



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-929

Circumvention Inquiry

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~~Proprietary Document~~

Public Version

April 11, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Preliminary Analysis Memorandum for the Circumvention Inquiry
of the Antidumping Duty Order on Small Diameter Graphite
Electrodes from the People's Republic of China

SUMMARY:

In response to a request from SGL Carbon LLC and Superior Graphite Co. ("the petitioners"), the Department of Commerce (the "Department") initiated a circumvention inquiry of the antidumping duty order on small diameter graphite electrodes ("SDGEs") from the People's Republic of China ("PRC"), pursuant to section 781(c) and 781(d) of the Tariff Act of 1930, as amended (the "Act").¹ The merchandise subject to this inquiry is defined as graphite electrodes from the PRC, produced and/or exported by Sinosteel Jilin Carbon Co., Ltd. ("Sinosteel") or Jilin Carbon Import & Export Company (collectively, "Jilin Carbon"), Beijing Fangda Carbon-Tech Co., Ltd. and Fangda Carbon New Material Co., Ltd. (collectively, "Fangda Carbon"), and Fushun Jinly Petrochemical Carbon (Fushun Jinly), with diameters larger than 16 inches but less than 18 inches and otherwise meeting the description of the scope of the *Order*.²

Based on the information submitted by interested parties and the analysis below, we recommend that, pursuant to section 781(c) of the Act, the Department preliminarily find that graphite electrodes from the PRC, produced and/or exported by Jilin Carbon, with an actual or nominal diameter of 17 inches are within the scope of the *Order*. In addition, if we affirm our preliminary determination under section 781(c) of the Act, we recommend rescinding our inquiry under section 781(d) of the Act.

¹ See *Small Diameter Graphite Electrodes From the People's Republic of China: Initiation of Anticircumvention Inquiry*, 77 FR 37873 (June 25, 2012) ("Initiation Notice").

² See *Antidumping Duty Order: Small Diameter Graphite Electrodes from the People's Republic of China*, 74 FR 8775 (February 26, 2009) ("Order").



BACKGROUND:

On April 5, 2012, the petitioners alleged that certain Chinese producers of graphite electrodes are engaged in circumvention of the *Order* by exporting graphite electrodes with diameters larger than 16 inches but less than 18 inches to the United States.³ The petitioners requested that the Department initiate an anticircumvention proceeding, pursuant to section 781(c) of the Act and 19 CFR 351.225(i), covering minor alterations of subject merchandise, to determine whether the importation of graphite electrodes from the PRC with diameters larger than 16 inches but less than 18 inches constitutes circumvention of the *Order*. The petitioners additionally requested that the Department initiate an anticircumvention proceeding, pursuant to section 781(d) of the Act and 19 CFR 351.225(j), covering later-developed merchandise, to determine whether the importation of graphite electrodes from the PRC with diameters larger than 16 inches but less than 18 inches constitutes circumvention of the *Order*.

On June 25, 2012, the Department initiated an anticircumvention inquiry on imports of graphite electrodes from the PRC with diameters larger than 16 inches but less than 18 inches under section 781(c) of the Act.⁴ The producers subject to this inquiry included Jilin Carbon, Fangda Carbon, and Fushun Jinly.⁵ The Department also initiated an anticircumvention inquiry on imports of graphite electrodes from the PRC with diameters larger than 16 inches but less than 18 inches under section 781(d) of the Act.⁶

Subsequent to the initiation of this proceeding, the Department sent questionnaires to the companies listed in the *Initiation Notice* and to all companies identified in the Comprehensive Service List for Scope Inquiries as well as the Government of the PRC.⁷ We received responses from Fangda Carbon and Fushun Jinly stating that neither of these companies nor any of their affiliates produce or sell graphite electrodes with diameters larger than 16 inches but less than 18 inches.⁸ We received a response from Jilin Carbon on July 25, 2012,⁹ and supplemental questionnaire responses on October 17, 2012,¹⁰ December 3, 2012,¹¹ and December 28, 2012.¹² We did not receive responses from any other parties. We also sent supplemental questionnaires to the petitioners and received responses on October 17, 2012,¹³ and November 26, 2012.¹⁴

³ See Letter from the petitioners entitled, "Small Diameter Graphite Electrodes: Request for Scope/Circumvention Ruling," dated April 5, 2012 ("Initiation Request"). As indicated in the "Scope of the Order" section, below, the maximum diameter specified in the scope of the *Order* is 16 inches.

⁴ See *Initiation Notice*, 77 FR at 37873.

⁵ See *id.*, 77 FR at 37875-76.

⁶ See *id.*, 77 FR at 37873.

⁷ See Memorandum to the File, "Small Diameter Graphite Electrodes from the People's Republic of China: Anticircumvention Inquiry Questionnaire Distribution," dated June 20, 2012.

⁸ See joint letter from Fangda Carbon and Fushun Jinly dated June 28, 2012.

⁹ See Jilin Carbon's response dated July 25, 2012 (JQR).

¹⁰ See Jilin Carbon's supplemental response dated October 17, 2012 (JSQR).

¹¹ See Jilin Carbon's second supplemental response dated December 3, 2012 (J2SQR).

¹² See Jilin Carbon's third supplemental response dated December 27, 2012 (J3SQR).

¹³ See the petitioners' supplemental response dated October 17, 2012 (PSQR).

¹⁴ See the petitioners' second supplemental response dated November 26, 2012 (P2SQR).

Finally, Ceramark Technology, Inc. (“Ceramark”) identified itself as an importer of SDGEs from the PRC.¹⁵ We issued a questionnaire and supplemental questionnaires to Ceramark and received responses on August 3, 2012,¹⁶ October 17, 2012,¹⁷ November 30, 2012,¹⁸ and December 28, 2012.¹⁹

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”) subheading 8545.11.0010.²⁰ The HTSUS number is provided for convenience and customs purposes, but the written description of the scope is dispositive.

