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⁽¹⁾ Text with EEA relevance.

EN

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II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION (EU) 2017/418

of 28 February 2017

on the conclusion on behalf of the European Union of the Sustainable Fisheries Partnership Agreement between the European Union and the Government of the Cook Islands and the Implementation Protocol thereto

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43 in conjunction with Article 218(6), second subparagraph, point (a)(v) and Article 218(7) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament ⁽¹⁾,

Whereas:

- (1) The Union and the Government of the Cook Islands negotiated a Sustainable Fisheries Partnership Agreement ('the Agreement') for a duration of 5 years, renewable by tacit agreement, and an Implementation Protocol thereto ('the Protocol'), granting Union vessels fishing opportunities in the waters over which the Cook Islands has sovereign rights or jurisdiction in respect to fisheries.
- (2) The Agreement and the Protocol were signed in accordance with Council Decision (EU) 2016/776 ⁽²⁾ and apply on a provisional basis from 14 October 2016.
- (3) The Agreement set up a Joint Committee which is responsible for monitoring the performance, interpretation and application of the Agreement. Furthermore, the Joint Committee may approve certain modifications to the Protocol. In order to facilitate the approval of such modifications, it is appropriate to empower the Commission, subject to specific conditions, to approve them under a simplified procedure.
- (4) The Agreement and Protocol should be approved,

HAS ADOPTED THIS DECISION:

Article 1

The Sustainable Fisheries Partnership Agreement between the European Union and the Government of the Cook Islands and the Implementation Protocol thereto are hereby approved on behalf of the Union.

⁽¹⁾ Consent of 14 February 2017 (not yet published in the Official Journal).

⁽²⁾ Council Decision (EU) 2016/776 of 29 April 2016 on the signing, on behalf of the European Union, and provisional application of the Sustainable Fisheries Partnership Agreement between the European Union and the Government of the Cook Islands and the Implementation Protocol thereto (OJ L 131, 20.5.2016, p. 1).

Article 2

The President of the Council shall, on behalf of the Union, give the notifications provided for in Article 17 of the Agreement and in Article 13 of the Protocol ⁽¹⁾.

Article 3

Subject to the provisions and conditions set out in Annex to this Decision, the Commission shall be empowered to approve, on behalf of the Union, modifications to the Protocol within the Joint Committee.

Article 4

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 28 February 2017.

For the Council
The President
J. HERRERA

⁽¹⁾ The date of entry into force of the Agreement and of the Protocol will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

ANNEX

Scope of the empowerment and procedure for establishing the Union position in the Joint Committee

- (1) The Commission shall be authorised to negotiate with Government of the Cook Islands and, where appropriate and subject to compliance with point 3 of this Annex, agree on modifications to the Protocol in respect of the following issues:
 - (a) review of the level of fishing opportunities and, consequently, of the relevant financial contribution, in accordance with Article 5 and point (a) of Article 6(3) of the Agreement and Articles 5 and 6 of the Protocol;
 - (b) decision on the modalities of the sectoral support in accordance with point (b) of Article 6(3) of the Agreement and Article 3 of the Protocol;
 - (c) the technical conditions and modalities under which the Union vessels carry out their fishing activities in accordance with point (c) of Article 6(3) of the Agreement and Articles 4 and 6 of the Protocol.
- (2) In the Joint Committee established under the Agreement, the Union shall:
 - (a) act in accordance with the objectives pursued by the Union within the framework of the Common Fisheries Policy;
 - (b) follow the Council Conclusions of 19 March 2012 on a Communication on the external dimension of the Common Fisheries Policy;
 - (c) promote positions that are consistent with the relevant rules adopted by regional fisheries management organisations and in the context of joint management by coastal States.
- (3) When a decision on modifications to the Protocol referred to in point 1 is intended to be adopted during a Joint Committee meeting, the necessary steps shall be taken so as to ensure that the position to be expressed on behalf of the Union takes account of the latest statistical, biological and other relevant information transmitted to the Commission.

To this effect and based on that information, a document setting out the particulars of the proposed Union position shall be transmitted by the Commission services, in sufficient time before the relevant Joint Committee meeting, to the Council or to its preparatory bodies for consideration and approval.

In respect of the issues referred to in point 1(a), the approval of the envisaged Union position by the Council shall require a qualified majority of votes. In the other cases, the Union position envisaged in the preparatory document shall be deemed to be agreed, unless a number of Member States equivalent to a blocking minority objects during a meeting of the Council's preparatory body or within 20 days of receipt of the preparatory document, whichever occurs earlier. In case of such an objection, the matter shall be referred to the Council.

If, in the course of further meetings, including on-the-spot meetings, it is impossible to reach an agreement in order for the Union position to take account of new elements, the matter shall be referred to the Council or its preparatory bodies.

- (4) The Commission is invited to take, in due time, any steps necessary as a follow-up to the decision of the Joint Committee, including, where appropriate, a publication of the relevant decision in the *Official Journal of the European Union* and a submission of any proposal necessary for the implementation of that decision.
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REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2017/419

of 9 March 2017

approving the basic substance *Urtica* spp. in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC ⁽¹⁾, and in particular Article 23(5) in conjunction with Article 13(2) thereof,

Whereas:

- (1) In accordance with Article 23(3) of Regulation (EC) No 1107/2009, the Commission received on 18 August 2015 an application from the Institut Technique de l'Agriculture Biologique (ITAB) for the approval of *Urtica* spp. as a basic substance. That application was accompanied by the information required by the second subparagraph of Article 23(3). In addition, the Commission received on 5 January 2016 an application from Myosotis for the approval of nettle as a basic substance. Considering that this application also concerns *Urtica* spp., but with a different proposed use, the Commission merged the assessment of both applications.
- (2) The Commission asked the European Food Safety Authority (hereinafter 'the Authority') for scientific assistance. The Authority presented to the Commission a Technical Report on the substance concerned on 28 July 2016 ⁽²⁾. The Commission presented the review report ⁽³⁾ and a draft of this Regulation to the Standing Committee on Plants, Animals, Food and Feed on 7 December 2016 and finalised them for the meeting of that Committee on 24 January 2017.
- (3) The documentation provided by the applicant shows that *Urtica* spp. fulfils the criteria of a foodstuff as defined in Article 2 of Regulation (EC) No 178/2002 of the European Parliament and of the Council ⁽⁴⁾. Moreover, it is not predominantly used for plant protection purposes but nevertheless is useful in plant protection in a product consisting of the substance and water. Consequently, it is to be considered as a basic substance.
- (4) It has appeared from the examinations made that *Urtica* spp. may be expected to satisfy, in general, the requirements laid down in Article 23 of Regulation (EC) No 1107/2009, in particular with regard to the uses which were examined and detailed in the Commission review report. It is therefore appropriate to approve *Urtica* spp. as a basic substance.
- (5) In accordance with Article 13(2) of Regulation (EC) No 1107/2009 in conjunction with Article 6 thereof and in the light of current scientific and technical knowledge, it is, however, necessary to include certain conditions for the approval which are detailed in Annex I to this Regulation.

⁽¹⁾ OJ L 309, 24.11.2009, p. 1.

⁽²⁾ European Food Safety Authority, 2016. Outcome of the consultation with Member States and EFSA on the basic substance applications for *Urtica* spp. for use in plant protection as insecticide, acaricide and fungicide. EFSA supporting publication 2016:EN-1075. 72 pp.

⁽³⁾ <http://ec.europa.eu/food/plant/pesticides/eu-pesticides-database/public/?event=activesubstance.selection&language=EN>

⁽⁴⁾ Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1).

- (6) In accordance with Article 13(4) of Regulation (EC) No 1107/2009, the Annex to Commission Implementing Regulation (EU) No 540/2011 ⁽¹⁾ should be amended accordingly.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Approval of a basic substance

The substance *Urtica* spp. as specified in Annex I is approved as a basic substance subject to the conditions laid down in that Annex.

Article 2

Amendments to Implementing Regulation (EU) No 540/2011

Implementing Regulation (EU) No 540/2011 is amended in accordance with Annex II to this Regulation.

Article 3

Entry into force

This Regulation shall enter into force on the twentieth day following that of 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, 9 March 2017.

For the Commission

The President

Jean-Claude JUNKER

⁽¹⁾ Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the list of approved active substances (OJ L 153, 11.6.2011, p. 1).

ANNEX I

Common Name, Identification Numbers	IUPAC Name	Purity ⁽¹⁾	Date of approval	Specific provisions
<i>Urtica</i> spp. CAS No 84012-40-8 (<i>Urtica dioica</i> extract) CAS No 90131-83-2 (<i>Urtica urens</i> extract)	<i>Urtica</i> spp.	European Pharmacopeia	30 March 2017	<i>Urtica</i> spp. shall be used in accordance with the specific conditions included in the conclusions of the review report on <i>Urtica</i> spp. (SANTE/11809/2016) and in particular Appendices I and II thereof.

⁽¹⁾ Further details on identity, specification and manner of use of basic substance are provided in the review report.

ANNEX II

In Part C of the Annex to Implementing Regulation (EU) No 540/2011, the following entry is added:

Number	Common Name, Identification Numbers	IUPAC Name	Purity ^(*)	Date of approval	Specific provisions
'14	<i>Urtica</i> spp. CAS No 84012-40-8 (<i>Urtica dioica</i> extract) CAS No 90131-83-2 (<i>Urtica urens</i> extract)	<i>Urtica</i> spp.	European Pharmacopeia	30 March 2017	<i>Urtica</i> spp. shall be used in accordance with the specific conditions included in the conclusions of the review report on <i>Urtica</i> spp. (SANTE/11809/2016) and in particular Appendices I and II thereof.

^(*) Further details on identity, specification and manner of use of basic substance are provided in the review report.

COMMISSION IMPLEMENTING REGULATION (EU) 2017/420**of 9 March 2017****concerning the authorisation of a preparation of thyme oil, synthetic star anise oil and quillaja bark powder as feed additive for chickens for fattening, chickens reared for laying, minor avian species for fattening and reared for laying (holder of the authorisation Delacon Biotechnik GmbH)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition ⁽¹⁾, and in particular Article 9(2) thereof,

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such authorisation.
- (2) In accordance with Article 7 of Regulation (EC) No 1831/2003 an application was submitted for the authorisation of the preparation of thyme oil, synthetic star anise oil and quillaja bark powder as feed additive for chickens for fattening, chickens reared for laying, minor avian species for fattening and reared for laying. That application was accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003.
- (3) That application concerns the authorisation of the preparation of thyme oil, synthetic star anise oil and quillaja bark powder as a feed additive for chickens for fattening, chickens reared for laying, minor avian species for fattening and reared for laying to be classified in the additive category 'zootechnical additives'.
- (4) The European Food Safety Authority ('the Authority') concluded in its opinion of 4 December 2015 ⁽²⁾ that, under the proposed conditions of use, the preparation of thyme oil, synthetic star anise oil and quillaja bark powder does not have an adverse effect on animal health, human health or the environment. The Authority also concluded that it has the potential to improve the performance of chickens for fattening. According to the Authority, this conclusion can be extended to chickens reared for laying and extrapolated to all minor poultry species for fattening and reared for laying. The Authority does not consider that there is a need for specific requirements of post-market monitoring. It also verified the report on the method of analysis of the feed additive in feed submitted by the Reference Laboratory set up by Regulation (EC) No 1831/2003.
- (5) The assessment of the preparation of thyme oil, synthetic star anise oil and quillaja bark powder shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003 are satisfied. Accordingly, the use of that preparation should be authorised as specified in the Annex to this Regulation.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

The preparation specified in the Annex, belonging to the additive category 'zootechnical additives' and to the functional group 'other zootechnical additives', is authorised as an additive in animal nutrition, subject to the conditions laid down in that Annex.

⁽¹⁾ OJ L 268, 18.10.2003, p. 29.

⁽²⁾ EFSA Journal 2016;14(7):4351.

Article 2

This Regulation shall enter into force on the twentieth day following that of 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, 9 March 2017.

For the Commission

The President

Jean-Claude JUNKER

Identification number of the additive	Name of the holder of authorisation	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
						mg of the additive/kg of complete feedingstuff with a moisture content of 12 %			
Category of zootechnical additives. Functional group: other zootechnical additives (improvement of performance parameters)									
4d15	Delacon Biotechnik GmbH	Thyme oil, synthetic star anise oil and quillaja bark powder	<i>Additive composition</i> Preparation of essential microencapsulated oils of thyme (<i>Thymus vulgaris</i> L.) ⁽¹⁾ and synthetic star anise ⁽²⁾ : ≥ 74 mg/g, Quillaja bark powder (<i>Quillaja saponaria</i>) ≥ 200 mg/g Saponins ≤ 23 mg/g Solid form <i>Characterisation of the active substances</i> Thyme oil: thymol 2-4 mg/g Star anise oil (produced by chemical synthesis): (<i>trans</i> and <i>cis</i>)-anethole 40-50 mg/g Quillaja bark powder (<i>Quillaja saponaria</i>) ≥ 200 mg/g <i>Analytical methods</i> ⁽³⁾ Quantification of thymol in the feed additive, in premixtures and in feedingstuffs: gas chromatography-mass spectrometry (GC/MS)	Chickens for fattening Chickens reared for laying Minor avian species for fattening and reared for laying	—	150	150	1. In the directions for use of the additive and premixture, indicate the storage temperature, storage life, and stability to pelleting. 2. For users of the additive and premixtures, feed business operators shall establish operational procedures and organisational measures to address potential risks resulting from its use. Where those risks cannot be eliminated or reduced to a minimum by such procedures and measures, the additive and premixtures shall be used with personal protective equipment, including breathing protection.	30 March 2027

⁽¹⁾ As defined by the European Pharmacopoeia of the Council of Europe (PhEur, 2005).

⁽²⁾ A mixture of pure compounds mimicking the profile of natural essential star anise oil (without estragole).

⁽³⁾ details of the analytical methods are available at the following address of the reference laboratory: <https://ec.europa.eu/jrc/en/eurl/feed-additives/evaluation-reports>

COMMISSION IMPLEMENTING REGULATION (EU) 2017/421**of 9 March 2017****imposing a definitive countervailing duty on imports of certain graphite electrode systems originating in India following an expiry review pursuant to Article 18 of Regulation (EU) 2016/1037 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ⁽¹⁾ (‘the basic Regulation’), and in particular Article 18 thereof,

Whereas:

A. PROCEDURE**1. Measures in force**

- (1) The Council, following an anti-subsidy investigation (‘the original investigation’), by Regulation (EC) No 1628/2004 ⁽²⁾, imposed a definitive countervailing duty on imports of certain graphite electrodes systems originating in India (‘country concerned’), currently falling within CN codes ex 8545 11 00 (TARIC code 8545 11 00 10) and ex 8545 90 90 (TARIC code 8545 90 90 10).
- (2) The Council, following an anti-dumping investigation, by Regulation (EC) No 1629/2004 ⁽³⁾, also imposed definitive anti-dumping duties on imports of certain graphite electrodes systems originating in India.
- (3) Following an ex officio partial interim review of the countervailing measures, the Council by Regulation (EC) No 1354/2008 ⁽⁴⁾ amended Regulations (EC) No 1628/2004 and (EC) No 1629/2004.
- (4) Following an expiry review of the countervailing measures pursuant to Article 18 of the basic Regulation, the Council by Implementing Regulation (EU) No 1185/2010 ⁽⁵⁾ extended the countervailing measures. Following an expiry review of the anti-dumping measures, the Council by Implementing Regulation (EU) No 1186/2010 ⁽⁶⁾ extended the anti-dumping measures.
- (5) The countervailing measures took the form of an *ad valorem* duty rate of 6,3 % and 7,0 % for imports from individually named exporters, with a residual duty rate of 7,2 %.

2. Request for an expiry review

- (6) Following the publication of a notice of impending expiry ⁽⁷⁾ of the countervailing measures in force on the imports of certain graphite electrode systems originating in India, the Commission has received a request for review pursuant to Article 18 of Council Regulation (EC) No 597/2009 ⁽⁸⁾.

⁽¹⁾ OJ L 176, 30.6.2016, p. 55.

⁽²⁾ Council Regulation (EC) No 1628/2004 of 13 September 2004 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain graphite electrode systems originating in India (OJ L 295, 18.9.2004, p. 4).

⁽³⁾ Council Regulation (EC) No 1629/2004 of 13 September 2004 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain graphite electrode systems originating in India (OJ L 295, 18.9.2004, p. 10).

⁽⁴⁾ Council Regulation (EC) No 1354/2008 of 18 December 2008 amending Regulation (EC) No 1628/2004 imposing a definitive countervailing duty on imports of certain graphite electrode systems originating in India and Regulation (EC) No 1629/2004 imposing a definitive anti-dumping duty on imports of certain graphite electrode systems originating in India (OJ L 350, 30.12.2008, p. 24).

⁽⁵⁾ 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 (OJ L 332, 16.12.2010, p. 1).

⁽⁶⁾ 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 (OJ L 332, 16.12.2010, p. 17).

⁽⁷⁾ OJ C 82, 10.3.2015, p. 4.

⁽⁸⁾ Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community (OJ L 188, 18.7.2009, p. 93). This Regulation has been codified by the basic Regulation.

- (7) The request was lodged by SGL Carbon GmbH, TOKAI Erftcarbon GmbH and GrafTech Switzerland SA ('the applicants') representing more than 25 % of the total Union production of certain graphite electrode systems.
- (8) The request was based on the grounds that the expiry of the measures would be likely to result in continuation of subsidisation and continuation or recurrence of injury to the Union industry.

3. Initiation

- (9) Having determined that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 15 December 2015, by notice published in the *Official Journal of the European Union* ⁽¹⁾ ('the Notice of Initiation') the initiation of an expiry review pursuant to Article 18 of Regulation (EC) No 597/2009.

4. Parallel investigation

- (10) By a notice published in the *Official Journal of the European Union* on 15 December 2015 ⁽²⁾, the Commission also announced the initiation of an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 ⁽³⁾ of the definitive anti-dumping measures in force with regard to imports into the Union of certain graphite electrode systems originating in India.

5. Interested parties

- (11) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the applicant, other known Union producers, exporting producers, importers and users in the Union known to be concerned, and the Indian authorities of the initiation of the expiry review and invited them to participate.
- (12) All interested parties had the opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

5.1. Sampling

- (13) In the Notice of Initiation, the Commission stated that it might sample interested parties, in accordance with Article 27 of the basic Regulation.

(a) Sampling of Union producers

- (14) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. In accordance with Article 27(1) of the basic Regulation the Commission selected the sample on the basis of the largest representative volume of sales which could reasonably be investigated within the time available, considering also the geographical location. This sample consisted of four Union producers. The sampled Union producers accounted for more than 80 % of the total Union production, based on information received during standing exercise. The Commission invited interested parties to comment on the provisional sample. No comments were received within the deadline and the sample was thus confirmed. The sample is representative of the Union industry.

(b) Sampling of importers

- (15) To decide whether sampling was necessary and, if so, to select a sample, the Commission requested all unrelated importers to provide the information specified in the Notice of Initiation.

⁽¹⁾ Notice of initiation of an expiry review of the countervailing measures applicable to imports of certain graphite electrode systems originating in India (OJ C 415, 15.12.2015, p. 25).

⁽²⁾ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain graphite electrode systems originating in India (OJ C 415, 15.12.2015, p. 33).

⁽³⁾ Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).

- (16) No importers came forward to provide the information requested in the Notice of Initiation.

5.2. Questionnaires and verification visits

- (17) The Commission sent questionnaires to the Government of India ('GOI'), all sampled Union producers, the two known Indian producers/exporters and 53 users that came forward after initiation.
- (18) Questionnaire replies were received from the GOI, the four sampled Union producers, one Indian exporting producer and eight users.
- (19) The Commission sought and verified all the information it deemed necessary for the determination of the likelihood of continuation or recurrence of subsidisation and resulting injury and for the determination of the Union interest. Verification visits pursuant to Article 26 of the basic Regulation were carried out at the premises of the GOI in Delhi and Bhopal, and the following companies:

(a) Union producers:

- Graftech France SNC, Calais, France
- Graftech Iberica S.L., Navarra, Spain
- SGL Carbon SA, Wiesbaden, Germany
- Tokai Erftcarbon GmbH, Grevenbroich, Germany

(b) Exporting producer in India:

- HEG Limited, Bhopal ('HEG')

6. Review investigation period and period considered

- (20) The investigation of the likelihood of continuation or recurrence of subsidisation covered the period from 1 October 2014 to 30 September 2015 (the 'review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of continuation or recurrence of injury covered the period from 1 January 2012 to the end of the review investigation period (the 'period considered').

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

- (21) The product concerned is graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,65 g/cm³ or more and an electrical resistance of 6,0 µΩ.m or less, and nipples used for such electrodes, whether imported together or separately originating in India ('GES' or 'the product under review'), currently falling within CN codes ex 8545 11 00 (TARIC code 8545 11 00 10) and ex 8545 90 90 (TARIC code 8545 90 90 10).

2. Like product

- (22) The investigation showed that the following products have the same basic physical and technical characteristics as well as the same basic uses:
- the product under review
 - the product produced and sold in the Union by the Union industry.
- (23) The Commission concluded that these products are like products within the meaning of Article 2(c) of the basic Regulation.

C. LIKELIHOOD OF A CONTINUATION OF SUBSIDISATION

1. Introduction

- (24) In accordance with Article 18(1) of the basic Regulation, the Commission examined whether the expiry of the existing measures would be likely to lead to a continuation of subsidisation.
- (25) On the basis of the information contained in the review request, the following schemes, which allegedly involve the granting of subsidies, were investigated:

Nationwide Schemes

- (a) Duty Drawback Scheme ('DDS');
- (b) Advance Authorisation Scheme ('AAS');
- (c) Focus Market Scheme ('FMS');
- (d) Merchandise Export from India Scheme ('MEIS');
- (e) Export Promotion Capital Goods Scheme ('EPCGS');
- (f) Export Credit Scheme ('ECS');

Regional scheme

- (g) Electricity Duty Exemption Scheme ('EDES')
- (26) The schemes specified in points (a) to (e) above are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 ('Foreign Trade Act'). The Foreign Trade Act authorises the Government of India ('GOI') to issue notifications regarding the export and import policy. These are summarised in 'Foreign Trade Policy' documents, which are issued by the Ministry of Commerce every 5 years and updated regularly. Two Foreign Trade Policy documents are relevant for the RIP of this investigation: Foreign Trade Policy 2009-2014 ('FTP 09-14') and Foreign Trade Policy 2015-2020 ('FTP 15-20'). The latter entered into force in April 2015. The GOI also sets out the procedures governing FTP 09-14 and FTP 15-20 in a 'Handbook of Procedures, Volume I, 2009-2014' ('HOP I 04-09') and a 'Handbook of Procedures, Volume I, 2015-2020' ('HOP I 15-20') respectively. The Handbooks of Procedures are updated on a regular basis.
- (27) The ECS scheme specified in point (f) above is based on sections 21 and 35A of the Banking Regulation Act 1949, which allow the Reserve Bank of India ('RBI') to direct commercial banks in the field of export credits.
- (28) The scheme specified in point (g) above is managed by the authorities of the State of Madhya Pradesh.
- (29) DDS, under the form of its predecessor scheme the Duty Entitlement Passbook Scheme ('DEPB')⁽¹⁾, and EPCGS were already countervailed in the original investigation while AAS, FMS, MEIS, ECS and EDES were not investigated.
- (30) As mentioned above in recital 18, only one of the Indian exporting producers cooperated. This exporting producer represented more than 95 % of all Indian imports of GES into the Union and 50 % of the total estimated production capacity in India. Production capacity in India was established on the basis of the verified questionnaire of the cooperating exporting producer and publicly available financial statements of the non-cooperating exporting producer. The cooperation from the Indian exporting producers was therefore considered as low. The Indian authorities were duly informed that due to the low cooperation of the Indian exporting producers, the Commission may apply Article 28 of the basic Regulation. No comments were received in this respect.

⁽¹⁾ Transition from DEPB to DDS is explained, inter alia, in recitals 47 to 54 of Council Implementing Regulation (EU) No 461/2013 of 21 May 2013 imposing a definitive countervailing duty on imports of certain polyethylene terephthalate (PET) originating in India following an expiry review pursuant to Article 18 of Regulation (EC) No 597/2009 (OJ L 137, 23.5.2013, p. 1).

- (31) After disclosure, the GOI claimed that cooperation could not be considered low since the cooperating producer represented more than 95 % of Indian exports of GES to the Union during the RIP and 50 % of the total estimated production capacity in India. In this respect it is clarified that the Commission established the level of cooperation on basis of the total production capacity in India which was considered more relevant than the Indian export volumes of GES to the Union during the RIP in the context of an expiry review. Since there are only two equally big producers in India and only one of them cooperated, it is justified to qualify the cooperation as low since the non-cooperating company has potentially a big bearing on the assessment of the likelihood of continuation of subsidisation and recurrence of injury. Indeed, as explained in recital 155, the non-cooperating producer almost stopped exporting to the Union due to the duty levels and would in all likelihood resume exports in more significant quantities in case the measures were allowed to lapse. As a consequence, since the two known producers represent each 50 % of the estimated total Indian production capacity, it cannot be excluded that their respective shares in total Indian exports to the Union would become more balanced and hence totally different than the ratio of circa 95/5 observed during the RIP. This claim was therefore rejected. In any event, the Commission notes that this claim is inapposite in the context of an expiry review, where the purpose is to determine whether there is continuation of subsidisation. On the basis of the findings made with respect to the only exporting producer, the Commission can already conclude that there is continuation of subsidisation. Therefore, whether the degree of cooperation is low or high is utterly irrelevant.

2. Duty Drawback Scheme (DDS)

2.1. Legal Basis

- (32) The detailed description of the DDS is contained in the Custom & Central Excise Duties Drawback Rules 1995 as amended by successive notifications.

2.2. Eligibility

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

2.3. Practical implementation

- (34) An eligible exporter can apply for a drawback amount which is calculated as a percentage of the free-on-board ('FOB') value of products exported under this scheme. The drawback rates have been established by the GOI for a number of products, including the product under review. They are determined on the basis of the average quantity or value of materials used as inputs in the manufacturing of a product and the average amount of duties paid on inputs. They are applicable regardless of whether import duties have actually been paid or not. During the RIP the DDS rate was 3 % with a cap of 3,2 INR/kg until 22 November 2014 and 2,4 % with a cap of 8 INR/kg afterwards.
- (35) To benefit from this scheme a company must export. At the moment when shipment details are entered in the Customs server (ICEGATE), it is indicated that the export is taking place under the DDS and the DDS amount is fixed irrevocably. After the shipping company has filed the Export General Manifest (EGM) and the Customs office has satisfactorily compared that document with the shipping bill data, all conditions are fulfilled to authorise the payment of the drawback amount by either direct payment on the exporter's bank account or by draft.
- (36) The exporter also has to produce evidence of realisation of export proceeds by means of a Bank Realisation Certificate (BRC). This document can be provided after the drawback amount has been paid but the GOI will recover the paid amount if the exporter fails to submit the BRC within a given delay.
- (37) The drawback amount can be used for any purpose.
- (38) In accordance with Indian accounting standards, the duty drawback amount can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation.

- (39) It was found that the cooperating exporting producer continued benefiting from the DDS during the RIP.

2.4. Conclusion on DDS

- (40) As noted in the original investigation, the DDS provides subsidies within the meaning of Article 3(1)(a)(I) and Article 3(2) of the basic Regulation. The so-called duty drawback amount is a financial contribution by the GOI as it takes form of a direct transfer of funds by the GOI. There are no restrictions as to the use of these funds. In addition, the duty drawback amount confers a benefit upon the exporter, because it improves its liquidity.
- (41) The rate of duty drawback for exports is determined by the GOI on a product by product basis. However, although the subsidy is referred to as a duty drawback, the scheme does not have the characteristics of a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. The cash payment to the exporter is not linked to actual payments of import duties on raw materials and is not a duty credit to offset import duties on past or future imports of raw materials.
- (42) During the verification visit, the GOI and the cooperating exporting producer claimed that there was an adequate link between the drawback rates as well as the duties paid on raw materials. This is because the GOI takes into account the average quantity or value of materials used as inputs in the manufacturing of the product as well as the average amount of duties paid on inputs in determining the duty drawback rates.
- (43) The Commission however does not consider that the alleged link between the drawback rates and the duties paid on raw materials is sufficient in order for the scheme to conform to the rules laid down in Annex I, Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. In particular, 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 (including their amounts and origin) 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. Moreover, no further examination by the GOI was conducted on the basis of actual inputs and transactions in order to determine whether an excess payment occurred. Therefore, the claim was rejected.
- (44) Consequently, the payment which takes form of a direct transfer of funds by the GOI subsequent to exports made by exporters has to be considered as a direct grant from the GOI contingent on export performance and is therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.

2.5. Calculation of the subsidy amount

- (45) 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 RIP. In this regard, it was considered that the benefit is conferred on the recipient at the time when an export transaction is made under this scheme. At this moment, the GOI is liable to the payment of the drawback amount, which constitutes a financial contribution within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Once the customs authorities issue an export shipping bill which shows, inter alia, the amount of drawback which is to be granted for that export transaction, the GOI has no discretion as to whether or not to grant the subsidy. In the light of the above, and since there is no reliable evidence showing otherwise, it is considered appropriate to assess the benefit under the DDS as being the sums of the drawback amounts earned on export transactions made under this scheme during the RIP.
- (46) In accordance with Article 7(2) of the basic Regulation these subsidy amounts have been allocated over the total export turnover of the product under review during the RIP 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.
- (47) Based on the above, the subsidy rate established in respect of this scheme for the cooperating exporting producer amounted to 2,02 %.

3. Advance Authorisation Scheme ('AAS')

3.1. Legal basis

- (48) The detailed description of the scheme is contained in paragraphs 4.1.1 to 4.1.14 of the FTP 09-14 and chapters 4.1 to 4.30 of the HOP I 09-14 as well as paragraphs 4.03 to 4.24 of FTP 15-20 and chapters 4.04 to 4.52 of HOP I 15-20.

3.2. Eligibility

- (49) The AAS consists of six sub-schemes, as described in more detail in recital 50 below. Those sub-schemes differ, inter alia, in the scope of eligibility. Manufacturer-exporters and merchant-exporters 'tied to' supporting manufacturers are eligible for the AAS physical exports and for the AAS for annual requirement sub-schemes. Manufacturer-exporters supplying the ultimate exporter are eligible for AAS for intermediate supplies. Main contractors which supply to the 'deemed export' categories mentioned in paragraph 8.2 of the FTP 09-14, such as suppliers of an export oriented unit ('EOU'), are eligible for the AAS deemed export sub-scheme. Eventually, intermediate suppliers to manufacturer-exporters are eligible for 'deemed export' benefits under the sub-schemes Advance Release Order ('ARO') and back to back inland letter of credit.

3.3. Practical implementation

- (50) The AAS can be issued for:

- (i) Physical exports: This is the main sub-scheme. It allows for duty-free import of input materials for the production of a specific resulting export product. 'Physical' in this context means that the export product has to leave Indian territory. An import allowance and export obligation including the type of export product are specified in the licence;
- (ii) Annual requirement: Such an authorisation is not linked to a specific export product, but to a wider product group (e.g. chemical and allied products). The licence holder can — up to a certain value threshold set by its past export performance — import duty-free any input to be used in manufacturing any of the items falling under such a product group. It can choose to export any resulting product falling under the product group using such duty-exempt material;
- (iii) Intermediate supplies: This sub-scheme covers cases where two manufacturers intend to produce a single export product and divide the production process. The manufacturer-exporter who produces the intermediate product can import duty-free input materials and can obtain for this purpose an AAS for intermediate supplies. The ultimate exporter finalises the production and is obliged to export the finished product;
- (iv) Deemed exports: This sub-scheme allows a main contractor to import inputs free of duty which are required in manufacturing goods to be sold as 'deemed exports' to the categories of customers mentioned in paragraph 8.2(b) to (f), (g), (i) and (j) of the FTP 09-14. According to the GOI, deemed exports refer to those transactions in which the goods supplied do not leave the country. A number of categories of supply is regarded as deemed exports provided the goods are manufactured in India, e.g. supply of goods to an export-oriented unit ('EOU') or to a company situated in a special economic zone ('SEZ');
- (v) Advance Release Order ('ARO'): The AAS holder intending to source the inputs from indigenous sources, in lieu of direct import, has the option to source them against AROs. In such cases the Advance Authorisations are validated as AROs and are endorsed to the indigenous supplier upon delivery of the items specified therein. The endorsement of the ARO entitles the indigenous supplier to the benefits of deemed exports as set out in paragraph 8.3 of the FTP 09-14 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty). The ARO mechanism refunds taxes and duties to the supplier instead of refunding the same to the ultimate exporter in the form of drawback/refund of duties. The refund of taxes/duties is available both for indigenous inputs as well as imported inputs;

- (vi) Back to back inland letter of credit: This sub-scheme again covers indigenous supplies to an Advance Authorisation holder. The holder of an Advance Authorisation can approach a bank for opening an inland letter of credit in favour of an indigenous supplier. The authorisation will be validated by the bank for direct import only in respect of the value and volume of items being sourced indigenously instead of importation. The indigenous supplier will be entitled to deemed export benefits as set out in paragraph 8.3 of the FTP 09-14 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty).
- (51) It was found that the cooperating exporting producer obtained concessions under the first sub-scheme i.e. AAS physical exports during the RIP. It is therefore not necessary to establish the countervailability of the remaining unused sub-schemes.
- (52) For verification purposes by the Indian authorities, an Advance Authorisation holder is legally obliged to maintain 'a true and proper account of consumption and utilisation of duty-free imported/domestically procured goods' in a specified format (chapters 4.26, 4.30 and Appendix 23 HOP I 09-14), i.e. an actual consumption register. This register has to be verified by an external chartered accountant/cost and works accountant who issues a certificate stating that the prescribed registers and relevant records have been examined and the information furnished under Appendix 23 is true and correct in all respects.
- (53) With regard to the sub-scheme used during the RIP by the company concerned, i.e. physical exports, the import allowance and the export obligation are fixed in volume and value by the GOI and are documented on the Authorisation. In addition, at the time of import and of export, the corresponding transactions are to be documented by Government officials on the Authorisation. The volume of imports allowed under the AAS is determined by the GOI on the basis of Standard Input Output Norms ('SIONs') which exist for most products including the product under review.
- (54) Imported input materials are not transferable and have to be used to produce the resultant export product. The export obligation must be fulfilled within a prescribed time frame after issuance of the licence (24 months with two possible extensions of 6 months each).
- (55) As explained in recital 26 a new FTP document came into force in April 2015. As far as the practical implementation set out in recitals 50 to 54 is concerned, the only change brought by the new FTP was a reduction of the export obligation period from 24 months to 18 months. It must also be noted that all licences used by the cooperating exporting producer during the RIP were still subject to FTP 09-14 as they were issued before April 2015.
- (56) The investigation established that the verification requirements stipulated by the Indian authorities were not yet honoured or tested in practice.
- (57) The cooperating exporting producer maintained a certain production and consumption register. It was however not possible to verify which inputs (including their origin) were consumed in the production of the exported product and in what amounts. In particular with the system put in place it was not possible to identify and measure with precision whether there was an excess remission.
- (58) Regarding the verification requirements referred to in recital 52, it was found that none of the AAS licences used by the company were at a point in their life cycle where the submission of Appendix 23 to the authorities was due. However it was also found that no records kept by the companies would enable the calculation of excess remission as requested in Appendix 23, thereby making any future certification by an external chartered accountant/cost and works accountant impossible.
- (59) In addition it was established that only between 75 % and 85 % of the main raw material (calcined petroleum coke or 'CPC') imported duty free under AAS was physically incorporated in GES while between 15 % and 25 % was incorporated in two by-products i.e. lumps and fines. It was also found that at least a part of both by-products was sold on the domestic market and that no system was in place to measure the actual amounts of CPC imported duty free incorporated in the by-products exported or sold domestically.
- (60) In sum, it is considered that the cooperating exporting exporter was not able to demonstrate that the relevant FTP provisions were met.

