

Notice of initiation of an expiry review of the countervailing measures applicable to imports of certain graphite electrode systems originating in India

(2009/C 224/11)

Following the publication of a notice of impending expiry ⁽¹⁾ of the anti-subsidy measures in force on imports of certain graphite electrode systems originating in India, ('country concerned'), the Commission has received a request for review pursuant to Article 18 of Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community ⁽²⁾ ('the basic Regulation').

1. Request for review

The request was lodged on 18 June 2009 by three Community producers: SGL Carbon, Erftcarbon and GrafTech ('the applicants') representing a major proportion, in this case more than 50 %, of the total Community production of certain graphite electrode systems.

2. Product

The product under review is 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, currently falling within CN code ex 8545 11 00 and nipples used for such electrodes, currently falling within CN code ex 8545 90 90 whether imported together or separately originating in India ('the product concerned').

3. Existing measures

The measures currently in force are a definitive countervailing duty imposed by Council Regulation (EC) No 1628/2004 on imports of certain graphite electrode systems originating in India ⁽³⁾.

4. Grounds for the review

The applicants have provided evidence that the expiry of the measures would be likely to lead to a continuation or recurrence of subsidisation and injury to the Community industry.

It is alleged that the producers of the product concerned have benefited and will continue to benefit from a number of subsidies granted by the Government of India. These alleged subsidies consist of the Advance Authorisation Scheme; the Duty Entitlement Passbook Scheme; the Export Promotion Capital Goods Scheme; and the Electricity Duty Exemption of the State of Madhya Pradesh.

The total subsidy estimated is significant.

It is alleged that the above schemes are subsidies since they involve a financial contribution from the government of India or other regional governments and confer a benefit to the recipients, i.e. to exporters/producers of certain graphite electrode systems. They are alleged to be contingent upon

export performance or do not appear to be granted according to criteria and conditions clearly set out by law, regulation, or other official document, and are therefore specific and countervailable.

Furthermore, it is also alleged that that imports of the product concerned from India have continued to enter in significant quantities, and that such quantities would be likely to remain at their current levels, if not increase, inter alia, due to the potential of the manufacturing facilities of the exporting producers.

In addition, the applicants allege that the current improved situation with regard to injury is mainly due to the existence of measures and that any continuation of substantial imports at dumped prices from the country concerned would likely lead to a recurrence of further injury to the Community industry should measures be allowed to lapse.

5. Procedure

Having determined, after consulting the Advisory Committee, that sufficient evidence exists to justify the initiation of an expiry review, the Commission hereby initiates a review in accordance with Article 18 of the basic Regulation.

5.1. Procedure for the determination of likelihood of subsidisation and injury

The investigation will determine whether the expiry of the measures would be likely, or unlikely, to lead to a continuation or recurrence of subsidisation and injury.

(a) Sampling

In view of the apparent large number of parties involved in this proceeding, the Commission may decide to apply sampling, in accordance with Article 27 of the basic Regulation.

(i) Sampling for importers

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all importers, or representatives acting on their behalf, are hereby requested to make themselves known to the Commission and to provide the following information on their company or companies within the time limit set in point 6(b)(i) and in the formats indicated in point 7:

— name, address, e-mail address, telephone, and fax numbers and contact person,

— the precise activities of the company with regard to the product concerned,

⁽¹⁾ OJ C 34, 11.2.2009, p. 11.

⁽²⁾ OJ L 188, 18.7.2009, p. 93.

⁽³⁾ OJ L 295, 18.9.2004, p. 4.

- the volume in tonnes and value in euro of imports into and resales made on the Community market during the period 1 July 2008 to 30 June 2009 of the imported product concerned originating in India,
- the names and the precise activities of all related companies ⁽⁴⁾ involved in the production and/or sales of the product concerned,
- any other relevant information that would assist the Commission in the selection of the sample.

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is chosen to be part of the sample, this will imply replying to a questionnaire and accepting an on-the-spot investigation of its response. If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed not to have cooperated in the investigation. The consequences of non-cooperation are set out in point 8 below.

