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

COUNCIL IMPLEMENTING REGULATION (EU) No 1185/2010

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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 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community[1] ('the basic Regulation'), and in particular Article 15(1), Article 18 and Article 22(1), (2) and (3) 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-subsidy investigation ('the original investigation'), by Regulation (EC) No 1628/2004[2], 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 %.

(2) The Council, by Regulation (EC) No 1629/2004[3], imposed definitive anti-dumping duties on imports of certain graphite electrodes currently falling within CN codes 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 %.

(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 countervailing measures in force, the Commission, on 18 June 2009, received a request for the initiation of an expiry review of these measures, pursuant to Article 18 of the basic Regulation. The request was lodged by three Union producers of the like product: 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 subsidisation and injury to the Union industry.

(6) Prior to the initiation of the expiry review, and in accordance with Articles 22(1) and 10(7) of the basic Regulation, the Commission notified the Government of India ('the GOI') that it had received a properly documented review request and invited the GOI for consultations with the aim of clarifying the situation as regards the contents of the review request and arriving at a mutually agreed solution. The GOI accepted the offer of consultations and consultations were subsequently held on 16 September 2009. During the consultations, no mutually agreed solution could be reached. However, due note was taken of the comments submitted by the authorities of the GOI.

3. **Initiation of an expiry review**

(7) 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 18 of the basic Regulation.

4. **Parallel investigations**

(8) 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 11(2) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[(8)] of the definitive anti-dumping measures.

5. **Investigation**

5.1. *Investigation period*

(9) The investigation of continuation or recurrence of subsidisation 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*

(10) The Commission officially advised the applicants, other known Union producers, exporting producers, importers, users known to be concerned, and the GOI 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.

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

(12) In view of the apparent large number of unrelated importers, it was considered appropriate, in accordance with Article 27 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 27 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.

(13) 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 3 groups of Union producers (i.e. the applicants), 1 exporting producer and 17 users, and the GOI. 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.

(14) 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.

(15) The Commission sought and verified all the information it deemed necessary for a determination of the likelihood of continuation or recurrence of

subsidisation and resulting injury 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,

(c) Government of India ('GOI').

B. PRODUCT CONCERNED AND LIKE PRODUCT

(16) 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 μΩ.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').

(17) 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 2(c) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF SUBSIDISATION

1. Introduction

(18) On the basis of the information contained in the review request and the replies to the Commission's questionnaire, the following schemes, which allegedly involve the granting of subsidies, were investigated:

Nationwide schemes

(a) Advance Authorisation Scheme ('AAS');

(b) Duty Entitlement Passbook Scheme ('DEPBS');

(c) Export Promotion Capital Goods Scheme ('EPCGS');

Regional Scheme

(d) Electricity Duty Exemption Scheme ('EDES').

(19) The schemes specified in points (a) to (c) 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 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 to the RIP of this case, i.e. FT-policy 04-09 and FT-policy 09-14. The latter entered into force in April 2009. In addition, the GOI also sets out the procedures governing the FT-policy 04-09 and FT-policy 09-14 in a 'Handbook of Procedures, Volume I' ('HOP I 04-09' and 'HOP I 09-14' respectively). The Handbook of Procedures is also updated on a regular basis.

(20) The scheme specified in point (d) above is managed by the authorities of the State of Madhya Pradesh.

2. **Advance Authorisation Scheme ('AAS')**

(21) In the course of the investigation it was found that the cooperating Indian producer did not obtain any benefits under the AAS scheme during the RIP. It was therefore not necessary to further analyse this scheme in this investigation.

3. **Duty Entitlement Passbook Scheme ('DEPBS')**

(a) *Legal Basis*

(22) The detailed description of the DEPBS is contained in paragraph 4.3 of the FT-policy 04-09 and FT-policy 09-14 as well as in Chapter 4 of the HOP I 04-09 and of the HOP I 09-14.

(b) *Eligibility*

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

(c) *Practical implementation of the DEPBS*

(24) An eligible exporter can apply for DEPBS credits which are calculated as a percentage of the value of products exported under this scheme. Such DEPBS rates have been established by the Indian authorities for most products, including the product concerned. They are determined on the basis of Standard Input Output Norm ('SION'), which is a norm taking into account a presumed import content of inputs in the exported product and the customs duty incidence on such presumed imports, regardless of whether import duties have actually been paid or not.

(25) To be eligible for benefits under this scheme, a company must export. At the point in time of the export transaction, a declaration must be made by the exporter to the authorities in India indicating that the export is taking

place under the DEPBS. In order for the goods to be exported, the Indian customs authorities issue, during the dispatch procedure, an export shipping bill. This document shows, *inter alia*, the amount of DEPBS credit which is to be granted for that export transaction. At this point in time, the exporter knows the benefit it will receive. Once the customs authorities issue an export shipping bill, the GOI has no discretion over the granting of a DEPBS credit. The relevant DEPBS rate to calculate the benefit is that which applied at the time the export declaration was made. Therefore, there is no possibility for a retroactive amendment to the level of the benefit.

(26) It was found that in accordance with Indian accounting standards, DEPBS credits can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation. Such credits can be used for payment of customs duties on subsequent imports of any goods unrestrictedly importable, except capital goods. Goods imported against such credits can be sold on the domestic market (subject to sales tax) or used otherwise. DEPBS credits are freely transferable and valid for a period of 12 months from the date of issue.

