

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

NOTIFICATION

NEW DELHI, the January, 2003

FINAL FINDINGS

Sub: Anti-dumping investigation concerning imports of Graphite Electrodes-UHP grade (of diameters upto and including 24") originating in or exported from Poland and Brazil – Final Findings.

No.60/1/2001-DGAD - Having regard to the Customs Tariff Act 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof:

A. PROCEDURE

1. The procedure described below has been followed with regard to the investigation:
 - i. The Designated Authority (hereinafter also referred to as Authority), under the above Rules, received a written application from M/s HEG Limited, Noida and M/s Carbon Everflow Ltd., Nashik (hereinafter referred to as petitioners) on behalf of the domestic industry, alleging dumping of Graphite Electrodes of Ultra High Power(UHP) grade (of diameters upto and including 24''') (hereinafter also referred to as subject goods) originating in or exported from Poland and Brazil (hereinafter referred to as subject countries).
 - ii. Preliminary scrutiny of the application filed by the petitioner revealed certain deficiencies, which were subsequently rectified by the petitioner. The petition was, therefore, considered as properly documented.
 - iii. The Authority on the basis of sufficient evidence submitted by the petitioner decided to initiate the investigation against imports of the subject goods from the subject countries. The Authority notified the Embassies of Poland and Brazil in New Delhi about the receipt of dumping allegation before proceeding to initiate the investigation in accordance with sub-Rule 5(5) of the Rules.

- iv. The Authority issued a public notice dated 29.1.2002 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the subject goods classified under Chapter 85 and Custom Head 85.45 of the Customs Tariff Act, 1975 and ITC/HS classification 85451101, 85451109, 85451901 and 85451909 originating in or exported from Poland and Brazil.
- v. The Authority notified preliminary finding dated 8.5.2002 and forwarded a copy of the preliminary findings to the following interested parties, who were requested to furnish their views, if any, on the preliminary findings within forty days of the date of the letter:-

IMPORTERS/USERS

1. M/s Mukand Ltd., Thane
Thane Belapur Rod
Dighe, P.O. Kalwe
Distt. Thane-400605.
2. M/s Tata Iron & Steel Co. Ltd., Jamshedpur
Jamshedpur-831001
3. M/s Ispat Industries Ltd., Raigad
Geetapuram
Dolvi, Taluka-Pen
4. M/s Essar Steel Ltd., Surat
(HRC Plant)
Hazir-394 270
Dist. Surat (Gujarat)
5. M/s Sunflag Iron & Steel Co. Ltd., Bhandara
Bhandara Road
Bhandara-441905
6. M/s Lloyds Steel Inds. Ltd., Wardha
Lloyds Nagar
Bhugaon, Wardha-442001
7. M/s Indian Seamless Steels & Alloys, Pune
174, Dhole Patil Road
Pune-411 001
8. M/s Ispat Profile Ltd., Pune
Sanaswadi
Taluka-Shirur
Dist. Pune-412 208

9. M/s Steel Authority of India Ltd., Durgapur
Alloy Steel Plant
Durgapur

EXPORTERS

Poland

1. M/s SGL Carbon, Poland
Wegierska Str. 188, P.O. Box 152
330300 Nowy Sacz

Brazil

2. M/s UCAR Carbon S.A, Brazil
Rua Raul Pompeia
14402, Andar
Sao Paulo, SP CEP 05015, BRAZIL

- vi. The Authority also forwarded a copy of the preliminary findings to the Embassy of the subject countries in New Delhi with a request that the exporters of subject goods and other interested parties may be advised to furnish their views on the preliminary findings within forty days of the date of the letter;
- vii. The Authority provided an opportunity to all interested parties to present their views orally on 29.7.2002. All parties presenting views were requested to file written submissions of the views expressed. The parties were advised to collect copies of the views expressed by the opposing parties and offer rebuttals, if any;
- viii. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to known interested parties on 8.11.2002 and comments received on the same have also been duly considered in these findings.
- ix. The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties as per Rule 6(7);
- x. Request was made to the Central Board of Excise and Customs (CBEC) to arrange details of imports of subject goods made in India during the past three years, including the period of investigation;
- xi. Arguments raised by the interested parties before announcing the preliminary findings, which have been brought out in the preliminary findings notified have not been repeated herein for sake of brevity. However, the arguments, if any,

raised by the interested parties subsequently have been appropriately dealt in these findings;

- xii. Cost investigation was also conducted 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 petitioner.
- xiii. The Authority verified the information provided by the petitioners to the extent considered necessary.
- xiv. ****in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- xv. Investigation was carried out for the period starting from 1st April, 2000 to 31st March, 2001 i.e. the period of investigation (POI).

