# 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

## COUNCIL IMPLEMENTING REGULATION (EU) No 1186/2010

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## 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

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[(1)] (the basic Regulation), and in particular Articles 9(4) and 11(2), (5) and (6) thereof,

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

Whereas:

### A. PROCEDURE

#### 1. Measures in force

(1) The Council, following an anti-dumping investigation (the original investigation), by Regulation (EC) No 1629/2004[(2)], imposed a definitive anti-dumping duty on imports of certain graphite electrodes currently falling within CN code ex 8545 11 00 and nipples used for such electrodes currently falling within CN code ex 8545 90 90 originating in India (the definitive anti-dumping measures). The measures took the form of an *ad valorem* duty of 0 %.

(2) The Council, following an anti-subsidy investigation, by Regulation (EC) No 1628/2004[(3)], imposed a definitive countervailing duty on imports of certain graphite electrodes currently falling within CN code ex 8545 11 00 and nipples used for such electrodes currently falling within CN code ex 8545 90 90 originating in India (the definitive countervailing measures). The measures took the form of an *ad valorem* duty of 15,7 %, with the exception of one company for which the duty rate was 7 %.

(3) Following an *ex officio* partial interim review of the countervailing measures, the Council, by Regulation (EC) No 1354/2008[(4)], amended Regulations (EC) No 1628/2004 and (EC) No 1629/2004. The definitive countervailing duties were amended to 6,3 % and 7,0 % for imports from individually named exporters, with a residual duty rate of 7,2 %. The definitive anti-dumping duties were amended to 9,4 % and 0 % for imports from individually named exporters, with a residual duty rate of 8,5 %.

2. **Request for an expiry review**

(4) Following the publication of a notice of impending expiry[5] of the definitive anti-dumping measures in force, the Commission received on 18 June 2009 a request for the initiation of an expiry review of these measures pursuant to Article 11(2) of the basic Regulation. The request was lodged by three Union producers: Graftech International, SGL Carbon GmbH, and Tokai Erftcarbon GmbH (the applicants) representing a major proportion, in this case more than 90 %, of the total Union production of certain graphite electrode systems.

(5) The request was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Union industry.

3. **Initiation of an expiry review**

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

4. **Parallel investigations**

(7) By a notice of initiation published in the *Official Journal of the European Union* on 17 September 2009[7], the Commission also announced the initiation of an expiry review investigation pursuant to Article 18 of Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community[8] of the definitive countervailing measures.

5. **Investigation**

5.1. *Investigation period*

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

5.2. *Parties concerned by the investigation*

(9) The Commission officially advised the applicants, other known Union producers, exporting producers, importers, users known to be concerned, and the representatives of the exporting country of the initiation of the expiry review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

(10) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(11) In view of the apparent large number of unrelated importers, it was considered appropriate, in accordance with Article 17 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the above parties were requested, pursuant to Article 17 of the basic Regulation, to make themselves known within 15 days of the initiation of the reviews and to provide the Commission with the information requested in the notice of initiation. However, no unrelated importers came forward to cooperate. Sampling was therefore not necessary.

(12) The Commission sent questionnaires to all parties known to be concerned and to those who made themselves known within the deadlines set in the notice of initiation. Replies were received from three groups of Union producers (i.e. the applicants), one exporting producer and 17 users. None of the importers came forward during the sampling exercise and no other importers supplied the Commission with any information or made themselves known in the course of the investigation.

(13) Only one of the two known exporting producers in India, namely HEG Limited (HEG) fully cooperated in the review by submitting a response to the questionnaire. It should be noted in this regard that in the original investigation the full, official name of that company was Hindustan Electro Graphite Limited. Subsequently the company changed its name into HEG Limited. The second exporting producer cooperating in the original investigation, namely Graphite India Limited (GIL) decided not to submit a questionnaire reply in the present review.

(14) The Commission sought and verified all the information it deemed necessary for a determination of the likelihood of continuation or recurrence of dumping and resulting injury and of the Union interest. Verification visits were carried out at the premises of the following interested parties:

(a) *Union producers*

— SGL Carbon GmbH, Wiesbaden and Meitingen, Germany,

— Graftech Switzerland SA, Bussigny, Switzerland,

— Graftech Iberica S.L., Ororbia, Spain,

— Tokai Erftcarbon GmbH, Grevenbroich, Germany.

(b) *Exporting producer in India*

— HEG Limited, Bhopal.

## B. PRODUCT CONCERNED AND LIKE PRODUCT

(15) The product concerned by this review is the same as the one in the original investigation, namely graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,65 g/cm$^3$ or more and an electrical resistance of 6,0 μ.Ω.m or less, currently falling within CN code ex 8545 11 00 and nipples used for such electrodes, currently falling within CN code ex 8545 90 90 whether imported together or separately originating in India (the product concerned).

**Changes to legislation:** *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 1186/2010. (See end of Document for details)*

(16) The investigation confirmed that, as in the original investigation, the product concerned and the products manufactured and sold by the exporting producer on the domestic market in India, as well as those manufactured and sold in the Union by the Union producers, have the same basic physical and technical characteristics as well as the same uses and are, therefore, considered to be like products within the meaning of Article 1(4) of the basic Regulation.

## C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

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

### 1. General

(18) Cooperation was obtained from one exporting producer in India. The second known exporting producer did not cooperate in the investigation.

(19) The comparison of the export volume of the cooperating exporting producer with the total volume of exports to the Union from India showed that the cooperating exporting producer accounted for the vast majority of all Union imports from India during the RIP. The level of cooperation was therefore considered to be high.

### 2. Dumping of imports during the RIP

#### 2.1. *Normal value*

(20) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the cooperating Indian exporting producer's domestic sales of the like product to independent customers were representative, i.e. whether the total volume of such sales was equal to at least 5 % of the total volume of the corresponding export sales to the Union.

(21) The Commission subsequently identified those types of the like product sold domestically by the company that were identical or directly comparable to the types sold for export to the Union. The elements taken into account in defining the product types of graphite electrode systems were (i) whether they were sold with a nipple or not, (ii) their diameter and (iii) their length.

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

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

(24) It was further examined whether the domestic sales of the cooperating exporting producer were representative for each product type, i.e. whether domestic sales of each product type constituted at least 5 % of the sales volume of the same product type to the Union. For the product types sold in representative quantities, it was then examined whether such sales were made in the ordinary course of trade, in accordance with Article 2(4) of the basic Regulation.

(25) The examination as to whether the domestic sales of each product type, sold domestically in representative quantities, could be regarded as having been made in the ordinary course of trade was made by establishing the proportion of the profitable sales to independent customers of the type in question. In all cases where the domestic sales of the particular product type were made in sufficient quantities and in the ordinary course of trade, normal value was based on the actual domestic price, calculated as a weighted average of all the domestic sales of that type made during the RIP.

(26) For the remaining product types where domestic sales were not representative or not sold in the ordinary course of trade, normal value was constructed in accordance with Article 2(3) of the basic Regulation. Normal value was constructed by adding to the manufacturing costs of the exported types, adjusted where necessary, a reasonable percentage for selling, general and administrative expenses and a reasonable margin for profit, on the basis of actual data pertaining to production and sales, in the ordinary course of trade, of the like product, by the exporting producer under investigation in accordance with the first sentence of Article 2(6) of the basic Regulation.

2.2. *Export price*

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

2.3. *Comparison*

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

(29) The cooperating Indian exporting producer claimed that in its case, the Duty Entitlement Passbook Scheme (DEPBS) is effectively a duty drawback scheme, since