

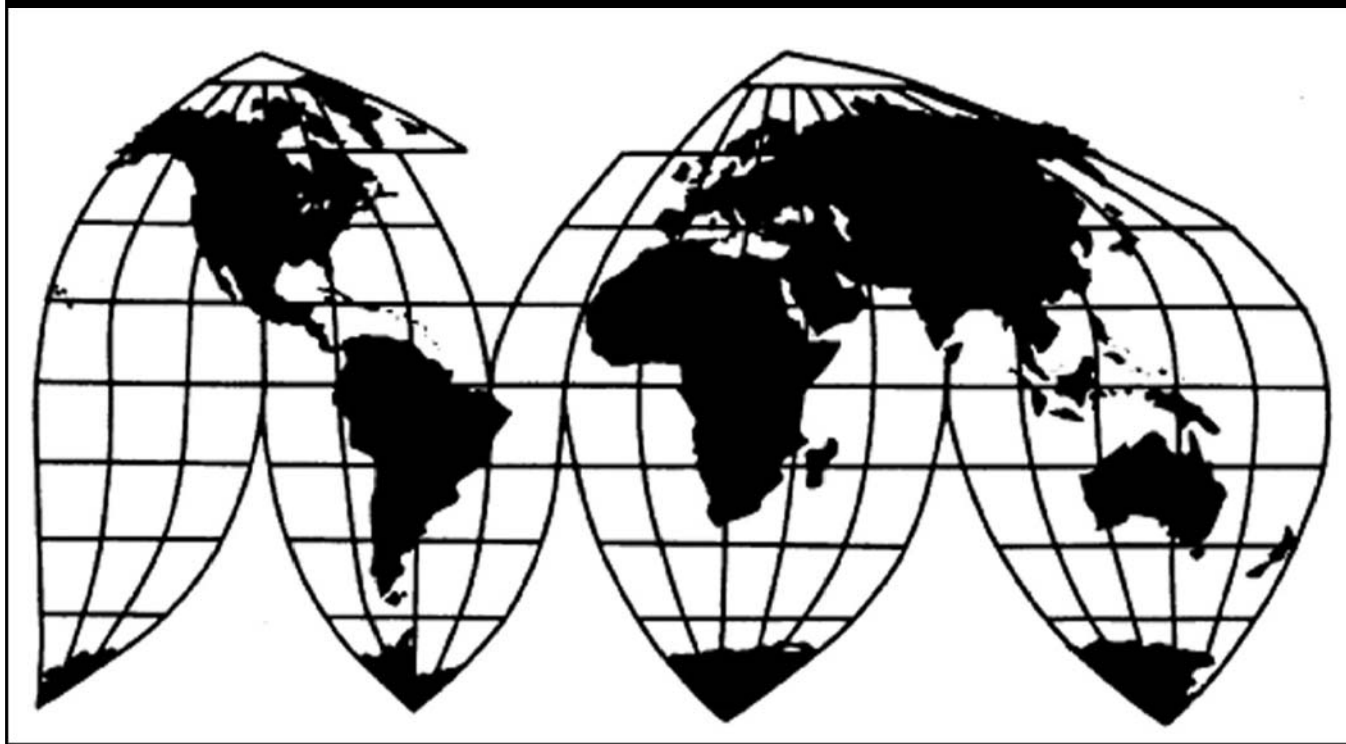
Small Diameter Graphite Electrodes from China

Investigation No. 731-TA-1143 (Final)

Publication 4062

February 2009

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Gracemary Roth-Roffy, Attorney
George Deyman, Supervisory Investigator

Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436

U.S. International Trade Commission

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-1143 (Final)

SMALL DIAMETER GRAPHITE ELECTRODES FROM CHINA

DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of small diameter graphite electrodes, provided for in subheading 8545.11.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).²

BACKGROUND

The Commission instituted this investigation effective January 17, 2008, following receipt of a petition filed with the Commission and Commerce by SGL Carbon LLC, Charlotte, NC, and Superior Graphite Co., Chicago, IL. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of small diameter graphite electrodes from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of September 4, 2008 (73 FR 51647). The hearing was held in Washington, DC, on January 6, 2009, and all persons who requested the opportunity were permitted to appear in person or by counsel.

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

² The Commission also finds that imports subject to Commerce's affirmative critical circumstances determination are not likely to undermine seriously the remedial effect of the antidumping duty order on China.

IEWS OF THE COMMISSION

Based on the record in the final phase of this investigation, we find that an industry in the United States is materially injured by reason of imports of small diameter graphite electrodes (“SDGE”) from China that are sold in the United States at less than fair value (“LTFV”). We also determine that critical circumstances do not exist with respect to the subject imports from China covered by the Department of Commerce’s (“Commerce”) affirmative critical circumstances determination.¹

I. BACKGROUND

The petition in this investigation was filed on January 17, 2008, by SGL Carbon LLC (“SGL Carbon”) and Superior Graphite Company (“Superior”) (collectively “Petitioners”). The Petitioners represented 100 percent of SDGE production in the United States during the period of investigation. Representatives from both producers appeared at the hearing and filed joint briefs.

Eight Chinese producers/exporters of the subject merchandise (Beijing Fangda Carbon Tech Co., Ltd.; Chengdu Rongguang Carbon Co., Ltd.; Fangda Carbon New Material Co., Ltd.; Fushun Carbon Co., Ltd.; Guangshan Shida Carbon Co., Ltd.; Hefei Carbon Co., Ltd.; GES (China) Co., Ltd.; and Jilin Carbon Import & Export Company) and representatives of five importers of the subject product (Ameri-Source Speciality Products; Ceramark Technology Inc.; Fedmet Resources Corp.; Graphite Electrode Sales, Inc.; and M. Brashem, Inc.) appeared at the hearing and submitted briefs in this investigation (all participating Chinese producers/exporters and importers are referred to collectively as “Respondents”).

The Commission received questionnaire responses from U.S. SDGE producers SGL Carbon and Superior.² The Commission also sent foreign producer/exporter questionnaires to 125 firms identified as producers or exporters of SDGE in China. Thirteen firms responded to the Commission’s foreign producer questionnaires. The responding firms reported that they accounted for nearly *** percent of production of SDGE in China during 2007, and nearly *** percent of exports from China to the United States of SDGE during 2007.

II. DOMESTIC LIKE PRODUCT AND DOMESTIC INDUSTRY

A. In General

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”³ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Tariff Act”), defines the relevant domestic industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”⁴ In turn, the Tariff Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation. . . .”⁵

¹ See Separate and Concurring Views of Commissioner Charlotte R. Lane on this issue.

² The Commission also received questionnaire responses from C/G Electrodes LLC (“C/G”) and Showa Denko Carbon, Inc. (“Showa”) domestic producers of large diameter graphite electrodes (“LDGE”).

³ 19 U.S.C. § 1677(4)(A).

⁴ 19 U.S.C. § 1677(4)(A).

⁵ 19 U.S.C. § 1677(10).

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.⁶ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁷ The Commission looks for clear dividing lines among possible like products and disregards minor variations.⁸ Although the Commission must accept Commerce’s determination as to the scope of the imported merchandise subsidized or sold at LTFV,⁹ the Commission determines what domestic product is like the imported articles Commerce has identified.¹⁰

B. Product Description

In its final antidumping duty determination, Commerce defined the imported merchandise within the scope of the antidumping duty investigation as follows:

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

⁶ See, e.g., Cleo, Inc. v. United States, 501 F.3d 1291, 1299 (Fed. Cir. 2007); NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including the following: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

⁷ See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

⁸ Nippon, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249 at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

⁹ See, e.g., USEC, Inc. v. United States, 34 Fed. Appx. 725, 730 (Fed. Cir. 2002) (“The ITC may not modify the class or kind of imported merchandise examined by Commerce.”); Algoma Steel Corp. v. United States, 688 F. Supp. 639, 644 (Ct. Int’l Trade 1988), aff’d, 865 F.3d 240 (Fed. Cir.), cert. denied, 492 U.S. 919 (1989).

¹⁰ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Cleo, 501 F.3d at 1298 n.1 (“Commerce’s {scope} finding does not control the Commission’s {like product} determination.”); Torrington, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

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.¹¹

SDGE are cylindrical in shape and are produced in a variety of diameters and lengths. They conduct electricity at very high currents to generate heat necessary to melt and/or further refine steel. They are used in various applications including certain electric arc furnaces in steel-making mini-mills; their uses include ladle metallurgy, primary low-duty melting, and specialty furnace applications.¹² Typically, electrodes are joined in columns with a threaded graphite pin joining system (also known as a pinning or connecting system). Because of the intensity of the melting process in steel production, the electrodes are continuously consumed.¹³

SDGE are manufactured from a range of petroleum coke grades, from low grade anode coke to premium high grade needle coke. The grade of coke, along with other characteristics such as size and impregnation, determines the level of current an electrode can carry.¹⁴ SDGE are produced in a variety of grades.¹⁵ Although domestic producers indicated that they can produce the full range of all grades and sizes of SDGE, they only produced SDGE in 8 inch to 16 inch diameters during the period of investigation.¹⁶ Importers reported that Chinese SDGE is sold in all diameters and sizes in the U.S. market.¹⁷

C. Preliminary Determination

In the preliminary phase of this investigation, Petitioners proposed defining a single domestic like product coextensive with the scope. Respondents urged the Commission to define the domestic like product to include all graphite electrodes, including LDGE (graphite electrodes in diameters greater than 16 inches), which are not within the scope.

In its preliminary determination, the Commission defined the domestic like product as SDGE corresponding to the scope. In so doing, the Commission found that there were both differences and similarities between SDGE and LDGE. The Commission found that both are produced from various grades and mixes of petroleum coke, and both act as conductors of electricity, regardless of their size and quality, to generate heat sufficient to melt steel or other metals. It observed that SDGE generally could not be interchanged for LDGE in steel-making applications, but noted that the interchangeability of all graphite electrodes is largely limited to adjacent diameter sizes. It also found that SDGE and LDGE were manufactured by the same production processes, manufactured on the same equipment by the only producer of both, and for the most part sold through the same channels of distribution. The Commission also found the record to be mixed as to whether producers perceived SDGE and LDGE to be different products; it noted that there was only limited information concerning customer perceptions, which the

¹¹ 74 Fed. Reg. 2049 (Jan. 14, 2009). In the preliminary determination, the scope had been limited to SDGE, including SDGE with an attached pin joining system. In its final determination, Commerce expanded the scope to include all graphite electrode joining pins as an anti-circumvention measure.

¹² Confidential Staff Report (“CR”) at I-7, Public Staff Report (“PR”) at I-6.

¹³ CR at I-8-I-9, PR at I-7.

¹⁴ CR at I-11, PR at I-8.

¹⁵ CR/PR at III-1 n. 1.

¹⁶ CR/PR at III-1 n. 1.

¹⁷ Importer and Foreign Producer Questionnaires.

Commission deemed to be a critical factor.¹⁸ Finally with respect to price, the Commission noted that, although Petitioners indicated that SDGE prices were lower than those for LDGE, it appeared that this may be true within the entire range of graphite electrodes, as the larger the diameter and length, the higher the price of the electrode.¹⁹ The Commission concluded as follows:

while it is a close question, we define the domestic like product to be SDGE. In any final phase investigation, we intend to collect additional information, particularly from purchasers concerning their perceptions of the products, and to revisit the issue of whether SDGE and LDGE should be characterized as a continuum of products without a clear dividing line.²⁰

D. Domestic Like Product

In this final phase, Petitioners again argue that the Commission should find one domestic like product consisting of SDGE, coextensive with Commerce's scope. They stress that there are pronounced differences between SDGE and LDGE. Respondents, however, argue that the domestic like product should be expanded to include SDGE and LDGE because they form a continuum of the same product, graphite electrodes.

Accordingly, we consider whether the product should be broadened beyond the scope to include LDGE. For the reasons discussed below, we find a single domestic like product consisting of only SDGE.

Physical Characteristics and End Uses. Both SDGE and LDGE share a number of physical characteristics and uses. As the Commission found in its preliminary determination, SDGE and LDGE are smooth, cylindrical in shape, and are produced from coke that is formed into shape by extrusion into an electrode of the desired grade, diameter, and length.²¹ Both LDGE and SDGE are joined in columns, each by a threaded graphite connecting system, most commonly a graphite pin. The strengths of the pins for SDGE and LDGE differ and pins designed for LDGE must be stronger and have a lower coefficient of thermal expansion than that for SDGE to prevent breakage of the pin.²² SDGE usually are produced from a range of different grades of petroleum coke, from low grade anode coke to premium high grade needle coke or a blend of the two.²³ Superior, which produces only SDGE, reports that ***. SGL Carbon, which produces 14 to 16 inch SDGE as well as LDGE, makes its SDGE from ***.²⁴ LDGE, on the other hand, generally are made from premium needle coke.²⁵ SDGE are generally produced in six different grades, while LDGE are typically produced in the three highest of the six grades.²⁶

¹⁸ Small Diameter Graphite Electrodes from China, Inv. No. 731-TA-1143 (Preliminary), USITC Pub. 3985 (Mar. 2008) (“USITC Pub. 3985”) at 6-8.

¹⁹ USITC Pub. 3985 at 9.

²⁰ USITC Pub. 3985 at 9.

²¹ CR at I-7, PR at I-6.

²² CR at I-8, PR at I-7, Petitioners' Prehearing Brief at 17.

²³ CR at I-10, PR at I-8.

²⁴ Petitioners' Posthearing Brief at Question 1, p. 3.

²⁵ CR at I-10, PR at I-8.

²⁶ SDGE generally are produced in regular power (“RP”), normal power (“NP”), medium power (“MP”), high power (“HP”), super high power (“SHP”) and ultra high power (“UHP”) grades. SDGE generally are sold in diameter increments of 2 inches, ranging from 2 inches through 16 inches. The majority of LDGE are produced in the UHP grade while some LDGE are produced in the HP and SHP grades. CR at I-10, PR at I-8. The grades are not
(continued...)

The grades of coke used to produce LDGE and SDGE, along with other physical characteristics, such as size and degree of impregnation, determine the amount of current the electrode can carry. As such, SDGE typically have lower current carrying capacity, ranging from currents of 15,000 to 60,000 amps and not exceeding 70,000 amps. LDGE can carry currents of 60,000 to 160,000 amps. However, while SDGE and LDGE have differing current capabilities, the same is also true for diverse sizes within each group of products; common current capability is only present within adjacent sizes. Other important physical characteristics of graphite electrodes include bulk density, specific electrical resistance, coefficient of thermal expansion, and flexural strength, and the ranges of each of these physical characteristics for SDGE and LDGE may vary.²⁷

Both SDGE and LDGE are used as conductors of electricity in electric furnaces, such as electric arc furnaces (“EAFs”) in steel mini-mills and foundries. Both groups of products conduct electricity at high currents to generate heat necessary to melt and further refine steel or other metals. SDGE, however, due to their lower current carrying capacity and coke make-up, are generally used in ladle steel refining, foundries, and specialty furnace applications.²⁸ They are used only rarely to melt steel scrap in mini-mill EAFs, and then only in older and smaller EAFs. In contrast, because of their higher current carrying capability and their coke make-up (premium needle coke), LDGE are used almost exclusively in higher intensity uses, in particular, steel melting in large electric arc furnaces. The record indicates that SDGE cannot be used in new electric arc furnaces as these furnaces do not utilize graphite electrodes in diameters under 24 inches due to the high currents involved in such operations (over 100,000 amps). The record indicates that *** percent of LDGE are used for steel melting in large electric arc furnaces, with only *** percent of LDGE used in secondary ladle and refining operations. Although a portion of LDGE in 18-inch diameters are used in ladle applications, *** LDGE in 20-inch diameters and above are used in steel melting applications.²⁹

Interchangeability. The record indicates that the design of the equipment that uses the electrodes determines the optimum electrode diameter based on electrical and operating specifications.³⁰ There is some evidence on the record suggesting that it may be possible to utilize an adjacent diameter size by converting the equipment that holds the electrodes in place and changing the electrical output of the furnace. Such conversion, while possible, would likely be cost-prohibitive and might be unsafe.³¹ Although Petitioners indicated that it was possible to shift between adjacent sizes, they testified that SDGE cannot be interchanged for LDGE, as LDGE are produced to withstand stress-intensive applications and to prevent breakage in electric arc furnaces.³²

The interchangeability of SDGE and LDGE in high current or voltage applications also appears to be limited by the type of grade of petroleum coke used in producing each type. The record indicates

²⁶ (...continued)

drawn to any industry standard, but are primarily a marketing tool. CR at I-10 n. 30, PR at I-8 n. 30. The UHP grade uses 100 percent needle coke.

²⁷ CR at I-11, CR/PR Table I-2, PR at I-8.

²⁸ Other uses include smelter uses, fused metal oxide production, waste recovery, waste encapsulation, and other minor furnace applications. CR at I-9 n. 21, PR at I-7 n. 21.

²⁹ CR at III-6 n. 5, PR at III-3.

³⁰ CR at I-9, PR at I-7.

³¹ CR at I-9, PR at I-7.

³² Transcript at 19 (Stinson).

that high grade needle coke used in LDGE is more suitable for high intensity applications because it makes the LDGE less likely to break apart in the electric arc furnace.^{33 34 ***.}³⁵ Similarly, ***.³⁶

Channels of Distribution. *** LDGE were sold directly to end users in 2007, while nearly *** percent of SDGE were sold to distributors and *** percent were sold to end users.³⁷

Manufacturing Facilities, Production Processes, and Employees. Both SDGE and LDGE share similar production processes at the formation stage. All graphite electrodes are made from petroleum coke that is shaped by extrusion into electrodes of various diameters and lengths. The formed electrodes are then baked. After the initial baking, however, the production processes for SDGE and LDGE may differ. Once the electrode undergoes initial baking, it may be impregnated with tar pitch and then rebaked, filling pores to increase its density and strength. LDGE, which require higher stress tolerances, are always impregnated at least once, but SDGE are not always impregnated. The baked electrodes are then heated in a furnace to extremely high temperatures of up to 3,000 degrees centigrade, and then are transformed into graphite, a process known as graphitization. Unfinished SDGE undergo no further processing beyond the graphitization stage other than machining, while LDGE may be rebaked. All graphite electrodes are cooled and may then go to a final stage to be machined to exact dimensions and tolerances. The final stage may include machining and fitting the pinning system.³⁸

The record indicates that there is a limited current overlap in manufacturing facilities between SDGE and LDGE. Superior, which produces only SDGE, is not able to produce LDGE on the equipment it uses to produce SDGE, due to the necessary size differences in equipment such as ***. Showa and C/G, currently manufacturers of LDGE only, once produced SDGE on the same equipment on which they now produce LDGE. ***.³⁹ SGL Carbon, the only producer of both SDGE and LDGE during the period of investigation, is able to produce both products on the same equipment using the same employees.⁴⁰

Producer and Customer Perceptions. There are no industry standards that establish a specific diameter distinction between LDGE and SDGE. In their marketing literature, Showa and C/G refer to themselves as producers of large graphite electrodes and Superior refers to itself as a producer of small graphite electrodes. On the other hand, SGL Carbon, the only producer of both LDGE and SDGE, does not advertise itself as such. Respondents indicated that according to SGL Carbon's website, SGL Carbon states that it produces electrodes ranging in size from 14" to 32" diameter and designates 14" to 24" in diameter as regular-sized electrodes and 26" to 32" in diameter electrodes as extra-sized electrodes.⁴¹ In

³³ Petitioners' Prehearing Brief at 12-15, Transcript at 19 (Stinson).

³⁴ When an electrode breaks in an EAF it is very costly to steel producers because of furnace downtime and subsequent significant delays in processing the affected batch of steel. The lower currents in ladle furnaces make it less likely that electrodes will break. Hearing Transcript at 35 (McClintock), Staff Notes from SGL Carbon plant tour (Dec. 3, 2008) EDIS number 317083.

³⁵ CR at D-21 ***, PR at D-4.

³⁶ CR at D-24 ***, PR at D-4.

³⁷ CR/PR at II-1.

³⁸ CR at I-12-I-15, PR at I-9-I-11.

³⁹ CR/PR at D-3.

⁴⁰ Transcript at 92 (Stinson).

⁴¹ Respondents' Posthearing Brief at 6.

***, however, *** indicated that they perceived SDGE and LDGE to be different products as SDGE and LDGE are used in different applications.⁴²

With respect to customer perceptions, we note that customer responses were mixed. Of the purchasers that provided an opinion, nine indicated that SDGE and LDGE are never or rarely comparable as to physical characteristics and uses, while eight indicated that SDGE and LDGE are mostly or somewhat comparable. Customers' detailed written responses, however, tend more to support the view that SDGE and LDGE have different end uses.⁴³

Price. The record shows that the average unit values for SDGE during the period of investigation were *** the average unit values for LDGE.⁴⁴ Domestic producers, importers and purchasers agree that SDGE are typically lower priced than LDGE, reflecting differences in the products' composition and physical characteristics.⁴⁵ Respondents are correct that the larger the diameter, the more costly to produce and the higher the price of the electrode.⁴⁶ Respondents acknowledge, however, that the higher prices for LDGE compared to SDGE are largely due to the higher cost of premium needle coke, a raw material necessary for LDGE's higher intensity applications.⁴⁷

Analysis and Conclusion

While we find the issue to be a close one, we conclude on balance that the record merits limiting the domestic like product to SDGE. There are a number of ways in which SDGE and LDGE might be viewed as forming a continuum, including that price, current carrying capacity, and premium needle coke content all tend to increase with the size of the electrode and electrodes of adjacent sizes are most comparable with respect to these attributes. Nevertheless, there are several salient features of graphite electrodes that we find establish a clear dividing line between SDGE and LDGE at 16 inches in diameter. Specifically, there is very little overlap in end uses between SDGE and LDGE. SDGE are used generally in foundry, specialty furnace applications and steel mill ladle applications. In contrast, *** of LDGE are used for primary melting of steel scrap in mini-mill electric arc furnaces, with only *** percent going into a limited number of steel refining ladles.⁴⁸ Second, there is very limited overlap in manufacturing facilities and equipment that produce SDGE and LDGE, with only one of four domestic manufacturers of graphite electrodes currently able to make both products. Third, although interchangeability of all graphite electrodes is generally limited to adjacent diameter sizes, SDGE cannot be substituted for LDGE in heavy melting applications due to coke content and other physical characteristics. Finally, although purchasers identify similarities between SDGE and LDGE, they widely acknowledge that they do not use

⁴² CR at D-3-D-6, PR at D-4.

⁴³ *** responded that SDGE are used on *** while LDGE are used on EAF furnaces. *** responded that while both sizes are used for heating and refining, only LDGE are used for melting. *** answered that SDGE and LDGE have "[t]otally different applications." See CR at D-17-D-27, PR at D-4. *** noted that each mill with a ladle furnace buys electrodes independently but electrodes for EAFs are purchased on a corporate basis. See CR at D-24, PR at D-4 (Question III-10). As noted previously, most ladle furnaces use SDGE and most EAFs use LDGE.

⁴⁴ CR/PR at Table I-3.

⁴⁵ Petitioners' Prehearing Brief at 34.

⁴⁶ Respondents' Prehearing Brief at 21.

⁴⁷ Respondents' Prehearing Brief at 21.

⁴⁸ Petitioners' submission of Feb. 15, 2008, CR at III-6 n.5, and PR at III-3 n.5.

SDGE and LDGE for the same applications, often purchase them in separate transactions and note that the level of technical support and service for SDGE and LDGE may vary.⁴⁹

On balance, we find a clear dividing line between SDGE and LDGE and we decline to expand the domestic like product beyond the scope of the investigation to include all graphite electrodes. We therefore define the domestic like product as all SDGE coextensive with the scope.⁵⁰

E. Domestic Industry

The domestic industry is defined as the domestic “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”⁵¹ In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market. Accordingly, consistent with our definition of the domestic like product, we define the domestic industry as all domestic producers of SDGE, that is SGL and Superior.

⁴⁹ CR at D-17-D-27.

⁵⁰ Both Petitioners and Respondents have cited a number of prior investigations to support their differing positions as to the appropriate definition of the domestic like product in this investigation, many of which they cited to in their briefs submitted in the preliminary phase of this investigation. The cited investigations generally address such issues as whether the domestic like product should encompass products not within the scope and whether a continuum of products within the scope should be divided into separate domestic like products. We noted the following in the preliminary determination:

[D]eterminations defining the domestic like product in other investigations of differing products have little utility as each determination is based on the record of each case, including the arguments made by the parties. Certain Aluminum Plate From South Africa, Inv. 731-TA-1056 (Preliminary) USITC Pub. 3654 (Dec. 2003) at n. 59, citing Nippon Steel Corp. v. United States, 19 CIT 450, 454-55 (1995); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1087-88 (CIT 1988); Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1669 n.5 (CIT 1988). Moreover, the cases that discuss whether a continuum of products included in the scope should be divided into separate like products are unpersuasive here. The inquiry in this matter is how to treat a continuum of products in the context of whether to define the domestic like product to encompass articles outside the scope. In cases such as the one presented in this matter, the Commission “is faced with determining where the continuum line ends.” Aluminum Plate at 11 n.59, citing Minivans from Japan, Inv. No. 731-TA-522 (Final), USITC Pub. 2529 at 6 (July 1992).

USITC Pub. 3985 at 9 n.46.

⁵¹ 19 U.S.C. § 1677(4)(A).

