

EN

EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.6.2009
COM(2009) 289 final

Proposal for a

COUNCIL REGULATION

Concluding the partial interim review pursuant to Article 11(3) of Council Regulation (EC) No. 384/96 of the anti-dumping duty on imports of certain graphite electrode systems originating in India

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 ('the basic Regulation') in the proceeding concerning imports of certain graphite electrode systems originating in India.

- **General context**

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

- **Existing provisions in the area of the proposal**

Measures are in force against imports of certain graphite electrode systems originating in India and were imposed by Council Regulation (EC) No. 1629/2004.

- **Consistency with other policies and objectives of the Union**

Not applicable.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Interested parties concerned by the proceeding have already had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not contain provisions for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

On 27 June 2008, the Commission initiated a partial interim review limited to dumping for one exporting producer of certain graphite electrode systems originating in India on request of the exporter concerned.

The investigation showed that the company concerned had ceased to dump the product concerned onto the Community market and that this change could be considered of a lasting nature.

It is therefore proposed that the Council adopt the attached proposal for a Regulation which should be published in the Official Journal of the European Union by 26 June 2009 at the latest.

- **Legal basis**

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons:

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Community, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

- **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate for the following reason:

Other means would not be adequate because the basic Regulation does not propose alternative options.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

Proposal for a

COUNCIL REGULATION

Concluding the partial interim review pursuant to Article 11(3) of Council Regulation (EC) No. 384/96 of the anti-dumping duty 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 Community¹ ('the basic Regulation') and in particular Articles 9 and 11(3) thereof,

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

Whereas:

1. EXISTING MEASURES

(1) Following an investigation ('the original investigation'), the Council, by Regulation (EC) No 1629/2004² which was further amended by Regulation (EC) No 1354/2008³, imposed a definitive anti-dumping duty on imports of certain graphite electrode systems originating in India.

1.1. Initiation of an interim review

(2) On the request of Hindustan Electro Graphite Limited ('HEG' or 'the company'), an Indian exporting producer subject to the anti-dumping measures in force, a partial interim review of the above-mentioned Regulation was initiated pursuant to Article 11(3) of the basic Regulation.

(3) This partial interim review was initiated based on *prima facie* evidence provided by the company that as far as they were concerned, the circumstances on the basis of which measures were established had changed and that these changes were of a lasting nature.

(4) The request alleged that the cost of production of the product concerned had reduced due to production efficiencies since the original investigation, and that the company had been able to significantly increase their export prices. They claimed therefore that

¹ OJ L 56, 6.3.1996, p. 1.

² OJ L 295, 18.9.2004, p.10.

³ OJ L 350, 30.12.2008, p.24.

the continued imposition of measures at the existing level, which were based on the level of dumping previously established, was no longer necessary to offset dumping.

- (5) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a partial interim review, the Commission published a notice ('Notice of Initiation')⁴ and commenced an investigation, limited in scope to the examination of dumping.

1.2. Parties concerned by the investigation

- (6) The Commission officially advised HEG, as well as the representatives of the exporting country and the Community industry, of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to request a hearing.
- (7) The Commission sent a questionnaire to the applicant and received a reply within the deadlines set for that purpose. The Commission sought and verified all the information it deemed necessary for the determination of dumping and carried out a verification visit at the premises of HEG, Bhopal, India.

1.3. Review investigation period

- (8) The investigation of dumping covered the period from 1 April 2007 to 31 March 2008 ('the review investigation period' or 'RIP').

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (9) The product concerned by the current review is the same as that in the original investigation, i.e. graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,65 g/cm³ 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.

2.2. Like product

- (10) The current review has shown that the graphite electrode systems produced by HEG and sold on the Indian domestic market were similar to those exported to the Community and therefore could be considered to be like product to the product concerned.

3. DUMPING

3.1. Normal value

- (11) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the domestic sales of the product concerned to independent

⁴ OJ C 164, 27.6.2008 p. 15.

customers were representative, i.e. whether the total volume of such sales was equal to or greater than 5 % of the total volume of the corresponding export sales to the Community. The domestic sales of HEG were found to be representative during the investigation period.