MERCHANDISE SUBJECT TO THE MINOR ALTERATIONS ANTIDUMPING CIRCUMVENTION INQUIRY:

The merchandise subject to this antidumping circumvention inquiry consists of graphite electrodes from the PRC, produced and/or exported by Jilin Carbon, Fangda Carbon, and Fushun Jinly, with diameters larger than 16 inches but less than 18 inches, and otherwise meeting the requirements of the scope of the *Order* as listed under the “Scope of the Order” section above. We have limited the application of our affirmative preliminary determination to graphite electrodes from the PRC, produced and/or exported by Jilin Carbon, with an actual or nominal diameter of 17 inches because record evidence shows that, among the producers and merchandise subject to this inquiry, Jilin Carbon produced and/or exported 17-inch diameter graphite electrodes to the United States,²¹ and we have no record evidence at this time supporting

¹⁵ See Ceramark’s letter dated June 28, 2012.

¹⁶ See Ceramark’s response dated August 3, 2012 (CQR).

¹⁷ See Ceramark’s supplemental response dated October 17, 2012 (CSQR).

¹⁸ See Ceramark’s second supplemental response dated November 30, 2012 (C2SQR).

¹⁹ See Ceramark’s third supplemental response dated December 21, 2012 (C3SQR).

²⁰ The scope described in the *Order* refers to the HTSUS subheading 8545.11.0000. The petitioners have informed the Department that, starting in 2010, imports of SDGEs are classified in the HTSUS under subheading 8545.11.0010 and imports of large diameter graphite electrodes are classified under subheading 8545.11.0020. See Initiation Request at 5.

²¹ See JQR at 1 and JSQR at 1.

a determination that any other producer in the PRC produces or exports graphite electrodes with diameters larger than 16 inches but less than 18 inches.

STATUTORY AND REGULATORY FRAMEWORK

The Act

Section 781(c) of the Act dealing with minor alterations of merchandise, states as follows:

(1) In general.

The class or kind of merchandise subject to—

- (A) an investigation under this title,
- (B) an antidumping duty order issued under section 736,
- (C) a finding issued under the Antidumping Act, 1921, or
- (D) a countervailing duty order issued under section 706 or section 303,

shall include articles altered in form or appearance in minor respects (including raw agricultural products that have undergone minor processing), whether or not included in the same tariff classification.

(2) Exception.

Paragraph (1) shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the investigation, order, or finding.

Department Regulations

Section 351.225(a) of the Department's regulations states as follows:

Issues may arise as to whether a particular product is included within the scope of an antidumping or countervailing duty order or a suspended investigation. Such issues can arise because the descriptions of subject merchandise contained in the Department's determinations must be written in general terms. At other times, a domestic interested party may allege that changes to an imported product or the place where the imported product is assembled constitutes circumvention under section 781 of the Act. When such issues arise, the Department conducts circumvention inquiries that clarify the scope of an order or suspended investigation with respect to particular products.

Section 351.225(i) of the Department's regulations states that, “under section 781(c) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order articles altered in form or appearance in minor respects.”

Case Precedent and the Criteria for Analysis

This circumvention inquiry involves graphite electrodes with diameters larger than 16 inches but less than 18 inches, as defined above. While the statute is silent regarding what factors to consider in determining whether alterations are properly considered “minor,” the legislative history of this provision indicates there are certain criteria which should be considered before reaching an anticircumvention determination:

In applying this provision, the Commerce Department should apply practical measurements regarding minor alterations, so that circumvention can be dealt with effectively, even where such alterations to an article technically transform it into a differently designated article. The Commerce Department should consider such criteria as *the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products.*²²

Previous anticircumvention cases conducted by the Department have relied on those enumerated criteria.²³

In the case of an allegation of a “minor alteration” under section 781(c) of the Act, it is the Department's practice to look at the five criteria listed in the Senate Finance Committee report to determine if circumvention exists in a particular case.²⁴ In certain circumvention inquiries we have also analyzed additional factors, as appropriate on a case-by-case basis, to determine if circumvention of the order is taking place.²⁵ For example, such additional factors have included the circumstances under which the products enter the United States, the timing of the entries during the circumvention review period, and the quantity of merchandise entered during the circumvention review period.²⁶

²² Omnibus Trade Act of 1987, Report of the Senate Finance Committee, S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987) (emphasis added).

²³ See, e.g., *Preliminary Determination of Circumvention of Antidumping Order; Cut-to-Length Carbon Steel Plate from Canada*, 65 FR 64926, 64929 (October 31, 2000) (unchanged in final results, 66 FR 7617 (January 24, 2001)) (“*Canadian Plate*”); *Final Results of Anti-Circumvention Review of Antidumping Order: Corrosion-Resistant Carbon Steel Flat Products From Japan*, 68 FR 33676, 33677 (June 5, 2003); and *Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 74 FR 33991, 33992-93 (July 14, 2009) (unchanged in final results, 74 FR 40565 (August 12, 2009)).

²⁴ See, e.g., *Canadian Plate*, 65 FR at 64930-31.

²⁵ *Id.*, 65 FR at 64930.

²⁶ *Id.*, 65 FR at 64930-31.

ALLEGATIONS OF CIRCUMVENTION AS IDENTIFIED IN THE INITIATION OF INQUIRY

In their initial April 5, 2012 request and their May 4, 2012 supplement to their request, the petitioners made numerous allegations regarding graphite electrodes produced by Chinese producers.²⁷

With respect to overall physical characteristics, the petitioners maintain that the graphite electrodes with diameters larger than 16 inches but less than 18 inches are produced in the same manner as subject merchandise.²⁸ The petitioners state that the slight increase of the diameter does not significantly change the bulk density, specific electrical resistance, coefficient of thermal expansion, or flexural strength of the SDGEs.²⁹

