

Notice of initiation of an anti-subsidy proceeding concerning imports of certain graphite electrode systems originating in India

(2003/C 197/03)

The Commission has received a complaint pursuant to Article 10 of Council Regulation (EC) No 2026/97 ⁽¹⁾, as last amended by Council Regulation (EC) No 1973/2002 ⁽²⁾ (the basic Regulation), alleging that imports of certain graphite electrode systems, originating in India (the country concerned), are being subsidised and are thereby causing material injury to the Community industry.

1. Complaint

The complaint was lodged on 7 July 2003 by the European Carbon and Graphite Association (the complainant) on behalf of producers representing a major proportion, in this case more than 50 %, of the total Community production of certain graphite electrode systems.

2. Product

The product allegedly being subsidised is, as above, 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, normally declared within CN code ex 8545 11 00 and/or nipples used for such electrodes, normally declared within CN code ex 8545 90 90, whether imported together or separately (the product concerned) originating in India. These CN codes are only given for information.

3. Allegation of subsidisation

It is alleged that the producers of the product concerned from India have benefited from a number of subsidies granted by the Government of India. These alleged subsidies consist of benefits for industries located in export processing zones/export oriented units; the advance licenses; advance release orders scheme; the duty entitlement passbook scheme; an income tax exemption; and the export promotion capital goods scheme.

The total subsidy is estimated to be significant.

It is alleged that the above schemes are subsidies since they involve a financial contribution from the Government of India 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 and therefore specific and countervailable or to be otherwise specific and countervailable.

4. Allegation of injury

The complainant has provided evidence that imports of the product concerned from India have increased overall in absolute terms and in terms of market share.

It is alleged that the volumes and the prices of the imported product concerned have, among other consequences, had a

negative impact on the market share held, the quantities sold and the level of prices charged by the Community industry, resulting in substantial adverse effects on the overall performance, the financial situation and the employment situation of the Community industry.

5. Procedure

Having determined, after consulting the Advisory Committee, that the complaint has been lodged by or on behalf of the Community industry and that there is sufficient evidence to justify the initiation of a proceeding, the Commission hereby initiates an investigation pursuant to Article 10 of the basic Regulation.

5.1. Procedure for the determination of subsidisation and injury

The investigation will determine whether the product described in paragraph 2 originating in India is being subsidised and whether this subsidisation has caused injury.

(a) Sampling

In view of the apparent large number of importers 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 by contacting the Commission and providing the following information on their company or companies within the time limit set in paragraph 6(b)(i) and in the formats indicated in paragraph 7 of this notice:

- name, address, e-mail address, telephone, and fax, and/or telex numbers and contact person,
- the total turnover in euro of the company during the period 1 April 2002 to 31 March 2003,
- the total number of employees,
- the precise activities of the company with regard to the product concerned,
- the volume in tonnes and value in euro of imports into and resales made in the Community market during the period 1 April 2002 to 31 March 2003 of the imported product concerned originating in India,

⁽¹⁾ OJ L 288, 21.10.1997, p. 1.

⁽²⁾ OJ L 305, 7.11.2002, p. 4.

- the names and the precise activities of all related companies⁽¹⁾ involved in the production and/or selling of the product concerned,
- any other relevant information that would assist the Commission in the selection of the sample,
- an indication of whether the company or companies agree to their inclusion in the sample, which implies replying to a questionnaire and accepting an on-the-spot investigation of their response.

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) Final selection of the sample

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

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

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

If sufficient co-operation 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.

(b) Questionnaires

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

In any event, all parties should contact the Commission forthwith by fax, but not later than the time limit set out in paragraph 6(a)(i) of this notice, in order to find out whether they are listed in the complaint and, if necessary, request a questionnaire, given that the time limit set in paragraph 6(a)(ii) of this notice applies to all such interested parties.

⁽¹⁾ For guidance on the meaning of related companies, please refer to Article 143 of Commission Regulation (EEC) No 2454/93 concerning the implementation of the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

(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 has to reach the Commission within the time limit set in paragraph 6(a)(ii) of this notice.

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 paragraph 6(a)(iii) of this notice.

5.2. Procedure for assessment of Community interest

In accordance with Article 31 of the basic Regulation and in the event that the allegations of subsidization and injury caused thereby are substantiated, a decision will be reached as to whether the adoption of anti-subsidy measures would not be against the Community interest. For this reason the Community industry, importers, their representative associations, representative users and representative consumer organisations, 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 paragraph 6(a)(ii) of this notice, make themselves known and provide the Commission with information. The parties which have acted in conformity with the previous sentence may request a hearing setting the particular reasons why they should be heard within the time limit set in paragraph 6(a)(iii) of this notice. It should be noted that any information submitted pursuant to Article 31 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 should request a questionnaire 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 limits specified in paragraph 6(b)(iii) of this notice.

(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 paragraph 5.1(a)(i) 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)(ii) 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, and/or telex numbers of the interested party). All written submissions, including the information requested in this notice, questionnaire replies and corre-

spondence 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'.

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Telex COMEU B 21877.

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, 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.

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, the result may be less favourable to the party than if it had cooperated.

9. Schedule of the investigation

The investigation will be concluded, according to Article 11(9) of the basic Regulation within 13 months of the date of the publication of this notice in the *Official Journal of the European Union*. According to Article 12(1) of the basic Regulation, provisional measures may be imposed no later than nine months from the publication of this notice in the *Official Journal of the European Union*.

⁽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 (OJ L 145, 31.5.2001, p. 43). It is a confidential document pursuant to Article 29 of Council Regulation (EC) No 2026/1997 (OJ L 288, 21.10.1997, p. 1.) and Article 12 of the WTO Agreement on Subsidies and Countervailing Measures.