(27) Applications for DEPBS credits are electronically filed and can cover an unlimited amount of export transactions. *De facto*, no strict deadlines to apply for DEPBS credits exist. The electronic system used to manage DEPBS does not automatically exclude export transactions exceeding the deadline submission periods mentioned in Chapter 4.47 of the HOP I 04-09 and 09-14. Furthermore, as clearly provided in Chapter 9.3 of the HOP I 04-09 and 09-14, applications received after the expiry of submission deadlines can always be considered with the imposition of a minor penalty fee (i.e. 10 % of the entitlement).

(28) It was found that the cooperating Indian exporting producer used this scheme during the RIP.

(d) *Conclusions on the DEPBS*

(29) The DEPBS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. A DEPBS 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 DEPBS credit confers a benefit upon the exporter, because it improves its liquidity.

(30) Furthermore, the DEPBS is contingent in law upon export performance, and is therefore deemed to be specific and countervailable pursuant to Article 4(4), first subparagraph, point (a) of the basic Regulation.

(31) 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 as claimed by the cooperating Indian exporting

producer. It does not conform to the strict rules laid down in Annexes I (item (i)), II (definition and rules for drawback) and 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. Moreover, 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 item (i) of Annex I, and Annexes II and III of the basic Regulation. Lastly, an exporter is eligible for the DEPBS 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 demonstrating 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 the DEPBS.

(e) *Calculation of the subsidy amount*

(32) 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 review investigation period. In this regard, it was considered that the benefit is conferred on the recipient at the point in time when an export transaction is made under this scheme. At this moment, the GOI is liable to forego the customs duties, which constitutes a financial contribution within the meaning of Article 3(1)(a)(ii) of the basic Regulation.

(33) In light of the above, it is considered appropriate to assess the benefit under the DEPBS as being the sum of the credits earned on all export transactions made under this scheme during the RIP.

(34) The cooperating Indian exporting producer claimed that in their case all the DEPBS credits obtained had been used to import materials used solely in the production of the product concerned, despite being in principle allowed to sell them or use them for the import of other materials. The company claimed that therefore DEPBS was a normal duty drawback system, and only the excess remission should be countervailed. This claim has to be rejected, however, since, as explained above in recital 31, DEPBS is not considered a permissible duty drawback system or substitution drawback system, which has been also admitted by the GOI. It is therefore not relevant what the exporter actually does with the licences obtained under this scheme. It is at the moment of the export transactions made under this scheme that an exporter obtains an irrevocable conferral of a benefit, not at the moment of subsequent usage of the licence.

(35) Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted from the credits so established to arrive at the subsidy amounts as numerator, pursuant to Article 7(1)(a) of the basic Regulation.

(36) In accordance with Article 7(2) of the basic Regulation these subsidy amounts have been allocated over the total export turnover during the review investigation period 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.

(37) Based on the above, the subsidy rate established in respect of this scheme for the cooperating exporting producer during the RIP amounts to 5,7 %.

4. **Export Promotion Capital Goods scheme (‘EPCGS’)**

(a) *Legal basis*

(38) The detailed description of the EPCGS is contained in Chapter 5 of the FT-policy 04-09 and of the FT-policy 09-14 as well as in Chapter 5 of the HOP I 04-09 and of the HOP I 09-14.

(b) *Eligibility*

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

(c) *Practical implementation*

(40) Under the condition of an export obligation, a company is allowed to import capital goods (new and – since April 2003 – second-hand capital goods up to 10 years old) at a reduced rate of duty. To this end, the GOI issues, upon application and payment of a fee, an EPCGS licence. Since April 2000, the scheme provides for a reduced import duty rate of 5 % applicable to all capital goods imported under the scheme. Until 31 March 2000, an effective duty rate of 11 % (including a 10 % surcharge) and, in case of high value imports, a zero duty rate, was applicable. 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. Under a new FT-policy 09-14, the capital goods can be imported with 0 % duty rate under the EPCGS but in such case the time period for fulfilment of the export obligation is shorter.

(41) 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.

(42) It was found that the cooperating exporting producer used this scheme during the RIP.

(d) *Conclusion on EPCGS*

(43) 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.

(44) 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 pursuant to Article 4(4), first subparagraph, point (a) of the basic Regulation. It has been claimed by the cooperating exporting producer that EPCGS subsidies with regard to the purchase of capital goods where the export obligation was already fulfilled before the RIP, should no longer be treated as contingent upon export performance. Therefore, they should not be treated as specific subsidies and should not be countervailed. However, this claim has to be rejected. It has to be underlined that the subsidy itself was contingent upon export performance, i.e. it would not have been granted had the company not accepted a certain export obligation.

(45) 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, item (i), of the basic Regulation, because they are not consumed in the production of the exported products.

(e) *Calculation of the subsidy amount*

(46) The subsidy amount 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. Interests were added to this amount in order to reflect the full value of the benefit over time. The commercial interest rate during the review investigation period in India was considered appropriate for this purpose.

(47) In accordance with Article 7(2) and (3) of the basic Regulation, this subsidy amount has been allocated over the export turnover during the RIP as appropriate denominator, because the subsidy is contingent upon export performance.

(48) The subsidy rate established in respect of this scheme for the cooperating exporting producer during the RIP amounts to 0,9 %.