With respect to expectations of ultimate users, the petitioners indicate that the ultimate purchasers of graphite electrodes with diameters larger than 16 inches but less than 18 inches and in-scope 16-inch SDGEs expect that they are interchangeable. The petitioners state they are unaware of any instances in which customers expected any significantly different characteristics or uses by purchasing graphite electrodes with diameters larger than 16 inches but less than 18 inches other than to avoid payment of antidumping duties.³⁰ The petitioners claim that, to the best of their knowledge, the customers purchasing graphite electrodes with diameters larger than 16 inches but less than 18 inches all used 16-inch SDGEs before the introduction of graphite electrodes with diameters larger than 16 inches but less than 18 inches and that the diameter increase provides no significant added commercial or industrial improvement.³¹ The petitioners also allege that certain end-users have modified their furnace holders designed for a 16-inch graphite electrode to accommodate 17-inch graphite electrodes.³²

Regarding use of the merchandise, the petitioners state that the graphite electrodes with diameters larger than 16 inches but less than 18 inches are sold to the same customers for the same end uses as the subject merchandise (*i.e.*, to be used as conductors of electricity in furnaces that heat or melt scrap metal or other material used to produce steel) and that the graphite electrodes with diameters larger than 16 inches but less than 18 inches are a direct substitute for in-scope SDGEs that were previously purchased by the same end-users.³³

²⁷ Specifically, the petitioners identified Jilin Carbon as the company engaging in this practice. *See* Letter from the petitioners dated May 4, 2012, at 2. The petitioners also asserted that Fangda Carbon and Fushun Jinly may be exporting graphite electrodes with diameters between 16 inches and 18 inches to the United States. *Id.* at 3-4. As noted above, these latter companies stated that neither they nor any of their affiliates produce or sell graphite electrodes with diameters between 16 inches and 18 inches. *See* joint letter from Fangda Carbon and Fushun Jinly dated June 28, 2012.

²⁸ *See* Initiation Request at 7.

²⁹ *Id.*

³⁰ *Id.* at 9.

³¹ *Id.*

³² *See* P2SQR at 1.

³³ *Id.* at 10-11.

Regarding channels of marketing, the petitioners state that both graphite electrodes with diameters larger than 16 inches but less than 18 inches and in-scope SDGEs are sold directly to foundries and steel producers, and that they are aware of at least one U.S. customer that was previously purchasing the subject merchandise that has simply substituted the graphite electrodes with diameters larger than 16 inches but less than 18 inches for in-scope 16-inch SDGEs. In support, the petitioners provide declarations to this effect from members of the U.S. industry.³⁴

Regarding the cost of modification, the petitioners assert that the cost of modifying SDGEs to a diameter above the 16-inch scope maximum is minimal. In support, the petitioners provide declarations from members of the U.S. industry describing the cost of modifying SDGEs to a diameter above the 16-inch maximum.³⁵

SUMMARY OF PARTIES' RESPONSES

Jilin Carbon states that it is an exporter of 17-inch graphite electrodes to the United States, and that an affiliated company, Sinosteel, is a producer of 17-inch graphite electrodes.³⁶ The affiliated companies are collectively referred to herein as "Jilin Carbon" consistent with Jilin Carbon's responses.³⁷ Jilin Carbon states that it does not produce or sell any graphite electrodes with diameters between 16 inches and 18 inches that have diameters other than 17 inches (*e.g.*, 16.5 inches).³⁸

Jilin Carbon also states that in addition to the 17-inch graphite electrodes, it produces graphite electrodes with diameters of 16 inches and below and graphite electrodes with diameters of 18 inches and above. Jilin Carbon also identifies another affiliated producer, Jilin Songjiang Carbon Co., Ltd., who produces only graphite electrodes with diameters of 16 inches or less. Jilin Carbon also states that it produced and sold graphite electrodes with diameters of 16 inches and below and graphite electrodes with diameters of 18 inches and above to the United States both prior to and subsequent to the *Order*, but has produced and sold 17-inch graphite electrodes only subsequent to the *Order*.³⁹ Additionally, Jilin Carbon states that it only sells 17-inch graphite electrodes to the United States, whereas it sells both graphite electrodes with diameters of 16 inches and below and graphite electrodes with diameters of 18 inches and above to countries besides the United States (in addition to the United States).⁴⁰

Jilin Carbon submitted the National Electrical Manufacturers Association ("NEMA") Standards Publication CG 1-1993, which describes graphite electrodes with 17-inch diameters and their joining systems,⁴¹ and NEMA Standards Publication CG 1-2001.⁴² Jilin Carbon claims that it

³⁴ *Id.* at 11-12.

³⁵ *Id.* at 12.

³⁶ See JQR at 1.

³⁷ *Id.*

³⁸ See JSQR at 1.

³⁹ See JSQR at Appendix S1-1.

⁴⁰ See JQR at 10-11.

⁴¹ See JQR at Appendix 1.

⁴² See JQR at Appendix 2.

produces 17-inch graphite electrodes in accordance with these NEMA standards. Jilin Carbon maintains that, “{s}ince 17-inch electrodes were listed in the {NEMA} standards prior to the issuance of the antidumping duty order on small diameter graphite electrodes, 17-inch {graphite electrode} is not ‘altered in form or appearance in minor respects’ from in-scope merchandise (graphite electrode with diameters of 16-inch and under).”⁴³

[] has acknowledged that it [] prior to the *Order*, although []⁴⁴.

