COMMISSION IMPLEMENTING REGULATION (EU) 2023/1102

of 6 June 2023

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:

1. PROCEDURE

1.1. Previous investigations and measures in force

(1) Following an anti-dumping investigation, the Council imposed a definitive anti-dumping duty on imports of certain graphite electrodes systems originating in India ('the original investigation') by Regulation (EC) No 1629/2004 ([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.

(2) Following an ex-officio partial interim review of the countervailing measures, the Council by Regulation (EC) No 1354/2008 ([4]) amended Regulation (EC) No 1628/2004 and Regulation (EC) No 1629/2004.

(3) Further to an expiry review pursuant to Article 11(2) of the basic Regulation, the Council by Implementing Regulation (EU) No 1186/2010 ([5]) extended the anti-dumping measures. Further to an expiry review of the countervailing measures, the Council by Implementing Regulation (EU) No 1185/2010 ([6]) extended the countervailing measures.

([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).

(4) Following the expiry review pursuant to Article 11(2) of the basic Regulation, the European Commission ('Commission') extended the anti-dumping measures by the Implementing Regulation (EU) 2017/422 ([7]). Following the expiry review of the countervailing measures, the Commission extended the countervailing measures by the Implementing Regulation (EU) 2017/421 ([8]).

(5) The anti-dumping measures currently in force are 9,4 % and 0 % on imports from individually named exporters, and a duty rate of 8,5 % on imports from all other companies from India.

1.2. **Request for an expiry review**

(6) Following the publication of a Notice of impending expiry ([9]), the Commission received a request for review pursuant to Article 11(2) of the basic Regulation.

(7) The request for review was submitted on 9 December 2021 by the Union producers, representing around 90 % of the total Union production of certain graphite electrodes systems ('the applicants'). The request for review was based on the grounds that the expiry of the measures would be likely to result in continuation of dumping and recurrence of injury to the Union industry.

1.3. **Initiation of an expiry review**

(8) Having determined, after consulting the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of an expiry review, the Commission, on 9 March 2022, by Notice published in the *Official Journal of the European Union* ([10]) ('the Notice of Initiation'), initiated an expiry review with regard to imports of certain graphite electrode systems originating in India ('the country concerned') on the basis of Article 11(2) of the basic Regulation.

1.4. **Separate investigation concerning anti-subsidy measures imposed on imports of the product under review**

(9) By a notice published in the *Official Journal of the European Union* on 9 March 2022 ([11]), the Commission also initiated an expiry review pursuant to Article 18 of Regulation (EU) 2016/1037 ([12]), of the definitive anti-subsidy measures in force with regard to imports into the Union of certain graphite electrode systems originating in India.

1.5. **Review investigation period and period considered**

(10) The investigation of a likelihood of continuation or recurrence of dumping covered the period from 1 January 2021 to 31 December 2021 ('the review investigation period' or 'RIP'). The examination of trends relevant for the assessment of a likelihood of continuation or recurrence of injury covered the period from 1 January 2018 to the end of the review investigation period ('the period considered').

([7]) Commission Implementing Regulation (EU) 2017/422 of 09 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 (OJ L 64, 10.3.2017, p. 46).

([8]) Commission Implementing Regulation (EU) 2017/421 of 09 March 2017 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 (EU) 2016/1037 of the European Parliament and of the Council (OJ L 64, 10.3.2017, p. 10).

([9]) OJ C 226, 14.6.2021, p. 3.

([10]) 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 113, 9.3.2022, p. 3.

([11]) Notice of initiation of an expiry review of the anti-subsidy measures applicable to imports of certain graphite electrode systems originating in India, OJ C 113, 9.3.2022, p. 13.

([12]) Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidized imports from countries not members of the European Union, OJ L 176, 30.6.2016, p. 55.

1.6. **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 applicants, other known Union producers, the known exporting producers and the Indian authorities, known importers, suppliers and users, traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.

(12) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.7. **Sampling**

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

1.7.1. *Sampling of Union producers*

(14) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of production and sales volumes of the like product in the Union. This sample consisted of three Union producers. The sampled Union producers accounted for around 61 % of the estimated total Union production and 64 % of the estimated sales volume of the like product in the Union. The Commission invited interested parties to comment on the provisional sample. The Commission received no comments. The sample is representative of the Union industry.

1.7.2. *Sampling of importers*

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

(16) No importers came forward.

1.7.3. *Sampling of exporting producers in India*

(17) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked all exporting producers in India to provide the information specified in the Notice of Initiation. The Commission has received in due time a sampling response from two graphite electrode systems producers in India: HEG Limited and Graphite India Limited, therefore, sampling was not necessary. The Commission decided to investigate the two exporting producers that provided the requested information.

1.8. **Questionnaire replies and remote cross-checking**

(18) At the initiation the questionnaires were made available in the file for inspection by interested parties and on DG Trade's website ([13]).

(19) Questionnaire replies were received from the three sampled Union producers. None of the exporting producers provided a questionnaire reply. None of the users provided a questionnaire or came forward during the investigation.

(20) 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:

Union producers

— GrafTech Iberica S.L., Navarra, Spain

([13]) https://tron.trade.ec.europa.eu/investigations/case-view?caseId=2585.

— Showa Denko Carbon Spain S.A., A Coruna, Spain

— Tokai Erftcarbon GmbH, Grevenbroich, Germany

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

(21) The product under review is graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,65 g/cm3 or more and an electrical resistance of 6,0 μ.Ω.m or less, and nipples used for such electrodes, whether imported together or separately ('the product under review'), currently falling under CN codes ex 8545 11 00 and ex 8545 90 90 (TARIC codes 8545 11 00 10 and 8545 90 90 10) 'the product under review', or 'GES').

2.2. Like product

(22) As established in the original investigation as well as in the previous expiry reviews, this expiry review investigation confirmed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:

— the product under review;

— the product produced and sold on the domestic market of the country concerned, and

— the product produced and sold in the Union by the Union industry.

