COMMISSION IMPLEMENTING REGULATION (EU) 2020/909

of 30 June 2020

imposing a definitive anti-dumtaping 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

THE EUROPEAN COMMISSION,

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

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

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) The measures currently in force are a definitive anti-dumping duty on imports of ferro-silicon originating in the People's Republic of China ('the PRC') and the Russian Federation ('Russia') ('the countries concerned') imposed by Commission Implementing Regulation (EU) No 360/2014 ([2]) following an expiry review under Article 11(2) of the basic Regulation ('the previous review investigation').

(2) The measures are in force in the form of an ad valorem duty established at 31,2 % on imports from the PRC, with the exception of Erdos Xijin Kuangye Co. (15,6 %) and Lanzhou Good Land Ferroalloy Factory Co., (29,0 %) and at 22,7 % on imports from Russia, with the exception of Bratsk Ferroalloy Plant (17,8 %).

1.2. Request for an expiry review

(3) Following the publication of a notice of impending expiry ([3]) of the anti-dumping measures in force, the Commission received a request for a review pursuant to Article 11(2) of Regulation (EU) 2016/1036.

(4) The request for review was lodged on 3 January 2019 by Euroalliages ('the applicant') on behalf of Union producers representing over 90 % of the total Union production of ferro-silicon.

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

1.3. Initiation

(6) Having determined, after consulting the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of an expiry review, the Commission initiated an expiry review regarding imports into the Union of ferro-silicon originating in the PRC and Russia. On 2 April 2019, it published a Notice of Initiation in the *Official Journal of the European Union* ([4]) ('the Notice of Initiation').

([1]) OJ L 176, 30.6.2016, p. 21.

([2]) Commission Implementing Regulation (EU) No 360/2014 of 9 April 2014 imposing a definitive anti-dumping duty on imports of ferro-silicon originating in the People's Republic of China and Russia, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ L 107, 10.4.2014, p. 13).

([3]) Notice of the impending expiry of certain anti-dumping measures (OJ C 243, 11.7.2018, p. 8).

([4]) Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of ferro-silicon originating in Russia and the People's Republic of China (OJ C 123, 2.4.2019, p. 9).

1.4. **Review investigation period and period considered**

(7) The investigation of continuation or recurrence of dumping covered the period from 1 April 2018 to 31 March 2019 ('review investigation period'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2015 to the end of the review investigation period ('the period considered').

1.5. **Interested parties**

(8) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. In addition, the Commission specifically informed the applicants, the other known Union producers, the known producers in the PRC and Russia, known importers, users and traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.

(9) Interested parties also had an opportunity to comment on the initiation of the expiry review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.5.1. *Sampling*

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

1.5.2. *Sampling of Union producers*

(11) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of four Union producers on the basis of the largest production and sales volumes of the product under review and invited the interested parties to comment. No comments were received.

(12) The final sample of Union producers accounted for more than 90 % of the total estimated Union production volume. The Commission concluded that the sample was representative of the Union industry.

1.5.3. *Sampling of importers*

(13) In view of the potentially large number of unrelated importers involved in the proceeding, at initiation stage the Commission considered limiting to a reasonable number the unrelated importers investigated by selecting a sample in accordance with Article 17 of the basic anti-dumping Regulation.

(14) As no unrelated importer replied to the sampling questionnaire attached to the notice of initiation, the Commission decided not to apply sampling for unrelated importers.

1.5.4. *Sampling of producers in the PRC and Russia*

(15) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known producers of the product under review in the PRC and in Russia to provide the information specified in the Notice of Initiation.

(16) In addition, the Commission asked the Mission of the People's Republic of China to the European Union and the Mission of the Russian Federation to the European Union to identify and/or contact other producers, if any, that could be interested in participating in the investigation.

(17) One Chinese company returned the sampling form and indicated to produce and have sold ferro-silicon to the Union.

(18) One Russian party returned the sampling forms but that party indicated that it did not produce ferro-silicon as defined in the Notice of Initiation. Two known Russian exporting producers came forward but they did not return the sampling forms.

1.6. **Replies to the questionnaire**

(19) Copies of the questionnaires were made available on DG Trade's website when the case was initiated.

(20) The Commission sent letters to the four sampled Union producers. The Commission also sent questionnaires to the Chinese company mentioned in recital 17 and the two Russian exporting producers referred to in recital 18, requesting them to complete the questionnaire intended for them.

(21) Questionnaire replies were received from the four Union producers and one user.

(22) After having received the questionnaire, the Chinese company mentioned in recital 17 above informed the Commission that it was in fact a trader, not a producer. Therefore it was informed that it should not reply to the questionnaire. The two Russian exporting producers mentioned in recital 18 above replied that in view of market circumstances they had decided not to prepare and provide a reply to the questionnaire. However, they also indicated that they wanted to cooperate 'on all other aspects of the investigation (…)'. These two exporting producers were given interested party status, however they were considered non-cooperating since they never replied to the sampling form or attempted to reply to the exporting producer's questionnaire. After final disclosure, the parties concerned contested the Commission's determination to consider them non-cooperating and they submitted that the Commission should have not only have duly assessed but also verified the limited amount of partly information they had submitted in a written submission. That claim was rejected, as explained in recital 189 below.

(23) Therefore, there was no cooperation by producers neither in the PRC nor in Russia.

1.7. **Verification**

(24) The Commission sought and verified all the information deemed necessary for the investigation. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

Union producers:

— Ferroatlantica S.L. and Ferropem in Madrid, Spain;

— OFZ, a.s. in Istebne, Slovakia;

— Re Alloys Sp. Z.o.o. in Laziska Gorne, Poland.

1.8. **Procedure for the determination of the normal value under Article 2(6a) of the basic Regulation for the imports of ferro-silicon originating in the PRC**

(25) In view of the sufficient evidence available at the initiation of the investigation tending to show, with regard to the PRC, the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission considered it appropriate to initiate the investigation with regard to the PRC on the basis of Article 2(6a) of the basic Regulation.

(26) 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 producers of the PRC to provide the information requested in Annex III to the Notice of the Initiation regarding the inputs used for producing the product under review. No exporting producers/producers submitted the information requested in Annex III.

(27) In order to obtain the necessary information for its investigation, the Commission also sent a questionnaire to the Government of China ('GOC') with regard to the alleged significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The GOC did not reply to the questionnaire.

(28) In the Notice of Initiation, the Commission also invited all interested parties to make their views known, submit information and provide supporting evidence regarding the appropriateness of the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of this Notice in the *Official Journal of the European Union*. No submissions or additional evidence was received in that respect.

(29) In the Notice of Initiation, the Commission also specified that, in view of the evidence available, it might need to select an appropriate 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.

(30) On 24 June 2019, the Commission issued a first note for the file ('the first note on production factors') seeking the views of the interested parties on the relevant sources that the Commission may use for the determination of the normal value, in accordance with Article 2(6a)(e) second indent of the basic Regulation. In that note, the Commission provided a list of all factors of production such as materials, energy and labour used in the production of the product under review by the exporting producers. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified three possible representative countries: Brazil, Russia, and Turkey.

(31) The Commission gave all interested parties the opportunity to comment. The Commission received only comments from the applicant.

(32) The Commission addressed these comments in a second note of 15 October 2019 ('the second note on production factors'). The Commission also established the list of factors of production and concluded that, at that stage, Brazil was the most appropriate representative country under Article 2(6a)(a), first indent of the basic Regulation. The Commission invited the interested parties to comment. The Commission did not receive any comments.

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

(33) The product under review is the same as in the original investigation and the previous expiry review namely ferro-silicon currently falling under CN codes 7202 21 00, 7202 29 10 and 7202 29 90, originating in the PRC and Russia ('the product under review').

2.2. Like product

(34) As established in the original investigation as well as in the previous expiry review, this expiry review investigation confirmed that ferro-silicon produced and sold on the domestic market in Russia, the PRC and in the representative country, and ferro-silicon produced and sold by the Union industry on the Union market have the same basic physical and technical characteristics and the same basic uses.

(35) Therefore these products are considered to be like products within the meaning of Article 1(4) of the basic Regulation.

3. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

3.1. Preliminary remarks

(36) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether the expiry of the measures in force would be likely to lead to a continuation or recurrence of dumping from the PRC or Russia.

3.1.1. *PRC*

(37) As mentioned in recital 23, none of the Chinese exporting producers cooperated in the investigation. Thus, the exporting producers failed to submit questionnaire replies, including any data on export prices and costs, domestic prices and costs, capacity, production, investments, etc. Likewise, the GOC and the exporting producers failed to address the evidence on the case file, including the 'Commission Staff Working Document on Significant

Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defense Investigations' ([5]) ('the Report'), and the additional evidence provided by the applicant, showing that such prices and costs were affected by substantial government interventions. Therefore, the Commission resorted to the use of facts available in accordance with Article 18 of the basic Regulation.

