

COMMISSION IMPLEMENTING REGULATION (EU) 2017/422**of 9 March 2017****imposing a definitive anti-dumping duty on imports of certain graphite electrode systems originating in India following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation'), and in particular Article 11(2) thereof,

Whereas:

A. PROCEDURE**1. Measures in force**

- (1) The Council, following an anti-dumping investigation, by Regulation (EC) No 1629/2004 ⁽²⁾, imposed a definitive anti-dumping duty on imports of certain graphite electrodes systems originating in India ('country concerned'), currently falling within CN codes ex 8545 11 00 (TARIC code 8545 11 00 10) and ex 8545 90 90 (TARIC code 8545 90 90 10).
- (2) The Council, following an anti-subsidy investigation, by Regulation (EC) No 1628/2004 ⁽³⁾, also imposed definitive countervailing duties on imports of certain graphite electrodes systems originating in India.
- (3) Following an *ex officio* partial interim review of the countervailing measures, the Council by Regulation (EC) No 1354/2008 ⁽⁴⁾ amended Regulations (EC) No 1628/2004 and (EC) No 1629/2004.
- (4) Following an expiry review of the anti-dumping measures pursuant to Article 11(2) of the basic Regulation, the Council by Implementing Regulation (EU) No 1186/2010 ⁽⁵⁾ extended the anti-dumping measures. Following an expiry review of the countervailing measures, the Council by Implementing Regulation (EU) No 1185/2010 ⁽⁶⁾ extended the countervailing measures.
- (5) The anti-dumping measures took the form of an *ad valorem* duty rate of 9,4 % and 0 % for imports from individually named exporters, with a residual duty rate of 8,5 %.

2. Request for an expiry review

- (6) Following the publication of a notice of impending expiry ⁽⁷⁾ of the anti-dumping measures in force on the imports of certain graphite electrode systems originating in India, the Commission has received a request for review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 ⁽⁸⁾.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Council Regulation (EC) No 1629/2004 of 13 September 2004 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain graphite electrode systems originating in India (OJ L 295, 18.9.2004, p. 10).

⁽³⁾ Council Regulation (EC) No 1628/2004 of 13 September 2004 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain graphite electrode systems originating in India (OJ L 295, 18.9.2004, p. 4).

⁽⁴⁾ Council Regulation (EC) No 1354/2008 of 18 December 2008 amending Regulation (EC) No 1628/2004 imposing a definitive countervailing duty on imports of certain graphite electrode systems originating in India and Regulation (EC) No 1629/2004 imposing a definitive anti-dumping duty on imports of certain graphite electrode systems originating in India (OJ L 350, 30.12.2008, p. 24).

⁽⁵⁾ Council Implementing Regulation (EU) No 1186/2010 of 13 December 2010 imposing a definitive anti-dumping duty on imports of certain graphite electrode systems originating in India following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ L 332, 16.12.2010, p. 17).

⁽⁶⁾ Council Implementing Regulation (EU) No 1185/2010 of 13 December 2010 imposing a definitive countervailing duty on imports of certain graphite electrode systems originating in India following an expiry review pursuant to Article 18 of Regulation (EC) No 597/2009 (OJ L 332, 16.12.2010, p. 1).

⁽⁷⁾ OJ C 82, 10.3.2015, p. 5.

⁽⁸⁾ Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51). This Regulation has been codified by the basic Regulation.

- (7) The request was lodged by SGL Carbon GmbH, TOKAI Erftcarbon GmbH and GrafTech Switzerland SA ('the applicants') representing more than 25 % of the total Union production of certain graphite electrode systems.
- (8) The request was based on the grounds that the expiry of the measures would be likely to result in continuation of dumping and continuation or recurrence of injury to the Union industry.

3. Initiation

- (9) Having determined that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 15 December 2015, by notice published in the *Official Journal of the European Union* ⁽¹⁾ ('the Notice of Initiation') the initiation of an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009.

4. Parallel investigation

- (10) By a notice published in the *Official Journal of the European Union* on 15 December 2015 ⁽²⁾, the Commission also announced the initiation of an expiry review pursuant to Article 18 of Council Regulation (EC) No 597/2009 ⁽³⁾ of the definitive countervailing measures in force with regard to imports into the Union of certain graphite electrode systems originating in India.

5. Interested parties

- (11) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the applicant, other known Union producers, exporting producers, importers and users in the Union known to be concerned, and the Indian authorities of the initiation of the expiry review and invited them to participate.
- (12) All interested parties had the opportunity to comment on the initiation of the review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

5.1. Sampling

- (13) In the Notice of Initiation, the Commission stated that it might sample interested parties, in accordance with Article 17 of the basic Regulation.

(a) Sampling of Union producers

- (14) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. In accordance with Article 17(1) of the basic Regulation the Commission selected the sample on the basis of the largest representative volume of sales which could reasonably be investigated within the time available, considering also the geographical location. This sample consisted of four Union producers. The sampled Union producers accounted for above 80 % of the total Union production, based on information received during standing exercise. The Commission invited interested parties to comment on the provisional sample. No comments were received within the deadline and the sample was thus confirmed. The sample is representative of the Union industry.

(b) Sampling of importers

- (15) To decide whether sampling was necessary and, if so, to select a sample, the Commission requested all unrelated importers to provide the information specified in the Notice of Initiation.

⁽¹⁾ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain graphite electrode systems originating in India (OJ C 415, 15.12.2015, p. 33).

⁽²⁾ Notice of initiation of an expiry review of the countervailing measures applicable to imports of certain graphite electrode systems originating in India (OJ C 415, 15.12.2015, p. 25).

⁽³⁾ Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community (OJ L 188, 18.7.2009, p. 93). This Regulation has been codified by Regulation (EU) 2016/1037 of the European Parliament and of the Council (OJ L 176, 30.6.2016, p. 55).

- (16) No importers came forward to provide the information requested in the Notice of Initiation.

5.2. Questionnaires and verification visits

- (17) The Commission sent questionnaires to all sampled Union producers, two Indian exporting producers and 53 users that came forward after initiation.
- (18) Questionnaire replies were received from the four sampled Union producers, one Indian exporting producer and eight users of the product under review. The second exporting producer cooperating in the original investigation, namely Graphite India Limited ('GIL'), did not submit a questionnaire reply in the present review.
- (19) The Commission sought and verified all the information it deemed necessary for the determination of the likelihood of continuation or recurrence of dumping and resulting injury and for the determination of the Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

(a) Union producers:

- Graftech France S.N.C. Calais, France
- Graftech Iberica S.L., Navarra, Spain
- SGL Carbon S.A., Wiesbaden, Germany
- Tokai Erftcarbon GmbH, Grevenbroich, Germany

(b) Exporting producer in India:

- HEG Limited, Bhopal ('HEG').

6. Review investigation period and period considered

- (20) The investigation of the likelihood of continuation or recurrence of dumping covered the period from 1 October 2014 to 30 September 2015 (the 'review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of continuation or recurrence of injury covered the period from 1 January 2012 to the end of the review investigation period (the 'period considered').

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

- (21) The product concerned 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, and nipples used for such electrodes, whether imported together or separately originating in India ('GES' or 'the product under review'), currently falling within CN codes ex 8545 11 00 (TARIC code 8545 11 00 10) and ex 8545 90 90 (TARIC code 8545 90 90 10).

2. Like product

- (22) The investigation showed that the following products have the same basic physical and technical characteristics as well as the same basic uses:
- the product under review;
 - the product produced and sold in the Union by the Union industry.