Ceramark states that it primarily imports graphite electrodes and refractory bricks from the PRC into Canada and the United States.⁴⁵ With respect to graphite electrodes with diameters larger than 16 inches but less than 18 inches, Ceramark states that it only imports graphite electrodes with a NEMA standard size diameter of 17 inches into the United States.⁴⁶ Ceramark claims that it does not sell any graphite electrodes with diameters between 16 inches and 18 inches that have diameters other than 17 inches (e.g., 16.5 inches).⁴⁷ Ceramark also states that it sold graphite electrodes with diameters of 16 inches and below and graphite electrodes with diameters of 18 inches and above to the United States both prior to and subsequent to the *Order*, but has sold 17-inch graphite electrodes only subsequent to the *Order*.⁴⁸ Ceramark also claims that it only sells 17-inch graphite electrodes within the United States, whereas it sells both graphite electrodes with diameters of 16 inches and below and graphite electrodes with diameters of 18 inches and above to countries besides the United States.⁴⁹ Ceramark maintains that “17-inch diameter is one of many standard sizes for {graphite electrodes} {and} {a} full inch difference in diameter is neither ‘minor’ nor an ‘alteration’ ... the defining characteristic of a {graphite electrode} is its diameter size.”⁵⁰

ANALYSIS

SENATE REPORT CRITERIA

1. Overall Physical Characteristics

The scope of the *Order* identifies various physical parameters for subject merchandise (e.g., dimensions, form). With respect to dimensions, the merchandise is limited to graphite electrodes with a nominal or actual diameter of 400 millimeters (16 inches) or less.⁵¹ In administrative reviews of this *Order*, we define the physical characteristics—which we use to determine what

⁴³ See J2SQR at 3.

⁴⁴ See PSQR at 4.

⁴⁵ See CQR at 2.

⁴⁶ *Id.*

⁴⁷ See CSQR at 2.

⁴⁸ See CQR at 7-11.

⁴⁹ See CQR at 11-12.

⁵⁰ See C2SQR at 4.

⁵¹ See *Order*, 74 FR at 8755.

constitutes identical merchandise—as power level, nominal diameter, nominal length, machining of electrode, and connecting systems.⁵²

The overall physical characteristics of 17-inch graphite electrodes are largely the same as 16-inch graphite electrodes with the exception of the diameter and the current-carrying capacity. Jilin Carbon reported that “an electrode’s electrical current carrying capacity increases with increasing electrode diameter.”⁵³ Thus, a 17-inch diameter graphite electrode has a greater electrical current-carrying capacity than a 16-inch diameter graphite electrode, other things being equal.

Beyond diameter, graphite electrodes are also produced to particular grades. Jilin Carbon produces graphite electrodes with diameters of 16 inches or less to five grades: ultra high power, super high power; high power, high density, and regular power.⁵⁴ Jilin Carbon’s 17-inch graphite electrodes are produced to one grade: high power; and its 18-inch products are produced to three grades: ultra high power, super high power and regular power.⁵⁵

In its investigation, the International Trade Commission (“ITC”) found that SDGEs (those with diameters of 16 inches or less) are produced from a range of different grades of petroleum coke (from low-grade anode coke to high grade needle coke or a blend of the two), whereas non-subject large diameter graphite electrodes (“LDGEs”) are produced from premium needle coke.⁵⁶ Along with diameter and impregnation, the grade of the coke used to produce the graphite electrode determines the electrode’s current-carrying capacity.⁵⁷ Jilin Carbon has stated that it does not separately identify its costs for 16-inch, 17-inch, and 18-inch graphite electrodes, and its identified inputs show that it uses the same or similar blend of needle and other cokes in all three sizes.⁵⁸

Analysis of Criterion: In the investigation, the petitioners and respondent parties made opposing arguments before the ITC regarding the domestic like product. The respondents argued that the domestic like product should include all graphite electrodes, while the petitioners sought to distinguish SDGEs (with diameters of 16 inches or less) from LDGEs (with diameters greater than 16 inches). The ITC adopted the definition put forth by the petitioners and drew the line between SDGEs and LDGEs at 16 inches in diameter, however, it is unclear whether 17-inch electrodes were precisely before the ITC (*i.e.*, in considering how to define the domestic industry, the ITC looked specifically at graphite electrodes in diameters of two-inch increments,

⁵² See, e.g., Section C of the Department’s questionnaire to the Fangda Group, dated May 8, 2012, in the 2011-12 review of the *Order* at questions 3.1 through 3.5 (pages C-7 through C-9).

⁵³ See JSQR at 2. In addition, Ceramark reported that, in general, the current capacity for HP grade electrodes in ladle metallurgy furnaces is up to 32 KA for 16” diameter electrodes and up to 38 KA for 17” diameter electrodes. See CSQR at 4.

⁵⁴ See JSQR at 1.

⁵⁵ *Id.* Jilin Carbon’s listing of “regular power” 18” diameter electrodes may be in error. Ceramark identifies the 18 inch products it markets as ultra high power, super high power and high power. See CSQR at 3.

⁵⁶ See *Small Diameter Graphite Electrodes from China*, Investigation No. 731-TA-1143 (Final) (February 2009) (“ITC Report”) at 6.

⁵⁷ *Id.* at 7.

⁵⁸ See JSQR at 8 and Appendix S1-4.

such as 14-inches, 16-inches and 18-inches, *etc.*)⁵⁹ The ITC also found that the small and large diameter graphite electrodes “share a number of physical characteristics”⁶⁰ and that in a number of ways, the two products form a continuum: “price, current carrying capacity, and premium needle coke content all tend to increase with the size of the electrode and electrodes of adjacent sizes are most comparable with respect to these attributes.”⁶¹

The information submitted in this inquiry is consistent with the ITC’s conclusions regarding the similarities between electrodes of adjacent sizes. In terms of their physical characteristics, graphite electrodes with diameters larger than 16 inches but less than 18 inches provide a continuum in terms of current-carrying capacity. This continuum may also be reflected in Jilin Carbon’s costs – the company does not break out separately 16-inch, 17-inch, and 18-inch electrodes, and uses a blend of low- and high-grade coke to produce them. Based on the ITC Report, this “recipe” (a blend of low- and high-grade coke) suggests that Jilin Carbon’s 17-inch graphite electrodes may be more similar to SDGEs than to LDGEs, which are typically made from premium needle coke.⁶²

In one respect, the number of grades produced, Jilin Carbon’s production does not reflect the continuum described by the ITC. The ITC found that, “SDGE are generally produced in six different grades, while LDGE are typically produced in the three highest of the six grades.”⁶³ Jilin Carbon, as explained above, produces five grades of 16-inch graphite electrodes, one grade of 17-inch graphite electrodes (high power grade, which is also a grade of Jilin Carbon’s 16-inch electrodes), and three grades of 18-inch graphite electrodes (which does not include a high power grade).