5. **Electricity Duty Exemption Scheme (EDES) – regional scheme of the State of Madhya Pradesh**

(49) 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.

(a) *Legal basis*

(50) The detailed description of the EDES is contained in the Government of Madhya Pradesh Notification No 29 of 21 July 2006 and Order No 4238-XIII-2006 Annexure C of 12 July 2006.

(b) *Eligibility*

(51) 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.

(c) *Practical implementation*

(52) The EDES provides for exemption from the payment of the electricity duty – local sales tax normally due in Madhya Pradesh – for companies which invested a certain amount of capital in the building of a power plant. The exemption is granted for a certain period depending on the value of investment. The aim of the scheme is to develop infrastructure as the state-owned power plants cannot provide companies in the area with sufficient electricity. The duty exemption is granted only for the captive use of energy.

(53) It was found that the cooperating exporting producer used this scheme during the RIP.

(d) *Conclusion on EDES*

(54) The EDES provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. The duty exemption constitutes a financial contribution by the State Government of Madhya Pradesh, since this concession decreases the State Government's duty revenue which would otherwise be due. In addition, the tax reduction confers a benefit upon the exporter, because the duty saved upon purchases of electricity improve its liquidity.

(55) The EDES is not contingent in law upon export performance. In addition, it is not limited in law to certain geographical areas within the State of Madhya Pradesh or to only some companies or branches of industry. Therefore, it was claimed by the cooperating exporting producer that this scheme should not be considered specific and therefore should not be countervailed, as its eligibility is based on objective and neutral economic criteria.

(56) However, due to the lack of cooperation of the State Government of Madhya Pradesh, the Commission was unable to make a firm conclusion on this

scheme as regards the specificity and practical application of this law and the level of discretion the granting authority enjoys when deciding on the applications. Indeed, it cannot be determined with certainty whether Article 4(2), first subparagraph, point (b) is fulfilled, given that it could not be established that the State Government of Madhya Pradesh applied objective criteria or conditions for granting the subsidy. Therefore, even if the scheme was shown not to be specific in law, it is still not clear that it is not specific *de facto*. As a result it is deemed to be specific and countervailable pursuant to Article 4(2), first subparagraph, point (c) and Article 4(2), fourth subparagraph of the basic Regulation.

(e) *Calculation of the subsidy amount*

(57) 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 concerned.

(58) The subsidy rate established in respect of this scheme for the cooperating exporting producer during the RIP amounts to 0,5 %.

6. **Amount of countervailable subsidies**

(59) The amount of countervailable subsidies determined in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated exporting producer amounts to 7,1 %. These amounts of subsidisation exceed the *de minimis* threshold mentioned pursuant to Article 14(5) of the basic Regulation.

(60) The level of the subsidisation established in the current procedure corresponds to the level of subsidisation of 7,2 % found for the same exporting producer during the most recent interim review.

(61) It is therefore considered that, pursuant to Article 18 of the basic Regulation, subsidisation continued during the RIP.

SCHEMES	**AAS**	**DEPBS**	**EPCGS**	**EDES**	**Total**
HEG Ltd	Nil	5,7 %	0,9 %	0,5 %	7,1 %

7. **Conclusions on the likelihood of continuation or recurrence of subsidisation**

(62) In accordance with Article 18(2) of the basic Regulation, it was examined whether the expiry of the measures in force would be likely to lead to a continuation or recurrence of subsidisation.

(63) In this respect it is recalled that only one of the two known exporting producers of the product concerned cooperated. It was established that during the RIP, the cooperating exporting producer continued to benefit from countervailable subsidisation by the Indian authorities. The subsidy schemes analysed above give recurring benefits and there are no indications that these programmes would be phased out or modified in the foreseeable future or that the cooperating exporting producer would stop obtaining benefits under these schemes. The schemes in question are still maintained in the FT-policy 09-14.

(64) As regards the other known exporting producer in India, according to the review request, it continued to benefit from the subsidy schemes analysed above. There is no information available which would indicate that this was not the case. It is therefore concluded that the subsidisation at country-wide level continued.

(65) In view of the findings described above, it is concluded that subsidisation continued during the RIP and would be likely to continue in the future.

(66) Since it has been demonstrated that subsidisation continued during the RIP and that it is likely to continue in the future, the issue of likelihood of recurrence of subsidisation is irrelevant.

D. DEFINITION OF THE UNION INDUSTRY

1. Union production

(67) Within the Union, the like product is manufactured by five companies or groups of companies whose output constitutes the total Union production of the like product within the meaning of Article 9(1) of the basic Regulation.

2. Union industry

(68) Two of the five groups of companies did not come forward to support the request and did not cooperate in the review investigation by submitting a response to the questionnaire. The following three groups of producers lodged the request and agreed to cooperate: Graftech International, SGL Carbon GmbH, and Tokai ERFTCARBON GmbH.

(69) These three groups of producers account for a major proportion of the total Union production of the like product, since they represent over 90 % of the total Union production of certain graphite electrode systems, as indicated at recital 4 above. They are therefore deemed to constitute the Union industry within the meaning of Articles 9(1) and 10(8) of the basic Regulation and will hereinafter be referred to as the ‘Union industry’.

E. SITUATION ON THE UNION MARKET

1. Preliminary remark

(70) Given that only one Indian exporting producer of the product concerned cooperated in this investigation, data relating to imports of the product concerned into the Union originating in India are not presented in precise figures in order to preserve confidentiality pursuant to Article 29 of the basic Regulation.