- (23) The Commission concluded that these products are like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

1. Preliminary remarks

- (24) In accordance with Article 11(2) of the basic Regulation, it was examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping.
- (25) As mentioned above in recital (18) only one Indian exporting producer cooperated in the current investigation. This company covered more than 95 % of the exports of GES from India into the Union during the RIP. Therefore, the Commission considered that it had sufficient information for the assessment of the export price and the dumping margin during the RIP.
- (26) However, this exporting producer represented only 50 % of the total production capacity and only between 40 % and 50 % of the total production of GES in India during the RIP. Moreover, its exports to other third countries ranged only between 43 % and 52 % of total exports from India to other third countries during the RIP (the exact weight of the sole cooperating Indian exporting producer in the total Indian production and total exports cannot be disclosed for confidentiality reasons). Therefore, and considering that the other Indian producer of GES did not cooperate, the Commission considered that it did not have sufficient information for the examination of the likelihood of continuation or recurrence of dumping and injury and use had to be made of facts available in accordance with Article 18 of the basic Regulation in order to assess the development of imports should measures be repealed.
- (27) The Indian authorities were duly informed that due to the low cooperation of the Indian exporting producers, the Commission may apply Article 18 of the basic Regulation. No comments were received in this respect.
- (28) The findings in Section 3 were thus based on facts available. For this purpose, the information provided by the cooperating exporting producer, the request for the expiry review, Eurostat statistics, the data collected by Member States pursuant to Article 14(6) of the basic Regulation ('14(6) database') and publicly available information were used.

2. Dumping in the Union during the review investigation period

2.1. Normal value

- (29) The Commission first examined whether the total volume of domestic sales for the sole cooperating exporting producer was representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales are representative if the total domestic sales volume of the like product to independent customers on the domestic market per exporting producer represented at least 5 % of its total export sales volume of the product under review to the Union during the RIP. On this basis, the total sales of the sole cooperating exporting producer of the like product on the domestic market were representative.
- (30) The Commission subsequently identified the product types sold domestically that were identical or comparable with the product types sold for export to the Union for the exporting producer with representative domestic sales. The elements taken into account in defining the product types of GES were (i) whether they were sold with a nipple or not, (ii) their diameter and (iii) their length.
- (31) The cooperating exporting producer claimed that the fact that GES are produced from different grades of needle coke (basic raw material) should be taken into account when establishing identical or directly comparable types of GES. Indeed, the investigation confirmed that in the production process, the company used two different types of needle coke, that is imported needle coke which is of a superior quality and regular needle coke sourced on the Indian market. It was also confirmed that the type of coke used determines the cost of production and the price of the end product.

- (32) Therefore, in order to ensure a fair comparison, the Commission split each of the product types into low-grade and high-grade products for the purpose of the dumping calculation.
- (33) The Commission then examined whether the domestic sales by the sole cooperating exporting producer on its domestic market for each product type that is identical or comparable with a product type sold for export to the Union were representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the RIP represents at least 5 % of the total volume of export sales of the identical or comparable product type to the Union. The Commission established that these product types were representative.
- (34) The Commission next defined the proportion of profitable sales to independent customers on the domestic market for each product type during the RIP in order to decide whether to use actual domestic sales price for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.
- (35) The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if:
- (a) the domestic sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of this product type; and
 - (b) the weighted average sales price of that product type is equal to or higher than the unit cost of production.
- (36) In this case, the normal value is the weighted average of the prices of all domestic sales of that product type during the RIP.
- (37) The normal value is the actual domestic price per product type of only the profitable domestic sales of the product types during the RIP, if:
- (a) the volume of profitable sales of the product type represents 80 % or less of the total sales volume of this type; or
 - (b) the weighted average price of this product type is below the unit cost of production.
- (38) Where there were no or insufficient sales of a product type of the like product in the ordinary course of trade, the Commission constructed the normal value in accordance with Article 2(3) and (6) of the basic Regulation.
- (39) For such product types normal value was constructed by adding to the average cost of production of the like product of the sole cooperating exporting producer during the RIP:
- (a) the weighted average selling, general and administrative ('SG&A') expenses incurred by the sole cooperating exporting producer on domestic sales of the like product, in the ordinary course of trade, during the RIP; and
 - (b) the weighted average profit realised by the sole cooperating exporting producer on domestic sales of the like product, in the ordinary course of trade, during the RIP.
- (40) For the product types not sold at all on the domestic market, the weighted average SG&A expenses and profit of all transactions made in the ordinary course of trade on the domestic market were added.

2.2. Export price

- (41) The sole cooperating exporting producer exported to the Union directly to independent customers. Therefore, the export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.
- (42) During the on-spot verification, a number of mistakes have been found in the export prices reported by the cooperating exporter. These mistakes have been corrected and the exporting producer has been duly informed.

2.3. Comparison

- (43) The Commission compared the normal value and the export price as established above on an ex-works basis.
- (44) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for transport, insurance, handling, loading and ancillary costs, packaging, credit costs, bank charges and countervailing duties paid by the cooperating exporting producer where applicable and justified.
- (45) The sole cooperating exporting producer claimed an adjustment for import charges on raw materials paid in accordance with Article 2(10)(b) of the basic Regulation, on the grounds that import charges were borne by GES produced for consumption in India but were refunded by means of the duty drawback scheme ('DDS') when the product was sold for export to the Union. The investigation showed however that there was no direct link between DDS amounts received on exports of GES and duties actually paid on incorporated imported raw material. Therefore it is considered that the exporting producer failed to prove that a tax refunded on export sales was included in the domestic price. This was also confirmed in recitals (38) to (42) of the parallel anti-subsidy investigation where it was established that the DDS constitutes a subsidy in the form of a financial contribution by the Government of India and cannot be considered a permissible duty drawback system or substitution drawback system. Therefore the adjustment cannot be granted.
- (46) Moreover the cooperating Indian exporting producer claimed an adjustment based on 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 India but were not collected due to the Advanced Authorisation Scheme ('AAS') when the product was sold for export to the Union. The investigation however showed that there was no system in place to ascertain that raw material imported duty free under AAS was exclusively incorporated in exported GES. Therefore, the Commission considers that the exporting producer failed to prove that the tax not paid on export sales was included in the domestic price. This was also confirmed in recitals (59) to (62) of the parallel anti-subsidy investigation where it was established that the AAS constitutes a subsidy in the form of a financial contribution by the Government of India and cannot be considered a permissible duty drawback system or substitution drawback system. Therefore this adjustment cannot be granted.

2.4. Dumping margin

- (47) 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 under review. Based on this methodology, the dumping margin established for the cooperating exporting producer amounts to 29,8 % during the RIP.
- (48) During the on-spot verification at the sole cooperating exporting producer's premises in India, the company claimed that the allegedly significant fluctuation of the price of the main raw material (needle coke) during the RIP should be taken into consideration and requested that the Commission would calculate for this purpose a quarterly dumping margin. This would show that there was no dumping during the RIP. In this regard, the company submitted the quarterly cost of production ('COP') at the end of the on-spot verification.
- (49) Given that such claim was not raised at an earlier stage of the proceeding nor in the questionnaire reply, the Commission was not in a position to properly verify this claim and could thus not establish whether the data provided were complete and accurate.
- (50) In any event, on the basis of the data provided during the on-spot verification, it was established that the unit COP per type of product showed a decreasing trend during the RIP from quarter to quarter for some product types, but not for all. For several PCNs the unit COP increased in the last quarter. The unit export price had a similar decreasing trend with the exception of the last quarter during which export prices increased except for two product types. The company exported significant volumes in each quarter of the RIP which were distributed over the different quarters as shown in the table below (the precise volume data cannot be disclosed due to confidentiality reasons). In addition, not all product types were sold in all quarters, out of the 23 product types sold by the cooperating exporter producer to the Union market, only six of them were sold in each quarter.

- (51) The dumping margins calculated for each quarter according to the methodology explained in recitals (29) to (47) showed significant dumping in each quarter of the RIP.

