

the rate selected is the rate currently applicable to the PRC-wide entity and was corroborated in the *LTFV Final Determination*, using Zibo Aifudi's CONNUM margins. See *LTFV Final Determination*, 73 FR at 35648. The Department assumes that if an uncooperative respondent could have obtained a lower rate, it would have cooperated.<sup>24</sup> Consequently, as there is no information on the record of this review that demonstrates that this rate is not appropriate for use as AFA, we determine that this rate continues to have relevance.

Based on our analysis as described above, we find that the margin of 91.73 percent is reliable and has relevance. As the 91.73 percent rate is both reliable and relevant, we determine that it has probative value. Accordingly, we determine that the calculated rate of 91.73 percent, which is the current PRC-wide rate, is in accordance with the requirement of section 776(c) of the Act that secondary information be corroborated to the extent practicable (*i.e.*, that it have probative value). Consequently, we have assigned this AFA rate to exports of the subject merchandise from the PRC-wide entity, including Zibo Aifudi.

#### Final Results of Review

The weighted-average dumping margins for the POR are as follows:

Exporter	Weighted Average Percent Margin
PRC-Wide Rate <sup>25</sup> .....	91.73

#### Assessment

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For assessment purposes, we calculated importer (or customer)-specific assessment rates for merchandise subject to this review. Where appropriate, we calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party

*From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 52273 (September 9, 2008).

<sup>24</sup> See *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190–91 (Fed. Cir. 1990); *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 24 CIT 841, 848 (2000) (respondents should not benefit from failure to cooperate).

<sup>25</sup> The PRC-Wide entity, including Zibo Aifudi Plastic Packaging Co., Ltd.

by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer (or customer)-specific assessment rate is *de minimis* (*i.e.*, less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties, in accordance with 19 CFR 351.106(c)(2). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

#### Cash Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each of the reviewed companies that received a separate rate in this review will be the rate listed in the final results of review (except that if the rate for a particular company is *de minimis*, *i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent POR; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the PRC-wide rate of 91.73 percent. These deposit requirements, when imposed, shall remain in effect until further notice.

#### Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the

reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

#### Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: March 14, 2011.

**Kim Glas,**

*Acting Deputy Assistant Secretary for Import Administration.*

#### Appendix I—Issues and Decision Memorandum

Comment 1: Preliminary Decision Regarding Country of Origin  
 1a. Procedures in Determining Country of Origin  
 1b. Department's Decision of Country of Origin of Sacks  
 1c. Authority to Issue Clarification Instruction to CBP  
 1d. Finalizing the Country-of-Origin Memorandum

Comment 2: Liquidation Instructions

[FR Doc. 2011-6450 Filed 3-17-11; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-929]

#### Small Diameter Graphite Electrodes From the People's Republic of China: Initiation of Anti-Circumvention Inquiry

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

**SUMMARY:** In response to requests from SGL Carbon LLC and Superior Graphite Co. ("Petitioners"), Petitioners in the original investigation, the Department of

Commerce ("Department") is initiating an anti-circumvention inquiry pursuant to section 781(b) of the Tariff Act of 1930, as amended ("the Act"), to determine whether certain merchandise from the United Kingdom ("U.K.") is being exported to the United States by U.K. Carbon and Graphite Co., Ltd. ("UKCG") in circumvention of the antidumping duty order on small diameter graphite electrodes ("SDGE") from the People's Republic of China ("PRC").<sup>1</sup>

**DATES:** *Effective Date:* March 18, 2011.

**FOR FURTHER INFORMATION CONTACT:** Brendan Quinn, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-5848.

**SUPPLEMENTARY INFORMATION:**

**Background**

On October 12, 2010, Petitioners filed a submission alleging that UKCG, a company located in the United Kingdom, is engaged in circumvention of the *SDGE Order*, by importing unfinished SDGE components<sup>2</sup> from the PRC to the United Kingdom, performing minor completion and assembly on these items, and exporting finished subject merchandise to the United States as SDGE of U.K. origin, thus, not subject to the *SDGE Order*.<sup>3</sup> In this submission, Petitioners request that the Department initiate and conduct a proceeding to clarify whether the scope of the *SDGE Order* includes unfinished graphitized SDGE components, as imported by UKCG from the PRC based on either the dispositive written descriptions of the scope pursuant to 19 CFR 351.225(k)(1) or, a further analysis of the product in question pursuant to

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

<sup>2</sup> According to Petitioners, the unfinished merchandise in question is defined in UKCG's submissions as, e.g., "graphite electrodes," "rods," "graphite billets," "graphite shapes," "synthetic graphite electrode rod," and "re-machined graphite electrode." Petitioners characterize these inputs as "unfinished SDGE," whereas UKCG refers to them as "artificial graphite." For customs purposes, these materials are, generally, classified under HTS 3801.10.00, defined as "Artificial Graphite; Colloidal or Semi-Colloidal Graphite; Preparations Based on Graphite or Other Carbon in the Form of Pastes, Blocks, Plates or Other Semi-Finished Goods." For ease of reference, these materials are referred to as "unfinished SDGE components" or "artificial graphite rods" throughout this notice.

<sup>3</sup> See Letter from Petitioners entitled, "Small Diameter Graphite Electrodes from the People's Republic of China," dated October 12, 2010 ("Initiation Request").

factors enumerated in 19 CFR 351.225(k)(2). Alternatively, Petitioners request that the Department initiate an anti-circumvention proceeding, pursuant to 19 CFR 351.225(h), to determine whether the importation of the aforementioned SDGE components by UKCG from the PRC for finishing in the United Kingdom and subsequent sale to the United States constitutes circumvention of the *SDGE Order*, as defined in section 781(b) of the Act.

