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Proposal for a

COUNCIL REGULATION

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 Council Regulation (EC) No 1225/2009

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ('the basic Regulation'), in the expiry review proceeding concerning the anti-dumping duty in force in respect of imports of certain graphite electrode systems originating in India.

- **General context**

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

- **Existing provisions in the area of the proposal**

A definitive anti-dumping duty on imports of certain graphite electrodes falling within CN code ex 8545 11 00 and nipples used for such electrodes falling within CN code ex 8545 90 90 originating in India was imposed by Council Regulation (EC) No 1629/2004 (OJ L 295, 18.9.2004, p. 10), as amended by Council Regulation (EC) No 1354/2008 (OJ L 350, 30.12.2008, p. 24).

- **Consistency with other policies and objectives of the Union**

Not applicable.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Interested parties concerned by the proceeding have had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not provide for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

On 17 September 2009, the Commission initiated upon substantiated request of three Union producers an expiry review of the anti-dumping duty in force in respect of imports of certain graphite electrodes originating in India.

The review investigation found continuing dumping of the product concerned, which, should anti-dumping measures be lifted, would result in the recurrence of injury to the Union industry. It was further established that the lapse of measures would not be in the interest of the Union.

Therefore, it is suggested that the Council adopts the attached proposal for a Regulation in order to prolong the existing measures, which should be published in the *Official Journal of the European Union* by 16 December 2010 at the latest.

- **Legal basis**

Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the European Union. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons:

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Union, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

- **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate for the following reason:

The basic Regulation does not provide for alternative options.

4) BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community¹ ('the basic Regulation'), and in particular Article 11(2) thereof,

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community², and in particular Article 24(1) thereof,

Having regard to the proposal submitted by the European Commission ('Commission') after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Measures in force

- (1) The Council, following an anti-dumping investigation ('the original investigation'), by Regulation (EC) No 1629/2004³, imposed, a definitive anti-dumping duty on imports of certain graphite electrodes currently falling within CN code ex 8545 11 00 and nipples used for such electrodes currently falling within CN code ex 8545 90 90 originating in India ('the definitive anti-dumping measures'). The measures took the form of an *ad valorem* duty of 0 %.
- (2) The Council, following an anti-subsidy investigation, by Regulation (EC) No 1628/2004⁴, imposed, a definitive countervailing duty on imports of certain graphite electrodes currently falling within CN code ex 8545 11 00 and nipples used for such electrodes currently falling within CN code ex 8545 90 90 originating in India ('the

¹ OJ L 343, 22.12.2009, p. 51.

² OJ L 188, 18.7.2009, p. 93.

³ OJ L 295, 18.9.2004, p. 10.

⁴ OJ L 295, 18.9.2004, p. 4.

definitive countervailing measures'). The measures took the form of an *ad valorem* duty of 15,7 %, with the exception of one company for which the duty rate was 7 %.

- (3) Following an *ex officio* partial interim review of the countervailing measures, the Council, by Regulation (EC) No 1354/2008⁵, amended Council Regulation (EC) No 1628/2004 and Council Regulation (EC) No 1629/2004. The definitive countervailing duties were amended to 6,3 % and 7,0 % for imports from individually named exporters, with a residual duty rate of 7,2 %. The definitive anti-dumping duties were amended to 9,4 % and 0 % for imports from individually named exporters, with a residual duty rate of 8,5 %.

2. Request for an expiry review

- (4) Following the publication of a notice of impending expiry⁶ of the definitive anti-dumping measures in force, the Commission received on 18 June 2009 a request for the initiation of an expiry review of these measures pursuant to Article 11(2) of the basic Regulation. The request was lodged by three Union producers: Graftech International, SGL Carbon GmbH, and Tokai ERFTCARBON GmbH ('the applicants') representing a major proportion, in this case more than 90 %, of the total Union production of certain graphite electrode systems.
- (5) The request was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Union industry.

3. Initiation of an expiry review

- (6) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 17 September 2009, by a notice published in the *Official Journal of the European Union*⁷ ('the Notice of initiation'), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

4. Parallel investigations

- (7) By a notice of initiation published in the *Official Journal of the European Union* on 17 September 2009⁸, the Commission also announced the initiation of an expiry review investigation pursuant to Article 18 of Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Union⁹ ('the basic anti-subsidy Regulation') of the definitive countervailing measures.

5. Investigation

5.1. Investigation period

⁵ OJ L 350, 30.12.2008, p. 24.

⁶ OJ C 34, 11.2.2009, p. 11.

⁷ OJ C 224, 17.9.2009, p. 20.

⁸ OJ C 224, 17.9.2009, p. 24.

⁹ OJ L 188, 18.7.2009, p. 93.

- (8) The investigation of continuation or recurrence of dumping covered the period from 1 July 2008 to 30 June 2009 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2006 to the end of the review investigation period ('the period considered').

