

COMMISSION IMPLEMENTING REGULATION (EU) 2017/421**of 9 March 2017****imposing a definitive countervailing duty on imports of certain graphite electrode systems originating in India following an expiry review pursuant to Article 18 of Regulation (EU) 2016/1037 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation'), and in particular Article 18 thereof,

Whereas:

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

- (1) The Council, following an anti-subsidy investigation ('the original investigation'), by Regulation (EC) No 1628/2004 ⁽²⁾, imposed a definitive countervailing duty on imports of certain graphite electrode systems originating in India ('country concerned'), currently falling within CN codes ex 8545 11 00 (TARIC code 8545 11 00 10) and ex 8545 90 90 (TARIC code 8545 90 90 10).
- (2) The Council, following an anti-dumping investigation, by Regulation (EC) No 1629/2004 ⁽³⁾, also imposed definitive anti-dumping duties on imports of certain graphite electrode systems originating in India.
- (3) Following an ex officio partial interim review of the countervailing measures, the Council by Regulation (EC) No 1354/2008 ⁽⁴⁾ amended Regulations (EC) No 1628/2004 and (EC) No 1629/2004.
- (4) Following an expiry review of the countervailing measures pursuant to Article 18 of the basic Regulation, the Council by Implementing Regulation (EU) No 1185/2010 ⁽⁵⁾ extended the countervailing measures. Following an expiry review of the anti-dumping measures, the Council by Implementing Regulation (EU) No 1186/2010 ⁽⁶⁾ extended the anti-dumping measures.
- (5) The countervailing measures took the form of an *ad valorem* duty rate of 6,3 % and 7,0 % for imports from individually named exporters, with a residual duty rate of 7,2 %.

2. Request for an expiry review

- (6) Following the publication of a notice of impending expiry ⁽⁷⁾ of the countervailing measures in force on the imports of certain graphite electrode systems originating in India, the Commission has received a request for review pursuant to Article 18 of Council Regulation (EC) No 597/2009 ⁽⁸⁾.

⁽¹⁾ OJ L 176, 30.6.2016, p. 55.

⁽²⁾ Council Regulation (EC) No 1628/2004 of 13 September 2004 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain graphite electrode systems originating in India (OJ L 295, 18.9.2004, p. 4).

⁽³⁾ Council Regulation (EC) No 1629/2004 of 13 September 2004 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain graphite electrode systems originating in India (OJ L 295, 18.9.2004, p. 10).

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

⁽⁵⁾ Council Implementing Regulation (EU) No 1185/2010 of 13 December 2010 imposing a definitive countervailing duty on imports of certain graphite electrode systems originating in India following an expiry review pursuant to Article 18 of Regulation (EC) No 597/2009 (OJ L 332, 16.12.2010, p. 1).

⁽⁶⁾ Council Implementing Regulation (EU) No 1186/2010 of 13 December 2010 imposing a definitive anti-dumping duty on imports of certain graphite electrode systems originating in India following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ L 332, 16.12.2010, p. 17).

⁽⁷⁾ OJ C 82, 10.3.2015, p. 4.

⁽⁸⁾ Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community (OJ L 188, 18.7.2009, p. 93). This Regulation has been codified by the basic Regulation.

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

3. Initiation

- (9) Having determined that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 15 December 2015, by notice published in the *Official Journal of the European Union* ⁽¹⁾ ('the Notice of Initiation') the initiation of an expiry review pursuant to Article 18 of Regulation (EC) No 597/2009.

4. Parallel investigation

- (10) By a notice published in the *Official Journal of the European Union* on 15 December 2015 ⁽²⁾, the Commission also announced the initiation of an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 ⁽³⁾ of the definitive anti-dumping measures in force with regard to imports into the Union of certain graphite electrode systems originating in India.

5. Interested parties

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

5.1. Sampling

- (13) In the Notice of Initiation, the Commission stated that it might sample interested parties, in accordance with Article 27 of the basic Regulation.

(a) Sampling of Union producers

- (14) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. In accordance with Article 27(1) of the basic Regulation the Commission selected the sample on the basis of the largest representative volume of sales which could reasonably be investigated within the time available, considering also the geographical location. This sample consisted of four Union producers. The sampled Union producers accounted for more than 80 % of the total Union production, based on information received during standing exercise. The Commission invited interested parties to comment on the provisional sample. No comments were received within the deadline and the sample was thus confirmed. The sample is representative of the Union industry.

(b) Sampling of importers

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

⁽¹⁾ Notice of initiation of an expiry review of the countervailing measures applicable to imports of certain graphite electrode systems originating in India (OJ C 415, 15.12.2015, p. 25).

⁽²⁾ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain graphite electrode systems originating in India (OJ C 415, 15.12.2015, p. 33).

⁽³⁾ Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).

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

5.2. Questionnaires and verification visits

- (17) The Commission sent questionnaires to the Government of India ('GOI'), all sampled Union producers, the two known Indian producers/exporters and 53 users that came forward after initiation.
- (18) Questionnaire replies were received from the GOI, the four sampled Union producers, one Indian exporting producer and eight users.
- (19) The Commission sought and verified all the information it deemed necessary for the determination of the likelihood of continuation or recurrence of subsidisation and resulting injury and for the determination of the Union interest. Verification visits pursuant to Article 26 of the basic Regulation were carried out at the premises of the GOI in Delhi and Bhopal, and the following companies:

(a) Union producers:

- Graftech France SNC, Calais, France
- Graftech Iberica S.L., Navarra, Spain
- SGL Carbon SA, Wiesbaden, Germany
- Tokai Erftcarbon GmbH, Grevenbroich, Germany

(b) Exporting producer in India:

- HEG Limited, Bhopal ('HEG')

6. Review investigation period and period considered

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

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

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

2. Like product

- (22) The investigation showed that the following products have the same basic physical and technical characteristics as well as the same basic uses:
- the product under review
 - the product produced and sold in the Union by the Union industry.
- (23) The Commission concluded that these products are like products within the meaning of Article 2(c) of the basic Regulation.

C. LIKELIHOOD OF A CONTINUATION OF SUBSIDISATION**1. Introduction**

- (24) In accordance with Article 18(1) of the basic Regulation, the Commission examined whether the expiry of the existing measures would be likely to lead to a continuation of subsidisation.
- (25) On the basis of the information contained in the review request, the following schemes, which allegedly involve the granting of subsidies, were investigated:

Nationwide Schemes

- (a) Duty Drawback Scheme ('DDS');
- (b) Advance Authorisation Scheme ('AAS');
- (c) Focus Market Scheme ('FMS');
- (d) Merchandise Export from India Scheme ('MEIS');
- (e) Export Promotion Capital Goods Scheme ('EPCGS');
- (f) Export Credit Scheme ('ECS');

Regional scheme

- (g) Electricity Duty Exemption Scheme ('EDES')
- (26) The schemes specified in points (a) to (e) 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 Government of India ('GOI') to issue notifications regarding the export and import policy. These are summarised in 'Foreign Trade Policy' documents, which are issued by the Ministry of Commerce every 5 years and updated regularly. Two Foreign Trade Policy documents are relevant for the RIP of this investigation: Foreign Trade Policy 2009-2014 ('FTP 09-14') and Foreign Trade Policy 2015-2020 ('FTP 15-20'). The latter entered into force in April 2015. The GOI also sets out the procedures governing FTP 09-14 and FTP 15-20 in a 'Handbook of Procedures, Volume I, 2009-2014' ('HOP I 04-09') and a 'Handbook of Procedures, Volume I, 2015-2020' ('HOP I 15-20') respectively. The Handbooks of Procedures are updated on a regular basis.
- (27) The ECS scheme specified in point (f) above is based on sections 21 and 35A of the Banking Regulation Act 1949, which allow the Reserve Bank of India ('RBI') to direct commercial banks in the field of export credits.
- (28) The scheme specified in point (g) above is managed by the authorities of the State of Madhya Pradesh.
- (29) DDS, under the form of its predecessor scheme the Duty Entitlement Passbook Scheme ('DEPB')⁽¹⁾, and EPCGS were already countervailed in the original investigation while AAS, FMS, MEIS, ECS and EDES were not investigated.
- (30) As mentioned above in recital 18, only one of the Indian exporting producers cooperated. This exporting producer represented more than 95 % of all Indian imports of GES into the Union and 50 % of the total estimated production capacity in India. Production capacity in India was established on the basis of the verified questionnaire of the cooperating exporting producer and publicly available financial statements of the non-cooperating exporting producer. The cooperation from the Indian exporting producers was therefore considered as low. The Indian authorities were duly informed that due to the low cooperation of the Indian exporting producers, the Commission may apply Article 28 of the basic Regulation. No comments were received in this respect.

⁽¹⁾ Transition from DEPB to DDS is explained, inter alia, in recitals 47 to 54 of Council Implementing Regulation (EU) No 461/2013 of 21 May 2013 imposing a definitive countervailing duty on imports of certain polyethylene terephthalate (PET) originating in India following an expiry review pursuant to Article 18 of Regulation (EC) No 597/2009 (OJ L 137, 23.5.2013, p. 1).