B . VIEWS OF PETITIONERS, EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES

A. Petitioner's Views

1. STANDING OF THE PETITIONER, PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

- i. The petitioners had filed the application for imposition of anti-dumping duties on the import of Ultra High Power(UHP) grade Graphite Electrodes used in Electric Arc Furnaces.
- ii. The graphite electrodes are used in arc furnaces as current carrying conductors and are required to carry a very high rate of power feed. Accordingly, they are required to have properties capable of taking such high current and power feeds. Electric arc furnaces are used for melting of steel by passing electric current into the charge fed into furnaces. This method of steel making is also known as secondary steel making.
- iii. The sizes of electrodes are described in terms of the diameter of electrodes.

The electrodes are cylindrical shaped with the diameter as the most relevant measure of the size. Thus the sizes of electrodes covered are from 16" upto and including 30" dia (16" dia, 18", 20" dia, 22" dia, 24" dia, 28" dia and 30" dia) . These form a full range as there are no standard requirement of 17", 19", 21" etc. The sizes in metric system are to be noted as 400mm, 450mm, 500mm, 550mm, 600mm, 700mm and 750mm(400mm upto and including 750mm).

- iv. The domestic industry during the period of investigation have not been manufacturing and supply 28"/30" dia and accordingly for the purpose of this application the relevant sizes for imported electrodes are narrowed down, i.e,

from 16" upto and including 24" dia (400mm upto and including 600mm dia). UHP grade refers to graphite electrodes used in arc furnaces of UHP rating which is typically considered as more than 500 KVA per MT of capacity. This means the rate of power fed into the arc furnace per MT of capacity of the furnace will be equal to or greater than 500 KVA.

2. STANDING & DOMESTIC INDUSTRY

- i. The petitioners account for 67.20% of the production of the product under consideration in the country and, therefore, have the standing to file the petition on behalf of the domestic industry. Since they also represent the major proportion of the production, they qualify as 'domestic industry' in terms of Rule 2(b) of the Anti-Dumping Rules.

In response to the disclosure statement, no comments have been made on product under consideration, like article and standing of the Domestic Industry.

3. NORMAL VALUE, EXPORT PRICE AND DUMPING

DUMPING

- i. Extensive evidence to demonstrate that graphite electrodes are being imported from the subject countries at dumped prices has been submitted. In case of Brazil, we had given the export prices to Argentina, Columbia, Venezuela etc. as a reasonable basis of arriving at the normal value. It was suggested that even if we take the lowest of the prices to the said three countries, namely Argentina as an appropriate third country, the Normal Value works out to US\$****. This price was adjusted by an amount of \$**** ocean freight and \$**** for the inland freight and port handling charges to arrive at an ex-factory Normal Value of US\$****.
- ii. In case of Poland, the cost of production from the trade publication titled 'Carbon Data Bank' for the concerned product in Japan during 2000-2001 has been used. The cost of production in Poland had been estimated on the basis of the consumption parameters obtained from Carbon Data Bank for Japan. International prices of key inputs such as Needle Coke and Pitch had been taken into account while Electric Power cost had been taken at the prevailing rates in Europe. Fixed costs, overheads, administration and selling expenses etc. were taken from the overall balance sheet(for the year 2000) of SGL Carbon group as a whole based on the expenses under the respective heads.
- iii. The cost of production including depreciation and a profit of ****% was estimated at US\$****. Consumption norms of the domestic industry for

comparison purposes in the confidential version of the petition has also been provided.

- iv. The export prices were arrived at after taking the CIF prices which were adjusted for ocean freight, insurance, inland freight and port charges at the point of origin to arrive at the adjusted export prices.
- v. Since none of the exporters has cooperated with the Designated Authority, the estimates submitted by us based on extensive evidence should form the basis for arriving at the dumping margins.

In response to the disclosure statement, no comments have been made.