5.2. *Parties concerned by the investigation*

- (9) The Commission officially advised the applicants, other known Union producers, exporting producers, importers, users known to be concerned, and the representatives of the exporting country of the initiation of the expiry review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the Notice of initiation.
- (10) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (11) In view of the apparent large number of unrelated importers, it was considered appropriate, in accordance with Article 17 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the above parties were requested, pursuant to Article 17 of the basic Regulation, to make themselves known within 15 days of the initiation of the reviews and to provide the Commission with the information requested in the Notice of initiation. However, no unrelated importers came forward to cooperate. Sampling was therefore not necessary.
- (12) The Commission sent questionnaires to all parties known to be concerned and to those who made themselves known within the deadlines set in the Notice of initiation. Replies were received from three groups of Union producers (i.e., the applicants), one exporting producer and 17 users. None of the importers came forward during the sampling exercise and no other importers supplied the Commission with any information or made themselves known in the course of the investigation.
- (13) Only one of the two known exporting producers in India, namely HEG Limited ('HEG') fully cooperated in the review by submitting a response to the questionnaire. It should be noted in this regard that in the original investigation the full, official name of that company was Hindustan Electro Graphite Limited. Subsequently the company has changed its name into HEG Limited. The second exporting producer cooperating in the original investigation, namely Graphite India Limited ('GIL') decided not to submit a questionnaire reply in the present review.
- (14) The Commission sought and verified all the information it deemed necessary for a determination of the likelihood of continuation or recurrence of dumping and resulting injury and of the Union interest. Verification visits were carried out at the premises of the following interested parties:

(a) *Union producers*

- SGL Carbon GmbH, Wiesbaden and Meitingen, Germany;
- Graftech Switzerland SA, Bussigny, Switzerland;

- Graftech Iberica S.L., Ororbia, Spain;
- Tokai ERFTCARBON GmbH, Grevenbroich, Germany.

(b) *Exporting producer in India*

- HEG Limited, Bhopal.

B. PRODUCT CONCERNED AND LIKE PRODUCT

- (15) The product concerned by this review is the same as the one in the original investigation, namely 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, currently falling within CN code ex 8545 11 00 and nipples used for such electrodes, currently falling within CN code ex 8545 90 90 whether imported together or separately originating in India ('the product concerned').
- (16) The investigation confirmed that, as in the original investigation, the product concerned and the products manufactured and sold by the exporting producer on the domestic market in India, as well as those manufactured and sold in the EU by the Union producers, have the same basic physical and technical characteristics as well as the same uses and are, therefore, considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

- (17) 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.

1. General

- (18) Cooperation was obtained from one exporting producer in India. The second known exporting producer did not cooperate in the investigation.
- (19) The comparison of the export volume of the cooperating exporting producer with the total volume of exports to the Union from India showed that the cooperating exporting producer accounted for the vast majority of all Union imports from India during the RIP. The level of cooperation was therefore considered to be high.

2. Dumping of imports during the RIP

2.1. Normal value

- (20) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the cooperating Indian exporting producer's domestic sales of the like product to independent customers were representative, i.e. whether the total volume of such sales was equal to at least 5 % of the total volume of the corresponding export sales to the Union.
- (21) The Commission subsequently identified those types of the like product sold domestically by the company that were identical or directly comparable to the types

sold for export to the Union. The elements taken into account in defining the product types of graphite electrode systems were i) whether they were sold with a nipple or not, ii) their diameter and iii) their length.

- (22) The cooperating exporting producer claimed that the fact that graphite electrode systems are produced from different grades of coke (basic raw material) should also be taken into account when establishing identical or directly comparable types of graphite electrode systems. Indeed it was confirmed that in the production process the company used two different types of coke: imported needle coke which is of a superior quality and regular coke sourced on the Indian market. It was also confirmed that the type of coke used determines the cost of production and the price of the end product.
- (23) Therefore, in order to ensure a fair comparison, the Commission split each of the product types into low-grade and high-grade products for the purpose of the dumping calculation.
- (24) It was further examined whether the domestic sales of the cooperating exporting producer were representative for each product type, i.e. whether domestic sales of each product type constituted at least 5 % of the sales volume of the same product type to the Union. For the product types sold in representative quantities it was then examined whether such sales were made in the ordinary course of trade, in accordance with Article 2(4) of the basic Regulation.
- (25) The examination as to whether the domestic sales of each product type, sold domestically in representative quantities, could be regarded as having been made in the ordinary course of trade was made by establishing the proportion of the profitable sales to independent customers of the type in question. In all cases where the domestic sales of the particular product type were made in sufficient quantities and in the ordinary course of trade, normal value was based on the actual domestic price, calculated as a weighted average of all the domestic sales of that type made during the RIP.
- (26) For the remaining product types where domestic sales were not representative or not sold in the ordinary course of trade, normal value was constructed in accordance with Article 2(3) of the basic Regulation. Normal value was constructed by adding to the manufacturing costs of the exported types, adjusted where necessary, a reasonable percentage for selling, general and administrative expenses and a reasonable margin for profit, on the basis of actual data pertaining to production and sales, in the ordinary course of trade, of the like product, by the exporting producer under investigation in accordance with the first sentence of Article 2(6) of the basic Regulation.

2.2. Export price

- (27) Since all export sales of the cooperating Indian exporting producer to the Union were made directly to independent customers, the export price was established on the basis of the prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.

2.3. Comparison

- (28) The comparison between the weighted average normal value and the weighted average export price was made on an ex-works basis and at the same level of trade. In order to

ensure a fair comparison between normal value and the export price, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were demonstrated to affect prices and price comparability. For this purpose, due allowance in the form of adjustments was made for differences in transport, insurance, handling, loading and ancillary costs, financial costs, bank charges and anti-dumping duties paid by the applicant where applicable and justified.

