

II

(Non-legislative acts)

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2020/1605

of 30 October 2020

terminating the partial interim review of the anti-dumping and countervailing measures applicable to imports of certain graphite electrode systems originating in India

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ ('the basic anti-dumping Regulation'), and in particular Article 11(3) thereof,

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 ⁽²⁾ ('the basic anti-subsidy Regulation'), and in particular Article 19 thereof,

Whereas:

A. PROCEDURE

1. Previous investigations and existing anti-dumping measures

- (1) Anti-dumping and anti-subsidy measures have been in force on imports of certain graphite electrode systems ('graphite electrodes') originating in India ('the country concerned') since 2004. The measures were prolonged in 2010 and in 2017. The measures currently in force are definitive anti-dumping and countervailing duties imposed by Commission Implementing Regulation (EU) 2017/422 ⁽³⁾ and Commission Implementing Regulation (EU) 2017/421 ⁽⁴⁾.
- (2) The current level of the duties for the two Indian producers is 7 % for Hindustan Electro Graphite (HEG) Limited ('HEG') and 15,7 % for Graphite India Limited ('GIL') and all other companies. HEG is subject to a 7 % countervailing duty and an anti-dumping duty of 0 %.

2. Request for a partial interim review limited to injury

- (3) The request for review was lodged by HEG ('the applicant'), an exporting producer from India. The request was limited in scope to the examination of injury.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ OJ L 176, 30.6.2016, p. 55.

⁽³⁾ Commission Implementing Regulation (EU) 2017/422 of 9 March 2017 imposing a definitive anti-dumping duty on imports of certain graphite electrode systems originating in India following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 64, 10.3.2017, p. 46).

⁽⁴⁾ 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 (OJ L 64, 10.3.2017, p. 10).

- (4) In the review request, the applicant mentioned two main issues: changes in the composition of Union industry, and a global shortage of graphite electrodes causing a massive increase in global prices of graphite electrodes and consequently also in the profitability of its producers, including those in the Union. The applicant alleged that Union producers enjoyed significant good profit margins and were no longer in a vulnerable situation. The applicant concluded that the continued imposition of measures, which were based on the level of injury previously established, was no longer necessary to offset the effects of injurious dumping and subsidisation as previously established.

3. Initiation of a partial interim review limited to injury

- (5) Having determined that sufficient evidence existed to justify the initiation of a partial interim review limited to the examination of injury, and after informing the Member States, the Commission announced the initiation of a partial interim review pursuant to Article 11(3) of the basic anti-dumping Regulation and Article 19 of the basic anti-subsidy Regulation on 2 March 2020. This was done by a notice published in the *Official Journal of the European Union* ^(⁹) ('Notice of Initiation').
- (6) The Commission officially informed the applicant, the authorities of the exporting country, the other known exporting producers and unrelated importers, the Union industry and the known users of the product under review of the initiation of the partial interim review investigation. Interested parties were given the opportunity to make their views known in writing and to be heard.

4. Investigation

- (7) In order to obtain the information necessary for its investigation, the Commission prepared questionnaires to exporting producers, Union producers and Union importers.
- (8) All interested parties were also invited to make their views known, submit information and provide supporting evidence. Several Union users of graphite electrodes, most notably the European Steel Association (EUROFER) submitted information.

4.1. Sampling and questionnaires

4.1.1. Exporting producers

- (9) The Commission sent questionnaires to the known exporting producers in India. Given the small number of exporting producers, a selection of a sample was not necessary in this case. HEG submitted a reply to the questionnaire.

4.1.2. Union producers

- (10) In view of the large number of Union producers concerned and in order to complete the investigation within the statutory time-limits, the Commission decided to limit to a reasonable number the Union producers to be investigated by selecting a sample (this process is also referred to as 'sampling'). The sampling was carried out in accordance with Article 17 of the basic anti-dumping Regulation and Article 27 of the basic anti-subsidy Regulation.
- (11) A sample of Union producers accounting for more than 80 % of the estimated total production volumes of graphite electrodes in the Union was selected after the initiation of the case, with no comments received on the sample. The companies selected in the sample were GrafTech France S.N.C., GrafTech Iberica S.L., Showa Denko Carbon Spain S.A. and Tokai Erftcarbon GmbH.