On October 29, 2010, the Department received a letter on behalf UKCG in rebuttal to Petitioners' request for a scope or anti-circumvention ruling.<sup>4</sup> In this submission, UKCG asserts that there is no need for the Department to undertake a full scope or anti-circumvention inquiry, arguing that the unfinished SDGE component inputs in question have already been excluded from the scope of the *SDGE Order*. On November 12, 2010, we received further comments from Petitioners in response to UKCG's October 29, 2010, submission.<sup>5</sup>

On November 24, 2010, the Department requested that Petitioners supplement their scope request with certain additional information to aid in our decision whether to initiate a formal scope or anti-circumvention inquiry.<sup>6</sup> In this questionnaire, the Department requested that Petitioners provide further information regarding both the pattern of trade for imports of unfinished SDGE components into the United Kingdom from the PRC and domestic U.K. production of unfinished SDGE components during the relevant time period. On November 30, 2010, we received Petitioners' response to the Department's pre-initiation questionnaire.<sup>7</sup> On December 14, 2010,

<sup>4</sup> See Letter from UKCG entitled, "Small Diameter Graphite Electrodes from the People's Republic of China: Response to Petitioners' Submission of October 12, 2010, On Behalf of UK Graphite and Carbon Co., Ltd.," dated October 29, 2010 ("Initiation Rebuttal Comments").

<sup>5</sup> See Letter from Petitioners entitled, "Small Diameter Graphite Electrodes from the People's Republic of China," dated November 12, 2010 ("Petitioners' Response to UKCG's Initiation Rebuttal Comments").

<sup>6</sup> See the Department's Letter to Petitioners entitled, "Small Diameter Graphite Electrodes from the People's Republic of China: Scope Inquiry Request Regarding Certain Merchandise Imported By UK Carbon and Graphite Company, Ltd.," dated November 24, 2010 ("Pre-Initiation Supplemental Questionnaire" or "Pre-Initiation SQ").

<sup>7</sup> See Letter from Petitioners entitled, "Small Diameter Graphite Electrodes from the People's Republic of China," dated November 30, 2010 ("Petitioners' Pre-Initiation Supplemental Questionnaire Response" or "Petitioners' SQR"). Upon receipt of this submission, we found that the record, henceforth, contained sufficient information from which the Department may determine whether a formal anti-circumvention inquiry is warranted.

we received a rebuttal from UKCG in response to Petitioners' SQR.<sup>8</sup>

On November 29, 2010, the Department received, via e-mail, a document from the British Embassy in support of UKCG's arguments, which the Department placed on the record of this proceeding.<sup>9</sup>

On January 13, 2011, the Department extended the deadline to initiate an anti-circumvention inquiry by 21 days, pursuant to 19 CFR 351.302(b).<sup>10</sup> On February 4, 2011, the Department further extended the deadline to initiate by 14 days, pursuant to 19 CFR 351.302(b).<sup>11</sup>

**Scope of the Order**

The merchandise covered by this 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 this 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

<sup>8</sup> See Letter from UKCG entitled, "Small Diameter Graphite Electrodes from the People's Republic of China: Response to Petitioners' Submission of November 30, 2010, On Behalf of UK Graphite and Carbon Co., Ltd.," dated December 14, 2010 ("UKCG's Rebuttal to Petitioners' Pre-Initiation Supplemental Questionnaire Response" or "UKCG's SQR Rebuttal").

<sup>9</sup> See the Department's Memorandum from Brendan Quinn to The File entitled, "Scope/Anti-Circumvention Inquiry of Small Diameter Graphite Electrodes from the People's Republic of China: Placing Document on the Record," dated February 2, 2011. In this document, the British Government related its support for UKCG and implored the Department to take into consideration certain arguments forwarded in UKCG's submissions, particularly with regard to the Binding Origin Information ruling discussed below. Because this document did not provide any new argument or information onto the record, we have not further summarized the British Embassy's letter for the purposes of this notice.

<sup>10</sup> See the Department's letter to Petitioners entitled, "Small Diameter Graphite Electrodes from the People's Republic of China: Scope Inquiry Request Regarding Certain Unfinished Merchandise Imported By UK Carbon and Graphite Company, Ltd.," dated January 13, 2011 ("Initiation Extension Letter").

<sup>11</sup> See the Department's letter to Petitioners entitled, "Small Diameter Graphite Electrodes from the People's Republic of China: Scope Inquiry Request Regarding Certain Unfinished Merchandise Imported By UK Carbon and Graphite Company, Ltd.," dated February 4, 2011 ("Second Initiation Extension Letter").

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 this order are currently classified under the Harmonized Tariff Schedule of the United States ("HTSUS") subheading 8545.11.0000. The HTSUS number is provided for convenience and customs purposes, but the written description of the scope is dispositive.

#### Determination Not To Initiate a Scope Proceeding

As noted above, Petitioners have requested the Department initiate either a scope proceeding to clarify whether the scope of the *SDGE Order* includes the merchandise in question pursuant to 19 CFR 351.225(k) or an anti-circumvention proceeding pursuant to section 781(b) of the Act and 19 CFR 351.225(h).

In the instant case, although Petitioners have provided substantial record evidence which may support the initiation of either type of inquiry, the Department has concluded that the issues raised by the parties are better addressed in the context of an anti-circumvention proceeding pursuant to section 781(b) of the Act and 19 CFR 351.225(h).<sup>12</sup> In particular, due to the specificity of Petitioners' request as it pertains to a particular company (*i.e.*, UKCG) and certain record information as to the timing of the pattern of trade (as discussed below), the Department has determined that a decision to initiate an anti-circumvention inquiry is the most appropriate course of action to address Petitioners' concerns at present. As a result of this determination, the Department will not initiate a scope proceeding pursuant to 19 CFR 351.225(k) at this time.

#### Initiation of Anti-Circumvention Proceeding

##### Statutory Criteria for Initiation of Anti-Circumvention Proceeding

Section 781(b)(1) of the Act provides that the Department may find that

<sup>12</sup> As such, the remainder of this notice will focus on the statutory criteria for the initiation of an anti-circumvention inquiry, as defined in section 781(b) of the Act. See the *Initiation of Anti-Circumvention Proceeding* section of this notice, below, for a full summary of both Petitioners' and UKCG's comments regarding initiation of an anti-circumvention inquiry. See also the *Analysis* section of this notice, below, for the full discussion of the Department's determination to initiate an anti-circumvention inquiry pursuant to section 781(b) of the Act and 19 CFR 351.225(h).

importation of certain merchandise completed or assembled in a third country constitutes circumvention of an antidumping duty order if:

(A) The merchandise imported into the United States is of the same class or kind as merchandise produced in a foreign country that is subject to the order.

