

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)

NOTIFICATION

New Delhi, the 24th. June, 2009

Final Findings (SSR)

Subject: Sunset Anti-dumping review investigations in the matter relating to imports of Graphite Electrodes from China PR

No.15/7/2007- DGAD : Having regard to the Customs Tariff Act, 1975 as amended in 1995 (hereinafter referred to as Act) and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as Rules);

Background

2. Whereas the Designated Authority (herein after also referred to as the Authority), having regard to the Customs Tariff Act, 1975 as amended in 1995 (hereinafter referred to as Act) and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as Rules) investigated and recommended imposition of final anti- dumping duty on imports of Normal Power Grade Graphite Electrodes (Including its High Power grade variant)from China PR, and High Power Grade Graphite Electrodes from USA, Germany, France, Italy, Austria, Spain and Belgium on 27th March 1998. In the first Sun Set Review, no duties were recommended on imports from USA, Germany, France, Italy, Austria, Spain and Belgium where as final anti-dumping duty was recommended / extended on imports from China PR in respect of Normal Power Grade Graphite Electrodes (Including its High Power grade variant) in April 2003 and the custom notification for final duties was issued on 7th July 2003.

3. The present application has been filed by M/s Graphite India Ltd. and M/s HEG Ltd under Section 9A (5) of the Customs Tariff Act, 1975, as amended in 1995 read with Rule 23 of the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 requesting for a 2nd sunset review of anti dumping duties earlier imposed on imports of Normal Power Grade Graphite Electrodes (Including its High Power Grade variant)

from China PR. In its application, the applicant pleaded for the need for a review of the anti dumping duty imposed on the subject goods originating in or exported from China PR. The petitioners claimed with prima facie evidence that cessation of anti dumping duty imposed on subject goods from these countries is likely to lead to continuation or recurrence of dumping and injury and have requested for continuation and enhancement of the anti dumping duty imposed on subject goods from subject country for a further period of five years.

4. Authority initiated 2nd sunset review vide notification dated 25th march 2008 in accordance with Section 9A(5) of the Act, read with Rule 23 of Antidumping Rules, to review the need for continued imposition of duties in force and whether the expiry of the duty is likely to lead to continuation or recurrence of dumping and injury.

5. And whereas, antidumping duty as notified vide Notification No. 101/2003-Customs dated 7th July, 2003 was extended up to 6th July 2009 vide notification No.81/2008 dated 27th June 2008 in terms of Section 9 (A) (5) of the Act.

Procedure

6. The procedure described below has been followed with regard to this investigation:

i. After initiation of the review investigation, the Authority notified the domestic industry, all known exporters/producers in the subject country and known importers, calling for questionnaire responses and necessary information in accordance with Rule 6(4)

ii. The Embassy of the subject country in New Delhi was informed about the initiation of the investigation, in accordance with Rule 6(2), with a request to advise the exporters/producers in their country to respond to the questionnaire within the prescribed time.

iii. The Authority sent questionnaires, to elicit relevant information, to the known exporters from China PR.

iv. Only one of the exporters from China, M/s Liaoning Jiayi Metals & Minerals Co. Ltd. responded to the questionnaire in response to the above notification.

v. The period of investigation for the purpose of the present review is 1st October 2006 to 30th September 2007 (12 months). However, injury analysis covered the years 2004-05, 2005-06, 2006-07 and POI.

vi. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years and the period of investigation;

vii. M/s Graphite India Ltd. and M/s HEG Ltd. (domestic producers) of the subject goods have provided their cost and injury information for injury investigation.

viii. No other interested party has submitted any response to the initiation notification.

ix. The Authority has considered all views expressed and submissions made by various interested parties to the extent they are relevant for the present investigation.

x. The Authority made available non-confidential version of the evidence presented by interested parties in the form of a public file kept open for inspection by the interested parties.

xi. The Authority verified the information furnished by the domestic industry to the extent possible to examine the injury suffered and to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information furnished by the applicants so as to ascertain if Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry.

xii. The Authority notes with respect to the responding exporter that it had given the information only for its export sales to India and did not give the information for the producer. Therefore, the normal value and dumping margin for the exporter is to be determined as per the Rules.

xiii. The Authority held a public hearing on 10th December 2008 to hear the interested parties orally, which was attended by representatives of domestic industry and of the abovementioned exporter from China. The parties attending the public hearing were requested to file written submissions of views expressed orally. The written submissions received from interested parties have been considered and incorporated to the extent they are relevant and substantiated with evidence.

xiv. ***In the statement represents information furnished by interested parties on confidential basis and so considered by the Authority under the Rules.

Product Under Consideration and Like Article

Views Of the Domestic Industry

7. The product involved in this sunset review is ‘Normal Power Grade (NPG) Graphite Electrodes including its variant High Power Grade (HPG) Electrodes of diameters from 8” up to and including 24” (here in after referred to as subject goods). Since, the present investigation is a review investigation; product under consideration remains the same as has been defined in the original investigation and thereafter restricted to ‘Normal Power Grade (NPG) Graphite Electrodes, including its variant High Power Grade (HPG) Electrodes of diameters from 8” up to and including 24” in the first SSR. The subject goods are classified under Customs sub-heading no. 85.45 of Chapter 85 of the Customs Tariff Act, 1975 and ITC (HS) Codes 85451901 and 85451101. The classification is however indicative only and in no way binding on the scope of the present investigation.

Views of Interested Parties

8. No interested party other than the domestic industry has made any submissions with regard to the product under consideration

Examination By The Authority

9. Authority examined the contentions of the domestic industry in detail. It is noted that the present investigation is a sunset review investigation and therefore the scope of the product under consideration should not be altered in review investigation. The Authority therefore holds that the scope of the present product under consideration is the same as was the scope of the product under consideration in the sunset review investigations notified vide Notification issued in April 2003 and consequent Customs Notification No. 101/2003- Customs dated 7th July, 2003.

Standing and Domestic Industry

10. The sunset review had been initiated on the basis of a request submitted by M/s Graphite India Ltd. and M/s HEG Ltd. accounting for manufacture of 100% of the total subject goods in the country as they are the only producers of the subject goods in India.

11. No comments have been received from any interested party on the issue of standing or the status of the applicants. Therefore, the Authority holds that the applicant producers of the subject goods in India constitute the domestic industry for the purpose of the current investigation.

Dumping Determination

Continuance of Dumping: Determination of Normal Values, Export Prices and Dumping Margins:

12. Apart from M/s Liaoning Jiayi Metals & Minerals Co. Ltd., the exporter from China PR, the only other interested party who filed a response to the initiation was Rail Wheel Factory Bangalore, who filed a response in the form of an importer questionnaire. However as per this response no imports from subject country have been reported during POI. Therefore this response is of no relevance so far as the present investigations are concerned.

Views of M/s Liaoning Jiayi Metals & Minerals Co. Ltd.

13. Only one exporter/manufacturer, M/s Liaoning Jiayi Metals & Minerals Co. Ltd. has filed its questionnaire response. They have claimed negative dumping and sought termination of the investigations. While submitting the questionnaire response the responding exporter has further stated that they have exported the PUC to India manufactured by M/S Chengdu Rongguang Carbon Co. Ltd. or by the said exporter / producer itself.

Views of the Domestic Industry

14. The domestic industry has sought declaration of the responding exporter from China PR as non-cooperating on the following grounds

- i. The exporter has failed to file certificate of information and authorization .
- ii. The exporter has failed to adhere to restrictions in the exporter questionnaire response as they have not provided all names of the producers.
- iii. The exporter has not provided any response about any change in the structure of the company and information the relationship of shareholders with any other company engaged in production and sale of

subject goods. Even telephone number and fax numbers including name and address of the principal contact person have not been provided.

iv. The exporter has not provided full description of the product he has exported in the period of investigation as the same has a bearing on apple to apple comparison for the dumping margin determination.

v. The information to questions relating to catalogues and brochures has not been answered and information about channel of distribution has been withheld for strategic reasons. Even information relating to placement of order, and essential sales negotiation process has not been provided.

vi. Under the pretext of not claiming the normal value, the exporter has not provided all material information which would have direct bearing on the account of the company.

vii. No information has been provided on profit determination for export sales.

viii. Details of export sales to other countries have not been furnished.

ix. Producer of goods exported by the present exporter has not filed any questionnaire response and in the absence of full response the present exporter cannot be treated as cooperating exporter. That apart they have also not filed any initiation notification and therefore submissions made on their behalf cannot be taken on record.

x. A proper non confidential version of the response has not been submitted to ensure that the domestic industry is not in a position to comment upon the same or to expose the inadequacies and incorrectness of the statements made by them.

