Commission Implementing Decision (EU) 2020/1605 of 30 October 2020 terminating the partial interim review of the anti-dumping and countervailing measures applicable to imports of certain graphite electrode systems originating in India

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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 anti-dumping Regulation'), and in particular Article 11(3) thereof,

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union[(2)] ('the basic anti-subsidy Regulation'), and in particular Article 19 thereof,

Whereas:

A. PROCEDURE

1. Previous investigations and existing anti-dumping measures

(1) Anti-dumping and anti-subsidy measures have been in force on imports of certain graphite electrode systems ('graphite electrodes') originating in India ('the country concerned') since 2004. The measures were prolonged in 2010 and in 2017. The measures currently in force are definitive anti-dumping and countervailing duties imposed by Commission Implementing Regulation (EU) 2017/422[(3)] and Commission Implementing Regulation (EU) 2017/421[(4)].

(2) The current level of the duties for the two Indian producers is 7 % for Hindustan Electro Graphite (HEG) Limited ('HEG') and 15,7 % for Graphite India Limited ('GIL') and all other companies. HEG is subject to a 7 % countervailing duty and an anti-dumping duty of 0 %.

2. Request for a partial interim review limited to injury

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

(4) In the review request, the applicant mentioned two main issues: changes in the composition of Union industry, and a global shortage of graphite electrodes causing a massive increase in global prices of graphite electrodes and consequently also in

the profitability of its producers, including those in the Union. The applicant alleged that Union producers enjoyed significant good profit margins and were no longer in a vulnerable situation. The applicant concluded that the continued imposition of measures, which were based on the level of injury previously established, was no longer necessary to offset the effects of injurious dumping and subsidisation as previously established.

3. Initiation of a partial interim review limited to injury

(5) Having determined that sufficient evidence existed to justify the initiation of a partial interim review limited to the examination of injury, and after informing the Member States, the Commission announced the initiation of a partial interim review pursuant to Article 11(3) of the basic anti-dumping Regulation and Article 19 of the basic anti-subsidy Regulation on 2 March 2020. This was done by a notice published in the *Official Journal of the European Union*[(5)] ('Notice of Initiation').

(6) The Commission officially informed the applicant, the authorities of the exporting country, the other known exporting producers and unrelated importers, the Union industry and the known users of the product under review of the initiation of the partial interim review investigation. Interested parties were given the opportunity to make their views known in writing and to be heard.

4. Investigation

(7) In order to obtain the information necessary for its investigation, the Commission prepared questionnaires to exporting producers, Union producers and Union importers.

(8) All interested parties were also invited to make their views known, submit information and provide supporting evidence. Several Union users of graphite electrodes, most notably the European Steel Association (EUROFER) submitted information.

4.1. *Sampling and questionnaires*

4.1.1. Exporting producers

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

4.1.2. Union producers

(10) In view of the large number of Union producers concerned and in order to complete the investigation within the statutory time-limits, the Commission decided to limit to a reasonable number the Union producers to be investigated by selecting a sample (this process is also referred to as 'sampling'). The sampling was carried out in accordance with Article 17 of the basic anti-dumping Regulation and Article 27 of the basic anti-subsidy Regulation.

(11) A sample of Union producers accounting for more than 80 % of the estimated total production volumes of graphite electrodes in the Union was selected after the initiation of the case, with no comments received on the sample. The companies selected in the sample were GrafTech France S.N.C., GrafTech Iberica S.L., Showa Denko Carbon Spain S.A. and Tokai Erftcarbon GmbH.

4.1.3. Unrelated importers

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

4.2. *Hearings*

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

5. **Review investigation period**

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

B. PRODUCT UNDER REVIEW AND LIKE PRODUCT

1. Product under review

(15) The product under review is graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,65 g/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 (‘graphite electrodes’ or ‘product under review’), currently falling under CN codes ex 8545 11 00 (TARIC code 8545 11 00 10) and ex 8545 90 90 (TARIC code 8545 90 90 10).

(16) Graphite electrodes are used for steel production. They are mostly used as an input material in electric arc furnaces (EAF) to produce steel from steel scrap.

(17) The main raw material used for the production of graphite electrodes is needle coke. Needle coke is also used in the lithium-ion battery industry.

2. Like product

(18) The product under review and the product produced and sold by the Union industry share the same basic characteristics.

(19) The Commission therefore concluded that these products are alike within the meaning of Article 1(4) of the basic anti-dumping Regulation and Article 2 of the basic anti-subsidy Regulation.

C. LASTING NATURE OF CHANGED CIRCUMSTANCES

(20) In accordance with Article 11(3) of the basic anti-dumping Regulation and Article 19 of the basic anti-subsidy Regulation, the Commission examined whether

the circumstances on the basis of which the current measures were established have changed significantly, and whether such change was of a lasting nature.