(23) The Commission decided that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

(24) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether the expiry of the measure in force would be likely to lead to a continuation or recurrence of dumping from India.

3.1. Preliminary remarks

(25) 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.

(26) As mentioned above in recital (19), none of the exporting producers provided a questionnaire reply. Due to the lack of cooperation from the cooperating exporting producers, and in accordance with Article 18 of the basic Regulation, the Commission's analysis had to be made of facts available in accordance with Article 18 of the basic Regulation.

(27) The Indian authorities were duly informed that due to the non-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 and 4 were thus based on facts available. For this purpose, the information provided in the request for expiry review and the statistics available in Eurostat and the Global Trade Atlas ([14]) ('GTA') databases as well as other publicly available sources were used.

3.2. Normal value

(29) On the basis of the above, the Commission constructed the normal value on an ex-works basis in accordance with Article 2 of the basic Regulation.

([14]) https://www.gtis.com/gta/

(30) The normal value was based on the data provided by the applicants, from (i) Mordor Intelligence ([15]) and (ii) Valuates Reports ([16]). The two sources indicated a similar average domestic price of GES in India of 3 788 EUR per tonne at ex-works level in the review investigation period. This price was cross-checked and was in line with the estimates made, based on the publicly available price charts published by SteelMint.com ([17]) during the same period, indicating an average price of EUR 3 630 per tonne.

(31) The Commission used the average price of the two sources provided by the applicants to establish a normal value at 3 788 EUR per tonne.

3.3. **Export price**

(32) In the absence of cooperation by the exporting producers from India, the export price was determined based on CIF prices in Eurostat data corrected to ex-works level. As seen in recital (44), the import volumes from India in the review investigation period were significant and thus the prices were considered as representative. The CIF price of 2 747 EUR per tonne ([18]) was adjusted for the sea freight and insurance cost, domestic transport costs in India and EU customs handling to arrive at 2 558 EUR per tonne at the ex-works level. The adjustments were based on OECD data ([19]) and information provided in the review request.

3.4. **Comparison and dumping margin**

(33) The Commission compared the normal value and the export price on an ex-work basis as established above.

3.5. **Dumping margin**

(34) On this basis, the weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, was 44,7 % for India. It was therefore concluded that dumping continued during the review investigation period.

4. **LIKELIHOOD OF CONTINUATION OF DUMPING**

(35) Further to the finding of the existence of dumping during the review investigation period, the Commission investigated, in accordance with Article 11(2) of the basic Regulation, the likelihood of continuation of dumping, should the measures be allowed to lapse.

(36) The investigation showed that during the RIP Indian imports continued to enter the Union market at significantly dumped prices and maintained their quantities and market shares as in the last two review investigations. Furthermore, the analysis of production volume and spare capacity in India, export volumes and prices from India to the other third country markets, existing measures in the other third countries, and attractiveness of the Union market provided in recitals (107) – (115) also shows that it is likely that the dumped exports would further increase their already substantial presence in the Union market should the current measures be allowed to lapse. Consequently, it is concluded that there is a likelihood of continuation of dumping should measures be allowed to lapse.

([15]) https://www.mordorintelligence.com/
([16]) https://reports.valuates.com/
([17]) A market data provider for steel producers and steel users: https://www.steelmint.com/intel/india-graphite-electrode-prices-inch-up-6-for-oct-dec-21-quarter-8571 and https://twitter.com/SteelMint/status/1400101045217357835, the publicly available information consists of charts providing monthly domestic sales prices for GES in India; however, the Commission could only estimate these prices and not precisely define them.
([18]) Import price without the customs and AD/AS duties. Source: Comext.
([19]) Dataset: International transport and insurance costs of merchandise trade – OECD.

5. **INJURY**

5.1. **Definition of the Union industry and Union production**

(37) The like product was manufactured by seven producers in the Union during the review investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

(38) The total Union production during the review investigation period was established at 219 330 tonnes. The Commission established the figure on the basis of the verified questionnaire replies of the sampled Union producers and the data provided by the non-sampled producers and the applicants ([20]). As indicated in recital (14) the three sampled Union producers represented more than 61 % of the total Union production of the like product.

5.2. **Union consumption**

(39) The Commission established Union consumption on the basis of the sales volumes of the Union industry's own production destined for the Union market and the import volumes obtained from Eurostat statistics.

(40) On this basis, Union consumption developed as follows:

Table 1

Union consumption (tonnes) ([21])

	2018	2019	2020	Review investigation period
Total Union consumption	152 612	120 169	99 873	137 279
Index	100	79	65	90

Source: Eurostat, information provided by the sampled and non-sampled Union producers, information provided by the applicants.

(41) The Union consumption of GES decreased by 10 % over the period considered. The year 2018 showed a high consumption driven by high demand of the EU steel industry, which was in the process of recovering from the steel crisis. In addition, in a situation of a sudden GES price increase, steelmakers were building up stocks of GES in the expectation of an additional increase.

(42) In 2019, the production of steel from electric arc furnaces decreased, as compared to 2018 (by 6,6 % according to Eurofer figures). Consequently, the demand for GES dropped. As the price of GES went down significantly, building up stocks was no longer considered necessary for the downstream industry as users were not anymore concerned by a further price increase. As a consequence, steel producers started destocking their GES inventories. Moreover, demand dropped further – but this time on a temporary basis in 2020, following the COVID-19 outbreak.

5.3. **Imports from India**

5.3.1. *Volume and market share of the imports from India*

(43) As mentioned in recital (39), the Commission established the volume of imports from India on the basis of Eurostat statistics. The market share was established based on of the Union consumption as set out in recital (40).

([20]) The production volume is based on EU-27 data as the United Kingdom ceased to be part of the European Union as from 1 February 2020 and the transition period for the United Kingdom's withdrawal ended on 31 December 2020.

([21]) The consumption is based on EU-27 data, excluding data related to the United Kingdom.