15. According to the Domestic Industry Rule 7 mandates that all the information submitted by a party on a confidential basis cannot be regarded as confidential unless the same is supported by reasons and is so accepted by the Authority by passing a separate order granting such confidentiality. In other words, Rule 7 does not in any way permits that the exporter can get away with minimal information rather it casts a responsibility on the exporters to furnish summaries in sufficient details so as to permit a reasonable understanding of the substance of the information submitted on confidential basis to enable the interested parties to give their comments and to assist the Authority in arriving at the correct determinations. The law further states that if

the authorities find that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information. It is also submitted that in terms of the Rule 7, the Designated Authority has to record the reasons for accepting the claim of confidentiality.

16. According to them CESTAT in the tiles case has clearly held that information provided to the Designated Authority on confidential basis is not required to be treated as confidential merely because it is provided to the Designated Authority on a confidential basis and has further laid down detailed guidelines to examine claims of confidentiality. Further, it has been clearly held that confidentiality is not a mere tool to deny disclosure to kill transparency, or to create a handicap for opposing parties. It has been laid down that for the purpose of transparency; there is an obligation on the authority to require the parties to furnish non-confidential summaries, which shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence.

Examination By the Authority

17. The Authority has examined the submissions of the domestic industry in detail and notes that the submissions as above are mostly legal in nature. The Authority further notes that meaningful information related to this case has been submitted by the responding exporter. The exporter has admitted to be operating under non-market economy conditions and has therefore not submitted response to the MET Questionnaire. Even if they had responded to the MET, they admittedly are operating under non-market economy conditions and therefore their submissions on this score would have been irrelevant as determination of normal value would be through CNV method only as has been followed here in after. Further details regarding exports to India during POI have been provided for determination of export price. On the issue of non furnishing of details of exports to third countries, the Authority notes that the same is required in a situation where the likelihood of continuation or recurrence of dumping is to be examined in the event of withdrawal or discontinuation of the existing antidumping duties. In the instant case, however, the Authority notes that in the first sunset review, no antidumping duty was imposed on the subject responding exporter and therefore the concept of withdrawal or discontinuation does not exist. Further, the Authority also notes that in respect of the present investigation the subject exporter has filed a questionnaire response which gives a clear picture of the volume and value of exports to India during POI for determination of individual dumping margin. To that extent, the Authority holds that the responding exporter from China PR as a fully co-operating for the purposes of the present investigation.

Adjustment on account of Quality

Views of M/s Liaoning Jiayi Metals & Minerals Co. Ltd.

18. The responding exporter has claimed that the authority has allowed price adjustment in the original investigation as well as the first sunset review investigation. The petitioners have conceded that there has been no difference either in PUC or like article. It has further been pleaded that petitioners at the time of original investigation conceded that the consumption of Chinese electrodes was higher and nowhere in the present application or the first sunset review have they claimed any changed whatsoever in the position.

19. It has been submitted that quality of electrodes supplied by them per se cannot be compared with a domestically produced electrodes as domestically produced electrodes are of much superior quality. Lower quality of goods exported by them results into higher consumption into higher electrodes as compared to the domestically produced electrodes and due to this associated quality cost of production of Indian producer is higher compared to the cost of production of the Chinese producers. They have further pleaded that authority has accepted this after proper evidence in the original investigation. To support this contention they have placed on record report from at least three different users of Chinese origin Graphite Electrodes, on a confidential basis. According to this confidential report, these users have been consuming both domestically produced electrodes as well as Chinese origin electrodes and they have further stated that Chinese electrodes are inferior in terms of quality, physical and chemical properties and the machining is not up to the mark when compared with the domestically procured electrodes. They have further confirmed that consumption of Chinese electrodes supplied by Liaoning Jiayi Metals and Minerals Co. China is about 20% higher than the domestically produced electrodes as per their experience.

Views of the Domestic Industry

20. Domestic industry has raised objection to the claim of adjustment on account of quality difference in the product under consideration and Indian goods. They have submitted that the admissibility of such an adjustment from legal or factual perspective can be accorded only after the producer / exporter participates and substantiates the basis of such claim by filing test report etc. and without such substantiation there is no rational in accepting 20% adjustment. They have claimed that there is nothing in the public file to suggest that exporter made a substantiated claim for an adjustment on account of quality in sunset review proceedings and, therefore, no adjustments on account of alleged quality or consumption difference can be permitted. As per their submissions, the entire proof to claim adjustment is to be furnished by the party who claims it. They have further submitted that under paragraph 6, the only provision for allowing any adjustment for comparison purposes

cannot be invoked in a non-market economy country and such an adjustment was permissible at the time of original Final Findings as the provision relating to non-market economy countries was introduced later, only in the year 1999. They have further suggested that one of the Public Sector Units under the Ministry of Railways; viz. Rail Wheel Factory has been using both Chinese and Indian Graphite Electrodes during the year 2006-07 and 2007-08, and therefore the Authority may seek information from the said unit on the consumption pattern of the electrodes. It has further been submitted that the normal value in the instant case is to be determined in accordance with the provisions of paragraph 7 of Annexure of Antidumping Rules as the only participating exporter has also not claimed that the principals set out in paragraph 1 to 6 should apply in terms of paragraph 8.3 of Annexure I. They have also pleaded that provision of paragraphs 1 to 6 of Annexure I are not even applicable and therefore, the question of any adjustments under any of those paragraphs does not arise.

Examination by the Authority

21. The Authority has considered the arguments put forth in favour and against the adjustment allowed in the original as well as in the first sunset review investigations and notes that it has been claimed by the exporter that no change has happened between the previous and present case with the product characteristics remaining the same.

22. As per Annexure I to Rule 8, Para 6(i) thereof, while arriving at margin of dumping, the designated authority shall make a fair comparison between the export price and the normal value. The comparison shall be made at the same level of trade, normally at ex-factory level, and in respect of sales made at as nearly as possible at the same time. Due allowance shall be made in each case, on its merits, for differences which affect price compatibility, including differences in conditions in terms of sale, taxation, levels of trade, quantities, physical characteristics and any other differences which are demonstrated to affect price compatibility.

23. The Authority notes that the issue of consumption concerns the product characteristics and in the absence of change in the technical parameters; the consumption pattern does not undergo change. Further there is no counter argument nor has any evidence been brought to the knowledge of the Designated Authority that the consumption pattern has undergone a change. The Authority in view of the fact that scope of product and the description remaining the same, considers the same adjustment essential as was considered in the original main investigation and first sunset review investigation and confirms the like articles as per Rule 2(d).

24. The Authority also sought information from the Rail Wheel factory as suggested by the Domestic Industry. However, the Authority did not receive any response to the same. As already stated hereinbefore, it is however seen that Rail Wheel factory did not make any imports of subject goods from China PR during either 2006-07 or POI, although they had reported some imports from China PR during 2004-05 and 2005-06. In any case, the Authority has the mandate to look into the aspect of continuation or discontinuation of Anti-dumping duty while conducting a Sun Set Review and need not go beyond that by revising technical details, which have already been considered and addressed in the original investigation. That apart, as per the details available in the project report for expansion as made available by one of the constituents of the domestic industry, it has been admitted that the Chinese manufacturers have the lowest manufacturing cost and are producing poor quality of PUC with manufacturing plants located in low cost locations. Therefore, in view of the foregoing and other details / documents on record made available by the responding exporter on a confidential basis and their confidentiality having been affirmed by the Authority, the Authority holds to continue with allowing adjustment to the extent of 20% as allowed in the original investigation as well as first Sun Set Review, in all the related parameters that can make a fair comparison for determination of dumping margin and injury margin, possible.

Normal Value:

25. The Authority notes that in the past three years, China PR has been treated as a non-market economy country in the anti-dumping investigations by other WTO Members. Therefore, in terms of Para 8 (2) of the annexure 1 of AD rules, China PR has been treated as a non-market economy country subject to rebuttal of the above presumption by the exporting country or individual exporters in terms of the above Rules.