(B) Before importation to the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is either subject to the order or is produced in the foreign country subject to the order.

(C) The process of assembly or completion in the third country is minor or insignificant.<sup>13</sup>

(D) The value of the merchandise produced in the country subject to the order amounts to a significant portion of the total value of the merchandise exported to the United States.

(E) Such action would be appropriate to prevent evasion of the order in question. In evaluating these aforementioned criteria, section 781(b)(3) of the Act further instructs the Department to take into account:

1. The pattern of trade, including sourcing patterns.
2. Whether the manufacturer or exporter of the merchandise in question from the country subject to the order (*i.e.*, the PRC producer of unfinished SDGE components) is affiliated with the third country party that completes or assembles the merchandise for subsequent importation into the United States (*i.e.*, UKCG).
3. Whether imports into the third country (*i.e.*, the United Kingdom) of the merchandise in question (*i.e.*, unfinished SDGE components from the PRC) have increased after the initiation of the investigation which resulted in the issuance of the order.

##### *Petitioners' Request for Initiation of an Anti-Circumvention Proceeding*<sup>14</sup>

In their October 12, 2010, Initiation Request, Petitioners presented the

<sup>13</sup> In determining whether the process of assembly or completion is minor or insignificant, section 781(b)(2) of the Act instructs the Department into account: (a) The level of investment in the foreign country; (b) the level of research and development in the foreign country; (c) the nature of the production process in the foreign country; (d) the extent of production facilities in the foreign country; and (e) whether the value of the processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States.

<sup>14</sup> Petitioners' request included arguments for both the initiation of a scope and anti-circumvention inquiry. Because, as noted in the *Determination Not To Initiate a Scope Proceeding*, above, we are focusing this notice on the determination as to whether to initiate an anti-

circumvention ruling, we have not summarized or addressed the arguments forwarded by Petitioners, which were submitted to specifically support the initiation of a scope ruling. However, we have included and addressed all arguments submitted in support of the initiation of an anti-circumvention inquiry, even in the instance that they were first presented in support of a scope initiation.

#### A. Merchandise of the Same Class or Kind

Petitioners contend that the SDGE products exported to the United States by UKCG are identical to those subject to the *SDGE Order*.<sup>15</sup>

#### B. Completion of Merchandise in a Foreign Country

Petitioners further assert that the unfinished SDGE component inputs imported by UKCG from the PRC for further processing before exportation to the United States are themselves subject merchandise.<sup>16</sup> Petitioners argue that the language of the scope (as included in the initial Petition, *SDGE Order*, and *Final ITC Determination*) identifies the graphitization process as the point at

circumvention ruling, we have not summarized or addressed the arguments forwarded by Petitioners, which were submitted to specifically support the initiation of a scope ruling. However, we have included and addressed all arguments submitted in support of the initiation of an anti-circumvention inquiry, even in the instance that they were first presented in support of a scope initiation.

<sup>15</sup> See Initiation Request at 23.

<sup>16</sup> With respect to the description of in-scope merchandise, Petitioners cite to the Letter from Petitioners entitled, "Small Diameter Graphite Electrodes from the People's Republic of China—Antidumping Duty Petition," dated January 17, 2008 ("Petition"), *Small Diameter Graphite Electrodes, Inv. 731-TA-1143 (Final)*, Pub. 4062, dated February 2009 ("*Final ITC Determination*"), and the *SDGE Order*. They argue that the scope of the *SDGE Order*, as established in these documents, explicitly includes "unfinished" SDGEs whether or not attached to a pin joining system. They assert that the inclusion of the "unfinished" language reflects the fact that unfinished SDGEs undergo no further processing beyond the graphitization stage, other than machining, as stated in the *Final ITC Determination*. As such, Petitioners contend that the scope is unambiguously dispositive regarding the inclusion of unfinished SDGE. Contrary to UKCG's claims that the SDGE components purchased from the PRC were not "unfinished" SDGE but, rather, inputs transformed into SDGE by manufacturing operations in the United Kingdom, Petitioners note that: (a) The 2009 UKCG financial statement describes the business of UKCG as the "purchasing, processing, and sale of synthetic graphite electrodes for the steel and foundry industries;" (b) the unfinished SDGE components in question contain the correct grade of petroleum coke mix, and have been baked, formed, carbonized, impregnated, and graphitized, thus, the resulting cylindrical rod, as produced in the PRC and imported into the U.K., has all the essential characteristics of a graphite electrode; (c) UKCG's own proprietary description of the U.K. processing on these artificial graphite rods demonstrates that only minor machining and finishing operations are performed, which do not impart any essential performance characteristics to the finished product. Therefore, according to Petitioners, the merchandise that UKCG imports from the PRC is "unfinished" SDGE as defined by the scope of the *SDGE Order* and, because the concept of scope encompasses both the product description and the country of origin of the product, the merchandise in question is of PRC origin and is subject merchandise both before and after finishing in the United Kingdom. See Initiation Request at 8–16.

which an electrode form becomes a graphite electrode subject to the *SDGE Order*.<sup>17</sup> As such, Petitioners contend that this graphitization process (performed in the PRC) confers both country of origin and, thus, “unfinished” subject merchandise status on the SDGE components in question, even if further machining occurs in a third country to become “finished” subject merchandise. Therefore, Petitioners conclude, the finished merchandise exported to the United States is not only produced from subject merchandise but, due to the nature of further processing not being sufficient to alter the country of origin, the finished merchandise is itself subject merchandise produced in the PRC.<sup>18</sup>

### C. Minor or Insignificant Process

#### 1. Level of Investment

Petitioners note that PRC producers have invested extensively in the SDGE industry, which includes significant investment in both manufacturing facilities and production equipment worth many millions of dollars. Petitioners contend that the bulk of this investment goes to the heavy industrial processes required for the production of SDGE (e.g., raw material handling, mixing, forming, baking, impregnating, and graphitizing), each of which occur prior to the final machining stage. Petitioners point out that, on the contrary, the total worth of UKCG’s plant, including its single machine shop and finishing equipment, as shown in UKCG’s financial statement, demonstrates that the level of investment required for a PRC manufacturer to produce an unfinished graphitized electrode is far greater than the level of investment needed by UKCG to perform its finishing processes.<sup>19</sup>