(71) The situation of the graphite electrode industry is closely linked to that of the steel sector since graphite electrodes are primarily used in the electrical steel industry. In this context, it should be noted that in 2007, and up to the first three quarters of 2008, very positive market conditions prevailed within the steel sector, and as a consequence, also for the graphite electrode industry.

(72) It should be noted that sales volumes of graphite electrodes move more or less in line with the volume of steel production. However, supply contracts for graphite electrodes, covering prices and quantities, are usually negotiated for 6-12 month periods. There is, therefore, generally a time lag between developments in sales volume resulting from changes in demand and any consequential effect on prices.

2. **Consumption in the Union market**

(73) Union consumption was established on the basis of the sales volumes of the Union industry on the Union market, an estimation of the sales volumes of the other Union producers on the Union market, import data from Eurostat, and data collected in accordance with Article 24(6) of the basic Regulation. As had been done in the original investigation[(9)], some imports were disregarded because, on the basis of the information available, they appeared not to be the product under investigation.

(74) Between 2006 and the RIP, Union consumption decreased by almost 25 %, with the main decrease occurring between 2008 and the RIP. It should be noted that, due to very positive market conditions at the beginning of the period considered, Union consumption was at very high levels and had increased by 30 % between the investigation period of the original investigation and 2006.

TABLE 1

	2006	**2007**	**2008**	**RIP**
Total Union consumption (tonnes)	170 035	171 371	169 744	128 437
Index (2006 = 100)	*100*	*101*	*100*	*76*

3. **Volume, market share and prices of imports from India**

(75) The volume of imports originating in India ('the country concerned') has increased steadily by 143 percentage points over the period considered and reached a level of 5 000 to 7 000 tonnes during the RIP. The market share of imports from the country concerned more than tripled between 2006 and the RIP, when it reached the level of around 5 %. Market share was still growing during the RIP, notwithstanding the significant decrease in demand. The prices of imports from the country concerned increased by 52 % over the period considered, following a similar trend to that for the Union industry's prices, but remained consistently lower than those of the Union industry. The data in *Table 2* are not given in precise figures for reasons of confidentiality, since there are only two known exporting producers in India.

TABLE 2

	2006	**2007**	**2008**	**RIP**
Volume of imports from the country concerned (tonnes)	2 000 to 3 000	3 000 to 4 000	7 000 to 9 000	5 000 to 7 000
Index (2006 = 100)	*100*	*123*	*318*	*243*
Market share of imports from the country concerned	Around 1,5 %	Around 2 %	Around 5 %	Around 5 %
Price of imports from the country concerned (EUR/tonne)	Around 2 000	Around 2 600	Around 3 000	Around 3 200
Index (2006 = 100)	*100*	*133*	*145*	*152*

4. **Economic situation of the Union industry**

(76) Pursuant to Article 8(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Union industry.

4.1. *Production*

(77) In the RIP, production decreased by 29 % compared to 2006. The Union industry's production first increased by 2 % in 2007 compared to 2006, before declining sharply, particularly during the RIP.

TABLE 3

	2006	**2007**	**2008**	**RIP**
Production (tonnes)	272 468	278 701	261 690	192 714
Index (2006 = 100)	*100*	*102*	*96*	*71*

4.2. *Capacity and capacity utilisation rates*

(78) Production capacity decreased marginally (by 2 % overall) between 2006 and the RIP. As production also decreased in 2008, and in particular during the RIP, the resulting capacity utilisation showed an overall decrease of 25 percentage points between 2006 and the RIP.

TABLE 4

	2006	**2007**	**2008**	**RIP**
Production capacity (tonnes)	298 500	292 250	291 500	293 500
Index (2006 = 100)	*100*	*98*	*98*	*98*
Capacity utilisation	91 %	95 %	90 %	66 %
Index (2006 = 100)	*100*	*104*	*98*	*72*

4.3. *Stocks*

(79) The level of closing stocks of the Union industry remained stable in 2007 compared to 2006 and then decreased by 10 % in 2008. In the RIP, the level of stocks increased somewhat, but was 5 % lower than in 2006.

TABLE 5

	2006	**2007**	**2008**	**RIP**
Closing stock (tonnes)	21 407	21 436	19 236	20 328

Index (2006 = 100)	*100*	*100*	*90*	*95*

4.4. *Sales volume*

(80) The sales by the Union industry on the Union market to unrelated customers decreased by 39 % over the period considered. They were very high at the beginning of the period considered, having increased by nearly 70 % compared to the investigation period of the original investigation. Sales volumes decreased slightly in 2007 and 2008 but remained at a relatively high level (in 2008 they were still 47 % above the level of the investigation period of the original investigation). However, sales volumes dropped significantly between 2008 and the RIP (by almost one-third).

TABLE 6

	2006	**2007**	**2008**	**RIP**
Union Sales volume to unrelated customers (tonnes)	143 832	139 491	124 463	88 224
Index (2006 = 100)	*100*	*97*	*87*	*61*

4.5. *Market share*

(81) The market share held by the Union industry declined progressively by almost 16 percentage points between 2006 and the RIP (from 84,6 % to 68,7 %).