- (31) After disclosure, the GOI claimed that cooperation could not be considered low since the cooperating producer represented more than 95 % of Indian exports of GES to the Union during the RIP and 50 % of the total estimated production capacity in India. In this respect it is clarified that the Commission established the level of cooperation on basis of the total production capacity in India which was considered more relevant than the Indian export volumes of GES to the Union during the RIP in the context of an expiry review. Since there are only two equally big producers in India and only one of them cooperated, it is justified to qualify the cooperation as low since the non-cooperating company has potentially a big bearing on the assessment of the likelihood of continuation of subsidisation and recurrence of injury. Indeed, as explained in recital 155, the non-cooperating producer almost stopped exporting to the Union due to the duty levels and would in all likelihood resume exports in more significant quantities in case the measures were allowed to lapse. As a consequence, since the two known producers represent each 50 % of the estimated total Indian production capacity, it cannot be excluded that their respective shares in total Indian exports to the Union would become more balanced and hence totally different than the ratio of circa 95/5 observed during the RIP. This claim was therefore rejected. In any event, the Commission notes that this claim is inapposite in the context of an expiry review, where the purpose is to determine whether there is continuation of subsidisation. On the basis of the findings made with respect to the only exporting producer, the Commission can already conclude that there is continuation of subsidisation. Therefore, whether the degree of cooperation is low or high is utterly irrelevant.

2. Duty Drawback Scheme (DDS)

2.1. Legal Basis

- (32) The detailed description of the DDS is contained in the Custom & Central Excise Duties Drawback Rules 1995 as amended by successive notifications.

2.2. Eligibility

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

2.3. Practical implementation

- (34) An eligible exporter can apply for a drawback amount which is calculated as a percentage of the free-on-board ('FOB') value of products exported under this scheme. The drawback rates have been established by the GOI for a number of products, including the product under review. They are determined on the basis of the average quantity or value of materials used as inputs in the manufacturing of a product and the average amount of duties paid on inputs. They are applicable regardless of whether import duties have actually been paid or not. During the RIP the DDS rate was 3 % with a cap of 3,2 INR/kg until 22 November 2014 and 2,4 % with a cap of 8 INR/kg afterwards.
- (35) To benefit from this scheme a company must export. At the moment when shipment details are entered in the Customs server (ICEGATE), it is indicated that the export is taking place under the DDS and the DDS amount is fixed irrevocably. After the shipping company has filed the Export General Manifest (EGM) and the Customs office has satisfactorily compared that document with the shipping bill data, all conditions are fulfilled to authorise the payment of the drawback amount by either direct payment on the exporter's bank account or by draft.
- (36) The exporter also has to produce evidence of realisation of export proceeds by means of a Bank Realisation Certificate (BRC). This document can be provided after the drawback amount has been paid but the GOI will recover the paid amount if the exporter fails to submit the BRC within a given delay.
- (37) The drawback amount can be used for any purpose.
- (38) In accordance with Indian accounting standards, the duty drawback amount can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation.

- (39) It was found that the cooperating exporting producer continued benefiting from the DDS during the RIP.

2.4. Conclusion on DDS

- (40) As noted in the original investigation, the DDS provides subsidies within the meaning of Article 3(1)(a)(I) and Article 3(2) of the basic Regulation. The so-called duty drawback amount is a financial contribution by the GOI as it takes form of a direct transfer of funds by the GOI. There are no restrictions as to the use of these funds. In addition, the duty drawback amount confers a benefit upon the exporter, because it improves its liquidity.
- (41) The rate of duty drawback for exports is determined by the GOI on a product by product basis. However, although the subsidy is referred to as a duty drawback, the scheme does not have the characteristics of a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. The cash payment to the exporter is not linked to actual payments of import duties on raw materials and is not a duty credit to offset import duties on past or future imports of raw materials.
- (42) During the verification visit, the GOI and the cooperating exporting producer claimed that there was an adequate link between the drawback rates as well as the duties paid on raw materials. This is because the GOI takes into account the average quantity or value of materials used as inputs in the manufacturing of the product as well as the average amount of duties paid on inputs in determining the duty drawback rates.
- (43) The Commission however does not consider that the alleged link between the drawback rates and the duties paid on raw materials is sufficient in order for the scheme to conform to the rules laid down in Annex I, Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. In particular, 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 (including their amounts and origin) 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. Moreover, no further examination by the GOI was conducted on the basis of actual inputs and transactions in order to determine whether an excess payment occurred. Therefore, the claim was rejected.
- (44) Consequently, the payment which takes form of a direct transfer of funds by the GOI subsequent to exports made by exporters has to be considered as a direct grant from the GOI contingent on export performance and is therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.

2.5. Calculation of the subsidy amount

- (45) In accordance with Article 3(2) and Article 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 time when an export transaction is made under this scheme. At this moment, the GOI is liable to the payment of the drawback amount, which constitutes a financial contribution within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Once the customs authorities issue an export shipping bill which shows, inter alia, the amount of drawback which is to be granted for that export transaction, the GOI has no discretion as to whether or not to grant the subsidy. In the light of the above, and since there is no reliable evidence showing otherwise, it is considered appropriate to assess the benefit under the DDS as being the sums of the drawback amounts earned on export transactions made under this scheme during the RIP.
- (46) In accordance with Article 7(2) of the basic Regulation these subsidy amounts have been allocated over the total export turnover of the product under review 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.
- (47) Based on the above, the subsidy rate established in respect of this scheme for the cooperating exporting producer amounted to 2,02 %.

3. Advance Authorisation Scheme ('AAS')

3.1. Legal basis

- (48) The detailed description of the scheme is contained in paragraphs 4.1.1 to 4.1.14 of the FTP 09-14 and chapters 4.1 to 4.30 of the HOP I 09-14 as well as paragraphs 4.03 to 4.24 of FTP 15-20 and chapters 4.04 to 4.52 of HOP I 15-20.

3.2. Eligibility

- (49) The AAS consists of six sub-schemes, as described in more detail in recital 50 below. Those sub-schemes differ, inter alia, 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 sub-schemes. 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 FTP 09-14, such as suppliers of an export oriented unit ('EOU'), are eligible for the AAS deemed export sub-scheme. 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.

3.3. Practical implementation

- (50) The AAS 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 resulting export product. 'Physical' in this context means that the export product has to leave Indian territory. An 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 resulting 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 who produces the intermediate product 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 FTP 09-14. 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 export-oriented unit ('EOU') or to a company situated in a special economic zone ('SEZ');
 - (v) Advance Release Order ('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 FTP 09-14 (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 validated 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 FTP 09-14 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty).
- (51) It was found that the cooperating exporting producer obtained concessions under the first sub-scheme i.e. AAS physical exports during the RIP. It is therefore not necessary to establish the countervailability of the remaining unused sub-schemes.
- (52) 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 09-14), 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.
- (53) With regard to the sub-scheme used during the RIP by the company concerned, i.e. physical exports, 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 the AAS is determined by the GOI on the basis of Standard Input Output Norms ('SIONs') which exist for most products including the product under review.
- (54) Imported input materials are not transferable and have to be used to produce the resultant 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 6 months each).
- (55) As explained in recital 26 a new FTP document came into force in April 2015. As far as the practical implementation set out in recitals 50 to 54 is concerned, the only change brought by the new FTP was a reduction of the export obligation period from 24 months to 18 months. It must also be noted that all licences used by the cooperating exporting producer during the RIP were still subject to FTP 09-14 as they were issued before April 2015.
- (56) The investigation established that the verification requirements stipulated by the Indian authorities were not yet honoured or tested in practice.
- (57) The cooperating exporting producer maintained a certain production and consumption register. It was however not possible to verify which inputs (including their origin) were consumed in the production of the exported product and in what amounts. In particular with the system put in place it was not possible to identify and measure with precision whether there was an excess remission.
- (58) Regarding the verification requirements referred to in recital 52, it was found that none of the AAS licences used by the company were at a point in their life cycle where the submission of Appendix 23 to the authorities was due. However it was also found that no records kept by the companies would enable the calculation of excess remission as requested in Appendix 23, thereby making any future certification by an external chartered accountant/cost and works accountant impossible.
- (59) In addition it was established that only between 75 % and 85 % of the main raw material (calcined petroleum coke or 'CPC') imported duty free under AAS was physically incorporated in GES while between 15 % and 25 % was incorporated in two by-products i.e. lumps and fines. It was also found that at least a part of both by-products was sold on the domestic market and that no system was in place to measure the actual amounts of CPC imported duty free incorporated in the by-products exported or sold domestically.
- (60) In sum, it is considered that the cooperating exporting exporter was not able to demonstrate that the relevant FTP provisions were met.

3.4. Conclusion on the AAS

- (61) The exemption from import duties is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation, namely it constitutes a financial contribution of the GOI since it decreases duty revenue which would otherwise be due and it confers a benefit upon the investigated exporter since it improves its liquidity.
- (62) In addition, AAS physical exports are clearly contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation. Without an export commitment a company cannot obtain benefits under these schemes.
- (63) The sub-scheme used in the present case cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the 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 a verification system or a procedure to confirm whether and in what amounts inputs were consumed in the production of the exported product (Annex II(4) of the basic Regulation and, in the case of substitution drawback schemes, Annex III(II)(2) of the basic Regulation). It is also considered that the SIONs for the product under review were not sufficiently precise and that themselves cannot constitute a verification system of actual consumption because the design of those standard norms does not enable the GOI to verify with sufficient precision what amounts of inputs were consumed in the export production. In addition, the GOI did not carry out a further examination based on actual inputs involved, although this would need to be carried out in the absence of an effectively applied verification system (Annex II(5) and Annex III(II)(3) to the basic Regulation).
- (64) The sub-scheme is therefore countervailable.

3.5. Calculation of the subsidy amount

- (65) In the absence of permitted duty drawback systems or substitution drawback systems, the countervailable benefit is the remission of import duties normally due upon importation of inputs.
- (66) Since there was no reliable evidence showing otherwise, the subsidy amount for the cooperating exporting producer was calculated on the basis of import duties forgone (basic customs duty and special additional customs duty) on the material imported under the sub-scheme 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 was allocated over the export turnover of the product under review 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.
- (67) The subsidy rate established in respect of this scheme for the cooperating exporting producer amounts to 0,30 %.