#### 2. Level of Research and Development

Petitioners argue that, although they do not have detailed information regarding research and development (“R&D”) expenses incurred by either UKCG or Chinese producers of SDGE, as

<sup>17</sup> With respect to the specific argument that the graphitization process confers “unfinished” status to the SDGE in process and is, thus, at that point “subject” to the *SDGE Order* and, furthermore, origin of the country in which this process takes place, Petitioners cite to the Petition at 3, stating, “The electrode form then undergoes the graphitization process, in which the electrode is heated in a furnace to an extremely high temperature (2600–3000 degrees centigrade). Through this process, the electrodes are transformed into graphite.” Petitioners also cite to the *Final ITC Determination* at 4, stating, “unfinished SDGEs undergo no further processing beyond the graphitization stage other than machining.”

<sup>18</sup> See Initiation Request at 23–24.

<sup>19</sup> See Initiation Request at 25–26.

explained in the “Level of Production Processes” section, immediately below, the technology required to manufacture merchandise up to the graphitization process of production (and, thus, the related R&D costs), should greatly exceed the R&D costs associated with finishing of the merchandise and that the R&D costs associated with the finishing of the merchandise are relatively insignificant by comparison.<sup>20</sup>

#### 3. Level of Production Processes

Petitioners contend that an understanding of the production of subject merchandise is essential to the analysis of whether or not UKCG is engaged in minor or insignificant production. As such, Petitioners detail the SDGE production process, demonstrating how raw materials are formed, baked, impregnated (if needed), re-baked, graphitized, finished and packaged. Petitioners emphasize the significant energy needed to graphitize the product and emphasize that, upon completion of this process, the electrode becomes an “unfinished” SDGE subject to the *SDGE Order*. Petitioners point out that, for PRC manufacturers to produce unfinished SDGE components for shipment to UKCG, they must perform each of these processes from the mixing of raw materials through to packaging, save finishing, which accounts for the vast majority of production costs (based on an analysis of proprietary information provided in the initial antidumping petition). In contrast, Petitioners argue that UKCG merely finishes<sup>21</sup> and repackages SDGE into UKCG branded cartons, processes amounting to insignificant costs when compared to those incurred by PRC producers to perform the heavy industrial processes summarized above.<sup>22</sup>

#### 4. Extent of Production Facilities

As detailed above, Petitioners note that the facilities needed to form, bake, impregnate, re-bake, graphitize and pack the subject merchandise in the PRC for exportation to the United Kingdom (e.g., equipment such as mills, sifters, calcinators, presses, ovens, and tanks) is far more significant than the single machining shop needed to finish the

<sup>20</sup> See Initiation Request at 26.

<sup>21</sup> Petitioners note that the “finishing” process involves machining of an electrode’s outside surface so that it is sized to exact dimensions and tolerances (according to National Electrical Manufacturers Association standards for U.S. bound products), and may also include machining and fitting the ends of an electrode with a threaded graphite pin connecting/joining system. See Initiation Request at 28.

<sup>22</sup> See Initiation Request at 27–30.

products exported by UKCG to the United States.<sup>23</sup>

#### 5. Value of Further Processing Compared to Total Value of Exported Merchandise

As noted above, Petitioners assert that, based on proprietary information supplied in the Petition, the cost of finishing a graphite electrode represents an insignificant amount of the total cost of manufacture for a SDGE.<sup>24</sup>

#### D. Value of Merchandise Produced in the PRC

Petitioners argue that, for reasons summarized above, the value of merchandise produced in the PRC represents the vast majority of the total value of the product.<sup>25</sup>

#### E. Whether Action Is Appropriate To Prevent Evasion of the Order

Petitioners reassert that UKCG imports graphitized components of SDGE (which, they contend are, subject merchandise) from PRC producers of subject merchandise, which are then finished and packaged for export to the United States as a product of the United Kingdom. Petitioners note that UKCG has relied on a European Binding Origin Information (“BOI”) ruling as support for the U.K. origin designation it applied to the merchandise in question. However, Petitioners argue, this ruling was issued for the purposes of trade within the European common market, and has no legal status in the United States. Moreover, Petitioners conclude that their arguments, as summarized above, invalidate any claim by UKCG that the finishing process is so substantial that it warranted a change in country of origin from the PRC to the United Kingdom.<sup>26</sup>

#### F. Additional Factors

##### 1. Pattern of Trade

Petitioners argue that, since the filing of the antidumping Petition and issuance of the preliminary determination in the initial less than fair value (“LTFV”) investigation in August 2008,<sup>27</sup> UKCG has shipped SDGE to the United States, sourced and finished from PRC-produced graphitized components, in significant and increasing quantities. According to

<sup>23</sup> See Initiation Request at 30–31.

<sup>24</sup> See Initiation Request at 31–32.

<sup>25</sup> See Initiation Request at 32.

<sup>26</sup> See Initiation Request at 32–35.

<sup>27</sup> See *Small Diameter Graphite Electrodes From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances, in Part*, 73 FR 49408 (August 21, 2008).

Petitioners, at the time of initiation of the LTFV investigation in February 2008,<sup>28</sup> the United Kingdom had no exports of SDGE of U.K. origin to the United States, but that UKCG began exporting the merchandise in question to the United States beginning two months after the publication of the preliminary determination.<sup>29</sup> According to Petitioners, during the period November 2008 through March 2010, UKCG exports of SDGE represented 96 percent of the total SDGE exports from the United Kingdom to the United States, and such exports occurred in significant and increasing quantities subsequent to the issuance of the *SDGE Order*. Petitioners also placed Chinese Customs data on the record, which they claim demonstrates a significant increase in imports of finished SDGE from the PRC into the U.K. corresponding to the aforementioned increase in exports to the U.S.<sup>30</sup>

## 2. Affiliation

Though Petitioners do not claim that UKCG is affiliated with any of the PRC producers from which it sourced the merchandise in question, they cite to UKCG's existing business relationship with PRC producers of merchandise subject to the *SDGE Order*.<sup>31</sup>

## 3. Import Volume Subsequent to the Investigation and Order

As noted above, Petitioners identify the following trends since the filing of the antidumping petition and issuance of the preliminary determination of the initial LTFV investigation in August 2008: UKCG has shipped Chinese-sourced subject merchandise to the United States in significant and increasing quantities; UKCG exports of SDGE represent the vast majority of the total SDGE exports from the United Kingdom to the United States; and customs data from the PRC and United States show a significant increase in PRC exports of SDGE to the United Kingdom and U.K exports to the United States.<sup>32</sup>

<sup>28</sup> See *Small Diameter Graphite Electrodes From the People's Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 8287 (February 13, 2008).