- (29) The cooperating Indian exporting producer claimed that in its case the Duty Entitlement Passbook Scheme ('DEPBS') is effectively a duty drawback scheme, since the DEPBS licenses are only used to pay the import duties for the raw-materials used for the production of graphite electrode systems. Therefore the cost of import duties paid for raw-materials is refunded when the product is exported resulting in a lower export price. The company claimed therefore that an adjustment should be made on the domestic prices since they are not affected by the reimbursement of import duties. The investigation showed that, contrary to what has been claimed, the company uses the duty-free imported raw materials both in the production of graphite electrode systems destined for the export market as well as in the production destined for the domestic market. Therefore, the DEPBS has no influence on the price difference between domestically sold and exported products and the adjustment cannot be granted.

2.4. *Dumping margin*

- (30) As provided for under Article 2(11) of the basic Regulation, the weighted average normal value by type was compared with the weighted average export price of the corresponding type of the product concerned. Based on the above methodology, the dumping margin established for the cooperating exporting producer amounts to 11-12 %.
- (31) In its comments to disclosure of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained ('final disclosure'), the company in question claimed that the calculation of the dumping margin on the basis of 4 of the 12 months of the RIP was a deviation from the methodology used in the original investigation where all 12 months of the investigation period were taken into account. It claimed therefore that the calculation method used inflated the dumping margin.
- (32) It is recalled, that basing the dumping calculation on 4 months of the RIP is a methodology normally used by the Commission in expiry reviews, where it should be determined whether there is continuation of dumping or a likelihood that dumping will recur. The investigation on spot ensured that the 4 months were representative of the full 12 month period. This was achieved by comparing costs and prices of the 4 months data with the remaining 8 months. In addition the 4 months selected were the last months of each quarter and therefore evenly spread over the 12 month period. The Commission does not therefore agree that the method applied alters the final conclusion with regard to the existence of dumping in the RIP nor that it inflates the dumping margin.
- (33) In view of the lack of cooperation from the second known Indian exporting producer, no dumping margin could be calculated for this producer. However, according to the review request exports by this company to the Union were also made at dumped

prices. As the majority of exports from India relate to the cooperating Indian producer which was found to be dumping and the average price of the product concerned imported from India according to Eurostat is lower than the average export price of the cooperating company, the existence of dumping at the country-wide level is confirmed.

3. Development of imports should measures be repealed

- (34) Further to the analysis of the existence of dumping during the RIP, the likelihood of the recurrence of dumping was investigated. Given the fact that only one exporting producer in India cooperated in this investigation, the conclusions below rely on the data from the sole cooperating company as well as on facts available in accordance with Article 18 of the basic Regulation, namely Eurostat data and the review request.
- (35) In this respect the following elements were analysed: the spare capacity of the exporting Indian producers; the attractiveness of the Union market for the Indian producers and the export prices to third countries.

3.1. Spare capacity of the exporters

- (36) As regards the cooperating Indian exporting producer the investigation showed that it has available spare capacity. Furthermore the company has publicly stated that it plans to increase the existing capacity. It should also be underlined that the company is export oriented with a majority of turnover in the RIP generated by export sales and that the Union is still an important export destination despite the measures in force.
- (37) Regarding the second Indian producer, according to the review request the company has already substantially increased its capacity since the imposition of the measures and further plans to increase it. Therefore it cannot be excluded that at least part of this increased capacity could be diverted to the Union market in the absence of measures.

3.2. Attractiveness of the Union market

- (38) The attractiveness of the Union market can be illustrated by the fact that the imposition of the anti-dumping and countervailing duties did not stop the expansion of the Indian exports. On the contrary, over the last three years the Indian exporters more than doubled their exports and their market share in the Union more than tripled. It should also be stressed that within this period the level of prices on the Union market increased by 40 %.

3.3. Export prices to third countries

- (39) With regard to exports to third countries, the investigation showed that in the RIP the level of the cooperating company's ex-works export prices were lower than the export prices to the Union which were found to be dumped. It can therefore be expected that in the absence of measures the cooperating exporting producer would shift at least part of its exports to the Union, in view of the attractiveness of the market.

3.4. Conclusion of the likelihood of continuation or recurrence of dumping

- (40) In view of the findings described above, it can be concluded that the exports from India are still being dumped and that there is a likelihood of continuation of dumping

on the Union market in case the current anti-dumping measures are removed. Indeed, taking into account the existing spare capacity in India and the attractiveness of the Union market, there appears to be an incentive for Indian exporting producers to increase their exports to the Union market at dumped prices, at least as far as the cooperating exporting producer is concerned.

D. DEFINITION OF THE UNION INDUSTRY

1. Union production

- (41) Within the Union, the like product is manufactured by five companies or groups of companies whose output constitutes the total Union production of the like product within the meaning of Article 4(1) of the basic Regulation.

2. Union industry

- (42) Two of the five groups of companies did not come forward to support the request and did not cooperate in the review investigation by submitting a response to the questionnaire. The following three groups of producers lodged the request and agreed to cooperate: Graftech International, SGL Carbon GmbH, and Tokai ERFTCARBON GmbH.
- (43) These three groups of producers account for a major proportion of the total Union production of the like product, since they represent over 90 % of the total Union production of certain graphite electrode systems, as indicated at recital (4) above. They are therefore deemed to constitute the Union industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation and will hereinafter be referred to as the 'Union industry'.