4.1.3. Unrelated importers

- (12) No Union importers made themselves known in the case.

4.2. Hearings

- (13) A hearing with three companies/groups of companies of the Union industry and their legal representatives took place on 17 July 2020.

⁽⁹⁾ Notice of initiation of a partial interim review of the anti-dumping and countervailing measures applicable to imports of certain graphite electrode systems originating in India (OJ C 67, 2.3.2020, p. 11).

5. Review investigation period

- (14) The period for the investigation of injury was 1 January 2019 to 31 December 2019 ('the review investigation period'). The period for examination of trends relevant for the assessment of injury was 1 January 2016 to the end of the review investigation period ('the period considered').

B. PRODUCT UNDER REVIEW AND LIKE PRODUCT

1. Product under review

- (15) The product under review is graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,65 g/cm³ or more and an electrical resistance of 6,0 µΩ.m or less, and nipples used for such electrodes, whether imported together or separately, originating in India ('graphite electrodes' or 'product under review'), currently falling under CN codes ex 8545 11 00 (TARIC code 8545 11 00 10) and ex 8545 90 90 (TARIC code 8545 90 90 10).
- (16) Graphite electrodes are used for steel production. They are mostly used as an input material in electric arc furnaces (EAF) to produce steel from steel scrap.
- (17) The main raw material used for the production of graphite electrodes is needle coke. Needle coke is also used in the lithium-ion battery industry.

2. Like product

- (18) The product under review and the product produced and sold by the Union industry share the same basic characteristics.
- (19) The Commission therefore concluded that these products are alike within the meaning of Article 1(4) of the basic anti-dumping Regulation and Article 2 of the basic anti-subsidy Regulation.

C. LASTING NATURE OF CHANGED CIRCUMSTANCES

- (20) In accordance with Article 11(3) of the basic anti-dumping Regulation and Article 19 of the basic anti-subsidy Regulation, the Commission examined whether the circumstances on the basis of which the current measures were established have changed significantly, and whether such change was of a lasting nature.
- (21) In its review request, the applicant argued that two major changes of a lasting nature had occurred since the previous expiry review of the measures on graphite electrodes and that the measures therefore merited a reassessment of injury findings. Firstly, the applicant raised changes in the composition of Union industry, notably the sale of the (European) SGL's group entire graphite electrode business to (Japanese) Showa Denko and (Japanese) Tokai. Secondly, the applicant alleged that 'the steel industry's fundamental and lasting shift from blast furnace production to electric arc furnace production has led to a shift in global graphite electrode demand and a worldwide shortage in graphite electrode supply,' also causing a substantial and lasting increase in the prices of graphite electrodes.

1. Allegation regarding changes in the composition of the Union industry

- (22) Regarding the change in the composition of the Union industry, the applicant claimed that the purchase by Showa Denko of SGL's European graphite electrode business and the purchase by Tokai of SGL's American graphite electrode business resulted in changes of ownership and corporate structure in two of the three main Union producers, mandating a reassessment of injury. The applicant further argued that the two transactions resulted in a major consolidation of the EU and global graphite electrode suppliers, which in turn resulted in fewer graphite electrode producers (outside of China) and therefore less competition on both the Union market and global markets. The result was sustained higher prices for the product on all markets.
- (23) Showa Denko argued that, prior to the acquisition of SGL's European graphite electrode business, they were not producing graphite electrodes in the Union. As such, the transaction represented a mere transfer of ownership from one group to another with no significant impact on the Union production, commercial strategy or market structure.