TABLE 7

	2006	**2007**	**2008**	**RIP**
Market share of the Union industry	84,6 %	81,4 %	73,3 %	68,7 %
Index (2006 = 100)	*100*	*96*	*87*	*81*

4.6. *Growth*

(82) Between 2006 and the RIP, the Union consumption decreased by almost 25 %. The Union industry lost almost 16 percentage points of market share, whilst the imports concerned gained 3,4 percentage points of market share.

4.7. *Employment*

(83) The level of employment of the Union industry declined by 7 % between 2006 and the RIP.

TABLE 8

	2006	2007	2008	RIP
Employment product concerned (persons)	1 942	1 848	1 799	1 804
Index (2006 = 100)	*100*	*95*	*93*	*93*

4.8. *Productivity*

(84) Productivity of the Union industry's workforce, measured as output per person employed per year, decreased by 24 % between 2006 and the RIP. It increased slightly during 2007 and 2008, before decreasing by almost 25 % during the RIP.

TABLE 9

	2006	2007	2008	RIP
Productivity (tonnes per employee)	140	151	146	107
Index (2006 = 100)	*100*	*107*	*104*	*76*

4.9. *Sales prices and factors affecting domestic prices*

(85) Unit sales prices of the Union industry show a positive trend, having increased by 40 % during the period considered. This is due to: (i) the general level of prices in the market; (ii) the need to recover increases in costs of production; and (iii) the way supply contract prices are established.

(86) In 2007 and 2008 the Union industry was able to increase its prices in the context of generally increasing market prices, which was due to continued strong demand for graphite electrodes. This demand was a result of the very positive market conditions prevailing within the steel sector up until the first three quarters of 2008, as described in recital 71.

(87) Prices also increased in 2007 and 2008, in part, in order to cover increasing costs of production and in particular those of raw materials. Between 2006

and 2008 costs increased by 23 %. However, the Union industry was able to cover this by increasing its prices considerably (+ 33 %).

(88) Prices still increased, although to a lesser extent (+ 5 %), in the RIP. The fact that prices did not fall during a period when demand dropped is explained by the way supply contracts are established in the market and the fact that most supply contracts for 2009 were concluded in 2008. As indicated in recital 72, sales volumes of graphite electrodes move more or less in line with steel production. However, the negotiation of supply contracts for graphite electrodes for periods of 6 to 12 months can lead to a delay in the effect of any change (increase or decrease) in demand on prices. Contracts are negotiated on the basis of anticipated sales volumes, which may be different from the actual sales level achieved, with the result that the price trend in a particular period may not necessarily follow the trend in sales volumes for the same period. This was the case in the RIP when sales volumes decreased but prices remained high because most supply contracts for 2009 were concluded in 2008 and some deliveries foreseen for 2008 were deferred until 2009. The 5 % increase in prices during the RIP was, nevertheless, not sufficient to cover cost increases (+ 13 %), as had been possible during the previous periods. Prices were renegotiated at lower levels from after the RIP.

(89) As explained in recital 75, the prices of imports from the country concerned followed a trend similar to that of the Union industry, but were consistently lower than the prices of the Union industry.

TABLE 10

	2006	**2007**	**2008**	**RIP**
Unit price Union market (EUR/tonne)	2 569	3 103	3 428	3 585
Index (2006 = 100)	*100*	*121*	*133*	*140*

4.10. *Wages*

(90) Between 2006 and the RIP, the average wage per employee increased by 15 %.

TABLE 11

	2006	**2007**	**2008**	**RIP**
Annual labour cost per employee	52	56	61	60

(thousand EUR)				
Index (2006 = 100)	*100*	*108*	*118*	*115*

4.11. *Investments*

(91) Between 2006 and the RIP, the annual flow of investments in the product concerned made by the Union industry increased by 37 %. However, during the RIP investments decreased by 14 % compared to 2008.

TABLE 12

	2006	2007	2008	RIP
Net investments (EUR)	30 111 801	45 383 433	47 980 973	41 152 458
Index (2006 = 100)	*100*	*151*	*159*	*137*

4.12. *Profitability and return on investments*

(92) With an increase in costs of 40 % occurring over the period considered, the Union industry still managed, between 2006 and 2007, to increase its prices by more than its increase in costs. This led to a profit increase from the level of 19 % in 2006 to 26 % in 2007. From 2007 to 2008 prices and costs increased in the same proportion so that the Union industry's margin remained stable at the level of 2007. Profits then decreased again to 19 % in the RIP due to the effect on costs of lower production capacity utilisation and higher raw material prices. Profits decreased further in 2009, since the Union industry had to adjust its prices downwards in order to reflect the general decrease of selling prices in the graphite electrode market, due to the shrinking demand within the steel sector.

(93) The return on investments ('ROI') increased from a level of 71 % in 2006 to 103 % in 2007. In 2008 it increased to 119 % before decreasing to 77 % during the RIP. Overall, the return on investments only increased by 6 percentage points between 2006 and the RIP.

TABLE 13

	2006	2007	2008	RIP
Net Profit of Union sales to unrelated customers	19 %	26 %	25 %	19 %

(% of net sales)				
ROI (net profit in % of net book value of investments)	71 %	103 %	119 %	77 %

4.13. *Cash flow and ability to raise capital*

(94) The net cash-flow from operating activities increased between 2006 and 2007. This increase continued in 2008 before decreasing during the RIP. Overall, cash flow was 28 % higher in the RIP than at the start of the period considered.