4. INJURY, CAUSAL LINK AND OTHER ISSUES

- i. There is no comment on the injury analysis done by the Designated Authority and as such it is required that the Authority may confirm the preliminary findings on injury as well as causal link at the earliest. The domestic industry also submitted as a part of their petition that injury assessment may be done on a cumulative basis as the margins of dumping from Brazil and Poland are much more than the 2% de minimis limit expressed as % of export price. Also the volumes of imports from each of the country are more than de minimis.
- ii. The case of anti dumping investigation on graphite electrodes has to be appreciated in the light of its background, market conditions and the special features of supply and procurement management.
- iii. The petitioners would also like to point out that the purchasing pattern for graphite electrodes has many distinct features. Graphite Electrodes have relatively long manufacturing cycle from raw material stage to finished stage of approximately 10 to 12 weeks. The usual pattern for the users of graphite electrodes is to place purchase orders for their requirement of 6 months to 1 years period with deferred deliveries based on their monthly consumption quantities. As a consequence, the customers expect the prices to remain firm for the order period of 6-12 months or for the ordered quantity during the period, whichever is earlier. The graphite manufacturers in India also usually adopt the above pattern and offer firm prices to its customers for a period of 6-12 months or for the ordered quantity to be delivered during the period, whichever is earlier. Few sample enquiries of some of our important users in India for the period of investigation and the previous year have already been supplied to the Authority as confidential annexures to the application, which would highlight this point. Similarly, a few offers against above enquiries showing the validity of prices and the purchase orders from the users indicating their acceptance were also attached as confidential annexures. The competitive rate expected by the customers is determined on the basis of the offers made by all the available

sources including exports from other countries and their landed values at the time of contract.

- iv. It is also submitted that for the determination of the price effect in a case like this, all comparisons should be made with reference to the landed values when the material terms of sale are finalized and not by the invoice price on the date of actual physical delivery. The said position is also borne out from jurisprudence on the subject and also the following provisions of the WTO Agreement on Anti Dumping:

Footnote 8: "Normally, the date of sale would be the date of contract, purchase order, order confirmation, or invoice whichever establishes the material terms of sale".

In response to the disclosure statement, Domestic Industry had desired detailed working of Non-Injurious Price for them.

B. Importer's views

No specific submissions have been made by the importers in response to the disclosure statement.

C. Exporter's views

- a) M/s UCAR, Brazil

1. STANDING OF THE PETITIONER, PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

- i. According to the preliminary findings (item 5.1), "the product under consideration for the purpose of the investigation is proposed to be 'Graphite Electrodes of UHP grade for diameters up to and including 24". Furthermore, it is explained that "the graphite electrodes are used in arc furnaces as current carrying conductors and are required to have properties capable for taking such high current and power feeds".
- ii. The foregoing notwithstanding, the preliminary findings Report does not address the fact that there are two sorts of arc furnaces, depending on the process stage of the steel manufacturing. One of such furnaces is the so-called "melting furnace", which is used for the melting of scrap. This furnace requires higher electric current passing through the graphite electrodes, thus the graphite electrodes shall have a higher quality. On the other hand, there are the ladle furnaces, in which melted steel is refined as the second step of the manufacturing process to define a specific steel grade. The electric current passing through the graphite electrodes inside the ladle furnaces are of a lower

level and, consequently, those products require a lower grade process technology and as of less demanding application. Note that such difference between the graphite electrodes depends on the furnace application used and the size of the graphite electrode.

In response to the disclosure statement, no submissions have been made.

2. NORMAL VALUE, EXPORT PRICE AND DUMPING

- i. The price of the graphite electrodes vary substantially depending of the quality and application of the same. Thus, in analysing the prices for the establishing where there were exports from UCAR BRASIL into India at dumped prices, the Designated Authority should have taken into consideration the prices of the same products, i.e. prices of graphite electrodes for melting furnaces exported into India should be compared with prices of graphite electrodes for melting furnaces exported into Argentina, whilst prices of graphite electrodes for ladle furnaces exported into India should be compared to prices of graphite electrodes for ladle furnaces exported into India.
- ii. In view of the foregoing, it should be pointed out that the definition of the product given by the preliminary findings report is in no way adequate for the establishing of the existence of export at dumped prices of graphite electrodes, for the Designated Authority, in its preliminary findings Report is comparing prices with substantial differences-since one of the types of Graphite Electrodes (for melting furnaces) has higher prices than the other type of graphite electrode(for ladle furnaces). Thus the conclusions of Section H of the preliminary findings report should be disregard and a new analysis, based on correct assumptions should be made.

