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MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh 
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping
Duty New Shipper Review: Small Diameter Graphite Electrodes
from the People's Republic of China

SUMMARY

We are conducting a new shipper review of the antidumping duty order on small diameter graphite electrodes from the People's Republic of China (PRC), covering the period of review (POR) February 1, 2014, through August 31, 2014. As we explain below, we recommend preliminarily rescinding this new shipper review.

BACKGROUND

On February 26, 2009, we published in the *Federal Register* the antidumping duty order on small diameter graphite electrodes from the PRC.¹ Pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the Act), we received a timely request for a new shipper review of the order from Xuzhou Jianglong Carbon Products Co., Ltd. (Jianglong).² We determined that Jianglong's request for a new shipper review met the threshold requirements for initiation of a new shipper review and, therefore, on September 30, 2014, we initiated a new shipper review of Jianglong.³

¹ See *Antidumping Duty Order: Small Diameter Graphite Electrodes from the People's Republic of China*, 74 FR 8775 (February 26, 2009).

² See Jianglong's new shipper request dated August 29, 2014.

³ See *Small Diameter Graphite Electrodes From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 79 FR 58742 (September 30, 2014).



SCOPE OF THE ORDER

The merchandise covered by the order includes all small diameter graphite electrodes of any length, whether or not finished, of a kind used in furnaces, with a nominal or actual diameter of 400 millimeters (16 inches) or less, and whether or not attached to a graphite pin joining system or any other type of joining system or hardware. The merchandise covered by the order also includes graphite pin joining systems for small diameter graphite electrodes, of any length, whether or not finished, of a kind used in furnaces, and whether or not the graphite pin joining system is attached to, sold with, or sold separately from, the small diameter graphite electrode. Small diameter graphite electrodes and graphite pin joining systems for small diameter graphite electrodes are most commonly used in primary melting, ladle metallurgy, and specialty furnace applications in industries including foundries, smelters, and steel refining operations. Small diameter graphite electrodes and graphite pin joining systems for small diameter graphite electrodes that are subject to the order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 8545.11.0010⁴ and 3801.10.⁵ The HTSUS numbers are provided for convenience and customs purposes, but the written description of the scope is dispositive.

DISCUSSION OF THE METHODOLOGY

Statutory and Regulatory Framework

As outlined in section 751(a)(2)(B) of the Act and 19 CFR 351.214, the new shipper review provisions require that the entity making a request for a new shipper review must document and certify, among other things: (A) the date on which subject merchandise of the exporter or producer making the request was first entered, or withdrawn from warehouse, for consumption, or, if it cannot establish the date of first entry, the date on which the exporter or producer first shipped the merchandise for export to the United States; (B) the volume of that and subsequent shipments; and (C) the date of the first sale to an unaffiliated customer in the United States.⁶ If these requirements, among others, are met, the Department will initiate a new shipper review to determine whether the new shipper is eligible for an individual weighted-average dumping margin.⁷ Further, an exporter or producer must request a new shipper review within one year of the date of the first entry (or if appropriate, first shipment for export to the United States).⁸

Section 771(33) of the Act states that the following persons shall be considered to be affiliated or affiliated persons: (A) “members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants,” (B) “any officer or director of an organization and such organization,” (C) “partners,” (D) “employer and employee,” (E) “any

⁴ The scope described in the order refers to the HTSUS subheading 8545.11.0000. We note that, starting in 2010, imports of small diameter graphite electrodes are classified in the HTSUS under subheading 8545.11.0010 and imports of large diameter graphite electrodes are classified under subheading 8545.11.0020.

⁵ See *Small Diameter Graphite Electrodes From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 77 FR 47596 (August 9, 2012).

⁶ See 19 CFR 351.214(b)(2)(iv)(A)-(C).

⁷ See generally 19 CFR 351.214(b)(2).

⁸ See 19 CFR 351.214(c) (referring to the date in 19 CFR 351.214(b)(iv)(A)).

person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization,” (F) “two or more persons directly or indirectly controlling, controlled by, or under common control with, any person,” or (G) “any person who controls any other person and such other person.” Furthermore, section 771(33) of the Act states that “a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.”

Analysis

Based on Jianglong’s response to our initial and supplemental questionnaires, we preliminarily determine that Jianglong is affiliated with a company identified as Shanghai Carbon International Trade Co., Ltd. (Shanghai Carbon) through common ownership, as defined by Section 771(33) of the Act.⁹ In the 2012/2013 administrative review of this order, we received a timely request for an administrative review of Shanghai Carbon from the petitioners, SGL Carbon LLC and Superior Graphite Co.¹⁰ As a result, we initiated an administrative review of Shanghai Carbon’s entries. In our *Initiation Notice*,¹¹ we explained that there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.¹² We also notified all exporters and producers of the application process by which exporters and producers may obtain separate rate status in NME proceedings.¹³ In the *Initiation Notice*, we stated that if one of the companies for which the review was initiated “does not qualify for a separate rate, all other exporters of small diameter graphite electrodes from the PRC who have not qualified for a separate rate are deemed to be covered by the review as part of a single PRC entity of which the named exporters are a part.”¹⁴ Although the petitioners withdrew their request of Shanghai Carbon in the 2012/2013 administrative review, we indicated in that review that exporters for which requests for reviews were timely withdrawn

⁹ See Jianglong’s November 10, 2014, questionnaire response at A-12, and Jianglong’s January 21, 2015, supplemental questionnaire response at 2. See also memorandum entitled, “Small Diameter Graphite Electrodes from the People’s Republic of China – Affiliation of Xuzhou Jianglong Carbon Products Co., Ltd., and Shanghai Carbon International Trade Co., Ltd.” dated concurrently with this memorandum.

