Commission Regulation (EC) No 1009/2004 of 19 May 2004 imposing a provisional anti-dumping duty 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[(1)], as last amended by Regulation (EC) No 461/2004[(2)] (the 'basic Regulation') and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. GENERAL

(1) On 21 August 2003, the Commission announced, by a notice ('notice of initiation') published in the *Official Journal of the European Union*[(3)], the initiation of an anti-dumping proceeding with regard to imports into the Community of certain graphite electrode systems originating in India.

(2) The proceeding was initiated as a result of a complaint lodged in July 2003 by the European Carbon and Graphite Association (ECGA), acting on behalf of producers representing a major proportion, in this case more than 50 %, of the total Community production of certain graphite electrode systems. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an anti-dumping proceeding.

(3) The initiation of a parallel anti-subsidy proceeding concerning imports into the Community of the same product originating in India was announced by a notice published in the *Official Journal of the European Union*[(4)] on the same date.

(4) The Commission officially advised the complainant and other known Community producers, exporting producers, importers, users and suppliers known to be concerned as well as the representatives of India of the initiation of the proceeding. The parties directly concerned were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

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(5) The two exporting producers in India and the Government of India ('GOI'), as well as Community producers, users and importers/traders made their views known in writing. All parties who so requested within the above time limit and indicated that there were particular reasons why they should be heard were granted an opportunity to be heard.

2. SAMPLING

(6) In view of the large number of unrelated importers in the Community, it was considered appropriate, in conformity with Article 17 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would indeed be necessary and, if so, to select a sample, all known unrelated importers were requested, pursuant to Article 17(2) of the basic Regulation, to make themselves known within two weeks of the initiation of the proceeding and to provide the Commission with the information requested in the notice of initiation, for the period from 1st April 2002 to 31st March 2003. Only two unrelated importers agreed to be included in the sample and provided the requested basic information within the deadline. Accordingly, sampling was not considered necessary in this proceeding.

3. QUESTIONNAIRES

(7) The Commission sent questionnaires to all parties known to be concerned, to the two unrelated importers referred to above and to all other companies who made themselves known within the deadlines set in the notice of initiation.

(8) Replies were received from two Indian exporting producers, from the two complainant Community producers, from eight user companies and from the two unrelated importers referred to above. In addition, one user company made a written submission containing some quantitative information and two users' associations provided the Commission with written submissions.

(9) The Commission sought and verified all the information it deemed necessary for the purpose of a provisional determination of dumping, resulting injury and Community interest. Verification visits were carried out at the premises of the following companies:

Community producers:

— SGL Carbon GmbH, Wiesbaden and Meitingen, Germany;

— SGL Carbon SA, La Coruña, Spain;

— UCAR SNC, Notre Dame de Briançon, France and its related company, UCAR SA, Etoy, Switzerland;

— UCAR Electrodos Ibérica SL, Pamplona, Spain;

— Graftech SpA, Caserta, Italy.

Unrelated importers in the Community:

— Promidesa SA, Madrid, Spain;

— AGC-Matov allied graphite & carbon GmbH, Berlin, Germany.

Users:

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— ISPAT Hamburger Stahlwerke GmbH, Hamburg, Germany;

— ThyssenKrupp Nirosta GmbH, Krefeld, Germany;

— Lech-Stahlwerke, Meitingen, Germany;

— Ferriere Nord, Osoppo, Italy.

Exporting producers in India:

— Graphite India Limited (GIL), Kolkatta and Nasik;

— Hindustan Electro Graphite (HEG) Limited, Bhopal.

(10) The investigation of dumping and injury covered the period from 1 April 2002 to 31 March 2003 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1999 to the end of the IP ('the period considered').

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. PRODUCT CONCERNED

(11) The product concerned is graphite electrodes and/or nipples used for such electrodes, whether imported together or separately. A graphite electrode is a ceramic-molded or extruded column of graphite. At both ends of this cylinder, threaded tapered 'sockets' are machined so that two or more electrodes can be joined to build a column. A connecting part, also in graphite, is used to join two sockets. This part is called a 'nipple'. Both the graphite electrode and the nipple are usually supplied pre-set as a 'graphite electrode system'.

(12) Graphite electrodes and nipples used for such electrodes are produced using petroleum coke, a by-product of the oil industry; and coal tar pitch. The manufacturing process has six steps; namely forming, baking, impregnation, rebaking, graphitising and machining. During the graphitising phase the product is heated electrically to over 3 000^{o}C and is physically transformed into graphite, the crystalline form of carbon: a unique material with low electrical but high heat conductivity; and high strength and performance at high temperature; that makes it suitable for use in electric arc furnaces. The processing time for a graphite electrode system is approximately two months. There are no product substitutes for graphite electrode systems.

