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⁽¹⁾ Text with EEA relevance.

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

Information concerning the entry into force of the Protocol to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part, to take account of the accession of the Republic of Croatia to the European Union

The abovementioned Protocol between the European Union and the Republic of Tunisia signed in Brussels on 27 July 2020, entered into force on 1 August 2021.

REGULATIONS

COMMISSION REGULATION (EU) 2021/1810

of 14 October 2021

amending Annex II to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards the maximum residue levels for cyprodinil in blueberries, cranberries, currants and gooseberries

(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 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC ⁽¹⁾, and in particular Article 14(1)(a) thereof,

Whereas:

- (1) For cyprodinil, maximum residue levels (MRLs) were set in Annex II to Regulation (EC) No 396/2005.
- (2) In the context of a procedure for the authorisation of the use of a plant protection product containing the active substance cyprodinil on blueberries, cranberries, currants and gooseberries, an application was submitted in accordance with Article 6(1) of Regulation (EC) No 396/2005 for modification of the existing MRLs.
- (3) In accordance with Article 8 of Regulation (EC) No 396/2005, the application was evaluated by the Member State concerned and the evaluation report was forwarded to the Commission.
- (4) The European Food Safety Authority ('the Authority') assessed the application and the evaluation report, examining in particular the risks to the consumer and, where relevant, to animals and gave a reasoned opinion on the proposed MRLs ⁽²⁾. It forwarded that opinion to the applicant, the Commission and the Member States, and made it available to the public.
- (5) The Authority concluded that all requirements with respect to data were met and that the modification to the MRLs requested by the applicant was acceptable with regard to consumer safety on the basis of a consumer exposure assessment for 27 specific European consumer groups. The Authority took into account the most recent information on the toxicological properties of the substance. The lifetime exposure to the substance via consumption of all food products that may contain it showed that there is no risk that the acceptable daily intake is exceeded. Moreover, the Authority concluded that the establishment of an acute reference dose is not necessary on the basis of the low acute toxicity profile of the active substance.
- (6) Based on the reasoned opinion of the Authority, and taking into account the factors relevant to the matter under consideration, the proposed modification to the MRLs fulfils the requirements of Article 14(2) of Regulation (EC) No 396/2005.
- (7) Regulation (EC) No 396/2005 should therefore be amended accordingly.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

⁽¹⁾ OJ L 70, 16.3.2005, p. 1.

⁽²⁾ EFSA scientific reports available online: <http://www.efsa.europa.eu>:

Reasoned opinion on the modification of the existing maximum residue levels for cyprodinil in blueberries, cranberries, currants and gooseberries. *EFSA Journal* 2021;19(3):6499.

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to Regulation (EC) No 396/2005 is amended in accordance with the Annex to this Regulation.

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, 14 October 2021.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

In Annex II to Regulation (EC) No 396/2005, the column for cyprodinil is replaced by the following:

'Pesticide residues and maximum residue levels (mg/kg)

Code number	Groups and examples of individual products to which the MRLs apply ^(a)	Cyprodinil (R) (F)
(1)	(2)	(3)
0100000	FRUITS, FRESH or FROZEN; TREE NUTS	
0110000	Citrus fruits	0,02 (*)
0110010	Grapefruits	
0110020	Oranges	
0110030	Lemons	
0110040	Limes	
0110050	Mandarins	
0110990	Others (2)	
0120000	Tree nuts	
0120010	Almonds	0,02 (*) (+)
0120020	Brazil nuts	0,04
0120030	Cashew nuts	0,04
0120040	Chestnuts	0,04
0120050	Coconuts	0,04
0120060	Hazelnuts/cobnuts	0,04
0120070	Macadamias	0,04
0120080	Pecans	0,04
0120090	Pine nut kernels	0,04
0120100	Pistachios	0,02 (*)
0120110	Walnuts	0,04
0120990	Others (2)	0,04
0130000	Pome fruits	2
0130010	Apples	
0130020	Pears	
0130030	Quinces	
0130040	Medlars	
0130050	Loquats/Japanese medlars	
0130990	Others (2)	

0140000	Stone fruits	2
0140010	Apricots	
0140020	Cherries (sweet)	
0140030	Peaches	
0140040	Plums	
0140990	Others (2)	
0150000	Berries and small fruits	
0151000	(a) grapes	3
0151010	Table grapes	
0151020	Wine grapes	
0152000	(b) strawberries	5
0153000	(c) cane fruits	
0153010	Blackberries	3
0153020	Dewberries	0,02 (*)
0153030	Raspberries (red and yellow)	3
0153990	Others (2)	0,02 (*)
0154000	(d) other small fruits and berries	
0154010	Blueberries	8
0154020	Cranberries	8
0154030	Currants (black, red and white)	8
0154040	Gooseberries (green, red and yellow)	8
0154050	Rose hips	3
0154060	Mulberries (black and white)	3
0154070	Azaroles/Mediterranean medlars	3
0154080	Elderberries	3
0154990	Others (2)	3
0160000	Miscellaneous fruitswith	
0161000	(a) edible peel	
0161010	Dates	0,02 (*)
0161020	Figs	0,02 (*)
0161030	Table olives	0,02 (*)
0161040	Kumquats	0,02 (*)
0161050	Carambolas	0,02 (*)
0161060	Kaki/Japanese persimmons	2
0161070	Jambuls/jambolans	0,02 (*)
0161990	Others (2)	0,02 (*)

0162000	(b) inedible peel, small	0,02 (*)
0162010	Kiwi fruits (green, red, yellow)	
0162020	Litchis/lychees	
0162030	Passionfruits/maracujas	
0162040	Prickly pears/cactus fruits	
0162050	Star apples/cainitos	
0162060	American persimmons/Virginia kaki	
0162990	Others (2)	
0163000	(c) inedible peel, large	
0163010	Avocados	1
0163020	Bananas	0,02 (*)
0163030	Mangoes	0,02 (*)
0163040	Papayas	0,02 (*)
0163050	Granate apples/pomegranates	5
0163060	Cherimoyas	0,02 (*)
0163070	Guavas	1,5
0163080	Pineapples	0,02 (*)
0163090	Breadfruits	0,02 (*)
0163100	Durians	0,02 (*)
0163110	Soursops/guanabanas	0,02 (*)
0163990	Others (2)	0,02 (*)
0200000	VEGETABLES, FRESH or FROZEN	
0210000	Root and tuber vegetables	
0211000	(a) potatoes	0,02 (*)
0212000	(b) tropical root and tuber vegetables	0,02 (*)
0212010	Cassava roots/manioc	
0212020	Sweet potatoes	
0212030	Yams	
0212040	Arrowroots	
0212990	Others (2)	
0213000	(c) other root and tuber vegetables except sugar beets	
0213010	Beetroots	1,5
0213020	Carrots	1,5
0213030	Celeriacs/turnip rooted celeries	0,3
0213040	Horseradishes	1,5
0213050	Jerusalem artichokes	0,02 (*)
0213060	Parsnips	1,5
0213070	Parsley roots/Hamburg roots parsley	1,5

0213080	Radishes	0,3
0213090	Salsifies	1,5
0213100	Swedes/rutabagas	0,02 (*)
0213110	Turnips	0,02 (*)
0213990	Others (2)	0,02 (*)
0220000	Bulb vegetables	
0220010	Garlic	0,07
0220020	Onions	0,3
0220030	Shallots	0,07
0220040	Spring onions/green onions and Welsh onions	0,8
0220990	Others (2)	0,02 (*)
0230000	Fruiting vegetables	
0231000	(a) Solanaceae and Malvaceae	
0231010	Tomatoes	1,5
0231020	Sweet peppers/bell peppers	1,5
0231030	Aubergines/eggplants	1,5
0231040	Okra/lady's fingers	0,02 (*)
0231990	Others (2)	0,02 (*)
0232000	(b) cucurbits with edible peel	0,5
0232010	Cucumbers	
0232020	Gherkins	
0232030	Courgettes	
0232990	Others (2)	
0233000	(c) cucurbits with inedible peel	0,6
0233010	Melons	
0233020	Pumpkins	
0233030	Watermelons	
0233990	Others (2)	
0234000	(d) sweet corn	0,02 (*)
0239000	(e) other fruiting vegetables	0,02 (*)
0240000	Brassica vegetables(excluding brassica roots and brassica baby leaf crops)	
0241000	(a) flowering brassica	2
0241010	Broccoli	
0241020	Cauliflowers	
0241990	Others (2)	
0242000	(b) head brassica	
0242010	Brussels sprouts	0,02 (*)

0242020	Head cabbages	0,7
0242990	Others (2)	0,02 (*)
0243000	(c) leafy brassica	0,02 (*)
0243010	Chinese cabbages/pe-tsai	
0243020	Kales	
0243990	Others (2)	
0244000	(d) kohlrabies	0,02 (*)
0250000	Leaf vegetables, herbs and edible flowers	
0251000	(a) lettuces and salad plants	15
0251010	Lamb's lettuces/corn salads	
0251020	Lettuces	
0251030	Escaroles/broad-leaved endives	
0251040	Cresses and other sprouts and shoots	
0251050	Land cresses	
0251060	Roman rocket/rucola	
0251070	Red mustards	
0251080	Baby leaf crops (including brassica species)	
0251990	Others (2)	
0252000	(b) spinaches and similar leaves	15
0252010	Spinaches	
0252020	Purslanes	
0252030	Chards/beet leaves	
0252990	Others (2)	
0253000	(c) grape leaves and similar species	0,02 (*)
0254000	(d) watercresses	0,02 (*)
0255000	(e) witloofs/Belgian endives	0,06
0256000	(f) herbs and edible flowers	40
0256010	Chervil	
0256020	Chives	
0256030	Celery leaves	
0256040	Parsley	
0256050	Sage	
0256060	Rosemary	
0256070	Thyme	
0256080	Basil and edible flowers	
0256090	Laurel/bay leaves	
0256100	Tarragon	
0256990	Others (2)	

0260000	Legume vegetables	
0260010	Beans (with pods)	2
0260020	Beans (without pods)	0,08
0260030	Peas (with pods)	2
0260040	Peas (without pods)	0,08
0260050	Lentils	0,2
0260990	Others (2)	0,02 (*)
0270000	Stem vegetables	
0270010	Asparagus	0,02 (*)
0270020	Cardoons	0,02 (*)
0270030	Celeries	30
0270040	Florence fennels	4
0270050	Globe artichokes	4
0270060	Leeks	0,02 (*)
0270070	Rhubarbs	2
0270080	Bamboo shoots	0,02 (*)
0270090	Palm hearts	0,02 (*)
0270990	Others (2)	0,02 (*)
0280000	Fungi, mosses and lichens	0,02 (*)
0280010	Cultivated fungi	
0280020	Wild fungi	
0280990	Mosses and lichens	
0290000	Algae and prokaryotes organisms	0,02 (*)
0300000	PULSES	
0300010	Beans	0,2
0300020	Lentils	0,02 (*)
0300030	Peas	0,1
0300040	Lupins/lupini beans	0,1
0300990	Others (2)	0,02 (*)
0400000	OILSEEDS AND OIL FRUITS	
0401000	Oilseeds	
0401010	Linseeds	0,02 (*)
0401020	Peanuts/groundnuts	0,02 (*)
0401030	Poppy seeds	0,02 (*)
0401040	Sesame seeds	0,02 (*)
0401050	Sunflower seeds	0,02 (*)
0401060	Rapeseeds/canola seeds	0,02
0401070	Soyabeans	0,02 (*)

0401080	Mustard seeds	0,02 (*)
0401090	Cotton seeds	0,02 (*)
0401100	Pumpkin seeds	0,02 (*)
0401110	Safflower seeds	0,02 (*)
0401120	Borage seeds	0,02 (*)
0401130	Gold of pleasure seeds	0,02 (*)
0401140	Hemp seeds	0,02 (*)
0401150	Castor beans	0,02 (*)
0401990	Others (2)	0,02 (*)
0402000	Oil fruits	0,02 (*)
0402010	Olives for oil production	
0402020	Oil palms kernels	
0402030	Oil palms fruits	
0402040	Kapok	
0402990	Others (2)	
0500000	CEREALS	
0500010	Barley	4
0500020	Buckwheat and other pseudocereals	0,02 (*)
0500030	Maize/corn	0,02 (*)
0500040	Common millet/proso millet	0,02 (*)
0500050	Oat	4
0500060	Rice	0,02 (*)
0500070	Rye	0,5
0500080	Sorghum	0,02 (*)
0500090	Wheat	0,5
0500990	Others (2)	0,02 (*)
0600000	TEAS, COFFEE, HERBAL INFUSIONS, COCOA AND CAROBS	
0610000	Teas	0,1 (*)
0620000	Coffee beans	0,1 (*)
0630000	Herbal infusions from	
0631000	(a) flowers	0,1 (*)
0631010	Chamomile	
0631020	Hibiscus/roselle	
0631030	Rose	
0631040	Jasmine	
0631050	Lime/linden	
0631990	Others (2)	

0632000	(b) leaves and herbs	0,1 (*)
0632010	Strawberry	
0632020	Rooibos	
0632030	Mate/maté	
0632990	Others (2)	
0633000	(c) roots	1,5(+)
0633010	Valerian	(+)
0633020	Ginseng	(+)
0633990	Others (2)	(+)
0639000	(d) any other parts of the plant	0,1 (*)
0640000	Cocoa beans	0,1 (*)
0650000	Carobs/Saint John's breads	0,1 (*)
0700000	HOPS	0,1 (*)
0800000	SPICES	
0810000	Seed spices	0,1 (*)
0810010	Anise/aniseed	
0810020	Black caraway/black cumin	
0810030	Celery	
0810040	Coriander	
0810050	Cumin	
0810060	Dill	
0810070	Fennel	
0810080	Fenugreek	
0810090	Nutmeg	
0810990	Others (2)	
0820000	Fruit spices	0,1 (*)
0820010	Allspice/pimento	
0820020	Sichuan pepper	
0820030	Caraway	
0820040	Cardamom	
0820050	Juniper berry	
0820060	Peppercorn (black, green and white)	
0820070	Vanilla	
0820080	Tamarind	
0820990	Others (2)	
0830000	Bark spices	0,1 (*)
0830010	Cinnamon	
0830990	Others (2)	

0840000	Root and rhizome spices	
0840010	Liquorice	1,5(+)
0840020	Ginger (10)	
0840030	Turmeric/curcuma	1,5(+)
0840040	Horseradish (11)	
0840990	Others (2)	1,5(+)
0850000	Bud spices	0,1 (*)
0850010	Cloves	
0850020	Capers	
0850990	Others (2)	
0860000	Flower pistil spices	0,1 (*)
0860010	Saffron	
0860990	Others (2)	
0870000	Aril spices	0,1 (*)
0870010	Mace	
0870990	Others (2)	
0900000	SUGAR PLANTS	0,02 (*)
0900010	Sugar beet roots	
0900020	Sugar canes	
0900030	Chicory roots	
0900990	Others (2)	
1000000	PRODUCTS OF ANIMAL ORIGIN - TERRESTRIAL ANIMALS	
1010000	Commodities from	(+)
1011000	(a) swine	0,02 (*) (+)
1011010	Muscle	(+)
1011020	Fat	(+)
1011030	Liver	(+)
1011040	Kidney	(+)
1011050	Edible offals (other than liver and kidney)	(+)
1011990	Others (2)	(+)
1012000	(b) bovine	
1012010	Muscle	0,02 (*) (+)
1012020	Fat	0,02 (*) (+)
1012030	Liver	0,05(+)
1012040	Kidney	0,05(+)
1012050	Edible offals (other than liver and kidney)	0,02 (*) (+)
1012990	Others (2)	0,02 (*) (+)

1013000	(c) sheep	
1013010	Muscle	0,02 (*) (+)
1013020	Fat	0,02 (*) (+)
1013030	Liver	0,05 (+)
1013040	Kidney	0,05 (+)
1013050	Edible offals (other than liver and kidney)	0,02 (*) (+)
1013990	Others (2)	0,02 (*) (+)
1014000	d) goat	
1014010	Muscle	0,02 (*) (+)
1014020	Fat	0,02 (*) (+)
1014030	Liver	0,05 (+)
1014040	Kidney	0,05 (+)
1014050	Edible offals (other than liver and kidney)	0,02 (*) (+)
1014990	Others (2)	0,02 (*) (+)
1015000	(e) equine	
1015010	Muscle	0,02 (*) (+)
1015020	Fat	0,02 (*) (+)
1015030	Liver	0,05 (+)
1015040	Kidney	0,05 (+)
1015050	Edible offals (other than liver and kidney)	0,02 (*) (+)
1015990	Others (2)	0,02 (*) (+)
1016000	(f) poultry	0,02 (*) (+)
1016010	Muscle	(+)
1016020	Fat	(+)
1016030	Liver	(+)
1016040	Kidney	
1016050	Edible offals (other than liver and kidney)	(+)
1016990	Others (2)	(+)
1017000	(g) other farmed terrestrial animals	
1017010	Muscle	0,02 (*) (+)
1017020	Fat	0,02 (*) (+)
1017030	Liver	0,05 (+)
1017040	Kidney	0,05 (+)
1017050	Edible offals (other than liver and kidney)	0,02 (*) (+)
1017990	Others (2)	0,02 (*) (+)
1020000	Milk	0,02 (*) (+)
1020010	Cattle	(+)
1020020	Sheep	(+)

1020030	Goat	(+)
1020040	Horse	
1020990	Others (2)	
1030000	Birds eggs	0,02 (*) (+)
1030010	Chicken	(+)
1030020	Duck	(+)
1030030	Geese	(+)
1030040	Quail	(+)
1030990	Others (2)	(+)
1040000	Honey and other apiculture products (7)	0,05 (*)
1050000	Amphibians and Reptiles	0,02 (*)
1060000	Terrestrial invertebrate animals	0,02 (*)
1070000	Wild terrestrial vertebrate animals	0,02 (*)
1100000	PRODUCTS OF ANIMAL ORIGIN - FISH, FISHPRODUCTS AND ANY OTHER MARINE AND FRESHWATER FOOD PRODUCTS (8)	
1200000	PRODUCTS OR PART OF PRODUCTS EXCLUSIVELY USED FOR ANIMAL FEED PRODUCTION (8)	
1300000	PROCESSED FOOD PRODUCTS (9)	

(*) Indicates lower limit of analytical determination

(†) For the complete list of products of plant and animal origin to which MRL's apply, reference should be made to Annex I

Cyprodinil (R) (F)

(R) The residue definition differs for the following combinations pesticide-code number: Cyprodinil - code 1000000 except 1020000, 1040000: Cyprodinil (sum of cyprodinil and CGA 304075 (free), expressed as cyprodinil); Cyprodinil - code 1020000: Cyprodinil (sum of cyprodinil and CGA 304075 (free and conjugated), expressed as cyprodinil)

(F) Fat soluble

The European Food Safety Authority identified some information on analytical and/or confirmatory methods as unavailable. When re-viewing the MRL, the Commission will take into account the information referred to in the first sentence, if it is submitted by 14 March 2017, or, if that information is not submitted by that date, the lack of it.

0120010 Almonds

0633000 (c) roots

0633010 Valerian

0633020 Ginseng

0633990 Others (2)

0840010 Liquorice

0840030 Turmeric/curcuma

0840990 Others (2)

1000000 PRODUCTS OF ANIMAL ORIGIN -TERRESTRIAL ANIMALS**1010000 Commodities from****1011000 (a) swine****1011010 Muscle****1011020 Fat****1011030 Liver****1011040 Kidney****1011050 Edible offals (other than liver and kidney)****1011990 Others (2)****1012000 (b) bovine****1012010 Muscle****1012020 Fat****1012030 Liver****1012040 Kidney****1012050 Edible offals (other than liver and kidney)****1012990 Others (2)****1013000 (c) sheep****1013010 Muscle****1013020 Fat****1013030 Liver****1013040 Kidney****1013050 Edible offals (other than liver and kidney)****1013990 Others (2)****1014000 (d) goat****1014010 Muscle****1014020 Fat****1014030 Liver****1014040 Kidney****1014050 Edible offals (other than liver and kidney)****1014990 Others (2)****1015000 (e) equine****1015010 Muscle****1015020 Fat**

1015030 Liver

1015040 Kidney

1015050 Edible offals (other than liver and kidney)

1015990 Others (2)

1016000 (f) poultry

1016010 Muscle

1016020 Fat

1016030 Liver

1016050 Edible offals (other than liver and kidney)

1016990 Others (2)

1017000 (g) other farmed terrestrial animals

1017010 Muscle

1017020 Fat

1017030 Liver

1017040 Kidney

1017050 Edible offals (other than liver and kidney)

1017990 Others (2)

1020000 Milk

1020010 Cattle

1020020 Sheep

1020030 Goat

1030000 Birds eggs

1030010 Chicken

1030020 Duck

1030030 Geese

1030040 Quail

1030990 Others (2)

COMMISSION IMPLEMENTING REGULATION (EU) 2021/1811**of 14 October 2021****imposing a provisional anti-dumping duty on imports of calcium silicon originating in the People's Republic of China**

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 7 thereof,

After consulting the Member States,

Whereas:

1. PROCEDURE**1.1. Initiation**

- (1) On 18 February 2021, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of calcium silicon originating in the People's Republic of China ('the country concerned' or 'PRC' or 'China') on the basis of Article 5 of the basic Regulation. It published a Notice of initiation in the *Official Journal of the European Union* ⁽²⁾ ('the Notice of initiation').
- (2) The Commission initiated the investigation following a complaint lodged on 4 January 2021 by Euroalliages ('the complainant'). The complaint was made on behalf of the Union industry of calcium silicon in the sense of Article 5(4) of the basic Regulation. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.
- (3) Pursuant to Article 14(5a) of the basic Regulation, the Commission should register imports subject to an anti-dumping investigation during the period of pre-disclosure unless it has sufficient evidence within the meaning of Article 5 that the requirements either under point (c) or (d) of Article 10(4) are not met.
- (4) In the case at hand, the complainant did not request registration and the Commission found that the requirements under point (d) were not met as there was not, in addition to the level of imports which caused injury during the investigation period, a further substantial rise in imports thereafter. According to Eurostat data, the volume of imports from China decreased by 86 % in the first 4 months (i.e. March to June 2021) after the initiation of the investigation as compared to the same months during the investigation period. On a monthly basis, the average imports from China during the first 4 months after the initiation of the investigation decreased by 74 % as compared to the average monthly imports during the investigation period. Therefore, the Commission did not register imports during the period of pre-disclosure.

1.2. Interested parties

- (5) 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 complainant, known Union producers, the known exporting producers and the authorities of the PRC, known importers, suppliers and users, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Notice of initiation of an anti-dumping proceeding concerning imports of calcium silicon originating in the People's Republic of China (OJ C 58, 18.2.2021, p. 60).

- (6) Interested parties had an 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.
- (7) No hearings were requested at this stage of the investigation.

1.3. Comments on initiation

- (8) The Commission received comments on initiation from Eurofer and the German Steel Federation (Wirtschaftsvereinigung Stahl) requesting the termination of the investigation.
- (9) Eurofer claimed that the main reason for the weak performance of the Union industry was the downturn in steel production and not Chinese imports and, therefore, the complaint failed to establish a causal link between Chinese imports and the situation of the Union industry. Eurofer also argued that the complainant did not give any information regarding to what extent calcium silicon producers can produce other ferroalloys on the same machinery. Furthermore, Eurofer claimed that the complainant failed to properly analyse factors other than dumped imports that might have led to the situation of the calcium silicon industry in the Union, such as the Covid-19 pandemic and the link with steel excess capacity. Moreover, Eurofer submitted that the alleged Chinese import surges could not be reconciled based on Eurostat/Comext import data for CN code 7202 99 80. According to these data, import increases from China were not visible during the IP, whereas import increases from Brazil were much stronger. Moreover, concerning profitability, Eurofer and the German Steel Federation claimed that its reduction was the logical consequence of the worst economic crisis in more than 10 years. According to Eurofer, the overall economic situation led to the bad performance of the complainant, rather than imports. In particular, as regards costs, Eurofer pointed out that, contrary to the complainant's allegation, energy costs decreased during the investigation period, and therefore could not have contributed to the cost increase. Also, according to Eurofer, fixed costs have not increased, due to lower steel demand. The German Steel Federation added that it must also be considered that the Chinese alloying elements producers have noticeable comparative cost advantages in the production of alloys due to lower energy and labour costs and own raw material sources. All this allegedly showed that the reduction in profitability was not the consequence of Chinese imports, but the logical consequence of the overall economic situation and the Covid-19 pandemic.
- (10) In the complaint, undercutting was established based on certain transactions which were the best information available to the complainant at that stage. Eurofer criticised this method and also pointed out that undercutting should take into account whether sales were made in bulk or as cored wire.
- (11) The Commission's analysis confirmed that none of the elements mentioned, whether factually correct or not, were sufficient to call into question the conclusion that the complaint contained sufficient evidence tending to show that imports of the product concerned were entering the Union at dumped prices and appeared to be causing material injury to the Union producers. These aspects had been established on the basis of the best evidence available to the complainant at the time, and were sufficiently representative and reliable. Furthermore, the claims put forward by Eurofer and the German Steel Federation were examined in detail in the course of the investigation, and are further addressed below.
- (12) On the basis of the above, the Commission confirmed that the complainant provided sufficient evidence of dumping, injury and a causal link, thereby satisfying the requirements set out in Article 5(2) of the basic Regulation.

1.4. Sampling

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

1.4.1. Union producers

- (14) In the Notice of initiation, the Commission stated that it would make questionnaires available to the only two known Union producers, namely OFZ, a.s. and Ferropem. Nevertheless, the Commission invited also other Union producers, if any, to make themselves known to the Commission and to request a questionnaire no later than 7 days after the publication of the Notice of initiation.

- (15) No other Union producers made themselves known to the Commission. The two Union producers mentioned are therefore considered to constitute 100 % of the Union industry.

1.4.2. *Sampling of importers*

- (16) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of initiation.
- (17) Four unrelated importers (Affival SAS, Coftech GmbH, Sider Trading SpA, SKW Stahl-Metallurgie GmbH) provided the requested information and agreed to be included in the sample. In view of the low number of replies, the Commission decided that sampling was not necessary. The Commission invited the four companies indicated to complete the questionnaire for importers.

1.4.3. *Sampling of exporting producers in the PRC*

- (18) In order to decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known exporting producers in the PRC to provide the information specified in the Notice of initiation. In addition, the Commission asked the Mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (19) Three exporting producers in the PRC provided the requested information and agreed to be included in the sample. In view of the low number of replies, the Commission decided that sampling was not necessary.

1.5. **Questionnaire replies and verification visits**

- (20) The Commission sent a questionnaire concerning the existence of significant distortions in the PRC within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of the PRC ("GOC").
- (21) Furthermore, the complainant provided in the complaint sufficient evidence of raw material distortions in the PRC regarding the product concerned. Therefore, as announced in the Notice of initiation, the investigation covered those raw material distortions to determine whether to apply the provisions of Article 7(2a) and 7(2b) of the basic Regulation with regard to the PRC. For this reason, the Commission sent an additional questionnaire in this regard to the Government of the PRC.
- (22) The questionnaires for Union producers, unrelated importers, users and exporting producers were made available online ⁽³⁾ on the day of initiation.
- (23) The Commission received questionnaire replies from the two Union producers, two Union importers (Affival and Coftech), two users (AFV Acciaierie Beltrame S.p.A. and Filo d.o.o.) and the three cooperating exporting producers (Ningxia Ketong New Material Technology Co., Ltd, Ningxia Shun Tai Smelting Co., Ltd and its related trader Overseas Metallurgy Co., Ltd and Shaanxi Shenghua Metallurgy-Chemical Co., Ltd).
- (24) The Commission sought and cross-checked all the information it deemed necessary for a provisional determination of dumping, resulting injury and Union interest. Due to the outbreak of the COVID-19 pandemic and the consequent measures taken to deal with the outbreak ("the COVID-19 Notice") ⁽⁴⁾ the Commission was unable to carry out verification visits at the premises of the cooperating companies. Instead, the Commission performed remote cross-checks ("RCCs") of the information provided by the following companies via videoconference:

Union producers

— OFZ, a.s., Istebné, Slovakia

⁽³⁾ https://trade.ec.europa.eu/tdi/case_details.cfm?id=2514

⁽⁴⁾ Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations (OJ C 86, 16.3.2020, p. 6).

— Ferropem, Chambéry, France

Importers

— Affival SAS, Solesmes, France

Exporting producers in the PRC

— Ningxia Ketong New Material Technology Co., Ltd ('Ketong')

— Ningxia Shun Tai Smelting Co., Ltd and its related trader Overseas Metallurgy Co., Ltd ('Shun Tai')

— Shaanxi Shenghua Metallurgy-Chemical Co., Ltd ('Shenghua').

1.6. Investigation period and period considered

- (25) The investigation of dumping and injury covered the period from 1 January 2020 to 31 December 2020 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2017 to the end of the investigation period ('the period considered').

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (26) The product concerned is an alloy or a chemical compound that contains by weight 16 % or more of calcium, 45 % or more of silicon, less than 14 % of iron and not more than 10 % of any other element; whether or not presented in bulk, packaged in bags or in steel drums, enclosed in steel sheets (or cored wire), or otherwise presented, originating in the PRC, currently falling under CN codes ex 7202 99 80 and ex 2850 00 60 (TARIC codes 7202 99 80 30 and 2850 00 60 91) ('the product concerned'). It is commonly referred to as calcium silicon or 'CaSi'.
- (27) Calcium silicon is used in the manufacture of special metal alloys. CaSi alloys are used as a deoxidiser and desulfuriser in the manufacturing of high-grade steel.

2.2. Like product

- (28) The investigation showed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:
- the product concerned;
 - the product produced and sold on the domestic market of the PRC, and
 - the product produced and sold in the Union by the Union industry.
- (29) The Commission decided at this stage that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

2.3. Claims regarding product scope

- (30) The Commission did not receive claims regarding the product scope.

3. DUMPING

3.1. Procedure for the determination of the normal value under Article 2(6a) of the basic Regulation

- (31) In view of the sufficient evidence available at the initiation of the investigation pointing to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation with regard to the PRC, the Commission considered it appropriate to initiate the investigation with regard to the exporting producers from this country having regard to Article 2(6a) of the basic Regulation.

- (32) Consequently, in order to collect the necessary data for the eventual application of Article 2(6a) of the basic Regulation, in the Notice of initiation the Commission invited all Chinese exporting producers to provide information regarding the inputs used for producing calcium silicon. Three Chinese exporting producers submitted the relevant information.
- (33) In order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions, the Commission sent a questionnaire to the GOC. In addition, in point 5.3.2 of the Notice of initiation, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of initiation in the *Official Journal of the European Union*. No reply to the requested information was provided by the GOC. Subsequently, the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in the PRC.
- (34) In point 5.3.2 of the Notice of initiation the Commission identified Brazil as a potential representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks. The Commission further stated that it would examine other possibly appropriate representative countries in accordance with the criteria set out in 2(6a)(a) first indent of the basic Regulation.
- (35) On 7 May 2021, the Commission informed by a note ('the First Note') interested parties on the relevant sources it intended to use for the determination of the normal value. In that note, the Commission provided a list of all factors of production such as raw materials, labour and energy used in the production of calcium silicon. In addition, the Commission identified Brazil and Argentina as possible representative countries. The Commission received comments from the complainant and the exporting producers Ketong and Shenghua. These comments are analysed in detail in recitals (93) to (119).
- (36) On 14 June 2021, the Commission informed by a second note ('the Second Note') interested parties on the relevant sources it intended to use for the determination of the normal value, with Brazil as the representative country. It also informed interested parties that it would establish selling, general and administrative costs ('SG&A') and profits based on available information for the relevant company Rima Industrial S.A. ('Rima Industrial') in the representative country. The Second Note also addressed the comments received to the First Note. Comments to the Second Note were received from the complainant and the exporting producers Ketong and Shenghua. These comments are analysed in detail in recitals (122) to (136).

3.2. Normal Value

- (37) According to Article 2(1) of the basic Regulation, 'the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country'.
- (38) However, according to Article 2(6a)(a) of the basic Regulation, 'in case it is determined [...] that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions within the meaning of point (b), the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks', and 'shall include an undistorted and reasonable amount of administrative, selling and general costs and for profits'.
- (39) As further explained below, the Commission concluded in the present investigation that, based on the evidence available, and in view of the lack of cooperation of the GOC, as stated in recital (33), the application of Article 2(6a) of the basic Regulation was appropriate.

3.2.1. Existence of significant distortions

- (40) In the recent investigation concerning ferro-silicon originating in the PRC, the producers of which belong to the ferro-alloys sector, similarly to producers of calcium silicon ⁽⁷⁾, the Commission found that significant distortions in the sense of Article 2(6a)(b) of the basic Regulation were present in the said sector. The Commission concluded in that investigation that, based on the evidence available, the application of Article 2(6a) of the basic Regulation was also appropriate.
- (41) In that investigation, the Commission found that there is substantial government intervention in the PRC resulting in a distortion of the effective allocation of resources in line with market principles ⁽⁸⁾. In particular, the Commission concluded that in the ferro-silicon sector, not only does a substantial degree of ownership by the GOC persists in the sense of Article 2(6a)(b), first indent of the basic Regulation ⁽⁷⁾ but the GOC is also in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation ⁽⁸⁾. The Commission found further that the State's presence and intervention in the financial markets, as well as in the provision of raw materials and inputs have an additional distorting effect on the market. Indeed, overall, the system of planning in the PRC results in resources being allocated to sectors designated as strategic or otherwise politically important by the GOC, rather than being allocated in line with market forces ⁽⁹⁾. Moreover, the Commission concluded that the Chinese bankruptcy and property laws do not work properly in the sense of Article 2(6a)(b), fourth indent of the basic Regulation, thus generating distortions in particular when maintaining insolvent firms afloat and when allocating land use rights in the PRC ⁽¹⁰⁾. In the same vein, the Commission found distortions of wage costs in the ferro-silicon sector in the sense of Article 2(6a)(b), fifth indent of the basic Regulation ⁽¹¹⁾, as well as distortions in the financial markets in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, in particular concerning access to capital for corporate actors in the PRC ⁽¹²⁾. Due to the close similarity of inputs used and of the production process, these findings largely apply also to the calcium-silicon sector, the latter also forming part of the ferro-alloys sector.
- (42) Like in the investigation concerning the ferro-silicon sector in the PRC, the Commission examined in the present investigation whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the complaint, as well as in the Report, which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in the PRC's economy in general, but also the specific market situation in the relevant sector including the product under investigation. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in the PRC as also found by its previous investigations in this respect.
- (43) The complaint in this case referred to the Report, in particular to distortions in the energy sector and with regard to certain mineral inputs. Moreover, the complainant also provided a study on State-induced market distortions the Chinese ferro-alloys and silicon industries. This study documented that the Chinese ferro-alloy industry is subject to heavy government guidance and discretionary interference and concluded that the Chinese companies in this

⁽⁷⁾ Commission Implementing Regulation (EU) 2020/909 of 30 June 2020 imposing a definitive anti-dumping duty on imports of ferro-silicon originating in Russia and the People's Republic of China, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 (OJ L 208, 1.7.2020, p. 2).

⁽⁸⁾ Ibid, recitals 54-60 and 111-115.

⁽⁹⁾ Ibid, recitals 61-64.

⁽⁸⁾ Ibid, recitals 66-69. While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights, CCP cells in enterprises, state owned and private alike, represent another important channel through which the State can interfere with business decisions. According to the PRC's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline. In 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of calcium silicon producers and the suppliers of their inputs.

⁽⁹⁾ Ibid, recitals 70-80.

⁽¹⁰⁾ Ibid, recitals 81-86.

⁽¹¹⁾ Ibid, recitals 87-90.

⁽¹²⁾ Ibid, recitals 91-110.

industry 'are operating in a distorted market environment in which competitive forces are not permitted to structure the domestic market and align it with the global markets.' This study was placed in the investigation file at the initiation stage. No comment on this study was provided by any interested party, including the GOC and the exporting producers. The complaint also contained references to the OECD Inventory on Export restrictions on Industrial Raw Materials.

- (44) In the calcium silicon sector, a certain degree of ownership and control by the GOC persists in the sense of Article 2(6a)(b), first indent of the basic Regulation. The investigation established that one of the cooperating exporting producers – Shenghua – is owned 65 % by Shaanxi Metallurgical & Mining Group Co., which in turn is a subsidiary of State-owned Shaanxi Non-ferrous Metals Holding Group Co. ⁽¹³⁾. The company acknowledges it remains under the influence of the SOE and benefits from the strong backing of the government ⁽¹⁴⁾. Additionally, while the two other cooperating exporting producers appear to be privately owned, one of them – Ningxia Shun Tai Smelting – also appears to entertain a close relationship with the local authorities: it is located in Zhongwei Industrial Park, which grants numerous preferential policies to established companies, such as reduced taxes or electricity prices ⁽¹⁵⁾. The Park's website states also that 'The silicon-calcium alloy submerged arc furnace and waste heat power generation project of Ningxia Shuntai Smelting Company is a key investment promotion project of Zhongwei Municipal Government.'
- (45) Since there was no cooperation from any other Chinese exporters of the product under investigation, the exact ratio of private and State-owned calcium silicon producers could not be further determined.
- (46) Additionally, the investigation confirmed under Article 2(6a)(b), first indent of the basic Regulation that in the electricity sector, which is the main factor of production in the manufacturing of calcium silicon, a substantial degree of ownership by the GOC persists. As found by the Commission in its Report, the electricity market in China is characterised by strong involvement of SOEs in various stages of the supply chain, and around 50 % of the generation capacity was State-owned in 2017, whereas the entire transmission grid is owned by two SOEs ⁽¹⁶⁾.
- (47) As to the GOC being in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation, during the investigation the Commission established the existence of personal connections between the Chinese Communist Party ('CCP') and at least one company manufacturing the product under investigation. Shenghua's CEO and owner of 35 % of the company's stake holds at the same time the position of Party Secretary ⁽¹⁷⁾.
- (48) Both public and privately owned enterprises in the calcium silicon sector are also subject to policy supervision and guidance. As in any other sector in the PRC, these producers are constrained to host party-building activities and maintain a close affiliation to the CCP and its ideology. The following example illustrates the above trend of an increasing level of intervention by the GOC also in the calcium silicon sector. The investigation revealed extensive party-building activities in the company Shenghua. The producer's website is particularly explicit about the

⁽¹³⁾ See company website: <http://www.sxshyh.com/html/guanyuwomen/> (accessed on 3 August 2021). 'It is controlled by Shaanxi Nonferrous Metallurgical Mining, a subsidiary of the large-scale state-owned enterprise Shaanxi Nonferrous Group. The company has a provincial-level recognised enterprise technology centre; it is a comprehensive non-ferrous metal and ferroalloy smelting, processing, R & D, and export trading enterprise. It is a national "high-tech enterprise", a "technological innovation demonstration enterprise" at Shaanxi Province level, a "quality benchmarking enterprise" at Shaanxi Province level, and a Director of China Ferroalloy Industry Association and a Director of Shaanxi Provincial Institute of Metals'.

