CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Wednesday, November 27, 1991

Review No.: RR-91-002

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the review finding made by the Canadian Import Tribunal on April 30, 1987, in Review No. R-5-87, continuing with amendment the finding of material injury made by the Canadian Import Tribunal on November 26, 1986, in Inquiry No. CIT-4-86, respecting:

FINISHED ARTIFICIAL GRAPHITE ELECTRODES AND CONNECTING PINS ORIGINATING IN OR EXPORTED FROM BELGIUM, JAPAN, SWEDEN AND THE UNITED STATES OF AMERICA

O R D E R

The Canadian International Trade Tribunal, under the provisions of subsection 76(2) of the *Special Import Measures Act*, has conducted a review of the review finding made by the Canadian Import Tribunal on April 30, 1987, in Review No. R-5-87, continuing with amendment the finding of material injury made by the Canadian Import Tribunal on November 26, 1986, in Inquiry No. CIT-4-86.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby rescinds the said finding.

W. Roy Hines
W. Roy Hines
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Robert C. Coates, Q.C.
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FINISHED ARTIFICIAL GRAPHITE ELECTRODES AND CONNECTING PINS ORIGINATING IN OR EXPORTED FROM BELGIUM, JAPAN, SWEDEN AND THE UNITED STATES OF AMERICA

Special Import Measures Act - Whether to rescind or continue, with or without amendment, the review finding made by the Canadian Import Tribunal on April 30, 1987, in Review No. R-5-87, continuing with amendment the finding of material injury made by the Canadian Import Tribunal on November 26, 1986, in Inquiry No. CIT-4-86.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	October 7 and 8, 1991
Date of Order and Reasons:	November 27, 1991
Tribunal Members:	W. Roy Hines, Presiding Member Kathleen E. Macmillan, Member Robert C. Coates, Q.C., Member
Director of Research:	Peter Welsh
Research Officer:	W. Douglas Kemp
Statistical Officer:	Margaret Saumweber
Counsel for the Tribunal:	Clifford Sosnow
Registration and Distribution Clerk:	Pierrette Hébert

Participants:

	W. Jack Millar and James H. Warnock
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	(Manufacturers)
	Keith Sandford
for	Superior Graphite Canada Ltd. and Superior Graphite Company
	(Importer/Exporter)

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Witnesses:

Jerry A. Acciarri
Pet-Coke Inc.

Donald K. White
Marketing Manager
UCAR Carbon Canada Inc.

Lorne D. Walker
Sales Manager & Secretary
G.L.C. Canada Inc.

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IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the review finding made by the Canadian Import Tribunal on April 30, 1987, in Review No. R-5-87, continuing with amendment the finding of material injury made by the Canadian Import Tribunal on November 26, 1986, in Inquiry No. CIT-4-86, respecting:

FINISHED ARTIFICIAL GRAPHITE ELECTRODES AND CONNECTING PINS ORIGINATING IN OR EXPORTED FROM BELGIUM, JAPAN, SWEDEN AND THE UNITED STATES OF AMERICA

TRIBUNAL: W. ROY HINES, Presiding Member
KATHLEEN E. MACMILLAN, Member
ROBERT C. COATES, Q.C., Member

STATEMENT OF REASONS

SUMMARY

The Canadian International Trade Tribunal (the Tribunal) has reviewed the review finding made by the Canadian Import Tribunal on April 30, 1987, in Review No. R-5-87, continuing with amendment the finding of material injury to the domestic production of finished artificial graphite electrodes and connecting pins from Belgium, Japan, Sweden and the United States of America made by the Canadian Import Tribunal on November 26, 1986, in Inquiry No. CIT-4-86.

The domestic industry consists of UCAR Carbon Canada Inc. and G.L.C. Canada Inc. In a joint submission, both firms requested that the finding be continued, except for exports from Sweden.

In reviewing a finding pursuant to subsection 76(2) of the *Special Import Measures Act* (SIMA), the Tribunal examines whether there would likely be a resumption of dumped imports from the subject countries and whether such dumping would likely cause material injury to the production in Canada of like goods.

The industry claimed that there would be a resumption of injurious dumping. It submitted that there was considerable excess capacity in the world industry and this excess was forecast to continue. Exporters from Japan and Belgium were dumping in the United States, and exports from the United States would likely be dumped in Canada. Even small volumes or the mere offer of imports at dumped prices would cause material injury.

The Tribunal examined evidence on recent import history and prices of graphite electrodes in the United States, recent developments in the world market, and production and trade in Canada. The Tribunal found that Japanese imports might be entering the

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United States at dumped prices. At the same time, however, it was not convinced that there was dumping of Belgian electrodes in the United States. The Tribunal found that prices were low, and declining, in the U.S. graphite electrode market. While the industry submitted that imports into Canada of U.S. electrodes at these prices would be dumped, little evidence was advanced to show that this, in fact, would be the case.