(38) The Commission notified the Chinese authorities of the application of Article 18(1) of the basic Regulation and gave them the opportunity to comment. The Commission did not receive any comments.

(39) On that basis, in accordance with Article 18(1) of the basic Regulation, the findings in relation to the likelihood of continuation or recurrence of dumping set out below were based on facts available, in particular, the information contained in the request for the expiry review, in the submissions by interested parties, combined with other sources of information such as trade statistics on imports and exports (Eurostat and Global Trade Atlas ('GTA')) and statistical data from independent providers of pricing intelligence, news, data, analysis and conferences for the iron and steel industry such us Metal expert ([6]) and AlloyConsult ([7]).

3.1.2. *Russia*

(40) As mentioned in recital 23, none of the Russian exporting producers cooperated in the investigation. Thus, the exporting producers failed to submit questionnaire replies. The Commission received comments from the Government of Russia ('GOR') and from the two exporting producers.

(41) In view of the non-cooperation by the Russian exporting producers, the Commission notified the GOR and the two exporting producers mentioned in recital 18 of its intention to use facts available in accordance with Article 18(1) of the basic Regulation and gave them the opportunity to comment. The Russian exporting producers replied that they understood the possible consequences and no comments were received from the GOR.

(42) On that basis, in accordance with Article 18(1) of the basic Regulation, the findings in relation to the likelihood of continuation or recurrence of dumping set out below were based on facts available, in particular, the information contained in the request for the expiry review, in the submissions by interested parties combined with other sources of information such as trade statistics on imports and exports (Eurostat and Global Trade Atlas 'GTA') and statistical data from specialist website such us Metal Expert and independent expert reports like AlloyConsult.

3.2. **Continuation of dumping of imports during the review investigation period**

3.2.1. *PRC*

(43) For the review investigation period, the statistical data from Eurostat show that 3 587 tonnes of ferro-silicon were imported into the Union from the PRC, constituting roughly 0,5 % of the total Union consumption. The Commission concluded that such volume of imports is sufficiently representative to examine whether dumping continued during the review investigation period.

3.2.1.1. Normal value

(44) 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.'*

(45) However, according to Article 2(6a)(a) of the basic Regulation, *'(i)n 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.'* 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 and the exporting producers, the application of Article 2(6a) of the basic Regulation was appropriate.

([5]) 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.

([6]) Metal Expert LLC: https://metalexpert.com/en/index.html

([7]) AlloyConsult report: www.alloyconsult.com

(a) Existence of significant distortions

(46) Article 2(6a)(b) of the basic Regulation defines *'significant distortions as 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.'*

(47) According to Article 2(6a)(b) of the basic Regulation, the assessment of the existence of significant distortions within the meaning of Article 2(6a)(a) shall take into account, amongst others, the non-exhaustive list of elements in the former provision. Pursuant to Article 2(6a)(b) of the basic Regulation, in assessing the existence of significant distortions, regard shall be had to the potential impact of one or more of these elements on prices and costs in the exporting country of the product under review. Indeed, as that list 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 entrust the government with substantive powers to intervene into market forces and which therefore points to the fact that prices and costs are not the result of free market forces.

(48) 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.'*

(49) Pursuant to this provision, the Commission has issued the Report. Interested parties were invited to rebut, comment or supplement the evidence contained in the investigation file at the time of initiation. In that respect, and in view of the lack of cooperation in this case, the Commission relied on the Report showing the existence of substantial government intervention at many levels of the economy, including specific distortions in key factors of production (such as land, energy, capital, raw materials and labour) as well as in specific sectors (such as aluminium, steel and chemicals). The Report was placed in the investigation file at the initiation stage.

(50) The request also provided additional evidence on the existence of significant distortions in the meaning of Article 2 (6a)(b) referred to above, complementing the Report.

(51) The applicant provided a study on the Chinese ferro-alloys market (including ferro-silicon) that it commissioned. This study documented that the Chinese ferro-alloy industry is subjected to heavy handed government guidance and discretionary interference and concluded that the Chinese companies in this 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 ([8]). No comment on this study was provided by any interested party including the GOC and the exporting producers.

([8]) Analysis of State-induced Market-Distortions in the Chinese Ferroalloys and Silicon Industries – Ferroalloy Focus (Annex 4 of the expiry review request) – Chapter 7, p. 173.

(52) 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 publicly available sources, notably on Chinese legislation, published official Chinese policy documents, reports published by international organisations and studies/articles by renowned academics, specifically identified in the Report. That analysis covered the examination of the substantial government interventions in its economy in general, but also the specific market situation in the relevant sector including the product under review.

(53) As specified in recital 37, the GOC did not provide any reply to the questionnaire it received. As mentioned in recital 23, there was no cooperation from exporting producers and neither did the exporting producers that were granted the status of an interested party provide evidence supporting or rebutting the existing evidence on the case file, including the Report, and the additional evidence provided by the applicant, 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.

(i) *Significant distortions affecting the domestic prices and costs in the PRC: general economic context*

(54) 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 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*' ([9]). Consequently, the overall setup 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 ([10]).

(55) In addition, under Chinese law, the socialist market economy is developed under the leadership of the Chinese Communist Party ('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 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.*' ([11]) This illustrates the control of the CCP over the economic system of the PRC. This control is inherent to the Chinese system and goes beyond the situation customary in other countries where the governments exercise broad macroeconomic control within the boundaries of which free market forces are at play.

(56) 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 ([12]). The interventionist economic tools deployed by the Chinese authorities are manifold, including the system of industrial planning, the financial system, as well as at the level of the regulatory environment.

(57) 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 cover 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 to support the relevant industries/sectors as well as the timeframes in which the objectives need to be achieved. Some plans contain explicit output targets. Under the plans, individual industrial sectors and/or projects are singled out as (positive or negative) priorities in line with the government priorities and specific development

([9]) Report – Chapter 2, p. 6-7.
([10]) Ibid., – Chapter 2, p. 10.
([11]) http://en.pkulaw.cn/display.aspx?cgid=311950&lib=law
([12]) Report – Chapter 2, p. 20-21.

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. Not only because of the binding nature of the plans but also because the relevant Chinese authorities at all level 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 (iv) below) ([13]).

(58) 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 (vii) below) ([14]). The same applies to the other components of the Chinese financial system, such as the stock markets, bond markets, private equity markets etc. Even though of lesser significance than the banking sector, these parts of the financial 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 ([15]).

(59) 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 ([16]). 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 ([17]).

(60) 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 free play of market forces, resulting in distorting the effective allocation of resources in line with market principles ([18]).

(ii) *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*

(61) Against that background of State intervention and dominance of State ownership in the Chinese economic model, State-owned enterprises ('SOEs') represent an essential part of the Chinese economy. The government and the CCP maintain structures that ensure their continued influence over SOEs. The State (and in many aspects 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 (iii)), as well as through shaping the corporate structure of the SOE sector ([19]). 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 finances ([20]).

([13]) *Ibid.*, Chapter 3, p. 41, 73-74.
([14]) *Ibid.*, Chapter 6, p. 120-121.
([15]) *Ibid.*, Chapter 6. p. 122 -135.
([16]) *Ibid.*, Chapter 7, p. 167-168.
([17]) *Ibid.*, Chapter 8, p. 169-170, 200-201.
([18]) *Ibid.*, Chapter 2, p. 15-16, Report – Chapter 4, p. 50, p. 84, Report – Chapter 5, p. 108-9.
([19]) *Ibid.*, Chapter 3, p. 22-24 and Chapter 5, p. 97-108.
([20]) *Ibid.*, Chapter 5, p. 104-9.

(62) A certain degree of State ownership by the GOC persists in the ferro-silicon sector. Even though the ferro-silicon industry in the PRC is very fragmented with a large number of small producers, the major producers of ferro-silicon Erdos Metallurgy Group and Erdos Xijin Kuangye Co., Ltd, which account for more than 10 % of the Chinese capacity to produce ferro-silicon ([21]) and produce about the double of the Union consumption, are SOEs.

(63) The elements that point to the existence of government control over enterprises in the silicon and ferro-silicon sector is further developed in section (iii) below.

(64) As concerns policy supervision and guidance by the State in the sector, the analysis is set out in sections (iii) and (iv) below. With the high level of government control and intervention in the ferro-silicon sector as described below, even privately owned producers are prevented from operating under market conditions.

