Council Regulation (EC) No 1354/2008 of 18 December 2008 amending Regulation (EC) No 1628/2004 imposing a definitive countervailing duty on imports of certain graphite electrode systems originating in India and Regulation (EC) No 1629/2004 imposing a definitive anti-dumping duty on imports of certain graphite electrode systems originating in India

COUNCIL REGULATION (EC) No 1354/2008

of 18 December 2008

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not member of the European Community[(1)] (the basic Regulation), and in particular Articles 15 and 19 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

I. Previous investigation and existing measures

(1) The Council, by Regulation (EC) No 1628/2004[(2)], imposed a definitive countervailing duty on imports of graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,65 g/cm^3 or more and an electrical resistance of 6,0 μΩ.m or less, falling within CN code ex 8545 11 00 and nipples used for such electrodes, falling within CN code ex 8545 90 90 whether imported together or separately, originating in India. The rate of the duty ranges between 7,0 % and 15,7 % for individually named exporters with a residual duty rate of 15,7 % imposed on imports from other exporters.

(2) At the same time, by Regulation (EC) No 1629/2004[(3)], the Council imposed a definitive anti-dumping duty on imports of the same product originating in India.

II. Initiation of a partial interim review

(3) Following the imposition of the definitive countervailing duty the Government of India (GOI) made submissions that the circumstances with regard to two subsidy schemes (the Duty Entitlement Passbook Scheme and the Income Tax Exemption under Section 80 HHC of the Income Tax Act) have changed and that

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1354/2008. (See end of Document for details)*

these changes are of a lasting nature. Consequently, it was argued that the level of subsidisation is likely to have decreased and thus measures that have been established partly on these schemes should be revised.

(4) The Commission examined the evidence submitted by the GOI and considered it sufficient to justify the initiation of a review in accordance with the provisions of Article 19 of the basic anti-subsidy Regulation. After consultation of the Advisory Committee, the Commission initiated an *ex officio* partial interim review of the measures in force by a notice published in the *Official Journal of the European Union*[4].

(5) The purpose of this partial interim review investigation is to assess the need for the continuation, removal or amendment of the existing measures in respect of those companies having benefited from one or both the changed subsidy schemes including, for those companies, in respect of other schemes where sufficient evidence is provided in line with the relevant provisions of the notice of initiation.

III. Investigation period

(6) The investigation covered the period from 1 October 2006 to 30 September 2007 (the review investigation period or RIP).

IV. Parties concerned by the investigation

(7) The Commission officially informed the GOI, the two Indian exporting producers listed in the notice of initiation of the partial interim review, as well as the Community producers, of the initiation of the partial interim review investigation. Interested parties had the opportunity to make their views known in writing and to request a hearing. The written and oral comments submitted by the parties were considered and, where appropriate, taken into account.

(8) The Commission sent questionnaires to two cooperating exporting producers and to the GOI. Replies were received from both the cooperating exporting producers and the GOI.

(9) The Commission sought and verified all information it deemed necessary for the determination of subsidisation. Verification visits were carried out at the premises of the following interested parties:

1. Government of India
   - Ministry of Commerce, New Delhi;

2. exporting producers in India
   - Graphite India Limited (GIL), Kolkatta
   - Hindustan Electro Graphite (HEG) Limited, Noida.

V. Disclosure and comments on procedure

(10) The GOI and the other interested parties were informed of the essential facts and considerations upon which it was intended to propose the amendment of the duty rate applicable to the two cooperating Indian producers and maintain the existing

measures for all other companies which did not cooperate with this partial interim review. They were also given a reasonable time to comment. All submissions and comments were taken duly into consideration as set out below.

B. PRODUCT CONCERNED

(11) The product covered by this review is the same product as the one concerned by Council Regulation (EC) No 1628/2004, namely graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,65 g/cm^3 or more and an electrical resistance of 6,0 μΩ.m or less, falling within CN code ex 8545 11 00 and nipples used for such electrodes, falling within CN code ex 8545 90 90 whether imported together or separately, originating in India.

C. SUBSIDIES

I. Introduction

(12) On the basis of the information submitted by the GOI and the cooperating exporting producers and the replies to the Commission's questionnaire, the following schemes, which allegedly involve the granting of subsidies, were investigated:

(a) Advance Authorisation Scheme (formerly known as Advance Licence Scheme),

(b) Duty Entitlement Passbook Scheme,

(c) Export Promotion Capital Goods Scheme,

(d) Income Tax Exemption,

(e) Electricity Duty Exemption of the State of Madhya Pradesh.

(13) The schemes (a) to (c) specified above are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 (Foreign Trade Act). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in Export and Import Policy documents, which are issued by the Ministry of Commerce every five years and updated regularly. One Export and Import Policy document is relevant to the RIP of this case, namely the one covering the period 1 September 2004 to 31 March 2009 (EXIM-policy 04-09). In addition, the GOI also sets out the procedures governing the EXIM-policy 04-09 in a 'Handbook of Procedures — 1 September 2004 to 31 March 2009, Volume I' (HOP I 04-09). The Handbook of Procedure is also updated on a regular basis.