On balance, the Tribunal found that the chaotic situation in the world electrode market might lead to dumping into Canada from the subject countries. The situation facing the world industry is one of high levels of excess capacity and weak demand. If this continues, exports from the subject countries may enter at dumped prices. However, the Tribunal concluded that the volume of any such imports would unlikely be large since low prices and the limited potential for market penetration in the Canadian market would make it relatively unattractive to foreign suppliers.

The Tribunal assessed the likelihood of material injury to the domestic industry of a small volume of dumped imports, or the mere offer of dumped imports in the market. It found that the domestic industry's excess capacity alone was such that intra-industry competition for market share would be fierce and would be reflected mainly in falling prices. This situation could be aggravated by sales or offers to supply at dumped prices. However, the negative impact of low prices on the industry's financial performance would be related primarily to intra-industry competition and not to dumped imports.

In consideration of these facts, the Tribunal was persuaded that the finding should be rescinded.

THE BACKGROUND

This is a review, under subsection 76(2) of SIMA, of the review finding made by the Canadian Import Tribunal on April 30, 1987, in Review No. R-5-87, continuing with amendment the finding of material injury made by the Canadian Import Tribunal on November 26, 1986, in Inquiry No. CIT-4-86, concerning finished artificial graphite electrodes and connecting pins originating in or exported from Belgium, Japan, Sweden and the United States of America.

Pursuant to section 76 of SIMA, the Tribunal initiated a review of the finding and issued a notice of review on June 14, 1991. This notice was forwarded to all known interested parties and was published in Part I of the June 22, 1991, issue of the Canada Gazette.

As part of this review, the Tribunal sent questionnaires to manufacturers and importers/exporters of the subject goods. The Tribunal acquired a report on the global steel, graphite electrode and needle coke markets entitled Worldwide Market Analysis and Forecast 1990-1995, August 1991[1] by Mr. J.A. Acciarri, President of Pet-Coke Inc. (Pet-Coke), Kingwood, Texas, United States. From the replies to the questionnaires and other sources, including the Pet-Coke report, the Tribunal's research staff prepared public and confidential pre-hearing staff reports. In addition, the record of this review consists of all relevant documents, including the original finding, the review finding, the Notice of Review, and public and confidential sections of replies to the questionnaires. All

1. Tribunal exhibit RR-91-002-25 (Protected).

public exhibits were made available to interested parties and confidential/protected exhibits were provided only to independent counsel who had filed an undertaking. Public and *in camera* hearings were held in Ottawa, Ontario, on October 7 and 8, 1991.

UCAR Carbon Canada Inc. and G.L.C. Canada Inc. are the manufacturers of the subject goods. They were represented by counsel, submitted evidence and made argument to continue the finding except against Sweden. Superior Graphite Canada Ltd. and Superior Graphite Company of the United States were also represented by counsel who submitted evidence and made argument to rescind the finding or, if the Tribunal continued the finding, to exclude artificial graphite electrodes of less than 350 mm in diameter.

THE PRODUCTS

The products are finished artificial graphite electrodes and connecting pins originating in or exported from Belgium, Japan, Sweden and the United States of America. They are used in electric arc furnaces (EAF) in the production of pig- and cast-iron, abrasive materials and non-ferrous metals. Connecting pins are pieces of graphite with machined female and male ends. They connect electrodes installed in groups of two or more. Certain small electrodes have machined male and female ends, and do not require connecting pins.

Electrodes conduct electric current into the furnace where an arc is formed between the electrode tip and the furnace charge. The very high temperature of the arc causes the metallurgical reactions taking place in the furnace.

Electrodes and connecting pins are manufactured by extruding a mixture of calcined petroleum needle coke and coal tar pitch into cylindrical rods which are then baked and machined. Electrodes may be either regular grade or high-power grade. Production of the high-power or high-density product requires an added coal tar pitch impregnation operation and additional baking. While the two products are almost identical chemically, high-power electrodes contain certain extra physical properties and electrical resistivity, which permits improved operation in high-power applications. The production of graphite electrodes is a relatively lengthy process, spanning approximately three months. There are four stages in production: the extrusion, baking, graphitizing and machining.

Extrusion

The needle coke is first crushed and graded to size by screening. Using different sized coke particles, in predetermined ratios, the mix is blended with pitch which forms the bond between the separate particles. The blending is done at a high temperature to make the pitch fully plastic. The mix is then charged into a ram type, hydraulic press from which the round or rectangular section is extruded and cooled. This is called "green stock."

Baking

The green electrodes are baked in furnaces in which each rod is surrounded with packing coke. The heating process follows a predetermined and gradually increasing heating curve, reaching a final temperature of approximately 900°C. During this stage, the pitch is converted into hard coke, and impurities are removed. To produce

high-grade graphite electrodes, the baked electrodes undergo special treatment in an autoclave where they are impregnated with liquid pitch under pressure.

