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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not member of the European Community [1] (the basic Regulation), and in particular Articles 15 and 19 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

I. Previous investigation and existing measures

(1) The Council, by Regulation (EC) No 1628/2004 [2], imposed a definitive countervailing duty on imports of graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,65 g/cm^3 or more and an electrical resistance of 6,0 μΩ.m or less, falling within CN code ex 8545 11 00 and nipples used for such electrodes, falling within CN code ex 8545 90 90 whether imported together or separately, originating in India. The rate of the duty ranges between 7,0 % and 15,7 % for individually named exporters with a residual duty rate of 15,7 % imposed on imports from other exporters.

(2) At the same time, by Regulation (EC) No 1629/2004 [3], the Council imposed a definitive anti-dumping duty on imports of the same product originating in India.

II. Initiation of a partial interim review

(3) Following the imposition of the definitive countervailing duty the Government of India (GOI) made submissions that the circumstances with regard to two subsidy schemes (the Duty Entitlement Passbook Scheme and the Income Tax Exemption under Section 80 HHC of the Income Tax Act) have changed and that these changes are of a lasting nature. Consequently, it was argued that the level of subsidisation is likely to have decreased and thus measures that have been established partly on these schemes should be revised.

(4) The Commission examined the evidence submitted by the GOI and considered it sufficient to justify the initiation of a review in accordance with the provisions of Article 19 of the basic anti-subsidy Regulation. After consultation of the Advisory Committee, the Commission initiated an *ex officio* partial interim review of the measures in force by a notice published in the *Official Journal of the European Union* [4].

(5) The purpose of this partial interim review investigation is to assess the need for the continuation, removal or amendment of the existing measures in respect of those companies having benefited from one or both the changed subsidy schemes including, for those companies, in respect of other schemes where sufficient evidence is provided in line with the relevant provisions of the notice of initiation.

III. Investigation period

(6) The investigation covered the period from 1 October 2006 to 30 September 2007 (the review investigation period or RIP).

IV. Parties concerned by the investigation

(7) The Commission officially informed the GOI, the two Indian exporting producers listed in the notice of initiation of the partial interim review, as well as the Community producers, of the initiation of the partial interim review investigation. Interested parties had the opportunity to make their views known in writing and to request a hearing. The written and oral comments submitted by the parties were considered and, where appropriate, taken into account.

[1] OJ L 288, 21.10.1997, p. 1.
[2] OJ L 295, 18.9.2004, p. 4.
[3] OJ L 295, 18.9.2004, p. 10.
[4] OJ C 230, 2.10.2007, p. 9.

(8) The Commission sent questionnaires to two cooperating exporting producers and to the GOI. Replies were received from both the cooperating exporting producers and the GOI.

(9) The Commission sought and verified all information it deemed necessary for the determination of subsidisation. Verification visits were carried out at the premises of the following interested parties:

1. Government of India

— Ministry of Commerce, New Delhi;

2. exporting producers in India

— Graphite India Limited (GIL), Kolkatta

— Hindustan Electro Graphite (HEG) Limited, Noida.

V. **Disclosure and comments on procedure**

(10) The GOI and the other interested parties were informed of the essential facts and considerations upon which it was intended to propose the amendment of the duty rate applicable to the two cooperating Indian producers and maintain the existing measures for all other companies which did not cooperate with this partial interim review. They were also given a reasonable time to comment. All submissions and comments were taken duly into consideration as set out below.

B. **PRODUCT CONCERNED**

(11) The product covered by this review is the same product as the one concerned by Council Regulation (EC) No 1628/2004, namely graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,65 g/cm^3 or more and an electrical resistance of 6,0 μΩ.m or less, falling within CN code ex 8545 11 00 and nipples used for such electrodes, falling within CN code ex 8545 90 90 whether imported together or separately, originating in India.

C. **SUBSIDIES**

I. **Introduction**

(12) On the basis of the information submitted by the GOI and the cooperating exporting producers and the replies to the Commission's questionnaire, the following schemes, which allegedly involve the granting of subsidies, were investigated:

(a) Advance Authorisation Scheme (formerly known as Advance Licence Scheme),

(b) Duty Entitlement Passbook Scheme,

(c) Export Promotion Capital Goods Scheme,

(d) Income Tax Exemption,

(e) Electricity Duty Exemption of the State of Madhya Pradesh.