26. As per Paragraph 8, Annexure I to the Anti Dumping Rules as amended, the presumption of a non-market economy can be rebutted if the exporter(s) from China provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) in Paragraph 8 and prove to the contrary. The cooperating exporters/producers of the subject goods from People's Republic of China are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the Market Economy Treatment questionnaire to enable the Designated Authority to consider the following criteria as to whether:-

- a) The decisions of concerned firms in China PR regarding prices, costs and inputs including raw materials, cost of technology and labour, output, sales and investment are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;
- b) The production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;
- c) Such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms and
- d) The exchange rate conversions are carried out at the market rate.

27. The only responding exporter from China PR has not claimed Market economy Status. They have in fact not responded to the Authority on this issue and have admitted to be operating under non-market economy conditions. The Authority therefore has adopted the Constructed Normal Value for the purposes on determination of Dumping margin Calculations.

28. The Normal Value has been constructed by taking the norms of the most efficient unit of domestic producer from amongst the domestic industry. Prices for the raw materials viz. Calcined Petroleum Coke used for manufacture of electrode have been taken as per domestic procurement price of the domestic industry and Calcined Petroleum Coke, required for manufacture of Nipple and price of Pitch have been taken as per DGCI&S data. The remaining cost elements have been also taken as per most efficient domestic unit. After taking into account the above methodology, the normal value works out to Rs. *** per MT.

Export Price:

Views of the Domestic Industry

29. They have submitted that the responding exporter cannot be considered as a cooperating exporter as the said exporter has withheld information relating to exports to third countries from the Designated Authority for carrying out likelihood test under section 9A (5). This has been claimed to be a total disregard to the ruling of the Hon'ble Supreme Court in the case of Haldor Topsoe vs. Designated Authority

{2000(120)ELT11(SC)}. They have further submitted that the producer has not cooperated in the investigation and therefore, that information of the so-called cooperating exporter cannot be accepted without verifying the information for completeness, accuracy or authenticity. It has also been submitted that dumping from participating exporter is confirmed and therefore, it cannot be concluded that the same would not dump the subject goods on the basis of the conclusions of the previous investigations. They have also sought likelihood analysis of dumping and stated that even if there are no imports from the subject country, the Authority cannot absolve itself from the compulsory analysis of likelihood of dumping.

Examination by the Authority

30. The Authority has considered the exporter response filed by the responding exporter. Total exports of PUC by the said responding exporter during POI as per the response filed is *** MT, which is far higher than the volume of imports available in either IBIS data source relied upon by the Domestic Industry or DGCI&S data procured by the Authority. Further the exports made by the said responding exporter are manufactured either by the said producer / exporter or by M/S Chengdu Rongguang Carbon Co. Ltd. The volume of exports manufactured by Chengdu Rongguang Carbon Co. Ltd. accounts for *** MT (all inclusive of nipple) at an average cif price of US\$ *** per MT. Similarly volume of exports produced by M/S Liaoning Jiayi Metals & Minerals and exported by them accounts for *** MT which includes *** MT of PUC without nipple at an average CIF price of US \$ *** per MT and *** MT with Nipple at an average cif price of US\$ *** per MT. The transaction wise export sales (in the absence of spot verification) have been compared with the transaction wise sales as reflected in the DGCI&S Data source on a sample basis. The verification of records of the responding exporter was not considered necessary as sample individual invoices, and other related sale documents, as demanded by the Authority were provided by the responding exporter. These records also revealed the details of manufacturer who had manufactured the subject goods and subsequently exported to India. Further comparison on a sample basis was carried out with DGCI&S data source. Moreover, the adjustments claimed by the petitioners for calculation of net export price are only US \$ *** per MT whereas the responding exporter had claimed a higher adjustment ranging from US \$ *** to US \$ ***per MT. In addition neither the domestic industry in their petition nor the responding exporter had claimed any deduction on account of VAT refund, which has however been considered by the Authority as an adjustment of 4%. To sum up, as against an adjustment of US\$ *** per MT claimed by the petitioner, the Authority has made an adjustment in excess of US \$ *** per MT. After allowing these claimed adjustments on account of inland freight, port charges, Ocean Freight, Overseas Insurance, Credit Cost, Bank Charges, and also 4% VAT (additional adjustment taken into account, as

the same was not claimed by the responding exporter), the net average export price at ex-factory level for the subject exporter works out as under: (Conversion rate during POI @ 1 US\$ = Rs.43.33)

a. Manufactured by M/s Chengdu Rongguang Carbon Co. Ltd. and exported by M/S Liaoning Jiayi Metals & Minerals (With Nipple) US\$ ***(Rs. ***) per MT.

b. Manufactured by by M/S Liaoning Jiayi Metals & Minerals Co. ltd. (With Nipple) US\$ *** (Rs. ***) per MT. (While arriving at the weighted average price, the cost of nipple at 4%, as per claim of the domestic industry that nipple cost comprises of 4% of the total cost of the electrode has been allowed to be added to the NEP of electrodes exported without nipples)

All Other Exporters from China PR

31. In respect of all other exporters from China PR the lowest priced export transaction of the cooperating exporter has been considered and after allowing adjustments at par with the ones allowed in respect of the cooperating exporter, the net export price works out to be US \$*** (Rs. ***) per MT.

Dumping Margin

Producer	Exporter	Normal Value (INR)	Normal Value (adjusted)(INR)	Export Price (INR)	Dumping Margin (INR)	DM %
M/sChengdu Rongguang Carbon Co. ,Ltd. No.145 Yidudadao, Longquan District,Chengdu. China	M/S Liaoning Jiayi Metals & Minerals Co. ltd	***	***	***	(***)	Negative
M/s. Liaoyang Carbon Co Limited.						
Zhongxin Village Liuerpu Town, Liaoyang County,Liaoning, China	M/S Liaoning Jiayi Metals & Minerals Co. ltd	***	***	***	***	5-10%
Any	All Other Exporters From China PR	***	***	***	***	25-30%

32. The current dumping margins from the subject countries have been found to be above de minimis.

Likelihood of continuation or reoccurrence of dumping in the event of withdrawal or reduction of ADD

Views of the Domestic Industry

33. Designated Authority is required to examine whether the cessation / discontinuance of anti-dumping duties in force is *likely* to lead to *continuance or recurrence* of dumping and injury.

34. The CESTAT in the case of *Vinati Organics Ltd. Versus Designated Authority* has held as under:

“the Designated Authority and the Central Govt. has to form an opinion that discontinuance of Anti-dumping duty will not create possibility of any injury being caused to the domestic industry in future.”

35. Thus Section 9A (5) requires an opinion as to the probability/possibility of recurrence or continuance of dumping and injury and not a categorical positive finding of recurrence or continuance. While arriving at the opinion of likelihood of continuance or recurrence of dumping and injury, it is necessary to bear in mind the effect and influence of the anti dumping duties already in place against the subject countries and the likely future behaviour of the exporters if the duties are allowed to lapse. The Designated Authority is also required to examine whether the trend / behavioural pattern of dumping continues to persist despite Anti dumping duties in place. It is pertinent to note while carrying out the review that the exporter/producers in subject countries are fully aware of the proximity of impending sunset review, hence their pricing behaviour is likely to be manipulated/determined and hence suspect and untrustworthy. In other words, the behaviour during the period of investigation is not conclusive as the same may be tainted due to prior knowledge about the review which is undertaken in terms of the trade notice on sunset review.

36. It is in this backdrop, it needs to be appreciated that the exporters from the China PR, continued to dump. It has further been submitted that the current dumping an injury is a clear and sufficient indicator that injury to domestic industry would continue once the duties are removed and thus, there are sufficient indicators in terms of Section 9A (5) for the Authority to formal opinion that the Cessation/discontinuance of antidumping duty is likely to lead to recurrence or continuance of dumping and injury to the domestic injury. It has further been pleaded that in the facts and circumstances of the present case, domestic industry has already placed on record material to show that there is current dumping an injury during the period of investigation and hence the likelihood of dumping an injury is imminent if duties are not extended.

37. With respect to dumping it has been submitted that China PR has been found to be dumping the subject goods during the period of investigation and dumping margins have been very significant. It has been pleaded that not only is a dumping margin from China PR still significant, but dumping has not ceased to exist despite the antidumping duties being in force. It has been alleged that exporters from China PR have also indulged in dumping during the years prior to POI.

38. The domestic industry has submitted that China PR is dumping the subject goods not only in India but also in other countries. Domestic industry has further claimed that subject countries having excess capacity as an industry and are essentially export oriented as far as the subject goods are concerned. To this extent, they have quoted the excerpts from the preliminary determination by USA in case No.A-570-929 according to which “the domestic industry is threatened with material injury by reason of dumped imports of small diameters graphite electrodes from China.