Graphitizing

Graphitizing is the process by which baked coke is transformed into graphite. The electrodes are packed in electric furnaces surrounded by carbon particles to form a solid mass. An electric current is passed through the furnace, raising the temperature to about 3000°C. After cooling, the rods are cleaned and inspected. Graphitizing is done in Acheson furnaces or lengthwise graphitization (LWG) furnaces. For medium- and larger size electrodes, LWG furnaces produce a higher quality graphite electrode at a lower cost when compared to the Acheson process. The LWG process requires less labour and a shorter heating time.

Machining

Electrodes range in size from 75 mm to 700 mm. The outside diameter and the ends are machined to meet international standard tolerances. Connecting pins require more machining, but are sold for the same price per tonne as the electrodes. Without the electrodes, connecting pins have no commercial value.

THE DOMESTIC INDUSTRY

In 1986, the industry consisted of Union Carbide Canada Limited (UCCL), 75 percent owned by Union Carbide Corporation, of New York, and G.L.C. Canada Inc. (GLC), a wholly owned subsidiary of Great Lakes Carbon Corporation (GLC U.S.), of Briarcliff Manor, New York. On December 31, 1989, the Carbon Products Division of UCCL became UCAR Carbon Canada Inc. (UCAR), a wholly owned subsidiary of UCAR Carbon Company Inc. (UCAR U.S.), of Danbury, Connecticut. In February 1991, Mitsubishi bought 50 percent of virtually all of the UCAR Carbon Company Inc. international network, including UCAR of Canada.

In September 1991, Hoechst AG (Hoechst), of Frankfurt, Germany, and Horsehead Industries, Inc. (Horsehead), of New York, signed a letter of intent to create a new carbon and graphite product company by merging their respective subsidiaries, SIGRI GmbH (SIGRI), of Meitingen, Germany, and the Graphite Products Division of GLC U.S. Horsehead and Hoechst anticipated the signing of definitive agreements by the end of this year, enabling the new company to begin operations in January 1992.

UCAR manufactures 250-mm to 600-mm diameter artificial graphite electrodes at its plant in Welland, Ontario. It also manufactures carbon electrodes and cathode blocks. In 1989, it closed some of its older, high-cost facilities, including its Acheson furnaces, and stopped manufacturing electrodes less than 250 mm in diameter, which had represented about 2 percent of its total electrode sales and all of its exports. UCAR uses LWG furnaces at Welland. UCAR's customers for small-diameter electrodes are now supplied by UCAR U.S. from the UCAR plant in Mexico. UCAR imports semi-processed connecting pins from UCAR U.S. and finishes them at its Welland facility.

GLC produces a full range of electrodes, incorporating all stages of production. It has two plants, one in Berthierville, Quebec, and the other in Lachute, Quebec. At Lachute, it produces larger electrodes used in ultra-high-powered steel applications throughout the world. At this location, the process begins with "green" electrodes

produced at Berthierville and other GLC facilities. GLC uses Acheson furnaces at Berthierville for small units, about 50 percent of its production, and LWG furnaces at Lachute. The firm imports the majority of the connecting pins it sells in Canada from GLC U.S.

UCAR purchases needle coke from UCAR U.S., which negotiates contracts with suppliers for the corporation's needs around the world. UCAR pays the negotiated price plus a commission. The firm purchases coal tar pitch in Canada and petroleum pitch from a firm in Kentucky, United States. GLC buys its petroleum coke requirements from GLC U.S., which buys from various oil refiners.

The industry sells graphite electrodes to the steel, foundry, abrasive and smelting industries across Canada, in diameters from 75 mm to 600 mm. The market is concentrated, and the bulk of UCAR and GLC sales are made to about 15 companies. Both firms sell directly to the end user. Similarly, end users usually source imported product directly from foreign manufacturers. Generally, the user industries contract their graphite electrode supplies for periods of four to twelve months in advance. The market may be characterized as involving a relatively small number of large contracts each year.

The International Industry

The western world graphite industry is made up of about 13 corporations. Five of these are multinational enterprises accounting for 79 percent of capacity. In order of magnitude, they are: UCAR U.S. with 34 percent of total capacity and facilities in Canada, the United States, Mexico, Brazil, France, Italy, Spain, Sweden and South Africa; GLC U.S. with 14 percent of total capacity and facilities in Canada, the United States, the United Kingdom and India; SIGRI with 13 percent of total capacity and facilities in Austria, Germany and Italy; Showa Denko with 11 percent of total capacity and facilities in Japan and the United States; and the SERS Group with 7 percent of total capacity and facilities in Spain, Belgium, France and India.

In the United States, UCAR U.S. and GLC U.S. have 65 percent of the available capacity. The remainder is split between Showa Denko and The Carbon/Graphite Group, Inc. as well as Superior Graphite Company (Superior Graphite U.S.), a manufacturer of electrodes in sizes up to 350 mm.

