

of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4162.

SUPPLEMENTARY INFORMATION:

The Petition

On January 17, 2008, the Department of Commerce (“Department”) received a petition concerning imports of small diameter graphite electrodes (“SDGE”) from the People’s Republic of China (“PRC”) filed in proper form by SGL Carbon LLC and Superior Graphite Co. (collectively “Petitioners”). See Petition on Small Diameter Graphite Electrodes from the People’s Republic of China dated January 17, 2008 (“Petition”). On January 22 and 29, 2008, the Department issued a request for additional information regarding, and clarification of certain areas of, the Petition. Based on the Department’s requests, the Petitioners filed additional information on January 25 and 30, 2008. The period of investigation (“POI”) is July 1 through December 31, 2007. See 19 CFR 351.204(b).

In accordance with section 732(b) of the Tariff Act of 1930, as amended (“the Act”), the Petitioners allege that imports of SDGE from the PRC are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports are materially injuring, or threaten material injury to, an industry in the United States.

The Department finds that the Petitioners filed this Petition on behalf of the domestic industry because the Petitioners are interested parties as defined in section 771(9)(C) of the Act, and have demonstrated sufficient industry support with respect to the antidumping duty investigation that the Petitioners are requesting that the Department initiate (see “Determination of Industry Support for the Petition” section below).

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. 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 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.

Comments on Scope of Investigation

During our review of the Petition, we discussed the scope with the Petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 days of signature of this notice. Comments should be addressed to Import Administration’s Central Records Unit (“CRU”), Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, attention Magd Zalok, room 3067. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

Comments on Product Characteristics for Antidumping Duty Questionnaire

We are requesting comments from interested parties regarding the appropriate physical characteristics of SDGE to be reported in response to the Department’s antidumping questionnaire. This information will be used to identify the key physical characteristics of the subject merchandise in order for respondents to accurately report the relevant factors of production, as well as develop appropriate product reporting criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as general product characteristics and product reporting criteria. We note that it is not always appropriate to use all product characteristics as product reporting criteria. We base product reporting criteria on meaningful differences among products. While there may be some physical product characteristics which manufacturers use to describe SDGE, it may be that only a select few product characteristics take into account meaningful physical characteristics. In

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-929]

Small Diameter Graphite Electrodes from the People’s Republic of China: Initiation of Antidumping Duty Investigation

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

EFFECTIVE DATE: February 13, 2008.

FOR FURTHER INFORMATION CONTACT: Magd Zalok, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department

order to consider the suggestions of interested parties in developing the antidumping duty questionnaire, we must receive comments at the above-referenced address by February 26, 2008. Rebuttal comments must be received within 10 calendar days of the receipt of timely filed comments.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method if there is a large number of producers in the industry.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), *citing Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 644

(CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the 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 under this subtitle." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the Petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that SDGE constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see the Antidumping Investigation Initiation Checklist: Small Diameter Graphite Electrodes from the People's Republic of China (PRC) (PRC Initiation Checklist)*, Industry Support at Attachment II, on file in the CRU.

On February 1, 2008, we received an industry support challenge from an importer of graphite electrodes from China. The Petitioners responded to this submission on February 4, 2008. *See PRC Initiation Checklist at Attachment II (Industry Support)*. Our review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that the Petitioners have established industry support. First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling). *See* section 732(c)(4)(D) of the Act. Second, the domestic producers have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. Finally, the domestic producers have met the statutory criteria for industry support under 732(c)(4)(A)(ii) because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing

support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See PRC Initiation Checklist at Attachment II (Industry Support)*.

The Department finds that the Petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the antidumping investigation that they are requesting the Department initiate. *See PRC Initiation Checklist at Attachment II (Industry Support)*.

Allegations and Evidence of Material Injury and Causation

The Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value ("NV"). The Petitioners contend that the industry's injured condition is illustrated by reduced market share, lost sales, reduced production, reduced capacity utilization rate, reduced shipments, underselling and price depressing and suppressing effects, lost revenue, reduced employment, decline in financial performance, and an increase in import penetration. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See PRC Initiation Checklist at Attachment III (Injury)*.