(95) There were no indications that the Union industry encountered difficulties in raising capital, mainly due to the fact that some of the producers are incorporated in larger groups.

TABLE 14

	2006	**2007**	**2008**	**RIP**
Cash flow (EUR)	109 819 535	159 244 026	196 792 707	140 840 498
Index (2006 = 100)	*100*	*145*	*179*	*128*

4.14. *Magnitude of subsidisation*

(96) Given the volume, market share and prices of the imports from India, the impact on the Union industry of the actual subsidy margins cannot be considered to be negligible.

4.15. *Recovery from the effects of past subsidisation and of past dumping*

(97) The indicators examined above show some improvement in the economic and financial situation of the Union industry following the imposition of definitive countervailing and anti-dumping measures in 2004. In particular, between 2006 and 2008, the Union industry benefited from increased prices and profits. This was due to very positive market conditions, which allowed a high level of prices and profitability to be maintained, even though, as explained in recital 81, the market share of the Union industry was declining. However, over the same period, and despite the measures, the market share of Indian imports has increased and Indian products have been imported at prices lower than those of the Union industry. During the RIP, profits already started to decrease for the Union industry and decreased further in 2009 due to increased costs and limited price increases.

5. **Impact of subsidised imports and other factors**

5.1. *Impact of the subsidised imports*

(98) Despite a decrease in consumption in the Union over the period considered, the volume of imports from the country concerned more than doubled and the market share of those imports more than tripled (see recital 75). If the anti-dumping and countervailing duties are not taken into consideration, the imports from the country concerned undercut the prices of the Union industry, although by less than 2 %, during the RIP.

5.2. *Impact of the economic crisis*

(99) Due to the very positive economic conditions prevailing in the steel and related industries, including graphite electrodes, in 2007 and in the first three quarters of 2008, the Union industry was in a relatively good economic condition when the economic crisis started at the end of 2008. The fact that supply contracts for graphite electrodes are usually negotiated for 6-12 months means that there is a delay in the effect of any change (increase or decrease) in demand on prices. Since contracts for the RIP were negotiated at a stage when the effects of the economic crisis could not be foreseen, the impact of the economic crisis during the RIP was mainly in terms of volumes, since, in terms of prices, any impact would be felt by the Union industry with a delay. In that context it has to be noted that the situation of the Union industry has deteriorated in some respect, even during the period of positive economic conditions, by losing market share to imports from the country concerned. The fact that this deterioration did not lead to more significant negative effects was partly due to the high level of demand in 2007-08 which had allowed the Union industry to maintain high volumes of production and sales and partly due to the fact that when these volumes decreased in the RIP, the prices could still be maintained due to the time-lag described above.

5.3. *Imports from other countries*

(100) Due to the inclusion of products other than the product under investigation in the import data available at CN code level from Eurostat, the following analysis has been made on the basis of import data at Taric code level, supplemented by information from data collected in accordance with Article 24(6) of the basic Regulation. Some imports were disregarded because, on the basis of the information available, they appeared not to be the product under investigation.

(101) It is estimated that the volume of imports from other third countries increased by 63 % from around 11 000 tonnes in 2006 to around 18 500 tonnes in the RIP. The market share of imports from other countries increased from 6,6 % in 2006 to 14,4 % in the RIP. The average price of imports from other third countries increased by 42 % between 2006 and the RIP. The main imports appear to be from the People's Republic of China ('PRC'), Russia, Japan, and

Mexico, which were the only countries with individual market shares higher than 1 % during the RIP. Imports from these countries are further examined in the following recitals. Imports from nine other countries account for a total market share of only around 2 % and are not examined further.

(102) The market share of Chinese imports increased by 2,4 percentage points over the period considered (from 0,2 % to 2,6 %). The available information indicates that these imports were made at prices which were lower than those of the Union industry and also lower than those of the imports originating in India.

(103) The market share of imports from Russia increased by 4,2 percentage points over the period considered (from 1,9 % to 6,1 %). The available information indicates that these imports were made at prices which were slightly lower than those of the Union industry, but higher than those of the imports originating in India.

(104) The market share of imports from Japan decreased by 0,4 percentage points over the period considered (from 2,0 % to 1,6 %). The available information indicates that these imports were made at prices which were similar to, or above, those of the Union industry and also higher than those of the imports originating in India.

(105) The market share of imports from Mexico increased by 1,0 percentage points over the period considered (from 0,9 % to 1,9 %). The available information indicates that these imports were made at prices which were higher than those of the Union industry and also higher than those of the imports originating in India.

(106) In conclusion, it cannot be excluded that the development of imports from the PRC and from Russia could have contributed to some extent to the deterioration in the market share of the Union industry. However, given the general nature of the data available from the import statistics, which does not allow a price comparison by product type, as was possible for India on the basis of the detailed information provided by the exporting producer, the impact of the imports from the PRC and Russia cannot be established with certainty.