3.4. Conclusion on the AAS

- (61) The exemption from import duties is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation, namely it constitutes a financial contribution of the GOI since it decreases duty revenue which would otherwise be due and it confers a benefit upon the investigated exporter since it improves its liquidity.
- (62) In addition, AAS physical exports are clearly contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation. Without an export commitment a company cannot obtain benefits under these schemes.
- (63) The sub-scheme used in the present case 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. It does not conform to the rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. The GOI did not effectively apply a verification system or a procedure to confirm whether and in what amounts inputs were consumed in the production of the exported product (Annex II(4) of the basic Regulation and, in the case of substitution drawback schemes, Annex III(II)(2) of the basic Regulation). It is also considered that the SIONs for the product under review were not sufficiently precise and that themselves cannot constitute a verification system of actual consumption because the design of those standard norms does not enable the GOI to verify with sufficient precision what amounts of inputs were consumed in the export production. In addition, the GOI did not carry out a further examination based on actual inputs involved, although this would need to be carried out in the absence of an effectively applied verification system (Annex II(5) and Annex III(II)(3) to the basic Regulation).
- (64) The sub-scheme is therefore countervailable.

3.5. Calculation of the subsidy amount

- (65) In the absence of permitted duty drawback systems or substitution drawback systems, the countervailable benefit is the remission of import duties normally due upon importation of inputs.
- (66) Since there was no reliable evidence showing otherwise, the subsidy amount for the cooperating exporting producer was calculated on the basis of import duties forgone (basic customs duty and special additional customs duty) on the material imported under the sub-scheme during the RIP (numerator). In accordance with Article 7(1)(a) of the basic Regulation, fees necessarily incurred to obtain the subsidy were deducted from the subsidy amount where justified claims were made. In accordance with Article 7(2) of the basic Regulation, this subsidy amount was allocated over the export turnover of the product under review during the RIP as appropriate denominator because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.
- (67) The subsidy rate established in respect of this scheme for the cooperating exporting producer amounts to 0,30 %.

4. Focus Market Scheme (FMS)

4.1. Legal basis

- (68) The detailed description of FMS is contained in paragraph 3.14 of FTP 09-14 and in paragraph 3.8 of HOP I 09-14.

4.2. Eligibility

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

4.3. *Practical implementation*

- (70) Under this scheme exports of all products which include exports of GES to countries notified under Tables 1 and 2 of Appendix 37(C) of HOP I 09-14 are entitled to duty credit equivalent to 3 % of the FOB value. As of 1 April 2011, exports of all products to countries notified under Table 3 of Appendix 37(C) ('Special Focus Markets') are entitled to a duty credit equivalent to 4 % of the FOB value. Certain types of export activities are excluded from the scheme, e.g. exports of imported goods or transhipped goods, deemed exports, service exports and export turnover of units operating under special economic zones/export operating units.
- (71) The duty credits under FMS are freely transferable and valid for a period of 24 months from the date of issue of the relevant credit entitlement certificate. They can be used for payment of custom duties on subsequent imports of any inputs or goods including capital goods.
- (72) The credit entitlement certificate is issued from the port from which the exports have been made and after realisation of exports or shipment of goods. As long as the complainant provides to the authorities copies of all relevant export documentation (e.g. export order, invoices, shipping bills, bank realisation certificates), the GOI has no discretion over the granting of the duty credits.
- (73) It was found that the cooperating exporting producer received benefits under the FMS during the RIP.

4.4. *Conclusion on FMS*

- (74) The FMS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. A FMS duty 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 FMS duty credit confers a benefit upon the exporter, because it improves its liquidity.
- (75) Furthermore, FMS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.
- (76) 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. It does not conform to the strict rules laid down in Annex I point (i), Annex II (definition and rules for drawback) and Annex 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. There is no system or procedure in place to confirm which inputs (including their amounts and origin) are consumed in the production process of the exported product and thus whether an excess payment of import duties occurred within the meaning of point (i) of Annex I and Annexes II and III of the basic Regulation. An exporter is eligible for FMS 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 having to demonstrate 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 FMS. Moreover, an exporter can use FMS duty credits in order to import capital goods although capital goods are not covered by the scope of permissible duty drawback systems, as set out in Annex I point (i) of the basic Regulation, because they are not consumed in the production of the exported products. In addition, the Commission observes that no further examination by the GOI was conducted on the basis of actual inputs and transactions in order to determine whether an excess payment occurred.

4.5. *Calculation of the subsidy amount*

- (77) Since there was no reliable evidence showing otherwise, the amount of countervailable subsidies was calculated on the basis of the benefit conferred on the recipient, which is found to exist during the RIP as booked by the

applicants on an accrual basis as income at the stage of export transaction. In accordance with Article 7(2) and (3) of the basic Regulation this subsidy amount (numerator) has been allocated over the export turnover of the product under review during the RIP 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.

- (78) Based on the above, the subsidy rate established in respect of this scheme for the cooperating exporting producer amounted to 0,13 %.

Withdrawal and replacement of FMS

- (79) Following the entry into force of FTP 15-20 on 1 April 2015, FMS, together with four other schemes, was merged into the Merchandise Export Incentive Scheme (MEIS) described in recitals 83 to 100. As explained in the document titled 'Highlights of the Foreign Trade Policy 2015-2020' ⁽¹⁾ published by the GOI's Directorate-General of Foreign Trade: 'Earlier there were 5 different schemes (Focus Product Scheme, Market Linked Focus Product Scheme, Focus Market Scheme, Agri. Infrastructure Incentive Scrip, VKGUY) for rewarding merchandise exports with different kinds of duty scrips with varying conditions (sector specific or actual user only) attached to their use. Now all these schemes have been merged into a single scheme, namely Merchandise Export from India Scheme [...].'
- (80) The investigation established that the cooperating exporting producer switched from FMS to MEIS as soon as FMS was withdrawn.
- (81) In view of recitals 79 and 80, the Commission considers that the subsidisation conferred by FMS was not discontinued but just merged and renamed, and that the benefits conferred by FMS continue to be conferred by the new scheme. On that basis FMS is deemed to be countervailable until its withdrawal.

5. Merchandise Export from India Scheme (MEIS)

5.1. Legal basis

- (82) The detailed description of MEIS is contained in chapter 3 of FTP 15-20 and in chapter 3 of HOP I 15-20.
- (83) MEIS came into force on 1 April 2015, i.e. in the middle of the RIP. It is reminded that, as explained in recitals 79 to 81, MEIS is the successor scheme of FMS and 4 other schemes (Focus Product Scheme, Market Linked Focus Product Scheme, Agricultural Infrastructure Incentive Scrip and VKGUY).

5.2. Eligibility

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

5.3. Practical implementation

- (85) Eligible companies can benefit from MEIS by exporting specific products to specific countries which are categorised into Group A ('Traditional Markets' including all EU Member States), Group B ('Emerging and Focus Markets') and Group C ('Other Markets'). The countries falling under each group and the list of products with corresponding reward rates are specified in Table 1 and Table 2 respectively of Appendix 3B of FTP 15-20.

⁽¹⁾ <http://dgft.gov.in/exim/2000/highlight2015.pdf>

- (86) The benefit takes the form of a duty credit equivalent to a percentage of the FOB value of the export. In the case of GES, this percentage was found to be 2 % for exports to Group B countries and 0 % for exports to Group A and C countries during the RIP. Certain types of exports are excluded from the scheme, e.g. exports of imported goods or transhipped goods, deemed exports, service exports and export turnover of units operating under special economic zones/export operating units.
- (87) The duty credits under MEIS are freely transferable and valid for a period of 18 months from the date of issue. They can be used for: (i) payment of custom duties on imports of inputs or goods including capital goods, (ii) payment of excise duties on domestic procurement of inputs or goods including capital goods and payment, (iii) payment of service tax on procurement of services.
- (88) An application for claiming benefits under MEIS must be filed on line on the Directorate-General of Foreign Trade website. Relevant documentation (shipping bills, bank realisation certificate and proof of landing) must be linked with the on-line application. The relevant Regional Authority ('RA') of the GOI issues the duty credit after scrutiny of the documents. As long as the exporter provides the relevant documentation, the RA has no discretion over the granting of the duty credits.
- (89) It was found that the cooperating exporting producer received benefits under the MEIS during the RIP.

5.4. Conclusion on MEIS

- (90) The MEIS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. MEIS duty 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 MEIS duty credit confers a benefit upon the exporter, because it improves its liquidity.
- (91) Furthermore, MEIS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.
- (92) 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. It does not conform to the strict rules laid down in Annex I point (i), Annex II (definition and rules for drawback) and Annex 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. 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 point (i) of Annex I and Annexes II and III of the basic Regulation. An exporter is eligible for MEIS 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 having to demonstrate 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 MEIS. Moreover, an exporter can use MEIS duty credits in order to import capital goods although capital goods are not covered by the scope of permissible duty drawback systems, as set out in Annex I point (i) of the basic Regulation, because they are not consumed in the production of the exported products. Moreover, no further examination by the GOI was conducted on the basis of actual inputs and transactions in order to determining whether an excess payment occurred.
- (93) Exports to the European Union were not directly eligible to MEIS during the RIP as the EU Member States are part of country Group A which was not eligible to MEIS benefits during that period. On that basis the GOI claimed that MEIS should not be considered countervailable. However MEIS duty credits obtained from exports of GES to third countries are freely transferable and can be used to offset import duties on inputs incorporated in the product under review even when it is exported to the Union. For that reason it was considered that MEIS conferred benefits to exports of GES in general, including exports to the Union, and therefore the claim was rejected.

- (94) After disclosure the GOI reiterated its claim that since only exports to non-EU third countries were directly eligible to MEIS benefits during the RIP the scheme could not be considered countervailable. The GOI however did not put forward new arguments that would challenge the findings of recital 93 and in particular the fact that duty credits obtained from exports of GES to third countries are freely transferable and can be used to offset import duties on inputs incorporated in the product under review when exported to the Union. Therefore, the claim was rejected.

5.5. Calculation of the subsidy amount

- (95) The amount of countervailable subsidies was calculated on the basis of the benefit conferred on the recipient, which is found to exist during the RIP as booked by the applicants on an accrual basis as income at the stage of export transaction.
- (96) It was found that while the MEIS and its predecessor scheme, the FMS, were both in force during six months (the first half of the RIP for FMS and the second half for MEIS) the amount of countervailable subsidies conferred by MEIS was about three times the amount conferred by FMS.
- (97) In the disclosure the Commission, in accordance with Article 7(2) and (3) of the basic Regulation allocated this subsidy amount (numerator) over the export turnover of the product under review during the RIP 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.
- (98) The GOI claimed that the Commission's calculation method described in recital 97 resulted in counting MEIS benefits twice, once for exports to countries directly eligible to MEIS and once for the global exports (including exports to the Union). However since the calculation method described in recital 97 consists in dividing the benefit conferred on all exports only by the export turnover (including exports to the Union) there was no double counting of benefits. The claim was therefore rejected.
- (99) In any event, in the context of this expiry review it is not necessary to establish the exact subsidy rate of MEIS since there is sufficient evidence of continuation of subsidisation in view of the findings made in respect of the other investigated schemes. It is thus only necessary to establish that the benefits conferred by FMS continued to be conferred by MEIS since MEIS is the continuation scheme of FMS as established in recitals 79 to 81. To that end the Commission recalculated the subsidy rate in the most conservative way possible by using the largest available denominator i.e. the total turnover of GES. On that basis the subsidy rate calculated in respect of this scheme for the cooperating exporting producer amounted to 0,31 %. This rate constitutes a lower bound of the subsidy rate during the RIP.
- (100) It must be noted that the subsidisation rate of this scheme is expected to rise significantly after the RIP as, by public notice No 44/2015-2020 dated 29 October 2015, the GOI extended the benefit of the 2 % rate to Group A and C thereby extending the market coverage of MEIS to all countries and in particular to EU Member States. This development will increase the subsidisation level as compared to what was observed during the RIP. Indeed, since MEIS benefits can in principle be claimed for any export, the subsidy rate for this scheme is expected to increase significantly and to reach the level of 2 %.

6. Export Promotion Capital Goods Scheme (EPCGS)

6.1. Legal basis

- (101) The detailed description of the scheme is contained in Chapter 5 of the FTP 09-14 and of the FTP 15-20 as well as Chapter 5 of the HOP I 09-14 and of the HOP I 15-20.

6.2. Eligibility

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

6.3. Practical implementation

- (103) Under the condition of an export obligation, a company is allowed to import capital goods at a reduced rate of duty. An export obligation is an obligation to export a minimum value of goods corresponding to, depending on the sub-scheme chosen, six or eight times the amount of duty saved. To this end, the GOI issues, upon application and payment of a fee, an EPCGS licence. The scheme provides for a reduced import duty rate of 3 % applicable to all capital goods imported under the scheme. 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. The capital goods can also be imported with a 0 % duty rate under the EPCGS but in such case the time period for fulfilment of the export obligation is shorter.
- (104) 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.
- (105) Like in the original investigation, it was found that the cooperating exporting producer continued benefiting from the EPCGS during the RIP.

6.4. Conclusion on the EPCGS

- (106) 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.
- (107) 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 under Article 4(4), first subparagraph, point (a) of the basic Regulation.
- (108) 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 point (I), of the basic Regulation, because they are not consumed in the production of the exported products.

6.5. Calculation of the subsidy amount

- (109) The amount of countervailable subsidies 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. The amount so calculated, which is attributable to the RIP, has been adjusted by adding interest during this period in order to reflect the full time value of the money. The commercial interest rate during the RIP in India was considered appropriate for this purpose.
- (110) In accordance with Article 7(2) and (3) of the basic Regulation, this subsidy amount has been allocated over the appropriate export turnover during the RIP as the appropriate denominator because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

- (111) Based on the above, the subsidy rate established in respect of this scheme for the cooperating exporting producer amounted to 0,27 %.
- (112) After disclosure the cooperating exporting producer claimed that for the calculation of the subsidy rate of this scheme, the subsidy amount should have been allocated over the total turnover of the company including both exports and domestic sales instead of only the export turnover. It justified its claim by the fact that machines benefitting from EPCGS subsidisation can also be used to manufacture products sold domestically and referred to Article F(b)(2) of the Guidelines for the calculation of the amount of subsidy in countervailing duty investigations ⁽¹⁾ ('the Guidelines') which contains an instruction regarding the calculation of subsidy rates for non-export subsidies. However, the possibility to manufacture GES sold domestically with machines imported under EPCGS does not challenge the qualification of EPCGS as an export subsidy since as explained in recitals 103 and 107 this subsidy is contingent in law upon export performance. Therefore Article F(b)(2) of the Guidelines which concerns non-export subsidies did not apply to the calculation of EPCGS and the claim was rejected. In addition it is reminded that the calculation method used for EPCGS in the current proceeding is the same as the one used in the other proceedings concerning GES originating in India, i.e. the initial investigation (see recital 57 of Commission Regulation (EC) No 1008/2004 ⁽²⁾), the partial interim review (see recital 54 of Regulation (EC) No 1354/2008) and the first expiry review (see recital 47 of Implementing Regulation (EU) No 1185/2010).

7. Export Credit Scheme (ECS)

- (113) It was alleged by the applicants that, under the ECS, the Reserve Bank of India ('RBI') was imposing maximum ceiling interest rates on export credit loans granted by banks. This ceiling was allegedly set at the benchmark prime lending rate bank minus 2,5 %.
- (114) It was however found that maximum ceiling interest rates imposed to banks on export credit loans in INR were withdrawn with effect from 1 July 2010 by RBI's Master Circular DBOD No DIR(Exp.) BC 06/04.02.002/2010-11 and that maximum ceiling interest rates imposed to banks on export credit loans in foreign currency were withdrawn with effect from 5 May 2012 by Master Circular DBOD No DIR(Exp.) BC 04/04.02.002/2011-2012 with the exception of specific limited number of sectors of industry. GES was not included in the list of exceptions and according to the legal basis in force the ECS scheme was therefore not available to the GES producers during the RIP.
- (115) The investigation confirmed that actual rates obtained by the cooperating exporting producer for its loans were equal to or only slightly different from the base rates of the respective banks granting the loans. As nothing indicated either that the RBI was deciding the base rate of banks, it was concluded that the rates of the export credit loans were freely determined by the banks.
- (116) It must be noted that shortly after the RIP the RBI announced a new 'Interest Equalisation Scheme on Pre and Post Shipment Rupee Export Credit' in Master Circular DBR.Dir.BC.No 62/04.02.001/2015-16 dated 4 December 2015. The scheme is available to exports of a wide range of products, including GES, irrespective of the size of the exporting producer and to any export for small and medium enterprises. On that basis it cannot be excluded that the cooperating exporting producer started availing or will avail itself of this scheme in the future. However the obtained benefits, if any, would be posterior to the RIP.
- (117) In view of the above, in the context of this expiry review the Commission does not consider it necessary to make findings about this scheme.

8. Electricity Duty Exemption Scheme ('EDES')

- (118) 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.

⁽¹⁾ OJ C 394, 17.12.1998, p. 6.

⁽²⁾ 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).

8.1. *Legal basis*

- (119) The description of the electricity duty exemption scheme applied by the MP Government is set out in Section 3-B of the Electricity Duty Act of 1949.

8.2. *Eligibility*

- (120) 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.

8.3. *Practical implementation*

- (121) According to notification No 5691-XIII-2004 of the MP Government dated 29 September 2004, companies or persons investing in new captive power plants of more than 10 kilowatt capacity can obtain from the MP Electrical Inspectorate a certificate of exemption from electricity duty. The exemption is only given for electricity generated for self-consumption, and only if the new captive power plant is not a replacement of an older one. The exemption is granted for a period of five years.
- (122) By notification No 3023/F-4/3/13/03 dated 5 April 2005 the MP Government exempted the first power plant built by the cooperating exporting producer (the '30-MW plant') for a period of 10 years with effect from 6 April 2005. It is noted that this notification applied only to the cooperating exporting producer and therefore constituted an exception to the general 5-year exemption period defined in notification No 5691-XIII-2004. This suggests that this incentive is not systematically granted according to criteria clearly set out by law or regulation.
- (123) By notification No 4328-XIII-2006 dated 21 July 2006 the MP Government introduced distinct exemption periods of 5, 7 and 10 years applicable in function of the investment value of the subsidised power plant.
- (124) According to a letter of the MP Government dated 4 February 2015 a 7-year exemption was granted to the cooperating exporting producer's second power plant (the '33-MW plant') from 10 June 2009 to 9 June 2016.

8.4. *Conclusion on EDES*

- (125) 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 under review.
- (126) Based on the above, the subsidy rate established in respect of this scheme for the cooperating exporting producer amounted to around 2 %.
- (127) However, the 30-MW plant operated by the cooperating exporting producer ceased to be eligible to EDES in April 2015 (i.e. during the RIP) pursuant notification No 3023/F-4/3/13/03 referred to in recital 122. The investigation confirmed that the cooperating exporting producer did not benefit from duty exemption for that power plant after this date.
- (128) As regards the 33-MW plant, eligibility was lapsing in June 2016 as explained in recital 124. Since the verification visit was also conducted in June 2016 it was not possible to verify on spot that the benefits indeed ceased to be conferred after that date. However since the expiration of the benefits could be verified for the 30-MW plant there is no tangible ground to challenge that benefits expired on time for the 33-MW plant as well.
- (129) In view of the expiration of the benefits this scheme, the Commission found that the exporting producer ceased to benefit from this scheme. In any event, in the context of this expiry review the Commission does not consider it necessary to make findings about this scheme since, as found before, there is sufficient evidence to conclude continuation of subsidisation on the basis of the schemes on which the Commission makes findings.

9. Amount of countervailable subsidies

- (130) The amounts of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the cooperating exporting producer were as follows:

Table 1

SCHEMES	DDS	AAS	FMS	MEIS	EPCGS	Total
HEG Limited (%)	2,02	0,30	0,13	0,31	0,27	3,03

- (131) The total amount of subsidisation exceeds the *de minimis* threshold mentioned in Article 14(5) of the basic Regulation.
- (132) The GOI submitted that the non-cooperating exporting producer Graphite India Limited ('GIL') did not avail of any of the five countervailable schemes found to confer benefits to HEG on basis of the following claims:
- (a) No DDS duty credit was issued in respect of exports to the Union during the RIP;
 - (b) FMS was terminated during the RIP and will not confer benefits to exporting producers in the future;
 - (c) MEIS was not available to exports to the Union during the RIP as far as GES is concerned;
 - (d) No AAS or EPCGS licence were granted to GIL during the RIP.
- (133) These claims must however be rejected for the following reasons:
- (a) Even if GIL did not receive DDS duty credits for their exports to the Union, this would still not allow concluding that the scheme did not confer benefits to GIL. Indeed the DDS subsidy rate is calculated on the basis of all exports of the company which also include exports to other third countries.
 - (b) While the investigation confirmed that the FMS scheme was terminated during the RIP, it also established, as described in recitals 79 to 81, that the benefits conferred by the FMS before its termination continued to be conferred by the new MEIS scheme which entered in force immediately after the FMS was terminated.
 - (c) As explained in recital 93 the mere fact that exports to the Union are not directly eligible to MEIS duty credits does not allow concluding that an exporting producer does not benefit from the MEIS in respect of its export or production activities in general. Indeed MEIS duty credits obtained from exports of GES to third countries are freely transferable and can be used to offset import duties on inputs incorporated in the product under review even if it is exported to the Union. It is therefore considered that these duty credits confer benefits to exports of GES as well as GIL's production in general, including exports to the Union.
 - (d) Even if GIL was not granted new AAS or EPCGS licences during the RIP, this would still not allow concluding that these schemes did not confer benefits to GIL. GIL could have availed of the respective schemes by using licences granted before the RIP. In this respect it is worth noting that while the cooperating exporting producer was not granted any new AAS or EPCGS licence during the RIP, it was still found to receive benefits under both schemes by using licences granted before the RIP.
- (134) According to the review request GIL benefited from the same countervailable schemes as the cooperating exporting producer. There is no information available which would indicate that this was not the case. In fact, the current investigation has shown that two schemes from which GIL benefited and were countervailed in the original investigation (DDS and EPCGS) continue being in place and benefiting the cooperating exporter. On the basis of these available facts and in accordance with Article 28 of the basic Regulation it was concluded that subsidisation at country-level continued during the RIP.

10. Conclusions on the likelihood of a continuation of subsidisation

- (135) It was established that the cooperating exporting producer continued to benefit from countervailable subsidisation by the Indian authorities during the RIP. In recital 134 it was established that subsidisation continued at country-level as well.
- (136) The countervailable subsidy schemes give recurring benefits and there is no indication (except for FMS which was immediately replaced by MEIS) that these schemes will be phased out in the foreseeable future or that the cooperating exporting producer would stop obtaining benefits under these schemes. To the contrary, these schemes were renewed during the RIP as part of the Foreign Trade Policy 2015-2020 which will remain in force until March 2020. In addition, it is reminded that after the RIP (i) the subsidy rate of the MEIS increased as established in recitals 96 and 100 and (ii) the subsidisation of export credits scheme was re-activated as established in recital 116. Moreover, each exporter is eligible to several of the subsidy schemes.
- (137) It was also examined whether exports to the Union would be made in significant volumes should the measures be lifted. To that end, the following elements were analysed: the production capacity and spare capacity in India, the exports from India to other third countries and the attractiveness of the Union market.
- (138) As mentioned in recital 30, only one exporting producer in India cooperated which represented only half of the total Indian production capacity. The findings in the sections below were therefore based on facts available in accordance with Article 28 of the basic Regulation. In this regard, the Commission used the information provided by the cooperating exporting producer, the request for the expiry review, the United Nations Database, Directorate-General of Commercial Intelligence and Statistics ('DGCIS') statistics provided by the GOI and publicly available information.

10.1. Production capacity and spare capacity

- (139) Based on public financial information and verified data of the cooperating exporting producer HEG ⁽¹⁾ ⁽²⁾ both Indian producers increased their production capacity after the previous expiry review mentioned in recital 4 by 27 %. At the end of the RIP, the total production capacity in India amounted to 160 000 tonnes per year, equally divided between the two producers ⁽³⁾. In addition, the investigation revealed that the Indian exporting producers are likely to further increase their capacity in case of increased demand ⁽⁴⁾.
- (140) The production volume of the two Indian producers ranged between 110 000 and 120 000 tonnes during the RIP. On the basis of the above, the total Indian spare capacity was estimated to be between 40 000 and 50 000 tonnes, which represented between 29 % and 36 % of the Union consumption during the RIP.
- (141) The increase in capacity took place in parallel to a decrease in consumption of GES in India and worldwide. GES is mainly used in the electric steel industry, more specifically it is used in steel plants to melt steel scrap. The development of GES consumption is therefore correlated with the development of electric steel production and follows similar trends. The investigation established that the production of electric steel in India and worldwide decreased between 2012 and the RIP ⁽⁵⁾ while the production capacity of GES in India increased.
- (142) At the end of November 2014, the Indian authorities imposed anti-dumping measures on imports of GES from China ⁽⁶⁾. It is expected that the Indian producers will increase their market share on the domestic market.

⁽¹⁾ http://www.google.be/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiqt6H2u9_QAhWEzRoKHYUwBVEQFggfMAA&url=http%3A%2F%2Fheg ltd.com%2Fwebmaster%2FDownloadFile.aspx%3Fd%3D..%2Fuploads%2FFinance%2F70Results_Release.pdf&usq=AFQjCNGMpUymLm4BNOjIMmolLDgwSGgcDw

⁽²⁾ http://content.iccidirect.com/mailimages/IDirect_GraphiteIndia_Q1FY16.pdf

⁽³⁾ <http://heg ltd.com/> and <http://www.graphiteindia.com/>

⁽⁴⁾ <http://heg ltd.com/WEBMASTER/DownloadFile.aspx?D=../Uploads/Newsletter/News9.pdf>

⁽⁵⁾ <https://www.worldsteel.org/statistics/statistics-archive/yearbook-archive.html>

⁽⁶⁾ http://www.dgtr.gov.in/sites/default/files/adfin_Graphite_Electrodes_diameters_ChinaPR.pdf

10.2. Exports to third countries

- (143) Based on public financial statements, both Indian exporting producers were found to be export oriented ⁽¹⁾ ⁽²⁾ exporting around 60 % of their total production during the RIP.
- (144) The Union remained an important export destination for the cooperating exporting producer HEG despite the measures in force. HEG's exports accounted for between 10 % and 17 % of its total sales in terms of value and between 10 % and 20 % in terms of volume in the RIP. The non-cooperating Indian company GIL exported very low volumes to the Union during the RIP. This has however to be seen in correlation with the anti-dumping and countervailing duties applicable to GIL (15,7 % in total) as compared to HEG (7 % in total).
- (145) In the absence of any other more reliable source to establish export volumes from India to other third country markets, the United Nations Database was used. According to this database, exports to other third countries increased between 2012 and 2013, by 43 %, and then decreased in 2014 and 2015, by 38 % as compared to 2013. Export volume overall decreased between 2012 and the RIP (by 10 %). The main destinations for the Indian exports in 2015 were USA, Saudi Arabia, Iran, Turkey and United Arab Emirates, Republic of Korea, Egypt. Between 2012 and 2015 Indian exports to some of these destinations increased (such as Saudi Arabia, United Arab Emirates, USA) while to some others (Iran, Turkey, Republic of Korea, Egypt) they decreased, with and overall decrease of 9 %.
- (146) While in 2012 Russia was the third export market for the Indian producers in terms of volume, after Russia imposed an *ad valorem* duty on imports of GES from India ranging from 16,04 % to 32,83 % in December 2012 ⁽³⁾ the exports from India to Russia dropped from 4 415 tonnes to 638 tonnes in 2015, a decrease of 86 %.
- (147) The information on export volumes in the United Nations Database could be counter-checked with DGCIS statistics, which showed similar trends as the one observed in the United Nations Database.
- (148) In addition, export volumes to other third countries of the cooperating exporting producer HEG also followed similar trends i.e. an increase of export volumes to other third countries from 2012 to 2013 and a decrease from 2014 to the RIP with an overall decreasing trend during the period considered. To be noted that despite this decrease of export volumes, the overall level in the RIP remained significant, between 20 000 tonnes and 30 000 tonnes.
- (149) Regarding export price levels, based on the United Nations Database the investigation revealed that Indian exports prices to certain countries like the USA and the Republic of Korea that used to be on average lower than the prices in EU between 2012 and 2014, have increased in 2015 at around the same level as the prices in the EU. In addition, Indian exports prices to other countries like Saudi Arabia for instance that were lower than the prices in EU between 2012 and 2014, increased at a higher level than the EU prices in 2015. Moreover, Indian exports to certain other countries, like Turkey for instance, continued to be lower than the EU prices during the whole period considered. To be noted however that the prices in this database do not distinguish between different product types and therefore the reliability of such a price comparison on this basis is limited.
- (150) The analysis of the information on export prices to other third country markets of the cooperating exporting producer showed that during 2012 and 2014 the average prices in the Union market were higher than the average prices of HEG on other third markets (adjusted on a calendar year basis as data were provided on a financial year basis) while during the RIP the average prices in the Union market were lower than the average prices of HEG on other third markets.
- (151) No other data was available to establish accurate price levels of the Indian exporting producers to other third country markets.

⁽¹⁾ http://hegltd.com/pdf/HEGLtd_Q1_FY_16_Investors_Presentation.pdf

⁽²⁾ http://www.graphiteindia.com/View/investor_relation.aspx (see GIL Q3 FY2015 Earnings Presentation.pdf, page 14).

⁽³⁾ http://www.eurasiancommission.org/_layouts/Lanit.EEC.Desicions/Download.aspx?IsDlg=0&ID=3805&print=1

10.3. *Attractiveness of the Union market*

- (152) The attractiveness of the Union market was demonstrated by the fact that despite the anti-dumping and countervailing duties in force, Indian GES continued to enter the Union market. During the period considered, India continued to be the second largest exporting country to the Union after the People's Republic of China ('China'). Despite a decrease between 2012 and the RIP, India maintained its exports to the Union in significant volumes and market shares as explained in recital 179 below.
- (153) The possible development of export sales to the Union should measures be allowed to lapse has to be seen against the background of the overall decrease in consumption of GES in India and worldwide in combination with the spare capacity in India. This will in all likelihood increase the pressure on the Indian exporting producers to explore further export markets, in particular when considering their export oriented business model. Therefore, should measures in the Union be repealed and the access to the Union market be free of either anti-dumping or countervailing duties it is indeed likely that a large part of the available spare capacity will be used for export to the Union market. In particular since the investigation showed that while in some exporting markets (such as Saudi Arabia, United Arab Emirates, USA) Indian exports increased in 2015, overall exports from India to other third country markets followed a decreasing trend. This indicates that on certain third countries there appears to be a limited capacity to absorb additional exports quantities.
- (154) In addition, as mentioned in recital 146, Russia has imposed anti-dumping duties on imports of GES from India. Indian exporting producers thus have limited access to this market and cannot increase or re-direct their export volumes to Russia, as showed by the drop in exports to this destination as of 2012.
- (155) On this basis, it is likely that the Indian exporting producers will continue to export significant quantities to the Union should measures be allowed to lapse and even increase their current export volumes taking into account their significant spare capacity. Indeed, this is likely for the cooperating exporting producer that will have an incentive to further increase its already significant presence in the Union market, and even more for the non-cooperating exporting producer, which duty levels are higher as compared to the cooperating exporting producer and which almost stopped exporting to the Union market.

10.4. *Conclusion on the likelihood of continuation of subsidisation*

- (156) The foregoing analysis shows that (i) subsidised Indian imports continued to enter the Union market in significant quantities during the RIP; (ii) subsidy schemes will continue to be available in the foreseeable future; (iii) both Indian producers are export oriented and have spare capacity which could be used to increase export volumes to the Union; (iv) consumption worldwide is following a decreasing trend, thus reducing the export possibilities to certain other third markets; (v) the existence of anti-dumping measures in Russia against Indian GES further restricts export possibilities to the Indian exporting producers. It is therefore likely that Indian GES would continue to enter the Union market in significant volumes and at subsidised prices should the measures be lifted.
- (157) In view of the above, in accordance with Article 18(3) of the basic Regulation, the Commission it was concluded that there is a likelihood of continuation of subsidisation should the measures in force be allowed to lapse.
- (158) After disclosure, the sole cooperating Indian exporting producer, HEG, claimed that the Commission has not considered the facts pertaining to the period after the RIP in its assessment of likelihood of continuation of subsidisation. In this regard, the cooperating Indian exporting producer claimed that when applying Article 28 of the basic Regulation, the Commission has not taken into account the fact that GIL, the other Indian producer of GES, has made an investment in a manufacturing facility in the Union, that is Graphite Cova GmbH ('GIL Cova'). HEG further argued that GIL has a strategic long term contract to sell baked green electrodes (which is a semi-finished product) to its graphitization facility of GIL Cova. HEG also claimed that because of the strategic investment of GIL, the Commission's conclusion that exports from India to the Union will increase is incorrect and that the finding that both Indian producers have spare capacity available for exports is based on mere assumptions. HEG also argued that the expiry of measures is not going to increase the volume of imports to the Union based on the decreasing trend of exports from India to the Union (including HEG's export to the Union) post RIP.

- (159) In addition, HEG claimed that HEG's plans to increase production capacity was only the vision of its Chairman considering the favourable economic scenario of 2010. Thus, in the annual report of HEG for the year ended March 31, 2016 there are no new proposals being discussed by the board of directors for expansion of capacities anymore.
- (160) In relation to the comparison of prices carried out by the Commission in recitals 149 and (150) with regard to exports to other third country markets, HEG submitted an analysis of its average CIF/CFR prices to four other third countries as compared to its average CIF prices to the Union and concluded that, in general, its average prices to the four other third countries were higher than its prices to the Union. Therefore, HEG claimed that the Union market with lower price levels would be in comparison less attractive.
- (161) As regards HEG's claim concerning the investment of GIL in GIL Cova during the period considered GIL exported a very small volume to the Union market. It is however considered that this is not only due to GIL's investment in GIL Cova, but mainly to the high anti-dumping and countervailing duties that apply to the exports of GIL India to Union (15,7 % in total). In the scenario that the anti-dumping and/or countervailing measures are repealed, it is therefore likely that GIL will resume its exports to the Union, despite its investment in GIL Cova, also taking into account its available spare capacity and the attractiveness of the Union market as described in recitals 152 to 155 above.
- (162) As concerns HEG's claim regarding the trend of exports after the RIP, it is highlighted that these exports were made while the anti-dumping and countervailing measures were in force. Therefore, even if the volume of exports of HEG's after the RIP showed a decreasing trend, it is likely that HEG's exports to Union will increase if the anti-dumping and/or countervailing measures are repealed taking into account that despite the measures in place, HEG continued to export to the Union market at significantly dumped and subsidised prices, its export oriented business model and its spare capacity which is not excluded to increase in the future if the demand for its products increases, as described in recitals 139 to 155 above.
- (163) Furthermore, regarding HEG's intention to increase capacity, it is highlighted that during the on-spot verification visit in 2016, HEG showed to the case team a short movie providing an overview of HEG's group. One of the elements presented in this movie were the future plans of the company to increase its production capacity. Moreover, the company's representatives explained during the on-spot verification that such plans were currently on hold taking into account that the company was not fully using its capacity and the decrease in the global demand. Therefore, in the event that the anti-dumping and/or the countervailing measures are repealed, it is likely that the demand for Indian GES in the Union market will increase and that HEG therefore, will have an incentive to increase its capacity to meet the demand.
- (164) As concerns HEG's claim referring to the price differences between the Union market and other third country markets, it is highlighted that the comparison carried out by the Commission in recitals 149 and 150 is made between average prices of the Indian exporting producers on other third markets and average prices of Union producers in the Union market and not the average prices of the Indian producers in the Union market. It is recalled that the HEG's average price in the Union market is at a significantly dumped level that undercuts the Union producers' average price and is therefore not suitable for the comparison in question.
- (165) In view of the above, HEG's claims are rejected.
- (166) The Commission's conclusion that there is a likelihood of continuation of subsidisation should the measures be repealed is therefore confirmed.

D. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF INJURY

1. Definition of the Union industry and Union production

- (167) During the review investigation period, the like product was manufactured by eight producers (two individual companies and two groups). They constitute the 'Union industry' within the meaning of Article 9(1) of the basic Regulation.