⁽¹⁴⁾ See notably the following excerpt: 'Shaanxi Shenghua Metallurgical & Chemical Co., Ltd was established in November 2007. After reorganization of assets in 2013, it became a subsidiary of Shaanxi Nonferrous Metals. Under the strong leadership of the group company and the strong support of the government and the whole society, all the cadres and employees of the company united, worked hard, and achieved significant economic and social benefits, and won the first prize of Shaanxi Science and Technology Award and many others honors [...]. It belongs to the fourth batch of ferroalloy enterprises approved by the Ministry of Industry and Information Technology, and has the right to import and export'. <http://sxshyh.cn/index/index/about>

⁽¹⁵⁾ See the Park's website – Article 68: 'Enterprises entering high-capacity industry parks determined by the Autonomous Region can benefit from electricity preferential policies regularly announced by the Autonomous Region'. <http://www.gdsnxsh.com/h-nd-226.html> (accessed on 3 August 2021).

⁽¹⁶⁾ In 2017, the largest five power generators electricity generation accounted for 45,5 % (Huaneng, Huadian, Guodian, Datang and State Power Investment). Adding other state-owned power generators, such as China Yangtze Power Co. Ltd and CGN, the figure would probably exceed 50 %. Source: <http://www.wusuobuneng.cn/archives/22266> (accessed on 25 August 2017). According to the data for 2015 of the China Statistical Yearbook 2016, National Bureau of Statistics of China, 97 % of the aggregated production and supply of electric power and heat power was state owned (97 % by assets and 83 % in terms of number of enterprises). See Report, p. 218.

⁽¹⁷⁾ <http://www.sxshyh.com/html/guanyuwomen/lingdaotuanhui/>

enterprise's CCP party-building and its role within the company: 'On July 17, the CCP Shaanxi Shenghua Metallurgical Chemical Co., Ltd committee held the fourth Party committee centre group study session. Party Secretary and Executive Director Wei Xinhua presided over the meeting. Party committee members, others members of the non-party committees as well as branch secretaries attended the meeting. At the meeting, Yang Hui, deputy secretary of the Party committee, introduced the study material on "The Fundamental Law of the Communist Party of China-The Party Constitution of the 19th National Congress of the Communist Party of China", and ensured collective study of the speech of the Chairman of the Metallurgical Group at the July 1st Praise Conference "Let's align with the advanced and unite and forge ahead the smelting force." Participants exchanged and discussed how to fulfil party members' obligations and fulfil their missions. [...] [Wei Xinhua] put forward several requirements for the leadership team and Party members comrades: 1. To continuously improve oneself by seriously reading the Party Constitution, [...] 2. Strengthen ideology and belief, unwaveringly adhere to the leadership of the company's Party committee, carry forward the "Yan'an Spirit" and "Nail Spirit", and focus one's energy on tasks to fulfil one's duties and ensure a good job for the company. [...] 4. Investigate and correct one's own work style-related problem in accordance with the Party's constitution and discipline. All branches must do a good job in ideological education of Party members and cadres and enhance their Party spirit; [...] The company's discipline inspection committee and the discipline inspection and supervision office must strictly perform their supervisory duties' ⁽¹⁸⁾.

- (49) Further, it was established that policies discriminating in favour of domestic producers or otherwise influencing the market in the sense of Article 2(6a)(b), third indent of the basic Regulation are in place in the calcium silicon sector.
- (50) That industry, together with other ferro-alloys sub-sectors which play a significant role in steel production, is an important sector for the GOC. Notably, the Commission found that the sector is considered an encouraged industry in the Ningxia province, in accordance with the 2020 National Development and Reform Commission ('NDRC') *Catalogue of encouraged industries in the Western provinces* ⁽¹⁹⁾.
- (51) Also with regard to inputs needed for the production of calcium silicon, numerous plans, directives and other documents have been issued at various levels. The latter display the level of State interference in the markets of these inputs.
- (52) Concerning electricity, which accounts for the largest share of input costs, as established by the Commission in the Report, the prices of electricity are not market-based in the PRC and are also affected by significant distortions (through central price-setting, price differentiation and in direct power purchase practices) ⁽²⁰⁾. While the energy market in China has undergone a number of changes and reforms ⁽²¹⁾, some prices relevant for the energy system are still not market-based. The government recognises that the prices are still largely controlled by the State: 'The current electricity price management is still based on government prices. Price adjustments often lag behind changes in costs and it is difficult to timely and reasonably reflect the electricity usage costs [...] An effective competitive mechanism for the sale of electricity has not yet been established, market transactions between electricity generation enterprises and users are limited and it is difficult to involve the decisive role of the market in the allocation of resources' ⁽²²⁾. This State-induced market weakness is at the origin of further attempts to manage the market, which is reflected in a number of subsequent administrative documents. For example, in November 2020, the NDRC released the *Notice on promoting the signing of mid to long-term 2021 electricity contracts* ⁽²³⁾. The

⁽¹⁸⁾ See article of 20 July 2020 on company website: <http://www.sxshyh.com/html/xinwenzixun/gongsixinwen/301.html> (last accessed on 27 July 2021). Other such accounts of Party-building work are available. See also the description of another meeting in February 2018: 'The event was hosted by the company's Party Secretary and General Manager Comrade Wei Xinhua. At the meeting, Comrade Yang Hui, Deputy Secretary of the Party Committee, Secretary of the Disciplinary Committee, and Chairman of the Labor Union at Shenghua Metallurgical Chemical Industry Co., Ltd led the Non-Ferrous Group's "Unbalanced and Insufficient Development" Special Investigation topic, and clarified the purpose and importance of the discussion: in order to thoroughly implement the spirit of the 19th National Congress of the Communist Party of China, in accordance with the documents and requirements of the Party Committee of the Nonferrous Metals Group Corporation and the Party Committee of the Metallurgical Group, starting from the aspects of Party-building work, production and operation, internal control management, reform and innovation, and carefully analyzing the symptoms and causes of the company's own development imbalances and deficiencies and propose solutions and measures.' <http://www.sxshyh.com/html/dangqungongzuo/dangjiangongzuo/2018/0205/211.html> (accessed on 27 July 2021).

⁽¹⁹⁾ See point IX.5 of the Catalogue. <https://www.ndrc.gov.cn/jyzxDownload/20200812xbdqglcyfzml.pdf> (accessed on 3 August 2021).

⁽²⁰⁾ Report – Chapter 10, p. 221-230.

⁽²¹⁾ For instance, reforms in 2002 detached the power generation from transmission and distribution networks and the two are now operated by separate entities.

⁽²²⁾ *Opinions Regarding the Deepening of the Power Sector's Reform* issued in March 2015 by the CCP Central Committee and the State Council.

⁽²³⁾ https://www.ndrc.gov.cn/xxgk/zcfb/tz/202012/t20201202_1252094.html?code=&state=123 (accessed on 3 August 2021).

document notably instructs to 'strive to ensure that the contracted electricity volume is not lower than 80 % of the average volume over the past three years', and with regard to pricing to 'establish a deviation settlement mechanism [...] in the local market regulations to deal with deviations between the contracted power volume and the actual implementation' and to '[i]mprove the medium and long-term transaction price mechanism. All localities shall strictly implement the power transmission and distribution prices as approved by the government.' The Notice contains also specific provisions on implementation, notably through the establishment of a tracking mechanism for the contract signing progress, or by strengthening contracts monitoring, disclosure and enforcement ⁽²⁴⁾. Furthermore, in January 2021, the State Council released the *NDRC Opinion on standardising urban water, electricity and heating supplies fees to foster a high quality development of the sector*. The Notice contains specific provisions with regard to government pricing '[...] For projects subject to government pricing or government-guided prices, reasonably determine the cost composition, strengthen cost supervision and review, improve the price formation mechanism and scientifically determine the price level. [...]' Among the 'main goals' of the Notice, specific reference is made to the government input mechanism in relation to pricing, as well as the sectoral differentiation of pricing methods: 'By 2025, clear results shall be achieved in cleaning up and standardizing the charges in the water supply, power supply, gas and heating sector. A basis for a scientific, standardized and transparent price formation mechanism shall be established, and the government input mechanism shall be further improved. Pricing methods applicable to related sectors, cost supervision and review methods, price behaviour and standard comprehensive coverage of services, as well as the quality and efficiency of the supply of water, electricity, heating and other products and services shall be significantly improved.' ⁽²⁵⁾.

- (53) Coal is another raw material used to manufacture calcium silicon. As found by the Commission in its Report, the coal market in the PRC is subject to distortions, notably as a result of subsidisation ⁽²⁶⁾ and through the management and control over the exploitation of coal resources ⁽²⁷⁾. Additionally, in the investigation concerning Monosodium Glutamate originating in the PRC and Indonesia, the Commission made findings on the State's interference with market forces in the Chinese coal sector at provincial level, notably in Shandong Province, by means of planning documents regulating the supply, localisation and industrial patterns ⁽²⁸⁾. In the current investigation, the Commission established further elements of State interference. In May 2021, the National Energy Administration (NEA) and NDRC jointly released the *Notice on Management measures for coal mine production capacity and approval criteria*, with the aim of regulating coal mine capacities and enforcing relevant limits, calculated on the basis of the notice ⁽²⁹⁾. As another example of far-reaching State regulating activity in the coal market, in December 2020, the NDRC issued the *Notice on ensuring the signature and performance of medium and long-term coal contracts in 2021* ⁽³⁰⁾. The Notice expressly emphasizes the goal of increasing the State's influence and supervision in the contractual process: 'Give better play to the role of the government, focus on strengthening system construction, improve transaction rules, strengthen credit supervision, and guide relevant parties to raise awareness of the overall situation, take social responsibilities, standardize contract performance, and ensure the smooth functioning of the coal market.' The notice also instructs to '[s]trengthen industry self-discipline. All relevant industry associations shall guide enterprises to strengthen self-discipline, to duly implement the requirements of medium and long-term contracts, and not to use the market supply and demand situation and the advantageous position of the industry to sign unbalanced contracts. Large-scale enterprises shall play an exemplary role, self-regulate contract signatures, enhance their awareness of fulfilling commitments, take the initiative to take social responsibility of ensuring supply and stable prices, and promote the smooth operation of coal market at national level.' Particularly worth noting is

⁽²⁴⁾ Notably 'Local government departments shall, in coordination with the National Energy Administration's seconded entity, report to the National Development and Reform Commission and the State Energy Administration in a timely manner on the signing of medium- and long-term contracts as well as on relevant issues, and ensure the connection of medium- and long-term contracts signature with the spot power.'

⁽²⁵⁾ http://www.gov.cn/zhengce/content/2021-01/06/content_5577440.htm (accessed on 3 August 2021).

⁽²⁶⁾ Report – Chapter 10.

⁽²⁷⁾ Report – Chapter 12, p. 269.

⁽²⁸⁾ Commission Implementing Regulation (EU) 2021/633 of 14 April 2021 imposing a definitive anti-dumping duty on imports of monosodium glutamate originating in the People's Republic of China and in Indonesia following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 132, 19.4.2021, p. 63), recital 81.

⁽²⁹⁾ Available at the NEA website: www.nea.gov.cn/2021-05/18/c_139953498.htm (accessed on 3 August 2021).

⁽³⁰⁾ NDRC Notice No 902 (2020) https://www.ndrc.gov.cn/xxgk/zcfb/tz/202012/t20201207_1252389.html?code=&state=123 (accessed on 5 August 2021).

the clear directive not to use the demand and supply situation in the market when signing contracts. In April 2021, the NDRC issued a further *Notice on ensuring supervision and management of 2021 coal medium and long-term contracts*, which aims at better overseeing sale contracts compliance and to ensure the supply of coal (notably based on the provisions of the pre-cited Notice No 902). On that basis, relevant parties should notably ensure that the monthly compliance rate should not be less than 80 %, and the quarterly and annual compliance rate should not be less than 90 % ⁽³¹⁾.

- (54) State interventionism in the coal market is also visible in the recent decision on extending for another year the trial operation time for shuttered coal mines with the aim to increase output and supply, in order to counter the commodity's price increases (after the mines production was previously suspended) ⁽³²⁾.
- (55) Furthermore, two other important raw materials used to manufacture calcium silicon – quartzite and limestone – are covered by the 13th Five-Year Plan for Mineral Resources, which allows the State to manage the key mineral resources markets in the PRC in virtually all areas ⁽³³⁾. Moreover, the investigation confirmed that as per the 2020 edition of the OECD Inventory of Export Restrictions on Industrial Raw Materials, quartzite (HS code 250590) was subject in 2019 in the PRC to a non-automatic export-licensing requirement ⁽³⁴⁾, which has the capacity to restrain export activity and thereby to distort the market.
- (56) As can be seen from the above examples, the GOC manages the development of the calcium silicon sector in accordance with a broad range of policy tools and directives and controls virtually every aspect in the functioning of the sector. This governmental guidance and intervention concerns also the main inputs used in the manufacturing of the product under investigation. As an example, Shenghua acknowledges it aligns its business operations on central planning documents and key State policies, as described in its corporate objectives: 'Strive to build and put into operation projects such as high-purity metal calcium, chemical-grade industrial silicon, and microwave metallurgical production lines and other projects by the end of the "13th Five-Year Plan"'. The company claims also it 'actively adapts to the new normal of the national economic development, accurately grasps the new direction of supply-side reform policies, earnestly implements the responsibility of safe and environmentally friendly production, and, on the basis of the stable leadership it exerts on the calcium silicon alloy industry, it relies on the Shaanxi Nonferrous Group's management, talents, and scientific research' ⁽³⁵⁾.
- (57) In addition to the above, calcium silicon producers are also beneficiaries of various forms of State support, which clearly points to the interest of the authorities in this sector. During the investigation, the Commission established that Ningxia Shun Tai Smelting benefited from support due to its establishment in Zhongwei Industrial Park (see recital (44)), whereas the company Ketong was recognized as '2020 Autonomous Region Enterprise Technology Center'. In relation to this local media reported that: 'According to relevant regulations, the autonomous region-level enterprise technology centre recognized as such for the first time will receive a financial support of RMB 1 million.' ⁽³⁶⁾ Other local media reports have confirmed the province's support to the company: 'The relevant person in charge at the Autonomous Region's Department of Industry and Information Technology indicated that our district is vigorously promoting the structural transformation, the green transformation, the smart transformation and the technological transformation of industry enterprises, through the extension of the industry chain, considered as a priority, as well as through green transformation, smart transformation and technological transformation, considered as the key tools, and that it is also promoting the structural adjustment and the product upgrades in the raw material industry. [...] As regards special alloy materials, our region supports the development of high-temperature alloys, corrosion-resistant alloys, ultra-high-strength alloys and other materials with special properties and special functions. Relying on enterprises such as Shengyan Industrial, Ketong New Materials, and Jun Magnetic New Materials, breakthroughs in core technologies will be made to develop alloy materials with special requirements such as high temperature resistance, high strength and high corrosion resistance, which are widely used in the field of stainless steel and special steel.' ⁽³⁷⁾.

⁽³¹⁾ Notice 338 (2021). www.ndrc.gov.cn/xxgk/zcfb/tz/202104/t20210429_1278643.html (accessed on 3 August 2021).

⁽³²⁾ See Nasdaq website article (original by Reuters Beijing Newsroom). *China grants one-year trial extensions at 15 coal mines to boost output*. 4 August 2021. <https://www.nasdaq.com/articles/china-grants-one-year-trial-extensions-at-15-coal-mines-to-boost-output-2021-08-04>.

⁽³³⁾ Report – Section 12.3.1.1. Limestone and quartzite feature notably in the Plan's Annex 4 concerning design standards for the minimum mining scale of key minerals.

⁽³⁴⁾ Available at: https://qdd.oecd.org/subject.aspx?Subject=ExportRestrictions_IndustrialRawMaterials

⁽³⁵⁾ Company website. <http://www.sxshyh.com/html/guanyuwomen/>

⁽³⁶⁾ See article in the Ningxia News: *Ningxia Autonomous Region adds 5 more enterprise technology centers*. 27 October 2020. http://www.nxnews.net/sz/nxdj/202010/t20201027_6904926.html (accessed on 6 August 2021).

⁽³⁷⁾ See article in the Ningxia Daily: *Ningxia strengthens, extends and expands the supply chain and to create an upgraded raw material industry*. 11 September 2020. http://nx.cnr.cn/xwdd/20200911/t20200911_525250053.shtml (accessed on 5 August 2021).

- (58) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives of supporting encouraged industries, including the production of calcium silicon as well as of the main raw materials used in the manufacturing of that product. Such measures impede market forces from operating freely.
- (59) The present investigation has not revealed any evidence that the discriminatory application or inadequate enforcement of bankruptcy and property laws according to Article 2(6a)(b), fourth indent of the basic Regulation in the calcium silicon sector referred to above in recital (41) would not affect the manufacturers of the product under investigation.
- (60) The calcium silicon sector is also affected by the distortions of wage costs in the sense of Article 2(6a)(b), fifth indent of the basic Regulation, as also referred to above in recital (41). Those distortions affect the sector both directly (when making the product under investigation or the main raw materials used in its production), as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in the PRC).
- (61) Moreover, no evidence was submitted in the present investigation to the effect that the calcium silicon sector would be exempted from the government intervention in the financial system in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, as also referred to above in recital (41). Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.
- (62) Finally, the Commission recalls that in order to produce the product under investigation, a number of inputs is needed. When the producers of the calcium silicon purchase/contract these inputs, the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system that applies across all levels of government and sectors.
- (63) As a consequence, not only the domestic sales prices of calcium silicon are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts A and B of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that in itself was produced in the PRC by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth.
- (64) No evidence or argument to the contrary has been adduced by the GOC. However, the exporting producers Ketong and Shenghua submitted a number of comments.
- (65) Ketong argued that the methodology prescribed by Article 2(6a) of the basic Regulation for the purpose of establishing the normal value is incompatible with China's Protocol of Accession to the WTO, the WTO Anti-Dumping Agreement ('ADA'), and WTO Dispute Settlement Body ('DSB') ruling, and should thus not be applied.
- (66) First, Ketong recalled that Section 15 of the China's Protocol of Accession to the WTO allowed derogations from the standard methodology in determining normal value and price comparability under Article VI of the GATT 1994 and the ADA, but these derogations were time-limited, as they expired on 11 December 2016. According to Ketong, as of 12 December 2016, the Union should not deviate from the standard methodology in establishing the normal value of the exporting country producers and from using only domestic prices and costs of the exporting country, unless other provisions of the WTO agreements, including the ADA, permit otherwise. Ketong claimed that Article 2(6a) of the basic Regulation, in so far as it allows the Union to use data of an appropriate representative country, goes against the Union's commitment under the WTO agreements, in particular its commitment under Section 15 of China's Protocol of Accession to the WTO.
- (67) Ketong also argued that Article 2 of the ADA does not permit the use of information other than that in the exporting country in order to establish the normal value. Also in exceptional circumstances, where the normal value needs to be constructed, the data relating to the cost of production and SGA and profits have to be obtained from the sources in the country of export. According to Ketong, the notion of significant distortions does not even exist in the ADA.

- (68) Second, Ketong recalled that the WTO Appellate Body in *European Union – Anti-dumping measures on biodiesel from Argentina* ⁽³⁸⁾ found that the Union acted inconsistently with Article 2.2.1.1 of the ADA by not using the records kept by the investigated producers as a basis to calculate the cost of production of the product under investigation. Ketong notably stated that in light of that ruling, distortions in Argentina which were causing a difference between the domestic and international prices of the main raw material of the product concerned were not in itself a sufficient basis under Article 2.2.1.1 for concluding that producer's records did not reasonably reflect the costs of the raw material associated with the production and sale of the product concerned, or for disregarding those costs when constructing the normal value of the product concerned.
- (69) Similarly, Shenghua argued that Article 2(6a) of the basic Regulation is inconsistent with WTO law.
- (70) First, Shenghua claimed that the ADA does not recognise the concept of significant distortions in Article 2.2, which only allows for the construction of the normal value if there are no sales in the ordinary course of trade. Shenghua observed that there is no article in the ADA allowing data from a third country, which cannot reflect the prices or cost level of the exporting country to be used for determining the normal value. The ADA thus requires that the normal value must be determined based on the sales prices or costs that reflect the price or cost level in the country of origin. Hence, the constructed price based on prices in the representative country cannot reflect the price and cost level in the exporting country.
- (71) Second, Shenghua claimed that even if the concept of significant distortions accorded with WTO law, the constructed value would need to be calculated in accordance with Article 2.2.1.1 of the ADA and its interpretation by the WTO Appellate Body in *EU – Biodiesel* (DS473). The significant distortions in the exporting country would need to fall under the definition of either sales not in the 'ordinary course of trade' or a 'particular market situation'. Shenghua submitted that even though the concept of 'ordinary course of trade' is not explicitly defined in the ADA, Article 2.2.1 provides that sales of a product can be treated as not being in the ordinary course of trade and disregarded 'only if [...] such sales are made within an extended period of time in substantial quantities and are at prices which do not provide for the recovery of all costs [...]'. Against this background, Shenghua claimed that the Complainant had not proved that the alleged significant distortions fall under either of the category of sales 'not in the ordinary course of trade' or of a 'particular market situation.'
- (72) The Commission considered that the provisions of Article 2(6a) are fully consistent with the Union's WTO obligations and the jurisprudence cited by both Ketong and Shenghua. With regard to commitments under Section 15 of China's Protocol of Accession to the WTO, the Commission recalls that in anti-dumping proceedings concerning products from China, the parts of Section 15 of the Protocol that have not expired continue to apply when determining normal value, both with respect to the market economy standard and with respect to the use of a methodology that is not based on a strict comparison with Chinese prices or costs.
- (73) With regard to the *EU – Biodiesel* case, the relevant ruling did not concern the application of Article 2(6a) of the basic Regulation, but of a specific provision of Article 2(5) of the basic Regulation. It is the Commission's view that WTO law as interpreted by the WTO Panel and the Appellate Body in *EU – Biodiesel* permits the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. The existence of significant distortions renders costs and prices in the exporting country inappropriate for the construction of normal value. In these circumstances, Article 2(6a) of the basic Regulation envisages the construction of costs of production and sale on the basis of undistorted prices or benchmarks, including those in an appropriate representative country with a similar level of development as the exporting country.
- (74) With regard to the claim concerning insufficient proof by the Complainant, the legal basis and underlying evidence in the complaint concerned the conditions of application of Article 2(6a) of the basic Regulation. As specified in Point 3 of the Notice of initiation, the Commission considered that the complaint provided sufficient evidence of significant distortions as required by Article 2(6a)(e) of the basic Regulation to initiate the investigation. There are no further evidentiary requirements of the type alleged by this party in Article 2(6a) of the basic Regulation.
- (75) Therefore, the Commission rejected the claims of Ketong and Shenghua.
- (76) Ketong submitted that its cost or price elements, which are not proven by the Commission to be distorted, should not be adjusted or established on a different basis.

⁽³⁸⁾ *European Union – Anti-dumping measures on Biodiesel from Argentina*, Report of Appellate Body, WT/DS473/AB/R, §6.23.

- (77) Shenghua submitted that, if the Commission decides to apply Article 2(6a) of the basic Regulation, it would be unreasonable to replace all factors of costs with data from other sources as, according to the wording of this provision, only those costs of production and sales which have been proven to be distorted will be replaced by undistorted prices and benchmarks. Specifically, Shenghua commented that the complainant failed to prove that the labour costs in China's calcium silicon industry were distorted, hence the Commission should have used the effective labour costs as reported by the exporting producers. Shenghua stated that it was unreasonable to replace the labour costs with those in a third country, because they were influenced by several factors, such as the supply and demand relationship in the market concerned, the degree of automation in the production and the commodity price level in the region where the producers were located. Shenghua added that the labour costs varied not only between different countries but also between different Chinese producers. Shenghua stated that the same is true also for energy, SG&A and profit.
- (78) In response to the claim concerning the lack of evidence about distortions in labour costs at initiation stage, the Commission refers to its reasoning in recitals (41) and (63). The determination on the actual existence of significant distortions and the consequent use of the methodology prescribed by Article 2(6a)(a) only occurs at the time of the provisional and/or definitive disclosure. In this case, the Commission deemed the evidence submitted by the complainant on the significant distortions sufficient to initiate the investigation on this basis. While the Commission acknowledges that wage costs can differ from country to country or even between sectors, the Commission, as a result of its investigation found that the labour market in the PRC was affected by distortions at a country-wide level. The issues inherent to the Chinese labour market, including the lack of labour unions independent from the government and the workforce mobility restrictions due to the household registration system have a distortive impact on the wage creation in the PRC for all economic operators. The fact that wage costs could be different in other countries or could vary within the PRC does not alter this finding.
- (79) In the course of the investigation, the Commission further established, as described in detail in recitals (51) to (55) that markets for inputs used by calcium silicon producers in the PRC were subject to numerous significant distortions, not only specific ones but also ones of a cross-cutting nature. The same situation applied to the producers of more basic inputs used to manufacture calcium silicon as well as its raw materials. Therefore, the Commission found that all costs of inputs used in the manufacturing of the product under investigation, including energy, were distorted in the PRC. The fact that, as claimed by Shenghua, there are differences in the costs of energy between different countries does not alter the Commission's assessment with regard to the energy prices being distorted in the PRC.
- (80) In this respect, while Article 2(6a)(a) of the basic Regulation allows the use of domestic costs, including labour or energy costs, if they are positively established not to be distorted, there is no evidence on the file establishing that the country-wide distortions are not applicable to calcium silicon producers. Accordingly, no such domestic costs could be used in the construction of the normal value.
- (81) With regard to SG&A and profits, the Commission noted that once it is determined that due to the existence of significant distortions for the exporting country in accordance with Article 2(6a)(b) of the basic Regulation it is not appropriate to use domestic prices and costs in the exporting country, the Commission may construct the normal value by reference to undistorted prices or benchmarks in an appropriate representative country for each exporting producer according to Article 2(6a)(a). The Commission underlines that the latter also specifically requires that the constructed normal value includes a reasonable amount of undistorted administrative, selling and general costs, and profits. If in the course of its investigation based on all evidence on the file the Commission proves the existence of the significant distortions affecting the product concerned in the exporting country, it follows that the SG&A costs of the exporting producers are also affected by those distortions.
- (82) The claims of both Ketong and Shenghua were therefore rejected.
- (83) Shenghua also claimed that, even if data from other sources were used, it would be unreasonable to use data of a third country as the undistorted price. Shenghua referred to the intention by the Commission to refer to the Global Trade Atlas ('GTA') database for import prices of the representative country and considered that, during the

investigation period, it purchased all the raw materials for the production of the product under investigation domestically. Therefore, the Commission should use a more reliable and reasonable data source and, whatever source of data is used, due adjustments (such as for delivery expenses) should be made to ensure that the alleged undistorted price is set under the same purchase terms with raw materials purchased by Shenghua.

- (84) Concerning this argument, the Commission noted that, for the reasons set out in recitals (41) to (63), it applies Article 2(6a) of the basic Regulation in the present investigation. Therefore, the Commission is bound to use undistorted costs in an appropriate representative country to ensure that the applied costs are not affected by distortions and are based on readily available data, such as the import data contained in the GTA database. In the absence of data provided by Shenghua to substantiate its claim concerning due adjustments (such as for higher delivery expenses), the import values of the representative country are considered to fulfil the criteria of Article 2(6a) of the basic Regulation and to provide a reasonable estimate of the price in the representative country, including the delivery expenses. Additionally, because the imported inputs compete on the domestic market of the representative country in terms of prices, the Commission considered them a reliable proxy. If not all delivery expenses in the case of import would be taken into account, the resulting price would not reflect the undistorted price on the representative country market. This would be contrary to Article 2(6a)(a) of the basic Regulation and thus this claim was dismissed.
- (85) In view of the above, the evidence available showed that prices or costs of the product under investigation, including the costs of raw materials, energy and labour, are not the result of the free interaction of market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation, as shown by the impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case. Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as discussed in the following section.

3.3. Representative country

3.3.1. General remarks

- (86) The choice of the representative country was based on the following criteria pursuant to Article 2(6a) of the basic Regulation:
- A level of economic development similar to China. For this purpose, the Commission used countries with a gross national income per capita similar to China on the basis of the database of the World Bank ⁽³⁹⁾;
 - Production of the product concerned in that country;
 - Availability of relevant public data in the representative country;
 - Where there is more than one possible representative country, preference should be given, where appropriate, to the country with an adequate level of social and environmental protection.
- (87) As explained in recitals (35) and (36), the Commission issued two notes to the file on the sources for the determination of the normal value. These notes described the facts and evidence underlying the relevant criteria, and also addressed the comments received by the parties on these elements and on the relevant sources. In the Second Note on production factors, the Commission informed interested parties of its intention to use Brazil as an appropriate representative country in the present case if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation would be confirmed.

⁽³⁹⁾ World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>.

3.3.2. *A level of economic development similar to the PRC*

- (88) In the First Note on production factors, the Commission identified Argentina, Brazil, Kazakhstan, Malaysia and Mexico as countries with a similar level of economic development as China according to the World Bank, i.e. they are all classified by the World Bank as 'upper-middle income' countries on a gross national income basis.
- (89) No comments were received from interested parties regarding the similarity to the PRC of the level of economic development of the countries that the Commission identified.
- (90) Ketong noted that Russia was also classified by the World Bank as an 'upper-middle income' country, similar to the PRC and asked the Commission to consider this country also as a potential representative country. However, the Commission has not found any producer of calcium silicon in Russia with publically available financial information representative for the purpose of constructing the normal value of the product under investigation and therefore it did not assess this country further.

3.3.3. *Availability of relevant public data in the representative country*

- (91) In the First Note, the Commission identified Brazil and Argentina as countries where production of calcium silicon was known to take place. In this note, the Commission identified further Kazakhstan, Malaysia and Mexico as countries producing ferro-alloys, an industry most similar to the calcium silicon industry in terms of production process and factors of production, which it might use in case of lack of appropriate data from the countries producing calcium silicon. Comments were received from Ketong, Shenghua and the complainant.
- (92) The Commission identified two producers of calcium silicon in Brazil and one in Argentina for which publicly financial information was available. However, recent financial data (i.e. 2019) was available only for the Argentinian producer and one of the two Brazilian producers (Rima Industrial S.A.).
- (93) The complainant took note that Brazil remained one of the possible representative countries and supported its potential selection as a representative country as it had initially proposed in the complaint.
- (94) Both Shenghua and Ketong claimed with their comments on the First Note that Brazil cannot be an appropriate representative country because the import volumes of several raw materials (such as electrode paste and silica rock/quartzite) were low and, therefore, not representative.
- (95) However, for electrode paste, the imports into Brazil covered at least 10 % of the reported consumption in China and are, therefore, considered representative. For quartzite, the Commission considered the low import volume into Brazil not representative and reverted to the average purchase price paid by the Union producers as an appropriate benchmark.
- (96) Shenghua claimed that the price of electricity in Brazil was too high and asked the Commission to reject Brazil as a representative country on this ground.
- (97) The Commission noted that nowhere in the criteria for selection of the representative country set out in the basic Regulation is mentioned that the prices of utilities have to be within a certain range. This argument was, therefore, rejected.
- (98) With their comments on the First Note, Ketong claimed that the electricity market in Brazil was distorted because (1) the Brazilian government was the majority shareholder in the electricity producer Eletrobrás, and (2) the Brazilian government regulated the electricity price through the regulatory agency Agência Nacional de Energia Elétrica (ANEEL). Therefore, for this reason Brazil would not be an appropriate representative country.

- (99) The Commission noted that Ketong did not provide any evidence that the government ownership of Eletrobrás led to a distortion of the electricity market in Brazil, and in particular that it impacted producers of calcium silicon regarding the price they paid for electricity during the investigation period. For instance, although 52 % of Eletrobrás shares are government-owned, the remainder of the shares are publicly traded. The issue is further considered in recital (133) below based on additional evidence received by interested parties, and in recital (152).
- (100) Shenghua claimed that Brazil was a highly protected market and a country that resorted to a 'high number of potentially trade-restrictive measures', which the Commission confirmed in its evaluation of Brazil's import restrictions ⁽⁴⁰⁾.
- (101) In the First Note, the Commission stated that it had not identified any trade distortions in Brazil affecting the main inputs for the production of calcium silicon. Shenghua did not show evidence that such distortions existed either with regard to calcium silicon and/or the main factors of production. The claim was considered unsubstantiated and, therefore, it was rejected.
- (102) Ketong claimed further that the Brazilian producers identified by the Commission were active in a diverse range of economic activities and therefore their costs, revenues and profits did not reflect those of a calcium silicon producer.
- (103) The Commission acknowledged in the First Note that the Brazilian producers had activities other than the manufacture and sale of calcium silicon and that their financial reporting did not allow for an allocation of the financial results on a product-by-product basis. The Commission clarified that this did not *per se* undermine the representativity of companies and thus it could use the financial results at the level of companies for establishing the benchmarks for SG&A and profit. Therefore, the claim was rejected.
- (104) Shenghua claimed that a sole company's SG&A and profit was not reliable or representative for the purpose of constructing normal value.
- (105) The Commission noted that Shenghua did not substantiate why a sole producer's SG&A and profit would not be reliable or representative for constructing normal value. Shenghua further did not identify other producers in Brazil with readily available public financial information that could be added to the dataset. The claim was therefore rejected.
- (106) Ketong claimed further that it was not appropriate to use financial data from Dun & Bradstreet as it was not sufficiently detailed to give the necessary information to accurately calculate a dumping margin.
- (107) The Commission noted that the Global Financials database from Dun & Bradstreet is the tool that it uses in order to obtain company-specific financial statements and ratios from companies in possible representative countries. In this respect, the Commission clarified that the terms 'direct costs' and 'indirect costs' used in the Dun & Bradstreet database refer to the 'Cost of Goods Sold' ('COGS') and 'operating expenses' respectively. Contrary to what Ketong claimed, the Commission therefore has data that are sufficiently detailed to allow it to find the relevant information to construct the normal value as per Article 2(6a) of the basic Regulation. The claim was therefore rejected.
- (108) Both Shenghua and Ketong claimed that Argentina was not an appropriate representative country because of the trade distortions on semi-coke, one of the most important factors of production, which the Commission mentioned already in the First Note.
- (109) The Commission agreed that the trade distortions (in this case the export licencing and tax), may explain the low import volume of semi-coke into Argentina and, consequently, render the use of the import price not suitable as a benchmark price.
- (110) Ketong claimed further that if the Commission concluded that the market for many of the inputs in China was distorted, then it must also consider the Argentinian market to be distorted, as many of the key inputs into Argentina originate in China.

⁽⁴⁰⁾ <https://ec.europa.eu/trade/policy/countries-and-regions/countries/brazil/>

- (111) The Commission rejected this claim as, contrary to what Ketong claimed, the vast majority of the inputs, except for semi-coke, were imported into Argentina from countries other than China. In the First Note, the Commission stated that there were very limited imports of semi-coke into Argentina that were not imported from China. Therefore, the Commission considered at that stage that the volume of imports of semi-coke into Argentina was not representative. Semi-coke represents around 10 % of the cost of production for the product concerned.
- (112) The complainant further claimed that Argentina could not meet the criteria for the selection as a representative country at this stage, taking into account the publically available information for the sole producer of the product concerned in that country, which showed a loss-making situation.
- (113) The Commission agreed that the sole Argentinian producer of CaSi whose financial data is publicly available could not be used as a benchmark for a profit margin as the company was loss making in 2019. In case the financial data for 2020 becomes available at a later stage, the Commission may reconsider Argentina as a representative country.
- (114) Ketong asked the Commission to use Russia as a representative country as it was classified by the World Bank as an 'upper-middle income' country, similar to the PRC, it had production of calcium silicon and at least one producer, Kluchevsky Ferroalloy Plant PJSC.
- (115) The Commission analysed the claim from Ketong as regards the use of Russia as an appropriate representative country. It examined the most recent financial data submitted by Ketong in respect of the Russian producer of ferroalloys, Kluchevsky Ferroalloy Plant PJSC, which, according to its website, allegedly produces also calcium silicon. The data concerned the year preceding the investigation period. As these data showed an almost zero profit and very low SG&A expenses, the Commission considered these data not to be representative for the purpose of constructing the normal value of the product under investigation according to Article 2(6a)(a) of the basic Regulation.
- (116) As the Commission was not able to find representative financial data for other possible producers of calcium silicon in Russia and Ketong did not provide such data either, the Commission concluded that Russia was not an appropriate representative country at this stage.
- (117) Shenghua and Ketong claimed that neither Brazil nor Argentina are appropriate representative countries because of the reasons mentioned in recitals (94), (96), (98), (100), (102), (104), (106), (108), (110) and (112) and suggested that because global production of calcium silicon is limited, the Commission should use data from manufacturers of ferroalloys and/or silicon metal producers instead, as those products have a similar cost structure to calcium silicon. They suggested that Kazakhstan be used, as it is one of the largest ferroalloys producers with several manufacturers whose SG&A and profit data can be used.
- (118) The Commission noted that given the presence of countries where there was production of calcium silicon, at this stage Kazakhstan was not considered an appropriate representative country according with the criteria laid down in Article 2(6a)(a) of the basic Regulation, as it is not a producer of calcium silicon and no relevant public data is available.
- (119) Ketong further claimed that the quality and completeness of the GTA data as regards Kazakhstan and Russia is inferior to ITC (International Trade Centre) data and suggested using it instead of GTA. As the Commission does not intend to use any of these countries as a representative country, this claim was not further examined at this stage.
- (120) In light of the above considerations, the Commission informed the interested parties with the Second Note that it intended to use Brazil as an appropriate representative country and financial data of Rima Industrial S.A. in accordance with Article 2(6a)(a), first indent of the basic Regulation in order to source undistorted prices or benchmarks for the calculation of normal value.
- (121) Interested parties were invited to comment on the appropriateness of Brazil as a representative country and of Rima Industrial S.A. as producer in the representative country. Comments were received from Ketong, Shenghua and the complainant.