III. MATERIAL INJURY BY REASON OF SUBJECT IMPORTS ⁵²

A. Legal Standards

In the final phase of antidumping or countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured or threatened with material injury by reason of the imports under investigation.⁵³ In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁵⁴ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁵⁵ In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁵⁶ No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁵⁷

The statute requires the Commission to determine whether the domestic industry is “materially injured by reason of” unfairly traded imports.⁵⁸ The statute, however, does not define the phrase “by reason of,” indicating that this aspect of the injury analysis is left to the Commission’s reasonable exercise of its discretion.⁵⁹ In identifying a causal link, if any, between subject imports and material injury to the domestic industry, the Commission examines the facts of record that relate to the significance of the volume and price effects of the subject imports and any impact of those imports on the condition of the domestic industry. This evaluation must ensure that subject imports are more than a minimal or tangential cause of material injury and that there is a sufficient causal nexus between subject imports and material injury.⁶⁰ Thus, the Commission interprets the “by reason of” language in a manner

⁵² Negligibility is not an issue in this investigation under 19 U.S.C. § 1677(24). According to the compilation of questionnaire data and official import statistics, it appears that subject imports from China were well above three percent of total imports for the most recent 12-month period preceding the filing of the petition for which data are available. Specifically, subject imports from China accounted for *** percent of total imports of the merchandise in that period. CR at IV-5, PR at IV-3.

⁵³ 19 U.S.C. §§ 1671d(b) and 1673d(b).

⁵⁴ 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B).

⁵⁵ 19 U.S.C. § 1677(7)(A).

⁵⁶ 19 U.S.C. § 1677(7)(C)(iii).

⁵⁷ 19 U.S.C. § 1677(7)(C)(iii).

⁵⁸ 19 U.S.C. § 1673d(b).

⁵⁹ Angus Chemical Co. v. United States, 140 F.3d 1478, 1484-85 (Fed. Cir. 1998) (“[T]he statute does not ‘compel the commissioners’ to employ [a particular methodology] . . . [however] regardless of what approach is used, whether it be the two-step or unitary approach or some other approach, the three mandatory factors must be considered in each case”), aff’d 944 F. Supp. 943, 951 (Ct. Int’l Trade 1996).

⁶⁰ The Federal Circuit, in addressing the causation standard of the statute, observed that “[a]s long as its effects are not merely incidental, tangential, or trivial, the foreign product sold at less than fair value meets the causation requirement.” Nippon Steel Corp. v. USITC, 345 F.3d 1379, 1384 (Fed. Cir. 2003). This was further ratified in Nippon Steel Corp. v. United States, 458 F. 3d 1345, 1357 (Fed. Cir. 2006), where the court stated that the “causation requirement is met so long as the effects of dumping are not merely incidental, tangential, or trivial.” See also Taiwan Semiconductor Industry Ass’n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001) (“to ensure that the subject imports are causing the injury, not simply contributing to the injury in a tangential or minimal way.”); Gerald

(continued...)

that implements the statutory requirement of finding a causal, not merely a temporal, link between the subject imports and the material injury to the domestic industry.

In many investigations, there are other economic factors that also may be causing injury to the domestic industry. The legislative history explains that the Commission must examine factors other than subject imports to ensure that it is not attributing injury from these sources to the subject imports, but does not require the Commission to isolate the injury caused by other factors from injury caused by unfair imports.⁶¹ The statutory scheme clearly contemplates that an industry may be facing difficulties from a variety of sources, including non-subject imports and other factors, but the existence of injury caused by other factors does not compel a negative determination if the subject imports themselves are making more than a minimal or tangential contribution to material injury.⁶² The legislative history further clarifies that subsidized imports need not be the “principal” cause of material injury and that the “by reason of” standard does not contemplate that injury from subsidized imports be weighed against other factors, such as non-subject imports, which may be contributing to overall injury to an industry.⁶³

Assessment of whether material injury to the domestic industry is “by reason of” subject imports “does not require the Commission to address the causation issue in any particular way” as long as “the injury to the domestic industry can reasonably be attributed to the subject imports” and the Commission

⁶⁰ (...continued)

Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997) (“the statute requires adequate evidence to show that the harm occurred ‘by reason of’ the LTFV imports, not by reason of a minimal or tangential contribution to material harm caused by LTFV goods.”); Mittal Steel Point Lisas Ltd. v. United States, 542 F.3d 867, 873 (Fed. Cir. 2008).

⁶¹ Statement of Administrative Action (“SAA”) on Uruguay Round Agreements Act (URAA), H.R. Rep. 103-316, Vol. I at 851-52 (1994) (“[T]he Commission need not isolate the injury caused by other factors from injury caused by unfair imports. . . Rather, the Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.”); S. Rep. 96-249 at 75 (1979) (the Commission “will consider information which indicates that harm is caused by factors other than less-than-fair-value imports.”); H.R. Rep. 96-317 at 47 (1979) (“in examining the overall injury being experienced by a domestic industry, the ITC will take into account evidence presented to it which demonstrates that the harm attributed by the petitioner to the subsidized or dumped imports is attributable to such other factors;” those factors include “the volume and prices of nonsubsidized imports or imports sold at fair value, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry”); accord Mittal Steel, 542 F.3d at 877.

The Federal Circuit has affirmed the following: “[T]he Commission need not isolate the injury caused by other factors from injury caused by unfair imports. . . . Rather, the Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.” Taiwan Semiconductor Industry Ass’n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001)(emphasis in original); Asociacion de Productores de Salmon y Trucha de Chile AG v. United States 180 F. Supp. 2d 1360, 1375 (Ct. Int’l Trade 2002) (“[t]he Commission is not required to isolate the effects of subject imports from other factors contributing to injury” or make “bright-line distinctions” between the effects of subject imports and other causes.). See also Softwood Lumber from Canada, Inv. Nos. 701-414 and 731-TA-928 (Remand), USITC Pub. 3658 at 100-01 (Dec. 2003) (Commission recognized that “[i]f an alleged other factor is found not to have or threaten to have injurious effects to the domestic industry, i.e., it is not an ‘other causal factor,’ then there is nothing to further examine regarding attribution to injury”), citing Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997) (the statute “does not suggest that an importer of LTFV goods can escape countervailing duties by finding some tangential or minor cause unrelated to the LTFV goods that contributed to the harmful effects on domestic market prices.”).

⁶² See SAA at 851-52, 885.

⁶³ S. Rep. 96-249 at 74-75; H.R. Rep. 96-317 at 47; see also Nippon Steel Corp., 345 F.3d at 1381 (“[D]umping need not be the sole or principal cause of injury.”).

“ensure[s] that it is not attributing injury from other sources to the subject imports.”⁶⁴ Indeed, the Federal Circuit has examined and affirmed various Commission methodologies and has disavowed “rigid adherence to a specific formula.”⁶⁵ The Federal Circuit has provided guidance on the questions that it would raise and expect the Commission to have considered in its analysis “where commodity products are at issue and fairly traded, price competitive, non-subject imports are in the market.”^{66 67 68 69} Nonetheless,

⁶⁴ Mittal Steel, 542 F.3d at 877-878; see also id at 873 (“While the Commission may not enter an affirmative determination unless it finds that a domestic industry is materially injured ‘by reason of’ subject imports, the Commission is not required to follow a single methodology for making that determination. . . . [and has] broad discretion with respect to its choice of methodology.”) citing United States Steel Group v. United States, 96 F.3d 1352, 1362 (Fed. Cir. 1996) and S. Rep. 96-249 at 75.

⁶⁵ Nucor Corp. v. United States, 414 F.3d 1331, 1336, 1341 (Fed. Cir. 2005). See also Mittal Steel, 542 F.3d at 879 (“Bratsk did not read into the antidumping statute a Procrustean formula for determining whether a domestic injury was ‘by reason’ of subject imports.”).

⁶⁶ Mittal Steel, 542 F.3d at 875-879.

⁶⁷ Chairman Aranoff, Vice Chairman Pearson, and Commissioners Okun and Lane note that the Federal Circuit’s decisions in Gerald Metals, Bratsk, and Mittal Steel all involved cases where the relevant “other factor” was the presence in the market of significant volumes of price competitive non-subject imports. The Commission interpreted the Federal Circuit’s very specific instructions in Bratsk as requiring it to apply a particular additional methodology following its finding of material injury in cases involving commodity products and a significant market presence of price-competitive non-subject imports. The additional “replacement/benefit” test looked at whether non-subject imports might have replaced subject imports without any benefit to the U.S. industry. The Commission applied that specific additional test in subsequent cases, including the Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago determination that underlies the Mittal Steel litigation.

Mittal Steel clarified that the Commission’s interpretation of Bratsk was too rigid and makes clear that the Federal Circuit does not require the Commission to apply an additional test nor any one specific methodology; the Commission need only ensure that subject imports are a substantial factor (as opposed to a merely incidental, tangential, or trivial factor) in the injury to the domestic industry, and not attribute injury from non-subject imports or other factors to subject imports. See Mittal Steel Point Lisas Ltd. v. United States, 542 F.3d 867, 875-879 and n.2 (recognizing the Commission’s alternative interpretation of Bratsk as a reminder to conduct a non-attribution analysis) (Fed. Cir. 2008). Accordingly, we do not consider ourselves required to apply the replacement/benefit analysis that has characterized the Commission’s recent opinions.

What we can discern from the progression of Gerald Metals, Bratsk, and Mittal Steel is that, in cases involving commodity products where price-competitive non-subject imports are a significant factor in the U.S. market, the Court will require the Commission to give full consideration to the causation and non-attribution issues and that its explanation will have to be sufficiently cogent and persuasive to survive the court’s scrutiny.

⁶⁸ Commissioner Pinkert does not join in this sentence or in the preceding footnote. He points out that the Federal Circuit, in Bratsk Aluminum Smelter v. United States, 444 F.3d 1369 (Fed. Cir. 2006) and Mittal Steel, held that the Commission is required, in certain circumstances, to undertake a particular kind of analysis of non-subject imports. Mittal Steel explains as follows:

What Bratsk held is that “where commodity products are at issue and fairly traded, price competitive, non-subject imports are in the market,” the Commission would not fulfill its obligation to consider an important aspect of the problem if it failed to consider whether non-subject or non-LTFV imports would have replaced LTFV subject imports during the period of investigation without a continuing benefit to the domestic industry. 444 F.3d at 1369. Under those circumstances, Bratsk requires the Commission to consider whether replacement of the LTFV subject imports might have occurred during the period of investigation, and it requires the Commission to provide an explanation of its conclusion with respect to that factor.

542 F. 3d at 878.

(continued...)

the question of whether one out of several possible causes of injury exceeds the minimal or tangential threshold and is an independent cause of material injury to the domestic industry is left to the expertise of the Commission. The finding as to whether the threshold is satisfied is a factual one, subject to review under the substantial evidence standard. Congress has delegated these factual findings to the Commission because of the agency's institutional expertise in resolving injury issues.⁷⁰

B. Conditions of Competition and the Business Cycle

The following conditions of competition inform our analysis of whether there is material injury by reason of subject imports.

1. Demand Considerations

The demand for SDGE is largely determined by the demand for steel.⁷¹ Apparent U.S. consumption of SDGE fluctuated during the period of investigation, but increased overall by *** percent. Apparent U.S. consumption increased *** from *** metric tons in 2005 to *** metric tons in 2006 (an increase of *** percent), then declined to *** metric tons in 2007 (a decrease of *** percent), but remained *** above the 2005 levels.⁷² Apparent U.S. consumption was *** lower during January-September 2008 than during the same period in 2007.⁷³ The increase in demand during the period of investigation was most commonly attributed by U.S. producers and importers to increased steel production.⁷⁴ Indeed, much of the period of investigation represented a boom period for domestic steel production, leading to increased demand for SDGE from the existing mills and the reopening of old integrated steels mills.⁷⁵

2. Supply Conditions

As noted earlier, the domestic industry consists of SGL Carbon and Superior. Both SGL Carbon and Superior reported that they were capable of producing the full range of grades and sizes of SDGE. SGL Carbon reported that it currently produces SDGE in diameters of 14 and 16 inches. According to SGL Carbon, it ceased production of SDGE in diameters of 10 inches and 12 inches in 2006 due to competition from Chinese imports in those diameters. Superior reported that it currently produces SDGE

⁶⁸ (...continued)

Based on the record evidence in the final phase of this investigation, Commissioner Pinkert finds that the subject merchandise is not a commodity product. It is customized for each purchaser, and such customization involves mixing various types of coke, especially anode and needle coke, not all of which are available to each supplier. Because a Bratsk replacement/benefit analysis is not required with respect to a product that is not a commodity, Commissioner Pinkert declines to perform one here.

⁶⁹ Commissioner Lane also refers to her dissenting views in Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, China, Thailand, and the United Arab Emirates, Inv. Nos. 731-TA-1131-1134 (Final), USITC Pub. 4040 (Oct. 2008), for further discussion of Mittal Steel.

⁷⁰ Mittal Steel, Slip Op. 2007-1552 at 9-10; Nippon Steel Corp., 458 F.3d at 1350, citing U.S. Steel Group, 96 F.3d at 1357; S. Rep. 96-249 at 75 ("The determination of the ITC with respect to causation is . . . complex and difficult, and is a matter for the judgment of the ITC.").

⁷¹ CR/PR at II-1.

⁷² CR/PR at Tables IV-3 and C-1.

⁷³ CR/PR at Table IV-3 and C-1.

⁷⁴ CR at II-6, PR at II-4.

⁷⁵ CR at II-6, PR at II-4.

in diameters from 8 inches to 16 inches. The domestic industry's capacity to produce SDGE was steady at *** metric tons in 2005 and 2006, but fell to *** metric tons in 2007.⁷⁶ The domestic industry's capacity to produce SDGE was *** metric tons in interim 2008 compared to *** metric tons in interim 2007.⁷⁷

During the period of investigation, the U.S. SDGE market was supplied by the domestic industry, subject imports, and nonsubject imports. Despite overall increasing demand during the period of investigation, the domestic industry's share of the U.S. market declined from *** percent in 2005 to *** percent in 2006 and to *** percent in 2007. The domestic industry's share of the U.S. market was higher at *** percent in interim 2008 compared to *** percent in interim 2007.⁷⁸ In contrast, subject imports' share of the U.S. market increased from *** percent in 2005 to *** percent in 2006 and to *** percent in 2007, and was higher at *** percent in interim 2008 compared to *** percent in interim 2007.⁷⁹ Nonsubject imports' share of the U.S. market fluctuated, increasing from *** percent in 2005 to *** percent in 2006 and then decreasing to *** percent in 2007, but was lower at *** percent in interim 2008 compared to *** percent in interim 2007.⁸⁰

As noted above, petroleum coke, either in the form of needle coke, anode coke, or other grades, and petroleum pitch or coal tar pitch are the principal raw materials used in producing SDGE. Domestic producers reported that there has been a limited supply of needle coke globally. The spot price for oil, which determines the cost of the petroleum-based raw materials, increased by 122 percent from January 2005 to September 2008, having peaked in June 2008, but declined thereafter.⁸¹ Domestic producers reported that their raw material costs have increased by *** percent on a per-unit basis from 2005 to 2007.⁸²

3. Substitutability and Other Conditions

The record indicates that the domestic like product and subject imports are at least moderately interchangeable. *** U.S. producers and a majority of importers reported that SDGE from China and SDGE produced in the United States are frequently interchangeable. Nearly all of the responding purchasers reported that SDGE from China and SDGE produced in the United States are always or frequently interchangeable.⁸³

*** subject imports are sold predominantly through short-term contracts or spot sales. With respect to domestic producers, ***. With respect to importers, short-term contracts range in duration from one month to one year. Importers' contracts typically contain fixed price and quantity terms.⁸⁴

⁷⁶ CR/PR at Table III-2, CR at III-4 n.3, PR at III-2 n.3. ***. CR at III-4 n.3, PR at III-2 n.3.

⁷⁷ CR/PR at Table III-2.

⁷⁸ CR/PR at Table IV-4.

⁷⁹ CR/PR at Table IV-4.

⁸⁰ CR/PR at Table IV-4.

⁸¹ CR/PR at V-1.

⁸² CR/PR at V-1.

⁸³ CR at II-11, PR at II-7.

⁸⁴ CR at V-5, PR at V-3.

C. Material Injury By Reason of Subject Imports from China

1. Volume of the Subject Imports

In evaluating the volume of subject imports, section 771(7)(C)(i) of the Tariff Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”⁸⁵

The volume of subject imports, which was sizeable at the beginning of the period of investigation,⁸⁶ increased by 36.7 percent from 2005 to 2007.⁸⁷ Subject imports increased from 10,082 metric tons in 2005 to 13,161 metric tons in 2006, then to 13,784 metric tons in 2007. In interim 2008, subject imports were slightly lower, at 10,112 metric tons, compared to 10,458 metric tons in interim 2007.⁸⁸ Subject imports also increased their market share. The market share of subject imports rose from *** percent in 2005 to *** percent in 2007, and was higher at *** percent in interim 2008 compared to *** percent in interim 2007.⁸⁹ Additionally, the ratio of subject imports to U.S. production rose *** from *** percent in 2005 to *** percent in 2007, but was lower in interim 2008, after the filing of the petition, at *** percent compared to *** percent in interim 2007.⁹⁰

Subject imports captured market share from the domestic industry despite overall rising demand during the period of investigation. The domestic industry’s market share by quantity declined from *** percent in 2005 to *** percent in 2006 (contrasting with *** increase in demand) to *** percent in 2007. The domestic industry’s market share was *** in interim 2008 at *** percent compared to *** percent in interim 2007.⁹¹ At the same time, the domestic industry’s U.S. shipments declined in each year as subject imports increased and demand increased overall from 2005 to 2007.⁹² By contrast, nonsubject imports’ market share by quantity followed the trend in demand, increasing from *** percent in 2005 to *** percent in 2006, and decreasing to *** percent in 2007. Nonsubject imports’ market share was lower in interim 2008 compared to interim 2007.⁹³

We find that the volume of subject imports and the increase in that volume are significant, both in absolute terms and relative to consumption and production in the United States.

2. Price Effects of the Subject Imports

In evaluating the price effects of the subject imports, section 771(7)(C)(ii) of the Tariff Act provides that the Commission shall consider whether –

⁸⁵ 19 U.S.C. § 1677(7)(C)(i).

⁸⁶ CR/PR at Table IV-2.

⁸⁷ Calculated from CR/PR at Table IV-2.

⁸⁸ CR/PR at Table IV-2. U.S. shipments of subject imports followed a similar trend, increasing from *** metric tons in 2005 to *** metric tons in 2006 and to *** metric tons in 2007, but were higher in interim 2008 at *** metric tons (coinciding with importers’ decreasing inventories) than in interim 2007 at *** metric tons. CR/PR at Tables IV-3 and C-1.

⁸⁹ CR/PR at Table IV-4.

⁹⁰ CR/PR at Table IV-5.

⁹¹ CR/PR at Table IV-4.

⁹² CR/PR at Table C-1.

⁹³ Nonsubject imports’ market share by quantity was *** percent in interim 2008 and *** percent in interim 2007. CR/PR at Table IV-4.

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.⁹⁴

As noted above, the domestic like product and subject imports are at least moderately interchangeable. The record indicates that price is an important factor in purchasing decisions. Notably, a majority of purchasers reported that they viewed U.S. SDGE to be inferior to Chinese SDGE with respect to price.⁹⁵ Domestic producers and a majority of importers reported that non-price differences between subject imports and the domestic like product were only *** in purchasing decisions. While a sizeable minority of responding importers reported that non-price differences were always or frequently an important factor,⁹⁶ and almost all purchasers indicated that reliability, availability, product consistency, and whether the quality meets industry standards were among the most important factors in purchasing decisions in addition to price, few market participants could identify instances when Chinese imports failed to satisfy quality and availability requirements.⁹⁷

In this investigation, the Commission collected quarterly pricing data for five types of SDGE for sales to both end users and distributors. The pricing data show pervasive underselling by subject imports. Subject imports undersold the domestic like product in 54 of 60 price comparisons by margins ranging from 2.3 percent to 36.2 percent.⁹⁸ Subject imports undersold the domestic like product in all quarterly comparisons of products 1 and 2, in one of two quarterly price comparisons of product 3, in 13 of 14 quarterly price comparisons of product 4, and in 10 of 14 quarterly price comparisons for product 5.⁹⁹ We thus find that there has been significant underselling of the domestic like product by subject imports.

This underselling has had a direct effect on the domestic industry's level of production and sales, as well as its market share. While we consider the effects of subject imports on the domestic industry as a whole, the two domestic producers that comprise the domestic industry faced somewhat different conditions of competition during the period of investigation. Consequently, the effects of underselling on the domestic industry differed with respect to the two domestic producers. Superior, which competes head-to-head with subject imports for sales across most SDGE sizes, submitted evidence, ***, of lost sales to low-priced imports totaling \$***. These lost sales are *** given the relative size of the domestic industry.¹⁰⁰ Additionally, we find that SGL, rather than lowering its prices to meet subject import prices and maintain customers for 10- and 12-inch diameter SDGE, made a business decision to cede its market share for those products and to focus only on customers for whom Chinese quality was not yet acceptable.¹⁰¹ Thus, the effects of underselling are in the lost volumes of domestic sales rather than in direct effects on domestic prices.

Available data do not indicate that subject imports had significant depressing effects on domestic prices, as domestic prices for all five products for which data were collected rose over the period of

⁹⁴ 19 U.S.C. § 1677(7)(C)(ii).

⁹⁵ CR at II-15, PR at V-7.

⁹⁶ CR/PR at Table II-5.

⁹⁷ CR/PR at Table II-6.

⁹⁸ CR at V-17, PR at V-7, CR/PR at Tables V-1-V-5.

⁹⁹ CR/PR at Tables V-1-V-5.

¹⁰⁰ CR/PR at Table V-8, CR at V-19-23, PR at V-8. We note that *** did not report specific lost sales allegations, rather it reported that there are *** purchasers that ***. CR at V-19 and V-21, PR at V-7.

¹⁰¹ Petitioners' Posthearing Brief at 42.

investigation.¹⁰² These price increases reflect the high and rising demand for SDGE due to the boom in steel production during the period, as well as the rising price of needle coke due to limited global supply.¹⁰³ Nonetheless, although the record reflects that most of the adverse effects of subject import pricing appear in sales revenue data, we note that with respect to product 2, which constituted *** percent of the quantity of product for which we received pricing data, and which had the largest margins of underselling by subject imports, the increase in domestic prices was *** than for the other three products.¹⁰⁴

Similarly, although available data do not support a finding that subject imports suppressed domestic prices to a significant degree over the full period of investigation, there is evidence that low-priced subject imports have adversely affected domestic producers' prices in certain instances.¹⁰⁵ From 2005 to 2006, unit sales values increased by a greater percentage than unit cost of goods sold. In 2007, however, unit sales values increased by less than the increase in unit COGS, despite continued strong demand in that year.¹⁰⁶ Consequently, the ratio of COGS to net sales rose from *** percent in 2006 to *** percent in 2007,¹⁰⁷ which, in light of strong demand, provides some evidence that subject imports had a suppressing effect on domestic prices in 2007.^{108 109} Following the filing of the petition, prices of subject imports and the domestic like product increased markedly in interim 2008. In interim 2008, the domestic industry's net sales values increased compared to interim 2007, and the domestic industry was able to cover costs as U.S. shipments increased by a greater percentage than the increase in unit COGS.¹¹⁰

¹⁰² The price for the U.S.-produced product 1 increased by *** percent over the period, while the price for the corresponding subject imports increased by *** percent. The price for the U.S.-produced product 2 increased by *** percent; the price for the corresponding subject imports increased by *** percent. The price for U.S.-produced product 3 increased by *** percent; the price for the corresponding subject imports increased by *** percent. The price for U.S.-produced product 4 increased by *** percent; the price for the corresponding subject imports increased by *** percent. Finally, the price for the U.S.-produced product 5 increased by *** percent; the price for the corresponding subject imports increased by *** percent. CR at V-8-V-9, PR at V-5.

¹⁰³ CR at II-6, PR at II-4, CR/PR at V-1.

¹⁰⁴ CR at V-8, PR at V-5, CR/PR at Table V-7.

¹⁰⁵ Vice Chairman Pearson does not join this paragraph. He bases his finding of price effects on the evidence of significant underselling and lost sales and revenue.

¹⁰⁶ CR/PR at Table C-1.

¹⁰⁷ CR/PR at Table C-1.

¹⁰⁸ The price-suppressing effects caused by subject imports may be obscured because SGL Carbon ceased producing SDGE in 10-inch and 12-inch diameters *** due to subject imports and its move to higher value products. At the hearing, an SGL executive testified that it had shifted production to more intense and complex products that Chinese suppliers could not satisfactorily produce. Hearing Transcript at 64 (Stinson). ***.

¹⁰⁹ Commissioner Pinkert joins the preceding footnote. In addition, for the reasons set forth below, he points out that subject imports have suppressed domestic producer Superior's prices to a significant degree.

Superior's COGS/sales ratio increased from 2005 to 2007, and was at *** levels, *** percent in 2006 and *** percent in 2007, notwithstanding high demand levels. CR/PR at Tables IV-4, VI-2. In interim 2008, with the pendency of the investigation, Superior's COGS/sales ratio improved. Further, unlike SGL, Superior competes directly against Chinese imports in a broad range of SDGE products, including sales of 10 and 12 inch SDGE. Prices for domestic 10 and 12 inch products (Products 1 and 2, respectively) remained at or below \$*** from 2005 to 2007. CR/PR at Tables V-1 and V-2. This occurred in the face of increased costs. Thus, subject import prices prevented price increases by Superior that would otherwise have occurred, to a significant degree, given high demand and increasing costs.

¹¹⁰ CR/PR at Table C-1.