2. Preliminary remarks

- (168) As mentioned in recital 141 the situation of the GES industry is closely linked to that of the electrical steel industry where GES are used in the electric steel furnaces to melt steel scrap. In this context, during the period considered negative market conditions prevailed within the electrical steel industry, with a decrease in consumption which is also reflected in the consumption of GES.
- (169) Given that there are only two exporting producer of the product concerned in India, data relating to imports of GES from India and other third countries into the European Union are not presented in precise figures in order to preserve confidentiality pursuant to Article 29 of the basic Regulation.

3. Union consumption

- (170) The Commission established the Union consumption by adding:
- (i) the sales of the sampled Union producers, obtained after verification of the questionnaire replies,
 - (ii) the sales of non-sampled cooperating Union producers, obtained from the review request,
 - (iii) the sales of non-sampled non-cooperating Union producer, obtained from its' annual reports,
 - (iv) the imports from India, based on 14(6) data base and
 - (v) the imports from all other third countries, based on Eurostat (TARIC level).
- (171) On this basis, Union consumption developed as follows:

Table 2

Union consumption

	2012	2013	2014	Review investigation period
Union consumption (tonnes)	151 508	140 244	146 637	139 974
Index (2012 = 100)	100	93	97	92

Source: questionnaire replies of sampled Union producers, annual reports of non-cooperating Union producer, review request, Eurostat (TARIC level), 14(6) data base.

- (172) The Union consumption decreased by 8 % over the period considered. More specifically, the Union consumption decreased by 7 % in 2013, it recovered by 4 % between 2013 and 2014, and then decreased again by 5 % from 2014 to the review investigation period.
- (173) As mentioned in recitals 141 and 168, the overall decrease in demand was a result of the negative market conditions prevailing within the electric steel sector, since the sales volumes of graphite electrodes follow the development of the volume of steel production in electric furnaces.
- (174) After disclosure, the cooperating exporting producer from India claimed that the market share and consumption analysis should take into consideration the imports made by the Union producers from their related companies in the USA, Mexico, Japan and Malaysia which would have increased significantly during the past three years.
- (175) Imports from all other third countries were duly taken into account when calculating the Union consumption, as explained above in the recital 170 and are therefore duly reflected in the total consumption. The argument was therefore rejected.

4. Imports from the country concerned

4.1. Volume and market share of imports from the country concerned

Table 3

Import volume and market share

Country		2012	2013	2014	Review investigation period
India	Import volume (tonnes)	9 000-10 000	5 000-6 000	7 000-8 000	6 500-7 500
	Indexed import volume (2012 = 100)	100	57	80	74
	Market share (%)	6-7	3-4	5-6	4-5
	Market share indexed	100	62	83	80

Source: 14(6) data base.

- (176) Import volumes were decreasing during the period considered. They dropped significantly in 2013 (by 43 %), picked-up in 2014 and decreased again in the review investigation period. Overall there was a decrease of 26 % during the period considered.
- (177) The Commission established the market share of the imports on the basis of the Union consumption as set out in recital 170 above.
- (178) Market share showed similar trends as import volumes, i.e. a decrease between 2012 and 2013, an increase between 2013 and 2014 and then a decrease again between 2014 and the review investigation period. Overall market share decreased by 1,2 percentage points in the review investigation period as compared to 2012.
- (179) The market share of Indian imports at the start of the period considered was in the range of 6 % to 7 %. It dropped to the range of 4 % to 5 % by the end of the review investigation period.

4.2. Prices of imports from the country concerned

- (180) The Commission established the trend of the prices of Indian imports on the basis of data recorded in the 14(6) data base. They were broadly in line with the prices reported by the cooperating exporting producer.
- (181) The average price of imports into the Union from the country concerned developed as follows:

Table 4

Import price (*)

Country		2012	2013	2014	Review investigation period
India	Import prices (EUR/tonne)	2 500-3 500	3 000-4 000	2 500-3 500	2 200-3 200
	Index (2012 = 100)	100	105	89	86

(*) Average price does not include anti-dumping/countervailing duties in place.

Source: 14(6) data base.

- (182) Overall, average import prices decreased by 14 % over the period considered. Import prices increased by 5 % between 2012 and 2013, decreased by 16 % in 2014 and decreased further by 3 % in the RIP.

4.3. Price undercutting

- (183) The Commission determined the price undercutting during the review investigation period by comparing (i) the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers in the Union market, adjusted to an ex-works level; and (ii) the corresponding weighted average prices per product type of the imports from the cooperating Indian producer to the first independent customer in the Union market, established on a cost, insurance, freight (CIF) basis, with appropriate adjustments for anti-dumping/countervailing duty and post-importation costs.
- (184) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the sampled Union producers' turnover during the review investigation period.
- (185) The comparison showed for a cooperating exporting producer a weighted average undercutting margin of 3 % in the Union market during the review investigation period. However when deducting the anti-dumping and countervailing duties from the calculations, the undercutting margin would amount to 9 %. Concerning the non-cooperating exporting producer, only very small volumes were imported during the RIP. The Commission nevertheless conducted an estimation of undercutting. The Commission found a 12 % undercutting margin, when deducting from the calculations the anti-dumping and countervailing duties in place. This estimation however is based on a very small import volume and, because of the lack of cooperation, does not take into account product types. Therefore, its reliability is limited.

4.4. Imports from other third countries

Table 5

Import volume and market share

Country		2012	2013	2014	Review investigation period
Total other third countries	Imports (tonnes)	33 000-35 000	30 000-32 000	34 000-36 000	30 000-32 000
	Index	100	90	103	90
	Market share (%)	22-23	22-23	24-25	22-23
	Price (EUR/tonne)	2 500-3 500	2 400-3 400	2 400-3 400	2 300-3 300
	Index	100	98	89	92
China	Imports (tonnes)	14 000-15 000	11 000-12 000	16 000-17 000	14 000-15 000
	Index	100	80	117	103
	Market share (%)	9-10	8-9	11-12	10-11
	Price (EUR/tonne)	2 000-3 000	1 500-2 500	1 400-2 400	1 600-2 600
	Index	100	94	90	99

Country		2012	2013	2014	Review investigation period
USA	Imports (tonnes)	3 000-4 000	4 000-5 000	4 200-5 200	4 200-5 200
	<i>Index</i>	100	118	129	128
	Market share (%)	2-3	3-4	3-4	3-4
	Price (EUR/tonne)	3 300-4 300	3 200-4 200	3 000-4 000	2 800-3 800
	<i>Index</i>	100	96	84	81
Mexico	Imports (tonnes)	3 000-4 000	4 000-5 000	5 500-6 500	4 000-5 000
	<i>Index</i>	100	127	165	119
	Market share (%)	2-3	3-4	4-5	3-4
	Price (EUR/tonne)	3 800-4 800	3 900-4 900	3 900-4 900	4 000-5 000
	<i>Index</i>	100	103	103	115
Russia	Imports (tonnes)	3 000-4 000	2 500-3 500	3 500-4 500	3 700-4 700
	<i>Index</i>	100	70	101	103
	Market share (%)	2-3	1-2	2-3	2-3
	Price (EUR/tonne)	3 000-4 000	2 800-3 800	2 500-3 500	2 100-3 100
	<i>Index</i>	100	91	79	75
Japan	Imports (tonnes)	4 500-5 500	3 000-4 000	3 000-4 000	2 000-3 000
	<i>Index</i>	100	74	62	50
	Market share (%)	3-4	2-3	2-3	1-2
	Price (EUR/tonne)	3 400-4 400	3 300-4 300	2 800-3 800	2 900-3 900
	<i>Index</i>	100	99	82	83
Other third countries	Imports (tonnes)	4 000-5 000	4 000-5 000	1 000-2 000	700-1 700
	<i>Index</i>	100	104	25	19
	Market share (%)	2-3	3-4	0,5-1,5	0,5-1,5
	Price (EUR/tonne)	2 600-3 600	2 000-3 000	1 900-2 900	1 600-2 600
	<i>Index</i>	100	83	78	72

Source: Eurostat (TARIC level).

- (186) In line with decreasing consumption, the volume of imports from all other third countries decreased by 10 % between 2012 and the RIP. The market share of imports from all other third countries was within the range 22 %-23 % during the period considered. The main imports were from China, USA, Mexico, Russia and Japan, which were the only countries with individual market shares higher than 1 % during the RIP.
- (187) Import prices from USA, Japan and Mexico were higher than the prices of the Indian exporters and the prices of the Union producers. The market share of imports from USA and Mexico increased, by less than 1 percentage point over the period considered. The market share of imports from Japan decreased by 1,5 percentage point over the period considered.
- (188) Import prices from China and Russia were lower than the prices of the Indian exporters and the prices of the Union producers (except in 2012 for Russia). According to the information provided by Union industry in the review request, a part of imports from China relate to small diameter GES (diameter of less than 400 millimetres) whereas the majority of Indian imports and the Union industry's production consist in large diameters GES ⁽¹⁾ (diameters of more than 400 millimetres), which are more expensive.
- (189) The market share of Chinese imports increased by 1 percentage point over the period considered and was in a range of 10 %-11 % during the RIP, while the market share of imports from Russia was only in a range of 2 %-3 % during the RIP. It increased by 0,3 percentage points over the period considered. However, these increase were not in detriment of the market share of the Union industry, which, as explained in the following recital 202, increased by 1,9 percentage points over the period considered.
- (190) In conclusion, given that the data available from the import statistics do not differentiate between different product types and that therefore a meaningful price comparison by product type could not be carried out, as it was possible for India on the basis of the detailed information provided by the cooperating exporting producer, the impact of the imports from China and Russia could not be clearly established.

5. Economic situation of the Union industry

5.1. General remarks

- (191) In accordance with Article 8(4) of the basic Regulation, the examination of the impact of the subsidised imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (192) As mentioned in recital 14, sampling was used for the determination of possible injury suffered by the Union industry.
- (193) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data contained in the review request, annual reports of non-cooperating Union producer and verified questionnaire replies of the sampled Union producers. The data related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. The data related to the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.
- (194) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the subsidy margin, and recovery from past subsidisation.
- (195) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments and ability to raise capital.
- (196) Both sets of data have been found to be representative for the economic situation of the Union industry.

⁽¹⁾ Both small and large diameters of graphite electrodes are included within the same TARIC codes.

5.2. Macroeconomic indicators

(a) Production, production capacity and capacity utilisation

- (197) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 6

Production, production capacity and capacity utilisation of Union producers

	2012	2013	2014	Review investigation period
Production volume (tonnes)	235 915	235 502	241 623	221 971
<i>Index (2012 = 100)</i>	100	100	102	94
Production capacity (tonnes)	297 620	297 245	299 120	290 245
<i>Index (2012 = 100)</i>	100	100	101	98
Capacity utilisation (%)	79	79	81	76

Source: review request, annual reports of non-cooperating Union producer and verified questionnaire replies of the sampled Union producers.

- (198) The production volume decreased by 6 % during the period considered. More specifically, it first increased by 2 % until 2014 and then decreased by 8 % in the review investigation period as compared with 2014.
- (199) The production capacity decreased by 2 % over the period considered.
- (200) As a result of the decrease in production volume, the capacity utilisation decreased by 3 percentage points during the period considered.

(b) Sales volume and market share

- (201) The Union industry's sales volume and market share developed over the period considered as follows:

Table 7

Sales volume and market share of Union producers

	2012	2013	2014	Review investigation period
Sales volume in the Union (tonnes)	107 655	103 779	103 704	102 123
<i>Index (2012 = 100)</i>	100	96	96	95
Market share (%)	71,1	74,0	70,7	73,0

Source: review request, annual reports of non-cooperating Union producer and verified questionnaire replies of the sampled Union producers.

(202) Total sales of the Union industry in the Union market decreased by around 5 % during the period considered. The Union industry's market share fluctuated during the period considered. It increased by 2,9 percentage points in 2013. It then decreased by the 3,3 percentage points in 2014 and increased again by 2,3 percentage points in the review investigation period. Overall, the Union industry's market share increased by 1,9 percentage points over the period considered.

(203) After disclosure, the cooperating exporting producer from India claimed that the imports of the Union producers from their related companies in the USA, Mexico, Japan and Malaysia should be taken into account when establishing the Union industry's market share. However, the market share of the Union industry is calculated on the basis of sales of its own production in the Union market. Imports by the Union industry are not taken into account because this would have a distorting effect on the overall picture, given that imports would be double counted; as an import on the one hand and as a sale from the Union industry on the other hand. This argument was therefore rejected.

(c) Growth

(204) Between 2012 and the RIP, the Union consumption decreased by 8 %. The sales volume of the Union industry decreased by 5 %, which, nonetheless, translated into a gain in market share of 1,9 percentage points.

(d) Employment and productivity

(205) Employment and productivity developed over the period considered as follows:

Table 8

Employment and productivity of Union producers

	2012	2013	2014	Review investigation period
Number of employees	1 526	1 539	1 475	1 523
<i>Index (2012 = 100)</i>	100	101	97	100
Productivity (tonnes/employee)	155	153	164	146
<i>Index (2012 = 100)</i>	100	99	106	94

Source: review request, annual reports of non-cooperating Union producer and verified questionnaire replies of the sampled Union producers.

(206) Employment of the Union industry remained at roughly the same level during the period considered. Due to the decrease in production (decrease of 6 % over the period considered), the productivity also decreased by 6 % over the same period.

(e) Magnitude of the subsidy margin and recovery from past subsidisation

(207) The investigation established that imports of GES from India continued to enter the Union market at subsidised prices. The subsidy margin established for India during the review investigation period was well above the *de minimis* level as described in see recital 130. This coincided with a decrease in import prices as compared to 2012. Nevertheless, the Union industry was able to benefit from the countervailing measures in force by maintaining and slightly increasing their market share.

5.3. Microeconomic indicators

(f) Prices and factors affecting prices

- (208) The average sales prices of the Union industry to unrelated customers in the Union developed over the period considered as follows:

Table 9

Average sales prices in the Union and unit cost

	2012	2013	2014	Review investigation period
Average unit selling price in the Union (EUR/tonne)	3 784	3 468	2 997	2 825
<i>Index (2012 = 100)</i>	100	92	79	75
Unit cost of production (EUR/tonne)	3 357	3 116	2 776	2 745
<i>Index (2012 = 100)</i>	100	93	83	82

Source: verified questionnaire replies of the sampled Union producers.

- (209) The Union industry's average unit sales price to unrelated customers in the Union decreased steadily by 25 % and reached 2 825 EUR/tonne in the RIP. The Union industry had to adjust its prices downwards in order to reflect the general decrease of selling prices in the GES market, due to the shrinking demand within the electric steel sector.
- (210) The average cost of production of the Union industry decreased to a lower extent, by 18 % over the period considered. The major factor having influenced the decrease in the unit cost of production was the decrease in the raw material price.
- (211) After disclosure, the cooperating exporting producer from India claimed that the worldwide price of raw material decreased more than the cost of the raw materials incurred by the Union industry over the period considered. Therefore the Union industry was inefficient in terms of the raw material sourcing and its viability was therefore questionable.
- (212) The investigation found that the Union industry sourced the raw material worldwide from its related and unrelated parties at a similar price level and there were no indications of inefficiencies in terms of the raw material sourcing. Since the claim was not further substantiated, it was rejected.

(g) Labour costs

- (213) The average labour costs developed over the period considered as follows:

Table 10

Average labour costs per employee

	2012	2013	2014	Review investigation period
Average labour costs per employee (EUR/employee)	66 111	66 842	67 113	67 253
<i>Index (2012 = 100)</i>	100	101	102	102

Source: verified questionnaire replies of the sampled Union producers.

(214) The average labour costs per employee increased over the period considered with a marginal increase of 2 %.

(h) Inventories

(215) Stock levels developed over the period considered as follows:

Table 11

Inventories

	2012	2013	2014	Review investigation period
Closing stocks	8 952	8 821	13 770	18 465
<i>Index (2012 = 100)</i>	100	99	154	206
Closing stocks as a percentage of production (%)	6	5	7	11

Source: verified questionnaire replies of the sampled Union producers.

(216) The level of closing stocks of the sampled Union producers more than doubled in absolute terms during the period considered. In the RIP, the level of stocks represented around 11 % of its production.

(i) Profitability, cash flow, investments, return on investments and ability to raise capital

(217) Profitability, cash flow, investments and return on investments developed over the period considered as follows:

Table 12

Profitability, cash flow, investments and return on investments

	2012	2013	2014	Review investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	11,3	10,2	7,4	2,8
Cash flow (EUR)	47 981 432	46 443 978	30 426 147	31 283 121
<i>Index (2012 = 100)</i>	100	97	63	65
Investments (EUR)	25 293 559	23 133 505	21 672 869	12 313 975
<i>Index (2012 = 100)</i>	100	91	86	49
Return on investments (%)	16,5	13,9	10,1	3,9

Source: verified questionnaire replies of the sampled Union producers.

(218) The Commission established the profitability of the Union industry by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. The profitability of the Union industry decreased gradually from 11,3 % in 2012 to 2,8 % in the RIP, i.e. a decrease of 8,5 percentage points.

- (219) After disclosure, the cooperating exporting producer from India claimed that the decline in profitability of the Union producers was caused by its high administrative and selling overheads.
- (220) The investigation found that the unit cost of production declined during the period considered, as indicated above in recital 210. This decline in the unit cost of production concerned the administrative and selling expenses even if the major part of the cost was attributed to the raw material. The argument was therefore rejected.
- (221) The net cash flow is the Union producer's ability to self-finance its activities. The net cash flow decreased by 35 % during the period considered. The substantial decrease in cash flow is mainly explained by the significant decrease in profitability, as described above in recital 218.
- (222) During the period considered the annual flow of investments in the product concerned made by the Union industry decreased by more than half, from 25 million EUR in 2012 to 12 million EUR in the RIP.
- (223) After disclosure, the cooperating exporting producer from India claimed that the decline in investments is purely attributable to contraction of demand and overcapacities of GES manufacturing globally.
- (224) Indeed, the investigation confirmed that, as explained in the recital 172 above, there was a decrease in consumption of GES during the period considered. However, it should be noted that the investments in the product concerned made by the Union industry during the RIP of the last expiry review, when also facing the decrease in consumption, was three times the investment level achieved during the RIP of the current review.
- (225) The return on investments is the profit in percentage of the net book value of investments. The return on investment from the production and sale of the like product decreased gradually from 16,5 % in 2012 to 3,9 % in the RIP.

5.4. Conclusion on the situation of the Union industry

- (226) The investigation showed that despite the measures in force most of the injury indicators developed negatively and the economic and financial situation of the Union industry deteriorated during the period considered. Nevertheless, the Union industry managed to keep and slightly increase its market share, which was only possible at the expense of lower profit levels achieved.
- (227) While these negative developments may be explained by the decrease in consumption, which declined by 8 % during the period considered, Indian imports were still a constant presence in the Union market. These imports were sold at prices lower than the Union industry's prices and undercut the Union industry's prices by 3 % in the RIP. In addition, the underselling margin was found to be 9 %. Thus, Indian dumped and subsidised imports still exerted price pressure. Indeed, the price pressure during the current RIP increased as compared to the previous expiry review when the price undercutting was less than 2 %.
- (228) Against the background of diminished consumption and price pressure from dumped and subsidised imports, the Union industry was forced to decrease its sales prices. As a consequence, its profit, although still positive (2,8 %) in the review investigation period, was below the 8 % target profit established in the original investigation.
- (229) After disclosure, the cooperating exporting producer from India claimed that since the market share of the Union industry has increased by 2 % Union producers have benefited substantially from the decline in Indian imports. The Union industry's market share was claimed to be even higher if imports of the Union industry from other third countries were also taken into account. At the same time, the Union industry has been facing stiff pricing competition from other sources (low prices imports from China and Russia, particularly). Therefore, it was claimed that no injury can be attributable to Indian imports as a result of alleged lower market share by the Union producers.
- (230) Indeed, the investigation showed a decrease of import volumes and market shares of imports from India, however, as explained above in the recital 227, Indian dumped and subsidised imports still exerted price pressure, which even increased during the current RIP as compared to the previous expiry review. The argument was therefore rejected.

- (231) The same interested party further claimed that the Commission has not considered the fact that low priced imports from China and Russia are one of the major causes of price pressure in the Union market and urged to carry out a full analysis of the low priced imports from China and Russia of the product under consideration before determining the likelihood of a recurrence of injury to the Union industry. This party also alleged that some Chinese manufacturers increased the imports of large diameter GES to the Union market.
- (232) Regarding import prices of GES from China and Russia, as explained above in recitals 188 and 190 it should be recalled that: (i) a meaningful price comparison by product type for imports from these countries could not be carried out, as it was possible for India on the basis of the detailed information provided by the cooperating exporting producer; (ii) the import statistics from these countries available for the Commission does not allow to differentiate between different product types and (iii) according to the information provided by Union industry in the review request, and confirmed by users, the majority of imports from these countries relate to smaller diameter GES that are cheaper. In addition, the cooperating exporting producer from India did not substantiate its claim regarding the increased imports of larger diameter GES from China to the Union.
- (233) Regarding the import volumes of GES and their market shares from China and Russia, as explained above in recital 189, the market share of Chinese imports increased by 1 percentage point, while the market share of imports from Russia increased by 0,3 percentage points over the period considered. These increases were not in detriment of the market share of the Union industry, which, as explained in the recital 189, increased by 1,9 percentage points over the period considered. The argument was therefore rejected.
- (234) The same interested party claimed that the Union industry was inefficient to produce smaller diameter GES because the sales of such products represented only a part of their total sales volume.
- (235) The market conditions normally ensure that supply, namely the type of product sold, is driven by demand. Since the claim regarding the inefficiency to produce smaller diameter GES by the Union industry was not further substantiated, the argument was rejected.
- (236) The same interested party claimed the lack of analysis of the impact of the increased quantities of imports at dumped prices from other countries including imports from affiliated companies in USA, Mexico, Malaysia and Japan.
- (237) As indicated above in recital 187, import prices from USA, Japan and Mexico were higher than the prices of the Indian exporters and the prices of the Union producers. The market share of imports from these countries increased by 0,1 percentage point during the period considered and was less than 10 % at the end of the RIP. Likewise, the Commission did not have any evidence that prices from these countries were dumped. The argument was therefore rejected.
- (238) The same interested party claimed that when calculating the undercutting and underselling margins on a per type basis, the Commission used the product control number ('PCN') which did not take into consideration the raw material used, which has, however, a significant impact on costs and prices. Comparing product types made of the same raw material would have the effect of reducing the underselling margin from 9 % to 8 %.
- (239) Indeed, the raw material difference was not reflected in the PCN structure and therefore the calculation of the undercutting and underselling margins did not take into account such difference. Nevertheless, when product types were split taking into consideration the raw material used for the purpose of the undercutting and underselling calculation, as submitted by the interested party after disclosure, the underselling margin stated in recital 227 only decreased by 1 percentage point to 8 %. Therefore, this decrease did not have any material impact on the Commission's findings of underselling margin during the review investigation period.
- (240) The same interested party questioned the level of 8 % target profit established in the original investigation claiming that the GES manufacturers were facing losses due to decline in the international steel demand and therefore 8 % target profit was not justified anymore.

- (241) It is recalled that the target profit level on sales of the like product in the Union market should be the one that could be reasonably achieved under normal conditions of competition by an industry of this type in the sector, namely in the absence of dumped/subsidised imports. In this regard, as noted in the recital 34 of Regulation (EC) No 1628/2004, a proper examination was made of Union industry's profit levels when the market share of subsidised imports was at its lowest (i.e. 1999). Therefore it was definitively concluded that the profit margin that could reasonably be deemed to represent the financial situation of the Community industry in the absence of injurious subsidisation from India should be set at 8 % for the purpose of the calculation of the injury margin. The argument was therefore rejected.
- (242) On the basis of the above, the Commission concluded that the Union industry was in an extremely fragile situation during the review investigation period, which is for the most part attributable to the negative market conditions and consequent fall in consumption. For this reason, the Commission's assessment focused on the likelihood of a recurrence of injury from the subsidised imports from India.

6. Likelihood of a recurrence of injury

- (243) To establish the likelihood of recurrence of injury should the measures against India be repealed the following elements were analysed: the production capacity and spare capacity in India, the exports from India to other third countries and the attractiveness of the Union market.
- (244) In recital 155 it was concluded that it is likely that the Indian exporting producers will continue to export significant quantities to the Union should measures be allowed to lapse and even increase their current export volumes and that these exports will likely be made at subsidised prices.
- (245) As established in recitals 139 and 140, the Indian capacity is estimated to be around 160 000 tonnes in the RIP, while the spare capacity is estimated to be between 40 000 and 50 000 tonnes, which represented between 29 % and 36 % of the Union consumption during the same period. In addition, as indicated in recital 139, the Indian exporting producers are likely to further increase their capacity in case of increase demand. As mentioned in recital 142, at the end of November 2014, the Indian authorities imposed anti-dumping measures on imports of GES from China. As a consequence it is expected that the Indian producers will increase their market share on the domestic market.
- (246) As a consequence of the attractiveness of the Union market described in recitals 152 to 155, should the measures be repealed, at least part of the spare capacity will, in all likelihood, be redirected to the Union market. Also, as described in recital 143, Indian producers are highly export oriented. Concerning prices of GES, as described in recital 149, higher price levels than in the Union were found for some of the destinations of the Indian exports. However given the different product mix, this information does not detract from the overall assessment that new capacity will be directed to the Union market as the reliability of this price comparison is limited.
- (247) As indicated in recital 146, anti-dumping measures against Indian GES imports had been imposed in Russia and the exports from India to Russia dropped significantly during the period considered. This implies that the access to the third main export market for Indian exporting producers is restricted and with the current or even likely increased spare capacity mentioned above in recital 245, there is a strong likelihood that Indian exporting producers will significantly increase their imports of the product concerned to the Union market should measures be allowed to lapse.
- (248) As established in recital 185, Indian import prices without anti-dumping and countervailing duties would undercut the Union sales prices by 9 %. For the non-cooperating exporting producer, an estimate of the undercutting margin without anti-dumping and countervailing duties included was calculated at 12 %. This is an indication of what could be the likely price level of imports from India should the measures be repealed. On this basis, it is likely that the price pressure in the Union market will significantly increase should the measures be repealed, thus further worsening the economic situation of the Union industry.

- (249) In terms of volumes, the repeal of the measures would very likely allow Indian exporting producers to gain market shares in the Union market. In particular the non-cooperating exporting producer, which has currently the higher duty rate of 15,7 %, would have a strong incentive to resume exports to the Union market in significant quantities. Should this situation occur, the Union industry would face an immediate drop in its sales volumes and market shares.
- (250) On this basis, in the absence of measures, Indian exporting producers will likely increase their presence in the Union market, in terms of import volumes and market shares at dumped and subsidised prices significantly undercutting the Union industry's sales prices. This will create an increased price pressure in the Union market with a negative impact on the Union industry's profitability and financial situation. This will also further deteriorate the economic situation of the Union industry.
- (251) Based on the above, the Commission concluded that there is a strong likelihood of recurrence of injury should the measures be repealed.

E. UNION INTEREST

- (252) In accordance with Article 31 of the basic Regulation, the Commission examined whether maintaining the existing countervailing measures against India would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users.
- (253) It is recalled that, in the original investigation, the adoption of measures was considered not to be against the interest of the Union.
- (254) All interested parties were given the opportunity to make their views known pursuant to Article 31(2) of the basic Regulation.
- (255) On this basis, the Commission examined whether, despite the conclusions on the likelihood of a continuation of subsidisation and recurrence of injury, compelling reasons existed which would lead to the conclusion that it was not in the Union interest to maintain the existing measures.

1. Interest of the Union industry

- (256) As explained in recital 226, the measures enabled the Union industry to maintain its market shares. At the same time, it was also concluded in recital 250, that the Union industry would be likely to experience a deterioration of its situation in case the countervailing measures against India were allowed to lapse. Therefore, it can be concluded that the continuation of the measures against India would benefit the Union industry.

2. Interest of importers/traders

- (257) As mentioned in recital 16, no importers cooperated or made themselves known in the current investigation. Therefore, there were no indications that the maintenance of the measures would have a negative impact on the importers outweighing the positive impact of the measures.

3. Interest of users

- (258) As mentioned in recital 18, out of 53 users contacted, eight submitted a questionnaire reply. Four of them have used GES imported from India. Their imports represented around 20 % of all imports of the product concerned from India.
- (259) It is recalled that in the original investigation, it was found that the impact of the imposition of measures would not be significant for the users. Despite the existence of measures for 10 years, users in the Union continued to source their supply, inter alia, from India. The users did not submit any information showing that there have been difficulties in finding other sources and the investigation did also not reveal such information.

- (260) Moreover, as regards the effect of the imposition of measures on users, it is recalled that it was concluded in the original investigation that, given the negligible incidence of the cost of GES on user industries, any cost increase was unlikely to have a significant effect on the user industry. These findings were confirmed in the current review as no indications of the contrary were found after the imposition of measures. Furthermore, none of the four users put forward any argument against the maintenance of the measures.
- (261) One federation of steel producers, the German steel industry federation (Wirtschaftsvereinigung Stahl) opposed the continuation of the measures and claimed that the measures resulted in competition disadvantages for steel producers in the Union compared to steel producers in other regions that have no measures imposed on GES. The federation alleged that the continuation of measures would allow the Union industry to continue having a dominant position. However, it is clear from the development of the Indian imports after the imposition of the measures that imports from India continued during the period considered. In addition, the investigation has shown that the GES are increasingly entering the Union market from a number of other third countries.
- (262) On this basis, and in line with the conclusions drawn in the original investigation, it is expected that the continuation of measures will not have a significant negative impact on users and that there are therefore no compelling reasons to conclude that it is not in the Union interest to extend the existing measures.

4. Conclusion on Union interest

- (263) In view of the above, the Commission concluded that there are no compelling reasons of Union interest against the extension of the current countervailing measures on imports from India.

F. COUNTERVAILING MEASURES

- (264) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to maintain the countervailing measures in force. They were also granted a period within which they could submit comments subsequent to this disclosure. The submissions and comments were duly taken into consideration.
- (265) It follows from the above considerations that, under Article 18 of the basic Regulation, the countervailing measures applicable to imports of certain graphite electrode systems originating in India imposed by Implementing Regulation (EU) No 1185/2010 should be maintained.
- (266) After disclosure, the cooperating exporting producer from India requested the Commission to consider continuation of measures for a period of two years. However, the investigation found no exceptional circumstances that would justify limiting the duration of measures to two years.
- (267) 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'.
- (268) 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 ⁽¹⁾ 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.

⁽¹⁾ European Commission, Directorate-General for Trade, Directorate H, 1049 Brussels, Belgium.

(269) This regulation is in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036 of the European Parliament and of the Council ⁽¹⁾,

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/cm³ 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	Duty rate (%)	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, 9 March 2017.

For the Commission
The President
Jean-Claude JUNCKER

⁽¹⁾ 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 (OJ L 176, 30.6.2016, p. 21).

COMMISSION IMPLEMENTING REGULATION (EU) 2017/422**of 9 March 2017****imposing a definitive anti-dumping duty on imports of certain graphite electrode systems originating in India following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

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

Whereas:

A. PROCEDURE**1. Measures in force**

- (1) The Council, following an anti-dumping investigation, by Regulation (EC) No 1629/2004 ⁽²⁾, imposed a definitive anti-dumping duty on imports of certain graphite electrodes systems originating in India ('country concerned'), currently falling within CN codes ex 8545 11 00 (TARIC code 8545 11 00 10) and ex 8545 90 90 (TARIC code 8545 90 90 10).
- (2) The Council, following an anti-subsidy investigation, by Regulation (EC) No 1628/2004 ⁽³⁾, also imposed definitive countervailing duties on imports of certain graphite electrodes systems originating in India.
- (3) Following an *ex officio* partial interim review of the countervailing measures, the Council by Regulation (EC) No 1354/2008 ⁽⁴⁾ amended Regulations (EC) No 1628/2004 and (EC) No 1629/2004.
- (4) Following an expiry review of the anti-dumping measures pursuant to Article 11(2) of the basic Regulation, the Council by Implementing Regulation (EU) No 1186/2010 ⁽⁵⁾ extended the anti-dumping measures. Following an expiry review of the countervailing measures, the Council by Implementing Regulation (EU) No 1185/2010 ⁽⁶⁾ extended the countervailing measures.
- (5) The anti-dumping measures took the form of an *ad valorem* duty rate of 9,4 % and 0 % for imports from individually named exporters, with a residual duty rate of 8,5 %.

2. Request for an expiry review

- (6) Following the publication of a notice of impending expiry ⁽⁷⁾ of the anti-dumping measures in force on the imports of certain graphite electrode systems originating in India, the Commission has received a request for review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 ⁽⁸⁾.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Council Regulation (EC) No 1629/2004 of 13 September 2004 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain graphite electrode systems originating in India (OJ L 295, 18.9.2004, p. 10).

⁽³⁾ Council Regulation (EC) No 1628/2004 of 13 September 2004 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain graphite electrode systems originating in India (OJ L 295, 18.9.2004, p. 4).

⁽⁴⁾ Council Regulation (EC) No 1354/2008 of 18 December 2008 amending Regulation (EC) No 1628/2004 imposing a definitive countervailing duty on imports of certain graphite electrode systems originating in India and Regulation (EC) No 1629/2004 imposing a definitive anti-dumping duty on imports of certain graphite electrode systems originating in India (OJ L 350, 30.12.2008, p. 24).

⁽⁵⁾ 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 (OJ L 332, 16.12.2010, p. 17).

⁽⁶⁾ 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 (OJ L 332, 16.12.2010, p. 1).

⁽⁷⁾ OJ C 82, 10.3.2015, p. 5.

⁽⁸⁾ Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51). This Regulation has been codified by the basic Regulation.

- (7) The request was lodged by SGL Carbon GmbH, TOKAI Erftcarbon GmbH and GrafTech Switzerland SA ('the applicants') representing more than 25 % of the total Union production of certain graphite electrode systems.
- (8) The request was based on the grounds that the expiry of the measures would be likely to result in continuation of dumping and continuation or recurrence of injury to the Union industry.

3. Initiation

- (9) Having determined that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 15 December 2015, by notice published in the *Official Journal of the European Union* ⁽¹⁾ ('the Notice of Initiation') the initiation of an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009.

4. Parallel investigation

- (10) By a notice published in the *Official Journal of the European Union* on 15 December 2015 ⁽²⁾, the Commission also announced the initiation of an expiry review pursuant to Article 18 of Council Regulation (EC) No 597/2009 ⁽³⁾ of the definitive countervailing measures in force with regard to imports into the Union of certain graphite electrode systems originating in India.

5. Interested parties

- (11) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the applicant, other known Union producers, exporting producers, importers and users in the Union known to be concerned, and the Indian authorities of the initiation of the expiry review and invited them to participate.
- (12) All interested parties had the opportunity to comment on the initiation of the review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

5.1. Sampling

- (13) In the Notice of Initiation, the Commission stated that it might sample interested parties, in accordance with Article 17 of the basic Regulation.

(a) Sampling of Union producers

- (14) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. In accordance with Article 17(1) of the basic Regulation the Commission selected the sample on the basis of the largest representative volume of sales which could reasonably be investigated within the time available, considering also the geographical location. This sample consisted of four Union producers. The sampled Union producers accounted for above 80 % of the total Union production, based on information received during standing exercise. The Commission invited interested parties to comment on the provisional sample. No comments were received within the deadline and the sample was thus confirmed. The sample is representative of the Union industry.

(b) Sampling of importers

- (15) To decide whether sampling was necessary and, if so, to select a sample, the Commission requested all unrelated importers to provide the information specified in the Notice of Initiation.

⁽¹⁾ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain graphite electrode systems originating in India (OJ C 415, 15.12.2015, p. 33).

⁽²⁾ Notice of initiation of an expiry review of the countervailing measures applicable to imports of certain graphite electrode systems originating in India (OJ C 415, 15.12.2015, p. 25).

⁽³⁾ Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community (OJ L 188, 18.7.2009, p. 93). This Regulation has been codified by Regulation (EU) 2016/1037 of the European Parliament and of the Council (OJ L 176, 30.6.2016, p. 55).

- (16) No importers came forward to provide the information requested in the Notice of Initiation.