- (122) The complainant supported the choice of Brazil as a representative country, dismissing Kazakhstan, Argentina and Russia as non-appropriate representative countries. With its comments, the complainant submitted the most recent available financial data of the two known Brazilian CaSi producers as published in the Official Journal of Minas Gerais ⁽⁴¹⁾ ⁽⁴²⁾. The complainant further claimed that the Russian company Kluchevsky Ferroalloy Plant PJSC, even if according to its website it allegedly produces calcium silicon, did not produce CaSi during the last 6 years including the investigation period and had no plans to produce CaSi in the near future.
- (123) Shenghua reiterated its claim that Brazil's electricity prices were too high and therefore Brazil should not be considered as an appropriate representative country. Shenghua claimed that the Commission statement that nowhere in the criteria for selection set out in the basic Regulation was mentioned that the prices of utilities have to be within a certain range for a country to be selected as representative country as stated in recital (97) was not in line with the basic Regulation and the WTO Anti-dumping Agreement, which requires that even if the Commission decides not to use the sales prices or costs of the companies in the country of origin, it should use reasonable replacement data for establishing normal value.
- (124) As stated in recital (86), for the selection of a representative country, the Commission uses the relevant criteria pursuant to Article 2(6a) of the basic Regulation. These criteria were all met by Brazil. The fact that electricity prices are higher in Brazil than in other countries does not disqualify Brazil as an appropriate representative country. Therefore, the claim was rejected.
- (125) Ketong claimed that the sole reason why the Commission rejected Russia as a representative country was that Kluchevsky Ferroalloy Plant had non-representative (i.e. too low) profit margin and SG&A expenses in 2019. Furthermore, Ketong claimed that the profit margin did not form part of the test under Article 2(6a) of the basic Regulation for the choice of a representative country and that data only needed to be readily available. According to Ketong, no additional 'representative test' could be extrapolated from the legal provision, and thus it did not constitute a criterion to assess the appropriateness of a representative country. Furthermore, Ketong argued that, even if profit margin were part of the test, it was unclear why Rima Industrial S.A. with only 3 % profit margin would be better than the low, but still positive, profit margin of Kluchevsky Ferroalloy Plant.
- (126) The Commission rejected the claim. Pursuant to Article 2(6a)(a) of the basic Regulation, the constructed normal value shall include an undistorted and reasonable amount for SGA and for profits. The Commission does not consider an almost zero profit margin to be a 'reasonable amount' within the meaning of the last paragraph of Article 2(6a)(a) of the basic Regulation.
- (127) Furthermore, Ketong submitted that Russia had better quality data than Brazil for several reasons. First, Rima Industrial has more diversified activities than Kluchevsky Ferroalloy Plant, which is focused on ferroalloys. Second, Ketong claimed that the Commission did not substantiate its statement that Rima Industrial's direct costs reported in the Dun&Bradstreet database correspond to the COGS and indirect costs are operating expenses. On the contrary, Kluchevsky Ferroalloy Plant's data allowed for the appraisal of what the different cost categories included. Third, Kluchevsky Ferroalloy Plant had more detailed SG&A expenses.
- (128) As explained in recital (122), more recent financial data concerning the two Brazilian producers identified by the Commission became available. According to these data, Rima Industrial S.A. made losses in 2020. On the contrary, Bozel Brasil S.A. made profits in 2020. As anticipated in the First Note, the Commission made use of 2020 data, since they became available. As a consequence, taking into account that, on the one side, a company not profitable is not representative of the situation on the domestic market and, on the other side, Bozel Brasil S.A. produces almost exclusively calcium silicon, the Commission used Bozel Brasil's data. Therefore, these claims were rejected.
- (129) Furthermore, Ketong reiterated its claim that the Brazilian imports of quartzite may not be representative, whereas Russian import statistics of quartzite from the ITC provided a reliable benchmark of the price of quartzite for industrial use.
- (130) As explained in recitals (90) and (115) the Commission did not consider Russia to be an appropriate representative country. As regards the benchmark for quartzite, in the absence of representative import volumes in Brazil, the Commission reverted to the price of quartzite on the Union market, as explained in recital (95). Therefore, the claim was rejected.

⁽⁴¹⁾ <https://www.jornalminasgerais.mg.gov.br/?dataJornal=2021-03-25#caderno-jornal>

⁽⁴²⁾ <https://www.jornalminasgerais.mg.gov.br/?dataJornal=2021-03-13#caderno-jornal>

- (131) In addition, Ketong claimed that, if the Commission chooses Brazil as representative country, then it must choose the most accurate and undistorted electricity cost for Brazil. In particular, Ketong submitted that in Brazil electricity was commercialized in two different contractual environments: the regulated market ('ACR') and the free market ('ACL'). Ketong claimed that as industrial purchasers would mainly purchase electricity in the ACL market, the ACL market rather than the ACR market would be the right source of the representative price for industrial electricity consumers. This would be particularly the case for large industrial electricity consumers including calcium silicon producers. In Ketong's opinion, it would be reasonable that a calcium silicon producer with electricity demand far exceeding 3 MW (the power rate of a single furnace being more than 20 MW) would directly purchase electricity from the power generator at a preferential price in the ACL market. Furthermore, Ketong claimed that the electricity prices of the company EDP Brasil used by the Commission in the Second Note reflected the electricity tariff on the ACR market which would not be representative of electricity prices at which large industrial consumers, like CaSi producers, purchase electricity. Ketong also claimed that the electricity tariff of EDP Brasil was the cap price regulated by the Regulatory Agency ANEEL and not the actual price that electricity was sold at. In support of this claim, Ketong submitted a press release stating that ANEEL approved the price ceiling for the auction scheduled for December 2020. Moreover, Ketong submitted that the operating data of EDP Brasil demonstrated that the actual price paid by the customers of EDP Brasil, either in the ACR or in the ACL market, was lower than the tariff and therefore, the Commission should use those data.
- (132) The Commission noted that the electricity prices on the ACL market are agreed bilaterally and are not made public ⁽⁴³⁾. Furthermore, when the consumers buy electricity on the ACL market they need to sign two contracts: one with the generator of electricity who is responsible for producing the electricity and another contract with the distributor for the use of the infrastructure (transmission lines) ⁽⁴⁴⁾. In general, the electricity tariff includes costs for generation, transmission, distributions, sectoral charges and taxes. The electricity prices in the annual report of EDP Brasil, indicated by Ketong, include only the electricity price for generating the electricity (hydroelectric and thermal), which is not the final price paid by the consumer and therefore cannot be used as a benchmark.
- (133) The Commission furthermore noted that Ketong did not provide any evidence other than its own assumption that calcium silicon producers are supplied through the ACL market instead of the ACR market. Furthermore, there is no evidence that the tariffs used by the Commission from the website of EDP Brasil, which is a private company, are actually a cap price as Ketong suggested and not the tariffs paid by consumers. The evidence submitted in this regard by Ketong does not support this allegation. That press release submitted simply states that the price cap has been increased by ANEEL. In fact, the Commission noted that the average tariff used for electricity for industrial users during the investigation period was 391 R\$/MWh, while the annual report of EDP submitted by Ketong says that the electricity tariff for industrial user was 508 R\$/MWh in the last quarter of 2020, therefore much higher than the tariff used by the Commission for the calculation of the benchmark. In the absence of any appropriate alternative data on the file, the Commission provisionally decided to use the tariff prices published by EDP Brasil. Therefore, the claim was rejected.
- (134) Ketong submitted that if the Commission decides to use Rima Industrial's financial data from Dun&Bradstreet and given that these data were presented in an imprecise and general form not allowing identification of the expenses included in the 'indirect costs', no adjustments to the export price by the selling expenses would be warranted, as the same expenses would be included in the constructed normal value.
- (135) As stated in recital (128), the Commission will use the financial statements of Bozel Brasil S.A. Therefore, this claim is not relevant anymore.
- (136) Shenghua reiterated its claim that Kazakhstan should be selected as an appropriate representative country. Indeed, the Commission should resort to consider countries with production of ferro-alloys, since the production of calcium silicon is located only in Argentina and Brazil, and the former was excluded by the Commission, whereas the latter was not considered suitable by Shenghua due to high electricity rates as mentioned in recital (123).
- (137) As there are producers in Brazil with publicly financial information available, there is no need to consider countries with production of ferro-alloys, such as Kazakhstan. Therefore, the claim was rejected.

⁽⁴³⁾ https://www.agora-energiawende.de/fileadmin/Projekte/2019/Brazil_Country_Profile/155_CountryProf_Brazil_EN_WEB.pdf (page 31).

⁽⁴⁴⁾ ACR e ACL: as diferenças entre os ambientes de contratação (esferaenergia.com.br)

3.3.4. Level of social and environmental protection

- (138) Having established that Brazil was the appropriate representative country at the provisional stage of the investigation, based on all of the above elements, there was no need to carry out an assessment of the level of social and environmental protection in accordance with the last sentence of Article 2(6a)(a) first indent of the basic Regulation.

3.3.5. Conclusion

- (139) In view of the above analysis, Brazil met the criteria laid down in Article 2(6a)(a), first indent of the basic Regulation in order to be considered as an appropriate representative country.

3.4. Sources used to establish undistorted costs

- (140) In the First Note, the Commission listed the factors of production such as materials, energy and labour used in the production of the product concerned by the exporting producers and invited the interested parties to comment and propose readily available information on undistorted values for each of the factors of production mentioned in that note.
- (141) Subsequently, in the Second Note, the Commission stated that, in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it would use GTA data to establish the undistorted cost of most of the factors of production, notably the raw materials. In addition, as explained further in recitals (151) and (152), the Commission stated that it would use the ILO statistics and readily available sources on labour costs in Brazil for establishing undistorted costs of labour, and readily available sources for industrial distribution tariffs published by an electricity provider for establishing undistorted costs of electricity.

3.5. Undistorted costs and benchmarks

3.5.1. Factors of production

- (142) Considering all the information submitted by the interested parties and collected during the RCCs, the following factors of production and their sources have been identified in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

Table 1

Factors of production of calcium silicon

Factor of Production	Commodity Code in Brazil	Undistorted value in CNY	Unit of measurement
Raw materials			
Anhydrous stemming/Anhydrous cannon clay	3816 00 11 3816 00 12 3816 00 19 3816 00 21 3816 00 29 3816 00 90	9,8157	kg
Bituminous coal	2701 12 00	0,6423	kg
Coal	2701 19 00	0,6423 ⁽¹⁾	kg
Coke/semi-coke	2704 00 11 2704 00 12 2704 00 90	1,6856	kg
Electrode paste	3801 30 10 3801 30 90	5,9464	kg
Graphite brick	3801 90 00	46,3942	kg
Limestone	2521 00 00	0,0858	kg

Quartzite/silica rock	2506 20 00	0,2705 ^(?)	kg
Steel products (other bars and rods of iron or non-alloy steel)	7215 50 00	11,5350	kg
Labour			
Labour costs in the manufacturing sector	[N/A]	29,7989	hour
Energy			
Electricity	[N/A]	0,5289	Kwh
By-products/waste			
Slag, ash and residues	2620 99 90	0,04 ^(?)	kg
Silica-calcium precipitated fine powder	7202 99 90	10,22 ^(?)	kg
⁽¹⁾ The establishment of the undistorted value is explained in recital (145). ⁽²⁾ The establishment of the undistorted value is explained in recital (146). ⁽³⁾ The establishment of the undistorted value is explained in recital (148).			

- (143) The Commission included a value for manufacturing overhead costs in order to cover costs not included in the factors of production referred to above. The methodology to establish this amount is duly explained in recital (154).

3.5.1.1. Raw materials and scrap/by-products

- (144) In order to establish the undistorted price of raw materials as delivered at the gate of a representative country producer, the Commission used as a basis the weighted average import price to the representative country as reported in the GTA to which import duties and transport costs were added. An import price in the representative country was determined as a weighted average of unit prices of imports from all third countries excluding the PRC and countries which are not members of the WTO, listed in Annex I of Regulation (EU) 2015/755 of the European Parliament and the Council ⁽⁴⁵⁾. The Commission decided to exclude imports from the PRC into the representative country as it concluded in recital (85) that it is not appropriate to use domestic prices and costs in the PRC due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected export prices. After excluding the imports into Brazil from China and non-market economy countries, the Commission found that imports of the main raw materials from other third countries remained representative (more than 98 % of total volumes imported to Brazil). The GTA quotes import values for Brazil at FOB level. To arrive at CIF import values for Brazil, 3,1 % to the FOB values was added, which is the difference between the average CIF and average FOB export prices of calcium silicon for the investigation period as reported by the cooperating exporting producers from China.
- (145) As there are no import data in Brazil and in the absence of an appropriate undistorted international price for coal, the Commission considered the weighted average import price for bituminous coal to be a suitable benchmark.
- (146) As import volumes of quartzite into Brazil were low and therefore considered non-representative, and in the absence of an undistorted international price for quartzite, the Commission considered the average purchase price paid by the Union producers to be a suitable benchmark.
- (147) One exporting producer also reported quartz sand as a factor of production. For this factor of production, the actual cost incurred by the cooperating exporting producers represented a negligible share of total cost of manufacturing in the investigation period. As the value used for these had no appreciable impact on the dumping margin calculations, regardless of the source used, the Commission decided to include those costs into consumables. The Commission calculated the percentage of the consumables as a fraction of the total cost of raw materials and applied this percentage to the recalculated cost of raw materials when using the established undistorted prices.

⁽⁴⁵⁾ Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33).

- (148) The by-products microsilica (classified in the HS as slag) and silica-calcium precipitated fine powder, a waste classified under the same HS code as calcium silicon, represented each less than 1 % of the total cost of manufacturing. As there were no imports of slag into Brazil in the investigation period, the Commission established the benchmark price for this by-product on the basis of the ratio between its domestic sales value in the PRC and the total material cost, and applied this ratio to the undistorted total material cost calculated. The resultant amount was then divided by the actual quantity sold to arrive at the undistorted unit price as mentioned in Table 1 in recital (142). For the other by-product, the waste of calcium silicon, the Commission adjusted the benchmark price by applying the ratio between the sales price of the by-product and the domestic sales price in the PRC of calcium silicon to the benchmark price for calcium silicon from the representative country. The resulting adjusted benchmark is mentioned in Table 1.
- (149) In order to establish the undistorted price of raw materials, as provided by Article 2(6a)(a), first indent of the basic Regulation, the Commission applied the relevant import duties of the representative country.
- (150) The Commission expressed the transport cost incurred by the cooperating exporting producers for the supply of raw materials as a percentage of the actual cost of such raw materials and then applied the same percentage to the undistorted cost of the same raw materials in order to obtain the undistorted transport cost. The Commission considered that, in the context of this investigation, the ratio between the exporting producer's raw material and the reported transport costs could be reasonably used as an indication to estimate the undistorted transport costs of raw materials when delivered to the company's factory.

3.5.1.2. Labour

- (151) Labour is an important factor of production representing some 5 to 10 % of the total cost of manufacturing. The Commission used the ILO statistics to determine the wages in Brazil. The ILO statistics ⁽⁴⁶⁾ provide information on monthly wages of workers in the manufacturing sector and average weekly hours worked in Brazil in 2020. The Commission calculated labour costs of an employer in Brazil using publicly available sources ⁽⁴⁷⁾ concerning the labour costs in Brazil.

3.5.1.3. Electricity

- (152) The Commission used the latest electricity price readily available (as of August 2021) as charged by EDP Brasil ⁽⁴⁸⁾. This price was adjusted for inflation to obtain a price applicable for 2020. The information available allows for the identification of the price of electricity and the price for the use of the distribution system (*modalidade tarifaria azul*) paid by industrial users. It even provides more details on prices paid by industrial users that opted for differentiated rates based on the time of the day when electricity is consumed (*modalidade tarifaria verde*). It should be noted that in Brazil, the regulatory authority ANEEL ⁽⁴⁹⁾ obliges the electricity suppliers occasionally to increase their tariffs by a certain percentage to regulate the consumption of electricity in the country. ANEEL uses a flag system ⁽⁵⁰⁾ (green, yellow, red level 1, red level 2) to signal whether the electricity price should remain as proposed by the supplier (green) or increased by 0,01343 BRL/kWh (yellow), 0,04169 BRL/kWh (red level 1) or 0,06243 BRL/kWh (red level 2) (2020 data). The flags are published by ANEEL on a monthly basis and are readily available on the website of EDP Brasil ⁽⁵¹⁾ for the investigation period. During the investigation period the flag system was mostly green. Only in January 2020 was there a yellow flag and in December 2020 a red level 2, and therefore the electricity tariffs had to be slightly increased. Overall this increase had a marginal impact on the tariff.

3.5.1.4. Manufacturing overhead costs, SG&A, profits and depreciation

- (153) According to Article 2(6a)(a) of the basic Regulation, 'the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits'. In addition, a value for manufacturing overhead costs needs to be established to cover costs not included in the factors of production referred to above.

⁽⁴⁶⁾ https://www.ilo.org/ilostat/faces/oracle/webcenter/portalapp/pagehierarchy/Page21.jspx?_afLoop=2007202804813928&_afWindowMode=0&_afWindowId=ejmga3iz_63#%40%40%3F_afWindowId%3Dejmga3iz_63%26_afLoop%3D2007202804813928%26_afWindowMode%3D0%26_adf.ctrl-state%3Dejmga3iz_119

⁽⁴⁷⁾ <https://www.jornalcontabil.com.br/quanto-custa-um-funcionario-aprenda-a-calcular/> or <https://establisbrazil.com/articles/whats-real-cost-employee>.

⁽⁴⁸⁾ <http://www.edp.com.br/distribuicao-es/saiba-mais/informativos/tarifas-aplicadas-a-clientes-atendidos-em-alta-e-media-tensao-grupo-a>

⁽⁴⁹⁾ <http://www.aneel.gov.br/a-aneel>

⁽⁵⁰⁾ <http://www.aneel.gov.br/bandeiras-tarifarias>

⁽⁵¹⁾ <http://www.edp.com.br/distribuicao-es/saiba-mais/informativos/bandeira-tarifaria>

- (154) The manufacturing overheads and depreciation incurred by the cooperating exporting producers were expressed as a share of the costs of manufacturing actually incurred by the exporting producers. This percentage was applied to the undistorted costs of manufacturing.
- (155) For establishing an undistorted and reasonable amount for SG&A and profits, the Commission relied on the financial data for 2020 for Bozel Brasil S.A. as extracted from the Journal of Minas Gerais ⁽⁵²⁾.

3.5.2. Calculation of normal value

- (156) Based on the undistorted prices and benchmarks described above, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (157) First, the Commission established the undistorted manufacturing costs based on the factors of production purchased by each of the companies. It then applied the undistorted unit costs to the actual consumption of the individual factors of production of each of the cooperating exporting producers. These consumption rates provided by the applicant were verified during the verification. The Commission multiplied the usage factors by the undistorted costs per unit observed in the representative country, as described in Table 1. The Commission reduced the costs of manufacturing by the undistorted costs of by-products.
- (158) Then the Commission added manufacturing overheads and depreciation, as explained in recital (154) to the undistorted cost of manufacturing in order to arrive at the undistorted costs of production.
- (159) To the cost of production established as described in the previous recital, the Commission applied SG&A expenses and profit of Bozel Brasil S.A. SG&A expenses were expressed as a percentage of the COGS and applied to the undistorted cost of production amounted to 11,98 %. The profit expressed as a percentage of the COGS and applied to the undistorted cost of production amounted to 18,96 %.
- (160) On that basis, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.

3.6. Export price

- (161) The exporting producers exported to the Union either directly to independent customers or through a related company located outside the Union.
- (162) 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.

3.7. Comparison

- (163) The Commission compared the normal value and the export price of the exporting producers on an ex-works basis.
- (164) 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, packing costs, credit costs, trader mark-ups, and bank charges.

3.8. Dumping margins

- (165) For the cooperating exporting producers, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.

⁽⁵²⁾ <https://www.jornalminasgerais.mg.gov.br/?dataJornal=2021-03-13#caderno-jornal>

- (166) On this basis, the provisional weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional dumping margin
Ningxia Ketong New Material Technology Co. Ltd	73,4 %
Ningxia Shun Tai Smelting Co., Ltd	132,8 %
Shaanxi Shenghua Metallurgy-Chemical Co. Ltd	85,9 %

- (167) For all other exporting producers in the PRC, the Commission established the dumping margin on the basis of the facts available, in accordance with Article 18 of the basic Regulation. To this end, the Commission determined the level of cooperation of the exporting producers. The level of cooperation is the volume of exports of the cooperating exporting producers to the Union expressed as a proportion of the total imports from the country concerned to the Union in the IP, that were established on the basis of Eurostat data.
- (168) In this case, the exports of the cooperating exporting producers constituted around 57,5 % of the total imports during the IP. On this basis, the Commission decided to establish the residual dumping margin at the level of the highest individual dumping margin established for a representative product type for one cooperating exporting producer.
- (169) The provisional dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional dumping margin
Ningxia Ketong New Material Technology Co. Ltd	73,4 %
Ningxia Shun Tai Smelting Co., Ltd	132,8 %
Shaanxi Shenghua Metallurgy-Chemical Co. Ltd	85,9 %
All other companies	142,3 %

4. INJURY

4.1. Definition of the Union industry and Union production

- (170) The like product was manufactured by two producers in the Union during the investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (171) As the data relating to the injury assessment was primarily derived from only two Union producers, the figures for the injury analysis are given in ranges for reasons of confidentiality. However, the indexes are based on actual data and not the ranges.
- (172) The total Union production during the investigation period was established at around 1 313 – 1 590 tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry, and most importantly the replies to the anti-dumping questionnaires by the cooperating Union producers. As indicated in recital (15), the two cooperating Union producers represented 100 % of the total Union production of the like product.

4.2. Determination of the relevant Union market

- (173) To establish whether the Union industry suffered injury and to determine consumption and the various economic indicators related to the situation of the Union industry, the Commission examined the downstream use of the Union industry's production of the like product in the context of integrated Union producers.
- (174) To provide a picture of the Union industry that is as complete as possible, the Commission obtained data for the entire calcium silicon activity and determined whether the production was destined for captive use or for the free market. The distinction between captive and free market is relevant for the injury analysis because products destined for captive use are not exposed to direct competition from imports. By contrast, production destined for free market sale is in direct competition with imports of the product concerned.
- (175) The Commission found that 7,6 % of the total Union consumption was for captive use during the investigation period, as shown in Table 2 below. The captive use as a fraction of total consumption was relatively stable over the period considered, increasing by only 3 %. In this respect the calcium silicon was being used to produce downstream ferroalloys by the producer concerned and therefore no actual invoiced sales took place.
- (176) The Commission examined certain economic indicators relating to the Union industry on the basis of data for the free market. These indicators are: sales volume and sales prices on the Union market; market share; growth; export volume and prices; profitability; return on investment; and cash flow.
- (177) However, other economic indicators could meaningfully be examined only by referring to the whole activity, including the captive use of the Union industry. These are: production; capacity, capacity utilisation; investments; stocks; employment; productivity; wages; and ability to raise capital. They depend on the whole activity, whether the production is captive or sold on the free market.

4.3. Union consumption

- (178) The Commission established the Union consumption by adding the sales of the Union producers on the Union market to imports of calcium silicon. The Union sales were obtained from the Union producers' replies to the anti-dumping questionnaire. The import figures were obtained from national customs authorities of Member States as described in Section 4.4.1 below.
- (179) Union consumption developed as follows:

Table 2

Union consumption (tonnes)

	2017	2018	2019	Investigation period
Total Union consumption	[25 836 – 31 275]	[22 248 – 26 931]	[17 053 – 20 643]	[12 814 – 15 512]
<i>Index</i>	100	86	66	50
Captive market	[1 030 – 1 247]	[1 479 – 1 790]	[1 582 – 1 916]	[1 059 – 1 281]
<i>Index</i>	100	144	154	103
Free market	[24 806 – 30 028]	[20 769 – 25 141]	[15 470 – 18 727]	[11 756 – 14 231]
<i>Index</i>	100	84	62	47

Source: Member States' national customs data, Union producers' questionnaire replies.

- (180) Total Union consumption and free market consumption decreased steadily over the period considered reaching about half of their initial level during the investigation period. The reduction in consumption was the result of imports falling by about 25 % and Union domestic sales falling by about 75 % over the period considered as stated in Tables 6 and 12 respectively. One of the main reasons for the substantial fall in consumption was the downturn in crude steel production as calcium silicon is an input to the steel-making process and steel making is by far the largest market for calcium silicon and the steel industry to some extent was buying less calcium silicon because it was using up its stocks of calcium silicon.

4.4. Imports from the PRC

4.4.1. Volume and market share of the imports from the PRC

- (181) In the complaint, import statistics were obtained from Eurostat under CN codes 7202 99 80 and 2850 00 60 and were adjusted based on the price of imports in order to remove products which are not the product under investigation. The quality of the import data (in terms of both volume and prices) used at this stage was criticised by Eurofer in its submission on the initiation of the investigation. However, this was the most reliable evidence available at that stage. Nevertheless, during the current investigation it was possible to obtain more accurate import data, which described the product imported for each import declaration made to the national customs authorities of Member States. The Commission requested detailed information on imports falling within CN codes 7202 99 80 and 2850 00 60 from France, Italy, Slovenia and Spain, the four Member States with the highest volume of imports in the complaint. The Commission then established the import volumes and prices of calcium silicon for three of these Member States (France, Slovenia and Spain) based on an analysis of the product description recorded in the information received from those Member States. For Italy, the fourth Member State in terms of volume of imports, the data supplied was not in the required format and therefore the Commission had to rely on the data in the complaint at provisional stage. The complaint showed what percentage was represented by those four Member States in each year of the period considered. The Commission used these percentages to calculate the volume of imports.
- (182) The market share of the imports was established on the basis of the imports from the PRC as compared to the volume of free market consumption as shown in Table 2.
- (183) Imports from the PRC developed as follows:

Table 3

Import volume (tonnes) and market share

	2017	2018	2019	Investigation period
Volume of imports from the PRC ⁽⁵³⁾	[10 009 – 12 116]	[10 657 – 12 900]	[9 433 – 11 419]	[7 789 – 9 428]
<i>Index</i>	100	106	94	78
Market share (%)	38,7	47,9	55,3	60,8
<i>Index</i>	100	124	143	157

Source: Member States' customs data.

- (184) Following a small increase in imports by 6 % from 2017 to 2018, imports from China decreased steadily by 27 % from 2018 to the investigation period. However, the market share of those imports increased steadily by 57 % between 2017 and 2020. As such, although imports from China decreased, their fall was much less pronounced than the decrease in EU consumption.

⁽⁵³⁾ The import volume figures quoted here in Table 3 have been extrapolated. The 4 Member States represented 82,6 % in 2017, 72,7 %, in 2018, 95,2 % in 2019 and 94,8 % in the investigation period.

4.4.2. Prices of the imports from the PRC and price undercutting

(185) The Commission established the weighted average prices of imports from the PRC on the basis of the national customs data showing imports of calcium silicon from the PRC as established in accordance with recital (181) above. Such prices were at a CIF level.

(186) The weighted average price of imports from the PRC developed as follows:

Table 4

Import prices (EUR/tonne)

	2017	2018	2019	Investigation period
The PRC	1 297	1 377	1 458	1 232
<i>Index</i>	<i>100</i>	<i>106</i>	<i>112</i>	<i>95</i>

Source: Member States' national customs data.

(187) Import prices from the PRC increased by 6 % from 2017 to 2018 and again from 2018 to 2019, but then fell sharply by 15,5 % from 2019 to the investigation period reaching a price level 5 % lower than that in 2017. Import prices from the PRC were below Union sales prices as reported in Table 8, with a difference between 15 %-30 % during the IP.

(188) The Commission determined the price undercutting during the investigation period by comparing:

- the weighted average sales prices per product type of the two Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and
- the corresponding weighted average prices per product type of the imports from the three cooperating Chinese producers to the first independent customer on the Union market, established on a Cost, insurance, freight (CIF) basis, with appropriate adjustments for customs duties and post-importation costs.

(189) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary for discounts and commissions. This type-by-type analysis took into account whether sales were made in bulk or cored wire, as pointed out by Eurofer in its comments on initiation of the investigation described in recital (9). The result of the comparison was expressed as a percentage of the Union producers' theoretical turnover during the investigation period. The weighted average undercutting found was 10,6 %. Bearing in mind that the product under investigation is a commodity, this was considered to be a significant undercutting margin. All product types of the cooperating exporting producers were found to be undercutting. These imports represented around 57 % of total imports.

4.5. Economic situation of the Union industry

4.5.1. General remarks

(190) 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.

(191) For the injury determination, all indicators were based on the two cooperating Union producers, which represented the totality of the Union industry as stated in recital (15).

4.5.2. *Production, production capacity and capacity utilisation*

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

Table 5

Production, production capacity and capacity utilisation

	2017	2018	2019	Investigation period
Production volume (tonnes)	[15 011 – 18 172]	[14 853 – 17 980]	[13 105 – 15 863]	[1 313 – 1 590]
<i>Index</i>	100	99	87	9
Production capacity (tonnes)	[24 634 – 29 820]	[24 634 – 29 820]	[24 634 – 29 820]	[25 350 – 30 687]
<i>Index</i>	100	100	100	103
Capacity utilisation (%)	60,9	60,3	53,2	5,2
<i>Index</i>	100	99	87	9

Source: Union producers questionnaires.

- (193) Production of the Union industry fell dramatically by 91 % from 2017 to 2020 while capacity increased by 3 %, resulting in a 91 % drop in capacity utilisation.
- (194) The Union industry produces calcium silicon on furnaces, which can also be used to produce other ferro-alloys. In these circumstances, Union production of calcium silicon was not continuous over the period considered as Union producers can optimise profits or minimise losses by producing the most beneficial product on the same furnaces.
- (195) Other reasons for interruptions in production were identified as technical issues with production equipment and essential maintenance. In order to supply its main customers during periods of no production, the Union industry supplied from stocks and at times from purchases.
- (196) Production was low during 2019 and especially low during the investigation period, when producers were faced with price suppression from substantial volumes of low-priced calcium silicon imports, mainly from the PRC, despite lower demand in the Union due to reduced steel production and the Covid-19 pandemic.
- (197) In addition, energy prices, which make up a significant proportion of manufacturing costs, were high. As Ferropem had built up calcium silicon stocks in 2018 and 2019, they decided to significantly reduce production in 2020.
- (198) Ferropem is currently undertaking a significant restructuring programme of its activities. In respect of calcium silicon, Ferroglobe (Ferropem's parent company) has indicated that it is committed to continue the production of the product concerned in the Union and has two current projects in this regard.
- (199) The other Union producer (OFZ) indicated that it has substantial spare capacity that could be used to increase Union production provided fair competition conditions prevail on the market.

- (200) The production capacity indicated for the Union industry is based on the capacity of furnaces, which were used for production of calcium silicon during the period considered. However, as mentioned by Eurofer and the German Steel Federation in their submission on the initiation of the investigation, it should be clarified that these furnaces were also used to produce other products, and therefore the capacity utilisation rates shown in Table 5 (which consider only calcium silicon) were low throughout the period considered. Nevertheless, the capacity indicated in the Union could be substantially increased at short notice by producing calcium silicon on the other furnaces, which were producing other ferro-alloys in the period considered. The small increase in the production capacity over the period considered was the result of improvements in efficiency.
- (201) Therefore, the investigation concluded that the capacity of the Union industry shown in Table 5 is indicative of the conditions prevailing during the period considered, but that it can be increased substantially in the short term.

4.5.3. Sales volume and market share

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

Table 6

Sales volume and market share

	2017	2018	2019	Investigation period
Free market sales	[13 036 – 15 780]	[8 574 – 10 379]	[5 034 – 6 094]	[3 214 – 3 891]
<i>Index</i>	100	66	39	25
Market share of free market sales (%)	50,5	38,5	29,5	25,1
<i>Index</i>	100	76	59	50

Source: Union producers' questionnaires.

- (203) The above table shows the sales volume of the Union producers of own production. The free market sales volume on the Union market decreased by 75 % between 2017 and the end of the investigation period. The reduced sales volumes followed the substantial fall in production shown above in Table 5.
- (204) The Union industry lost about half of its market share between 2017 and the investigation period. The fall in market share was not as pronounced as the fall in sales volumes, but it occurred due to the continuation of imports, particularly from the PRC, in substantial volumes.

4.5.4. Growth

- (205) In a context of decreasing consumption, the Union industry not only lost substantial sales volumes in the Union market, but also market share. Therefore, the Union industry position on the Union market has clearly contracted in both absolute and relative terms.

4.5.5. Employment and productivity

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

Table 7

Employment and productivity

	2017	2018	2019	Investigation period
Number of employees (FTE)	[51 – 62]	[46 – 55]	[51 – 61]	[14 – 16]
<i>Index</i>	100	89	99	27

Productivity (tonnes/FTE)	[279 – 338]	[309 – 375]	[246 – 297]	[92 – 111]
Index	100	111	88	33

Source: Union producers' questionnaires.

- (207) The number of employees varied during the period considered reflecting the reallocation of certain employees to different products during periods of fluctuating production. As such the number of FTE employees working on calcium silicon fell by 73 % during the period considered.
- (208) Productivity increased by 11 % from 2017 to 2018 and then declined by 21 % from 2018 to 2019 and fell substantially by 63 % between 2019 and the investigation period. Taking into account the fluctuations in employment levels shown in Table 7, the trend mainly followed that of production, which fell substantially over the period considered.

4.5.6. Magnitude of the dumping margin and recovery from past dumping

- (209) All dumping margins were significantly above the *de minimis* level. The impact of the magnitude of the actual margins of dumping on the Union industry was substantial, given the volume and prices of imports from the country concerned.
- (210) This is the only anti-dumping investigation regarding the product concerned. Therefore, no data was available to assess the effects of possible past dumping.

4.5.7. Prices and factors affecting prices

- (211) The weighted average unit sales prices of the Union producers to unrelated customers in the Union developed over the period considered as follows:

Table 8

Sales prices in the Union (EUR/tonne)

	2017	2018	2019	Investigation period
Average unit sales price on the free market to unrelated customers	[1 367 – 1 654]	[1 559 – 1 887]	[1 564 – 1 894]	[1 435 – 1 737]
Index	100	114	114	105
Unit cost of production	[1 213 – 1 468]	[1 390 – 1 683]	[1 543 – 1 868]	[1 836 – 2 223]
Index	100	115	127	151

Source: Union producers' questionnaires.

- (212) The average unit sales prices on the Union free market to unrelated customers increased by 14 % from 2017 to 2018 and remained at that level for 2019 before falling by 8 % in the investigation period. Prices in the investigation period were 5 % higher than in 2017. In 2018 and 2019, increasing sales prices were consistent with increasing costs. As sales volumes decreased substantially, sales prices on the Union market stagnated in 2019 and then fell significantly in 2020. Union producers' prices were negatively impacted by continuing substantial low priced imports from China, which suppressed prices in the Union market.

- (213) The unit costs of production increased steadily by over 50 % from 2017 to 2020. These cost increases were, to a large degree, due to the substantial decrease in production throughout the period under investigation, which came about for the reasons outlined in recitals (193) to (197). In particular, the low levels of production in 2019 and 2020 meant that fixed costs (e.g. depreciation) had to be recovered over lower production volumes leading to higher unit costs of production. In addition there were increases in certain production costs such as energy.

4.5.8. Labour costs

- (214) The average labour costs of the Union producers developed over the period considered as follows:

Table 9

Average labour costs per employee (EUR/FTE)

	2017	2018	2019	Investigation period
Average labour costs per employee	[55 032 – 66 618]	[67 345 – 81 523]	[57 342 – 69 415]	[49 188 – 59 543]
Index	100	122	104	89

Source: Union producers' questionnaires.

- (215) Labour costs per employee increased by 22 % from 2017 to 2018 and then decreased by 27 % between 2018 and the investigation period. This fluctuation results from significant differences in production quantity and labour rates of the two Union producers.

4.5.9. Inventories

- (216) Stock levels of the Union producers developed over the period considered as follows:

Table 10

Inventories

	2017	2018	2019	Investigation period
Closing stocks (tonnes)	[1 550 – 1 877]	[3 850 – 4 660]	[6 604 – 7 995]	[1 889 – 2 287]
Index	100	248	426	122
Closing stocks as a percentage of production (%)	10,3	25,9	50,4	143,8
Index	100	251	488	1 393

Source: Union producers' questionnaires.

- (217) Closing stock levels increased steadily from 2017 to 2019 before decreasing substantially from 2019 to the end of the investigation period. The Union producers did not produce all of the time during the period considered, but made production decisions depending on the market situation for calcium silicon and other ferro-alloys and the levels of calcium silicon in stock. As such, stock levels are generally higher following periods of production and then decrease during periods when producers decide to sell from stocks.

- (218) Closing stocks as a percentage of production increased throughout the period considered due particularly to the substantial reduction in production shown in Table 4.