4. Focus Market Scheme (FMS)

4.1. Legal basis

- (68) The detailed description of FMS is contained in paragraph 3.14 of FTP 09-14 and in paragraph 3.8 of HOP I 09-14.

4.2. Eligibility

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

4.3. Practical implementation

- (70) Under this scheme exports of all products which include exports of GES to countries notified under Tables 1 and 2 of Appendix 37(C) of HOP I 09-14 are entitled to duty credit equivalent to 3 % of the FOB value. As of 1 April 2011, exports of all products to countries notified under Table 3 of Appendix 37(C) ('Special Focus Markets') are entitled to a duty credit equivalent to 4 % of the FOB value. Certain types of export activities are excluded from the scheme, e.g. exports of imported goods or transhipped goods, deemed exports, service exports and export turnover of units operating under special economic zones/export operating units.
- (71) The duty credits under FMS are freely transferable and valid for a period of 24 months from the date of issue of the relevant credit entitlement certificate. They can be used for payment of custom duties on subsequent imports of any inputs or goods including capital goods.
- (72) The credit entitlement certificate is issued from the port from which the exports have been made and after realisation of exports or shipment of goods. As long as the complainant provides to the authorities copies of all relevant export documentation (e.g. export order, invoices, shipping bills, bank realisation certificates), the GOI has no discretion over the granting of the duty credits.
- (73) It was found that the cooperating exporting producer received benefits under the FMS during the RIP.

4.4. Conclusion on FMS

- (74) The FMS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. A FMS duty 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 FMS duty credit confers a benefit upon the exporter, because it improves its liquidity.
- (75) Furthermore, FMS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.
- (76) This scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the strict rules laid down in Annex I point (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. There is no system or procedure in place to confirm which inputs (including their amounts and origin) are consumed in the production process of the exported product and thus whether an excess payment of import duties occurred within the meaning of point (i) of Annex I and Annexes II and III of the basic Regulation. An exporter is eligible for FMS 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 having to demonstrate 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 FMS. Moreover, an exporter can use FMS duty credits in order to import capital goods although capital goods are not covered by the scope of permissible duty drawback systems, as set out in Annex I point (i) of the basic Regulation, because they are not consumed in the production of the exported products. In addition, the Commission observes that no further examination by the GOI was conducted on the basis of actual inputs and transactions in order to determine whether an excess payment occurred.

4.5. Calculation of the subsidy amount

- (77) Since there was no reliable evidence showing otherwise, the amount of countervailable subsidies was calculated on the basis of the benefit conferred on the recipient, which is found to exist during the RIP as booked by the

applicants on an accrual basis as income at the stage of export transaction. In accordance with Article 7(2) and (3) of the basic Regulation this subsidy amount (numerator) has been allocated over the export turnover of the product under review 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.

- (78) Based on the above, the subsidy rate established in respect of this scheme for the cooperating exporting producer amounted to 0,13 %.

Withdrawal and replacement of FMS

- (79) Following the entry into force of FTP 15-20 on 1 April 2015, FMS, together with four other schemes, was merged into the Merchandise Export Incentive Scheme (MEIS) described in recitals 83 to 100. As explained in the document titled 'Highlights of the Foreign Trade Policy 2015-2020' ⁽¹⁾ published by the GOI's Directorate-General of Foreign Trade: 'Earlier there were 5 different schemes (Focus Product Scheme, Market Linked Focus Product Scheme, Focus Market Scheme, Agri. Infrastructure Incentive Scrip, VKGUY) for rewarding merchandise exports with different kinds of duty scrips with varying conditions (sector specific or actual user only) attached to their use. Now all these schemes have been merged into a single scheme, namely Merchandise Export from India Scheme [...].'
- (80) The investigation established that the cooperating exporting producer switched from FMS to MEIS as soon as FMS was withdrawn.
- (81) In view of recitals 79 and 80, the Commission considers that the subsidisation conferred by FMS was not discontinued but just merged and renamed, and that the benefits conferred by FMS continue to be conferred by the new scheme. On that basis FMS is deemed to be countervailable until its withdrawal.

5. Merchandise Export from India Scheme (MEIS)

5.1. Legal basis

- (82) The detailed description of MEIS is contained in chapter 3 of FTP 15-20 and in chapter 3 of HOP I 15-20.
- (83) MEIS came into force on 1 April 2015, i.e. in the middle of the RIP. It is reminded that, as explained in recitals 79 to 81, MEIS is the successor scheme of FMS and 4 other schemes (Focus Product Scheme, Market Linked Focus Product Scheme, Agricultural Infrastructure Incentive Scrip and VKGUY).

5.2. Eligibility

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

5.3. Practical implementation

- (85) Eligible companies can benefit from MEIS by exporting specific products to specific countries which are categorised into Group A ('Traditional Markets' including all EU Member States), Group B ('Emerging and Focus Markets') and Group C ('Other Markets'). The countries falling under each group and the list of products with corresponding reward rates are specified in Table 1 and Table 2 respectively of Appendix 3B of FTP 15-20.

⁽¹⁾ <http://dgft.gov.in/exim/2000/highlight2015.pdf>

- (86) The benefit takes the form of a duty credit equivalent to a percentage of the FOB value of the export. In the case of GES, this percentage was found to be 2 % for exports to Group B countries and 0 % for exports to Group A and C countries during the RIP. Certain types of exports are excluded from the scheme, e.g. exports of imported goods or transhipped goods, deemed exports, service exports and export turnover of units operating under special economic zones/export operating units.
- (87) The duty credits under MEIS are freely transferable and valid for a period of 18 months from the date of issue. They can be used for: (i) payment of custom duties on imports of inputs or goods including capital goods, (ii) payment of excise duties on domestic procurement of inputs or goods including capital goods and payment, (iii) payment of service tax on procurement of services.
- (88) An application for claiming benefits under MEIS must be filed on line on the Directorate-General of Foreign Trade website. Relevant documentation (shipping bills, bank realisation certificate and proof of landing) must be linked with the on-line application. The relevant Regional Authority ('RA') of the GOI issues the duty credit after scrutiny of the documents. As long as the exporter provides the relevant documentation, the RA has no discretion over the granting of the duty credits.
- (89) It was found that the cooperating exporting producer received benefits under the MEIS during the RIP.

5.4. Conclusion on MEIS

- (90) The MEIS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. MEIS duty 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 MEIS duty credit confers a benefit upon the exporter, because it improves its liquidity.
- (91) Furthermore, MEIS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.
- (92) This scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the strict rules laid down in Annex I point (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. 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 point (i) of Annex I and Annexes II and III of the basic Regulation. An exporter is eligible for MEIS 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 having to demonstrate 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 MEIS. Moreover, an exporter can use MEIS duty credits in order to import capital goods although capital goods are not covered by the scope of permissible duty drawback systems, as set out in Annex I point (i) of the basic Regulation, because they are not consumed in the production of the exported products. Moreover, no further examination by the GOI was conducted on the basis of actual inputs and transactions in order to determine whether an excess payment occurred.
- (93) Exports to the European Union were not directly eligible to MEIS during the RIP as the EU Member States are part of country Group A which was not eligible to MEIS benefits during that period. On that basis the GOI claimed that MEIS should not be considered countervailable. However MEIS duty credits obtained from exports of GES to third countries are freely transferable and can be used to offset import duties on inputs incorporated in the product under review even when it is exported to the Union. For that reason it was considered that MEIS conferred benefits to exports of GES in general, including exports to the Union, and therefore the claim was rejected.

- (94) After disclosure the GOI reiterated its claim that since only exports to non-EU third countries were directly eligible to MEIS benefits during the RIP the scheme could not be considered countervailable. The GOI however did not put forward new arguments that would challenge the findings of recital 93 and in particular the fact that duty credits obtained from exports of GES to third countries are freely transferable and can be used to offset import duties on inputs incorporated in the product under review when exported to the Union. Therefore, the claim was rejected.

5.5. Calculation of the subsidy amount

- (95) The amount of countervailable subsidies was calculated on the basis of the benefit conferred on the recipient, which is found to exist during the RIP as booked by the applicants on an accrual basis as income at the stage of export transaction.
- (96) It was found that while the MEIS and its predecessor scheme, the FMS, were both in force during six months (the first half of the RIP for FMS and the second half for MEIS) the amount of countervailable subsidies conferred by MEIS was about three times the amount conferred by FMS.
- (97) In the disclosure the Commission, in accordance with Article 7(2) and (3) of the basic Regulation allocated this subsidy amount (numerator) over the export turnover of the product under review 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.
- (98) The GOI claimed that the Commission's calculation method described in recital 97 resulted in counting MEIS benefits twice, once for exports to countries directly eligible to MEIS and once for the global exports (including exports to the Union). However since the calculation method described in recital 97 consists in dividing the benefit conferred on all exports only by the export turnover (including exports to the Union) there was no double counting of benefits. The claim was therefore rejected.
- (99) In any event, in the context of this expiry review it is not necessary to establish the exact subsidy rate of MEIS since there is sufficient evidence of continuation of subsidisation in view of the findings made in respect of the other investigated schemes. It is thus only necessary to establish that the benefits conferred by FMS continued to be conferred by MEIS since MEIS is the continuation scheme of FMS as established in recitals 79 to 81. To that end the Commission recalculated the subsidy rate in the most conservative way possible by using the largest available denominator i.e. the total turnover of GES. On that basis the subsidy rate calculated in respect of this scheme for the cooperating exporting producer amounted to 0,31 %. This rate constitutes a lower bound of the subsidy rate during the RIP.
- (100) It must be noted that the subsidisation rate of this scheme is expected to rise significantly after the RIP as, by public notice No 44/2015-2020 dated 29 October 2015, the GOI extended the benefit of the 2 % rate to Group A and C thereby extending the market coverage of MEIS to all countries and in particular to EU Member States. This development will increase the subsidisation level as compared to what was observed during the RIP. Indeed, since MEIS benefits can in principle be claimed for any export, the subsidy rate for this scheme is expected to increase significantly and to reach the level of 2 %.