Graphite electrodes are also produced in China and the Union of Soviet Socialist Republics, which have about 185,000 tonnes of capacity. According to testimony, their quality is not up to that required for modern electric arc furnaces.

THE SUMMARY OF THE 1986 FINDING AND 1987 REVIEW FINDING

Artificial graphite electrodes from Japan were the subject of an injury finding in 1978. That finding was rescinded in 1985. Soon after, prices fell in the marketplace and Japanese electrodes, along with product from Belgium, Sweden and the United States took an increasing share of the market. By 1985, these imports accounted for 19 percent of the market, up from 13 percent in 1983. Over one-half of the imports came from Japan. After a complaint by the domestic industry, the Department of National Revenue investigated the imports of electrodes from these countries and, on June 29, 1986, made a preliminary determination of dumping.

The Canadian Import Tribunal found that the prices of Belgian and Swedish electrodes were generally below domestic producer prices, while the price of American electrodes sold in Canada fell in competition with falling Canadian prices. Although Japanese prices remained somewhat higher than the domestic manufacturers' prices, they did not increase after 1985, despite a 40-percent appreciation in the yen. The Canadian Import Tribunal also found that Japanese prices were lower than would be warranted by the higher performance of their electrodes, thus creating an additional advantage.

Because the domestic producers had been unable to increase their prices in line with cost increases and, in fact, had to discount prices to compete with dumped imports, the Canadian Import Tribunal found that the industry had suffered price pressure from these imports. Furthermore, because of the depressed prices and loss of market share, the industry had less than satisfactory financial performance and had to delay investment projects. The Canadian Import Tribunal found that the dumping had caused, was causing and was likely to cause material injury to the domestic production of electrodes.

In 1987, at the request of Canron Inc., the Canadian Import Tribunal excluded from the finding Canron's imports of graphite electrodes under an Inward Processing Remission Order for the purpose of coating and ultimate return to the United States.

THE POSITION OF PARTIES

The Industry

The industry's case was presented in a joint submission and in evidence given by Donald K. White, Marketing Manager of UCAR, and Lorne D. Walker, Sales Manager and Secretary of GLC. The industry submitted that global overcapacity for graphite electrodes induces offshore suppliers to dump their product to cover overhead and capital costs, and to keep their plants loaded. Should the finding be rescinded, Japan, Belgium and the United States would re-enter the market at dumped prices to regain market share lost since 1986 to the industry and to new non-subject imports. This would lead to price erosion and suppression. The industry did not seek the continuation of the finding against Sweden because the manufacturer in Sweden no longer produces finished graphite electrodes.

Domestic Production Capacity and Demand for Graphite Electrodes

The industry submitted that the combined capacity of UCAR and GLC exceeds domestic demand. This excess capacity is increasing. In 1991, excess capacity increased by about 25 percent, and the industry submitted that it would be able to supply the entire Canadian market for the next several years.

The industry submitted that overcapacity was increasing because of a reduced demand from the steel industry. This reduction stems from two factors. First, graphite electrode consumption per unit of steel produced has fallen. Since 1985, specific graphite electrode consumption rates have fallen 17 percent, from 4.49 kg/t of steel produced to 3.71 kg/t in 1990. This decline is expected to continue. Second, the recession has weakened the steel market, resulting in a large reduction in steel production, causing a significant decline in electrode purchases. Exacerbating the decline in demand was an accompanying steady decline in the average selling price per tonne of graphite electrodes. In testimony, Mr. White noted that, in constant dollars, UCAR's average selling price fell nearly 30 percent between 1985 and 1990.

UCAR submitted that it has reduced production costs and improved its efficiency and the quality of its electrodes. For example, by making better use of raw materials and more efficient use of facilities, it reduced production costs for 500-mm electrodes by about 25 percent between 1985 and 1990. However, because the sales price of electrodes declined steadily during the same period, profitability did not improve. As part of its rationalization program, UCAR ceased production of electrodes of 75 mm to 230 mm in diameter, which had accounted for 2 percent of electrode production at Welland. GLC also reported cost improvements in the areas of labour, raw materials and utilities usage, but declining prices also limited its profitability.

International Overcapacity

Counsel submitted that there was significant underutilization of capacity in the world. In the western world, demand was 75 percent of capacity in 1990 and is estimated to be 76 percent in 1991. Capacity utilization in the United States and Japan was somewhat lower than the average for the western world while in Belgium, it was significantly below the western average.

The industry submitted that it was uneconomical for offshore and U.S. suppliers to operate at such low capacity levels, thus creating an incentive to dump. Global excess capacity of these magnitudes has caused prices and profits to decline worldwide. Low bids from foreign suppliers have created sufficient price pressure to force the domestic industry to pass its cost savings to its customers to avoid volume losses.