4.5.10. *Profitability, cash flow, investments, return on investments and ability to raise capital*

- (219) Profitability, cash flow, investments and return on investments of the Union producers developed over the period considered as follows:

Table 11

Profitability, cash flow, investments and return on investments

	2017	2018	2019	Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	9,7 % to 11,7 %	10,3 % to 12,5 %	0,9 % to 2,7 %	- 25,2 % to - 36,3 %
<i>Index</i>	100	106	16	- 296
Cash flow (EUR)	2 680 005 to 3 244 217	- 834 797 to - 1 010 543	- 3 507 642 to - 4 246 094	3 562 317 to 4 312 279
<i>Index</i>	100	- 31	- 131	133
Investments (EUR)	[17 832 – 21 586]	[559 138 – 676 851]	[1 588 224 – 1 922 586]	[6 509 – 7 879]
<i>Index</i>	100	3 136	8 907	36
Return on investments (%)	48 to 58	40 to 48	1 to 2	- 43 to - 52
<i>Index</i>	100	83	3	- 89

Source: Union producers' questionnaires.

- (220) The Commission established the profitability of sales of the Union producers' own production 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. In 2018, profitability was maintained at a level similar to that of 2017, because increases in costs were matched by higher sales prices, therefore the Union industry achieved profit levels between 9,7 % and 12,5 % on turnover. However, lower sales volumes, stagnant market prices and further increases in costs saw profitability fall to levels between 0,9 % and 2,7 % in 2019. In 2020, as production and sales volumes fell further, market prices fell and costs increased again, resulting in very large losses. Eurofer used annual reports of Ferroglobe to challenge the profit margins quoted in the complaint. However, the above profit margins relate to the sales of the producing entities (Ferropem and OFZ) and relate solely to calcium silicon, while the reports quoted give the profitability of all products manufactured by Ferroglobe.
- (221) The net cash flow is the ability of the Union producers to self-finance their activities. Cash flow was substantially positive in 2017 and the investigation period and substantially negative in 2018 and 2019. This trend was generally in line with changes in closing stock levels. When closing stock levels decreased in the investigation period, cash flow was positive as sales were made from stock, whereas in 2018 and 2019 when closing stock levels increased, cash flow from sales was reduced.
- (222) The average investments during the period considered were low, less than EUR 600 000 per year. The higher investment in 2019 is consistent with the small increase in capacity in 2020.

- (223) The return on investments is the profit in percentage of the net book value of investments. While the net book value of investments increased slightly over the period considered, the main reason for the dramatic fall in the return on investment in 2019 and 2020 was due to the substantial fall in profitability in those years.
- (224) Although no large investments were planned during the period considered, the Union producers' ability to raise capital would have deteriorated over that period as their level of profitability declined.

4.5.11. Conclusion on injury

- (225) During the period considered, imports from the country concerned fell by 22 % but gained considerably in market share as consumption fell by 50 %. Imports from the PRC substantially increased their market share (from 38,7 % to 60,8 %). In addition, Chinese import prices were consistently low and significantly below Union industry prices throughout the period considered. During the investigation period, the import prices of the cooperating exporting producers undercut Union industry prices by 10,6 % on average. As such, the Union industry was unable to raise prices to the same extent as costs were increasing because of the downward pressure on prices caused by imports from China.
- (226) The injury suffered by the Union industry was a combination of volume and price effects. Many volume indicators showed a significant negative trend over the period considered: production fell by 91 %, capacity utilisation by 91 %, sales volume in the Union market fell by 75 % and its market share fell by 25 percentage points. In addition, employment fell by 73 %, average labour costs fell by 11 % and productivity fell by 67 %.
- (227) The average prices of the Union industry increased by only 5 % over the period considered and its costs rose by 51 %. This had a dramatic impact on profitability and return on investment which fell from reasonable levels in 2017 and 2018 to a substantial loss situation in the investigation period. Investments were low throughout the period.
- (228) Very few indicators showed a positive development. Capacity showed a slightly positive trend due to improvements in the efficiency of production. Calcium silicon is normally sold from stock, and it was evident that the development of cash flow and stocks were closely linked. As stocks were built up in 2018 and 2019, cash flow was negative, but then in 2020 when production was lower and larger quantities were sold from stock, cash flow improved and became positive. The relatively small captive use increased by 3 % over the period, but this development had only a marginal impact on the overall situation of the industry.
- (229) In summary, consumption on the Union market was falling rapidly, but the Union industry was not able to maintain its market share. Imports from the PRC were substantial throughout the period considered, at prices which were lower than the Union industry prices. At the end of 2019 and in 2020, the Union industry was selling at prices which no longer covered its costs and consequently the industry substantially reduced its production and sales levels. The largest Union producer reduced the production significantly in 2020, and in the investigation period sales were made largely from stock. This situation was not sustainable and a restructuring plan was developed, which involved a possible closure of the site used for the production of calcium silicon.
- (230) On the basis of the above, the Commission concluded at this stage that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

- (231) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the country concerned caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could, at the same time, have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the dumped imports from the country concerned was not attributed to the dumped imports. These factors are: the impact of the fall in consumption due to contraction in demand by the steel industry, imports from third countries, the export performance of the Union industry, increased costs of production in the Union, the impact of imports to fulfil demand and captive use.

5.1. Effects of the dumped imports

- (232) The volume of imports from the PRC decreased (as shown in Table 3) by 22 % from 2017 to the investigation period. However, the market share of the PRC increased by 57 %, i.e. from 38,7 % to 60,8 %. This was at the detriment of the Union industry. Indeed, over the same period (as shown in Table 6), the Union industry sales on the free market decreased by 75 % and its market share on the free market fell from 50,5 % to 25,1 %, a decrease of 50 %.
- (233) The prices of the dumped imports decreased by 5 % over the period considered (as shown in Table 4). In comparison, the Union industry prices on the free market increased by 6 % over the same period. The Chinese imports, ever more present in the Union market throughout the period considered, were made at prices that continuously undercut those of the Union industry.
- (234) The pressure exerted by the dumped imports also caused significant price suppression as evidenced by the fact that the Union industry was unable to raise prices at the same rate as costs. Indeed, as shown in Table 8, during the IP the costs of production were more than 20 % higher than the Union industry's sales prices. By 2019, this prevention of price increases caused the profitability of the Union industry to fall to below 3 %, which is clearly an unsustainable level. Over the period 2017 to 2019, imports from the PRC decreased in volume by only 6 % but their market share increased from 38,7 % to 55,3 % market share, while the market share of the Union industry dropped from 50,5 % to 29,5 %. Indeed, despite a decrease in consumption between 2017 and 2019 of 34 %, Chinese imports continued to gain market share from the Union industry. In the same period, Chinese import prices increased by 12 % (Table 4), while the Union industry prices increased more, by 14 %, but much less than the cost of production, that increased by 27 %. So already by 2019, the Union industry was suffering from material injury caused by the dumped imports.
- (235) In 2020, Chinese prices fell by a further 16 % as compared to 2019 and the market share of the Chinese imports increased from 55 % to 61 %, an increase of 10 %. In the same period, the Union industry prices fell by 8,2 %, its cost of production increased by 19 %, and its market share fell by 15 %, going from 29,5 % to 25,1 %. This had a substantial impact on the Union industry, causing its profitability to become heavily negative in the investigation period.
- (236) On the basis of the above, the Commission provisionally concluded that the imports from China caused material injury to the Union industry. Such injury had both volume and price effects.

5.2. Effects of other factors

5.2.1. *The fall in consumption*

- (237) The development of consumption shown in Table 2 was considered as the main cause of injury by Eurofer and the German Steel Federation in their submissions on initiation. It fell by 50 % over the period considered. This development reflected lower demand from the main user sector (the steel industry). The steel industry reduced their purchases of calcium silicon by using its inventories of calcium silicon and over the period considered crude steel production fell by 18 %.
- (238) In 2018 the consumption of calcium silicon fell by 14 % as compared to 2017 and the Union industry was still able to adjust its business to this fall, so that the profitability of calcium silicon sales was maintained at above 10 %. However, in 2019 the situation was no longer sustainable for the Union industry, as Chinese import penetration meant that the Union industry production and sales fell to levels that did not enable it to cover its rising unit costs. In 2020, the year of the start of the Covid-19 pandemic, consumption fell by a further 25 %.
- (239) It was argued by both Eurofer and the German Steel Federation that the fall in production of crude steel was the main reason for the injury suffered by the calcium silicon industry rather than Chinese imports.

- (240) However, against the backdrop of decreasing consumption the market share of the PRC increased by 57 %, i.e. from 38,7 % to 60,8 % while the Union industry's fall in production, sales volume, market share, profitability, employment and return on investment showed bigger declines than the consumption. This is because the Chinese market penetration at low prices was causing substantial damage to these injury indicators.
- (241) Therefore, the fall in consumption did not break the causal link between the dumped imports from the PRC and the material injury suffered by the Union industry. Furthermore, as pointed out by Eurofer, the Covid-19 pandemic began to have an impact in 2020 while an injurious situation had already been created by 2019. Therefore, the Covid-19 pandemic should be seen as an exacerbating factor in 2020.

5.2.2. *Increases in the cost of production*

- (242) The Union industry cost of production increased for two main reasons. Firstly, the electricity costs used in the production of calcium silicon, which represent a significant proportion of the costs of production (up to 40 % in the period considered), increased for the largest Union producer by over 30 % over the period considered.
- (243) Secondly, the unit cost of production increased substantially as a result of the lower production and sales quantities of the Union industry over the period considered. This meant that fixed costs were recovered over lower volumes of production and sales, which increased the unit fixed cost element in the unit costs of production.
- (244) Eurofer claimed that Ferroglobe's second quarter of 2020 Business Review indicated that there had been cost improvements attributable to a decrease in energy prices. However, this Business Review relates to Ferroglobe, which operates in several countries, and is not solely related to Ferropem at its site used for calcium silicon production. Therefore, the argument could not be accepted.
- (245) In 2018, the Union industry was able to maintain its profit levels above 10 % despite increases in electricity costs, as it was able to pass on those cost increases to its customers. However, in 2019 the Union industry was no longer able to increase prices due to the price pressure of the Chinese imports which, by 2019, were dominating the market (with a 55 % market share) and acting as its price setters. The Union industry was not able to follow such low import prices in 2019. This contributed to Ferropem's decision to decrease significantly production in 2020.
- (246) Therefore, it should be concluded that increases in the cost of production were not a cause of injury. It was the low priced Chinese imports, which increased their share on the Union market, even in the situation of a fall in consumption, to the detriment of the Union industry and prevented the Union industry to increase their prices to profitable levels.

5.2.3. *Purchases of calcium silicon replacing own production*

- (247) Purchases of calcium silicon from outside the Union (mainly from Argentina) were made by the Union industry during the period considered. The Commission therefore examined whether the decision to import calcium silicon had caused injury to the Union industry because of its impact on production and sales levels and, therefore, profitability. These imports, that fluctuated throughout the period considered and represent 15 % of total sales in that period, were generally made at times of technical issues with their Union production facilities to satisfy customer orders. Therefore, they allowed the Union industry to meet demand and as such cannot be considered to have contributed to the injury suffered by the Union industry. In addition, such purchases were not being made during the IP when the Union industry faced the most substantive injury.

5.2.4. *Production of other products replacing production of calcium silicon*

- (248) Eurofer pointed out that as the Union industry produced calcium silicon on the same equipment as other products, a switch to other products would prevent the production of calcium silicon.

- (249) However, the investigation revealed that the Union producers had spare capacity throughout the period considered even taking into account these other ferroalloys. Therefore, it is clear that production of other products did not present a barrier to the production of calcium silicon and were not an indirect cause of injury during the period considered.

5.2.5. Imports from third countries

- (250) The volume of imports from other third countries developed over the period considered as follows:

Table 12

Imports from third countries

Country		2017	2018	2019	Investigation period
Brazil	Volume (tonnes)	[1 130 – 1 368]	[614 – 743]	[1 157 – 1 401]	[1 470 – 1 779]
	Index	100	54	102	130
	Market share (%)	4,4	2,8	6,8	11,5
	Average price (EUR/tonne)	1 341	1 439	1 420	1 108
	Index	100	107	106	83
Thailand	Volume (tonnes)	[157 – 190]	[545 – 660]	[288 – 348]	[245 – 297]
	Index	100	347	183	156
	Market share (%)	0,6	2,5	1,7	1,9
	Average price (EUR/tonne)	1 210	1 313	1 417	1 112
	Index	100	109	117	92
Argentina	Volume (tonnes)	[1 505 – 1 822]	[1 828 – 2 212]	[1 123 – 1 360]	[96 – 116]
	Index	100	121	75	6
	Market share (%)	5,8	8,2	6,6	0,7
	Average price (EUR/tonne)	1 587	1 535	1 538	1 248
	Index	100	97	97	79
Other third countries	Volume (tonnes)	0	[29 – 36]	[17 – 21]	[0 – 2]
	Index	0	0	0	0
	Market share (%)	0,0	0,1	0,1	0,0
	Average price (EUR/tonne)	0	1 554	2 469	2 254
	Index	0	0	0	0
Total of all third countries except the country concerned	Volume (tonnes)	[2 792 – 3 380]	[3 017 – 3 652]	[2 585 – 3 129]	[1 812 – 2 193]

	<i>Index</i>	100	108	93	65
	Market share (%)	10,8	13,6	15,2	14,1
	Average price (EUR/tonne)	1 466	1 476	1 478	1 117
	<i>Index</i>	100	101	101	76

Source: Member States customs data.

- (251) Imports from Brazil increased by 30 % over the period considered. Their market share increased from 4,4 % to 11,5 % in this period. These imports were at similar prices to those from China in the period 2017 to 2019, but undercut the Chinese prices by 10 % in 2020. Brazilian imports should therefore be considered as a contributory factor to the injury suffered by the Union industry especially in 2020. This issue was also raised by Eurofer and the German Steel Federation in the context of comments on the Complaint.
- (252) However, as the volume of such imports was always at least 5 times lower than those from China, it is clear that Chinese imports were a more important causation factor.
- (253) Imports from other third countries were mainly from Argentina, including purchases made by one of the Union producers from a related company, but these imports were not made at volumes and prices which caused injury throughout the period considered and, as explained in recital (247), they allowed the Union industry to meet demand at concrete times of technical issues.
- (254) Therefore, while imports took place in significant quantities and at low prices from Brazil, these were not significant enough to attenuate the causal link between the substantial quantities of imports of calcium silicon from China at low prices and the injury caused to the Union industry.

5.2.6. Export performance of the Union industry

- (255) The volume of exports of the Union producers developed over the period considered as follows:

Table 13

Export performance of the Union producers

	2017	2018	2019	Investigation period
Export volume (tonnes)	[2 931 – 3 548]	[2 696 – 3 264]	[2 119 – 2 565]	[1 581 – 1 914]
<i>Index</i>	100	92	72	54
Average price (EUR/tonne)	[1 196 – 1 448]	[1 490 – 1 804]	[1 492 – 1 806]	[1 369 – 1 657]
<i>Index</i>	100	125	125	114

Source: Union producer's questionnaires.

- (256) Exports of the Union industry decreased by 46 % over the period considered, which was considerably less than the 75 % decrease in sales volume by Union producers on the Union market over the same period.

- (257) The average price of these exports first increased by 25 % in 2018. That level was then maintained in 2019 before decreasing to a level that was still significantly above the 2017 level in the investigation period (+ 14 %). The average price of these exports was slightly lower than that the Union industry could have achieved on the Union market in 2017, but then export and domestic sale price levels remained at similar levels for the rest of the period considered.
- (258) In view of the volumes and price levels of the Union industry exports to third countries, and given that the export sales did not deteriorate as much as the sales on the Union market (shown in Table 6), the Commission provisionally concluded that the export performance contributed, but only to a minimal extent, to the material injury suffered by the Union industry.

5.2.7. *Captive use*

- (259) The Union industry used the product concerned captively to produce other downstream ferroalloys. As shown in Table 2, captive use increased in 2018 and 2019 but over the period considered it only increased by 3 %. In addition, the captive market represented less than 10 % of the total market throughout the period considered.
- (260) Therefore, it was provisionally concluded that developments in the captive market did not have a material impact on the Union industry.

5.3. **Conclusion on causation**

- (261) The dumped imports from China caused material injury to the Union industry in 2019 and 2020 because of the massive market penetration achieved at the expense of the Union industry. In terms of prices, the increasing market share of imports continuously undercut those of the Union industry and created substantial price pressure and prevented the market price increases which were necessary for the Union industry to achieve reasonable profit levels.
- (262) Other factors also had an impact on the Union industry. The most important of these factors was the fall in consumption because of weaker demand from the steel industry. However, bearing in mind that the Union industry suffered falls in production, sales volume, market share and profitability much greater than the fall in consumption (50 %), and that against such a backdrop of decreasing consumption, the market share of the PRC increased by 57 %, i.e. from 38,7 % to 60,8 %, it is concluded that the fall in consumption was simply a contributing factor. The main cause of injury was the Chinese imports which had significantly penetrated the Union market at low prices throughout the period considered.
- (263) In addition, imports from Brazil, and the export performance of the Union industry impacted the situation of the Union industry. However, these factors had a very limited impact on the industry, because imports from Brazil were at similar prices to the Chinese imports but at much lower volumes. The massive Chinese imports at prices much lower than those of the Union industry are the main reason why the Union industry lost sales and could not raise its prices in line with its cost of production, which led to severe losses.
- (264) The Commission thus distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports.
- (265) On the basis of the above, the Commission concluded at this stage that the dumped imports from the country concerned caused material injury to the Union industry and that the other factors, considered individually or collectively, did not attenuate the causal link between the dumped imports and the material injury. The injury is clear in the evolution of production, capacity utilisation, sales volume in the Union market, market share, employment, productivity, cost of production, profitability and return on investments.

6. LEVEL OF MEASURES

- (266) In the present case, the complainants claimed that there were raw material distortions within the meaning of Article 7(2a) of the basic Regulation. Thus, in order to assess the appropriate level of measures, the Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry in the absence of distortions under Article 7(2a) of the basic Regulation. Then it examined whether the dumping margin of the cooperating exporting producers would be higher than their underselling margin (see recitals (275) to (281) below).

6.1. Underselling margin

- (267) The injury would be removed if the Union industry were able to obtain a target profit by selling at a target price in the sense of Articles 7(2c) and 7(2d) of the basic regulation.
- (268) In accordance with Article 7(2c) of the basic Regulation, for establishing the target profit, the Commission took into account the following factors: the level of profitability before the increase of imports from the country under investigation, the level of profitability needed to cover full costs and investments, research and development (R & D) and innovation, and the level of profitability to be expected under normal conditions of competition. Such profit margin should not be lower than 6 %.
- (269) As a first step, the Commission established a basic profit covering full costs under normal conditions of competition. In 2017 and 2018, before the Union industry suffered material injury, the Union industry weighted average profitability rate was between 9,7 % and 12,5 % on turnover as shown in Table 11. Such profit margin was deemed to be the basic profit covering full costs under normal conditions of competition in this investigation.
- (270) As one of the Union producers did not produce significant quantities of calcium silicon during the investigation period, its costs were not considered reliable and appropriate for the purposes of establishing the target price. As the sales of this producer were largely made from stocks produced in 2019, the production cost of that year was considered appropriate for this investigation.
- (271) On this basis, the non-injurious price is between 1 650 and 1 750 EUR/tonne, resulting from applying the above-mentioned profit margin of between 9,7 % and 12,5 % to the weighted average cost of production of the Union producers.
- (272) In accordance with article 7(2d) of the basic Regulation, as a final step, the Commission assessed the future costs resulting from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia that the Union industry will incur during the period of the application of the measure pursuant to Article 11(2). Based on the evidence available at the provisional stage, the Commission established that no additional costs to the Union industry applied in this respect.
- (273) The Commission then determined the underselling margin level on the basis of a comparison of the weighted average import price of the cooperating exporting producers in the country concerned, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the Union producers on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.
- (274) The injury elimination level for 'other cooperating companies' and for 'all other companies' is defined in the same manner as the dumping margin for these companies (see recital (168)).

Company	Dumping margin (%)	Underselling margin (%)
Ningxia Ketong New Material Technology Co. Ltd	73,4	31,5
Ningxia Shun Tai Smelting Co., Ltd	132,8	43,3
Shaanxi Shenghua Metallurgy-Chemical Co. Ltd	85,9	32,8
All other companies	142,3	50,6

- (275) Since the underselling margin so calculated was lower than the margin of dumping, the Commission undertook the examination required under Article 7(2a) of the basic Regulation.

6.2. Examination of the margin adequate to remove the injury to the Union industry

6.2.1. Raw material distortions

- (276) The complainant provided sufficient evidence in the complaint that there are raw material distortions within the meaning of Article 7(2a) of the basic Regulation in the PRC with regard to the product concerned. According to the evidence in the complaint, electricity, accounting for 20 % of the cost of production of the product concerned, is subject to a dual pricing scheme in the PRC. Therefore, as announced in the Notice of initiation, in accordance with Article 7(2a) of the basic Regulation, the Commission investigation covered the examination of the alleged distortions and any other distortions covered by Article 7(2a) of the basic Regulation in the PRC.
- (277) The Commission first identified the main raw materials, including energy, used in the production of the product concerned by each of the cooperating exporting producers. As main raw materials were considered those raw materials which are likely to represent at least 17 % of the cost of production of the product concerned. The Commission established that electricity is the only raw material that represents more than 17 % of the cost of production of the product concerned.
- (278) The Commission then examined whether electricity is distorted by a dual pricing scheme or any other of the measures listed in Article 7(2a) of the basic Regulation. For this purpose the Commission used the information in the complaint as well as the information provided by the cooperating exporting producers. As explained in recital (21), the Commission sent a questionnaire in this regard to the GOC. The GOC did not reply to this questionnaire. Subsequently, the Commission informed the GOC by letter of 31 March 2021 that it may have to apply facts available in this regard in accordance with Article 18 of the basic Regulation. The GOC did not reply to this letter either.
- (279) In the complaint, the complainant alleged that the price of electricity in Northern provinces of the PRC is distorted by a dual pricing scheme. To support the allegation, the complaint contained a comparison of prices of electricity in Northern provinces of the PRC, in which the main exporters of the CaSi are located, and the export price of electricity exported from the same provinces, showing that consistently the latter is significantly higher.
- (280) The investigation did not find any evidence of a dual pricing scheme or any other of the measures mentioned in Article 7(2a) of the basic Regulation in the PRC. Moreover, none of the cooperating exporting producers is located in the Northern regions identified in the complaint. Two of the cooperating exporting producers stated that they purchased electricity at the market rate in their province; one of them provided evidence that the electricity rates are much higher in its region than in those identified in the complaint.
- (281) The Commission therefore provisionally concluded that, based on the evidence on file at this stage of the investigation and the specific circumstances of this case, electricity was not subject to a distortion within the meaning of Article 7(2a) of the basic Regulation.

6.3. Conclusion on the level of measures

- (282) Following the above assessment, provisional anti-dumping duties should be set as below in accordance with Article 7(2) of the basic Regulation:

Company	Provisional anti-dumping duty
Ningxia Ketong New Material Technology Co. Ltd	31,5 %
Ningxia Shun Tai Smelting Co., Ltd	43,3 %
Shaanxi Shenghua Metallurgy-Chemical Co. Ltd	32,8 %
All other companies	50,6 %

7. UNION INTEREST

- (283) Having decided to apply Article 7(2) of the basic Regulation, the Commission examined whether it could clearly conclude that it was not in the Union interest to adopt measures in this case, despite the determination of injurious dumping, in accordance with Article 21 of the basic Regulation. 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, such as the cored wire manufacturers and the steel industry.

7.1. Interest of the Union industry

- (284) The Union industry represents 100 % of Union production in this investigation. A combination of factors, including increasing penetration of Chinese imports at low prices, created difficult market conditions in 2019 and this situation was made worse in 2020 by further import penetration and falls in consumption caused partly by the Covid-19 pandemic. The Union industry suffered substantial falls in production, sales volume, employment and profitability.
- (285) Ferropem, the largest Union producer, was forced to begin to implement a restructuring plan, which involved a possible closure of the main calcium silicon site at Chateau Feuillet. The imposition of measures on Chinese imports would enable Ferropem to restart calcium silicon production at another site in the Union. Employment at Chateau Feuillet site was around 250 FTEs, a significant proportion of which related to calcium silicon throughout the period considered.
- (286) Measures would improve market conditions for both Union producers, as they would help them recover lost market share and price pressure would be lifted if Chinese import prices were higher due to the anti-dumping duties. The measures would also facilitate Ferropem's implementation of its restructuring plan.
- (287) The non-imposition of measures would put the Union industry in jeopardy because any continuation of the unsustainable situation on the market in 2019 and 2020 would threaten future production of calcium silicon in the Union.
- (288) Furthermore, the profitability, and even the existence, of the production of other ferroalloys would be threatened if such products use the same facilities as calcium silicon. This is because ferroalloy sites depend on sharing fixed costs to lower unit costs of production in order to make sites profitable.
- (289) Clearly the imposition of measures would be in the interest of both the calcium silicon industry and the wider ferroalloy sector.

7.2. Interest of unrelated importers and cored wire manufacturers

- (290) The investigation showed that the vast majority of imports from all countries were in powder or lumps and were normally transformed into cored wire products in the Union before being sold to the largest end user industry, the steel industry. Therefore, the interest of cored wire manufacturers is considered here together with the importers.
- (291) As mentioned above, two importers submitted questionnaire replies following the decision not to apply sampling. These were Affival SAS in France and Coftech G.m.b.H. in Germany. Another cored wire manufacturer, Filo D.o.o. in Slovenia, cooperated by submitting a user questionnaire as they did not import directly themselves.
- (292) The investigation showed that the cored wire producers also manufacture other products in cored wire. For the co-operators mentioned above, the turnover of products containing calcium silicon compared to total turnover varied from below 10 % to almost 50 %.
- (293) The cored wire producers source calcium silicon from the country concerned, other third countries and the Union industry. Their main concern was that measures on Chinese imports would disrupt the calcium silicon market in the Union and may limit imports from one of their main sources of supply.

- (294) However, it is recalled that other sources of supply exist around the world, the main ones being Brazil and Argentina in the period considered and the measures are intended to restore fair competition on the Union market for the benefit of all players on that market. If measures are not imposed this could threaten the supply of calcium silicon from the two Union producers which would be to the detriment of all participants in the supply chain of calcium silicon.

7.3. Interest of end users

- (295) Information in the complaint shows that the main user industry is the steel sector. However, calcium silicon is also used in foundries and the chemical sector.
- (296) Only one steel producer, AFV Acciaierie Beltrame S.p.A., completed a questionnaire. In addition, Eurofer and the German Steel Federation (Wirtschaftsvereinigung Stahl) made submissions relevant to the investigation.
- (297) Eurofer and the German Steel Federation submitted that the imposition of anti-dumping duties was not in the Union interest and that there was no economic justification for the imposition of anti-dumping measures. The main concern related to the availability of supply to the steel sector. It was claimed that the Union industry had never supplied more than 42 % of the Union apparent consumption.
- (298) In addition, it was claimed that capacity figures published by one of the Union producers indicated only a limited amount of free capacity. Therefore, it would be highly questionable whether the Union industry would be able to supply the users if anti-dumping duties were applied on Chinese imports.
- (299) Furthermore, they argued that there was no alternative source that could replace Chinese volumes and that duties were already levied in the Union as customs duties on imports from China.
- (300) In this respect, the Union industry submitted that it did not question that there should be space for different sources of supply, as long as such imports were made at fair prices. However, for now imports from the PRC take place at injurious levels which put Union production in jeopardy.
- (301) In terms of sources of supply, the Commission concluded that several sources of supply currently exist including the Union producers, which have ample spare capacity, and imports from China, Brazil, and Argentina. However, it was not in the Union interest to continue to allow dumped Chinese imports to threaten the existence of the Union calcium silicon industry which has traditionally supplied a large portion of the Union market. In the absence of measures, supply problems would clearly be created for the steel industry as production in the Union may no longer be possible.
- (302) The Commission also examined the likely financial impact of measures on the steel industry if measures are imposed. According to the complainant, restoring fair market conditions would not come at a disproportionate cost for the downstream industry. The information in the response of AFV Acciaierie Beltrame S.p.A. showed that calcium silicon purchases represents a very low percentage of its costs (less than 0,5 %). The imposition of measures on the steel industry will, therefore, have a marginal financial impact on the industry.

7.4. Conclusion on Union interest

- (303) On the basis of the above, the Commission concluded that there were no compelling reasons to consider that it was not in the Union interest to impose measures on imports of calcium silicon originating in the country concerned at this stage of the investigation.

8. PROVISIONAL ANTI-DUMPING MEASURES

- (304) On the basis of the preliminary conclusions reached by the Commission on dumping, injury, causation and Union interest, provisional measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.

- (305) Provisional anti-dumping measures should be imposed on imports of calcium silicon originating in the country concerned, in accordance with the lesser duty rule in Article 7(2) of the basic Regulation. The Commission compared the underselling margins and the dumping margins as stated in recital (275) above. The amount of the duties was set at the level of the lower of the dumping and the underselling margins.
- (306) On the basis of the above, the provisional anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Country	Company	Provisional anti-dumping duty
PRC	Ningxia Ketong New Material Technology Co. Ltd	31,5 %
PRC	Ningxia Shun Tai Smelting Co., Ltd	43,3 %
PRC	Shaanxi Shenghua Metallurgy-Chemical Co. Ltd	32,8 %
PRC	All other companies	50,6 %

- (307) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflect the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imports of the product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.
- (308) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies should apply not only to the non-cooperating exporting producers in this investigation, but also to the producers which did not have exports to the Union during the investigation period.
- (309) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.
- (310) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this regulation, the customs authorities of Member States must carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the lower rate of duty is justified, in compliance with customs law.
- (311) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.

9. INFORMATION AT PROVISIONAL STAGE

- (312) In accordance with Article 19a of the basic Regulation, the Commission informed interested parties about the planned imposition of provisional duties. This information was also made available to the general public via DG TRADE's website. Interested parties were given 3 working days to provide comments on the accuracy of the calculations specifically disclosed to them.
- (313) No comments on the accuracy of the calculations were received.

10. FINAL PROVISIONS

- (314) In the interests of sound administration, the Commission will invite the interested parties to submit written comments and/or to request a hearing with the Commission and/or the Hearing Officer in trade proceedings within a fixed deadline.
- (315) The findings concerning the imposition of provisional duties are provisional and may be amended at the definitive stage of the investigation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is imposed on imports of calcium silicon, currently falling within CN codes ex 7202 99 80 and ex 2850 00 60 (TARIC codes 7202 99 80 30 and 2850 00 60 91), and originating in the People's Republic of China.
2. The rates of the provisional anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed below shall be as follows:

Country	Company	Provisional anti-dumping duty	TARIC additional code
PRC	Ningxia Ketong New Material Technology Co. Ltd, Hongguozi Industrial Zone, Huinong District, Shizuishan City, Ningxia Province	31,5 %	C721
PRC	Ningxia Shun Tai Smelting Co., Ltd, Zhongwei Industrial Park, Zhongwei City, Ningxia Province	43,3 %	C722
PRC	Shaanxi Shenghua Metallurgy-Chemical Co. Ltd, Yangxian Eco-Industrial Park, Hanzhong City, Shaanxi Province	32,8 %	C723
PRC	All other companies	50,6 %	C999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of (product concerned) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in [country concerned]. I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty applicable to all other companies shall apply.
4. The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security deposit equivalent to the amount of the provisional duty.
5. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

1. Interested parties shall submit their written comments on this regulation to the Commission within 15 calendar days of the date of entry into force of this Regulation.
2. Interested parties wishing to request a hearing with the Commission shall do so within 5 calendar days of the date of entry into force of this Regulation.
3. Interested parties wishing to request a hearing with the Hearing Officer in trade proceedings are invited to do so within 5 calendar days of the date of entry into force of this Regulation. The Hearing Officer shall examine requests submitted outside this time limit and may decide whether to accept such requests.

Article 3

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 1 shall apply for a period of 6 months.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 14 October 2021.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2021/1812**of 14 October 2021****imposing a provisional anti-dumping duty on imports of certain graphite electrode systems originating in the People's Republic of China**

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 ('the basic Regulation') ⁽¹⁾, and in particular Article 7 thereof,

After consulting the Member States,

Whereas:

1. PROCEDURE**1.1. Initiation**

- (1) On 17 February 2021, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of certain graphite electrode systems originating in the People's Republic of China ('the PRC', 'China' or 'the country concerned') on the basis of Article 5 of Regulation (EU) 2016/1036. It published a Notice of Initiation in the *Official Journal of the European Union* ⁽²⁾ ('the Notice of Initiation').
- (2) The Commission initiated the investigation following a complaint lodged on 4 January 2021 by Graphite Cova GmbH, Showa Denko Carbon Holding GmbH and Tokai ErftCarbon GmbH ('the complainants'). The complaint was made by the Union industry of certain graphite electrode systems in the sense of Article 5(4) of the basic Regulation. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

1.2. Registration

- (3) Pursuant to Article 14(5a) of the basic Regulation, the Commission should register imports subject to an anti-dumping investigation during the period of pre-disclosure unless it has sufficient evidence within the meaning of Article 5 that the requirements either under point (c) or (d) of Article 10(4) are not met.
- (4) One of these requirements, as indicated in Article 10(4)(d) of the basic Regulation, is that there is a further substantial rise in imports in addition to the level of imports which caused injury during the investigation period. The imports of graphite electrodes originating in the PRC showed a decrease of 59,1 % in the four months following initiation (1 March to 30 June 2021) as compared to the investigation period (1 January to 31 December 2020). The data following initiation was compared to the monthly average imports from the PRC for the investigation period. The sources of the data are the Comext database (Eurostat) and the Surveillance Database. An adjustment aiming at deducing which products do not fall under the product scope was performed (see recital (187)).
- (5) Consequently, the Commission did not make imports of the product concerned subject to registration under Article 14(5a) of the basic Regulation, as the condition in Article 10(4)(d) of the basic Regulation, that is a further substantial rise in imports, was not met.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Notice of Initiation of an anti-dumping proceeding concerning imports of certain graphite electrode systems in the People's Republic of China (OJ C 57, 17.2.2021, p. 3).

1.3. Interested parties

- (6) 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 complainants, other known Union producers, the known exporting producers, the authorities of the People's Republic of China, known importers, suppliers and users, traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.

1.4. Comments on initiation

- (7) Interested parties had an 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.
- (8) China Chamber of Commerce for Import and Export of Machinery and Electronic Products ('CCCME'), Eurofer, Misano, Sangraf, Trasteel and the complainants requested a hearing with the Commission services. They made such requests within the stipulated deadlines and were granted an opportunity to be heard.
- (9) Several interested parties commented on initiation. Comments concerned especially the product scope, the product control number, the Union industry's injury, causation and the Union interest. Regarding the latter, Union interest is not a relevant criterion for assessing whether a complaint justifies the initiation of an anti-dumping proceeding under Article 5 of the basic Regulation. Therefore, those comments were not considered in relation to claims regarding the initiation of the proceedings. Furthermore, comments received after the deadline for comments as set in the Notice of Initiation were not considered either at this stage and will be addressed at definitive stage. Claims regarding product scope and product exclusion requests were addressed in Section 2.3 of this Regulation.
- (10) Regarding the claims on injury and causation, complainants, based on TARIC data have shown the increase of imports from China and the decrease of the price thereof. They demonstrated how substantially the prices of these imports undercut the Union industry's prices. They further argued that reduced Chinese imports price forced the EU industry to lower its price below the cost of production. This led to reduction of sales and profitability, thus placing the industry in a situation of injury. Based on industry figures, they further exemplified that, from mid-2019 onward, the Union producers significantly reduced their production, capacity use, sales, as well as prices and profits.
- (11) Several interested parties mentioned that Chinese producers were not very present on the market of UHP-grade electrodes. Allegedly, China was mainly on the HP/SHP-grades market, where the Union industry was not producing in sufficient quantities. This allegedly broke the causal link. However, the complainants provided sufficient evidence that Chinese imports increasingly contained UHP grades as well, which was confirmed by the investigation. This claim was therefore rejected.

1.5. Sampling

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

1.5.1. Sampling of Union producers

- (13) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample based on the production and Union sales volume of the product under investigation, taking also into account geographic location of the Union producers. This sample consisted of three Union producers, located in three different Member States. The sampled Union producers accounted for more than 55 % of the estimated total volume of production and more than 65 % of the sales of the like product in the Union. The Commission invited interested parties to comment on the provisionally selected sample. No comment was received.

1.5.2. *Sampling of importers*

- (14) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (15) Ten unrelated importers provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three unrelated importers based on the largest volume of sales of the product under investigation in the Union. The sample accounted for 64 % of the total volume of reported sales of the product under investigation by the cooperating importers and 34,7 % of the estimated total import volume of the product under investigation from the People's Republic of China. In accordance with Article 17(2) of the basic Regulation, all known importers concerned were consulted on the selection of the sample. No comment was received.

1.5.3. *Sampling of exporting producers in the PRC*

- (16) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked all exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (17) Thirty-six exporting producers in the country concerned provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three exporting producers based on the largest representative volume of exports to the Union, which could reasonably be investigated within the time available. In addition, the selected companies sold significant quantities of the product under investigation on the People's Republic of China's domestic market. This sample covered 33 % of the estimated total export volume to the European Union from the PRC in the investigation period (see recital (24)). In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned and the authorities of the country concerned were consulted on the selection of the sample. No comments were received.

1.6. **Individual examination**

- (18) Twelve exporting producers in the country concerned requested individual examination under Article 17(3) of the basic Regulation, including the three sampled producers mentioned above. However, no exporting producer but for the sampled ones submitted a completed questionnaire reply within the deadline. Therefore, no individual examination request could be considered.