(13) The schemes (a) to (c) specified above are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 (Foreign Trade Act). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in Export and Import Policy documents, which are issued by the Ministry of Commerce every five years and updated regularly. One Export and Import Policy document is relevant to the RIP of this case, namely the one covering the period 1 September 2004 to 31 March 2009 (EXIM-policy 04-09). In addition, the GOI also sets out the procedures governing the EXIM-policy 04-09 in a 'Handbook of Procedures — 1 September 2004 to 31 March 2009, Volume I' (HOP I 04-09). The Handbook of Procedure is also updated on a regular basis.

(14) The Income Tax Scheme specified above under (d) is based on the Income Tax Act of 1961, which is amended yearly by the Finance Act.

(15) The Electricity Duty Exemption scheme specified in recital 12(e) is based on Section 3-B of the Madhya Pradesh Electricity Duty Act of 1949.

(16) In accordance with Article 11(10) of the basic anti-subsidy Regulation, the Commission invited the GOI for additional consultations with respect to both changed and unchanged schemes with the aim of clarifying the factual situation as regards the alleged schemes and arriving at a mutually agreed solution. Following these consultations, and in the absence of a mutually agreed solution in relation to these schemes, the Commission included all these schemes in the investigation of subsidisation.

II. **Specific Schemes**

1. *Advance Authorisation Scheme (AAS)*

(a) Legal basis

(17) The detailed description of the scheme is contained in paragraphs 4.1.1 to 4.1.14 of the EXIM-policy 04-09 and Chapters 4.1 to 4.30 of the HOP I 04-09. This scheme was called Advance Licence Scheme during the previous review investigation that led to the imposition by Regulation (EC) No 1628/2004 of the definitive countervailing duty currently in force.

(b) Eligibility

(18) The AAS consists of six sub-schemes, as described below in more detail. Those sub-schemes, *inter alia*, differ in the scope of eligibility. Manufacturer-exporters and merchant-exporters 'tied to' supporting manufacturers are eligible for the AAS physical exports and for the AAS for annual requirement. Manufacturer-exporters supplying the ultimate exporter are eligible for AAS for intermediate supplies. Main contractors which supply to the 'deemed export' categories mentioned in paragraph 8.2 of the EXIM-policy 04-09, such as suppliers of an export oriented unit (EOU), are eligible for AAS deemed export. Eventually, intermediate suppliers to manufacturer-exporters are eligible for 'deemed export' benefits under the sub-schemes Advance Release Order (ARO) and back to back inland letter of credit.

(c) Practical implementation

(19) Advance authorisations can be issued for:

(i) Physical exports: This is the main sub-scheme. It allows for duty-free import of input materials for the production of a specific resultant export product. 'Physical' in this context means that the export product has to leave Indian territory. Import allowance and export obligation including the type of export product are specified in the licence.

(ii) Annual requirement: Such an authorisation is not linked to a specific export product, but to a wider product group (e.g. chemical and allied products). The licence holder can — up to a certain value threshold set by its past export performance — import duty free any input to be used in manufacturing any of the items falling under such a product group. It can choose to export any resultant product falling under the product group using such duty-exempt material.

(iii) Intermediate supplies: This sub-scheme covers cases where two manufacturers intend to produce a single export product and divide the production process. The manufacturer-exporter produces the intermediate product. It can import duty free input materials and can obtain for this purpose an AAS for intermediate supplies. The ultimate exporter finalises the production and is obliged to export the finished product.

(iv) Deemed exports: This sub-scheme allows a main contractor to import inputs free of duty which are required in manufacturing goods to be sold as 'deemed exports' to the categories of customers mentioned in paragraph 8.2(b) to (f), (g), (i) and (j) of the EXIM policy 04-09. According to the GOI, deemed exports refer to those transactions in which the goods supplied do not leave the country. A number of categories of supply is regarded as deemed exports provided the goods are manufactured in India, e.g. supply of goods to an EOU or to a company situated in a special economic zone (SEZ).