6. Export Promotion Capital Goods Scheme (EPCGS)

6.1. Legal basis

- (101) The detailed description of the scheme is contained in Chapter 5 of the FTP 09-14 and of the FTP 15-20 as well as Chapter 5 of the HOP I 09-14 and of the HOP I 15-20.

6.2. Eligibility

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

6.3. Practical implementation

- (103) Under the condition of an export obligation, a company is allowed to import capital goods at a reduced rate of duty. An export obligation is an obligation to export a minimum value of goods corresponding to, depending on the sub-scheme chosen, six or eight times the amount of duty saved. To this end, the GOI issues, upon application and payment of a fee, an EPCGS licence. The scheme provides for a reduced import duty rate of 3 % 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. The capital goods can also be imported with a 0 % duty rate under the EPCGS but in such case the time period for fulfilment of the export obligation is shorter.
- (104) The EPCGS licence holder can also source the capital goods indigenously. In such case, the indigenous manufacturer of capital goods may avail himself 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.
- (105) Like in the original investigation, it was found that the cooperating exporting producer continued benefiting from the EPCGS during the RIP.

6.4. Conclusion on the EPCGS

- (106) The EPCGS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(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 exporter, because the duties saved upon importation improve the company's liquidity.
- (107) 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 4(4), first subparagraph, point (a) of the basic Regulation.
- (108) The EPCGS cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(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 point (I), of the basic Regulation, because they are not consumed in the production of the exported products.

6.5. Calculation of the subsidy amount

- (109) The amount of countervailable subsidies 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 the industry concerned. 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 time value of the money. The commercial interest rate during the RIP in India was considered appropriate for this purpose.
- (110) In accordance with Article 7(2) and (3) of the basic Regulation, this subsidy amount has been allocated over the appropriate export turnover during the RIP as the appropriate denominator because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

- (111) Based on the above, the subsidy rate established in respect of this scheme for the cooperating exporting producer amounted to 0,27 %.
- (112) After disclosure the cooperating exporting producer claimed that for the calculation of the subsidy rate of this scheme, the subsidy amount should have been allocated over the total turnover of the company including both exports and domestic sales instead of only the export turnover. It justified its claim by the fact that machines benefitting from EPCGS subsidisation can also be used to manufacture products sold domestically and referred to Article F(b)(2) of the Guidelines for the calculation of the amount of subsidy in countervailing duty investigations ⁽¹⁾ ('the Guidelines') which contains an instruction regarding the calculation of subsidy rates for non-export subsidies. However, the possibility to manufacture GES sold domestically with machines imported under EPCGS does not challenge the qualification of EPCGS as an export subsidy since as explained in recitals 103 and 107 this subsidy is contingent in law upon export performance. Therefore Article F(b)(2) of the Guidelines which concerns non-export subsidies did not apply to the calculation of EPCGS and the claim was rejected. In addition it is reminded that the calculation method used for EPCGS in the current proceeding is the same as the one used in the other proceedings concerning GES originating in India, i.e. the initial investigation (see recital 57 of Commission Regulation (EC) No 1008/2004 ⁽²⁾), the partial interim review (see recital 54 of Regulation (EC) No 1354/2008) and the first expiry review (see recital 47 of Implementing Regulation (EU) No 1185/2010).

7. Export Credit Scheme (ECS)

- (113) It was alleged by the applicants that, under the ECS, the Reserve Bank of India ('RBI') was imposing maximum ceiling interest rates on export credit loans granted by banks. This ceiling was allegedly set at the benchmark prime lending rate bank minus 2,5 %.
- (114) It was however found that maximum ceiling interest rates imposed to banks on export credit loans in INR were withdrawn with effect from 1 July 2010 by RBI's Master Circular DBOD No DIR(Exp.) BC 06/04.02.002/2010-11 and that maximum ceiling interest rates imposed to banks on export credit loans in foreign currency were withdrawn with effect from 5 May 2012 by Master Circular DBOD No DIR(Exp.) BC 04/04.02.002/2011-2012 with the exception of specific limited number of sectors of industry. GES was not included in the list of exceptions and according to the legal basis in force the ECS scheme was therefore not available to the GES producers during the RIP.
- (115) The investigation confirmed that actual rates obtained by the cooperating exporting producer for its loans were equal to or only slightly different from the base rates of the respective banks granting the loans. As nothing indicated either that the RBI was deciding the base rate of banks, it was concluded that the rates of the export credit loans were freely determined by the banks.
- (116) It must be noted that shortly after the RIP the RBI announced a new 'Interest Equalisation Scheme on Pre and Post Shipment Rupee Export Credit' in Master Circular DBR.Dir.BC.No 62/04.02.001/2015-16 dated 4 December 2015. The scheme is available to exports of a wide range of products, including GES, irrespective of the size of the exporting producer and to any export for small and medium enterprises. On that basis it cannot be excluded that the cooperating exporting producer started availing or will avail itself of this scheme in the future. However the obtained benefits, if any, would be posterior to the RIP.
- (117) In view of the above, in the context of this expiry review the Commission does not consider it necessary to make findings about this scheme.

8. Electricity Duty Exemption Scheme ('EDES')

- (118) 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.

⁽¹⁾ OJ C 394, 17.12.1998, p. 6.

⁽²⁾ Commission Regulation (EC) No 1008/2004 of 19 May 2004 imposing a provisional anti-subsidy duty on imports of certain graphite electrode systems originating in India (OJ L 183, 20.5.2004, p. 35).

8.1. *Legal basis*

- (119) 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.

8.2. *Eligibility*

- (120) Every manufacturer which invests a certain amount of capital in the set-up of a power plant within the State of Madhya Pradesh is eligible for this scheme.

8.3. *Practical implementation*

- (121) According to notification No 5691-XIII-2004 of the MP Government dated 29 September 2004, companies or persons investing in new captive power plants of more than 10 kilowatt 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.
- (122) By notification No 3023/F-4/3/13/03 dated 5 April 2005 the MP Government exempted the first power plant built by the cooperating exporting producer (the '30-MW plant') for a period of 10 years with effect from 6 April 2005. It is noted that this notification applied only to the cooperating exporting producer and therefore constituted an exception to the general 5-year exemption period defined in notification No 5691-XIII-2004. This suggests that this incentive is not systematically granted according to criteria clearly set out by law or regulation.
- (123) By notification No 4328-XIII-2006 dated 21 July 2006 the MP Government introduced distinct exemption periods of 5, 7 and 10 years applicable in function of the investment value of the subsidised power plant.
- (124) According to a letter of the MP Government dated 4 February 2015 a 7-year exemption was granted to the cooperating exporting producer's second power plant (the '33-MW plant') from 10 June 2009 to 9 June 2016.

8.4. *Conclusion on EDES*

- (125) The subsidy amount was calculated in accordance with Article 7(2) of the basic Regulation on the basis of the unpaid sales duty on electricity purchased in the RIP (the numerator) and the total sales turnover of the company (the denominator) as EDES is neither contingent upon export performance nor was the use of electricity limited only to the production of the product under review.
- (126) Based on the above, the subsidy rate established in respect of this scheme for the cooperating exporting producer amounted to around 2 %.
- (127) However, the 30-MW plant operated by the cooperating exporting producer ceased to be eligible to EDES in April 2015 (i.e. during the RIP) pursuant notification No 3023/F-4/3/13/03 referred to in recital 122. The investigation confirmed that the cooperating exporting producer did not benefit from duty exemption for that power plant after this date.
- (128) As regards the 33-MW plant, eligibility was lapsing in June 2016 as explained in recital 124. Since the verification visit was also conducted in June 2016 it was not possible to verify on spot that the benefits indeed ceased to be conferred after that date. However since the expiration of the benefits could be verified for the 30-MW plant there is no tangible ground to challenge that benefits expired on time for the 33-MW plant as well.
- (129) In view of the expiration of the benefits this scheme, the Commission found that the exporting producer ceased to benefit from this scheme. In any event, in the context of this expiry review the Commission does not consider it necessary to make findings about this scheme since, as found before, there is sufficient evidence to conclude continuation of subsidisation on the basis of the schemes on which the Commission makes findings.

9. Amount of countervailable subsidies

- (130) The amounts of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the cooperating exporting producer were as follows:

Table 1

SCHEMES	DDS	AAS	FMS	MEIS	EPCGS	Total
HEG Limited (%)	2,02	0,30	0,13	0,31	0,27	3,03

- (131) The total amount of subsidisation exceeds the *de minimis* threshold mentioned in Article 14(5) of the basic Regulation.
- (132) The GOI submitted that the non-cooperating exporting producer Graphite India Limited ('GIL') did not avail of any of the five countervailable schemes found to confer benefits to HEG on basis of the following claims:
- No DDS duty credit was issued in respect of exports to the Union during the RIP;
 - FMS was terminated during the RIP and will not confer benefits to exporting producers in the future;
 - MEIS was not available to exports to the Union during the RIP as far as GES is concerned;
 - No AAS or EPCGS licence were granted to GIL during the RIP.
- (133) These claims must however be rejected for the following reasons:
- Even if GIL did not receive DDS duty credits for their exports to the Union, this would still not allow concluding that the scheme did not confer benefits to GIL. Indeed the DDS subsidy rate is calculated on the basis of all exports of the company which also include exports to other third countries.
 - While the investigation confirmed that the FMS scheme was terminated during the RIP, it also established, as described in recitals 79 to 81, that the benefits conferred by the FMS before its termination continued to be conferred by the new MEIS scheme which entered in force immediately after the FMS was terminated.
 - As explained in recital 93 the mere fact that exports to the Union are not directly eligible to MEIS duty credits does not allow concluding that an exporting producer does not benefit from the MEIS in respect of its export or production activities in general. Indeed MEIS duty credits obtained from exports of GES to third countries are freely transferable and can be used to offset import duties on inputs incorporated in the product under review even if it is exported to the Union. It is therefore considered that these duty credits confer benefits to exports of GES as well as GIL's production in general, including exports to the Union.
 - Even if GIL was not granted new AAS or EPCGS licences during the RIP, this would still not allow concluding that these schemes did not confer benefits to GIL. GIL could have availed of the respective schemes by using licences granted before the RIP. In this respect it is worth noting that while the cooperating exporting producer was not granted any new AAS or EPCGS licence during the RIP, it was still found to receive benefits under both schemes by using licences granted before the RIP.
- (134) According to the review request GIL benefited from the same countervailable schemes as the cooperating exporting producer. There is no information available which would indicate that this was not the case. In fact, the current investigation has shown that two schemes from which GIL benefited and were countervailed in the original investigation (DDS and EPCGS) continue being in place and benefiting the cooperating exporter. On the basis of these available facts and in accordance with Article 28 of the basic Regulation it was concluded that subsidisation at country-level continued during the RIP.