- (24) Union users represented by EUROFER stressed that the number of producers servicing the global demand for graphite electrodes is now less than ten, therefore supporting the applicant's argument.
- (25) The Commission noted that Showa Denko had not previously owned any electrode business in the Union. Before the acquisition, and before the review investigation period, SGL had proceeded with capacity closures in the Union. After the acquisition of SGL's European graphite electrode business by Showa Denko, while Showa Denko made some reduction in production and sales⁽⁶⁾ in line with market developments, there were no significant developments affecting the production of the like product in the Union in the period concerned. Hence, the take-over by Showa Denko of SGL's European graphite electrode business cannot be equated with business consolidation on the Union market of a lasting nature. Rather, the relevant data showed that since the acquisition in 2017 Showa Denko overall continued the activities of its predecessor in the Union. A reassessment of injury of Union industry on the basis of industry consolidation, was, therefore, not merited, since the change of ownership of a Union producer did not alter the Union market structure significantly. As regards the issue of decreased competition resulting from fewer global suppliers leading to sustained higher prices of graphite electrodes, the Commission found that, rather than remaining at sustained higher levels, global prices of graphite electrodes have continued to fall (as demonstrated in recital 30) and therefore also did not constitute a sustained change necessitating a reassessment of injury.

2. Allegation on shift in global markets and increase in prices

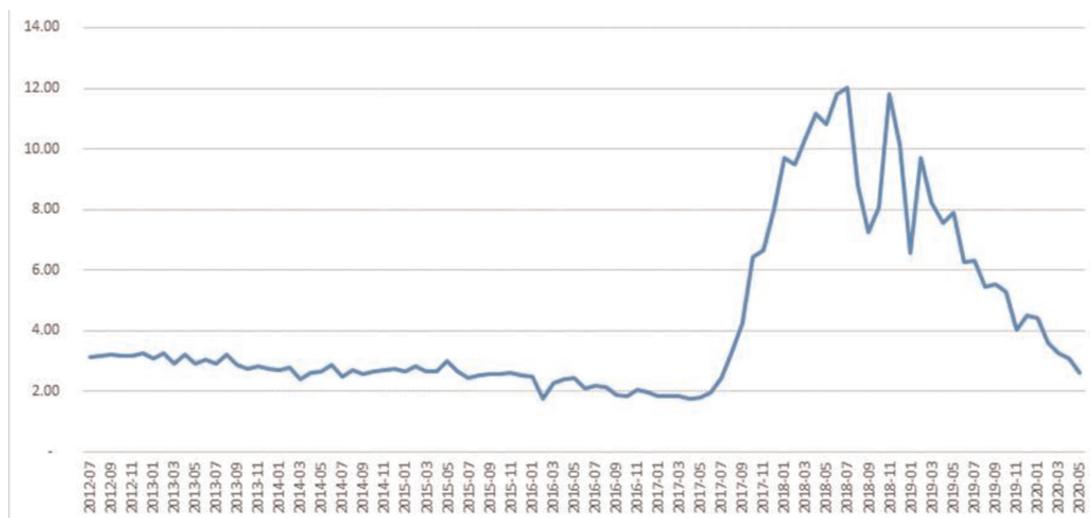
- (26) Regarding the shift in global supply and demand, and the alleged substantial and lasting increase in the prices of graphite electrodes, the applicant argued that the significant global price increase of graphite electrodes, which happened in 2017 and 2018, was indicative of a rise in global demand and a supply unable to keep up with demand. The key reason for the rise in demand was cited to be the global shift from blast furnaces to the electric arc furnaces, which use graphite electrodes, in the steel industry. The key reason for a lag in global supply was cited as the government-mandated shut-downs of Chinese graphite electrode producers for environmental upgrading. Those closures coincided with an increased domestic demand for graphite electrodes from Chinese steel producers and new competition for needle coke (the main raw material used in the production of graphite electrodes) from the lithium-ion battery industry.
- (27) Furthermore, the applicant also argued that, despite the current situation of temporary re-balancing of the supply and demand of graphite electrodes, the shortage in global supply will increase again and will lead to a further increase in prices in the future. According to the applicant, although Chinese graphite electrode production is currently above Chinese domestic demand, that demand for graphite electrodes will increase drastically once all the new electric arc furnace production plants foreseen by the environmental upgrading launched in 2017 are built and running at full speed. The applicant expected electric arc furnace steel production globally (and in China in particular) to grow faster than the increase in global graphite electrode production capacities, leading to a global shortage in supply and further price increases. Moreover, the applicant argued that 2020 global prices of graphite electrodes cannot be considered representative as they reflect temporary distortions resulting from the COVID-19 crisis, including in steel demand, which they expect to recover as early as 2021.
- (28) In support of the elements provided by the applicant, the users represented by EUROFER indicated that post-2017 prices remained constantly higher than the pre-2017 period both on the spot market and on contractual basis, and that demand for graphite products was expected to continuously grow in the next decades, as electric arc furnace production increases. Furthermore, EUROFER stressed that the capacity of Chinese producers had been drastically reduced in 2017 as a result of central government measures aimed at curbing pollution. The number of needle coke production sites remained extremely limited worldwide. EUROFER claimed that the Union steel industry is highly exposed to the price volatility of input materials like graphite electrodes.