(65) On the basis of the above, it is concluded that the market for ferro-silicon in the PRC was served to a significant extent by enterprises subject to the ownership, control or policy supervision or guidance by the GOC.

(iii) *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*

(66) Apart from exercising control over the economy by means of ownership of SOEs and other tools, the GOC is in a 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 ([22]), CCP cells in enterprises, State-owned and private alike, represent another channel through which the State can interfere with business decisions. According to China'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 ([23])) and the company is to 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 it claims to control business decision 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 ([24]). 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 final say over the business decision within their respective companies ([25]). These rules are of general application throughout the Chinese economy, including the ferro-alloys sector. Hence, it is determined that these rules also apply to the producers of ferro-silicon and the suppliers of their inputs.

(67) Specifically in the ferro-silicon sector, tight links exist between decision making processes of enterprises active in the sector and the State, in particular the CCP. Party structures personally overlap with the management bodies in a number of Chinese ferro-silicon producers. A number of examples confirm the State presence in firms, in particular the role of the CCP organisations ([26]):

— A Chairman of Inner Mongolia Junzheng Energy and Chemical Group Co., Ltd. has also served as a delegate to the Committee of the 10th Inner Mongolia Autonomous Region of the PPCC and a delegate to the 12th Chinese People's Political Consultative Conference (2012 AR at 42, 2013 AR at 39, 2014 AR at 43).

— An Independent director of Inner Mongolia Junzheng Energy and Chemical Group Co., Ltd. has successively served as deputy secretary of the Zhangjiakou District Party Committee, mayor of Cangzhou City, director of Hebei Provincial Construction Committee, and deputy governor of Hebei Province (2012 AR at 42, 2013 AR at 39, 2014 AR at 43).

([21]) Expiry review request p. 38 and updated figures provided by the applicant in the file.
([22]) Report – Chapter 5, p. 100-1.
([23]) *Ibid.*, Chapter 2, p. 26.
([24]) *Ibid.*, Chapter 2, p. 31-2.
([25]) https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU
([26]) Analysis of State-induced Market-Distortions in the Chinese Ferroalloys and Silicon Industries – Ferroalloy Focus (Annex 4 of the expiry review request), – Chapter 2.5, p. 43.

— A Director of Inner Mongolia Eerduosi Resources Co., Ltd. worked at the Zhuzhou City Central Branch of China Construction Bank, served as deputy director of the Foreign Exchange Clearing Division of the China Construction Bank, as deputy director of the bank's Foreign Exchange and Accounting Department, and as director of its R & D Department (2017 AR at 44).

— An independent director of Inner Mongolia Junzheng Energy and Chemical Group Co., Ltd.) is a member of the Financial and Economic Committee of the China National People's Congress (2017 AR at 63).

— A director of Inner Mongolia Junzheng Energy and Chemical Group Co., Ltd.) previously served as head of the Enterprise Section of the municipal Economic and Trade Commission of Wuhai City and as secretary of the General Office of Municipal Party Committee (2012 AR at 42, 2013 AR at 39, 2014 AR at 43, 2015 AR at 46, 2016 AR at 57, 2017 AR at 63).

(68) The State's presence and intervention in the financial markets (see also section (vii) below), as well as in the provision of raw materials and inputs further, have a distorting effect on the market ([27]).

(69) Based on all of the above, it is concluded that the State presence in firms in the ferro-silicon sector, as well as in in the financial sector and other input sectors, combined with the framework described in section (ii) above and in the subsequent sections, allows the GOC to interfere with respect to prices and costs.

(iv) *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*

(70) 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 ([28]).

(71) The National Development and Reform Commission (NDRC) released the Three-year Action Plan to Enhance the Core Competence of Manufacturing Industry (2018-2020), which called to accelerate the industrialization of advanced metal and non-metal key materials. It stipulates that '*…, it is necessary to further implement the spirit of the Nineteenth National Congress of the Communist Party of China and the decision-making and deployment of the Central Government on building a manufacturing power, accelerate the intelligentization, greenization, and service of the manufacturing industry, earnestly enhance the core competitiveness of the manufacturing industry, and promote the acceleration of China's manufacturing industry as part of a high-end global value chain.*'

(72) The MIIT published a number of requirements to the industry when it wishes to open, to adapt or to develop, inter alia, the ferro-silicon sector ([29]). Specifically, it mentions requirements in term of equipment to be installed, energy consumption and water cycle utilization ratio. Also, the MIIT foresees that new (reform, expansion) projects of ferro-alloy need to comply with the requirements of national and provincial (district, municipality) functional area plans, regional plans, industry development plans, urban development plans, urban environmental comprehensive plans, land use plans, energy saving and emission reduction plans, environmental protection and pollution prevention plans etc.

(73) The Commission also found that there is significant government interventions into the raw materials used to produce ferro-silicon. Most components used to produce ferro-silicon are made of raw materials which on the Chinese market are subject to heavy intervention by the GOC ([30]), including coal, quartz, coke and limestone.

([27]) Report – Chapters 14.1 to 14.3.
([28]) *Ibid.*, Chapter 4, p. 41-42, 83.
([29]) http://www.miit.gov.cn/n1146285/n1146352/n3054355/n3057292/n3057296/c3645437/part/3645438.doc
([30]) *Ibid.*, Chapter 14 on steel, Chapter 15 on aluminium, Chapter 16 on the chemical sector and Chapter 12 on raw materials.

(74) Coal, quartz, limestone are mentioned in the thirteenth Five Year Plan for Mineral Resources, which underlines the importance of the mining sector and security of supply of minerals for industry. According to the plan, since 2008 the PRC undertook major investments into geological surveys (RMB 800 billion), fixed asset investment in the mining sector was more than RMB 9 trillion, and ore output equalled more than 70 billion tonnes ([31]).

(75) In January 2017, the GOC introduced a new system of governmental intervention into coal prices. The Notice on the Issuance of a Memorandum on Countering the Abnormal Price Fluctuations on the Coal Market, jointly issued by the NDRC, China Coal Industry Association, China Electricity Council and China Iron and Steel Industry Association, sets out a mechanism to limit coal price fluctuations ([32]).

(76) The GOC has implemented export restrictions on certain raw materials used to produce ferro-silicon, having a distortive effect on the market. The restrictions have taken the form of non-automatic export licensing for the coke and export duties for coking coal, pig iron, and metal waste and scrap ([33]).

(77) Electricity is a crucial cost driver for the production of ferro-silicon. Some of the enterprises of the ferro-alloy sector generate income from the sales excess of electricity generation to industrial and residential consumers ([34]). Nonetheless, due to the vastly differing rates of self-sufficiency in electricity supply and the unclear profitability of external power sales, it cannot accurately be determined if electricity price subsidies are provided to reduce the cost of power as production input or to compensate for a gap between relatively low sales prices and high generation cost. The same can be said about heating subsidies. Metallurgical enterprises, like steel and ferro-alloy producers, make extensive use of waste heat recovery and are both ordered and subsidized by the GOC to expand synergistic resource utilization capacities in this area.

(78) Various ferro-silicon producers have been recognized by supervising local government organisations as 'high and new technology enterprises' and thus have benefited from a reduced enterprise income tax rate of 15 percent, for example: Inner Mongolia Eerduosi Resources Co., Ltd via its subsidiary Qinghai Baitong High Purity Material Development Co. and Inner Mongolia Junzheng Energy & Chemical Group Co., Ltd., took benefit of this measure respectively for the years 2013-2015 and 2012-2017 ([35]).

(79) In 2015, the Ministry of Finance ('MOF') and the State Administration of Taxation have issued the Catalogue of Synergistic Resource Utilization Products and Services for VAT Privileges. Sales income from products contained in the Catalogue is subject to EIT breaks. Provided that provincial authorities confirm that a product does conform to the catalogue, the producing enterprise only needs to pay EIT on 70 % on the corresponding sales income. Several major ferro-silicon producers have taken advantage of this tax preference scheme. All subsidiaries of Inner Mongolia Eerduosi Resources Co., Ltd., benefitted from this programme in 2016 and 2017 ([36]). Inner Mongolia Junzheng Energy & Chemical Group Co., Ltd. took advantage of this policy since January 1st, 2009, the enterprise being refunded 50 % of the VAT paid on sales of electricity ([37]).

(80) It is therefore established that the GOC has a number of public policies in place influencing free market forces concerning the production of ferro-silicon, including the raw materials used in that sector. Such measures impede market forces from operating normally.