10. Conclusions on the likelihood of a continuation of subsidisation

- (135) It was established that the cooperating exporting producer continued to benefit from countervailable subsidisation by the Indian authorities during the RIP. In recital 134 it was established that subsidisation continued at country-level as well.
- (136) The countervailable subsidy schemes give recurring benefits and there is no indication (except for FMS which was immediately replaced by MEIS) that these schemes will be phased out in the foreseeable future or that the cooperating exporting producer would stop obtaining benefits under these schemes. To the contrary, these schemes were renewed during the RIP as part of the Foreign Trade Policy 2015-2020 which will remain in force until March 2020. In addition, it is reminded that after the RIP (i) the subsidy rate of the MEIS increased as established in recitals 96 and 100 and (ii) the subsidisation of export credits scheme was re-activated as established in recital 116. Moreover, each exporter is eligible to several of the subsidy schemes.
- (137) It was also examined whether exports to the Union would be made in significant volumes should the measures be lifted. To that end, the following elements were analysed: the production capacity and spare capacity in India, the exports from India to other third countries and the attractiveness of the Union market.
- (138) As mentioned in recital 30, only one exporting producer in India cooperated which represented only half of the total Indian production capacity. The findings in the sections below were therefore based on facts available in accordance with Article 28 of the basic Regulation. In this regard, the Commission used the information provided by the cooperating exporting producer, the request for the expiry review, the United Nations Database, Directorate-General of Commercial Intelligence and Statistics ('DGCIS') statistics provided by the GOI and publicly available information.

10.1. Production capacity and spare capacity

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

⁽¹⁾ http://www.google.be/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKewiq6H2u9_QAhWEzRoKHYUwBVEQFggfMAA&url=http%3A%2F%2Fheg ltd.com%2Fwebmaster%2FDownloadFile.aspx%3F%3D.%2Fuploads%2FFinance%2F70Results_Release.pdf&usq=AFQjCNGMpUymLm4BNOjIMmOLLDgwSGgcDw

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

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

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

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

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

10.2. Exports to third countries

- (143) Based on public financial statements, both Indian exporting producers were found to be export oriented ⁽¹⁾ ⁽²⁾ exporting around 60 % of their total production during the RIP.
- (144) The Union remained an important export destination for the cooperating exporting producer HEG despite the measures in force. HEG's exports accounted for between 10 % and 17 % of its total sales in terms of value and between 10 % and 20 % in terms of volume in the RIP. The non-cooperating Indian company GIL exported very low volumes to the Union during the RIP. This has however to be seen in correlation with the anti-dumping and countervailing duties applicable to GIL (15,7 % in total) as compared to HEG (7 % in total).
- (145) In the absence of any other more reliable source to establish export volumes from India to other third country markets, the United Nations Database was used. According to this database, exports to other third countries increased between 2012 and 2013, by 43 %, and then decreased in 2014 and 2015, by 38 % as compared to 2013. Export volume overall decreased between 2012 and the RIP (by 10 %). The main destinations for the Indian exports in 2015 were USA, Saudi Arabia, Iran, Turkey and United Arab Emirates, Republic of Korea, Egypt. Between 2012 and 2015 Indian exports to some of these destinations increased (such as Saudi Arabia, United Arab Emirates, USA) while to some others (Iran, Turkey, Republic of Korea, Egypt) they decreased, with an overall decrease of 9 %.
- (146) While in 2012 Russia was the third export market for the Indian producers in terms of volume, after Russia imposed an *ad valorem* duty on imports of GES from India ranging from 16,04 % to 32,83 % in December 2012 ⁽³⁾ the exports from India to Russia dropped from 4 415 tonnes to 638 tonnes in 2015, a decrease of 86 %.
- (147) The information on export volumes in the United Nations Database could be counter-checked with DGCIS statistics, which showed similar trends as the one observed in the United Nations Database.
- (148) In addition, export volumes to other third countries of the cooperating exporting producer HEG also followed similar trends i.e. an increase of export volumes to other third countries from 2012 to 2013 and a decrease from 2014 to the RIP with an overall decreasing trend during the period considered. To be noted that despite this decrease of export volumes, the overall level in the RIP remained significant, between 20 000 tonnes and 30 000 tonnes.
- (149) Regarding export price levels, based on the United Nations Database the investigation revealed that Indian exports prices to certain countries like the USA and the Republic of Korea that used to be on average lower than the prices in EU between 2012 and 2014, have increased in 2015 at around the same level as the prices in the EU. In addition, Indian exports prices to other countries like Saudi Arabia for instance that were lower than the prices in EU between 2012 and 2014, increased at a higher level than the EU prices in 2015. Moreover, Indian exports to certain other countries, like Turkey for instance, continued to be lower than the EU prices during the whole period considered. To be noted however that the prices in this database do not distinguish between different product types and therefore the reliability of such a price comparison on this basis is limited.
- (150) The analysis of the information on export prices to other third country markets of the cooperating exporting producer showed that during 2012 and 2014 the average prices in the Union market were higher than the average prices of HEG on other third markets (adjusted on a calendar year basis as data were provided on a financial year basis) while during the RIP the average prices in the Union market were lower than the average prices of HEG on other third markets.
- (151) No other data was available to establish accurate price levels of the Indian exporting producers to other third country markets.

⁽¹⁾ http://hegltd.com/pdf/HEGLtd_Q1_FY_16_Investors_Presentation.pdf

⁽²⁾ http://www.graphiteindia.com/View/investor_relation.aspx (see GIL Q3 FY2015 Earnings Presentation.pdf, page 14).

⁽³⁾ http://www.eurasiancommission.org/_layouts/Lanit.EEC.Desicions/Download.aspx?IsDlg=0&ID=3805&print=1

10.3. *Attractiveness of the Union market*

- (152) The attractiveness of the Union market was demonstrated by the fact that despite the anti-dumping and countervailing duties in force, Indian GES continued to enter the Union market. During the period considered, India continued to be the second largest exporting country to the Union after the People's Republic of China ('China'). Despite a decrease between 2012 and the RIP, India maintained its exports to the Union in significant volumes and market shares as explained in recital 179 below.
- (153) The possible development of export sales to the Union should measures be allowed to lapse has to be seen against the background of the overall decrease in consumption of GES in India and worldwide in combination with the spare capacity in India. This will in all likelihood increase the pressure on the Indian exporting producers to explore further export markets, in particular when considering their export oriented business model. Therefore, should measures in the Union be repealed and the access to the Union market be free of either anti-dumping or countervailing duties it is indeed likely that a large part of the available spare capacity will be used for export to the Union market. In particular since the investigation showed that while in some exporting markets (such as Saudi Arabia, United Arab Emirates, USA) Indian exports increased in 2015, overall exports from India to other third country markets followed a decreasing trend. This indicates that on certain third countries there appears to be a limited capacity to absorb additional exports quantities.
- (154) In addition, as mentioned in recital 146, Russia has imposed anti-dumping duties on imports of GES from India. Indian exporting producers thus have limited access to this market and cannot increase or re-direct their export volumes to Russia, as showed by the drop in exports to this destination as of 2012.
- (155) On this basis, it is likely that the Indian exporting producers will continue to export significant quantities to the Union should measures be allowed to lapse and even increase their current export volumes taking into account their significant spare capacity. Indeed, this is likely for the cooperating exporting producer that will have an incentive to further increase its already significant presence in the Union market, and even more for the non-cooperating exporting producer, which duty levels are higher as compared to the cooperating exporting producer and which almost stopped exporting to the Union market.

10.4. *Conclusion on the likelihood of continuation of subsidisation*

- (156) The foregoing analysis shows that (i) subsidised Indian imports continued to enter the Union market in significant quantities during the RIP; (ii) subsidy schemes will continue to be available in the foreseeable future; (iii) both Indian producers are export oriented and have spare capacity which could be used to increase export volumes to the Union; (iv) consumption worldwide is following a decreasing trend, thus reducing the export possibilities to certain other third markets; (v) the existence of anti-dumping measures in Russia against Indian GES further restricts export possibilities to the Indian exporting producers. It is therefore likely that Indian GES would continue to enter the Union market in significant volumes and at subsidised prices should the measures be lifted.
- (157) In view of the above, in accordance with Article 18(3) of the basic Regulation, the Commission it was concluded that there is a likelihood of continuation of subsidisation should the measures in force be allowed to lapse.
- (158) After disclosure, the sole cooperating Indian exporting producer, HEG, claimed that the Commission has not considered the facts pertaining to the period after the RIP in its assessment of likelihood of continuation of subsidisation. In this regard, the cooperating Indian exporting producer claimed that when applying Article 28 of the basic Regulation, the Commission has not taken into account the fact that GIL, the other Indian producer of GES, has made an investment in a manufacturing facility in the Union, that is Graphite Cova GmbH ('GIL Cova'). HEG further argued that GIL has a strategic long term contract to sell baked green electrodes (which is a semi-finished product) to its graphitization facility of GIL Cova. HEG also claimed that because of the strategic investment of GIL, the Commission's conclusion that exports from India to the Union will increase is incorrect and that the finding that both Indian producers have spare capacity available for exports is based on mere assumptions. HEG also argued that the expiry of measures is not going to increase the volume of imports to the Union based on the decreasing trend of exports from India to the Union (including HEG's export to the Union) post RIP.