Table 1

RIP	Dumping margin (%)	Volume of exports (tonnes)
October 2014 – December 2014	23,1	[1 500 – 1 700]
January 2015 – March 2015	32,3	[1 900 – 2 100]
April 2015 – June 2015	15,4	[1 500 – 1 700]
July 2015 – September 2015	6,4	[1 100 – 1 400]

- (52) The claim of the cooperating exporting producer that a calculation of its dumping margin on a quarterly basis would result in no dumping was therefore incorrect. The dumping margins were significant in each quarter and likewise the average dumping margin during the RIP calculated on the basis of these quarterly margins remained at a significant level, i.e. at 19,3 %.
- (53) While the dumping margins in the different quarters calculated on a product type basis show a fluctuating trend (increasing between October 2014 — December 2014 to January 2015 — March 2015 and then decreasing between January 2015 — March 2015 till the end of the RIP), the gradual decrease of the COP during the RIP did not have the claimed impact. In fact, it is noted that the decrease in the dumping margin was also in part due to an increase in the export price. It is recalled that the claim of the cooperating exporting producer for a quarterly dumping margin was only based on the fluctuations of the price of the raw materials. Therefore, the Commission concluded that the information provided did not put into question the findings of dumping during the RIP and consequently the findings of continuation of dumping in recitals (57) to (87).
- (54) After disclosure, the sole cooperating Indian exporting producer argued that for the calculation of profitability used to construct the normal value, the Commission should differentiate between products manufactured from domestic coke, on the one hand, and the products manufactured from imported needle coke, on the other hand. This was because of a difference in usage of these products. It furthermore claimed that only the products manufactured from imported needle coke, which are used in the high power electric arc furnace, are sold in the Union market and that the profitability used to construct the normal value should therefore be calculated only on basis of these types of products. During a hearing held with the Commission following disclosure, HEG elaborated that, on the basis of these claims, for constructing the normal value the Commission should not use a weighted average profitability rate calculated based on all domestic sales. HEG argued that the Commission should calculate two separate profitability rates taking into account the origin of the coke, and apply it accordingly in the construction of the normal value.
- (55) In the reply to the questionnaire, HEG reported for each product type the origin of the raw material and the performance of GES. However, when taking only these two elements into account, the comparison between the product types sold in the Union market and the ones sold in the Indian market showed that HEG sold the same product types in both markets during the review investigation period. Therefore, the first part of the claim is factually wrong.
- (56) In addition, as explained in recitals (39) and (40), for constructing the normal value, the Commission used the weighted average profit of all domestic sales of the like product, in the ordinary course of trade, during the review investigation period pursuant to Article 2(6) of the basic Regulation. Nevertheless, using the individual profit rates for each type of product as submitted by the company during the hearing mentioned in recital (54), the dumping margin stated in recital (47) would only decrease by 3,2 percentage points to 26,7 %. Therefore, this decrease does not have a material impact on the Commission's findings of dumping during the review investigation period and consequently the findings of continuation of dumping in recitals (57) to (87).

3. Development of imports should measures be repealed

- (57) Further to the finding of significant dumping during the RIP, the Commission analysed whether there was a likelihood of a continuation of dumping should the measures be allowed to lapse. The following elements were analysed: the production capacity and spare capacity in India, the exports from India to other third countries and the attractiveness of the Union market.
- (58) As mentioned in recital (25), only one exporting producer in India cooperated which represented only half of the total Indian production capacity. The findings in the sections below were therefore based on facts available in accordance with Article 18 of the basic Regulation. In this regard, the Commission used the information provided by the cooperating exporting producer, the request for the expiry review, the United Nation Database, information provided by the government of India (GOI) in the parallel anti-subsidy investigation mentioned in recital (10) and publicly available information.

3.1. Production capacity and spare capacity

- (59) Based on public financial information and verified data of the cooperating exporting producer ⁽¹⁾ ⁽²⁾, both Indian producers increased their production capacity after the previous expiry review mentioned in recital (4) by 27 %. At the end of the RIP, the total production capacity in India amounted to 160 000 tonnes per year, equally divided between the two producers ⁽³⁾. In addition, the investigation revealed that the Indian exporting producers are likely to further increase their capacity in case of increased demand ⁽⁴⁾.
- (60) The production volume of the two Indian producers ranged between 110 000 and 120 000 tonnes during the RIP. On the basis of the above, the total Indian spare capacity was estimated to between 40 000 and 50 000 tonnes, which represented between 29 % and 36 % of the Union consumption during the RIP.
- (61) The increase in capacity took place in parallel to a decrease in consumption of GES in India and worldwide. GES is mainly used in the electric steel industry, more specifically it is used in steel plants to melt steel scrap. The development of GES consumption is therefore correlated with the development of electric steel production and follows similar trends. The investigation established that the production of electric steel in India and worldwide decreased between 2012 and the RIP ⁽⁵⁾ while the production capacity of GES in India increased.
- (62) At the end of November 2014, the Indian authorities imposed anti-dumping measures on imports of GES from China ⁽⁶⁾. It is expected that the Indian producers will increase their market share on the domestic market.

3.2. Exports to third countries

- (63) Based on public financial statements, both Indian exporting producers were found to be export-oriented ⁽⁷⁾ ⁽⁸⁾ exporting around 60 % of their total production during the RIP.
- (64) The Union remained an important export destination for the cooperating exporting producer HEG despite the measures in force. HEG's exports accounted for between 10 % and 17 % of its total sales in terms of value and between 10 % and 20 % in terms of volume in the RIP. The non-cooperating Indian company GIL exported very low volumes to the Union during the RIP. This has however to be seen in correlation with the anti-dumping and countervailing duties applicable to GIL (15,7 % in total) as compared to HEG (7 % in total).

⁽¹⁾ http://www.google.be/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiqt6H2u9_QAhWEzRoKHYUwBVEQFggfMAA&url=http%3A%2F%2Fheg ltd.com%2Fwebmaster%2FdownloadFile.aspx%3Fd%3D.%2Fuploads%2FFinance%2F70Results_Release.pdf&usq=AFQjCNGMpUymLm4BNOjIMmolLDgwSGgcDw

⁽²⁾ http://content.icidirect.com/mailimages/IDirect_GraphiteIndia_Q1FY16.pdf

⁽³⁾ <http://heg ltd.com/> and <http://www.graphiteindia.com/>

⁽⁴⁾ <http://heg ltd.com/WEBMASTER/DownloadFile.aspx?D=../Uploads/Newsletter/News9.pdf>

⁽⁵⁾ <https://www.worldsteel.org/statistics/statistics-archive/yearbook-archive.html>

⁽⁶⁾ http://www.dgtr.gov.in/sites/default/files/adfin_Graphite_Electrodes_diameters_ChinaPR.pdf

⁽⁷⁾ http://heg ltd.com/pdf/HEGLtd_Q1_FY_16_Investors_Presentation.pdf

⁽⁸⁾ http://www.graphiteindia.com/View/investor_relation.aspx (see GIL Q3 FY2015 Earnings Presentation.pdf, page 14).

- (65) In the absence of any other more reliable source to establish export volumes from India to other third country markets, the United Nations Database was used. According to this database, exports to other third countries increased between 2012 and 2013, by 43 %, and then decreased in 2014 and 2015, by 38 % as compared to 2013. Export volume overall decreased between 2012 and the RIP (by 10 %). The main destinations for the Indian exports in 2015 were USA, Saudi Arabia, Iran, Turkey and United Arab Emirates, Republic of Korea, Egypt. Between 2012 and 2015 Indian exports to some of these destinations increased (such as Saudi Arabia, United Arab Emirates, USA) while to some others (Iran, Turkey, Republic of Korea, Egypt) they decreased, with an overall decrease of 9 %.
- (66) While in 2012 Russia was the third export market for the Indian producers in terms of volume, after Russia imposed an *ad valorem* duty on imports of GES from India ranging from 16,04 % to 32,83 % in December 2012 ⁽¹⁾ the exports from India to Russia dropped from 4 415 tonnes to 638 tonnes in 2015, a decrease of 86 %.
- (67) The information on export volumes in the United Nations Database could be counter-checked with the information provided by the GOI in the parallel anti-subsidy investigation, i.e. export statistics of the Directorate-General of Commercial Intelligence and Statistics ('DGCIS'), which showed similar trends as the ones observed in the United Nations Database.
- (68) In addition, export volumes to other third countries of the cooperating exporting producer HEG also followed similar trends, i.e. an increase of export volumes to other third countries from 2012 to 2013 and a decrease from 2014 to the RIP with an overall decreasing trend during the period considered. To be noted that despite this decrease of export volumes, the overall level in the RIP remained significant, between 20 000 tonnes and 30 000 tonnes.
- (69) Regarding export price levels, based on the United Nations Database the investigation revealed that Indian export prices to certain countries like the USA and the Republic of Korea that used to be on average lower than the prices in EU between 2012 and 2014 have increased in 2015 at around the same level as the prices in the EU. In addition, Indian export prices to other countries, like Saudi Arabia for instance, that were lower than the prices in EU between 2012 and 2014, increased at a higher level than the EU prices in 2015. Moreover, Indian exports to certain other countries, like Turkey for instance, continued to be lower than the EU prices during the whole period considered. To be noted however that the prices in this database do not distinguish between different product types and therefore the reliability of such a price comparison on this basis is limited.
- (70) The analysis of the information on export prices to other third country markets of the cooperating exporting producer showed that during 2012 and 2014 the average prices in the Union market were higher than the average prices of HEG on other third markets (adjusted on a calendar year basis as data were provided on a financial year basis) while during the RIP the average prices in the Union market were lower than the average prices of HEG on other third markets.
- (71) No other data were available to establish accurate price levels of the Indian exporting producers to other third country markets.