39. The domestic industry has submitted that on account of the surplus capacities and currently faced antidumping duties in USA, their export markets have been curtailed in USA and hence they are unable to utilize their already existing surplus capacities and there is a strong likelihood of diversion of subject goods to India at dumped prices, in the event the antidumping duties are withdrawn at this stage.

Submissions made by responding exporter M/s Liaoning Jiayi Metals & Minerals Co. Ltd.

40. It has been submitted that in the exile to project high dumping margin the petitioners have over stated normal value and understated the export prices. According to them normal value is over stated solely based on experience. In view of the fact that there is no material information available to them in the non confidential version of petition on how the normal value has been determined and have sought that authority may

kindly investigate the same. On export price front the same has been claimed to have been grossly under stated by including products which are not even product under consideration and a number of transactions included by the petitioners in the import data were shown to the authority at the time of hearing and it was shown that these transactions were not PUC at all.

41. They have further pleaded that another reason for high dumping margin determined in the petition is that they have supplied electrodes without nipples and machining in a number of cases whereas the domestic industry always supplies with nipples and machine.

Examination By the Authority

42. So far as the responding exporter is concerned, no duty was imposed in the earlier Sun Set review investigations in case of exports made by the said responding exporter and produced by M/S Chengdu Rongguang Carbon Co. Ltd. or produced by the said exporter itself. So far as the likelihood of recurrence in the event of cessation of such duty as per Section 9A (5) is concerned, since no duty was in place for this exporter, the concept of cessation is not relevant. However, specific duty was in place in respect of the exports made by the responding exporter in case they exported PUC manufactured by M/S China Tianjin Jinghai Carbon Plant (Not participating in the present investigation and no exports made by responding exporter in respect of the PUC produced by the said producer) or any other manufacturer in China PR. To that extent the likelihood of continuation of dumping can be pegged at the actual dumping margins determined in respect of the subject exporter from China PR. The Authority notes that the exporter in its submissions has clearly stated that they have been exporting PUC to India in a combination of producer / manufacturer whereon no antidumping duty was imposed. The Authority concludes that they have not been in a position to export PUC manufactured by such producers who were liable to pay ADD. Authority further holds that the present dumping margins based upon the response filed by the Chinese exporter are reliable as is evident from the volume of exports made by the said responding exporter.

43. So far as the third country exports of the responding exporter, as raised by the domestic industry is concerned, the Authority notes that the same is required in a situation where the likelihood of continuation or recurrence of dumping is to be examined in the event of withdrawal or discontinuation of the existing antidumping duties. In the instant case, however, the Authority notes that in the first sunset review, no antidumping duty was imposed on the subject exporter and therefore the concept of withdrawal or discontinuation does not exist. Authority further notes that in respect of the present investigation the subject exporter has filed a questionnaire response which gives a clear picture of the volume and value of exports to India during POI for determination of individual dumping margin. To that extent, the Authority considers that the details of exports to third countries, is not required to be examined in the present investigation. So far as the impact of ADD, having been imposed by USA against China PR, the Authority notes that the product described in the said investigation is "Small Diameter Graphite Electrodes" and the same does not specify either the size or variant of the Graphite electrodes covered under the said investigation. Moreover, the Authority, after having accessed marketing information on Graphite Electrodes from various websites of Chinese manufacturers notes that the size of electrodes manufactured by these Chinese manufacturers varies from 2" to 24". The sizes, apart from PUC also include 2", 3", 4" and 6". The Authority notes that size 2" to 6" can be treated as small diameter graphite electrodes, and are therefore outside the purview of PUC and therefore cannot be treated as relevant for the likelihood analysis of the present investigation.

44. So far as other exporters from China PR, who were liable to pay anti-dumping duty subsequent to the first sun set review investigations, are concerned, the Authority notes the data analysis as per DGCI&S data source reveals that total imports of the subject goods as reflected therein for the period October 2006-September 2007(POI) are far less in volume than the volume of exports declared by the single responding exporter. As per DGCI&S data source, the imports into India during POI are to the tune of *** MT whereas the only responding exporter, as per the response filed with the Authority has exported *** MT of PUC during POI. This indicates that the export data from China PR has not got fully captured in DGCI&S data source. The domestic industry has relied upon IBIS data source in its petition, but the total volume of imports reflected therein is even less than the volume captured in DGCI&S data source, although they have included non-PUC items also in their analysis as per the petition and as admitted during public hearing by the representative of the domestic industry. To make a fair comparison on volume of imports into India, the Authority tried to have the details of exports of subject goods from China from World Trade Atlas data source. However the Authority notes that the said data in WTA does not have the segregated details of PUC. The data available therein refers to carbon electrodes, classifiable under the same Tariff heading, as applicable to graphite electrodes. Further from amongst graphite electrodes itself only NPG and its High Power grade

comprises the PUC and cannot be segregated from other variants including UHP grade which is outside the purview of present investigation. Moreover different sizes have also not got reflected in this data source. To That extent WTA data source cannot be considered for likelihood analysis.

45. Thus the Authority has relied upon the data provided by the responding exporter and the DGCI&S data source and considers that the actual dumping margins based upon the exports by the only responding exporter are an indicator as to at what price the PUC is likely to be exported by other Chinese exporters as well to India in the event of discontinuation or withdrawal of duty.

Injury Assessment

Views of Domestic Industry

46. It is stated by the domestic industry that the injury to the domestic industry has continued as the imports as well as dumping has not stopped from Chinese exporters. The domestic industry has also stated that the anti-dumping duties against the subject country may be continued for another term of 5 years in the interest of the domestic industry.

Views of other interested parties

47. The sole exporter from China has stated that the NPG and UHP Electrodes cannot be seen separately for the purpose of determination of injury. They have also stated that there can be either continued injury or likelihood of recurrence of injury.

48. It has been submitted that there can either be continued injury or likelihood of recurrence of injury and that is why the rules provide for continuation or recurrence and not for continuation and recurrence.

49. Antidumping duties have been in force on imports of PUC for the past more than 10 years and even after this the domestic industry has claimed continued injury. HEG claims to be on the way to become world's largest single location producer of graphite electrodes. Financial results declared by HEG shows that their profit as a percentage of sales have been in the region of 25-30%, leading to return of capital employed in the excess of 50%. It has been submitted that they are aware these financial results are in respect of various products produced by the company. However, the company is substantially into production of graphite electrodes. Therefore, any claim of company which shows injury in the PUC implies abnormally high profitability in the remaining products (UHP electrodes). If so, it is additional reason to examine injury to the domestic industry by including NPG and UHP electrodes. In a situation, where the UHP electrodes are performing so well in spite of stiff competition from other countries, it clearly shows that changes in pattern of consumption resulting from development in steel production technology are the real cause of alleged sub-optimal price for product under consideration.

50. No other interested party has made any submissions in respect of any aspect of the present investigation.

Examination by the Authority

51. The Authority has examined the injury suffered by the domestic industry and the likelihood of continuance / recurrence of dumping and injury in the following paragraphs.

Examination of Injury Parameters

52. The Authority has taken note of various arguments raised by the domestic industry in their submissions and issue of continuation of injury to the domestic industry has been examined in the light of these arguments made before the Authority. The Authority notes that the current dumping

margins from China PR are above de minimis. The Authority therefore, proceeds to examine the current injury, if any, to the domestic industry before proceeding to examine the likelihood aspects of dumping and injury on account of imports from the subject country.

53. Article 3.1 of the ADA and Annexure II of the AD Rules provide for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices in the domestic market for the like products; and (b) the consequent impact of these imports on domestic producers of such products. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in imports, either in absolute term or relative to production or consumption in the importing member. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree, or prevent price increase, which would have otherwise occurred to a significant degree.

54. For the purpose of current injury analysis, the Authority has examined the volume and price effects of dumped imports of the subject goods from the subject country on the domestic industry and its effect on the prices and profitability to examine the existence of injury and causal link between the dumping and injury, if any as follows:

Volume Effect of dumped imports and Impact on domestic Industry

55. The effect of the volume of dumped imports from the subject country has been examined. The domestic industry had relied upon IBIS data source for volume analysis. The Authority, however, procured data from DGCI&S. The Authority notes that the volume of imports as reflected in DGCI&S data source, particularly during POI is much higher than the volume of imports of PUC as detailed in IBIS data source. Further Authority notes that the only responding exporter has reported a much higher sale to India during POI compared to the volume available either in IBIS or DGCI&S data source. The Authority therefore has relied upon DGCI&S data and responding exporter's data for volume carrying out analysis.