<sup>29</sup> Petitioners note that the preliminary margins ranged from 132.80 to 159.34, indicating that significant dumping margins might be levied against SDGE from the PRC in the final determination.

<sup>30</sup> See Initiation Request at 35–37.

<sup>31</sup> See Initiation Request at 38.

<sup>32</sup> See *id.*

## *Comments Received Subsequent to the Initiation Request*

### A. UKCG's Rebuttal Comments

On October 29, 2010, the Department received a letter on behalf UKCG in rebuttal to Petitioners' October 12, 2010, requests for a scope and/or anti-circumvention ruling. In this submission, UKCG asserts that there is no need for the Department to undertake a full scope or anti-circumvention inquiry, arguing that the unfinished SDGE component inputs in question have already been excluded from the scope of the *SDGE Order*, the finished SDGE exports are of U.K. origin, and that Petitioners' October 12, 2010, submission merely reiterates old allegations which have been previously rebutted based on record evidence.<sup>33</sup> UKCG presents the following arguments in support of its position:

**Legal Standards:** UKCG argues that the scope of the *SDGE Order*, which was drafted by Petitioners, explicitly excludes the unfinished material in question. Citing to *Hylsa, S.A. de C.V. v. United States*, 22 C.I.T. 44, 49 (1998), UKCG asserts that it is legally impermissible to bring such excluded merchandise back into the case, either as part of a scope or anti-circumvention proceeding.<sup>34</sup>

**Artificial Graphite Is Not Covered by the *SDGE Order*:** UKCG argues that the addition of the term "unfinished" to the scope of the *SDGE Order* is a lawyer-created term with no meaning in the industry and, as such, the term "unfinished" electrode could be applied to even the raw materials used to create SDGE. UKCG claims that the items imported into the United Kingdom are not "unfinished" SDGE but, rather, artificial graphite rods. UKCG cites to separate customs rulings from the United States and the United Kingdom/European Union ("E.U.") that it purports define the product in question as artificial graphite and not unfinished SDGE.<sup>35</sup>

**Petitioners Did Not Include Artificial Graphite Rods in the Scope of the Order:** UKCG notes that SGL Carbon, a Petitioner, and Graftech, a producer of electrodes who supported Petitioners in their filing of the initial Petition, have themselves imported items classified as artificial graphite rods under the 3801 tariff classification used by UKCG in its classification of the unfinished materials in question. As such, UKCG

asserts that Petitioners knew of such materials and their classification under HTS subheading 3801, but expressly did not include them within the scope of the *SDGE Order*, either in the dispositive scope narrative or in the HTS classification listed in the narrative. Therefore, UKCG concludes that, because Petitioners were aware of the use of separate terminology and HTS classification for artificial graphite products and finished graphite electrode products, considering the fact that they refrained from including the former within the scope of the *SDGE Order*, their request to include such products in the order is inappropriate at this stage of the proceeding.<sup>36</sup>

**Petitioners' Country of Origin Citation Is Without Factual Basis:** UKCG avers that Petitioners have provided no factual basis for their assertion that the *ITC Final Determination* holds that the graphitization process confers the final country of origin status for the purposes of the *SDGE Order*, and that any offhanded remark on this issue in the *ITC Final Determination* is without authority and contradicted by customs rulings from both the United Kingdom and the United States.<sup>37</sup>

**A U.K. BOI Ruling Found That Artificial Graphite Rods Are Not Electrodes, and Petitioners Misstate the Effect of This BOI Ruling:** UKCG argues that U.K. authorities examined the issue at hand and determined that the unfinished SDGE components in question were properly classified as "Artificial Graphite" under HTS subcategory 3801.10, rather than as "Carbon Electrodes" under HTS subcategory 8548.11. UKCG asserts that Petitioners have misunderstood the impact of this BOI, because the submission of any untrue information on an E.U. export declaration is considered an illegal act.<sup>38</sup>

**A U.S. CBP Ruling Also Found That Artificial Graphite Rods Are Not Electrodes:** UKCG notes that a February 23, 2009, ruling by U.S. Customs and Border Protection ("CBP") found that semi-manufactures of artificial graphite rods are expressly included in the explanatory note of HTSUS 3801. UKCG points out the CPB ruling states that "artificial graphite rods in their imported condition will consist of un-machined semi-manufactures that must be cut, machined to fine tolerances and surface finished before they can be considered finished articles in {HTSUS}

<sup>36</sup> See UKCG's Initiation Rebuttal Comments at 4–6.

<sup>37</sup> See UKCG's Initiation Rebuttal Comments at 6.

<sup>38</sup> See UKCG's Initiation Rebuttal Comments at 6–8. This BOI ruling is provided in UKCG's Initiation Rebuttal Comments at Exhibit 2.

<sup>33</sup> See UKCG's Initiation Rebuttal Comments at 1–2.

<sup>34</sup> See UKCG's Initiation Rebuttal Comments at 3.