(44) Imports from India developed as follows:

Table 2

Import volume (tonnes) and market share

	2018	2019	2020	Review investigation period
Volume of imports from India (tonnes)	5 802	3 369	2 154	6 540
Index	*100*	*58*	*37*	*113*
Market share (%)	4	3	2	5
Index	*100*	*74*	*57*	*125*

Source: Eurostat and 14.6 database

(45) Imports of the product under review from the country concerned had decreased in 2019 and 2020, following the decrease of EU consumption, and recovered during the review investigation period. Overall, during the period considered the volume of imports increased from 5 802 tonnes in 2018 to 6 540 tonnes in the review investigation period, i.e. by 13 %. Imports of GES from India represented around 16 % of total GES imports to the Union during the review investigation period corresponding to a market share of 5 %.

(46) Overall, the imports from India and their market share increased over the period considered. Despite the Union consumption decrease, the volume of dumped imports from India kept increasing during the period considered (by 13 %), whereas the Union industry's sales decreased.

5.3.2. *Prices of the imports from India and price undercutting*

(47) The average price of imports from India developed as follows:

Table 3

Import prices (EUR/tonne)

	2018	2019	2020	Review investigation period
Import prices from India	13 756	10 211	4 120	2 747
Index	*100*	*74*	*30*	*20*

Source: Eurostat

(48) The average import price ([22]) of GES from India went down by 80 % throughout the period considered, from 13 756 EUR/tonne in 2018 to 2 747 EUR/tonne in the review investigation period.

(49) Due to the high global demand for GES, the Indian prices surpassed the Union industry prices in the first half of the period considered, but then dropped by 60 % between 2018 and 2020 and remained consistently lower than the Union prices in 2020 and in the review investigation period.

(50) In view of the non-cooperation of the Indian exporting producers, the Commission determined the price undercutting in the review investigation period by comparing:

(1) the weighted average sales price of the Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and

([22]) Import price without the customs and AD/AS duties. Source: Eurostat.

(2) the corresponding weighted average import prices of the product under review from India from Eurostat, established on a CIF basis, excluding the anti-dumping and countervailing duties, with appropriate adjustments for customs duties and post-importation costs. In the absence of any other information, these costs were estimated at 1 % of the CIF value.

(51) This resulted in the average undercutting margin of 33,2 %. These prices were also considered as a reasonable indicator of future possible price levels should measures be repealed.

(52) After disclosure the Government of India (GOI), argued that the undercutting margin calculated by the Commission is not representative as it is not based on actual market prices in the Union. In GOI's view the fact that sales sourced from GrafTech Iberica were made pursuant to long-term contracts ('LTAs') have resulted in an artificially high selling price which is not indicative of the market price of GES in the Union.

(53) The Commission disagrees with this assessment. LTAs are not an uncommon commercial practice and a business decision in which a customer accepts to tie itself to a particular price level in exchange for a security of supply. Considering that LTAs were being used in dealings on the relevant market their presence in the sample does not render the sample not representative. Moreover, Only part of the sales made by GrafTech were covered by LTAs while the sales of the other two sampled Union producers in the review investigation period were not covered by similar LTAs. Therefore, in the Commission's view, whilst representative of a part of the market, overall the LTAs used by GrafTech Iberica did not significantly affected the undercutting calculation. Therefore, this claim was dismissed.

5.3.3. *Imports from third countries other than India*

(54) The imports of the product under review from other third countries were mainly from China, Mexico and Russia.

(55) The volume of imports from other third countries, as well as the market share and price trends developed over the period considered as follows:

Table 4

Imports from third countries other than India

Country		2018	2019	2020	Review investigation period
PRC	Volume (tonnes)	22 054	19 284	20 074	26 065
	Index	*100*	*87*	*91*	*118*
	Market share (%)	14	16	20	19
	Index	*100*	*111*	*139*	*131*
	Average price	10 875	5 253	2 337	2 614
	Index	*100*	*48*	*21*	*24*
Russia	Volume (tonnes)	1 076	3 229	780	3 371
	Index	*100*	*300*	*72*	*313*
	Market share (%)	1	3	1	2
	Index	*100*	*381*	*111*	*348*

	Average price	9 623	5 771	4 898	2 851
	Index	*100*	*60*	*51*	*30*
Mexico	Volume (tonnes)	1 374	12	896	1 437
	Index	*100*	*1*	*65*	*105*
	Market share (%)	1	0	1	1
	Index	*100*	*1*	*100*	*116*
	Average price	2 530	3 264	3 976	3 435
	Index	*100*	*129*	*157*	*136*
Rest of the world	Volume (tonnes)	4 482	2 471	2 616	3 621
	Index	*100*	*55*	*58*	*81*
	Market share (%)	3	2	3	3
	Index	*100*	*70*	*89*	*90*
	Average price	8 253	10 648	5 737	3 979
	Index	*100*	*129*	*70*	*48*
Total third countries except India	Volume (tonnes)	28 987	24 996	24 366	34 494
	Index	*100*	*86*	*84*	*119*
	Market share (%)	19	21	24	25
	Index	*100*	*110*	*128*	*132*
	Average price	10 027	5 852	2 844	2 814
	Index	*100*	*58*	*28*	*28*

Source: Eurostat

(56) The impact of imports from other third countries has been analysed since they represented around 84 % of total GES imports to the Union during the RIP. Despite the decreasing consumption, volume of imports from other third countries increased by 19 % from almost 29 000 tonnes in 2018 to around 35 000 tonnes in the RIP.

(57) Imports from third countries followed partially the decrease in consumption in 2019 and 2020 yet rapidly recovered and reached the highest level in the RIP, with 19 % increase compared to 2018. The average price of imports from other third countries followed the global trend, decreasing by 72 % between 2018 and the RIP.

(58) The large majority of these imports in the RIP, 76 %, were imports from China. The import volumes from the other third countries except China and India increased over the period considered by 22 %. Import volume of GES from India increased from 5 800 tonnes in 2018 to 6 500 tonnes during the RIP, while China increased from 22 054 tonnes in 2018 to 26 065 tonnes during the RIP, with a market share gain of 25 % and 31 %, respectively.

