltd. Produced by: Chengdu Rongguang Carbon Co., Ltd.	159.64%
Jilin Carbon Import and Export Company Produced by: Sinosteel Jilin Carbon Co., Ltd.	132.90%

Exporter & Producer	Weighted-Average Margin
Guanghan Shida Carbon Co., Ltd. Produced by: Guanghan Shida Carbon Co., Ltd.	132.90%
Nantong River-East Carbon Joint Stock Co., Ltd. Produced by: Nantong River-East Carbon Co., Ltd.; or Nantong Yangzi Carbon Co., Ltd.	132.90%
Xinghe County Muzi Carbon Co. Ltd. Produced by: Xinghe County Muzi Carbon Co., Ltd.	132.90%
Brilliant Charter Limited Produced by: Nantong Falter New Energy Co., Ltd.; or Shanxi Jinneng Group Co., Ltd.	132.90%
Shijiazhuang Huanan Carbon Factory Produced by: Shijiazhuang Huanan Carbon Factory	132.90%
Shenyang Jinli Metals & Minerals Imp & Exp Co., Ltd. Produced by: Shenyang Jinli Metals & Minerals Imp. & Exp. Co., Ltd.	132.90%
Shanghai Jinneng International Trade Co., Ltd. Produced by: Shanxi Jinneng Group Datong Energy Development Co., Ltd.	132.90%
Dalian Thrive Metallurgy Import and Export Co., Ltd. Produced by: Linghai Hongfeng Carbon Products Co., Ltd.; Tianzhen Jintian Graphite Electrodes Co., Ltd.; Jiaozuo Zhongzhou Carbon Products Co., Ltd.; Heilongjiang Xinyuan Carbon Products Co., Ltd.; Xuzhou Jianglong Carbon Manufacture Co., Ltd.; or Xinghe Xinyuan Carbon Products Co., Ltd.	132.90%
GES (China) Co., Ltd. Produced by: Shanghai GC Co., Ltd.; Fushun Jinli Petrochemical Carbon Co., Ltd.; Xinghe County Muzi Carbon Plant and Linyi County Lubei Carbon Co., Ltd. Shandong Province	132.90%
Qingdao Haosheng Metals & Minerals Imp & Exp Co., Ltd. Produced by: Sinosteel Jilin Carbon Co., Ltd.	132.90%
PRC-Wide Entity	159.64%

Disclosure

We will disclose to parties the calculations performed within five days of the date of public announcement of this determination in accordance with 19 C.F.R. § 351.224(b).

Continuation of Suspension of Liquidation

In the *Preliminary Determination*, the Department found that critical circumstances exist with respect to imports of subject merchandise from the Fangda Group and the separate rate companies but the Department found that critical circumstances did not exist with respect to Fushun Jinly and the PRC-wide entity. As noted above, for the final determination, the Department has found that critical circumstances exist with respect to imports of subject merchandise from the Fangda Group, the separate rate companies, and the PRC-wide entity, including Fushun Jinly. Thus, in accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all imports of subject merchandise from the Fangda Group and the separate rate applicants⁴ entered, or withdrawn from warehouse, for consumption on or after May 23, 2008, which is 90 days prior to the date of publication of the *Preliminary Determination* in the **Federal Register**. For the PRC wide entity, including Fushun Jinly, we will instruct CBP to

⁴ As noted above, the separate rate applicants are Jilin Carbon; Guanghan Shida Carbon Co., Ltd.; Nantong River East Carbon Co. Ltd.; Xinghe County Muzi Carbon Co. Ltd.; Brilliant Charter Limited; Shijiazhuang Huanan Carbon Factory; Shenyang Jinli Metals & Minerals Imp & Exp Co., Ltd.; Shanghai Jinneng International Trade Co., Ltd.; Dalian Thrive Metallurgy Import and Export Co., Ltd.; GES (China) Co., Ltd.; and Qingdao Haosheng Metals & Minerals Imp & Exp Co., Ltd..

suspend liquidation of all entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after May 23, 2008, pursuant to section 735(c)(4)(B) of the Act. We will instruct CBP to continue to require a cash deposit or the posting of a bond for all companies based on the estimated weighted-average dumping margins shown above. The suspension of liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified ITC of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise within 45 days of this final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information

disclosed under APO in accordance with 19 C.F.R. § 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: January 5, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I

Comment 1: Whether Fushun Jinly's Dumping Margin Should be Based on Adverse Facts Available

Comment 2: Whether Graphite Connecting Pins are Covered by the Scope of the Investigation

Comment 3: Whether the Fangda Group's Dumping Margin Should be Based on Adverse Facts Available

Comment 4: Whether Critical Circumstances Exist for the Fangda Group, Fushun Jinly, the Separate Rate Applicants, and the PRC-Wide Entity
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