3.3. Attractiveness of the Union market

- (72) The attractiveness of the Union market was demonstrated by the fact that despite the anti-dumping and countervailing duties in force, Indian GES continued to enter the Union market. During the period considered, India continued to be the second largest exporting country to the Union after the People's Republic of China ('China'). Despite a decrease between 2012 and the RIP, India maintained its exports to the Union in significant volumes and market shares as explained in recital (100) below.
- (73) The possible development of export sales to the Union should measures be allowed to lapse has to be seen against the background of the overall decrease in consumption of GES in India and worldwide in combination with the spare capacity in India. This will in all likelihood increase the pressure on the Indian exporting producers to explore further export markets, in particular when considering their export-oriented business

⁽¹⁾ http://www.eurasiancommission.org/_layouts/Lanit.EEC.Desicions/Download.aspx?IsDlg=0&ID=3805&print=1

model. Therefore, should measures in the Union be repealed and the access to the Union market be free of anti-dumping and countervailing duties it is indeed likely that a large part of the available spare capacity will be used for export to the Union market. In particular since the investigation showed that while in some exporting markets (such as Saudi Arabia, United Arab Emirates, USA) Indian exports increased in 2015, overall exports from India to other third country markets followed a decreasing trend. This indicates that on certain third countries there appears to be a limited capacity to absorb additional exports quantities.

- (74) In addition, as mentioned in recital (66), Russia has imposed anti-dumping duties on imports of GES from India. Indian exporting producers thus have limited access to this market and cannot increase or re-direct their export volumes to Russia, as showed by the drop in exports to this destination as of 2012.
- (75) On this basis, it is likely that the Indian exporting producers will continue to export significant quantities to the Union should measures be allowed to lapse and even increase their current export volumes taking into account their significant spare capacity. Indeed, this is likely for the cooperating exporting producer that will have an incentive to further increase its already significant presence in the Union market, and even more for the non-cooperating exporting producer, whose duty levels are higher as compared to the cooperating exporting producer and which almost stopped exporting to the Union market.

3.4. Conclusion on the likelihood of continuation of dumping

- (76) The foregoing analysis shows that (i) Indian imports continued to enter the Union market at significant dumped prices and in significant quantities; (ii) both Indian producers are export-oriented and have spare capacity which could be used to increase export volumes to the Union at dumped prices; (iii) consumption worldwide is following a decreasing trend, thus reducing the export possibilities to certain other third markets; (iv) the existence of anti-dumping measures in Russia against Indian GES further restricts export possibilities to the Indian exporting producers.
- (77) In view of the above, it was concluded that there is a likelihood of continuation of dumping should the measures be repealed.
- (78) After disclosure, the sole cooperating Indian exporting producer, HEG, claimed that the Commission has not considered the facts pertaining to the period after the RIP in its assessment of likelihood of continuation of dumping. In this regard, the cooperating Indian exporting producer claimed that when applying Article 18 of the basic Regulation, the Commission has not taken into account the fact that GIL, the other Indian producer of GES, has made an investment in a manufacturing facility in the Union, that is Graphite Cova GmbH ('GIL Cova'). HEG further argued that GIL has a strategic long term contract to sell baked green electrodes (which is a semi-finished product) to its graphitisation facility of GIL Cova. HEG also claimed that because of the strategic investment of GIL, the Commission's conclusion that exports from India to the Union will increase is incorrect and that the finding that both Indian producers have spare capacity available for exports is based on mere assumptions. HEG also argued that the expiry of measures is not going to increase the volume of imports to the Union based on the decreasing trend of exports from India to the Union (including HEG's export to the Union) post RIP.
- (79) In addition, HEG claimed that the HEG's plans to increase production capacity was only the vision of its Chairman considering the favourable economic scenario of 2010. Thus, in the annual report of HEG for the year ended 31 March 2016 there are no new proposals being discussed by the board of directors for expansion of capacities anymore.
- (80) In relation to the comparison of prices carried out by the Commission in recitals (69) and (70) with regard to exports to other third country markets, HEG submitted an analysis of its average CIF/CFR prices to four other third countries as compared to its average CIF prices to the Union and concluded that, in general, its average prices to the four other third countries were higher than its prices to the Union. Therefore, HEG claimed that the Union market with lower price levels would be in comparison less attractive.
- (81) As regards HEG's claim concerning the investment of GIL in GIL Cova during the period considered GIL exported a very small volume to the Union market. It is however considered that this is not only due to GIL's investment in GIL Cova, but mainly to the high anti-dumping and countervailing duties that apply to the exports of GIL India to Union (15,7 % in total). In the scenario that the anti-dumping and/or countervailing measures are repealed, it is therefore likely that GIL will resume its exports to the Union, despite its investment in GIL Cova, also taking into account its available spare capacity and the attractiveness of the Union market as described in recitals (72) to (75) above.

- (82) As concerns HEG's claim regarding the trend of exports after the RIP, it is highlighted that these exports were made while the anti-dumping and countervailing measures were in force. Therefore, even if the volume of exports of HEG's after the RIP showed a decreasing trend, it is likely that HEG's exports to Union will increase if the anti-dumping and/or countervailing measures are repealed taking into account that despite the measures in place, HEG continued to export to the Union market at significantly dumped prices, its export-oriented business model and its spare capacity which is not excluded to increase in the future if the demand for its products increases, as described in recitals (59) to (75) above.
- (83) Furthermore, regarding HEG's intention to increase capacity, it is highlighted that during the on-spot verification visit in 2016, HEG showed to the case team a short movie providing an overview of HEG's group. One of the elements presented in this movie were the future plans of the company to increase its production capacity. Moreover, the company's representatives explained during the on-spot verification that such plans were currently on hold taking into account that the company was not fully using its capacity and the decrease in the global demand. Therefore, in the event that the anti-dumping and/or the countervailing measures are repealed, it is likely that the demand for Indian GES in the Union market will likely increase and that HEG therefore, will have an incentive to increase its capacity to meet the demand.
- (84) As concerns HEG's claim referring to the price differences between the Union market and other third country markets, it is highlighted that the comparison carried out by the Commission in recitals (69) and (70) is made between average prices of the Indian exporting producers on other third markets and average prices of Union producers in the Union market and not the average prices of the Indian producers in the Union market. It is recalled that the HEG's average price in the Union market is at a significantly dumped level that undercuts the Union producers' average price and is therefore not suitable for the comparison in question.
- (85) In view of the above, HEG's claims are rejected.
- (86) One other interested party claimed that due to the lower energy consumption, as main cost factor, and lower labour costs, the Indian producers have clear comparative advantages in terms of cost efficiency. However, it should be noted that the investigation revealed that the main cost driver in the manufacturing process of GES in India is actually the coke and not the energy or the labour. In any event, even if there would be a comparative advantage for the Indian producers, this should have a similar effect on the export price and on the normal value and therefore no impact on the dumping margin. This claim is thus factually wrong and it is therefore rejected.
- (87) The Commission's conclusion that there is a likelihood of continuation of dumping should the measures be repealed is therefore confirmed.

D. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF INJURY

1. Definition of the Union industry and Union production

- (88) During the review investigation period, the like product was manufactured by eight producers (two individual companies and two groups). They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

2. Preliminary remarks

- (89) As mentioned in recital (61) the situation of the GES industry is closely linked to that of the electrical steel industry where GES are used in the electric steel furnaces to melt steel scrap. In this context, during the period considered negative market conditions prevailed within the electrical steel industry, with a decrease in consumption which is also reflected in the consumption of GES.
- (90) Given that there are only two exporting producer of the product concerned in India, data relating to imports of GES from India and other third countries into the European Union are not presented in precise figures in order to preserve confidentiality pursuant to Article 19 of the basic Regulation.

3. Union consumption

- (91) The Commission established the Union consumption by adding:
- (i) the sales of the sampled Union producers, obtained after verification of the questionnaire replies,
 - (ii) the sales of non-sampled cooperating Union producers, obtained from the review request,
 - (iii) the sales of non-sampled non-cooperating Union producer, obtained from its' annual reports,
 - (iv) the imports from India, based on 14(6) data base and
 - (v) the imports from all other third countries, based on Eurostat (TARIC level).
- (92) On this basis, Union consumption developed as follows:

Table 2

Union consumption

	2012	2013	2014	Review investigation period
Union consumption (tonnes)	151 508	140 244	146 637	139 974
<i>Index (2012 = 100)</i>	100	93	97	92

Source: questionnaire replies of sampled Union producers, annual reports of non-cooperating Union producer, review request, Eurostat (TARIC level), 14(6) database.

- (93) The Union consumption decreased by 8 % over the period considered. More specifically, the Union consumption decreased by 7 % in 2013, it recovered by 4 % between 2013 and 2014, and then decreased again by 5 % from 2014 to the review investigation period.
- (94) As mentioned in recitals (61) and (89), the overall decrease in demand was a result of the negative market conditions prevailing within the electric steel sector, since the sales volumes of graphite electrodes follow the development of the volume of steel production in electric furnaces.
- (95) After disclosure, the cooperating exporting producer from India claimed that the market share and consumption analysis should take into consideration the imports made by the Union producers from their related companies in the USA, Mexico, Japan and Malaysia which would have increased significantly during the past three years.
- (96) Imports from all other third countries were duly taken into account when calculating the Union consumption, as explained above in the recital (91) and are therefore duly reflected in the total consumption. The argument was therefore rejected.

4. Imports from the country concerned

4.1. Volume and market share of imports from the country concerned

Table 3

Import volume and market share

Country		2012	2013	2014	Review investigation period
India	Import volume (tonnes)	9 000 – 10 000	5 000 – 6 000	7 000 – 8 000	6 500 – 7 500
	<i>Indexed import volume (2012 = 100)</i>	100	57	80	74

Country		2012	2013	2014	Review investigation period
	Market share (%)	6-7	3-4	5-6	4-5
	Market share indexed	100	62	83	80

Source: 14(6) database.

- (97) Import volumes were decreasing during the period considered. They dropped significantly in 2013 (by 43 %), picked up in 2014 and decreased again in the review investigation period. Overall there was a decrease of 26 % during the period considered.
- (98) The Commission established the market share of the imports on the basis of the Union consumption as set out in recital (91) above.
- (99) Market share showed similar trends as import volumes, i.e. a decrease between 2012 and 2013, an increase between 2013 and 2014 and then a decrease again between 2014 and the review investigation period. Overall market share decreased by 1,2 percentage points in the review investigation period as compared to 2012.
- (100) The market share of Indian imports at the start of the period considered was in the range of 6 % to 7 %. It dropped to the range of 4 % to 5 % by the end of the review investigation period.

4.2. Prices of imports from the country concerned

- (101) The Commission established the trend of the prices of Indian imports on the basis of data recorded in the 14(6) database. They were broadly in line with the prices reported by the cooperating exporting producer.
- (102) The average price of imports into the Union from the country concerned developed as follows:

Table 4

Import price ⁽¹⁾

Country		2012	2013	2014	Review investigation period
India	Import prices (EUR/tonne)	2 500 – 3 500	3 000 – 4 000	2 500 – 3 500	2 200 – 3 200
	Index (2012 = 100)	100	105	89	86

⁽¹⁾ Average price does not include anti-dumping/countervailing duties in place.

Source: 14(6) database.

- (103) Overall, average import prices decreased by 14 % over the period considered. Import prices increased by 5 % between 2012 and 2013, decreased by 16 % in 2014 and decreased further by 3 % in the RIP.

4.3. Price undercutting

- (104) The Commission determined the price undercutting during the review investigation period by comparing (i) the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers in the Union market, adjusted to an ex-works level; and (ii) the corresponding weighted average prices per product type of the imports from the cooperating Indian producer to the first independent customer in the Union market, established on a cost, insurance, freight (CIF) basis, with appropriate adjustments for anti-dumping/countervailing duty and post-importation costs.

- (105) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the sampled Union producers' turnover during the review investigation period.
- (106) The comparison showed for a cooperating exporting producer a weighted average undercutting margin of 3 % in the Union market during the review investigation period. However when deducting the anti-dumping and countervailing duties from the calculations, the undercutting margin would amount to 9 %. Concerning the non-cooperating exporting producer, only very small volumes were imported during the RIP. The Commission nevertheless conducted an estimation of undercutting. The Commission found a 12 % undercutting margin, when deducting from the calculations the anti-dumping and countervailing duties in place. This estimation however is based on a very small import volume and, because of the lack of cooperation, does not take into account product types. Therefore, its reliability is limited.

4.4. Imports from other third countries

Table 5

Import volume and market share

Country		2012	2013	2014	Review investigation period
Total other third countries	Imports (tonnes)	33 000 – 35 000	30 000 – 32 000	34 000 – 36 000	30 000 – 32 000
	Index	100	90	103	90
	Market share (%)	22 – 23	22 – 23	24 – 25	22 – 23
	Price (EUR/tonne)	2 500 – 3 500	2 400 – 3 400	2 400 – 3 400	2 300 – 3 300
	Index	100	98	89	92
China	Imports (tonnes)	14 000 – 15 000	11 000 – 12 000	16 000 – 17 000	14 000 – 15 000
	Index	100	80	117	103
	Market share (%)	9 – 10	8 – 9	11 – 12	10 – 11
	Price (EUR/tonne)	2 000 – 3 000	1 500 – 2 500	1 400 – 2 400	1 600 – 2 600
	Index	100	94	90	99
USA	Imports (tonnes)	3 000 – 4 000	4 000 – 5 000	4 200 – 5 200	4 200 – 5 200
	Index	100	118	129	128
	Market share (%)	2 – 3	3 – 4	3 – 4	3 – 4
	Price (EUR/tonne)	3 300 – 4 300	3 200 – 4 200	3 000 – 4 000	2 800 – 3 800
	Index	100	96	84	81

Country		2012	2013	2014	Review investigation period
Mexico	Imports (tonnes)	3 000 – 4 000	4 000 – 5 000	5 500 – 6 500	4 000 – 5 000
	<i>Index</i>	100	127	165	119
	Market share (%)	2 – 3	3 – 4	4 – 5	3 – 4
	Price (EUR/tonne)	3 800 – 4 800	3 900 – 4 900	3 900 – 4 900	4 000 – 5 000
	<i>Index</i>	100	103	103	115
Russia	Imports (tonnes)	3 000 – 4 000	2 500 – 3 500	3 500 – 4 500	3 700 – 4 700
	<i>Index</i>	100	70	101	103
	Market share (%)	2 – 3	1 – 2	2 – 3	2 – 3
	Price (EUR/tonne)	3 000 – 4 000	2 800 – 3 800	2 500 – 3 500	2 100 – 3 100
	<i>Index</i>	100	91	79	75
Japan	Imports (tonnes)	4 500 – 5 500	3 000 – 4 000	3 000 – 4 000	2 000 – 3 000
	<i>Index</i>	100	74	62	50
	Market share (%)	3 – 4	2 – 3	2 – 3	1 – 2
	Price (EUR/tonne)	3 400 – 4 400	3 300 – 4 300	2 800 – 3 800	2 900 – 3 900
	<i>Index</i>	100	99	82	83
Other third countries	Imports (tonnes)	4 000 – 5 000	4 000 – 5 000	1 000 – 2 000	700 – 1 700
	<i>Index</i>	100	104	25	19
	Market share (%)	2 – 3	3 – 4	0,5 – 1,5	0,5 – 1,5
	Price (EUR/tonne)	2 600 – 3 600	2 000 – 3 000	1 900 – 2 900	1 600 – 2 600
	<i>Index</i>	100	83	78	72

Source: Eurostat (TARIC level).