1.7. **Questionnaire replies and verification visits**

- (19) The Commission sent a questionnaire concerning the existence of significant distortions in the PRC within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of the People's Republic of China ('GOC').
- (20) Furthermore, the complainants provided in the complaint sufficient evidence of raw material distortions in the PRC regarding the product concerned. Therefore, as announced in the Notice of Initiation, the investigation covered those raw material distortions to determine whether to apply the provisions of Article 7(2a) and 7(2b) of the basic Regulation with regard to the PRC. For this reason, the Commission requested additional information in this regard from the GOC.
- (21) The Commission sent questionnaires to the three sampled Chinese exporting producers/group of exporting producers, the three sampled Union producers and the three sampled unrelated importers. The same questionnaires were made available online ⁽³⁾ on the day of initiation.

⁽³⁾ https://trade.ec.europa.eu/tdi/case_details.cfm?id=2515

- (22) The Commission received questionnaire replies from three sampled Union producers, three unrelated importers, eight users and three exporting producers. Sangraf Italy initially provided a user questionnaire. Eventually Sangraf Italy was considered a producer and as such part of the Union industry (see recitals (183) and (184)).
- (23) In view of the outbreak of COVID-19 and the confinement measures put in place by various Member States as well as by various third countries, the Commission could not carry out verification visits pursuant to Article 16 of the basic Regulation at provisional stage. The Commission instead cross-checked remotely all the information deemed necessary for its provisional findings in line with its Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations ⁽⁴⁾. The Commission carried out remote crosschecks ('RCC') of the following companies/parties:

Union producers

- GrafTech France S.N.C., France
- Showa Denko Carbon Spain S.A., Spain
- Tokai Erftcarbon GmbH, Germany

Exporting producers in the PRC

- Liaoning Dantan Technology Group Co., Ltd
- Fangda Carbon New Material Co., Ltd
- Nantong Yangzi Carbon Co., Ltd

1.8. Investigation period and period considered

- (24) The investigation of dumping and injury covered the period from 1 January 2020 to 31 December 2020 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2017 to the end of the investigation period ('the period considered').

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (25) At initiation, the product concerned was defined as graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,5 g/cm³ or more and an electrical resistance of 7,0 µΩ.m or less, and nipples used for such electrodes, whether imported together or separately, originating in the PRC, currently falling under CN codes ex 8545 11 00 and ex 8545 90 90 (TARIC codes 8545 11 00 10, 8545 11 00 15, 8545 90 90 10 and 8545 90 90 15).
- (26) Following the request for exclusion of nipples from the product scope (see Section 2.3 below), the Commission revised the product scope and defined the product concerned as graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,5 g/cm³ or more and an electrical resistance of 7,0 µΩ.m or less, whether or not equipped with nipples, originating in the PRC, currently falling under CN code ex 8545 11 00 (TARIC codes 8545 11 00 10 and 8545 11 00 15).
- (27) Graphite electrodes are consumable products used mainly in electric arc furnace steel production. As such, graphite electrodes are an essential component for the world's recycling industry since they are the only product that can conduct the power and withstand the heat necessary to melt scrap. Graphite electrodes contribute therefore to the mitigation of climate change through the reduction of the use of raw materials as well as through the reduction of the quantity of untreated waste.

2.2. Like product

- (28) The investigation showed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:
- the product concerned,

⁽⁴⁾ Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations (OJ C 86, 16.3.2020, p. 6).

- the product produced and sold on the domestic market of the People's Republic of China, and
- the product produced and sold in the Union by the Union industry.

(29) The Commission decided at this stage that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

2.3. Claims regarding product scope and product exclusion request

(30) Four claims regarding the product scope were received respectively by a Union producer (Sangraf Italy), a user (NLMK Verona), an unrelated importer (CTPS Srl) and the China Chamber of Commerce ('CCCME').

(31) Sangraf Italy requested to exclude the nipples (or connecting pins) from the scope of the investigation, as there is no more production of nipples in the Union. Sangraf claimed that it cannot purchase these from its competitors.

(32) It is recalled that nipples are an integral and necessary part of a graphite electrode system. However, the Commission also noted that nipples have different characteristics than graphite electrodes bodies. The Commission also took note that there is no more production of nipples in the Union and that there is no distinct competitive market for nipples. Nipples are sold to the final end-user (the steel producers) either attached to the graphite electrode or occasionally as a spare part to the final user. Nipples are, however, specific to any given body of graphite electrode and are not sold by graphite electrode systems suppliers to other such suppliers.

(33) Therefore, the Commission concluded that the product scope should be defined as graphite electrodes, whether or not equipped with nipples, as described in recital (26) above.

(34) NLMK Verona, a steel producer, requested the exclusion of electrodes with a diameter of 350 mm from the product scope. NLMK claims that the Union industry does not provide a stable supply of electrodes with such a diameter, as the Union industry is focusing on larger diameter electrodes, which are more profitable. COMAP SAS, an importer of graphite electrodes, put forward similar arguments for small electrodes (diameter between 130 and 250 mm). CCCME, similarly, requested the exclusion of electrodes with a diameter of less than 450 mm.

(35) The Commission considered that these graphite electrodes, irrespective of size, have the same basic physical, technical and/or chemical characteristics. These claims were therefore rejected.

(36) CTPS Srl, an unrelated importer, requested the exclusion of HP electrodes ⁽ⁱ⁾ from the product scope. CTPS Srl claimed that there is not enough Union production of HP electrodes. In addition, CTPS Srl points out that HP and UHP electrodes differ regarding their raw materials, their technical characteristics and their uses. Misano S.p.A. developed similar arguments in its submission. CCCME put forward similar claims and requested to exclude non-UHP grade graphite electrodes.

(37) The complainants, on the other hand, claimed that there is no clear distinction between graphite electrodes' grades. There is no official industry standard, which would allow for a clear distinction between HP and UHP graphite electrodes. In addition, they claimed that, for some sizes, different grades of electrode can be used interchangeably.

(38) The Commission considered that these electrodes have the same basic physical, technical and/or chemical characteristics and that there is a certain level of overlap of the use of different grades, whose description is in any case largely based on a self-declaration by producer given that there is no commonly recognised industry standard for the grading. Excluding any of these types would therefore undermine the effectiveness of any anti-dumping measure and facilitate possible circumvention. The requests to exclude HP and non-UHP grades were therefore rejected.

⁽ⁱ⁾ Graphite electrodes are generally referred to in different grades: regular or normal power ('RP'), high power ('HP'), and ultra-high power ('UHP'). RP graphite electrodes are low quality graphite electrodes, mainly used for regular power furnaces whereas HP and UHP graphite electrodes are mainly used in electric arc furnace steel production with a higher current density.

3. DUMPING

3.1. Procedure for the determination of the normal value under Article 2(6a) of the basic Regulation

- (39) The evidence available at the initiation of the investigation pointed to the existence of significant distortions in the PRC within the meaning of Article 2(6a), point (b) of the basic Regulation. The Commission therefore considered it appropriate to initiate the investigation having regard to Article 2(6a) of the basic Regulation.
- (40) In order to collect the necessary data for a possible application of Article 2(6a) of the basic Regulation the Commission invited all exporting producers in the country concerned to provide information regarding the inputs used for producing graphite electrodes. Thirty-two exporting producers submitted the relevant information.
- (41) In addition, in point 5.3.2 of the Notice of Initiation, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the *Official Journal of the European Union*.
- (42) In point 5.3.2 of the Notice of Initiation the Commission also informed interested parties that based on the information available at that stage possible appropriate representative countries pursuant to Article 2(6a)(a) of the basic Regulation could be Mexico. The Commission also stated that it would examine other possibly appropriate representative countries in accordance with the criteria set out in 2(6a)(a) first indent of the basic Regulation.
- (43) On 22 March 2021, the Commission issued the First Note on the sources for the determination of the normal value ('the First Note' ⁽⁶⁾) in which it informed the interested parties on the relevant sources it intended to use for the determination of the normal value. In that note, the Commission provided a list of all factors of production such as raw materials, labour and energy used in the production of graphite electrodes. Three possible representative countries were analysed: Mexico, Malaysia and the Russian Federation. Based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified Mexico as an appropriate representative country. The Commission received comments on the First Note from Fangda Carbon New Material Co., LTD., Liaoning Dantan Technology Group Co., LTD., from the exporting producers represented by the China Chamber of Commerce for Import and Export of Machinery and Electronic Products ('CCCME'), as well as from the European Carbon and Graphite Association.
- (44) On 17 June 2021, and after having analysed the comments received, the Commission issued the Second note on the sources for the determination of the normal value (the 'Second Note' ⁽⁷⁾) (the First Note and Second Note are collectively referred to as the 'Notes'). In the Second Note, the Commission updated the list of factors of production and informed interested parties of its intention to use Mexico as the representative country under Article 2(6a)(a), first indent of the basic Regulation. It also informed interested parties that it would establish selling, general and administrative costs ('SG&A') and profits based on readily available financial statements of a producer active in non-clay refractory business in Mexico. The Commission invited interested parties to comment. The Commission received comments on the Second Note from Fangda Carbon New Material Co., LTD., Liaoning Dantan Technology Group Co., LTD., from the exporting producers represented by CCCME, as well as from the European Carbon and Graphite Association.
- (45) After having analysed the comments and information received on the Second Note, the Commission provisionally concluded that Mexico was an appropriate choice as representative country from which undistorted prices and costs would be sourced for the determination of the normal value. The underlying reasons for that choice are further described in detail in Section 3.4 below.

3.2. Application of Article 18 of the basic Regulation

- (46) Upon initiation of the investigation on the basis of Article 2(6a)(a) of the basic Regulation, the Commission sent two questionnaires concerning the existence of distortions to the GOC. The GOC however did not submit any replies. The Commission informed the GOC by Note Verbale on 15 June 2020 that it intended to make use of the provision of Article 18 of the basic Regulation with regard to the possible existence of significant distortions on the Chinese

⁽⁶⁾ Document registered t21.002670.

⁽⁷⁾ Document registered t21.004605.

domestic market for graphite electrodes within the meaning of Article 2(6a) of the basic Regulation, and the possible existence of raw material distortions within the meaning of Article 7(2a) of the basic Regulation. The Commission invited the GOC to submit its comment on the application of Article 18. No comments were received.

3.3. Normal value

- (47) According to Article 2(1) of the basic Regulation, *'the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country'*.
- (48) However, according to Article 2(6a)(a) of the basic Regulation, *'in case it is determined [...] that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions within the meaning of point (b), the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks'*, and *'shall include an undistorted and reasonable amount of administrative, selling and general costs and for profits'* ('administrative, selling and general costs' is referred hereinafter as 'SG&A').
- (49) In their comments on the Notes, Fangda Carbon New Material Co., LTD., Liaoning Dantan Technology Group Co., LTD., and the exporting producers represented by CCCME argued that:
- (1) Article 2(6a) of the basic Regulation is inconsistent with the Article 2.2 and 2.2.1.1 of the WTO Anti-Dumping Agreement ('ADA') and the WTO jurisprudence;
 - (2) there is lack of evidence with regard to the alleged 'significant distortions' in relation to the Chinese graphite electrode industry. To the contrary, the Chinese graphite electrode industry is operating under market-oriented conditions.
- (50) More specifically, with respect to WTO compatibility of Article 2(6a) of the basic Regulation, the parties pointed out that the notion of significant distortions does not exist in the ADA. They submitted that the methodology stipulated in Article 2 of the ADA does not permit the use of information other than that in the exporting country in order to establish the normal value and that there is nothing in the ADA which would allow disregarding the costs and prices of the exporting producer or those existing in the exporting country, and replace them instead with allegedly undistorted prices or benchmarks in a so-called appropriate representative country. The parties further referred to the WTO disputes DS473 European Union – Anti-dumping measures on biodiesel from Argentina and DS494 European Union – Cost Adjustment Methodologies and Certain Anti-Dumping measures on Imports from Russia, recalling that according to those rulings, for the purpose of calculating the costs in order to obtain the normal value of the product concerned when the domestic price in the exporting country cannot be used, the investigating authorities are not allowed to evaluate the costs reported in the records kept by the exporter/producer pursuant to a benchmark unrelated to the costs of production in the country of origin.
- (51) Concerning the alleged lack of evidence on 'significant distortions', the parties considered first that the country report concerning the PRC (hereinafter 'the Report') ⁽⁸⁾ fails to meet the standards of impartial and objective evidence and evidence of sufficient probative value since it was prepared by the Commission, it has been tailored to facilitate lodging complaints and it therefore deliberately omits factual circumstances, elements, and conclusions, which would contradict or weaken that purpose. Moreover, the Report is, in the parties' view, outdated and therefore not able to reflect the alleged distortions during the investigation period or with respect to the product under investigation. Moreover, the Report does not specifically address the graphite electrode sector which calls into question its relevance for the present investigation. Second, the parties submitted that the Chinese graphite electrode sector is highly market-oriented, with only limited presence of State-owned enterprises ('SOEs'), operating on the basis of market and commercial principles and with no specific regulations or policies adopted by the GOC to 'encourage' the production or exports of graphite electrodes.
- (52) Consequently, the parties argued that the Commission ought not to apply Article 2(6a) of the basic Regulation but should accept instead the domestic prices and costs reported in the PRC. Should the Commission nonetheless apply Art 2(6a), the parties considered that the assessment should be done separately for each exporting producers, and each factor of production.

⁽⁸⁾ Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 20 December 2017, SWD(2017) 483 final/2.

- (53) Section 3.3.1. below contains the Commission's assessment on the existence of significant distortions. That assessment addresses the parties' specific comments on the alleged lack of evidence with respect to significant distortions in the graphite electrodes sector in China. As to the general claim that the Report is purpose-driven and therefore not impartial and objective, the Commission noted first of all that the Report is a comprehensive document based on extensive objective evidence, including Chinese legislation, regulations and other official policy documents published by the GOC, third party reports from international organisations, academic studies and articles by scholars, and other reliable independent sources. It was made readily available since December 2017 so that any interested party would have ample opportunity to rebut, supplement or comment on it and the evidence on which it is based. Since the parties have not put forward any rebuttal on the substance and evidence contained in the Report other than pointing to the Report's abstract flaws in terms of its probative value, the Commission must reject the argument. In the same vein, the argument that the Report is too outdated and too generic to reflect the alleged distortions during the investigation period or with respect to the product under investigation cannot be accepted. Legislation and policies pertaining to wider areas of the Chinese economy or to the country as a whole cannot be considered irrelevant just because it may not specifically mention the product under investigation. Similarly, as long as applicable legislation and government policies remain in force, they are relevant for the present investigation, irrespective of when they were enacted or referred to in the Report. Finally, the Commission recalled that the analysis in Section 3.3.1. relies on a number of sources, among which the Report represents only one piece of evidence.
- (54) As to the parties' arguments concerning the WTO compatibility of Article 2(6a) of the basic Regulation, the Commission considers that the provisions of Article 2(6a) are fully consistent with the European Union's WTO obligations and the jurisprudence cited by CCCME. At the outset, the Commission notes that the WTO rulings in DS473 and DS494 did not concern the application of Article 2(6a) of the basic Regulation, but of a specific provision of Article 2(5) of the basic Regulation. In any event, WTO law as interpreted by the WTO Panel and the Appellate Body in DS473, allows the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. The existence of significant distortions renders costs and prices in the exporting country inappropriate for the construction of normal value. In these circumstances, Article 2(6a) envisages the construction of costs of production and sale on the basis of undistorted prices or benchmarks, including those in an appropriate representative country with a similar level of development as the exporting country. Moreover, in relation to the case DS494, the Commission further recalls that both the Union and the Russian Federation appealed the findings of the Panel, which are not final and therefore, according to standing WTO case-law, have no legal status in the WTO system, since they have not been endorsed through decisions by WTO Members. In any event, the Panel Report in this dispute specifically considered the provisions in Article 2(6a) of the basic Regulation to be outside the scope of the dispute.
- (55) Concerning the parties' claim that the existence of distortions should be assessed for each exporting producer and factor of production individually, the Commission recalls that once it is determined that, due to the existence of significant distortions for the exporting country in accordance with Article 2(6a)(b) of the basic Regulation, it is not appropriate to use domestic prices and costs in the exporting country, the Commission may construct normal value using undistorted prices or benchmarks in an appropriate representative country for each exporting producer according to Article 2(6a)(a). Article 2(6a)(a) allows the use of domestic costs only if they are positively established not to be distorted. However, no costs of production and sale of the product under investigation could be established as undistorted in light of the evidence available on the factors of production of individual exporting producers. The claim was therefore rejected.
- (56) For the above reasons and as further explained below, the Commission concluded in the present investigation that, based on the evidence available and given the lack of cooperation of the GOC, the application of Article 2(6a) of the basic Regulation was appropriate.

3.3.1. *Existence of significant distortions*

3.3.1.1. *Introduction*

- (57) Article 2(6a)(b) of the basic Regulation stipulates that 'significant distortions are those distortions which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces as they are affected by substantial government intervention. In assessing the existence of significant distortions regard shall be had, inter alia, to the potential impact of one or more of the following elements:
- the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country,
 - state presence in firms allowing the state to interfere with respect to prices or costs,

- public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces,
- the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws,
- wage costs being distorted,
- access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the state’.

- (58) As the list in Article 2(6a)(b) of the basic Regulation is non-cumulative, not all the elements need to be given regard to for a finding of significant distortions. Moreover, the same factual circumstances may be used to demonstrate the existence of one or more of the elements of the list. However, any conclusion on significant distortions within the meaning of Article 2(6a)(a) must be made on the basis of all the evidence at hand. The overall assessment on the existence of distortions may also take into account the general context and situation in the exporting country, in particular where the fundamental elements of the exporting country’s economic and administrative set-up provides the government with substantial powers to intervene in the economy in such a way that prices and costs are not the result of the free development of market forces.
- (59) Article 2(6a)(c) of the basic Regulation provides that *‘[w]here the Commission has well-founded indications of the possible existence of significant distortions as referred to in point (b) in a certain country or a certain sector in that country, and where appropriate for the effective application of this Regulation, the Commission shall produce, make public and regularly update a report describing the market circumstances referred to in point (b) in that country or sector’*.
- (60) Pursuant to this provision, the Commission issued the Report, showing the existence of substantial government intervention at many levels of the economy, including specific distortions in many key factors of production (such as land, energy, capital, raw materials and labour) as well as in specific sectors (such as steel and chemicals). Interested parties were invited to rebut, comment or supplement the evidence contained in the investigation file at the time of initiation. The Report was placed in the investigation file at the initiation stage.
- (61) The complaint contained information additional to the findings of the Report. It quoted additional sources, including the 2019 US Report on China’s WTO compliance ⁽⁹⁾, which points to distortions at different levels of the Chinese economy. The complaint further underlined that the sector of graphite electrodes was investigated by authorities of other countries who found irregularities in the sector ⁽¹⁰⁾. The complaint furthermore indicated that a large number of key graphite electrodes manufacturers are SOEs, including: Sinosteel Engineering & Technology (former Sinosteel Jilin Carbon), Shanxi Jinneng Group, Henan General Machinery, Jilin Songjiang Carbon and Kaifeng Carbon. It also pointed out that there are initiatives to create large producers of graphite electrodes in China, for example Shanghai Baosteel Chemical, a subsidiary of Baosteel Group, joined the leading private graphite electrode manufacturer Fangda Carbon to establish Baofang Carbon Material Technology, a joint-venture aiming at UHP graphite electrode production in Lanzhou Economic and Technological Development Zone, Gansu Province in the amount of 100 000 tonnes annually ⁽¹¹⁾. Fangda Carbon, even though it is privately owned, underlines in its annual report that it closely aligns its activities with the goals of the GOC (its *‘normal business operations are closely related to national policy’*, further insisting on the fact that *‘the company will closely focus on the goal of building the world’s first and largest carbon leading enterprise, and (...) fully implement the spirit of the 19th National Congress of the Communist Party of China’*, as well as ensuring that it *‘will adhere to the guidance of Xi Jinping’s new era of socialism with Chinese characteristics’* ⁽¹²⁾).

⁽⁹⁾ United States Trade Representative, ‘2019 Report on China’s WTO Compliance’, March 2020.

⁽¹⁰⁾ The complaint quoted the following investigations from other authorities: Secretary of Foreign Trade of Brazilian Ministry of Development, Resolução No 19, 8.4.2009; Government of India Ministry of Commerce & Industry, Anti-Dumping Investigation concerning import of ‘Graphite Electrodes of all diameters’ originating in or exported from China PR, Final findings, 19 November 2014; United States Department of Commerce, Eighth Administrative Review of Small Diameter Graphite Electrodes from the PRC: Surrogate Values for the Preliminary Result, 5 March 2018, A-570-929.

⁽¹¹⁾ Xinhua Silk Road, ‘100 000 tons ultra-high power graphite electrode project settled in Lanzhou, Gansu’, 21 August 2018 <https://www.imsilkroad.com/news/p/107255.html>

⁽¹²⁾ See Fangda Carbon, 2018 Annual Report.

- (62) The complaint further explains that even the privately owned enterprises are often under direct influence of the government, for example the municipal branch of SASAC has a minority stake in Fushun Carbon, the largest graphite electrode producer in Liaoning, meaning it has direct influence over the company. Similarly, a state-owned investment company CITIC has a minority stake in Heifei Carbo, an important graphite electrodes producer.
- (63) The complaint further indicated that the producers of the main raw material, needle coke, are also to a large extent SOEs. According to the complaint, the main producer of petroleum- and coal-based needle coke in China is CNPC Jinzhou Petrochemical Company, a subsidiary of PetroChina, whose sole controlling shareholder is China National Petroleum Corporation, a large state-owned enterprise managed by the SASAC. Also Shanghai Baosteel Chemical, a subsidiary of the state-owned company China Baowu Steel Group is a leading producer of needle coke.
- (64) The complaint also pointed out that the major producers of graphite electrodes, whether SOEs or private companies, are members of China Carbon Industry Association, which is directly supervised by SASAC and the Ministry of Civil Affairs. This organisation has the objective to follow the Party commandment and implement the main goals and key tasks determined by the 19th National Congress of the Communist Party.
- (65) The complaint further listed a number of examples of personal connections between the management of the graphite electrode producers and the Chinese Communist Party ('CCP'), including presence of CCP members among the higher management of graphite electrode producers, including in Fushun Carbon, Fangda Carbon, CIMM Group and in the companies producing main raw materials, such as Ansteel Chemical and Shaanxi Coal and Chemical Industry Group.
- (66) The complaint also mentioned a large capacity expansion in Inner Mongolia ⁽¹³⁾.
- (67) The complaint also lists guidance documents which guide the development of the graphite electrodes industry, including: 2013 and 2019 version of Guidance Catalogue for the Industrial Structure Adjustment – an implementing measure of Decision No 40, which provides support to the production of UHP graphite electrodes with a diameter of 600 mm and above; Strategic Emerging Industries Key Products and Services Catalogue and the 2018 Classification of Strategic Emerging Industries, which include graphite electrodes in the 'new materials' provisions; 13th FYP for chemical industry of Shanxi Province; 13th FYP of Shanxi Province on New Materials Industry and 13th FYP of Shanxi Province on Industrial and Information Development; Western Henan 2019–2025 Five-Year Plan; Inner Mongolia Implementation Plan for the High-quality Development of Emerging Industries in the Autonomous Region; the Implementation Plan for the Project of Building a National New Raw Material Base in Liaoning Province or Construction Plan to Strengthen the Industry of Heilongjiang Province; and Made in China 2025. A number of documents target needle coke, including the Catalogue for Guiding Industry Restructuring and the Guidance Catalogue for the Adjustment of Industrial Structure of 2019 and at the provincial level. Shanxi's 13th FYP for New Material Industry Development directly targets needle coke which is defined as an encouraged industry. Moreover, the 13th Five Year Plan of Shanxi Province on Industrial and Information Development targets needle coke with regard to its aim to accelerate the transformation of traditional industries and to speed up the development of potential industry.
- (68) As indicated in recital (46), the GOC did not comment or provide evidence supporting or rebutting the existing evidence on the case file, including the Report and the additional evidence provided by the complainants, on the existence of significant distortions and/or on the appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand.
- (69) Comments in this regard were received from the sampled exporting producers. As indicated in recital (51), the exporting producers claimed that Chinese graphite electrode sector is highly market-oriented, with only limited presence of SOEs, operating on the basis of market and commercial principles and with no specific regulations or policies adopted by the GOC to 'encourage' the production or exports of graphite electrodes.

⁽¹³⁾ Mining News Agency, Is China's Inner Mongolia Region becoming Manufacturing Hub for Graphite Electrode Industry?, <https://www.miningnewspro.com/news/230134/is-china%E2%80%99s-inner-mongolia-region-becoming-manufacturing-hub-for-graphite-electrode-industry> SteelMint's China Roadshow: Precious Insights into Graphite Electrodes and Needle Coke – SteelMint Events, <https://www.steelmintevents.com/blog/steelmint-china-roadshow-precious-insights-into-graphite-electrodes-and-needle-coke/>

- (70) The Commission examined whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the Report, which relies on readily available sources. That analysis covered the examination of the substantial government interventions in the PRC's economy in general, but also the specific market situation in the relevant sector including the product concerned. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in the PRC.

3.3.1.2. Significant distortions affecting the domestic prices and costs in the PRC

- (71) The Chinese economic system is based on the concept of a '*socialist market economy*'. That concept is enshrined in the Chinese Constitution and determines the economic governance of the PRC. The core principle is the '*socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people*'. The State-owned economy is the '*leading force of the national economy*' and the State has the mandate '*to ensure its consolidation and growth*' ⁽¹⁴⁾. Consequently, the overall set-up of the Chinese economy not only allows for substantial government interventions into the economy, but such interventions are expressly mandated. The notion of supremacy of public ownership over the private one permeates the entire legal system and is emphasized as a general principle in all central pieces of legislation. The Chinese property law is a prime example: it refers to the primary stage of socialism and entrusts the State with upholding the basic economic system under which the public ownership plays a dominant role. Other forms of ownership are tolerated, with the law permitting them to develop side by side with the State ownership ⁽¹⁵⁾.
- (72) In addition, under Chinese law, the socialist market economy is developed under the leadership of the CCP. The structures of the Chinese State and of the CCP are intertwined at every level (legal, institutional, personal), forming a superstructure in which the roles of CCP and the State are indistinguishable. Following an amendment of the Chinese Constitution in March 2018, the leading role of the CCP was given an even greater prominence by being reaffirmed in the text of Article 1 of the Constitution. Following the already existing first sentence of the provision: '[t]he socialist system is the basic system of the People's Republic of China' a new second sentence was inserted which reads: '[t]he defining feature of socialism with Chinese characteristics is the leadership of the Communist Party of China' ⁽¹⁶⁾. This illustrates the unquestioned and ever growing control of the CCP over the economic system of the PRC. This leadership and control is inherent to the Chinese system and goes well beyond the situation customary in other countries where the governments exercise general macroeconomic control within the boundaries of which free market forces are at play.
- (73) The Chinese State engages in an interventionist economic policy in pursuance of goals, which coincide with the political agenda set by the CCP rather than reflecting the prevailing economic conditions in a free market ⁽¹⁷⁾. The interventionist economic tools deployed by the Chinese authorities are manifold, including the system of industrial planning, the financial system, as well as the level of the regulatory environment.
- (74) First, on the level of overall administrative control, the direction of the Chinese economy is governed by a complex system of industrial planning which affects all economic activities within the country. The totality of these plans covers a comprehensive and complex matrix of sectors and crosscutting policies and is present on all levels of government. Plans at provincial level are detailed while national plans set broader targets. Plans also specify the means in order to support the relevant industries/sectors as well as the timeframes in which the objectives need to be achieved. Some plans still contain explicit output targets while this was a regular feature in previous planning cycles. Under the plans, individual industrial sectors and/or projects are being singled out as (positive or negative) priorities in line with the government priorities and specific development goals are attributed to them (industrial upgrade, international expansion, etc.). The economic operators, private and State-owned alike, must effectively adjust their business activities according to the realities imposed by the planning system. This is not only because of the binding nature of the plans but also because the relevant Chinese authorities at all levels of government adhere to the system of plans and use their vested powers accordingly, thereby inducing the economic operators to comply with the priorities set out in the plans (see also Section 3.3.1.5 below) ⁽¹⁸⁾.

⁽¹⁴⁾ Report – Chapter 2, p. 6–7.

⁽¹⁵⁾ Report – Chapter 2, p. 10.

⁽¹⁶⁾ Available at http://www.fdi.gov.cn/1800000121_39_4866_0_7.html (last viewed 15 July 2019).

⁽¹⁷⁾ Report – Chapter 2, p. 20–21.

⁽¹⁸⁾ Report – Chapter 3, p. 41, 73–74.

- (75) Second, on the level of allocation of financial resources, the financial system of the PRC is dominated by the State-owned commercial banks. Those banks, when setting up and implementing their lending policy need to align themselves with the government's industrial policy objectives rather than primarily assessing the economic merits of a given project (see also Section 3.3.1.8 below) ⁽¹⁹⁾. The same applies to the other components of the Chinese financial system, such as the stock markets, bond markets, private equity markets etc. Also these parts of the financial sector other than the banking sector are institutionally and operationally set up in a manner not geared towards maximizing the efficient functioning of the financial markets but towards ensuring control and allowing intervention by the State and the CCP ⁽²⁰⁾.
- (76) Third, on the level of regulatory environment, the interventions by the State into the economy take a number of forms. For instance, the public procurement rules are regularly used in pursuit of policy goals other than economic efficiency, thereby undermining market based principles in the area. The applicable legislation specifically provides that public procurement shall be conducted in order to facilitate the achievement of goals designed by State policies. However, the nature of these goals remains undefined, thereby leaving broad margin of appreciation to the decision-making bodies ⁽²¹⁾. Similarly, in the area of investment, the GOC maintains significant control and influence over destination and magnitude of both State and private investment. Investment screening as well as various incentives, restrictions, and prohibitions related to investment are used by authorities as an important tool for supporting industrial policy goals, such as maintaining State control over key sectors or bolstering domestic industry ⁽²²⁾.
- (77) In sum, the Chinese economic model is based on certain basic axioms, which provide for and encourage manifold government interventions. Such substantial government interventions are at odds with the free play of market forces, resulting in distorting the effective allocation of resources in line with market principles ⁽²³⁾.

3.3.1.3. Significant distortions according to Article 2(6a)(b), first indent of the basic Regulation: the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country

- (78) In the PRC, enterprises operating under the ownership, control and/or policy supervision or guidance by the State represent an essential part of the economy.
- (79) The GOC and the CCP maintain structures that ensure their continued influence over enterprises, and in particular State-owned enterprises (SOEs). The State (and in many aspects also the CCP) not only actively formulates and oversees the implementation of general economic policies by individual SOEs, but it also claims its rights to participate in operational decision making in SOEs. This is typically done through rotation of cadres between government authorities and SOEs, through presence of party members on SOEs executive bodies and of party cells in companies (see also Section 3.3.1.4), as well as through shaping the corporate structure of the SOE sector ⁽²⁴⁾. In exchange, SOEs enjoy a particular status within the Chinese economy, which entails a number of economic benefits, in particular shielding from competition and preferential access to relevant inputs, including finance ⁽²⁵⁾. The elements that point to the existence of government control over enterprises in the graphite electrodes sector is further developed in Section 3.3.1.4 below.
- (80) Specifically in the graphite electrodes sector, a substantial degree of ownership by the GOC persists, as indicated in the complaint and described in recital (61). The investigation confirmed that a large number of companies, including those listed in the complaint are indeed SOEs and that even though no official information exists on the exact split between privately owned companies and SOEs, the presence of SOEs in the graphite electrodes sector is substantial, including, among others, the following entities: Shanxi Jinneng Group Co., Ltd., Henan General Machinery, Kaifeng Carbon. The Commission notes further the presence in the sector of joint-ventures between

⁽¹⁹⁾ Report – Chapter 6, p. 120–121.

⁽²⁰⁾ Report – Chapter 6, p. 122–135.

⁽²¹⁾ Report – Chapter 7, p. 167–168.

⁽²²⁾ Report – Chapter 8, p. 169–170, 200–201.

⁽²³⁾ Report – Chapter 2, p. 15–16, Report – Chapter 4, p. 50, p. 84, Report – Chapter 5, p. 108–109.

⁽²⁴⁾ Report – Chapter 3, p. 22–24 and Chapter 5, p. 97–108.

⁽²⁵⁾ Report – Chapter 5, p. 104–109.

private and state-owned companies, such as in the case of Baofang Carbon Material Technology (controlled 51 % by the state-owned Baowu group and 49 % by Fangda Carbon New Materials Co., LTD ⁽²⁶⁾) or of Fushun Carbon (with 65,5 % held by Fangda Carbon New Materials Co., LTD and 34,5 % held by Fushun Longsheng State-owned Capital Operation Group Co., Ltd.).

- (81) The Commission notes moreover that various SOEs, such as CNPC Jinzhou Petrochemical ⁽²⁷⁾ and Shanghai Baosteel ⁽²⁸⁾ chemical, are involved in the production of needle coke, an essential raw material for the production of graphite electrodes. Furthermore, another SOE, Ordos Weiyi High-tech Materials ⁽²⁹⁾, a subsidiary of Baotou, is involved in a needle coke capacity expansion project in Inner Mongolia.
- (82) With the high level of government intervention in the graphite electrodes industry and a significant presence of SOEs in the sector, as well as at the upstream level, even privately owned producers are prevented from operating under market conditions. Indeed, both public and privately owned enterprises in the graphite electrodes sector are also subject to policy supervision and guidance as set out in Section 3.3.1.5 below.

3.3.1.4. Significant distortions according to Article 2(6a)(b), second indent of the basic Regulation: State presence in firms allowing the state to interfere with respect to prices or costs

- (83) Apart from exercising control over the economy by means of ownership of SOEs and other tools, the GOC is in position to interfere with prices and costs through State presence in firms. While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights ⁽³⁰⁾, CCP cells in enterprises, state owned and private alike, represent another important channel through which the State can interfere with business decisions. According to the PRC's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution ⁽³¹⁾) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline ⁽³²⁾. In 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies ⁽³³⁾. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of graphite electrodes and the suppliers of their inputs.
- (84) In addition, on 15 September 2020 a document titled General Office of CCP Central Committee's Guidelines on stepping up the United Front work in the private sector for the new era ('the Guidelines') ⁽³⁴⁾ was released, which further expanded the role of the party committees in private enterprises. Section II.4 of the Guidelines state: '[w]e must raise the Party's overall capacity to lead private-sector United Front work and effectively step up the work in this area'; and Section III.6 states: '[w]e must further step up Party building in private enterprises and enable the Party cells to play their role effectively as a fortress and enable Party members to play their parts as vanguards and pioneers.' The Guidelines thus emphasise and seeks to increase the role of the CCP in companies and other private sector entities ⁽³⁵⁾.

⁽²⁶⁾ See for example at: Asian Metal, Baosteel Chemical and Fangda Carbon jointly construct graphite electrode project, <http://www.asianmetal.com/news/data/1440613/Baosteel%20Chemical%20and%20Fangda%20Carbon%20jointly%20construct%20graphite%20electrode%20project> (accessed on 2 August 2021).

⁽²⁷⁾ See at: <http://www.cnpc.com.cn/cnpc/lyxgdt/201912/74dfc55f14f84da189c03c7654d143c5.shtml> (accessed on 15 September 2021) Jinzhou Petrochemical's needle coke quality keeps improving, released on 19 December 2019, in China National Petroleum News.

⁽²⁸⁾ See at: https://www.sohu.com/a/282104808_120065805 (accessed on 4 August 2021).

⁽²⁹⁾ See at: https://www.sohu.com/a/314213234_120054226 (accessed on 4 August 2021).

⁽³⁰⁾ Report – Chapter 5, p. 100–101.

⁽³¹⁾ Report – Chapter 2, p. 26.

⁽³²⁾ Report – Chapter 2, p. 31–32.

⁽³³⁾ Available at Reuters, Exclusive: In China, the Party's push for influence inside foreign firms stirs fears, <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU> (last viewed 15 July 2019).

⁽³⁴⁾ Available at www.gov.cn/zhengce/2020-09/15/content_5543685.htm (last viewed on 10 March 2021).

⁽³⁵⁾ Financial Times (2020) 'Chinese Communist Party asserts greater control over private enterprise', available at: <https://on.ft.com/3mYxP4j>

- (85) Specifically in the graphite electrodes sector, as already pointed out, many of the producers are owned by the State and declare their commitment to adhere to the government industrial policies, as well as to the leading role of the CCP. For example, the state-owned trading company Henan General Machinery and the producer Kaifeng Carbon have emphasized the importance of CCP guidance since a number of years, with Henan General Machinery declaring that it has been *'guided by the scientific concept of development, [we shall] deeply implement the spirit of the 18th National Congress of the Communist Party of China'* ⁽³⁶⁾ and Kaifeng Carbon reporting on the company's first successful Party congress already back in 2016 ⁽³⁷⁾. However, the influence of the State and Party is not limited to state-owned companies but occurs also in privately owned companies, confirming the growing influence of the CCP in the private sector described in recital above. The Commission notes in this connection that the chairman of the board of Fangda Carbon New Materials Co., LTD., is also a member of the CCP ⁽³⁸⁾. Moreover, the company states the following with respect to Party building activities: *'Fangda Carbon, as one of the world's leading carbon enterprise, actively implements the corporate culture considering "Party Building as the Soul". Over the years, the company has closely focused on the corporate development strategy of "building a strong Party to grow strong", unswervingly integrated Party building into the production and business operation of the company, and gathered strong positive energy for the healthy and rapid development of the company. [...] Over the years, Fangda Carbon has continuously strengthened the building of the Party organization [...]. The company's Party committee has received the award of "National Pioneer for Advanced Grassroots Party Organization" [...]'* ⁽³⁹⁾. Similarly, the company Jilin Carbon Co. LTD., part of the Zhongze Group, states: *'Party organizations at all levels of Zhongze Group actively carry out a series of party building activities to celebrate the 99th anniversary of the founding of the Communist Party of China, [...] demonstrating the determination, belief and responsibility of private enterprises to always adhere to the Party's leadership to help build a socialist economy. [...] All companies in the Zhongze Group have always kept doing a good job in Party building, with activities such as developing Party lessons and, organizing party history lessons, and establishing advanced models, inheriting the red gene and maintaining the original aspiration'* ⁽⁴⁰⁾.
- (86) Moreover, the Commission notes that articles of association of the China Carbon Industry Association, i.e. the graphite electrode sector's industry association of which Fangda Carbon New Materials Co., LTD. is a member and deputy chairman and Liaoning Dantan Technology Group is a member and standing director ⁽⁴¹⁾, state unequivocally that the very purpose of the association is *'to implement the party's line, guidelines, and policies'* and that the association *'adheres to the overall leadership of the Communist Party of China and, in accordance with the provisions of the Constitution of the Communist Party of China, establishes the organization of the Communist Party of China, develops party activities, and provides necessary conditions for the activities of the Party organization'* ⁽⁴²⁾.
- (87) The State's presence and intervention in the financial markets (see also Section 3.3.1.8 below) as well as in the provision of raw materials and inputs further have an additional distorting effect on the market ⁽⁴³⁾. Thus, the State presence in firms, including SOEs, in the graphite electrodes and other sectors (such as the financial and input sectors) allow the GOC to interfere with respect to prices and costs.