TABLE 15

	2006	**2007**	**2008**	**RIP**
Volume of imports from other countries (tonnes)	11 289	11 243	19 158	18 443

Index (2006 = 100)	*100*	*100*	*170*	*163*
Market share of imports from the other countries	6,6 %	6,6 %	11,3 %	14,4 %
Price of imports from the other countries (EUR/tonne)	2 467	3 020	3 403	3 508
Index (2006 = 100)	*100*	*122*	*138*	*142*
	2006	**2007**	**2008**	**RIP**
Volume of imports from the PRC (tonnes)	421	659	2 828	3 380
Index (2006 = 100)	*100*	*157*	*672*	*804*
Market share of imports from the PRC	0,2 %	0,4 %	1,7 %	2,6 %
Price of imports from the PRC (EUR/tonne)	1 983	2 272	2 818	2 969
Index (2006 = 100)	*100*	*115*	*142*	*150*
	2006	**2007**	**2008**	**RIP**
Volume of imports from Russia (tonnes)	3 196	2 887	8 441	7 821
Index (2006 = 100)	*100*	*90*	*264*	*245*
Market share of imports from Russia	1,9 %	1,7 %	5,0 %	6,1 %
Price of imports	2 379	2 969	3 323	3 447

from Russia (EUR/tonne)				
Index (2006 = 100)	*100*	*125*	*140*	*145*
	2006	**2007**	**2008**	**RIP**
Volume of imports from Japan (tonnes)	3 391	2 223	3 731	2 090
Index (2006 = 100)	*100*	*66*	*110*	*62*
Market share of imports from Japan	2,0 %	1,3 %	2,2 %	1,6 %
Price of imports from Japan (EUR/tonne)	2 566	3 131	3 474	3 590
Index (2006 = 100)	*100*	*122*	*135*	*140*
	2006	**2007**	**2008**	**RIP**
Volume of imports from Mexico (tonnes)	1 478	2 187	2 115	2 465
Index (2006 = 100)	*100*	*148*	*143*	*167*
Market share of imports from Mexico	0,9 %	1,3 %	1,2 %	1,9 %
Price of imports from Mexico (EUR/tonne)	2 634	3 629	4 510	4 554
Index (2006 = 100)	*100*	*138*	*171*	*173*

6. **Conclusion**

(107) As indicated in recital 75 the volume of imports from the country concerned has more than doubled between 2006 and the RIP. Given that consumption declined by almost 25 % over the same period, this resulted in a sharp rise

in the market share held by Indian exporters from around 1,5 % in 2006 to around 5 % during the RIP. While Indian export prices to the Union increased considerably during the period considered as an effect of generally high market prices, they were still undercutting the prices of the Union industry.

(108) Between 2006 and the RIP, and notwithstanding the existence of the anti-dumping and countervailing measures, a number of important indicators developed negatively: production and sales volumes decreased by 29 % and 39 % respectively, capacity utilisation went down by 28 % and was followed by a decrease in employment and productivity levels. Although a part of these negative developments may be explained by the strong decrease in consumption, which declined by almost 25 % over the period considered, the Union industry's strong decrease in market share (down by 15,9 percentage points between 2006 and the RIP) must also be interpreted in the light of the constant increase in market share of imports from India.

(109) As for the relatively high level of profits during the RIP, this was mainly due to the continued high level of prices, for the reasons explained in recital 88. It is concluded that the Union industry's situation deteriorated overall during the period considered and that the Union industry was in a fragile situation at the end of the RIP, despite a relatively high level of profit at that stage, when its efforts to maintain sales volumes and a sufficient level of prices, in a situation of weakened demand, were hampered by the increased presence of the Indian subsidised imports.

F. LIKELIHOOD OF CONTINUATION AND RECURRENCE OF INJURY

1. Preliminary remarks

(110) As already seen, the imposition of countervailing measures has allowed the Union industry to recover only to some extent from the injury suffered. However, when the high levels of Union consumption experienced during most of the period considered disappeared during the RIP, the Union industry appeared in a fragile and vulnerable situation and still exposed to the injurious effect of the subsidised imports from India. In particular, the ability of the Union industry to recover increased costs was weak at the end of the RIP.

2. Relationship between export volumes and prices to third countries and export volumes and prices to the Union

(111) It was found that the average export price of Indian sales to non-EU countries was below the average export price to the Union and also below the prices on the domestic market. The Indian exporter's sales to non-EU countries were made in significant quantities, accounting for the majority of its total export sales. Therefore, it was considered that, should measures lapse, Indian exporters would have an incentive to shift significant quantities of exports from other third countries to the more attractive Union market, at price levels,

which, even if they were higher than the prices to third countries, would likely still be below the current export price levels to the Union.

3. **Unused capacity and stocks in the Indian market**

(112) The cooperating Indian producer had significant spare capacities and planned to increase its capacity in 2010/2011. Therefore, the capacity to significantly increase export quantities to the Union exists, in particular because there are no indications that third country markets or the domestic market could absorb any additional production.

(113) In its comments to the disclosure, the cooperating Indian producer alleged that its spare capacity was mainly due to the economic crisis and the related decrease in demand. However, a significant part of the company's spare capacity can be explained by the fact that the company substantially increased its capacity between 2006 and the RIP. Furthermore, it should be noted that the company has planned additional increased capacity. Moreover, it should also be pointed out that there is another Indian producer which did not cooperate, that has similar capacity and utilisation and has also announced recently an even more substantial increase in capacity.