E. SITUATION ON THE UNION MARKET

1. Preliminary remark

- (44) Given that only one Indian exporting producer of the product concerned cooperated in this investigation, data relating to imports of the product concerned into the European Union originating in India are not presented in precise figures in order to preserve confidentiality pursuant to Article 19 of the basic Regulation.
- (45) The situation of the graphite electrode industry is closely linked to that of the steel sector since graphite electrodes are primarily used in the electrical steel industry. In this context, it should be noted that in 2007, and up to the first three quarters of 2008, very positive market conditions prevailed within the steel sector, and as a consequence, also for the graphite electrode industry.
- (46) It should be noted that sales volumes of graphite electrodes move more or less in line with the volume of steel production. However, supply contracts for graphite electrodes, covering prices and quantities, are usually negotiated for 6-12 month periods. There is, therefore, generally a time lag between developments in sales volume resulting from changes in demand and any consequential effect on prices.

2. Consumption in the Union market

- (47) Union consumption was established on the basis of the sales volumes of the Union industry on the Union market, an estimation of the sales volumes of the other Union producers on the Union market, import data from Eurostat, and data collected in accordance with Article 14(6) of the basic Regulation. As had been done in the original investigation¹⁰, some imports were disregarded because, on the basis of the information available, they appeared not to be the product under investigation.
- (48) Between 2006 and the RIP, Union consumption decreased by almost 25 %, with the main decrease occurring between 2008 and the RIP. It should be noted that, due to very positive market conditions at the beginning of the period considered, Union consumption was at very high levels and had increased by 30 % between the investigation period of the original investigation and 2006.

Table 1

	2006	2007	2008	RIP
Total EU consumption (tonnes)	170.035	171.371	169.744	128.437
<i>Index (2006=100)</i>	100	101	100	76

3. Volume, market share and prices of imports from India

- (49) The volume of imports originating in India ('the country concerned') has increased steadily by 143 percentage points over the period considered and reached a level of 5.000 to 7.000 tonnes during the RIP. The market share of imports from the country concerned more than tripled between 2006 and the RIP, when it reached the level of around 5 %. Market share was still growing during the RIP, notwithstanding the significant decrease in demand. The prices of imports from the country concerned increased by 52 % over the period considered, following a similar trend to that for the Union industry's prices, but remained consistently lower than those of the Union industry. The data in *Table 2* is not given in precise figures for reasons of confidentiality, since there are only two known exporting producers in India.

Table 2

	2006	2007	2008	RIP
Volume of imports from the country concerned (tonnes) *	2.000 to 3.000	3.000 to 4.000	7.000 to 9.000	5.000 to 7.000
<i>Index (2006=100)</i>	100	123	318	243
Market share of imports from the country concerned *	Around 1,5 %	Around 2 %	Around 5 %	Around 5 %
Price of imports from the country concerned (EUR/tonne) *	Around 2.000	Around 2.600	Around 3.000	Around 3.200
<i>Index (2006=100)</i>	100	133	145	152

4. Economic situation of the Union industry

- (50) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Union industry.

¹⁰ See recital (88) of Commission Regulation (EC) No 1009/2004 (OJ L 183, 20.5.2004, p. 61).

4.1. Production

- (51) In the RIP, production decreased by 29 % compared to 2006. The Union industry's production first increased by 2 % in 2007 compared to 2006, before declining sharply, particularly during the RIP.

Table 3

	2006	2007	2008	RIP
Production (tonnes)	272.468	278.701	261.690	192.714
<i>Index (2006=100)</i>	100	102	96	71

4.2. Capacity and capacity utilisation rates

- (52) Production capacity decreased marginally (by 2 % overall) between 2006 and the RIP. As production also decreased in 2008 and in particular during the RIP, the resulting capacity utilisation showed an overall decrease of 25 percentage points between 2006 and the RIP.

Table 4

	2006	2007	2008	RIP
Production capacity (tonnes)	298.500	292.250	291.500	293.500
<i>Index (2006=100)</i>	100	98	98	98
Capacity utilisation	91 %	95 %	90 %	66 %
<i>Index (2006=100)</i>	100	104	98	72

4.3. Stocks

- (53) The level of closing stocks of the Union industry remained stable in 2007 compared to 2006 and then decreased by 10 % in 2008. In the RIP, the level of stocks increased somewhat, but was 5 % lower than in 2006.

Table 5

	2006	2007	2008	RIP
Closing stock (tonnes)	21.407	21.436	19.236	20.328
<i>Index (2006=100)</i>	100	100	90	95

4.4. Sales volume

- (54) The sales by the Union industry on the Union market to unrelated customers decreased by 39 % over the period considered. They were very high at the beginning of the period considered having increased by nearly 70 % compared to the investigation period of the original investigation. Sales volumes decreased slightly in 2007 and 2008 but remained at a relatively high level (in 2008 they were still 47 % above the level of the investigation period of the original investigation). However, sales volumes dropped significantly between 2008 and the RIP (by almost one-third).

Table 6

	2006	2007	2008	RIP
EU Sales volume to unrelated customers (tonnes)	143.832	139.491	124.463	88.224
<i>Index (2006=100)</i>	100	97	87	61

4.5. Market share

- (55) The market share held by the Union industry declined progressively by almost 16 percentage points between 2006 and the RIP (from 84,6 % to 68,7 %).