(v) ARO: The AAS holder intending to source the inputs from indigenous sources, in lieu of direct import, has the option to source them against AROs. In such cases the Advance Authorisations are validated as AROs and are endorsed to the indigenous supplier upon delivery of the items specified therein. The endorsement of the ARO entitles the indigenous supplier to the benefits of deemed exports as set out in paragraph 8.3 of the EXIM-policy 04-09 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty). The ARO mechanism refunds taxes and duties to the supplier instead of refunding the same to the ultimate exporter in the form of drawback/refund of duties. The refund of taxes/duties is available both for indigenous inputs as well as imported inputs.

(vi) Back to back inland letter of credit: This sub-scheme again covers indigenous supplies to an Advance Authorisation holder. The holder of an Advance Authorisation can approach a bank for opening an inland letter of credit in favour of an indigenous supplier. The authorisation will be invalidated by the bank for direct import, only in respect of the value and volume of items being sourced indigenously instead of importation. The indigenous supplier will be entitled to deemed export benefits as set out in paragraph 8.3 of the EXIM-policy 04-09 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty).

(20) It was established that during the RIP one of the cooperating exporters obtained concessions under the first sub-scheme, i.e. AAS physical exports. It is therefore not necessary to establish the countervailability of the remaining sub-schemes.

(21) Following the imposition by Regulation (EC) No 1628/2004 of the definitive countervailing duty currently in force, the GOI has modified the verification system applicable to AAS. In concrete terms, for verification purposes by the Indian authorities, an Advance Authorisation holder is legally obliged to maintain 'a true and proper account of consumption and utilisation of duty-free imported/domestically procured goods' in a specified format (Chapters 4.26, 4.30 and Appendix 23 HOP I 04-09), i.e. an actual consumption register. This register has to be verified by an external chartered accountant/cost and works accountant who issues a certificate stating that the prescribed registers and relevant records have been examined and the information furnished under Appendix 23 is true and correct in all respects. Nevertheless, the aforesaid provisions apply only to Advance Authorisations issued on or after 13 May 2005. For all Advance Authorisations or Advance Licences issued before that date, holders are requested to follow the previously applicable verification provisions, i.e. to keep a true and proper account of licence-wise consumption and utilisation of imported goods in the specified format of Appendix 18 (Chapter 4.30 and Appendix 18 HOP I 02-07).

(22) With regard to the sub-scheme used during the RIP by the cooperating exporting producer, i.e. physical exports, both the import allowance and the export obligation are fixed in volume and value by the GOI and are documented on the Authorisation. In addition, at the time of import and of export, the corresponding transactions are to be documented by Government officials on the Authorisation. The volume of imports allowed under this scheme is determined by the GOI on the basis of standard input-output norms (SIONs). SIONs exist for most products, including the product concerned, and are published in the HOP II 04-09.

(23) Imported input materials are not transferable and have to be used to produce the resulting export product. The export obligation must be fulfilled within a prescribed time frame after issuance of the licence (24 months with two possible extensions of six months each).

(24) The review investigation established that the Advanced Licences used for importing raw materials during the RIP had been issued before 13 May 2005. Therefore, the new verification requirements stipulated by the Indian authorities in HOP I 04-09, as described in recital 21, had not yet been tested in practice. Furthermore, the company could not show that the necessary actual consumption and stock registers had been kept in the format required by Chapter 4.30 and Appendix 18 of HOP I 02-07, as applicable to Advanced Licences issued before 13 May 2005. Account taken of this situation, it is considered that the investigated exporter was not able to demonstrate that the relevant EXIM provisions at the time were met.

(d) Disclosure comments

(25) The cooperating exporter who had made use of AAS during the RIP argued that it had voluntarily submitted the advance licenses used, although they were issued before 13 May 2005, to verification by a certified accountant according to the requisites of the HOP I 04-09, and that this demonstrates that a proper verification system now exists under the new provisions of the HOP.

(26) A certificate in the form of Appendix 23 of the HOP, signed by a certified accountant and dated 1 February 2008, was indeed submitted to the Commission services during the verification at the company's premises. However, given that the advance licences were dated as of 2004, and the new HOP provisions did not apply to them, it must be concluded that this was a voluntary exercise by the company, which does not demonstrate that an effective verification system was actually implemented by the GOI. Furthermore, it was not shown that the excess duty remission, as calculated by the certified accountant, was actually repaid to the government.