3.3.1.5. Significant distortions according to Article 2(6a)(b), third indent of the basic Regulation: public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces

- (88) The direction of the Chinese economy is to a significant degree determined by an elaborate system of planning which sets out priorities and prescribes the goals the central and local governments must focus on. Relevant plans exist on all levels of government and cover virtually all economic sectors. The objectives set by the planning instruments are of binding nature and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government. Overall, the system of planning in the PRC results in resources being driven to sectors designated as strategic or otherwise politically important by the government, rather than being allocated in line with market forces ⁽⁴⁴⁾.

⁽³⁶⁾ See at: <http://www.hngcmc.com/index.php?m=content&c=index&a=show&catid=27&id=451>, 'Innovative development year' released on 28 February 2013 and available on Henan General Machinery's website (accessed on 15 September 2021).

⁽³⁷⁾ See at: <http://www.kfcc.com.cn/news/newsInfo.asp?ID=110> 'The Company's first Party members' congress was a success', released on 28 December 2016 and available on Kaifeng Carbon's website (accessed on 15 September 2021).

⁽³⁸⁾ See at: https://vip.stock.finance.sina.com.cn/corp/view/vCI_CorpManagerInfo.php?stockid=600516&Pcode=30033806&Name=%B5%B3%CE%FD%BD%AD Information notice on Mr Dang Xijiang, Chairman of Fangda Carbon New Materials, released by the information website sina.com.cn (accessed on 15 September 2021).

⁽³⁹⁾ See at: http://www.fdtsgs.com/htm/202011/13_1830.htm 'Party Building guides and fosters development', on Fangda Carbon New Materials' website on 25 November 2020, (accessed on 15 September 2021).

⁽⁴⁰⁾ See at: <http://www.jlts.cn/Html/NewsView.asp?ID=1367&SortID=13> (accessed on 2 August 2021).

⁽⁴¹⁾ See at: <http://www.chinacarbon.org.cn/huiyuan.html> (accessed on 2 August 2021).

⁽⁴²⁾ See Point 2 and 3 of the Articles of Association, available at: <http://www.chinacarbon.org.cn/zhangcheng.html> (accessed on 2 August 2021).

⁽⁴³⁾ Report – Chapters 14.1 to 14.3.

⁽⁴⁴⁾ Report – Chapter 4, p. 41–42, 83.

- (89) The graphite electrodes industry is regarded as a key industry by the GOC. This is confirmed in the numerous plans, directives and other documents focused on graphite electrodes, which are issued at national, regional and municipal level.
- (90) As indicated in the complaint and in recital (67) above, a large number of policy guidance documents exist for the graphite electrodes industry and needle coke, which is the main raw material to produce graphite electrodes. The Commission's research confirmed the information provided in the complaint in that respect. For example, graphite electrodes are listed as encouraged industry in point VIII.2 of the 2019 NDRC Guiding Catalogue for Industry Adjustments. That provision refers to *'ultra-high power electrodes with a diameter of 600 mm and above, microporous and ultra-microporous carbon bricks for blast furnaces, special graphite (high strength, high density, high purity, high modulus), graphite (good quality) cathode, internal graphitization furnace development and production'* ⁽⁴⁵⁾. The same section of the Guiding Catalogue also lists needle coke: *'Resource utilization of desulfurization waste liquid, advanced treatment and reuse of coking wastewater, coal tar and carbon-based materials, needle coke from coal pitch, high value-added utilization of coke oven gas, raw gas and circulating ammonia, etc.'* Similarly, at the provincial level, speeding up the transformation and upgrading of the coal industry represents one of the designated priorities of the Shanxi province's 13th FYP on Industrial and Information Development. According to that plan, which refers to both graphite electrodes and needle coke, the province should: *'actively develop further the follow-up fine processing chemicals of washing oil, phenol oil, naphthalene oil, anthracene oil and other fractions, focusing on the promotion of pitch-based needle coke and ultra-high-power graphite electrodes, special carbon black, nuclear graphite, and pitch-based High value-added carbon materials such as carbon fiber. Promote the formation of large-scale production capacity'* ⁽⁴⁶⁾. On the municipal level, an example represents the Xishe Industrial Park of Jishan Economic Development Zone in Datong (Shanxi) where a new built ultra-high power graphite electrode project with an annual output of 60 000 tons of diameter of 600 mm and above with a total investment of RMB 1,2 billion is considered a provincial key project ⁽⁴⁷⁾. The Commission's research confirmed also that the Western Henan plan for industry transformation and upgrade and for the building of demonstration areas ⁽⁴⁸⁾, the Inner Mongolia implementation plan for the high-quality development of emerging industries in the autonomous region ⁽⁴⁹⁾, the Implementation Plan for the Project of Building a National New Raw Material Base in Liaoning Province ⁽⁵⁰⁾, as well as the Construction Plan to Strengthen the Industry of Heilongjiang Province ⁽⁵¹⁾ feature among industrial policy documents targeting the graphite electrodes sector.
- (91) In sum, the GOC has measures in place to induce operators active in the graphite electrodes sector to comply with the public policy objectives of supporting encouraged industries, including the production of needle coke as the main raw material used in the manufacturing of the product concerned. Such measures impede market forces from operating freely.

3.3.1.6. Significant distortions according to Article 2(6a)(b), fourth indent of the basic Regulation: the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws

- (92) According to the information on file, the Chinese bankruptcy system delivers inadequately on its own main objectives such as to fairly settle claims and debts and to safeguard the lawful rights and interests of creditors and debtors. This appears to be rooted in the fact that while the Chinese bankruptcy law formally rests on principles that are similar to those applied in corresponding laws in countries other than the PRC, the Chinese system is characterised by systematic under-enforcement. The number of bankruptcies remains notoriously low in relation to the size of the country's economy, not least because the insolvency proceedings suffer from a number of shortcomings, which effectively function as a disincentive for bankruptcy filings. Moreover, the role of the State in the insolvency proceedings remains strong and active, often having direct influence on the outcome of the proceedings ⁽⁵²⁾.

⁽⁴⁵⁾ See at: http://www.gov.cn/xinwen/2019-11/06/content_5449193.htm (accessed on 30 July 2021).

⁽⁴⁶⁾ See at: https://www.jcgov.gov.cn/zwgk/wjgg/sxwj/201611/t20161125_137333.shtml (accessed on 30 July 2021).

⁽⁴⁷⁾ See at: <http://www.dt.gov.cn/dtzw/sxyw/202106/42ef183ea0ab4ab084a2dad8fd5c7b5.shtml> (accessed on 30 July 2021).

⁽⁴⁸⁾ See at: <https://www.ndrc.gov.cn/fzggw/jgsj/zxs/sjdt/202004/P020200401627899644473.pdf> (accessed on 3 August 2021). This plan was referred to in the complaint as Western Henan 2019–2025 Five-Year Plan.

⁽⁴⁹⁾ See at: http://www.nmg.gov.cn/zwgk/zfxgk/zfxgkml/zzqzfjbgwtj/202012/t20201208_315136.html (accessed on 3 August 2021).

⁽⁵⁰⁾ See at: http://www.ln.gov.cn/zwgk/zfwj/szfbgtwj/zfwj2011_136268/201901/t20190122_3424162.html (accessed on 3 August 2021).

⁽⁵¹⁾ See at: <https://www.hlj.gov.cn/zwfb/system/2019/07/02/010903336.shtml> (accessed on 3 August 2021).

⁽⁵²⁾ Report – Chapter 6, p. 138–149.

- (93) In addition, the shortcomings of the system of property rights are particularly obvious in relation to ownership of land and land-use rights in the PRC .⁽⁵³⁾ All land is owned by the Chinese State (collectively owned rural land and State-owned urban land). Its allocation remains solely dependent on the State. There are legal provisions that aim at allocating land use rights in a transparent manner and at market prices, for instance by introducing bidding procedures. However, these provisions are regularly not respected, with certain buyers obtaining their land for free or below market rates⁽⁵⁴⁾. Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land⁽⁵⁵⁾.
- (94) Much like other sectors in the Chinese economy, the producers of graphite electrodes are subject to the ordinary rules on Chinese bankruptcy, corporate, and property laws. That has the effect that these companies, too, are subject to the top-down distortions arising from the discriminatory application or inadequate enforcement of bankruptcy and property laws. The present investigation revealed nothing that would call those findings into question. As such, the Commission concluded that the Chinese bankruptcy and property laws do not work properly, thus generating distortions when maintaining insolvent firms afloat and when allocating land use rights in the PRC. Those considerations, on the basis of the evidence available, appear to be fully applicable also in the graphite electrodes sector.
- (95) In light of the above, the Commission concluded that there was discriminatory application or inadequate enforcement of bankruptcy and property laws in the graphite electrodes sector, including with respect to the product concerned.

3.3.1.7. Significant distortions according to Article 2(6a)(b), fifth indent of the basic Regulation: wage costs being distorted

- (96) A system of market-based wages cannot fully develop in the PRC as workers and employers are impeded in their rights to collective organisation. The PRC has not ratified a number of essential conventions of the International Labour Organisation ('ILO'), in particular those on freedom of association and on collective bargaining⁽⁵⁶⁾. Under national law, only one trade union organisation is active. However, this organisation lacks independence from the State authorities and its engagement in collective bargaining and protection of workers' rights remains rudimentary⁽⁵⁷⁾. Moreover, the mobility of the Chinese workforce is restricted by the household registration system, which limits access to the full range of social security and other benefits to local residents of a given administrative area. This typically results in workers who are not in possession of the local residence registration finding themselves in a vulnerable employment position and receiving lower income than the holders of the residence registration⁽⁵⁸⁾. Those findings lead to the distortion of wage costs in the PRC.
- (97) No evidence was submitted to the effect that the graphite electrodes sector would not be subject to the Chinese labour law system described. The graphite electrodes sector is thus affected by the distortions of wage costs both directly (when making the product concerned or the main raw material for its production) as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in the PRC).

3.3.1.8. Significant distortions according to Article 2(6a)(b), sixth indent of the basic Regulation: access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the State

- (98) Access to capital for corporate actors in the PRC is subject to various distortions.
- (99) Firstly, the Chinese financial system is characterised by the strong position of State-owned banks⁽⁵⁹⁾, which, when granting access to finance, take into consideration criteria other than the economic viability of a project. Similarly to non-financial SOEs, the banks remain connected to the State not only through ownership but also via personal relations (the top executives of large State-owned financial institutions are ultimately appointed by the CCP)⁽⁶⁰⁾ and, again just like non-financial SOEs, the banks regularly implement public policies designed by the government. In

⁽⁵³⁾ Report – Chapter 9, p. 216.

⁽⁵⁴⁾ Report – Chapter 9, p. 213–215.

⁽⁵⁵⁾ Report – Chapter 9, p. 209–211.

⁽⁵⁶⁾ Report – Chapter 13, p. 332–337.

⁽⁵⁷⁾ Report – Chapter 13, p. 336.

⁽⁵⁸⁾ Report – Chapter 13, p. 337–341.

⁽⁵⁹⁾ Report – Chapter 6, p. 114–117.

⁽⁶⁰⁾ Report – Chapter 6, p. 119.

doing so, the banks comply with an explicit legal obligation to conduct their business in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State ⁽⁶¹⁾. This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ⁽⁶²⁾.

- (100) While it is acknowledged that various legal provisions refer to the need to respect normal banking behaviour and prudential rules such as the need to examine the creditworthiness of the borrower, the overwhelming evidence, including findings made in trade defence investigations, suggests that these provisions play only a secondary role in the application of the various legal instruments.
- (101) For example, the GOC has very recently clarified that even private commercial banking decisions must be overseen by the CCP and remain in line with national policies. One of the State's three overarching goals in relation to banking governance is now to strengthen the Party's leadership in the banking and insurance sector, including in relation to operational and management issues in companies ⁽⁶³⁾. Also, the performance evaluation criteria of commercial banks have now to, notably, take into account how entities '*serve the national development objectives and the real economy*', and in particular how they '*serve strategic and emerging industries*' ⁽⁶⁴⁾.
- (102) Furthermore, bond and credit ratings are often distorted for a variety of reasons including the fact that the risk assessment is influenced by the firm's strategic importance to the GOC and the strength of any implicit guarantee by the government. Estimates strongly suggest that Chinese credit ratings systematically correspond to lower international ratings ⁽⁶⁵⁾.
- (103) This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ⁽⁶⁶⁾. This results in a bias in favour of lending to SOEs, large well-connected private firms and firms in key industrial sectors, which implies that the availability and cost of capital is not equal for all players on the market.
- (104) Secondly, borrowing costs have been kept artificially low to stimulate investment growth. This has led to the excessive use of capital investment with ever lower returns on investment. This is illustrated by the growth in corporate leverage in the State sector despite a sharp fall in profitability, which suggests that the mechanisms at work in the banking system do not follow normal commercial responses.
- (105) Thirdly, although nominal interest rate liberalization was achieved in October 2015, price signals are still not the result of free market forces, but are influenced by government-induced distortions. The share of lending at or below the benchmark rate still represented at least one-third of all lending as of the end of 2018 ⁽⁶⁷⁾. Official media in the PRC have recently reported that the CCP called for '*guiding the loan market interest rate downwards*' ⁽⁶⁸⁾. Artificially low interest rates result in under-pricing, and consequently, the excessive utilization of capital.

⁽⁶¹⁾ Report – Chapter 6, p. 120.

⁽⁶²⁾ Report – Chapter 6, p. 121–122, 126–128, 133–135.

⁽⁶³⁾ See official policy document of the China Banking and Insurance Regulatory Commission (CBIRC) of 28 August 2020: *Three-year action plan for improving corporate governance of the banking and insurance sectors (2020–2022)*. <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=925393&itemId=928> (last viewed on 3 April 2021). The Plan instructs to '*further implement the spirit embodied in General Secretary Xi Jinping's keynote speech on advancing the reform of corporate governance of the financial sector*'. Moreover, the Plan's Section II aims at promoting the organic integration of the Party's leadership into corporate governance: '*we shall make the integration of the Party's leadership into corporate governance more systematic, standardised and procedure-based [...] Major operational and management issues must have been discussed by the Party Committee before being decided upon by the Board of Directors or the senior management.*'

⁽⁶⁴⁾ See CBIRC's *Notice on the Commercial banks performance evaluation method*, issued on 15 December 2020. http://jrs.mof.gov.cn/gongzuotongzhi/202101/t20210104_3638904.htm (last viewed on 12 April 2021).

⁽⁶⁵⁾ See IMF Working Paper '*Resolving China's Corporate Debt Problem*', by Wojciech Maliszewski, Serkan Arslanalp, John Caparusso, José Garrido, Si Guo, Joong Shik Kang, W. Raphael Lam, T. Daniel Law, Wei Liao, Nadia Rendak, Philippe Wingender, Jiangyan, October 2016, WP/16/203.

⁽⁶⁶⁾ Report – Chapter 6, p. 121–122, 126–128, 133–135.

⁽⁶⁷⁾ See OECD (2019), *OECD Economic Surveys: China 2019*, OECD Publishing, Paris. p. 29. https://doi.org/10.1787/eeco_surveys-chn-2019-en.

⁽⁶⁸⁾ See: http://www.xinhuanet.com/fortune/2020-04/20/c_1125877816.htm (last viewed on 12 April 2021).

- (106) Overall credit growth in the PRC indicates a worsening efficiency of capital allocation without any signs of credit tightening that would be expected in an undistorted market environment. As a result, non-performing loans have increased rapidly in recent years. Faced with a situation of increasing debt-at-risk, the GOC has opted to avoid defaults. Consequently, bad debt issues have been handled by rolling over debt, thus creating so called 'zombie' companies, or by transferring the ownership of the debt (e.g. via mergers or debt-to-equity swaps), without necessarily removing the overall debt problem or addressing its root causes.
- (107) In essence, despite the steps that have been taken to liberalize the market, the corporate credit system in the PRC is affected by significant distortions resulting from the continuing pervasive role of the state in the capital markets.
- (108) No evidence was submitted to the effect that the graphite electrodes sector, would be exempted from the above-described government intervention in the financial system. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

3.3.1.9. Systemic nature of the distortions described

- (109) The Commission noted that the distortions described in the Report are characteristic for the Chinese economy. The evidence available shows that the facts and features of the Chinese system as described above in Sections 3.3.1.2–3.3.1.5, as well as in Part A of the Report apply throughout the country and across the sectors of the economy. The same holds true for the description of the factors of production as set out above in Sections 3.3.1.6–3.3.1.8 above and in Part B of the Report.
- (110) The Commission recalls that in order to produce graphite electrodes, a range of inputs is needed, such as, among others, petroleum coke, needle petroleum coke, needle pitch coke, as well as electricity (see Section 2.1). According to the evidence on the file, the PRC is one of the major producers of needle coke – the key raw material in the graphite electrodes production process and the sampled exporting producers sourced most of their inputs in the PRC (i.e. more than 70 % in terms of purchase value). When the producers of graphite electrodes purchase/contract these inputs, the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system that applies across all levels of government and sectors.
- (111) As a consequence, not only the domestic sales prices of graphite electrodes are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts A and B of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that in itself was produced in the PRC by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth. No evidence or argument to the contrary has been adduced by the GOC or the exporting producers in the present investigation.

3.3.1.10. Conclusion

- (112) The analysis set out in Sections 3.3.1.2 to 3.3.1.9, which includes an examination of all the available evidence relating to the PRC's intervention in its economy in general as well as in the graphite electrodes sector showed that prices or costs of the product concerned, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission rejected the arguments by the exporting producers concerning the lack of significant distortions (see recital (69)) and concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case.
- (113) Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as discussed in the following section.

3.3.2. Representative country

3.3.2.1. General remarks

- (114) The choice of the representative country was based on the following criteria pursuant to Article 2(6a) of the basic Regulation:
- A level of economic development similar to the PRC. For this purpose, the Commission used countries with a gross national income per capita similar to the PRC on the basis of the database of the World Bank ⁽⁶⁹⁾,
 - Production of the product under investigation in that country,
 - Availability of relevant public data in the representative country,
 - Where there is more than one possible representative country, preference was given, where appropriate, to the country with an adequate level of social and environmental protection.
- (115) As explained in recitals (43) and (44), the Commission issued and placed on the file two notes for the file on the sources for the determination of the normal value. The Notes described the facts and evidence underlying the relevant criteria and addressed the comments received by the parties on these elements and on the relevant sources. In the Second Note, the Commission informed interested parties of its intention to consider Mexico as an appropriate representative country in the present case if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation would be confirmed. The Commission's assessment can be summarised as follows.

3.3.2.2. A level of economic development similar to China and production of the product under investigation

- (116) In the First Note on production factors, the Commission identified the countries with a similar level of economic development as China. In the investigation period, the World Bank classified these countries as 'upper-middle income' countries on a gross national income basis. However, a sizeable production of the product under investigation was found to exist only in three countries, namely Malaysia, Mexico and Russia.
- (117) Following the Second Note, CCCME and Fangda Carbon New Material Co., LTD claimed that Malaysia, Mexico and Russia are not appropriate choices for the representative country, and recommended other possible countries, in particular Ukraine and India. Both parties noted that the Commission had in a recent proceeding chosen India as the representative country ⁽⁷⁰⁾.
- (118) Regarding the investigation mentioned above by the parties, the Commission used India as a representative country as the product subject to that investigation appeared to be produced only in India and the United States of America. Moreover, since that investigation was an expiry review where the question was whether dumping is likely to continue or recur irrespective of the actual level of dumping, the Commission considered that India could exceptionally constitute the basis to establish the costs of production and sale in the particular circumstances of that case.
- (119) Moreover, the Notes contain a specific annex to guide parties in submitting information on possible additional representative countries and/or companies for the purpose of Article 2(6a)(a) of the basic Regulation. Both parties failed to provide the information to the requisite standard and level of detail prescribed by the said annex.
- (120) The Commission noted that India and Ukraine have a level of economic development inferior to the one of the PRC as defined by the World Bank's classification whereas Malaysia, Mexico and Russia have a similar level of economic development as the PRC. In accordance with Article 2(6a)(a), first indent of the basic Regulation, which mandates the normal value to be established based on corresponding costs of production and sales in an appropriate representative country with a similar level of economic development as the exporting country, these countries were considered appropriate potential representative countries, and there was no reason to consider countries with a lower level of economic development such as India and Ukraine. Therefore, the Commission rejected these claims.

⁽⁶⁹⁾ World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>

⁽⁷⁰⁾ Commission Implementing Regulation (EU) 2021/441 of 11 March 2021 imposing a definitive anti-dumping duty on imports of sulphanilic acid originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 85, 12.3.2021. p. 154), recital (111).

3.3.2.3. Availability of relevant public data in the representative country

- (121) In the First Note the Commission indicated that for the countries identified as countries where product concerned is being produced, namely Malaysia, Mexico and Russia, the availability of public data needed to be further verified in particular with regard to the public financial data from producers of the product concerned.
- (122) With regard to the Russian Federation, the financial statements of the identified producers' concerned only 2019. In addition, one company in Russia was lossmaking. Furthermore, in the First Note, the Commission identified a number of distortions existing on the Russian market which had an impact on the cost of production of the product under investigation and undermined Russia as a suitable representative country.
- (123) As for Malaysia, readily available financial statements dated back to 2017, rendering them outdated as compared to the investigation period. Also, there were two export restrictions in Malaysia, although they had an immaterial impact on the cost of production of the product under investigation representing approximately 1 % of the cost of production of graphite electrodes of the sampled exporting producers. In the meantime, the Commission obtained access to publically available financial statements for 2020 for Showa Denko Malaysia ⁽⁷¹⁾ but the company was loss making for that year. As a result, as there was no profitable producer in this country with readily available data for the investigation period, the Commission did not consider Malaysia to be a suitable representative country.
- (124) Concerning Mexico, the Commission identified one producer, namely GrafTech Mexico S.A. de C.V ('GrafTech Mexico'). Although the company's financial statements were not readily available, the Commission identified GrafTech Group's ('GrafTech International') Annual Report for 2020 which contained the group's consolidated financial statements. In light of the above, overall, this appeared to be the best readily available data. Finally, in the First Note, the Commission identified that Mexico has import requirements on graphite electrodes (Tariff codes 8545 11 and 8545 90) in the form of labelling requirements. However, these labelling requirements are not product-specific but apply for all products imported into Mexico. The relevant Mexican regulation ⁽⁷²⁾ provides general rules ensuring that labels do not mislead consumers or end users when it comes to imports from third countries and do not as such constitute an import restriction. These requirements therefore do not have an important impact on the cost of production of the product under investigation.
- (125) Following the First Note, Fangda Carbon New Material Co., Ltd., Liaoning Dantan Technology Group Co., Ltd. and the CCCME claimed in their submissions that GrafTech Mexico was an unsuitable option. First, as the only financial statements available were consolidated accounts consisting not only of Mexico, but also the other subsidiaries worldwide, these consolidated accounts would incorporate companies from countries that could not be considered at the same level of development as China and that would not reflect the fixed manufacturing overhead, SG&A and profit of Mexico, if Mexico was to become the representative country for the purposes of this investigation. Furthermore, Liaoning Dantan Technology Group Co., Ltd. claimed that, if Mexico is chosen as representative country then the profit of GrafTech International Ltd must be adjusted to reflect the reasonable level of profit for graphite electrode operation, since the consolidated profit level of GrafTech International Ltd is excessively high, this resulting from the fully vertically integrated nature of GrafTech's operation, where the company produces its own petroleum needle coke rather than relying on third party suppliers. Finally, the CCCME questioned the overall objectivity of any data as provided by GrafTech Mexico, given that GrafTech International Ltd is a supporting party of the Complaint.
- (126) Finally, Liaoning Dantan Technology Group Co., Ltd. brought forward a more general observation, namely that profitability for 2020 will be much reduced compared to 2019 owing to the cyclical phenomenon of this industry and the effects of global pandemic lately. Therefore, unless GrafTech Mexico's individual financial data in 2020 becomes available, Mexico does not meet the requirement as an appropriate representative country under the provision of Article 2(6a).

⁽⁷¹⁾ The data for this company was available at the following site <https://www.crif.com.my/> which contains publically available financial data of companies registered in Malaysia and the data comes from SSM which is the national registry for companies and businesses in Malaysia. However, the report is copyright protected and for the time being cannot be put on the open file, but is available for purchase at a nominal fee.

⁽⁷²⁾ NORMA Oficial Mexicana NOM-024-SCFI-2013, Información comercial para empaques, instructivos y garantías de los productos electrónicos, eléctricos y electrodomésticos, available at: dof.gob.mx/nota_detalle.php?codigo=5309980&fecha=12/08/2013

- (127) As stated in the First Note, the Commission found online the consolidated financial statements of GrafTech International Ltd. In the First Note they concerned the fiscal year 2019 ⁽⁷³⁾, while in the Second Note – fiscal year 2020 ⁽⁷⁴⁾.
- (128) With regard to the claim that the consolidated accounts of GrafTech International Ltd. would incorporate companies that would not reflect the fixed manufacturing overheads, SG&A and profit of Mexico, the data available from GrafTech International Ltd. is specific to the production of the product under investigation, as the only product the group manufactures is graphite electrodes. In other words, the group's consolidated financial data reflects both the performance of the production of graphite electrodes and its fixed manufacturing overhead, SG&A and profit of graphite electrodes because the group does not manufacture any other product but graphite electrodes. GrafTech International Ltd. also was profit making during the investigation period. Moreover, GrafTech Mexico is also a company of a size similar to the Chinese companies and also has an important production of the product concerned.
- (129) Finally, the data from any other producers considered from other countries could not be used for the reasons explained and none of the parties who submitted comments following the First Note put forward any alternatives.
- (130) However, in light of those comments, the Commission decided to also investigate whether there were any producers in the same or similar categories of products as the product under investigation in Mexico. In particular, the Commission observed that the profit declared in GrafTech International's 2020 consolidated accounts was indeed extraordinarily high (35,5 % expressed on a revenue basis). Among the Mexican producers producing same or similar categories of products as the product under investigation, the Commission identified at this stage only one company which had available data for 2020. That is Reotix Materiales Refractarios S.A. de C.V ('Reotix Materiales Refractarios'), a company active in the non-clay refractory business. The profit achieved by that company in 2020 was 4,7 %. In the absence of any other reliable readily available data at this stage, the Commission considered that this profit could be reasonably achieved by a producer in Mexico of the product under investigation.
- (131) On the other hand, the SG&A of Reotix Materiales Refractarios, was shown to be 39,0 % on a revenue basis. In light of this, the Commission found it more reasonable to rely on the SG&A reported in the Annual Report for 2020 of GrafTech International Ltd, which was 5,9 % on a revenue basis, as this did relate to the product concerned, and, in part, to GrafTech Mexico.
- (132) In view of the above, in the absence of any other reliable data, the Commission considered that the amount of SG&A of GrafTech International Ltd and the profit achieved by Reotix Materiales Refractarios are undistorted and reasonable within the meaning of Article 2(6a)(a) last paragraph, of the basic Regulation.
- (133) In response to the Second Note, CCCME and Fangda Carbon New Material Co., LTD and Liaoning Dantan Technology Group Co., Ltd had opposed the use of SG&A obtained from GrafTech International Ltd as it came from the consolidated financial data of various companies established in countries with different level of income, including high income countries however, without putting forward any new arguments compared to the similar arguments brought after the First Note or submitting evidence in this regard. At the same time, the Commission noted that CCCME and Fangda Carbon New Material Co., LTD supported the Commission's decision to use a reasonable profit.
- (134) Therefore, in the absence of any other comments or the submission of any other readily available data, the Commission provisionally concluded that the sources it proposed to use for SG&A and profit are undistorted and reasonable within the meaning of Article 2(6a)(a) last paragraph of the basic Regulation.

3.3.2.4. Level of social and environmental protection

- (135) Having established that Mexico was the only available appropriate representative country, based on all of the above elements, there was no need to carry out an assessment of the level of social and environmental protection in accordance with the last sentence of Article 2(6a)(a) first indent of the basic Regulation.

⁽⁷³⁾ Annual report 2019 available at https://s2.q4cdn.com/282965219/files/doc_financials/2019/q4/843539-GrafTech-Bookmarked-Annual-Report.pdf

⁽⁷⁴⁾ Annual report 2020 available at: https://s2.q4cdn.com/282965219/files/doc_financials/2020/q4/2020-Graftech-Bookmarked-Annual-Report.pdf accessed on 16.6.2021.

3.3.2.5. Conclusion

- (136) In view of the above analysis, Mexico met the criteria laid down in Article 2(6a)(a), first indent of the basic Regulation in order to be considered as an appropriate representative country.
- (137) Fangda Carbon New Material Co., Ltd., Liaoning Dantan Technology Group Co., Ltd. and the CCCME stressed in their comments that an alternative fourth representative country must be found. However, none of these parties proposed an alternative representative country. It should be underlined that, indeed, out of all countries with an economic development comparable to the PRC, the Commission identified, on the basis of the information at its disposal that only Mexico, Malaysia and Russia have production of the product under investigation. Moreover, from these three countries, only in Mexico was relevant data readily available.
- (138) In light of those observations and all the relevant facts considered in their totality, the Commission provisionally decided to use Mexico as appropriate representative country for the purpose of establishing the normal value of Chinese exporting producers pursuant to Article 2(6a) of the basic Regulation and the company GrafTech Mexico based in Mexico in accordance with Article 2(6a)(a), first indent, of the basic Regulation.

3.3.3. Sources used to establish undistorted costs for factors of production

- (139) On the basis of the information submitted by interested parties and other relevant information available on the file, the Commission established, in the First Note, an initial list of factors of production such as materials, energy and labour used for the production of the product under investigation.
- (140) In accordance with Article 2(6a)(a) of the basic Regulation, the Commission also identified sources to be used for establishing undistorted prices and benchmarks. The main source that the Commission proposed to use included the Global Trade Atlas (the 'GTA'). Finally, in the same note, the Commission identified the Harmonised System (HS) codes of factors of production which, on the basis of information provided by the interested parties, were initially considered to be used for the GTA analysis.
- (141) The Commission invited the interested parties to comment and propose readily available information on undistorted values for each of the factors of production mentioned in that note.
- (142) Subsequently, in the Second Note, the Commission updated the list of factors of production based on the comments of the parties and information submitted by the sampled exporting producers in the questionnaire reply.
- (143) In the Second Note the Commission proposed to use Malaysian import data for establishing the price of petroleum coke (HS 2713 12) instead of the Mexican import price, following comments of the exporting producers and European Carbon and Graphite Association that import statistics of petroleum coke into Mexico did not sufficiently reflect the quality grade of needle coke as used in the manufacturing of graphite electrode systems.
- (144) Following the Second Note, several parties claimed that the Commission should not use the Malaysian import data for establishing price of petroleum coke (HS 2713 12) as the quantity reported in the Malaysian statistics is very low and not representative.
- (145) The Commission accepted the claim and decided to provisionally establish the benchmark for petroleum coke based on the Mexican import price.
- (146) In the Second Note, the Commission further reported that there is no import in Mexico of coal tar (HS 2708 20) and thus decided to use Malaysia for the establishment of that benchmark.
- (147) The Commission noted that the parties did not oppose this decision in their comments on the Second Note.
- (148) One party claimed that the methodology used to establish the Mexican CIF import price is not correct as the Commission used the same freight costs ratio based on a unique HS code (i.e. 2713) for any exporting country and for all benchmarks. Moreover, the dataset used is outdated as the latest available financial year is from 2016.

- (149) While the party claimed that the methodology is not correct, no alternative solution was proposed. The Commission concluded that the estimation remains the most accurate at its disposal.
- (150) Considering all the information submitted by the interested parties and collected during the verification visits, the following factors of production and their sources have been identified in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

Factors of production of graphite electrodes			
Factor of Production	Commodity Code	Undistorted value (RMB)	Unit of measurement
Raw materials			
Petroleum coke (calcined)	2713 12	5 240	Tonne
Petroleum coke (non calcined)	2713 11	432	Tonne
Pitch from coal tar	2708 10	8 640	Tonne
Pitch coke from coal tar	2708 20	3 917	Tonne
Coke and semi-coke of coal	2704 00	1 884	Tonne
Coal asphalt	2715 00	6 113	Tonne
Coal	2701 12	881	Tonne
Graphite fragments	3801 90	13 048	Tonne
Consumables			
Labour			
Labour wages in manufacturing sector	[N/A]	13,37	Hours
Energy			
Electricity	[N/A]	1 138	kWh
Natural Gas	[N/A]	0,70	m3
By product/waste			
Graphite scrap	3801 90	13 048	Tonne
Silicon carbide scrap	2849 20	8 055	Tonne

3.3.3.1. Raw materials used in the production process

- (151) In order to establish the undistorted price of raw materials the Commission used as a basis the weighted average import price (CIF) to the representative country, as reported in the GTA, from all third countries excluding the PRC and countries that are not members of the WTO and listed in Annex I of Regulation 2015/755 of the European Parliament and of the Council ⁽⁷⁵⁾. The Commission decided to exclude imports from China as it concluded that it is not appropriate to use domestic prices and costs in China due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation (see Section 3.3.1 above). Absent any evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected exports. For Mexico, the exclusion of imports from PRC and of some non-WTO Members did not have a significant impact, as the remaining imports still represented around 99 % of total import volumes into the representative country. In Malaysia, for imports of pitch coke from coal tar, imports from PRC represented 55 % of the total imports. The weighted average import price was adjusted for import duties, where applicable.

⁽⁷⁵⁾ Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33). Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value.

- (152) For a small number of factors of production the actual costs incurred by the cooperating exporting producers represented a negligible share of total raw material costs in the investigation period. As the value used for these had no appreciable impact on the dumping margin calculations, regardless of the source used, the Commission treated those factors of production as consumables, as explained in recital (166).
- (153) The Commission expressed the transport costs incurred by the cooperating exporting producers for the supply of raw materials as a percentage of the actual cost of such raw materials and then applied the same percentage to the undistorted cost of the same raw materials in order to obtain the undistorted transport cost. The Commission considered that, in the context of this investigation, the ratio between the exporting producer's raw material and the reported transport costs could be reasonably used as an indication to estimate the undistorted costs of raw materials when delivered to the company's factory.

3.3.3.2. Labour

- (154) The Commission used the ILO statistics, which provide information on average monthly earnings of employees and average weekly hours actually worked per employed person in Mexico in 2020. The monthly earnings do not include social security cost and taxes born by the employer. Such information is available in the OECD Library for the same year ⁽⁷⁶⁾.

3.3.3.3. Electricity

- (155) The price of electricity in Mexico is published by the Mexican Electric Commission. The Commission used the data on the industrial electricity prices as published in Mexico's Official Journal.
- (156) Following the Second Note, Liaoning Dantan Technology Group Co., Ltd. claimed that the prices of electricity in Mexico are distorted upward and thus should be lowered as the development of the renewable sources of energy was undermined by the Mexican State.
- (157) The Commission noted that the party did not submit any evidence supporting its claim, other than vague statements. Therefore, the claim was rejected.

3.3.3.4. Natural gas

- (158) The Commission used the price of gas for industrial users in Mexico as published by the Comisión Reguladora de Energía ⁽⁷⁷⁾ in its regular press releases. The Commission used the data of the industrial gas prices in the corresponding consumption band in gigajoules covering the investigation period.

3.3.3.5. Waste

- (159) The Commission analysed the accounting practices of the sampled Chinese exporting producers pertaining to by-products and waste. As a result, the Commission adjusted the constructed cost of production in accordance with each companies' accounting practices pertaining to by-products and waste.

3.3.3.6. Manufacturing overhead costs, SG&A, profits and depreciation

- (160) According to Article 2(6a)(a) of the basic Regulation, '*the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits*'. In addition, a value for manufacturing overhead costs needs to be established to cover costs not included in the factors of production referred to above.
- (161) The manufacturing overheads incurred by the cooperating exporting producers were expressed as a share of the costs of manufacturing actually incurred by the exporting producers. This percentage was applied to the undistorted costs of manufacturing.
- (162) For establishing an undistorted and reasonable amount for manufacturing overheads, SG&A and profit, the Commission relied on the financial data of GrafTech International Ltd for SG&A and of Reotix Materiales Refractarios for profit.

⁽⁷⁶⁾ Available at <https://ilostat.ilo.org/data/country-profiles/> (last viewed 28 March 2021).

⁽⁷⁷⁾ Available at <https://www.cre.gob.mx/IPGN/index.html> (last viewed 28 March 2021).

3.3.4. Calculation of normal value

- (163) Based on the undistorted prices and benchmarks described above, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (164) To establish the undistorted costs of manufacturing for each legal entity manufacturing and exporting the product concerned, the Commission replaced, for each exporting producer, factors of production purchased both from related and unrelated parties by the factors of production identified in the table above.
- (165) First, the Commission established the undistorted costs of manufacturing based on the factors of production purchased by each of the companies. It then applied the undistorted unit costs to the actual consumption of the individual factors of production of each of the cooperating exporting producers. The Commission reduced the costs of manufacturing by the undistorted costs of by-products re-used in the production process.
- (166) Second, to arrive at a total undistorted cost of manufacturing, the Commission added manufacturing overheads. Manufacturing overheads incurred by the cooperating exporting producers were increased by the costs of consumables referred to in recital (152) and subsequently expressed as a share of the costs of manufacturing actually incurred by each of the exporting producers. This percentage was applied to the undistorted costs of manufacturing.
- (167) Finally, the Commission added SG&A and profit which were expressed as a percentage of the cost of goods sold and applied to the undistorted total cost of manufacturing (i.e. SG&A amounted to 12,0 % and profit amounted to 8,9 %).
- (168) On that basis, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.