5.2. Questionnaires and verification visits

- (17) The Commission sent questionnaires to all sampled Union producers, two Indian exporting producers and 53 users that came forward after initiation.
- (18) Questionnaire replies were received from the four sampled Union producers, one Indian exporting producer and eight users of the product under review. The second exporting producer cooperating in the original investigation, namely Graphite India Limited ('GIL'), did not submit a questionnaire reply in the present review.
- (19) The Commission sought and verified all the information it deemed necessary for the determination of the likelihood of continuation or recurrence of dumping and resulting injury and for the determination of the Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

(a) Union producers:

- Graftech France S.N.C. Calais, France
- Graftech Iberica S.L., Navarra, Spain
- SGL Carbon S.A., Wiesbaden, Germany
- Tokai Erftcarbon GmbH, Grevenbroich, Germany

(b) Exporting producer in India:

- HEG Limited, Bhopal ('HEG').

6. Review investigation period and period considered

- (20) The investigation of the likelihood of continuation or recurrence of dumping covered the period from 1 October 2014 to 30 September 2015 (the 'review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of continuation or recurrence of injury covered the period from 1 January 2012 to the end of the review investigation period (the 'period considered').

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

- (21) The product concerned is graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,65 g/cm³ or more and an electrical resistance of 6,0 µΩ.m or less, and nipples used for such electrodes, whether imported together or separately originating in India ('GES' or 'the product under review'), currently falling within CN codes ex 8545 11 00 (TARIC code 8545 11 00 10) and ex 8545 90 90 (TARIC code 8545 90 90 10).

2. Like product

- (22) The investigation showed that the following products have the same basic physical and technical characteristics as well as the same basic uses:
- the product under review;
 - the product produced and sold in the Union by the Union industry.

- (23) The Commission concluded that these products are like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

1. Preliminary remarks

- (24) In accordance with Article 11(2) of the basic Regulation, it was examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping.
- (25) As mentioned above in recital (18) only one Indian exporting producer cooperated in the current investigation. This company covered more than 95 % of the exports of GES from India into the Union during the RIP. Therefore, the Commission considered that it had sufficient information for the assessment of the export price and the dumping margin during the RIP.
- (26) However, this exporting producer represented only 50 % of the total production capacity and only between 40 % and 50 % of the total production of GES in India during the RIP. Moreover, its exports to other third countries ranged only between 43 % and 52 % of total exports from India to other third countries during the RIP (the exact weight of the sole cooperating Indian exporting producer in the total Indian production and total exports cannot be disclosed for confidentiality reasons). Therefore, and considering that the other Indian producer of GES did not cooperate, the Commission considered that it did not have sufficient information for the examination of the likelihood of continuation or recurrence of dumping and injury and use had to be made of facts available in accordance with Article 18 of the basic Regulation in order to assess the development of imports should measures be repealed.
- (27) The Indian authorities were duly informed that due to the low cooperation of the Indian exporting producers, the Commission may apply Article 18 of the basic Regulation. No comments were received in this respect.
- (28) The findings in Section 3 were thus based on facts available. For this purpose, the information provided by the cooperating exporting producer, the request for the expiry review, Eurostat statistics, the data collected by Member States pursuant to Article 14(6) of the basic Regulation ('14(6) database') and publicly available information were used.

2. Dumping in the Union during the review investigation period

2.1. Normal value

- (29) The Commission first examined whether the total volume of domestic sales for the sole cooperating exporting producer was representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales are representative if the total domestic sales volume of the like product to independent customers on the domestic market per exporting producer represented at least 5 % of its total export sales volume of the product under review to the Union during the RIP. On this basis, the total sales of the sole cooperating exporting producer of the like product on the domestic market were representative.
- (30) The Commission subsequently identified the product types sold domestically that were identical or comparable with the product types sold for export to the Union for the exporting producer with representative domestic sales. The elements taken into account in defining the product types of GES were (i) whether they were sold with a nipple or not, (ii) their diameter and (iii) their length.
- (31) The cooperating exporting producer claimed that the fact that GES are produced from different grades of needle coke (basic raw material) should be taken into account when establishing identical or directly comparable types of GES. Indeed, the investigation confirmed that in the production process, the company used two different types of needle coke, that is imported needle coke which is of a superior quality and regular needle coke sourced on the Indian market. It was also confirmed that the type of coke used determines the cost of production and the price of the end product.

- (32) Therefore, in order to ensure a fair comparison, the Commission split each of the product types into low-grade and high-grade products for the purpose of the dumping calculation.
- (33) The Commission then examined whether the domestic sales by the sole cooperating exporting producer on its domestic market for each product type that is identical or comparable with a product type sold for export to the Union were representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the RIP represents at least 5 % of the total volume of export sales of the identical or comparable product type to the Union. The Commission established that these product types were representative.
- (34) The Commission next defined the proportion of profitable sales to independent customers on the domestic market for each product type during the RIP in order to decide whether to use actual domestic sales price for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.
- (35) The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if:
- (a) the domestic sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of this product type; and
 - (b) the weighted average sales price of that product type is equal to or higher than the unit cost of production.
- (36) In this case, the normal value is the weighted average of the prices of all domestic sales of that product type during the RIP.
- (37) The normal value is the actual domestic price per product type of only the profitable domestic sales of the product types during the RIP, if:
- (a) the volume of profitable sales of the product type represents 80 % or less of the total sales volume of this type; or
 - (b) the weighted average price of this product type is below the unit cost of production.
- (38) Where there were no or insufficient sales of a product type of the like product in the ordinary course of trade, the Commission constructed the normal value in accordance with Article 2(3) and (6) of the basic Regulation.
- (39) For such product types normal value was constructed by adding to the average cost of production of the like product of the sole cooperating exporting producer during the RIP:
- (a) the weighted average selling, general and administrative ('SG&A') expenses incurred by the sole cooperating exporting producer on domestic sales of the like product, in the ordinary course of trade, during the RIP; and
 - (b) the weighted average profit realised by the sole cooperating exporting producer on domestic sales of the like product, in the ordinary course of trade, during the RIP.
- (40) For the product types not sold at all on the domestic market, the weighted average SG&A expenses and profit of all transactions made in the ordinary course of trade on the domestic market were added.

2.2. Export price

- (41) The sole cooperating exporting producer exported to the Union directly to independent customers. Therefore, the export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.
- (42) During the on-spot verification, a number of mistakes have been found in the export prices reported by the cooperating exporter. These mistakes have been corrected and the exporting producer has been duly informed.

2.3. Comparison

- (43) The Commission compared the normal value and the export price as established above on an ex-works basis.
- (44) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for transport, insurance, handling, loading and ancillary costs, packaging, credit costs, bank charges and countervailing duties paid by the cooperating exporting producer where applicable and justified.
- (45) The sole cooperating exporting producer claimed an adjustment for import charges on raw materials paid in accordance with Article 2(10)(b) of the basic Regulation, on the grounds that import charges were borne by GES produced for consumption in India but were refunded by means of the duty drawback scheme ('DDS') when the product was sold for export to the Union. The investigation showed however that there was no direct link between DDS amounts received on exports of GES and duties actually paid on incorporated imported raw material. Therefore it is considered that the exporting producer failed to prove that a tax refunded on export sales was included in the domestic price. This was also confirmed in recitals (38) to (42) of the parallel anti-subsidy investigation where it was established that the DDS constitutes a subsidy in the form of a financial contribution by the Government of India and cannot be considered a permissible duty drawback system or substitution drawback system. Therefore the adjustment cannot be granted.
- (46) Moreover the cooperating Indian exporting producer claimed an adjustment based on Article 2(10)(b) of the basic Regulation on the grounds that import charges were allegedly borne by the like product when intended for consumption in India but were not collected due to the Advanced Authorisation Scheme ('AAS') when the product was sold for export to the Union. The investigation however showed that there was no system in place to ascertain that raw material imported duty free under AAS was exclusively incorporated in exported GES. Therefore, the Commission considers that the exporting producer failed to prove that the tax not paid on export sales was included in the domestic price. This was also confirmed in recitals (59) to (62) of the parallel anti-subsidy investigation where it was established that the AAS constitutes a subsidy in the form of a financial contribution by the Government of India and cannot be considered a permissible duty drawback system or substitution drawback system. Therefore this adjustment cannot be granted.

2.4. Dumping margin

- (47) As provided for under Article 2(11) of the basic Regulation, the weighted average normal value by type was compared with the weighted average export price of the corresponding type of the product under review. Based on this methodology, the dumping margin established for the cooperating exporting producer amounts to 29,8 % during the RIP.
- (48) During the on-spot verification at the sole cooperating exporting producer's premises in India, the company claimed that the allegedly significant fluctuation of the price of the main raw material (needle coke) during the RIP should be taken into consideration and requested that the Commission would calculate for this purpose a quarterly dumping margin. This would show that there was no dumping during the RIP. In this regard, the company submitted the quarterly cost of production ('COP') at the end of the on-spot verification.
- (49) Given that such claim was not raised at an earlier stage of the proceeding nor in the questionnaire reply, the Commission was not in a position to properly verify this claim and could thus not establish whether the data provided were complete and accurate.
- (50) In any event, on the basis of the data provided during the on-spot verification, it was established that the unit COP per type of product showed a decreasing trend during the RIP from quarter to quarter for some product types, but not for all. For several PCNs the unit COP increased in the last quarter. The unit export price had a similar decreasing trend with the exception of the last quarter during which export prices increased except for two product types. The company exported significant volumes in each quarter of the RIP which were distributed over the different quarters as shown in the table below (the precise volume data cannot be disclosed due to confidentiality reasons). In addition, not all product types were sold in all quarters, out of the 23 product types sold by the cooperating exporter producer to the Union market, only six of them were sold in each quarter.

- (51) The dumping margins calculated for each quarter according to the methodology explained in recitals (29) to (47) showed significant dumping in each quarter of the RIP.

Table 1

RIP	Dumping margin (%)	Volume of exports (tonnes)
October 2014 – December 2014	23,1	[1 500 – 1 700]
January 2015 – March 2015	32,3	[1 900 – 2 100]
April 2015 – June 2015	15,4	[1 500 – 1 700]
July 2015 – September 2015	6,4	[1 100 – 1 400]

- (52) The claim of the cooperating exporting producer that a calculation of its dumping margin on a quarterly basis would result in no dumping was therefore incorrect. The dumping margins were significant in each quarter and likewise the average dumping margin during the RIP calculated on the basis of these quarterly margins remained at a significant level, i.e. at 19,3 %.
- (53) While the dumping margins in the different quarters calculated on a product type basis show a fluctuating trend (increasing between October 2014 — December 2014 to January 2015 — March 2015 and then decreasing between January 2015 — March 2015 till the end of the RIP), the gradual decrease of the COP during the RIP did not have the claimed impact. In fact, it is noted that the decrease in the dumping margin was also in part due to an increase in the export price. It is recalled that the claim of the cooperating exporting producer for a quarterly dumping margin was only based on the fluctuations of the price of the raw materials. Therefore, the Commission concluded that the information provided did not put into question the findings of dumping during the RIP and consequently the findings of continuation of dumping in recitals (57) to (87).
- (54) After disclosure, the sole cooperating Indian exporting producer argued that for the calculation of profitability used to construct the normal value, the Commission should differentiate between products manufactured from domestic coke, on the one hand, and the products manufactured from imported needle coke, on the other hand. This was because of a difference in usage of these products. It furthermore claimed that only the products manufactured from imported needle coke, which are used in the high power electric arc furnace, are sold in the Union market and that the profitability used to construct the normal value should therefore be calculated only on basis of these types of products. During a hearing held with the Commission following disclosure, HEG elaborated that, on the basis of these claims, for constructing the normal value the Commission should not use a weighted average profitability rate calculated based on all domestic sales. HEG argued that the Commission should calculate two separate profitability rates taking into account the origin of the coke, and apply it accordingly in the construction of the normal value.
- (55) In the reply to the questionnaire, HEG reported for each product type the origin of the raw material and the performance of GES. However, when taking only these two elements into account, the comparison between the product types sold in the Union market and the ones sold in the Indian market showed that HEG sold the same product types in both markets during the review investigation period. Therefore, the first part of the claim is factually wrong.
- (56) In addition, as explained in recitals (39) and (40), for constructing the normal value, the Commission used the weighted average profit of all domestic sales of the like product, in the ordinary course of trade, during the review investigation period pursuant to Article 2(6) of the basic Regulation. Nevertheless, using the individual profit rates for each type of product as submitted by the company during the hearing mentioned in recital (54), the dumping margin stated in recital (47) would only decrease by 3,2 percentage points to 26,7 %. Therefore, this decrease does not have a material impact on the Commission's findings of dumping during the review investigation period and consequently the findings of continuation of dumping in recitals (57) to (87).

3. Development of imports should measures be repealed

- (57) Further to the finding of significant dumping during the RIP, the Commission analysed whether there was a likelihood of a continuation of dumping should the measures be allowed to lapse. The following elements were analysed: the production capacity and spare capacity in India, the exports from India to other third countries and the attractiveness of the Union market.
- (58) As mentioned in recital (25), only one exporting producer in India cooperated which represented only half of the total Indian production capacity. The findings in the sections below were therefore based on facts available in accordance with Article 18 of the basic Regulation. In this regard, the Commission used the information provided by the cooperating exporting producer, the request for the expiry review, the United Nation Database, information provided by the government of India (GOI) in the parallel anti-subsidy investigation mentioned in recital (10) and publicly available information.

3.1. Production capacity and spare capacity

- (59) Based on public financial information and verified data of the cooperating exporting producer ⁽¹⁾ ⁽²⁾, both Indian producers increased their production capacity after the previous expiry review mentioned in recital (4) by 27 %. At the end of the RIP, the total production capacity in India amounted to 160 000 tonnes per year, equally divided between the two producers ⁽³⁾. In addition, the investigation revealed that the Indian exporting producers are likely to further increase their capacity in case of increased demand ⁽⁴⁾.
- (60) The production volume of the two Indian producers ranged between 110 000 and 120 000 tonnes during the RIP. On the basis of the above, the total Indian spare capacity was estimated to between 40 000 and 50 000 tonnes, which represented between 29 % and 36 % of the Union consumption during the RIP.
- (61) The increase in capacity took place in parallel to a decrease in consumption of GES in India and worldwide. GES is mainly used in the electric steel industry, more specifically it is used in steel plants to melt steel scrap. The development of GES consumption is therefore correlated with the development of electric steel production and follows similar trends. The investigation established that the production of electric steel in India and worldwide decreased between 2012 and the RIP ⁽⁵⁾ while the production capacity of GES in India increased.
- (62) At the end of November 2014, the Indian authorities imposed anti-dumping measures on imports of GES from China ⁽⁶⁾. It is expected that the Indian producers will increase their market share on the domestic market.

3.2. Exports to third countries

- (63) Based on public financial statements, both Indian exporting producers were found to be export-oriented ⁽⁷⁾ ⁽⁸⁾ exporting around 60 % of their total production during the RIP.
- (64) The Union remained an important export destination for the cooperating exporting producer HEG despite the measures in force. HEG's exports accounted for between 10 % and 17 % of its total sales in terms of value and between 10 % and 20 % in terms of volume in the RIP. The non-cooperating Indian company GIL exported very low volumes to the Union during the RIP. This has however to be seen in correlation with the anti-dumping and countervailing duties applicable to GIL (15,7 % in total) as compared to HEG (7 % in total).

⁽¹⁾ http://www.google.be/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiqt6H2u9_QAhWEzRoKHYUwBVEQFggfMAA&url=http%3A%2F%2Fheg ltd.com%2Fwebmaster%2FdownloadFile.aspx%3Fd%3D%2Fuploads%2FFinance%2F70Results_Release.pdf&usq=AFQjCNGMpUymLm4BNOjIMmolLDgwSGgcDw

⁽²⁾ http://content.icidirect.com/mailimages/IDirect_GraphiteIndia_Q1FY16.pdf

⁽³⁾ <http://heg ltd.com/> and <http://www.graphiteindia.com/>

⁽⁴⁾ <http://heg ltd.com/WEBMASTER/DownloadFile.aspx?D=../Uploads/Newsletter/News9.pdf>

⁽⁵⁾ <https://www.worldsteel.org/statistics/statistics-archive/yearbook-archive.html>

⁽⁶⁾ http://www.dgtr.gov.in/sites/default/files/adfin_Graphite_Electrodes_diameters_ChinaPR.pdf

⁽⁷⁾ http://heg ltd.com/pdf/HEGLtd_Q1_FY_16_Investors_Presentation.pdf

⁽⁸⁾ http://www.graphiteindia.com/View/investor_relation.aspx (see GIL Q3 FY2015 Earnings Presentation.pdf, page 14).

- (65) In the absence of any other more reliable source to establish export volumes from India to other third country markets, the United Nations Database was used. According to this database, exports to other third countries increased between 2012 and 2013, by 43 %, and then decreased in 2014 and 2015, by 38 % as compared to 2013. Export volume overall decreased between 2012 and the RIP (by 10 %). The main destinations for the Indian exports in 2015 were USA, Saudi Arabia, Iran, Turkey and United Arab Emirates, Republic of Korea, Egypt. Between 2012 and 2015 Indian exports to some of these destinations increased (such as Saudi Arabia, United Arab Emirates, USA) while to some others (Iran, Turkey, Republic of Korea, Egypt) they decreased, with an overall decrease of 9 %.
- (66) While in 2012 Russia was the third export market for the Indian producers in terms of volume, after Russia imposed an *ad valorem* duty on imports of GES from India ranging from 16,04 % to 32,83 % in December 2012 ⁽¹⁾ the exports from India to Russia dropped from 4 415 tonnes to 638 tonnes in 2015, a decrease of 86 %.
- (67) The information on export volumes in the United Nations Database could be counter-checked with the information provided by the GOI in the parallel anti-subsidy investigation, i.e. export statistics of the Directorate-General of Commercial Intelligence and Statistics ('DGCIS'), which showed similar trends as the ones observed in the United Nations Database.
- (68) In addition, export volumes to other third countries of the cooperating exporting producer HEG also followed similar trends, i.e. an increase of export volumes to other third countries from 2012 to 2013 and a decrease from 2014 to the RIP with an overall decreasing trend during the period considered. To be noted that despite this decrease of export volumes, the overall level in the RIP remained significant, between 20 000 tonnes and 30 000 tonnes.
- (69) Regarding export price levels, based on the United Nations Database the investigation revealed that Indian export prices to certain countries like the USA and the Republic of Korea that used to be on average lower than the prices in EU between 2012 and 2014 have increased in 2015 at around the same level as the prices in the EU. In addition, Indian export prices to other countries, like Saudi Arabia for instance, that were lower than the prices in EU between 2012 and 2014, increased at a higher level than the EU prices in 2015. Moreover, Indian exports to certain other countries, like Turkey for instance, continued to be lower than the EU prices during the whole period considered. To be noted however that the prices in this database do not distinguish between different product types and therefore the reliability of such a price comparison on this basis is limited.
- (70) The analysis of the information on export prices to other third country markets of the cooperating exporting producer showed that during 2012 and 2014 the average prices in the Union market were higher than the average prices of HEG on other third markets (adjusted on a calendar year basis as data were provided on a financial year basis) while during the RIP the average prices in the Union market were lower than the average prices of HEG on other third markets.
- (71) No other data were available to establish accurate price levels of the Indian exporting producers to other third country markets.

3.3. Attractiveness of the Union market

- (72) The attractiveness of the Union market was demonstrated by the fact that despite the anti-dumping and countervailing duties in force, Indian GES continued to enter the Union market. During the period considered, India continued to be the second largest exporting country to the Union after the People's Republic of China ('China'). Despite a decrease between 2012 and the RIP, India maintained its exports to the Union in significant volumes and market shares as explained in recital (100) below.
- (73) The possible development of export sales to the Union should measures be allowed to lapse has to be seen against the background of the overall decrease in consumption of GES in India and worldwide in combination with the spare capacity in India. This will in all likelihood increase the pressure on the Indian exporting producers to explore further export markets, in particular when considering their export-oriented business

⁽¹⁾ http://www.eurasiancommission.org/_layouts/Lanit.EEC.Desicions/Download.aspx?IsDlg=0&ID=3805&print=1

model. Therefore, should measures in the Union be repealed and the access to the Union market be free of anti-dumping and countervailing duties it is indeed likely that a large part of the available spare capacity will be used for export to the Union market. In particular since the investigation showed that while in some exporting markets (such as Saudi Arabia, United Arab Emirates, USA) Indian exports increased in 2015, overall exports from India to other third country markets followed a decreasing trend. This indicates that on certain third countries there appears to be a limited capacity to absorb additional exports quantities.

- (74) In addition, as mentioned in recital (66), Russia has imposed anti-dumping duties on imports of GES from India. Indian exporting producers thus have limited access to this market and cannot increase or re-direct their export volumes to Russia, as showed by the drop in exports to this destination as of 2012.
- (75) On this basis, it is likely that the Indian exporting producers will continue to export significant quantities to the Union should measures be allowed to lapse and even increase their current export volumes taking into account their significant spare capacity. Indeed, this is likely for the cooperating exporting producer that will have an incentive to further increase its already significant presence in the Union market, and even more for the non-cooperating exporting producer, whose duty levels are higher as compared to the cooperating exporting producer and which almost stopped exporting to the Union market.

3.4. Conclusion on the likelihood of continuation of dumping

- (76) The foregoing analysis shows that (i) Indian imports continued to enter the Union market at significant dumped prices and in significant quantities; (ii) both Indian producers are export-oriented and have spare capacity which could be used to increase export volumes to the Union at dumped prices; (iii) consumption worldwide is following a decreasing trend, thus reducing the export possibilities to certain other third markets; (iv) the existence of anti-dumping measures in Russia against Indian GES further restricts export possibilities to the Indian exporting producers.
- (77) In view of the above, it was concluded that there is a likelihood of continuation of dumping should the measures be repealed.
- (78) After disclosure, the sole cooperating Indian exporting producer, HEG, claimed that the Commission has not considered the facts pertaining to the period after the RIP in its assessment of likelihood of continuation of dumping. In this regard, the cooperating Indian exporting producer claimed that when applying Article 18 of the basic Regulation, the Commission has not taken into account the fact that GIL, the other Indian producer of GES, has made an investment in a manufacturing facility in the Union, that is Graphite Cova GmbH ('GIL Cova'). HEG further argued that GIL has a strategic long term contract to sell baked green electrodes (which is a semi-finished product) to its graphitisation facility of GIL Cova. HEG also claimed that because of the strategic investment of GIL, the Commission's conclusion that exports from India to the Union will increase is incorrect and that the finding that both Indian producers have spare capacity available for exports is based on mere assumptions. HEG also argued that the expiry of measures is not going to increase the volume of imports to the Union based on the decreasing trend of exports from India to the Union (including HEG's export to the Union) post RIP.
- (79) In addition, HEG claimed that the HEG's plans to increase production capacity was only the vision of its Chairman considering the favourable economic scenario of 2010. Thus, in the annual report of HEG for the year ended 31 March 2016 there are no new proposals being discussed by the board of directors for expansion of capacities anymore.
- (80) In relation to the comparison of prices carried out by the Commission in recitals (69) and (70) with regard to exports to other third country markets, HEG submitted an analysis of its average CIF/CFR prices to four other third countries as compared to its average CIF prices to the Union and concluded that, in general, its average prices to the four other third countries were higher than its prices to the Union. Therefore, HEG claimed that the Union market with lower price levels would be in comparison less attractive.
- (81) As regards HEG's claim concerning the investment of GIL in GIL Cova during the period considered GIL exported a very small volume to the Union market. It is however considered that this is not only due to GIL's investment in GIL Cova, but mainly to the high anti-dumping and countervailing duties that apply to the exports of GIL India to Union (15,7 % in total). In the scenario that the anti-dumping and/or countervailing measures are repealed, it is therefore likely that GIL will resume its exports to the Union, despite its investment in GIL Cova, also taking into account its available spare capacity and the attractiveness of the Union market as described in recitals (72) to (75) above.

- (82) As concerns HEG's claim regarding the trend of exports after the RIP, it is highlighted that these exports were made while the anti-dumping and countervailing measures were in force. Therefore, even if the volume of exports of HEG's after the RIP showed a decreasing trend, it is likely that HEG's exports to Union will increase if the anti-dumping and/or countervailing measures are repealed taking into account that despite the measures in place, HEG continued to export to the Union market at significantly dumped prices, its export-oriented business model and its spare capacity which is not excluded to increase in the future if the demand for its products increases, as described in recitals (59) to (75) above.
- (83) Furthermore, regarding HEG's intention to increase capacity, it is highlighted that during the on-spot verification visit in 2016, HEG showed to the case team a short movie providing an overview of HEG's group. One of the elements presented in this movie were the future plans of the company to increase its production capacity. Moreover, the company's representatives explained during the on-spot verification that such plans were currently on hold taking into account that the company was not fully using its capacity and the decrease in the global demand. Therefore, in the event that the anti-dumping and/or the countervailing measures are repealed, it is likely that the demand for Indian GES in the Union market will likely increase and that HEG therefore, will have an incentive to increase its capacity to meet the demand.
- (84) As concerns HEG's claim referring to the price differences between the Union market and other third country markets, it is highlighted that the comparison carried out by the Commission in recitals (69) and (70) is made between average prices of the Indian exporting producers on other third markets and average prices of Union producers in the Union market and not the average prices of the Indian producers in the Union market. It is recalled that the HEG's average price in the Union market is at a significantly dumped level that undercuts the Union producers' average price and is therefore not suitable for the comparison in question.
- (85) In view of the above, HEG's claims are rejected.
- (86) One other interested party claimed that due to the lower energy consumption, as main cost factor, and lower labour costs, the Indian producers have clear comparative advantages in terms of cost efficiency. However, it should be noted that the investigation revealed that the main cost driver in the manufacturing process of GES in India is actually the coke and not the energy or the labour. In any event, even if there would be a comparative advantage for the Indian producers, this should have a similar effect on the export price and on the normal value and therefore no impact on the dumping margin. This claim is thus factually wrong and it is therefore rejected.
- (87) The Commission's conclusion that there is a likelihood of continuation of dumping should the measures be repealed is therefore confirmed.

D. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF INJURY

1. Definition of the Union industry and Union production

- (88) During the review investigation period, the like product was manufactured by eight producers (two individual companies and two groups). They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

2. Preliminary remarks

- (89) As mentioned in recital (61) the situation of the GES industry is closely linked to that of the electrical steel industry where GES are used in the electric steel furnaces to melt steel scrap. In this context, during the period considered negative market conditions prevailed within the electrical steel industry, with a decrease in consumption which is also reflected in the consumption of GES.
- (90) Given that there are only two exporting producer of the product concerned in India, data relating to imports of GES from India and other third countries into the European Union are not presented in precise figures in order to preserve confidentiality pursuant to Article 19 of the basic Regulation.

3. Union consumption

- (91) The Commission established the Union consumption by adding:
- (i) the sales of the sampled Union producers, obtained after verification of the questionnaire replies,
 - (ii) the sales of non-sampled cooperating Union producers, obtained from the review request,
 - (iii) the sales of non-sampled non-cooperating Union producer, obtained from its' annual reports,
 - (iv) the imports from India, based on 14(6) data base and
 - (v) the imports from all other third countries, based on Eurostat (TARIC level).
- (92) On this basis, Union consumption developed as follows:

Table 2

Union consumption

	2012	2013	2014	Review investigation period
Union consumption (tonnes)	151 508	140 244	146 637	139 974
<i>Index (2012 = 100)</i>	100	93	97	92

Source: questionnaire replies of sampled Union producers, annual reports of non-cooperating Union producer, review request, Eurostat (TARIC level), 14(6) database.

- (93) The Union consumption decreased by 8 % over the period considered. More specifically, the Union consumption decreased by 7 % in 2013, it recovered by 4 % between 2013 and 2014, and then decreased again by 5 % from 2014 to the review investigation period.
- (94) As mentioned in recitals (61) and (89), the overall decrease in demand was a result of the negative market conditions prevailing within the electric steel sector, since the sales volumes of graphite electrodes follow the development of the volume of steel production in electric furnaces.
- (95) After disclosure, the cooperating exporting producer from India claimed that the market share and consumption analysis should take into consideration the imports made by the Union producers from their related companies in the USA, Mexico, Japan and Malaysia which would have increased significantly during the past three years.
- (96) Imports from all other third countries were duly taken into account when calculating the Union consumption, as explained above in the recital (91) and are therefore duly reflected in the total consumption. The argument was therefore rejected.

4. Imports from the country concerned

4.1. Volume and market share of imports from the country concerned

Table 3

Import volume and market share

Country		2012	2013	2014	Review investigation period
India	Import volume (tonnes)	9 000 – 10 000	5 000 – 6 000	7 000 – 8 000	6 500 – 7 500
	<i>Indexed import volume (2012 = 100)</i>	100	57	80	74

Country		2012	2013	2014	Review investigation period
	Market share (%)	6-7	3-4	5-6	4-5
	Market share indexed	100	62	83	80

Source: 14(6) database.

- (97) Import volumes were decreasing during the period considered. They dropped significantly in 2013 (by 43 %), picked up in 2014 and decreased again in the review investigation period. Overall there was a decrease of 26 % during the period considered.
- (98) The Commission established the market share of the imports on the basis of the Union consumption as set out in recital (91) above.
- (99) Market share showed similar trends as import volumes, i.e. a decrease between 2012 and 2013, an increase between 2013 and 2014 and then a decrease again between 2014 and the review investigation period. Overall market share decreased by 1,2 percentage points in the review investigation period as compared to 2012.
- (100) The market share of Indian imports at the start of the period considered was in the range of 6 % to 7 %. It dropped to the range of 4 % to 5 % by the end of the review investigation period.

4.2. Prices of imports from the country concerned

- (101) The Commission established the trend of the prices of Indian imports on the basis of data recorded in the 14(6) database. They were broadly in line with the prices reported by the cooperating exporting producer.
- (102) The average price of imports into the Union from the country concerned developed as follows:

Table 4

Import price ⁽¹⁾

Country		2012	2013	2014	Review investigation period
India	Import prices (EUR/tonne)	2 500 – 3 500	3 000 – 4 000	2 500 – 3 500	2 200 – 3 200
	Index (2012 = 100)	100	105	89	86

⁽¹⁾ Average price does not include anti-dumping/countervailing duties in place.

Source: 14(6) database.

- (103) Overall, average import prices decreased by 14 % over the period considered. Import prices increased by 5 % between 2012 and 2013, decreased by 16 % in 2014 and decreased further by 3 % in the RIP.

4.3. Price undercutting

- (104) The Commission determined the price undercutting during the review investigation period by comparing (i) the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers in the Union market, adjusted to an ex-works level; and (ii) the corresponding weighted average prices per product type of the imports from the cooperating Indian producer to the first independent customer in the Union market, established on a cost, insurance, freight (CIF) basis, with appropriate adjustments for anti-dumping/countervailing duty and post-importation costs.

- (105) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the sampled Union producers' turnover during the review investigation period.
- (106) The comparison showed for a cooperating exporting producer a weighted average undercutting margin of 3 % in the Union market during the review investigation period. However when deducting the anti-dumping and countervailing duties from the calculations, the undercutting margin would amount to 9 %. Concerning the non-cooperating exporting producer, only very small volumes were imported during the RIP. The Commission nevertheless conducted an estimation of undercutting. The Commission found a 12 % undercutting margin, when deducting from the calculations the anti-dumping and countervailing duties in place. This estimation however is based on a very small import volume and, because of the lack of cooperation, does not take into account product types. Therefore, its reliability is limited.

4.4. Imports from other third countries

Table 5

Import volume and market share

Country		2012	2013	2014	Review investigation period
Total other third countries	Imports (tonnes)	33 000 – 35 000	30 000 – 32 000	34 000 – 36 000	30 000 – 32 000
	Index	100	90	103	90
	Market share (%)	22 – 23	22 – 23	24 – 25	22 – 23
	Price (EUR/tonne)	2 500 – 3 500	2 400 – 3 400	2 400 – 3 400	2 300 – 3 300
	Index	100	98	89	92
China	Imports (tonnes)	14 000 – 15 000	11 000 – 12 000	16 000 – 17 000	14 000 – 15 000
	Index	100	80	117	103
	Market share (%)	9 – 10	8 – 9	11 – 12	10 – 11
	Price (EUR/tonne)	2 000 – 3 000	1 500 – 2 500	1 400 – 2 400	1 600 – 2 600
	Index	100	94	90	99
USA	Imports (tonnes)	3 000 – 4 000	4 000 – 5 000	4 200 – 5 200	4 200 – 5 200
	Index	100	118	129	128
	Market share (%)	2 – 3	3 – 4	3 – 4	3 – 4
	Price (EUR/tonne)	3 300 – 4 300	3 200 – 4 200	3 000 – 4 000	2 800 – 3 800
	Index	100	96	84	81

Country		2012	2013	2014	Review investigation period
Mexico	Imports (tonnes)	3 000 – 4 000	4 000 – 5 000	5 500 – 6 500	4 000 – 5 000
	<i>Index</i>	100	127	165	119
	Market share (%)	2 – 3	3 – 4	4 – 5	3 – 4
	Price (EUR/tonne)	3 800 – 4 800	3 900 – 4 900	3 900 – 4 900	4 000 – 5 000
	<i>Index</i>	100	103	103	115
Russia	Imports (tonnes)	3 000 – 4 000	2 500 – 3 500	3 500 – 4 500	3 700 – 4 700
	<i>Index</i>	100	70	101	103
	Market share (%)	2 – 3	1 – 2	2 – 3	2 – 3
	Price (EUR/tonne)	3 000 – 4 000	2 800 – 3 800	2 500 – 3 500	2 100 – 3 100
	<i>Index</i>	100	91	79	75
Japan	Imports (tonnes)	4 500 – 5 500	3 000 – 4 000	3 000 – 4 000	2 000 – 3 000
	<i>Index</i>	100	74	62	50
	Market share (%)	3 – 4	2 – 3	2 – 3	1 – 2
	Price (EUR/tonne)	3 400 – 4 400	3 300 – 4 300	2 800 – 3 800	2 900 – 3 900
	<i>Index</i>	100	99	82	83
Other third countries	Imports (tonnes)	4 000 – 5 000	4 000 – 5 000	1 000 – 2 000	700 – 1 700
	<i>Index</i>	100	104	25	19
	Market share (%)	2 – 3	3 – 4	0,5 – 1,5	0,5 – 1,5
	Price (EUR/tonne)	2 600 – 3 600	2 000 – 3 000	1 900 – 2 900	1 600 – 2 600
	<i>Index</i>	100	83	78	72

Source: Eurostat (TARIC level).

- (107) In line with decreasing consumption, the volume of imports from all other third countries decreased by 10 % between 2012 and the RIP. The market share of imports from all other third countries was within the range 22 % — 23 % during the period considered. The main imports were from China, USA, Mexico, Russia and Japan, which were the only countries with individual market shares higher than 1 % during the RIP.
- (108) Import prices from USA, Japan and Mexico were higher than the prices of the Indian exporters and the prices of the Union producers. The market share of imports from USA and Mexico increased, by less than 1 percentage point over the period considered. The market share of imports from Japan decreased by 1,5 percentage point over the period considered.
- (109) Import prices from China and Russia were lower than the prices of the Indian exporters and the prices of the Union producers (except in 2012 for Russia). According to the information provided by Union industry in the review request, a part of imports from China relate to small diameter GES (diameter of less than 400 millimetres) whereas the majority of Indian imports and the Union industry's production consist in large diameter GES ⁽¹⁾ (diameters of more than 400 millimetres), which are more expensive.
- (110) The market share of Chinese imports increased by 1 percentage point over the period considered and was in a range of 10 % — 11 % during the RIP, while the market share of imports from Russia was only in a range of 2 % — 3 % during the RIP, and increased by 0,3 percentage points over the period considered. However, these increase were not in detriment of the market share of the Union industry, which, as explained in the following recital (123), increased by 1,9 percentage points over the period considered.
- (111) In conclusion, given that the data available from the import statistics do not allow to differentiate between different product types and that therefore a meaningful price comparison by product type could not be carried out, as it was possible for India on the basis of the detailed information provided by the cooperating exporting producer, the impact of the imports from China and Russia could not be clearly established.

