

COMMISSION REGULATION (EC) No 217/2007

of 28 February 2007

initiating an investigation concerning the possible circumvention of countervailing measures imposed by Council Regulation (EC) No 1628/2004 on imports of certain graphite electrode systems originating in India by imports of certain artificial graphite originating in India and making such imports subject to registration

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

C. EXISTING MEASURES

Having regard to the Treaty establishing the European Community,

- (5) The measures currently in force and allegedly being circumvented are countervailing measures imposed by Council Regulation (EC) No 1628/2004 ⁽²⁾.

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community ⁽¹⁾ (the basic Regulation), and in particular Article 23(2) and Article 24(3) and 24(5) thereof,

D. GROUNDS

After having consulted the Advisory Committee,

- (6) The request contains sufficient *prima facie* evidence that the countervailing measures on imports of the product concerned are being circumvented by means of imports of the product under investigation.

Whereas:

- (7) The evidence submitted is as follows:

A. REQUEST

- (1) The Commission has received a request pursuant to Article 23(2) of the basic Regulation to investigate the alleged circumvention of the countervailing measures imposed on imports of certain graphite electrode systems originating in India.
- (2) The request was lodged on 15 January 2007 by the European Carbon and Graphite Association (ECGA) on behalf of Community producers of certain graphite electrode systems.

- (i) the request shows that a significant change in the pattern of trade involving exports from India to the Community has taken place following the imposition of countervailing measures on the product concerned, and that there is insufficient due cause or justification other than the imposition of the duty for such a change;

B. PRODUCT

- (3) 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/cm³ 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'). These codes are given for information only.
- (4) The product under investigation is artificial graphite rods of a diameter of 75 mm or more originating in India ('the product under investigation'), normally declared under CN code ex 3801 10 00 (TARIC 3801 10 00 10). This code is given for information only. 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.

- (ii) this change in the pattern of trade appears to stem from a simple conversion operation carried out in the Community whereby imports of the product under investigation are converted into the product concerned;
- (iii) furthermore, the request contains sufficient *prima facie* evidence that the remedial effects of the existing countervailing measures on the product concerned are being undermined in terms of quantity. Significant volumes of imports of the product under investigation from India appear to have replaced imports of the product concerned;
- (iv) finally, the request contains sufficient *prima facie* evidence that the imported product under investigation still benefits from the subsidy;
- (v) should circumvention practices covered by Article 23 of the basic Regulation, other than simple conversion, be identified in the course of the investigation, the investigation may cover these practices also.

⁽¹⁾ OJ L 288, 21.10.1997, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

⁽²⁾ OJ L 295, 18.9.2004, p. 4.

E. PROCEDURE

(8) In the light of the above, the Commission has concluded that sufficient evidence exists to justify the initiation of an investigation pursuant to Article 23 of the basic Regulation and to make imports of the product under investigation subject to registration, in accordance with Article 24(5) of the basic Regulation.

(a) Questionnaires

(9) In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the exporters/producers and to the associations of exporters/producers in India, to the importers and to the associations of importers in the Community which cooperated in the investigation that led to the existing measures, and to the authorities of India. Information, as appropriate, may also be sought from the Community industry.

(10) In any event, all interested parties should contact the Commission forthwith, but not later than the time limit set in Article 3 of this Regulation in order to find out whether they are listed in the request and, if necessary, request a questionnaire within the time limit set in Article 3(1) of this Regulation, given that the time limit set in Article 3(2) of this Regulation applies to all interested parties.

(11) The authorities in India will be notified of the initiation of the investigation and provided with a copy of the request.

(b) Collection of information and holding of hearings

(12) All interested parties are hereby invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

(c) Exemption from registration of imports or measures

(13) In accordance with Article 23(3) of the basic Regulation, imports of the product under investigation may be exempted from registration or measures if the importation does not constitute circumvention.

(14) Since the possible circumvention takes place inside the Community, exemptions may be granted, in accordance with Article 23(3) of the basic Regulation, to importers of the product under investigation that can show that

they are not related to producers subject to the measures. Importers wishing to obtain an exemption should submit a request duly supported by evidence within the time limit indicated in Article 3(3) of this Regulation.

F. REGISTRATION

(15) Pursuant to Article 24(5) of the basic Regulation, imports of the product under investigation should be made subject to registration in order to ensure that, should the investigation result in findings of circumvention, countervailing duties of an appropriate amount can be levied retroactively from the date of registration of such imports originating in India.

G. TIME LIMITS

(16) In the interest of sound administration, time limits should be stated within which:

— interested parties may make themselves known to the Commission, present their views in writing and submit questionnaire replies or any other information to be taken into account during the investigation,

— importers in the Community may request exemption from registration of imports or measures,

— interested parties may make a written request to be heard by the Commission.

(17) 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 time limits mentioned in Article 3 of this Regulation.

H. NON-COOPERATION

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

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

HAS ADOPTED THIS REGULATION:

Article 1

An investigation is hereby initiated pursuant to Article 23(2) of Council Regulation (EC) No 2026/97, in order to determine if imports into the Community of artificial graphite rods of a diameter of 75 mm or more originating in India, normally falling within CN code ex 3801 10 00 (TARIC 3801 10 00 10), are circumventing the measures imposed by Council Regulation (EC) No 1628/2004.

Article 2

The customs authorities are hereby directed, pursuant to Article 23(2) and Article 24(5) of Regulation (EC) No 2026/97, to take the appropriate steps to register the imports into the Community identified in Article 1 of this Regulation.

Registration shall expire nine months following the date of entry into force of this Regulation.

The Commission, by Regulation, may direct customs authorities to cease registration in respect of imports into the Community of products imported by importers having applied for an exemption of registration and having been found not to be circumventing the countervailing duties.

Article 3

1. Questionnaires should be requested from the Commission within 15 days of the date of publication of this Regulation in the *Official Journal of the European Union*.

2. 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 in

writing and submit questionnaire replies or any other information within 40 days from the date of the publication of this Regulation in the *Official Journal of the European Union*, unless otherwise specified.

3. Importers requesting exemption of imports from registration or measures should submit a request duly supported by evidence within the same 40-day time limit.

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

5. Any information relating to the matter, any request for a hearing or for a questionnaire as well as any request for exemption of imports from registration or measures 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 Regulation, questionnaire replies and correspondence provided by interested parties on a confidential basis shall be labelled as 'Limited' ⁽¹⁾ 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:

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Directorate General for Trade
Directorate H
J-79 5/16
B-1049 Brussels
Fax (32-2) 295 65 05.

Article 4

This Regulation shall enter into force on the day following 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, 28 February 2007.

For the Commission

Peter MANDELSON

Member of the Commission

⁽¹⁾ 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 of 30 May 2001 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 Regulation (EC) No 2026/97 and Article 12 of the WTO Agreement on Subsidies and Countervailing Measures.