Share of Imports from subject country (% of total imports, % of total demand and domestic production)

56. According to the DGCI&S import data, it is noted that there is a huge price variation in respect of imports from China PR as compared to imports from other countries. In fact during the verification of one of the constituents of the Domestic Industry it came to the fore that source documents did not reflect the variant of Electrode viz. NPG / HPG / UHP in the source documents and they pleaded that different variants could be identified by the specific code given to them as per the details available in their data base as also by following the unit price which is much higher in case of non-PUC UHP variant as against NPG and HPG variant which are the PUC. Considering this unit price factor in the following table, it is imperative that the PUC is being imported into India only from China PR and the imports from other countries are non-PUC products.

2004-05 2005-06 2006-07 Oct 06-Sep 07(POI)

Country	MT	Rs./MT	MT	Rs./MT	MT	Rs./MT	MT	Rs./MT
China PR	***	88065	***	114151	***	84521	***	76138
South Africa	289.900	141247	178.495	101234	694.000	155157	694.000	155157
USA	0.909	258966	210.000	116091	2051.303	141861	411.480	148591
Mexico	10.000	419909						
Indonesia					20.500	2308293		

Japan					590.003	162859	675.000	163694
Korea RP					0.017	112527706		
Korea DPR		0.014	162857	0.002	2290000			
Austria					402.551	145564	289.429	144329
France					97.000	153614	97.000	153614
Germany	19.279	108053	0.065	4429462	105.001	36036	5.000	170806
Italy	0.215	525874	0.300	269417	51.368	70772		
Spain	108.000	207819	788.310	145629	3530.734	161235	2193.178	165780
Unspecified					67.802	142086	323.844	123115
Total	***	135055	***	128660	***	145700	***	141970

57. The details of imports volumes as per DGCIS\$ data source for injury period and as per data provided by the responding exporter for POI is tabulated as under:

Particulars	Unit	2004-05	2005-06	2006-07	Oct 06 to Sep 07(POI)
Imports from China	MT	***	***	***	***
Trend	Indexed	100	164	600	1062
Total Imports	MT	***	***	***	***
Trend	Indexed	100	164	600	1062
Production	MT	***	***	***	***
Subject Imports as a % of Total Production	%	***	***	***	***
Trend	Indexed	100	148	441	772
Total Domestic Sales	MT	***	***	***	***
Trend	Indexed	100	106	109	107
Total Demand	MT	***	***	***	***

Trend	Indexed	100	107	119	127
Export sales	MT	***	***	***	***
Trend		100	118	184	190
Export sales as a % of production	%	***	***	***	***
Trend	Index	100	106	132	139
Subject Imports as a % of Total Demand	%	***	***	***	***
Trend	Index	100	154	503	837
Share of domestic industry as a percentage of total demand	%	***	***	***	***
Trend	Index	100	99	91	84

58. The Authority notes from the above that the import of PUC is taking place only from the subject country. The data also reveals that the imports from the subject country have gone up in absolute terms from the base year 2004-05 up to POI. At the same time, the percentage share of imports from subject country in total demand as indexed has also increased from 100 in the base year to 837 during POI whereas the share of the domestic industry has come down from 100 during 2004-05 to 84 during POI. However when compared to the export sales from injury period thru POI it is seen that indexed at 100 during the base period 2004-05, their export sales have gone as high as 190 during POI. Export sales as a percentage of production has increased from ***% in the base year 2004-05 to ***% during POI. Therefore the loss in the domestic market share of the domestic industry is attributed to the fact that their main aim has been to expand their export base and not because of the surge in imports from the subject country.

Capacity, Production, and Capacity Utilisation

59. The verified information shows as follows:

	UOM	2004-05	2005-06	2006-07	Oct 06 to Sep 07(POI)
Installed capacity	MT	***	***	***	***
Trend	Index	100	143	158	158
Production	MT	***	***	***	***
Trend	Index	100	109	133	146

Capacity utilization	%	***	***	***	***
Trend	Index	100	76	85	93
Production of PUC	MT	***	***	***	***
Trend	Index	100	111	136	138
Production of non-PUC	MT	***	***	***	***
Trend	Index	100	129	132	150

60. The above data shows the following-

(a) The domestic industry expanded the capacity first in the year 2005-06 by 43% and again in the year 2006-07 by another 15%.

(b) The petitioner is in a position to utilize the plant for production of subject goods as also other goods. These other goods are outside the purview of PUC.

(c) The production of the domestic industry as a whole (PUC as well as non-PUC products are manufactured from the same plant) has increased by around 46% during POI compared to base year 2004-05. As far as product under consideration, the production during POI has increased by 38% compared to base year 2004-05. On the contrary the production of non-PUC has increased by 50% during the same period. Moreover, the data on production also reveals that although the production of PUC remained at more or less at the same level during POI compared to the preceding year 2006-07, that of non-PUC increased by about 12% during the same period. There being a case of PUC and non-PUC products being manufactured in the same plant, lower increase in production of PUC can be attributed to an internal policy of the domestic industry to produce more of non-PUC products compared to PUC, the expansion being essentially for non-PUC products.

(d) As regards capacity utilization, it is noted that though the capacity utilization during POI declined by 7% over the base year 2004-05, this fall in capacity utilization does not reflect a true picture as the installed capacity has been increased by 58% during POI compared to the same in the base year 2004-05. The Authority notes that during last three years i.e. since 2005-06, the capacity utilization of the Domestic Industry has continued to improve despite capacity additions. In fact when production of PUC is seen in the context of originally available capacity during 2004-05, (capacity expansion having been made for non-PUC only), the same has increased from 25% in 2004-05 to 35% during POI.

61. In view of the above, Authority holds that although there has been increase in imports over the injury investigation period, the domestic industry has been able to capture a reasonable portion of domestic market, in comparison to imports from subject country, and hold it through injury investigation thru POI, as also they have been able to sustain the competition with imported PUC and increase the production, commensurate to increasing demand and have essentially been concentrating on either export of PUC or increase capacity and production of non-PUC.

Sales, Inventories, etc. of Domestic Industry

62. Verified information shows as follows:

	UOM	2004-05	2005-06	2006-07	Oct 06 to Sep 07 (POI)
Opening Stock	MT	***	***	***	***
Trend	Index	100	16	17	54
Production	MT	***	***	***	***
Trend	Index	100	111	136	138
Total Sales	MT	***	***	***	***
Trends	Index	100	109	132	132
Domestic sales	MT	***	***	***	***
Trend	Index	100	106	109	107
Export sales	MT	***	***	***	***
Trends		100	118	183	190
Export sales as a % of production	%	***	***	***	***
Trend	Index	100	106	134	138
Total Demand	MT	***	***	***	***
Trend	Indexed	100	107	119	127
Closing Stock	MT	***	***	***	***
Trend	Index	100	103	348	315

63. The above data shows that the domestic sales of the domestic industry have increased consistently and the increase was about 7% during POI compared to base year 2004-05. There is, however a marginal decrease of 2% during POI compared to immediate preceding year 2006-07 and at the same time, Exports made by the Domestic Industry grew by 7% during POI compared to the immediate preceding period 2006-07. While demand grew by 27% over the injury investigation period, the sales of the domestic industry in the domestic market grew only by 7%. However it

is noted that Export sales of the domestic industry have risen by 90% during POI over the base year 2004-05. Further the export sales, which comprised of only ***% of their production during base year 2004-05, went up to ***% of the total production during POI. The Authority therefore holds that the main thrust of the domestic industry has been to garner export market much more than selling the PUC in the domestic market. The Authority also notes that closing stocks have stayed at lower level during POI compared to opening stock which implies that the domestic industry has been able to sell more than what they produced during the same period.

Price Effect of the Dumped imports on the Domestic Industry

64. The impact on the prices of the domestic industry on account of the dumped imports from the subject country has been examined with reference to the price undercutting, price underselling, price suppression and price depression, if any. For the purpose of this analysis, the weighted average cost of production, adjusted weighted average Net Sales Realization (NSR) and the adjusted Non-injurious Price (NIP) of the domestic industry have been compared with the landed cost of imports from the subject country.