The domestic industry's COGS to net sales ratio was lower at *** percent in interim 2008 compared to *** percent in interim 2007.¹¹¹

While subject import prices for all five products increased over the period of investigation, *** of this increase occurred in interim 2008, after the petition was filed. We attribute the increase in prices of subject imports in interim 2008 and their diminishing impact on domestic prices for SDGE to the filing of the petition in January 2008, and therefore accord less weight to the 2008 price data in our analysis.¹¹²

Accordingly, we find that there was significant underselling by subject imports and that this underselling led to lost sales in 2006 and 2007. We also note that the underselling allowed subject imports to gain market share at the expense of the domestic industry and that the domestic industry's U.S. shipments declined throughout the period of investigation, despite generally rising demand. We consequently determine that subject imports had significant adverse price effects on the domestic industry.

3. Impact of the Subject Imports on the Domestic Industry¹¹³

In examining the impact of subject imports, section 771(7)(C)(iii) of the Tariff Act provides that the Commission "shall evaluate all relevant economic factors which have a bearing on the state of the industry."¹¹⁴ These factors include output, sales, inventories, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."¹¹⁵

We have examined the performance indicators in trade and financial data for the domestic industry. These data indicate declining overall trends despite strong demand, although some indicators fluctuated during this period before recovering *** during interim 2008, after the petition was filed. The declines corresponded to increases in subject imports' volume and market share, which were already significant at the beginning of the period of investigation.

¹¹¹ CR/PR at Table VI-1.

¹¹² The statutory provision governing the Commission's treatment of post-petition information, 19 U.S.C. § 1677(7)(I), states as follows:

[T]he Commission shall consider whether any change in the volume, price effects, or impact of imports of the subject merchandise since the filing of the petition in an investigation ... is related to the pendency of the investigation and, if so, the Commission may reduce the weight accorded to the data for the period after the filing of the petition in making its determination of material injury, threat of material injury, or material retardation of the establishment of an industry in the United States.

See also Statement of Administrative Action to the Uruguay Round Agreements Act, H. Rep. 103-316, Vol. 1 ("SAA") at 854 (1994).

¹¹³ The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its final determination, Commerce calculated the final weighted-average dumping margins ranging from 132.90 percent to 159.64 percent. 74 Fed. Reg. 2049 (January 14, 2009).

¹¹⁴ 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.").

¹¹⁵ 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

U.S. producers' production, capacity utilization, and U.S. shipments all declined steadily from 2005 to 2006, but experienced some improvement when the interim periods are compared. Domestic production of SDGE declined by *** percent from 2005 to 2007, but was higher in interim 2008 compared to interim 2007 as the influx of subject imports slowed and their prices increased after the filing of the petition.¹¹⁶ The domestic industry's U.S. shipments of SDGE declined each year for an overall decline of *** percent and were higher in interim 2008 than in interim 2007.¹¹⁷ While the domestic industry's capacity remained flat throughout most of the period,¹¹⁸ capacity utilization followed production trends, declining from 2005 to 2007, and was higher in interim 2008 compared to interim 2007.¹¹⁹ Capacity utilization decreased from *** percent in 2005 to *** percent in 2006 and to *** percent in 2007, but was *** percent in interim 2008 compared to *** percent in interim 2007.¹²⁰

The average number of production related workers declined by *** percent from 2005 to 2007 and was lower in interim 2008 than in interim 2007.¹²¹ Hours worked and wages paid decreased from 2005 to 2007, but were higher in interim 2008 than in interim 2007.¹²² Hourly wages increased from 2005 to 2007, and were higher in interim 2008 than in interim 2007.¹²³ The domestic industry's average unit labor costs rose from 2005 to 2007, but were lower in interim 2008 than in interim 2007.¹²⁴ Productivity declined from 2005 to 2007, but was higher in interim 2008 than in interim 2007.¹²⁵ Due to the significant presence of aggressively priced subject imports, the domestic industry's financial indicators were *** despite rising prices and very strong demand throughout the period of investigation. The domestic industry's net sales quantities declined by *** percent from 2005 to 2007.¹²⁶ Net sales by value decreased by *** percent from 2005 to 2006, and then increased by *** percent from 2006 to

¹¹⁶ CR/PR at Table C-1. Domestic production of SDGE decreased from *** metric tons in 2005 to *** metric tons in 2006 and to *** metric tons in 2007. Domestic production was *** metric tons in interim 2008 and *** metric tons in interim 2007. CR/PR at Table C-1.

¹¹⁷ CR/PR at Table C-1. The domestic industry's U.S. shipments decreased from *** metric tons in 2005 to *** metric tons in 2006, and to *** metric tons in 2007. The domestic industry's U.S. shipments were *** metric tons in interim 2008 and *** metric tons in interim 2007.

¹¹⁸ As noted in conditions of competition, the domestic industry's capacity to produce SDGE was steady at *** metric tons in 2005 and 2006, but fell to *** metric tons in 2007. CR at III-4 n.3, PR at III-2 n.3.

¹¹⁹ CR/PR at Table C-1.

¹²⁰ CR/PR at Table C-1.

¹²¹ CR/PR at Table C-1. The average number of production workers fell from *** in 2005 to *** in 2006 and to *** in 2007. The average number of production workers was *** in interim 2007 and *** in interim 2008. CR/PR at Table C-1.

¹²² CR/PR at Table C-1. Hours worked fell from *** in 2005 to *** in 2006 and to *** in 2007. Hours worked were *** in interim 2007 and *** in interim 2008. CR/PR at Table C-1. Wages paid decreased from \$*** in 2005 to \$*** in 2006 and \$*** in 2007. Wages paid were \$*** in interim 2007 and \$*** in interim 2008. CR/PR at Table C-1.

¹²³ CR/PR at Table C-1. Hourly wages increased from \$*** in 2005 to \$*** in 2006 and \$*** in 2007. Hourly wages were \$*** in interim 2007 and \$*** in interim 2008. CR/PR at Table C-1.

¹²⁴ CR/PR at Table C-1. Unit labor costs increased from \$*** in 2005 to \$*** in 2006 and \$*** in 2007. Unit labor costs were \$*** in interim 2007 and \$*** in interim 2008. CR/PR at Table C-1.

¹²⁵ CR/PR at Table C-1. Productivity decreased from *** metric tons per 1,000 hours in 2005 to *** metric tons per 1,000 hours in 2006 and to *** metric tons per 1,000 hours in 2007. Productivity was *** metric tons per 1,000 hours in interim 2007 and *** metric tons per 1,000 hours in interim 2008.

¹²⁶ CR/PR at Table C-1. Net sales by quantity decreased from *** metric tons in 2005 to *** metric tons in 2006 and to *** metric tons in 2007. Net sales by quantity were *** metric tons in interim 2007 and *** metric tons in interim 2008. CR/PR at Table C-1.

2007.¹²⁷ The domestic industry's operating income improved from *** in 2005 to *** in 2006, but declined in 2007. In interim 2008, as net sales quantities increased ***, operating income was *** higher compared to interim 2007.¹²⁸ The domestic industry's operating income margin increased from *** percent in 2005 to *** percent in 2006, and then fell to *** percent in 2007. The domestic industry's operating income margin was higher at *** percent in interim 2008 compared to *** percent in interim 2007.¹²⁹

In a market characterized by strong demand and rising prices, aggressive pricing by subject imports caused the domestic industry to lose sales volume and market share. Deprived of the ability to spread costs over additional sales volume, the industry's profits, while not falling from 2005 to 2007, were ***.¹³⁰

We have also examined the role of nonsubject imports in the U.S. market during the period of investigation. First, although SDGE from various sources are considered to be moderately or highly interchangeable, SDGE is not a commodity product. Specifically, the interchangeability of SDGE is limited by the fact that SDGE are produced to each customer's specifications, which are derived from the particular furnace or electrical equipment in which they are used.¹³¹ Secondly, nonsubject imports were generally priced above subject imports, particularly later in the period of investigation.¹³² While nonsubject imports were present in substantial quantities, nonsubject import volume and market share tracked fluctuating trends in apparent U.S. consumption, in contrast to steady increases in subject imports and declines in domestic producers' U.S. shipments.^{133 134} Moreover, nonsubject imports' market share declined significantly in 2007 when the domestic industry's condition worsened.¹³⁵

Respondents note correctly that between 2005 and 2006, when U.S. producers' U.S. shipments experienced their largest annual drop in market share during the period of investigation, a majority of that lost market share was initially assumed by non-subject imports. However, because subject imports consistently undersold both domestic and non-subject imports, by the end of the period of investigation subject imports had ultimately taken a greater portion of market share from the U.S. producers than that taken by non-subject imports.¹³⁶ Accordingly, we do not find that the injury to the domestic industry described above can be attributed to the nonsubject imports.

¹²⁷ CR/PR at Table C-1. Net sales by value decreased from \$*** to \$*** in 2006, and then increased to \$*** in 2007. Net sales by value were \$*** in interim 2007 compared to \$*** million in interim 2008.

¹²⁸ The domestic industry reported *** in 2005, *** in 2006, and *** in 2007. The domestic industry reported *** in interim 2007 and *** in interim 2008. CR/PR at Table C-1.

¹²⁹ CR/PR at Table C-1.

¹³⁰ CR/PR at Table C-1.

¹³¹ Respondents testified that because SDGE is made to customer specifications, only a handful of customers may be able to use SDGE of the same size or grade. Transcript at 207-208 (Brashem).

¹³² CR /PR at Tables V-1-V-5 and E-1-E-4.

¹³³ Nonsubject imports accounted for *** percent of the U.S. market in 2007, compared with *** percent for subject imports and *** percent for the domestic industry. CR/PR at Table C-1.

¹³⁴ The three largest suppliers of nonsubject imports were Mexico, Japan, and Russia. From 2005 to 2007, the volume of nonsubject imports from Mexico fluctuated but decreased overall; the volume of nonsubject imports from Japan remained relatively steady; and the volume of nonsubject imports from Russia increased. CR/PR at Table VII-7. Prices for nonsubject imports from these countries were generally above prices for subject imports during the period of investigation. CR/PR at Tables V-1-V-5, VII-7, E-1-E-4.

¹³⁵ CR/PR at Table C-1. We note that nonsubject imports declined in interim 2008 compared to interim 2007. In both interim periods, however, nonsubject imports generally were priced higher than subject imports. CR/PR at Tables V-1-V-5 and E-1-E-4.

¹³⁶ CR/PR at Table C-1.

Respondents maintain that any material injury suffered by the domestic industry was caused by other factors and not by subject imports. They first contend that any material injury is due to *** during the period of investigation. However, the statute requires the Commission to focus on the domestic industry “as a whole” and data for the industry as a whole, described above, demonstrate the material injury by reason of subject imports.¹³⁷ Moreover, while ***. ***. By contrast, SGL, which ceased production of 10- and 12- inch SDGE *** in order to be more insulated from competition from subject imports, has concentrated production in the 14- and 16-inch diameter sizes. Because SGL’s manufacture of SDGE was concentrated in those sizes, not only did it experience less direct competition with subject imports, but it may have also benefitted from the fact that 14-inch and 16-inch diameter SDGE are higher value products.¹³⁸ Furthermore, both producers’ condition improved in the interim period 2008 (compared with interim 2007) as increases in subject imports into the U.S. market slowed and subject imports’ prices increased after the petition was filed. Although Respondents attempt to tie ***,¹³⁹ the record indicates that ***.¹⁴⁰ In addition, ***.

Respondents also argue that the domestic industry was not materially injured as its profitability increased throughout the period of investigation. First, the effects of subject imports are not limited to an industry’s profitability. The evidence shows that despite of rising overall demand, the domestic industry’s U.S. shipments steadily declined from 2005 to 2007.¹⁴¹ Moreover, the record indicates that the aggressively priced subject imports had a significant share of the market at the beginning of the period of investigation when the domestic industry ***.¹⁴² While the domestic industry’s profitability improved somewhat thereafter, its profitability was *** given very strong demand during the period as its U.S. shipments declined due to increases in subject imports.¹⁴³

Respondents contend that the decrease in domestic production during the period of investigation is due to *** in the domestic industry’s export shipments.¹⁴⁴ However, the record indicates that the decline in production is largely attributable to the decline in the domestic industry’s U.S. shipments of SDGE. Although the domestic industry did experience *** in export shipments, export shipments represented a far smaller ratio to domestic production than U.S. shipments.¹⁴⁵

Respondents also assert that domestic producers do not have the capacity to supply the entire U.S. SDGE market.¹⁴⁶ As the Commission previously has noted, “there is no short supply provision in the statute” and “the fact that the domestic industry may not be able to supply all of demand does not mean

¹³⁷ See, e.g., Timken Co. v. United States, 321 F. Supp. 2d at 13, n. 2 (Ct. Int’l Trade 2004) (“The purpose of the antidumping statute . . . is to protect United States industries not specific corporations from unfair behavior by foreign competitors.”); Calabria Corp. v. United States, 794 F. Supp. 377, 385-86 (Ct. Int’l Trade 1992) (“This Court has repeatedly affirmed . . . that ‘Congress intended the ITC determine whether or not the domestic industry (as a whole) has experienced material injury due to the imports. This language defies the suggestion that the ITC must make a disaggregated analysis of material injury.’” quoting Copperweld Corp. v. United States, 682 F. Supp. 552, 569 (Ct. Int’l Trade 1988) (other citations omitted)). See also, Certain Aluminum Plate from South Africa, Inv. No. 731-TA-1056 (Final), USITC Pub. 3734 (November 2004) at 21, n. 179 (declining to rely “on isolated data from a given producer”).

¹³⁸ CR/PR at Tables VI-I and VI-2, CR at VI-6, PR at VI-2.

¹³⁹ Respondents’ Prehearing Brief at 41.

¹⁴⁰ CR/PR at Table VI-2.

¹⁴¹ CR/PR at Table C-1.

¹⁴² CR/PR at Table C-1.

¹⁴³ CR/PR at Table C-1.

¹⁴⁴ Respondents’ Posthearing Brief at 7.

¹⁴⁵ CR/PR at Table C-1.

¹⁴⁶ CR/PR at Table C-1.

the industry may not be materially injured or threatened with material injury by reason of subject imports.”¹⁴⁷ While domestic producers’ existing production is less than apparent U.S. consumption, domestic producers had *** unused capacity during 2005 to 2007, despite very high demand.¹⁴⁸ Indeed, the domestic producers’ capacity utilization decreased from *** percent in 2005 to *** percent in 2006 and to *** percent in 2007 and was *** percent in interim 2008 compared to *** percent in interim 2007.¹⁴⁹

We conclude that subject imports had a significant adverse impact on the condition of the domestic industry during the period of investigation. As discussed above, the absolute and relative volume of subject imports are significant. Subject imports gained market share at the expense of the domestic industry and caused domestic U.S. shipments to dwindle as subject imports aggressively undersold the domestic product. The pattern of underselling resulted in significant lost sales and suppressed domestic prices to some extent in 2007. The increase in subject imports and their adverse effects on U.S. prices materially impacted the domestic industry’s profitability and market share over the period of investigation.

IV. CRITICAL CIRCUMSTANCES¹⁵⁰

In its final antidumping duty determinations concerning SDGE from China, Commerce found that critical circumstances exist with respect to a number of subject producers/exporters.¹⁵¹ Because we have determined that the domestic industry is materially injured by reason of subject imports from China, we must further determine “whether the imports subject to the affirmative [Commerce critical circumstances] determination . . . are likely to undermine seriously the remedial effect of the antidumping order to be issued.”¹⁵² The Statement of Administrative Action (“SAA”) indicates that the Commission is to determine “whether, by massively increasing imports prior to the effective date of relief, the importers have seriously undermined the remedial effect of the order.”¹⁵³

The statute further provides that in making this determination the Commission shall consider, among other factors it considers relevant –

- (I) the timing and the volume of the imports,
- (II) a rapid increase in inventories of the imports, and

¹⁴⁷ Softwood Lumber from Canada, Inv. Nos. 701-TA-414 and 731-TA-928 (Article 1904 NAFTA Remand) at 108, n. 310 (December 2003). See also, Certain Activated Carbon from China, Inv. No. 731-TA-1103 (Preliminary), USITC Pub. 3852 (May 2006) at 19, n. 134; Certain Orange Juice from Brazil, Inv. No. 731-TA-1089 (Final), USITC Pub. 3838 (March 2006) at 20 n. 143; Certain Lined Paper School Supplies, Inv. Nos. 701-TA-442-443 (Preliminary) and 731-TA-1095-1097 (Preliminary), USITC Pub. 3811 (October 2005) at 23, n. 155; Metal Calendar Slides from Japan, Inv. No. 731-TA-1094 (Preliminary), USITC Pub. 3792 (August 2005) at 9, n. 45 (“To the extent that Respondents claim that the Commission is legally unable to make an affirmative finding of material injury by reason of subject imports because the domestic industry is incapable of supplying domestic demand, they are incorrect.”).

¹⁴⁸ CR/PR at Tables III-2, IV-3, and C-1.

¹⁴⁹ CR/PR at Table C-1.

¹⁵⁰ See Separate and Concurring Views of Commissioner Charlotte R. Lane, discussing the high level of U.S. importers’ inventories as it pertains to the issue of critical circumstances.

¹⁵¹ Final Determination, 72 Fed. Reg. at 19692.

¹⁵² 19 U.S.C. § 1673d(b)(4)(A)(i).

¹⁵³ SAA at 877.

(III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.¹⁵⁴

In considering the timing and volume of subject imports, the Commission's practice is to consider import quantities prior to the filing of the petition with those subsequent to the filing of the petition¹⁵⁵ using monthly statistics on the record regarding those firms for which Commerce has made an affirmative critical circumstance determination.¹⁵⁶

Petitioners urge the Commission to make an affirmative critical circumstances finding. They argue that the Commission should predicate its critical circumstances determination on import trends for the five-month pre-petition period of September 2007 through January 2008 and a post-petition period of February through June 2008. Petitioners contend that January 2008 should be considered part of the pre-petition period as the petition was filed late in January 2008.¹⁵⁷

We are not persuaded by Petitioners' argument that we should diverge from our normal practice of relying on data gathered for the six-month periods immediately preceding and following the filing of the petition.^{158 159} Based on a comparison of subject import volume over the six-month periods before and after the petition's filing in January 2008, we find no massive increase in imports prior to the effective date of relief that could seriously undermine the remedial effect of the order. Based on importer questionnaires, subject imports increased by only *** percent between the July-December 2007 and January-June 2008 periods, from *** metric tons to *** metric tons.¹⁶⁰ Thus, the record reflects no massive increase in subject import volume subsequent to the petition's filing.

Inventory data confirms the lack of any massive increase in subject imports that could seriously undermine the remedial effect of the order. Indeed, the record shows that importers' end-of-period inventories in interim 2008 of subject merchandise from China were actually less than end-of-the period inventories in interim 2007, which contravenes any allegation that U.S. importers were stockpiling SDGE from China after the filing of the petition in January 2008.¹⁶¹

We determine that critical circumstances do not exist with respect to the subject imports from China covered by Commerce's affirmative critical circumstances determination, and we therefore make a negative critical circumstances determination.

¹⁵⁴ 19 U.S.C. § 1673d(b)(4)(A)(ii).

¹⁵⁵ The legislative history for the critical circumstances provision indicates that the provision was designed "to deter exporters whose merchandise is subject to an investigation from circumventing the intent of the law by increasing their exports to the United States during the period between initiation of an investigation and a preliminary determination by [Commerce]." ICC Industries, Inc. v. United States, 812 F.2s 694, 700 (Fed. Cir. 1987), quoting H.R. Rep. No. 317, 96th Cong., 1st Sess. 63 (1979).

¹⁵⁶ See Certain Lined School Paper Supplies from China, India, and Indonesia, USITC Pub. 3884 at 47; Carbozole Violet Pigment from China and India, Inv. Nos. 701-TA-437 and 731-TA-1060 and 1061 (Final), USITC Pub. 3744 (December 2004) at 26; Certain Frozen Fish Fillets from Vietnam, Inv. No. 731-TA-1012 (Final), USITC Pub. 3617 (August 2003) at 20-22.

¹⁵⁷ Petitioners' Posthearing Brief Ex. 1 at 54.

¹⁵⁸ Compare Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 (April 1997) at 19 n.109 with Steel Concrete Reinforcing Bars from Turkey, Inv. Nos. 731-TA-745 (Final), USITC Pub. 3034 (April 1997) at 34.

¹⁵⁹ We note that Petitioners also advocated that we should use official import statistics in making our critical circumstances determination. As the Petitioners themselves indicated, those statistics include nonsubject merchandise. In any event, both official import statistics and the import data collected by the Commission show similar trends. Petitioners' Posthearing Brief Ex. 1 at 54.

¹⁶⁰ CR/PR at IV-5.

¹⁶¹ CR/PR at Table C-1.

CONCLUSION

For the foregoing reasons, we determine that the domestic industry producing SDGE is materially injured by reason of subject imports from China sold at less than fair value.

SEPARATE AND CONCURRING VIEWS OF COMMISSIONER CHARLOTTE R. LANE

Based on the record in these final phase investigations, I find that an industry in the United States is materially injured by reason of imports of small diameter graphite electrodes (“SDGE”) from China that are sold in the United States at less than fair value. I also determine that critical circumstances do not exist with respect to the subject imports from China covered by the Department of Commerce’s affirmative critical circumstances determination. Following are my additional views regarding the issue of critical circumstances, specifically as pertains to the large number of subject importers’ inventories in this investigation.

Under the statute, when evaluating critical circumstances the Commission shall consider, among other factors it considers relevant, the timing and the volume of the imports, a rapid increase in inventories of the imports, and *any other circumstances* indicating that the remedial effect of the antidumping order will be seriously undermined.¹ I agree with my colleagues that, based on the Commission’s traditional evaluation of the volumes of subject imports during the six-month period prior to the filing of a petition and the six-month period following the filing of a petition, there does not appear to be an unusual increase in subject imports after the petition in this investigation was filed in January 2008.² Moreover, it is not clear how rapidly inventories of subject imports have increased, as most of the inventory data in the record represent a snapshot in time at the end of each year of the period of investigation and the remaining inventory data do not correspond to the six-month periods described above.³ However, I am concerned that an unusually high level of subject imports, regardless of the timing of the buildup of such inventories, could be a significant “other circumstance” that the Commission should more carefully consider in determining if the effect of an antidumping order will be seriously undermined. If volumes of subject imports held in inventory are unusually high, domestic shipments of subject imports that are not subject to an order could continue for an extended period of time and undermine the effectiveness of an order.

In this case, it appears that the volume of subject importers’ inventories is unusually high. These inventories, as reported to the Commission as of the end of 2007, totaled *** metric tons.⁴ This is an exceptionally large number relative to the *** metric tons of U.S. shipments of subject imports in 2007 and represents an inventory equal to *** percent, or nearly *** of U.S. shipments.⁵ By comparison, non-subject import inventory levels totaled only *** metric tons in 2007, or approximately *** percent of non-subject annual U.S. shipments.⁶ Domestic producers’ inventory levels in 2007 were only *** metric tons, or approximately *** percent of annual U.S. shipments.⁷

Moreover, the reported inventories of subject imports appear to be seriously understated, even before taking into consideration the limited number of responses to the Commission’s importer

¹ 19 U.S.C. § 1673d(b)(4)(A)(ii).

² See CR/PR at IV-5.

³ See CR/PR at Table VII-4.

⁴ CR/PR at Table VII-4.

⁵ CR/PR at Table IV-3.

⁶ CR/PR at Table VII-4.

⁷ CR/PR at Table III-6.

questionnaire.⁸ One *** importer who responded to the questionnaire did not provide inventory numbers.⁹ This may account for the discrepancy between reported imports, reported domestic shipments of imports and reported inventory levels. The reported volume of subject imports in 2006 and 2007 was *** metric tons and the reported shipments of subject imports during 2006 and 2007 totaled only *** metric tons.¹⁰ Thus, there were *** metric tons of subject SDGE imported in excess of shipments in 2006 and 2007. Even assuming that the *** metric ton inventory level reported for 2005 was correct (which would mean that the importer that did not provide inventory data had a zero inventory in 2005),¹¹ the data indicate that total inventories of subject SDGE for those importers responding to the questionnaire are likely to be in excess of *** metric tons as of the end of 2007. This would represent over *** percent of reported U.S. shipments of subject imports in 2007, or more than *** months worth of U.S. shipments. And it is also important to note that all of the import data are likely understated because, as stated above, the import coverage in the questionnaire responses is estimated to be only approximately 58 percent of total subject imports.

As noted above, the Commission is not limited by the statute to finding that a rapid increase in subject imports or inventories of the imports immediately after the filing of a petition may undermine an antidumping order. There may be “other circumstances” that would also undermine an order. I believe that the level of inventories of subject imports is an important piece of information and one of the “other circumstances” that might indicate that an antidumping duty order will be undermined. I believe that it is a very close call in this case whether the unusually high inventory levels support a finding that the remedial effects of an order will be seriously undermined. The domestic industry did not argue that the high inventory levels were an undermining factor and there is no evidence of rapid increases in volumes of subject imports. Therefore, even though I find that the high levels of subject imports alone represent a factor that could undermine the effectiveness of the order, I do not find sufficient evidence that this factor alone justifies an affirmative finding with regard to critical circumstances.

⁸ Importer questionnaires were sent to 32 firms believed to be subject importers. The Commission received usable questionnaire responses from 12 companies, representing 58.3 percent of total imports from China during the period of investigation under HTS subheading 8545.11.00, a “basket” category. CR/PR at IV-1.

⁹ See *** Importer Questionnaire Response.

¹⁰ See CR/PR at Tables IV-2, IV-3.

¹¹ See CR/PR at Table VII-4.