In response to the disclosure statement, no submissions have been made:-

3. INJURY, CAUSAL LINK AND OTHER ISSUES

- i. It is informed in the preliminary findings report that the "domestic industry has not lost the market share from 57.01% to 56.88%" if the period immediately prior to the period under investigation is compared with the period under investigation. Thus according to the report, the loss of market share of domestic industry is less than 0.15%.

b) SGL Carbon Group, Poland.

1. NORMAL VALUE, EXPORT PRICE AND DUMPING

- i. The answer to such preliminary findings is not possible, because all essential figures are deleted. The prices of our exports from Poland to Europe, Africa, Middle East and Asia are nearly the same as our prices we invoiced to Indian customers as provided by us earlier. Therefore any anti dumping duty would have a negative effect to all users of Graphite Electrodes in India because they would have to pay more for the electrodes than their competitors outside India.

In response to the disclosure statement, no submissions have been made:-

c) Embassy of the Federative Republic of Brazil

1. NORMAL VALUE, EXPORT PRICE AND DUMPING

- i. With reference to the preliminary notification of injury issued by the Ministry of Commerce and Industry, dated May 8th 2002, the Government of Brazil, as an interested party in the investigation, would like to assert that the non-confidential version of the afore-mentioned notification does not enable the parties to fully understand the case against them, thus hindering their right of defence.
- ii. As per Article 6.5 of WTO, it is fundamental that, in case the confidential character of the information is justified, that a sufficiently detailed non-confidential summary be provided so as to enable the understanding of the substance of the confidential information submitted.

In response to the disclosure statement, no submissions have been made:

2. INJURY, CAUSAL LINK AND OTHER ISSUES

It is the understanding of the Brazilian part that such a summary was not enclosed with the preliminary notification of injury or appropriate consideration.

In response to the disclosure statement, no submissions have been made.

C. EXAMINATION BY AUTHORITY

The foregoing submissions made by the petitioner, to the extent these are relevant as per Rules and have a bearing upon the case, have been examined, considered and dealt with at appropriate places in these findings.

1. PRODUCT UNDER CONSIDERATION

The Authority notes that there have been no submissions regarding product under consideration. The fact that M/s UCAR, Brazil had indicated that there are difference in quality of Graphite Electrode used for melting furnaces and ladle furnaces, however, no specific difference was evidenced in terms of price or substitutability. The Authority in view of no significant submissions made on the product under consideration confirms the product under consideration as indicated in Para E (5.1) of the preliminary findings dated 8th May, 2002. The Authority reiterates the product under consideration as under:-

"The product under consideration is Graphite Electrodes of UHP grade of diameters upto and including 24". These are used in arc furnaces as current carrying conductors and are required to carry a very high rate of power feed. Accordingly, there are required to have properties capable for taking such high current and power feeds.

"Electric arc furnances are used for melting of steel by passing electric current into the charge fed into the furnaces. The method of steel making is also known as secondary steel making."

Technical specifications of the subject goods are defined in terms of typical properties of Ultra High Power (UHP)/Normal Power Grade (NPG) Graphite Electrodes are indicated below:-

Specifications	Unit	NPG/High Power Grade	UHP
Bulk Density	Gm/cc	1.53-1.67	1.65-1.76
Electrical Resistivity*	Micro Ohm Mtr.	7.0-10.0	4.5-6.0
Flexural Strength	MT.cm2	65-140	90-160
Youngs Modulus	MT/mm2	700-1200	800-1400
CTE	X10-6 /O C	0.8-2.2	0.4-1.20

Electrical resistivity is the distinguishing characteristics while comparing the UHP with the NPG (Normal Power Grade) electrodes including HPG (High Power Grade) variation as per the above table.

The product is classified under Chapter 85.45 of the Customs Tariff Act, 1975 and the eight digit under which the product gets cleared are 85451101, 85451109, 85451901 and 85451909.