<sup>35</sup> See UKCG's Initiation Rebuttal Comments at 3–4.

heading 8545,” and ultimately determines that unfinished artificial graphite electrode rods identical to the product at issue in the instant case should be classified under HTSUS 3801.10.5000. UKCG asserts that, in this ruling, CBP specifically declares that the items in question are a form of artificial graphite rods, which are semi-manufactured inputs that have not yet taken on the nature of an electrode.<sup>39</sup>

#### B. Petitioners' Response to UKCG's Rebuttal

On November 12, 2010, Petitioners submitted a response to UKCG's Rebuttal Comments. Petitioners first note their disagreement with UKCG's categorization of the unfinished SDGE components in question as artificial graphite rods not subject to the *SDGE Order*, and reiterate their contention that the scope of the *SDGE Order* clearly includes such merchandise.<sup>40</sup> Petitioners then present specific rebuttals to certain arguments forwarded by UKCG, summarized below:

*“Unfinished” SDGE Are Clearly Defined:* Petitioners argue that, despite UKCG's assertion that the term “unfinished” is a term without meaning and that Petitioners' conclusion that graphitization confers country of origin to the SDGE in question is unfounded, the Petition and *Final ITC Determination* clearly define “unfinished SDGE” as SDGE that have been graphitized but not further machined or finished. Furthermore, Petitioners argue that whether or not the term “unfinished” has a specific meaning in the trade is irrelevant for antidumping purposes.<sup>41</sup>

*UKCG's Argument That Artificial Graphite Was Expressly Excluded From the Scope Is Flawed:* Petitioners argue that, because the “unfinished” SDGE language was included within the scope of the *SDGE Order* (which, according to Petitioners, includes the unfinished SDGE components in question), there was no need to consider the classification of artificial graphite rods. Furthermore, Petitioners note that the scope clearly indicates that the HTSUS number provided is for convenience and customs purposes, but should not be considered dispositive.<sup>42</sup>

*The BOI Ruling Is Not Relevant to This Proceeding:* Petitioners contend that the BOI Ruling cited to by UKCG

as evidence that the merchandise in question is of U.K. origin is not relevant for antidumping purposes because: (a) It speaks to HTS classifications, which are not dispositive to the scope of the *SDGE Order*; (b) the BOI does not address the specific issue relevant in the instant proceeding (*i.e.*, whether artificial graphite rods are unfinished SDGE); (c) the BOI is a ruling applicable to trade within the European Community and has no application for exports to other countries, including the United States; and (d) no customs ruling, whether United Kingdom or United States in origin, can bind or limit the scope of a U.S. antidumping duty order.<sup>43</sup>

*Commerce Should Request Immediate Suspension of Liquidation:* Petitioners argue that because UKCG has incorrectly reported the country of origin in its entry documents (*i.e.*, listing the United Kingdom rather than the PRC) and, in so doing, has avoided suspension of liquidation and antidumping duty deposits that are required under the *SDGE Order*, the Department should immediately request that CBP reverse the liquidation of such entries in order to properly suspend liquidation and collect the appropriate antidumping duty deposits.<sup>44</sup>

#### Responses to the Department's Request for Supplemental Information

On November 24, 2010, the Department requested that Petitioners supplement their scope request with certain additional information to aide in the Department's decision to initiate a formal scope or anti-circumvention inquiry.<sup>45</sup> In this questionnaire, the Department requested that Petitioners provide further information regarding both the pattern of trade for imports of “unfinished SDGE” into the United Kingdom from the PRC and domestic U.K. production of “unfinished SDGE” during the relevant time period. On November 30, 2010, we received Petitioners' response to the Department's pre-initiation questionnaire.<sup>46</sup> On December 14, 2010, we received a rebuttal from UKCG in response to Petitioners' submission.<sup>47</sup>

<sup>39</sup> See Petitioners' Response to UKCG's Initiation Rebuttal Comments at 6–7. Citing to *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 3987 (January 22, 2009), and accompanying Issues and Decisions Memorandum (“*Tapered Roller Bearings*”) at Comment 1, Petitioners assert that only the Department has the authority to define what products are within or outside the scope of an order.

<sup>40</sup> See Petitioners' Response to UKCG's Initiation Rebuttal Comments at 7–8.

<sup>41</sup> See Pre-Initiation Supplemental Questionnaire.

<sup>42</sup> See Petitioners' SQR.

<sup>43</sup> See UKCG's SQR Rebuttal.

#### A. Petitioners' Supplemental Questionnaire Response

In their November 30, 2010, response, Petitioners submitted information onto the record regarding U.K. imports under HTS 3801.10.00<sup>48</sup> from the PRC (*i.e.*, the HTS subcategory most specific to unfinished SDGE components in question) for the years 2008–2010.<sup>49</sup> Petitioners assert that these data show a direct correlation between the antidumping investigation on SDGE and imports of the unfinished merchandise in question into the United Kingdom from the PRC, noting that:

- The monthly average volume of imports of merchandise classified under HTS 3801.10.00 from January through August 2008 was 66,208 kg, but in September 2008, the month following the preliminary determination, imports increased to a monthly average of 603,944 kg.<sup>50</sup>

- In the four months between the announcement of the preliminary determination and the final determination, September through December 2008, the average monthly imports were 574,162 kg, but the volume of imports rose to 815,061 kg in January 2009, the month corresponding to the announcement of the final determination.<sup>51</sup>

- The volume of imports, by year, has increased dramatically since the filing of the initial antidumping duty petition, with 2,152,370 kg (averaging 180,198 kg per month) imported in 2008, 3,097,554 kg (averaging 258,130 per month) in 2009, and 8,751,286 kg (annualized, averaging 729,273 kg per month) in 2010.<sup>52</sup>

Petitioners argue that these data demonstrate that the antidumping duty investigation resulted in a significant increase of imports of “unfinished SDGE” into the United Kingdom from the PRC, and allege that this increase is attributable to a scheme undertaken by PRC producers to unlawfully avoid U.S. antidumping duties.<sup>53</sup> Finally, Petitioners maintain that they do not know of any SDGE manufacturing operations in the United Kingdom during the relevant time period, other

<sup>48</sup> “Artificial Graphite; Colloidal or Semi-Colloidal Graphite; Preparations Based on Graphite or Other Carbon in the Form of Pastes, Blocks, Plates or Other Semi-Finished Goods.”

<sup>49</sup> See Petitioners' SQR at Attachment 1. These data were obtained from HM Revenue and Customs' UK Overseas Trade Statistics and Regional Trade Statistics Web site, available at <http://www.hmrc.gov.uk/stats/trade-statistics.htm>.