Table 7

	2006	2007	2008	RIP
Market share of the Union industry	84,6 %	81,4 %	73,3 %	68,7 %
<i>Index (2006=100)</i>	100	96	87	81

4.6. Growth

- (56) Between 2006 and the RIP, the Union consumption decreased by almost 25 %. The Union industry lost almost 16 percentage points of market share, whilst the imports concerned gained 3,4 percentage points of market share.

4.7. Employment

- (57) The level of employment of the Union industry declined by 7 % between 2006 and the RIP.

Table 8

	2006	2007	2008	RIP
Employment product concerned (persons)	1.942	1.848	1.799	1.804
<i>Index (2006=100)</i>	100	95	93	93

4.8. Productivity

- (58) Productivity of the Union industry's workforce, measured as output per person employed per year, decreased by 24 % between 2006 and the RIP. It increased slightly during 2007 and 2008, before decreasing by almost 25 % during the RIP.

Table 9

	2006	2007	2008	RIP
Productivity (tonnes per employee)	140	151	146	107
<i>Index (2006=100)</i>	100	107	104	76

4.9. Sales prices and factors affecting domestic prices

- (59) Unit sales prices of the Union industry show a positive trend, having increased by 40 % during the period considered. This is due to: i) the general level of prices in the market, ii) the need to recover increases in costs of production, and iii) the way supply contract prices are established.
- (60) In 2007 and 2008 the Union industry was able to increase its prices in the context of generally increasing market prices, which was due to continued strong demand for graphite electrodes. This demand was a result of the very positive market conditions prevailing within the steel sector up until the first three quarters of 2008, as described in recital (45).
- (61) Prices also increased in 2007 and 2008, in part, in order to cover increasing costs of production and in particular those of raw materials. Between 2006 and 2008 costs

increased by 23 %. However, the Union industry was able to cover this by increasing its prices considerably (+33 %).

- (62) Prices still increased, although to a lesser extent (+5 %), in the RIP. The fact that prices did not fall during a period when demand dropped is explained by the way supply contracts are established in the market and the fact that most supply contracts for 2009 were concluded in 2008. As indicated at recital (46), sales volumes of graphite electrodes move more or less in line with steel production. However, the negotiation of supply contracts for graphite electrodes for periods of 6 to 12 months can lead to a delay in the effect of any change (increase or decrease) in demand on prices. Contracts are negotiated on the basis of anticipated sales volumes, which may be different from the actual sales level achieved, with the result that the price trend in a particular period may not necessarily follow the trend in sales volumes for the same period. This was the case in the RIP when sales volumes decreased but prices remained high because most supply contracts for 2009 were concluded in 2008 and some deliveries foreseen for 2008 were deferred until 2009. The 5 % increase in prices during the RIP was, nevertheless, not sufficient to cover cost increases (+13 %), as had been possible during the previous periods. Prices were renegotiated at lower levels from after the RIP.
- (63) As explained in recital (49), the prices of imports from the country concerned followed a trend similar to that of the Union industry, but were consistently lower than the prices of the Union industry.

Table 10

	2006	2007	2008	RIP
Unit price EU market (EUR/tonne)	2.569	3.103	3.428	3.585
<i>Index (2006=100)</i>	100	121	133	140

4.10. Wages

- (64) Between 2006 and the RIP, the average wage per employee increased by 15 %.

Table 11

	2006	2007	2008	RIP
Annual labour cost per employee ('000 EUR)	52	56	61	60
<i>Index (2006=100)</i>	100	108	118	115

4.11. Investments

- (65) Between 2006 and the RIP, the annual flow of investments in the product concerned made by the Union industry increased by 37 %. However, during the RIP investments decreased by 14 % compared to 2008.

Table 12

	2006	2007	2008	RIP
Net investments (EUR)	30.111.801	45.383.433	47.980.973	41.152.458
<i>Index (2006=100)</i>	100	151	159	137

4.12. Profitability and return on investments

- (66) With an increase in costs of 40 % occurring over the period considered, the Union industry still managed, between 2006 and 2007, to increase its prices by more than its increase in costs. This led to a profit increase from the level of 19 % in 2006 to 26 % in 2007. From 2007 to 2008 prices and costs increased in the same proportion so that the Union industry's margin remained stable at the level of 2007. Profits then decreased again to 19 % in the RIP due to the effect on costs of lower production capacity utilisation and higher raw material prices. Profits decreased further in 2009, since the Union industry had to adjust its prices downwards in order to reflect the general decrease of selling prices in the graphite electrode market, due to the shrinking demand within the steel sector.
- (67) The return on investments ('ROI') increased from a level of 71 % in 2006 to 103 % in 2007. In 2008 it increased to 119 % before decreasing to 77 % during the RIP. Overall, the return on investments only increased by 6 percentage points between 2006 and the RIP.

Table 13

	2006	2007	2008	RIP
Net Profit of EU sales to unrelated customers (% of net sales)	19 %	26 %	25 %	19 %
ROI (net profit in % of net book value of investments)	71 %	103 %	119 %	77 %

4.13. Cash flow and ability to raise capital

- (68) The net cash-flow from operating activities increased between 2006 and 2007. This increase continued in 2008 before decreasing during the RIP. Overall, cash flow was 28 % higher in the RIP than at the start of the period considered.
- (69) There were no indications that the Union industry encountered difficulties in raising capital, mainly due to the fact that some of the producers are incorporated in larger groups.