(59) Over the same period import prices from China were lower than the prices of both the Indian exporters and the prices of the Union producers (except in 2018).

(60) Furthermore, as of 7 April 2022 ([23]) the Commission made the imports of GES from China subject to anti-dumping duty (ranging from 23 % to 74,9 %) ([24]).

5.4. **Economic situation of the Union industry**

5.4.1. *General remarks*

(61) The assessment of the economic situation of the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

(62) As mentioned in recital (14), sampling was used for the assessment of the economic situation of the Union industry.

(63) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators based on data contained in the replies to the anti-dumping questionnaire by the sampled producers as well as macroeconomic data provided by the non-sampled producers and the applicants, crosschecked with the data in the review request. The data related to all Union producers. The Commission evaluated the microeconomic indicators based on data contained in the questionnaire replies from the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.

(64) 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.

(65) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

5.4.2. *Macroeconomic indicators*

5.4.2.1. Production, production capacity and capacity utilisation

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

Table 5

Production, production capacity and capacity utilisation

	2018	2019	2020	Review investigation period
Production volume (tonnes)	251 009	219 744	164 413	219 330
Index	*100*	*88*	*66*	*87*
Production capacity (tonnes)	283 500	294 900	294 900	285 235
Index	*100*	*104*	*104*	*101*
Capacity utilisation (%)	89	75	56	77
Index	*100*	*84*	*63*	*87*

Source: Information provided by the sampled and non-sampled Union producers, information provided by the applicants.

([23]) Commission Implementing Regulation (EU) 2022/558 of 6 April 2022 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of certain graphite electrode systems originating in the People's Republic of China (OJ L 108, 7.4.2022, p. 20).

([24]) The scope of the Chinese regulation is slightly different than the scope of the present regulation, as it does not include nipples and it also includes graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,5 g/cm³ or more but less than 1,65 g/cm³ and an electrical resistance of 6,0 μΩ.m or less, or with an apparent density of 1,5 g/cm³ or more and an electrical resistance of more than 6,0 μΩ.m but not more than 7,0 μΩ.m, (TARIC codes 8545 11 00 10 and 8545 11 00 15).

(67) Following the decrease in consumption, the production volume of the Union industry dropped by 34 % between 2018 and 2020, and partially recovered in the RIP, remaining below the 2018 level. Overall, the production volume decreased by 13 % during the period considered.

(68) The decrease of the production volume is due to the decrease in consumption coupled with the loss in sales quantity suffered by the Union industry, as explained below in recital (70).

5.4.2.2. Sales volume and market share

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

Table 6

Sales volume and market share

	2018	2019	2020	Review investigation period
Total sales volume on the Union market (tonnes)	117 824	91 804	73 352	96 245
Index	*100*	*78*	*62*	*82*
Market share (%)	*77*	*76*	*73*	*70*
Index	*100*	*99*	*95*	*91*

Source: Information provided by the applicants, information provided by the sampled and non-sampled Union producers.

(70) Sales volume of the Union industry decreased by 18 % during the period considered. It decreased steadily up to 2020 (by 38 %) and recovered only partially during the review investigation period. However, this increase was not in line with the similar trend followed by the Union consumption which resulted overall in a loss of market share of the Union industry from 77 % in 2018 to 70 % in the review investigation period (minus 9 %), while the market share of the imports from India increased by 25 % during the same period.

(71) During the period considered, the EU consumption of GES decreased by 10 %. This decrease of 15 000 tonnes in consumption hit only the Union industry, that lost 21 000 tonnes of sales. Over the same period the volume of dumped imports from India, China and other third countries kept increasing during the period considered, by 13 %, 18 % and 19 % respectively.

5.4.2.3. Growth

(72) As explained above, during the period considered, the sales volume of the Union industry lost 21 000 tonnes of sales while imports increased by more than 6 200 tonnes. This resulted in a 9 % market share loss for the Union industry over the period considered. Consequently, there was no growth for the Union industry during the period considered.

5.4.2.4. Employment and productivity

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

Table 7

Employment and productivity

	2018	2019	2020	Review investigation period
Number of employees (FTE)	1 165	1 148	1 102	1 143
Index	*100*	*99*	*95*	*98*

Productivity (unit/employee)	215	191	149	192
Index	*100*	*89*	*69*	*89*

Source: Information provided by the applicants, information provided by the sampled and non-sampled Union producers

(74) The number of employees of the Union industry remained relatively stable over the period considered (decreased by 2 % over the period considered). Therefore, given the drop in production explained in section 5.4.2.1, the productivity of the Union industry's workforce, measured as output (tonnes) per employee, followed the same trend dropping by 11 % over the same period.

5.4.2.5. Magnitude of the dumping margin and recovery from past dumping

(75) The Commission concluded in recital (34) that dumping from India continued during the review investigation period. The Commission also concluded that there was a strong likelihood of continuation of dumping from India if the measures were allowed to lapse.

(76) Despite the anti-dumping measures in force since 2009, the Union industry has lost substantial sales volume which is reflected in a loss of market share of 9 percentage points over the period considered. Thus, no full recovery from the past dumping could be established and the Union industry remains highly vulnerable to the injurious effects of any dumped imports in the Union market.

5.4.3. *Microeconomic indicators*

5.4.3.1. Prices and factors affecting prices

(77) The weighted average unit sales prices of the sampled Union producers to unrelated customers in the Union developed over the period considered as follows:

Table 8

Sales prices in the Union

	2018	2019	2020	Review investigation period
Average unit sales price in the Union on the total market (EUR/tonne)	8 483	9 578	5 870	4 682
Index	*100*	*113*	*69*	*55*
Unit cost of production (EUR/tonne)	3 696	4 685	4 864	3 556
Index	*100*	*127*	*132*	*96*

Source: Questionnaire replies of the sampled Union producers

(78) The sales prices increased between 2018 and 2019 by 13 % before decreasing steeply in 2020 and in the review investigation period to the level by 45 % lower than in 2018.