In order to obtain the information it deems necessary for the selection of the sample of importers, the Commission will, in addition, contact any known associations of importers.

(ii) Sampling for Community producers

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all Community producers, or representatives acting on their behalf, are hereby requested to make themselves known to the Commission and to provide the following information on their company or companies within the time limit set in point 6(b)(i) and in the formats indicated in point 7:

- name, address, e-mail address, telephone and fax numbers, and contact person,
- the precise activities of the company worldwide with regard to the production of the like product during the period 1 July 2008 to 30 June 2009,
- the value in euro of sales of the like product made on the Community market during the period 1 July 2008 to 30 June 2009,
- the volume in tonnes of sales of the like product made on the Community market during the period 1 July 2008 to 30 June 2009,
- the volume in tonnes of the production of the like product during the period 1 July 2008 to 30 June 2009,

⁽⁴⁾ For guidance on the meaning of related companies, please refer to Article 143 of Commission Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

- the volume in tonnes imported into the Community of the product concerned produced in India during the period 1 July 2008 to 30 June 2009, if applicable,
- the names and the precise activities of all related companies ⁽⁵⁾ involved in the production and/or sales of the like product (produced in the Community) and the product concerned (produced in India),
- any other relevant information that would assist the Commission in the selection of the sample.

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is chosen to be part of the sample, this will imply replying to a questionnaire and accepting an on-the-spot investigation of its response. If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed not to have cooperated in the investigation. The consequences of non-cooperation are set out in point 8 below.

(iii) Final selection of the samples

All interested parties wishing to submit any relevant information regarding the selection of the samples must do so within the time limit set in point 6(b)(ii).

The Commission intends to make the final selection of the samples after having consulted the parties concerned that have expressed their willingness to be included in the sample.

Companies included in the samples must reply to a questionnaire within the time limit set in point 6(b)(iii) and must cooperate within the framework of the investigation.

If sufficient cooperation is not forthcoming, the Commission may base its findings, in accordance with Articles 27(4) and 28 of the basic Regulation, on the facts available. A finding based on facts available may be less advantageous to the party concerned, as explained in point 8.

(b) Questionnaires

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the sampled Community industry and to any known association of producers in the Community, to the known exporters/producers in India, to any known association of exporters/producers, to the sampled importers, to any known association of importers, and to the authorities of the exporting country concerned.

(c) Collection of information and holding of hearings

All interested parties are hereby invited to make their views known, submit information other than questionnaire replies and to provide supporting evidence. This information and supporting evidence must reach the Commission within the time limit set in point 6(a)(ii).

⁽⁵⁾ See footnote 4.

Furthermore, the Commission may hear interested parties, provided that they make a request showing that there are particular reasons why they should be heard. This request must be made within the time limit set in point 6(a)(iii).

5.2. Procedure for the assessment of Community interest

In accordance with Article 31 of the basic Regulation and in the event that the continuation or recurrence of subsidisation and injury is confirmed, a determination will be made as to whether maintaining the anti-subsidy measures would not be against the Community interest. For this reason the Commission may send questionnaires to the known Community industry, importers, their representative associations, representative users and representative consumer organisations. Such parties, including those not known to the Commission, provided that they prove that there is an objective link between their activity and the product concerned, may, within the general time limits set in point 6(a)(ii), make themselves known and provide the Commission with information. The parties which have acted in conformity with the preceding sentence may request a hearing, setting the particular reasons why they should be heard, within the time limit set in point 6(a)(iii). It should be noted that any information submitted pursuant to Article 31 of the basic Regulation will only be taken into account if supported by factual evidence at the time of submission.

6. Time limits

(a) General time limits

- (i) For parties to request a questionnaire

All interested parties who did not cooperate in the investigation leading to the measures subject to the present review should request a questionnaire or other claim forms as soon as possible, but not later than 15 days after the publication of this notice in the *Official Journal of the European Union*.