Therefore, based on record evidence, we conclude that the overall physical characteristics of Jilin Carbon’s 17-inch graphite electrodes are only slightly different from in-scope 16-inch graphite electrodes. We note that the chief difference between the 17-inch graphite electrodes and in-scope 16-inch graphite electrodes is the diameter, which in turn contributes to different current-carrying capacities. However, we find these differences alone do not represent a significant departure from the physical characteristics of subject merchandise and, therefore, are not meaningful differences for purposes of our minor alterations inquiry. For instance, we find these differences are similar to the differences that would be seen between adjacent sizes of in-scope merchandise, *e.g.*, 14-inch and 16-inch graphite electrodes. Moreover, the blend of low- and high-grade coke used to produce Jilin Carbon’s 17-inch graphite electrodes (which also affects current-carrying capacity) is the same blend used to produce Jilin Carbon’s 16-inch graphite electrodes, which further supports a finding that the 17-inch graphite electrodes are physically similar to in-scope merchandise. Lastly, the grade to which Jilin Carbon produces its 17-inch graphite electrode (high power grade) is shared only by Jilin Carbon’s 16-inch graphite electrodes, and is not a grade shared by Jilin Carbon’s 18-inch graphite electrodes. Overall, there

⁵⁹ See ITC Report at 6 and fn 26 (“SDGE generally are sold in diameter increments of 2 inches, ranging from 2 inches through 16 inches.”); *id.* at 7 (discussing LDGE in 18-inch, 20-inch, and 24-inch diameters).

⁶⁰ See ITC Report at 6.

⁶¹ *Id.* at 9.

⁶² *Id.* at 7-8.

⁶³ *Id.* at 6.

is no record evidence to suggest that the differences in diameter and current-carrying capacity are distinguishable in any meaningful sense and, therefore, we find that the 17-inch graphite electrodes are physically similar to in-scope merchandise.

2. Expectations of the Ultimate Users

According to the ITC, subject merchandise, such as 16-inch graphite electrodes, are used as conductors of electricity in electric furnaces in steel mini-mills and foundries; they conduct electricity at high currents to generate heat necessary to melt and further refine steel or other metals.⁶⁴ The ITC further explained that subject electrodes are generally used in ladle steel refining, foundries, and specialty furnace applications; they are used only rarely to melt steel scrap in mini-mill electric arc furnaces, and then only in older and smaller electric arc furnaces.⁶⁵ The ITC also stated that “{c}ustomers’ detailed written responses, however, tend more to support the view that subject electrodes and LDGE have different end uses.”⁶⁶

Jilin Carbon reported that the 17-inch graphite electrodes it sold to the United States were “manufactured to the NEMA standards.”⁶⁷ Jilin Carbon also reported that it “does not market or advertise graphite electrodes with different diameters differently.”⁶⁸ Jilin Carbon’s 17-inch graphite electrodes are sold to [] of the same customers as was Jilin Carbon’s previously-produced subject merchandise.⁶⁹ Jilin Carbon also reported that “{t}o the best of our knowledge, certain end-users of the 16-inch electrodes did modify their {furnace} holders to accommodate the 17-inch graphite electrodes that we manufactured. However, we are not aware whether they did this prior to or after the date of the order.”⁷⁰

Ceramark sold 17-inch graphite electrodes to [] of the same customers to whom it previously sold subject merchandise.⁷¹ Ceramark did not sell 17-inch graphite electrodes prior to the imposition of the *Order*.⁷² Moreover, Ceramark acknowledged that “some users of the 16-inch graphite electrodes that were supplied prior to the order modified their {furnace} holders to accommodate 17-inch graphite electrodes. This modification was done solely at the customer’s direction and instigation.”⁷³ Ceramark also acknowledged that 17-inch graphite electrodes became “less expensive” than 16-inch graphite electrodes as a result of the *Order*.⁷⁴ Ceramark also reported that its customers desire the 17-inch electrodes because they have less breakage and less graphite consumption.

⁶⁴ See ITC Report at 7.

⁶⁵ *Id.*

⁶⁶ *Id.* at 9.

⁶⁷ See JQR at 3.

⁶⁸ See JQR at 15.

⁶⁹ See JSQR at Appendix S1-1.

⁷⁰ See J3SQR at 1.

⁷¹ See CQR at 7-11.

⁷² See CQR at 2.

⁷³ See C3QR at 1.

⁷⁴ See CQR at 2.

Analysis of Criterion: As indicated above, Jilin Carbon does not market or advertise graphite electrodes with different diameters differently. Thus, the company's marketing efforts do not reflect any distinction in customer expectations between the 17-inch product and in-scope 16-inch graphite electrodes. Jilin Carbon also acknowledges that "certain end-users of the 16-inch electrodes did modify their {furnace} holders to accommodate the 17-inch graphite electrodes that we manufactured,"⁷⁵ thus suggesting that 17-inch electrodes are being used as a direct substitute for in-scope merchandise.

Ceramark's response is more informative. Ceramark states that [] of its customers use 17-inch graphite electrodes as a substitute for subject 16-inch graphite electrodes. This substitution is accomplished by modifying the same holders in the same furnaces that were used for 16-inch graphite electrodes to accommodate 17-inch graphite electrodes. These customers previously purchased subject 16-inch graphite electrodes from Ceramark prior to the order, then subsequently ceased purchasing such merchandise and instead began purchasing 17-inch graphite electrodes from Ceramark.⁷⁶ In particular, these customers sought "less expensive" graphite electrodes and modified their holders to accommodate the 17-inch graphite electrodes.⁷⁷ Although Ceramark has claimed that its customers desire the 17-inch graphite electrodes because they have less breakage and less graphite consumption, the timing of the sales described above suggests that any difference in breakage and graphite consumption is far less important to the ultimate users than the fact that 17-inch electrodes became less expensive relative to 16 inch and smaller electrodes as a result of the *Order*.