Resumption of Dumping

The industry submitted that the considerable volume of surplus capacity internationally puts pressure on foreign electrode producers to dump. Using dumped prices as bargaining chips, buyers have caused prices to erode steadily. The industry has had to accept lower prices to maintain its production volume. Although imported electrodes have only a small share of the market, the impact of imported electrodes on prices has been dramatic.

If the finding were rescinded, the industry submitted, exporters in Japan, Belgium and the United States would resume dumping. Counsel noted that in 1985, after the 1978 finding was rescinded, Japan resumed dumping. The United States, Sweden and Belgium soon joined Japan, actively dumping electrodes in the Canadian market.

As an indication of the likelihood that these countries will resume dumping, counsel noted that electrode prices in the United States, where there are no anti-dumping duties, are the lowest in the world, and below the domestic cost of production. Although certain U.S. producers recently tried to increase their prices to US$1.15/lb., intense price pressures kept them at about US$1.02/lb. (approximately CAN$2,623/t). Even at this price level, Japanese and Belgian product has been offered at 5 to 12 percent below market prices. Counsel referred to Mr. Acciarri's testimony that, in July 1991, Japanese electrodes were entering the United States for about US$2,000 to $2,100 CIF per tonne (US$0.91 to US$0.95/lb.). He also noted that the price of these electrodes in Japan was over US$2,400/t (US$1.09/lb.). The industry also submitted that Showa Denko, a major Japanese producer which also produces in the United States, was likely to resume dumping in Canada from its U.S. facility if the finding were rescinded. The industry based this submission on the fact that Showa Denko previously dumped in Canada from Japan.

Turning to the likelihood that the subject countries will resume dumping in Canada, the industry stated that certain U.S. producers are currently making low bids in Canada. Both Mr. White and Mr. Walker testified that a number of their customers had been offered low prices from manufacturers in the subject countries. Also, because Pechiney World Trade (Canada) Inc. (Pechiney Canada) stopped importing from Belgium after the finding and began importing from France and Spain, the industry expects Pechiney Canada to again source electrodes in Belgium should the finding be rescinded.

Material Injury

UCAR and GLC submitted that there will be renewed low-price bidding by exporters from Japan, Belgium and the United States as they try to recapture lost market share. They expect such bidding to drive prices to U.S. levels, causing the industry's sales volumes and market share to decline, at a time when the industry is particularly vulnerable due to the weak steel market, declining electrode prices and significant overcapacity.

Because of its high capital and fixed costs, the industry is extremely sensitive to changes in production levels, and any reduction in production would have a dramatic effect on costs. Volume losses would lead to manpower reductions and lower profits or possible losses. Finally, the industry maintained that, because electrode buyers contract for their requirements for four- to twelve-month periods, a resumption of dumping would enable dumped imports to take a substantial share of the market within a short period of time.

Importer/Exporter

Superior Graphite U.S., a manufacturer that exports small electrodes to Canada, and Superior Graphite Canada Ltd. (Superior Graphite), an importer, were jointly represented by counsel. Superior Graphite imports artificial graphite electrodes of 350 mm and less for sale to foundry customers. Counsel submitted that both UCAR and GLC were primarily concerned with the larger size electrodes, noting that UCAR, the only Canadian manufacturer who effectively supplied electrodes in this smaller size range, had ceased production, deciding to supply the market with imports from UCAR in Mexico.

Superior Graphite sought an exclusion for electrodes of less than 350 mm in diameter, if the finding were continued. Counsel submitted that these electrodes have a separate and distinct marketplace. They are used primarily in the foundry industry, whereas larger ones are used primarily in the steel industry.

Counsel added that recent acquisitions and consolidations in the industry have significantly changed the marketplace worldwide and in Canada. Referring to Mitsubishi's 50-percent ownership of UCAR, he noted that Mitsubishi, as a part owner of Tokyo and Tokai Carbon companies, was one of the offending parties in the original dumping action. He also noted that SIGRI, which was involved in the original dumping action, and GLC have signed a letter of intent to merge to become SIGRI-GLC Corporation. Counsel submitted that it is difficult to determine the need for continued protection for UCAR and GLC. Their affiliations with foreign manufacturers will inevitably result in the rationalization of production between Canada and the other countries involved, regardless of any anti-dumping barriers that are in place.

THE ECONOMIC INDICATORS

With the exception of 1985, there have been anti-dumping duties on graphite electrodes since 1978. Looking at the period since 1983, the start of the period of inquiry for the 1986 finding, the market for graphite electrodes grew steadily, reaching record levels in 1988. The volume of electrodes sold increased by over 14,000 tonnes, or approximately 40 million dollars. By 1990, the market had declined to near 1987 levels and continued to decline in 1991. From 1983 to 1985, the industry's share fell from 87 percent to 81 percent. After 1986, the industry's share of the market grew steadily, reaching 97 percent in the first quarter of 1991.