5. Economic situation of the Union industry

5.1. General remarks

- (112) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (113) As mentioned in recital (14), sampling was used for the determination of possible injury suffered by the Union industry.
- (114) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data contained in the review request, annual reports of non-cooperating Union producer and verified questionnaire replies of the sampled Union producers. The data related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. The data related to the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.
- (115) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.
- (116) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments and ability to raise capital.
- (117) Both sets of data have been found to be representative for the economic situation of the Union industry.

⁽¹⁾ Both small and large diameters of graphite electrodes are included within the same TARIC codes.

5.2. Macroeconomic indicators

(a) Production, production capacity and capacity utilisation

- (118) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 6

Production, production capacity and capacity utilisation of Union producers

	2012	2013	2014	Review investigation period
Production volume (tonnes)	235 915	235 502	241 623	221 971
<i>Index (2012 = 100)</i>	100	100	102	94
Production capacity (tonnes)	297 620	297 245	299 120	290 245
<i>Index (2012 = 100)</i>	100	100	101	98
Capacity utilisation (%)	79	79	81	76

Source: review request, annual reports of non-cooperating Union producer and verified questionnaire replies of the sampled Union producers.

- (119) The production volume decreased by 6 % during the period considered. More specifically, it first increased by 2 % until 2014 and then decreased by 8 % in the review investigation period as compared with 2014.
- (120) The production capacity decreased by 2 % over the period considered.
- (121) As a result of the decrease in production volume, the capacity utilisation decreased by 3 percentage points during the period considered.

(b) Sales volume and market share

- (122) The Union industry's sales volume and market share developed over the period considered as follows:

Table 7

Sales volume and market share of Union producers

	2012	2013	2014	Review investigation period
Sales volume in the Union (tonnes)	107 655	103 779	103 704	102 123
<i>Index (2012 = 100)</i>	100	96	96	95
Market share (%)	71,1	74,0	70,7	73,0

Source: review request, annual reports of non-cooperating Union producer and verified questionnaire replies of the sampled Union producers.

- (123) Total sales of the Union industry in the Union market decreased by around 5 % during the period considered. The Union industry's market share fluctuated during the period considered. It increased by 2,9 percentage points in 2013. It then decreased by the 3,3 percentage points in 2014 and increased again by 2,3 percentage points in the review investigation period. Overall, the Union industry's market share increased by 1,9 percentage points over the period considered.

- (124) After disclosure, the cooperating exporting producer from India claimed that the imports of the Union producers from their related companies in the USA, Mexico, Japan and Malaysia should be taken into account when establishing the Union industry's market share. However, the market share of the Union industry is calculated on the basis of sales of its own production in the Union market. Imports by the Union industry are not taken into account because this would have a distorting effect on the overall picture, given that imports would be double counted; as an import on the one hand and as a sale from the Union industry on the other hand. This argument was therefore rejected.

(c) Growth

- (125) Between 2012 and the RIP, the Union consumption decreased by 8 %. The sales volume of the Union industry decreased by 5 %, which, nonetheless, translated into a gain in market share of 1,9 percentage points.

(d) Employment and productivity

- (126) Employment and productivity developed over the period considered as follows:

Table 8

Employment and productivity of Union producers

	2012	2013	2014	Review investigation period
Number of employees	1 526	1 539	1 475	1 523
<i>Index (2012 = 100)</i>	100	101	97	100
Productivity (tonnes/employee)	155	153	164	146
<i>Index (2012 = 100)</i>	100	99	106	94

Source: review request, annual reports of non-cooperating Union producer and verified questionnaire replies of the sampled Union producers.

- (127) Employment of the Union industry remained at roughly the same level during the period considered. Due to the decrease in production (decrease of 6 % over the period considered), the productivity also decreased by 6 % over the same period.

(e) Magnitude of the dumping margin and recovery from past dumping

- (128) The investigation established that imports of GES from India continued to enter the Union market at dumped prices. The dumping margin established for India during the review investigation period was well above the *de minimis* level as described in see recital (47). This coincided with a decrease in import prices as compared to 2012. Nevertheless, the Union industry was able to benefit from the anti-dumping measures in force by maintaining and slightly increasing their market share.

5.3. Microeconomic indicators

(a) Prices and factors affecting prices

- (129) The average sales prices of the Union industry to unrelated customers in the Union developed over the period considered as follows:

Table 9

Average sales prices in the Union and unit cost

	2012	2013	2014	Review investigation period
Average unit selling price in the Union (EUR/tonne)	3 784	3 468	2 997	2 825
<i>Index (2012 = 100)</i>	100	92	79	75

	2012	2013	2014	Review investigation period
Unit cost of production (EUR/tonne)	3 357	3 116	2 776	2 745
<i>Index (2012 = 100)</i>	100	93	83	82

Source: verified questionnaire replies of the sampled Union producers.

- (130) The Union industry's average unit sales price to unrelated customers in the Union decreased steadily by 25 % and reached 2 825 EUR/tonne in the RIP. The Union industry had to adjust its prices downwards in order to reflect the general decrease of selling prices in the GES market, due to the shrinking demand within the electric steel sector.
- (131) The average cost of production of the Union industry decreased to a lower extent, by 18 % over the period considered. The major factor having influenced the decrease in the unit cost of production was the decrease in the raw material price.
- (132) After disclosure, the cooperating exporting producer from India claimed that the worldwide price of raw material decreased more than the cost of the raw materials incurred by the Union industry over the period considered. Therefore the Union industry was inefficient in terms of the raw material sourcing and its viability was therefore questionable.
- (133) The investigation found that the Union industry sourced the raw material worldwide from its related and unrelated parties at a similar price level and there were no indications of inefficiencies in terms of the raw material sourcing. Since the claim was not further substantiated, it was rejected.

(b) Labour costs

- (134) The average labour costs developed over the period considered as follows:

Table 10

Average labour costs per employee

	2012	2013	2014	Review investigation period
Average labour costs per employee (EUR/employee)	66 111	66 842	67 113	67 253
<i>Index (2012 = 100)</i>	100	101	102	102

Source: verified questionnaire replies of the sampled Union producers.

- (135) The average labour costs per employee increased over the period considered with a marginal increase of 2 %.

(c) Inventories

- (136) Stock levels developed over the period considered as follows:

Table 11

Inventories

	2012	2013	2014	Review investigation period
Closing stocks	8 952	8 821	13 770	18 465
<i>Index (2012 = 100)</i>	100	99	154	206

	2012	2013	2014	Review investigation period
Closing stocks as a percentage of production	6	5	7	11

Source: verified questionnaire replies of the sampled Union producers.

- (137) The level of closing stocks of the sampled Union producers more than doubled in absolute terms during the period considered. In the RIP, the level of stocks represented around 11 % of its production.

(d) Profitability, cash flow, investments, return on investments and ability to raise capital

- (138) Profitability, cash flow, investments and return on investments developed over the period considered as follows:

Table 12

Profitability, cash flow, investments and return on investments

	2012	2013	2014	Review investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	11,3	10,2	7,4	2,8
Cash flow (EUR)	47 981 432	46 443 978	30 426 147	31 283 121
Index (2012 = 100)	100	97	63	65
Investments (EUR)	25 293 559	23 133 505	21 672 869	12 313 975
Index (2012 = 100)	100	91	86	49
Return on investments (%)	16,5	13,9	10,1	3,9

Source: verified questionnaire replies of the sampled Union producers.

- (139) The Commission established the profitability of the Union industry by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. The profitability of the Union industry decreased gradually from 11,3 % in 2012 to 2,8 % in the RIP, i.e. a decrease of 8,5 percentage points.
- (140) After disclosure, the cooperating exporting producer from India claimed that the decline in profitability of the Union producers was caused by its high administrative and selling overheads.
- (141) The investigation found that the unit cost of production declined during the period considered, as indicated above in recital (131). This decline in the unit cost of production concerned the administrative and selling expenses even if the major part of the cost was attributed to the raw material. The argument was therefore rejected.

- (142) The net cash flow is the Union producer's ability to self-finance its activities. The net cash flow decreased by 35 % during the period considered. The substantial decrease in cash flow is mainly explained by the significant decrease in profitability, as described above in recital (139).
- (143) During the period considered the annual flow of investments in the product concerned made by the Union industry decreased by more than half, from 25 million EUR in 2012 to 12 million EUR in the RIP.
- (144) After disclosure, the cooperating exporting producer from India claimed that the decline in investments is purely attributable to contraction of demand and overcapacities of GES manufacturing globally.
- (145) Indeed, the investigation confirmed that, as explained in the recital (93) above, there was a decrease in consumption of GES during the period considered. However, it should be noted that the investments in the product concerned made by the Union industry during the RIP of the last expiry review, when also facing the decrease in consumption, was three times the investment level achieved during the RIP of the current review.
- (146) The return on investments is the profit in percentage of the net book value of investments. The return on investment from the production and sale of the like product decreased gradually from 16,5 % in 2012 to 3,9 % in the RIP.

5.4. Conclusion on the situation of the Union industry

- (147) The investigation showed that despite the measures in force most of the injury indicators developed negatively and the economic and financial situation of the Union industry deteriorated during the period considered. Nevertheless, the Union industry managed to keep and slightly increase its market share, which was only possible at the expense of lower profit levels achieved.
- (148) While these negative developments may be explained by the decrease in consumption, which declined by 8 % during the period considered, Indian imports were still a constant presence in the Union market. These imports were sold at prices lower than the Union industry's prices and undercut the Union industry's prices by 3 % in the RIP. In addition, the underselling margin was found to be 9 %. Thus, Indian dumped and subsidised imports still exerted price pressure. Indeed, the price pressure during the current RIP increased as compared to the previous expiry review when the price undercutting was less than 2 %.
- (149) Against the background of diminished consumption and price pressure from dumped and subsidised imports, the Union industry was forced to decrease its sales prices. As a consequence, its profit, although still positive (2,8 %) in the review investigation period, was below the 8 % target profit established in the original investigation.
- (150) After disclosure, the cooperating exporting producer from India claimed that since the market share of the Union industry has increased by 2 % Union producers have benefited substantially from the decline in Indian imports. The Union industry's market share was claimed to be even higher if imports of the Union industry from other third countries were also taken into account. At the same time, the Union industry has been facing stiff pricing competition from other sources (low prices imports from China and Russia, particularly). Therefore, it was claimed that no injury can be attributable to Indian imports as a result of alleged lower market share by the Union producers.
- (151) Indeed, the investigation showed a decrease of import volumes and market shares of imports from India, however, as explained above in the recital (148), Indian dumped and subsidised imports still exerted price pressure, which even increased during the current RIP as compared to the previous expiry review. The argument was therefore rejected.
- (152) The same interested party further claimed that the Commission has not considered the fact that low priced imports from China and Russia are one of the major causes of price pressure in the Union market and urged to carry out a full analysis of the low priced imports from China and Russia of the product under consideration before determining the likelihood of a recurrence of injury to the Union industry. This party also alleged that some Chinese manufacturers increased the imports of large diameter GES to the Union market.

- (153) Regarding import prices of GES from China and Russia, as explained above in recitals (109) and (111) it should be recalled that: (i) a meaningful price comparison by product type for imports from these countries could not be carried out, as it was possible for India on the basis of the detailed information provided by the cooperating exporting producer; (ii) the import statistics from these countries available for the Commission does not allow to differentiate between different product types and (iii) according to the information provided by Union industry in the review request, and confirmed by users, the majority of imports from these countries relate to smaller diameter GES that are cheaper. In addition, the cooperating exporting producer from India did not substantiate its claim regarding the increased imports of larger diameter GES from China to the Union.
- (154) Regarding the import volumes of GES and their market shares from China and Russia, as explained above in recital (110), the market share of Chinese imports increased by 1 percentage point, while the market share of imports from Russia increased by 0,3 percentage points over the period considered. These increases were not in detriment of the market share of the Union industry, which, as explained in the recital (110), increased by 1,9 percentage points over the period considered. The argument was therefore rejected.
- (155) The same interested party claimed that the Union industry was inefficient to produce smaller diameter GES because the sales of such products represented only a part of their total sales volume.
- (156) The market conditions normally ensure that supply, namely the type of product sold, is driven by demand. Since the claim regarding the inefficiency to produce smaller diameter GES by the Union industry was not further substantiated, the argument was rejected.
- (157) The same interested party claimed the lack of analysis of the impact of the increased quantities of imports at dumped prices from other countries including imports from affiliated companies in USA, Mexico, Malaysia and Japan.
- (158) As indicated above in recital (108), import prices from USA, Japan and Mexico were higher than the prices of the Indian exporters and the prices of the Union producers. The market share of imports from these countries increased by 0,1 percentage point during the period considered and was less than 10 % at the end of the RIP. Likewise, the Commission did not have any evidence that prices from these countries were dumped. The argument was therefore rejected.
- (159) The same interested party claimed that when calculating the undercutting and underselling margins on a per type basis, the Commission used the product control number ('PCN') which did not take into consideration the raw material used, which has, however, a significant impact on costs and prices. Comparing product types made of the same raw material would have the effect of reducing the underselling margin from 9 % to 8 %.
- (160) Indeed, the raw material difference was not reflected in the PCN structure and therefore the calculation of the undercutting and underselling margins did not take into account such difference. Nevertheless, when product types were split taking into consideration the raw material used for the purpose of the undercutting and underselling calculation, as submitted by the interested party after disclosure, the underselling margin stated in recital (148) only decreased by 1 percentage point to 8 %. Therefore, this decrease did not have any material impact on the Commission's findings of underselling margin during the review investigation period.
- (161) The same interested party questioned the level of 8 % target profit established in the original investigation claiming that the GES manufacturers were facing losses due to decline in the international steel demand and therefore 8 % target profit was not justified anymore.
- (162) It is recalled that the target profit level on sales of the like product in the Union market should be the one that could be reasonably achieved under normal conditions of competition by an industry of this type in the sector, namely in the absence of dumped/subsidised imports. In this regard, as noted in the recital (26) of the Regulation (EC) No 1629/2004, a proper examination was made of Union industry's profit levels when the market share of dumped imports was at its lowest (i.e. 1999). Therefore it was definitively concluded that the profit margin that could reasonably be deemed to represent the financial situation of the Community industry in the absence of injurious dumping from India should be set at 8 % for the purpose of the calculation of the injury margin. The argument was therefore rejected.

- (163) On the basis of the above, the Commission concluded that the Union industry was in an extremely fragile situation during the review investigation period, which is for the most part attributable to the negative market conditions and consequent fall in consumption. For this reason, the Commission's assessment focused on the likelihood of a recurrence of injury from the dumped imports from India.

6. Likelihood of a recurrence of injury

- (164) To establish the likelihood of recurrence of injury should the measures against India be repealed the following elements were analysed: the production capacity and spare capacity in India, the exports from India to other third countries and the attractiveness of the Union market.
- (165) In recital (75) it was concluded that it is likely that the Indian exporting producers will continue to export significant quantities to the Union should measures be allowed to lapse and even increase their current export volumes and that these exports will likely be made at dumped prices.
- (166) As established in recital (60), the Indian capacity is estimated to be around 160 000 tonnes in the RIP, while the spare capacity is estimated to be between 40 000 and 50 000 tonnes, which represented between 29 % and 36 % of the Union consumption during the same period. In addition, as indicated in recital (59), the Indian exporting producers are likely to further increase their capacity in case of increase demand. As mentioned in recital (62), at the end of November 2014, the Indian authorities imposed anti-dumping measures on imports of GES from China. As a consequence it is expected that the Indian producers will increase their market share on the domestic market.
- (167) As a consequence of the attractiveness of the Union market described in recitals (72) to (75) should the measures be repealed, at least part of the spare capacity will, in all likelihood, be redirected to the Union market. Also, as described in recital (63), Indian producers are highly export-oriented. Concerning prices of GES, as described in recital (69), higher price levels than in the Union were found for some of the destinations of the Indian exports. However given the different product mix, this information does not detract from the overall assessment that new capacity will be directed to the Union market as the reliability of this price comparison is limited.
- (168) As indicated in recital (66), anti-dumping measures against Indian GES imports had been imposed in Russia and the exports from India to Russia dropped significantly during the period considered. This implies that the access to the third main export market for Indian exporting producers is restricted and with the current or even likely increased spare capacity mentioned above in recital (166), there is a strong likelihood that Indian exporting producers will significantly increase their imports of the product concerned to the Union market should measures be allowed to lapse.
- (169) As established in recital (106), Indian import prices without anti-dumping and countervailing duties would undercut the Union sales prices by 9 %. For the non-cooperating exporting producer, an estimate of the undercutting margin without anti-dumping and countervailing duties included was calculated at 12 %. This is an indication of what would be the likely price level of imports from India should the measures be repealed. On this basis, it is likely that the price pressure in the Union market will significantly increase should the measures be repealed, thus further worsening the economic situation of the Union industry.
- (170) In terms of volumes, the repeal of the measures would very likely allow Indian exporting producers to gain market shares in the Union market. In particular the non-cooperating exporting producer, which has currently the higher duty rate of 15,7 %, would have a strong incentive to resume exports to the Union market in significant quantities. Should this situation occur, the Union industry would face an immediate drop in its sales volumes and market shares.
- (171) On this basis, in the absence of measures, Indian exporting producers will likely increase their presence in the Union market, in terms of import volumes and market shares at dumped and subsidised prices significantly undercutting the Union industry's sales prices. This will create an increased price pressure in the Union market with a negative impact on the Union industry's profitability and financial situation. This will also further deteriorate the economic situation of the Union industry.

- (172) Based on the above, the Commission concluded that there is a strong likelihood of recurrence of injury caused by dumped imports from India should the measures be repealed.

E. UNION INTEREST

- (173) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures against India would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users.
- (174) It is recalled that, in the original investigation, the adoption of measures was considered not to be against the interest of the Union.
- (175) All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.
- (176) On this basis, the Commission examined whether, despite the conclusions on the likelihood of a continuation of dumping and recurrence of injury, compelling reasons existed which would lead to the conclusion that it was not in the Union interest to maintain the existing measures.

1. Interest of the Union industry

- (177) As explained in recital (147), the measures enabled the Union industry to maintain its market shares. At the same time, it was also concluded in recital (172), that the Union industry would be likely to experience a deterioration of its situation in case the anti-dumping measures against India were allowed to lapse. Therefore, it can be concluded that the continuation of the measures against India would benefit the Union industry.

2. Interest of importers/traders

- (178) As mentioned in recital (16), no importers cooperated or made themselves known in the current investigation. Therefore, there were no indications that the maintenance of the measures would have a negative impact on the importers outweighing the positive impact of the measures.

3. Interest of users

- (179) As mentioned in recital (18), out of 53 users contacted, eight submitted a questionnaire reply. Four of them have used GES imported from India. Their imports represented around 20 % of all imports of the product concerned from India.
- (180) It is recalled that in the original investigation, it was found that the impact of the imposition of measures would not be significant for the users. Despite the existence of measures for 10 years, users in the Union continued to source their supply, inter alia, from India. The users did not submit any information showing that there have been difficulties in finding other sources and the investigation did also not reveal such information.
- (181) Moreover, as regards the effect of the imposition of measures on users, it is recalled that it was concluded in the original investigation that, given the negligible incidence of the cost of GES on user industries, any cost increase was unlikely to have a significant effect on the user industry. These findings were confirmed in the current review as no indications of the contrary were found after the imposition of measures. Furthermore, none of the four users put forward any argument against the maintenance of the measures.
- (182) One federation of steel producers, the German steel industry federation (Wirtschaftsvereinigung Stahl) opposed the continuation of the measures and claimed that the measures resulted in competition disadvantages for steel

producers in the Union compared to steel producers in other regions that have no measures imposed on GES. The federation alleged that the continuation of measures would allow the Union industry to continue having a dominant position. However, it is clear from the development of the Indian imports after the imposition of the measures that imports from India continued during the period considered. In addition, the investigation has shown that the GES are increasingly entering the Union market from a number of other third countries.

- (183) On this basis, and in line with the conclusions drawn in the original investigation, it is expected that the continuation of measures will not have a significant negative impact on users and that there are therefore no compelling reasons to conclude that it is not in the Union interest to extend the existing measures.

4. Conclusion on Union interest

- (184) In view of the above, the Commission concluded that there are no compelling reasons of Union interest against the extension of the current anti-dumping measures on imports from India.

F. ANTI-DUMPING MEASURES

- (185) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to maintain the anti-dumping measures in force. They were also granted a period within which they could submit comments subsequent to this disclosure. The submissions and comments were duly taken into consideration.
- (186) It follows from the above considerations that, under Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of GES originating in India imposed by Regulation (EU) No 1225/2009 should be maintained.
- (187) After disclosure, the cooperating exporting producer from India requested the Commission to consider continuation of measures for a period of two years. However, the investigation found no exceptional circumstances that would justify limiting the duration of measures to two years.
- (188) The individual company anti-dumping 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'.
- (189) Any claim requesting the application of these individual anti-dumping 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 ⁽¹⁾ 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.
- (190) The Committee established by Article 15(1) of Regulation (EU) 2016/1036 did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,65 g/cm³ 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.

⁽¹⁾ European Commission, Directorate-General for Trade, Directorate H, B-1049 Brussels, Belgium.

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	Duty rate	TARIC additional code
Graphite India Limited (GIL), 31 Chowringhee Road, Kolkatta — 700016, West Bengal	9,4 %	A530
HEG Limited, Bhilwara Towers, A-12, Sector-1, Noida — 201301, Uttar Pradesh	0 %	A531
All other companies	8,5 %	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, 9 March 2017.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2017/423**of 9 March 2017**

re-imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam and produced by Fujian Viscap Shoes Co. Ltd, Vietnam Ching Luh Shoes Co. Ltd, Vinh Thong Producing-Trading-Service Co. Ltd, Qingdao Tae Kwang Shoes Co. Ltd, Maystar Footwear Co. Ltd, Lien Phat Company Ltd, Qingdao Sewon Shoes Co. Ltd, Panyu Pegasus Footwear Co. Ltd, PanYu Leader Footwear Corporation, Panyu Hsieh Da Rubber Co. Ltd, An Loc Joint Stock Company, Qingdao Changshin Shoes Company Limited, Chang Shin Vietnam Co. Ltd, Samyang Vietnam Co. Ltd, Qingdao Samho Shoes Co. Ltd, Min Yuan, Chau Giang Company Limited, Foshan Shunde Fong Ben Footwear Industrial Co. Ltd and Dongguan Texas Shoes Limited Co. implementing the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union ('TFEU'), and in particular to Article 266 thereof,

Having regard to Regulation (EU) 2016/1036 of the European Parliament and the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation'), and in particular Article 9(4) and 14(1) and (3) thereof,

Whereas:

A. PROCEDURE

- (1) On 23 March 2006, the Commission adopted Regulation (EC) No 553/2006 ⁽²⁾ imposing provisional anti-dumping measures on imports of certain footwear with uppers of leather ('footwear') originating in the People's Republic of China ('PRC' or 'China') and Vietnam ('the provisional Regulation').
- (2) By Regulation (EC) No 1472/2006 ⁽³⁾ the Council imposed definitive anti-dumping duties ranging from 9,7 % to 16,5 % on imports of certain footwear with uppers of leather, originating in Vietnam and in the PRC for two years ('Regulation (EC) No 1472/2006' or 'the contested Regulation').
- (3) By Regulation (EC) No 388/2008 ⁽⁴⁾ the Council extended the definitive anti-dumping measures on imports of certain footwear with uppers of leather originating in the PRC to imports consigned from the Macao Special Administrative Region ('SAR'), whether declared as originating in the Macao SAR or not.
- (4) Further to an expiry review initiated on 3 October 2008 ⁽⁵⁾, the Council further extended the anti-dumping measures for 15 months by Implementing Regulation (EU) No 1294/2009 ⁽⁶⁾, i.e. until 31 March 2011, when the measures expired ('Implementing Regulation (EU) No 1294/2009').
- (5) Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd and Risen Footwear (HK) Co Ltd as well as Zhejiang Aokang Shoes Co. Ltd ('the applicants') challenged the contested Regulation in the Court of First Instance (now: the General Court). By judgments of 4 March 2010 in Case T-401/06 Brosmann Footwear (HK) and Others v Council and of 4 March 2010 in Joined Cases T-407/06 and T-408/06 Zhejiang Aokang Shoes and Wenzhou Taima Shoes v Council the General Court rejected those challenges.
- (6) The applicants appealed those judgments. In its judgments of 2 February 2012 in case C-249/10 P Brosmann Footwear (HK) and Others v Council and of 15 November 2012 in case C-247/10P Zhejiang Aokang Shoes v Council ('the Brosmann and Aokang judgments'), the Court of Justice set aside those judgments. It held that the General Court erred in law in so far as it held that the Commission was not required to examine requests for market economy treatment ('MET') under Article 2(7)(b) and (c) of the basic Regulation from non-sampled traders (paragraph 36 of the judgment in Case C-249/10 P and paragraph 29 and 32 of the judgment in Case C-247/10 P).

- (7) The Court of Justice then gave judgment itself in the matter. It held that ‘the Commission ought to have examined the substantiated claims submitted to it by the appellants pursuant to Article 2(7)(b) and (c) of the basic regulation for the purpose of claiming MET in the context of the anti-dumping proceeding [which is] the subject of the contested regulation. It must next be found that it cannot be ruled out that such an examination would have led to a definitive anti-dumping duty being imposed on the appellants other than the 16,5 % duty applicable to them pursuant to Article 1(3) of the contested regulation. It is apparent from that provision that a definitive anti-dumping duty of 9,7 % was imposed on the only Chinese trader in the sample which obtained MET. As is apparent from paragraph 38 above, had the Commission found that the market economy conditions prevailed also for the appellants, they ought, when the calculation of an individual dumping margin was not possible, also to have benefited from the same rate’ (paragraph 42 of the judgment in Case C-249/10 P and paragraph 36 of the judgment in Case C-247/10 P).
- (8) As a consequence, it annulled the contested Regulation, in so far as it relates to the applicants concerned.
- (9) In October 2013, the Commission, by means of a notice published in the *Official Journal of the European Union* ⁽⁷⁾, announced that it had decided to resume the anti-dumping proceeding at the very point at which the illegality occurred and to examine whether market economy conditions prevailed for the applicants for the period from 1 April 2004 to 31 March 2005. That notice invited interested parties to come forward and make themselves known.
- (10) In March 2014, the Council, by Implementing Decision 2014/149/EU ⁽⁸⁾, rejected a Commission proposal to adopt a Council Implementing Regulation re-imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on certain footwear with uppers of leather originating in the People’s Republic of China and produced by Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd, Risen Footwear (HK) Co Ltd and Zhejiang Aokang Shoes Co. Ltd and terminated the proceedings with regard to these producers. The Council took the view that importers having bought shoes from those exporting producers, to whom the relevant customs duties had been reimbursed by the competent national authorities on the basis of Article 236 of Council Regulation (EEC) No 2913/1992 ⁽⁹⁾ (‘the Community Customs Code’), had acquired legitimate expectations on the basis of Article 1(4) of the contested Regulation, which had rendered the provisions of the Community Customs Code, and in particular its Article 221, applicable to the collection of the duties.
- (11) Three importers of the product concerned, C & J Clark International Ltd (‘Clark’), Puma SE (‘Puma’) and Timberland Europe BV (‘Timberland’) (‘the importers concerned’) challenged the anti-dumping measures on imports of certain footwear from China and Vietnam invoking the jurisprudence mentioned in recitals (5) to (7) before their national Courts, which referred the matters to the Court of Justice for a preliminary ruling.
- (12) On 4 February 2016, in the Joined Cases C-659/13 C & J Clark International Limited and C-34/14 Puma SE ⁽¹⁰⁾, the Court of Justice declared Regulation (EC) No 1472/2006 and Implementing Regulation (EU) No 1294/2009 invalid in so far as the European Commission did not examine the MET and individual treatment (‘IT’) claims submitted by exporting producers in the PRC and Vietnam that were not sampled (‘the judgments’), contrary to the requirements laid down in Articles 2(7)(b) and 9(5) of Council Regulation (EC) No 384/96 ⁽¹¹⁾.
- (13) Regarding Case C-571/14 Timberland Europe, the Court of Justice decided on 11 April 2016 to remove the case from the register at the request of the referring national court.
- (14) Article 266 TFEU provides that the institutions must take the necessary measures to comply with the Court’s judgments. In case of annulment of an act adopted by the institutions in the context of an administrative procedure, such as anti-dumping, compliance with the Court’s judgment consists in the replacement of the annulled act by a new act, in which the illegality identified by the Court is eliminated. ⁽¹²⁾
- (15) According to the case-law of the Court, the procedure for replacing the annulled act may be resumed at the very point at which the illegality occurred. ⁽¹³⁾ That implies in particular that in a situation where an act concluding an administrative procedure is annulled, that annulment does not necessarily affect the preparatory acts, such as the initiation of the anti-dumping procedure. In a situation where a regulation imposing definitive anti-dumping measures is annulled, that means that, subsequent to the annulment, the anti-dumping proceeding is still open, because the act concluding the anti-dumping proceeding has disappeared from the Union legal order ⁽¹⁴⁾, except if the illegality occurred at the stage of initiation.

- (16) Apart from the fact that the institutions did not examine the MET and IT claims submitted by exporting producers in the PRC and Vietnam that were not sampled, all other findings made in Regulation (EC) No 1472/2006 and Implementing Regulation (EU) No 1294/2009 remain valid.
- (17) In the present case, the illegality occurred after initiation. Hence, the Commission decided to resume the present anti-dumping proceeding that was still open following the judgments at the very point at which the illegality occurred and to examine whether market economy conditions prevailed for the exporting producers concerned for the period from 1 April 2004 to 31 March 2005, which was the investigation period ('investigation period'). The Commission also examined, where appropriate, whether the exporting producers concerned qualified for IT in accordance with 9(5) of Council Regulation (EC) No 1225/2009 ⁽¹⁵⁾ (the 'basic Regulation prior to its amendment') ⁽¹⁶⁾.
- (18) By Commission Implementing Regulation (EU) 2016/1395 ⁽¹⁷⁾, the Commission re-imposed a definitive anti-dumping duty and collected definitely the provisional duty imposed on imports of Clark and Puma of certain footwear with uppers of leather originating in the PRC and produced by 13 Chinese exporting producers that have submitted MET and IT claims but that had not been sampled.
- (19) By Commission Implementing Regulation (EU) 2016/1647 ⁽¹⁸⁾, the Commission re-imposed a definitive anti-dumping duty and collected definitely the provisional duty imposed on imports of Clark, Puma and Timberland of certain footwear with uppers of leather originating in Vietnam and produced by certain Vietnamese exporting producers that had submitted MET and IT claims, but had not been sampled.
- (20) By Commission Implementing Regulation (EU) 2016/1731 ⁽¹⁹⁾ the Commission re-imposed a definitive anti-dumping duty and collected definitely the provisional duty imposed on imports of Puma and Timberland of certain footwear with uppers of leather originating in the People's Republic of China and produced by General Footwear Ltd and certain footwear with uppers of leather originating in Vietnam and produced by Diamond Vietnam Co. Ltd and Ty Hung Footgearmex/Footwear Co. Ltd ('Ty Hung Co. Ltd') that submitted MET and IT claims, but had not been sampled.
- (21) The validity of Implementing Regulations (EU) 2016/1395, (EU) 2016/1647 and (EU) 2016/1731 has been challenged by Puma and Timberland at the General Court in Cases T-781/16 Puma and Others v Commission and T-782/16 Timberland Europe v Commission. Furthermore, the validity of Implementing Regulation (EU) 2016/1395 has also been challenged at the General Court by Clark in Cases T-790/16 C & J Clark International v Commission and T-861/16 C & J Clark International v Commission.
- (22) In view of the implementation of the judgment in Joined Cases C-659/13 C & J Clark International Limited and C-34/14 Puma SE mentioned above in recital (12), the Commission adopted Implementing Regulation (EU) 2016/223 ⁽²⁰⁾. In Article 1 of that regulation, the Commission instructed national customs authorities to forward all requests for reimbursement of the definitive anti-dumping duties paid on imports of footwear originating in China and Vietnam made by importers based on Article 236 of the Community Customs Code and based on the fact that a non-sampled exporting producer had requested MET or IT in the investigation that lead to the imposition of the definitive measures by Regulation (EC) No 1472/2006 ('original investigation'). The Commission shall assess the relevant MET or IT claim and re-impose the appropriate duty rate. On this basis the national customs authorities should subsequently decide on the request for repayment and remission of the anti-dumping duties.
- (23) The validity of Implementing Regulation (EU) 2016/223 is subject to a preliminary ruling request lodged by the Finanzgericht Düsseldorf on 9 May 2016 (Case C-256/16 Deichmann). The above request for a preliminary ruling was made in the context of a dispute between Deichmann, a German importer of footwear and the relevant national customs authority, the Hauptzollamt Duisburg. The dispute concerns the reimbursement of anti-dumping duties paid by Deichmann on imports of footwear from, inter alia, its Chinese supplier Chengdu Sunshine Shoes Co. Ltd which lodged an MET and IT claim and was not sampled. A second preliminary ruling request on the validity of Implementing Regulation (EU) 2016/223 was lodged by the UK First-tier Tribunal (Tax Chamber) on 28 November 2016 (Case C-612/16 C & J Clark International).

- (24) Furthermore, following a notification from the French customs authorities in accordance with Article 1 of Implementing Regulation (EU) 2016/223, the Commission analysed MET/IT claims from three Chinese exporting producers, Chengdu Sunshine Shoes Co. Ltd, Foshan Nanhai Shyang Yuu Footwear Ltd and Fujian Sunshine Footwear Co. Ltd
- (25) As a result of the above, by Implementing Regulation (EU) 2016/2257 ⁽²¹⁾, the Commission re-imposed a definitive anti-dumping duty and collected definitely the provisional duty imposed on imports certain footwear with uppers of leather originating in the People's Republic of China and produced by three exporting producers that had submitted MET and IT claims but that had not been sampled.
- (26) On 12 July 2016, in accordance with Article 1 of Implementing Regulation (EU) 2016/223, the customs authorities of the United Kingdom notified the Commission reimbursement claims of importers in the Union and provided supporting documents.
- (27) On 13 July 2016, in accordance with Article 1 of Implementing Regulation (EU) 2016/223, the customs authorities of Belgium notified the Commission reimbursement claims of importers in the Union and provided supporting documents.
- (28) On 26 July 2016, in accordance with Article 1 of Implementing Regulation (EU) 2016/223, the customs authorities of Sweden notified the Commission reimbursement claims of importers in the Union and provided supporting documents.
- (29) These notifications, which are the subject of this Regulation, listed a total of 246 companies as suppliers of footwear from China and Vietnam.
- (30) For a large number of these companies, 168 (listed in Annex III of this Regulation) the Commission has no record that these companies had submitted any MET or IT claim form in the original investigation. Amongst these companies there were also companies that are not concerned by the investigation as they were, for instance, not located in China or Vietnam or they were trading or mere processing companies in any event not entitled to any individual dumping margin. The companies listed in Annex III were also not able to demonstrate that they were related to any of the Chinese or Vietnamese exporting producers that had provided a MET/IT claim in the original investigation. However, as mentioned in recital (79) below, the Commission recognises that not all importers that bought footwear from those traders may have been aware of the need to inform the Commission of the names of the exporting producers from which said traders acquired their footwear. Recital (79) also explains in more detail why the Commission, on that basis, has decided to temporarily suspend the examination of the companies listed in Annex III.
- (31) Out of the remaining companies, 20 were already assessed individually or as part of a company group selected in the sample of Chinese or Vietnamese exporting producers in the context of the original investigation (listed in Annex IV of this Regulation). As none of these companies received an individual duty rate, the duty for China of 16,5 %, or of 10 % for Vietnam, is applied to imports of footwear from these companies respectively. These rates were not affected by the judgment mentioned in recital (12).
- (32) Out of the remaining companies, 31 (listed in Annex V of this Regulation) were already assessed either individually or as part of a company group in the context of the implementation of the judgment mentioned in recital (12); namely in Implementing Decision 2014/149/EU or in Implementing Regulations (EU) 2016/1395, (EU) 2016/1647, (EU) 2016/1731 and (EU) 2016/2257 respectively. These assessments included also eight companies that were notified to the Commission and were identified following disclosure through comments received from Federation of the European Sporting Goods Industry ('FESI') and the Footwear Coalition as being related to one of the company or company groups already assessed previously in one of the before-mentioned regulations.
- (33) Companies or company groups assessed by Implementing Decision 2014/149/EU were not made subject to any re-imposition of an anti-dumping duty, as mentioned in recital (10), on the basis that the reimbursement of duties to these companies had already taken place and thus provided legitimate expectations to them that no such re-imposition would occur. The reimbursement claims of importers in the Union relating to companies or company groups assessed by Implementing Regulations (EU) 2016/1395, (EU) 2016/1647, (EU) 2016/1731 and (EU) 2016/2257 respectively, should, on the other hand, not be granted. This is because these importers find themselves in a different legal situation than those assessed by Implementing Decision 2014/149/EU, having notably not gained legitimate expectations.