(v) *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*

(81) According to the information on file, the Chinese bankruptcy system appears inadequate to deliver 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 similar principles as corresponding laws in other countries, 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,

([31]) 13th FYP for Mineral Resources, section I-1.
([32]) China Electricity Council website: http://www.cec.org.cn/xiangguanhangye/2017-01-13/163701.html (accessed on 12 October 2017).
([33]) OECD data on export restrictions 2017: https://www.compareyourcountry.org/trade-in-raw-materials (accessed on 8 October 2019).
([34]) Analysis of State-induced Market-Distortions in the Chinese Ferroalloys and Silicon Industries – Ferroalloy Focus – Annex 4 of the expiry review request – Chapter 5.6, p. 153.
([35]) *Ibid.*, Chapter 4.5, p. 136.
([36]) *Ibid.*, Chapter 4.5, p. 136.
([37]) *Ibid.*, Chapter 4.5, p. 136.

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 ([38]).

(82) 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 ([39]). 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 free or below market rates ([40]). Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land ([41]).

(83) Therefore, the Chinese bankruptcy and property laws do not appear to properly work, resulting in distortions when maintaining insolvent firms afloat and in relation to the land provision and acquisition in the PRC. These laws also apply with respect to the ferro-silicon sector, including the exporting producers of the product under review.

(84) The U.S. International Trade Administration ruled that '*Due to the overwhelming presence of government involvement in the land-use rights market, as well as the widespread and documented deviation from the authorised methods of pricing and allocating land, purchase of land-use rights in China is not conducted in accordance with market principles*' (U.S. ITA 2008 at 16).

(85) The Think!Desk Report attached to the expiry review request clearly describes that Chinese law and regulation treat land use rights as a policy tool in the sense that the provision of land under favourable conditions has been identified as a legitimate incentive for enterprises engagement in mergers and acquisitions ('M&A') by the PRC's central government ([42]). Favourable treatment of land use rights were confirmed in *The Several Opinions on Further Strengthening Energy Conservation and Emissions Reduction and Accelerate the Structural Adjustment of the Steel Industry* (GOSC 2010). The field of land use may be utilised by local government policies in order to promote M&A in the ferroalloy sector. In 2013, *the Ministry of Industry and Information Technology Guiding Opinions on Accelerating the Promotion of M&A for Enterprises in Key Industries* required local M&A promotion measures to include provisions on land administration. Finally, between 2012 and 2017, several ferroalloy producers have received a total of RMB 98,7 million in subsidies related to land use.

(86) In light of the above, the Commission concluded that there was discriminatory application or inadequate enforcement of bankruptcy and property laws in the ferro-silicon sector, including with respect to the product under review.

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

(87) 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 ([43]). 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 ([44]). 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

([38]) Report – Chapter 6, p. 138-149.
([39]) *Ibid.*, Chapter 9, p. 216.
([40]) *Ibid.*, Chapter 9, p. 213-215.
([41]) *Ibid.*, Chapter 9, p. 209-211.
([42]) Analysis of State-induced Market-Distortions in the Chinese Ferroalloys and Silicon Industries – Ferroalloy Focus – Annex 4 of the expiry review request – Chapter 5.4.
([43]) Report – Chapter 13, p. 332-337.
([44]) *Ibid.*, Chapter 13, p. 336.

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 ([45]). Those findings lead to the distortion of wages costs in the PRC.

(88) Nothing in the file of this investigation has revealed that the ferro-silicon sector is not subject to the Chinese labour law system described. In fact, the ferro-silicon sector appears to be equally affected by the distortions of wage costs both directly (when making the product under review), as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in the PRC).

(89) The report by Think!Desk provided by the applicant indicated that Municipal governments are strongly concerned with the improvement of human capital and the prevention of job losses. Enterprises that have made mandatory social insurance premiums for their employs for several years and meet several other criteria may obtain financial support for their social security fund obligations. The report indicates that local authorities have made regular payments to directly subsidize existing jobs, even covering living expenses of hired migrant workers and student interns. There have also been a number of transactions supporting staff training and the promotion of talent development. Some local governments have also provided partial compensation for social security premiums enterprises pay for employees ([46]).

(90) On the basis of the above, the Commission concluded that wage costs were distorted in the ferro-silicon sector, including with respect to the product under review.

(vii) *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*

(91) Access to capital for corporate actors in the PRC is subject to various distortions.

(92) Firstly, the Chinese financial system is characterised by strong position of State-owned banks ([47]), which, when granting access to finance, take into consideration criteria other than 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 the large State-owned financial institutions are ultimately appointed by the CCP) ([48]) and, again just like non-financial SOEs, the banks regularly implement public policies designed by the government. In 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 ([49]). This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ([50]).

(93) While it is acknowledged that there might be various legal instruments referring to the need to respect normal banking behaviour and prudential rules, such as the need to examine the creditworthiness of the borrower, the relevant evidence shows that these provisions play only a secondary role in the application of the various legal instruments ([51]). Findings made in previous trade defence investigations also reached the same conclusion ([52]).

(94) 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 ([53]).

([45]) *Ibid.*, Chapter 13, p. 337-341.
([46]) Analysis of State-induced Market-Distortions in the Chinese Ferroalloys and Silicon Industries – Ferroalloy Focus – Annex 4 of the expiry review request – Chapter 5.5, p. 157.
([47]) Report – Chapter 6, p. 114-117.
([48]) *Ibid.*, Chapter 6, p. 119.
([49]) *Ibid.*, Chapter 6, p. 120.
([50]) *Ibid.*, Chapter 6, p. 121-122, 126-128, 133-135.
([51]) Ibid.
([52]) Report – Chapter 14, p. 362-3, listing EU trade defence investigations (concerning certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and concerning certain organic coated steel products originating in the People's Republic of China), as well as trade defence investigation conducted by the Australian, Canadian, Indian and US authorities.
([53]) *Ibid.*, Chapter 6, p. 127, in particular with respect to the IMF estimate.

(95) This results in a bias for 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.

(96) 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 recent 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.

(97) 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. Indeed, the share of lending at or below the benchmark rate still represents 45 % of all lending and recourse to targeted credit appears to have been stepped up, since this share has increased markedly since 2015 in spite of worsening economic conditions. Artificially low interest rates result in under-pricing, and consequently, the excessive utilization of capital.

(98) 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.

(99) In essence, despite the recent steps that have been taken to liberalize the market, the corporate credit system in the PRC is affected by significant systemic issues and distortions resulting from the continuing pervasive role of the State in the capital markets.

(100) Nothing in the file of this investigation has revealed that ferro-silicon producers and/or the suppliers of raw materials and other inputs do not benefit from this financial system. To the contrary, a report by Think!Desk provided by the applicant indicated that Inner Mongolia Eerduosi Resources Co., Ltd. had benefited from non-market conform financial operations from the China Export Import Bank (fully State-owned) and the China Development Bank (fully State-owned).

(101) Chinese producers of ferro-silicon benefitted from the provision of loan interest subsidies allocating a part of the credit risk to financial institutions and tasked the latter with keeping tabs on corporate (financial) performance. As government participation and brokerage activities clearly signal State support, the assumed reduction credit risk strengthened the debtors' bargaining position in setting the terms. According to the Think!Desk Report, Ningxia Shengyan Group and Inner Mongolia Eerduosi Resources Co., Ltd. benefited from this measure ([54]).

(102) This report indicates that export promotion policy is tightly integrated in the general industrial policy framework. The GOC selectively encourages the exportation of certain high technology, high added value goods and services. In recent years, the export of industrial services and technology has received substantial support as well. For example, Inner Mongolia Eerduosi Resources Co., Ltd. received funds for the establishment of foreign trade common service platforms.

(103) Financial assistance to exporters took also the shape of foreign trade subsidies. These transfers intended to encourage, facilitate or reward export business. In this respect, Inner Mongolia Eerduosi Resources Co., Ltd. received funds for the establishment of foreign trade common service platforms, for innovative development and foreign trade transformation and upgrading, and for foreign trade development ([55]).

(104) Certain ferro-silicon producers have received substantial funding to reduce the cost of transportation ([56]). This is especially important as plants are predominantly located in landlocked regions far from the coastal economic hubs. Financial aid from the GOC in this respect comes in the form of transportation price subsidies compensating enterprises for parts of their costs incurred. It also takes the form of infrastructure construction subsidies, mainly

([54]) Analysis of State-induced Market-Distortions in the Chinese Ferroalloys and Silicon Industries – Ferroalloy Focus – Annex 4 of the expiry review request – Chapter 5.3, p. 148.
([55]) *Ibid.*, Chapter 6.2.2.2, p. 166.
([56]) *Ibid.*, Chapter 5.7, p. 158.

for the installation of dedicated railway lines allowing the direct connection of factory plots to the national railway network. Inner Mongolia Eerduosi Resources Co., Ltd. has obtained funds for the construction of special railway lines allowing the company to save time and cost in bringing its goods to international markets ([57]).