Import volumes fell considerably since 1986. With the exception of a small volume of electrodes imported by the domestic industry, the subject countries, which accounted for nearly all imports, lost virtually all representation in Canada. Although non-subject imports have been on the rise, their volumes were still far below those imported from the subject countries as late as 1987. Non-subject imports reached 4 percent of the market in 1990.

According to testimony and evidence, nearly all Canadian users of graphite electrodes, including such major iron and steel manufacturers as Sidbec-Dosco Inc. and QIT-Fer et Titane Inc., purchase the bulk of their requirements from the domestic industry. There are a few users that also source electrodes from foreign suppliers. The industry was successful not only in keeping its major clients, but has also managed to capture much of the residual market where imports compete with domestic product. With demand from domestic buyers being stable, or declining, the export market remains the only source for potential growth for the domestic industry. However, according to testimony from the industry, its corporate sales policies leave no discretion for exports. The industry testified that its sales efforts would be concentrated exclusively, or primarily, in the Canadian market.

The trend in the industry's financial performance has generally been positive since 1983, with the exception of a sharp drop in profits in 1984 and 1985. In 1988, the industry had a banner year as sales and profits peaked in conjunction with record demand. In the ensuing two years, sales fell somewhat, and profits returned to 1986 levels, although remaining positive despite intensifying price pressures. Performance of the two firms was not identical. GLC's performance improved throughout the period, surpassing that of UCAR.

The industry told the Tribunal that its financial performance depends on both maximum plant loading and the price at which it sells its electrodes. In this regard, the Tribunal notes that, on balance, the industry's performance has improved over the last eight years. In fact, in 1987 and 1988, with exceptional sales volumes, its net profits rose to levels considerably above what it achieved during most of the past decade.

The Tribunal also looked at the international market for electrodes. The domestic industry submitted evidence on graphite electrode production, capacity and prices. The Tribunal also had before it a report by Pet-Coke entitled Worldwide Market Analysis and Forecast 1990-1995, August 1991. Mr. Acciarri, President of Pet-Coke, appeared at the hearing. Supporting the industry's submission of excessive overcapacity, he noted that, in 1990, the western world had 948,000 tonnes of installed capacity, while western demand stood at 681,000 tonnes. This amounted to 28 percent more capacity than demand. He forecast that, in the western world, production would increase at an

average annual rate of 1.9 percent and, globally, at a slightly slower rate of 1.5 percent a year. Mr. Acciarri qualified the production estimates provided in his written report, stating that they could be high because demand from centrally planned economies (CPE) could be lower than forecast.

A high level of overcapacity will continue to exist in the near future. Mr. Acciarri said that overcapacity had depressed electrode prices in the world, and if the problem was not addressed, price levels would drop even further. He explained that, to rectify the situation, the world graphite electrode industry had to continue to rationalize. He noted that, since 1980, a number of plant shutdowns, joint-ventures and mergers have reduced capacity by 25 percent. As an example, he described how rationalization in Japan since the mid-1980 has reduced the number of electrode companies from six to four and reduced capacity by closing three plants. Mr. Acciarri noted that, conceivably within two years, the industry would not be recognizable. He indicated that corporate decisions for further rationalization had already been made, but that their effects on capacity had not yet materialized.

Evidence before the Tribunal suggested that, in many respects, there is a large degree of similarity between the domestic and international electrode markets. Worldwide, growth in demand for electrodes has been and will continue to be slow. As a result, there is a significant degree of overcapacity. The consequent competition for the market has caused the price structure to collapse. In Canada, in the Tribunal's view, conditions will be no better, and if the industry's forecast is correct, demand for electrodes will be even softer in the next few years.

THE REASONS FOR DECISION

In reviewing a finding pursuant to subsection 76(2) of SIMA, the Tribunal examines whether there would likely be a resumption of dumped imports from the subject countries and whether such dumping would likely cause material injury to the production in Canada of like goods.

THE LIKELIHOOD OF DUMPING

In addressing the question of dumping, the Tribunal examined the evidence and testimony, including recent trade developments in Canada, graphite electrode production, trade, capacity utilization and electrode prices in the world, and particularly in the United States, and the behaviour of Japanese and Belgian exporters in the U.S. market.

Since 1987, there have been no imports of graphite electrodes from Japan or Belgium. The industry argued that the absence of Belgian and Japanese electrode imports into Canada since the finding indicates that their normal values would be far above any price at which they could be competitive. There have been imports from the United States which, according to the Department of National Revenue's enforcement data, have increased since 1988. Almost all U.S. imports consisted of sales by affiliates of the Canadian firms or of sales by Superior Graphite. Although most of these sales were at normal values, dumping duties were paid by one of the domestic manufacturers on a small volume of purchases from its U.S. affiliate. Since 1986, exporters from Austria, Spain, Germany and France have partially replaced subject imports in the market, but their share remains small, considerably smaller than that held by the subject countries in the early and mid-1980s.