- (107) In line with decreasing consumption, the volume of imports from all other third countries decreased by 10 % between 2012 and the RIP. The market share of imports from all other third countries was within the range 22 % — 23 % during the period considered. The main imports were from China, USA, Mexico, Russia and Japan, which were the only countries with individual market shares higher than 1 % during the RIP.
- (108) Import prices from USA, Japan and Mexico were higher than the prices of the Indian exporters and the prices of the Union producers. The market share of imports from USA and Mexico increased, by less than 1 percentage point over the period considered. The market share of imports from Japan decreased by 1,5 percentage point over the period considered.
- (109) Import prices from China and Russia were lower than the prices of the Indian exporters and the prices of the Union producers (except in 2012 for Russia). According to the information provided by Union industry in the review request, a part of imports from China relate to small diameter GES (diameter of less than 400 millimetres) whereas the majority of Indian imports and the Union industry's production consist in large diameter GES ⁽¹⁾ (diameters of more than 400 millimetres), which are more expensive.
- (110) The market share of Chinese imports increased by 1 percentage point over the period considered and was in a range of 10 % — 11 % during the RIP, while the market share of imports from Russia was only in a range of 2 % — 3 % during the RIP, and increased by 0,3 percentage points over the period considered. However, these increase were not in detriment of the market share of the Union industry, which, as explained in the following recital (123), increased by 1,9 percentage points over the period considered.
- (111) In conclusion, given that the data available from the import statistics do not allow to differentiate between different product types and that therefore a meaningful price comparison by product type could not be carried out, as it was possible for India on the basis of the detailed information provided by the cooperating exporting producer, the impact of the imports from China and Russia could not be clearly established.

5. Economic situation of the Union industry

5.1. General remarks

- (112) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (113) As mentioned in recital (14), sampling was used for the determination of possible injury suffered by the Union industry.
- (114) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data contained in the review request, annual reports of non-cooperating Union producer and verified questionnaire replies of the sampled Union producers. The data related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. The data related to the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.
- (115) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.
- (116) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments and ability to raise capital.
- (117) Both sets of data have been found to be representative for the economic situation of the Union industry.

⁽¹⁾ Both small and large diameters of graphite electrodes are included within the same TARIC codes.

5.2. Macroeconomic indicators

(a) Production, production capacity and capacity utilisation

- (118) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 6

Production, production capacity and capacity utilisation of Union producers

	2012	2013	2014	Review investigation period
Production volume (tonnes)	235 915	235 502	241 623	221 971
<i>Index (2012 = 100)</i>	100	100	102	94
Production capacity (tonnes)	297 620	297 245	299 120	290 245
<i>Index (2012 = 100)</i>	100	100	101	98
Capacity utilisation (%)	79	79	81	76

Source: review request, annual reports of non-cooperating Union producer and verified questionnaire replies of the sampled Union producers.

- (119) The production volume decreased by 6 % during the period considered. More specifically, it first increased by 2 % until 2014 and then decreased by 8 % in the review investigation period as compared with 2014.
- (120) The production capacity decreased by 2 % over the period considered.
- (121) As a result of the decrease in production volume, the capacity utilisation decreased by 3 percentage points during the period considered.

(b) Sales volume and market share

- (122) The Union industry's sales volume and market share developed over the period considered as follows:

Table 7

Sales volume and market share of Union producers

	2012	2013	2014	Review investigation period
Sales volume in the Union (tonnes)	107 655	103 779	103 704	102 123
<i>Index (2012 = 100)</i>	100	96	96	95
Market share (%)	71,1	74,0	70,7	73,0

Source: review request, annual reports of non-cooperating Union producer and verified questionnaire replies of the sampled Union producers.

- (123) Total sales of the Union industry in the Union market decreased by around 5 % during the period considered. The Union industry's market share fluctuated during the period considered. It increased by 2,9 percentage points in 2013. It then decreased by the 3,3 percentage points in 2014 and increased again by 2,3 percentage points in the review investigation period. Overall, the Union industry's market share increased by 1,9 percentage points over the period considered.

- (124) After disclosure, the cooperating exporting producer from India claimed that the imports of the Union producers from their related companies in the USA, Mexico, Japan and Malaysia should be taken into account when establishing the Union industry's market share. However, the market share of the Union industry is calculated on the basis of sales of its own production in the Union market. Imports by the Union industry are not taken into account because this would have a distorting effect on the overall picture, given that imports would be double counted; as an import on the one hand and as a sale from the Union industry on the other hand. This argument was therefore rejected.

(c) Growth

- (125) Between 2012 and the RIP, the Union consumption decreased by 8 %. The sales volume of the Union industry decreased by 5 %, which, nonetheless, translated into a gain in market share of 1,9 percentage points.

(d) Employment and productivity

- (126) Employment and productivity developed over the period considered as follows:

Table 8

Employment and productivity of Union producers

	2012	2013	2014	Review investigation period
Number of employees	1 526	1 539	1 475	1 523
<i>Index (2012 = 100)</i>	100	101	97	100
Productivity (tonnes/employee)	155	153	164	146
<i>Index (2012 = 100)</i>	100	99	106	94

Source: review request, annual reports of non-cooperating Union producer and verified questionnaire replies of the sampled Union producers.

- (127) Employment of the Union industry remained at roughly the same level during the period considered. Due to the decrease in production (decrease of 6 % over the period considered), the productivity also decreased by 6 % over the same period.

(e) Magnitude of the dumping margin and recovery from past dumping

- (128) The investigation established that imports of GES from India continued to enter the Union market at dumped prices. The dumping margin established for India during the review investigation period was well above the *de minimis* level as described in see recital (47). This coincided with a decrease in import prices as compared to 2012. Nevertheless, the Union industry was able to benefit from the anti-dumping measures in force by maintaining and slightly increasing their market share.

5.3. Microeconomic indicators

(a) Prices and factors affecting prices

- (129) The average sales prices of the Union industry to unrelated customers in the Union developed over the period considered as follows:

Table 9

Average sales prices in the Union and unit cost

	2012	2013	2014	Review investigation period
Average unit selling price in the Union (EUR/tonne)	3 784	3 468	2 997	2 825
<i>Index (2012 = 100)</i>	100	92	79	75

	2012	2013	2014	Review investigation period
Unit cost of production (EUR/tonne)	3 357	3 116	2 776	2 745
<i>Index (2012 = 100)</i>	100	93	83	82

Source: verified questionnaire replies of the sampled Union producers.

- (130) The Union industry's average unit sales price to unrelated customers in the Union decreased steadily by 25 % and reached 2 825 EUR/tonne in the RIP. The Union industry had to adjust its prices downwards in order to reflect the general decrease of selling prices in the GES market, due to the shrinking demand within the electric steel sector.
- (131) The average cost of production of the Union industry decreased to a lower extent, by 18 % over the period considered. The major factor having influenced the decrease in the unit cost of production was the decrease in the raw material price.
- (132) After disclosure, the cooperating exporting producer from India claimed that the worldwide price of raw material decreased more than the cost of the raw materials incurred by the Union industry over the period considered. Therefore the Union industry was inefficient in terms of the raw material sourcing and its viability was therefore questionable.
- (133) The investigation found that the Union industry sourced the raw material worldwide from its related and unrelated parties at a similar price level and there were no indications of inefficiencies in terms of the raw material sourcing. Since the claim was not further substantiated, it was rejected.

(b) Labour costs

- (134) The average labour costs developed over the period considered as follows:

Table 10

Average labour costs per employee

	2012	2013	2014	Review investigation period
Average labour costs per employee (EUR/employee)	66 111	66 842	67 113	67 253
<i>Index (2012 = 100)</i>	100	101	102	102

Source: verified questionnaire replies of the sampled Union producers.

- (135) The average labour costs per employee increased over the period considered with a marginal increase of 2 %.