PART I: INTRODUCTION

BACKGROUND

This investigation results from a petition filed with the U.S. Department of Commerce (“Commerce”) and the U.S. International Trade Commission (“USITC” or “Commission”) by SGL Carbon LLC, Charlotte, NC and Superior Graphite Co., Chicago, IL on January 17, 2008, alleging that an industry in the United States is materially injured and threatened with material injury by reason of less-than-fair-value (“LTFV”) imports of small diameter graphite electrodes (“SDGE”)¹ from China. Information relating to the background of the investigation is provided below.²

Effective date	Action
January 17, 2008	Petition filed with Commerce and the Commission; institution of the Commission’s investigation (73 FR 4627, January 25, 2008)
February 13, 2008	Commerce’s notice of initiation (73 FR 8287)
March 3, 2008	Commission’s preliminary determination (73 FR 12461), March 7, 2008
August 21, 2008	Commerce’s preliminary determination (73 FR 49408, August 21, 2008, amended by 73 FR 54561, September 22, 2008); scheduling of final phase of the Commission’s investigation (73 FR 51647, September 4, 2008)
January 14, 2009	Commerce’s final determination (74 FR 2049, January 14, 2009)
January 6, 2009	Commission’s hearing ¹
February 5, 2009	Commission’s vote
February 19, 2009	Commission’s determination sent to Commerce
¹ App. B presents a list of witnesses that appeared at the hearing.	

STATUTORY CRITERIA AND ORGANIZATION OF THE REPORT

Statutory Criteria

Section 771(7)(B) of the Tariff Act of 1930 (the “Act”) (19 U.S.C. § 1677(7)(B)) provides that in making its determinations of injury to an industry in the United States, the Commission--

shall consider (I) the volume of imports of the subject merchandise, (II) the effect of imports of that merchandise on prices in the United States for domestic like products, and (III) the impact of imports of such merchandise on domestic producers of domestic like products, but only in the context of production operations within the United States; and . . . may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.

¹ A complete description of the imported products subject to this investigation is presented in *The Subject Merchandise* section of this part of the report.

² *Federal Register* notices since August 2008 cited in the tabulation are presented in app. A.

Section 771(7)(C) of the Act (19 U.S.C. § 1677(7)(C)) further provides that--

In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States is significant.

...

In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether . . . (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

...

In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to

...

(I) actual and potential declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, (IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and (V) in {an antidumping investigation}, the magnitude of the margin of dumping.

Organization of the Report

Part I of this report presents information on the subject merchandise, dumping margins, and domestic like product. *Part II* of this report presents information on conditions of competition and other relevant economic factors. *Part III* presents information on the condition of the U.S. industry, including data on capacity, production, shipments, inventories, and employment. *Parts IV and V* present the volume and pricing of imports of the subject merchandise, respectively. *Part VI* presents information on the financial experience of U.S. producers. *Part VII* presents the statutory requirements and information obtained for use in the Commission's consideration of the question of threat of material injury and the judicial requirements and information obtained for use in the Commission's consideration of *Bratsk* issues.

U.S. MARKET SUMMARY

The U.S. market for SDGE totaled approximately *** metric tons and \$*** in 2007. Currently two companies produce SDGE in the United States: SGL Carbon LLC and Superior Graphite Co., which accounted for all U.S. production of SDGE in 2007.³ Eight firms reported having imported SDGE from China since 2005, and four firms reported having imported from all other sources. Graphite Electrode Sales and M. Brashem accounted for *** percent and *** percent of reported imports of SDGE from China in 2007, respectively.⁴ The petition identified 102 firms as producers or exporters of SDGE in China.

U.S. producers' U.S. shipments of SDGE totaled *** metric tons valued at \$*** in 2007, and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. U.S. shipments of imports from China totaled *** metric tons, and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. U.S. shipments of imports for all other sources totaled *** metric tons, and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value.

SDGE is generally used by foundries, smelters, steel refining operations, and other industries in primary melting, ladle metallurgy, and specialty furnace applications.

SUMMARY DATA

A summary of data collected on SDGE is presented in appendix C, table C-1. Except as noted, U.S. industry data are based on questionnaire responses of two firms that accounted for 100 percent of U.S. production of SDGE during 2007. Data on U.S. imports from China presented in this report are based on questionnaire responses, as official statistics are from a "basket" classification that is broader than the subject product. Data on U.S. imports from Mexico presented in this report are based on information provided by GrafTech Mexico S.A. de C.V., the sole known producer of SDGE in Mexico.⁵ Data on U.S. imports from sources other than China and Mexico are based on the estimates of official Commerce statistics as provided in the petition.

The Commission sent producers' questionnaires to four firms believed to be possible producers of large diameter graphite electrodes ("LDGE") in the United States: C/G Electrodes LLC; GrafTech International, Ltd.; Showa Denko Carbon, Inc.; and a petitioner, SGL Carbon. SGL Carbon is currently the only U.S. producer that manufactures both LDGE and SDGE. A summary of data collected on LDGE is presented in appendix C, table C-2, and a summary of data collected on SDGE and LDGE combined is presented in appendix C, table C-3.

³ In the United States, during the period of investigation, SGL Carbon produced 14-inch and 16-inch SDGE and 18-inch through 32-inch LDGE, and Superior Graphite produced 8-inch to 16-inch diameter SDGE. Conference transcript, pp. 45 (Stinson), and 49-50 (Carney).

⁴ Respondents M. Brashem and Graphite Electrode Sales both noted that they imported 3-inch through 24-inch graphite electrodes. Conference transcript, pp. 108 (Buchanan) and 122 (Kearney).

⁵ U.S. importer GrafTech International Holdings Inc. accounted for *** of U.S. imports from Mexico reported in official Commerce statistics. The U.S. imports of SDGE from Mexico are ***. Imports from Mexico account for *** of nonsubject imports for each year during the period of investigation.

PREVIOUS AND RELATED INVESTIGATIONS

SDGE has not been the subject of any prior antidumping or countervailing duty investigations in the United States.

NATURE AND EXTENT OF SALES AT LTFV

Commerce has determined dumping margins of between 132.90 percent and 159.64 percent for SDGE from China.⁶

THE SUBJECT MERCHANDISE

Commerce's Scope

Commerce has defined the scope of this investigation as follows:

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.⁷

Tariff Treatment

Imports of SDGE are classifiable in the HTSUS under subheading 8545.11.00 (carbon or graphite electrodes of a kind used for furnaces) and are free of duty under the general duty rate, applicable to China. This subheading contains other products besides SDGE (all carbon or graphite electrodes of a kind used in furnaces). Table I-1 presents current tariff rates for SDGE.

⁶ *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.

⁷ *Ibid.*

Table I-1
SDGE: Tariff rates, 2009

HTS provision	Article description	General ¹	Special ²	Column 2 ³
		Rates (<i>percent ad valorem</i>)		
8545	Carbon electrodes, carbon brushes, lamp carbons, battery carbons and other articles of graphite or other carbon, with or without metal, of any kind used for electrical purposes:			
8545.11.00	Electrodes: Of a kind used for furnaces. . . .	Free		45.0

¹ Normal trade relations, formerly known as the most-favored-nation duty rate, applicable to imports from China.
² Special rates not applicable when General rate is free. China is ineligible for special duty rate treatment.
³ Applies to imports from a small number of countries that do not enjoy normal trade relations duty status.

Source: Harmonized Tariff Schedule of the United States (2009).

DOMESTIC LIKE PRODUCT

The Commission’s decision regarding the appropriate domestic products that are "like" the subject imported products is based on a number of factors including: (1) physical characteristics and uses; (2) common manufacturing facilities and production employees; (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and (6) price. Information regarding interchangeability, customer and producer perceptions, and channels of distribution is presented in *Part II* of this report. Information regarding price is presented later in *Part I* and also in *Part V* of this report. Information regarding the physical characteristics and uses and the manufacturing process of graphite electrodes is presented below.

Petitioners contend that the Commission should find one domestic like product that is coextensive with the scope of merchandise subject to the investigation as identified by the petition. Moreover, petitioners assert that SDGE form a single domestic like product that is exclusive of other electrodes, in particular LDGE.⁸ Respondents argue that there is no “bright line” between graphite electrodes at the 16-inch diameter point, and that all graphite electrodes constitute a single domestic like product with a continuum of diameter sizes.⁹ In the preliminary phase of this investigation, the Commission found that:

“there are both differences and similarities between SDGE and LDGE with respect to each of the six factors. Based on the current record, while it is a close question, we define the domestic like product to be SDGE. In any final phase investigation, we intend to collect additional information, particularly from purchasers concerning their perceptions of the products, and to revisit the issue of whether SDGE and LDGE should be characterized as a continuum of products without a clear dividing line.”¹⁰

⁸ Petition, p. 73.

⁹ Respondents’ postconference brief, p. 1. Respondents consist of 5 U.S. importers of SDGE from China, and 8 producers and/or exporters of SDGE from China.

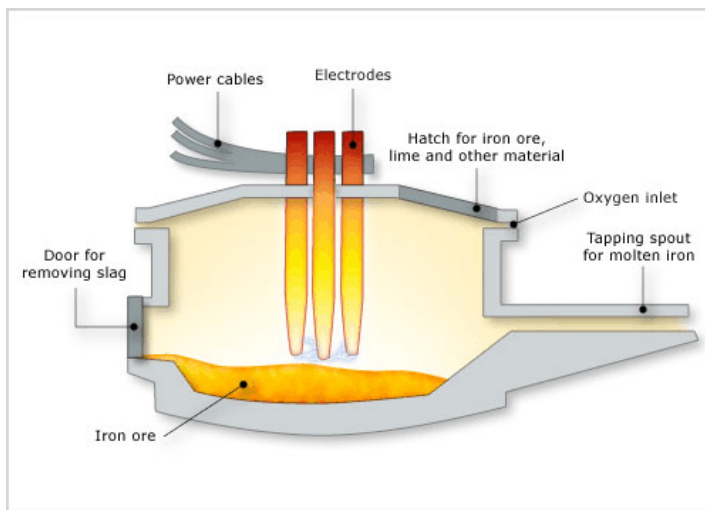
¹⁰ *Small Diameter Graphite Electrodes From China, Investigation No. 731-1143 (Preliminary)*, USITC Publication 3985, March 2008, p. 9.

In the final phase of the investigation, the Commission asked U.S. producers, importers, purchasers, and foreign producers to describe the differences and similarities between SDGE and LDGE; the data collected are presented in appendix D.

Physical Characteristics and Uses

SDGE, cylindrical in shape, are produced from various grades of petroleum coke,¹¹ and are used primarily in ladle metallurgy, primarily low-duty melting, and specialty furnace applications, such as the electric arc furnace (“EAF”) shown in figure I-1. SDGE are used in steel-making “mini-mills” to generate the heat necessary to melt and further refine steel.¹² SDGE act as conductors of electricity in EAFs, generating sufficient heat to melt scrap metal, iron ore, or other raw materials used to produce steel or other metals. Heat is generated as electricity at very high amperes¹³ passes through the SDGE and creates an electric arc between the electrodes and the raw material.¹⁴ Typically, electrodes are joined in columns by a threaded connecting system, most commonly a graphite connecting pin which is a short graphite piece that is threaded at both ends and used to join two electrodes.¹⁵ The pin joining system is the most

Figure I-1
Electric arc furnace



Source: Fleur Templeton. “Iron and steel.” Te Ara - the Encyclopedia of New Zealand. found at <http://www.teara.govt.nz/EarthSeaAndSky/MineralResources/IronAndSteel/2/ENZ-Resources/Standard/4/en>. retrieved on January 29, 2008.

¹¹ Superior currently sells *** and SGL uses a ***. Petitioners’ posthearing brief, p. 3.

¹² Respondents reported that the primary steel segment uses electrodes ranging from 14 inches to 28 inches in diameter. The ladle segment uses 10-inch through 20-inch electrodes. The foundry segment uses 3-inch through 24-inch electrodes, and other categories use electrodes ranging from 8 inches to 24 inches for a wide variety of applications, such as refining slag, making abrasives, fusing silica, and producing iron, and titanium. Conference transcript, p. 112 (Buchanan).

¹³ An ampere is a unit of electric current in the meter-kilogram-second system. Amperes are used to measure electric current.

¹⁴ Petition, p. 5.

¹⁵ Staff telephone interview with ***. Conference transcript, p. 13 (Stinson).

expensive and strongest part of the electrode.¹⁶ Alternating current electric arc furnaces generally use three columns of electrodes and direct current furnaces use one column.¹⁷ Graphite connecting pins are tapered and threaded on each end and screw two or more electrodes together.¹⁸ The electrodes are fed through holes in the top of the EAFs and held in place by electrical current carrying holders and arms designed for the specific size of electrode to be used.¹⁹ ***.²⁰ Because of the intensity of the melting process, the electrodes are continuously consumed during the course of the production of metal.

SDGE are primarily used in steel refining, but are also used in foundry applications, steel melting, and other uses.²¹ Foundries are the primary users of electrodes that are 8 inches and under.²² LDGE are primarily used in high to ultra-high power (“UHP”) melting applications, namely large EAFs for steel melting, and the small remainder of LDGE, only about 5 percent, is used in secondary ladle and refining operations to support the largest size melting operations.²³ Modern steel mills typically have EAFs that use electrodes that are at least 24 inches in diameter.²⁴

The design of the equipment that uses the electrodes determines the optimum electrode diameter, based on electrical and operating specifications.²⁵ Once a furnace, transformer, and electrical system is designed and built, an optimum electrode diameter becomes fixed on the electrical and operating specifications. At this point, it becomes unfeasible and unsafe to interchange different electrode diameters. In addition, electrode holders are designed for a specific electrode diameter and would need to be changed to hold a larger or smaller electrode. It is not possible to interchange between electrodes of different diameters without first making significant equipment changes.²⁶

According to the petitioners, it is cost-prohibitive to convert the equipment, such as the holders in EAFs, to accept a different size.²⁷ Depending on the application and its requirements, an electrode designed for those uses will have certain physical characteristics, such as resistance, current carrying capacity, and strength. Given the different typical uses of SDGE and LDGE and their different requirements, petitioners contend that SDGE have physical characteristics that distinguish them from

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ ***, plant visit by Commission staff, January 28, 2008.

²¹ Other uses include smelters, fused metal oxide production, waste recovery, waste encapsulation, and other minor furnace applications (petitioners’ February 15, 2008 submission on the uses of graphite electrodes by diameter size). Respondents reported that the primary steel segment uses electrodes ranging from 14 inches to 28 inches in diameter. The ladle segment uses 10-inch through 20-inch electrodes and the foundry segment uses 3-inch through 24-inch electrodes. Conference transcript, p. 112 (Buchanan).

²² Hearing transcript, p. 79 (McClintock).

²³ Petitioners’ postconference brief, p. 7. Respondents agree with this characteristic of general uses of LDGE and SDGE, but argue that there is considerable overlap of sizes of electrodes by different segments of the domestic industry consuming electrodes. Respondents’ postconference brief, p. 10.

²⁴ Hearing transcript, p. 17 (Stinson).

²⁵ Petitioners note that an electrode is designed to fit a particular application. Conference transcript, p. 57 (Anderson).

²⁶ *** importer’s questionnaire at I-10.

²⁷ Conference transcript, p. 49 (Stinson). Petitioners acknowledge that this is true amongst sizes both in and between SDGE and LDGE. Conference transcript, pp. 63-65.

other graphite electrodes (such as LDGE)²⁸ and that these physical characteristics make SDGE more applicable to the aforementioned uses.

SDGE are typically fabricated from a range of different grades of petroleum coke, from low grade anode coke to premium high grade needle coke (also known as acicular coke) or a blend of the two. Anode coke is used in low intensity applications using SDGE that are typically used in refining operations (ladle) and medium- to low-duty melting applications (foundries) whereas LDGE generally use 100-percent premium high grade needle coke and are typically used in high to ultra-high power (melting) applications.²⁹ As a result of the different raw materials used, SDGE and LDGE are produced in a variety of grades, including regular power (“RP”), normal power (“NP”), medium power (“MP”), high power (“HP”), super high power (“SHP”), and ultra high power (“UHP”).³⁰ SDGE are generally produced in all grades, while LDGE are typically produced in the HP, SHP, and mostly UHP grades.³¹ ***.³²

The grade of coke, along with other characteristics such as size, determines the amount of current an electrode can carry. SDGE typically have lower current carrying capacity ranging from 15,000 to 60,000 amps, but do not exceed 70,000 amps.³³ LDGE can carry from 60,000 to 160,000 amps, with the majority of modern EAFs operating over 100,000 amps.³⁴ Respondents note that there is an overlap in current carrying capacity among adjacent sized electrodes but no overlap among electrodes of more diverse size.³⁵ A typical consumption rate for SDGE in ladle furnace and foundry uses typically ranges from 0.2 to 1.5 pounds of electrodes per ton of steel processed. In contrast, the LDGE ratio of consumption in large steel mill EAFs can range from 1.5 to 12 pounds of electrodes per ton of steel processed.³⁶ Characteristics of electrodes include bulk density, specific electrical resistance, coefficient of thermal expansion, and flexural strength.³⁷ Typical characteristics and ranges for SDGE and LDGE are presented in table I-2.

²⁸ Petition, p. 70. Respondents argue that while electrodes may have different characteristics, essential characteristics are shared by all electrodes, and there is overlap of certain characteristics between two adjacent sizes. Respondents’ postconference brief, pp. 7-9.

²⁹ Petition, p. 3, and petitioners’ postconference brief, p. 8. SGL noted that it uses premium needle coke in some of its SDGE, depending on its customers’ requirements. Conference transcript, p. 53 (Stinson).

³⁰ These grades are not governed by a particular organization, and are more of a marketing technique. Conference transcript, pp. 55-56 (Stinson). The uses of these grades are generally accepted in the market as points of differentiation between electrodes.

³¹ Petitioners’ postconference brief, p. 9, and conference transcript, p. 130 (Brashem).

³² *** importer’s questionnaire at II-5a.

³³ Conference transcript, p. 17 (Stinson).

³⁴ Conference transcript, p. 16 (Stinson) and hearing transcript, p. 17 (Stinson).

³⁵ Conference transcript, pp. 109-110 (Buchanan).

³⁶ Petitioners’ postconference brief, exh. 23 and conference transcript, p. 140 (Buchanan).

³⁷ Bulk density is a measurement of weight per unit volume. A higher bulk density will generally be reflected in improved mechanical properties. Specific electric resistance is the electrical resistance of a unit length of graphite. One of graphite’s useful properties is that electrical resistance does not increase strongly with temperature. Up to 1400°C, the electrical resistance is lower than it was at room temperature. The coefficient of thermal expansion (“CTE”) is a measurement of the increase in length per unit length per degree rise in temperature. Lower CTE will give better resistance to thermal shock. Also, CTE compatibility between the graphite electrode and the connecting pin is important for satisfactory performance of the electrode joint. The flexural strength is the maximum stress which the material will withstand before rupture in bending. Higher flexural strength in electrodes will generally result in lower electrode breakage frequency. Petitioners’ postconference brief, exh. 8; staff telephone interview with ***; and staff telephone interview with ***.

**Table I-2
Electrodes: Typical physical characteristics**

Characteristic	SDGE	LDGE
Bulk density (g/cm ³)	1.57 - 1.77	1.67 - 1.77
Specific electrical resistance (μΩm)	5.5 - 8.9	4.0 - 5.5
Coefficient of thermal expansion (μm/K·m)	0.4 - 1.4	0.3 - 0.6
Flexural strength (psi)	1,000 - 2,400	1,100 - 1,900
Note: This table represents typical characteristics. These characteristics may vary by producer and grade of electrode. The importance of these characteristics depends on the application of the electrode.		
Source: Petitioners' postconference brief, exh. 2, 4, 5, and 6		

Manufacturing Facilities and Production Processes

Graphite electrodes are cylindrical in shape, and are manufactured through a series of processes.³⁸ The six basic stages of production include forming (also known as extruding), baking, pitch impregnation (for some models), graphitization, finishing, and packaging. Figure I-2 presents a flow diagram of the graphite electrode production process. The production of graphite electrodes begins with petroleum coke being crushed and graded to size by screening to achieve desired formulation. Utilizing different-sized coke particles in predetermined ratios, the mix is blended with coal or petroleum tar pitch which forms the bond between the separate particles. The blending is done at a high temperature to make the tar pitch fully plastic.

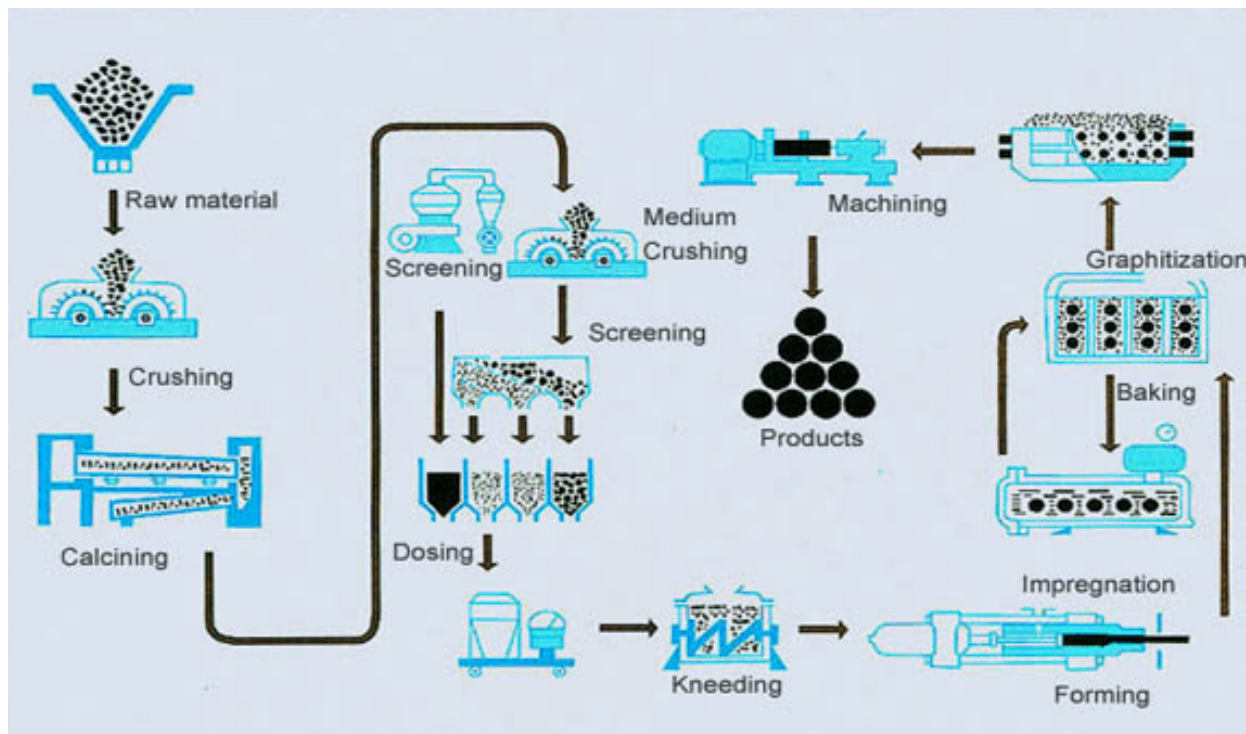
The mix is then charged into a ram type hydraulic press from which a cylindrical column is extruded and cooled.³⁹ This basic form cylindrical column, known as a "green electrode," then enters an oven to undergo a baking process. The heating process follows a predetermined and gradually increasing heating curve, reaching a final temperature of approximately 900 degrees centigrade. During this stage, the petroleum pitch is converted into hard coke, and impurities are removed. After the baking process, the electrode form may be impregnated with a special pitch and rebaked, filling pores to increase its density and strength, and lowering the electrical resistivity. LDGE are always impregnated at least once while SDGE are not always impregnated. The electrode form then undergoes the graphitization process by which baked coke is transformed into graphite. The electrodes are packed in electric furnaces surrounded by carbon particles to form a solid mass. An electric current is passed through the furnace, raising the temperature to as much as 3,000 degrees centigrade (approximately 5,400 degrees Fahrenheit). This process is usually achieved using either an Acheson type furnace or an in-line graphitization furnace (also known as a lengthwise graphitization ("LWG") furnace). With the Acheson type furnace, electrodes are graphitized using a batch process, while in a LWG furnace the entire column is graphitized at the same time. Unfinished SDGE undergo no further processing beyond the graphitization stage other than machining. For larger size electrodes, LWG furnaces produce a higher quality graphite electrode at a lower cost when compared to the Acheson process. The LWG furnace requires shorter heating periods,

³⁸ The following discussion is generally from the petition, pp. 4-5, and "Electric Arc Furnace Steel Making, Electrodes," American Iron and Steel Institute, found at <http://www.steel.org/AM/Template.cfm?Section=Home&template=/CM/HTMLDisplay.cfm&ContentID=21169#turn>, retrieved on January 31, 2008.

³⁹ Petitioners note that SDGE and LDGE use different presses in the extrusion process. Conference transcript, pp. 62-63.

less power consumption, less labor, and a smaller furnace.⁴⁰ Acheson furnaces have larger payloads, but can take significantly longer to graphitize.⁴¹ SGL Carbon uses ***, Superior Graphite uses ***, and nearly all the Chinese production of SDGE makes use of older Acheson furnace technology.

Figure I-2
Graphite electrode production process



Source: Sichuan GMT International, Inc., found at <http://www.scgmt.com/graphite%20electrode/index.html>, retrieved on January 31, 2008.

The graphite electrodes, after cooling, may then go to a final stage to be machined to exact dimensions and tolerances. This stage may also include machining and fitting the ends of the electrode with a threaded graphite pin joining system (also known as a pinning or connecting system). Due to the mechanical stresses in melting scrap steel, connecting pins must be very strong and are impregnated and rebaked multiple times. In contrast, connecting pins for small diameter products are not required to be as strong because the low energy applications in which they are used, such as refining furnaces, ladle furnaces, and foundries, generally do not place as much physical stress on the product.⁴² The electrode size and prevailing industrial standards dictate the diameter size and threading of the connecting pin.⁴³ ***.⁴⁴ The finished product is then packaged for shipment, typically placed between wooden chocks, and

⁴⁰ “Graphite production and further processing,” found at www.carbonandgraphite.org/pdf/graphite_production.pdf, retrieved on January 30, 2008.