<sup>50</sup> See Petitioners' SQR at 1.

<sup>51</sup> See Petitioners' SQR at 1–2.

<sup>52</sup> See Petitioners' SQR at 2.

<sup>53</sup> See Petitioners' SQR at 2–3.

<sup>39</sup> See UKCG's Initiation Rebuttal Comments at 8–9.

<sup>40</sup> See Petitioners' Response to UKCG's Initiation Rebuttal Comments at 1–4.

<sup>41</sup> See Petitioners' Response to UKCG's Initiation Rebuttal Comments at 4–5.

<sup>42</sup> See Petitioners' Response to UKCG's Initiation Rebuttal Comments at 6.

than the finishing operations performed by UKCG.<sup>54</sup>

#### B. UKCG's Rebuttal to Petitioners' Supplemental Questionnaire Response

In rebuttal, UKCG asserts that the information submitted by Petitioners in both their Initiation Request and SQR is misleading because it: (a) Misstates the amounts of SDGE exported by UKCG to the United States, (b) misinterprets the significance of UKCG's increase of business with the United States as an attempt to circumvent the Order when it is only a result of increased global marketing on behalf of the company, and (c) draws incorrect conclusions regarding circumvention due to a reliance on publicly available information for HTS subcategory 3801, which is a basket category containing items much more broad than just artificial graphite rods.<sup>55</sup>

UKCG argues that the CBP data used by Petitioners in the Initiation Request to demonstrate the amount of SDGE exported to the United States by UKCG during the relevant time period do not accurately reflect the volume of exports. UKCG also disputes Petitioners' assertion from the Initiation Request that UKCG did not export SDGE to the United States until November 2008 (two months after the Department's announcement of the preliminary determination), and demonstrates that the company had certain exports of SDGE produced in the same manner as the merchandise in question prior to that date.<sup>56</sup>

Furthermore, UKCG attributes its increase in U.S. business to certain factors unrelated to the LTFV investigation and subsequent *SDGE Order*, including:

- The actual significance of any U.S. sales being overstated, because the low base of existing sales volume would yield any increase (or decrease) to appear significant in percentage terms, even though the actual change in sales volume was considerably less meaningful.<sup>57</sup>

- Internal efforts to obtain a larger global market share, which predate the *SDGE Order*.<sup>58</sup>

- The increase in demand due to the shortage of electrodes in the United States, created by high antidumping duties imposed on PRC SDGE.<sup>59</sup>

Finally, UKCG argues that it is misleading for Petitioners to point to a

swing in the import figures for a broad-basket 3801.10.00 "artificial graphite" HTS subcategory, such as the large increase in January 2009, and attribute such an increase to UKCG's sales of finished SDGE to the United States, since the total amount UKCG sales of finished SDGE to the United States during that year was lower than the imports of unfinished artificial graphite imported into the country in that single month. UKCG also points out that, though Petitioners submitted import data extracted from the [uktradeinfo.com](http://uktradeinfo.com) website in the November 30, 2010 SQR, they did not provide other information available at the same Web site, which shows that over 40 U.K. companies imported products under HTS 3801.10.00 in 2008. UKCG asserts that this information undermines Petitioners' arguments regarding circumvention, and shows the import data for HTS 3801.10.00 to be overstated and unreliable.<sup>60</sup>

#### Analysis

Based on our analysis of Petitioners' anti-circumvention inquiry request, summarized above, the Department determines that Petitioners have satisfied the criteria to warrant an initiation of a formal anti-circumvention inquiry pursuant to section 781(b)(1) of the Act and 19 CFR 351.225(h). In accordance with 19 CFR 351.225(e), if the Department finds that the issue of whether a product is included within the scope of an order cannot be determined based solely upon the application and the descriptions of the merchandise, the Department will notify by mail all parties on the Department's scope service list of the initiation of a scope inquiry, including an anti-circumvention inquiry. In addition, in accordance with 19 CFR

351.225(f)(1)(ii), a notice of the initiation of an anti-circumvention inquiry issued under paragraph (e) of this section will include a description of the product that is the subject of the anti-circumvention inquiry, *i.e.*, SDGE, as provided in the scope of the *SDGE Order*, produced from unfinished artificial graphite rod components from the PRC that are further machined and finished in the United Kingdom for exportation to the United States. Furthermore, in accordance with 19 CFR 351.225(f)(1)(ii), the Department will explain the reasoning for its decision to initiate an anti-circumvention inquiry, which is provided below.

With regard to whether the merchandise exported to the United

States is of the same class or kind as subject merchandise produced in the PRC, Petitioners have presented information to the Department indicating that, pursuant to section 781(b)(1)(A) of the Act, the merchandise being exported from the United Kingdom by UKCG may be of the same class or kind as SDGE produced in the PRC, which are subject to the *SDGE Order*. While UKCG contends that its finished SDGE exports to the United States are of U.K. origin, UKCG has not presented evidence demonstrating that the merchandise exported to the United States is not of the same class or kind as merchandise subject to the *SDGE Order*. Consequently, the Department finds that Petitioners have provided sufficient information in their requests regarding the class or kind of merchandise to warrant initiation of an anti-circumvention inquiry.

With regard to completion or assembly of merchandise in a foreign country, pursuant to section 781(b)(1)(B) of the Act, Petitioners have also presented information to the Department indicating that the SDGE exported from the United Kingdom are being processed by UKCG from unfinished components which are produced in the PRC (*i.e.*, the country subject to the *SDGE Order*) and which might be, themselves, "unfinished SDGE" subject to the *SDGE Order*. While UKCG argues that such inputs are not subject to the *SDGE Order*, it does not provide evidence to contradict Petitioners' claim that the finished SDGE exported to the United States by UKCG are produced from inputs sourced from the PRC. Therefore, we find that the information presented by Petitioners regarding this criterion supports their request to initiate an anti-circumvention inquiry.