(105) Chinese industrial policy with regards to technology innovation is guided by the National Medium- and Long-Term Science and Technology Development Plan (2006-2020) (State Council 2005b). In this framework, the ferro-silicon producer Ningxia Shengyan Group have received subsidies for conducting R & D tasks specified in the National Science and Technology Support Plan ([58]).

(106) To remove obsolete production capacities from the market, certain ferro-silicon producers received financial support for production capacities elimination. Inner Mongolia Junzheng Energy & Chemical Group Co. and Ningxia Shengyan Group benefitted from this measure ([59]).

(107) The GOC has sought to influence the industry layout in geographic terms. This implies that heavy industry should leave urban areas and resettle into dedicated industrial parks. While this serves cities' environmental protection objectives and brings down pollution in densely populated areas, the move also helps companies in a variety of ways including providing generous investment incentives, tax breaks, cash grants and subsidized loans. The group Inner Mongolia Eerduosi Resources Co., Ltd., which produces ferro-silicon, received subsidies for plant relocation ([60]).

(108) The ferro-silicon producer Ningxia Shengyan Group received subsidies related to land use ([61]).

(109) Therefore, the latter support and the general substantial government intervention in the financial system described above leads to the market conditions being severely affected at all levels.

(110) In light of the above, the Commission concluded that the producers of ferro-silicon had access to finance granted by institutions which implement public policy objectives or otherwise not acting independently from the State.

(viii) *Systemic nature of the distortions described*

(111) The Commission noted that the distortions described in the Report are not limited to any particular industry sector. On the contrary, the evidence available shows that the facts and features of the Chinese system as described above in sections (i) – (iv) (recitals 54 to 80) 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 (v) – (vii) above and in Part B of the Report.

(112) In order to produce ferro-silicon, a number of inputs is needed. When the ferro-silicon producers 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, which applies across all levels of government and sectors.

(113) As a consequence, not only the domestic sales prices of ferro-silicon cannot be used but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also tainted 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 any other interested party in the present investigation.

([57]) *Ibid.*, Chapter 5.7, p. 153.
([58]) *Ibid.*, Chapter 3.2.2, p. 89.
([59]) *Ibid.*, Chapter 3.4.3, p. 116.
([60]) *Ibid.*, Chapter 3.4.1, p. 112.
([61]) *Ibid.*, Chapter 5.4, p. 151.

(ix) *Conclusion*

(114) The analysis laid out in sections (i) to (viii) above, 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 ferro-silicon sector (including the product under review) showed that prices or costs, 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. On that basis, and in the absence of any cooperation from the GOC and the exporting producers in the PRC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case.

(115) 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. The Commission recalled that no claim was presented that some domestic costs would be undistorted under the third indent of Article 2(6a)(a) of the basic Regulation.

(b) Representative country

(i) *General remarks*

(116) The choice of the representative country was based on the following criteria:

— *A level of economic development similar to the PRC. For this purpose, the Commission used countries with a gross national income similar to the PRC on the basis of the database of the World Bank* ([62]);

— *Production of the product under review in that country* ([63]);

— *Availability of relevant public data in that 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.*

(117) As explained in recitals 30-32, the Commission issued two notes for the file on the sources for the determination of the normal value (the first note on production factors of 24 June 2019 and the second note on the production factors of 15 October 2019 which addressed the comments received on the first note on the production factors). In the second note on production factors, the Commission informed interested parties of its conclusion that Brazil was an appropriate representative country in the present case.

(ii) *A level of economic development similar to the PRC*

(118) In the first note on production factors, the Commission identified Argentina, Brazil, Columbia, Malaysia, Mexico, Russia, South Africa, and Turkey as countries with a similar level of economic development as the PRC 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.

(119) No comments were received concerning the level of economic development following that note.

(iii) *Production of the product under review in the representative country*

(120) In the first note on production factors, the Commission indicated that production of the product under review was known to take place in Argentina, Brazil, Columbia, Malaysia, Mexico, Russia, South Africa and Turkey. In its comments on that note, the applicant warned that in Turkey there was no production of ferro-silicon.

(121) The Commission examined the claim and found that indeed the identified Turkish producer did not produce ferro-silicon during the investigation period. Consequently, the Commission did not anymore consider Turkey as a possible representative country.

([62]) World Bank Open Data – Upper Middle Income, https://data.worldbank.org/income-level/upper-middle-income

([63]) If there is no production of the product under review in any country with a similar level of development, production of a product in the same general category and/or sector of the product under review may be considered.

(iv) *Availability of the relevant public data in the representative country*

(122) For the countries considered and mentioned above, the availability of public data (and in particular public financial data from the producers of the product under review) was further verified by the Commission.

(123) The Commission looked for ferro-silicon producers with publicly available financial data that could be used to establish undistorted and reasonable amounts for selling, general and administrative expenses ('SG&A') and profit. As mentioned in the first and second note on the production factors, the Commission relied on the Orbis database ([64]) and the internet as source of data. Moreover, the Commission restricted the search to companies with publicly available profit and loss statements for the most recent period (2018) and profitable companies. This narrowed the search down, in the second note on production factors, to five companies in Brazil and five in Russia.

(124) The Commission finally noted that only one company, located in Brazil, had a segmental presentation in its financial accounts allowing isolating the revenues and expenses specifically for its ferro-silicon segment. Therefore, the Commission considered that Brazil was an appropriate representative country.

(125) Consequently, the Commission announced its intention to all interested parties in the second note on production factors to use Brazil as an appropriate representative country, should it conclude that all the conditions to apply the methodology foreseen in Article 2(6a)(a) of the basic Regulation would be met. Taking into account all the above elements and the absence of comments by the parties on the second note, the Commission decided that the final choice of an appropriate representative country was Brazil and selected the following company with publicly available financial data that could be used to establish undistorted and reasonable amounts for SG&A and profits in accordance with the last paragraph of Article 2(6a)(a) of the basic Regulation: Cia de Ferro Ligas da Bahia S.A.

(v) *Level of social and environmental protection*

(126) Having established that Brazil was appropriate representative country on the basis of these 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.

(vi) *Conclusion*

(127) In view of the above analysis, Brazil met all 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. In particular, Brazil has a substantial production of the product under review and a complete set of data available for all factors of production, SG&A and profit.

(c) Sources used to establish undistorted costs

(128) In the second note on production factors, 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 Global Trade Atlas ('GTA') to establish the undistorted cost of most of the factors of production in the representative country and the statistics of the International Labour Organisation ('ILO') and national statistics to establish the undistorted costs of labour in the representative country. The Commission also stated that it would use for the electricity costs the prices charged by one of the largest electricity suppliers in Brazil, the company EDP Brazil, and that the financial data from the Brazilian company selected, i.e. Cia de Ferro Ligas da Bahia S.A., would be used to establish SG&A costs and profits.

(129) The Commission also explained that for the review investigation period, the information reported by GTA on the import of one factor of production of ferro-silicon into Brazil, i.e. wood chips, was not representative and could therefore not be used. In the absence of availability of international benchmark or international publication and the materiality of wood chips, the Commission decided to use an alternative: the import price reported in GTA of woodchip in Turkey, a country with a level of economic development similar to the PRC and which had been identified by the Commission as one of the three possible representative countries in the first note on production factors (see recital 30). In Russia, the other country also identified in that note, there were no representative volumes of imports of woodchips but in Turkey, this product is imported in representative volumes. This benchmark was considered undistorted because, being based on an arithmetic average of the values pertaining to a representative number of transactions identified in GTA, it was deemed to reflect competitive market conditions in the area ([65]).

([64]) Orbis database, provided by Bureau Van Dick (https://orbis.bvdinfo.com/version-2019228/home.serv?product=OrbisNeo).
([65]) Taking instead a similar product in Brazil still would show around the same costs and dumping margin in the end.

(130) The Commission included a value for manufacturing overhead costs in order to cover costs not included in the factors of production referred to above. To establish this amount use was made of the financial data of the sampled Union producer that cooperated in the framework of the dumping investigation and that provided specific information for that purpose and allowed an on site verification thereof, FerroAtlántica S.A.U., Spain ('FASAU'). The methodology is duly explained in section 3.2.1.1 (e).

(d) Factors of production

(i) *Introduction*

(131) Through the first and second notes on production factors, the Commission sought to establish a list of factors of production and sources intended to be used for all factors of production such as materials, energy and labour used in the production of the product under review by the producers in the PRC. The Commission did not receive any comments concerning the list of factors of production shared with interested parties in those notes.