⁴¹ Petitioners note that heating periods for LWG furnaces can range from 10 to 20 hours, while Acheson furnaces can take many days. Conference transcript, p. 54 (Stinson).

⁴² Conference transcript, p. 39 (Luberda). Hearing transcript, p. 19 (Stinson).

⁴³ Staff telephone interview with ***.

⁴⁴ ***, email message to Commission staff, January 7, 2009.

packed in wooden crates for protection during shipping. SDGE may also be bundled in steel strips before packing.

There is some overlap in manufacturing facilities between SDGE and LDGE.^{45 46} SGL Carbon, the only producer of both SDGE and LDGE, is able to produce both products on the same equipment using the same employees.⁴⁷ However, Superior Graphite, the other producer of SDGE, is not able to produce LDGE on the same equipment as SDGE, due to the necessary size differences in equipment such as forming dies, baking furnaces and saggars, rectifier sizes, and machine lines.^{48 *** 49 *** 50}

Price

Table I-3 presents the average unit values (“AUVs”) and shares of U.S. producers’ and U.S. importers’ U.S. shipments of SDGE and LDGE during the period for which data were collected in the investigation. The AUVs of U.S. shipments of U.S.-produced SDGE and LDGE and imports from China of both products increased in each year from 2005 to 2007.⁵¹ The AUV of U.S. shipments of U.S.-produced SDGE increased by *** percent, while the AUV of U.S. shipments of imports of SDGE from China rose by *** percent. The AUVs of U.S. producers’ U.S. shipments of both SDGE and LDGE continued to rise between the interim periods of January-September 2007 and January-September 2008, as did the AUVs of shipments of imports from China. Information on prices of SDGE is presented in *Part V* of this report.

⁴⁵ Petition, p. 73 and hearing transcript, p. 20 (Stinson).

⁴⁶ ***. *** importer’s questionnaire, II-5a.

⁴⁷ Petition, p. 72, conference transcript, p. 63, and hearing transcript, p. 20 (Stinson). Petitioners note that the stainless steel cans used in the baking process and much of the handling equipment are designed for a certain diameter size of electrode. ***.

⁴⁸ Petition, pp. 72-73 and hearing transcript, p. 20 (Stinson). Superior Graphite notes that impregnation is the only process in its current process flow sheet which could be used to produce LDGE. Conference transcript, p. 47.

⁴⁹ *** producer’s questionnaire, II-3b.

⁵⁰ Email message to Commission staff by ***, January 8, 2009; information from importers (see email from *** to ***), August 1, 2008; and petitioners’ prehearing brief, p. 4, fn. 2.

⁵¹ Trends in AUVs may reflect shifts in product mix.

Table I-3

SDGE and LDGE: U.S. producers' and U.S. importers' average unit values and shares of U.S. shipments, by product group, 2005-07, January-September 2007, and January-September 2008

Item	Calendar year			January-September	
	2005	2006	2007	2007	2008
Unit value (per metric ton)					
U.S. shipments of U.S.-produced product:					
SDGE	\$***	\$***	\$***	\$***	\$***
LDGE	2,912	3,809	4,477	4,390	5,148
Weighted average	***	***	***	***	***
U.S. shipments of imports from China:					
SDGE	\$2,108	\$2,173	\$2,348	\$2,195	\$2,811
LDGE	2,282	2,532	2,642	2,651	3,380
Weighted average	2,154	2,252	2,414	2,294	2,964
Share of quantity, based on metric tons (percent)					
U.S. shipments of U.S.-produced product:					
SDGE	11.6	10.8	9.3	9.6	10.4
LDGE	88.4	89.2	90.7	90.4	89.6
Total	100.0	100.0	100.0	100.0	100.0
U.S. shipments of imports from China:					
SDGE	73.5	78.2	77.3	78.3	73.1
LDGE	26.5	21.8	22.7	21.7	26.9
Total	100.0	100.0	100.0	100.0	100.0
Source: Compiled from data submitted in response to Commission questionnaires.					

PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET

U.S. MARKET SEGMENTS/CHANNELS OF DISTRIBUTION

SDGE are typically used as conductors of electricity in furnaces that heat or melt scrap metal or other material used to produce steel and other materials. SDGE can also be applied in primary melting and ladle metallurgy. The demand for SDGE is thus largely determined by steel production.¹ SDGE may be produced according to different grades based on the relative use of the coke raw material and whether the product goes through the pitch impregnation production step, including regular power (“RP”), normal power (“NP”), medium power (“MP”), high power (“HP”), super high power (“SHP”), and ultra high power (“UHP”). SDGE are also produced to a certain diameter size of 16 inches or less.

As shown in table II-1, a majority of U.S. producers’ U.S. commercial shipments of SDGE went to *** over the period for which data were collected.² Specifically, in 2007, approximately *** percent of U.S. producers’ U.S. commercial shipments of SDGE were to end users and *** percent were to distributors.³ *** U.S. commercial shipments of imports of SDGE from China were to end users.

Based on questionnaire responses, there is some customer overlap for U.S. producers and importers. *** of the *** largest customers reported by the two U.S. producers were listed as customers by responding importers of Chinese product.

Table II-1

SDGE: Channels of distribution of U.S. commercial shipments of SDGE reported by U.S. producers and importers, 2005-07, January-September 2007, and January-September 2008

* * * * *

When firms were asked to list market areas in the United States where they sell SDGE, the responses showed that the market areas tended to be nationwide. Among the two U.S. producers, both reported that they sell nationally. Among eight responding importers of SDGE from China, five reported that they sell nationally. The three others listed specific geographic regions, including the Northeast, the Mid-Atlantic, the Southwest, and the Southeast.

U.S. inland shipping distances for U.S.-produced SDGE were compared with those for imports from China. For U.S. producers, *** percent of their U.S. sales in 2007 occurred within 100 miles of their storage or production facility, *** percent were within distances of 101 to 1,000 miles, and *** percent were at distances of over 1,000 miles from their facilities. For imports from China, 51 percent of sales occurred within 100 miles of importers’ storage facilities, 44 percent were within 101 to 1,000 miles, and 5 percent were to distances over 1,000 miles.

*** percent of U.S. producers’ sales and 70 percent of importers’ sales of imports from China were produced to order. Lead times for delivery of SDGE ranged widely for both producers and importers. For producers, lead times were *** days for sales from inventory and ranged from *** days to as much as *** for sales produced to order. For importers, lead times ranged from one day to three months for sales from inventory and from ten weeks to as much as six months or more for sales to order.

¹ Conference transcript, p. 31 (Kerwin).

² *** U.S. commercial shipments of U.S. producers’ LDGE and imports of LDGE from China went to end users over the period for which data were collected.

³ U.S. producer *** reported that *** percent of its sales were to ***.

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

The supply response of domestic SDGE producers to changes in price depends on such factors as the level of excess capacity, the availability of alternate markets for U.S.-produced SDGE, inventory levels, and the ability to shift to the manufacture of other products. The evidence indicates that U.S. producers have the ability to respond to changes in price with relatively large changes in quantity, due primarily to the ***.

Industry capacity

U.S. producers' annual capacity utilization rates for SDGE decreased over the period for which data were collected in the investigation, ranging from a high of *** percent in *** to a low of *** percent in ***. This level of capacity utilization indicates that U.S. producers *** capacity with which they could increase production of SDGE in the event of a price change.

Fifteen of 34 responding purchasers reported that one or more firms have refused or been unable to supply SDGE since January 2005, with many purchasers attributing the supply shortages to U.S. SDGE producers' capacity shortages and high steel demand worldwide. Eleven purchasers reported that *** was unable to supply all of their requirements, with seven specifically citing 2008. Four purchasers reported that *** has been unable to supply SDGE, with two citing shortages in 2008, one purchaser reporting that *** has been unable to supply 12-inch SDGE since 2006 to the present, and one reporting that *** has removed all SDGE from its product line. Purchaser Magotteaux-Pulaski reported that beginning in May 2008, it faced supply shortages of 9-inch SDGE and that Superior stated that it would not be able to supply it with any 9-inch SDGE in 2008 or in 2009.⁴ Petitioners reported that Magotteaux-Pulaski did not seek a price quote for 9-inch SDGE until September 2008 for its 2009 needs, at which time Superior was responding to existing customers and is currently evaluating Magotteaux-Pulaski's request.⁵

U.S. producer Superior reported that it experienced a short-lived tight supply of SDGE beginning in February or March of 2008 that was alleviated by August of 2008, attributing the tightness to steel producers' operating at full capacity during that period.⁶ Petitioners also reported that, due to the filing of this investigation in February 2008, purchasers began realizing in the middle of 2008 that they might not be able to purchase the same amounts of SDGE from China that they had previously purchased and began contacting domestic suppliers to cover their shortfalls; however, U.S. producers require three months to produce SDGE and could not immediately supply the requested quantities. Petitioners report that U.S. producers are not experiencing supply tightness now.⁷

⁴ Hearing transcript, pp. 193-194 (Grosko).

⁵ Petitioners' posthearing brief, exh. 1, p. 34.

⁶ Hearing transcript, p. 87 (Carney).

⁷ Hearing transcript, pp. 151-152 (Luberda).

Alternative markets

Exports by U.S. producers, as a share of their total shipments, decreased from *** percent in 2005 to *** percent in 2007. These data indicate that U.S. producers have *** ability to divert shipments to or from alternative markets in response to changes in the price of SDGE.

Inventory levels

The ratio of end-of-period inventories to total shipments increased from *** percent in 2005 to *** percent in 2006 before decreasing to *** percent in 2007. These data indicate that U.S. producers *** ability to use inventories as a means of increasing shipments of SDGE to the U.S. market.

Production alternatives

U.S. producer *** reported that it uses the machinery, equipment, and workers used to make SDGE in the production of other products, including LDGE ***. U.S. producer *** reported that it uses the same workers used in producing SDGE to produce other products ***.

Subject Imports

The responsiveness of supply of imports from China to changes in price in the U.S. market is affected by such factors as capacity utilization rates and the availability of home markets and other export markets. Based on available information, producers in China have the capability to respond to changes in demand with moderate changes in the quantity of shipments of SDGE to the U.S. market. The main contributing factor to this degree of responsiveness of supply is the availability of alternative markets, including the Chinese home market, combined with limited inventories and limited capacity. Three purchasers reported supply shortages from Chinese suppliers in 2007 and 2008, with one reporting shortages specifically in mid-2008 during the Olympics. An importer of SDGE from nonsubject sources (***) reported that it attempted to import SDGE from China before the period of investigation, but stopped doing so in 2003 due to unreliable supply from Chinese suppliers. An importer reported that the Chinese government eliminated the value added tax (“VAT”) rebate on SDGE for shipments in 2009.⁸

Industry capacity

During the period of investigation, the capacity utilization rate for responding Chinese producers of SDGE decreased from *** percent in 2005 to *** percent in 2007; it was projected to be *** percent in 2008 and *** percent in 2009.

Alternative markets

Available data indicate that producers in China have the ability to divert shipments to or from alternative markets in response to changes in the price of SDGE. Shipments of SDGE from China to the United States increased irregularly from *** percent of total shipments in 2005 to *** percent in 2007. The share of China’s shipments to export markets other than the United States decreased irregularly from *** percent in 2005 to *** percent in 2007, with the remainder mostly going to the home market.

⁸ The importer reported that orders placed by August 1, 2008 and reported to the Chinese government by mid-August for shipments before the end of 2008 were still eligible for the VAT rebate. Hearing transcript, p. 247 (Brashem). The VAT rebate was 13 percent. Hearing transcript, p. 199 (Liu).

Inventory levels

Responding Chinese producers' inventories, as a share of total shipments, decreased from *** percent in 2005 to *** percent in 2007. These data indicate that Chinese producers have some ability to use inventories as a means of increasing shipments of SDGE to the U.S. market.

Nonsubject Imports

Based on responses to Commission questionnaires combined with adjusted official Commerce statistics, U.S. imports of SDGE from nonsubject sources accounted for *** percent of the quantity of total U.S. imports in 2007.

U.S. Demand

Demand Characteristics

The lack of substitutes for SDGE discussed below indicates that the demand for this product is likely to be price inelastic. When asked how the overall demand for SDGE has changed since January 2005, *** and 6 of 10 responding importers stated that the demand had increased, mostly citing increased steel production. Petitioners reported that the re-opening of old integrated steel mills over the last four years contributed to the increase in demand for SDGE.⁹ *** reported that U.S. steel production has remained flat since 2004. This firm also reported that demand has shifted more towards the 16-inch diameter graphite electrodes that are required by new ladle metallurgy furnaces. Petitioners reported that they expect steel demand worldwide to be weak in 2009.¹⁰ Respondents reported that demand for SDGE in China is increasing.¹¹ Four importers reported that there has been no change in demand since 2005. Eighteen of 32 responding purchasers reported that demand has increased, while 8 reported no change and 6 reported that it has decreased. One purchaser reported that demand for steel products utilizing SDGE increased between January 2005 and mid-2008, but has since declined.

Substitute Products

*** and virtually all of the responding importers stated that there are no substitutes for SDGE. One importer reported that refurbished SDGE can be used as an alternative; however, U.S. producers reported that they do not consider it a substitute.¹² Another importer reported that purchasers have the ability to change to a cupola furnace that does not require SDGE, noting that this change would not be very efficient. This firm also reported that it is possible to increase the size of the clamp to accommodate LDGE, noting that this substitution would require sufficient power. One purchaser reported that steel mill ladle refining stations can be modified to use LDGE instead of SDGE.

⁹ Petitioners' postconference brief, pp. 22-23. The re-opened mills are reportedly mostly blast furnaces that use SDGE in diameters ranging from 12 to 16 inches. Petitioners also reported that the demand for LDGE is stronger than the demand for SDGE because LDGE are consumed more quickly. Conference transcript, pp. 85-86 (Stinson).

¹⁰ Petitioners reported that steel demand worldwide is predicted to fall as much as 40 percent and that steel production in China is expected to decline by 9 up to as much as 30 percent in 2009. Petitioners' posthearing brief, exh. 1, p. 31.

¹¹ Hearing transcript, p. 199 (Liu). Respondents reported that the Chinese government is enacting an economic stimulus package of over \$600 million for infrastructure projects which will reportedly result in increased demand for steel and SDGE in China. Respondents' posthearing brief, responses to Commissioners' questions, p. 21.

¹² Conference transcript, p. 77 (Stinson).

Ten of 36 responding purchasers reported that there are alternative technologies to electric arc furnaces that do not require SDGE, including induction furnaces or modification of ladle furnaces to accept LDGE. One purchaser reported that switching the type of furnace would require *** in investment and new environmental permits. Two purchasers reported that they have considered switching to alternative equipment due to rising prices of SDGE.

Cost Share

According to responding producers, importers, and purchasers, the primary end use of SDGE is in furnaces for steel melting and refining. Most responding producers and importers and 22 of 26 responding purchasers reported that the total cost of downstream steel products accounted for by SDGE range from 1 to 5 percent.

SUBSTITUTABILITY ISSUES

The extent of substitutability between domestic products and subject and nonsubject imports and between subject and nonsubject imports is examined in this section. Information is based primarily on questionnaire responses from producers, importers, and purchasers.¹³

Factors Affecting Purchasing Decisions

Available information indicates that a variety of factors are considered important in the purchasing decision for SDGE. While quality and price were mentioned as being important factors in the sale of the product, other factors such as availability and delivery are also important considerations. Purchasers were asked to list the top three factors that they consider when choosing a supplier of SDGE. Table II-2 summarizes the responses.

**Table II-2
SDGE: Ranking of factors used in purchasing decisions, as reported by U.S. purchasers**

Factor	Number of purchasers		
	Number one factor	Number two factor	Number three factor
Price	9	10	9
Quality	18	4	4
Availability	4	12	9
Other ¹	4	9	11

¹ Other factors include two firms reporting “cost per ton of steel melted” for the number one factor; one firm reporting “traditional supplier” for the number one factor; one firm reporting “reliable supply” for the number one factor; three firms reporting “cost per heat” for the number two factor; two firms reporting delivery for the number two factor; one firm reporting “packaging” for the number two factor; one firm reporting “pre-arranged contracts” for the number two factor; one firm reporting “product consistency” for the number two factor; one firm reporting “reliable supply” for the number two factor; five firms reporting “delivery” for the number three factor; three firms reporting “cost per ton produced” as the number three factor; one firm reporting “sale characteristics, including delivery, reliability, and availability” as the number three factor; one firm reporting “reliability” as the number three factor; and one firm reporting “technical assistance” as the number three factor.

Source: Compiled from data submitted in response to Commission questionnaires.

¹³ The Commission received purchasers’ questionnaire responses from 36 purchasers. Among the largest responding purchasers of SDGE are: ***. Purchasers were asked how many suppliers they generally contact before making a purchase. Twenty-three purchasers reported that they contact two to four suppliers, 10 reported that they contact more than four, two reported that they contact one to two suppliers, and one reported that it only uses one supplier.

Price was named by 9 purchasers as the number one factor generally considered in deciding from whom to purchase SDGE, while 10 other purchasers indicated that it was the number two factor, and 9 purchasers responded it was the number three factor. As indicated in table II-3 30 of 35 responding purchasers indicated that price was a “very important” factor in their purchasing decisions.

**Table II-3
SDGE: Importance of factors used in purchasing decisions, as reported by U.S. purchasers**

Factor	Number of firms reporting		
	Very important	Somewhat Important	Not important
Availability	34	1	0
Delivery terms	20	12	3
Delivery time	27	7	1
Discounts and rebates	13	14	8
Extension of credit	5	16	14
Price	30	5	0
Minimum qty requirements	2	19	14
Packaging	9	17	9
Product consistency	34	1	0
Quality meets industry standards	33	2	0
Quality exceeds industry standards	13	15	6
Product range	3	14	18
Reliability of supply	35	0	0
Technical support/service	11	18	6
U.S. transportation costs	9	20	6
Heating costs (“cost per heat”)	28	4	3
Other ¹	5	0	0

¹ Other factor include two instances of “supply diversification,” one instance of “value in use,” one instance of “iron content,” and one instance of “electrical consumption.”

Source: Compiled from data submitted in response to Commission questionnaires.

Quality was named by 18 purchasers as the number one factor generally considered in deciding from whom to purchase SDGE, while 4 purchasers indicated that it was the number two factor and 4 other purchasers responded it was the number three factor. Thirty-four of 35 responding purchasers indicated that product consistency was a “very important” factor in their purchasing decisions and 33 of 35 purchasers indicated that quality meeting industry standards was a “very important” factor.

Availability was named by 4 purchasers as the number one factor generally considered in deciding from whom to purchase SDGE, while 12 purchasers indicated that it was the number two factor and 9 purchasers responded it was the number three factor. Thirty-four of 35 responding purchasers indicated that availability was a “very important” factor in their purchasing decisions. All 35 responding purchasers reported that “reliability of supply” was a very important factor. Twenty-eight of 35 responding purchasers reported that heating costs (or “cost per heat”) was a “very important” factor.

Twenty-four of 35 responding purchasers reported that they require suppliers for all of their purchases to become certified, while 3 reported that a portion of their purchases must be from a certified supplier and 8 reported that they do not require qualification. Qualification times can reportedly last anywhere from one month to one year. Of 31 responding purchasers, 29 purchasers reported that they have already certified SDGE from Chinese suppliers. When asked if any suppliers have failed in their attempts at certification, three purchasers cited importer *** for poor quality, one purchaser cited importer *** for breakage, one cited importer *** for poor performance, one purchaser cited importer *** for supplying SDGE from a non-approved plant, and one purchaser cited experiencing initial poor quality with product from China, including nipple and thread size problems, as well as cracking. This firm reported that those quality problems have been resolved. Another purchaser reported that it experienced quality problems with SDGE from a nonsubject supplier in India in 2004.

Purchasers were asked how detailed they are when placing orders. A majority of responding purchasers reported that their orders are very detailed, often including a specification for size and grade. Seven purchasers reported that their orders are not very detailed because they only use pre-qualified or long-term suppliers. When asked how often their order specifications are met, 25 of 34 responding purchasers responded “always,” while 5 responded “almost always” and 3 responded “usually” or “often.” When asked how willing they are to accept orders that do not exactly meet their specifications, 22 of 32 responding purchasers reported that they are “never” willing (or “not willing”) to accept such orders, while 7 reported that they are “not very” willing to accept them, and 3 reported that they would consider accepting such orders if there was an economic benefit or based on acceptable performance of the SDGE.

Comparisons of Domestic Product and Subject Imports

In order to determine whether U.S.-produced SDGE can generally be used in the same applications as imports from China, producers and importers were asked whether the products can “always,” “frequently,” “sometimes,” or “never” be used interchangeably. *** U.S. producers that compared China with the United States reported that they are *** interchangeable, as shown in table II-4. A majority of the importers that compared China with the United States reported that they are frequently interchangeable. Nearly all of responding purchasers reported that U.S. product and that from China are always or frequently interchangeable.

Table II-4
SDGE: Perceived degree of interchangeability of product produced in the United States and in other countries

Country comparison	U.S. producers				U.S. importers				U.S. purchasers			
	A	F	S	N	A	F	S	N	A	F	S	N
U.S. vs. China	***	***	***	***	2	7	1	0	22	6	1	2
U.S. vs. Nonsubject	***	***	***	***	2	5	1	0	17	5	1	2
China vs. Nonsubject	***	***	***	***	2	5	1	0	18	4	2	1

Note: “A” = Always, “F” = Frequently, “S” = Sometimes, and “N” = Never.

Source: Compiled from data submitted in response to Commission questionnaires.

*** reported that they are capable of producing the full product range of all grades and sizes of SDGE.¹⁴ U.S. producer SGL Carbon reported that it currently produces SDGE in diameters of 14 and 16 inches and stopped production of SDGE in diameters of 10 and 12 inches in 2006.¹⁵ U.S. producer Superior Graphite reported that it produces SDGE in diameters ***.¹⁶ U.S. producers reported that imports from China compete in the full range of SDGE products.¹⁷ Respondents, however, report that imports from China have historically competed mostly in the 20-inch and smaller sizes of graphite electrodes because producers in China have lacked the sophistication to produce larger sizes.¹⁸ In the preliminary phase of this investigation, one importer reported that U.S. producers are unwilling to produce SDGE in diameters of 3 to 8 inches and one importer reported that it sells Chinese graphite electrodes in diameters ranging from 3 to 24 inches.¹⁹

Purchasers were asked if certain grades or sizes of SDGE were only available from a single source; 32 of 34 responding purchasers responded “no.” Thirteen of 36 responding purchasers reported that they use both HP and UHP grades of SDGE. While most purchasers reported that UHP grade SDGE contain higher amounts of premium needle coke and is more well-suited to high power applications, two purchasers reported that the grades are not necessarily consistent across suppliers and that they run trials to determine the performance of the SDGE.

Respondents have reported that U.S. producers try to sell customers higher-priced, higher grades of SDGE than the customer actually requires.²⁰ Purchasers were asked if they ever use a higher grade of SDGE when they could be using a lower grade. Twenty-five of 34 responding purchasers responded “no,” while 9 reported “yes,” mostly citing better value based on consumption of the UHP grade relative to the HP grade. One purchaser also reported that it would purchase a higher grade if the lower grade were unavailable and another purchaser reported that higher grades have lower breakage.

Petitioners report that SDGE are not sold on the basis of an industry standard.²¹ U.S. producers report that they produce to order because customers specify their performance needs.²² *** reported that all SDGE within a specific diameter can be interchanged, provided that the performance and value of the product are acceptable to the customer. One importer reported that industry standards set by the National Electrical Manufacturers Association (NEMA), the International Electrotechnical Commission (IEC), and the Japanese Industrial Standard (JIS) have standardized the diameter and lengths for SDGE; however, this firm also reported that the operating parameters of the particular purchaser (including height limitations in the work area) determine which grades of SDGE are suitable for its operation.

Of 35 responding purchasers, 27 reported that they “always” know whether the SDGE they purchase is imported or produced domestically and 14 reported that they “always” know the manufacturer.

Seventeen of 29 responding purchasers reported that SDGE produced in the United States always meet minimum quality specifications; 16 of 34 responding purchasers reported that SDGE produced in China always meet minimum quality specifications.

¹⁴ Petitioners’ postconference brief, p. 23. Respondents contend that U.S. producers try to sell customers more expensive, higher grades of SDGE than are necessary. Conference transcript, p. 10 (Levinson). Petitioners maintain that U.S. producers produce according to customer specifications. Petitioners’ postconference brief, p. 26.

¹⁵ Conference transcript, pp. 12, 46 (Stinson).

¹⁶ Questionnaire response, section II-11.

¹⁷ Conference transcript, p. 20 (Stinson).

¹⁸ Respondents’ posthearing brief, responses to Commissioners’ questions, p. 9.

¹⁹ Conference transcript, p. 122 (Kearney).

²⁰ Hearing transcript, p. 290 (Levinson).

²¹ Petitioners’ postconference brief, p. 26.

²² Petitioners’ postconference brief, p. 26. Conference transcript, p. 51 (Stinson).