- (159) In addition, HEG claimed that HEG's plans to increase production capacity was only the vision of its Chairman considering the favourable economic scenario of 2010. Thus, in the annual report of HEG for the year ended March 31, 2016 there are no new proposals being discussed by the board of directors for expansion of capacities anymore.
- (160) In relation to the comparison of prices carried out by the Commission in recitals 149 and (150) with regard to exports to other third country markets, HEG submitted an analysis of its average CIF/CFR prices to four other third countries as compared to its average CIF prices to the Union and concluded that, in general, its average prices to the four other third countries were higher than its prices to the Union. Therefore, HEG claimed that the Union market with lower price levels would be in comparison less attractive.
- (161) As regards HEG's claim concerning the investment of GIL in GIL Cova during the period considered GIL exported a very small volume to the Union market. It is however considered that this is not only due to GIL's investment in GIL Cova, but mainly to the high anti-dumping and countervailing duties that apply to the exports of GIL India to Union (15,7 % in total). In the scenario that the anti-dumping and/or countervailing measures are repealed, it is therefore likely that GIL will resume its exports to the Union, despite its investment in GIL Cova, also taking into account its available spare capacity and the attractiveness of the Union market as described in recitals 152 to 155 above.
- (162) As concerns HEG's claim regarding the trend of exports after the RIP, it is highlighted that these exports were made while the anti-dumping and countervailing measures were in force. Therefore, even if the volume of exports of HEG's after the RIP showed a decreasing trend, it is likely that HEG's exports to Union will increase if the anti-dumping and/or countervailing measures are repealed taking into account that despite the measures in place, HEG continued to export to the Union market at significantly dumped and subsidised prices, its export oriented business model and its spare capacity which is not excluded to increase in the future if the demand for its products increases, as described in recitals 139 to 155 above.
- (163) Furthermore, regarding HEG's intention to increase capacity, it is highlighted that during the on-spot verification visit in 2016, HEG showed to the case team a short movie providing an overview of HEG's group. One of the elements presented in this movie were the future plans of the company to increase its production capacity. Moreover, the company's representatives explained during the on-spot verification that such plans were currently on hold taking into account that the company was not fully using its capacity and the decrease in the global demand. Therefore, in the event that the anti-dumping and/or the countervailing measures are repealed, it is likely that the demand for Indian GES in the Union market will increase and that HEG therefore, will have an incentive to increase its capacity to meet the demand.
- (164) As concerns HEG's claim referring to the price differences between the Union market and other third country markets, it is highlighted that the comparison carried out by the Commission in recitals 149 and 150 is made between average prices of the Indian exporting producers on other third markets and average prices of Union producers in the Union market and not the average prices of the Indian producers in the Union market. It is recalled that the HEG's average price in the Union market is at a significantly dumped level that undercuts the Union producers' average price and is therefore not suitable for the comparison in question.
- (165) In view of the above, HEG's claims are rejected.
- (166) The Commission's conclusion that there is a likelihood of continuation of subsidisation should the measures be repealed is therefore confirmed.

D. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF INJURY

1. Definition of the Union industry and Union production

- (167) During the review investigation period, the like product was manufactured by eight producers (two individual companies and two groups). They constitute the 'Union industry' within the meaning of Article 9(1) of the basic Regulation.

2. Preliminary remarks

- (168) As mentioned in recital 141 the situation of the GES industry is closely linked to that of the electrical steel industry where GES are used in the electric steel furnaces to melt steel scrap. In this context, during the period considered negative market conditions prevailed within the electrical steel industry, with a decrease in consumption which is also reflected in the consumption of GES.
- (169) Given that there are only two exporting producer of the product concerned in India, data relating to imports of GES from India and other third countries into the European Union are not presented in precise figures in order to preserve confidentiality pursuant to Article 29 of the basic Regulation.

3. Union consumption

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

Table 2

Union consumption

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

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

- (172) The Union consumption decreased by 8 % over the period considered. More specifically, the Union consumption decreased by 7 % in 2013, it recovered by 4 % between 2013 and 2014, and then decreased again by 5 % from 2014 to the review investigation period.
- (173) As mentioned in recitals 141 and 168, the overall decrease in demand was a result of the negative market conditions prevailing within the electric steel sector, since the sales volumes of graphite electrodes follow the development of the volume of steel production in electric furnaces.
- (174) After disclosure, the cooperating exporting producer from India claimed that the market share and consumption analysis should take into consideration the imports made by the Union producers from their related companies in the USA, Mexico, Japan and Malaysia which would have increased significantly during the past three years.
- (175) Imports from all other third countries were duly taken into account when calculating the Union consumption, as explained above in the recital 170 and are therefore duly reflected in the total consumption. The argument was therefore rejected.

4. Imports from the country concerned

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

Table 3

Import volume and market share

Country		2012	2013	2014	Review investigation period
India	Import volume (tonnes)	9 000-10 000	5 000-6 000	7 000-8 000	6 500-7 500
	<i>Indexed import volume (2012 = 100)</i>	100	57	80	74
	Market share (%)	6-7	3-4	5-6	4-5
	<i>Market share indexed</i>	100	62	83	80

Source: 14(6) data base.

- (176) Import volumes were decreasing during the period considered. They dropped significantly in 2013 (by 43 %), picked-up in 2014 and decreased again in the review investigation period. Overall there was a decrease of 26 % during the period considered.
- (177) The Commission established the market share of the imports on the basis of the Union consumption as set out in recital 170 above.
- (178) Market share showed similar trends as import volumes, i.e. a decrease between 2012 and 2013, an increase between 2013 and 2014 and then a decrease again between 2014 and the review investigation period. Overall market share decreased by 1,2 percentage points in the review investigation period as compared to 2012.
- (179) The market share of Indian imports at the start of the period considered was in the range of 6 % to 7 %. It dropped to the range of 4 % to 5 % by the end of the review investigation period.

4.2. Prices of imports from the country concerned

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

Table 4

Import price (*)

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

(*) Average price does not include anti-dumping/countervailing duties in place.
Source: 14(6) data base.

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

4.3. Price undercutting

- (183) The Commission determined the price undercutting during the review investigation period by comparing (i) the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers in the Union market, adjusted to an ex-works level; and (ii) the corresponding weighted average prices per product type of the imports from the cooperating Indian producer to the first independent customer in the Union market, established on a cost, insurance, freight (CIF) basis, with appropriate adjustments for anti-dumping/countervailing duty and post-importation costs.
- (184) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the sampled Union producers' turnover during the review investigation period.
- (185) The comparison showed for a cooperating exporting producer a weighted average undercutting margin of 3 % in the Union market during the review investigation period. However when deducting the anti-dumping and countervailing duties from the calculations, the undercutting margin would amount to 9 %. Concerning the non-cooperating exporting producer, only very small volumes were imported during the RIP. The Commission nevertheless conducted an estimation of undercutting. The Commission found a 12 % undercutting margin, when deducting from the calculations the anti-dumping and countervailing duties in place. This estimation however is based on a very small import volume and, because of the lack of cooperation, does not take into account product types. Therefore, its reliability is limited.

4.4. Imports from other third countries

Table 5

Import volume and market share

Country		2012	2013	2014	Review investigation period
Total other third countries	Imports (tonnes)	33 000-35 000	30 000-32 000	34 000-36 000	30 000-32 000
	<i>Index</i>	100	90	103	90
	Market share (%)	22-23	22-23	24-25	22-23
	Price (EUR/tonne)	2 500-3 500	2 400-3 400	2 400-3 400	2 300-3 300
	<i>Index</i>	100	98	89	92
China	Imports (tonnes)	14 000-15 000	11 000-12 000	16 000-17 000	14 000-15 000
	<i>Index</i>	100	80	117	103
	Market share (%)	9-10	8-9	11-12	10-11
	Price (EUR/tonne)	2 000-3 000	1 500-2 500	1 400-2 400	1 600-2 600
	<i>Index</i>	100	94	90	99

Country		2012	2013	2014	Review investigation period
USA	Imports (tonnes)	3 000-4 000	4 000-5 000	4 200-5 200	4 200-5 200
	<i>Index</i>	100	118	129	128
	Market share (%)	2-3	3-4	3-4	3-4
	Price (EUR/tonne)	3 300-4 300	3 200-4 200	3 000-4 000	2 800-3 800
Mexico	<i>Index</i>	100	96	84	81
	Imports (tonnes)	3 000-4 000	4 000-5 000	5 500-6 500	4 000-5 000
	<i>Index</i>	100	127	165	119
	Market share (%)	2-3	3-4	4-5	3-4
Russia	Price (EUR/tonne)	3 800-4 800	3 900-4 900	3 900-4 900	4 000-5 000
	<i>Index</i>	100	103	103	115
	Imports (tonnes)	3 000-4 000	2 500-3 500	3 500-4 500	3 700-4 700
	<i>Index</i>	100	70	101	103
Japan	Market share (%)	2-3	1-2	2-3	2-3
	Price (EUR/tonne)	3 000-4 000	2 800-3 800	2 500-3 500	2 100-3 100
	<i>Index</i>	100	91	79	75
	Imports (tonnes)	4 500-5 500	3 000-4 000	3 000-4 000	2 000-3 000
Other third countries	<i>Index</i>	100	74	62	50
	Market share (%)	3-4	2-3	2-3	1-2
	Price (EUR/tonne)	3 400-4 400	3 300-4 300	2 800-3 800	2 900-3 900
	<i>Index</i>	100	99	82	83
Other third countries	Imports (tonnes)	4 000-5 000	4 000-5 000	1 000-2 000	700-1 700
	<i>Index</i>	100	104	25	19
	Market share (%)	2-3	3-4	0,5-1,5	0,5-1,5
	Price (EUR/tonne)	2 600-3 600	2 000-3 000	1 900-2 900	1 600-2 600
Other third countries	<i>Index</i>	100	83	78	72

Source: Eurostat (TARIC level).