- (ii) For parties to make themselves known, to submit questionnaire replies and any other information

All interested parties, if their representations are to be taken into account during the investigation, must make themselves known by contacting the Commission, present their views and submit questionnaire replies or any other information within 40 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the party's making itself known within the aforementioned period.

Companies selected in a sample must submit questionnaire replies within the time limit specified in point 6(b)(iii).

(iii) Hearings

All interested parties may also apply to be heard by the Commission within the same 40-day time limit.

(b) Specific time limit in respect of sampling

- (i) The information specified in points 5.1(a)(i) and 5.1(a)(ii) should reach the Commission within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, given that the Commission intends to consult parties concerned that have expressed their willingness to be included in the sample on its final selection within a period of 21 days of the publication of this notice in the *Official Journal of the European Union*.

- (ii) All other information relevant for the selection of the sample as referred to in 5.1(a)(iii) must reach the Commission within a period of 21 days of the publication of this notice in the *Official Journal of the European Union*.

- (iii) The questionnaire replies from sampled parties must reach the Commission within 37 days from the date of the notification of their inclusion in the sample.

7. Written submissions, questionnaire replies and correspondence

All submissions and requests made by interested parties must be made in writing (not in electronic format, unless otherwise specified) and must indicate the name, address, e-mail address, telephone and fax numbers of the interested party. All written submissions, including the information requested in this notice, questionnaire replies and correspondence provided by interested parties on a confidential basis shall be labelled as 'Limited' ⁽⁶⁾ and, in accordance with Article 29(2) of the basic Regulation, shall be accompanied by a non-confidential version, which will be labelled 'For inspection by interested parties'.

Commission address for correspondence:

European Commission
Directorate-General for Trade
Directorate H
Office: N105 04/92
1049 Bruxelles/Brussel
BELGIQUE/BELGIË
Fax +32 22956505

⁽⁶⁾ This means that the document is for internal use only. It is protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43). It is a confidential document pursuant to Article 29 of the basic Regulation and Article 12 of the WTO Agreement on Subsidies and Countervailing Measures.

8. Non-cooperation

In cases in which any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 28 of the basic Regulation, on the basis of the facts available.

Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made, in accordance with Article 28 of the basic Regulation, of the facts available. If an interested party does not cooperate or cooperates only partially, and use of facts available is made, the result may be less favourable to that party than if it had cooperated.

9. Schedule of the investigation

The investigation will be concluded, according to Article 22(1) of the basic Regulation within 15 months of the date of the publication of this notice in the *Official Journal of the European Union*.

10. Possibility to request a review under Article 19 of the basic Regulation

As this expiry review is initiated in accordance with the provisions of Article 18 of the basic Regulation, the findings thereof will not lead to the level of the existing measures being amended but will lead to those measures being repealed or maintained in accordance with Article 22(3) of the basic Regulation.

If any party to the proceeding considers that a review of the level of the measures is warranted so as to allow for the possibility to amend (i.e. increase or decrease) the level of the measures, that party may request a review in accordance with Article 19 of the basic Regulation.

Parties wishing to request such a review, which would be carried out independently of the expiry review mentioned in this notice, may contact the Commission at the address given above.

11. Processing of personal data

It is noted that any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽⁷⁾.

12. Hearing Officer

It is also noted that if interested parties consider that they are encountering difficulties in the exercise of their rights of defence, they may request the intervention of the Hearing Officer of Directorate-General for Trade. He acts as an interface between the interested parties and the Commission services, offering, where necessary, mediation on procedural matters affecting the protection of their interests in this proceeding, in particular with regard to issues concerning access to file, confidentiality, extension of time limits and the treatment of written and/or oral submission of views. For further information and contact details interested parties may consult the Hearing Officer's web pages of the website of Directorate-General for Trade (<http://ec.europa.eu/trade>).

⁽⁷⁾ OJ L 8, 12.1.2001, p. 1.