- (34) Following disclosure, through comments provided by FESI and the Footwear Coalition, one Chinese exporting producer that was notified to the Commission, was identified as a company having submitted a MET/IT claim form during the original investigation but that was not sampled, nor assessed in previous implementation exercises mentioned in recitals (18) to (20) and (25). The same parties also identified four other companies notified to the Commission that were related to Chinese or Vietnamese exporting producers that had submitted a MET/IT claim form during the original investigation, but were not sampled and that had also not been assessed in previous implementation exercises mentioned in recitals (18) to (20) and (25). In total there are thus five companies (listed in Annex VI) whose MET/IT claim, or that of their related companies, should be assessed. These assessments cannot be finalised within the time frame of the current implementation exercise and will therefore be subject to a subsequent implementation exercise. The reimbursement claims of importers in the Union of these companies (listed in Annex VI) should therefore be temporarily suspended pending the outcome of the assessment of the MET/IT claims of the relevant suppliers in China and/or Vietnam.
- (35) Finally, following disclosure, the same parties claimed that six companies listed in Annex III were related to a company or company group already assessed in previous implementation exercises and should be identified as such. However, the evidence in the file did not confirm this claim, which was, in any case, also not substantiated by any further evidence. This claim is therefore rejected.
- (36) The remaining 19 companies were Chinese or Vietnamese exporting producers that were not sampled in the original investigation and that had submitted an MET/IT claim form. The Commission therefore assessed the MET and IT claims provided by these companies. This assessment included also two companies that were notified to the Commission and were identified following disclosure through comments received from FESI and the Footwear Coalition as being related to one Chinese exporting producer subject to the current assessment.
- (37) In summary, in this Regulation, the Commission assessed the MET/IT claim forms of: Fujian Viscap Shoes Co. Ltd, Vietnam Ching Luh Shoes Co. Ltd, Vinh Thong Producing-Trading-Service Co. Ltd, Qingdao Tae Kwang Shoes Co. Ltd, Maystar Footwear Co. Ltd, Lien Phat Company Ltd, Qingdao Sewon Shoes Co. Ltd, Panyu Pegasus Footwear Co. Ltd, PanYu Leader Footwear Corporation, Panyu Hsieh Da Rubber Co. Ltd, An Loc Joint Stock Company, Qingdao Changshin Shoes Company Limited, Chang Shin Vietnam Co. Ltd, Samyang Vietnam Co. Ltd, Qingdao Samho Shoes Co. Ltd, Min Yuan, Chau Giang Company Limited, Foshan Shunde Fong Ben Footwear Industrial Co. Ltd and Dongguan Texas Shoes Limited Co.

**B. IMPLEMENTATION OF THE JUDGMENT OF THE COURT OF JUSTICE IN JOINED CASES C-659/13
AND C-34/14 FOR IMPORTS FROM CHINA**

- (38) The Commission has the possibility to remedy the aspects of the contested Regulation which led to its annulment, while leaving unchanged the parts of the assessment which are not affected by the judgment ⁽²²⁾.
- (39) This Regulation seeks to correct the aspects of the contested Regulation found to be inconsistent with the basic Regulation, and which thus led to the declaration of invalidity in so far as the exporting producers mentioned in recital (37) are concerned.
- (40) All other findings made in the contested Regulation and in Implementing Regulation (EU) No 1294/2009, which were not declared invalid by the Court, remain valid and are herewith incorporated into this Regulation.
- (41) Therefore, the following recitals are limited to the new assessment necessary in order to comply with the judgments of the Court.
- (42) The Commission has examined whether MET or IT prevailed for the exporting producers mentioned in recital (37) ('exporting producers concerned') which submitted MET/IT requests for the investigation period. The purpose of this determination is to ascertain the extent to which the importers concerned are entitled to receive a repayment of the anti-dumping duty paid with regard to anti-dumping duties paid on exports of these suppliers.
- (43) Should the analysis reveal that MET was to be granted to the exporting producers concerned whose exports were subject to the anti-dumping duty paid by the importers concerned, an individual duty rate would have to be attributed to that exporting producer and the repayment of the duty would be limited to an amount corresponding to a difference between the duty paid and the individual duty rate, i.e. in case of import from

China, the difference between 16,5 %, and the duty imposed on the only exporting company in the sample that obtained MET, namely 9,7 %; and, in case of imports from Vietnam, the difference between 10 % and the individual duty rate calculated for the exporting producer concerned, if any.

- (44) Should the analysis reveal that IT was to be granted to an exporting producer for which MET was rejected, an individual duty rate would have to be attributed to the exporting producer concerned and the repayment of the duty would be limited to an amount corresponding to a difference between the duty paid, i.e. in case of imports from China 16,5 % and in case of imports from Vietnam 10 %, and the individual duty calculated for the exporting producer concerned, if any.
- (45) Conversely, should the analysis of such MET and IT claims reveal that both MET and IT should be rejected, no repayment of anti-dumping duties can be awarded.
- (46) As explained in recital (12), the Court of Justice annulled the contested Regulation and Implementing Regulation (EU) No 1294/2009 with regard to exports of certain footwear from certain Chinese and Vietnamese exporting producers, in so far as the Commission did not examine the MET and IT claims submitted by these exporting producers.
- (47) The Commission has therefore examined the MET and IT claims of the exporting producers concerned in order to determine the duty rate applicable to their exports. That assessment showed that the information provided did not demonstrate that the exporting producers concerned operated under market economy conditions or that they qualified for individual treatment (see for a detailed explanation below recitals (48) and following).

1. Assessment of the MET claims

- (48) It is necessary to point out that the burden of proof lies with the producer wishing to claim MET under Article 2(7)(b) of the basic Regulation. To that end, the first subparagraph of Article 2(7)(c) provides that the claim submitted by such a producer must contain sufficient evidence, as laid down in that provision, that the producer operates under market economy conditions. Accordingly, there is no obligation on the Union institutions to prove that the producer does not satisfy the conditions laid down for the recognition of such status. On the contrary, it is for the Union institutions to assess whether the evidence supplied by the producer concerned is sufficient to show that the criteria laid down in the first subparagraph of Article 2(7)(c) of the basic Regulation are fulfilled in order to grant it MET and it is for the Union judicature to examine whether that assessment is vitiated by a manifest error (paragraph 32 of the judgment in Case C-249/10 P and paragraph 24 of the judgment in Case C-247/10 P).
- (49) In accordance with Article 2(7)(c) of the basic Regulation, all five criteria listed in this article should be met so that an exporting producer can be granted MET. Therefore, the Commission considered that the failure to meet at least one criterion was enough to reject the MET request.
- (50) None of the exporting producers concerned was able to demonstrate that they met criterion 1 (Business decisions). More specifically, the Commission found that most of the exporting producers concerned (Companies 7, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25) ⁽²³⁾ could not determine freely their sales quantities for domestic and export markets. In this respect, the Commission established that there were limitations in the output and/or a limitation to sales quantities on specific markets (domestic and export). Moreover, some of the exporting producers concerned (Companies 8, 9, 10, 15) failed to provide essential and complete information (e.g. evidence concerning the structure and the capital of the company, evidence or explanations concerning the company's decision making) to demonstrate that their business decisions were taken in accordance with market signals without significant State interference.
- (51) With regard to criterion 2 (Accounting), Companies 8, 10, 13, 14, 15, 16, 17, 19, 20, 21, 24 and 25 in addition failed to demonstrate that they had a set of basic accounting records independently audited in line with international accounting standards. In particular, the MET assessments revealed that these companies either failed to provide the Commission with an independent auditor opinion/report, or their accounts were not audited, or lacked explicative notes on several items of the balance sheet and income statement.

- (52) Regarding criterion 3 (Assets and 'carry-over'), Companies 7, 8, 9, 10, 11, 13, 15, 16, 17, 18, 19, 22, 23 and 25 failed to demonstrate that no distortions are carried over from the non-market economy system. In particular, these companies failed to provide essential and complete information, inter alia, about the assets owned by the company, and the terms and the value of the land use-rights.
- (53) Lastly, and considering the reasons set out in recital (49), the Commission did not assess criteria 4 (Bankruptcy and property laws) and 5 (Exchange rate conversions) for any of the exporting producers concerned. The Commission informed the exporting producers concerned of the MET findings and invited them to provide comments. No comments were received.

2. Assessment of the IT claims

- (54) Pursuant to Article 9(5) of the basic Regulation prior to its amendment, where Article 2(7)(a) of the same regulation applies, an individual duty shall however be specified for the exporters which can demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation prior to its amendment.
- (55) As mentioned in recital (48) it is necessary to point out that the burden of proof lies with the producer wishing to claim IT under Article 9(5) of the basic Regulation prior to its amendment. To that end, the first subparagraph of Article 9(5) provides that the claim submitted must be properly substantiated. Accordingly, there is no obligation on the Union institutions to prove that the exporter does not satisfy the conditions laid down for the recognition of such status. On the contrary, it is for the Union institutions to assess whether the evidence supplied by the exporter concerned is sufficient to show that the criteria laid down in Article 9(5) of the basic Regulation prior to its amendment are fulfilled in order to grant IT.
- (56) In accordance with Article 9(5) of the basic Regulation prior to its amendment, exporters should demonstrate on the basis of a properly substantiated claim that all five criteria listed therein are met so that they can be granted IT. Therefore, the Commission considered that the failure to meet at least one criterion was enough to reject the IT claim.
- (57) The five criteria are the following:
- (1) in the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits;
 - (2) export prices and quantities, and conditions and terms of sale are freely determined;
 - (3) the majority of the shares belong to private persons; state officials appearing on the board of directors or holding key management positions shall either be in minority or it must be demonstrated that the company is nonetheless sufficiently independent from State interference;
 - (4) exchange rate conversions are carried out at the market rate; and
 - (5) State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.
- (58) All 19 exporting producers concerned that requested MET claimed also IT in the event that they would not be granted MET. The Commission therefore assessed the IT claims of each exporting producer concerned.
- (59) Regarding criterion 1 (Repatriation of capital and profits), Companies 9 and 20 failed to provide evidence showing that they were free to repatriate capital and profits and did thus not demonstrate that this criterion was fulfilled.
- (60) With regard to criterion 2 (Export sales and prices freely determined), the Commission concluded that Companies 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23 and 24, had failed to prove that business decisions such as export prices and quantities, and conditions and terms of sale were freely determined in response to market signals, as the evidence analysed, such as articles of association or business licences, showed a limitation in output and/or on the sales quantities of footwear in specific markets.

- (61) As regards criterion 3 (Company — key management and shares — is sufficiently independent from State interference), Companies 7, 8, 9, 10, 13, 15, 16, 17, 18, 19, 22, 23 and 25 failed to provide the necessary information to demonstrate that they were sufficiently independent from State interference. *inter alia*, no information was provided on how the land use right were transferred to these companies and at what terms and conditions.
- (62) In addition, companies 8, 10, 17, 18 and 25 also failed to prove that they fulfilled the requirements of criterion 5 (Circumvention) on the basis that no information was provided as to how decisions were taken within the company.
- (63) Lastly, considering the provisions referred to in recital (56) the Commission did not assess criterion 4 (exchange rate conversions are carried out at the market rate) for any of the exporting producers concerned.
- (64) None of the 19 exporting producers concerned fulfilled the conditions set out in Article 9(5) of the basic Regulation prior to its amendment and IT was therefore denied to all of them. The Commission informed the exporting producers concerned accordingly and invited them to provide comments. No comments were received.
- (65) The residual anti-dumping duty applicable to China and Vietnam, of 16,5 % and 10 % respectively, should therefore be imposed for exports made by the 19 exporting producers concerned for the period of application of Regulation (EC) No 1472/2006. The period of application of that regulation was initially from 7 October 2006 until 7 October 2008. Following the initiation of an expiry review, it was prolonged on 30 December 2009 until 31 March 2011. The illegality identified in the judgments is that the Union institutions failed to establish whether the products produced by the exporting producers concerned should be subject to the residual duty or to an individual duty. On the basis of the illegality identified by the Court, there is no legal ground for completely exempting the products produced by the exporting producers concerned from paying any anti-dumping duty. A new act remedying the illegality identified by the Court therefore only needs to reassess the applicable anti-dumping duty rate, and not the measures themselves.
- (66) Since it is concluded that the residual duty applicable to China and Vietnam respectively should be re-imposed in respect of the exporting producers concerned at the same rate as originally imposed by the contested Regulation and Implementing Regulation (EU) No 1294/2009, no changes are required to Regulation (EC) No 388/2008. That latter regulation remains valid.

C. CONCLUSIONS

- (67) Having taken account of the comments made and the analysis thereof, it was concluded that the residual anti-dumping duty applicable to China and Vietnam, i.e. 16,5 % and 10 % respectively, should be re-imposed for the period of application of the contested Regulation.

D. DISCLOSURE

- (68) The exporting producers concerned and all parties that came forward were informed of the essential facts and considerations on the basis of which it was intended to recommend the re-imposition of the definitive anti-dumping duty on exports of the 19 exporting producers concerned. They were granted a period within which to make representations subsequent to disclosure.

E. COMMENTS OF INTERESTED PARTIES AFTER DISCLOSURE

- (69) Following disclosure, the Commission received comments on behalf of (i) FESI and the Footwear Coalition ⁽²⁴⁾ representing importers of footwear in the Union; and (ii) Cortina NV ('Cortina'), an importer of footwear in the Union.
- (70) In their comments to the disclosure, FESI and the Footwear Coalition first noted that the current implementation is based on the same legal grounds and reasons as the regulations previously adopted by the Commission related to the same implementation procedure, i.e. Implementing Regulations (EU) 2016/1395, (EU) 2016/1647, (EU) 2016/1731 and (EU) 2016/2257. Therefore, in their reply to the disclosure, they referred to, and incorporated by reference, the comments they had filed in relation to the above Regulations on 16 December 2015, 6 June 2016, 16 June 2016 and 11 August 2016 respectively, without, however, detailing such comments and claims.

- (71) In reply to these comments the Commission refers to Implementing Regulations (EU) 2016/1395, (EU) 2016/1647, (EU) 2016/1731 and (EU) 2016/2257 which fully addressed the comments made by FESI and the Footwear Coalition in the current implementation. Since FESI and the Footwear Coalition did not elaborate on their arguments any further, the Commission considers that these have been fully replied to in the above regulations and the conclusions made in this regard in these regulations are herewith confirmed.
- (72) In addition, FESI and the Footwear Coalition provided comments that are addressed in detail below.

Status of companies listed in Annex III

- (73) FESI and the Footwear Coalition submitted that the approach followed by the Commission with regard to the companies listed in Annex III was illegal. Thus, by listing in Annex III companies that were related to companies already assessed in the context of Implementing Regulations (EU) 2016/1395, (EU) 2016/1647, (EU) 2016/1731 or (EU) 2016/2257, the Commission had breached the concept of 'single economic entity' however applied in the original investigation. In addition, such approach would lead to legal inconsistencies as via the previously mentioned Regulations the Commission re-imposed anti-dumping duties on these companies, while in Annex III the same companies are listed as companies that appear not have submitted any MET/IT claim in the original investigation.
- (74) As for unrelated traders, as they had no legal requirement to file MET/IT claims during the original investigation it would in any event not be required to list them in Annex III.
- (75) Finally, for companies related to Chinese or Vietnamese suppliers that had filed an MET/IT claim in the original investigation, but have not yet been assessed in any regulation referred to in recital (63), in the context of the implementation of the judgments referred to in recital (12), FESI and the Footwear Coalition argued that those should also not have been listed in Annex III. In particular, it was claimed that such an approach would prevent the Commission in future to assess any MET/IT claim of their related suppliers in China or Vietnam. The same parties also claimed that it would be the Commission's obligation to identify from the list of companies notified by the national customs authorities those companies/traders belonging to the same company group and whether they form part of any of the Chinese or Vietnamese exporting producers that filed a MET/IT claim during the original investigation but that were not sampled during the original investigation. Otherwise, the Commission would create an impossible burden of proof for the interested parties.
- (76) As mentioned in recital (34), following disclosure, FESI and the Footwear Coalition, identified indeed companies that were related to Chinese or Vietnamese exporting producers that had submitted a MET/IT claim form during the original investigation, but were not sampled and that had also not been assessed in previous implementation exercises mentioned in recitals (18) to (20) and (25). The information in the file confirmed the information received by these interested parties, so that the MET/IT requests of these companies will be assessed. The outcome of this assessment will be subject to a separate legal act. The request with regard to these companies was therefore granted and these companies are not listed in Annex III.
- (77) With regard to traders that claimed re-imbursement of the duties paid (related or unrelated to Chinese or Vietnamese suppliers), the Commission considers that the burden of proof lies with these traders.
- (78) None of the traders listed in Annex III provided, however, information or proof of their suppliers in China or Vietnam (with the exception of the ones mentioned in recital (76)).
- (79) The Commission recognises, however, that not all importers that bought footwear from those traders may have been aware of the need to inform the Commission of the names of the exporting producers from which those traders acquired their footwear. In order to ensure full respect of their rights of defence, the Commission therefore has decided to specifically contact the importers in question and make them aware of the situation and their burden of proof. In order to provide for the time necessary to implement this decision, the examination of the companies listed in Annex III is temporarily suspended until the Commission has contacted the relevant importers and given them time to react. The deadline of eight months for assessing MET/IT claims will start on

the day the importer informs the Commission of the names and addresses of the exporting producers concerned, or, where no reply is received within the time period determined by the Commission, from the date of expiry of that time period.

Suspension of ongoing implementation exercise

- (80) FESI and the Footwear Coalition argued also that in the interest of legal certainty, the Commission should not adopt and publish any further legal acts regarding the implementation of the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14, until the Court of Justice rules on an ongoing preliminary rulings on the validity of Implementing Regulation (EU) 2016/223 referred to in recital (23) and the validity of Implementing Regulation (EU) 2016/1647 referred to in recital (19) and Implementing Regulation (EU) 2016/1731 referred to in (20). In this respect, it was argued that Article 278 TFEU, whereas a legal action against legal acts adopted by the institutions does not have suspensive effect, is not applicable in the current case because the claim made in this regard is not to suspend Implementing Regulation (EU) 2016/223, but to refrain to adopt further Regulations re-imposing the definitive anti-dumping duties on imports of footwear from China and Vietnam. For the same reasons, it was also argued that the judgments in the *Zuckerfabrik Süderdithmarschen/Altana* were not a legally relevant reference.
- (81) Regarding Article 278 TFEU and the *Zuckerfabrik Süderdithmarschen/Altana* judgments, the Commission agrees with FESI and the Footwear Coalition that that case-law is not applicable to assess whether or not to suspend the implementation of the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14. However, the Commission considers that it is obliged to implement that judgment in a reasonable time-frame, and that ongoing proceedings concerning earlier acts implementing that judgment do not constitute a valid reason for not finalising the implementation of the judgment. In particular, it considers that doing so would deprive interested parties other than FESI and the Footwear Coalition from exercising their rights in the administrative procedure and in a possible court procedure.
- (82) Regarding the validity of Implementing Regulations (EU) 2016/1647 and (EU) 2016/1731, FESI and the Footwear Coalition claimed that given that the latter and any new Regulation re-imposing definitive duties on imports of footwear originating in China and Vietnam have the same legal basis, approach and reasoning of the Commission and the invalidation of Implementing Regulations (EU) 2016/1647 and (EU) 2016/1731 would also entail that any further similar Regulation would be equally invalid. The Commission's approach would therefore not reflect a good faith effort in implementing the judgment in the Joined Cases C-659/13 C & J Clark International and C-34/14 Puma referred to in recital (12).
- (83) Finally, FESI and the Footwear Coalition argued that the implementation of the above judgment would not be subject to any deadlines imposed by the Court of Justice, would have a negative impact on the importers in the Union, while on the other hand would not have any fiscal advantage for the Union. For these reasons the Commission should refrain from implementing the judgment, pending the outcome of the Court cases mentioned in recital (80).
- (84) The Commission refers to the reasons set out above at recital (81).

Procedural requirements when assessing MET and IT claim forms

- (85) FESI and the Footwear Coalition claimed that the burden of proof when assessing MET/IT claims lies with the Commission, as the Chinese and Vietnamese exporting producers had discharged the burden by submitting the MET/IT claims in the original investigation. FESI and the Footwear Coalition also claimed that the same procedural rights should have been granted to the exporting producers concerned by the current implementation as those granted to the sampled exporting producers during the original investigation. FESI and the Footwear Coalition argued in particular, that only a desk analysis had been carried out rather than on-spot verification visits, and that the Chinese and Vietnamese exporting producers were not provided any opportunity to complement their MET/IT claim forms via deficiency letters.
- (86) FESI and the Footwear Coalition further argued that the exporting producers concerned by this implementation were not provided with the same procedural guarantees than those applied in standard anti-dumping investigations, but stricter standards were applied. FESI and the Footwear Coalition claimed that the Commission has not taken into account the time lag between the filing of the MET/IT request in the original investigation and the assessment of these claims. In addition, exporting producers during the original investigation were only provided 15 days in order to fill in the MET/IT requests, instead of the usual 21 days.

- (87) On this basis, FESI and the Footwear Coalition claimed that the fundamental legal principle of granting interested parties full opportunity to exercise their rights of defence laid down in Article 41 of the Charter of Fundamental Rights of the European Union and Article 6 of the Treaty on European Union, was not respected. On this basis, it was argued that by not giving the exporting producers the opportunity to complete incomplete information the Commission misused its powers and effectively reversed the burden of proof at the stage of the implementation.
- (88) Finally, FESI and the Footwear Coalition also claimed that this approach would be discriminatory vis-à-vis the Chinese and Vietnamese exporting producers that were sampled in the original investigation, but also other exporting producers in non-market economy countries that were subject to an anti-dumping investigation and filed MET/IT claims in that investigation. Thus, the Chinese and Vietnamese companies concerned by the current implementation should not be made subject to the same information provision threshold as applied in a normal 15 months investigation and should not be subject to stricter procedural standards.
- (89) FESI and the Footwear Coalition also claimed that the Commission applied de facto facts available within the meaning of Article 18(1) of the basic Regulation, while the Commission did not comply with the procedural rules set out in Article 18(4) of the basic Regulation.
- (90) The Commission recalls that according to the case-law, the burden of proof lies with the producer wishing to claim MET/IT under Article 2(7)(b) of the basic Regulation. To that end, the first subparagraph of Article 2(7)(c) provides that the claim submitted by such a producer must contain sufficient evidence, as laid down in that provision, that the producer operates under market economy conditions. Accordingly, as held by the Court in the judgments in *Brosmann and Aokang*, there is no obligation on the institutions to prove that the producer does not satisfy the conditions laid down for the recognition of such status. On the contrary, it is for the Commission to assess whether the evidence supplied by the producer concerned is sufficient to show that the criteria laid down in the first subparagraph of Article 2(7)(c) of the basic Regulation are fulfilled in order to grant it MET/IT (see recital (48)). In that regard, it is recalled that there is no obligation for the Commission to request the exporting producer to complement the MET/IT claim. The Commission may base its assessment on the information submitted by the exporting producer.
- (91) In relation to the argument that only a desk analysis was carried out, the Commission notes that a desk analysis is a procedure whereby the requests for MET/IT are analysed on the basis of the documents submitted by the exporting producer. All MET/IT applications are subject to a desk analysis by the Commission. In addition, the Commission may decide to carry out on-site inspections. On-site inspections are, however, not required, nor are they carried out for every application for MET/IT. On-site inspections, where they are carried out, usually have as their purpose to confirm a certain preliminary assessment made by the institutions and/or to check the veracity of the information provided by the exporting producer concerned. In other words, if the evidence submitted by the exporting producer clearly shows that MET/IT is not warranted, the additional and optional step of on-site inspections would typically not be organised. It is for the Commission to assess whether a verification visit is appropriate ⁽²⁵⁾. The discretion to decide on the means of verifying the information in an MET/IT form lies with that institution. So, where, as in the present case, the Commission decides, on the basis of a desk analysis, that it was in possession of sufficient evidence to rule on an MET/IT claim, a verification visit is not necessary and cannot be required.
- (92) Concerning the claim that the rights of defence were not appropriately respected through the Commission's decision not to send deficiency letters, it is, first of all, recalled that rights of defence are subjective rights, and that FESI and the Footwear Coalition cannot rely on a violation of a subjective right of other companies. Second, the Commission contests the assertion that there is a practice by the Commission that significant exchange of information and a detailed deficiency completion process is carried out when use is made of desk analysis alone as opposed to desk analysis plus on-site verification. Indeed, FESI and the Footwear Coalition have not been able to provide evidence to the contrary.
- (93) FESI and the Footwear Coalition's comments on discrimination must equally be rejected as unfounded. It is recalled the principle of equal treatment is violated where the Union institutions treat like cases differently, thereby placing some traders at a disadvantage by comparison to others, without such differentiation being justified by the existence of substantial objective differences ⁽²⁶⁾. Yet, that is precisely not what the Commission is doing: by requiring the non-sampled Chinese and Vietnamese exporting producers to file MET/IT claims for re-assessment, it intends to bring these formerly non-sampled exporting producers on the same footing as those who were sampled in the initial investigation. In addition, as the basic Regulation does not set out a minimum

timeframe in this regard, so long as the timeframe for this purpose is reasonable and provides the parties with sufficient opportunity to assemble (or re-assemble) the information needed while at the same time safeguarding their rights of defence, no discrimination occurs.

- (94) Regarding Article 18(1) of the basic Regulation, in the current case, the Commission accepted the information provided by the exporting producers concerned, it did not reject this information and based its assessment on it. Therefore, the Commission did not apply Article 18. It follows that there was no need to follow the procedure under Article 18(4) of the Basic Regulation. The procedure under Article 18(4) is followed in cases where the Commission intends to reject certain information provided by the interested party and to use facts available instead.

Legal basis of re-opening of the investigation

- (95) FESI and the Footwear Coalition argued that the Commission would be in breach of Article 266 TFEU, as this article does not provide it with the legal basis to reopen the investigation with respect to an expired measure. FESI and the Footwear Coalition also reiterated that Article 266 TFEU does not allow for the imposition of anti-dumping duties retroactively, which would also be confirmed by the ruling of the Court of Justice in case C-458/98P *IPS v Council*.
- (96) In this regard, FESI and the Footwear Coalition argued that the anti-dumping proceeding concerning imports of footwear from China and Vietnam had been concluded on 31 March 2011 with the expiry of the measures. To this aim, the Commission had issued a notice in the *Official Journal of the European Union* regarding the expiry of the duties on 16 March 2011 ⁽²⁷⁾ ('notice of expiry'), the Union industry had not claimed any continuation of dumping and also the judgment of the Court of Justice of the European Union did not invalidate the notice of expiry.
- (97) In addition, the same parties argued that there would also not be any grounds in the basic Regulation which would allow the Commission to re-open the anti-dumping investigation.
- (98) In this context, FESI and the Footwear Coalition argued in addition that the resumption of the investigation and the assessment of the MET/IT claims filed by the Chinese and Vietnamese exporting producers concerned in the original investigation is in violation of the universal principle of prescription or limitation. This principle is laid down in the WTO Agreement and the basic Regulation that set a 5-year time limit for the duration of measures and in Articles 236(1) and 221(3) of the Community Customs Code that set a 3-year period for importers to claim the repayment of anti-dumping duties on the one hand and for national customs authorities to collect import duties and anti-dumping duties on the other hand ⁽²⁸⁾. Article 266 of the TFEU does not allow from the deviation of this principle.
- (99) Finally, it was claimed that the Commission has not provided any reasoning or prior jurisprudence to support of the use of Article 266 TFEU as a legal basis for the re-opening of the procedure.
- (100) Concerning the lack of any legal basis to re-open the investigation, the Commission recalls the case-law quoted above at recital (15), pursuant to which it may resume the investigation at the very point at which the illegality occurred. According to the case-law, the legality of an anti-dumping Regulation has to be assessed in the light of the objective norms of Union law, and not of a decisional practice, even where such a practice exists (which is not the case here). Hence, the Commission's past practice, *quod non*, cannot create legitimate expectations: pursuant to settled case-law of the Court, legitimate expectations can only arise where the institutions have given specific assurances which would allow an interested party to lawfully deduce that the Union institutions would act a certain way ⁽²⁹⁾. Neither FESI nor the Footwear Coalition have attempted to demonstrate that such assurances were given in the present case. That is all the more the case because the previous practice referred to does not correspond to the factual and legal situation of the present case, and whose differences can be explained by factual and legal differences with the present case.
- (101) Those differences are as follows: The illegality identified by the Court does not concern the findings on dumping, injury, and Union interest, and therefore the principle of the imposition of the duty, but only the precise duty rate. The previous annulments relied on by the interested parties, on the contrary, concerned the findings on dumping, injury and Union interest. The institutions are therefore permitted to recalculate the precise duty rate for the exporting producers concerned.

- (102) In particular, in the present case, there was no need to seek additional information from interested parties. Rather, the Commission had to assess information that had been filed, but not assessed before the adoption of Regulation (EC) No 1472/2006. In any event, as noted in recital (100) above, previous practice in other cases does not constitute precise and unconditional assurance for the present case.
- (103) Finally, all parties against which the proceeding is directed, i.e. the exporting producers concerned, as well as the parties in the Court cases and the association representing one of those parties, have been informed by the disclosure of the relevant facts on the basis of which the Commission intends to adopt the present MET/IT assessment. Hence, their rights of defence are safeguarded. In that regard, it is to be noted in particular that unrelated importers do not enjoy, in an antidumping proceeding, rights of defence, as those proceedings are not directed against them.
- (104) As regards the claim that the measures in question expired on 31 March 2011, the Commission fails to see why the expiry of the measure would be of any relevance for the possibility for the Commission to adopt a new act to replace the annulled act following a judgment annulling the initial act. According to the case-law referred to in recital (15) above, the administrative procedure should be resumed at the point in time where the illegality occurred.
- (105) The anti-dumping proceedings are hence, as a result of the annulment of the act concluding the proceedings, still open. The Commission is under an obligation to close those proceedings; Article 9(4) of the basic Regulation provides that an investigation has to be closed by an act of the Commission.

Article 236 of the Community Customs Code

- (106) FESI and the Footwear Coalition also submitted that the procedure adopted to reopen the investigation and retroactively impose the duty amounts to an abuse of powers by the Commission and violates of the TEU. FESI and the Footwear Coalition sustain in this regard that the Commission does not have the authority to interfere with Article 236(1) of the Community Customs Code by preventing the repayment of the anti-dumping duties. They argued that it was up to the national customs authorities to draw the consequences from an invalidation of an act imposing anti-dumping duties and that the national customs authorities would also be obliged to reimburse those duties that had been declared invalid by the Court.
- (107) In this regard, FESI and the Footwear Coalition claimed that Article 14(3) of the basic Regulation does not allow the Commission to derogate from Article 236 of the Community Customs Code, as both legislations are of an equal legal order and the basic Regulation cannot be seen as a *lex specialis* of the Community Customs Code.
- (108) Furthermore, the same parties continued Article 14(3) of the basic Regulation does not refer to Article 236 of the Community Customs Code and only states that special provisions may be adopted by the Commission, but no derogations to the Community Customs Code.
- (109) In response thereto, it is important to underline that Article 14(1) of the basic Regulation does not automatically render applicable the rules governing Union customs legislation to the imposition of the individual anti-dumping duties. ⁽³⁰⁾ Rather, Article 14(3) of the basic Regulation gives the Union's institutions the right to transpose and make applicable, where necessary and useful, the rules governing the Union's customs legislation ⁽³¹⁾.
- (110) This transposition does not require a full application of all the provisions of the Union's customs legislation. Article 14(3) of the basic Regulation explicitly envisages special provisions with regard to the common definition of the concept of origin, a good example of where deviation from the provisions of the Union's customs legislation occurs. It is on that basis that the Commission made use of the powers arising from Article 14(3) of the basic Regulation and required that national customs authorities refrain temporarily from any reimbursement. This does not challenge the exclusive competence that national customs authorities have in relation to disputes concerning customs debt: the decision-making authority remains with the customs authorities of the Member States. The Member States customs authorities still decide, on the basis of the conclusions reached by the Commission vis-à-vis the MET and IT claims, whether reimbursement should be granted or not.
- (111) Thus, while it is true that nothing in the Union's customs legislation allows for an obstacle to the reimbursement of erroneously paid customs duties to be erected, no such sweeping statement can be made in relation to the reimbursement of anti-dumping duties. Accordingly, and with the overarching necessity to protect the Union's own resources from unjustified requests for repayment and the related difficulty this would have caused pursuing unjustified repayments thereafter, the Commission had to deviate temporarily from the Union's customs legislation by making use of its powers under Article 14(3) of the basic Regulation.

Lack of statement of legal basis

- (112) FESI and the Footwear Coalition also argued that in violation of Article 296 TFEU, the Commission failed to provide adequate statement of reasons and indication of the legal basis on which duties were re-imposed retroactively and therefore the reimbursement of duties denied to the importers concerned by the current implementation. Accordingly, FESI and the Footwear coalition claimed that the Commission had breached the right to effective judicial protection of interested parties.
- (113) The Commission considers that the extensive legal reasoning provided in the general disclosure document and in this Regulation duly motivates the latter.

Legitimate expectations

- (114) FESI and the Footwear Coalition claimed further that the retroactive correction of expired measures violates the principle of protection of legitimate expectations. FESI argued that first, parties including importers, would have received assurance that the measures expired on 31 March 2011 and that given the time elapsed since the original investigation, parties were entitled to have justified expectations that the original investigation will not be resumed or reopened. Likewise, the Chinese and Vietnamese exporting producers were entitled to have justified legitimate expectations that their MET/IT claims provided in the original investigation would not be reviewed anymore by the Commission, based on the mere fact that these claims were not assessed within the three-month period applicable during the original investigation.
- (115) Regarding legitimate expectations of interested parties that anti-dumping measures expired and that the investigation will not be re-opened anymore, reference is made to recitals (104) and (105) where these claims had been addressed in detail.
- (116) Regarding the legitimate expectations of Chinese and Vietnamese exporting producers not to have their MET/IT claims reviewed, reference is made to recital (100) above, where this has equally been addressed in light of the case-law of the Court on this matter.

Principle of non-discrimination

- (117) FESI and the Footwear Coalition submitted that the imposition of anti-dumping measures with retroactive effects constitutes discrimination of (i) the importers concerned by the current implementation vis-à-vis importers concerned by the implementation of the Brosmann and Aokang judgments referred to in recital (6) that were reimbursed duties paid on imports of footwear from the five exporting producers concerned by these judgments; as well as (ii) a discrimination of the exporting producers concerned by the current implementation vis-à-vis the five exporting producers concerned by the Brosmann and Aokang judgments which were not made subject of any duty following Implementing Decision 2014/149/EU.
- (118) Regarding the claim on discrimination, the Commission recalls first of all the requirements for discrimination, as set out in recital (93) above.
- (119) Then, it is noted that the difference between importers concerned by the current implementation and those concerned by the implementation of the Brosmann and Aokang judgments is that the latter decided to challenge Regulation (EC) No 1472/2006 in the General Court, whereas the former did not.
- (120) A decision adopted by a Union institution, which has not been challenged by its addressee within the time-limit laid down by the sixth paragraph of Article 263 TFEU, becomes definitive as against him. That rule is based in particular on the consideration that the periods within which legal proceedings must be brought are intended to ensure legal certainty by preventing Union measures which produce legal effects from being called into question indefinitely ⁽³²⁾.
- (121) This procedural principle of Union law necessarily creates two groups: those which challenged a Union measure and who may have gained a favourable position as a result (like Brosmann and the other four exporting producers), and those who did not. Yet, that does not mean that the Commission has treated the two parties unequally in violation of the principle of equal treatment. An acknowledgement that a party falls into the latter category because of a conscious decision not to challenge a Union measure does not discriminate against that group.