(132) The Commission then, after a verification visit at FASAU, established a definitive list of factors of production of ferro-silicon.

(133) Considering all the information submitted by the applicant and the absence of comments on the two notes on the sources for the determination of the normal value concerning the factors of production, the following factors of production and codes, where applicable, have been identified:

Table

Factor of Production	Brazilian tariff codes	Unit undistorted value
Material		
Quartz	2506 10 00	241,3 EUR/kg
Coal	2701 12	129,8 EUR/kg
Coke	2704 00 12	291,9 EUR/kg
Wood chips	4401 21 00	82,9 EUR/kg ([1])
Iron scrap (mill scale)	2619 00 90	Cost disregarded ([2])
Limestone	2515 11 00	Cost disregarded ([3])
Carbonaceous paste for Soderberg electrodes	3801 30 10	575,5 EUR/kg
Labour		
Labour wages in manufacturing sector	[N/A]	4,34 EUR/hour
Energy		
Electricity	[N/A]	0,11 EUR/kWh
By-product/Waste		
Microsilica/silica fume	2811 22 10	1 169,8 EUR/kg
Ferro-silicon slag	2621 90 00	Included in overhead costs

([1]) Based on Turkish import prices – see recital 137.
([2]) See recital 139.
([3]) Ibid.

(134) In order to establish undistorted prices of materials as delivered at the gate of the producer's factory as provided by Article 2(6a)(a), first indent, the Commission used the import prices in the representative country, of each material used for the production of ferro-silicon by FASAU, considering that there were no cooperating producers in the PRC.

(135) For establishing normal value, according to the Commission's methodology the import duties of the factors of production and the materials imported into Brazil (and for wood chips into Turkey), see recital 133, as well as the domestic transport costs should be added to these import prices. These adjustments would result in a higher normal value since the import duties would further increase the import prices of materials and thus an upwards adjustment of the level of dumping. Considering the finding in recital 155 as well as the nature of this expiry review investigation, which is focused on finding whether dumping continued during the review investigation period rather than finding its exact magnitude, the Commission decided that in those circumstances adjustments for import duties and domestic transport were unnecessary.

(ii) *Raw materials and by-products/waste*

(136) During the verification visit at FASAU, the Commission verified the reported raw materials used, the steel scrap generated and the relevant consumption ratios in the manufacturing of the product under review.

(137) For the purchase prices of all raw materials except for three, absent any information on the market of the representative country, the Commission relied on import prices in the representative country Brazil. For wood chips, import prices in Turkey were used (see recital 129. The import prices were determined as a weighted average of unit prices of imports from all third countries excluding the PRC.

(138) The Commission decided to exclude imports from the PRC into the representative country (or Turkey for wood chips) as it concluded in recital 121 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. Similarly, import data on imports in the representative country (or Turkey for wood chips) from non-WTO members listed in Annex 1 of Regulation (EU) 2015/755 ([66]) were also excluded. Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value and, in any event, such import data was negligible. After excluding the PRC, the imports from other third countries remained representative ranging from 30 % to 93 % of total volumes imported to Brazil (or Turkey in case of wood chips). Moreover, the main raw material to produce ferro-silicon, namely coal, is not exported to Brazil from the PRC.

(139) The Commission examined the existence of the export restrictions in Brazil and in the Note of 15 October 2019 it confirmed that the exports of limestone and mill scale were subject to export authorisation ([67]). Moreover, the Commission established that the import volumes into Brazil of limestone were negligible and that there were no imports of mill scale during the review investigation period. No representative alternative benchmark could be identified. The verification at FASAU demonstrated that these input raw materials have a relatively minor impact on the total cost of the product under review. In view of the findings in recital 155, as well as the nature of this expiry review investigation, which is focused on finding whether dumping continued during the review investigation period or is likely to recur rather than finding its exact magnitude, the Commission therefore decided to disregard the costs of these two factors of production for which no representative benchmark could be identified.

(140) Revenue from the by-product microsilica was deducted from the costs by multiplying the usage factors indicated in the request by the undistorted costs per unit observed in the representative country Brazil.

(141) With regard to the revenue from the by-product ferro-silicon slag the Commission established that the import volumes of that product to Brazil were close to zero and that the Brazilian imports prices thereof obtained could thus not be considered representative. Since the actual revenue from ferro-silicon slag incurred by FASAU represented a negligible share on total costs of raw material, it has no significant impact on the dumping margin calculations no matter what source would be used to replace them. The Commission therefore decided to account for this revenue when establishing the manufacturing overhead costs (see section 3.2.1.1 (e) below).

([66]) 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).

([67]) Available at https://qdd.oecd.org/subject.aspx?Subject=ExportRestrictions_IndustrialRawMaterials (last viewed 22 January 2020).

(142) In order to establish the undistorted price of raw materials, delivered at the gate of the exporting producer's factory as provided by Article 2(6a)(a), first indent of the basic Regulation, the Commission should add international transport and insurance costs ([68]), and apply the import duty of the representative country and add domestic transport costs to the import price. Considering the weighted average dumping margin obtained without these costs (see recital 155), the Commission decided to disregard these costs.

(iii) *Labour*

(143) To establish the benchmark for labour costs, the Commission used the ILO statistics together with publicly available information on average additional labour costs incurred by Brazilian employers ([69]) such as social security contributions including FGTS (unemployment, serious disease, construction/purchases of property).

(144) The ILO statistics ([70]) provided data on the mean weekly hours actually worked per employed person and monthly earnings of employees in manufacturing during the investigation period. Using that data, the Commission calculated an hourly salary in manufacturing, to which additional labour related costs ([71]) (social security and unemployment contributions born by the employer) were added.

(iv) *Electricity*

(145) The electricity price charged by one of the largest electricity suppliers in Brazil, the company EDP Brasil, was readily available ([72]). The information was detailed enough to identify the price of electricity and the price for the use of the distribution system (modalidade tarifaria azul) paid by industrial users.

(146) It should be noted that in Brazil, the regulatory authority Agência Nacional de Energia Elétrica ([73]) ('ANEEL') obliges the electricity suppliers to increase their tariffs by a certain percentage to regulate the consumption of electricity in the country. ANEEL uses a flag system ([74]) (green, yellow, red 1, red 2) to signal whether the electricity price should remain as proposed by the supplier (green) or increased by 0,010 BRL/kWh (yellow), 0,030 BRL/kWh (red 1), or 0,050 BRL/kWh (red 2). The flags are published by ANEEL on a monthly basis and for the investigation period were readily available on the website of EDP Brazil ([75]). When determining the undistorted costs of electricity, the Commission did not take into account the flags applied during the investigation period and did not adjust the price accordingly. On the basis of the finding in recital 155 as well as the nature of this expiry review investigation, which is focused on finding whether dumping continued during the review investigation period or is likely to recur rather than finding its exact magnitude, the Commission decided that adjustments of electricity cost was unnecessary.

(e) Manufacturing overhead costs, SG&A and profits

(147) Further to the factors of production summarised under recital 133 above, manufacturing overhead costs were identified. The calculation of these manufacturing overhead costs used, was based on the ratio of manufacturing overhead over the cost of manufacturing reported and verified by FASAU's costs of manufacturing (covering the consumption of materials not put into the furnaces, external services, internal transport, and structural costs such as depreciation and maintenance). This percentage was applied to the undistorted costs of manufacturing.

(148) For SG&A and profit, as explained in recital 128, the Commission used the financial data of Cia de Ferro Ligas da Bahia S.A. In order to coincide with the review investigation period, the Commission took that company's 2018 consolidated financial accounts, added the 2019 first trimester consolidated financial accounts, and deducted the first trimester 2018 consolidated financial accounts ([76]). Considering that the company did not only produce ferro-silicon, the Commission took account of the segmentation provided by the company in order to calculate figures limited to the ferro-silicon segment.

([68]) Brazilian imports are reported at FOB level in GTA.
([69]) https://establishbrazil.com/articles/whats-real-cost-employee
([70]) Available at https://ilostat.ilo.org/ (last viewed 4 July 2019).
([71]) Available at https://establishbrazil.com/articles/whats-real-cost-employee (last viewed 4 July 2019).
([72]) Available at http://www.edp.com.br/distribuicao-es/saiba-mais/informativos/tarifas-aplicadas-a-clientes-atendidos-em-alta-e-media-tensao-(grupo-a) (last viewed 10 April 2019).
([73]) Available at http://www.aneel.gov.br/a-aneel (last viewed 10 April 2019).
([74]) Available at http://www.aneel.gov.br/bandeiras-tarifarias (last viewed 10 April 2019).
([75]) Available at http://www.edp.com.br/distribuicao-es/saiba-mais/informativos/bandeira-tarifaria (last viewed 10 April 2019).
([76]) Segmentation for ferro-silicon on page 67 for year 2018: http://www.ferbasa.com.br/default_pt.asp?idioma=0&conta=28

(149) In the calculation of SG&A, the Commission disregarded the item 'share of profit (loss) in investments' since such cost (or income) was not related to the product under review. This adjustment resulted in a higher percentage of SG&A and a lower percentage of profit in the same proportion. Therefore, taken together it had no influence on the calculation of the normal value.