4. **Conclusion**

(114) The producers in the country concerned have the potential to raise and/or redirect their export volumes to the Union market. Moreover, the prices of Indian exports to third countries are lower than those to the Union. The investigation showed that, on the basis of comparable product types, the cooperating exporting producer sold the product concerned at prices lower than those of the Union industry. These low prices would most likely decrease in line with the lower prices charged to the rest of the world. Such price behaviour, coupled with the ability of the exporters in the country concerned to deliver significant quantities of the product concerned to the Union market, would, in all likelihood, have a negative impact on the economic situation of the Union industry.

(115) As shown above, the situation of the Union industry remains vulnerable and fragile. If the Union industry were to be exposed to increased volumes of imports from the country concerned at subsidised prices, this would be likely to result in a deterioration of its sales, market share, sales prices, as well as a consequent deterioration of its financial situation to the levels found in the original investigation. On this basis, it is therefore concluded that the repeal of the measures would in all likelihood result in a worsening of the already fragile situation, and a recurrence of material injury to the Union industry.

G. UNION INTEREST

1. **Introduction**

(116) In accordance with Article 31 of the basic Regulation, it was examined whether the maintenance of the existing countervailing measures would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of the various interests involved, i.e. those of the Union industry, of importers, and of users.

(117) It should be recalled that, in the original investigation, the adoption of measures was considered not to be against the interest of the Union. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which countervailing measures have already been in place, allows the assessment of any undue negative impact on the parties concerned by the current countervailing measures.

(118) On this basis it was examined whether, despite the conclusions on the likelihood of a continuation or recurrence of injurious subsidisation, compelling reasons existed which would lead to the conclusion that it is not in the Union interest to maintain measures in this particular case.

2. **Interest of the Union industry**

(119) The Union industry has proven to be a structurally viable industry. This was confirmed by the positive development of its economic situation observed after the imposition of the countervailing measures in 2004. In particular, the fact that the Union industry increased its profitability in the few years before the RIP contrasts sharply with the situation preceding the imposition of the measures. However, the Union industry has consistently lost market share while imports from the country considered have substantially increased in market share over the period considered. Without the existence of the measures, the Union industry would likely be in an even worse situation.

3. **Interest of importers/users**

(120) None of the nine unrelated importers that were contacted came forward to cooperate.

(121) 17 users came forward and submitted questionnaire replies. While most users have not sourced graphite electrodes from India for several years, and therefore remained neutral with respect to a possible continuation of the measures, six users have, at least to some extent, used Indian electrodes. Four users claimed that a continuation of measures would have a negative impact on competition. One association (Eurofer) strongly opposed a continuation of the measures and claimed that the measures resulted in Indian exporters largely withdrawing from the EU market. The association alleges that the continuation of measures would hamper steel producers in developing alternative sources of supply and would allow the Union industry to continue having a dominant, near duopoly position. However, it is clear from the development of the Indian imports after the imposition of the measures, that such a large withdrawal has not taken place; instead imports from India

have increased significantly during the period considered. In addition, the investigation has shown that the graphite electrodes are increasingly entering the Union market from a number of other third countries. As for the strength of the position of the Union industry in the market, it is recalled that its market share has decreased by almost 16 percentage points over the period considered (see recital 81 above). Finally, this association also admitted that graphite electrodes represent only a relatively small component of the total costs of steel manufacturers.

(122) It is further recalled that, in the original investigation, it was found that the impact of the imposition of measures would not be significant for the users[10]. Despite the existence of measures for 5 years, importers/users in the Union continued to source their supply, inter alia, from India. No indications were brought forward either that there have been difficulties in finding other sources. Moreover, it is recalled that, as regards the effect of the imposition of measures on users, it was concluded in the original investigation that, given the negligible incidence of the cost of graphite electrodes on user industries, any cost increase was unlikely to have a significant effect on the user industry. No indications of the contrary were found after the imposition of measures. It is therefore concluded that the maintenance of the countervailing measures is not likely to have a serious effect on importers/users in the Union.

4. **Conclusion**

(123) Given the above, it is concluded that there are no compelling reasons against the maintenance of the current countervailing measures.

H. **COUNTERVAILING MEASURES**

(124) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to submit comments subsequent to this disclosure. The submissions and comments were taken duly into consideration where warranted.

(125) It follows from the above that, as provided for by Article 18(2) of the basic Regulation, the countervailing measures applicable to imports of certain graphite electrodes originating in India should be maintained. It is recalled that these measures consist of *ad valorem* duties.

(126) 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’.

(127) 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[(11)] 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,

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/cm^3 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	Definitive Duty(%)	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, 13 December 2010.

For the Council

The President

K. PEETERS

(**1**) OJ L 188, 18.7.2009, p. 93.

(**2**) OJ L 295, 18.9.2004, p. 4.

(**3**) OJ L 295, 18.9.2004, p. 10.

(**4**) OJ L 350, 30.12.2008, p. 24.

(**5**) OJ C 34, 11.2.2009, p. 11.

(**6**) OJ C 224, 17.9.2009, p. 24.

(**7**) OJ C 224, 17.9.2009, p. 20.

(**8**) OJ L 343, 22.12.2009, p. 51.

(**9**) See recital 132 of 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).

(**10**) See recital 150 of Commission Regulation (EC) No 1008/2004 (OJ L 183, 20.5.2004, p. 35) and recital 30 of Council Regulation (EC) No 1628/2004 (OJ L 295, 18.9.2004, p. 4).

(**11**) European Commission, Directorate-General for Trade, Directorate H, B-1049 Brussels, Belgium.