Based on the above, we preliminarily determine that there does not appear to be any significant difference in the expectation of ultimate users of 17-inch graphite electrodes and in-scope 16-inch graphite electrodes as 17-inch graphite electrodes appear to be used as a direct substitute for in-scope merchandise.

3. Use of the Merchandise

As stated above, according to the ITC, subject merchandise, such as 16-inch graphite electrodes, are used as conductors of electricity in electric furnaces in steel mini-mills and foundries, and are generally used in ladle steel refining, foundries, and specialty furnace applications; they are used only rarely to melt steel scrap in mini-mill electric arc furnaces, and then only in older and smaller electric arc furnaces.⁷⁸

Jilin Carbon reported that "{w}ith respect to ultimate use, all types of graphite electrodes are used in electric furnaces."⁷⁹ Jilin Carbon also reported that "17-inch electrodes can also be used in arc furnaces and are not strictly limited to use in ladle furnaces" and that "there is no reason why a {diameter} 16 {inch} can be used in arc furnace but not a {diameter} 17 {inch}."⁸⁰ Jilin

⁷⁵ See J3SQR at 1.

⁷⁶ See CQR at 7-11.

⁷⁷ See CQR at 2 and C3QR at 1.

⁷⁸ See ITC Report at 7.

⁷⁹ See JQR at 10.

⁸⁰ See JSQR at 2.

Carbon also stated that “{t}o the best of our knowledge, certain end-users of the 16-inch electrodes did modify their {furnace} holders to accommodate the 17-inch graphite electrodes that we manufactured.”⁸¹

Ceramark reported that it imports 17-inch graphite electrodes which “are primarily used in LMF (ladle metallurgical furnaces) for steel making.”⁸² Ceramark also reported that it imports 7-inch and 14-inch graphite electrodes, both of which “are used in foundry furnaces.”⁸³ Ceramark further reported that it imports graphite electrodes with a diameter of 18 inches or higher, but did not specify the use of such electrodes.⁸⁴ In addition, Ceramark reported that:

Based on Ceramark’s significant experience in the industry, there are ladle furnaces that use {graphite electrodes} with diameters of 18 {inches} and there are ladle metallurgy furnaces (LMF) which use {graphite electrodes} with diameters of 20 {inches}. There are also arc furnaces that use {graphite electrodes} with diameters of 16 {inches} and even 14 {inches}.⁸⁵

Ceramark also acknowledged that “some users of the 16-inch graphite electrodes that were supplied prior to the order modified their {furnace} holders to accommodate 17-inch graphite electrodes.”⁸⁶

In its investigation, the ITC found that:

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

⁸¹ See J3SQR at 1.

⁸² See CQR at 5.

⁸³ *Id.*

⁸⁴ *Id.* at 6.

⁸⁵ See CSQR at 4.

⁸⁶ See C3QR at 1.

applications, *** LDGE in 20-inch diameters and above are used in steel melting applications.⁸⁷

Ceremark contends that the petitioners “argued that 17-inch {graphite electrodes} are used only in the same way as 16-inch {graphite electrodes}, but then Petitioner {sic}[].”

Analysis of Criterion: The use of 17-inch graphite electrodes reported by Ceremark appears to be largely consistent with the ITC’s findings with respect to the uses of SDGEs (*i.e.*, ladle steel refining, foundries, and specialty furnace applications as opposed to arc furnaces), although both Jilin Carbon and Ceremark reported that 18-inch graphite electrodes can and are being used in ladle furnaces and ladle metallurgy furnaces. Also, both Jilin Carbon and Ceremark report that 16-inch graphite electrodes can and are being used in arc furnaces. This is consistent with the ITC’s observation that electrodes form a continuum. Furthermore, as noted above, Jilin Carbon reports that some end-users of its product modified the same holders in the same furnaces that were used for 16-inch graphite electrodes to accommodate 17-inch graphite electrodes,⁸⁸ and Ceremark reports that “some users of the 16-inch graphite electrodes that were supplied prior to the order modified their {furnace} holders to accommodate 17-inch graphite electrodes.”⁸⁹ This modification shows that certain end-users use the 17-inch graphite electrodes as a direct substitute for in-scope merchandise. We note Ceremark’s and Jilin Carbon’s arguments that [

]; however, this is not relevant to our analysis of the use of Jilin Carbon’s 17-inch graphite electrodes in the United States.

Based on the above, we preliminarily determine that there does not appear to be any significant difference in the uses of 17-inch graphite electrodes and in-scope 16-inch graphite electrodes as 17-inch graphite electrodes appear to be used as a direct substitute for in-scope merchandise.

4. Channels of Marketing

Jilin Carbon reported that it “does not market or advertise graphite electrodes with different diameters differently.”⁹⁰ Jilin Carbon sells 17-inch graphite electrodes to [] of the same customers as it previously sold subject merchandise.⁹¹ Furthermore, Jilin Carbon does not sell 17-inch graphite electrodes to any customer to whom it did not previously sell subject merchandise.⁹² [] of the customers to whom Jilin Carbon sells 17-inch graphite electrodes also purchased graphite electrodes with diameters of 18 inches or greater.⁹³

⁸⁷ See ITC Report at 7.

⁸⁸ See J3SQR at 1.

⁸⁹ See C3QR at 1.

⁹⁰ See JQR at 15.

⁹¹ See JQR at 14.

⁹² *Id.*

⁹³ *Id.*

Ceramark sells 17-inch graphite electrodes to [] of the same customers to whom it previously sold subject merchandise.⁹⁴ Furthermore, Ceramark does not sell 17-inch graphite electrodes to any customer to whom it did not previously sell subject merchandise.⁹⁵ [] of the customers to whom Ceramark sells 17-inch graphite electrodes also purchased graphite electrodes with diameters of 18 inches or greater.⁹⁶

Analysis of Criterion: Aside from the apparent substitution of 17-inch graphite electrodes for 16-inch graphite electrodes, neither Jilin Carbon nor Ceramark reports any change in the selling pattern for graphite electrodes with diameters larger than 16 inches but less than 18 inches.