- (12) The Commission then identified those product types sold domestically by that company which were identical or directly comparable with the types sold for export to the Community.
- (13) Domestic sales of a particular product type were considered as sufficiently representative when the volume of that product type sold on the domestic market to independent customers during the investigation period represented 5 % or more of the total volume of the comparable product type sold for export to the Community.
- (14) The Commission then examined whether the domestic sales of each type of graphite electrode system sold domestically in representative quantities could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of profitable domestic sales to independent customers, of each exported product type, on the domestic market during the investigation period.
- (15) For those domestic sales of each type of graphite electrode system sold domestically in representative quantities where the sales were over 80% profitable by volume, normal value was therefore based on the actual domestic price of all transactions during the investigation period.
- (16) For all other exported types also sold on the domestic market, where the sales were less than 80% profitable by volume, normal value was based on the domestic sales price of the profitable transactions during the investigation period.
- (17) Wherever domestic prices of a particular product type could not be used in order to establish normal value, another method had to be applied. In accordance with Article 2(3) of the basic Regulation the Commission instead calculated a constructed normal value, as follows.
- (18) Normal value was constructed by adding to the exporter's manufacturing costs of the exported types, a reasonable amount for selling, general and administrative expenses ('SG&A') and a reasonable margin of profit.
- (19) In all cases SG&A and profit were established pursuant to the methods set out in Article 2(6) of the basic Regulation. To this end, the Commission examined whether the SG&A incurred and the profit realised by the exporting producer on sales on the domestic market of the like product constituted reliable data and in this case determined that it was suitable to be used to construct normal value.

3.2. Export price

- (20) All export sales of the product concerned by HEG were made directly to independent customers in the Community, and therefore the export price was established on the basis of the prices actually paid or payable for the product concerned in the RIP in accordance with Article 2(8) of the basic Regulation.

3.3. Comparison

- (21) The comparison between the normal value and the export price was made on an ex-factory basis and at the same level of trade. In order to ensure a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were demonstrated to affect prices and price comparability. On this basis, allowances for differences in rebates, transport costs, insurance, handling charges, packaging, credit costs and import duties were made where applicable and justified.

3.4. Dumping margin

- (22) As provided for under Article 2(11) of the basic Regulation, the weighted average normal value by type was compared with the weighted average export price of the corresponding type of the product concerned.
- (23) HEG's dumping margin expressed as a percentage of the net, free-at-Community-frontier price, duty unpaid, was found to be *de minimis* in the sense of Article 9(3) of the basic Regulation.

4. LASTING NATURE OF CHANGED CIRCUMSTANCES

- (24) In accordance with Article 11(3) of the basic Regulation, it was also examined whether the changed circumstances could reasonably be said to be of a lasting nature.
- (25) Whereas the cost of production of the company had not significantly decreased since the original investigation, the export price of the product concerned had increased substantially during the RIP, thereby removing the dumping findings of the original investigation.
- (26) Latest available data collected for the period after the RIP showed the import prices from HEG to have remained both high and stable, thereby confirming that the company continued with its non-dumping behaviour after the RIP.
- (27) It was also found that, during the RIP, exports by HEG to markets other than the EU were made at prices above prices on the Indian domestic market.
- (28) In these circumstances, the findings from the RIP can be considered to be lasting.

5. ANTI-DUMPING MEASURES

- (29) As stated above, HEG was found to be dumping at a *de minimis* level during the RIP. It is however noted that, while the dumping margin established for the company concerned in the original investigation was 22.4%, the anti-dumping duty presently in force against this company is 0%⁵. This results from the fact that there are parallel countervailing duties in force on imports of the product concerned. In these circumstances, the finding of *de minimis* dumping has no immediate impact on the level of the measures currently in force⁶.

⁵ See recital 30 of Regulation (EC) No 1629/2004.

⁶ OJ L 295, 18.9.2004, p. 4.

6. DISCLOSURE

- (30) Interested parties were informed of the essential facts, considerations and findings of the investigation and were given an opportunity to comment. No comments were received.

HAS ADOPTED THIS REGULATION:

Article 1

The partial interim review of the anti-dumping measures applicable to imports of certain graphite electrode systems originating in India, initiated pursuant to Article 11(3) of Regulation (EC) No 384/96 is hereby concluded without amending the level of the anti-dumping measure in force.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President