2. LIKE ARTICLE

The Authority notes that there has been no arguments about the like article produced by the Domestic Industry having characteristics closely resembling the imported subject goods and that both are commercially and technically substitutable. Even

though M/s UCAR, Brazil have mentioned that the goods exported by them go for usages in ladle furnaces on account of quality considerations, there are no submissions on non-interchangeability of the goods exported by them and those produced by the Domestic Industry. The Authority therefore confirms the preliminary findings of Para F (6.1) on Like Article and holds that the subject goods produced by the Domestic Industry are like article to the goods exported from the subject countries within the meaning of Rule 2(d).

3. DOMESTIC INDUSTRY

The Authority notes that there are no submissions regarding standing of the petitioner and the Domestic Industry as defined in the preliminary findings of Para G(7.1) on Domestic Industry and reiterates that M/s HEG Limited, Noida and M/s Carbon Everflow Ltd., Nashik represent the Domestic Industry as they account for more than 67% of the domestic production of the subject goods during the period of investigation. Thus, M/s HEG Limited and M/s Carbon Everflow Limited., therefore, have the standing to file the petition as per Rule 5(3) (a) and (b) and also represent the Domestic Industry as per Rule 2(b) of Anti Dumping Rules.

4. NORMAL VALUE & EXPORT PRICE

Under Section 9A(1)(c), normal value in relation to an article means:

- i. the comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or
- ii. when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either:-
 - a. comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or
 - b. the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section(6);

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped through the country of export or such article is not produced in the country of export or there is no

comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

The normal value and ex-factory export price determination is illustrated below.

A. UCAR, BRAZIL

1. Normal Value

The Authority recalls its preliminary findings dated 8th May, 2002 on Normal Value and Export Price from Para 8.5 to 8.10 . The Authority notes that in the disclosure statement dated 8th November, 2002, the Authority had acknowledged the submissions made by M/s UCAR, Brazil and had noted that even though the domestic selling prices have been provided by M/s UCAR, Brazil, in view of no cost of production details having been provided and that it not being in structured questionnaire as sought by the Authority, the domestic selling prices indicated by the exporter cannot be held in the ordinary course of trade. The Authority notes that even these prices would also indicate dumping. The Authority has relied upon the best facts available with regard to the Normal Value.

The Authority in this regard recalls Para 8.8 and 8.9 of the preliminary findings and confirms the methodology on Normal Value determination as indicated herein. The Normal Value determination for M/s UCAR, Brazil and all other exporters/producers of Brazil is computed as under.

The petitioners have provided the export price of the subject goods to Argentina, Columbia and Venezuela etc. from Brazil based on the information from Carbon Data Bank. It is noticed that the average CIF export price from Brazil to Columbia is ***/MT, whereas the CIF prices to Venezuela and Argentina are ***/MT and ***/MT respectively. Considering the lowest of the prices to the said three countries, namely, Argentina as an appropriate third country, the Normal Value works out to ***/MT. The price has been adjusted for ocean freight, inland freight, insurance and port handling charges to an extent of ***, ***, *** and ***/MT to arrive at an ex-factory third country price viz. Normal Value .

The Authority has therefore referenced the Normal Value as ***/MT.

As stated above, under these circumstances, Normal Value as per the rules is determined on the basis of 'facts available' in terms of Rule 6(8) of the Anti Dumping Rules. Therefore, as per the information provided by the petitioner, on the basis of the export of the subject goods to an appropriate third country, namely, Argentina has

been taken as the basis for working out the Normal Value of the product which works out as *** \$/MT.

2. Export Price

The Authority in this regard recalls Para 8.10 of the preliminary findings and confirms the methodology as indicated in Para 8.10 of the preliminary findings. The Export Price determination for M/s UCAR, Brazil and all other exporters/producers of Brazil is computed as under.

The weighted average CIF price per MT of exports of the subject goods effected during the period of investigation by all the exporters of Brazil works out as ***\$/MT. Adjustments on account of inland freight, ocean freight, insurance and port expenses to an extent of ***, ***, *** and ***\$/MT respectively have been considered.

The Authority has therefore referenced the weighted average ex-factory export price as ***\$/MT.

B. SGL CARBON, POLAND

1. Normal Value

The Authority recalls the Normal Value methodology indicated in the preliminary findings Paras 8.11 to 8.17 dated 8th May, 2002. The Authority also notes that in the disclosure statement dated 8th November, 2002, it had held that M/s SGL Carbon have provided their export price to countries other than India but have not filed any information in the structured questionnaire as was required to be done. The Authority also notes that in response to disclosure statement also, no comments have been made by M/s SGL Carbon. The Authority in view of this confirms the methodology on normal value and export price as evaluated during the preliminary findings as under.