⁽⁶⁾ See for instance Showa Denko public press statements on financial results (<https://www.sdk.co.jp/english/ir/library/results.html>) of August 2019 'we reduced our forecast for the sales figure of GEs in this year by 15%. We will reduce our production of GEs mainly in Europe because of economic slowdown in that area', of November 2019 'Compared with August, steel production further fell in Europe owing to economic slowdown. Thus, we have increased the rate of production cut to approx. 30%', and of February 2020 referring to the planned closure of the pins plant in Germany. This last press statement also refers to the exceptional situation in 2017-2018, to an expected return to stable conditions going forward, and mentions 'Indian electrodes are flowing into the European market.'

- (29) The joint legal representative of three companies/groups of companies of the Union industry submitted that the significant increase in demand and parallel lag in supply of graphite electrodes in 2017-2018 was an exceptional situation, which resulted from a temporary imbalance in supply and demand. This imbalance was caused by the convergence in time of several factors: a) the recovery of the global economy and corresponding increased demand for steel produced in a more environmentally-conscious way (via electric arc furnaces, which needed graphite electrodes for production); b) the temporary shutdowns of Chinese graphite electrode production for government-mandated environmental upgrading; and c) increased competition for needle coke (a critical raw material in graphite electrode production) from the lithium-ion battery industry. The temporary imbalance ended in 2019, by which time many Chinese graphite electrode producers restarted production with increased capacities and increased worldwide exports of graphite electrodes. Spot prices decreased sharply throughout 2019.
- (30) The Commission started from the premise that a shift in global supply and demand may be qualified as being a significant change of lasting nature under Articles 11(3) of the basic anti-dumping Regulation and Article 19 of the basic anti-subsidy Regulation if the prices for graphite electrodes are constantly and significantly above the previous levels. In the case at hand, there was a significant rise in import prices into the Union for graphite electrodes 2017-2018. However, import prices into the Union started dropping significantly during the review investigation period (2019). By 2020, the import prices into the Union had even returned to levels similar to those that the Union industry had seen over a number of years prior to 2017. Table 1 below summarizes price evolution on the basis of data from import statistics collected pursuant to Article 14(6) of the basic anti-dumping Regulation and Article 24(6) of the basic anti-subsidy Regulation ('the 14(6) database').

Table 1

Evolution of average import prices of graphite electrode systems into the Union (EUR/kg)



Source: 14(6) database

- (31) The Commission also noted that China continued to export graphite electrodes globally. Although import prices from China to the Union rose in 2017 and 2018 in line with the global trend, they also fell in 2019 and continued to fall in early 2020 in line with the global trend. Likewise, the price of needle coke has been on a downward trend throughout 2019.
- (32) The Commission found that the rise in prices for imports of graphite electrodes into the Union was only temporary. Therefore, the development of prices did not confirm the applicant's claim that there was an established structural shift in global supply and demand of the product under review. The development of prices indicates a rebalancing

of supply and demand after a temporary situation of unbalance. This global rebalancing of supply and demand is confirmed by public reports of graphite electrodes producers including the applicant ⁽⁷⁾ and Union producers ⁽⁸⁾. As regards the expectation that demand for graphite electrodes will once again rise and outstrip supply in the future, the Commission was not in a position to speculate as to its accuracy or potential for changing the global markets for graphite electrodes in a lasting way, particularly in light of the evolving situation resulting from COVID-19. In the absence of any lasting change in the global markets for graphite electrodes, the Commission concluded that a reassessment of injury of Union industry was not legally warranted.

