Commission Regulation (EC) No 1229/2007 of 19 October 2007 terminating the investigation concerning possible circumvention of anti-dumping measures imposed by Council Regulation (EC) No 1629/2004 on imports of certain graphite electrode systems originating in India

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (the basic Regulation)[(1)], and in particular Articles 9 and 13 thereof,

Whereas:

A. PROCEDURE

1. Existing measures and former investigations

(1) Following parallel anti-dumping and anti-subsidy proceedings, the Council imposed, by Regulation (EC) No 1629/2004[(2)] (the original Regulation), a definitive anti-dumping duty of 0 % on imports of certain graphite electrode systems originating in India. At the same time, countervailing duties between 7,0 % and 15,7 % were imposed on the same imports by Council Regulation (EC) No 1628/2004[(3)].

2. Request

(2) On 15 January 2007 the Commission received a request pursuant to Article 13(3) of the basic Regulation to investigate the alleged circumvention of the anti-dumping measures imposed on imports of certain graphite electrode systems originating in India. The request was submitted by the European Carbon and Graphite Association (ECGA) on behalf of Community producers of certain graphite electrode systems.

(3) The request contained *prima facie* evidence showing that there had been a change in the pattern of trade following the imposition of the anti-dumping measures on imports of certain graphite electrode systems originating in India, as shown by a significant increase in imports of artificial graphite from India (the product under investigation) while imports of certain graphite electrode systems from India (the product concerned) had decreased substantially during the same period.

(4) The request to investigate the alleged circumvention of the measures in force argued that one exporting producer of the product concerned originating in India

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 1229/2007. (See end of Document for details)*

was, after imposition of the measures, exporting the product under investigation to its related company in the Community. This company was then performing a completion operation in the Community to produce the product concerned from the product under investigation.

(5) It was alleged that there was insufficient due cause or economic justification for these changes other than the existence of the anti-dumping duty on certain graphite electrode systems originating in India.

(6) Finally, the applicant alleged that the remedial effects of the existing anti-dumping duty on the product concerned were being undermined in terms of quantity and that dumping was taking place in relation to the normal value previously established for the product concerned.

3. Initiation

(7) The Commission initiated an investigation by Regulation (EC) No 216/2007[4] (the initiating Regulation) into the alleged circumvention and, pursuant to Articles 13(3) and 14(5) of the basic Regulation, directed the customs authorities to register imports of the product under investigation, being artificial graphite rods of a diameter of 75 mm or more originating in India, falling under CN code ex 3801 10 00 (TARIC code 3801 10 00 10), as from 2 March 2007.

4. Investigation

(8) The Commission advised the authorities of India of the initiation of the investigation. Questionnaires were sent to the exporting producers in India as well as to importers in the Community named in the request or known to the Commission from the previous investigation. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the initiating Regulation.

(9) Two exporting producers in India submitted complete replies to the questionnaire. One reply was also received from an importer in the Community.

(10) The Commission carried out investigations at the premises of the following companies:

— Graphite India Limited, Durgapur and Bangalore, India (GIL),

— Graphite COVA GmbH, Rothenbach, Germany (COVA).

5. Investigation period

(11) The investigation period was set as from 1 January 2006 to 31 December 2006.

B. RESULTS OF THE INVESTIGATION

1. General considerations/degree of cooperation

(12) Two exporting producers of the product concerned and the product under investigation cooperated with the investigation. The information submitted by the two companies could be reconciled to the data available on the imports of the product under

investigation so as to show that the two companies, Graphite India Limited and HEG Limited, were the sole exporters of the product under investigation to the Community during the IP.

2. Product concerned and like product

(13) The product concerned by the possible circumvention is 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 (TARIC code 8545 11 00 10) and nipples used for such electrodes, falling within CN code ex 8545 90 90 (TARIC code 8545 90 90 10) whether imported together or separately originating in India (the product concerned).

(14) The product under investigation is artificial graphite rods of a diameter of 75 mm or more originating in India, normally declared under CN code ex 3801 10 00 (TARIC 3801 10 00 10) (the product under investigation). The product under investigation is an intermediate product in the manufacturing of the product concerned, and it already embodies the basic characteristics of the latter product.

3. Change in the pattern of trade

(15) According to Eurostat data, imports under CN codes 8545 11 00 and 8545 90 90 from India decreased from 11 866 tonnes in 2004 to 3 244 tonnes in 2006. During the same period, imports under CN code 3801 10 00 increased from 1 348 tonnes in 2004 to 10 289 tonnes in 2006.

(16) As stated in recital 3 above, the change in the pattern of trade was alleged to stem from the substitution of imports of finished graphite electrode systems by artificial graphite rods produced in India.

(17) However, on inspection of the related company in Germany, Graphite COVA, it became clear that the part of the imports from India declared as artificial graphite were in fact imports of re-baked electrodes in the form of rods of carbon which had not yet been through the process of graphitisation. These re-baked electrodes were then graphitised and machined in Germany before being resold.

(18) The change in the pattern of trade described by the applicant is confirmed by the available data, insofar as the imports under CN codes 8545 11 00 and 8545 90 90 appeared to be partly replaced by an increase in imports under CN code 3801 10 00.

(19) The latter increase consisted essentially of imports of carbon rods destined for the manufacture of electrodes with a diameter of 600 mm or above, and artificial graphite rods for the manufacture of electrode nipples, imported by COVA from GIL, its parent company in India.

(20) Regarding HEG, it was found that no such change in the pattern of trade had taken place.

4. Insufficient due cause or economic justification

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(21) The Commissions services examined whether, as alleged, the acquisition of COVA by GIL in 2004, and the subsequent changes in the pattern of trade, could be considered as having an economic justification other than the duty imposed in 2004.

(22) In particular, the following aspects were examined:

— the nature of the manufacturing activities undertaken by COVA before and after the acquisition by GIL,

— the amount of the investment by GIL in COVA, and the overall volume of business, in electrodes and other products,

— COVAs technical and historical constraints regarding the production of large diameter electrodes and nipples,

— COVAs capacity constraints in the various stages of production,

— differences in costs such as labour, energy and manufacturing overheads, at the various stages of production, between COVA and GIL, and,

— technical and marketing advantages of having the electrodes and electrode nipples finished in Germany as opposed to in India.

(23) Following examination of these points in both the German and Indian producers, it was found that:

— a number of reasons, in terms of capacity and technical constraints, explain the fact that COVA has not so far taken up the full production of nipples and large diameter electrodes. In particular, COVA has historically not produced the largest diameter electrodes, which used to be outsourced from other producers. Also, electrode nipples used to be produced in a plant which no longer belongs to the group. It is logical therefore that COVA should now procure those materials from its parent company GIL,

— the difference in the total cost of manufacturing between Germany and India is not very significant, and the small cost advantage of manufacturing the entire product in India is outweighed by other advantages, such as having the products finished in Germany and sold under the COVA label, and being able to offer the entire product range for sale dispatched from the site in Germany,

— it was alleged that the purchase of COVA by GIL was motivated solely by the imposition of the measures. However the amount of investment by GIL in COVA is of such a magnitude as to make it unlikely that the potential duties payable on those imports could be the main justification for such an investment.

(24) Therefore, it was concluded that there were reasonable economic grounds, other than the imposition of duties on imports of certain graphite electrode systems originating in India, for the change in the pattern of trade referred to in recital 3.

5. Added value

(25) The operations of completion of the electrodes and nipples in the Community were also examined under the provisions Article 13(2)(b) of the basic Regulation.