(e) Conclusion

(27) The exemption from import duties is a subsidy within the meaning of Article 2(1)(a)(ii) and Article 2(2) of the basic Regulation, i.e. a financial contribution of the GOI which conferred a benefit upon the investigated exporters.

(28) In addition, AAS for physical exports is clearly contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 3(4)(a) of the basic Regulation. Without an export commitment a company cannot obtain benefits under these schemes.

(29) The sub-scheme used in the present case cannot be considered as permissible duty drawback system or substitution drawback system within the meaning of Article 2(1)(a)(ii) of the basic Regulation. It does not conform to the strict rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution

drawback) of the basic Regulation. The GOI did not effectively apply any verification system or procedure to confirm whether and in what amounts inputs were consumed in the production of the exported product (Annex II(II)(4) of the basic Regulation and, in the case of substitution drawback schemes, Annex III(II)(2) of the basic Regulation). The SIONs themselves cannot be considered a verification system of actual consumption, since they do not enable the GOI to verify with sufficient precision what amounts of inputs were consumed in the export production. Furthermore, an effective control done by the GOI based on a correctly kept actual consumption register did not take place during the RIP. In addition, the GOI did not carry out a further examination based on actual inputs involved, although this would normally need to be carried out in the absence of an effectively applied verification system (Annex II(II)(5) and Annex III(II)(3) to the basic Regulation).

(30) This sub-scheme is therefore countervailable.

(f) Calculation of the subsidy amount

(31) In the absence of permitted duty drawback systems or substitution drawback systems, the countervailable benefit is the remission of total import duties normally due upon importation of inputs. In this respect, it is noted that the basic Regulation does not only provide for the countervailing of an 'excess' remission of duties. According to Article 2(1)(a)(ii) and Annex I(i) of the basic Regulation only an excess remission of duties can be countervailed, provided the conditions of Annexes II and III of the basic Regulation are met. However, these conditions were not fulfilled in the present case. Thus, if an absence of an adequate monitoring process is established, the above exception for drawback schemes is not applicable and the normal rule of the countervailing of the amount of (revenue forgone) unpaid duties, rather than any purported excess remission, applies. As set out in Annexes II(II) and III(II) of the basic Regulation the burden is not upon the investigating authority to calculate such excess remission. To the contrary, according to Article 2(1)(a)(ii) of the basic Regulation it only has to establish sufficient evidence to refute the appropriateness of an alleged verification system.

(32) The subsidy amount for the exporter which used the AAS was calculated on the basis of import duties forgone (basic customs duty and special additional customs duty) on the material imported under the subscheme used for the product concerned during the RIP (numerator). In accordance with Article 7(1)(a) of the basic Regulation, fees necessarily incurred to obtain the subsidy were deducted from the subsidy amount where justified claims were made. In accordance with Article 7(2) of the basic Regulation, this subsidy amount has been allocated over the export turnover generated by the product concerned during the RIP as appropriate denominator, because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(33) The subsidy rate established in respect of this scheme during the RIP for the cooperating producer concerned amounts to 0,3 %.

2. *Duty Entitlement Passbook Scheme (DEPBS)*

(a) Legal basis

(34) The detailed description of the DEPBS is contained in paragraph 4.3 of the EXIM-policy 04-09 and in Chapter 4 of the HOP I 04-09.

(b) Eligibility

(35) Any manufacturer-exporter or merchant-exporter is eligible for this scheme.

(c) Practical implementation of the DEPBS

(36) An eligible exporter can apply for DEPBS credits which are calculated as a percentage of the value of products exported under this scheme. Such DEPBS rates have been established by the Indian authorities for most products, including the product concerned. They are determined on the basis of SIONs, taking into account a presumed import content of inputs in the export product and the customs duty incidence on such presumed imports, regardless of whether import duties have actually been paid or not.

(37) To be eligible for benefits under this scheme, a company must export. At the point in time of the export transaction, a declaration must be made by the exporter to the authorities in India indicating that the export is taking place under the DEPBS. In order for the goods to be exported, the Indian customs authorities issue, during the dispatch procedure, an export shipping bill. This document shows, *inter alia*, the amount of DEPBS credit which is to be granted for that export transaction. At this point in time, the exporter knows the benefit it will receive. Once the customs authorities issue an export shipping bill, the GOI has no discretion over the granting of a DEPBS credit. The relevant DEPBS rate to calculate the benefit is that which applied at the time the export declaration is made.