Allegation of Sales at Less Than Fair Value

The following is a description of the allegation of sales at less than fair value upon which the Department based its decision to initiate this investigation of imports of SDGE from the PRC. The sources of data for the deductions and adjustments relating to the U.S. price and the factors of production are also discussed in the checklist. *See Initiation Checklist*. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we will reexamine the information and revise the margin calculations, if appropriate.

Export Price

The Petitioners relied on 14 prices obtained from U.S. resellers for SDGE manufactured by Chinese producers/

exporters. The 14 prices were for POI sales of certain types of SDGE falling within the scope of the Petition. The Petitioners deducted from the quoted prices the costs associated with exporting and delivering the product to the customer in the United States, including foreign brokerage and handling, ocean freight and insurance, U.S. inland freight, U.S. port fees, and a reseller's mark-up. See *Initiation Checklist*. The Petitioners calculated foreign brokerage and handling based on the methodology used by the Department in the *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007), and the accompanying memorandum, *Investigation of Certain Polyester Staple Fiber from the People's Republic of China: Surrogate Values for the Final Determination*, dated April 10, 2007, at 2. See also the Petition at page 51 and Exhibit AD-5. The Petitioners calculated ocean freight and insurance based on the CIF data for imports of SDGE from the PRC under HTSUS number 8545.11.0000, which were reported in the official U.S. import statistics published by the U.S. International Trade Commission Dataweb. The Petitioners calculated U.S. port fees, including harbor maintenance and processing fees, based on standard charges applicable to SDGE imported under HTSUS number 8545.11.0000. Lastly, the Petitioners calculated U.S. inland freight and a reseller's mark-up based on their own experience and knowledge of the industry.

NV

The Petitioners stated that the Department has not revoked the non-market economy ("NME") status of the PRC, and thus they treated the PRC as a NME country for purposes of their Petition. The Department examined the PRC's market status and determined that NME status should continue for the PRC. See *Memorandum from the Office of Policy to David M. Spooner, Assistant Secretary for Import Administration, Regarding The People's Republic of China Status as a Non-Market Economy*, dated May 15, 2006. (This document is available online at <http://ia.ita.doc.gov/download/prc-nme-status/prc-nme-status-memo.pdf>.) In addition, in every subsequent investigations, the Department treated the PRC as an NME country. See, e.g., *Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of*

China, 72 FR 9508 (March 2, 2007), and *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. Because the presumption of NME status for the PRC has not been revoked by the Department it remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product is appropriately based on factors of production valued in a surrogate market-economy country in accordance with section 773(c) of the Act. After initiation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

The Petitioners selected India as the surrogate country arguing, pursuant to section 773(c)(4) of the Act, that India is an appropriate surrogate because it is a market-economy country that is at a level of economic development comparable to that of the PRC and is a significant producer and exporter of SDGE. See Petition at pages 52 through 54. Based on the information provided by the Petitioners, we find it appropriate to use India as a surrogate country for this initiation. After initiation, we will solicit comments regarding surrogate country selection.

The Petitioners calculated NVs for each of the U.S. prices discussed above using the Department's NME methodology that is required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. Because the quantities of the factors of production that are consumed by Chinese companies in manufacturing SDGE are not available to the Petitioners, the Petitioners calculated NVs using consumption rates experienced by U.S. producers of SDGE. See Petition at page 54. The Petitioners provided information which they claim demonstrates that Chinese and U.S. companies use the same process to produce SDGE. See the January 25, 2008, supplement to Petition at 11 and Enclosure 13. Additionally, the Petitioners provide an affidavit to support their use of U.S. production data. See the Petition at Exhibit AD-2. The Petitioners valued the factors of production as noted below.