- (186) In line with decreasing consumption, the volume of imports from all other third countries decreased by 10 % between 2012 and the RIP. The market share of imports from all other third countries was within the range 22 %-23 % during the period considered. The main imports were from China, USA, Mexico, Russia and Japan, which were the only countries with individual market shares higher than 1 % during the RIP.
- (187) Import prices from USA, Japan and Mexico were higher than the prices of the Indian exporters and the prices of the Union producers. The market share of imports from USA and Mexico increased, by less than 1 percentage point over the period considered. The market share of imports from Japan decreased by 1,5 percentage point over the period considered.
- (188) Import prices from China and Russia were lower than the prices of the Indian exporters and the prices of the Union producers (except in 2012 for Russia). According to the information provided by Union industry in the review request, a part of imports from China relate to small diameter GES (diameter of less than 400 millimetres) whereas the majority of Indian imports and the Union industry's production consist in large diameters GES ⁽¹⁾ (diameters of more than 400 millimetres), which are more expensive.
- (189) The market share of Chinese imports increased by 1 percentage point over the period considered and was in a range of 10 %-11 % during the RIP, while the market share of imports from Russia was only in a range of 2 %-3 % during the RIP. It increased by 0,3 percentage points over the period considered. However, these increase were not in detriment of the market share of the Union industry, which, as explained in the following recital 202, increased by 1,9 percentage points over the period considered.
- (190) In conclusion, given that the data available from the import statistics do not differentiate between different product types and that therefore a meaningful price comparison by product type could not be carried out, as it was possible for India on the basis of the detailed information provided by the cooperating exporting producer, the impact of the imports from China and Russia could not be clearly established.

5. Economic situation of the Union industry

5.1. General remarks

- (191) In accordance with Article 8(4) of the basic Regulation, the examination of the impact of the subsidised imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (192) As mentioned in recital 14, sampling was used for the determination of possible injury suffered by the Union industry.
- (193) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data contained in the review request, annual reports of non-cooperating Union producer and verified questionnaire replies of the sampled Union producers. The data related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. The data related to the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.
- (194) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the subsidy margin, and recovery from past subsidisation.
- (195) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments and ability to raise capital.
- (196) Both sets of data have been found to be representative for the economic situation of the Union industry.

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

5.2. Macroeconomic indicators

(a) Production, production capacity and capacity utilisation

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

Table 6

Production, production capacity and capacity utilisation of Union producers

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

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

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

(b) Sales volume and market share

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

Table 7

Sales volume and market share of Union producers

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

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

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

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

(c) Growth

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

(d) Employment and productivity

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

Table 8

Employment and productivity of Union producers

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

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

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

(e) Magnitude of the subsidy margin and recovery from past subsidisation

(207) The investigation established that imports of GES from India continued to enter the Union market at subsidised prices. The subsidy margin established for India during the review investigation period was well above the *de minimis* level as described in see recital 130. This coincided with a decrease in import prices as compared to 2012. Nevertheless, the Union industry was able to benefit from the countervailing measures in force by maintaining and slightly increasing their market share.

5.3. Microeconomic indicators

(f) Prices and factors affecting prices

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

Table 9

Average sales prices in the Union and unit cost

	2012	2013	2014	Review investigation period
Average unit selling price in the Union (EUR/tonne)	3 784	3 468	2 997	2 825
<i>Index (2012 = 100)</i>	100	92	79	75
Unit cost of production (EUR/tonne)	3 357	3 116	2 776	2 745
<i>Index (2012 = 100)</i>	100	93	83	82

Source: verified questionnaire replies of the sampled Union producers.

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

(g) Labour costs

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

Table 10

Average labour costs per employee

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

Source: verified questionnaire replies of the sampled Union producers.

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

(h) Inventories

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

Table 11

Inventories

	2012	2013	2014	Review investigation period
Closing stocks	8 952	8 821	13 770	18 465
<i>Index (2012 = 100)</i>	100	99	154	206
Closing stocks as a percentage of production (%)	6	5	7	11

Source: verified questionnaire replies of the sampled Union producers.

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

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

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

Table 12

Profitability, cash flow, investments and return on investments

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

Source: verified questionnaire replies of the sampled Union producers.

(218) The Commission established the profitability of the Union industry by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. The profitability of the Union industry decreased gradually from 11,3 % in 2012 to 2,8 % in the RIP, i.e. a decrease of 8,5 percentage points.

- (219) After disclosure, the cooperating exporting producer from India claimed that the decline in profitability of the Union producers was caused by its high administrative and selling overheads.
- (220) The investigation found that the unit cost of production declined during the period considered, as indicated above in recital 210. This decline in the unit cost of production concerned the administrative and selling expenses even if the major part of the cost was attributed to the raw material. The argument was therefore rejected.
- (221) The net cash flow is the Union producer's ability to self-finance its activities. The net cash flow decreased by 35 % during the period considered. The substantial decrease in cash flow is mainly explained by the significant decrease in profitability, as described above in recital 218.
- (222) During the period considered the annual flow of investments in the product concerned made by the Union industry decreased by more than half, from 25 million EUR in 2012 to 12 million EUR in the RIP.
- (223) After disclosure, the cooperating exporting producer from India claimed that the decline in investments is purely attributable to contraction of demand and overcapacities of GES manufacturing globally.
- (224) Indeed, the investigation confirmed that, as explained in the recital 172 above, there was a decrease in consumption of GES during the period considered. However, it should be noted that the investments in the product concerned made by the Union industry during the RIP of the last expiry review, when also facing the decrease in consumption, was three times the investment level achieved during the RIP of the current review.
- (225) The return on investments is the profit in percentage of the net book value of investments. The return on investment from the production and sale of the like product decreased gradually from 16,5 % in 2012 to 3,9 % in the RIP.

5.4. *Conclusion on the situation of the Union industry*

- (226) The investigation showed that despite the measures in force most of the injury indicators developed negatively and the economic and financial situation of the Union industry deteriorated during the period considered. Nevertheless, the Union industry managed to keep and slightly increase its market share, which was only possible at the expense of lower profit levels achieved.
- (227) While these negative developments may be explained by the decrease in consumption, which declined by 8 % during the period considered, Indian imports were still a constant presence in the Union market. These imports were sold at prices lower than the Union industry's prices and undercut the Union industry's prices by 3 % in the RIP. In addition, the underselling margin was found to be 9 %. Thus, Indian dumped and subsidised imports still exerted price pressure. Indeed, the price pressure during the current RIP increased as compared to the previous expiry review when the price undercutting was less than 2 %.
- (228) Against the background of diminished consumption and price pressure from dumped and subsidised imports, the Union industry was forced to decrease its sales prices. As a consequence, its profit, although still positive (2,8 %) in the review investigation period, was below the 8 % target profit established in the original investigation.
- (229) After disclosure, the cooperating exporting producer from India claimed that since the market share of the Union industry has increased by 2 % Union producers have benefited substantially from the decline in Indian imports. The Union industry's market share was claimed to be even higher if imports of the Union industry from other third countries were also taken into account. At the same time, the Union industry has been facing stiff pricing competition from other sources (low prices imports from China and Russia, particularly). Therefore, it was claimed that no injury can be attributable to Indian imports as a result of alleged lower market share by the Union producers.
- (230) Indeed, the investigation showed a decrease of import volumes and market shares of imports from India, however, as explained above in the recital 227, Indian dumped and subsidised imports still exerted price pressure, which even increased during the current RIP as compared to the previous expiry review. The argument was therefore rejected.

