Council Regulation (EC) No 1629/2004 of 13 September 2004 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain graphite electrode systems originating in India

COUNCIL REGULATION (EC) No 1629/2004

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imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain graphite electrode systems originating in India

THE COUNCIL OF THE EUROPEAN UNION,

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[(1)] (the basic Regulation) and in particular Article 9 thereof,

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

Whereas:

A. PROVISIONAL MEASURES

(1) On 19 May 2004, the Commission, by Regulation (EC) No 1009/2004[(2)] (the provisional Regulation), imposed a provisional anti-dumping duty on imports into the Community of certain graphite electrode systems originating in India.

B. SUBSEQUENT PROCEDURE

(2) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures, several interested parties made written submissions making their views known on the provisional findings. The parties who so requested were granted an opportunity to be heard.

(3) The Commission continued to seek and verify all information it deemed necessary for the definitive findings.

(4) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty on imports of certain graphite electrode systems originating in India and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period within which to make representations subsequent to the disclosure of the essential facts and considerations.

(5) The oral and written comments submitted by the interested parties were considered and, where appropriate, the findings have been modified accordingly.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1629/2004. (See end of Document for details)*

C. PRODUCT CONCERNED AND LIKE PRODUCT

(6) Since no new comments were received regarding the product concerned and the like product, recitals 11 to 15 of the provisional Regulation are hereby confirmed.

D. DUMPING

1. Claims made by the exporting producers

(7) The two cooperating exporting producers reiterated their claim that a duty drawback adjustment on the normal value should have been granted, pursuant to Article 2(10)(b) 'Import charges and indirect taxes' or under Article 2(10)(k) 'Other factors' of the basic Regulation, for the benefits received under the Duty Entitlement Passbook Scheme (DEPB) on a post-export basis. Pursuant to Article 2(10)(b), they claimed that at least the amount of DEPB credits used against imports of raw materials consumed in the production process of the exported product should be granted as allowance.

(8) In this regard, it should be noted that no adjustment could be granted because, as was explained in recital 25 of the provisional Regulation, the investigation showed that no direct link could be established between the DEPB credits granted and the raw materials purchased as the credits could be used against duties payable on any goods to be imported, except for capital goods and goods subject to import restrictions or prohibitions. Moreover, even when the credits were used against imports of raw materials necessary for the production of graphite electrodes, the exporting producers could not demonstrate that these raw materials had been used for the production of the exported product. In addition, the DEPB benefit was accounted for as an income and not as a negative item in the cost accounting system of the companies. Therefore, on the basis of the companies' accounting records, there was no link between the pricing of the exported goods and the DEPB income received. Finally, no new arguments justifying the application of Article 2(10)(k) of the basic Regulation were submitted. Therefore, these claims could not be accepted and the findings set out in recitals 25 and 26 of the provisional Regulation are hereby confirmed.

(9) Both cooperating exporting producers also reiterated their claims pursuant to Article 2(10)(d)(ii) of the basic Regulation, with regard to differences in levels of trade. However, no new arguments were brought forward. Therefore the findings set out in recitals 27 and 28 of the provisional Regulation are hereby confirmed.

(10) The cooperating exporting producers contested the exchange rates used in the calculation of the export prices. They claimed that the exchange rates used should be those prevailing at the date of payment instead of the date of the invoice. Moreover, they also claimed that instead of using the average exchange rates of the month in which the invoice was issued, it would have been more accurate to use the actual daily exchange rates.

(11) In this respect, it should be noted that it is the Commission's consistent practice to use exchange rates pertaining to the date of the invoice, because the price determination takes into consideration the exchanges rates at the moment of invoicing.

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The claim to use the exchange rates prevailing at the date of payment was therefore rejected. However, it was agreed to use the actual exchange rates prevailing at the date of invoice instead of the average monthly exchange rates pertaining to that date. In view of this, the dumping calculations were amended accordingly.

(12) When the matter was examined, a clerical error was discovered in the provided average monthly exchange rates. As these exchange rates were replaced by the daily exchange rates, as explained in recital 11, this error is considered to be corrected.

2. Dumping calculations

(13) Following the adjustments with regard to the exchange rates used, as described in recitals 10 to 12, the amount of dumping finally determined, expressed as a percentage of the CIF net free-at-Community-frontier price, is as follows:

Graphite India Limited (GIL)	31,1 %
Hindustan Electro Graphite (HEG) Limited	22,4 %
All others	31,1 %

E. COMMUNITY INDUSTRY

(14) In the absence of any substantially new information or argument in this particular respect, recitals 32 to 35 of the provisional Regulation are hereby confirmed.

F. INJURY

(15) Following the provisional disclosure, the Indian exporters pointed to the divergence in the undercutting margin of one particular type of the product concerned, as compared with the undercutting margins of similar types. The claim was properly examined and it was found that the discrepancy was due to a mistake in the reporting of a number of credit notes and discounts of one particular Community producer. The claim was therefore accepted and the undercutting margin of this particular type and, where applicable, of other types were corrected accordingly.