Based on the above, we preliminarily determine that there does not appear to be any significant difference in the channels of marketing for 17-inch graphite electrodes and in-scope 16-inch graphite electrodes.

5. Cost of Modification

Jilin Carbon reported that it “produced a forming spout to produce a 17 inch electrode”⁹⁷ and that “{t}he cost of producing such a spout was about RMB []” and that “{n}ormally a forming spout can be used as long as 15 years or even longer.”⁹⁸ According to Jilin Carbon, the only difference in the production process⁹⁹ is in the spout used in the forming step. Moreover, Jilin Carbon reported that “there is no separate cost calculation for 16-inch, 17-inch or 18-inch {high-power} graphite electrodes. In other words, all three electrode diameters share the same costs.”¹⁰⁰ Jilin Carbon reported that the material and energy costs per metric ton for 16-inch, 17-inch or 18-inch high-power graphite electrodes was RMB [].

Ceramark is an importer located in the United States.¹⁰¹ Accordingly, it does not produce graphite electrodes in the PRC.

Although the ITC found that “{b}oth SDGE and LDGE share similar production processes at the formation stage,”¹⁰² it did not analyze the relative costs of production of SDGEs and LDGEs. However, we note that no party has argued that there is a significant cost of modification.

Analysis of Criterion: Foremost, we note that Jilin Carbon confirms that it does not maintain separate cost calculations to produce 16-inch, 17-inch and 18-inch graphite electrodes and that the per metric ton cost to produce each is []. Based on this information alone, we find

⁹⁴ See CQR at 7-11.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ See JQR at 10.

⁹⁸ See JSQR at 6.

⁹⁹ The production process consists of twelve steps: calcining, crushing, screening, burden, preparing coal tar pitch, kneading, forming, baking, impregnation, re-baking, graphitization, and machining. See JQR at Exhibit 4.

¹⁰⁰ See JSQR at 8.

¹⁰¹ See CQR at 1.

¹⁰² See ITC Report at 8.

that there is no significant difference in the cost of modification. However, Jilin Carbon states that it used a specific forming spout to produce the 17-inch graphite electrode. Based on Jilin Carbon's data, the annual cost of a forming spout used to produce the 17-inch electrode amortized over 15 years is less than the sum of the material and energy costs per metric ton for 16-inch, 17-inch or 18-inch high-power graphite electrodes. Given that Jilin Carbon sold [] metric tons of 17-inch graphite electrodes from January 2010 through June 2012,¹⁰³ Jilin Carbon's average annual sales amount to nearly [] metric tons. Dividing the annual cost of a 17-inch forming spout by the product of annual sales and the per metric ton costs of materials and energy results in an allocated cost of a 17-inch forming spout of approximately [] percent.¹⁰⁴ This may understate the relative cost to Jilin Carbon of producing the 17-inch graphite electrodes because we do not know how many forming spouts Jilin Carbon produced or used in producing 17-inch graphite electrodes. But even if Jilin Carbon used 10 forming spouts, the cost of the spouts would amount to [] percent of its material and energy costs.

Based on the above, we preliminarily determine that the cost of modification for Jilin Carbon's 17-inch graphite electrodes relative to Jilin Carbon's 16-inch graphite electrodes is insignificant.

Other Case-Specific Criteria (Circumstances Under Which the Products Enter the United States, Timing of Entries, and Quantity of Merchandise Entered)

As described above, Jilin Carbon and Ceramark both sold graphite electrodes with diameters of 16 inches and below and graphite electrodes with diameters of 18 inches and above to the United States both prior to and subsequent to the *Order*, but have sold 17-inch graphite electrodes only subsequent to the *Order*. Moreover, both Jilin Carbon and Ceramark only sell 17-inch graphite electrodes to the United States, whereas they both sell graphite electrodes with diameters of 16 inches and below and graphite electrodes with diameters of 18 inches and above to countries besides the United States.

In 2008, prior to the *Order*, Jilin Carbon sold [] kilograms of graphite electrodes with diameters of 16 inches or less to [] customers in the United States and sold [] kilograms of graphite electrodes with diameters of 18 inches or more to [] customers in the United States.¹⁰⁵ Subsequent to the *Order*, Jilin Carbon sold graphite electrodes in the United States as summarized in the chart below.¹⁰⁶

¹⁰³ See JSQR at Appendix S1-1.

¹⁰⁴ Note that this figure does not account for labor or fixed overhead costs in the denominator. Also, we cannot use our normal non-market economy methodology for estimating these cost differences since a forming spout would presumably be a fixed-overhead cost and we normally estimate fixed-overhead costs in non-market economy proceedings using expense ratios from financial statements of companies in the surrogate country engaged in similar enterprises.

¹⁰⁵ See JSQR at Appendix S1-1.

¹⁰⁶ *Id.*

		2009	2010	2011	Jan-Jun 2012
<= 16 inches	Customers	[]	[]	[]	[]
	Quantity (kg)	[]	[]	[]	[]
17 inches	Customers	[]	[]	[]	[]
	Quantity (kg)	[]	[]	[]	[]
>= 18 inches	Customers	[]	[]	[]	[]
	Quantity (kg)	[]	[]	[]	[]

The [] who purchased Jilin Carbon’s 17-inch graphite electrodes purchased graphite electrodes with diameters of 16 inches or less in 2008 but ceased purchasing such electrodes beginning in 2009.¹⁰⁷ Moreover, the quantity of 17-inch graphite electrodes Jilin Carbon sold to the United States has [] the total quantity of graphite electrodes with diameters of 16 inches or less sold to all customers in 2008.¹⁰⁸

Jilin Carbon also reported that “{t}o the best of our knowledge, certain end-users of the 16-inch electrodes did modify their {furnace} holders to accommodate the 17-inch graphite electrodes that we manufactured. However, we are not aware whether they did this prior to or after the date of the order.”¹⁰⁹