The Authority notes that the petitioners have estimated the cost of production for the concerned product in Poland by taking the cost of production in Japan during 2000-2001 obtained from the trade publication titled 'Carbon Data Bank'. The prices of key inputs to India such as Needle Coke and Pitch have been taken from the import prices to India from Europe while the cost of Electric Power has been taken at the prevailing rates in Europe. Fixed costs, overheads, administration and selling expenses etc. have been taken from the overall balance sheet for the year 2000 of SGL Carbon group as a whole based on the expenses under the respective heads. The cost of production including depreciation and a profit of ***% comes to ***\$/MT. Thus, Normal Value therefore has been estimated at *** \$/MT.

As stated above, under the circumstances, Normal Value as per the Rules is determined on the basis of 'facts available' in terms of Rule 6(8) of the Anti Dumping Rules. Therefore, as per the information provided by the petitioner on the basis of the estimated cost of production of the subject goods has been taken as the basis for working out the Normal Value of the product which works out as *** \$/ MT in case of Poland.

Thus the Normal Value as worked out during the preliminary findings at ***\$/MT is confirmed.

2. Export Price

The weighted average CIF price of the subject goods during the Period of investigation for all exporters from Poland works out to *** \$/MT. Adjustments on ocean freight, inland freight, insurance and port expenses to an extent of ***, ***, *** and ***\$/MT respectively have been considered.

The Authority has therefore referenced the ex-factory export price as ***\$/MT.

5. DUMPING-Comparison of Normal Value & Export Price

The rules relating to comparison provides as follows:

"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-works level, and in respect of sales made at as nearly possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are demonstrated to affect price comparability."

The Authority has carried out weighted average normal value comparison with the weighted average ex-factory export price in Period of Investigation, for evaluation of the dumping margin for all the exporters/producers of the subject countries.

The dumping margin for all exporter/producers comes as under:

Exporter	Normal value(NV) \$/MT	Export Price(EP) \$/MT	Dumping margin as % of EP
Brazil			

All exporters/Producers including M/s UCAR	****	****	49.56
Poland			
All exporters/producers including M/s SGL Carbon	****	****	36.22

The above dumping margins are above the the de-minimis level.

6. INJURY

The relevant Rules pertaining to injury determination include the following.

Under Rule 11 supra, Annexure-II, when a finding of injury is arrived at, such finding shall involve determination of the injury to the domestic industry, ".....taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...." In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree".

Annexure II(iii) under Rule 11 supra further provides that in case where imports of a product from more than one country are being simultaneously subjected to anti dumping investigation, the Designated Authority will cumulatively assess the effect of such imports, only when it determines that the margin of dumping established in relation to the imports from each country is more than two per cent expressed as a percentage of export price and the volume of the imports from each country is three per cent of the imports of the like article or where the export of the individual countries is less than three per cent, the imports cumulatively account for more than sever per cent of the imports of the like article, and cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic article.

Analysis of injury to the Domestic Industry has been done on the basis of the information available on record. For the examination of the impact of imports on the Domestic Industry in India, the Authority has considered such further indices having a bearing on the state of the industry as sales volume, changes in the market share, output productivity and capacity utilisation, sales price, profitability, return on investment (Capital employed) etc. in accordance with Annexure II(iv) of the rules supra.

The Authority notes that the margin of dumping and quantum of imports from the subject countries are more than the limits prescribed above. The cumulative assessment of the effect of imports of the subject goods is appropriate in light of the conditions of competition between the imported subject goods and the conditions of competition between the imported subject goods and the like domestic article.