- (122) So, all interested parties did enjoy judicial protection in the Union courts at all times.
- (123) Insofar as it concerns the alleged discrimination of the exporting producers concerned by the current implementation which were not made subject of any duty following Implementing Decision 2014/149/EU, it should be noted that the decision of the Council not to re-impose duties was clearly taken with regard to the particular circumstances of the specific situation as it stood at the time the Commission made its proposal for the re-imposition of those duties and in particular on the grounds that the anti-dumping duties concerned had already been reimbursed, and to the extent that the original communication of the debt to the debtor in question had been withdrawn following the judgments in Brosmann and Aokang. According to the Council, this reimbursement had created legitimate expectations on the part of the importers concerned. Since no comparable reimbursement took place for other importers, these are not in a comparable situation to those importers concerned by the Council decision.
- (124) In any event, the fact that the Council chose to act in a certain way, given the particular circumstances of the case before it, cannot bind the Commission to implement another judgment in the exact same way.

Commission's competence to impose definitive anti-dumping measures

- (125) In addition, FESI and the Footwear Coalition claimed that the Commission does not have the competence to adopt the Regulation imposing an anti-dumping duty retroactively in the current implementation exercise, and that this competence would in any event lie with the Council. This claim was based on the argument that if the investigation is resumed at the very point at which the illegality occurred, the same rules should also be applicable than the ones at the time of the original investigation, where definitive measures were adopted by the Council. These parties argued that in accordance with Article 3 of Regulation (EU) No 37/2014 of the European Parliament and of the Council ⁽³³⁾ (also called 'Omnibus I Regulation') the new decision-making procedure in the field of the common commercial policy does not apply to the present context given that before the entry into force of the Omnibus I Regulation the Commission (i) had already adopted an act (the provisional Regulation); (ii) the consultations that were required under Regulation (EC) No 384/96 were initiated and concluded; and (iii) the Commission had already adopted a proposal for a Council Regulation adopting definitive measures. On this basis, these parties concluded that the decision making procedures prior to the entry in force of the Omnibus I Regulation should apply.
- (126) That claim, however, focuses on the date of initiation of the investigation (which is indeed relevant in relation to the other substantive amendments that were made to the basic Regulation) but fails to note that Regulation (EU) No 37/2014 uses a different criterion (that is, the initiation of the procedure for adoption of measures). The position of FESI and the Footwear Coalition is therefore based on an incorrect interpretation of the transitional rule in Regulation (EU) No 37/2014.
- (127) Indeed, given the reference in Article 3 of Regulation (EU) No 37/2014 to '*procedures initiated for the adoption of measures*', which sets out the transitional rules for the changes to the decision-making procedures for the adoption of anti-dumping measures, and given the meaning of 'procedure' in the basic Regulation, for an investigation that was initiated prior to the entry into force of Regulation (EU) No 37/2014, but where the Commission had not launched the consultation of the relevant committee with a view to adopting measures prior to that entry into force, the new rules apply to the procedure for adopting said anti-dumping measures. The same holds true for proceedings where measures had been imposed on the basis of the old rules and come up for review, or for measures where provisional duties had been imposed on the basis of the old rules, but the procedure for adopting definitive measures had not been launched yet when Regulation (EU) No 37/2014 entered into force. In other words, Regulation (EU) No 37/2014 applies to a specific '*procedure for adoption*' and not to the entire period of a given investigation or even proceeding.
- (128) Accordingly, the decision-making procedure introduced by the Omnibus I Regulation was the correct one to apply.
- (129) With regard to Cortina, it first claimed that the Commission has no legal basis to investigate the MET/IT claims submitted by exporting producers in the original investigation. Cortina argued that the proceeding, which was closed by the expiry of the measures on 31 March 2011, was not invalidated by the judgment in Joined Cases C-659/13 and C-34/14, and that therefore, it cannot be re-opened.

- (130) In reply to this comment, the Commission refers to the explanation provided in recitals (104) and (105) above.
- (131) Second, Cortina claimed that the current proceeding is in breach of the principles of non-retroactivity and legal certainty enshrined in Article 10 of the basic Regulation.
- (132) As to the claim concerning retroactivity based on Article 10 of the basic Regulation and Article 10 of the WTO Anti-Dumping Agreement ('WTO ADA'), Article 10(1) of the basic Regulation, which follows the text of Article 10(1) of the WTO ADA, stipulates that provisional measures and definitive anti-dumping duties shall only be applied to products which enter free circulation after the time when the decision taken pursuant to Article 7(1) or 9(4) of the basic Regulation, as the case may be, enters into force. In the present case, the anti-dumping duties in question are only applied to products which entered into free circulation after the provisional and the contested (definitive) Regulation taken pursuant to 7(1) and 9(4) of the basic Regulation respectively had entered into force. Retroactivity in the sense of Article 10(1) of the basic Regulation, however, refers only to a situation where the goods were introduced into free circulation before measures were introduced, as can be seen from the very text of that provision as well as from the exception for which Article 10(4) of the basic Regulation provides.
- (133) The Commission also observes that there is neither violation of the principle of retroactivity, nor violation of legal certainty and legitimate expectations involved in the present case.
- (134) As to retroactivity, the case-law of the Court distinguishes, when assessing whether a measure is retroactive, between the application of a new rule to a situation that has become definitive (also referred to as an existing or definitively established legal situation) ⁽³⁴⁾, and a situation that started before the entry into force of the new rule, but which is not yet definitive (also referred to as a temporary situation) ⁽³⁵⁾.
- (135) In the present case, the situation of the imports of the products concerned that occurred during the period of application of Regulation (EC) No 1472/2006 has not yet become definitive, because, as a result of the annulment of the contested Regulation, the anti-dumping duty applicable to them has not yet been definitively established. At the same time, importers of footwear were warned that such a duty may be imposed by the publication of the Notice of Initiation ⁽³⁶⁾ and the provisional Regulation. It is standing case-law of the Union Courts that operators cannot acquire legitimate expectations until the institutions have adopted an act closing the administrative procedure, which has become definitive ⁽³⁷⁾.
- (136) This Regulation constitutes immediate application to the future effects of a situation that is ongoing: The duties on footwear have been levied by national customs authorities. As a result of the requests for reimbursement, which have not been decided in a definitive way, they constitute an ongoing situation. This Regulation sets out the duty rate applicable to those imports, and hence regulates the future effects of an ongoing situation.
- (137) In any event, even if there was retroactivity in the sense of Union law, *quod non*, such retroactivity would be justified, for the following reason:
- (138) The substantive rules of Union law may apply to situations existing before their entry into force in so far as it clearly follows from their terms, objectives or general scheme that such effect must be given to them ⁽³⁸⁾. In particular, in case C-337/88 *Società agricola fattoria alimentare (SAFA)* it was held that: '[A]lthough in general the principle of legal certainty precludes a Community measure from taking effect from a point in time before its publication, it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected' ⁽³⁹⁾.
- (139) In the present case, the purpose is to comply with the obligation of the Commission pursuant to Article 266 TFEU. Since, in the judgments referred to in recital (12) above, the Court only found an illegality with regard to the determination of the applicable duty rate, and not with regard to the imposition of the measures themselves (that is, with regard to the finding of dumping, injury, causation and Union interest), the exporting producers concerned could not have legitimately expected that no definitive anti-dumping measures would be imposed. Consequently, that imposition, even if it was retroactive, *quod non*, cannot be construed as breaching legitimate expectations.
- (140) Third, Cortina claimed that the Commission's statement in recital (46) that the Court of Justice annulled the contested Regulation and Implementing Regulation (EU) No 1294/2009 with regard to exports of certain

footwear from certain Chinese and Vietnamese exporting producers is incorrect, insofar as judgment in cases C-659/13 and C-34/14 did not annul Regulation (EC) No 1472/2006 and Implementing Regulation (EU) No 1294/2009 with regard to the 19 exporting producers concerned, but it had annulled these regulations with *erga omnes* effect. According to Cortina, if the Commission were to re-impose an anti-dumping duty only on imports from the 19 exporting producers concerned, and not on imports from other exporting producers equally affected by the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14 C & J Clark International Limited and Puma SE, it would constitute unjustifiable discrimination vis-à-vis imports of these other exporting producers, and it would also be in breach of Article 266 TFEU.

- (141) Regarding the claim of discriminatory treatment vis-à-vis imports of other exporting producers affected by the judgment of the Court of Justice in the Joined Cases C-659/13 and C-34/14 C & J Clark International Limited and Puma SE, the Commission observes that exporting producers and certain importers concerned by this Regulation enjoy judicial protection in the Union courts against it. Other importers enjoy such protection via the national courts and tribunals, which act as judges of ordinary Union law.
- (142) As mentioned in recital (21), in view of the implementation of the judgment in Joined Cases C-659/13 and C-34/14 C & J Clark International Limited and Puma SE, the Commission adopted Implementing Regulation (EU) 2016/223. In Article 1 of that regulation the Commission instructed national customs authorities to forward all requests for reimbursement of the definitive anti-dumping duties paid on imports of footwear originating in China and Vietnam made by importers based on Article 236 of the Community Customs Code and based on the fact that a non-sampled exporting producer had requested MET or IT in the original investigation. The Commission will assess the relevant MET or IT claim and re-impose the appropriate duty rate. On this basis the national customs authorities will subsequently decide on the request for repayment and remission of the anti-dumping duties.
- (143) Therefore, for all imports of footwear where the above criteria are fulfilled the Commission will examine the MET and IT claims and anti-dumping duties will be re-imposed based on the objective criteria laid down in Articles 2(7)(b) and 9(5) of the basic Regulation prior to its amendment. Therefore, all other non-sampled exporting producers from the PRC and Vietnam and their importers will be treated in the same fashion at a later stage pursuant to the procedure set out in Implementing Regulation (EU) 2016/223. It is only where there are no outstanding national procedures that no assessment of the MET and IT claims will be carried out, as it would serve no practical purpose.
- (144) Fourth, Cortina claimed that it would be discriminatory to re-impose an anti-dumping duty on the 19 exporting producers concerned, given that no anti-dumping duty was re-imposed following the Brosmann and Aokang judgments.
- (145) This claim is unfounded. Importers that have imported from Brosmann and the other four exporting producers concerned by the judgments in cases C-247/10 P and C-249/10 P, are in a different factual and legal situation, because their exporting producers decided to challenge the contested Regulation and because they were reimbursed their duties, so that they are protected by Article 221(3) of the Community Customs Code. No such challenge and no such reimbursement have taken place for others. See, in this regard, also recitals (118) to (122) above.
- (146) Fifth, Cortina alleged that there were several procedural irregularities resulting from this investigation. In the first place, they argued that the exporting producers concerned may no longer be in a position to provide meaningful comments or adduce additional evidence to support their MET/IT claims that they made several years ago. For example, the companies may no longer exist or relevant documents may no longer be available.
- (147) In addition, Cortina argued that unlike during the original investigation, the Commission's measures would de facto and de jure affect only importers, whereas they have no means of providing any meaningful input and cannot require their suppliers to cooperate with the Commission.
- (148) The Commission observes that nothing in the basic Regulation requires the Commission to give exporting companies claiming MET/IT the possibility to complete lacking factual information. It recalls that according to the case-law, the burden of proof lies with the producer wishing to claim MET/IT under Article 2(7)(b) of the

basic Regulation. To that end, the first subparagraph of Article 2(7)(c) provides that the claim submitted by such a producer must contain sufficient evidence, as laid down in that provision, that the producer operates under market economy conditions. Accordingly, as held by the Court in the judgments in *Brosmann* and *Aokang*, there is no obligation on the institutions to prove that the producer does not satisfy the conditions laid down for the recognition of such status. On the contrary, it is for the Commission to assess whether the evidence supplied by the producer concerned is sufficient to show that the criteria laid down in the first subparagraph of Article 2(7)(c) of the basic Regulation are fulfilled in order to grant it MET/IT (see above recital (44)). The right to be heard concerns the assessment of those facts, but does not comprise the right to remedy deficient information. Otherwise, the exporting producer could prolong indefinitely the assessment, by providing information piece by piece.

- (149) In that regard, it is recalled that there is no obligation, for the Commission, to request the exporting producer to complement the MET/IT claim. As mentioned in the preceding recital, the Commission may base their assessment on the information submitted by the exporting producer. In any event, the exporting producers concerned have not contested the assessment of their MET/IT claims by the Commission, and they have not identified which documents or which people they have no longer been able to rely upon. The allegation is therefore so abstract that the institutions cannot take into account those difficulties when carrying out the assessment of the MET/IT claims. As that argument is based on speculation and not supported by precise indications as to which documents and which people are no longer available and as to what the relevance of those documents and people for the assessment of the MET/IT claim is, that argument is rejected.
- (150) Regarding the claim that an importer would have no means to provide any meaningful input, the Commission observes the following: first, importers do not enjoy rights of defence, as the anti-dumping measure is not directed against them, but against the exporting producers. Second, importers had the opportunity to comment on that point already during the administrative procedure prior to the adoption of the contested Regulation. Third, if importers thought that there was an irregularity in that regard, they had to take the necessary contractual arrangements with their suppliers to ensure to dispose of the necessary documentation. Therefore, the claim has to be rejected.
- (151) Sixth, Cortina argued that the Commission failed to examine whether the imposition of the anti-dumping duties would be in the Union interest and argued that the measures would be against the Union interest because (i) the measures already had their intended effect when first imposed; (ii) the measures would not cause additional benefit for the Union industry; (iii) the measures would not affect the exporting producers; and (iv) the measures would impose an important cost on the importers in the Union.
- (152) The present case only concerns the MET/IT requests, because this is the only point on which a legal error has been identified by the Union Courts. For Union interest, the assessment in Regulation (EC) No 1472/2006 remains fully valid. Furthermore, the present measure is justified in order to protect the financial interest of the Union.
- (153) Seventh, Cortina claimed that the anti-dumping duty, if re-imposed, could no longer be collected because of the statute of limitations of Article 221(3) of the Community Customs Code (now Article 103(1) of the Union Customs Code) had expired. According to Cortina, this situation would constitute an abuse of power by the Commission.
- (154) The Commission recalls that according to Article 221(3) of the Community Customs Code/103(1) of the Union Customs Code, the statute of limitations does not apply where an appeal pursuant to Article 243 of the Community Customs Code/Article 44(2) of the Union Customs Code is lodged, as in all the present cases, which concern appeals on the basis of Article 236 of the Community Customs Code/Article 119 of the Union Customs Code. An appeal within the meaning of Article 103(3) of the Union Customs Code, pursuant to the clarification in Article 44(2) of the same regulation, extends from the initial challenge to the decision by the national customs authorities imposing the duties up to the final judgment rendered by the national court, including, where necessary, a reference for a preliminary ruling. The three year period is consequently stayed from the date the challenge is filed.
- (155) Lastly, Cortina claimed that, following the expiry of paragraph 15(a)(ii) of China's WTO Protocol of Accession on 11 December 2016, the Commission can no longer rely on the methodology used to determine normal value for Chinese exporters in the original investigation (i.e. the analogue country methodology under Article 2(7)(a) of the basic Regulation).

(156) The contested regulation was adopted in 2006. The relevant legislation applicable to this proceeding is Regulation (EU) 2016/1036. Therefore, this claim is rejected.

(157) This Regulation is in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of footwear with uppers of leather or composition leather, excluding sports footwear, footwear involving special technology, slippers and other indoor footwear and footwear with a protective toecap, originating in the People's Republic of China and Vietnam and produced by the exporting producers listed in Annex II to this Regulation and falling within CN codes: 6403 20 00, ex 6403 30 00 ⁽⁴⁰⁾, ex 6403 51 11, ex 6403 51 15, ex 6403 51 19, ex 6403 51 91, ex 6403 51 95, ex 6403 51 99, ex 6403 59 11, ex 6403 59 31, ex 6403 59 35, ex 6403 59 39, ex 6403 59 91, ex 6403 59 95, ex 6403 59 99, ex 6403 91 11, ex 6403 91 13, ex 6403 91 16, ex 6403 91 18, ex 6403 91 91, ex 6403 91 93, ex 6403 91 96, ex 6403 91 98, ex 6403 99 11, ex 6403 99 31, ex 6403 99 33, ex 6403 99 36, ex 6403 99 38, ex 6403 99 91, ex 6403 99 93, ex 6403 99 96, ex 6403 99 98 and ex 6405 10 00 ⁽⁴¹⁾ which took place during the period of application of Regulation (EC) No 1472/2006 and Implementing Regulation (EU) No 1294/2009. The TARIC codes are listed in the Annex I to this Regulation.

2. For the purpose of this Regulation, the following definitions shall apply:

- 'sports footwear' shall mean footwear within the meaning of subheading note 1 to Chapter 64 of Annex I of Commission Regulation (EC) No 1719/2005 ⁽⁴²⁾,
- 'footwear involving special technology' shall mean footwear having a CIF price per pair of not less than EUR 7,50, for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact, or materials such as low-density polymers and falling within CN codes ex 6403 91 11, ex 6403 91 13, ex 6403 91 16, ex 6403 91 18, ex 6403 91 91, ex 6403 91 93, ex 6403 91 96, ex 6403 91 98, ex 6403 99 91, ex 6403 99 93, ex 6403 99 96, ex 6403 99 98,
- 'footwear with a protective toecap' shall mean footwear incorporating a protective toecap with an impact resistance of at least 100 joules ⁽⁴³⁾ and falling within CN codes: ex 6403 30 00 ⁽⁴⁴⁾, ex 6403 51 11, ex 6403 51 15, ex 6403 51 19, ex 6403 51 91, ex 6403 51 95, ex 6403 51 99, ex 6403 59 11, ex 6403 59 31, ex 6403 59 35, ex 6403 59 39, ex 6403 59 91, ex 6403 59 95, ex 6403 59 99, ex 6403 91 11, ex 6403 91 13, ex 6403 91 16, ex 6403 91 18, ex 6403 91 91, ex 6403 91 93, ex 6403 91 96, ex 6403 91 98, ex 6403 99 11, ex 6403 99 31, ex 6403 99 33, ex 6403 99 36, ex 6403 99 38, ex 6403 99 91, ex 6403 99 93, ex 6403 99 96, ex 6403 99 98 and ex 6405 10 00,
- 'slippers and other indoor footwear' shall mean such footwear falling within CN code ex 6405 10 00.

3. The rate of the definitive anti-dumping duty applicable, before duty, to the net free-at-Union-frontier price of the products described in paragraph 1 and manufactured by the exporting producers listed in Annex II to this Regulation shall be 16,5 % for the Chinese exporting producers concerned and 10 % for the Vietnamese exporting producers concerned.

Article 2

The amounts secured by way of the provisional anti-dumping duty pursuant to Regulation (EC) No 553/2006 shall be definitively collected. The amounts secured in excess of the definitive rate of anti-dumping duties shall be released.

Article 3

The assessment of the situation of companies listed in Annex III of this Regulation is temporarily suspended until the importer claiming reimbursement from national customs authorities has informed the Commission of the names and addresses of the exporting producers from which the relevant traders have purchased the footwear, or, where no reply is received within that period of time, the expiry of the deadline set by the Commission for providing that information. That deadline shall be set out in a letter by the Commission to the relevant importer, and shall, in any case, not be shorter than one month.

The Commission shall examine the information received within eight months from the date of receipt. National customs authorities are hereby directed not to reimburse customs duties collected until the Commission has finalised its assessment of those claims.

Article 4

This Regulation shall enter into force on the day following that of 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, 9 March 2017.

For the Commission

The President

Jean-Claude JUNCKER

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Regulation (EC) No 553/2006 of 23 March 2006 imposing provisional anti-dumping measures on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam (OJ L 98, 6.4.2006, p. 3).

⁽³⁾ Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam (OJ L 275, 6.10.2006, p. 1).

⁽⁴⁾ Council Regulation (EC) No 388/2008 of 29 April 2008 extending the definitive anti-dumping measures imposed by Regulation (EC) No 1472/2006 on imports of certain footwear with uppers of leather originating in the People's Republic of China to imports of the same product consigned from the Macao SAR, whether declared as originating in the Macao SAR or not (OJ L 117, 1.5.2008, p. 1).

⁽⁵⁾ OJ C 251, 3.10.2008, p. 21.

⁽⁶⁾ Council Implementing Regulation (EU) No 1294/2009 of 22 December 2009 imposing a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in Vietnam and originating in the People's Republic of China, as extended to imports of certain footwear with uppers of leather consigned from the Macao SAR, whether declared as originating in the Macao SAR or not, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 (OJ L 352, 30.12.2009, p. 1).

⁽⁷⁾ OJ C 295, 11.10.2013, p. 6.

⁽⁸⁾ Council Implementing Decision 2014/149/EU of 18 March 2014 rejecting the proposal for an Implementing Regulation reimposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed of certain footwear with uppers of leather originating in the People's Republic of China and produced by Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd, Risen Footwear (HK) Co. Ltd and Zhejiang Aokang Shoes Co. Ltd (OJ L 82, 20.3.2014, p. 27).

⁽⁹⁾ Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).

- ⁽¹⁰⁾ OJ C 106, 21.3.2016, p. 2.
- ⁽¹¹⁾ Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ L 56, 6.3.1996, p. 1).
- ⁽¹²⁾ Joined Cases 97, 193, 99 and 215/86 *Asteris AE and others and Hellenic Republic v Commission* [1988] ECR 2181, paragraphs 27 and 28.
- ⁽¹³⁾ Case C-415/96 *Spain v Commission* [1998] ECR I-6993, paragraph 31; Case C-458/98 P *Industrie des Poudres Sphériques v Council* [2000] I-8147, paragraphs 80 to 85; Case T-301/01 *Alitalia v Commission* [2008] II-1753, paragraphs 99 and 142; Joined Cases T-267/08 and T-279/08 *Région Nord-Pas de Calais v Commission* [2011] II-1999, paragraph 83.
- ⁽¹⁴⁾ Case C-415/96 *Spain v Commission* [1998] ECR I-6993, paragraph 31; Case C-458/98 P *Industrie des Poudres Sphériques v Council* [2000] I-8147, paragraphs 80 to 85.
- ⁽¹⁵⁾ Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).
- ⁽¹⁶⁾ Regulation (EC) No 1225/2009 was subsequently amended by Regulation (EU) No 765/2012 of the European Parliament and of the Council of 13 June 2012 amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community (OJ L 237, 3.9.2012, p. 1). According to Article 2 of Regulation (EU) No 765/2012, the amendments introduced by that amending Regulation only apply to investigations initiated after the entry into force of that Regulation. The present investigation, however, was initiated on 7 July 2005 (OJ C 166, 7.7.2005, p. 14).
- ⁽¹⁷⁾ Commission Implementing Regulation (EU) 2016/1395 of 18 August 2016 re-imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and produced by Buckingham Shoe Mfg Co. Ltd, Buildyet Shoes Mfg, DongGuan Elegant Top Shoes Co. Ltd, Dongguan Stella Footwear Co. Ltd, Dongguan Taiway Sports Goods Limited, Foshan City Nanhai Qun Rui Footwear Co., Jianle Footwear Industrial, Sihui Kingo Rubber Shoes Factory, Synfort Shoes Co. Ltd, Taicang Kotoni Shoes Co. Ltd, Wei Hao Shoe Co. Ltd, Wei Hua Shoe Co. Ltd, Win Profile Industries Ltd and implementing the judgment of the Court of Justice in joined cases C-659/13 and C-34/14 (OJ L 225, 19.8.2016, p. 52).
- ⁽¹⁸⁾ Commission Implementing Regulation (EU) 2016/1647 of 13 September 2016 re-imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in Vietnam and produced by Best Royal Co. Ltd, Lac Cuong Footwear Co. Ltd, Lac Ty Co. Ltd, Saoviet Joint Stock Company (Megastar Joint Stock Company), VMC Royal Co. Ltd, Freetrend Industrial Ltd and its related company Freetrend Industrial A (Vietnam) Co. Ltd, Fulgent Sun Footwear Co. Ltd, General Shoes Ltd, Golden Star Co. Ltd, Golden Top Company Co. Ltd, Kingmaker Footwear Co. Ltd, Tripos Enterprise Inc., Vietnam Shoe Majesty Co. Ltd, and implementing the judgment of the Court of Justice in joined cases C-659/13 and C-34/14 (OJ L 245, 14.9.2016, p. 16).
- ⁽¹⁹⁾ Commission Implementing Regulation (EU) 2016/1731 of 28 September 2016 re-imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam and produced by General Footwear Ltd (China), Diamond Vietnam Co. Ltd and Ty Hung Footgearmex/Footwear Co. Ltd and implementing the judgment of the Court of Justice in joined cases C-659/13 and C-34/14 (OJ L 262, 29.9.2016, p. 4).
- ⁽²⁰⁾ Implementing Regulation (EU) 2016/223 of 17 February 2016 establishing a procedure for assessing certain market economy treatment and individual treatment claims made by exporting producers from China and Vietnam, and implementing the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14 (OJ L 41, 18.2.2016, p. 3).
- ⁽²¹⁾ Commission Implementing Regulation (EU) 2016/2257 of 14 December 2016 re-imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and produced by Chengdu Sunshine Shoes Co. Ltd, Foshan Nanhai Shyang Yuu Footwear Ltd and Fujian Sunshine Footwear Co. Ltd and implementing the judgment of the Court of Justice in joined cases C-659/13 and C-34/14 (OJ L 340 I, 15.12.2016, p. 1).
- ⁽²²⁾ Case C-458/98 P *Industrie des Poudres Sphériques v Council* [2000] I-8147, paragraphs 80 to 85.
- ⁽²³⁾ In order to protect confidentiality, company names have been replaced by numbers. Companies 1 to 3 have been subject to Implementing Regulation (EU) 2016/1731 mentioned in recital (20), while Companies 4 to 6 have been subject to Implementing Regulation (EU) 2016/2257 mentioned in recital (24). The companies concerned by the current Regulation were attributed the consecutive numbers 7 to 25.
- ⁽²⁴⁾ Wolverine Europe BV, Wolverine Europe Limited and Damco Netherlands BV, in their reply to the General Disclosure Document, referred to the comments submitted by FESI and the Footwear Coalition.

- (²⁵) Case T-192/08 Transnational Company Kazchrome and ENRC Marketing v Council, [2011] ECR II-07449, at paragraph 298. The judgment was upheld on appeal, see Case C-10/12 P Transnational Company Kazchrome and ENRC Marketing v Council, ECLI:EU:C:2013:865.
- (²⁶) Case T-255/01 Changzhou Hailong Electronics & Light Fixtures and Zhejiang Sunlight Group v Council, [2003] ECR II-04741, at paragraph 60.
- (²⁷) Notice of the expiry of certain anti-dumping measures (OJ C 82, 16.3.2011, p. 4).
- (²⁸) That time limit is now found in Articles 103(1) and 121(1)(a) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).
- (²⁹) Case C-373/07 P Mebrom v Commission, [2009] ECR I-00054, at paragraphs 91-94.
- (³⁰) See Commission Staff Working Document, Compliance with the judgments of the Court of Justice of 2 February 2012 in Case C-249/10 P Brosmann and of 15 November 2012 in Case C-247/10P Zhejiang Aokang, accompanying the Proposal for a Council Implementing Regulation re-imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and produced by Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd, Risen Footwear (HK) Co. Ltd and Zhejiang Aokang Shoes Co. Ltd/* SWD/2014/046 final, at recitals 45-48.
- (³¹) Case C-382/09 Stils Met, [2010] ECR I-09315, paragraphs 42-43. The TARIC, for instance, which is also used as a vehicle to ensure compliance with trade defence measures, finds its origins in Article 2 of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).
- (³²) Case C-239/99 Nachi Europe, [2001] ECR I-01197, at paragraph 29.
- (³³) Regulation (EU) No 37/2014 of the European Parliament and of the Council of 15 January 2014 amending certain regulations relating to the common commercial policy as regards the procedures for the adoption of certain measures (OJ L 18, 21.1.2014, p. 1).
- (³⁴) Case 270/84 Licata v ESC [1986] ECR 2305, paragraph 31 Case C-60/98 Butterfly Music v CEDEM [1999] ECR I-3939, paragraph 24; Case 68/69 Bundesknappschaft v Brock [1970] ECR 171, paragraph 6; Case 1/73 Westzucker GmbH v Einfuhr und Vorratsstelle für Zucker [1973] 723, paragraph 5; Case 143/73 SOPAD v FORMA a.o. [1973] ECR 1433, paragraph 8; Case 96/77 Bauche [1978] ECR 383, paragraph 48; Case 125/77 Koninklijke Scholten-Honig NV v Floofdproduktschaap voor Akkerbouwprodukten [1978] ECR 1991, paragraph 37; Case 40/79 P v Commission [1981] ECR 361, paragraph 12; Case T-404/05 Greece v Commission [2008] ECR II-272, paragraph 77; C-334/07 P Commission v Freistaat Sachsen [2008] ECR I-9465, paragraph 53.
- (³⁵) Case T-176/01 Ferrière Nord v Commission [2004] ECR II-3931, paragraph 139; C-334/07 P
- (³⁶) OJ C 166, 7.7.2005, p. 14.
- (³⁷) Case C-169/95 Spain v Commission [1997] ECR I-135, paragraph 51 to 54; Joined Cases T-116/01 and T-118/01 P&O European Ferries (Vizcaya) SA v Commission [2003] ECR II-2957, paragraph 205.
- (³⁸) Case C-34/92 GruSa Fleisch v Hauptzollamt Hamburg-Jonas [1993] ECR I-4147, paragraph 22. The same or similar wording can be found for example in Joined cases 212 to 217/80 Meridionale Industria Salumi a.d. [1981] ECR 2735, paragraph 9 and 10; Case 21/81 Bout [1982] ECR 381, paragraph 13; Case T-42/96 Eyckeler & Malt v Commission [1998] ECR II-401, paragraphs 53 and 55 to 56; Case T-180/01 Euroagri v Commission [2004] ECR II-369, paragraphs 36 to 37.
- (³⁹) Case C-337/88 Società agricola fattoria alimentare (SAFA) [1990] ECR I-1, paragraph 13.
- (⁴⁰) By virtue of Commission Regulation (EC) No 1549/2006 of 17 October 2006 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 301, 31.10.2006, p. 1) this CN code is replaced on 1 January 2007 by CN codes ex 6403 51 05, ex 6403 59 05, ex 6403 91 05 and ex 6403 99 05.
- (⁴¹) As defined in Commission Regulation (EC) No 1719/2005 of 27 October 2005 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 286, 28.10.2005, p. 1). The product coverage is determined in combining the product description in Article 1(1) and the product description of the corresponding CN codes taken together.
- (⁴²) See previous footnote.
- (⁴³) The impact resistance shall be measured according to European Norms EN345 or EN346.
- (⁴⁴) By virtue of Regulation (EC) No 1549/2006 this CN code is replaced on 1 January 2007 by CN codes ex 6403 51 05, ex 6403 59 05, ex 6403 91 05 and ex 6403 99 05.

ANNEX I

TARIC codes for footwear with uppers of leather or composition leather as defined in Article 1

(a) From 7 October 2006:

6403 30 00 39, 6403 30 00 89, 6403 51 11 90, 6403 51 15 90, 6403 51 19 90, 6403 51 91 90,
 6403 51 95 90, 6403 51 99 90, 6403 59 11 90, 6403 59 31 90, 6403 59 35 90, 6403 59 39 90,
 6403 59 91 90, 6403 59 95 90, 6403 59 99 90, 6403 91 11 99, 6403 91 13 99, 6403 91 16 99,
 6403 91 18 99, 6403 91 91 99, 6403 91 93 99, 6403 91 96 99, 6403 91 98 99, 6403 99 11 90,
 6403 99 31 90, 6403 99 33 90, 6403 99 36 90, 6403 99 38 90, 6403 99 91 99, 6403 99 93 29,
 6403 99 93 99, 6403 99 96 29, 6403 99 96 99, 6403 99 98 29, 6403 99 98 99 and 6405 10 00 80

(b) From 1 January 2007:

6403 51 05 19, 6403 51 05 99, 6403 51 11 90, 6403 51 15 90, 6403 51 19 90, 6403 51 91 90,
 6403 51 95 90, 6403 51 99 90, 6403 59 05 19, 6403 59 05 99, 6403 59 11 90, 6403 59 31 90,
 6403 59 35 90, 6403 59 39 90, 6403 59 91 90, 6403 59 95 90, 6403 59 99 90, 6403 91 05 19,
 6403 91 05 99, 6403 91 11 99, 6403 91 13 99, 6403 91 16 99, 6403 91 18 99, 6403 91 91 99,
 6403 91 93 99, 6403 91 96 99, 6403 91 98 99, 6403 99 05 19, 6403 99 05 99, 6403 99 11 90,
 6403 99 31 90, 6403 99 33 90, 6403 99 36 90, 6403 99 38 90, 6403 99 91 99, 6403 99 93 29,
 6403 99 93 99, 6403 99 96 29, 6403 99 96 99, 6403 99 98 29, 6403 99 98 99 and 6405 10 00 80

(c) From 7 September 2007:

6403 51 05 15, 6403 51 05 18, 6403 51 05 95, 6403 51 05 98, 6403 51 11 91, 6403 51 11 99,
 6403 51 15 91, 6403 51 15 99, 6403 51 19 91, 6403 51 19 99, 6403 51 91 91, 6403 51 91 99,
 6403 51 95 91, 6403 51 95 99, 6403 51 99 91, 6403 51 99 99, 6403 59 05 15, 6403 59 05 18,
 6403 59 05 95, 6403 59 05 98, 6403 59 11 91, 6403 59 11 99, 6403 59 31 91, 6403 59 31 99,
 6403 59 35 91, 6403 59 35 99, 6403 59 39 91, 6403 59 39 99, 6403 59 91 91, 6403 59 91 99,
 6403 59 95 91, 6403 59 95 99, 6403 59 99 91, 6403 59 99 99, 6403 91 05 15, 6403 91 05 18,
 6403 91 05 95, 6403 91 05 98, 6403 91 11 95, 6403 91 11 98, 6403 91 13 95, 6403 91 13 98,
 6403 91 16 95, 6403 91 16 98, 6403 91 18 95, 6403 91 18 98, 6403 91 91 95, 6403 91 91 98,
 6403 91 93 95, 6403 91 93 98, 6403 91 96 95, 6403 91 96 98, 6403 91 98 95, 6403 91 98 98,
 6403 99 05 15, 6403 99 05 18, 6403 99 05 95, 6403 99 05 98, 6403 99 11 91, 6403 99 11 99,
 6403 99 31 91, 6403 99 31 99, 6403 99 33 91, 6403 99 33 99, 6403 99 36 91, 6403 99 36 99,
 6403 99 38 91, 6403 99 38 99, 6403 99 91 95, 6403 99 91 98, 6403 99 93 25, 6403 99 93 28,
 6403 99 93 95, 6403 99 93 98, 6403 99 96 25, 6403 99 96 28, 6403 99 96 95, 6403 99 96 98,
 6403 99 98 25, 6403 99 98 28, 6403 99 98 95, 6403 99 98 98, 6405 10 00 81 and 6405 10 00 89

ANNEX II

List of exporting producers for which imports a definitive anti-dumping duty is imposed

Name of the exporting producer	TARIC additional code
An Loc Joint Stock Company (Vietnam)	A999
Chang Shin Vietnam Co. Ltd (Dong Nai — Vietnam) and its related company Changshin Inc. (Busan — South Korea)	A999
Chau Giang Company Limited (Haiphong City, Vietnam)	A999
Dongguan Texas Shoes Limited Co.	A999
Foshan Shunde Fong Ben Footwear Industrial Co. Ltd (Foshan City — China)	A999
Fujian Viscap Shoes Co. Ltd (Quanzhou — China)	A999
Lien Phat Company Ltd (Vietnam)	A999
Maystar Footwear Co. Ltd (Zhuhai — China) (related to Kingmaker)	A999
Min Yuan (Guangzhou — China) and related companies E-Light and Golden Chang	A999
Panyu Hsieh Da Rubber Co. Ltd (China)	A999
PanYu Leader Footwear Corporation (Guangzhou — China)	A999
Panyu Pegasus Footwear Co. Ltd (Guangzhou — China)	A999
Qingdao Changshin Shoes Company Limited (Qingdao — China) and its related company Changshin Inc. (Busan — South Korea)	A999
Qingdao Samho Shoes Co. Ltd (China) and related company Samho shoes Co. Ltd (South Korea)	A999
Qingdao Sewon Shoes Co. Ltd (Qingdao — China)	A999
Qingdao Tae Kwang Shoes Co. Ltd (China) and related company Tae Kwang Industrial Co. (Korea) (related to sampled Taekwang Vina)	A999
Samyang Vietnam Co. Ltd (Ho Chi Minh City — Vietnam)	A999
Vietnam Ching Luh Shoes Co. Ltd (Vietnam)	A999
Vinh Thong Producing-Trading-Service Co. Ltd (Ho Chi Minh — Vietnam)	A999

ANNEX III

List of companies for whom the examination is suspended pursuant to Article 3

ALAMODE

ALL PASS

ALLIED JET LIMITED

ALLIED JET LIMITED C/O SHENG RONG F

AMERICAN ZABIN INTL

AN THINH FOOTWEAR CO. LTD

AQUARIUS CORPORATION

ASIA FOOTWEAR

BCNY INTERNATIONAL INC.