(13) Graphite electrode systems are used by steel producers in electric arc furnaces; also referred to as 'mini mills'; as current carrying conductors to produce steel from recycled scrap. Graphite electrodes and nipples used for such electrodes covered by this investigation are only those with an apparent density of 1,65 g/cm^3 or more and an electrical resistance of 6,0 μΩ.m or less. Graphite electrode systems which meet these technical parameters can carry a very high rate of power feed.

(14) One Indian exporter stated that, in some cases, he produced the product concerned without using 'premium needle coke', a top quality petroleum coke which, according to this company, was considered by the complainants to be indispensable for producing the product within the specifications as mentioned in recital 11 to 13 above. This exporter therefore claimed that graphite electrodes, and nipples used for

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such electrodes, made without 'premium needle coke' should be excluded from the scope of the investigation. Indeed, different qualities of petroleum coke can be used for producing graphite electrode systems. However, it is the basic physical and technical characteristics of the end product and its end uses, irrespective of the raw materials used, which determine the product definition. If graphite electrodes and nipples used for such electrodes originating in India and imported into the Community meet the basic physical and technical characteristics as described in the product definition, they are considered product concerned. Therefore, the claim was rejected.

2. LIKE PRODUCT

(15) The product exported to the Community from India, the product produced and sold domestically in India as well as the one manufactured and sold in the Community by the Community producers were found to have the same basic physical and technical characteristics as well as the same uses and are therefore considered as like products within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

1. NORMAL VALUE

(16) As far as the determination of normal value is concerned, the Commission first established, for each exporting producer, whether its total domestic sales of the like product were representative in comparison with its total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative when the total domestic sales volume of each exporting producer was at least 5 % of its total export sales volume to the Community.

(17) The Commission subsequently identified those types of graphite electrodes sold domestically by the companies having representative domestic sales that were identical or directly comparable to the types sold for export to the Community. The elements taken into account in defining the product types of graphite electrodes were i) whether they were sold with a nipple or not, ii) their diameter and iii) their length. The product types of the nipples sold alone were defined on the basis of their diameter and their length.

(18) It was then examined whether the domestic sales of each co-operating exporting producer were representative for each product type, i.e. whether the domestic sales of each product type constituted at least 5 % of the sales volume of the same product type to the Community. For these product types, it was then examined for each exporting producer whether such sales were made in the ordinary course of trade, in accordance with Article 2(4) of the basic Regulation.

(19) The examination as to whether the domestic sales of each product type, sold domestically in representative quantities, could be regarded as having been made in the ordinary course of trade was made by establishing the proportion of profitable sales to independent customers of the type in question. For both exporting producers, it was established that, in all cases where the domestic sales of a particular product type were made in sufficient quantities, more than 80 % by volume was sold at a profit

on the domestic market, and the weighted average sales price of that type was above its weighted average unit cost. For these product types, therefore, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales of that type made during the IP.

(20) For the remaining product types where domestic sales were not representative, normal value was constructed in accordance with Article 2(3) of the basic Regulation. Normal value was constructed by adding to the manufacturing costs of the exported types, adjusted where necessary, a reasonable percentage for selling, general and administrative expenses ('SG&A') and a reasonable margin of profit, on the basis of actual data pertaining to production and sales, in the ordinary course of trade, of the like product, by the exporting producers under investigation in accordance with the first sentence of Article 2(6) of the basic Regulation.

2. EXPORT PRICE

(21) The investigation showed that the export sales of both co-operating Indian exporting producers were solely made directly to unrelated customers in the Community.

(22) Therefore, the export price was established in accordance with Article 2(8) of the basic Regulation, on the basis of export prices actually paid or payable.

3. COMPARISON

(23) The normal value and export prices were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation.

(24) Accordingly, allowances for differences in transport costs, ocean freight and insurance costs, handling, loading and ancillary costs, credit costs, commissions and discounts have been granted where applicable and supported by verified evidence.

(25) Both companies claimed a duty drawback adjustment pursuant to Article 2(10)(b) of the basic Regulation on the grounds that import charges were allegedly borne by the like product when intended for consumption in the exporting country but were refunded or not paid when the product was sold for export to the Community. The companies made use of the 'Duty Entitlement Passbook Scheme' ('DEPB') on post-export basis for that reason. In this regard, the investigation showed that no direct link could be established between the credits granted by the GOI to exporting producers under the DEPB Scheme 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, the credits could also be sold on the domestic market or used in any other way and no restriction existed to use these for the importation of raw materials incorporated in the exported product. For these reasons, the claims were rejected.