As indicated in table II-5, *** U.S. producers that compared the United States with China said that differences other than price are *** significant. The majority of the responding importers that compared the United States with China said that the differences are sometimes significant, with the remainder reporting that such differences are always or frequently significant. *** reported that the quality and availability of SDGE imported from China have improved. Petitioners reported that 14- and 16-inch sizes of UHP SDGE from China have had more quality problems than smaller sizes of SDGE, but that their overall quality is expected to improve.²³ Petitioners reported that SDGE from China work particularly well in low-intensity operations, typically for customers that can tolerate higher consumption rates, which introduces more carbon into the heat.²⁴ Superior also reported that, even in instances where SDGE from China are consumed more quickly than domestic product, purchasers state that the SDGE from China are still lower priced than the domestic product.²⁵ Petitioners also reported that there is a limited global supply of needle coke (which is needed to produce SDGE for higher-intensity applications), which also limits Chinese producers' capability to manufacture SDGE suitable for higher-intensity applications.²⁶

Table II-5
SDGE: Differences other than price between products from different sources¹

Country comparison	U.S. producers				U.S. importers			
	A	F	S	N	A	F	S	N
U.S. vs. China	***	***	***	***	2	2	5	0
U.S. vs. Nonsubject	***	***	***	***	1	1	5	0
China vs. Nonsubject	***	***	***	***	2	1	4	0

¹ Producers and importers were asked if differences other than price between SDGE produced in the United States and in other countries are a significant factor in their firms' sales of SDGE.

Note: "A" = Always, "F" = Frequently, "S" = Sometimes, and "N" = Never.

Source: Compiled from data submitted in response to Commission questionnaires.

Purchaser Wheelabrator Abrasive reported that the consumption rates for SDGE from U.S. producer Superior and Chinese import suppliers are the same.²⁷ Another importer (***) reported that while SDGE from China are lower priced, higher consumption of the SDGE is required to obtain the same amount of melted steel, but that Chinese SDGE are still cost-effective for many customers. Another importer, ***, reported that the cost of a poor-performing SDGE will always be greater than the difference in the sales prices; this firm also noted that while U.S. producers may not have an advantage with regard to the performance of their SDGE, they should have superior product availability and technical support, but that distributors of imported product also have advantages in those areas. One importer reported that there were quality concerns with the SDGE from China in the past, but that the quality of the Chinese product has been improving. Two importers reported that the imports from China

²³ Hearing transcript, p. 81 (Hartquist).

²⁴ Hearing transcript, p. 85 (Stinson).

²⁵ Hearing transcript, pp. 25-26 (Carney).

²⁶ Hearing transcript, p. 85 (Stinson).

²⁷ Hearing transcript, p. 246 (Wood).

are available in a wider variety of grades than U.S.-produced products or imports from other countries. One purchaser reported that SDGE produced in the United States do not have ***.

For some factors that all or almost all responding purchasers indicated were “very important” in their purchasing decisions, including reliability of supply and quality meets industry standards (see table II-3), purchaser comparisons as shown in table II-6 indicate that the domestic product is mostly comparable to the product imported from China. However, a majority of purchasers reported that the U.S. product is inferior to the product from China with respect to “lower price.” A number of purchasers reported that the U.S. product is superior to the product from China with respect to “delivery time” and “technical support/service.”

Table II-6
SDGE: Comparisons between U.S.-produced and subject imported product, as reported by U.S. purchasers

Factor	China		
	S	C	I
Availability	2	15	4
Delivery terms	1	18 ¹	2
Delivery time	8	10 ¹	2
Discounts offered	1	17	1
Extension of credit	0	17	4
Lower price ²	0	4	17
Minimum quantity requirements	0	20	0
Packaging	2	19	0
Product consistency	3	17	1
Quality meets industry standards	1	20 ³	0
Quality exceeds industry standards	1	19 ³	0
Product range	1	19	0
Reliability of supply	1	16	4
Technical support/service	7	11	1
Lower U.S. transportation costs	2	18	0
Heating costs (“cost per heat”)	2	16	2
Other ⁴	0	1	1
¹ One response included in this column for this factor rated the U.S. product “comparable/inferior” to the subject imports. ² A rating of superior means that the price is generally lower. For example, if a firm reports “U.S. superior,” this means that it rates the U.S. price generally lower than the subject import price. ³ One response included in this column for this factor rated the U.S. product “superior/comparable” to the subject imports. ⁴ Other factors include one instance of “value in use” with a ranking of “comparable” and one instance of “supply diversity” with a ranking of “inferior.” Note.--S=U.S. product is superior, C=U.S. product is comparable, I=U.S. product is inferior. Source: Compiled from data submitted in response to Commission questionnaires.			

Other Country Comparisons

In addition to comparisons between the U.S. product and imports from the subject country, U.S. producer and importer comparisons between the United States and imports from nonsubject countries and between subject imports and nonsubject imports are also shown in tables II-4 and II-5. *** reported that the quality of SDGE from nonsubject countries, particularly Mexico, is comparable with that of domestic product and of Chinese product.²⁸ One purchaser reported that the quality of SDGE it obtained from Mexico two or three years ago was inferior to the SDGE it was using.²⁹ Another purchaser reported that it experienced problems with the quality of the threads of SDGE from India. One importer reported that SDGE imported from the Ukraine at the time the petition was filed did not meet customer requirements because the product offered was not impregnated, was of a different nipple size, and was of a different connecting machine size.³⁰ This importer also reported that there was a lack of availability of SDGE from India at the time the petition was filed.³¹

Five of 12 responding purchasers reported that SDGE from India “always” meet minimum quality specifications and 5 responded “usually.” Five of 11 responding purchasers reported that SDGE from Mexico “always” meet minimum quality specifications, and the remaining 6 responded “usually.” Four responding purchasers reported that SDGE from Japan “always” or “usually” meet minimum quality specifications; two responding purchasers reported that SDGE from Russia “always” or “usually” meet them; one reported that SDGE from Ukraine “always” meet them and another reported that SDGE from Ukraine “usually” meet them; one reported that SDGE from the United Kingdom “usually” meet them; and one reported that SDGE from ***, an importer of SDGE from Mexico, Brazil, and South Africa, “usually” meet minimum quality specifications.

When asked if they had changed the amount of their purchases of SDGE from China due to the filing of the petition or due to the Department of Commerce’s preliminary determination of sales at less than fair value, 19 of 35 responding purchasers reported that they had not changed their purchases, six of which cited lack of availability from U.S. suppliers. Sixteen purchasers reported that they had changed their purchases from China, with 3 specifically stating that they had switched to U.S. suppliers, 7 stating that they had switched to nonsubject sources (including Japan, Mexico, India, the United Kingdom, and Ukraine), one reporting that it was in the process of testing SDGE from Mexico and India, and one reporting that it had switched to another Chinese supplier that had a relative low preliminary dumping margin.

When purchasers were asked if the relative shares of their total purchases of SDGE from different sources had changed since 2005, ten reported that their share of purchases from U.S. producers had decreased, whereas thirteen purchasers reported that their share of purchases of imports from China had increased (with one citing 2005 to 2007 in particular), mostly citing price and availability. Two purchasers reported that their share of purchases from U.S. producers had increased (with one citing 2008 in particular); five reported that the share of their purchases of imports from China had decreased (with two citing 2008 in particular); three reported that their share of purchases of imports from Mexico had decreased; three reported that their share of purchases of imports from Mexico had increased; two reported that their share of purchases of imports from India had increased; two reported that their share of purchases of imports from India had decreased; and one reported that its share of purchases of imports from the United Kingdom had increased.

Purchasers that had replaced, to some degree, their purchases of imports from China with imports from nonsubject countries were asked if they paid a higher price for those nonsubject imports than they

²⁸ Conference transcript, pp. 78-79 (Stinson, Carney).

²⁹ Hearing transcript, p. 216 (Hancock).

³⁰ Hearing transcript, p. 265 (Brashem).

³¹ Hearing transcript, p. 265 (Brashem).

had been paying for imports from China before this case was filed. Of 29 responding purchasers, 16 responded “no,” that they were not paying a higher price for nonsubject imports than they had been paying for imports from China, and 13 responded “yes.”

ELASTICITY ESTIMATES

U.S. Supply Elasticity³²

The domestic supply elasticity for SDGE measures the sensitivity of the quantity supplied by U.S. producers to changes in the U.S. market price of SDGE. The elasticity of domestic supply depends on several factors including the level of excess capacity, the ease with which producers can alter capacity, producers’ ability to shift to production of other products, the existence of inventories, and the availability of alternate markets for U.S.-produced SDGE. Analysis of these factors above indicates that the U.S. industry is likely to be able to increase or decrease shipments to the U.S. market; an estimate in the range of 3 to 5 is suggested.

U.S. Demand Elasticity

The U.S. demand elasticity for SDGE measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of SDGE. This estimate depends on factors discussed above such as the existence, availability, and commercial viability of substitute products, as well as the component share of SDGE in the production of downstream products. Based on the available information, the aggregate demand elasticity for SDGE is likely to be in the range of -0.5 to -0.75.

Substitution Elasticity

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products.³³ Product differentiation, in turn, depends upon such factors as quality and conditions of sale (availability, sales terms/discounts, etc.). Based on available information, the elasticity of substitution between U.S.-produced SDGE and SDGE from China is likely to be in the range of 2 to 4.

³² A supply function is not defined in the case of a non-competitive market.

³³ The substitution elasticity measures the responsiveness of the relative U.S. consumption levels of the subject imports and the domestic like products to changes in their relative prices. This reflects how easily purchasers switch from the U.S. product to the subject products (or vice versa) when prices change.

PART III: U.S. PRODUCERS' PRODUCTION, SHIPMENTS, AND EMPLOYMENT

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information on the margin of dumping was presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V. Information on the other factors specified is presented in this section and/or Part VI and (except as noted) is based on the questionnaire responses of two firms that accounted for 100 percent of U.S. production of SDGE during 2007.

U.S. PRODUCERS

The Commission sent producers' questionnaires to two firms, SGL Carbon and Superior Graphite, identified in the petition as U.S. producers of SDGE. The Commission received completed producers' questionnaire responses from both firms, accounting for all known U.S. production of SDGE during the period of investigation.¹ The Commission asked producers to identify related firms that import or produce SDGE: *** reported related production facilities in *** and *** (*** and ***, respectively). Table III-1 presents U.S. producers' reported positions on the petition, plant locations, ownership, and shares of total reported U.S. production of SDGE in 2007.

Table III-1
Graphite electrodes: U.S. producers, positions on petition, plant locations, and shares of U.S. production in 2007

Firm name	Position on petition	Plant locations	Parent company	Share of reported 2007 U.S. SDGE production (percent)	Share of reported 2007 U.S. LDGE production (percent)	Share of reported 2007 U.S. graphite electrode production (percent)
SGL Carbon LLC	Support (petitioner)	Morganton, NC Ozark, AR	***% SGL Carbon AG (Germany)	***	***	***
Superior Graphite Co.	Support (petitioner)	Russellville, AR	***% Superior Graphite Co.	***	/ / / / / / / /	***
Total SDGE				100.0	/ / / / / / / /	***
C/G Electrodes, LLC	***	St. Marys, PA	***% C/G Electrodes	/ / / / / / / /	***	***
SGL Carbon LLC	Support (petitioner)	Hickman, KY	***% SGL Carbon AG (Germany)	***	***	(1)
Showa Denko Carbon, Inc.	***	Ridgeville, SC	***% Showa Denko KK (Japan)	/ / / / / / / /	***	***
Total LDGE				/ / / / / / / /	100.0	***
¹ Not presented here to avoid double-counting.						
Source: Compiled from data submitted in response to Commission questionnaires.						

¹ In the United States, SGL Carbon produces 14-inch and 16-inch diameter SDGE and 18-inch through 32-inch diameter LDGE. SGL Carbon noted that it used to produce down to 2-inch diameter SDGE. Conference transcript, p. 45 (Stinson). Superior Graphite cannot produce graphite electrodes larger than 16 inches in diameter. Conference transcript, pp. 49-50 (Carney).

The Commission also sent producers' questionnaires to two firms, Showa Denko and C/G Electrodes, identified as U.S. producers of LDGE. The Commission received completed producers' questionnaires from both firms, which, along with SGL Carbon, accounted for all known U.S. production of LDGE during the period of investigation; *** the petition. A summary of data collected in the investigation on LDGE is presented in appendix C, table C-2.

U.S. PRODUCTION, CAPACITY, AND CAPACITY UTILIZATION

U.S. producers' capacity, production, and capacity utilization data for SDGE and LDGE are presented in table III-2. These data show that SDGE production capacity remained stable during 2005 to 2006, declining by *** percent in 2007, with average capacity utilization declining by *** percentage points over the same period. U.S. producers' capacity to supply SDGE was *** below apparent U.S. consumption of SDGE in each year and period for which data were collected. U.S. producers increased their production of LDGE over the period for which data were collected.

Table III-2
Graphic electrodes: U.S. capacity, production, and capacity utilization, 2005-07, January-September 2007, and January-September 2008

* * * * *

The Commission asked domestic producers to describe any plant openings, relocations, expansions, acquisitions, consolidations, closures, and prolonged shutdowns. *** reported closing or reducing production lines of SDGE.

The Commission asked domestic producers to describe the constraints that limit production capacity.² *** responded that the baking stage of processing limited capacity to produce SDGE. *** reported that *** also constrained production capacity of SDGE. *** were also noted as constraints by ***.

***, accounting for *** percent of total reported U.S. production of SDGE in 2007, reported producing other products, namely LDGE *** on the same machinery and equipment, and with the same workers used in the production of SDGE. SDGE, LDGE, *** reportedly accounted for *** of its total production in 2007. *** reported producing products ***, accounting for *** percent of total production in 2007.³

U.S. PRODUCERS' SHIPMENTS

Table III-3 presents information on U.S. producers' shipments of SDGE. U.S. producers' U.S. shipments, in terms of quantity, fell from 2005 to 2007 by *** percent. On a value basis, U.S. producers' U.S. shipments increased by *** percent from 2005 to 2007, which resulted in an increase in the average unit value of *** percent. *** the U.S. producers reported transfers to related firms, while *** reported export shipments.⁴ *** reported internal consumption.

² Producers' questionnaire responses, section II-4.

³ ***, E-mail from ***.

⁴ ***.

Table III-3
SDGE: U.S. producers' shipments, by type, 2005-07, January-September 2007, and January-September 2008

* * * * *

Table III-4 presents data for U.S. producers' production, U.S. shipments, and exports of graphite electrodes, by size, during the period for which data were collected. Production of sizes above 16 inches rose as a share of the total from 2005 (***) percent) to 2007 (***) percent) and continued to rise during the interim periods. Table III-5 presents data for U.S. producers' U.S. shipments of graphite electrodes by size and use for 2007. *** graphite electrodes shipped in the 8-inch to 16-inch sizes were to foundry and steel refining and those above 16 inches were for ***.⁵

Table III-4
Graphite electrodes: U.S. producers' production, U.S. shipments, and exports, by size, 2005-07, January-September 2007, and January-September 2008

* * * * *

Table III-5
Graphite electrodes: U.S. producers' U.S. shipments, by size and use in 2007

* * * * *

U.S. PRODUCERS' IMPORTS AND PURCHASES

During the period of investigation, neither U.S. SDGE producer reported imports, ***.⁶ ***.

U.S. PRODUCERS' INVENTORIES

Data on U.S. producers' end-of-period inventories of SDGE for the period of investigation are presented in table III-6. Inventories increased by nearly *** percent from 2005 to 2007 (they *** between 2005 and 2006). Inventories as a ratio to production, to U.S. shipments, and to total shipments followed a similar trend. However, inventories declined by *** percent between January-September 2007 and January-September 2008.

Table III-6
SDGE: U.S. producers' end-of-period inventories, 2005-07, January-September 2007, and January-September 2008

* * * * *

⁵ Petitioners estimated the breakout of 18 inch and above graphite electrodes by use:

* * * * *

⁶ ***.

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

Data provided by U.S. producers on the number of production and related workers (“PRWs”) engaged in the production of SDGE, the total hours worked by such workers, and wages paid to such PRWs during the period for which data were collected in this investigation are presented in table III-7. PRWs producing SDGE declined by *** percent from 2005 to 2007.

Table III-7
SDGE: U.S. producers’ employment-related indicators, 2005-07, January-September 2007, and January-September 2008

* * * * *

PART IV: U.S. IMPORTS, APPARENT CONSUMPTION, AND MARKET SHARES

U.S. IMPORTERS

Importer questionnaires were sent to 32 firms believed to be importers of subject SDGE, as well as to all U.S. producers of SDGE and LDGE.¹ Usable questionnaire responses were received from 12 companies, representing 58.3 percent of total imports from China in the period of investigation under HTS subheading 8545.11.00, a “basket” category. *** and *** accounted for *** percent of reported imports of SDGE from China in 2007, and *** percent of adjusted imports from all other sources. *** also reported imports from ***. *** accounted for *** percent of adjusted imports from all other sources in 2007.² Table IV-1 lists all responding U.S. importers of SDGE from China and other sources, their locations, and their shares of U.S. imports, in 2007.

Table IV-1
SDGE: U.S. importers, source(s) of imports, U.S. headquarters, and shares of imports in 2007

* * * * *

U.S. IMPORTS

Table IV-2 presents data for U.S. imports of SDGE from China and all other sources. Data on U.S. imports from China presented in this report are based on questionnaire responses, as official statistics are from a basket classification that is broader than the subject product.³ Data on U.S. imports from Mexico presented in this report (table VII-8) are based on GrafTech Mexico S.A. de C.V.’s response to the Commission’s foreign producer’s questionnaire, as GrafTech is believed to represent *** of exports from Mexico.⁴ Data on U.S. imports from sources other than China and Mexico are based on the estimates provided in the petition.⁵

The quantity of U.S. imports from China increased by 36.7 percent from 2005 to 2007, and slipped by 3.3 percent between January-September 2007 and January-September 2008. The value of U.S. imports from China increased, rising by 51.7 percent and 24.5 percent over the same periods.

¹ The Commission sent questionnaires to those firms identified in the petition, along with firms that, based on a review of data provided by U.S. Customs and Border Protection (“Customs”), may have imported at least 100,000 kilograms or greater than one percent of total imports under HTS subheading 8545.11.00 in any one year since 2004.

² GrafTech reported that *** to Monterrey, Mexico. This was done for several reasons, including ***. Graftech’s importers’ questionnaire response, section II-2.

³ Respondents contended that the importers which submitted the importer questionnaires in the preliminary phase of the investigation represented virtually 100 percent of imports of SDGE from China. Conference transcript, p. 8 (Levinson).

⁴ The U.S. exports of SDGE from Mexico reported by GrafTech are ***. Imports from Mexico account for *** of nonsubject imports for each year during the period of investigation.

⁵ Petition, Injury Exh. 2. Coverage of these countries appears to be incomplete due to limited information received in response to the Commission’s questionnaire. Commission staff elected to adjust official import statistics by the estimates provided in the petition based on the petitioners’ industry knowledge. These are believed to be the best available data as no other alternative data were provided to Commission staff. SDGE was estimated to be 60 percent of official imports from India; 10 percent from Germany, Japan, Poland, and Spain; 0 percent from Canada; and 50 percent from all other sources (other than China and Mexico).

Table IV-2
SDGE: U.S. imports, by sources, 2005-07, January-September 2007, and January-September 2008

Source	Calendar year			January-September	
	2005	2006	2007	2007	2008
Quantity (metric tons)					
China	10,082	13,161	13,784	10,458	10,112
Nonsubject	***	***	***	***	***
Total	***	***	***	***	***
Value (1,000 dollars)¹					
China	15,819	21,638	24,003	18,161	22,618
Nonsubject	***	***	***	***	***
Total	***	***	***	***	***
Unit value (per metric ton)¹					
China	\$1,569	\$1,644	\$1,741	\$1,737	\$2,237
Nonsubject	***	***	***	***	***
Average	***	***	***	***	***
Share of quantity (percent)					
China	***	***	***	***	***
Nonsubject	***	***	***	***	***
Total	100.0	100.0	100.0	100.0	100.0
Share of value (percent)					
China	***	***	***	***	***
Nonsubject	***	***	***	***	***
Total	100.0	100.0	100.0	100.0	100.0
<p>¹ Landed, U.S. port of entry, duty-paid. Because of the methodology by which official Commerce statistics were adjusted, value data for countries other than China and Mexico may be overstated to the extent that the unit values of SDGE are lower than the unit values of other products imported under the same HTS subheading.</p> <p>Source: Compiled from data submitted in response to Commission questionnaires and from adjusted official Commerce statistics.</p>					

CRITICAL CIRCUMSTANCES

On January 6, 2009, Commerce issued its final determination that “critical circumstances” exist with regard to imports from China of SDGE from the Fangda Group, the separate rate companies, and the PRC-wide entity, including Fushun Jinly.⁶ In this investigation, if both Commerce and the Commission make affirmative final critical circumstances determinations, certain subject imports may be subject to antidumping duties retroactive by 90 days from August 21, 2008, the effective date of Commerce’s preliminary affirmative LTFV determination.

The following are the reported imports into the United States, by month (*in metric tons*), derived from importers’ questionnaire responses: July 2007 - ***; August 2007 - ***; September 2007 - ***; October 2007 - ***; November 2007 - ***; December 2007 - ***; January 2008 - ***; February 2008 - ***; March 2008 - ***; April 2008 - ***; May 2008 - ***; and June 2008 - ***.

NEGLIGENCE

The statute requires that an investigation be terminated without an injury determination if imports of the subject merchandise are found to be negligible.⁷ Negligible imports are generally defined in the Tariff Act of 1930, as amended, as imports from a country of merchandise corresponding to a domestic like product where such imports account for less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes the filing of the petition or the initiation of the investigation. However, if there are imports of such merchandise from a number of countries subject to investigations initiated on the same day that individually account for less than 3 percent of the total volume of the subject merchandise, and if the imports from those countries collectively account for more than 7 percent of the volume of all such merchandise imported into the United States during the applicable 12-month period, then imports from such countries are deemed not to be negligible.⁸ Imports from China accounted for *** percent of total imports of SDGE by quantity during 2007.

APPARENT U.S. CONSUMPTION

Data concerning apparent U.S. consumption of SDGE during the period of investigation are shown in table IV-3 and figure IV-1. The quantity of apparent U.S. consumption increased by *** percent from 2005 to 2007, but decreased by *** percent from January-September 2007 to January-September 2008. In terms of value, apparent U.S. consumption increased by *** percent between 2005 and 2007, and by *** percent between January-September 2007 and January-September 2008.

⁶ 74 FR 2049, January 14, 2009, presented in app. A. When petitioners file timely allegations of critical circumstances, Commerce examines whether there is a reasonable basis to believe or suspect that (1) either there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or 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 LTFV and that there was likely to be material injury by reason of such sales; and (2) there have been massive imports of the subject merchandise over a relatively short period.

⁷ Sections 703(a)(1), 705(b)(1), 733(a)(1), and 735(b)(1) of the Act (19 U.S.C. §§ 1671b(a)(1), 1671d(b)(1), 1673b(a)(1), and 1673d(b)(1)).

⁸ Section 771(24) of the Act (19 U.S.C. § 1677(24)).

Table IV-3

SDGE: U.S. shipments of domestic product, U.S. shipments of imports, and apparent U.S. consumption, 2005-07, January-September 2007, and January-September 2008

* * * * *

Figure IV-1

SDGE: Apparent U.S. consumption, by sources, 2005-07, January-September 2007, and January-September 2008

* * * * *

U.S. MARKET SHARES

U.S. market share data are presented in table IV-4. Shares of both quantity and value of imports from China of SDGE increased from 2005 to 2007, with Chinese import shares of U.S. consumption growing by *** percentage points in quantity and *** percentage points in value. U.S. producers' share (by quantity) of the domestic market decreased by *** percentage points during this same period, but increased *** between the interim periods.

Table IV-4

SDGE: U.S. consumption and market shares, 2005-07, January-September 2007, and January-September 2008

* * * * *

RATIO OF IMPORTS TO U.S. PRODUCTION

Information concerning the ratio of imports to U.S. production of SDGE is presented in table IV-5. Subject imports were equivalent to *** percent of U.S. production during 2005. This level increased to *** percent in 2006, *** percent in 2007, and fell to *** percent in January-September 2008.

Table IV-5

SDGE: U.S. production, U.S. imports, and ratios of imports to U.S. production, 2005-07, January-September 2007, and January-September 2008

* * * * *

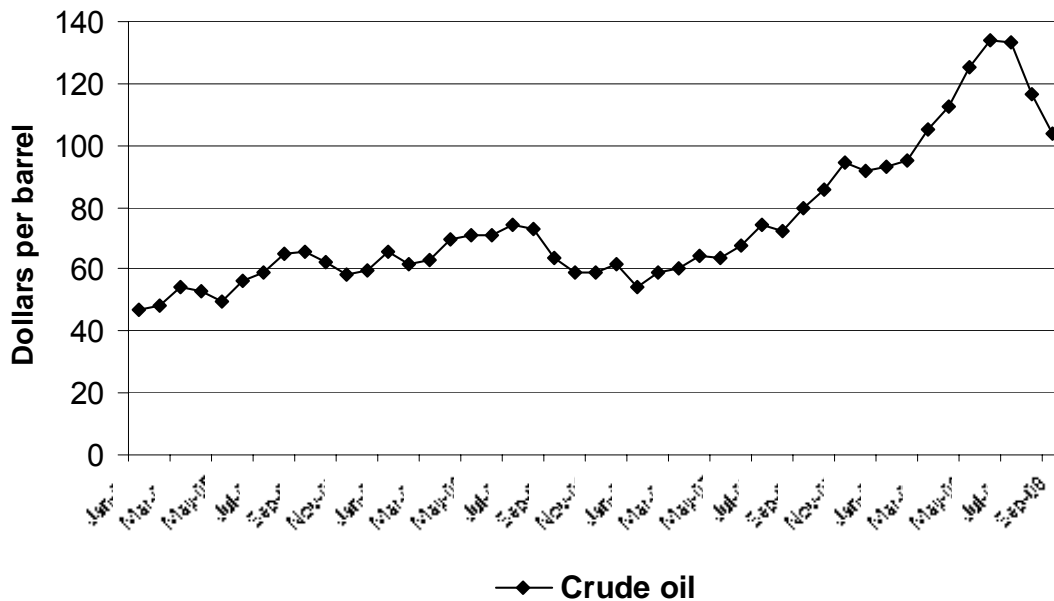
PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

Raw Material Costs

Petroleum coke, either in the form of needle coke, anode coke, or other grades, and petroleum pitch or coal tar pitch are the principal raw materials used in producing SDGE.¹ U.S. producers reported that there has been a limited supply of needle coke globally.² U.S. producers also reported that their raw material costs increased by *** percent on a per-unit basis from 2005 to 2007.³ The spot price for oil, which determines the cost of the petroleum-based raw materials, increased by 122 percent from January 2005 to September 2008, peaking in June 2008 and declining thereafter, as shown in figure V-1.⁴ Respondents report that the prices of raw materials have also increased substantially in China over the period of investigation.⁵

Figure V-1
SDGE: Monthly spot prices of crude oil, January 2005-September 2008



Source: *Energy Information Administration*, November 18, 2008.