- (231) The same interested party further claimed that the Commission has not considered the fact that low priced imports from China and Russia are one of the major causes of price pressure in the Union market and urged to carry out a full analysis of the low priced imports from China and Russia of the product under consideration before determining the likelihood of a recurrence of injury to the Union industry. This party also alleged that some Chinese manufacturers increased the imports of large diameter GES to the Union market.
- (232) Regarding import prices of GES from China and Russia, as explained above in recitals 188 and 190 it should be recalled that: (i) a meaningful price comparison by product type for imports from these countries could not be carried out, as it was possible for India on the basis of the detailed information provided by the cooperating exporting producer; (ii) the import statistics from these countries available for the Commission does not allow to differentiate between different product types and (iii) according to the information provided by Union industry in the review request, and confirmed by users, the majority of imports from these countries relate to smaller diameter GES that are cheaper. In addition, the cooperating exporting producer from India did not substantiate its claim regarding the increased imports of larger diameter GES from China to the Union.
- (233) Regarding the import volumes of GES and their market shares from China and Russia, as explained above in recital 189, the market share of Chinese imports increased by 1 percentage point, while the market share of imports from Russia increased by 0,3 percentage points over the period considered. These increases were not in detriment of the market share of the Union industry, which, as explained in the recital 189, increased by 1,9 percentage points over the period considered. The argument was therefore rejected.
- (234) The same interested party claimed that the Union industry was inefficient to produce smaller diameter GES because the sales of such products represented only a part of their total sales volume.
- (235) The market conditions normally ensure that supply, namely the type of product sold, is driven by demand. Since the claim regarding the inefficiency to produce smaller diameter GES by the Union industry was not further substantiated, the argument was rejected.
- (236) The same interested party claimed the lack of analysis of the impact of the increased quantities of imports at dumped prices from other countries including imports from affiliated companies in USA, Mexico, Malaysia and Japan.
- (237) As indicated above in recital 187, import prices from USA, Japan and Mexico were higher than the prices of the Indian exporters and the prices of the Union producers. The market share of imports from these countries increased by 0,1 percentage point during the period considered and was less than 10 % at the end of the RIP. Likewise, the Commission did not have any evidence that prices from these countries were dumped. The argument was therefore rejected.
- (238) The same interested party claimed that when calculating the undercutting and underselling margins on a per type basis, the Commission used the product control number ('PCN') which did not take into consideration the raw material used, which has, however, a significant impact on costs and prices. Comparing product types made of the same raw material would have the effect of reducing the underselling margin from 9 % to 8 %.
- (239) Indeed, the raw material difference was not reflected in the PCN structure and therefore the calculation of the undercutting and underselling margins did not take into account such difference. Nevertheless, when product types were split taking into consideration the raw material used for the purpose of the undercutting and underselling calculation, as submitted by the interested party after disclosure, the underselling margin stated in recital 227 only decreased by 1 percentage point to 8 %. Therefore, this decrease did not have any material impact on the Commission's findings of underselling margin during the review investigation period.
- (240) The same interested party questioned the level of 8 % target profit established in the original investigation claiming that the GES manufacturers were facing losses due to decline in the international steel demand and therefore 8 % target profit was not justified anymore.

- (241) It is recalled that the target profit level on sales of the like product in the Union market should be the one that could be reasonably achieved under normal conditions of competition by an industry of this type in the sector, namely in the absence of dumped/subsidised imports. In this regard, as noted in the recital 34 of Regulation (EC) No 1628/2004, a proper examination was made of Union industry's profit levels when the market share of subsidised imports was at its lowest (i.e. 1999). Therefore it was definitively concluded that the profit margin that could reasonably be deemed to represent the financial situation of the Community industry in the absence of injurious subsidisation from India should be set at 8 % for the purpose of the calculation of the injury margin. The argument was therefore rejected.
- (242) On the basis of the above, the Commission concluded that the Union industry was in an extremely fragile situation during the review investigation period, which is for the most part attributable to the negative market conditions and consequent fall in consumption. For this reason, the Commission's assessment focused on the likelihood of a recurrence of injury from the subsidised imports from India.

6. Likelihood of a recurrence of injury

- (243) To establish the likelihood of recurrence of injury should the measures against India be repealed the following elements were analysed: the production capacity and spare capacity in India, the exports from India to other third countries and the attractiveness of the Union market.
- (244) In recital 155 it was concluded that it is likely that the Indian exporting producers will continue to export significant quantities to the Union should measures be allowed to lapse and even increase their current export volumes and that these exports will likely be made at subsidised prices.
- (245) As established in recitals 139 and 140, the Indian capacity is estimated to be around 160 000 tonnes in the RIP, while the spare capacity is estimated to be between 40 000 and 50 000 tonnes, which represented between 29 % and 36 % of the Union consumption during the same period. In addition, as indicated in recital 139, the Indian exporting producers are likely to further increase their capacity in case of increase demand. As mentioned in recital 142, at the end of November 2014, the Indian authorities imposed anti-dumping measures on imports of GES from China. As a consequence it is expected that the Indian producers will increase their market share on the domestic market.
- (246) As a consequence of the attractiveness of the Union market described in recitals 152 to 155, should the measures be repealed, at least part of the spare capacity will, in all likelihood, be redirected to the Union market. Also, as described in recital 143, Indian producers are highly export oriented. Concerning prices of GES, as described in recital 149, higher price levels than in the Union were found for some of the destinations of the Indian exports. However given the different product mix, this information does not detract from the overall assessment that new capacity will be directed to the Union market as the reliability of this price comparison is limited.
- (247) As indicated in recital 146, anti-dumping measures against Indian GES imports had been imposed in Russia and the exports from India to Russia dropped significantly during the period considered. This implies that the access to the third main export market for Indian exporting producers is restricted and with the current or even likely increased spare capacity mentioned above in recital 245, there is a strong likelihood that Indian exporting producers will significantly increase their imports of the product concerned to the Union market should measures be allowed to lapse.
- (248) As established in recital 185, Indian import prices without anti-dumping and countervailing duties would undercut the Union sales prices by 9 %. For the non-cooperating exporting producer, an estimate of the undercutting margin without anti-dumping and countervailing duties included was calculated at 12 %. This is an indication of what could be the likely price level of imports from India should the measures be repealed. On this basis, it is likely that the price pressure in the Union market will significantly increase should the measures be repealed, thus further worsening the economic situation of the Union industry.

- (249) In terms of volumes, the repeal of the measures would very likely allow Indian exporting producers to gain market shares in the Union market. In particular the non-cooperating exporting producer, which has currently the higher duty rate of 15,7 %, would have a strong incentive to resume exports to the Union market in significant quantities. Should this situation occur, the Union industry would face an immediate drop in its sales volumes and market shares.
- (250) On this basis, in the absence of measures, Indian exporting producers will likely increase their presence in the Union market, in terms of import volumes and market shares at dumped and subsidised prices significantly undercutting the Union industry's sales prices. This will create an increased price pressure in the Union market with a negative impact on the Union industry's profitability and financial situation. This will also further deteriorate the economic situation of the Union industry.
- (251) Based on the above, the Commission concluded that there is a strong likelihood of recurrence of injury should the measures be repealed.

E. UNION INTEREST

- (252) In accordance with Article 31 of the basic Regulation, the Commission examined whether maintaining the existing countervailing measures against India would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users.
- (253) It is recalled that, in the original investigation, the adoption of measures was considered not to be against the interest of the Union.
- (254) All interested parties were given the opportunity to make their views known pursuant to Article 31(2) of the basic Regulation.
- (255) On this basis, the Commission examined whether, despite the conclusions on the likelihood of a continuation of subsidisation and recurrence of injury, compelling reasons existed which would lead to the conclusion that it was not in the Union interest to maintain the existing measures.

1. Interest of the Union industry

- (256) As explained in recital 226, the measures enabled the Union industry to maintain its market shares. At the same time, it was also concluded in recital 250, that the Union industry would be likely to experience a deterioration of its situation in case the countervailing measures against India were allowed to lapse. Therefore, it can be concluded that the continuation of the measures against India would benefit the Union industry.

2. Interest of importers/traders

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

3. Interest of users

- (258) As mentioned in recital 18, out of 53 users contacted, eight submitted a questionnaire reply. Four of them have used GES imported from India. Their imports represented around 20 % of all imports of the product concerned from India.
- (259) It is recalled that in the original investigation, it was found that the impact of the imposition of measures would not be significant for the users. Despite the existence of measures for 10 years, users in the Union continued to source their supply, inter alia, from India. The users did not submit any information showing that there have been difficulties in finding other sources and the investigation did also not reveal such information.

- (260) Moreover, as regards the effect of the imposition of measures on users, it is recalled that it was concluded in the original investigation that, given the negligible incidence of the cost of GES on user industries, any cost increase was unlikely to have a significant effect on the user industry. These findings were confirmed in the current review as no indications of the contrary were found after the imposition of measures. Furthermore, none of the four users put forward any argument against the maintenance of the measures.
- (261) One federation of steel producers, the German steel industry federation (Wirtschaftsvereinigung Stahl) opposed the continuation of the measures and claimed that the measures resulted in competition disadvantages for steel producers in the Union compared to steel producers in other regions that have no measures imposed on GES. The federation alleged that the continuation of measures would allow the Union industry to continue having a dominant position. However, it is clear from the development of the Indian imports after the imposition of the measures that imports from India continued during the period considered. In addition, the investigation has shown that the GES are increasingly entering the Union market from a number of other third countries.
- (262) On this basis, and in line with the conclusions drawn in the original investigation, it is expected that the continuation of measures will not have a significant negative impact on users and that there are therefore no compelling reasons to conclude that it is not in the Union interest to extend the existing measures.

4. Conclusion on Union interest

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

F. COUNTERVAILING MEASURES

- (264) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to maintain the countervailing measures in force. They were also granted a period within which they could submit comments subsequent to this disclosure. The submissions and comments were duly taken into consideration.
- (265) It follows from the above considerations that, under Article 18 of the basic Regulation, the countervailing measures applicable to imports of certain graphite electrode systems originating in India imposed by Implementing Regulation (EU) No 1185/2010 should be maintained.
- (266) After disclosure, the cooperating exporting producer from India requested the Commission to consider continuation of measures for a period of two years. However, the investigation found no exceptional circumstances that would justify limiting the duration of measures to two years.
- (267) The individual company countervailing 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'.
- (268) 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, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates.

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

(269) This regulation is in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036 of the European Parliament and of the Council ⁽¹⁾,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is hereby imposed on imports of graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,65 g/cm³ or more and an electrical resistance of 6,0 μΩ.m or less, currently falling within CN code ex 8545 11 00 (TARIC code 8545 11 00 10) and nipples used for such electrodes currently falling within CN code ex 8545 90 90 (TARIC code 8545 90 90 10) whether imported together or separately originating in India.

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

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

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

Article 2

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

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

Done at Brussels, 9 March 2017.

For the Commission
The President
 Jean-Claude JUNCKER

⁽¹⁾ Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 21).