Price undercutting and underselling effects

65. The price undercutting and underselling details are given in the table below.

	Unit	POI (Oct 06-Sep 07)
Landed Price	Rs per MT	***
Adjusted Landed Price	Rs per MT	***
Non-Injurious Price	Rs per MT	***
Price Underselling	Rs per MT	***
Price underselling %		Negligible(Cannot be quantified from confidentiality perspective)

66. The Authority notes that price-underselling is insignificant when the comparison is made at the same level of trade by adding 20% on landed value (on account of inferior quality as allowed in the original as well as previous SSR investigation). Moreover the imports from China PR of the subject goods are of inferior quality and therefore the impact of price undercutting cannot be determined (As has been detailed in the previous SSR review Investigation as well).

Price suppression and depression effects of the dumped imports:

67. In order to determine whether imports of the subject goods were suppressing / depressing the prices of the domestic industry in the market, the Authority considered and examined the trends in cost of production, selling price and landed price of imports from subject country and other countries. The relevant information is given in the following table:

Particulars	Unit	2004-05	2005-06	2006-07	Oct 06-Sep 07(POI)
Cost of Sales	Rs./MT	***	***	***	***
Trend	Index	100	98	119	117
Selling Price	Rs./MT	***	***	***	***
Trend	Index	100	99	108	111
Landed Price	Rs./MT	***	***	***	***
Trend	Index	100	130	96	87

68. The above data shows that selling prices have always been higher than the cost of sales meaning thereby that domestic industry has been able to recover its costs apart from making a reasonable profit. Movements in the selling prices during the injury period shows that during POI, selling prices were higher by 11% over the base year as compared to increase in cost of sales by 17% during this period. During POI, while cost of sales came down by 2% over 2006-07, the selling prices went up by 3%. However there is seen a fall in landed price of imports from subject country by about 13% during POI compared to base year 2004-05, which can partially be attributed to reduction in the customs duty over the years. In spite of this fall in the landed price, the subject exporter has been able to hold its own and realize much higher price than the import price, and therefore holds that imports of PUC from subject Country do not pose a competition to the domestic industry.

Other Economic Parameters Relating to the Domestic Industry

69. Annexure II to the Rules requires that the determination of injury shall involve an object examination of the consequent impact of these imports on domestic producers of the subject goods. Further Annexure II (iv) of the Rules lays down as follows:

"The examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including natural and potential decline in sales, profits, output market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow inventories, employment, wages, growth, ability to raise capital investments."

Examination of other Injury Parameters

70. Other economic parameters, which could indicate existence of injury to the domestic industry, have been analyzed here as follows:

a. **Productivity:** The productivity during the period of investigation has increased during POI compared to the base year 2004-05.

Unit	2004-05	2005-06	2006-07	Oct 06 to Sep 07
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Production	MT	***	***	***	***
Productivity per day	MT	***	***	***	***
Trend	Index	100	111	136	138
Employees	Nos.	***	***	***	***
Production / Employee	MT	***	***	***	***
Trend	Index	100	105	157	174

b. Employment and Wages: The number of employees as well as wages paid to them has declined over the injury investigation period. However decline in wages is far lower compared to decline in no. of employees.

	Unit	2004-05	2005-06	2006-07	Oct 06 to Sep 07
Employees	Nos.	***	***	***	***
Trend	Index	100	106	87	79
Wages Total	Rs. Lacks	***	***	***	***
Trend	Index	100	107	106	97

c. Profitability, Return on Investment and Cash Flow: The profitability, return on investment as well as cash profit has declined over the injury investigation period, although there has been a substantial increase in these parameters during POI compared to immediate preceding year 2006-07 in spite of huge surge in imports from China PR during the same period and in spite of lower landed price during POI compared to Immediate preceding year.

Profit, Cash Flow and Return on Capital Employed.

71. Verified information shows as follows:

Particulars	Unit	2004-05	2005-06	2006-07	Oct 06 to Sep 07(POI)
Cost of Sales	Rs./MT	***	***	***	***
Trend	Index	100	98	119	117

Selling Price	Rs./MT	***	***	***	***
Trend	Index	100	99	108	111
Profit/Loss	Rs. MT	***	***	***	***
Trend	Index	100	105	56	83
Total Profit/Loss on domestic sales	Rs. Lacks	***	***	***	***
Trend	Index	100	111	61	89
Cash Profit/Loss	Rs. Lacks	***	***	***	***
Trend	Index	100	116	75	93
PBIT	Rs. Lacks	***	***	***	***
Trend	Index	100	123	93	109
Capital Employed (PUC)(Domestic)	Rs. Lacks	***	***	***	***
Trend	Index	100	161	146	128
Return on Capital Employed	%	***	***	***	***
Trend	Index	100	77	63	85

72. The above data shows that per unit profit of the domestic industry declined over the injury investigation period, mainly due to higher incidence of depreciation, interest cost and wages, although the same has increased during POI in comparison to immediate preceding year 2006-07 considerably. It is also noted that the selling prices have increased considerably over the same period. It is also noted that per unit selling price has come down marginally during 2005-06 compared to 2004-05 although the decrease is not proportionate to reduction in cost of sales. The unit selling price has increased substantially thereafter during 2006-07 and POI. In fact during POI the unit selling price realisation has gone up compared to 2006-07 in spite of reduction in the cost of sales during the same period. Total profit on domestic sales has come down during POI compared to 2004-05. However when seen in the context of comparison with immediate preceding period 2006-07, the same have gone up considerably. Cash profits have come down from base year 2004-05 to 2006-07 but have recovered considerably during POI. It is also noted that PBIT has increased by 9% during POI compared to base injury period 2004-05. Similarly Capital employed has gone up by 28% during POI compared to base injury period 2004-05. However return on capital employed has made a huge upward-surge during POI compared to immediate preceding year 2006-07, although there is a decrease when compared to base year 2004-05, mainly due to higher incidence of depreciation, interest cost and wages. It is thus seen that evidence about existence of injury is not unequivocal as the physical and financial indicators of performance of the domestic industry do not point in the same direction. The physical parameters such as volume of production and sales of domestic industry show substantial growth. In specific terms, during 2004-05 to POI, production of PUC increased by 38% whereas total sales

also increased by 32% and domestic sales itself by 7%.The substantial sale in export market of course is on account of the substantial export market and perhaps the efforts of DI to concentrate on export sales as against domestic sales. On the contrary, financially, the DI registered a fall in profit in 2006-07 compared to 2004-05 when only *** MT of PUC was reported from subject country. However during POI when the imports increased by around 77% to *** MT compared to 2006-07, the profitability of domestic industry increased considerably, thus indicating that there is no linkage between imports and profitability.

73. In view of the same, the Authority concludes that the decline in profits during the period of investigation is not due to the presence of dumped imports from the subject country.

Likelihood of Continuation of Dumping and Injury

74. The domestic industry in their submissions has pleaded that in a sunset review the Authority is required to examine the likelihood of continuation or recurrence of dumping and injury to arrive at a decision to continue or vary or remove the duty so as to offset dumping.

75. The domestic industry has *inter alia* submitted:

- i. That the exporters from subject country are dumping the material in the Indian market.
- ii. That the injury to the domestic industry is still continuing and in case the duties are discontinued the injury to the domestic industry would recur or intensify.
- iii. That the landed price of imports from subject country is much lower than the price domestic industry ought to get.
- iv. That the volume of imports from China has increased in spite of the anti-dumping duty in existence.
- v. That the producers are holding significant surplus capacities.

Examination By the Authority

76. Authority takes note of the above submissions of the domestic industry and notes that although dumping from the subject country is established, the injury to the domestic industry because of these imports from China PR has not been established. Authority notes that domestic industry has been realizing a higher price on domestic sales than they ought to have realized and they have been able to sell almost every bit of the produced PUC during POI. Further their profit margins have increased compared to immediate preceding year 2006-07 in spite of substantial increase in import of dumped PUC. Their export sales have increased substantially during the injury period through POI which is indicative of the fact that they are more concentrated on export sales in comparison to domestic sales. That apart, the adjusted landed value is almost the same as NIP at the same level of trade. To that extent, there being insignificant underselling, injury to the domestic industry is not substantiated.

