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

COMMISSION IMPLEMENTING REGULATION (EU) 2017/421

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THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 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 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-dumping investigation, by Regulation (EC) No 1629/2004[(3)], also imposed definitive anti-dumping 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 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 %.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2017/421. (See end of Document for details)*

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].

(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*[9] ('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[10], the Commission also announced the initiation of an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009[11] 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.

(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

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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 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')[(12)], 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.

(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