(c) Inventories

- (136) Stock levels developed over the period considered as follows:

Table 11

Inventories

	2012	2013	2014	Review investigation period
Closing stocks	8 952	8 821	13 770	18 465
<i>Index (2012 = 100)</i>	100	99	154	206

	2012	2013	2014	Review investigation period
Closing stocks as a percentage of production	6	5	7	11

Source: verified questionnaire replies of the sampled Union producers.

- (137) The level of closing stocks of the sampled Union producers more than doubled in absolute terms during the period considered. In the RIP, the level of stocks represented around 11 % of its production.

(d) Profitability, cash flow, investments, return on investments and ability to raise capital

- (138) Profitability, cash flow, investments and return on investments developed over the period considered as follows:

Table 12

Profitability, cash flow, investments and return on investments

	2012	2013	2014	Review investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	11,3	10,2	7,4	2,8
Cash flow (EUR)	47 981 432	46 443 978	30 426 147	31 283 121
Index (2012 = 100)	100	97	63	65
Investments (EUR)	25 293 559	23 133 505	21 672 869	12 313 975
Index (2012 = 100)	100	91	86	49
Return on investments (%)	16,5	13,9	10,1	3,9

Source: verified questionnaire replies of the sampled Union producers.

- (139) The Commission established the profitability of the Union industry by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. The profitability of the Union industry decreased gradually from 11,3 % in 2012 to 2,8 % in the RIP, i.e. a decrease of 8,5 percentage points.
- (140) After disclosure, the cooperating exporting producer from India claimed that the decline in profitability of the Union producers was caused by its high administrative and selling overheads.
- (141) The investigation found that the unit cost of production declined during the period considered, as indicated above in recital (131). This decline in the unit cost of production concerned the administrative and selling expenses even if the major part of the cost was attributed to the raw material. The argument was therefore rejected.

- (142) The net cash flow is the Union producer's ability to self-finance its activities. The net cash flow decreased by 35 % during the period considered. The substantial decrease in cash flow is mainly explained by the significant decrease in profitability, as described above in recital (139).
- (143) During the period considered the annual flow of investments in the product concerned made by the Union industry decreased by more than half, from 25 million EUR in 2012 to 12 million EUR in the RIP.
- (144) After disclosure, the cooperating exporting producer from India claimed that the decline in investments is purely attributable to contraction of demand and overcapacities of GES manufacturing globally.
- (145) Indeed, the investigation confirmed that, as explained in the recital (93) above, there was a decrease in consumption of GES during the period considered. However, it should be noted that the investments in the product concerned made by the Union industry during the RIP of the last expiry review, when also facing the decrease in consumption, was three times the investment level achieved during the RIP of the current review.
- (146) The return on investments is the profit in percentage of the net book value of investments. The return on investment from the production and sale of the like product decreased gradually from 16,5 % in 2012 to 3,9 % in the RIP.

5.4. Conclusion on the situation of the Union industry

- (147) The investigation showed that despite the measures in force most of the injury indicators developed negatively and the economic and financial situation of the Union industry deteriorated during the period considered. Nevertheless, the Union industry managed to keep and slightly increase its market share, which was only possible at the expense of lower profit levels achieved.
- (148) While these negative developments may be explained by the decrease in consumption, which declined by 8 % during the period considered, Indian imports were still a constant presence in the Union market. These imports were sold at prices lower than the Union industry's prices and undercut the Union industry's prices by 3 % in the RIP. In addition, the underselling margin was found to be 9 %. Thus, Indian dumped and subsidised imports still exerted price pressure. Indeed, the price pressure during the current RIP increased as compared to the previous expiry review when the price undercutting was less than 2 %.
- (149) Against the background of diminished consumption and price pressure from dumped and subsidised imports, the Union industry was forced to decrease its sales prices. As a consequence, its profit, although still positive (2,8 %) in the review investigation period, was below the 8 % target profit established in the original investigation.
- (150) After disclosure, the cooperating exporting producer from India claimed that since the market share of the Union industry has increased by 2 % Union producers have benefited substantially from the decline in Indian imports. The Union industry's market share was claimed to be even higher if imports of the Union industry from other third countries were also taken into account. At the same time, the Union industry has been facing stiff pricing competition from other sources (low prices imports from China and Russia, particularly). Therefore, it was claimed that no injury can be attributable to Indian imports as a result of alleged lower market share by the Union producers.
- (151) Indeed, the investigation showed a decrease of import volumes and market shares of imports from India, however, as explained above in the recital (148), Indian dumped and subsidised imports still exerted price pressure, which even increased during the current RIP as compared to the previous expiry review. The argument was therefore rejected.
- (152) The same interested party further claimed that the Commission has not considered the fact that low priced imports from China and Russia are one of the major causes of price pressure in the Union market and urged to carry out a full analysis of the low priced imports from China and Russia of the product under consideration before determining the likelihood of a recurrence of injury to the Union industry. This party also alleged that some Chinese manufacturers increased the imports of large diameter GES to the Union market.

- (153) Regarding import prices of GES from China and Russia, as explained above in recitals (109) and (111) it should be recalled that: (i) a meaningful price comparison by product type for imports from these countries could not be carried out, as it was possible for India on the basis of the detailed information provided by the cooperating exporting producer; (ii) the import statistics from these countries available for the Commission does not allow to differentiate between different product types and (iii) according to the information provided by Union industry in the review request, and confirmed by users, the majority of imports from these countries relate to smaller diameter GES that are cheaper. In addition, the cooperating exporting producer from India did not substantiate its claim regarding the increased imports of larger diameter GES from China to the Union.
- (154) Regarding the import volumes of GES and their market shares from China and Russia, as explained above in recital (110), the market share of Chinese imports increased by 1 percentage point, while the market share of imports from Russia increased by 0,3 percentage points over the period considered. These increases were not in detriment of the market share of the Union industry, which, as explained in the recital (110), increased by 1,9 percentage points over the period considered. The argument was therefore rejected.
- (155) The same interested party claimed that the Union industry was inefficient to produce smaller diameter GES because the sales of such products represented only a part of their total sales volume.
- (156) The market conditions normally ensure that supply, namely the type of product sold, is driven by demand. Since the claim regarding the inefficiency to produce smaller diameter GES by the Union industry was not further substantiated, the argument was rejected.
- (157) The same interested party claimed the lack of analysis of the impact of the increased quantities of imports at dumped prices from other countries including imports from affiliated companies in USA, Mexico, Malaysia and Japan.
- (158) As indicated above in recital (108), import prices from USA, Japan and Mexico were higher than the prices of the Indian exporters and the prices of the Union producers. The market share of imports from these countries increased by 0,1 percentage point during the period considered and was less than 10 % at the end of the RIP. Likewise, the Commission did not have any evidence that prices from these countries were dumped. The argument was therefore rejected.
- (159) The same interested party claimed that when calculating the undercutting and underselling margins on a per type basis, the Commission used the product control number ('PCN') which did not take into consideration the raw material used, which has, however, a significant impact on costs and prices. Comparing product types made of the same raw material would have the effect of reducing the underselling margin from 9 % to 8 %.
- (160) Indeed, the raw material difference was not reflected in the PCN structure and therefore the calculation of the undercutting and underselling margins did not take into account such difference. Nevertheless, when product types were split taking into consideration the raw material used for the purpose of the undercutting and underselling calculation, as submitted by the interested party after disclosure, the underselling margin stated in recital (148) only decreased by 1 percentage point to 8 %. Therefore, this decrease did not have any material impact on the Commission's findings of underselling margin during the review investigation period.
- (161) The same interested party questioned the level of 8 % target profit established in the original investigation claiming that the GES manufacturers were facing losses due to decline in the international steel demand and therefore 8 % target profit was not justified anymore.
- (162) It is recalled that the target profit level on sales of the like product in the Union market should be the one that could be reasonably achieved under normal conditions of competition by an industry of this type in the sector, namely in the absence of dumped/subsidised imports. In this regard, as noted in the recital (26) of the Regulation (EC) No 1629/2004, a proper examination was made of Union industry's profit levels when the market share of dumped imports was at its lowest (i.e. 1999). Therefore it was definitively concluded that the profit margin that could reasonably be deemed to represent the financial situation of the Community industry in the absence of injurious dumping from India should be set at 8 % for the purpose of the calculation of the injury margin. The argument was therefore rejected.