BESCO ENTERPRISE

BEST CAPITAL

BRANCH OF EMPEREOR CO. LTD

BRENTWOOD FUJIAN INDUSTRY CO. LTD

BRENTWOOD TRADING COMPANY

BROWN PACIFIC TRADING LTD

BUFENG

BULLBOXER

C AND C ACCORD LTD

CALSON INVESTMENT LIMITED

CALZ.SAB SHOES S.R.L.

CARLSON GROUP

CD STAR

CHAOZHOU ZHONG TIAN CHENG

CHINA EVER

CORAL REEF ASIA PACIFIC LTD

CULT DESIGN

DHAI HOAN FOOTWEAR PRODUCTION JOINT STOCK COMPANY

DIAMOND GROUP INTERNATIONAL LTD/YONG ZHOU XIANG WAY SPORTS GOODS LTD

DONG GUAN CHANG AN XIAO BIAN SEVILLA

DONG GUAN HUA XIN SHOES LTD

DONGGUAN QIAOSHENG FOOTWEAR CO.

DONGGUAN TA YUE SHOES CO. LTD

DONGGUAN YONGXIN SHOES CO. LTD

EASTERN SHOES COLLECTION CO. LTD

EASY DENSE LIMITED

ENIGMA/MORE SHOES INC.

EVAIS CO. LTD

EVER CREDIT PACIFIC LTD

EVERGIANT

EVERGO ENTERPRISES LTD C/O THUNDER

FH SPORTS AGENCIES LTD

FIJIAN GUANZHOU FOREIGN TRADE CORP

FOSTER INVESTMENTS INC.

FREEMANSHOES CO. LTD

FU XIANG FOOTWEAR

FUJIAN JINMAIWANG SHOES & GARMENTS PRODUCTS CO. LTD

GERLI

GET SUCCESS LIMITED GLOBE DISTRIBUTING CO. LTD

GOLDEN STEPS FOOTWEAR LTD

GOODMILES

HA CHEN TRADE CORPORATION

HAI VINH TRADING COMP

HAIPHONG SHOLEGA

HANLIN (BVI) INT'L COMPNAY LTD C/O

HAPPY THOSE INTERNATIONAL LTD

HAWSHIN

HESHAN SHI HENGYU FOOTWEAR LTD

HIEP TRI CO. LTD

HISON VINA CO. LTD

HOLLY PACIFIC LTD

HUEY CHUEN SHOES GROUP/FUH CHUEN CO. LTD

HUI DONG FUL SHING SHOES CO. LTD

HUNEX

HUNG TIN CO. LTD

IFR

INTER — PACIFIC CORP.

IPC HONG KONG BRANCH LTD

J.C. TRADING LIMITED

JASON FOOTWEAR

JIA HSIN CO. LTD

JIA HUAN

JINJIANG YIREN SHOES CO. LTD

JOU DA

JUBILANT TEAM INTERNATIONAL LTD

JWS INTERNATIONAL CORP

KAI YANG VIETNAM CO. LTD

KAIYANG VIETNAM CO. LTD

KIM DUCK TRADING PRODUCTION

LEGEND FOOTWEAR LTD ALSO SPELLED AS LEGENT FOOTWEAR LTD

LEIF J. OSTBERG, INC.

LU XIN JIA

MAI HUONG CO. LTD

MARIO MICHELI

MASTERBRANDS

MAYFLOWER

MING WELL INT'L CORP.

MIRI FOOTWEAR INTERNATIONAL, INC.

MIX MODE

MORGAN INT'L CO. LTD C/O Hwashun

NEW ALLIED

NEW FU XIANG

NORTHSTAR SOURCING GROUP HK LTD

O.T. ENTERPRISE CO.

O'LEAR IND VIETNAM CO. LTD ALSO SPELLED AS O'LEER IND. VIETNAM CO. LTD

O'LEER IND. VIETNAM CO. LTD

ONTARIO DC

OSCO INDUSTRIES LTD

OSCO VIETNAM COMPANY LTD

PACIFIC BEST CO. LTD

PERFECT GLOBAL ENTERPRISES LTD

PETER TRUONG STYLE, INC.

PETRONA TRADING CORP

PHUOC BINH COMPANY LTD

PHY LAM INDUSTRY TRADING INVESTMENT CORP

POP EUROPE

POU CHEN P/A POU SUNG VIETNAM CO. LTD

POU CHEN CORP P/A IDEA

POU CHEN CORP P/A YUE YUEN INDUSTRIAL ESTATE

PRO DRAGON INC.

PUIBRIGHT INVESTMENTS LIMITED T/A

PUTIAN LIFENG FOOTWEAR CO. LTD

PUTIAN NEWPOWER INTERNATIONAL T

PUTIAN XIESHENG FOOTWEAR CO

QUAN TAK

RED INDIAN

RICK ASIA (HONG KONG) LTD

RIGHT SOURCE INVESTMENT LIMITED/VINH LONG FOOTWEAR CO. LTD

RIGHT SOURCE INVESTMENTS LTD

ROBINSON TRADING LTD

RUBBER INDUSTRY CORP. RUBIMEX

SENG HONG SHOES (DONG GUAN) CO. LTD

SEVILLE FOOTWEAR

SHANGHAI XINPINGSHUN TRADE CO. LTD

SHENG RONG

SHENZHEN GUANGYUFA INDUSTRIAL CO. LTD

SHENZHEN HENGGTENGFA ELECTRONI

SHINING YWANG CORP

SHISHI

SHISHI LONGZHENG IMPORT AND EXPORT TRADE CO. LTD

SHOE PREMIER

SIMONATO

SINCERE TRADING CO. LTD

SINOWEST

SLIPPER HUT & CO

SUN POWER INTERNATIONAL CO. LTD

SUNKUAN TAICHUNG OFFICE/JIA HSIN CO. LTD

SUNNY

SUNNY FAITH CO. LTD

SUNNY STATE ENTERPRISES LTD

TBS

TENDENZA ENTERPRISE LTD

TEXAS SHOE FOOTWEAR CORP

THAI BINH HOLDING & SHOES MANUFAC

THANH LE GENERAL IMPORT-EXPORT TRADING COMPANY

THUONG TANG SHOES CO. LTD

TIAN LIH

TONG SHING SHOES COMPANY

TOP ADVANCED ENTERPRISE LIMITED

TRANS ASIA SHOES CO. LTD

TRIPLE WIN

TRULLION INC.

TRUONG SON TRADE AND SERVICE CO. LTD

TUNLIT INTERNATIONAL LTD- SIMPLE FOOTWEAR

UYANG

VIETNAM XIN CHANG SHOES CO.

VINH LONG FOOTWEAR CO. LTD

WINCAP INDUSTRIAL LTD

WUZHOU PARTNER LEATHER CO. LTD

XIAMEN DUNCAN — AMOS SPORTSWEAR CO. LTD

XIAMEN LUXINJIA IMPORT & EXPORT CO.

XIAMEN OCEAN IMP&EXP

XIAMEN UNIBEST IMPORT AND EXPORT CO. LTD

YANGZHOU BAOYI SHOES

YDRA SHOES

YONGMING FOOTWEAR FACTORY

ZHONG SHAN POU SHEN FOOTWEAR COMPANY LTD

ZIGI NEW YORK GROUP

ANNEX IV

List of exporting producers notified to the Commission already assessed individually or as part of a company group selected in the sample of exporting producers in the original investigation

APACHE FOOTWEAR AND APACHE II FOOTWEAR

FOSHAN CITY NANHAI GOLDEN STEP INDUSTRIAL CO. LTD

GROWTH-LINK TRADING COMPANY LIMITED

JOINT STOCK COMPANY 32

KAI NAN JOINT VENTURE CO. LTD

NIKE (SUZHOU) SPORTS CO. LTD

POU CHEN/POU CHEN VIETNAM ENTERPRISE LTD

POU CHEN CORP P/A POU CHEN VIETNAM ENTERPRISE, LTD

POU CHEN CORPORATION/DONGGUAN YUE YUEN MFR. CO.

POU CHEN CORPORATION/POU YUEN VIETNAM ENTERPRISES LTD

POU CHEN CORPORATION/POUYUEN VIETNAM COMPANY LIMITED

POU CHEN CORPORATION/PT. POU CHEN INDONESIA

POU YUEN/POU YUEN VIETNAM COMPANY LTD/POU YUEN VIETNAM ENTERPRISE LTD

SHOES MAJESTY TRADING COMPANY LTD (VIETNAM)

SKY HIGH TRADING LTD

SUN KUAN (BVI) ENTERPRISES/SUN KUAN J V CO.

SUN SANG KONG YUEN SHOES FACTORY (HUY YANG) CO. LTD

SUNKUAN TAICHUNG OFFICE/SUN KUAN J.V. CO.

TAE KWANG INDUSTRIAL CO. LTD P/A TAE KWANG VINA INDUSTRIAL CO.

YUE GROUP/YUE YUEN

ANNEX V

List of exporting producers notified to the Commission already assessed either individually or as part of a company group in the context of Implementing Decision 2014/149/EU or in Implementing Regulations (EU) 2016/1395, (EU) 2016/1647, (EU) 2016/1731 and (EU) 2016/2257 respectively

Name of the exporting producer	Regulation where it was assessed
BROOKDALE INVESTMENTS LTD	Implementing Regulation (EU) 2016/1395
WEI HUA SHOE COMPANY LTD	Implementing Regulation (EU) 2016/1395
DIAMOND GROUP INTERNATIONAL LTD/TAI-WAY SPORTS LTD	Implementing Regulation (EU) 2016/1395
DONGGUAN STELLA FOOTWEAR CO. LTD	Implementing Regulation (EU) 2016/1395
HK WEI HUA KIMO	Implementing Regulation (EU) 2016/1395
HO HSING	Implementing Regulation (EU) 2016/1395
HOPEWAY GROUP LTD	Implementing Regulation (EU) 2016/1395
FOSHAN CITY NANHAI QUNRUI FOOTWEAR CO. LTD	Implementing Regulation (EU) 2016/1395
QUN RUI FOOTWEAR	Implementing Regulation (EU) 2016/1395
STELLA INTERNATIONAL LTD	Implementing Regulation (EU) 2016/1395
FENG TAY ENTERPRISES CO. LTD P/A DONA PACIFIC (VIETNAM) CO. LTD	Implementing Regulation (EU) 2016/1647
FENG TAY ENTERPRISES CO. LTD P/A LIFENG FOOTWEAR CORPORATION	Implementing Regulation (EU) 2016/1647
FENG TAY ENTERPRISES CO. LTD P/A VIETNAM DONA STANDARD	Implementing Regulation (EU) 2016/1647
FENG TAY ENTERPRISES CO. LTD P/A DONA VICTOR FOOTWEAR CO. LTD	Implementing Regulation (EU) 2016/1647
FENG TAY ENTERPRISES CO. LTD P/A VIETNAM DONA ORIENT CO. LTD	Implementing Regulation (EU) 2016/1647
FULGENT SUNSHINE FOOTWEAR CO. LTD	Implementing Regulation (EU) 2016/1647
GRAND SMARTLY GROUP LTD P/A FREETREND INDUSTRIAL CO. LTD	Implementing Regulation (EU) 2016/1647
KINGFIELD INTERNATIONAL LTD	Implementing Regulations (EU) 2016/1647 and (EU) 2016/1731
VIETNAM SHOE MAJESTER CO. LTD	Implementing Regulation (EU) 2016/1647
GENFORT SHOES LTD	Implementing Regulations (EU) 2016/1647 and (EU) 2016/1731
FOOTGEARMEX FOOTWEAR CO. LTD	Implementing Regulation (EU) 2016/1731
DIAMOND GROUP INTERNATIONAL LTD/DIAMOND VIETNAM CO. LTD — P.T. HORN MING INDONESIA	Implementing Regulation (EU) 2016/1731

Name of the exporting producer	Regulation where it was assessed
DIAMOND VIETNAM CO. LTD	Implementing Regulation (EU) 2016/1731
FOOTGEARMEX FOOTWEAR CO. LTD	Implementing Regulation (EU) 2016/1731
CAPITAL CONCORD ENTERPRISES LTD P/A FUJIAN SUNSHINE FOOTWEAR CO. LTD SUNNY FOOTWEAR CO. LTD	Implementing Regulation (EU) 2016/2257
BROSMANN FOOTWEAR (HK) LTD	Implementing Decision 2014/149/EU
LUNG PAO FOOTWEAR (GUANGZHOU) LTD	Implementing Decision 2014/149/EU
NOVI FOOTWEAR	Implementing Decision 2014/149/EU
RISEN FOOTWEAR (HK) CO. LTD	Implementing Decision 2014/149/EU
SEASONABLE FOOTWEAR (ZHONGSHAN) LTD	Implementing Decision 2014/149/EU
WENZHOU TAIMA SHOES CO. LTD	Implementing Decision 2014/149/EU
ZHEJIANG AOKANG SHOES CO. LTD	Implementing Decision 2014/149/EU

ANNEX VI

List of companies notified to the Commission that will be assessed in an upcoming implementation exercise either individually or as part of a company group

DAH LIH PUH

EVERVAN GROUP P/A EVA OVERSEAS INTERNATIONAL, LTD

EVERVAN GROUP P/A JIANGXI GUANGYOU FOOTWEAR CO.

LONG SON JOINT STOCK COMPANY

SHING TAK IND. CO. LTD

COMMISSION IMPLEMENTING REGULATION (EU) 2017/424**of 9 March 2017****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾,

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ⁽²⁾, and in particular Article 136(1) thereof,

Whereas:

- (1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.
- (2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day of 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, 9 March 2017.

*For the Commission,
On behalf of the President,*

Jerzy PLEWA

Director-General

Directorate-General for Agriculture and Rural Development

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	EG	235,2
	IL	243,7
	MA	93,7
	SN	205,2
	TR	104,7
	ZZ	176,5
0707 00 05	MA	80,2
	TR	182,6
	ZZ	131,4
0709 91 00	EG	97,7
	ZZ	97,7
0709 93 10	MA	51,9
	TR	149,9
	ZZ	100,9
0805 10 22, 0805 10 24, 0805 10 28	EG	49,9
	IL	71,1
	MA	48,0
	TN	57,4
	TR	73,0
	ZZ	59,9
0805 50 10	EG	68,9
	TR	70,0
	ZZ	69,5
0808 10 80	CL	90,0
	CN	135,3
	ZA	86,6
	ZZ	104,0
0808 30 90	AR	124,1
	CL	131,5
	CN	74,5
	ZA	129,2
	ZZ	114,8

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EU) No 1106/2012 of 27 November 2012 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards the update of the nomenclature of countries and territories (OJ L 328, 28.11.2012, p. 7). Code 'ZZ' stands for 'of other origin'.

COMMISSION IMPLEMENTING REGULATION (EU) 2017/425**of 9 March 2017****on the minimum selling price for skimmed milk powder for the sixth partial invitation to tender within the tendering procedure opened by Implementing Regulation (EU) 2016/2080**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾,

Having regard to Commission Implementing Regulation (EU) 2016/1240 of 18 May 2016 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to public intervention and aid for private storage ⁽²⁾, and in particular Article 32 thereof,

Whereas:

- (1) Commission Implementing Regulation (EU) 2016/2080 ⁽³⁾ has opened the sale of skimmed milk powder by a tendering procedure.
- (2) In the light of the tenders received for the sixth partial invitation to tender, a minimum selling price should not be fixed.
- (3) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of the Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

For the sixth partial invitation to tender for the selling of skimmed milk powder within the tendering procedure opened by Implementing Regulation (EU) 2016/2080, in respect of which the period during which tenders were to be submitted ended on 7 March 2017, a minimum selling price has not been fixed.

Article 2

This Regulation shall enter into force on the day of 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, 9 March 2017.

For the Commission,

On behalf of the President,

Jerzy PLEWA

Director-General

Directorate-General for Agriculture and Rural Development

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ OJ L 206, 30.7.2016, p. 71.

⁽³⁾ Commission Implementing Regulation (EU) 2016/2080 of 25 November 2016 opening the sale of skimmed milk powder by a tendering procedure (OJ L 321, 29.11.2016, p. 45).

DECISIONS

COUNCIL DECISION (EU) 2017/426

of 7 March 2017

appointing a member and an alternate member, proposed by the Kingdom of Denmark, of the Committee of the Regions

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 305 thereof,

Having regard to the proposal of the Danish Government,

Whereas:

- (1) On 26 January 2015, 5 February 2015 and 23 June 2015, the Council adopted Decisions (EU) 2015/116 ⁽¹⁾, (EU) 2015/190 ⁽²⁾ and (EU) 2015/994 ⁽³⁾ appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020. On 5 April 2016, by Council Decision (EU) 2016/552 ⁽⁴⁾, Mr Thomas KASTRUP-LARSEN was replaced by Mr Erik NIELSEN as a member.
- (2) A member's seat on the Committee of the Regions has become vacant following the end of the term of office of Mr Erik NIELSEN.
- (3) An alternate member's seat on the Committee of the Regions has become vacant following the appointment of Ms Kirstine BILLE as a member of the Committee of the Regions,

HAS ADOPTED THIS DECISION:

Article 1

The following are hereby appointed to the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2020:

- (a) as a member:
 - Ms Kirstine BILLE, *Deputy Mayor of Syddjurs Municipality*;
- (b) as an alternate member:
 - Ms Kirsten JENSEN, *Deputy Mayor of Hillerød Municipality*.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 7 March 2017.

For the Council
The President
L. GRECH

⁽¹⁾ Council Decision (EU) 2015/116 of 26 January 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 20, 27.1.2015, p. 42).

⁽²⁾ Council Decision (EU) 2015/190 of 5 February 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 31, 7.2.2015, p. 25).

⁽³⁾ Council Decision (EU) 2015/994 of 23 June 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 159, 25.6.2015, p. 70).

⁽⁴⁾ Council Decision (EU) 2016/552 of 5 April 2016 appointing a member, proposed by the Kingdom of Denmark of the Committee of the Regions (OJ L 95, 9.4.2016, p. 12).

COMMISSION IMPLEMENTING DECISION (EU) 2017/427**of 8 March 2017****amending Implementing Decision 2012/535/EU as regards measures to prevent the spread within the Union of *Bursaphelenchus xylophilus* (Steiner et Buhrer) Nickle et al. (the pine wood nematode)***(notified under document C(2017) 1482)*

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community ⁽¹⁾, and in particular the fourth sentence of Article 16(3) thereof,

Whereas:

- (1) Given the critical situation of pine wood nematode (PWN) in Portugal and some findings in Spain, a Task Force composed of a number of Member States' experts was set up in September 2014 with a view to support Portugal in the containment and Spain in the eradication of PWN in their respective territories, while preventing its spread into the rest of the Union territory.
- (2) On 22 June 2016, the Task Force on PWN published a report containing a number of recommendations. Moreover, further scientific knowledge has been acquired as part of the Rephrame project ⁽²⁾.
- (3) It is necessary to introduce a definition of 'plant affected by fire or storm' to identify the susceptible plants to which the respective measures are to be applied.
- (4) The European Plant Protection Organisation has developed international standards concerning contingency plans. In order to ensure consistency with those international standards ⁽³⁾ and to improve the clarity and efficacy of contingency plans, the rules concerning contingency plans should set out in more detail the tasks of the responsible official bodies, laboratories and operators.
- (5) In order to reduce the administrative burden, and taking into account the improvement of the situation as indicated by the outcome of the checks carried out by Portugal and Spain so far, the results of the checks carried out in accordance with Article 11(3) of Commission Implementing Decision 2012/535/EU ⁽⁴⁾ should be submitted on an annual basis and no longer on a monthly basis. The results of the measures taken pursuant to Articles 6 and 7 of that Decision, where applicable, should be communicated by 30 April of each year to ensure the timely submission of relevant information concerning the period preceding the start of the flight season of the vector.
- (6) Experience both in Portugal and Spain, as well as technical and scientific studies, indicate that the detection of PWN on healthy-looking pine is extremely unlikely, while the sampling of cut stems, cutting residues and naturally occurring debris showing signs of activity of insect vectors may be very important to detect the presence of PWN in areas where pine wilt symptoms are not expected to occur. Annexes I and II to Implementing Decision 2012/535/EU should therefore be amended accordingly.
- (7) Evidence reported by the Task Force has confirmed that forest fire occurring during the flight season of the vector immediately attracts vectors from long distances, and for some time after the fire. The immediate removal

⁽¹⁾ OJ L 169, 10.7.2000, p. 1.

⁽²⁾ Development of improved methods for detection, control and eradication of pine wood nematode in support of EU Plant Health Policy (REPHRAME) — EU research project No 265483.

⁽³⁾ 2009 OEPP/EPPO, Bulletin OEPP/EPPO Bulletin 39, 471-474 'Generic elements for contingency plans'.

⁽⁴⁾ Commission Implementing Decision 2012/535/EU of 26 September 2012 on emergency measures to prevent the spread within the Union of *Bursaphelenchus xylophilus* (Steiner et Buhrer) Nickle et al. (the pine wood nematode) (OJ L 266, 2.10.2012, p. 42).

and disposal of plants in fire-affected areas does not mitigate the attractiveness and, in fact, can trigger a risk of further dispersal of vectors. Member States should therefore be allowed to proceed with the felling and removal of susceptible plants situated in those fire-affected areas before the start of the next flight season of the vector.

- (8) Experience has shown that in order to ensure an optimal use of the available resources, the surveys in the infested zones referred to in point 2 of Annex II to Implementing Decision 2012/535/EU should be focused on the parts of the infested zone which are adjacent to the buffer zones, so that appropriate measures may be taken to contain PWN to those parts of the infested zones where it is known to occur and to prevent spread into the buffer zones.
- (9) Member States may reduce the radius of the clear cut from 500 m to 100 m if, based on survey activities carried out in accordance with FAO International Standard for Phytosanitary Measures No 4 ⁽¹⁾, and taking into account the dispersal capacity of the vectors, there is no evidence of presence of the vectors in that part of the territory.
- (10) Experience has confirmed that treatment of wood identified in the demarcated area during the flight season of the vector as required in point 8 of Annex I and point 3(c) of Annex II to Implementing Decision 2012/535/EU may not always be appropriate to prevent the further spread of PWN in case of logs colonised by the vectors during the year preceding the survey activities. The Member State may decide, therefore, to immediately destroy such wood on site.
- (11) Implementing Decision 2012/535/EU should therefore be amended accordingly.
- (12) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

Article 1

Amendments to Implementing Decision 2012/535/EU

Implementing Decision 2012/535/EU is amended as follows:

- (1) In Article 1, the following point (h) is added:

‘(h) “plant affected by fire or storm” means any susceptible plant which is damaged by fire or storm in a way which allows oviposition by the vector.’

- (2) Article 4(2) is replaced by the following:

‘2. The contingency plan shall set out the following:

- (a) a specific section providing a summary information on the assessment of the risk of PWN for the Member State concerned, including background information on the biology of PWN, expected symptoms and affected hosts, as well as detection methods, main pathways for entry and further spread, including recommendations of how the risk of entry, establishment and spread can be reduced;
- (b) the roles and responsibilities of the bodies involved in the execution of the plan in the event of an officially confirmed or suspected presence of PWN, as well as the chain of command and procedures for the coordination of actions to be taken by responsible official bodies, other public authorities, delegated bodies or natural persons involved, laboratories and operators;
- (c) the conditions of access of responsible official bodies to the premises of operators and other persons;

⁽¹⁾ Secretariat of the International Plant Protection Convention (1995), International Standard for Phytosanitary Measures 4: Requirements for the establishment of pest-free areas.

- (d) the conditions of access of responsible official bodies, where necessary, to laboratories, equipment, personnel, external expertise and resources necessary for the rapid and effective eradication or, where appropriate, containment of PWN;
- (e) the measures to be taken concerning the provision of information to the Commission, the other Member States, the operators concerned and the public as regards the presence of PWN and the measures taken against PWN in the event that its presence is officially confirmed or suspected;
- (f) the arrangements for recording findings of the presence of PWN;
- (g) the protocols describing the methods of visual examinations, sampling and laboratory testing;
- (h) the procedures, and persons responsible, for the coordination framework with neighbouring Member States and, where applicable, neighbouring third countries.

The content of the contingency plan shall take into account the risk that the specified organism poses to the Member State concerned.'

(3) Article 9(3) is replaced by the following:

'3. Member States shall communicate to the Commission and the other Member States by 30 April of each year a report on the results of the measures taken pursuant to Articles 6 and 7 between 1 April of the preceding year and 31 March of the year of the communication.

That report shall include all of the following elements:

- (a) number and locations of findings of the presence of PWN, including maps, identified respectively for the infested zone and buffer zone;
- (b) number of dead plants, plants in poor health or affected by fire or storm that were identified, with specification of the number of plants which were completely destroyed by forest fires or storm;
- (c) number of dead plants, plants in poor health or affected by fire or storm that were sampled;
- (d) number of samples taken on dead plants, plants in poor health or affected by fire or storm and tested for the presence of PWN;
- (e) number of samples tested positive for PWN;
- (f) number of dead plants and plants in poor health or affected by fire or storm which have been eliminated, with specification of the number of plants which were identified before the start of the relevant period;
- (g) number and location of traps and monitoring period, as well as the number of vectors trapped, the species concerned, number of vectors analysed for the presence of PWN, number of samples analysed for the presence of PWN in the buffer and infested zones respectively, including the number of samples tested positive for PWN, if any.

Member States shall collect the information referred to in points (b) and (f) during the following periods: 1 January to 31 March, 1 April to 31 October and 1 November to 31 December of the preceding year and 1 January to 31 March of the year of the communication.

When communicating that information, Member States shall make reference to the collection period concerned.'

(4) In Article 11(3), the first subparagraph is replaced by the following:

'3. Member States shall, by 30 April of each year, communicate to the other Member States and the Commission the time and results of the checks referred to in paragraphs 1 and 2 carried out during the preceding year.'

(5) Annexes I and II are amended as set out in the Annex to this Decision.

*Article 2***Addressees**

This Decision is addressed to the Member States.

Done at Brussels, 8 March 2017.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

ANNEX

The Annexes to Implementing Decision 2012/535/EU are amended as follows:

(1) Annex I is amended as follows:

(a) in point 2, the third subparagraph is replaced by the following:

‘All plants which are dead or in poor health, and a number of healthy-looking plants selected based on the risk of spreading the PWN in the particular case, shall be sampled after felling. Sampling shall take place in several parts of each plant, including the crown, and in particular in those parts where signs of activity of insect vectors are visible. Samples shall also be taken from cut stems, cutting residues, and naturally occurring debris showing signs of activity of insect vectors, and located in parts of the demarcated areas where wilt symptoms of the susceptible plants are not expected to occur or are expected to occur at a later stage. Those samples shall be tested for the presence of PWN.’

(b) point 4 is replaced by the following:

‘4. Where point 3 applies, each susceptible plant exempted from felling and located between 100 and 500 m from the susceptible plants in which PWN has been found to be present, shall be inspected before, during and after the flight season of the vectors, for signs or symptoms of the presence of PWN.

In case those signs or symptoms are present, the plant shall be sampled and tested for the presence of PWN. The sampling of those susceptible plants shall be carried out in several parts of the plant including the crown. The Member State concerned shall, within the flight season, perform intensive surveys of the vectors by sampling and testing those vectors for the presence of PWN.

Those measures shall apply until completion of eradication as provided for in Article 6(1) or until containment measures as provided for in Article 7(1) have been approved.’

(c) point 5 is replaced by the following:

‘5. Where a Member State has evidence that the vector has not been present in the area concerned for the last 3 years, based on surveys carried out for the presence of the vector in accordance with FAO International Standard for Phytosanitary Measures No 4 (*) and taking into account the dispersal capacity of the vectors, the minimum radius of the clear-cut zone shall be 100 m around each susceptible plant in which PWN has been found to be present.

That evidence shall be included in the communication provided for in Article 9(1).

(*) Secretariat of the International Plant Protection Convention (1995), International Standard for Phytosanitary Measures 4: Requirements for the establishment of pest-free areas.’

(d) point 6 is replaced by the following:

‘6. Member States shall perform, during and outside the flight season of the vector, surveys of the susceptible plants in the demarcated areas by inspecting, sampling and testing those plants and the vector for the presence of PWN. They shall also perform surveys of the vector of PWN during its flight season. Those surveys shall give particular attention to susceptible plants which are dead, in poor health or affected by fire or storm. The sampling of those susceptible plants shall be carried out in several parts of each plant including the crown. Those surveys shall also be performed on cut stems, cutting residues, naturally occurring debris showing signs of activity of insect vectors and located in parts of the demarcated areas where wilt symptoms of the susceptible plants are not expected to occur or are expected to be delayed. The intensity of the surveys within a radius of 3 000 m around each susceptible plant in which PWN has been found shall be at least four times higher than from 3 000 m thereof to the outer limit of the buffer zone.’

(e) in point 7, the first paragraph is replaced by the following:

‘7. Member States shall, throughout the demarcated area, identify and fell all susceptible plants in which PWN has been found to be present, and those which are dead, in poor health or affected by fire or storm. They shall remove and dispose of plants felled and logging remains, taking all necessary precautions to avoid spreading of PWN and its vector until the end of felling. They shall respect the following conditions.’

- (f) in point 8, the second subparagraph is replaced by the following:

‘Where the Member State concludes that stripping of the bark, treatment with an insecticide known to be effective against the vector and coverage with an insect net drenched in such an insecticide is inappropriate, the wood, which was not stripped of its bark, shall be immediately destroyed on site.

Wood waste produced at the time of felling of susceptible plants which is left on site and wood not stripped of the bark which is destroyed on site shall be chipped into pieces less than 3 cm thick and less than 3 cm wide.’

- (g) the following point 8a is inserted:

‘8a. By way of derogation from point 7(b), where a Member State concludes that felling and removal of susceptible plants affected by fire or storm, during the flight season of the vector, is inappropriate, the Member State concerned may decide to proceed with the felling and removal of those plants before the start of the next flight season.

Without prejudice to point 6, the Member State concerned shall, within the flight season, perform intensive surveys in the area affected by fire or storm by sampling and testing those vectors for the presence of PWN and, if confirmed, perform surveys of the susceptible plants located in the surrounding area, by inspecting, sampling and testing those plants which show signs or symptoms of the presence of PWN or its vectors.’

- (2) Annex II is amended as follows:

- (a) point 2 is replaced by the following:

‘2. Member States shall perform annual surveys of the susceptible plants and the vector in the infested zones by inspecting, sampling and testing those plants and the vector for the presence of PWN. Those surveys shall give particular attention to susceptible plants which are dead, in poor health or affected by fire or storm. They shall be focused on parts of the infested zone which are adjacent to the buffer zones, with the aim to preserve those zones. Member States shall fell all susceptible plants in which PWN is found to be present and remove and dispose of those plants and their logging remains, taking all necessary precautions to avoid spreading of PWN and its vectors.’

- (b) point 3 is replaced by the following:

‘3. Member States shall take the following measures in the buffer zones:

- (a) Member States shall perform, outside and during the flight season of the vector, surveys of the susceptible plants in the buffer zones by inspecting, sampling and testing those plants and the vector for the presence of PWN. They shall also perform surveys of the vector of PWN during its flight season. Those surveys shall give particular attention to susceptible plants which are dead, in poor health or affected by fire or storm, and to vectors which are situated in areas where PWN is likely to be present or where delayed expression of symptoms can be expected. The sampling of susceptible plants shall be carried out in several parts of each plant including the crown. Those surveys shall also be performed on cut stems, cutting residues, naturally occurring debris showing signs of activity of insect vectors and located in parts of the demarcated areas where wilt symptoms of the susceptible plants are not expected to occur.
- (b) Member States shall, throughout the concerned buffer zones, identify and fell all susceptible plants which are dead, in poor health or affected by fire or storm. They shall remove and dispose of plants felled and logging remains, taking all necessary precautions to avoid spreading of PWN and its vector before and during felling and under the following conditions:
 - (i) Susceptible plants identified outside the flight season of the vector shall, before the next flight season, be felled and destroyed on site, moved under official control into the infested zone or removed. In the last case the wood and bark of those plants shall either be treated, as set out in point 2(a) of Section 1 of Annex III, or processed, as set out in point 2(b) of Section 2 of Annex III.
 - (ii) Susceptible plants identified during the flight season of the vector shall, immediately, be felled and destroyed on site, moved under official control into the infested zone or removed. In the last case the wood and bark of those plants shall either be treated, as set out in point 2(a) of Section 1 of Annex III, or processed, as set out in point 2(b) of Section 2 of Annex III.

Felled susceptible plants, other than plants completely destroyed by forest fires, shall be sampled and tested for the presence of PWN, according to a sampling scheme able to confirm with 99 % reliability that the level of presence of PWN in those susceptible plants is below 0,02 %.

By way of derogation from point (ii), where a Member State concludes that the felling and removal of susceptible plants identified during the flight season and affected by fire or storm is inappropriate, the Member State concerned may decide to proceed with the felling and removal of those plants before the start of the next flight season. During such felling and removal, the susceptible plants concerned shall be either destroyed on site or removed and their wood and bark treated, in accordance with point 2(a) of Section 1 of Annex III, or processed, in accordance with point 2(b) of Section 2 of Annex III. Where this derogation applies, and without prejudice to point (a), the Member State concerned shall, within the flight season, perform intensive surveys in the area affected by fire or storm by sampling and testing those vectors for the presence of PWN and, if confirmed, perform intensified surveys of the susceptible plants located in the surrounding area, by inspecting, sampling and testing those plants which show signs or symptoms of the presence of PWN

- (c) As regards susceptible wood identified in the buffer zone during the flight season of the vector, as referred to in point (b), Member States shall strip logs of felled susceptible plants of their bark, or treat those logs with an insecticide known to be effective against the vector or cover those logs with an insect net drenched in such an insecticide immediately after felling.

After stripping, treating or covering, the susceptible wood shall, under official supervision, immediately be moved to a storage place or to an authorised treatment facility. Wood, which was not stripped of its bark, shall, immediately, at its storage place or at the authorised treatment facility, once more, be treated with an insecticide known to be effective against the vector or covered with an insect net drenched in such an insecticide.

Wood waste produced at the time of felling of susceptible plants which is left on site shall be chipped into pieces of less than 3 cm thickness and width.

By way of derogation from the first subparagraph, where the Member State concludes that stripping of the bark, treatment with an insecticide known to be effective against the vector and coverage with an insect net drenched in such an insecticide are inappropriate, the wood, which was not stripped of its bark, shall be immediately destroyed on site. Where this derogation applies, wood waste produced at the time of felling of susceptible plants which is left on site and wood not stripped of its bark which is destroyed on site, shall be chipped into pieces less than 3 cm thick and less than 3 cm wide.'

CORRIGENDA**Corrigendum to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU**

(Official Journal of the European Union L 173 of 12 June 2014)

On page 421, first subparagraph of Article 34(9):

for: 'ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the transmission of information in accordance with paragraphs 3, 4, 5 and 7.'

read: 'ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the transmission of information in accordance with paragraphs 2, 3, 4, 5 and 7.';

on page 423, first subparagraph of Article 35(12):

for: 'ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the transmission of information in accordance with paragraphs 3, 4, 7 and 10.'

read: 'ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the transmission of information in accordance with paragraphs 2, 3, 4, 7 and 10.'