(14) The Income Tax Scheme specified above under (d) is based on the Income Tax Act of 1961, which is amended yearly by the Finance Act.

(15) The Electricity Duty Exemption scheme specified in recital 12(e) is based on Section 3-B of the Madhya Pradesh Electricity Duty Act of 1949.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1354/2008. (See end of Document for details)*

(16) In accordance with Article 11(10) of the basic anti-subsidy Regulation, the Commission invited the GOI for additional consultations with respect to both changed and unchanged schemes with the aim of clarifying the factual situation as regards the alleged schemes and arriving at a mutually agreed solution. Following these consultations, and in the absence of a mutually agreed solution in relation to these schemes, the Commission included all these schemes in the investigation of subsidisation.

II. Specific Schemes

1. Advance Authorisation Scheme (AAS)

(a) Legal basis

(17) The detailed description of the scheme is contained in paragraphs 4.1.1 to 4.1.14 of the EXIM-policy 04-09 and Chapters 4.1 to 4.30 of the HOP I 04-09. This scheme was called Advance Licence Scheme during the previous review investigation that led to the imposition by Regulation (EC) No 1628/2004 of the definitive countervailing duty currently in force.

(b) Eligibility

(18) The AAS consists of six sub-schemes, as described below in more detail. Those sub-schemes, *inter alia*, differ in the scope of eligibility. Manufacturer-exporters and merchant-exporters 'tied to' supporting manufacturers are eligible for the AAS physical exports and for the AAS for annual requirement. Manufacturer-exporters supplying the ultimate exporter are eligible for AAS for intermediate supplies. Main contractors which supply to the 'deemed export' categories mentioned in paragraph 8.2 of the EXIM-policy 04-09, such as suppliers of an export oriented unit (EOU), are eligible for AAS deemed export. Eventually, intermediate suppliers to manufacturer-exporters are eligible for 'deemed export' benefits under the sub-schemes Advance Release Order (ARO) and back to back inland letter of credit.

(c) Practical implementation

(19) Advance authorisations can be issued for:

(i) Physical exports: This is the main sub-scheme. It allows for duty-free import of input materials for the production of a specific resultant export product. 'Physical' in this context means that the export product has to leave Indian territory. Import allowance and export obligation including the type of export product are specified in the licence.

(ii) Annual requirement: Such an authorisation is not linked to a specific export product, but to a wider product group (e.g. chemical and allied products). The licence holder can — up to a certain value threshold set by its past export performance — import duty free any input to be used in manufacturing any of the items falling under such a product group. It can choose to export any

resultant product falling under the product group using such duty-exempt material.

(iii) Intermediate supplies: This sub-scheme covers cases where two manufacturers intend to produce a single export product and divide the production process. The manufacturer-exporter produces the intermediate product. It can import duty free input materials and can obtain for this purpose an AAS for intermediate supplies. The ultimate exporter finalises the production and is obliged to export the finished product.

(iv) Deemed exports: This sub-scheme allows a main contractor to import inputs free of duty which are required in manufacturing goods to be sold as 'deemed exports' to the categories of customers mentioned in paragraph 8.2(b) to (f), (g), (i) and (j) of the EXIM policy 04-09. According to the GOI, deemed exports refer to those transactions in which the goods supplied do not leave the country. A number of categories of supply is regarded as deemed exports provided the goods are manufactured in India, e.g. supply of goods to an EOU or to a company situated in a special economic zone (SEZ).

(v) ARO: The AAS holder intending to source the inputs from indigenous sources, in lieu of direct import, has the option to source them against AROs. In such cases the Advance Authorisations are validated as AROs and are endorsed to the indigenous supplier upon delivery of the items specified therein. The endorsement of the ARO entitles the indigenous supplier to the benefits of deemed exports as set out in paragraph 8.3 of the EXIM-policy 04-09 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty). The ARO mechanism refunds taxes and duties to the supplier instead of refunding the same to the ultimate exporter in the form of drawback/refund of duties. The refund of taxes/duties is available both for indigenous inputs as well as imported inputs.

(vi) Back to back inland letter of credit: This sub-scheme again covers indigenous supplies to an Advance Authorisation holder. The holder of an Advance Authorisation can approach a bank for opening an inland letter of credit in favour of an indigenous supplier. The authorisation will be invalidated by the bank for direct import, only in respect of the value and volume of items being sourced indigenously instead of importation. The indigenous supplier will be entitled to deemed export benefits as set out in paragraph 8.3 of the EXIM-policy 04-09 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty).

(20) It was established that during the RIP one of the cooperating exporters obtained concessions under the first sub-scheme, i.e. AAS physical exports. It is therefore not necessary to establish the countervailability of the remaining sub-schemes.

(21) Following the imposition by Regulation (EC) No 1628/2004 of the definitive countervailing duty currently in force, the GOI has modified the verification system applicable to AAS. In concrete terms, for verification purposes by the Indian authorities,