- (163) On the basis of the above, the Commission concluded that the Union industry was in an extremely fragile situation during the review investigation period, which is for the most part attributable to the negative market conditions and consequent fall in consumption. For this reason, the Commission's assessment focused on the likelihood of a recurrence of injury from the dumped imports from India.

6. Likelihood of a recurrence of injury

- (164) To establish the likelihood of recurrence of injury should the measures against India be repealed the following elements were analysed: the production capacity and spare capacity in India, the exports from India to other third countries and the attractiveness of the Union market.
- (165) In recital (75) it was concluded that it is likely that the Indian exporting producers will continue to export significant quantities to the Union should measures be allowed to lapse and even increase their current export volumes and that these exports will likely be made at dumped prices.
- (166) As established in recital (60), the Indian capacity is estimated to be around 160 000 tonnes in the RIP, while the spare capacity is estimated to be between 40 000 and 50 000 tonnes, which represented between 29 % and 36 % of the Union consumption during the same period. In addition, as indicated in recital (59), the Indian exporting producers are likely to further increase their capacity in case of increase demand. As mentioned in recital (62), at the end of November 2014, the Indian authorities imposed anti-dumping measures on imports of GES from China. As a consequence it is expected that the Indian producers will increase their market share on the domestic market.
- (167) As a consequence of the attractiveness of the Union market described in recitals (72) to (75) should the measures be repealed, at least part of the spare capacity will, in all likelihood, be redirected to the Union market. Also, as described in recital (63), Indian producers are highly export-oriented. Concerning prices of GES, as described in recital (69), higher price levels than in the Union were found for some of the destinations of the Indian exports. However given the different product mix, this information does not detract from the overall assessment that new capacity will be directed to the Union market as the reliability of this price comparison is limited.
- (168) As indicated in recital (66), anti-dumping measures against Indian GES imports had been imposed in Russia and the exports from India to Russia dropped significantly during the period considered. This implies that the access to the third main export market for Indian exporting producers is restricted and with the current or even likely increased spare capacity mentioned above in recital (166), there is a strong likelihood that Indian exporting producers will significantly increase their imports of the product concerned to the Union market should measures be allowed to lapse.
- (169) As established in recital (106), Indian import prices without anti-dumping and countervailing duties would undercut the Union sales prices by 9 %. For the non-cooperating exporting producer, an estimate of the undercutting margin without anti-dumping and countervailing duties included was calculated at 12 %. This is an indication of what would be the likely price level of imports from India should the measures be repealed. On this basis, it is likely that the price pressure in the Union market will significantly increase should the measures be repealed, thus further worsening the economic situation of the Union industry.
- (170) In terms of volumes, the repeal of the measures would very likely allow Indian exporting producers to gain market shares in the Union market. In particular the non-cooperating exporting producer, which has currently the higher duty rate of 15,7 %, would have a strong incentive to resume exports to the Union market in significant quantities. Should this situation occur, the Union industry would face an immediate drop in its sales volumes and market shares.
- (171) On this basis, in the absence of measures, Indian exporting producers will likely increase their presence in the Union market, in terms of import volumes and market shares at dumped and subsidised prices significantly undercutting the Union industry's sales prices. This will create an increased price pressure in the Union market with a negative impact on the Union industry's profitability and financial situation. This will also further deteriorate the economic situation of the Union industry.

- (172) Based on the above, the Commission concluded that there is a strong likelihood of recurrence of injury caused by dumped imports from India should the measures be repealed.

E. UNION INTEREST

- (173) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures against India would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users.
- (174) It is recalled that, in the original investigation, the adoption of measures was considered not to be against the interest of the Union.
- (175) All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.
- (176) On this basis, the Commission examined whether, despite the conclusions on the likelihood of a continuation of dumping and recurrence of injury, compelling reasons existed which would lead to the conclusion that it was not in the Union interest to maintain the existing measures.

1. Interest of the Union industry

- (177) As explained in recital (147), the measures enabled the Union industry to maintain its market shares. At the same time, it was also concluded in recital (172), that the Union industry would be likely to experience a deterioration of its situation in case the anti-dumping measures against India were allowed to lapse. Therefore, it can be concluded that the continuation of the measures against India would benefit the Union industry.

2. Interest of importers/traders

- (178) As mentioned in recital (16), no importers cooperated or made themselves known in the current investigation. Therefore, there were no indications that the maintenance of the measures would have a negative impact on the importers outweighing the positive impact of the measures.

3. Interest of users

- (179) As mentioned in recital (18), out of 53 users contacted, eight submitted a questionnaire reply. Four of them have used GES imported from India. Their imports represented around 20 % of all imports of the product concerned from India.
- (180) It is recalled that in the original investigation, it was found that the impact of the imposition of measures would not be significant for the users. Despite the existence of measures for 10 years, users in the Union continued to source their supply, inter alia, from India. The users did not submit any information showing that there have been difficulties in finding other sources and the investigation did also not reveal such information.
- (181) Moreover, as regards the effect of the imposition of measures on users, it is recalled that it was concluded in the original investigation that, given the negligible incidence of the cost of GES on user industries, any cost increase was unlikely to have a significant effect on the user industry. These findings were confirmed in the current review as no indications of the contrary were found after the imposition of measures. Furthermore, none of the four users put forward any argument against the maintenance of the measures.
- (182) One federation of steel producers, the German steel industry federation (Wirtschaftsvereinigung Stahl) opposed the continuation of the measures and claimed that the measures resulted in competition disadvantages for steel

producers in the Union compared to steel producers in other regions that have no measures imposed on GES. The federation alleged that the continuation of measures would allow the Union industry to continue having a dominant position. However, it is clear from the development of the Indian imports after the imposition of the measures that imports from India continued during the period considered. In addition, the investigation has shown that the GES are increasingly entering the Union market from a number of other third countries.

- (183) On this basis, and in line with the conclusions drawn in the original investigation, it is expected that the continuation of measures will not have a significant negative impact on users and that there are therefore no compelling reasons to conclude that it is not in the Union interest to extend the existing measures.

4. Conclusion on Union interest

- (184) In view of the above, the Commission concluded that there are no compelling reasons of Union interest against the extension of the current anti-dumping measures on imports from India.

F. ANTI-DUMPING MEASURES

- (185) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to maintain the anti-dumping measures in force. They were also granted a period within which they could submit comments subsequent to this disclosure. The submissions and comments were duly taken into consideration.
- (186) It follows from the above considerations that, under Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of GES originating in India imposed by Regulation (EU) No 1225/2009 should be maintained.
- (187) After disclosure, the cooperating exporting producer from India requested the Commission to consider continuation of measures for a period of two years. However, the investigation found no exceptional circumstances that would justify limiting the duration of measures to two years.
- (188) The individual company anti-dumping duty rates specified in this Regulation are solely applicable to imports of the product concerned produced by these companies and thus by the specific legal entities mentioned. Imports of the product concerned manufactured by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.
- (189) Any claim requesting the application of these individual anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission ⁽¹⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for instance, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates.
- (190) The Committee established by Article 15(1) of Regulation (EU) 2016/1036 did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of 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 (TARIC code 8545 11 00 10) and nipples used for such electrodes currently falling within CN code ex 8545 90 90 (TARIC code 8545 90 90 10) whether imported together or separately originating in India.

⁽¹⁾ European Commission, Directorate-General for Trade, Directorate H, B-1049 Brussels, Belgium.

2. The rate of duty applicable to the net free-at-Union- frontier price, before duty, for the products described in paragraph 1 and produced by the companies listed below shall be as follows:

Company	Duty rate	TARIC additional code
Graphite India Limited (GIL), 31 Chowringhee Road, Kolkatta — 700016, West Bengal	9,4 %	A530
HEG Limited, Bhilwara Towers, A-12, Sector-1, Noida — 201301, Uttar Pradesh	0 %	A531
All other companies	8,5 %	A999

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

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, 9 March 2017.

For the Commission
The President
Jean-Claude JUNCKER