(79) Cost of production increased, reached its highest point in 2020 and started decreasing during the review investigation period. This trend is due to the substantial increase of the price of the main raw material, that is needle coke. The price of needle coke, due to the increased demand driven by the lithium-ion battery industry, increased steadily and significantly up to 2019 and only as of 2020 it started decreasing.

(80) Considering the sales prices of the Union industry, the Commission noted that a part of the Union production (in particular produced by GrafTech Iberica and GrafTech France) representing around 50 % of the total Union sales and production, was to some extent temporarily shielded from direct market competition, whereas the other part (the other two sampled Union producers) was directly exposed to the dumped Indian imports.

(81) This situation was due to the existence of LTAs covering sales of GES sourced from GrafTech Iberica. These LTAs were concluded in the wake of a period of unusually high prices in the years 2017–2018. These contracts are 'take or pay' purchase contracts with a guaranteed level of supplies at set prices and the buyer committed to buy the agreed volumes at the pre-determined and fixed price, subject to various contractual rights and obligations. The duration of these contracts was three to five years. It appeared that a very large portion of sales sourced from GrafTech Iberica during the review investigation period were made under these LTAs. The investigation did not reveal that any other Union producer would covered by similar LTAs in the period considered. In view of the LTAs' limited duration, the Commission noted that the impact of the contracts is of a temporary nature.

(82) The origin of these LTAs is to be found in the period of high price volatility in the years 2017-2018 that stretched up to 2019. In these years, globally prices of graphite electrodes increased significantly. This was due to many factors, including increased global demand. The key reason for the rise in demand cited by the Union industry was to be the global shift in the steel industry, from blast furnaces to the electric arc furnaces, which use graphite electrodes. In addition, as explained in recital (79), the new competition for needle coke (the main raw material used in the production of graphite electrodes) with the lithium-ion battery industry drove an increase of raw material cost that contributed to the price volatility. To address this issue of price volatility, the LTAs for the supply of the product under review sourced from GrafTech Iberica were negotiated with a duration between three to five years. The principle was to obtain more stable prices in exchange for a stable supply as requested by clients.

(83) Therefore, thanks to the existing LTAs, sales of GrafTech Iberica could be made at a stable price level ([25–50] % above the average unit sales price in the Union) during the review investigation period despite the general fall in prices from which the remainder of the Union industry was not covered by LTAs. Based on the information available, such as sales volumes of the product under review not subject to LTAs and sourced from GrafTech Iberica as well as the sales of the other two sampled Union producers, the Commission estimated that the average price on the market not covered by the terms of the LTAs was around [25–50] % lower than the average unit sales price in the Union on the total market. Accordingly, the average Union sales price during the review investigation period does not accurately reflect the competitive price situation on the Union market, which was significantly affected by low-priced and dumped imports from both India and China.

5.4.3.2. Labour costs

(84) The average labour costs of the sampled Union producers developed over the period considered as follows:

Table 9

Average labour costs per employee

	2018	2019	2020	Review investigation period
Average labour costs per employee (EUR)	91 856	87 714	84 993	87 519
Index	*100*	*95*	*93*	*95*

Source: Questionnaire replies of the sampled Union producers

(85) The average labour cost slightly decreased over the period considered. Overall, the average labour cost per employee decreased by 5 %. This trend was mostly influenced by the limited reduction in employment figures as explained in recital (74).

5.4.3.3. Inventories

(86) Stock levels of the sampled Union producers developed over the period considered as follows:

Table 10

Inventories

	2018	2019	2020	Review investigation period
Closing stocks (tonnes)	7 026	9 447	8 172	8 812
Index	*100*	*134*	*116*	*125*
Closing stocks as a percentage of production (%)	3	4	5	4
Index	*100*	*154*	*178*	*144*

Source: Questionnaire replies of the sampled Union producers

(87) Inventories cannot be considered as a relevant injury indicator in this sector, as production and sales are mainly based on orders and, accordingly, producers tend to hold limited stocks. Therefore, the trends on inventories are given for information only.

(88) Overall, inventories were influenced by the decreasing trends of production and sales of the Union industry. Closing stocks as a percentage of production increased significantly in 2019 and 2020 (by 54 % and 78 % respectively) partially decreasing during the review investigation period. Overall, during the period considered closing stocks in tonnes increased by 25 %.

(89) However, when looking at the data of the two Union producers that did not conclude LTAs. Over the same period their stocks increased by [35 – 45] %.

5.4.3.4. Profitability, cash flow, investments, return on investments and ability to raise capital

(90) Profitability, cash flow, investments and return on investments of the sampled Union producers developed over the period considered as follows:

Table 11

Profitability, cash flow, investments and return on investments

	2018	2019	2020	Review investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	75	62	2	31
Index	*100*	*82*	*2*	*42*
Cash flow (EUR)	659 909 270	475 537 375	120 592 009	210 732 326
Index	*100*	*72*	*18*	*32*
Investments (EUR)	23 523 042	28 065 231	21 574 327	29 396 885
Index	*100*	*119*	*92*	*125*

Return on investments (%)	722	467	35	154
Index	*100*	*65*	*5*	*21*

Source: Questionnaire replies of the sampled Union producers

(91) The Commission established the profitability of the sampled Union producers 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.

(92) After the previous expiry review investigation mentioned in recital (1), where the anti-dumping measures were imposed, the situation of the Union industry improved and its profit margin, due to the increase in prices mentioned above in section 5.4.3.1, reached 75 % in 2018. However, the situation deteriorated subsequently and profit margins declined as from 2018 reaching its bottom point in 2020 (2 %) and partially recovering in the review investigation period (31 %), corresponding to a decrease of 58 % over the period considered.