(f) Calculation of the normal value

(150) In order to establish the constructed normal value, the Commission took the following steps.

(151) Firstly, the Commission established the undistorted manufacturing costs. In the absence of cooperation by the exporting producers, the Commission then multiplied the verified usage factors of FASAU for materials, labour, and energy by the undistorted costs per unit established as explained under section 3.2.1.1.(d) above.

(152) Secondly, to these manufacturing costs the Commission applied the manufacturing overhead costs, and added SG&A and profit established, as explained under section 3.2.1.1.(e) above. The manufacturing overhead costs thus established amounted to 37,11 %. The SG&A ([77]) expressed as a percentage of the Costs of Goods Sold ('COGS') and applied to the sum of the costs of manufacturing and manufacturing overheads amounted to 15,12 %. The profit ([78]), expressed as a percentage of the COGS and applied to the sum of costs of the manufacturing, manufacturing overheads, and SG&A, amounted to 51,1 %.

(153) On that basis, the Commission constructed the normal value on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation. Due to the fact no exporting producers cooperated, the normal value was established on a countrywide basis.

3.2.1.2. Export price

(154) In the absence of cooperation of Chinese exporting producers, the export price was determined based on CIF Eurostat data corrected to ex-works level.

3.2.1.3. Comparison and dumping margin

(155) The Commission compared the constructed normal value in accordance with Article 2(6a)(a) of the basic Regulation with the export price as established above. On that basis, the weighted average dumping margin, expressed as a percentage of the CIF Union frontier price, duty unpaid, was 157,8 %.

3.2.1.4. Conclusion

(156) The Commission therefore concluded that dumping from the PRC continued during the review investigation period.

3.2.2. *Russia*

(157) For the review investigation period, the statistical data from Eurostat show that 2,735 tonnes of ferro-silicon were imported into the Union from Russia, constituting roughly 0,4 % of the total Union consumption. The GOR submitted that such volume of imports was negligible. The Commission however concluded that such level of imports was sufficiently representative to examine whether dumping continued during the review investigation period.

3.2.2.1. Normal value

(158) Due to the lack of cooperation from Russian producers, the Commission used facts available for establishing a normal value in Russia. To this end, the information submitted by the applicant was used ([79]). This copy right protected information was provided by Metal Expert ([80]).

([77]) Referred to in Note 7 – Selling, general and administrative expenses, p. 80, and including Other operating income (expenses) as referred to in Note 9, p. 81 and Other financial income (expenses) as referred to in Note 10, p. 81 of the Annual report 2017.
([78]) Referred to in the consolidated income statements, p. 45 of the Annual report 2017.
([79]) Annex G of the expiry review request.
([80]) Metal Expert is an independent provider of pricing intelligence, news, data, analysis and conferences for the iron and steel industry: https://metalexpert.com/en/index.html

(159) Thus, normal value was based on the domestic prices provided in the request and updated ([81]) for the investigation period. The updated domestic prices were made public in the file. No comments were received from any interested party.

3.2.2.2. Export price

(160) In the absence of cooperation of Russian exporting producers, the export price was determined based on CIF Eurostat data corrected to ex-works level.

3.2.2.3. Comparison and dumping margin

(161) 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)(e) of the basic Regulation. Based on information from the applicant, a downward adjustment of 100 euro per tonne was made to the export price for freight costs.

(162) On that basis, the weighted average dumping margin, expressed as a percentage of the CIF Union frontier price, duty unpaid, was 17,6 %.

3.2.2.4. Conclusion

(163) The Commission therefore concluded that dumping from Russia continued during the review investigation period.

3.3. **Likelihood of continuation or recurrence of dumping should measures be repealed**

3.3.1. *PRC*

(164) As established in section 3.2.1 above, imports of ferro-silicon from the PRC were found to be dumped during the review investigation period. For the sake of completeness, the Commission also investigated whether dumping would persist or recur should measures be repealed. The following additional elements were analysed: the production capacity and spare capacity in the PRC, the availability of other markets to the Chinese producers, the pricing behaviour of exporting producers in the PRC in their domestic market and in other markets and the attractiveness of the Union market.

3.3.1.1. Production capacity and spare capacity in the PRC

(165) Given the non-cooperation, production capacity and spare capacity in the PRC were established on the basis of facts available and in particular the information provided by the applicant, in accordance with Article 18 of the basic Regulation.

(166) The production capacity in the PRC substantially exceeded the current production volumes. According to the data provided in the request ([82]), which were updated during the investigation ([83]), the production capacity of ferro-silicon amounted to 10 571 000 tonnes in 2019, while the production volumes amounted to 4 040 000 tonnes in the same year. Therefore, the capacity utilisation reached only approximately 38,2 %. Would the measures be repealed, the Chinese producers would thus have an estimated spare capacity of 6 531 000 tonnes whereas the Union market consumption was 740 144 tonnes during the review investigation period (see Table 1). The production capacity and the spare capacity in PRC indicated in the expiry review request were not rebutted by any party.

(167) Based on the above, the Commission concluded that the Chinese exporting producers have significant spare capacity, which they could use to produce ferro-silicon to export to the Union market if measures were allowed to lapse.

([81]) Information provided by Metal Expert commissioned by the applicant.
([82]) Annex 11 provided by AlloyConsult, market-related consulting services on the ferroalloy sector.
([83]) No t19.005064.

3.3.1.2. Availability of other markets

(168) The Chinese domestic market is worldwide by far the most important market as it represented 58 % of the world apparent consumption in 2017 ([84]). However, consumption on that market went down by 18 % or 887 000 tonnes from 2013 to the review investigation period ([85]).

(169) During the review investigation period, Japan imported 167 000 tonnes of ferro-silicon from the PRC and it was the PRC's industry's first export market, accounting for 27,7 % of the total of the Chinese exports of ferro-silicon. However, according to articles in the press, the Japanese ferroalloy smelters aim at diversifying their supplies and ending their dependency on India and the PRC. To that end, they have set up several joint ventures in Malaysia in 2017 ([86]). Consequently, it is expected that the Japanese market will be more difficult to access for Chinese exports in the future.

(170) Therefore, the Commission concluded that, should the current measures be repealed, there is a high risk that the Chinese producers will endeavour to compensate for their significant losses in term of sales volumes on the important domestic and, expectedly, also Japanese market by re-directing substantial sales flows to the Union market.

3.3.1.3. Attractiveness of the Union market

(171) Chinese exports of ferro-silicon during the review investigation period amounted to 608 000 tonnes of which 3 587 tonnes to the Union ([87]). The Chinese producers exported to 63 countries and on average the ferro-silicon sales prices to those countries were lower as compared to sales prices to the Union. Only in 14 of these countries, the sales prices were higher as compared to sales prices to the Union. Indeed, the average Chinese sales prices to the Union was higher (+6,1 %) than the overall average Chinese export sales price during the review investigation period ([88]). Therefore, exporting to the Union is much more attractive for Chinese exporters than exporting to almost all other countries.

(172) The Union market is also attractive to Chinese producers in view of its size: whereas global consumption of ferro-silicon, the Union is the second largest single market after the PRC. It represents in size 1,7 times the North American market and 1,5 times the Japanese market ([89]). Its size is thus an important factor contributing to its attractiveness.

3.3.1.4. Conclusion on the likelihood of continuation or recurrence of dumping

(173) In view of the continued dumping during the review investigation period, the pricing behaviour of the exporters in third markets, the magnitude of the spare capacity in the PRC, the size of the Union market and the prevailing prices on that market and the significantly decreased consumption on the domestic market and expected reduced availability of another important export market, there is a strong likelihood that dumping from the PRC would continue or in any event recur should the measures be allowed to lapse.

3.3.2. *Russia*

(174) As established in section 3.2.2 above, imports of ferro-silicon from Russia were found to be dumped during the review investigation period. The Commission also investigated whether dumping would persist or recur should measures be repealed. The following additional elements were analysed: the production capacity and spare capacity in Russia, the availability of other markets to the Russian producers, the pricing behaviour of exporting producers in Russia in their domestic market and in other markets and the attractiveness of the Union market.