D. DISCLOSURE

- (33) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to terminate this investigation, and were given the opportunity to comment. Interested parties who so requested were granted a hearing.
- (34) Immediately prior to disclosure, the applicant submitted further comments concerning the changes in the composition of the EU industry and the global demand for graphite electrodes. These comments could not be taken into consideration in the General Disclosure Document because of the late stage of their receipt, but have now been reflected in the recitals above. Moreover, the applicant reiterated these comments in their formal contribution following disclosure (addressed below).
- (35) Comments on disclosure were received from the Government of India, the applicant and the European Carbon and Graphite Association (ECGA) representing Union industry.
- (36) The Government of India claimed that it was not enough for the Commission to focus on changes in the circumstances of the graphite electrode industry in Europe. They requested that the Commission conduct a full injury analysis of Union industry based on all parameters embodied in the WTO Agreement on Anti-Dumping.
- (37) As stated in recital 31 above, the Commission concluded that a reassessment of injury of Union industry was not legally warranted because no lasting change in the global markets for graphite electrodes had been found. Without such lasting change in the circumstances on the basis of which existing measures had been imposed/extended, the applicant's request for a partial interim review of injury was groundless. Therefore, the Commission rejected the Government of India's claim and request.
- (38) The applicant elaborated on its claim that the sales of SGL holdings to Showa Denko in the EU and Tokai in the US have resulted in a major consolidation of the EU and global graphite electrode suppliers. The applicant argued that the consolidation went beyond the Union producers owned by Showa Denko. This consolidation, the applicant argued, has led to fewer global producers and less competition on both the Union and global markets, which influences prices of graphite electrodes and profitability of other producers and therefore constitutes a structural change on the graphite electrodes market. One of the consequences of this consolidation, the applicant argued, has been the near disappearance of Japanese imports from the EU market.
- (39) The applicant also reiterated its previous claim that a worldwide shift towards electric arc furnace steel production over the past several years constituted a structural change in the market because it resulted in a structural worldwide increase in demand for graphite electrodes. The Commission's finding of the contrary, the applicant

⁽⁷⁾ See for example HEG public report of February 2020 (<https://hegltd.com/results-presentation/>) indicating that *'the electrode prices have corrected in the past few quarters'* as *'Since the past year, the electrode prices have been sequentially dropping quarter after quarter to reflect the market conditions. As the customer has overbought in 2018 and first half of 2019, the new purchases have come down to more normal operating levels.'* and *'people globally, including us, we have adjusted our production levels to reflect the market demand'*.

⁽⁸⁾ See for example GrafTech annual report 2019 (<https://www.graftech.com/investors/default.aspx#events>) *'Pricing has historically been cyclical, reflecting the demand trends of the global EAF steelmaking industry and supply of graphite electrode. [...]. Following the significant rationalization of graphite electrode production globally, the resumption of growth in EAF steel production, falling scrap prices, reductions in Chinese steel exports, and constrained supply of needle coke, graphite electrode spot prices began to increase in late 2017 and reached record high prices in 2018. These record high spot prices began to retreat in 2019, falling 25% during the year. We expect additional decreases in 2020'*, and Showa Denko public report of August 2020 (<https://www.sdk.co.jp/english/ir/library.html>) *'electric steelmakers are continuing to adjust their inventory of graphite electrodes since the second half of 2019. [...] [the closure of our German plant and temporary idling of our Austrian plant] will result in a rebalancing of capacity in Europe in line with projected graphite electrode demand'*.

argued, was based on the faulty premise that significant change can only be considered to be of a lasting nature if prices are constantly and significantly above previously established levels. Prices need not constantly be above the previously established levels for change to be lasting because they are only one indicator of demand, the applicant argued.