Table 14

	2006	2007	2008	RIP
Cash flow (EUR)	109.819.535	159.244.026	196.792.707	140.840.498
<i>Index (2006=100)</i>	100	145	179	128

4.14. Magnitude of dumping margin

- (70) Given the volume, market share and prices of the imports from India, the impact on the Union industry of the actual margins of dumping cannot be considered to be negligible.

4.15. Recovery from the effects of past subsidisation and of past dumping

- (71) The indicators examined above show some improvement in the economic and financial situation of the Union industry following the imposition of definitive countervailing and anti-dumping measures in 2004. In particular, between 2006 and 2008, the Union industry benefited from increased prices and profits. This was due to very positive market conditions, which allowed a high level of prices and profitability to be maintained, even though, as explained in recital (55), the market share of the Union industry was declining. However, over the same period, and despite the

measures, the market share of Indian imports has increased and Indian products have been imported at prices lower than those of the Union industry. During the RIP, profits already started to decrease for the Union industry and decreased further in 2009 due to increased costs and limited price increases.

5. Impact of dumped imports and other factors

5.1. Impact of the dumped imports

- (72) Despite a decrease in consumption in the European Union over the period considered, the volume of imports from the country concerned more than doubled and the market share of those imports more than tripled (see recital (49)). If the anti-dumping and countervailing duties are not taken into consideration, the imports from the country concerned undercut the prices of the Union industry, although by less than 2 %, during the RIP.

5.2. Impact of the economic crisis

- (73) Due to the very positive economic conditions prevailing in the steel and related industries, including graphite electrodes, in 2007 and in the first three quarters of 2008, the Union industry was in a relatively good economic condition when the economic crisis started at the end of 2008. The fact that supply contracts for graphite electrodes are usually negotiated for 6-12 months means that there is a delay in the effect of any change (increase or decrease) in demand on prices. Since contracts for the RIP were negotiated at a stage when the effects of the economic crisis could not be foreseen, the impact of the economic crisis during the RIP was mainly in terms of volumes, since, in terms of prices, any impact would be felt by the Union industry with a delay. In that context it has to be noted that the situation of the Union industry has deteriorated in some respect, even during the period of positive economic conditions, by losing market share to imports from the country concerned. The fact that this deterioration did not lead to more significant negative effects was partly due to the high level of demand in 2007-2008 which had allowed the Union industry to maintain high volumes of production and sales and partly due to the fact that when these volumes decreased in the RIP, the prices could still be maintained due to the time-lag described above.

5.3. Imports from other countries

- (74) Due to the inclusion of products other than the product under investigation in the import data available at CN code level from Eurostat, the following analysis has been made on the basis of import data at Taric code level, supplemented by information from data collected in accordance with Article 14(6) of the basic Regulation. Some imports were disregarded because, on the basis of the information available, they appeared not to be the product under investigation.
- (75) It is estimated that the volume of imports from other third countries increased by 63 % from around 11.000 tonnes in 2006 to around 18.500 tonnes in the RIP. The market share of imports from other countries increased from 6,6 % in 2006 to 14,4 % in the RIP. The average price of imports from other third countries increased by 42 % between 2006 and the RIP. The main imports appear to be from the People's Republic of China ('PRC'), Russia, Japan, and Mexico, which were the only countries with individual market shares higher than 1 % during the RIP. Imports from these countries

are further examined in the following recitals. Imports from nine other countries account for a total market share of only around 2 % and are not examined further.

- (76) The market share of Chinese imports increased by 2,4 percentage points over the period considered (from 0,2 % to 2,6 %). The available information indicates that these imports were made at prices which were lower than those of the Union industry and also lower than those of the imports originating in India.
- (77) The market share of imports from Russia increased by 4,2 percentage points over the period considered (from 1,9 % to 6,1 %). The available information indicates that these imports were made at prices which were slightly lower than those of the Union industry, but higher than those of the imports originating in India.
- (78) The market share of imports from Japan decreased by 0,4 percentage points over the period considered (from 2,0 % to 1,6 %). The available information indicates that these imports were made at prices which were similar to, or above, those of the Union industry and also higher than those of the imports originating in India.
- (79) The market share of imports from Mexico increased by 1,0 percentage points over the period considered (from 0,9 % to 1,9 %). The available information indicates that these imports were made at prices which were higher than those of the Union industry and also higher than those of the imports originating in India.
- (80) In conclusion, it cannot be excluded that the development of imports from the PRC and from Russia could have contributed to some extent to the deterioration in the market share of the Union industry. However, given the general nature of the data available from the import statistics, which does not allow a price comparison by product type, as was possible for India on the basis of the detailed information provided by the exporting producer, the impact of the imports from the PRC and Russia cannot be established with certainty.