(38) DEPBS credits are freely transferable and valid for a period of 12 months from the date of issue. They can be used for payment of customs duties on subsequent imports of any goods unrestrictedly importable, except capital goods. Goods imported against such credits can be sold on the domestic market (subject to sales tax) or used otherwise.

(39) Applications for DEPBS credits are electronically filed and can cover an unlimited amount of export transactions. *De facto* no strict deadlines exist to apply for DEPBS credits. The electronic system used to manage DEPBS does not automatically exclude export transactions outside the deadline submission periods mentioned in chapter 4.47 HOP I 04-09. Furthermore, as clearly provided in Chapter 9.3 HOP I 04-09 applications received after the expiry of submission deadlines can always be considered with the imposition of a penalty fee (i.e. 10 % on the entitlement).

(d) Disclosure comments

(40) One cooperating exporter argued that all the DEPBS credits obtained by the company had been used to import materials used in the production of the product concerned, despite being in principle allowed to use them for other purposes, as stated above. This exporter claimed that therefore their actual use of DEPBS was, in that respect, in line with a normal duty drawback system, and that therefore only the excess remission, if any should be countervailed. However, according to Article 2(1)(a)(ii) and Annex I(i) of the basic Regulation only if the conditions of Annexes II and III of the basic Regulation are met can an excess remission of duties can be countervailed. These conditions, as explained in recital 43 were not fulfilled in the present case. Thus, the normal rule of the countervailing of the amount of unpaid duties (revenue forgone), rather than any purported excess remission, applies.

(e) Conclusions on the DEPBS

(41) The DEPBS provides subsidies within the meaning of Article 2(1)(a)(ii) and Article 2(2) of the basic Regulation. A DEPBS credit is a financial contribution by the GOI, since the credit will eventually be used to offset import duties, thus decreasing the GOI's duty revenue which would be otherwise due. In addition, the DEPBS credit confers a benefit upon the exporter, because it improves its liquidity.

(42) The DEPBS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 3(4)(a) of the basic Regulation.

(43) This scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 2(1)(a)(ii) of the basic Regulation. It does not conform to the strict rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. An exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. Moreover, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of item (i) of Annex I and Annexes II and III of the basic Regulation. Lastly, an exporter is eligible for the DEPBS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from the DEPBS.

(f) Calculation of the subsidy amount

(44) In accordance with Articles 2(2) and 5 of the basic Regulation, the amount of countervailable subsidies was calculated in terms of the benefit conferred on the recipient, which is found to exist during the RIP. In this regard, it was considered that the benefit is conferred on the recipient at the point in time when an export transaction is made under this scheme. At this moment, the GOI is liable to forgo the customs duties, which constitutes a financial contribution within the meaning of Article 2(1)(a)(ii) of the basic Regulation. Once the customs authorities issue an export shipping bill which shows, inter alia, the amount of DEPBS credit which is to be granted for that export transaction, the GOI has no discretion as to whether or not to grant the subsidy and it has no discretion as to the amount of the subsidy. Furthermore, the cooperating exporting producers booked the DEPBS credits on an accrual basis as income at the stage of export transaction.

(45) Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted from the credits so established to arrive at the subsidy amount as numerator, pursuant to Article 7(1)(a) of the basic Regulation. In accordance with Article 7(2) of the basic Regulation this subsidy amount has been allocated over the total export turnover during the review investigation period as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(46) The subsidy rates established in respect of this scheme during the RIP for the cooperating exporting producers amount to 6,2 % and 5,7 %.

3. *Export Promotion Capital Goods Scheme (EPCGS)*

(a) Legal basis

(47) The detailed description of the EPCGS is contained in Chapter 5 of the EXIM-policy 04-09 and in Chapter 5 of the HOP I 04-09.

(b) Eligibility

(48) Manufacturer-exporters, merchant-exporters 'tied to' supporting manufacturers and service providers are eligible for this scheme.