77. On the issue of Blocking of Chinese imports by USA, as alleged by the domestic industry, the Authority notes that the domestic industry has relied upon the petition filed before US Department of Commerce as also findings from the US Authorities. However one thing that has been ignored by the domestic industry is the scope of PUC in those investigations. US investigations against China PR refer to small size Graphite Electrodes and do not reflect either the specific sizes or the variants of these electrodes under investigation and whether the same are comparable to PUC in the present investigation. . On the issue of availability of surplus capacities in the subject countries, the DI has not quantified the same and therefore Authority is not in a position to accept this statement on its mere face value. Authority has also not been able to access any data source which would give credence to this claim of the domestic industry. The Authority, however, takes note of the submissions of domestic industry and concludes that mere existence of excess, capacities, even if available in the subject country, can not necessarily be construed as their

intention to offload the same into India at dumped prices when substantial quantities of Chinese origin PUC are already finding their way into India at un-dumped prices, and some quantities at dumped prices without causing injury to the domestic industry.

Overall assessment of Injury

Causal Link

Submissions made by the Domestic Industry

78. Domestic Industry has submitted that it is a settled position of law that causal link analysis is not required to be done in sunset reviews. In this connection, they have relied upon the following excerpts from the Appellate Body decision in the case of Oil Country Tubular Goods from Mexico (WT/DS282/AB/R dated 2 November 2005):

“118. We therefore agree with Mexico that this fundamental principle is expressed in Article VI of the GATT 1994 and in various provisions of the Anti-Dumping Agreement. The United States does not question this principle per se. However, this does not mean that a causal link between dumping and injury is required to be established anew in a "review" conducted under Article 11.3 of the Anti-Dumping Agreement. This is because the "review" contemplated in Article 11.3 is a "distinct" process with a "different" purpose from the original investigation.”

“119. The Appellate Body has underlined that "[t]he nature of the determination to be made in a sunset review differs in certain essential respects from the nature of the determination to be made in an original investigation", and that "[t]he disciplines applicable to original investigations cannot, therefore, be automatically imported into review processes.”

"X. Findings and Conclusions

219. for the reasons set forth in this Report, the Appellate Body:

(a) in relation to causation:

(i) finds that there is no requirement to establish the existence of a causal link between likely dumping and likely injury, as a matter of legal obligation, in a sunset review determination under Article 11.3 of the Anti-Dumping Agreement and that, therefore, the USITC was not required to demonstrate such a link in making its likelihood-of-injury determination in the sunset review at issue in this dispute;”

79. The Domestic Industry further submits that there are good technical and logical reasons for not applying the requirement of causal link in a sunset review case. Extension of anti-dumping duties is envisaged even if there are no imports during the review investigation period. Further, the test for extension of the period of duties under Section 9A (5) is only to examine whether the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury.

Examination by the Authority

80. The Authority has examined the submissions of the Domestic Industry with regard to the significance of causal link in a sunset review investigation. It is important to note that the Authority is required to examine the need for continuation of duties; even if there have been no imports during the review investigation period. This requirement is very clear from Section 9A (5) itself. Thus, even though it is not mandatory for the Authority to apply the criterion of causal link in sunset reviews investigations; there is no bar either for the Authority to examine this aspect, particularly when (a) the AD duty has been in place for more than 10 years, (b) substantial quantities of PUC are finding their way into

Indian market, (c) imports during the period have increased and at the same time the performance of the domestic industry has improved, (d) actual reliable Dumping Margins can be established, as is the case here. It is also noted that the WTO in its Appellate Body reports has not said that causal link should not be examined in a sunset review case. On the contrary, it has said that it might be highly pertinent to examine causal link in a sunset review case. The Authority considers it appropriate to examine how the imports have impacted the performance of the domestic industry. The Authority therefore proceeds to examine the causal link aspect, which is further discussed in the following paragraphs.

Volume and Prices from Other Countries:

81. The Authority holds that as per available data and as indicated in the paragraphs herein before, no imports of PUC is reported during POI from countries other than the subject country.

Contraction in Demand and / or Change in Pattern of Consumption:

82. The Authority holds that there is no contraction of demand over the injury investigation period. The demand of the subject goods has increased by 27% in the period of investigation as compared to the base year.

Trade Restrictive Practices of and Competition between the Foreign and Domestic producers:

83. The Authority notes that import of the subject goods is not restricted in any manner and the same are freely importable in the country. The Domestic Industry competes among one another and at the same time competes with the adjusted landed prices of the subject goods. There is, however, nothing on record to substantiate that price of the Domestic Industry is determined by the landed price of subject goods which is substantiated by the fact that the actual landed price shows a downward trend from the base year 2004-05 thru POI (except during 2005-06) whereas the actual NSR of the domestic industry has, on the contrary, gone up consistently from the base year to POI.

Development of Technology and Export Performance:

84. None of the interested parties has raised any issue with regard to technology as being the cause of injury to the Domestic Industry. As regards exports by the Domestic Industry, the Designated Authority has already segregated the export sales related data for the purpose of this analysis and notes that the Domestic Industry has been exporting a substantial volume of their production and these export sales have gone up from ***% of their production during base year 2004-05 to ***% during POI. Moreover, the Authority notes that their export sales have increased by a whopping 90% during POI compared to the base year 2004-05, which inter-alia means that their effort is not so much intended at domestic sales as is on export sales.

Comments to The Disclosure Statement

85. Comments have been received to the disclosure statement on behalf of the domestic industry as well as the responding exporter.

86. So far as the domestic industry is concerned, their submissions can be summed up as under:

- a. Authority has made adjustment of fresh investments. The production of product under consideration and non-PUC and the increase in production should be proportionate. The production of product under consideration increased by 38% over the period of investigation. The common cost of product under consideration and non-puc should be apportioned and revise the period of investigation.

- b. While determining non-injurious price the credit adjustment for by products sales has not taken on the same basis. Computational error in by product sales, which is now corrected, and authority should take the verified figure for determining non-injurious price.
- c. Revised disclosure statement proposes to make adjustment of 20% on normal value on all exports from China for computation of dumping margin. No exporter has claimed individual normal value. Also the methodology for quantification is not disclosed for calculation. Para 7 of Annex.1 of ads rules referred.
- d. Non-Confidential Version of three users of the Chinese goods has not provided.
- e. The exporter is to be declared as non-cooperative as they have not provided information relating to exports to third countries. Supreme Court ruling in the Haldor Topsø case cited.
- f. Product size defined in USA findings is upto 16”(400mm). Majority (about 71%) of the sales in domestic market is 8-16”. Dumped import from China to USA will be diverted to India in case of Add is revoked.
- g. There is surplus capacity with Chinese producers and since USA blocked the import, the dumping in India will be increased in case of revocation of anti dumping duties.
- h. The determination of likelihood analysis is incorrect. The likelihood analysis is incomplete and misleading.
- i. 56% of the total sales of the domestic industry is in domestic market. It is incorrect that the focus is on export market.
- j. The conclusion is misconceived and imaginary – the capacity expansion only for non-puc products.
- k. Inventories of the domestic industry has increased by over 300%
- l. Underselling and price undercutting is made after adjustment of 20% to non-injurious price and Net Sales Realization.
- m. Price of the domestic industry suppressed
- n. No desirable returns due to pressure from Chinese dumped imports.
- o. Credit adjustment for by-product sales has not been taken into account.
- p. Return on investment, profitability, cash flow, market share etc come down during the period of investigation.
- q. The authorities letter dt. July 2, 08 has been replied vide letter 14th July 08. With regard to confidentiality only costing and pricing information only kept confidential. Exporter has not given volume related/summary of information.