(93) The cause for this decreasing trend is the significant reduction in Union consumption and in sales volume suffered by the Union industry at the advantage of the dumped Indian and Chinese imports that exerted significant price pressure entering into the Union undercutting those of the Union industry and forcing the part of the Union industry not covered by the LTAs to reduce their prices levels, as explained above in recital (83).

(94) As mentioned above, one of the sampled Union producers, Graftech Iberica, sold the majority of its volume under LTAs. Therefore, products were sold at stable prices and, during the RIP (until expiry of the LTAs; a significant part expired by the end of 2021, another part by the end of 2022), these sales were still considered partially shielded from external factors such as the general price decrease.

(95) However, the situation is different for the other two sampled Union producers. Excluding GrafTech Iberica the micro-indicators show a different picture, with profitability of sales in the Union dropping from [+ 70 – +80] % in 2018 to [0 – +10] % in the review investigation period.

(96) The net cash flow is the Union industry's ability to self-finance their activities. Given the decreasing trend of Union industry's profit the cash flow dropped by 68 % over the period considered.

(97) Investments, thanks to a still positive cash flow, increased by 25 % in the period considered, which is mainly due to the efforts made by the Union industry to rationalize its production and increase efficiency and productivity to face the increasing low-priced imports. However, in the same period, the return on investments, which is expressed as the profit in percentage of the net book value of investments dropped by 79 % and therefore followed the same trend as the profitability.

(98) A picture similar to the one explained above can be observed when looking at the data of the two Union producers that did not sell under LTAs during the review investigation period. Over the same period return on investment and cash flow dropped to [0 + 10]%.

(99) The decreasing profitability and return on investment will made it increasingly difficult for the sampled Union producers to raise capital for future investment. With return on investments falling so quickly, the sampled producers' ability to raise capital in the future is in greater jeopardy.

5.4.4. *Conclusion on injury*

(100) The investigation showed that the measures allowed the Union industry to maintain, at least partially, a significant market shares throughout the period considered. Most of injury indicators showed that the economic situation of the Union industry was difficult. As explained above, these negative developments are explained by the decrease in consumption coupled with the consequence of the COVID-19 outbreak and dumped imports from China and India which during the same period gained market share to the detriment of Union industry whose market share decreased. The situation was further aggravated by the sharp increase of the dumped imports from China and India. The Union industry has responded to these challenges by decreasing its prices and reducing profit, which, nevertheless, remained positive during the period considered.

(101) In particular, production, sales volumes and market shares decreased, as well as sales prices which had a negative effect on productivity as well as on profitability. The increased price pressure from the dumped imports coming from India and China forced the Union industry to reduce its sales prices with negative effects on its profitability which decreased substantially over the period considered. Finally, the rapidly decreasing returns on investments has a negative impact on the Union industry's ability to raise capital and investments.

(102) On the other hand, despite the declining trends, the Union industry still managed to maintain large sales volume and considerable market share. Likewise, despite the negative trend, profitability remained positive throughout the period considered. Therefore, the Commission concluded that the Union industry was subject to some negative trends over the period considered which resulted in an overall vulnerable situation in 2021 but did not suffer material injury within the meaning of Article 3(5) of the basic Regulation during the review investigation period.

(103) After disclosure, the GOI claimed that the increased prices of raw materials, following the military aggression by the Russian Federation against Ukraine, is one of the main factors for the reduced profitability of the Union industry.

(104) This claim is not supported by any evidence. The military aggression and the underlying geopolitical situation developed after the review investigation period, as of February 2022, and therefore had no influence on the situation of the Union industry over the period considered. Therefore, this claim was deemed as unfounded.

6. **LIKELIHOOD OF RECURRENCE OF INJURY**

(105) The Commission concluded in recital (102) that the Union industry did not suffer material injury during the review investigation period. Therefore, the Commission assessed, in accordance with Article 11(2) of the basic Regulation, whether there would be a likelihood of recurrence of injury originally caused by the dumped imports from India if the measures were allowed to lapse.

(106) In order to establish whether there is likelihood of recurrence of injury originally caused by the dumped imports from India, the Commission considered the following elements: (i) production volume and spare capacity in India, (ii) export volumes and prices from India to the other third country markets, (iii) existing measures in the other third countries, (iv) attractiveness of the Union market, and, (v) likely price levels of imports from India and their impact on the Union industry's situation, should the measures allowed to lapse.

6.1. **Production capacity and spare capacity**

(107) Based on the information provided in the request for expiry review ([25]), the total Indian production capacity of GES was estimated at around 160 000 tonnes, the production at around 121 000 tonnes and the spare capacity at around 39 000 tonnes in the review investigation period. The estimated spare capacity represented around 29 % of the Union consumption during the review investigation period.

(108) In addition, the information provided in the request ([26]) indicated that one Indian producer is expected to continue to increase its capacity by additional 20 000 tonnes by early 2023, increasing the spare capacity to 59 000 tonnes (43 % of the Union consumption during the review investigation period). Therefore, the capacity to significantly increase export quantities to the Union exists, in particular because there are no indications that third country markets or the domestic market could absorb any additional production.

6.2. **Export volumes and prices from India to the other third country markets**

(109) In the absence of cooperation and consequently of any other more reliable source for establishing the Indian exports of GES from India to the other third countries except the Union, the analysis was based on the GTA data of HS code 8545 11. This HS code covered around 82 % of the Indian exports to the Union (compared to Eurostat TARIC data), while almost no imports into the Union from India were made under HS code 8545 90. The GTA data for HS 8545 11 was therefore considered the most reliable source for third country market analysis.

([25]) Publicly available annual report of HEG in 2021 and GIL Corporate Presentation of 2021.
([26]) HEG, Annual Report 2021, p. 2, 11.

(110) Both GIL and HEG were, the two known producers of GES in India, found to be highly export oriented, exporting above 60 % of their production in 2021. Turkey, the United States, the Union and Egypt were its their main export markets. Overall, worldwide export volumes from India decreased by 14 % from 2018 to the RIP, while it increased by 16 % to the top three export markets (Turkey, United States and Egypt).