¹ Petitioners' postconference brief, p. 25.

² Hearing transcript, p. 85 (Stinson).

³ According to a steel industry source, the price of needle coke has reportedly doubled since January 2005 and has increased by one-third since mid-2006. "Steel Guru," January 31, 2008. (http://www.steelguru.com/news/index/2008/01/31/MzU3MDk=/US_steel_mini_mills_boost_demand_for_specialized_coke_product.html).

⁴ The spot price for oil decreased by 26 percent from September to October 2008 and continued to decline by another 46.3 percent from October 2008 to December 2008. Energy Information Administration. (Http://tonto.eia.doe.gov/dnav/pet/pet_pri_spt_s1_m.htm).

⁵ Respondents' postconference brief, p. 3.

Transportation Costs to the U.S. Market

Transportation costs for SDGE shipped from China to the United States averaged 9.0 percent of the customs value during 2007. This estimate is derived from official import data.⁶

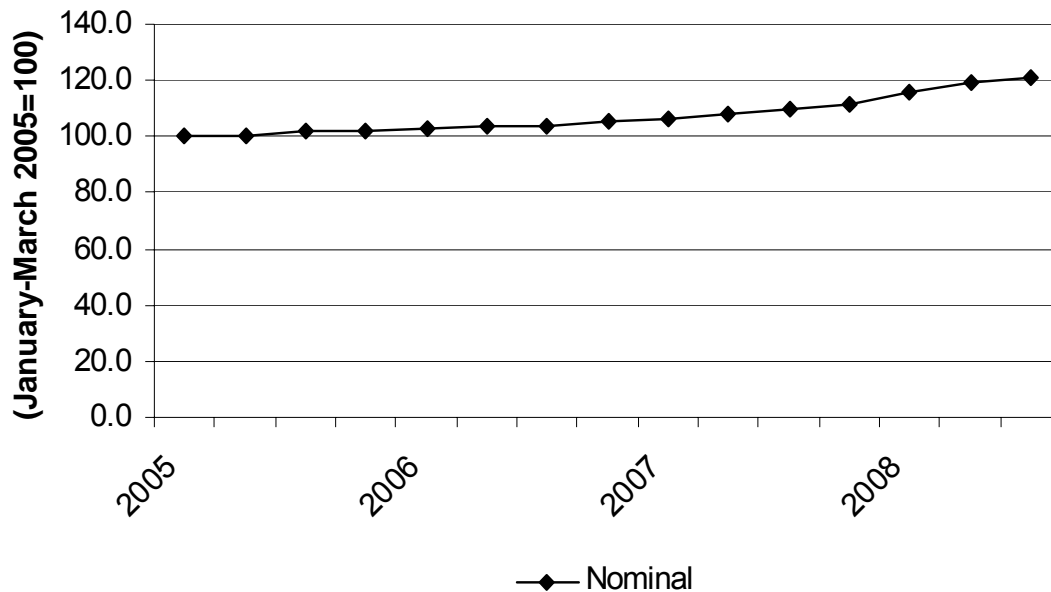
U.S. Inland Transportation Costs

Reported transportation costs on U.S. inland shipments of SDGE ranged from *** to *** percent of the delivered price for U.S. producers. For importers from China, the costs ranged from less than one percent to as much as 12.5 percent of the delivered price, with most firms citing costs of 3 percent or less.

Exchange Rate

While the nominal exchange rate for the Chinese yuan was pegged to the U.S. dollar during the first two quarters of 2005, the dollar depreciated by 21.0 percent relative to the yuan in nominal terms from the first quarter of 2005 to the third quarter of 2008, as shown in figure V-2. A real value is unavailable.

Figure V-2
Exchange rate: Index of the nominal exchange rate of the Chinese currency relative to the U.S. dollar, by quarters, January 2005-September 2008



Source: International Monetary Fund, International Financial Statistics, November 18, 2008.

⁶ The estimated cost was obtained by subtracting the customs value from the c.i.f. value of the imports for 2007 and then dividing by the customs value. This calculation used import data on HTS subheading 8545.11.00.

PRICING PRACTICES

Pricing Methods

When questionnaire respondents were asked how they determined the prices that they charge for SDGE, responses were varied. Among U.S. producers, *** were most often cited. Among importers, transaction-by-transaction negotiations and the use of contracts for multiple shipments were most often cited. *** producers *** importers reported the use of price lists.

Prices of SDGE are most commonly quoted on a delivered rather than an f.o.b. basis, for both U.S. producers and importers.

Four of 34 responding purchasers reported that the lowest price will “always” win a contract or sale. Fourteen purchasers reported that the lowest price will “usually” win a contract or sale, 13 purchasers reported “sometimes,” and three purchasers reported “never.”

Twenty-two purchasers reported that they had purchased SDGE from one source although a comparable product was available from another source at a lower price, with most purchasers citing a desire to have multiple sources of supply or to ensure a reliable supply; others cited cost effectiveness and delivery or lead times. When purchasers were asked if they are willing to pay a price premium for one grade of SDGE over another, 17 of 36 responding purchasers responded that they would be willing to pay a price premium for SDGE of a high enough quality that would result in lower consumption to produce the same amount of steel.⁷ Petitioners reported that, even in instances when SDGE from China must be consumed more quickly than domestic product, purchasers state that the SDGE from China is still lower priced than the comparable domestic product.⁸ One importer (***) reported that while higher consumption of SDGE from China is required to obtain the same amount of melted steel, the Chinese SDGE are still cost-effective for many customers. Another importer (***) reported that the cost of a poor-performing SDGE will always be greater than the difference in the sales prices.

Twenty-six of 36 purchasers reported firms that they considered price leaders, with 11 specifically naming *** (an importer of SDGE from nonsubject sources), 8 naming U.S. producer ***, 3 naming importer ***, and 3 naming importer ***.

Sales Terms and Discounts

U.S. producers and importers of SDGE from China were asked what shares of their sales were on a (1) long-term contract basis (multiple deliveries for more than 12 months), (2) short-term contract basis, and (3) spot sales basis (for a single delivery) during 2007. Among producers, *** reported that they sell ***.⁹ Among the eight responding importers that reported sales of imports from China, five reported that a vast majority (greater than 90 percent) of their sales are on a short-term contract basis, two reported a mixture of short-term contracts and spot sales, and one reported that a majority of its sales are on a long-term contract basis.

For U.S. producers selling on a contract basis, ***. These producer contracts usually *** a meet-or-release provision. In the case of importers, short-term contracts can range from periods as short as three months to one year. Prices and quantities are both typically fixed during the contract period. These importer contracts typically do not contain meet-or-release provisions.

Discount policies on sales of SDGE vary widely. ***. Among importers, three importers reported that they may apply discounts based on early payment or volume.

⁷ One purchaser (***) reported that it would pay a price premium for U.S.-produced SDGE.

⁸ Hearing transcript, p. 26 (Carney).

⁹ U.S. producer *** reported that *** percent of its sales are on a ***.

PRICE DATA

The Commission requested U.S. producers and importers of SDGE from China to provide quarterly data for the total quantity and delivered values of selected products that were shipped to unrelated customers in the U.S. market.¹⁰ Data were requested for the period January 2005-September 2008. The products for which pricing data were requested are as follows:

Product 1.—HP graphite electrodes, 250 mm. (10 inches) nominal diameter x 1,800 mm. (72 inches) nominal length, 3 TPI taper connecting pin.

Product 2.— HP graphite electrodes, 300 mm. (12 inches) nominal diameter x 1,800 mm. (72 inches) nominal length, 3 TPI taper connecting pin.

Product 3.— UHP graphite electrodes, 250 mm. (10 inches) nominal diameter x 1,800 mm. (72 inches) nominal length, 3 TPI taper connecting pin.

Product 4.— UHP graphite electrodes, 350 mm. (14 inches) nominal diameter x 1,800 mm. (72 inches) nominal length, 3 TPI taper connecting pin.

Product 5.-- UHP graphite electrodes, 400 mm. (16 inches) nominal diameter x 1,800 mm. (72 inches) nominal length, 3 TPI taper connecting pin.

Both U.S. producers and seven importers of SDGE from China provided pricing data for sales of the requested products, although not all firms reported pricing for all products for all quarters.¹¹ Pricing data reported by these firms accounted for approximately *** percent of U.S. producers' U.S. commercial shipments of SDGE during January 2005-September 2008 and *** percent of U.S. shipments of imports from China over the same period.

Price Trends

When purchasers were asked if prices for SDGE had generally increased, decreased, or stayed the same since January 2005, 30 of 33 responding purchasers reported that prices had increased. Most purchasers attributed rising prices of SDGE to increased costs for raw materials (especially needle coke) and energy, while four purchasers cited availability shortages, four purchasers cited the preliminary duties resulting from this investigation, three cited the depreciation of the U.S. dollar relative to many currencies over the period of investigation, and three purchasers cited rising labor costs. Petitioners reported that the

¹⁰ Pricing data were requested on both an f.o.b. and delivered basis; the delivered prices are presented here, as producers and importers reported that *** sales are made on a delivered basis. Pricing data were also requested separately for sales to distributors and sales to end users. *** of reported sales were to end users. U.S. producers' reported sales quantities to distributors accounted for *** percent of their total reported quantity of sales of pricing products. Among the five products, U.S.-produced product 1 had ***, accounting for *** percent of the total quantity of reported sales of that product. However, U.S.-produced product 1 also had *** as reported by U.S. producers. The price trends of sales to the two channels for U.S.-produced products 1-5 were ***, although U.S. producers' reported prices to end users were generally *** reported prices to distributors. *** percent of the reported sales of pricing products 1-5 imported from China were to end users. If only sales prices to end users are considered, the underselling/overselling analysis presented here does not change significantly. See discussion of margins of underselling later in Part V.

¹¹ Pricing data reported by importers of imports from nonsubject sources are presented in appendix E.

market price for SDGE increased, especially in 2006, due to rising raw material costs and increased demand.¹²

Weighted-average delivered prices reported by U.S. producers and importers are presented in tables V-1 through V-5 and in figures V-3 through V-7 on a quarterly basis during January 2005-September 2008. ***.¹³ Petitioner reported that Superior only produces SDGE and has continued to offer a full product range and has had little option but to meet competitive pricing offered by import sources of SDGE from China, whereas SGL has narrowed its product range to the 14- and 16-inch sizes of SDGE where there has historically been less competition from the imports from China relative to the smaller sizes, thereby choosing to sacrifice volume while attempting to maintain prices on its remaining product range.¹⁴

For sales reported by U.S. producers, product *** accounted for the plurality of sales (*** percent of the total quantity reported by U.S. producers for all pricing products), product *** accounted for *** percent, product *** accounted for *** percent, product *** accounted for *** percent, and product *** accounted for *** percent. For sales of products imported from China, product *** accounted for the plurality of sales (*** percent of the total quantity reported by importers for all pricing products), product *** accounted for *** percent, product *** accounted for *** percent, product *** accounted for *** percent, and product *** accounted for *** percent.

The weighted-average sales price of U.S.-produced product 1 as reported by *** increased by *** percent from the first quarter of 2005 to the third quarter of 2008, with most of the increases occurring ***. The weighted-average sales price of product 1 imported from China as reported by importers *** increased by *** percent over the same period, with most of the increase occurring ***.

The weighted-average sales price of U.S.-produced product 2 as reported by *** increased by *** percent from the first quarter of 2005 to the third quarter of 2008, with most of the increase occurring from the ***. The weighted-average sales price of product 2 imported from China as reported by importers *** increased by *** percent over the same period, with most of the increase occurring in ***.

The weighted-average sales price of U.S.-produced product 3 as reported by *** increased by *** percent from the first quarter of 2005 to the third quarter of 2008. The weighted-average sales price of product 3 imported from China as reported by importers *** increased by *** percent from ***.

The weighted-average sales price of U.S.-produced product 4 as reported by *** increased by *** percent from the first quarter of 2005 to the third quarter of 2008. The weighted-average sales price of product 4 imported from China as reported by importers *** increased by *** percent over the same period.

The weighted-average sales price of U.S.-produced product 5 as reported by *** increased by *** percent from the first quarter of 2005 to the third quarter of 2008. The weighted-average sales price of product 5 imported from China as reported by importers *** increased by *** percent from the second quarter of 2005 to the third quarter of 2008.

¹² Hearing transcript, p. 100 (Kerwin) and p. 101 (Gore, Stinson).

¹³ ***. See discussion of margins of underselling later in Part V.

¹⁴ Hearing transcript, p. 15 (Stinson) and p. 98 (Kerwin).

Table V-1

SDGE: Weighted-average delivered prices and quantities of domestic and imported product 1 and margins of underselling/(overselling), by quarters, January 2005-September 2008

* * * * *

Figure V-3

SDGE: Weighted-average delivered prices and quantities of domestic and imported product 1, by quarters, January 2005-September 2008

* * * * *

Table V-2

SDGE: Weighted-average delivered prices and quantities of domestic and imported product 2 and margins of underselling/(overselling), by quarters, January 2005-September 2008

* * * * *

Figure V-4

SDGE: Weighted-average delivered prices and quantities of domestic and imported product 2, by quarters, January 2005-September 2008

* * * * *

Table V-3

SDGE: Weighted-average delivered prices and quantities of domestic and imported product 3 and margins of underselling/(overselling), by quarters, January 2005-September 2008

* * * * *

Figure V-5

SDGE: Weighted-average delivered prices and quantities of domestic and imported product 3, by quarters, January 2005-September 2008

* * * * *

Table V-4

SDGE: Weighted-average delivered prices and quantities of domestic and imported product 4 and margins of underselling/(overselling), by quarters, January 2005-September 2008

* * * * *

Figure V-6

SDGE: Weighted-average delivered prices and quantities of domestic and imported product 4, by quarters, January 2005-September 2008

* * * * *

Table V-5

SDGE: Weighted-average delivered prices and quantities of domestic and imported product 5 and margins of underselling/(overselling), by quarters, January 2005-September 2008

* * * * *

Figure V-7

SDGE: Weighted-average delivered prices and quantities of domestic and imported product 5, by quarters, January 2005-September 2008

* * * * *

Price Comparisons

Margins of underselling and overselling for the period are presented by product category in tables V-6 and V-7 below. The data show that prices of imports from China were lower than the U.S. producer prices in 54 of 60 quarterly comparisons of products 1-5, by margins ranging from 2.3 percent to 36.2 percent.¹⁵ There were six instances of overselling, by margins ranging from 0.1 to 17.4 percent.

Table V-6

SDGE: Margins of underselling/(overselling) by product, quarterly, January 2005-September 2008

* * * * *

Table V-7

SDGE: Instances of underselling/overselling and the range and average of margins for products 1-5, January 2005-September 2008

* * * * *

LOST SALES AND LOST REVENUES

The Commission requested U.S. producers of SDGE to report any instances of lost sales or revenues they experienced due to competition from imports of SDGE from China since January 2004. U.S. producer *** reported that it had to either reduce prices or roll back announced price increases and provided *** lost sales allegations totaling \$***. Staff contacted the *** purchasers cited in the allegations; *** responded, *** of which confirmed *** allegations, valued at a total of \$***.¹⁶ The results are summarized in table V-8 and are discussed below. U.S. producer *** did not report specific lost sales allegations; rather, it reported that there are *** purchasers that ***.¹⁷

¹⁵ If only sales to end users are considered, there would be fewer quarterly comparisons, but the analysis would not change significantly. There would be *** instances of underselling out of *** quarterly comparisons, with margins ranging from *** percent to *** percent, and *** instances of overselling, with margins ranging from *** percent to *** percent. ***.

¹⁶ ***.

¹⁷ *** of the purchasers cited by *** (***) are also cited in lost sales allegations reported by ***.

Table V-8
SDGE: U.S. producers' lost sales allegations

* * * * *

PART VI: FINANCIAL CONDITION OF U.S. PRODUCERS

BACKGROUND

Two U.S. producers of SDGE provided usable financial data on their operations on SDGE.^{1 2} These data are believed to account for all U.S. production of SDGE in 2007. *** reported *** on its SDGE operations; however, the reported amounts account for a weighted average of *** percent of total net sales (quantity and value) during the period for which data were requested and are not shown separately in this section of the report.

OPERATIONS ON SDGE

Income-and-loss data for U.S. producers of SDGE are presented in table VI-1. Selected company-specific financial data are presented in table VI-2. The reported aggregate net sales quantities steadily declined from 2005 to 2007, while aggregate net sales values increased irregularly during this time frame. During the interim periods, net sales values increased at a greater rate than net sales quantities. As a result of these movements, per-unit revenues steadily increased from 2005 to 2007, as well as between the interim periods. Operating income improved from *** in 2005 to *** in both 2006 and 2007; however, operating income declined from 2006 to 2007. Between the interim periods, operating income *** improved from *** to the *** during the period for which data were collected.

Table VI-1

SDGE: Results of operations of U.S. producers, 2005-07, January-September 2007, and January-September 2008

* * * * *

For U.S. producers of SDGE, per-unit net sales values increased by \$*** from 2005 to 2007, while combined per-unit cost of goods sold (“COGS”) and selling, general, and administrative (“SG&A”) expenses increased by \$*** during this time frame, which led to improved operating income in 2007 as compared to 2005, ***.³ Between the interim periods, per-unit net sales values increased by \$***, while per-unit operating costs and expenses increased by \$***, which resulted in *** from *** in interim 2007 to *** during the period for which data were collected.⁴

¹ The U.S. producers of SDGE are Superior Graphite and SGL Carbon. In addition, three U.S. producers reported operations on LDGE. These U.S. producers are C/G Electrodes, SGL Carbon, and Showa Denko. All U.S. producers of SDGE and LDGE reported a fiscal year end of December 31. Income-and-loss data for U.S. producers of LDGE are presented in table C-2, while income-and-loss data for the combined operations of U.S. producers of SDGE and LDGE are presented in table C-3.

² The company records underlying the trade and financial data for *** were reviewed at Commission offices. Adjustments resulting from the office review were incorporated in this final report. ***.

³ Despite the improvement in 2007 as compared to 2005, per-unit operating income declined in 2007 as compared to 2006. From 2006 to 2007, per-unit net sales values increased by \$***, while per-unit operating costs and expenses increased by \$***.

⁴ *** the reported financial results for SDGE operations, operations on LDGE are ***, with operating margins ranging from *** to *** percent during the period for which data were collected. Petitioners state that the *** for the two products is due to unfair competition from imports of SDGE from China, and that per-unit prices for SDGE

(continued...)

While all components of COGS and SG&A expenses generally increased on a per-unit basis during the period for which data were collected, the most significant per-unit increases occurred in *** and ***, which increased by \$*** and \$***, respectively, from 2005 to 2007. Between the interim periods, per-unit raw material costs continued to increase by \$***, while per-unit other factory costs declined by \$*** due in part to improved production levels.

Table VI-2
SDGE: Selected results of operations of U.S. producers, by firm, 2005-07, January-September 2007, and January-September 2008

* * * * *

While the aggregate data on SDGE operations reveal an industry that was ***, individual firm data reveal that *** on its SDGE operations. In terms of per-unit revenue, ***.⁵ ***. ***.^{6 7}

A variance analysis for the operations of U.S. producers of SDGE is presented in table VI-3. The information for this variance analysis is derived from table VI-1. The variance analysis provides an assessment of changes in profitability as it relates to changes in pricing, cost, and volume. The analysis shows that the improvement in the operating income from 2005 to 2007, as well as between the interim periods, was attributable to the favorable price variance which was higher than the unfavorable net cost/expense variance (i.e., prices increased more than costs and expenses).

Table VI-3
SDGE: Variance analysis on the operations of U.S. producers, 2005-07, and January-September 2007 to January-September 2008

* * * * *

CAPITAL EXPENDITURES AND RESEARCH AND DEVELOPMENT EXPENSES

Capital expenditures and research and development (“R&D”) expenses are shown in table VI-4. Both SGL Carbon and Superior Graphite reported capital expenditures and R&D expenses. Between the two firms, *** accounted for *** percent of capital expenditures from 2005 to 2007; however, during the interim periods *** accounted for *** percent of capital expenditures. In all periods, *** accounted for *** of R&D expenses. According to ***, its capital expenditures primarily reflect ***, while its R&D

⁴(...continued)

and LDGE were comparable 10 to 12 years ago before the imports from China began to have a significant impact on the U.S. market. Petitioners’ postconference brief, exh. 1, p. 6.

⁵ ***.

⁶ Petitioners’ postconference brief, exh. 1, pp. 4-6, and ***.

⁷ Respondents argue that the notable difference in profitability between the two petitioners reflects Superior Graphite’s failure to upgrade its facility to enable the company to produce both LDGE and SDGE, and thus produce at greater volumes and at greater efficiency. Further, respondents argue that ***. Respondents’ prehearing brief, pp. 39-42.

expenses primarily reflect ***.⁸ ***'s capital expenditures primarily reflect ***. In addition, ***'s R&D expenses primarily reflect ***,⁹ ¹⁰ With the exception of the interim periods, ***.

Table VI-4
SDGE: Capital expenditures and research and development expenses of U.S. producers, 2005-07, January-September 2007, and January-September 2008

* * * * *

ASSETS AND RETURN ON INVESTMENT

Data on the U.S. producers' total assets and their return on investment ("ROI") are presented in table VI-5. For U.S. producers of SDGE, the total assets utilized in the production, warehousing, and sale of such products increased from 2005 to 2007, with an increase from \$*** in 2005 to \$*** in 2007. The ROI increased irregularly during the period for which data were collected, increasing by *** percentage points from 2005 to 2006, which brought the ROI ***, before decreasing by *** percentage points from 2006 to 2007. The trend in the ROI was similar to the trend in operating income.

Table VI-5
SDGE: U.S. producers' total assets and return on investment, fiscal years 2005-07

* * * * *

CAPITAL AND INVESTMENT

The Commission requested U.S. producers of SDGE and U.S. producers of LDGE to describe any actual or potential negative effects of imports of SDGE from China on their firms' growth, investment, ability to raise capital, development and production efforts, or the scale of capital investments. Their responses are shown in appendix F.

⁸ ***.

⁹ ***.

¹⁰ Superior Graphite stated at the hearing that its recent profitability has been too low to justify any significant investment in improvements to production equipment, thus capital investment has largely been limited to the maintenance of existing equipment. Hearing transcript, p. 31 (Carney). In contrast, respondents argued that any material injury that Superior Graphite claims to have suffered is self-inflicted because the company has failed to modernize its equipment and has limited its production to the less profitable smaller electrodes. Hearing transcript, p. 260 (Brashem).

PART VII: THREAT CONSIDERATIONS AND INFORMATION ON NONSUBJECT COUNTRIES

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(F)(i)). Information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in appendix F. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows. Also presented in this section of the report is information obtained for consideration by the Commission on nonsubject countries and the global market.

THE INDUSTRY IN CHINA

The Commission sent foreign producer/exporter questionnaires to 125 firms identified in the petition and Commerce's notice¹ as producers or exporters of SDGE in China, for which contact information was publicly available.² Thirteen firms provided responses to the Commission's questionnaires.³ The names of the foreign firms along with shares of production and subject exports to the United States (by quantity) are presented in table VII-1. The responding firms reported that they accounted for an estimated nearly *** percent of production of SDGE in China during 2007, and nearly *** percent of exports from China to the United States of SDGE during 2007.⁴ The Commission asked these foreign firms to estimate the shares of their firm's total sales that were represented by sales of SDGE in 2007; firms' estimates ranged from 14 percent to 100 percent of total sales. In response to a question on capacity changes, three Chinese producers reported plans to change production capacity or production of SDGE in China.⁵

Table VII-1
SDGE: Reporting manufacturers/exporters in China, and quantities and shares of reported production and exports to the United States, 2007

* * * * *

¹ *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.

² Petition, Exhibit General-3 and internet searches.

³ Two firms that responded in the preliminary phase of the investigation did not respond in the final. Information compiled by the China Carbon Industry Association indicates that 47 companies in China produce graphite electrodes (small and/or large diameter); those companies reportedly account for over 95 percent of graphite electrode production in China. In interim 2008, only 25 of these companies reportedly exported graphite electrodes, of which only 20 exported to the United States. Of these 20 companies, only 10 exported quantities in excess of 200 tons to the United States. Respondents' posthearing brief, p. 19.

⁴ The coverage share is based on a summary of estimates provided by ten producing firms and three exporting firms in response to the Commission's questionnaire. Chinese producers' questionnaire responses, section II-10, fn. 4 and 5.