Further, we find that Petitioners have provided sufficient evidence to demonstrate that the processing performed in the United Kingdom may be minor or insignificant, as described by sections 781(b)(1)(C) and 781(b)(2) of the Act. In particular, we find that Petitioners' submissions suggest that the level of overall investment, R&D, sophistication of production processes (and the degree to which they alter the fundamental characteristics of the merchandise), and production facilities needed for UKCG to machine and finish the components in question into finished SDGE for exportation to the United States may be insignificant, especially when compared to the level of investment, facilities, R&D, and processes required by SDGE producers in the PRC to manufacture said components. We find that Petitioners

<sup>54</sup> See Petitioners' SQR at 3.

<sup>55</sup> See UKCG's SQR Rebuttal at 2.

<sup>56</sup> See UKCG's SQR Rebuttal at 2-4.

<sup>57</sup> See UKCG's SQR Rebuttal at 4.

<sup>58</sup> See UKCG's SQR Rebuttal at 4-5.

<sup>59</sup> See UKCG's SQR Rebuttal at 4.

<sup>60</sup> See UKCG's SQR Rebuttal 5-6.

have also provided evidence to demonstrate that finishing processes in the United Kingdom may add little value to the merchandise imported into the United Kingdom, as exported to the United States. Though UKCG provides rebuttal evidence to demonstrate that the processes performed in the United Kingdom are, indeed, sophisticated and contend that Petitioners' arguments are based on the incorrect conclusion that the SDGE component inputs sourced from the PRC are in-scope (citing to the U.K. Customs and CBP rulings noted above), we do not find that their arguments are sufficient to deter the Department from initiating an anti-circumvention inquiry to attain more information regarding the concerns raised by Petitioners. As a result, our subsequent analysis will focus on UKCG's machining and finishing operations in the United Kingdom (in addition to information regarding pattern of trade, as discussed below) and we will closely examine the nature of the materials sourced from the PRC and whether those materials are subject to the scope of the *SDGE Order*.

With respect to the value of the merchandise produced in the PRC pursuant to section 781(b)(1)(D) of the Act, Petitioners rely on their "minor or insignificant processing" arguments summarized above, as well as certain proprietary cost information provided in the initial *Petition*, to indicate that the value of the unfinished SDGE components may be significant relative to the total value of a the finished SDGE exported to the United States. We find that the information, as discussed above, adequately meets the requirements for initiation pursuant to section 781(b)(1)(D) of the Act.

Regarding whether action is needed to prevent evasion of the *SDGE Order*, pursuant to section 781(b)(1)(E) of the Act, Petitioners do not address this issue directly, instead addressing this criterion in their arguments regarding "pattern of trade" pursuant to section 781(b)(3) of the Act. Specifically, they rebut UKCG's reliance on the BOI ruling and the CBP ruling as support for either the appropriateness of the HTS 3801 sub-classification for the unfinished components or confirmation of U.K. origin of the finished merchandise in question. Petitioners conclude that neither ruling is relevant for the purposes of the issues present in the instant proceeding. Conversely, UKCG emphasizes the weight of these determinations and implores the Department to consider them in its analysis on the issue of proper classification of the unfinished SDGE components for the purposes of this

initiation determination. We will seek more information regarding the proper country of origin classification for the finished SDGE imported into the United States; however, we note that Petitioners are correct to point out that neither the BOI nor the CBP ruling are legally binding for the purposes of antidumping proceedings in the United States.<sup>61</sup> While we will give each document due consideration for the purposes of our ultimate anti-circumvention determination, we do not find the content of either document sufficient to compel the Department to decline to initiate such a proceeding.

Finally, we find that Petitioners have provided sufficient evidence, in both their Initiation Request and SQR, to fulfill the additional initiation criteria specified in section 781(b)(3) of the Act. Though Petitioners do not show that UKCG is affiliated with any PRC producer of subject merchandise, they demonstrate that the company has a business relationship with PRC producers of subject merchandise. Furthermore, information provided by Petitioners regarding imports and exports under HTS 3801 and 8545, suggests that (a) U.K. importers are sourcing PRC-produced unfinished SDGE components in increasing quantities, and (b) exports of finished SDGE from the United Kingdom have increased since the beginning of the initial SDGE investigation. Although UKCG provides evidence to demonstrate that Petitioners' information may be distorted or misstated due to certain factors, the Department intends to seek further information on this pattern of trade issue during the course of this inquiry, and will request greater detail as to the nature of UKCG's relationship with PRC producers of subject merchandise and timing of sales and sourcing. As such, though we recognize UKCG's concerns regarding the conclusions reached by Petitioners in their analysis of the pattern of trade data placed on the record, we do not agree with UKCG that the Department should conclude that such concerns are sufficient to refrain from further inquiry.

Therefore, for the reasons stated above, we have determined that Petitioners have provided sufficient basis for the Department to initiate a formal anti-circumvention inquiry concerning the *SDGE Order*, pursuant to section 781(b) of the Act. In accordance with 19 CFR 351.225(l)(2), if the Department issues a preliminary affirmative determination, we will then instruct CBP to suspend liquidation and

require a cash deposit of estimated duties on the merchandise.

This anti-circumvention inquiry covers UKCG only. If, within sufficient time, the Department receives a formal request from an interested party regarding potential circumvention of the *SDGE Order* by other companies in the United Kingdom, we will consider conducting additional inquiries concurrently.

The Department will, following consultation with interested parties, establish a schedule for questionnaires and comments on the issues. The Department intends to issue its final determination within 300 days of the date of publication of this initiation pursuant to section 781(f) of the Act. This notice is published in accordance with 19 CFR 351.225(f).

Dated: February 17, 2011.

**Ronald K. Lorentzen,**  
Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011-6451 Filed 3-17-11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

**AGENCY:** NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of decision of panel.

**SUMMARY:** On March 10, 2011, the binational panel issued its decision in the review of the determination on remand made by the International Trade Commission, respecting Light-Walled Rectangular Pipe and Tube from Mexico: Final Determination of Material Injury to a U.S. Industry (NAFTA Secretariat File Number USA-MEX-2008-1904-04). The binational panel affirmed the International Trade Commission's determination on remand. Copies of the panel's order are available from the U.S. Section of the NAFTA Secretariat.

**FOR FURTHER INFORMATION CONTACT:** Valerie Dees, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty

<sup>61</sup> See, e.g., *Tapered Roller Bearings* at Comment 1.