(111) The export prices analysis to India's top ten export countries during the RIP indicated that the export price to the Union at FOB Indian border level (2 727 EUR/tonne) was higher than to Egypt, South Korea, South Africa, Mexico and United Arab Emirates, while lower than to Turkey, United States, Saudi Arabia and Indonesia. However, given the export restrictions the Indian industry is facing, as explained below in section 6.3, and taking into account the current Indian spare capacity, it was considered that,, Indian exporters would have an incentive to shift significant quantities of exports from third countries to the more attractive Union market should measures be allowed to lapse.

6.3. **Existing measures in the other third countries**

(112) Following the US sanctions against Iran in August 2018, India lost its largest export destination for GES ([27]). Before the sanctions, Iran was among the top three export destinations of GES for India with export volumes of around 9 000 tonnes/year. In 2019, following the sanctions, export volumes from India to Iran decreased to nearly zero tonnes and remained so in the following years.

(113) In addition, the Eurasian Economic Commission extended the anti-dumping measures on imports of GES from India until September 2023 at the rate of 16,04 % for HEG and 32,83 % for GIL and other Indian manufactures. The Russian Federation, one of the members of the Eurasian Economic Union, was an important consumer of GES with its annual electric arc furnaces steelmaking of 24 million tonnes in 2019. India's GES exports to Russia decreased from around 840 tonnes in 2018 to zero tonnes in 2020 and 2021. Therefore, with the already available spare capacity this will restrict the potentially available export markets for the Indian producers, increasing even further the attractiveness of the Union market, should the measures allowed to lapse.

6.4. **Attractiveness of the Union market**

(114) 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 China. Despite a decrease between 2019 and 2020 due to the COVID-19 pandemic, India maintained and increased its exports to the Union, between 5 800 tonnes in 2018 and to 6 500 tonnes in the review investigation period, and market shares, between 4 % in 2018 and 5 % in the review investigation period. This is in the same range of the export volumes and market shares observed in the Union during the review investigation period of the two previous expiry reviews. As provided in the recital (51), the Indian export price to the Union was significantly undercutting the prices on the Union market during the review investigation period.

(115) In addition, according to the public statements of HEG, the producer considers the Union an important export market to increase their presence if the anti-dumping/subsidy measures are lifted ([28]).

6.5. **Likely price levels of imports from India and their impact on the Union industry's situation should the measures lapse**

(116) To assess the impact of future imports on the situation of the Union industry, the Commission considered that price levels of the Indian exports without the anti-dumping duties would be a reasonable indicator of future price levels to the Union market. On this basis, as set out in (51), the average undercutting margin for the product under review was found to be 33,2 %, therefore is considered the best indicator of the likely price levels in the absence of anti-dumping measures.

([27]) Non-US companies can no longer use US dollars for transactions with Iran. Moreover, if sanctioned for violating the US sanctions it may result for foreign companies not being permitted to open new US bank accounts and facing restrictions on loans, licences and Ex-Im credit.

([28]) Publicly available HEG, Conference Call Transcript 2021 provided by the applicants. https://hegltd.com/wp-content/uploads/2021/06/ConferenceCallTranscript08062021.pdf;

(117) Given its intense use and rapid replacement, users of the product under review tend to maintain substantial stocks as for commodities. Therefore, the product under review is price sensitive. A surge in imports at low prices would force the Union industry to further reduce their prices as it has already been done to compete with the imports from India and China, as explained above in section 5.4.3.1.

(118) In addition, as of April 2022 imports of certain GES from China are subject to the anti-dumping duty mentioned in recital (58). The scope of the product concerned by these duties covers, to a large extent, the scope of the product concerned by the present investigation, namely TARIC code 8545 11 00 10. It is therefore expected that the Chinese market share will decrease (from 20 %, in the review investigation period). This will further increase the attractiveness of the Union market for the dumped/subsidised imports from India. With the current or even likely increased spare capacity mentioned above in recital (108), and without the competition of the Chinese exporting producers, there is a strong likelihood that Indian exporting producers will significantly increase their imports of the product under review to the Union market should measures be allowed to lapse.

(119) Moreover, as explained above in recitals (81) to (83) the global situation of the Union industry is affected by the particular situation of GrafTech Iberica that is temporary. The LTAs came to an end (to a large extent the large majority of the LTAs in force already expired in 2022) Some of the existing LTAs sourced from GrafTech Iberica were extended for one or two years beyond 2022. However, the extended LTAs covered only a minor part of total sales sourced from Graftech Iberica. Even including the extended LTAs, the vast majority of the sales volume sourced from GrafTech Iberica will, at the end of 2023 no longer be covered by the current LTAs. This proportion will further increase at the end of 2024. Moreover, the Commission noted that the average sales prices for products sourced from GrafTech Iberica for the IP declined compared to 2020 (even including the sales under the LTAs), which indicated that sales sourced from GrafTech Iberica were impacted by the imports of graphite electrodes from India and China at low prices. Therefore, by the end of 2023 at the latest, Graftech Iberica will be in the same situation as the other producers and will be fully exposed to the impact of increasing volumes of dumped imports from India. This means that the economic situation of the Union industry would further deteriorate should measures be allowed to lapse.

(120) With a loss of profitability, the Union industry would not be able to carry out necessary investments. Ultimately, this would also lead to an employment loss and risk of production lines closures.

(121) After disclosure the GOI argued that there is no likelihood of recurrence of injury in the present case, primarily because the market share of the imports from India into the Union is merely 5 % and that any injury to the Union industry is on account of imports from China and not imports from India. Furthermore, the GOI argued that the low import prices from India is a reaction to the low-priced imports from China.

(122) When establishing whether there is a likelihood of recurrence of injury originally caused by the dumped imports from India, as explained in recital (106), the Commission considered several elements such as production volume and spare capacity in India, export volumes and prices from India to the other third country markets, existing measures in the other third countries, attractiveness of the Union market, and likely price levels of imports from India and their impact on the Union industry's situation, should the measures be allowed to lapse. In its comments GOI did not question the Commission's analysis or conclusion on any of these elements other than the one addressed in recital (125). Contrary to what the GOI suggested in its comments, the Commission did not base its finding with regards to the likelihood of recurrence of injury on the market share of imports of the GES from India to the Union observed during the review investigation period.