3.4. Export price

- (169) Liaoning Dantan Technology Group Co., Ltd. exported all the production of the product concerned via two related traders in China. Another exporting producer, Chengdu Rongguang Carbon Co., Ltd., which is part of the group Fangda Carbon New Material Co., Ltd., exported only part of its production of the product concerned via a related trader in China. By contrast, Nantong Yangzi Carbon Co., Ltd. only sold directly to the Union.
- (170) 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 for all three sampled exporting producers.

3.5. Comparison

- (171) The Commission compared the normal value and the export price of the sampled exporting producers on an ex-works basis.
- (172) 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 and loading, credit costs, bank charges, commissions and customs duties.
- (173) As the Liaoning Dantan Technology Group Co., Ltd. and Chengdu Rongguang Carbon Co., Ltd., part of the group Fangda Carbon New Material Co., Ltd., exported via a related trader in China, the Commission adjusted the export prices of these companies in accordance with Article 2(10)(i) of the basic Regulation as these traders were acting as agents working on a commission basis. The adjustment amounted to the SG&A and profit of the trader.

3.6. Dumping margins

- (174) For the sampled cooperating exporting producers, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.

- (175) On this basis, the provisional weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional dumping margin
Fangda Group composed of 4 producers	24,5 %
Liaoning Dantan Technology Group Co., Ltd.	17,5 %
Nantong Yangzi Carbon Co., Ltd.	24,5 %

- (176) For the cooperating exporting producers outside the sample, the Commission calculated the weighted average dumping margin, in accordance with Article 9(6) of the basic Regulation. Therefore, that margin was established on the basis of the margins of the sampled exporting producers.

- (177) On this basis, the provisional dumping margin of the cooperating exporting producers outside the sample is 21,6 %.

- (178) For all other exporting producers in China, the Commission established the dumping margin on the basis of the facts available, in accordance with Article 18 of the basic Regulation. To this end, the Commission determined the level of cooperation of the exporting producers. The level of cooperation is the volume of exports of the cooperating exporting producers to the Union expressed as proportion of the total imports from the country concerned to the Union in the investigation period, that were established on the basis of Eurostat.

- (179) The level of cooperation in this case is low because the imports of the cooperating exporting producers constituted only around 62 % of the total exports to the Union during the investigation period. On this basis, the Commission considered it appropriate to set the country-wide dumping margin applicable to all other non-cooperating exporting producers at the level of the highest dumping margin established for a product type sold in representative quantities by the exporting producer with the highest dumping margin found. The dumping margin thus established was 66,5 %.

- (180) The provisional dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional dumping margin
Fangda Group composed of 4 producers	24,5 %
Liaoning Dantan Technology Group Co., Ltd.	17,5 %
Nantong Yangzi Carbon Co., Ltd.	24,5 %
Other cooperating companies	21,6 %
All other companies	66,5 %

4. INJURY

4.1. Definition of the Union industry and Union production

- (181) The like product was manufactured by five companies or groups of companies in the Union during the investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

- (182) The total Union production during the investigation period was established at around 164 460 tonnes. The Commission established the figure on the basis of the information provided by the Union producers. As indicated in recital (13), the three sampled Union producers represented more than 55 % of the total volume of production and more than 65 % of the sales in the Union of the like product.

- (183) The complainants requested to exclude Sangraf Italy from the definition of the Union industry, as Sangraf Italy and its related company Sangraf Henan from the PRC are both fully controlled by the Hong-Kong based Gaoshuo Group (Hong Kong), which is ultimately owned by Sanergy Group Limited, incorporated in the Cayman Islands.
- (184) The investigation showed that Sangraf Italy imported nipples from its related company in the PRC, but produced graphite electrode bodies in Narni, Italy. Sangraf also demonstrated that it is operating in the EU with a certain degree of operational autonomy. Sangraf Italy is managed from Italy, while the Group (Sangraf international) is managed from the US. From a shareholding perspective, the ultimate controlling holding company is incorporated in the Cayman Islands. Sangraf Italy is also a full member of the European Carbon and Graphite Association.
- (185) Based on these considerations Sangraf Italy was considered part of the Union industry in line with Article 4 of the basic Regulation. The request to exclude Sangraf Italy from the definition of the Union industry was therefore rejected.

4.2. Union consumption

- (186) The Commission established the Union consumption on the basis of the information provided by the Union industry and the imports volumes (TARIC level) reported in Eurostat.
- (187) Union consumption developed as follows:

Table 1

Union consumption (in tonnes)

	2017	2018	2019	Investigation period
Total Union consumption	175 738	181 070	153 706	132 454
Index	100	103	87	75

Source: Eurostat (Comext) and Union industry

Note: An adjustment was made to imports under TARIC code 8545 11 00 90 to exclude graphite electrodes with an apparent density of less than 1,5 g/cm³ or an electrical resistance of more than 7,0 µΩ.m. This adjustment consisted in withdrawing 7,5 % of the total export in volume and 3,3 % of the total export in value. This adjustment followed the methodology used in the complaint, which was based on the share of RP graphite electrodes in the worldwide consumption of graphite electrodes (excluding China) for the year 2019 (*). In other words, 7,5 % of the total volume of electrodes consumed outside China were RP electrodes in 2019. 3,3 % of the total value of electrodes consumed outside China were RP electrodes in 2019.

- (*) Last year available to the Commission services. It was considered sufficient, as this figure is not displaying a high volatility.

- (188) Over the period considered, the Union consumption of graphite electrodes decreased by 25 %. The years 2017 and 2018 showed a high consumption driven by high demand of the Union steel industry, which was in the process of recovering from the steel crisis. In addition, in a situation of sudden price increase of graphite electrodes, steelmakers were building up stocks of graphite electrodes in fear of an additional increase. In 2019, the production of steel from electric arc furnaces hit a low point (– 6,6 %) as compared to 2018 according to Eurofer figures. Demand for graphite electrodes dropped. As the price of graphite electrodes went down significantly, building up stocks was no longer necessary for the downstream industry. As a consequence, steel producers were destocking their graphite electrodes inventories. Demand dropped even further in 2020 as a consequence of the COVID-19 outbreak.

4.3. Imports from the country concerned

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

- (189) The Commission established the volume of imports on the basis of the Comext database. The market share of the imports was established on the basis of the import data and Union industry data for sales in the Union market.

(190) Imports from the country concerned developed as follows:

Table 2

Import volume (in tonnes) and market share

	2017	2018	2019	Investigation period
Volume of imports from China	42 256	43 180	45 932	47 429
<i>Index</i>	100	102	109	112
Market share (%)	24,0	23,8	29,9	35,8
<i>Index</i>	100	99	124	149

Source: Eurostat(Comext), Union industry.

(191) In a context of decreasing consumption, Chinese imports increased to the detriment of the Union industry. The volume of imports from China increased by 12 % over the period considered and their market share increased by 49 %, reaching 35,8 % in the investigation period (+ 11,8 percentage points). The market share of the Union industry decreased by 6,4 percentage points, from 60,0 % in 2017 to 53,6 % in 2020 (Table 5). The market share of other countries was reduced to 10,6 % over the period considered (– 5,3 percentage points) (Table 11).

4.3.2. Prices of the imports from the country concerned and price undercutting

(192) The Commission established the prices of imports on the basis of Eurostat Comext database. Price undercutting of the imports was established on the basis of the questionnaire replies by the sampled Union producers and Chinese exporting producers.

(193) The average price of imports from the country concerned developed as follows:

Table 3

Import prices (EUR / tonne)

	2017	2018	2019	Investigation period
China	4 152	9 710	4 845	2 077
<i>Index</i>	100	234	117	50

Source: Eurostat (Comext).

(194) Average import prices from China have been significantly below Union industry prices and costs since 2019. Average import prices from China decreased by 50 % over the period considered, while costs of production increased for the Union industry according to the data provided by the sampled Union producers (see Table 7). Initially import prices went up to very high levels, reached its peak in 2018 and then started decreasing steeply. Following the price peak of 2018, this decrease in prices of Chinese imports was more significant than the decrease in Union sales prices.

(195) The Commission determined the price undercutting during the investigation period by comparing:

- (1) the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and
- (2) the corresponding weighted average prices per product type of the imports from the sampled cooperating Chinese producers to the first independent customer on the Union market, established on a cost, insurance, freight (CIF) basis, with appropriate adjustments for customs duties and post-importation costs.

- (196) 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' theoretical turnover during the investigation period. It showed a weighted average undercutting margin of 51,2 % by the imports from the country concerned on the Union market. All import volumes for which there was matching were found to be undercutting Union prices.

4.4. Economic situation of the Union industry

4.4.1. General remarks

- (197) 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.
- (198) As mentioned in recital (13), sampling was used for the determination of possible injury suffered by the Union industry.
- (199) 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 submission of the Union industry. 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.
- (200) 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.
- (201) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

4.4.2. Macroeconomic indicators

4.4.2.1. Production, production capacity and capacity utilisation

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

Table 4

Production, production capacity and capacity utilisation

	2017	2018	2019	Investigation period
Production volume (tonnes)	233 538	250 597	219 526	164 460
<i>Index</i>	100	107	94	70
Production capacity (tonnes)	255 500	283 500	294 900	294 900
<i>Index</i>	100	111	115	115
Capacity utilisation (%)	91,4	88,4	74,4	55,8
<i>Index</i>	100	97	81	61

Source: Questionnaire replies from the sampled Union producers.

- (203) During the period considered, the production volume decreased by 30 %. The production followed closely the variation in consumption: high demand in 2017–2018, drop in demand in 2019 (destocking), further and more pronounced drop in demand in 2020 (COVID-19 outbreak).
- (204) Production capacity increased by 15 % over the period considered. This is partly due to Sangraf Italy, which started its operations in 2018. The Union industry more generally invested to develop capacities. The Union industry expected that the positive market situation in the beginning of the period considered would last and that demand would further increase.
- (205) The two above-mentioned trends (decrease in production, increase in capacity) led to a significant decrease in the capacity utilisation (– 35 %). During the investigation period, the capacity utilisation rate reached a very low level (55,8 %).

4.4.2.2. Sales volume and market share

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

Table 5

Sales volume and market share

	2017	2018	2019	Investigation period
Sales volume on the Union market (tonnes)	105 520	118 025	91 949	70 970
<i>Index</i>	100	112	87	67
Market share (%)	60,0	65,2	59,8	53,6
<i>Index</i>	100	109	100	89

Source: Union industry.

- (207) Sales increased between 2017 and 2018 and then decreased over the period 2018–2020. The general trend is in line with the development of consumption. However, the drop in sales (– 33 %) was more pronounced than the drop in consumption (– 25 %) over the period considered.
- (208) As a consequence, the market share of the Union industry dropped by 6,4 percentage points. The market share of third countries other than the PRC dropped by 5,3 percentage points. The Union industry lost market share to Chinese imports, which increased their market share by 11,8 percentage points during the same period.

4.4.2.3. Growth

- (209) The GDP growth rate of the Union (27 countries) over the period 2017–2019 was + 2,2 % (Eurostat ⁽⁷⁸⁾). It was – 6 % in 2020 (Eurostat ⁽⁷⁹⁾). Union electric crude steel production showed a downward trend before the COVID-19 outbreak: 68 497 tonnes in 2017, 69 781 tonnes in 2018, 65 171 tonnes in 2019 (source: Eurofer). The demand and production of graphite electrodes followed this trend. In the context of decreasing consumption, the Union industry not only lost sales volumes but also market share as explained above in recital (208).

4.4.2.4. Employment and productivity

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

Table 6

Employment and productivity

	2017	2018	2019	Investigation period
Number of employees	1 034	1 164	1 150	1 102
<i>Index</i>	100	113	111	107

⁽⁷⁸⁾ <https://ec.europa.eu/eurostat/databrowser/view/tec00115/default/table?lang=en>

⁽⁷⁹⁾ Ibid.

Productivity (tonnes/ employee)	226	215	191	149
Index	100	95	85	66

Source: Union industry.

- (211) Employment in the sector followed similar trend as the production and the consumption on the Union market and grew by 13 % between 2017 and 2018. This is partly due to Sangraf Italy, which started its operations in 2018. Employment then continued to follow similar trend as the production and the consumption and decreased from 2018 toward the end of the period considered yet employment decreased at a slower pace. Overall, employment increased over the period considered by 7 %.
- (212) Given the above, in a situation where production decreased by 30 % over the period considered, the productivity fell. It dropped by 34 % over the period considered.

4.4.2.5. Magnitude of the dumping margin and recovery from past dumping

- (213) All dumping margins were significantly above the de minimis level. The impact of the magnitude of the actual margins of dumping on the Union industry was substantial, given the volume and prices of imports from the country concerned.
- (214) Graphite electrodes have already been subject to anti-dumping investigations in the past, and anti-dumping measures on imports of graphite electrodes from India are still in force.
- (215) Previous investigations showed that past dumping had a long-lasting negative effect on the situation of the Union industry. These investigations did not indicate the Union industry had recovered from past dumping. To the contrary, the findings of the latest interim review, that was terminated in October 2020, showed that the good economic state of the Union industry in the years 2017 and 2018 was temporary, and that there was no need to terminate the measures against India ⁽⁸⁰⁾.

4.4.3. Microeconomic indicators

- (216) When considering sales of the Union industry and microeconomic indicators, the Commission noted that a part of the Union production of the like product (in particular, one Union producer, GrafTech, with around 50 % of the total sales and above 50 % of total production ⁽⁸¹⁾) was shielded from direct market competition, whereas the other part (the other two sampled Union producers) was directly exposed to the low-priced Chinese imports (see Section 4.3).
- (217) This situation was due to the existence of long-term contracts that the single largest Union producer of graphite electrodes (GrafTech) had concluded with its customers in the wake of a period of unusually high prices in the years 2017–2018. These contracts are ‘take or pay’ purchase contracts by which GrafTech guaranteed a certain level of supplies at set prices and the buyer committed to buy the agreed volumes at the pre-determined and fixed price, subject to various contractual rights and obligations. The duration of these contracts was three to five years. It appeared that a very large portion of GrafTech sales during the investigation period were made under these long-term contracts (‘LTAs’). To the best knowledge of the Commission, no other Union producer benefits from similar LTAs. In view of the LTAs’ duration, the Commission noted that the impact of the contracts is of a temporary nature.

⁽⁸⁰⁾ Commission Implementing Decision (EU) 2020/1605 of 30 October 2020 terminating the partial interim review of the anti-dumping and countervailing measures applicable to imports of certain graphite electrode systems originating in India.

⁽⁸¹⁾ In the Union, GrafTech France and GrafTech Iberica are producing for GrafTech. The figures in this recital are for the two entities.

- (218) Therefore, in order to properly appreciate the economic relationship between the two parts of the Union industry, the Commission examined, in accordance with WTO jurisprudence ⁽⁸²⁾, in like manner, on the one hand, the part of the industry that was deemed shielded from direct competition with imports and, on the other hand, the other part that was subject to the competitive pressure of imports, as well as the industry as a whole.

4.4.3.1. Prices and factors affecting prices

- (219) The average unit sales prices of the sampled Union producers to unrelated customers in the Union developed over the period considered as follows:

Table 7

Sales prices in the Union

	2017	2018	2019	Investigation period
Average unit sales price in the Union on the total market (EUR/tonne)	2 221	8 780	9 900	5 993
<i>Index</i>	100	395	446	270
Unit cost of production (EUR/tonne)	2 071	4 095	5 454	5 016
<i>Index</i>	100	198	263	242

Source: Questionnaire replies from the sampled Union producers.

- (220) The sales prices increased very strongly in 2018 and 2019 before decreasing steeply in 2020. Sales prices in 2020 were, however, still at levels more than twice as high as in 2017 (+ 170 %).
- (221) Thanks to the existing LTAs, GrafTech France could maintain a high price level ([25–50] % above the average unit sales price in the Union) during the IP despite the general fall in prices from which the remainder of the Union industry was not shielded. Based on the information available, and in particular the GraftTech France's sales volumes not subject to LTAs as well as the sales of the other two sampled Union producers, the Commission estimated that the average price on the 'free' market was around [20–40] % lower than the average unit sales price in the Union on the total market. Accordingly, the average Union sales price during the IP does not accurately reflect the competitive price situation on the Union market, which was significantly affected by low-priced and dumped imports from China.
- (222) In the period 2017–2019, sales prices of graphite electrodes increased globally. It was the result of a market imbalance with a rise in global demand and a supply unable to keep up with demand. The key reason for the rise in demand was cited to be the global shift in the steel industry, from blast furnaces to electric arc furnaces, which use graphite electrodes. The key reason for a lag in global supply was cited as the government-mandated shutdowns of Chinese graphite electrode producers for environmental upgrading. Those closures coincided with an increased domestic demand for graphite electrodes from Chinese steel producers and new competition for needle coke (the main raw material used in the production of graphite electrodes) from the lithium ion battery industry.
- (223) The price of needle coke increased steadily and significantly from 2017 to mid-2019. It multiplied by a factor around 9, rising from around 500 USD per tonne to about 4 500 USD per tonne. This volatility in the price of graphite electrodes and its raw materials led some of the industry to engage in LTAs as indicated in recital (217). Prices of needle coke then moved back to normal levels, but costs and prices of graphite electrodes remained higher than in 2017. During the IP, sales prices of the sampled Union producers were back to levels closer to the long-term average. This was linked to a combination of factors: a decrease of the price of needle coke, a decrease in demand linked to the COVID-19 pandemic, and the increased price pressure due to the competition of low-priced imports

⁽⁸²⁾ Appellate Body Report, United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, WT/DS184/AB/R, paras. 195–205.

from China. As already mentioned before (recitals (216) to (218)), this situation did however not affect the entire Union industry in equal measure. The part of the Union industry not shielded by LTAs saw a significant drop in the sales prices of – [48–60] % in the IP, when GrafTech France sales prices only decreased by – [15–35] %.

- (224) For the period considered, production costs increased by 242 %. This was linked to the increase in prices of the main raw materials: needle coke as mentioned above. The labour costs were stable over the period (see Table 8). The price of energy (including electricity) was on the rise, contributing to a certain extent to the increase of production costs.

4.4.3.2. Labour costs

- (225) The average labour costs of the sampled Union producers developed over the period considered as follows:

Table 8

Average labour costs per employee

	2017	2018	2019	Investigation period
Average labour costs per employee (EUR)	83 705	91 784	89 456	84 780
Index	100	110	107	101

Source: Questionnaire replies from the sampled Union producers.

- (226) The average labour cost per employee increased by 10 % in 2018, followed by a decrease of 3 % and continued dropping in the IP to reach the level 1 % higher than in 2017.
- (227) When assessing the development of labour costs for the different part of the industry and the industry as a whole, the Commission did not find significant differences in the variation of costs over the period considered.

4.4.3.3. Inventories

- (228) Stock levels of the sampled Union producers developed over the period considered as follows:

Table 9

Inventories

	2017	2018	2019	Investigation period
Closing stocks (tonnes)	6 142	6 424	9 114	8 163
Index	100	105	148	133
Closing stocks as a percentage of production	4,8 %	4,9 %	8,3 %	8,6 %
Index	100	103	174	180

Source: Questionnaire replies from the sampled Union producers.

- (229) Stocks were on the rise both in nominal terms (+ 33 %) and as a percentage of production (+ 80 %). This was linked to the decrease of the sales of the Union industry both on the Union market and on export markets. The industry indicated that it had to maintain some volume of activity and was therefore not able to reduce production in line with the decrease of sales.

- (230) When examining separately the part of the Union industry which had not concluded LTAs with its customers, the Commission noted that stocks increased more over the period considered ([5–15] percentage points above the average growth of stocks). In contrast, when examining separately GrafTech France, the stocks increased to a lesser extent ([5–15] percentage points below the average growth of stocks). This further demonstrates that the existence of LTAs had (and still has) a significant positive impact on economic indicators of only one Union producer.

4.4.3.4. Profitability, cash flow, investments, return on investments and ability to raise capital

- (231) Profitability, cash flow, investments and return on investments of the sampled Union producers developed over the period considered as follows:

Table 10

Profitability, cash flow, investments and return on investments

	2017	2018	2019	Investigation period	Q4 of the investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	8,0	52,7	43,8	16,1	2,6
<i>Index</i>	100	658	547	201	33
Cash flow (EUR)	28 215 108	488 291 957	380 447 375	60 964 690	–22 330 357
<i>Index</i>	100	1 731	1 348	216	– 356
Investments (EUR)	12 662 440	30 259 283	21 600 910	18 670 327	6 542 529
<i>Index</i>	100	239	171	147	208(*)
Return on investments (%)	17,8	552,4	366,5	–3,9	–32,6
<i>Index</i>	100	3 100	2 057	–22	– 183

Source: Questionnaire replies from the sampled Union producers.

(*) On an annual basis.

- (232) The Commission established the profitability of the sampled Union producers 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. Over the period considered, profits skyrocketed in 2018–2019, before dropping steeply and turning into double-digit losses for all Union producers, except GrafTech France. The exceptionally high profits of the years 2018–2019 are linked to the very special situation of these years, characterised by market imbalances very favourable to the graphite electrodes producers. In 2020, in the context of the sudden drop in demand linked to the COVID-19 pandemic, the increased competition of Chinese exports completely reversed the situation and profits hit rock bottom.
- (233) Overall, profitability of sales in the Union increased from + 8,0 % in 2017 to + 16,1 % for the investigation period. However, the situation is highly dissimilar for the different parts of the industry.
- (234) In the first instance, the Commission analysed the situation of the part of the Union industry that had not concluded LTAs and was therefore fully exposed to the changed market dynamics including increased volumes of dumped imports from China. The sampled Union producers falling under this category displayed a sharp drop of their profitability during the period considered from + [5–15] % in 2017 to [– 10 to – 20] % during the IP.

- (235) The Commission then examined GrafTech France. This company is benefiting from LTAs and accordingly still experienced high profits in the IP. The Commission noted however that some of GrafTech France's sales of graphite electrodes also took place on the open market. The prices for those transactions were significantly lower than its transactions under LTAs. When comparing PCN by PCN the prices of GrafTech France's non-LTA transactions with the prices of the other sampled Union producers, it appeared that some displayed higher prices and some lower prices. On average, the prices of these transactions were very close to the prices of the other sampled Union producers. The Commission concluded that in these open market transactions, prices were comparable to the prices of the other sampled Union producers. The competitive pressure of low-priced imports from China was therefore also felt by GrafTech France when not shielded from competition by virtue of the LTAs.
- (236) The Commission noted moreover that the situation of the whole Union industry, including GrafTech France, was worsening at the end of the IP, as shown in particular by the profitability figures for the fourth quarter of the IP, which are well below the profit margin usual for this sector under normal conditions of competition. The worsening of the situation of the industry is mainly due to the worsening of the situation of the part of the industry not covered by LTAs.
- (237) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow developed in a similar manner to profitability: a tremendous increase in 2018–2019 followed by a drastic fall in 2020. The same explaining factors are at play. When examining cash flow for different parts of the Union industry, the same remarks can be made about the disparities between GrafTech France (large cash flow) and the rest of the Union industry (negative cash flow).
- (238) Investments increased over the period considered (+ 47 %). The large profits of the years 2018–2019 enabled the Union industry to invest in their production facilities. Investments decreased again toward the end of the period considered, after the COVID-19 pandemic.
- (239) When analysing the different parts of the industry, no clear pattern was observed. GrafTech France invested more in the middle of the period concerned, while the rest of the industry invested more toward the end of the period.
- (240) The return on investments is the profit in percentage of the net book value of investments. It developed in a similar manner to profitability: a tremendous increase in 2018–2019 followed by a drastic fall in 2020.

4.4.4. Conclusion on injury

- (241) The main macro-indicators showed a negative trend during the period considered: Union sales volume dropped by 33 %, production by 30 % and the Union industry lost market share. Against a background of a shrinking market, the volume of imports from China increased by 12 % over the period considered and its market share by 49 %, reaching 35,8 % in the investigation period. Import prices from China were consistently and significantly below Union industry prices and costs since 2019.
- (242) As regards the micro-indicators, having regard to the industry as a whole, the Union industry showed a mixed picture: profitability of sales in the Union (from + 8,0 % to + 16,1 %) as well as cash flow (+ 116 %) increased, but stocks (+ 33 %) and return on investment (from + 17,8 % to – 3,9 %), all deteriorated significantly.
- (243) However, these aggregated figures are hiding a very disparate situation which affects the market dynamics and the economic relationship among the various producers in the Union. For the reasons stated in recitals (216) to (218), the Commission examined separately the part of the Union industry which had not concluded LTAs with its customers and is operating on the open market (thus, subject to ongoing competition with the dumped imports), on the one hand, and the part of the Union industry which had concluded LTAs with its customers in the period 2017–2018 (that is GrafTech), on the other hand.
- (244) For two out of three sampled Union producers which had not concluded LTAs with their customers, all micro indicators deteriorated significantly: the profitability of sales in the Union dropped from [5–10] % in 2017 to – [10–20] % in 2020, stocks increased (+ [30–60] %), return on investment decreased from [20–50] % to – [200–250] %, and cash flow fell (– [220–260] %).
- (245) On the other hand, the situation of third sampled Union producer, GrafTech France, was different and exceptional. GrafTech France experienced large profits and cash flow during the IP.

- (246) In this respect, the investigation exposed the role of LTAs between GrafTech France and its clients. It appeared that a very large portion of GrafTech France sales during the investigation period were realised under LTAs. As a consequence, GrafTech France's prices were significantly higher than its competitors' during the investigation period. These LTAs had as an effect to disconnect GrafTech France sales prices from the competitive Union market prices. As a matter of fact, GrafTech France, and GrafTech more generally, were to a large extent shielded from external factors such as the drop in demand and the increasing competition of low-priced imports from China due to its LTAs that it concluded with its customers.
- (247) This was however a temporary and exceptional situation as some of the LTAs have already expired and the majority of the remaining LTAs will expire at the end of 2022.
- (248) However, already in the fourth quarter of the investigation period, a further deterioration could already be observed as profitability figures (average of sampled companies, including GrafTech France) dropped to 2,6 %. Once all LTAs expire, GrafTech will have to operate under the same market conditions as the other Union producers.
- (249) The Commission further examined the economic relationship between the part of the Union industry, which had not concluded LTAs with its customers, on the one hand, and the part of the Union industry, which had concluded LTAs with its customers (that is GrafTech France), on the other hand, in order to establish whether the healthier part of the industry would follow the other part of the industry and the Union industry as a whole into the already negative trend observed during the period concerned.
- (250) Looking at production, all three sampled producers informed the Commission that they were producing the same grade of electrodes (UHP-grade electrodes). The range of graphite electrodes produced by these three sampled producers covered diameters from 500 to 720 mm and length above 1 651 cm (and especially above 1 951 cm). The three producers produced in high volumes electrodes around the diameters of 600 mm and 700 mm. The Commission could not establish a different production pattern between the part of the Union industry that had not concluded LTAs with its customers, and GrafTech France.
- (251) Looking at the costs, the costs of production for the sampled Union producers amounted to about EUR 5 000 during the IP. No significant difference was observed between the three sampled producers. Their costs of production were all in the range of ± 10 % around this average.
- (252) The Commission also noted that for the part of its sales considered not to be under LTAs, GrafTech France was selling at prices very close to the ones of the rest of the industry (see recital (235)). When not shielded by its LTAs, GrafTech France was therefore also clearly experiencing the pressure of imports at low prices from China.
- (253) Therefore, the production sold in the Union market outside the LTAs is representative of the Union industry as a whole. This is because the LTAs are the only elements, which differentiate one Union producer from the rest of the Union industry. However, the relief the LTAs provide to that producer is of temporary nature and does not reflect the overall market dynamics in the investigation period, which is characterised by a continued increase of low-priced Chinese imports. Without the LTAs, even GrafTech France is suffering from the dumped imports (see recital (235)). In view of the fact that GrafTech France's LTAs are due to expire soon, it can be envisaged that GrafTech France will join the same negative trends already established for the other part of the Union industry, and thus for the Union industry as a whole.
- (254) On the basis of the above, the Commission concluded at this stage of the proceeding that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation. The profitable part of the industry will not be able to positively influence the non-profitable part, which is suffering tremendous competitive pressure from low-priced imports from China. Furthermore, when looking at the data of the fourth quarter of the investigation period, a further deterioration of the economic situation of the Union industry as a whole can already be observed. It is expected that these downward trends will be reinforced once the LTAs of GrafTech will expire, also in view of the significant rate of increase of dumped imports at prices, which consistently undercut Union prices significantly, and the increase of the production capacity in the PRC over the last years.

5. CAUSATION

- (255) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the country concerned caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the dumped

imports from the country concerned was not attributed to the dumped imports. These factors were the COVID-19 pandemic, the end of the 2017–2018 crisis, the obsolescence of the Union industry, imports from other countries, export performance of the Union industry and Union consumption.

5.1. Effects of the dumped imports

- (256) The volume of imports from China increased by 12 % over the period considered from 42 256 tonnes in 2017 to 47 429 tonnes in 2020. During the same period, their market share increased by 49 %, reaching 35,8 % in the investigation period. These increasing imports were made at prices significantly lower than those of the Union industry during the second half of the period considered (2019–2020). This strongly impacted the Union industry in the investigation period, which saw its sales drop from 118 025 tonnes in 2018 to 91 949 tonnes in 2019 and 70 970 tonnes in 2020. This resulted in a very strong drop in profitability for all sampled Union producers except for the one who has LTAs, from profits (of + [5–10] % in 2017) to heavy losses (– [10–20] % in 2020), and the consequent deterioration of other financial indicators such as level of inventories, return on investment and cashflow.
- (257) It is therefore confirmed that – in view of the concomitance in time – the increased imports of graphite electrodes at dumped prices originating in China led to the deterioration of the economic and financial situation of the Union industry. Others factors will be considered in 5.2.

5.2. Effects of other factors

5.2.1. The COVID-19 pandemic

- (258) Imports of graphite electrodes from PRC at low prices were recorded from 2019 onwards. In 2019 and 2020, the average price of Chinese imports was respectively 57 % and 51 % of the average price of imports excluding China. Since 2019 (i.e. before the pandemic) Chinese imports started increasing, in a period of decreasing consumption in the Union. This resulted in a consistent increase of Chinese imports since 2018, also in terms of market share. Therefore, the decrease in consumption because of the pandemic did not attenuate the causal link between the dumped imports and the injury of the Union industry.

5.2.2. The end of the 2017–2019 peak period

- (259) After the 2017–2019 period, both domestic and import prices went down. However, as mentioned above, the Chinese prices have decreased at a faster pace than the average of third countries imports excluding China (– 50 % in 2019 and – 57 % in 2020 as compared to – 12 % and – 51 % respectively). Therefore, the price decrease worldwide did not contribute to the injury of the Union industry.

5.2.3. The obsolescence of the Union industry

- (260) While some Union producers may be lagging behind in terms of equipment, it is a dynamic industry that increased its investments to increase their capacity, adapt its production equipment and acquire the latest technology. Investment increased by 47 % during the period considered.

5.2.4. Imports from third countries

- (261) The volume of imports from other third countries developed over the period considered as follows:

Table 11

Imports from third countries

Country		2017	2018	2019	Investigation period
India	Volume (tonnes)	5 662	6 212	3 700	2 211
	Index	100	110	65	39
	Market share (%)	3,2	3,4	2,4	1,7
	Average price (EUR)	2 339	13 709	10 018	4 072
	Index	100	586	428	174

Mexico	Volume (tonnes)	2 865	1 379	12	896
	<i>Index</i>	100	48	0,4	31
	Market share (%)	1,6	0,8	0	0,7
	Average price (EUR)	2 218	2 525	3 344	3 976
	<i>Index</i>	100	114	151	179
Russia	Volume (tonnes)	4 118	5 244	8 092	5 485
	<i>Index</i>	100	127	197	133
	Market share (%)	2,3	2,9	5,3	4,1
	Average price (EUR)	2 382	9 055	6 879	3 578
	<i>Index</i>	100	380	289	150
USA	Volume (tonnes)	9 689	3 359	1 860	2 950
	<i>Index</i>	100	35	19	30
	Market share (%)	5,5	1,9	1,2	2,2
	Average price (EUR)	2 398	7 997	11 376	5 025
	<i>Index</i>	100	333	474	210
Other third countries	Volume (tonnes)	5 629	3 671	2 162	2 514
	<i>Index</i>	100	65	38	45
	Market share (%)	3,2	2,0	1,4	1,9
	Average price (EUR)	2 427	7 435	9 057	4 285
	<i>Index</i>	100	306	373	177
Total of all third countries except the country concerned	Volume (tonnes)	27 962	19 866	15 826	14 055
	<i>Index</i>	100	71	57	50
	Market share (%)	15,9	11,0	10,3	10,6
	Average price (EUR)	2 371	9 579	8 436	4 111
	<i>Index</i>	100	404	356	173

Source: Eurostat(Comext).

- (262) The market share of third countries except the country concerned was at a low levels (around 10–11 %) and remained stable during the period 2018–2020. This means that, in absolute volumes, it decreased in proportion to the decrease in the Union consumption.

- (263) The prices of import from third countries except the country concerned were on average over the period considered at the same levels as the prices of the Union industry. During the investigation period, prices were however, 31 % lower than the Union industry prices, which was the lowest level that was reached in relative terms compared to Union industry prices during the period considered. This is in stark contrast with the prices of Chinese imports, which decreased significantly in 2020 and were 65 % lower than the Union industry prices during the investigation period. However, prices vary depending on the specifications of the electrodes and, though comparing average prices give some indication, such comparison cannot replace a price comparison on a PCN basis.
- (264) Therefore, it was concluded that imports from other countries did not contribute to the injury of the Union industry as they were made at significantly higher prices than Chinese imports.

5.2.5. Export performance of the Union industry

- (265) The volume of exports of the Union producers developed over the period considered as follows:

Table 12

Export performance of the Union producers

	2017	2018	2019	Investigation period
Export volume (tonnes)	134 311	132 850	124 460	102 222
Index	100	99	93	76
Average price (EUR/tonne)	2 377	8 134	9 186	5 660
Index	100	342	386	238

Source: Questionnaire replies from the sampled Union producers and the Union industry.

- (266) During the period considered, Union industry exports were continuously decreasing (– 24 % over the period). The Union industry pointed to the competition of Chinese exports, which is taking place not only on the domestic market but also on third countries markets.
- (267) Overall the export performance showed similar trends as those for the sales of the Union industry on the Union market, but export sales, in relative terms, decreased less than sales on the Union market. On that basis, the Commission provisionally concluded that the decrease in export performance did not contribute to the injury.

5.2.6. Consumption

- (268) As shown in Table 1, over the period considered, the Union consumption of graphite electrodes decreased by 25 %. This was linked to the COVID-19 pandemic whose impact is analysed in recital (258). At the same times, Union industry sales on the EU market fell by 33 %. On that basis, the Commission provisionally concluded that the evolution of consumption did not contribute to the injury of the Union industry.

5.2.7. Captive use

- (269) From the information provided by the sampled companies, there were no sales to related companies in the Union, but sales were made to related companies in third countries. These sales represented – depending of the year considered – between 5 and 11 % of the total sales in volume. On that basis, the Commission provisionally concluded that the role of the captive consumption evolution on the injury suffered by the Union industry, if any, was limited.

5.3. Conclusion on causation

- (270) Chinese import prices were significantly lower than Union industry prices and costs since 2019. The investigation showed a weighted average undercutting margin of 51,2 %. During the same period, the market share of PRC producers increased. Over the period considered, the volume of imports from China increased by 12 % and its market share increased by 49 %, reaching 35,8 % in the investigation period. This increasing market presence was to the detriment of the Union industry. The market share of the Union industry decreased from its peak of 65,2 % in 2018 to 53,6 % in 2020. It led to the negative development in the economic situation of the Union industry.
- (271) The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports.
- (272) The COVID-19 pandemic and the related drop in the Union and global consumption of graphite electrodes weighed negatively on the Union industry's developments but was considered as a temporary factor. Before the pandemic and at the end of the period considered the situation of the Union industry deteriorated. There was also an asymmetry, as – in spite of the economic downturn – imports from China did not abate. To the contrary, they were continuously increasing over the years 2018–2020, a period of diminishing consumption.
- (273) The effect of the end of the 2017–2018 crisis, the obsolescence of the Union industry and imports from other countries on the Union industry's negative developments could only be very limited at most.
- (274) Based on the above, the Commission concluded at this stage that the dumped imports from the country concerned caused material injury to the Union industry and that the other factors, considered individually or collectively, did not attenuate the causal link between the dumped imports and the material injury.

6. UNION INTEREST

- (275) Having regard to Article 7(2) of the basic Regulation, the Commission examined whether it could clearly conclude that it was not in the Union interest to adopt measures in this case, despite the determination of injurious dumping, in accordance with Article 21 of the basic Regulation. 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 traders, users and final consumers.

6.1. Interest of the Union industry

- (276) The Union industry is composed of five groups producing graphite electrodes in the Union. All groups cooperated fully in the investigation.
- (277) The imposition of measures would allow the Union industry to recover lost market share, increase capacity utilisation, increase prices to sustainable levels and improve profitability to levels to be expected under normal conditions of competition.
- (278) While part of the industry is temporarily shielded from dumped imports from China by LTAs, most of these agreements are to expire by the end of 2022 at the latest. Any renewal, at least under the current conditions, is unlikely in view of the steep drop in prices of graphite electrodes globally since 2019.
- (279) The non-imposition of measures would likely lead to further deterioration of profitability, which was already negative for all but one sampled Union producer who is temporarily shielded from the effects of dumped imports because it concluded LTAs with its customers in the period 2017–2018. The non-imposition of measures could lead to the closure of production facilities and dismissals thus endangering the viability of the Union industry.
- (280) The Commission therefore provisionally concluded that the imposition of provisional measures is in the interest of the Union industry.