(c) Practical implementation

(49) Under the condition of an export obligation, a company is allowed to import capital goods (new and — since April 2003 — second-hand capital goods up to 10 years old) at a reduced rate of duty. To this end, the GOI issues, upon application and payment of a fee, an EPCGS licence. Until 31 March 2000, an effective duty rate of 11 % (including a 10 % surcharge) and, in case of high value imports, a zero duty rate was applicable. Since April 2000, the scheme provides for a reduced import duty rate of 5 % applicable to all capital goods imported under the scheme. In order to meet the export obligation, the imported capital goods must be used to produce a certain amount of export goods during a certain period.

(50) The EPCGS licence holder can also source the capital goods indigenously. In such case, the indigenous manufacturer of capital goods may avail of the benefit for duty-free import of components required to manufacture such capital goods. Alternatively, the indigenous manufacturer can claim the benefit of deemed export in respect of supply of capital goods to an EPCGS licence holder.

(d) Conclusion on EPCG Scheme

(51) The EPCGS provides subsidies within the meaning of Article 2(1)(a)(ii) and Article 2(2) of the basic Regulation. The duty reduction constitutes a financial contribution by the GOI, since this concession decreases the GOI's duty revenue, which would be otherwise due. In addition, the duty reduction confers a benefit upon the exporters, because the duties saved upon importation improve its liquidity.

(52) Furthermore, the EPCGS is contingent in law upon export performance, since such licences cannot be obtained without a commitment to export. Therefore, it is deemed to be specific and countervailable under Article 3(4)(a) of the basic Regulation.

(53) Eventually, this scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 2(1)(a)(ii) of the basic Regulation. Capital goods are not covered by the scope of such permissible systems, as set out in Annex I, item (i), of the basic Regulation, because they are not consumed in the production of the exported products.

(e) Calculation of the subsidy amount

(54) The subsidy amount was calculated, in accordance with Article 7(3) of the basic Regulation, on the basis of the unpaid customs duty on imported capital goods spread across a period which reflects the normal depreciation period of such capital goods. In accordance with the established practice, the amount so calculated, which is attributable to the RIP, has been adjusted by adding interest during this period in order to reflect the full value of the benefit over time. The commercial long-term interest rate during the review investigation period in India was considered appropriate for this purpose. Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted in accordance with Article 7(1)(a) of the basic Regulation from this sum to arrive at the subsidy amount as numerator. In accordance with Article 7(2) and 7(3) of the basic Regulation, this subsidy amount has been allocated over the export turnover during the RIP as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(55) The subsidy rates established in respect of this scheme during the RIP for the cooperating producers amount to 0,7 % and 0,3 %.

(f) Disclosure comments

(56) One cooperating exporter pointed out a mistake in the methodology initially used for calculating the benefits of EPCG, in particular with regard to the amount of interest applied. This mistake, which affected both cooperating exporters, was corrected.

4. *Income Tax Exemption Scheme (ITES)*

Section 80HHC of the Income Tax Act 1961 (ITA)

(57) Under this scheme exporters could avail the benefit of a partial income tax exemption on profits derived from export sales. The legal basis for this exemption was set by Section 80HHC of the ITA.

(58) This provision was abolished for the assessment year 2005-06 (i.e. for the financial year from 1 April 2004 to 31 March 2005) onwards and thus 80HHC of the ITA does not confer any benefits after 31 March 2004. The cooperating exporting producers did not avail of any benefits under this scheme during the RIP. Consequently, since the scheme has been withdrawn, it shall therefore not be countervailed, in accordance with Article 15(1) of the Regulation.

Section 80 I A of the ITA

(a) Legal basis

(59) The scheme is based on Section 80 I A of the ITA. This provision was brought into the ITA through the Finance Act of 2001.

(b) Eligibility

(60) Section 80 I A of the ITA applies to companies engaged in the setting up of infrastructure facilities, including the generation and distribution of power, in any part of India.

(c) Practical implementation

(61) According to the provisions of the ITA Section 80 I A, an amount corresponding to the profit generated by the power generating activities is exempted from profit tax, for 10 consecutive years within the first 15 years of operation of the generating unit. The unit in question must be new and have started operation on or after the 1 April 2003 and up to 31 March 2010.