Examination By the Authority

- a. In their own admission before the visiting verification team to one of the constituent DI, the non-PUC UHP are more efficient and are much more in demand. It was also admitted that all the new furnaces are set up in steel plants to accommodate UHP variant for better productivity and PUC i.e NPG and HPG are essentially used by old plants which cannot accommodate more efficient UHP, non-PUC variant. To that extent expansion has essentially been for non-PUC

UHP variant, and is not at all relevant to PUC. Further, this is also borne by the actual figures of capacity vis-a-vis production. When the capacity of the plants was *** MT the production of PUC stood at *** where as when the capacity was increased to *** MT the production of PUC (*** MT) continued to be much lower than the actual capacity originally available. To that extent, expansion for the purposes of PUC was not required at all. On the contrary non-PUC production stood at *** MT during POI compared to the original installed capacity of *** MT and therefore the Authority concludes that additional installed capacity has been necessitated for production of Non-PUC. Even going by the individual details provided by each individual constituent of DI, the perusal of project report of M/s HEG Ltd., capacity and production of the PUC and non-PUC, it has become clear that the capital asset expenditure incurred on account of capacity expansion related to Ultra High Power Grade (UHP) i.e. non-PUC. Moreover, the production of the PUC in case of M/s GIL-Durgapur (on the enhanced capacity) has been decreased from 34% in 2004-05 to 12% in the POI, however, during the same period; the production of non-PUC has been increased from 66% to 88%. Therefore, the capital expenditure as well as consequent depreciation has not been taken into consideration while finalizing the NIP.

b. During verification it came to the fore that scrap / wastage / bi-product is generated from manufacture of PUC and for computation of NIP, the scrap/wastage/bi-product sale has been considered on the basis of Formats C-I and C-II duly certified by V. Mattha & Co., Chartered Accountants on 16.1.2009.

c-d. The submissions are a repeat of what was stated earlier and have adequately been addressed in the disclosure statement at appropriate places. The DI in its comments to disclosure statement has conveniently tried to ignore the fact that has been specifically mentioned that in a review the Authority is required to examine the aspect of continuation or recurrence and there is no statutory mandatory provision of looking into technical aspects a fresh, when the same have already been addressed and accepted by the DI in the original as well as first SSR. It has also ignored the fact, elaborated in the disclosure statement about admission by one of the constituent DI in its expansion project report about low quality of the Chinese Electrodes. About their allegation of their submissions not having been dealt with the revised disclosure statement, it is just a statement without substance as they have not highlighted which of their specific submissions have not been addressed in the disclosure statement. The domestic industry has not disputed that product under consideration in the present investigation is the same as defined in the original investigation. In fact, the domestic industry itself argued that product under consideration in the present investigation continues to be the same as defined in the original investigation. Further, the domestic industry has not disputed the product characteristics or any other parameters relating to the product between the original investigation and the current investigation has undergone any change. The sole objection of the domestic industry is with regard to 20% price adjustment proposed to be allowed. It would be relevant to mention that the price adjustment on account of quality difference was allowed in the original investigations and was not opposed by the domestic industry. The claim in the original investigations was based on the arguments of the Chinese producers that even though domestic product and imported product are like article, the consumption of imported electrodes is higher as per compared to domestic electrodes. Authority also notes that this particular vital fact of the original investigation was not challenged by the domestic industry at the time of original investigations. The Authority had followed the very same approach in the first sunset review as well. The domestic industry had challenged the decision of the Designated Authority on this account before the CESTAT. CESTAT was, however, pleased to dismiss the appeal upholding the decision of the Designated Authority. It is thus evident that in the present investigations as well previous sunset review, barring dispute to the adjustment made, the domestic industry on its own, has provided no evidence whatsoever to establish that the price adjustment granted is no longer necessary. On the contrary, the domestic industry itself considers that the quality of Chinese electrodes is inferior (thus leading to higher consumption). At the same time, the Chinese responding producer has provided documentary evidence to support their claim in the previous sunset as also current sunset review. Thus, in a situation where the domestic industry has failed to establish that the alleged difference between imported and domestic product no longer continues and the Chinese producers have provided third party evidence to establish that the price adjustments continues to be valid, the Authority considers it appropriate to continue with the price adjustment earlier

granted. On the issue of confidentiality granted to the evidence before the Authority about the quality aspect and consequent 20% adjustment, the Authority holds this document as confidential for which a non-confidential version is not possible and is not required to be divulged to the interested parties.

e. The Authority holds that since adjusted landed price of imports made during the investigation period were at almost the same level as non injurious price of the domestic industry at the same level of quality and since the same establishes no likelihood of injury to the domestic industry in case of revocation of anti dumping duties, non availability of the information on third countries exports of the exporters is not relevant. Further, as regards third country exports to be considered for likelihood analysis, this has adequately been addressed in the disclosure statement and the Authority has confirmed the adequacy of the data in terms of volume as well to be reliable to analyse the future behaviour of the imports into India and therefore there is no need to revisit this issue.

f-h. The argument itself establishes that the product under consideration in the two investigations is not identical. The domestic industry reiterates its arguments on likelihood based on anti dumping duties imposed on USA. Even when the product scope in the present findings and US findings is not identical, in any case, given that the adjusted landed price of import from China is almost at the same level as non injurious price of the domestic industry at the same level of quality, the selling price of the domestic industry is higher than non injurious price and price underselling is insignificant, no likelihood of injury because of imposition of duty by USA is established.

i. The Authority holds that export sales of the domestic industry have grown far more than domestic sales, which clearly establishes that the domestic industry is focusing on export market. Presuming the product involved in the present case and US case is overlapping, imposition of anti dumping duties on exports from China might provide additional export market opportunities to the domestic industry.

j. Same as at "a" above.

k. While appreciating that the inventory has increased, given that selling price of the domestic industry is higher than non-injurious price, it is evident that the domestic industry has option of reducing its stock levels by resorting to price reduction up to the level of non-injurious price. It, however, appears that the increase in inventory is more on account of export volumes.

l. The 20% price adjustment made for the purpose of price underselling and consequent injury margin is consistent with the rules and the previous two determinations, the domestic industry itself has considered that quality of Chinese product is poor, thus leading to higher consumption of Chinese product. This factor is therefore to be accounted for while determining the injury margin by adding this 20% to the landed price of imports for comparison with NIP, as has been followed in the previous SSR investigation. Further the impact of price undercutting cannot be determined because imports of subject goods from China PR are of inferior quality and this is in consistence with the procedure followed and recorded in the Final Findings of Previous SSR investigation.

m. Price suppression exists in a situation where the increase in the selling price of domestic industry is lower than the increase in the cost of production. However, the fact is that the domestic industry realizing more than the non-injurious price clearly establishes that the domestic industry prices are not suppressed.

n-q. The argument is factually incorrect. It is found that the domestic industry has already realized a price higher than the non-injurious price. Regarding credit adjustment on bi-product sale, UHP- a non-PUC product is produced from imported calcined coke which costs more than double the domestically procured coke used for manufacture of PUC and rejections of

UHP are sold as HPG i.e. PUC. Therefore the generation of bi-products is essentially from PUC and not from non-PUC. Further the scrap/wastage/bi-product sale has been considered on the basis of Formats C-I and C-II duly certified by V. Mattha & Co., Chartered Accountants on 16.1.2009. Further while it is true that the return on investment, cash flow, profits and market share have declined during the current period, compared to base injury period, the fact that the non-injurious price determined is higher than selling prices of the domestic industry at the same level of quality clearly establishes that such decline is not material. As regards market share, the domestic industry had an option of selling at a lower price and maintaining its market share given that landed price of imports was more or less the same as non-injurious price and selling price of the domestic industry was much higher than NIP.

FINAL FINDINGS:

87. Having regard to the contentions raised, information provided and submissions made by the interested parties including those furnished in the form of comments to the disclosure statement, and having considered all these submissions and facts available before the Authority through the submission of interested parties or otherwise as recorded in the above findings or those which may not have been recorded in the above findings but have been adequately addressed and on the basis of the above analysis of the state of current and likely dumping and injury and likelihood of continuation or recurrence of dumping and injury, the Authority concludes that:

- i) The subject goods are entering the Indian market at dumped prices and dumping margins of the subject goods imported from China PR are above de-minimis.
- ii) The subject goods entering the Indian market, though at dumped prices do not cause any injury to the domestic industry and domestic industry has been selling the PUC in the domestic market at prices higher than the NIP.
- iii) The subject goods, in the event of revocation of ADD, are likely to enter the Indian market at the prevailing dumped prices and are therefore unlikely to cause injury to the domestic industry.

88. In view of the Above the Designated Authority considers it appropriate to recommend discontinuation of Anti-Dumping Duty already in place in respect of 'Normal Power Grade (NPG) Graphite Electrodes, including its variant High Power Grade (HPG) Electrodes of diameters from 8" up to and including 24" and classified under Customs sub-heading no. 85.45 of Chapter 85 of the Customs Tariff Act, 1975 and ITC (HS) Codes 85451901 and 85451101, notified vide Notification No. 101/2003- Customs dated 7th July, 2003 and subsequently extended up to 6th July 2009 vide notification No.81/2008 dated 27th June 2008 in terms of Section 9 (A) (5) of the Act.

89. An appeal against the orders of the Central Government that may arise out of this recommendation shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

R. Gopalan
Designated Authority