The Petitioners valued material inputs using the most recently available six months of import data from the World Trade Atlas (data from December 2006 through May 2007). See the *PRC Initiation Checklist* and the Petition at

page 56. In calculating surrogate values from Indian import data, the Petitioners excluded the values of imports from unspecified countries, NME countries, and countries which the Department has found to maintain broadly available, non-industry-specific export subsidies (i.e., Indonesia, the Republic of Korea and Thailand). See *Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Administrative Review and Final Results of New Shipper Review*, 72 FR 27287 (May 15, 2007), and accompanying Issues and Decision Memorandum at Comment 23.

The Petitioners valued electricity using the cost of electricity for industrial use in India for 2000, obtained from *Energy Prices and Taxes, Quarterly Statistics, 3rd Quarter 2003*, published in the International Financial Statistics by the IMF. See Petition at pages 61-62 and Exhibit AD-7.

The Petitioners valued natural gas based on an article in *The Financial Express*, "Gas Prices Hiked 12%," dated May 28, 2005. See Petition at pages 62-63 and Exhibit AD-7.

Where a surrogate value was in effect during a period preceding the POI, the Petitioners adjusted it using the Indian wholesale price index in the publication *International Financial Statistics*, which is published by the International Monetary Fund. See Petition at Exhibit AD-7. The surrogate values used by the Petitioners for the above-referenced inputs consist of information reasonably available to the Petitioners and are, therefore, acceptable for purposes of initiation.

The Petitioners based factory overhead expenses, selling, general and administrative expenses, and profit on data from an Indian SDGE producer, Graphite India Limited. The data come from the company's most recently available annual report which covers the period April 1, 2006, through March 31, 2007. See Petition at pages 63-64 and Exhibit AD-8, as well as Enclosure 1 of the January 30, 2008, supplement to the Petition. We find that the Petitioners' use of this company's information as surrogate financial data is appropriate for purposes of this initiation.

Fair Value Comparisons

Based on the data provided by the Petitioners, there is reason to believe that imports of SDGE from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of export price to NV, calculated in accordance with section 773(c) of the Act, the estimated dumping margins for SDGE range from

119.09 percent to 159.34 percent. *See* Enclosure 4 of the January 30, 2008, supplement to the Petition.

Initiation of Antidumping Investigation

Based upon the examination of the Petition on SDGE from the PRC, the Department finds that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of SDGE from the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act, unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Separate Rates

In order to obtain separate-rate status in NME investigations, exporters and producers must submit a separate-rate status application. *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries (April 5, 2005) (Separate Rates and Combination Rates Bulletin), available on the Department's website at <http://ia.ita.doc.gov/policy/bull05-1.pdf>. Based on our experience in processing the separate-rate applications in previous antidumping duty investigations, we have modified the application for this investigation to make it more administrable and easier for applicants to complete. *See, e.g., Initiation of Antidumping Duty Investigation: Certain New Pneumatic Off-the-Road Tires From the People's Republic of China*, 72 FR 43591, 43594-95 (August 6, 2007). The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, which will be available on the Department's website at <http://ia.ita.doc.gov/ia-highlights-and-news.html> on the date of publication of this initiation notice in the **Federal Register**. The separate-rate application will be due 60 days after publication of this initiation notice.

Respondent Selection

For this investigation, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports under HTSUS number 8545.11.0000 during the POI. We intend to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within seven days

of publication of this **Federal Register** notice.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Separate Rates and Combination Rates Bulletin, states:

{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. (Emphasis in original.)

See Separate Rates and Combination Rates Bulletin at 6.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petition have been provided to the representatives of the Government of the PRC. We will attempt to provide a copy of the public version of the Petition to the foreign producers/exporters, consistent with 19 CFR 351.203(c)(2).

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the International Trade Commission

The ITC will preliminarily determine, no later than March 3, 2008, whether there is a reasonable indication that

imports of SDGE from the PRC are materially injuring, or threatening material injury to, a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: February 6, 2008.

Ronald K. Lorentzen,

Acting Deputy Assistant Secretary for Import Administration.

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