(62) The calculation of the income tax deduction forms part of the company's annual tax return, and is audited together with the company's profit and loss and other financial statement. It must comply with the rules stipulated in the ITA, namely that the accounting valuation of the electricity generated must reflect its market value. It is the role of the Income Tax authorities to verify if the calculation of the income tax deduction is according to ITA rules and the companies' audited accounts. The investigation has shown evidence that the authorities have in practice verified the calculation and made adjustments to the calculations when justified.

(63) The investigation has shown that both investigated exporting producers have set up captive power plants as part of their graphite production units. They have therefore requested the corresponding deduction in income tax, according to the provisions of the ITA.

(d) Conclusion on ITES under Section 80 I A of the ITA

(64) The exemption from income tax is a subsidy within the meaning of Article 2(1)(a)(ii) and Article 2(2) of the basic Regulation, i.e. a financial contribution of the GOI which conferred a benefit upon the investigated exporters.

(65) However, the investigation has shown that access to the ITES under Section 80 I A of the ITA is not limited to certain enterprises in the sense of Article 3(2)(a) of the basic Regulation. This scheme appears to be available to all companies on the basis of objective criteria. Neither has any other evidence been found in this case that the scheme is specific.

(66) Furthermore, it is tied to a product (electricity) other than the product concerned and benefits under the scheme therefore occur on the basis of an activity which is not the production of sales of the product concerned. In these circumstances, it is considered that any benefits accruing to the exporters concerned under this scheme should not be countervailed.

5. *Electricity Duty Exemption (EDE)*

(67) Under the Industrial Promotion Policy of 2004, the State of Madhya Pradesh (MP) offers exemption of electricity duty to industrial companies investing in electricity generation for captive consumption.

(a) Legal basis

(68) The description of the electricity duty exemption scheme applied by the MP Government is set out in Section 3-B of the Electricity Duty Act of 1949.

(b) Eligibility

(69) Any industries located in the jurisdiction of the MP Government, investing in new captive power plants.

(c) Practical implementation

(70) According to a 29 September 2004 notification of the MP Government, companies or persons investing in new captive power plants of more than 10 KW capacity can obtain from the MP Electrical Inspectorate a certificate of exemption from electricity duty. The exemption is only given for electricity generated for self-consumption, and only if the new captive power plant is not a replacement of an older one. The exemption is granted for a period of five years.

(71) A notification from the MP Government dated of 5 April 2005 exempted the new power plant established by one of the cooperating exporting producers in this investigation from electricity duty for a period of 10 years.

(d) Disclosure comments

(72) The cooperating exporter who was granted an exemption from electricity duty claimed that the EDE scheme is not specific, and is applied without discrimination to all eligible companies. According to that exporter, the initial policy of granting an exemption for five years was subsequently revised by the Government of Madhya Pradesh to confer an exemption for ten years. However, no published notification of such a policy change was submitted either by the cooperating exporter or by the GOI in their replies.

(e) Conclusion on EDE Scheme

(73) This scheme is a subsidy within the meaning of Articles 2(1)(a)(ii) and 2(2) of the basic Regulation. It constitutes a financial contribution by the MP Government, since this incentive decreases the state revenues which would be otherwise due. In addition, it confers a benefit upon the recipient company.

(74) Although the Industrial Promotion Policy of 2004 and the 29 September 2004 notification of the MP Government foresee a period of exemption of five years, the exporting producer in question was granted an exemption of ten years. Therefore, this incentive does not appear to be granted according to criteria and conditions clearly set out by law, regulation, or other official document.

(f) Calculation of the subsidy amount

(75) The benefit to the exporting producer has been calculated on the basis of the amount of electricity duty normally due during the review investigation period but which remained unpaid under this scheme. In accordance with Article 7(2) of the basic Regulation, the amount of subsidy (numerator) has then been allocated over total sales during the review investigation period (denominator), because it relates to all sales, domestic and export, and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(76) A subsidy margin of 0,7 % was thus established for one company which received benefits under the EDE.

III. **Amount of countervailable subsidies**

(77) It is recalled that in Regulation (EC) No 1628/2004 the amount of countervailable subsidies, expressed *ad valorem*, was found to be 15,7 % and 7 % respectively for the two exporting producers cooperating with the present partial interim review.