In 2008, prior to the *Order*, Ceramark sold graphite electrodes with diameters of 16 inches or less to [] customers in the United States and sold graphite electrodes with diameters of 18 inches or more to [] customer in the United States.¹¹⁰ Subsequent to the *Order*, Ceramark continued to sell graphite electrodes with diameters of 16 inches or less to [] customers in the United States, though generally [] and [] than prior to the *Order*. Such sales appear to have become [] and [] since []; when Ceramark began selling 17-inch graphite electrodes.¹¹¹ Ceramark sold 17-inch graphite electrodes to [] customers from [] through June 2012 and [] of those customers, who had purchased graphite electrodes with diameters of 16 inches or less prior to [] ceased purchasing graphite electrodes with diameters of 16 inches or less beginning in [].¹¹² Ceramark’s sales of graphite electrodes with diameters of 18 inches or more subsequent to the *Order* were to the [] in the United States that purchased such electrodes prior to the *Order*; and there is no apparent pattern with respect to the quantities sold of such electrodes to [].¹¹³

Ceramark also reported that “{t}o the best of Ceramark’s understanding, some users of the 16-inch graphite electrodes that were supplied prior to the order modified their {furnace} holders to

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ See J3SQR at 1.

¹¹⁰ See CQR at 7-11.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

accommodate 17-inch graphite electrodes. This modification was done solely at the customer's direction and instigation."¹¹⁴

Analysis of Additional Factors: Based on record evidence described above, we find that certain end-users use 17-inch graphite electrodes as a direct substitute for subject graphite electrodes, while others have continued to purchase 16-inch electrodes. This is consistent with Jilin Carbon's and Ceramark's explanations that: (i) the 17-inch graphite electrodes became a less expensive alternative to 16-inch graphite electrodes as a result of the duties imposed by the *Order*, and (ii) the holders in the same furnaces that were used for 16-inch graphite electrodes can be converted to accommodate 17-inch electrodes, and this conversion may be costly (otherwise, one might expect greater substitution of the 17-inch for the 16-inch electrodes).¹¹⁵ Although both Jilin Carbon and Ceramark disclaimed knowledge as to when these customers modified their holders,¹¹⁶ given that these customers did not begin purchasing 17-inch graphite electrodes until [], it is reasonable, in light of any evidence to the contrary, to conclude that these customers did not modify their holders until after the *Order* was published in February 2009.

Given these circumstances, and given that both Jilin Carbon and Ceramark only sell 17-inch graphite electrodes to customers in the United States and not to other countries despite selling in-scope graphite electrodes to other countries,¹¹⁷ we find that evasion of antidumping duties is the primary reason for the sudden commencement of the sales of 17-inch graphite electrodes in the United States. Thus, the totality of the circumstances detailed above and under which 17-inch graphite electrodes entered the United States provides substantial evidence of circumvention of the *Order*.

Preliminary Findings

Based on the record of this circumvention inquiry, 17-inch graphite electrodes produced and/or exported by Jilin Carbon have physical characteristics that do not differ significantly from merchandise covered under the *Order*. We find, based on record evidence, that the expectations of the ultimate users, uses of the merchandise, and channels of marketing between 17-inch graphite electrodes and merchandise covered under the scope are comparable or identical. Furthermore, evidence on the record supports the conclusion that the difference in the cost of producing 17-inch graphite electrodes relative to the previously produced subject merchandise is not significant. Also, roughly one year after the *Order* went into effect, Jilin Carbon began to produce its 17-inch graphite electrodes, which it then shipped to the United States and only to the United States. The timing of this development is consistent with a finding that circumvention of

¹¹⁴ See C3SQR at 2.

¹¹⁵ The ITC found that "{t}here is some evidence on the record suggesting that it may be possible to utilize an adjacent diameter size by converting the equipment that holds the electrodes in place and changing the electrical output of the furnace. Such conversion, while possible, would likely be cost-prohibitive and might be unsafe." See ITC Report at 7.

¹¹⁶ The petitioners asserted that Jilin Carbon paid its customers to convert their holders. See P2SQR at 3. Jilin Carbon denied this assertion. See J3SQR at 1.

¹¹⁷ See JQR at 10-11 and [].

the *Order* was occurring by means of minor alteration. Finally, the circumstances under which 17-inch graphite electrodes entered the United States, *i.e.*, as substitution for subject merchandise, are highly indicative of circumvention of the *Order*.

Based on our analysis, we preliminarily find that Jilin Carbon's production and exportation of 17-inch graphite electrodes to the United States circumvented the *Order*. As a result of our aforementioned analysis, we preliminarily determine that graphite electrodes produced and/or exported by Jilin Carbon with an actual or nominal diameter of 17 inches constitutes merchandise altered in form or appearance in such minor respects that it should be included within the scope of the *Order*.¹¹⁸

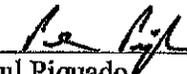
Intent To Rescind Later-Developed Merchandise Circumvention Inquiry

Because we are recommending an affirmative preliminary determination of circumvention with respect to minor alterations pursuant to section 781(c) of the Act, we do not find it necessary to make a determination with respect to a later-developed merchandise circumvention inquiry pursuant to section 781(d) of the Act. Thus, if the Department affirms this preliminary determination of circumvention, which covers graphite electrodes produced and/or exported by Jilin Carbon with an actual or nominal diameter of 17 inches, then we recommend rescinding the later-developed-merchandise circumvention inquiry.

Recommendation

We recommend that, pursuant to section 781(c) of the Act and 19 CFR 351.225, the Department issue an affirmative preliminary circumvention determination that graphite electrodes produced and/or exported by Jilin Carbon with an actual or nominal diameter of 17 inches are circumventing the *Order*. If we uphold this ruling in the final determination, we recommend that the section 781(d) inquiry be rescinded.

Agree Disagree



Paul Piquado
Assistant Secretary
for Import Administration

11 APRIL 2013
Date

¹¹⁸ See section 781(c) of the Act and 19 CFR 351.225(i).