¹⁰ See *Small Diameter Graphite Electrodes from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission; 2012-2013*, 79 FR 15944 (Appendix III) (March 24, 2014) (*2012-2013 Preliminary Results*), unchanged in *Small Diameter Graphite Electrodes from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 57508 (September 25, 2014) (*2012-2013 Final Results*).

¹¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 19197 (March 29, 2013) (*Initiation Notice*).

¹² See *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China*, 71 FR 53079, 53082 (September 8, 2006); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People’s Republic of China*, 71 FR 29303, 29307 (May 22, 2006).

¹³ See *Initiation Notice*.

¹⁴ See *Initiation Notice*, 78 FR at 19208, fn 6.

that did not have a separate rate will remain part of the PRC-wide entity.¹⁵ We indicated further that Shanghai Carbon was one of thirteen companies, for which a review was requested, that did not demonstrate entitlement to a separate rate and did not make a claim of no shipments.¹⁶ Accordingly, we did not rescind the administrative review with respect to Shanghai Carbon, and determined that Shanghai Carbon was part of the PRC-wide entity and subject to the PRC-wide entity rate of 159.64 percent.¹⁷

We placed CBP entry data for the 2012/2013 administrative review period on the record of this review, which indicate that there were multiple entries under the PRC entity rate.¹⁸ As we indicate above, Shanghai Carbon did not provide us with a no shipment certification in the 2012/2013 administrative review. Thus, consistent with the presumption of government control, we preliminarily determine that the PRC-wide entity, which includes Shanghai Carbon, made shipments of subject merchandise, which were entered for consumption during the 2012/2013 POR.¹⁹

As indicated above, record evidence preliminarily demonstrates that Jianglong is affiliated with Shanghai Carbon, a company that in a prior administrative review was considered part of the PRC-wide entity, which had shipments during that POR. Accordingly, Jianglong is affiliated with a company which we can conclude entered subject merchandise into the United States more than one year prior to Jianglong's request for a new shipper review. Therefore, we preliminarily find that Jianglong failed to certify to its first U.S. shipment and its first U.S. sale, as required by 19 CFR 351.214(b)(2)(iv)(A) and (C), within the timeline required by 19 CFR 351.214(c).²⁰ Because record evidence shows that Jianglong did not report the shipments made by the PRC-wide entity (which included Shanghai Carbon) in the 2012/2013 review in its request for a new shipper review, we have preliminarily found that Jianglong's request does not satisfy the regulatory requirements for a new shipper review under 19 CFR 351.214. Thus, we preliminarily determine that it is appropriate to rescind the new shipper review for Jianglong on this basis.

¹⁵ See *2012-2013 Preliminary Results*, unchanged in *2012-2013 Final Results*. At the time of that administrative review, the Department's current policy regarding conditional review of the PRC-wide entity was not applicable. See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65970 (November 4, 2013) (applying the change in policy in antidumping administrative reviews for which the opportunity notice to request a review was published after December 3, 2013).

¹⁶ *Id.*

¹⁷ See *2012-2013 Preliminary Results* at Appendix III, unchanged in *2012-2013 Final Results*, 79 FR at 57511 (Appendix II).

¹⁸ See the April 9, 2015, memo to the file placing on the record CBP data documenting U.S. imports of the subject merchandise from the PRC during the 2012/2013 administrative review.

¹⁹ See *Welded Stainless Pressure Pipe From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*; 79 FR 806 (January 7, 2014), and accompanying Preliminary Decision Memorandum at 16.

²⁰ See *Glycine From the People's Republic of China: Preliminary Rescission of Antidumping Duty New Shipper Review; 2012*, 78 FR 52501 (August 23, 2013) and accompanying Preliminary Decision Memorandum at 3-4, unchanged in *Glycine From the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Review; 2012*, 78 FR 73837 (December 9, 2013) and accompanying Issues and Decision Memorandum at Comments 1-2.

We have not conducted a detailed *bona fides* analysis for these preliminary results due to our preliminary decision that Jianglong is not eligible for a new shipper review because it is affiliated with an entity that we find to have exported subject merchandise to the United States more than one year prior to Jianglong's request for a new shipper review.²¹

Recommendation

We recommend rescinding this new shipper review for these preliminary results.

✓

Agree

Disagree

Ronald K Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

May 21, 2015

(Date)

²¹ *Id.*