(78) During the present partial interim review the amounts of countervailing subsidies, expressed *ad valorem*, were found to be as listed hereunder:

Company	ALS	DEPB	EPCG	EDE	Total
Graphite India Ltd	nil	6,2 %	0,1 %	nil	6,3 %
HEG Ltd	0,3 %	5,7 %	0,5 %	0,7 %	7,2 %

IV. **Countervailing measures**

(79) In line with the provisions of Article 19 of the basic anti-subsidy Regulation and the grounds of this partial interim review stated under point 3 of the notice of initiation, it is established that the level of subsidisation with regard to the cooperating producers has changed and, therefore, the rate of countervailing duty imposed by Regulation (EC) No 1628/2004 has to be amended accordingly.

(80) The countervailing duty under review resulted from parallel anti-subsidy and anti-dumping investigations (the original investigations). According to Article 24(1) of the basic Regulation and Article 14(1) of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Communities [1] the anti-dumping duties imposed by Regulation (EC) No 1629/2004, were adjusted to the extent that the subsidy amounts and the dumping margins arose from the same situation.

(81) The subsidy schemes investigated and found to be countervailable in the current review proceeding, with the exception of EDE, constituted export subsidies within the meaning of Article 3(4)(a) of the basic Regulation.

[1] OJ L 56, 6.3.1996, p. 1.

(82) It is therefore appropriate that the anti-dumping duty be readjusted to reflect the new levels of subsidisation found in the present review, as far as export subsidies are concerned. Moreover, in accordance with Article 15(1) of the basic Regulation, the level of countervailing duties should not be higher than the injury elimination margin found in the original investigation. As in the original investigation, given that the level of cooperation was high (100 %) the residual subsidy margin was set at the level of the company with the highest individual margin.

(83) Accordingly, the levels of countervailing and anti-dumping duties should be adjusted as follows:

Company	Subsidy margin	Dumping margin	Injury elimination margin	Countervailing duty	Anti-dumping duty
Graphite India Ltd	6,3 %	31,1 %	15,7 %	6,3 %	9,4 %
HEG Ltd	7,2 %	24,4 %	7,0 %	7,0 %	0 %
All others	7,2 %	31,1 %	15,7 %	7,2 %	8,5 %

(84) One cooperating exporter claimed that since the present partial interim review was limited to the level of subsidisation, the anti-dumping duties should not be modified.

(85) In this respect, it is recalled that the notice of initiation of the present review stated that 'for those companies which are subject to both anti-dumping and countervailing measures, the anti-dumping measure may be adjusted accordingly should there be a change in the countervailing measure.' The change in the anti-dumping duties is not the result of any new findings concerning the level of dumping, but an automatic consequence of the fact that the original dumping margins had been adjusted to reflect the level of export subsidies found, and that the latter have now been revised.

(86) The individual company countervailing duty rates specified in this Regulation reflect the situation found during the partial interim review. Thus, they are solely applicable to imports of the product concerned produced by these companies. Imports of the product concerned manufactured by any other company not specifically mentioned in the operative part of this Regulation, 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'.

(87) Any claim requesting the application of these individual countervailing 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, and after consultation of the Advisory Committee, the Commission is hereby empowered to amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(2) of Regulation (EC) No 1628/2004 shall be replaced by the following:

'The rate of the definitive countervailing duty applicable to the net free-at-Community-frontier price, before duty, for products produced by the companies listed below shall be as follows:

Company	Definitive duty	TARIC additional code
Graphite India Limited (GIL), 31 Chowringhee Road, Kolkatta — 700016, West Bengal	6,3 %	A530
Hindustan Electro Graphite (HEG) Limited, Bhilwara Towers, A-12, Sector- 1, Noida — 201301, Uttar Pradesh	7,0 %	A531
All others	7,2 %	A999'

[1] European Commission, Directorate-General for Trade, Directorate H, Office N-105 4/92, 1049 Brussels, Belgium.

Article 2

Article 1(2) of Regulation (EC) No 1629/2004 shall be replaced by the following:

'The rate of the definitive anti-dumping duty applicable to the net free-at-Community-frontier price, before duty, for products produced by the companies listed below shall be as follows:

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

Article 3

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, 18 December 2008.

For the Council
The President
M. BARNIER