- (40) Finally, the applicant argued that the decrease in prices in the EU during the investigation period was a result not of low-priced Indian imports but of substantially increased volumes of Chinese imports at very low and decreasing prices. The fact that there has not yet been an investigation of graphite electrode imports from China is confirmation that Union producers are not materially injured by those imports, the applicant claimed. Furthermore, the fact that Indian imports have remained at significantly higher price levels than Chinese imports implies that Indian imports are not a cause of injury to EU producers. The applicant called for a full assessment of injury of Union producers of graphite electrodes, not just an examination of price.
- (41) As regards the applicant's claim regarding market consolidation, fewer global producers, and a decrease in competition all of which influence prices and profitability and therefore constitute structural change on the graphite electrodes market, the Commission noted that the applicant had itself acknowledged that there were fewer global producers only if excluding Chinese ones. Following the Chinese environmental upgrading launched in 2017, refurbished and new Chinese graphite electrode producers (re)emerged ready to serve the electric arc furnace demand for graphite electrodes⁽⁹⁾. This has led to an increased global supply of graphite electrodes and falling global prices and, while Japanese imports into the EU may have dropped sharply, Chinese exports of graphite electrodes are increasing globally (see recital 31). The Commission, therefore, rejected the applicant's claim.
- (42) As regards the applicant's claim that the Commission based its assessment of significant change of a lasting nature in this case on a faulty premise, the Commission recalls that it has a margin of appreciation as concerns the assessment of this complex situation. The Commission considered that, while price may not be the only indicator of demand in this case, it is a necessary indicator to determine significant change of a lasting nature in demand. Therefore, in order for the increase in demand for graphite electrodes to constitute a significant change of a lasting nature, the prices of graphite electrodes should be constantly and significantly above previously established levels. The Commission therefore rejected the applicant's claim.
- (43) As regards the applicant's claim that Indian imports are not causing injury to Union producers, the Commission reiterated that the injury status of Union producers was not assessed during this investigation because such a review was not found to be legally warranted (recital 32) and again rejected the applicant's call for a full assessment of Union injury. Additionally, the Commission stressed that no conclusions can be drawn from this interim review about the injury of Union producers – whether potentially caused by imports from India or elsewhere – beyond that which was concluded during the expiry review of 2017.
- (44) The ECGA welcomed the Commission's decision to terminate this partial interim review on the basis of an absence of any lasting change in the market for graphite electrodes. Furthermore, the ECGA argued that it is speculative to assume that an increase in electric arc furnace steel production will automatically lead to a shortage of graphite electrodes in the future and an increase in graphite electrode prices, and that the current situation rather points in the direction of a graphite electrode oversupply.

E. TERMINATION OF THE INVESTIGATION

- (45) The Commission could not establish the existence of lasting changes in the global market for graphite electrodes in its investigation pursuant to Article 11(3) of the basic anti-dumping Regulation and Article 19 of the basic anti-subsidy Regulation.
- (46) Therefore, the Commission concluded that the partial interim review concerning imports of the product under review originating in India should be terminated.
- (47) This Decision is in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

⁽⁹⁾ See, for example, Mirchandani, N, 'Graphite Electrode Makers' Woes Intensify as China Shadow Looms,' *Bloomberg*, 13 June 2019, or Shaw, S., 'Graphite: CIMM Group of China plans European synthetic graphite electrode plant,' *Roskill*, 28 October 2019.

HAS ADOPTED THIS DECISION:

Article 1

The partial interim review limited to injury of the anti-dumping and countervailing measures applicable to imports of certain graphite electrode systems originating in India (currently falling under CN codes ex 8545 11 00 (TARIC code 8545 11 00 10) and ex 8545 90 90 (TARIC code 8545 90 90 10)) is terminated.

Article 2

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

Done at Brussels, 30 October 2020.

For the Commission
The President
Ursula VON DER LEYEN