Table 15

	2006	2007	2008	RIP
Volume of imports from other countries (tonnes)	11.289	11.243	19.158	18.443
<i>Index (2006=100)</i>	100	100	170	163
Market share of imports from the other countries	6,6 %	6,6 %	11,3 %	14,4 %
Price of imports from the other countries (EUR/tonne)	2.467	3.020	3.403	3.508
<i>Index (2006=100)</i>	100	122	138	142
	2006	2007	2008	RIP
Volume of imports from the PRC (tonnes)	421	659	2.828	3.380
<i>Index (2006=100)</i>	100	157	672	804
Market share of imports from the PRC	0,2 %	0,4 %	1,7 %	2,6 %
Price of imports from the PRC (EUR/tonne)	1.983	2.272	2.818	2.969

<i>Index (2006=100)</i>	<i>100</i>	<i>115</i>	<i>142</i>	<i>150</i>
	2006	2007	2008	RIP
Volume of imports from Russia (tonnes)	3.196	2.887	8.441	7.821
<i>Index (2006=100)</i>	<i>100</i>	<i>90</i>	<i>264</i>	<i>245</i>
Market share of imports from Russia	1,9 %	1,7 %	5,0 %	6,1 %
Price of imports from Russia (EUR/tonne)	2.379	2.969	3.323	3.447
<i>Index (2006=100)</i>	<i>100</i>	<i>125</i>	<i>140</i>	<i>145</i>
	2006	2007	2008	RIP
Volume of imports from Japan (tonnes)	3.391	2.223	3.731	2.090
<i>Index (2006=100)</i>	<i>100</i>	<i>66</i>	<i>110</i>	<i>62</i>
Market share of imports from Japan	2,0 %	1,3 %	2,2 %	1,6 %
Price of imports from Japan (EUR/tonne)	2.566	3.131	3.474	3.590
<i>Index (2006=100)</i>	<i>100</i>	<i>122</i>	<i>135</i>	<i>140</i>
	2006	2007	2008	RIP
Volume of imports from Mexico (tonnes)	1.478	2.187	2.115	2.465
<i>Index (2006=100)</i>	<i>100</i>	<i>148</i>	<i>143</i>	<i>167</i>
Market share of imports from Mexico	0,9 %	1,3 %	1,2 %	1,9 %
Price of imports from Mexico (EUR/tonne)	2.634	3.629	4.510	4.554
<i>Index (2006=100)</i>	<i>100</i>	<i>138</i>	<i>171</i>	<i>173</i>

6. Conclusion

- (81) As shown under recital (49) the volume of imports from the country concerned has more than doubled between 2006 and the RIP. Given that consumption declined by almost 25 % over the same period, this resulted in a sharp rise in the market share held by Indian exporters from around 1,5 % in 2006 to around 5 % during the RIP. While Indian export prices to the Union increased considerably during the period considered as an effect of generally high market prices, they were still undercutting the prices of the Union industry.
- (82) Between 2006 and the RIP, and notwithstanding the existence of the anti-dumping and countervailing measures, a number of important indicators developed negatively: production and sales volumes decreased by 29 % and 39 % respectively, capacity utilisation went down by 28 % and was followed by a decrease in employment and productivity levels. Although a part of these negative developments may be explained by the strong decrease in consumption, which declined by almost 25 % over the period considered, the Union industry's strong decrease in market share (down by 15,9

percentage points between 2006 and the RIP) must also be interpreted in the light of the constant increase in market share of imports from India.

- (83) As for the relatively high level of profits during the RIP, this was mainly due to the continued high level of prices, for the reasons explained in recital (62). It is concluded that the Union industry's situation deteriorated overall during the period considered and that the Union industry was in a fragile situation at the end of the RIP, despite a relatively high level of profit at that stage, when its efforts to maintain sales volumes and a sufficient level of prices, in a situation of weakened demand, were hampered by the increased presence of the Indian dumped imports.

F. LIKELIHOOD OF CONTINUATION AND RECURRENCE OF INJURY

1. Preliminary remarks

- (84) As already seen, the imposition of anti-dumping measures has allowed the Union industry to recover only to some extent from the injury suffered. However, when the high levels of Union consumption experienced during most of the period considered disappeared during the RIP, the Union industry appeared in a fragile and vulnerable situation and still exposed to the injurious effect of the dumped imports from India. In particular, the ability of the Union industry to recover increased costs was weak at the end of the RIP.

2. Relationship between export volumes and prices to third countries and export volumes and prices to the Union

- (85) It was found that the average export price of Indian sales to non-EU countries was below the average export price to the Union and also below the prices on the domestic market. The Indian exporter's sales to non-EU countries were made in significant quantities, accounting for the majority of its total export sales. Therefore, it was considered that, should measures lapse, Indian exporters would have an incentive to shift significant quantities of exports from other third countries to the more attractive Union market, at price levels, which, even if they were higher than the prices to third countries, would likely still be below the current export price levels to the Union.

3. Unused capacity and stocks in the Indian market

- (86) The cooperating Indian producer had significant spare capacities and planned to increase its capacity in 2010/2011. Therefore, the capacity to significantly increase export quantities to the EU exists, in particular because there are no indications that third country markets or the domestic market could absorb any additional production.
- (87) In its comments to the disclosure, the cooperating Indian producer alleged that its spare capacity was mainly due to the economic crisis and the related decrease in demand. However, a significant part of the company's spare capacity can be explained by the fact that the company substantially increased its capacity between 2006 and the RIP. Furthermore, it should be noted that the company has planned additional increased capacity. Moreover, it should also be pointed out that there is another Indian producer which did not cooperate, that has similar capacity and utilisation and has also announced recently an even more substantial increase in capacity.