6.2. Interest of unrelated importers and traders

- (281) Ten unrelated importers, representing 63 % in volume of Chinese imports, submitted a sampling form. The weighted average of the profit of the sampled importers during the investigation period was around 4 %.

- (282) These importers were against the imposition of measures. They claimed that the Union producers have no ability to cover the existing Union demand and product variety, especially for small diameter electrodes (up to 400–450 mm). Moreover, they indicated that the possibilities to switch to other sources of supply are marginal. Third countries graphite electrodes producers have usually their own sales departments and have direct contact with Union customers.
- (283) The Commission noted that quality control of graphite electrodes and the technical service provided were some of the key assets of the Union importers. It is therefore likely that some of the additional costs can be passed to the final users of graphite electrodes. The Commission therefore considered that the imposition of anti-dumping measures might have an impact, although limited, on the results of the Union importers.
- (284) Thus any negative impact of measures on unrelated importers as a whole is expected to be limited and not to outweigh the positive effect of measures on Union producers.

6.3. Interest of users

- (285) Fifteen users registered as interested parties and questionnaires were received from eight users. These users mainly represent the Union steel industry. The downstream sectors (and especially the steel industry) are larger in terms of turnover and employment than the graphite electrodes industry. According to Eurofer figures, in 2019, the steel industry was directly employing 330 000 people and indirectly 1 620 000 people.
- (286) Users raised concerns that the imposition of measures would be imposed, could have a negative impact on their competitiveness. The cost of graphite electrodes is estimated to be between 1 % and 5 % of the cost of the production of steel. This means that measures will not have a significant impact on the cost of production of the steel producers.
- (287) Moreover, the complainants and the press reported that steel prices are on the rise as demand is exceeding supply. This may allow the steel industry to pass on any additional costs, or a part thereof, to the downstream users.
- (288) The Union steel industry also argued that Union producers were not able to satisfy demand during the investigation period. Regarding the security of supply, the Union industry displays sufficient spare capacity. During the period considered the Union production capacity increased from 255 500 tonnes to 294 900 tonnes (+ 15 %). The capacity utilisation was only at 55,6 % during the investigation period. Other countries, such as India, Mexico, Russia and the USA, are possible alternative sources of supply, though not yet well established on the Union market. These four countries represented together in 2020 11 % of the Union supplies.
- (289) The Commission therefore provisionally concluded that negative impacts of measures on users are expected to be limited and not to outweigh the positive effect of measures on Union producers.

6.4. Other factors

- (290) Furthermore, graphite electrodes contribute to the environmental goal of the Union and specifically the fight against climate change. Graphite electrodes are an essential component of the electric arc furnaces, which recycle steel. Electric arc furnace produce steel with lowered CO₂ emissions as compared to traditional method of steel production based on blast furnace.
- (291) Some interested parties claimed that imposing measures would have a negative impact on competition in a sector that is allegedly very concentrated. The Commission noted however that there are five Union groups supplying the market. The Commission also observes that Sangraf Italy is a new Union producer (although noting that the facilities are not new but formerly operated by SGL Group). The Commission therefore concluded that no negative impact of measures on competition within the Union could be expected at this stage.

6.5. Conclusion on Union interest

- (292) Based on the above, the Commission concluded that there were no compelling reasons indicating that it was not in the Union interest to impose measures on imports of graphite electrode systems originating in China at this stage of the investigation.

7. LEVEL OF MEASURES

- (293) In order to determine the level of the measures, the Commission examined whether a duty lower than the margin of dumping would be sufficient to remove the injury caused by dumped imports to the Union industry.
- (294) In the present case, the complainants claimed the existence of raw material distortions within the meaning of Article 7(2a) of the basic Regulation. Thus, in order to conduct the assessment on the appropriate level of measures, the Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry. Then it examined whether this amount of duty would be adequate to remove the injury taken into account the alleged presence of raw material distortions in accordance with Article 7(2a) of the basic Regulation.

7.1. Underselling margin

- (295) The Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry in the absence of distortions under Article 7(2a) of the basic Regulation. In this case, the injury would be eliminated if the Union industry was able to cover its costs of production, including those costs *resulting from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia*, and to obtain a reasonable profit ('target profit').
- (296) In accordance with Article 7(2c) of the basic Regulation, for establishing the target profit, the Commission took into account the following factors:
- the level of profitability before the increase of imports from the country concerned,
 - the level of profitability needed to cover full costs and investments, research and development (R & D) and innovation, and
 - the level of profitability to be expected under normal conditions of competition.
- (297) Such profit margin should not be lower than 6 %.
- (298) The complainants used as target profit 8 % in the complaint, but considered that this is a conservative estimate and that a higher profit margin should be expected in the absence of injurious imports.
- (299) In the previous investigation against imports of graphite electrode systems from India, the Commission concluded that the profit margin that can reasonably be deemed to represent the financial situation of the Community industry in the absence of injurious dumping should be set at 8 % for the purpose of the calculation of the injury margin. This was also the profit obtained by the sampled Union producers in 2017.
- (300) In view of the above considerations, the profit margin was established at 8 % in accordance with the provision of Article 7(2c).
- (301) In accordance with Article 7(2d) of the basic Regulation, as a final step, the Commission assessed the future costs resulting from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia that the Union industry will incur during the period of the application of the measure pursuant to Article 11(2). The Commission established an additional cost ranging from EUR 0 to 42 per tonne, which was added to the non-injurious price for the sampled Union producers concerned. A note to the file on how the Commission established this additional cost is available in the file for inspection by interested parties.
- (302) These costs comprised the additional future costs to ensure compliance with the EU Emissions Trading System (EU ETS). The EU ETS is a cornerstone of the EU's policy to comply with Multilateral Environmental Agreements. Such additional costs were calculated on the basis of the estimated EU Allowances (EUAs) which will have to be purchased during the period of the application of the measures (2021 to 2025). The additional costs also took account of indirect CO₂ costs stemming from an increase in electricity prices over the period 2021 to 2025 linked to the EU ETS and the forecasted prices of EUAs.
- (303) The source for these EUAs prices forecasts is a Bloomberg New Energy Finance extraction dated 30 July 2021. The average projected price for EUAs for this period is 55 EUR/tonne of CO₂ emitted.
- (304) On this basis, the Commission calculated a non-injurious price of the like product for the Union industry.

- (305) The Commission then determined the injury elimination level on the basis of a comparison of the weighted average import price of the cooperating exporting producers, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the sampled Union producers on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.
- (306) In terms of the residual margin, bearing in mind that cooperation of the Chinese exporters was low as explained in recital (179) above, the Commission considered it appropriate to set the residual margin on the basis of facts available. This margin was set at the level of the highest underselling margin established for a product type sold in representative quantities by the exporting producer with the highest underselling margin found. The residual underselling margin so calculated was set at a level of 153,6 %.
- (307) The result of these calculations is shown in the table below.

Company	Dumping margin	Underselling margin
Fangda group composed of four producers: Fangda Carbon New Material Co., Ltd ; Fushun Carbon Co., Ltd; Chengdu Rongguang Carbon Co., Ltd; Hefei Carbon Co., Ltd	24,5 %	139,7 %
Liaoning Dantan Technology Group Co., Ltd	17,5 %	99,5 %
Nantong Yangzi Carbon Co., Ltd	24,5 %	150,5 %
Other cooperating companies	21,6 %	123,6 %
All other companies	66,5 %	159,3 %

7.2. Raw material distortions

- (308) As explained in the Notice of Initiation, the complainant provided the Commission sufficient evidence that there are raw material distortions in the country concerned regarding the product under investigation. Therefore, in accordance with Article 7(2a) of the basic Regulation, this investigation examined the alleged distortions to assess whether, if relevant, a duty lower than the margin of dumping would be sufficient to remove injury.
- (309) However, as the margins adequate to remove injury are higher than the dumping margins found, the Commission considered that, at this stage, it was not necessary to address this aspect.

8. PROVISIONAL ANTI-DUMPING MEASURES

- (310) On the basis of the conclusions reached by the Commission on dumping, injury, causation and Union interest, provisional measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.
- (311) Provisional anti-dumping measures should be imposed on imports of graphite electrodes originating in the People's Republic of China, in accordance with the lesser duty rule in Article 7(2) of the basic Regulation.
- (312) The Commission compared the underselling margins and the dumping margins as set out in recital (307) above. The amount of the duties was set at the level of the lower of the dumping and the underselling margins.
- (313) On the basis of the above, the provisional anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Provisional dumping margin
Fangda group composed of four producers: Fangda Carbon New Material Co., Ltd; Fushun Carbon Co., Ltd; Chengdu Rongguang Carbon Co., Ltd; Hefei Carbon Co., Ltd	24,5 %
Liaoning Dantan Technology Group Co., Ltd	17,5 %

Nantong Yangzi Carbon Co., Ltd	24,5 %
Other cooperating companies	21,6 %
All other companies	66,5 %

- (314) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflect the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imports of the product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.
- (315) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ⁽⁸³⁾. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a regulation about the change of name will be published in the *Official Journal of the European Union*.
- (316) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies should apply not only to the non-cooperating exporting producers in this investigation, but to the producers which did not have exports to the Union during the investigation period.
- (317) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.
- (318) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this regulation, the customs authorities of Member States must carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the lower rate of duty is justified, in compliance with customs law.
- (319) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, *inter alia*, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.

9. INFORMATION AT PROVISIONAL STAGE

- (320) In accordance with Article 19a of the basic Regulation, the Commission informed interested parties about the planned imposition of provisional duties. This information was also made available to the general public via DG TRADE's website. Interested parties were given three working days to provide comments on the accuracy of the calculations specifically disclosed to them.

⁽⁸³⁾ European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170, 1040 Brussels, Belgium.

- (321) Comments on the accuracy of the calculations were received. The comments made by Liaoning Dantan Technology Group Co., Ltd and Fangda Carbon New Material Co., Ltd did not affect the accuracy of the calculations. Furthermore, the companies Misano S.p.A. and COMAP SAS (an importer and a user of the product concerned) made general comments following the pre-disclosure that did not relate to the accuracy of the calculations. Those comments will therefore only be addressed at definitive stage.

10. FINAL PROVISIONS

- (322) In the interests of sound administration, the Commission will invite the interested parties to submit written comments and/or to request a hearing with the Commission and/or the Hearing Officer in trade proceedings within a fixed deadline.
- (323) The findings concerning the imposition of provisional duties are provisional and may be amended at the definitive stage of the investigation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is imposed on imports of graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,5 g/cm³ or more and an electrical resistance of 7,0 µΩ.m or less, whether or not equipped with nipples, currently falling under CN code ex 8545 11 00 (TARIC codes 8545 11 00 10 and 8545 11 00 15), and originating in the People's Republic of China.

2. The rates of the provisional anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed below, shall be as follows:

Country	Company	Provisional anti-dumping duty	TARIC additional code
PRC	Fangda group composed of four producers: Fangda Carbon New Material Co., Ltd; Fushun Carbon Co., Ltd; Chengdu Rongguang Carbon Co., Ltd; Hefei Carbon Co., Ltd	24,5 %	C731
PRC	Liaoning Dantan Technology Group Co., Ltd.	17,5 %	C732
PRC	Nantong Yangzi Carbon Co., Ltd.	24,5 %	C733
PRC	Other cooperating companies listed in Annex	21,6 %	
PRC	All other companies	66,5 %	C999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of (product concerned) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in [country concerned]. I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty applicable to all other companies shall apply.

4. The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security deposit equivalent to the amount of the provisional duty.

5. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

1. Interested parties shall submit their written comments on this regulation to the Commission within 15 calendar days of the date of entry into force of this Regulation.
2. Interested parties wishing to request a hearing with the Commission shall do so within 5 calendar days of the date of entry into force of this Regulation.
3. Interested parties wishing to request a hearing with the Hearing Officer in trade proceedings are invited to do so within 5 calendar days of the date of entry into force of this Regulation. The Hearing Officer shall examine requests submitted outside this time limit and may decide whether to accept to such requests if appropriate.

Article 3

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 1 shall apply for a period of six months.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 14 October 2021.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Cooperating exporting producers not sampled

Country	Name	TARIC additional code
People's Republic of China	ANSHAN CARBON CO., LTD	C 735
People's Republic of China	ASAHI FINE CARBON DALIAN CO., LTD	C 736
People's Republic of China	DALIAN JINGYI CARBON CO., LTD	C 738
People's Republic of China	DATONG YU LIN DE GRAPHITE NEW MATERIAL CO., LTD	C 739
People's Republic of China	DECHANG SHIDA CARBON CO., LTD	C 740
People's Republic of China	Fushun Jinly Petrochemical Carbon Co., Ltd	C 741
People's Republic of China	FUSHUN ORIENTAL CARBON CO., LTD	C 742
People's Republic of China	Fushun Xinxinda Furnace Charge Factory	C 743
People's Republic of China	Henan Sangraf Carbon Technologies Co., Limited	C 744
People's Republic of China	Jiangsu Jianglong New Energy Technology Co., Ltd	C 746
People's Republic of China	JILIN CARBON CO., LTD	C 747
People's Republic of China	Jilin City Chengxin Carbon Co., Ltd	C 748
People's Republic of China	JILIN CITY ZHAOCHEN CARBON CO., LTD	C 749
People's Republic of China	Kaifeng Pingmei New Carbon Materials Technology Co., Ltd	C 750
People's Republic of China	LIAONING SINCERE CARBON NEW MATERIAL CO., LTD	C 751
People's Republic of China	LIAOYANG CARBON CO., LTD	C 752
People's Republic of China	LIAOYANG SHOUSHAN CARBON FACTORY	C 753
People's Republic of China	LINGHAI HONGFENG CARBON PRODUCTS CO., LTD	C 754
People's Republic of China	MEISHAN SHIDA NEW MATERIAL CO., LTD	C 755
People's Republic of China	SHANDONG ASAHI GRAPHITE NEW MATERIAL TECHNOLOGY CO., LTD	C 756
People's Republic of China	SHANDONG BASAN GRAPHITE NEW MATERIAL PLANT	C 757
People's Republic of China	SHANXI JUXIAN GRAPHITE NEW MATERIALS CO., LTD	C 758
People's Republic of China	SHANXI SINSAGE CARBON MATERIAL TECHNOLOGY CO., LTD	C 759
People's Republic of China	TIANJIN KIMWAN CARBON TECHNOLOGY AND DEVELOPMENT CO., LTD	C 760
People's Republic of China	XINGHE COUNTY MUZI CARBON CO., LTD	C 762

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2021/1813

of 14 October 2021

amending Implementing Decision (EU) 2019/436 as regards harmonised standards for aircraft ground support equipment, cranes, mining tools, and other machinery drafted in support of Directive 2006/42/EC of the European Parliament and of the Council and repealing Commission Implementing Decision (EU) 2015/27

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European Standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council ⁽¹⁾, and in particular Article 10(6) thereof,

Having regard to Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC ⁽²⁾, and in particular Article 7(3) and Article 10 thereof,

Whereas:

- (1) In accordance with Article 7 of Directive 2006/42/EC machinery manufactured in conformity with a harmonised standard, the reference to which has been published in the *Official Journal of the European Union*, is to be presumed to comply with the essential health and safety requirements covered by such a harmonised standard.
- (2) By letter M/396 of 19 December 2006, the Commission made a request to the European Committee for Standardisation (CEN) and the European Committee for Electrotechnical Standardisation (Cenelec) ('the request') for the drafting, the revision and the completion of the work on harmonised standards in support of Directive 2006/42/EC to take account of changes introduced by that Directive in comparison with Directive 98/37/EC of the European Parliament and of the Council ⁽³⁾.
- (3) On the basis of the request, CEN drafted new harmonised standards EN 1459-5:2020 on safety requirements for attachment interfaces for variable reach trucks, as well as EN 16808:2020 on safety requirements for manual elevators in the petroleum, petrochemical and natural gas industries.
- (4) On the basis of the request, CEN and Cenelec revised existing harmonised standards, the references of which are published in the C series of the *Official Journal of the European Union* by Commission Communication 2018/C092/01 ⁽⁴⁾ to adapt them to technological progress. This resulted in the adoption of the following new harmonised standards: EN 12312-7:2020 with specific requirements for aircraft ground support equipment; EN 13586:2020 on access requirements to cranes; EN 15011:2020 on bridge and gantry cranes; EN 15571:2020 on safety requirements for surface finishing machines for natural stone; EN 16564:2020 on requirements for bridge type sawing/milling machines including numerical control; EN 1804-1:2020 on support units and general

⁽¹⁾ OJ L 316, 14.11.2012, p. 12.

⁽²⁾ OJ L 157, 9.6.2006, p. 24.

⁽³⁾ Directive 98/37/EC of the European Parliament and of the Council of 22 June 1998 on the approximation of the laws of the Member States relating to machinery (OJ L 207, 23.7.1998, p. 1).

⁽⁴⁾ Commission communication in the framework of the implementation of the Directive 2006/42/EC of the European Parliament and of the Council on machinery, and amending Directive 95/16/EC (Publication of titles and references of harmonised standards under Union harmonisation legislation) (OJ C 92, 9.3.2018, p. 1).

requirements for hydraulic powered roof supports; EN 1804-2:2020 on power set legs and rams for hydraulic powered roof supports; EN 1804-3:2020 on hydraulic and electro hydraulic control systems for hydraulic powered roof supports; EN 1837:2020 on integral lightning of machines; EN 1974:2020 on safety and hygiene requirements for food processing machinery; EN 81-40:2020 on stairlifts and inclined lifting platforms intended for persons with impaired mobility; EN 1175:2020 on electrical and electronic requirements for industrial trucks; EN 12312-3:2017+A1:2020 on conveyor belt vehicles; EN ISO 16092-2:2020 on safety requirements for mechanical presses; EN ISO 16092-4:2020 on safety requirements for pneumatic presses; EN 16307-1:2020 with supplementary requirements for self-propelled industrial trucks, other than driverless trucks, variable-reach trucks and burden-carrier trucks; EN 16808:2020 on manual elevators; EN ISO 19085-10:2019/A11:2020 on building site saws; EN ISO 20430:2020 on injection moulding machines; EN IEC 62841-2-6:2020 on particular requirements for hand-held hammers with an amendment in EN IEC 62841-2-6:2020/A11:2020; as well as EN ISO 11553-1:2020 on laser safety requirements with an amendment in EN ISO 11553-1:2020/A11:2020.

- (5) In addition, on the basis of the request, CEN and Cenelec revised EN 12999:2011+A2:2018, the reference of which is included in Annex I to Commission Implementing Decision (EU) 2019/436 ⁽⁵⁾, to EN 12999:2020 on loader cranes in order to adapt it to technological progress.
- (6) CEN and Cenelec also amended EN 16851:2017 on light crane systems and EN 16486:2014 on compactors, the references of which have been published by Communication 2018/C092/01, respectively to EN 16851:2017+A1:2020 on light crane systems and 16486:2014+A1:2020 on compactors.
- (7) The Commission together with CEN and Cenelec has assessed whether the standards drafted, revised and amended by CEN and Cenelec comply with the request.
- (8) The harmonised standards drafted, revised and amended by CEN and Cenelec on the basis of the request satisfy the safety requirements which they aim to cover and which are set out in Directive 2006/42/EC. It is therefore appropriate to publish the references of those standards in the *Official Journal of the European Union*, together with references of any relevant amending or correcting standards thereto.
- (9) The reference of standard EN 474-1:2006+A4:2013 was published in the *Official Journal of the European Union* with a restriction by Commission Implementing Decision (EU) 2015/27 ⁽⁶⁾ that excluded the presumption of conformity provided by the standard in relationship to the essential health and safety requirements 1.2.2 and 3.2.1 of Annex I to Directive 2006/42/EC.
- (10) Standard EN 474-1:2006+A4:2013 is withdrawn as of 19 September 2020, as provided for in Implementing Decision (EU) 2019/436. It is therefore appropriate to repeal Implementing Decision (EU) 2015/27.
- (11) CEN improved the standard in the version EN 474-1:2006+A5:2018. However, the new version failed to address the visibility concerns caused by the interplay of EN 474-1:2006+A5:2018 with part 5 of EN 474 series that cover specific requirements for hydraulic excavators. Therefore, standard EN 474-1:2006+A5:2018 did not fully meet the essential health and safety requirements set out in points 1.2.2 and 3.2.1 of Annex I to Directive 2006/42/EC. The harmonised standard was published with a new restriction in relation to its application with EN 474-5:2006+A3:2013 requirements for hydraulic excavators in the *Official Journal of the European Union* by Implementing Decision (EU) 2019/436.
- (12) CEN continued to improve EN 474-1 and presented an amended version of the harmonised standard EN 474-1:2006+A6:2019. The Commission together with CEN and Cenelec has assessed whether the standards EN 474-1:2006+A6:2019 meet the essential health and safety requirements set out in points 1.2.2 and 3.2.1 of Annex I to Directive 2006/42/EC and concluded that the restriction in relation to the visibility concerns of the standard could be lifted.

⁽⁵⁾ Commission Implementing Decision (EU) 2019/436 of 18 March 2019 on the harmonised standards for machinery drafted in support of Directive 2006/42/EC of the European Parliament and of the Council (OJ L 75, 19.3.2019, p. 108).

⁽⁶⁾ Commission Implementing Decision (EU) 2015/27 of 7 January 2015 on the publication with a restriction in the *Official Journal of the European Union* of the reference of standard EN 474-1:2006+A4:2013 on Earth-moving machinery under Directive 2006/42/EC of the European Parliament and of the Council (OJ L 4, 8.1.2015, p. 24).

- (13) However, while examining standard EN 474-1 new concerns were raised by the representatives of the committee established by Article 22 of Directive 2006/42/EC, regarding the quick coupling mechanism foreseen in annex B.2 of the standard that allows for the attachment of different tools to earth-moving machines. In particular, a high number of serious injuries and fatalities were recorded by the Member States due to the incorrect locking of tools and the absence of an active warning system or active monitoring system for the operator when engaging the machine with incorrectly attached tools such as backhoe buckets, grabs, vibratory plates. The number of accidents are particularly pronounced for certain machines such as excavators that change regularly different powered tools on a daily basis.
- (14) Having examined EN 474-1:2006+A6:2019, the Commission concluded that the standard fails to meet the essential healthy and safety requirement set out in points 1.2.2 and 3.2.1 of Annex I to Directive 2006/42/EC, namely the requirement of safety integration and that the driver can operate the machinery and its tools in their foreseeable conditions of use, in complete safety for the driver and the exposed persons. EN 474-1:2006+A6:2019 should therefore be published in the *Official Journal of the European Union* with restriction when applied in combination with parts EN 474-4:2006+A2:2012 requirements for backhoe loaders and EN 474-5:2006+A3:2013 requirements for hydraulic excavators.
- (15) Harmonised standard EN 62841-4-1:2020 on particular requirements for hand-held chain saws introduced significant changes to the specifications set out in harmonised standard EN 60745-2-13:2009. Hand-held chain saws, covered by EN 62841-4-1:2020 and EN 60745-2-13:2009, are a machinery listed in Annex IV to Directive 2006/42/EC that need to follow a stricter certification procedure involving a notified body in the absence of a harmonised standard covering all of the relevant essential health and safety requirements. Considering that the design of chain saws covered by harmonised standard EN 62841-4-1:2020 needs to be significantly modified and that harmonised standard EN 60745-2-13:2009 ceases to provide a presumption of conformity after 3 September 2022, a number of manufacturers may not be in a position to meet that deadline. It is therefore appropriate to exceptionally postpone the date of withdrawal of harmonised standard EN 60745-2-13:2009 for an additional 8 months. The entry concerning the harmonised standard EN 60745-2-13:2019 in Annex III to Implementing Decision (EU) 2019/436 should therefore be amended accordingly.
- (16) Reference of harmonised standard EN ISO 3743-2:2019 on methods for special reverberation test rooms was included in Annex I to Implementing Decision (EU) 2019/436 by Commission Implementing Decision 2021/377⁽⁷⁾. However, the previous version of that standard, EN ISO 3743-2:2009 was published by Communication 2018/C092/01, and has not been withdrawn. Considering that standard EN ISO 3743-2:2009 no longer represents the state of the art, it is appropriate to withdraw the reference of that standard from the *Official Journal of European Union*. In order to give manufacturers sufficient time to prepare for applying standard EN ISO 3743-2:2019, it is necessary to defer the withdrawal of EN ISO 3743-2:2009.
- (17) Implementing Decision (EU) 2019/436 provides in Annex I the references of harmonised standards conferring a presumption of conformity with Directive 2006/42/EC and provides in Annex II the references of harmonised standards conferring a presumption of conformity with restrictions. In order to ensure that the references of harmonised standards drafted in support of Directive 2006/42/EC are listed in one act, the references of the standards that are replaced, revised or amended by CEN and Cenelec should be included in Implementing Decision (EU) 2019/436.
- (18) Annex III to Implementing Decision (EU) 2019/436 lists the references of harmonised standards in support of Directive 2006/42/EC that are withdrawn from the C series of the *Official Journal of the European Union* as from the dates set out in that Annex.
- (19) As the result of the work by CEN and Cenelec on the basis of the Request, the following harmonised standards published in the C series of the *Official Journal of the European Union* have been replaced, revised or amended: EN 12312-7:2005+A1:2009; EN 13155:2003+A2:2009; EN 13586:2004+A1:2008; EN 15011:2011+A1:2014; EN 15571:2014; EN 15746-2:2010+A1:2011; EN 1804-1:2001+A1:2010; EN 1804-2:2001+A1:2010; EN 1804-3:2006+A1:2010; EN 1837:1999+A1:2009; EN 1974:1998+A1:2009; EN 60745-2-6:2010; EN IEC 62841-2-6:2020; EN ISO 11553-1:2008; EN ISO 11553-1:2020; EN 1175-1:1998+A1:2010; EN 1175-2:1998

⁽⁷⁾ Commission Implementing Decision (EU) 2021/377 of 2 March 2021 amending Implementing Decision (EU) 2019/436 on harmonised standards for machinery drafted in support of Directive 2006/42/EC of the European Parliament and of the Council (OJ L 72, 3.3.2021, p. 12).

+A1:2010; EN 1175-3:1998+A1:2010; EN 12312-3:2017; EN 13411-1:2002+A1:2008; EN 13411-2:2001+A1:2008; EN 13411-3:2004+A1:2008; EN 13411-4:2011; EN 13411-5:2003+A1:2008; EN 13411-6:2004+A1:2008; EN 13411-7:2006+A1:2008; EN 13411-8:2011; EN 16307-1:2013+A1:2015; EN 16486:2014; EN 201:2009; and EN 81-40:2008. It is therefore necessary to withdraw the references of those standards from the *Official Journal of the European Union* by including those references in Annex III to Implementing Decision (EU) 2019/436.

- (20) It is also necessary to withdraw the reference of harmonised standard EN 12999:2011+A2:2018 published by Implementing Decision (EU) 2019/436, given that the standard has been revised. It is therefore appropriate to delete the reference from Annex I to that Implementing Decision.
- (21) In order to give manufacturers sufficient time to prepare for application of the new, revised or amended standards, it is necessary to defer the withdrawal of the references of harmonised standards EN 12999:2011+A2:2018, EN 1175-1:1998+A1:2010, EN 1175-2:1998+A1:2010, EN 1175-3:1998+A1:2010, EN 12312-3:2017, EN 12312-7:2005+A1:2009, EN 13411-1:2002+A1:2008, EN 13411-2:2001+A1:2008, EN 13411-3:2004+A1:2008, EN 13411-4:2011, EN 13411-5:2003+A1:2008, EN 13411-6:2004+A1:2008, EN 13411-7:2006+A1:2008, EN 13411-8:2011, EN 13586:2004+A1:2008, EN 15011:2011+A1:2014, EN 16307-1:2013+A1:2015, EN 16486:2014, EN 16851:2017, EN 1804-1:2001+A1:2010, EN 1804-2:2001+A1:2010, EN 1804-3:2006+A1:2010, EN 1837:1999+A1:2009, EN 1974:1998+A1:2009, EN 201:2009, EN 60745-2-6:2010, EN 81-40:2008, EN ISO 11553-1:2008, and EN ISO 3743-2:2009.
- (22) Implementing Decision (EU) 2019/436 should therefore be amended accordingly.
- (23) Compliance with a harmonised standard confers a presumption of conformity with the corresponding essential requirements set out in Union harmonisation legislation from the date of publication of the reference of such standard in the *Official Journal of the European Union*. This Decision should therefore enter into force on the date of its publication,

HAS ADOPTED THIS DECISION:

Article 1

Implementing Decision (EU) 2019/436 is amended as follows:

- (1) Annex I is amended in accordance with Annex I to this Decision;
- (2) Annex II is amended in accordance with Annex II to this Decision;
- (3) Annex III is amended in accordance with Annex III to this Decision.

Article 2

Implementing Decision (EU) 2015/27 is repealed.

Article 3

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Point (1) of Annex I shall apply from 15 April 2023.

Done at Brussels, 14 October 2021.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX I

Annex I is amended as follows:

(1) row 10 is deleted;

(2) the following row 10a is inserted:

'10a.	EN 12999:2020 Cranes - Loader cranes	C';
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(3) the following rows are added:

'95.	EN 1837:2020 Safety of machinery - Integral lighting of machines	B
96.	EN ISO 11553-1:2020 Safety of machinery - Laser processing machines - Part 1: Laser safety requirements (ISO 11553-1:2020) EN ISO 11553-1:2020/A11:2020	B
97.	EN 81-40:2020 Safety rules for the construction and installation of lifts - Special lifts for the transport of persons and goods - Part 40: Stairlifts and inclined lifting platforms intended for persons with impaired mobility	C
98.	EN 1175:2020 Safety of industrial trucks - Electrical/electronic requirements	C
99.	EN 1459-5:2020 Rough-terrain trucks - Safety requirements and verification - Part 5: Attachment interface	C
100.	EN 1804-1:2020 Machines for underground mines - Safety requirements for hydraulic powered roof supports - Part 1: Support units and general requirements	C
101.	EN 1804-2:2020 Machines for underground mines - Safety requirements for hydraulic powered roof supports - Part 2: Power set legs and rams	C
102.	EN 1804-3:2020 Machines for underground mines - Safety requirements for hydraulic powered roof supports - Part 3: Hydraulic and electro hydraulic control systems	C
103.	EN 1974:2020 Food processing machinery - Slicing machines - Safety and hygiene requirements	C
104.	EN 12312-3:2017+A1:2020 Aircraft ground support equipment - Specific requirements - Part 3: Conveyor belt vehicles	C
105.	EN 12312-7:2020 Aircraft ground support equipment - Specific requirements - Part 7: Aircraft movement equipment	C

106.	EN 13586:2020 Cranes - Access	C
107.	EN 15011:2020 Cranes - Bridge and gantry cranes	C
108.	EN 15571:2020 Machines and plants for mining and tooling of natural stone - Safety - Requirements for surface-finishing machines	C
109.	EN ISO 16092-2:2020 Machine tools safety - Presses - Part 2: Safety requirement for mechanical presses (ISO 16092-2:2019)	C
110.	EN ISO 16092-4:2020 Machine tools safety - Presses - Part 4: Safety requirements for pneumatic presses (ISO 16092-4:2019)	C
111.	EN 16307-1:2020 Industrial trucks - Safety requirements and verification - Part 1: Supplementary requirements for self-propelled industrial trucks, other than driverless trucks, variable-reach trucks and burden-carrier trucks	C
112.	EN 16486:2014+A1:2020 Machines for compacting waste materials or recyclable fractions - Compactors - Safety requirements	C
113.	EN 16564:2020 Machines and plants for mining and tooling of natural stone - Safety - Requirements for bridge type sawing/milling machines, included numerical control (NC/CNC) versions	C
114.	EN 16808:2020 Petroleum, petrochemical and natural gas industries - Safety of machineries - Manual elevators	C
115.	EN 16851:2017+A1:2020 Cranes - Light crane systems	C
116.	EN ISO 19085-10:2019 Woodworking machines - Safety - Part 10: Building site saws (contractor saws) (ISO 19085-10:2018) EN ISO 19085-10:2019/A11:2020	C
117.	EN ISO 20430:2020 Plastics and rubber machines - Injection moulding machines - Safety requirements (ISO 20430:2020)	C
118.	EN IEC 62841-2-6:2020 Electric motor-operated hand-held tools, transportable tools and lawn and garden machinery - Safety - Part 2-6: Particular requirements for hand-held hammers (IEC 62841-2-6:2020, Modified) EN IEC 62841-2-6:2020/A11:2020	C'

ANNEX II

In Annex II row 1 is replaced by the following:

'1.	EN 474-1:2006+A6:2019 Earth-moving machinery — Safety — Part 1: General requirements Notice: With regards to Annex B.2 – Quick couplers, the harmonised standard EN 474-1:2006 +A6:2019 does not confer a presumption of conformity to the essential health and safety requirements 1.2.2 and 3.2.1 of Annex I to Directive 2006/42/EC when applied in combination with EN 474-4:2006+A2:2012 requirements for backhoe loaders and EN 474-5:2006+A3:2013 requirements for hydraulic excavators.	C'
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ANNEX III

Annex III is amended as follows:

(1) row 73 is replaced by the following:

'73.	EN 60745-2-13:2009 Hand-held motor-operated electric tools - Safety - Part 2-13: Particular requirements for chain saws (IEC 60745-2-13:2006, Modified) EN 60745-2-13:2009/A1:2010	3 May 2023	C'
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(2) the following rows are added:

'86.	EN 1175-1:1998+A1:2010 Safety of industrial trucks - Electrical requirements - Part 1: General requirements for battery powered trucks	15 April 2023	C
87.	EN 1175-2:1998+A1:2010 Safety of industrial trucks - Electrical requirements - Part 2: General requirements of internal combustion engine powered trucks	15 April 2023	C
88.	EN 1175-3:1998+A1:2010 Safety of industrial trucks - Electrical requirements - Part 3: Specific requirements for the electric power transmission systems of internal combustion engine powered trucks	15 April 2023	C
89.	EN 12312-3:2017 Aircraft ground support equipment - Specific requirements - Part 3: Conveyor belt vehicles	15 April 2023	C
90.	EN 12312-7:2005+A1:2009 Aircraft ground support equipment - Specific requirements - Part 7: Air-craft movement equipment	15 April 2023	C
91.	EN 13411-1:2002+A1:2008 Terminations for steel wire ropes - Safety - Part 1: Thimbles for steel wire rope slings	15 April 2023	C
92.	EN 13411-2:2001+A1:2008 Terminations for steel wire ropes - Safety - Part 2: Splicing of eyes for wire rope slings	15 April 2023	C
93.	EN 13411-3:2004+A1:2008 Terminations for steel wire ropes - Safety - Part 3: Ferrules and ferrule-securing	15 April 2023	C
94.	EN 13411-4:2011 Terminations for steel wire ropes - Safety - Part 4: Metal and resin socketing	15 April 2023	C
95.	EN 13411-5:2003+A1:2008 Terminations for steel wire ropes - Safety - Part 5: U-bolt wire rope grips	15 April 2023	C

96.	EN 13411-6:2004+A1:2008 Terminations for steel wire ropes - Safety - Part 6: Asymmetric wedge socket	15 April 2023	C
97.	EN 13411-7:2006+A1:2008 Terminations for steel wire ropes - Safety - Part 7: Symmetric wedge socket	15 April 2023	C
98.	EN 13411-8:2011 Terminations for steel wire ropes - Safety - Part 8: Swage terminals and swaging	15 April 2023	C
99.	EN 13586:2004+A1:2008 Cranes - Access	15 April 2023	C
100.	EN 15011:2011+A1:2014 Cranes - Bridge and gantry cranes	15 April 2023	C
101.	EN 16307-1:2013+A1:2015 Industrial trucks - Safety requirements and verification - Part 1: Supplementary requirements for self-propelled industrial trucks, other than driverless trucks, variable-reach trucks and burden-carrier trucks	15 April 2023	C
102.	EN 16486:2014 Machines for compacting waste materials or recyclable fractions - Compactors - Safety requirements	15 April 2023	C
103.	EN 16851:2017 Cranes - Light crane systems	15 April 2023	C
104.	EN 1804-1:2001+A1:2010 Machines for underground mines - Safety requirements for hydraulic powered roof supports - Part 1: Support units and general requirements	15 April 2023	C
105.	EN 1804-2:2001+A1:2010 Machines for underground mines - Safety requirements for hydraulic powered roof supports - Part 2: Power set legs and rams	15 April 2023	C
106.	EN 1804-3:2006+A1:2010 Machines for underground mines - Safety requirements for hydraulic powered roof supports - Part 3: Hydraulic control systems	15 April 2023	C
107.	EN 1837:1999+A1:2009 Safety of machinery - Integral lighting of machines	15 April 2023	B
108.	EN 1974:1998+A1:2009 Food processing machinery - Slicing machines - Safety and hygiene requirements	15 April 2023	C
109.	EN 201:2009 Plastics and rubber machines - Injection moulding machines - Safety requirements	15 April 2023	C

110.	EN 60745-2-6:2010 Hand-held motor-operated electric tools - Safety - Part 2-6: Particular requirements for hammers (IEC 60745-2-6:2003, Modified, + A1:2006)	15 April 2023	C
111.	EN 81-40:2008 Safety rules for the construction and installation of lifts - Special lifts for the transport of persons and goods - Part 40: Stairlifts and inclined lifting platforms intended for persons with impaired mobility	15 April 2023	C
112.	EN ISO 11553-1:2008 Safety of machinery - Laser processing machines - Part 1: General safety requirements (ISO 11553-1:2005)	15 April 2023	C
113.	EN ISO 3743-2:2009 Acoustics - Determination of sound power levels of noise sources using sound pressure - Engineering methods for small, movable sources in reverberant fields - Part 2: Methods for special reverberation test rooms (ISO 3743-2:1994)	15 April 2023	B'

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