⁵ ***, which estimated that it accounted for *** percent and *** percent of total Chinese production and exports to the United States, reported that ***. It reported that ***. ***, which estimated that it accounted for *** percent and *** percent of total Chinese production and exports to the United States, reported that ***. *** which estimated that it accounted for *** percent and *** percent of total Chinese production and exports to the United States, reported that ***.

Table VII-2 presents information on Chinese producers' SDGE operations as compiled from responses to the Commission's questionnaires. Chinese capacity rose by nearly *** percent from 2005 to 2007 and is projected to decline by about *** percent by 2009. Exports to the United States rose *** percent from 2005 to 2007, compared with an increase of *** percent to all other markets. Table VII-3 presents data on Chinese producers' production and exports of SDGE, by size.

Table VII-2

SDGE: China's reported capacity, production, inventories, and shipments, 2005-07, January-September 2007, January-September 2008, and projections for 2008 and 2009

* * * * *

Table VII-3

Graphite electrodes: Chinese producers' production and exports, by size, 2005-07, January-September 2007, and January-September 2008

* * * * *

U.S. IMPORTERS' INVENTORIES

Data collected in this investigation on U.S. importers' end-of-period inventories of SDGE are presented in table VII-4.

Table VII-4

SDGE: U.S. importers' end-of-period inventories of imports, by source, 2005-07, January-September 2007, and January-September 2008

* * * * *

U.S. IMPORTERS' CURRENT ORDERS

The Commission requested importers to indicate whether they imported or arranged for the importation of SDGE from China after September 30, 2008. Six firms reported having arranged for the importation of SDGE from China.⁶ Table VII-5 presents U.S. importers' orders of SDGE from China for October 2008 through September 2009.

Table VII-5

SDGE: U.S. importers' current orders from China subsequent to September 2008

* * * * *

⁶ U.S. importers' questionnaire responses, section II-3.

ANTIDUMPING INVESTIGATIONS IN THIRD-COUNTRY MARKETS

The government of India has conducted one antidumping duty investigation on imports of graphite electrodes (a product with a definition broader than SDGE). India imposed antidumping duty orders on graphite electrodes from Austria, Belgium, China, France, Germany, Italy, Spain, and the United States in May 1998.⁷ In July 2003, a continuation notice of the antidumping duty order on imports from China was issued.⁸ Antidumping duties were removed in July 2003 from all other countries covered by the original orders.

*** in July 2008 an antidumping duty investigation commenced in Brazil on imports of graphite electrodes from China. Importer *** also mentioned an investigation in Brazil.

INFORMATION ON NONSUBJECT COUNTRIES

In assessing whether the domestic industry is materially injured or threatened with material injury “by reason of subject imports,” the legislative history states “that the Commission must examine all relevant evidence, including any known factors, other than the dumped or subsidized imports, that may be injuring the domestic industry, and that the Commission must examine those other factors *** ‘to ensure that it is not attributing injury from other sources to the subject imports.’”⁹

Global Market

According to official import statistics from the U.S. Department of Commerce, U.S. imports of electrodes provided for under HTS subheading 8545.11.00, a “basket” category, entered the United States from 23 countries other than China between 2005 and September 2008. According to data collected in questionnaire responses and adjusted official Commerce import statistics,¹⁰ imports from four countries (China, Mexico, Russia, and Japan) accounted for *** percent of total imports of SDGE by quantity and *** percent by value during the period for which data were collected.¹¹ Detailed production data for SDGE produced in most nonsubject countries are not readily available. Trade data, however, suggest that Japan, Spain, China, Germany, France, and India are major net exporters of graphite electrodes, either SDGE or LDGE.

Major multinational producers of graphite electrodes such as SGL Carbon AG, GrafTech International, Showa Denko K.K., and Tokai Carbon maintain company operations in North America, Europe, Asia, and Japan. The United States and Japan produce needle coke, a critical raw material component in the production of graphite electrodes, both SDGE and LDGE.¹² Needle coke production is

⁷ *Annual Report 2005-2006*, Directorate General of Anti-dumping & Allied Duties, Ministry of Commerce & Industry, Government of India.

⁸ No antidumping duties were imposed on the following producer/exporter combinations: (1) Chengdu Rongguang Carbon Co. Ltd./Liaoning Jiayi Metals & Minerals Co. Ltd. and (2) Liaoyang Carbon Co. Ltd. of China/Liaoning Jiayi Metals & Minerals Co. Ltd.

⁹ *Mittal Steel Point Lisas Ltd. v. United States*, Slip Op. 2007-1552 at 17 (Fed. Cir., Sept. 18, 2008), quoting from Statement of Administrative Action on Uruguay Round Agreements Act, H.R. Rep. 103-316, Vol. I at 851-52; see also *Bratsk Aluminum Smelter v. United States*, 444 F.3d 1369 (Fed. Cir. 2006).

¹⁰ Data on U.S. imports from sources other than China and Mexico are based on estimates provided in the petition. Petition Injury Exh. 2.

¹¹ These four countries, Canada, and Germany accounted for the vast majority of total U.S. imports as reported in official Commerce import statistics, which include nonsubject electrodes.

¹² Conference transcript, pp. 52-53 (Stinson).

critical for the success of electrode performance and reportedly limits the ability of manufacturers in other countries to make higher grades and sizes of graphite electrodes.

The export, import, and trade balance data presented in table VII-6 are derived from Global Trade Atlas for 6-digit HTS subheading 8545.11, and include nonsubject products. Table VII-7 presents adjusted imports for 2005-07.

Table VII-6
Carbon and graphite electrodes: Net trade positions of major subject and nonsubject countries,
2004-07

Country	Calendar year			
	2004	2005	2006	2007
Value (\$1,000)				
Imports into:				
Japan	18,012	22,397	20,275	22,913
Spain	38,522	50,540	50,336	73,978
Germany	45,018	63,033	72,466	93,366
China	46,407	56,034	56,273	79,038
France	42,487	48,211	61,925	82,380
India	13,726	20,589	38,109	42,667
Italy	63,886	73,511	90,425	119,903
United States	144,371	157,298	208,492	256,870
Russia	16,949	40,286	90,050	141,667
Mexico	37,119	41,786	49,633	73,143
All others	837,143	942,066	1,066,246	1,433,921
Total	1,303,641	1,515,749	1,804,227	2,419,844
Exports from:				
Japan	287,003	348,953	435,355	546,431
Spain	148,119	180,949	244,012	346,048
Germany	174,349	211,557	245,779	336,987
China	148,822	193,933	204,786	328,589
France	100,337	86,776	114,098	151,327
India	53,061	81,344	120,829	143,272
Italy	90,511	94,275	75,258	137,244
United States	56,795	77,673	100,100	122,528
Russia	50,104	53,662	64,646	95,084
Mexico	63,167	58,433	71,444	70,657
All others	227,948	262,901	338,153	407,327
Total	1,400,215	1,650,456	2,014,460	2,685,493
Trade balance of:¹				
Japan	268,991	326,555	415,080	523,519
Spain	109,596	130,410	193,677	272,070
Germany	129,331	148,524	173,313	243,621
China	102,415	137,900	148,513	249,551
France	57,849	38,565	52,173	68,947
India	39,335	60,755	82,720	100,606
Italy	26,626	20,764	(15,167)	17,341
United States	(87,577)	(79,624)	(108,392)	(134,342)
Russia	33,155	13,376	(25,403)	(46,583)
Mexico	26,049	16,648	21,811	(2,485)
All others	(609,195)	(679,165)	(728,093)	(1,026,594)
Total	96,574	134,707	210,233	265,649

¹ Positive numbers presented for "trade balance" show net exports and numbers in parentheses presented for "trade balance" show net imports. Based on top ten exporting countries to the world in 2007.

Source: Compiled from the Global Trade Atlas database, HTS subheading 8545.11.

Table VII-7
SDGE: U.S. imports, by sources, 2005-07

Country	Calendar year		
	2005	2006	2007
Quantity (metric tons)			
China	10,082	13,161	13,784
Mexico	***	***	***
Russia	463	2,263	4,835
Japan	1,258	1,454	1,795
India	68	1,845	817
Germany	186	393	190
Poland	33	138	165
Brazil	1,346	385	142
All Other	404	2,427	1,635
Total	***	***	***
Value (\$1,000)			
China	15,819	21,638	24,003
Mexico	***	***	***
Russia	598	2,540	5,857
Japan	4,017	5,760	8,559
India	179	4,347	2,093
Germany	999	1,276	1,199
Poland	47	208	309
Brazil	2,869	652	486
All Other	878	2,397	2,134
Total	***	***	***
<p>Note.--Both quantity and value are adjusted using the following formula: 60 percent of official imports from India; 10 percent from Germany, Japan, Poland, and Spain; 0 percent from Canada; and 50 percent from all other sources (other than China and Mexico which are questionnaire driven). Because of the methodology by which official Commerce statistics were adjusted, value data for countries other than China and Mexico may be overstated to the extent that the unit values of SDGE are lower than the unit values of other products imported under the same HTS subheading.</p> <p>Source: Compiled from data submitted in response to Commission questionnaires and from adjusted official Commerce statistics.</p>			

Mexico

GrafTech Mexico S.A. de C.V. (also known as UCAR Carbon Mexicana S.A.) is the sole known producer of SDGE and LDGE in Mexico.¹³ GrafTech's production facility in Monterrey, Mexico is the largest graphite electrode manufacturing plant in the world.¹⁴ Table VII-8 presents information on GrafTech's SDGE operations and table VII-9 presents data for its production and exports of graphite electrodes as compiled from its response to the Commission's questionnaire.

¹³ ***.

¹⁴ Data Monitor, "Company Profile: GrafTech International Ltd.," August 23, 2007, p. 15.

Table VII-8

SDGE: GrafTech's (Mexico) reported capacity, production, inventories, and shipments, 2005-07, January-September 2007, January-September 2008, and projections for 2008 and 2009

* * * * *

Table VII-9

Graphite electrodes: GrafTech's (Mexico) production and exports, by size, 2005-07, January-September 2007, and January-September 2008

* * * * *

Brazil

GrafTech International (also known as UCAR Carbon S.A.) is one of the world's largest manufacturers of graphite electrodes, and has a facility in Salvador, Brazil. GrafTec International of Brazil maintains a state-of-the-art manufacturing facility producing both SDGEs and LDGEs.¹⁵ While GrafTech ***.¹⁶

Canada

SGL Canada is the sole graphite electrode producer in Canada. The SGL facility in Canada ***. SGL Canada largely produces ***. ***.¹⁷

Germany

Several of the major producers of graphite electrodes have production locations in Germany. SGL Carbon Group's headquarters are in Germany and it has two production sites in Germany.¹⁸ ***.¹⁹ In addition to SGL, ERFTCARBON, a subsidiary of Tokai Carbon, produces LDGE in Germany and Graphite COVA, a subsidiary of Graphite India, produces SDGE and LDGE.²⁰

India

The two major producers of graphite electrodes in India are Graphite India Ltd. and HEG India Ltd. (a subsidiary of the LNJ Bhilwara Group), both of which produce SDGE and LDGE. Graphite India and HEG each have a current domestic production capacity of about 60,000 metric tons and are in the process of further expanding their production capacity. EAF use among Indian steel producers is low, so the primary markets for their products are overseas. Graphite India exports about 65 to 70 percent of the

¹⁵ GrafTech International 2007 SEC 10-Q filing, found at <http://www.esignal.brand.edgar-online.com>, retrieved on February 9, 2008.

¹⁶ Email from ***, February 20, 2008.

¹⁷ Staff telephone interview with ***, on November 20, 2008.

¹⁸ SGL Group, *Graphite Electrodes*.
<http://www.sglgroup.com/export/sites/sglcarbon/common/downloads/products/product-groups/gce/graphite-electrodes/graphite.pdf> (accessed November 19, 2008).

¹⁹ ***'s importer's questionnaire, section I-5.

²⁰ ERFTCARBON Company Website: <http://www.erftcarbon.com> (accessed November 19, 2008); and Graphite COVA Company Website: <http://www.graphitecova.com> (accessed November 19, 2008).

graphite electrodes that it produces and HEG exports about 80 percent, though Graphite India expects domestic demand to increase. Graphite India also has a Coke Division which can produce calcined petroleum coke that is used in the manufacturing of graphite electrodes.²¹

Japan

Tokai Carbon Co. and Showa Denko KK are two of the five known multinational manufacturers of graphite electrodes in Japan.²² Tokai Carbon produces small (14-16 inches) and large diameter (18 to 32 inches) electrodes.²³ Its domestic plants operated at full capacity in 2007.²⁴ ***.²⁵ Other Japanese producers of graphite electrodes include Nippon Carbon Co. and SEC Carbon. Mitsubishi Carbon represents approximately 40 percent of Japan's exports of graphite electrodes for steelmaking.²⁶

Russia

Energoprom is the leading supplier of graphite electrodes and graphite products in Russia. Energoprom reportedly was the largest producer of LDGE in Russia during 2006.²⁷ Information on its recent production of SDGE is not publicly available. According to GrafTec International, formerly known as UCAR Grafit OAO in Russia, its production facility of graphite and carbon electrodes closed in 2007.²⁸

²¹ Graphite India Limited, *Annual Report 2007-08*, p. 9: <http://www.graphiteindia.com/images/annualreport/pdf2008/ar1-84.pdf> (accessed November 9, 2008); Graphite India Limited Website: <http://www.graphiteindia.com> (accessed November 14, 2008); "Graphite India Sales Top Rs 1000cr Mark, Net up 37%," *The Financial Express*, May 13, 2008: <http://www.financialexpress.com> (accessed November 14, 2008); HEG Limited Website: <http://www.hegltd.com> (accessed November 14, 2008); "Profit Call," Outlook Profit, October 31, 2008: <http://www.hegltd.com/newsDetail.aspx?NewsId=4> (accessed November 21, 2008); and Srividhya Sivakumar, "Graphite India: Buy," *The Hindu Business Line*, April 6, 2008: <http://www.thehindubusinessline.com> (accessed April 6, 2008).

²² GrafTech International, *2007 Annual Report*, 16: <http://www.graftech.com/> (accessed November 24, 2008).

²³ Tokai Carbon Company Website: <http://www.tokaicarbon.co.jp/en/> (accessed November 24, 2008).

²⁴ Tokai Carbon Company, *Annual Report 2007*, 2: <http://www.tokaicarbon.co.jp/en/> (accessed November 24, 2008).

²⁵ ***'s Importer's Questionnaire at II-5b, II-8a, and II-8b; and ***'s Producer's Questionnaire at II-15.

²⁶ Mitsubishi Corp., "Profile Carbon Materials Unit," found at <http://www.mitsubishicorp.com/en/bg/ucmaterials.html>, February 13, 2008.

²⁷ Energoprom Co., Company profile, found at <http://www.energoprom.kiev.ua>, retrieved on February 9, 2008.

²⁸ U.S. Securities and Exchange Commission, "Synthetic Graphite Segment," GrafTech's 2007 10-Q filing, p. 12, and Data Monitor, "Company Profile: GrafTech International Ltd," DataMonitor, p. 23, found at <http://www.datamonitor.com>, retrieved on August 23, 2007.

APPENDIX A
***FEDERAL REGISTER* NOTICES**

electrodes, provided for in subheading 8545.11.00 of the Harmonized Tariff Schedule of the United States.¹

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: *Effective Date:* August 21, 2008.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202-205-3187 or fred.ruggles@usitc.gov), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of small diameter graphite electrodes from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on January 17, 2008, with the Commission and Commerce by SGL Carbon LLC, Charlotte, NC, and Superior Graphite Co., Chicago, IL.

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary

to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on December 16, 2008, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on January 6, 2009, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 23, 2008. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 30, 2008, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1143 (Final)]

Small Diameter Graphite Electrodes From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731-TA-1143 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of small diameter graphite

¹For purposes of this investigation, the Department of Commerce has defined the subject merchandise as "all small diameter graphite electrodes of any length, whether or not finished, of a kind used in furnaces, with a nominal or actual diameter of 400 millimeters (16 inches) or less, and whether or not attached to a graphite pin joining system or any other type of joining system or hardware. Small diameter graphite electrodes are most commonly used in primary melting, ladle metallurgy, and specialty furnace applications in industries including foundries, smelters, and steel refining operations."

business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is December 29, 2008. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is January 13, 2009; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before January 13, 2009. On January 29, 2009, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 2, 2009, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified

by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: August 29, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8-20496 Filed 9-3-08; 8:45 am]

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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
 [FR Doc. E9-699 Filed 1-13-09; 8:45 am]

BILLING CODE 3510-DS-S

APPENDIX B
HEARING WITNESSES

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject: Small Diameter Graphite Electrodes from China
Inv. No.: 731-TA-1143 (Final)
Date and Time: January 6, 2009 - 9:30 a.m.

Sessions were held in connection with this investigation in the Main Hearing Room (room 101), 500 E Street, S.W., Washington, D.C.

In Support of the Imposition of Antidumping Duty Order:

Kelley Drye & Warren LLP
Washington, DC
on behalf of

Superior Graphite Co.
SGL Carbon LLC

Edward O. Carney, President and CEO, Superior Graphite Co.

Dennis Shannon, Vice President, Sales, Superior Graphite Co.

Scott Anderson, Vice President, Production; *and* Business Manager, Graphite Electrodes, Superior Graphite Co.

K. Andrew Stinson, Vice President, Technical Sales for the Americas, SGL Carbon LLC

Brian Gore, Sales Manager, SGL Carbon LLC

Willy McClintock, President, Northsouth, Inc.

Thomas Danjczek, President, Steel Manufacturers Association

Michael T. Kerwin, Economic Consultant, Georgetown Economic Services

David A. Hartquist)
R. Alan Luberda) – OF COUNSEL
Grace W. Kim)

**In Opposition to the Imposition of
Antidumping Duty Order:**

Garvey Schubert Barer
Washington, DC
on behalf of

Amerisource-Specialty Products
Cermark Technology Inc.
Fedmet Resources Corp.
Graphite Electrode Sales, Inc.
M. Brashem Inc.
Beijing Fangda Carbon Tech Co., Ltd.
Chengdu Rongguang Carbon Co., Ltd.
Fangda Carbon New Material Co., Ltd.
Fushun Carbon Co., Ltd.
Sichuan Guanghan Shida Carbon Co., Ltd.
Hefei Carbon Co., Ltd.
Jilin Carbon Import and Export Co.
GES (China) Co., Ltd.

Marvin Brashem, President, M. Brashem, Inc.

Phil Buchanan, Account Manager, M. Brashem, Inc.

Joe Hancock, Purchasing Manager, Wheelabrator Abrasives, Inc.

Greg Wood, Production Manager, Wheelabrator Abrasives, Inc.

Thomas Grosko, Plant Manager, Magotteaux Pulaski

Zhiyong Shi, Procurement Manager–Beijing, M. Brashem, Inc.

Darrell Ruth, Chief Financial Officer, Frog Switch and Manufacturing Company

Ms. Liu, Executive Vice General Manager, Beijing Fangda, and Assistant to the
Chairman, Fangda Group

Dick West, President, D&B Metals, Inc.

George X.Z. Wang, Ph.D., President, Cermark Technology, Inc.

Lizbeth R. Levinson)
William Perry) – OF COUNSEL
Ronald M. Wisla)

APPENDIX C
SUMMARY DATA

Table C-1

Small diameter graphite electrodes: Summary data concerning the U.S. market, 2005-07, January-September 2007, and January-September 2008

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Table C-2

Large diameter graphite electrodes: Summary data concerning the U.S. market, 2005-07, January-September 2007, and January-September 2008

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Table C-3

Total graphite electrodes: Summary data concerning the U.S. market, 2005-07, January-September 2007, and January-September 2008

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APPENDIX D

RESPONSES TO QUESTIONS CONCERNING SDGE AND LDGE

U.S. producers were asked the following questions concerning SDGE and LDGE in section II-10 of the producers' questionnaire: Since January 1, 2005, has your firm produced large diameter graphite electrodes? Please describe the differences and similarities between large diameter graphite electrodes and small diameter graphite electrodes with respect to the following factors: (a) **characteristics and uses**--describe the differences and similarities in the physical characteristics and end uses; (b) **interchangeability**--discuss the interchangeability in end use of the two products; (c) **manufacturing processes**--describe the two processes and include a discussion of the interchangeability of production inputs, machinery and equipment, and skilled labor; (d) **channels of distribution**--describe the specific end use/customer requirements and channels of distribution/market situation in which the products are sold; (e) **customer and producer perceptions**--describe any perceived differences in the two products (e.g., sales/marketing practices); and (f) **price**--provide a discussion and specific examples of prices for the two products. Firms were asked to indicate whether product comparisons are "fully" comparable or the same, *i.e.*, have no differentiation between them; "mostly" comparable or similar; "somewhat" comparable or similar; "rarely" comparable or similar; "never" or not-at-all comparable or similar; or "no familiarity."

* * * * *

U.S. importers were asked the following questions concerning SDGE and LDGE in section II-5 of the importers' questionnaire: Since January 1, 2005, has your firm imported large diameter graphite electrodes? Please describe the differences and similarities between large diameter graphite electrodes and small diameter graphite electrodes with respect to the following factors: (a) **characteristics and uses**--describe the differences and similarities in the physical characteristics and end uses; (b) **interchangeability**--discuss the interchangeability in end use of the two products; (c) **manufacturing processes**--describe the two processes and include a discussion of the interchangeability of production inputs, machinery and equipment, and skilled labor; (d) **channels of distribution**--describe the specific end use/customer requirements and channels of distribution/market situation in which the products are sold; (e) **customer and producer perceptions**--describe any perceived differences in the two products (e.g., sales/marketing practices); and (f) **price**--provide a discussion and specific examples of prices for the two products. Firms were asked to indicate whether product comparisons are "fully" comparable or the same, *i.e.*, have no differentiation between them; "mostly" comparable or similar; "somewhat" comparable or similar; "rarely" comparable or similar; "never" or not-at-all comparable or similar; or "no familiarity."

* * * * *

Purchasers were asked the following questions concerning SDGE and LDGE in question III-9 and III-10 of the purchasers' questionnaire: Since January 1, 2005, has your firm purchased large diameter graphite electrodes? Please describe the differences and similarities between large diameter graphite electrodes and small diameter graphite electrodes with respect to the following factors: (a) **characteristics and uses**--describe the differences and similarities in the physical characteristics and end uses; (b) **interchangeability**--discuss the interchangeability in end use of the two products; (c) **manufacturing processes**--describe the two processes and include a discussion of the interchangeability of production inputs, machinery and equipment, and skilled labor; (d) **channels of distribution**--describe the specific end use/customer requirements and channels of distribution/market situation in which the products are sold; (e) **customer and producer perceptions**--describe any perceived differences in the two products (e.g., sales/marketing practices); and (f) **price**--provide a discussion and specific examples of prices for the two products. Purchasers were asked to indicate whether product comparisons are "fully" comparable or the same, *i.e.*, have no differentiation between them; "mostly" comparable or similar; "somewhat" comparable or similar; "rarely" comparable or similar; "never" or not-at-all comparable or similar; or "no familiarity." If your firm purchase both small diameter graphite electrodes and large diameter graphite electrodes, are your requests for price quotes for both products made together?

* * * * *

Chinese producers and GrafTech (the sole Mexican producer of SDGE) were asked the following questions concerning SDGE and LDGE in question II-5 of the foreign producers' questionnaire: Since January 1, 2005, has your firm produced large diameter graphite electrodes? Please describe the differences and similarities between large diameter graphite electrodes and small diameter graphite electrodes with respect to the following factors: (a) **characteristics and uses**--describe the differences and similarities in the physical characteristics and end uses; (b) **interchangeability**--discuss the interchangeability in end use of the two products; (c) **manufacturing processes**--describe the two processes and include a discussion of the interchangeability of production inputs, machinery and equipment, and skilled labor; (d) **channels of distribution**--describe the specific end use/customer requirements and channels of distribution/market situation in which the products are sold; (e) **customer and producer perceptions**--describe any perceived differences in the two products (e.g., sales/marketing practices); and (f) **price**--provide a discussion and specific examples of prices for the two products. Firms were asked to indicate whether product comparisons are "fully" comparable or the same, *i.e.*, have no differentiation between them; "mostly" comparable or similar; "somewhat" comparable or similar; "rarely" comparable or similar; "never" or not-at-all comparable or similar; or "no familiarity."

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APPENDIX E

**WEIGHTED-AVERAGE DELIVERED SALES PRICES OF PRICING
PRODUCTS IMPORTED FROM NONSUBJECT COUNTRIES**

Table E-1

SDGE: Weighted-average delivered prices and quantities of domestic and product 1 imported from nonsubject countries, by quarters, January 2005-September 2008

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Table E-2

SDGE: Weighted-average delivered prices and quantities of domestic and product 2 imported from nonsubject countries, by quarters, January 2005-September 2008

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Table E-3

SDGE: Weighted-average delivered prices and quantities of domestic and product 4 imported from nonsubject countries, by quarters, January 2005-September 2008

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Table E-4

SDGE: Weighted-average delivered prices and quantities of domestic and product 5 imported from nonsubject countries, by quarters, January 2005-September 2008

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APPENDIX F

**ALLEGED EFFECTS OF SUBJECT IMPORTS ON U.S. PRODUCERS'
EXISTING DEVELOPMENT AND PRODUCTION EFFORTS,
GROWTH, INVESTMENT, AND ABILITY TO RAISE CAPITAL**

The Commission requested U.S. producers to describe any actual or potential negative effects since January 1, 2005, on their return on investment, growth, investment, ability to raise capital, existing development and production efforts, or the scale of capital investments as a result of imports of SDGE from China. Their responses are as follows:

Actual Negative Effects On SDGE Operations

* * * * *

Actual Negative Effects On LDGE Operations

* * * * *

Anticipated Negative Effects of Imports of SDGE from China

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