The industry witnesses and the Tribunal's witness, Mr. Acciarri, described the world graphite electrode market as "chaotic." Significant global overcapacity has seriously depressed prices worldwide. The global industry has undergone considerable rationalization in an attempt to eliminate excess capacity. In spite of recent reductions, capacity continues to exceed demand, resulting in significant price competition both internally, among domestic electrode manufacturers, and from external sources. The Tribunal heard evidence that the industry will continue to rationalize and, in the words of its witness, may not be recognizable in a few years. The Tribunal also heard evidence that demand forecasts for graphite electrodes, which showed modest growth over the next five years, may be somewhat optimistic given recent events in Eastern Europe, a major market for graphite electrodes.

The Tribunal cannot predict when supply and demand conditions will stabilize in the world market and is prepared to accept, for the near future, the possibility that a certain degree of "chaos" will persist. These conditions may, on balance, lead to dumping, as long as they last. However, given the concentrated nature of the world industry, the potential for dumping from the subject countries may be less than it appears. For example, affiliates of the domestic industry, which account for nearly half of the western world capacity, are unlikely to dump in the Canadian market. In this regard, the witness for UCAR testified that it would be counter-productive for UCAR's affiliates to export into markets where there are UCAR production facilities.

In support of its argument that the subject countries would resume dumping, the industry also claimed that Japan and, to a lesser degree, Belgium, were now dumping in the U.S. graphite electrode market. It also testified and referred to testimony by the Tribunal's expert witness that U.S. manufacturers were selling below cost in the United States, and alleged that sales at these prices in Canada would be dumped.

In the case of Japan, the evidence was that the landed price of Japanese electrodes in the United States was below the Japanese domestic selling price. The Tribunal does not dispute that Japanese electrodes sold in the U.S. market may be dumped, but other considerations raise questions about whether dumping would resume in the Canadian market to any significant degree. The Tribunal heard testimony that amalgamations and plant closures in the Japanese industry have reduced capacity and that the appreciation of the yen has adversely affected the Japanese industry's ability to export. Both of these factors will likely limit the volume of electrode trade from Japan. This view is supported, in part, by corporate moves into the North American market by Japanese firms such as Showa Denko and Mitsubishi, and the fact that there have been no imports of electrodes from Japan since the finding.

Regarding Belgium, Mr. Acciarri testified that it sells very little into the U.S. market (about 500 tonnes annually). The evidence shows that production capacity in Belgium is small. The Tribunal also notes that there have been no imports into Canada since the finding and that affiliates of the Belgian firm in France and Spain now have only a small presence in the Canadian market.

Turning to the industry's allegation that exports from the United States into Canada at prices now prevailing in the U.S. market would be found to be dumped, the evidence before the Tribunal is not conclusive. The Tribunal's witness gave testimony to the effect that, at current price levels, a new entrant to the industry would not likely obtain a return that would interest an investor, taking account of alternative opportunities. While not disputing this analysis, for the Tribunal to accept that

U.S. exports, at current U.S. prices, are below cost, it would have needed more substantive facts showing that U.S. manufacturers were, in fact, selling at a loss, and, consequently, that U.S. electrodes would be dumped in the Canadian market. Furthermore, the Tribunal is persuaded that the make-up of the U.S. electrode industry is such that dumping on the part of the majority of the companies is not likely. The testimony was clear that affiliates of the two Canadian firms account for over 65 percent of U.S. electrode production capacity. Superior Graphite is now competing successfully at undumped prices in the small diameter end of the Canadian market. The Tribunal also notes testimony that Showa Denko, which accounts for over 10 percent of the U.S. industry's capacity, is operating at full capacity.

Notwithstanding these considerations, the Tribunal cannot exclude the possibility that there may be a resumption of dumping from the subject countries. The situation facing the world industry is "chaotic." Until there is either a significant increase in demand for graphite electrodes or further rationalization to eliminate the considerable degree of excess capacity, prices will continue to be depressed. In this regard, the Tribunal notes that testimony from the industry and the expert witness was that prices have been on a downward trend. The Tribunal is not in a position to say how low prices may go, nor can it say, as testified by one witness, that there may soon be an upswing in prices.

Accordingly, the Tribunal believes that if the subject countries resume exporting into Canada, the exports may be at dumped prices. The Tribunal does not believe, however, that dumped imports from the subject countries would enter Canada in large volumes. This conclusion is based on three considerations. First, from an international perspective, the Tribunal does not consider that all of the excess capacity in the world represents supply waiting to enter the Canadian market if the finding is rescinded. Much of it is controlled by world affiliates of the two domestic manufacturers. Even if the SIGRI-GLC merger does not materialize, the Tribunal feels that the likely volume of dumped imports would not be large.

Second, recent developments show that the scope for penetrating the Canadian market is small. This conclusion is supported by the fact that exporters from France, Spain, Germany and Austria have taken a relatively small share of the Canadian market. This corroborates testimony the Tribunal heard on the industry's ability to hold its customers. Very few Canadian users of graphite electrodes, and certainly not the larger users, seem inclined to source abroad. Any imports from the subject countries would likely compete with imports from other sources in that small segment of the market now supplied by imports.