(21) In its review request, the applicant argued that two major changes of a lasting nature had occurred since the previous expiry review of the measures on graphite electrodes and that the measures therefore merited a reassessment of injury findings. Firstly, the applicant raised changes in the composition of Union industry, notably the sale of the (European) SGL's group entire graphite electrode business to (Japanese) Showa Denko and (Japanese) Tokai. Secondly, the applicant alleged that 'the steel industry's fundamental and lasting shift from blast furnace production to electric arc furnace production has led to a shift in global graphite electrode demand and a worldwide shortage in graphite electrode supply,' also causing a substantial and lasting increase in the prices of graphite electrodes.

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

(22) Regarding the change in the composition of the Union industry, the applicant claimed that the purchase by Showa Denko of SGL's European graphite electrode business and the purchase by Tokai of SGL's American graphite electrode business resulted in changes of ownership and corporate structure in two of the three main Union producers, mandating a reassessment of injury. The applicant further argued that the two transactions resulted in a major consolidation of the EU and global graphite electrode suppliers, which in turn resulted fewer graphite electrode producers (outside of China) and therefore less competition on both the Union market and global markets. The result was sustained higher prices for the product on all markets.

(23) Showa Denko argued that, prior to the acquisition of SGL's European graphite electrode business, they were not producing graphite electrodes in the Union. As such, the transaction represented a mere transfer of ownership from one group to another with no significant impact on the Union production, commercial strategy or market structure.

(24) Union users represented by EUROFER stressed that the number of producers servicing the global demand for graphite electrodes is now less than ten, therefore supporting the applicant's argument.

(25) The Commission noted that Showa Denko had not previously owned any electrode business in the Union. Before the acquisition, and before the review investigation period, SGL had proceeded with capacity closures in the Union. After the acquisition of SGL's European graphite electrode business by Showa Denko, while Showa Denko made some reduction in production and sales[(6)] in line with market developments, there were no significant developments affecting the production of the like product in the Union in the period concerned. Hence, the take-over by Showa Denko of SGL's European graphite electrode business cannot be equated with business consolidation on the Union market of a lasting nature. Rather, the relevant data showed that since the acquisition in 2017 Showa Denko overall continued the activities of its predecessor in the Union. A reassessment of injury of Union industry on the basis of industry consolidation, was, therefore, not merited, since the change of ownership of a Union producer did not alter the Union market structure significantly. As regards

the issue of decreased competition resulting from fewer global suppliers leading to sustained higher prices of graphite electrodes, the Commission found that, rather than remaining at sustained higher levels, global prices of graphite electrodes have continued to fall (as demonstrated in recital 30) and therefore also did not constitute a sustained change necessitating a reassessment of injury.

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

(26) Regarding the shift in global supply and demand, and the alleged substantial and lasting increase in the prices of graphite electrodes, the applicant argued that the significant global price increase of graphite electrodes, which happened in 2017 and 2018, was indicative of a rise in global demand and a supply unable to keep up with demand. The key reason for the rise in demand was cited to be the global shift from blast furnaces to the electric arc furnaces, which use graphite electrodes, in the steel industry. The key reason for a lag in global supply was cited as the government-mandated shut-downs of Chinese graphite electrode producers for environmental upgrading. Those closures coincided with an increased domestic demand for graphite electrodes from Chinese steel producers and new competition for needle coke (the main raw material used in the production of graphite electrodes) from the lithium-ion battery industry.

(27) Furthermore, the applicant also argued that, despite the current situation of temporary re-balancing of the supply and demand of graphite electrodes, the shortage in global supply will increase again and will lead to a further increase in prices in the future. According to the applicant, although Chinese graphite electrode production is currently above Chinese domestic demand, that demand for graphite electrodes will increase drastically once all the new electric arc furnace production plants foreseen by the environmental upgrading launched in 2017 are built and running at full speed. The applicant expected electric arc furnace steel production globally (and in China in particular) to grow faster than the increase in global graphite electrode production capacities, leading to a global shortage in supply and further price increases. Moreover, the applicant argued that 2020 global prices of graphite electrodes cannot be considered representative as they reflect temporary distortions resulting from the COVID-19 crisis, including in steel demand, which they expect to recover as early as 2021.

(28) In support of the elements provided by the applicant, the users represented by EUROFER indicated that post-2017 prices remained constantly higher than the pre-2017 period both on the spot market and on contractual basis, and that demand for graphite products was expected to continuously grow in the next decades, as electric arc furnace production increases. Furthermore, EUROFER stressed that the capacity of Chinese producers had been drastically reduced in 2017 as a result of central government measures aimed at curbing pollution. The number of needle coke production sites remained extremely limited worldwide. EUROFER claimed that the Union steel industry is highly exposed to the price volatility of input materials like graphite electrodes.

(29) The joint legal representative of three companies/groups of companies of the Union industry submitted that the significant increase in demand and parallel lag in