The Authority recalls its observations on the various economic parameters in the case of domestic producers who had supported the petition. The economic parameters pertaining to these producers are as under :-

	1998-1999	1999-2000	2000-2001(POI)
Production (MT)	26963	29536	35063
Domestic Sales (MT)	2786	3615	3553
Capacity (MT)	34000	34000	34000
Capacity Utilisation (%)	79.3	86.87	103.13
Total imports from subject countries (MT)	1065	1173	1383.51
Total imports (MT)	3335	2500.08	2434.03
Demand (MT)	6308	6341	6249
Market share of subject countries as % of total imports (%)	31.9	46.9	56.9
Market share of subject countries in demand (%)	16.9	18.5	22.1
Market share of Domestic Industry in demand (%)	44.17	57.01	56.86
Net Sales Realisation (Rs/MT)	***	***	***
Profitability(%)	***	***	***

Noting the above parameters, the Authority observes the following:-

Sales Volume and Value

The Authority notes that the Domestic Industry has been able to improve its sales volume after the imposition of anti dumping duties on imports from Germany, France, Italy, Spain, Austria, Belgium and USA. The Authority notes that though the sales volume has gone up but the Domestic Industry has not been able to increase its profitability to a reasonable level despite all cost-cutting exercise undertaken by them over the years. It is also noted that the return on investment is low and un-remunerative.

Change in Market Share of the imports from the subject countries

The Authority notes that the market share of the imports from the subject countries as a percent of the total imports has gone up from 32% in the year 1998-99 to about 47% in 1999-2000 and to 57% in the period of investigation. Thus, the market share as a proportion to the overall imports is significantly high during this entire period on account of the dumped prices and aggressive pricing policies of the exporters from the

subject countries. The high market share of the dumped imports in relation to the total imports along with the increasing absolute volumes demonstrate the injury being caused to the Domestic Industry

The Authority notes that the market share of imports from the subject countries in relation to the total demand in the country has also gone up significantly from 16.88% in 1998-1999 to 18.50% in 1999-2000 and then to 22.14% during the period of investigation indicating that the Domestic Industry has suffered directly on account of loss of market share during the last three years to the dumped imports.

Market Share of Domestic Industry

The Authority notes that while the exporters from the subject countries have increased their market share from 18.50% in 1999-2000 to 22.14% in 2000-2001, the Domestic Industry has lost the market share from 57.01% to 56.86% over the same period.

Production & Capacity Utilisation

The Authority notes that the capacity of graphite electrodes is not divisible between NPG and the UHP grades. Therefore, the capacity utilisation analysis based on only the production of UHP grade will not give any meaningful results. Therefore for an appropriate analysis, the petitioners have combined the production figures of both NPG as well as the UHP grades to arrive at the capacity utilisation figures. It is noted that the Domestic Industry has been successful in improving its capacity utilisation considerably by developing new geographical markets for exports of its electrodes. The Authority also notes their submission that despite consistent improvements in the levels of capacity utilisation and other cost-cutting exercise, they have not been able to improve their profitability due to the continuous dumping from the subject countries.

Profitability

The Authority notes that between 1997 and the year 2000, Indian industry has taken various steps to improve the productivity, capacity utilisation etc. and to reduce cost of manufacture besides penetrating new geographical market for diversifying exports. However, they have not been able to improve profitability.

Return on Investment

The Authority notes that the return on investment during the period of investigation has been as low as ***% which has actually come down from the previous year's figure of ***%.

Price Depression

The Authority notes that the graphite electrodes market has its peculiarities in terms of determination of prices offered to the customers. There are conditions of competition amongst the domestic producers as well as between the domestic producers and the exporters and the prices are invariably determined with reference to the prices (landed value inclusive of duty) of the imported products.

The Authority notes the petitioners' claim that while there could be some differences between two exporters price offers, what is relevant for comparison is the lowest of prices known to be offered by the exporters. The Authority also notes that the prices of the Domestic Industry get determined not by the invoice price on the date of actual import but by the prices offered by the exporters on the date on which the material terms and conditions of the contract/sale are finalized. The result is that the Domestic Industry is not in a position to recover even the prices offered by the exporters if seen over any specified period. Continued price depression due to dumped imports of subject goods at low prices has thus been causing material injury to the Domestic Industry.

Other Factors

The Authority notes that the petitioners have not approached the market in the last few years with the objective of raising any capital. The Authority notes the petitioners' claim that considering the extremely low and un-remunerative return on investment, they are not in a position to even plan any further expansion on the basis of market capital. Their cash flow will also come under pressure due to low return on investment. The Authority also notes the petitioners' claim that employment and wages cannot be considered as a factor of injury to the Domestic Industry in view of the prevailing labour laws.

The Authority notes that the Domestic Industry has lost the full contract in respect of *** and part of the contract in the case of *** on account of the pricing pattern of the exporters.