(16) It was further found that a number of sale transactions of the Community industry used for the undercutting calculations were double counted. In view of this, the double counted transactions had to be eliminated and the undercutting calculations had to be modified accordingly. However, this double-counting had not taken place when establishing the figures used for assessing the injury indicators. Therefore, there was no need to modify the injury indicators.

(17) As a result, the comparison showed that during the IP the prices of the product concerned originating in India and sold in the Community undercut the Community industry's prices by between 3 % and 11 %.

(18) In the absence of any substantially new information or argument in this particular respect, recitals 36 to 72 of the provisional Regulation are hereby confirmed, with the exception of recital 42 (see recitals 15 to 17 above).

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G. CAUSATION

1. Return to normal competition conditions after the dismantling of the cartel

(19) The Indian exporters re-iterated their argument that the establishment of a causal link between the dumped imports and the injury felt by the Community industry is based on data which would be unreliable because of the existence of a cartel up until the beginning of 1998. However, the Indian exporters did not provide any new information within the deadline set for submitting comments in this particular respect.

2. Imports from other third countries

(20) Several interested parties submitted that the Commission should have initiated this proceeding also against imports of the like product from Japan. At the time of the initiation of the current proceeding, the Commission did not have sufficient evidence regarding injurious dumping that would have justified the initiation of a proceeding against imports originating in Japan in line with the requirements of Article 5 of the basic Regulation. The information provided by certain parties after the initiation does not constitute such sufficient evidence, whether taken into account separately or together with other information available to the Commission at the time of the investigation, as no evidence of injurious dumping emanates therefrom. For example, the evidence provided by the abovementioned parties contained only information on average domestic and export prices for Japanese graphite electrodes, without any indication as to whether these graphite electrodes actually met the parameters defining the product concerned, as set in recital 13 of the provisional Regulation. In any event, the fact that imports originating in Japan are not subject to the proceeding does not in any way alter the conclusions of the investigation regarding the existence of a causal link.

(21) In the absence of any substantially new information or argument, recitals 73 to 93 of the provisional Regulation are hereby confirmed.

H. COMMUNITY INTEREST

(22) An association representing users and a user company reiterated their main concern that, by excluding Indian suppliers from the Community market, the imposition of any measure would reduce overall competition on the Community market for this particular product and inevitably lead to an increase in prices. However, as assessed under recital 103 of the provisional Regulation, the impact of any increase in the price of the like product for final customers is likely to be minimal. It is further recalled that the purpose of any anti-dumping measure is by no means to stop access into the Community of products from India, but rather to restore a level playing field that had been distorted by unfair trade practices. Finally, it is considered that the level of the measures is not such as to exclude the Indian producers from the Community market.

(23) In the absence of any substantially new information or argument in this particular respect, recitals 94 to 107 of the provisional Regulation are hereby confirmed.

I. INJURY ELIMINATION LEVEL

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(24) Further to disclosure of provisional findings, several interested parties claimed that the profit level of 9,4 % deemed to represent the financial situation of the Community industry in the absence of injurious dumping from India was too high. It was alleged that the normal practice was to set a 5 % profit ratio for commodity goods sectors such as steel, textiles and base chemicals. The same parties further claimed that the methodology used to arrive at this figure should be fully disclosed.

(25) As explained under recital 110 of the provisional Regulation, the profit of 9,4 % was the result of a reasoned assessment established on the basis of a number of elements, amongst which (i) the profit achieved by the Community industry in 1999, when the market share of the dumped imports was at its lowest; (ii) the market conditions at that time; and (iii) the output drawn from a database on company accounts. As regards this database, it consists of company accounts data, which are first collected by national central banks of the largest industrialised countries, i.e. most of the member countries of the European Union, the United States of America and Japan, and then aggregated, by sectors, by the European Committee of Central Balance Sheet Data Offices and the European Commission. The database has been updated between provisional and definitive determination. An analysis of the updated data referring to the EU Member States, plus the United States of America and Japan shows that the average profit before extraordinary items for companies belonging to the nearest available business sector was of 7,5 % in 2002, which is the last year available in the database.

(26) However, it is further considered that, when setting the profit that could have been achieved in the absence of dumping, due consideration has to be paid to all qualitative and quantitative elements relevant for this purpose. In particular, as this has been done under recital 110 of the provisional Regulation, a proper examination was made of Community industry's profit levels when the market share of dumped imports was at its lowest (i.e. 1999), and of any other causes and circumstances that might affect the representativity of the latter period. Finally, it is noted that the product concerned is used in demanding applications and has to match strictly certain parameters, notably in terms of electrical resistance. This entails both a highly capital intensive manufacturing process and a not negligible amount of Research and Development costs. The fact that only a limited number of producers in the world master this technology is a further indication that this product can certainly not be considered as a basic commodity.

(27) Taking all these circumstances and elements into account, it is definitively concluded that the profit margin that can reasonably be deemed to represent the financial situation of the Community industry in the absence of injurious dumping from India should be set at 8 % for the purpose of the calculation of the injury margin.

(28) As a result of the above, of the findings regarding undercutting (see recitals 15 to 17 above), and due account being taken of the revision of the exchange rates (see recital 11above), injury margins were revised as follows.

Graphite India Limited (GIL)	15,7 %