Finally, not only would exporters in the subject countries face stiff competition for market share in Canada, but prices would likely be extremely unattractive. Testimony was unanimous that price levels in Canada are now approaching those in the United States. Notwithstanding the current "chaotic" situation in the world, there still may be more attractive markets than Canada, both in terms of price and volumes, for exporters in the subject countries.

THE LIKELIHOOD OF MATERIAL INJURY

The question of whether a small volume of dumped imports would be materially injurious to the domestic industry turns on both the effects a small market share loss would have on the industry's operations, and on their potential impact on prices. In

addition, counsel for the industry argued that even without penetrating the market, the mere availability of dumped imports would cause price erosion and financial injury to the industry; that dumped imports from France, Germany, Spain and Austria were the cause of the dramatic price decline that has occurred in the Canadian market; and that the Canadian industry, faced with a sharp decline in the market and poor prospects for recovery in the near future, has no alternative but to match dumped prices to maintain plant loading.

An understanding of how factors now at play in the domestic market affect the supply and demand of graphite electrodes and their prices is crucial in considering these issues. According to the industry's testimony, it expects to be operating at low levels of capacity utilization in the near future. The industry told the Tribunal that it would be able to supply the entire Canadian market for the next several years. Excluding the small volumes of imports that might be dumped in Canada would not, in the Tribunal's view, diminish the effects the industry is now expecting to experience because of low operating levels.

The Tribunal addressed the question of whether a small volume of dumped imports or potential dumped imports from the subject countries would have a material impact on prices in the Canadian graphite electrode market. The Tribunal realizes that some low-priced imports may enter the market, but because of their small volume, the Tribunal is persuaded that any price effect would be limited. Domestic price competition is likely to have a considerably greater effect on prices than do dumped imports.

While the Tribunal agrees that, in the long run, continued sales at such low prices might be injurious to the industry, possibly even to a material degree, it is not persuaded that such pricing will be caused by competition from imports at dumped prices. Demand for graphite electrodes is off sharply and, according to the industry, will remain low. The industry will feel increasing pressure from its customers in the steel industry. According to testimony, the steel industry is facing difficult times, and prospects are not good for the immediate future. Faced with the need to reduce costs, steel manufacturers may press for lower prices.

Borrowing from the industry's argument, the Tribunal is also aware that overcapacity in a highly capital-intensive industry naturally translates into significant price competition as manufacturers strive to maintain plant loading and to cover their fixed costs. In the highly competitive, domestic market environment, where the domestic industry has forecast it will utilize only about one-half of its total capacity in 1991, a lost sale is equally damaging to either domestic manufacturer. Price competition between the two domestic manufacturers will naturally reflect each firm's considerable volume of excess capacity, as each firm endeavours to maintain its share of a domestic market which is largely supplied by the domestic industry. Driving this need to increase market share and maintain plant loading is the fact that neither firm in the domestic industry has any discretion in expanding its production through export sales.

Under these conditions, the Tribunal is convinced that domestic competition for the Canadian market will be fierce. Evidence before the Tribunal shows that there has been extensive competition between the two Canadian firms since 1988 when demand and prices began to decline. During this period, the industry also increased its market share. If imports from the subject countries were to play any part in this market struggle, the Tribunal is persuaded that, like in the U.S. market, domestic competition will force prices to levels that are not particularly attractive, even to foreign manufacturers.

It notes, in this regard, that Japanese and Belgian exports have not taken a large share of the U.S. market. Taking account of these low market shares and testimony by the Tribunal's witness, the intense price competition in the U.S. market would appear to stem more from domestic firms than from imports. In a more favourable market, which a witness suggested may occur in the near future, the domestic industry in Canada, as well as in the United States, is likely to obtain better prices. Under this scenario, the prices of any exports from the subject countries would increase in line with prices in the Canadian market.

The Tribunal expects that, in the near future, intense price competition will weaken what has been a relatively steady financial performance by the industry. However, because intra-industry competition is likely to have a greater impact on price levels than will dumped imports from the subject countries, the Tribunal is not persuaded that dumped electrodes in the Canadian market will be of such a magnitude as to materially injure the domestic production of artificial graphite electrodes in Canada.

CONCLUSION

In light of the evidence, the Tribunal concludes that injurious dumping from Belgium, Japan, Sweden and the United States of America is not likely to resume in the foreseeable future. The Tribunal feels that the considerable volumes of domestic overcapacity would fuel intense intra-industry competition and such competition would depress the price of graphite electrodes to such an extent that imports, dumped or otherwise, would be limited and would have little or no effect on the graphite electrode price structure.

In consideration of these facts, the Tribunal hereby rescinds the finding.

W. Roy Hines
W. Roy Hines
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Member