7. CONCLUSION OF INJURY

- a. the quantum of imports from the subject countries has increased in absolute as well as in relative terms;
- b. the market share of the petitioner companies has gone down;
- c. the return on investment has been low, unremunerative and has come down as compared to the previous year;
- d. the Domestic Industry has been forced to operate at low profit margins;

- e. imports are significantly depressing the prices of the Domestic Industry;
- f. there is evidence of lost contracts.

The Authority therefore concludes that the Domestic Industry has suffered material injury on account of the dumped imports.

8. CAUSAL LINK

In establishing that the material injury to the Domestic Industry has been caused by the imports from the subject countries, the Authority holds that the increase in market share of imports from Poland and Brazil resulted in decline in the market share of the petitioner i.e Domestic Industry. These imports have significantly depressed the prices of the domestic product forcing the Domestic Industry to sell at un-remunerative prices. The material injury to the Domestic Industry has, therefore, been caused by the dumped imports from the subject countries.

On the basis of the fact available, it is observed that the imports of subject goods from other countries are below the de-minimis level during the period of investigation.

Demand has by and large been around 6300 MT in Period of Investigation and two years preceding Period of Investigation. Thus contraction of demand of subject goods is not apparent and also no technological development in the industry or any other such factor which could have resulted in injury to the Domestic Industry has been noticed or cited as a cause of injury to the Domestic Industry. Thus the material injury to the Domestic Industry has been on account of dumping of subject goods from the subject countries.

The Authority notes that it has been indicated by one of the interested parties that the information on injury parameters has not been disputed in the preliminary determination. The Authority keeping in view the Rule 7 of the Anti Dumping Rules, and the Rule 11 on injury determination, have indicated relevant details of injury determination in the final findings.

9. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

Keeping in view the fact that though the user industry of subject goods might get affected, the Authority holds that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country.

The Authority also recognises that though the imposition of anti-dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products, however, fair competition in the Indian market will not be reduced by these anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by the dumping practices and would prevent the decline of the domestic industry and help maintain availability of wider choice of the subject goods to the consumers. Imposition of anti-dumping measures would also not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers.

To ascertain the extent of anti dumping duty necessary to remove the injury to the Domestic Industry, the Authority relied upon reasonable selling price of the subject goods in India for the Domestic Industry which is a non-injurious selling price, by considering the optimum cost of production at optimum level of capacity utilisation by normating and benchmarking best utilisations norms on raw material, utilities and consumables for the Domestic Industry.

Since the Non-Injurious Price (NIP) has been worked out on normative basis, the injury, if any, to the Domestic Industry on account of other factors like inefficiencies in the production of Domestic Industry is nullified.

10. LANDED VALUE

The landed value of imports for the purpose shall be the assessable value as determined by the customs under Customs Tariff Act, 1962 and applicable level of custom duties except duties levied under Section 3, 3A, 8B, 9, 9A of the Customs Tariff Act, 1975.

D. CONCLUSIONS:

It is seen, after considering the foregoing that:

- a. The subject goods originating in or exported from Poland and Brazil have been exported to India below Normal Value, resulting in dumping;
- b. The Indian domestic industry has suffered material injury;
- c. Injury has been caused by imports of subject goods from the subject countries;
- d. It is considered necessary to imposed definitive anti-dumping duty on imports of subject goods originating in or exported from the subject countries.
- e. It was considered to recommend the amount of anti-dumping duty equal to the margin of dumping or lower so as to remove the injury to the domestic industry accrued on account of dumping. Accordingly, it is proposed that definitive anti

dumping duties equal to the difference between the amount of Column 3 of the Table below and the landed value of subject goods in \$/MT be imposed by the Central Government, on all imports of subject goods originating in or exported from subject countries under Chapter 85.45 of the Customs Tariff Act.

Sl. No.	Exporters/Producers	Amount (US\$/MT)
1.	Poland All producers/exporters from Poland including M/s SGL Carbon	2903.71
2.	Brazil All producers/exporters from Brazil including M/s UCAR	2903.71

- f. Subject to above, the Authority confirms the preliminary findings dated 8th May, 2002.
- g. An appeal against this order shall lie to the Customs, Excise, Gold (Control) Appellate Tribunal in accordance with the Act Supra.

L.V. SAPTHARISHI,
Designated Authority