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

COMMISSION IMPLEMENTING REGULATION (EU) 2017/422

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THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union[(1)] ('the basic Regulation'), and in particular Article 11(2) thereof,

Whereas:

A. **PROCEDURE**

1. **Measures in force**

(1) The Council, following an anti-dumping investigation, by Regulation (EC) No 1629/2004[(2)], imposed a definitive anti-dumping duty on imports of certain graphite electrodes 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-subsidy investigation, by Regulation (EC) No 1628/2004[(3)], also imposed definitive countervailing duties on imports of certain graphite electrodes 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 anti-dumping measures pursuant to Article 11(2) of the basic Regulation, the Council by Implementing Regulation (EU) No 1186/2010[(5)] extended the anti-dumping measures. Following an expiry review of the countervailing measures, the Council by Implementing Regulation (EU) No 1185/2010[(6)] extended the countervailing measures.

(5) The anti-dumping measures took the form of an *ad valorem* duty rate of 9,4 % and 0 % for imports from individually named exporters, with a residual duty rate of 8,5 %.

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2. **Request for an expiry review**

(6) Following the publication of a notice of impending expiry[7] of the anti-dumping 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 11(2) of Council Regulation (EC) No 1225/2009[8].

(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 dumping 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*[9] ('the Notice of Initiation') the initiation of an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009.

4. **Parallel investigation**

(10) By a notice published in the *Official Journal of the European Union* on 15 December 2015[10], the Commission also announced the initiation of an expiry review pursuant to Article 18 of Council Regulation (EC) No 597/2009[11] of the definitive countervailing 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 review 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 17 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 17(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 above 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.

(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 all sampled Union producers, two Indian exporting producers and 53 users that came forward after initiation.

(18) Questionnaire replies were received from the four sampled Union producers, one Indian exporting producer and eight users of the product under review. The second exporting producer cooperating in the original investigation, namely Graphite India Limited ('GIL'), did not submit a questionnaire reply in the present review.

(19) The Commission sought and verified all the information it deemed necessary for the determination of the likelihood of continuation or recurrence of dumping and resulting injury and for the determination of the Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

(a) Union producers:
- Graftech France S.N.C. Calais, France
- Graftech Iberica S.L., Navarra, Spain
- SGL Carbon S.A., 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 dumping 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

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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/cm^3 or more and an electrical resistance of 6,0 μ.Ω.m or less, and nipples used for such electrodes, whether imported together or separately 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 1(4) of the basic Regulation.

C. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

1. Preliminary remarks

(24) In accordance with Article 11(2) of the basic Regulation, it was examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping.

(25) As mentioned above in recital (18) only one Indian exporting producer cooperated in the current investigation. This company covered more than 95 % of the exports of GES from India into the Union during the RIP. Therefore, the Commission considered that it had sufficient information for the assessment of the export price and the dumping margin during the RIP.

(26) However, this exporting producer represented only 50 % of the total production capacity and only between 40 % and 50 % of the total production of GES in India during the RIP. Moreover, its exports to other third countries ranged only between 43 % and 52 % of total exports from India to other third countries during the RIP (the exact weight of the sole cooperating Indian exporting producer in the total Indian production and total exports cannot be disclosed for confidentiality reasons). Therefore, and considering that the other Indian producer of GES did not cooperate, the Commission considered that it did not have sufficient information for the examination of the likelihood of continuation or recurrence of dumping and injury and use had to be made of facts available in accordance with Article 18 of the basic Regulation in order to assess the development of imports should measures be repealed.

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(27) The Indian authorities were duly informed that due to the low cooperation of the Indian exporting producers, the Commission may apply Article 18 of the basic Regulation. No comments were received in this respect.

(28) The findings in Section 3 were thus based on facts available. For this purpose, the information provided by the cooperating exporting producer, the request for the expiry review, Eurostat statistics, the data collected by Member States pursuant to Article 14(6) of the basic Regulation ('14(6) database') and publicly available information were used.

2. Dumping in the Union during the review investigation period

2.1. *Normal value*

(29) The Commission first examined whether the total volume of domestic sales for the sole cooperating exporting producer was representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales are representative if the total domestic sales volume of the like product to independent customers on the domestic market per exporting producer represented at least 5 % of its total export sales volume of the product under review to the Union during the RIP. On this basis, the total sales of the sole cooperating exporting producer of the like product on the domestic market were representative.

(30) The Commission subsequently identified the product types sold domestically that were identical or comparable with the product types sold for export to the Union for the exporting producer with representative domestic sales. The elements taken into account in defining the product types of GES were (i) whether they were sold with a nipple or not, (ii) their diameter and (iii) their length.

(31) The cooperating exporting producer claimed that the fact that GES are produced from different grades of needle coke (basic raw material) should be taken into account when establishing identical or directly comparable types of GES. Indeed, the investigation confirmed that in the production process, the company used two different types of needle coke, that is imported needle coke which is of a superior quality and regular needle coke sourced on the Indian market. It was also confirmed that the type of coke used determines the cost of production and the price of the end product.

(32) Therefore, in order to ensure a fair comparison, the Commission split each of the product types into low-grade and high-grade products for the purpose of the dumping calculation.

(33) The Commission then examined whether the domestic sales by the sole cooperating exporting producer on its domestic market for each product type that is identical or comparable with a product type sold for export to the Union were representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the RIP represents at least 5 % of the