(123) The claim was therefore dismissed.

(124) Furthermore, the GOI claimed that the Union market is not a price attractive market for the Indian exporting producers as its export prices to the Union are lower that the export price of GES to other third countries.

(125) The Commission acknowledged, in recital (111) above that Indian export prices to some third countries are above the export prices to the Union. Nevertheless, prices to some other export markets, that are important to the Indian exporting producers, are lower than the prices to the Union. Moreover, as explained in sections 6.1 to 6.5 above, the Indian exports gained market share in the Union over the period considered. Therefore, for the reasons set out above, the Commission concluded that this claim was unfounded.

6.6. **Conclusion**

(126) In view of the above, the Commission concluded that the expiry of the measures would in all likelihood result in a significant increase of dumped imports from India at prices undercutting the Union industry prices, and therefore would aggravate the economic situation of the Union industry. It is highly likely that this would lead to a recurrence of material injury and as a consequence, the viability of the Union industry would be at serious risk.

7. **UNION INTEREST**

(127) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures would be against the interest of the Union as 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, distributors and users.

(128) All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.

7.1. **Interest of the Union industry**

(129) The Union industry is composed of five groups producing graphite electrodes in the Union. All groups cooperated fully in the investigation. As mentioned in recital (14), the Commission selected a sample of Union producers. The sample consisted of 3 Union producers that provided a reply to the questionnaire. The sample was considered representative for the Union industry.

(130) As set out above, the Union industry did not suffer material injury during the period considered but it is in a fragile situation, as confirmed by the negative trends of the injury indicators. Removing the anti-dumping duties would lead to a likely recurrence of material injury which would be translated in a loss of sales and production volume, as well as market share leading to a loss of profitability and employment.

(131) On the other hand, the Union industry has proven to be a viable industry. After the last expiry review it managed to improve its situation in the fair conditions on the Union market, invest and operating at a profit above the target profit established in the original investigation. The continuation of the measures would prevent the low priced imports from India to flood the Union market and therefore would allow the Union industry to maintain sustainable prices and profitability levels necessary for future investments.

(132) On this basis, the Commission thus concluded that the maintenance of the anti-dumping measures is in the interest of the Union industry.

7.2. **Interest of unrelated importers, traders, and users**

(133) The Commission contacted all known unrelated importers, traders, and users. No interested party came forward.

(134) Given the non-cooperation of any importers, traders or users, no information was available on the impact of the duties on these parties. The original investigation revealed, however, that any impact on other interested parties was not as such that measures had to be considered to be against the Union interest and likewise, the previous expiry review investigation established that the maintenance of the measures would not have a significant negative impact on the situation these parties.

(135) On the basis of the above, the Commission concluded that the maintenance of the anti-dumping measures in force would not have any significant adverse effects on importers, traders or users.

(136) After disclosure the GOI claimed that the maintenance of the anti-dumping measures in force is not in the interest of the Union. The GOI argued that the fact that sales sourced from GrafTech Iberica were made pursuant to LTAs resulted in an artificially and anti-competitive high selling price which is not indicative of the market price of GES in the Union. The consequences of these artificially high-priced sales would be faced by the downstream users in the Union.

(137) As explained above in recital (53) LTAs are a not uncommon freely entered into commercial practice in which both parties agrees on the terms as they assume they will be beneficial. Therefore, in the Commission's view the LTAs and the resulting prices cannot be deemed as anti-competitive. Moreover, as explained in recital (119) by the end of 2023 the majority of the LTAs signed by GrafTech Iberica will come to an end and GrafTech Iberica will be in the same situation as the other producers and will be fully exposed to the impact of increasing volumes of dumped imports from India.

(138) Therefore, this claim was dismissed.

(139) Furthermore, the GOI argued that the continuation of duties would not be in interest of the Union as the impact of such duties will be passed down to the customers.

(140) This argument was deemed as unfounded. The interest of the users was assessed, by the Commission, in recitals (134) and (135) and it was concluded that the maintenance of the anti-dumping measures in force would not have any significant adverse effects on the users.

7.3. **Conclusion on Union interest**

(141) On the basis of the above, the Commission concluded that there were no compelling reasons of the Union interest against the maintenance of the existing measures on imports of the product under review originating in India.

8. **ANTI-DUMPING MEASURES**

(142) Based on the conclusions reached by the Commission concerning the continuation of dumping from India, the likelihood of recurrence of injury caused by dumped imports from India, and the Union interest, the Commission finds that the anti-dumping measures on imports of certain graphite electrode systems originating in India should be maintained.

(143) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.

(144) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this regulation, the customs authorities of Member States must carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the lower rate of duty is justified, in compliance with customs law.

(145) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.

(146) The individual company anti-dumping duty rates specified in this Regulation are exclusively applicable to imports of the product under review originating in India and produced by the named legal entities. Imports of the product under review produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.

(147) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ([29]). The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a regulation about the change of name will be published in the *Official Journal of the European Union*.

(148) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to make representations subsequent to this disclosure. No comments were received.

(149) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([30]), when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.

(150) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036.

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 μ.Ω.m or less, and nipples used for such electrodes, whether imported together or separately, currently falling under CN codes ex 8545 11 00 and ex 8545 90 90 (TARIC codes 8545 11 00 10 and 8545 90 90 10) and originating in India.

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

Company	Anti-dumping duty	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

([29]) European Commission, Directorate-General for Trade, Directorate G, Rue de la Loi 170, 1040 Brussels, Belgium.

([30]) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of (product concerned) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in India. I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty applicable to all other companies shall apply.

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

Article 2

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

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

Done at Brussels, 6 June 2023.

For the Commission
The President
Ursula VON DER LEYEN