4. Conclusion

- (88) The producers in the country concerned have the potential to raise and/or redirect their export volumes to the EU market. Moreover, the prices of Indian exports to third countries are lower than those to the EU. The investigation showed that, on the basis of comparable product types, the cooperating exporting producer sold the product concerned at prices lower than the Union industry's. These low prices would most likely decrease in line with the lower prices charged to the rest of the world. Such price behaviour, coupled with the ability of the exporters in the country concerned to deliver significant quantities of the product concerned to the EU market, would, in all likelihood, have a negative impact on the economic situation of the Union industry.
- (89) As shown above, the situation of the Union industry remains vulnerable and fragile. If the Union industry were to be exposed to increased volumes of imports from the country concerned at dumped prices, this would be likely to result in a deterioration of its sales, market share, sales prices, as well as a consequent deterioration of its financial situation to the levels found in the original investigation. On this basis, it is therefore concluded, that the repeal of the measures would in all likelihood result in a worsening of the already fragile situation, and a recurrence of material injury to the Union industry.

G. UNION INTEREST

1. Introduction

- (90) In accordance with Article 21 of the basic Regulation, it was examined whether the maintenance of the existing anti-dumping measures would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of the various interests involved, i.e. those of the Union industry, of importers, and of users.
- (91) It should be recalled that, in the original investigation, the adoption of measures was considered not to be against the interest of the Union. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place, allows the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.
- (92) On this basis it was examined whether, despite the conclusions on the likelihood of a continuation or recurrence of injurious dumping, compelling reasons existed which would lead to the conclusion that it is not in the Union interest to maintain measures in this particular case.

2. Interest of the Union industry

- (93) The Union industry has proven to be a structurally viable industry. This was confirmed by the positive development of its economic situation observed after the imposition of the anti-dumping measures in 2004. In particular, the fact that the Union industry increased its profitability in the few years before the RIP contrasts sharply with the situation preceding the imposition of the measures. However, the Union industry has consistently lost market share while imports from the country considered have substantially increased in market share over the period considered. Without the existence of the measures, the Union industry would likely be in an even worse situation.

3. Interest of importers/ users

- (94) None of the nine unrelated importers that were contacted came forward to cooperate.
- (95) Seventeen users came forward and submitted questionnaire replies. While most users have not sourced graphite electrodes from India for several years, and therefore remained neutral with respect to a possible continuation of the measures, six users have, at least to some extent, used Indian electrodes. Four users claimed that a continuation of measures would have a negative impact on competition. One association (Eurofer) strongly opposed a continuation of the measures and claimed that the measures resulted in Indian exporters largely withdrawing from the EU market. The association alleges that the continuation of measures would hamper steel producers in developing alternative sources of supply and would allow the Union industry to continue having a dominant, near duopoly position. However, it is clear from the development of the Indian imports after the imposition of the measures, that such a large withdrawal has not taken place; instead imports from India have increased significantly during the period considered. In addition, the investigation has shown that the graphite electrodes are increasingly entering the EU market from a number of other third countries. As for the strength of the Union industry's position in the market, it is recalled that its market share has decreased by almost 16 percentage points over the period considered (see recital (55) above). Finally, this association also admitted that graphite electrodes represent only a relatively small component of the total costs of steel manufacturers.
- (96) It is further recalled that, in the original investigation, it was found that the impact of the imposition of measures would not be significant for the users¹¹. Despite the existence of measures for five years, importers/users in the Union continued to source their supply, *inter alia*, from India. No indications were brought forward either that there have been difficulties in finding other sources. Moreover, it is recalled that, as regards the effect of the imposition of measures on users, it was concluded in the original investigation that, given the negligible incidence of the cost of graphite electrodes on user industries, any cost increase was unlikely to have a significant effect on the user industry. No indications of the contrary were found after the imposition of measures. It is therefore concluded that the maintenance of the anti-dumping measures is not likely to have a serious effect on importers/users in the Union.

4. Conclusion

- (97) Given the above, it is concluded that there are no compelling reasons against the maintenance of the current anti-dumping measures.

H. ANTI-DUMPING MEASURES

- (98) All 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 submit comments subsequent to that disclosure. The submissions and comments were duly taken into consideration where warranted.

¹¹ See recital (106) of Commission Regulation (EC) No 1009/2004 (OJ L 183, 20.5.2004, p. 61) and recital (22) of Council Regulation (EC) No 1629/2004 (OJ L 295, 18.9.2004, p. 10).

- (99) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of certain graphite electrodes, originating in India should be maintained. It is recalled that these measures consist of *ad valorem* duties.
- (100) The individual company anti-dumping duty rates specified in this Regulation are solely applicable to imports of the product concerned produced by these companies and thus by the specific legal entities mentioned. Imports of the product concerned manufactured by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.
- (101) Any claim requesting the application of these individual anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission¹² forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for instance, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates,

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, currently falling within CN code ex 8545 11 00 (TARIC code 8545 11 00 10) and nipples used for such electrodes currently falling within CN code ex 8545 90 90 (TARIC code 8545 90 90 10) whether imported together or separately originating in India.
2. The rate of duty applicable to the net free-at-Union-frontier price, before duty, for the products described in paragraph 1 and produced by the companies listed below shall be as follows:

Company	Definitive 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

¹² European Commission, Directorate-General for Trade, Directorate H, B-1049 Brussels, Belgium.

All other companies	8,5	A999
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3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

This Regulation shall enter into force on the day following 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,

For the Council
The President