3.3.2.1. Production capacity and spare capacity in Russia

(175) Given the non-cooperation, production capacity and spare capacity in Russia were established on the basis of facts available and in particular the information provided and updated by the applicant ([90]), in accordance with Article 18 of the basic Regulation.

([84]) Expiry review request – Chapter 5, figures 12 and 15, pages 40 and 43.
([85]) *Ibid.*, Chapter 5, figure 12, page 40 and submission by the applicant of 3.10.2019 (t19.005064).
([86]) https://asia.nikkei.com/Business/Malaysia-emerging-as-major-production-center-for-ferroalloys
([87]) Eurostat: http://comext.eurostat.ec.europa.eu/Analytical.html and user guidance https://ec.europa.eu/eurostat/web/international-trade-in-goods/data/focus-on-comext
([88]) Data extracted and calculated from Global Trade Atlas ('GTA')
([89]) https://www.metalbulletin.com/events/download.ashx/document/speaker/8479/a0ID000000ZP1j5MAD/Presentation
([90]) Annex 11 provided by AlloyConsult, market-related consulting services on the ferroalloy sector.

(176) The production capacity in Russia substantially exceeded the current production volumes. According to the request, the production capacity of ferro-silicon amounted 826 000 tonnes in 2019, while the production volumes amounted to 561 000 tonnes in the same year. Therefore, the capacity utilisation reached only approximately 67,9 %. Should the measures be repealed, the Russian producers have sufficient spare capacity estimated at 265 000 tonnes to oversupply the Union market, where consumption amounted to 740 144 tonnes during the review investigation period, with dumped ferro-silicon.

(177) Two non-cooperating Russian exporters and the GOR submitted that the Commission would have underestimated the utilisation rate in Russia. The GOR pointed at a submission made by the two Russian exporting producers, according to which the Russian production capacity would be much lower, in particular for the two exporting producers themselves, and the Russian production volumes higher. Consequently, the capacity utilisation in Russia would reach between 90 % and 100 %. The GOR also pointed at a submission it had made in this regard.

(178) First, the Commission noted that in its submission of 24 April 2019 the GOR/the Ministry of Economic Development of the Russian Federation stated that capacity of production of the product under review in Russia presented by the applicants and used by the Commission was 'also confirmed by Russian official statistics'.

(179) Second, according to the investigation, Russian production capacity was estimated at 826 000 tons for 2019, while on the basis of the Russian official statistics this number would be even higher for the year of 2018, that is, 932 000 tons. The figures presented by the non-cooperating exporting producers for 2017 do not match the Russian official statistics nor the estimations of the applicants for the same year. In fact, the 2017 production capacity in Russia was, according to the GOR, [20 %-30 %] higher than according to the figure provided therefor by the two non-cooperating exporting producers. Thus, based both on the estimations of the applicants and the Russian official statistics (as well as the statement by the GOR), it is clear that the production capacity provided by the exporting producer was understated.

(180) Third, the information submitted by the non-cooperating exporting producers concerned the year 2017 and not to the investigation period. Even if this unverified information were accepted, the statement that capacity utilisation in Russia would be almost 100 % is still incorrect. Indeed, if capacity utilisation were calculated by using the Russian official statistics on production capacity (840 700 tonnes) and the actual production submitted by the non-cooperating exporting producer [600 000 tonnes – 700 000 tonnes] for 2017, capacity utilisation would be [71 %-83 %], which is still far from 'almost 100 %'.

(181) In any event, the data with regard to production capacity and volumes provided by the applicant were more recent and thus more relevant for the purpose of a forward-looking exercise like a likelihood analysis, as they concerned the year 2019.

(182) On all these grounds, the claims that the Commission would have overstated the spare capacity in Russia are rejected. This decision was disclosed to the parties, which were given the opportunity to comment before a final decision was taken.

(183) In response, the two exporting producers submitted that the Commission had not addressed all outstanding issues raised by them and the GOR throughout the current expiry review investigation in general, and, specifically, the Commission's findings on spare capacity of the Russian producers. The exporting producers further submitted that, apart from dumping issues, they had fully cooperated with the investigation as an interested party. In addition, they claimed that in light of significant discrepancies in the data submitted by various interested parties regarding the capacity, production and capacity utilisation in Russia, the Commission was obliged to verify the data, including by means of the verification visit at their premises. The exporting producers challenged the rejection of its argument that the capacity utilisation rate was close to 100 % on the basis of an alternative calculation using the data provided by the companies and the applicants. In this regard, they claimed that the Commission had resorted to cherry-picking in the use of production capacity and volumes data. Finally, the companies referred to WTO case law in relation to facts available in support of their assertion that the information used by the Commission was not the most appropriate to this case and that the information they provided would be the best one available.

(184) First, the Commission disagreed that there was any submission or argument that had not been considered and replied to. The Commission in fact sent the companies an additional disclosure to ensure that their comments on the spare capacity had been fully addressed and that they were given the opportunity to comment before the findings became final. The fact that the companies did not agree with the Commission's conclusions cannot be confused with lack of reasoning. Apart from the spare capacity, the companies did not specify which issues would have not been addressed by the Commission in the final disclosure document. Needless to say that the additional disclosure was limited to the spare capacity assessment and that the reply to comments to the final disclosure document are found in this Regulation, as per the Commission's standard practice.

(185) Second, the two exporting producers were considered non-cooperating parties under Article 18 of the basic Regulation. As noted by the companies themselves, they chose not to reply to the questionnaires, which required important information to be used not only for the dumping but also for the injury assessment (such as production, production capacity and utilisation). While not under any legal obligation to conduct on-spot verifications, it is the Commission's practice to verify the questionnaire responses and additional data provided by all cooperating parties, which however was not the case for these two exporting producers. The Commission further notes that in this particular instance, regardless of the fact that these parties failed to cooperate and thus no verification was carried out at their premises, the data submitted by them was considered in substance, even if not verified, as per the additional specific disclosure. Such information was then also rejected in substance after being cross checked against the information provided by the GOR and the applicants. Contrary to what the companies claimed, there were no 'significant discrepancies in the data submitted by various interested parties'. It was their information alone that significantly differed from all the other information available on file, and more importantly the fact that this information related to the year 2017 pre-dating the review investigation period and also the more recent period of 2018 for which the GOR had submitted information. At the same time, the data provided by the applicants and by the GOR, on which the Commission relied for its assessment, though not identical were in line with each other. In its submission of 24 April 2019 the GOR/the Ministry of Economic Development of the Russian Federation itself confirmed that the data provided by the applicants was correct. On this basis, the Commission concluded on substance, and regardless of the verification of such information, that the information provided by the exporting producers was outdated and thus irrelevant, in addition to being not reliable and thus not being usable to calculate the spare capacity in Russia.

(186) Third, contrary to what the companies claimed, the calculation the Commission conducted used the companies' own data and the official statistics for capacity in Russia submitted by the GOR (and not the information provided by the applicant). Furthermore, the Commission cannot accept that different methodologies could yield such different results as the ones observed for the figures provided by the companies for production capacity. For this reason, the Commission rejects the assertion that it was picking and choosing the data available to it. When cross-checked with official statistics, the information provided by the companies could not be confirmed and was therefore rejected.

(187) Fourth, the Commission disagreed that the most appropriate information in this case was the information provided by the companies. A cross-check against official data showed that the figure provided for production capacity was not correct and therefore this information was considered unreliable and not used in the Commission's findings. The Commission decided to use the information provided by the applicants which was in line with Russian official statistics. In respect of the basic Regulation and the WTO concept cited by the companies, that information was found to be the 'most appropriate' in this case. The companies' claim was therefore rejected.

(188) In any event, the Commission recalled that the assessment of spare capacity was only one among several other elements and indicators on which it is legally required to base its findings the recurrence of injury in expiry reviews.

(189) Based on the above, the Commission concluded that the Russian exporting producers have significant spare capacity, which they could use to produce ferro-silicon to export to the Union market if measures were allowed to lapse.

3.3.2.2. Availability of other markets

(190) As described in recital 168 recent development in the Japanese market do suggest that imports from Malaysia will gradually take over the market share of other imports. Japan is also the first Russian export market for ferro-silicon. During the review investigation period, the Japanese market accounted for 30 % of the total of the Russian exports of ferro-silicon (or 127 000 tonnes). Should the current measures be repealed, it is likely that the Russian exporting producers would re-direct at least some of these exports towards the Union at dumped prices.

3.3.2.3. Attractiveness of the Union market

(191) In the absence of cooperation, to compare the Russian export prices to the Union with Russian export prices in other export markets, use was made of Global Trade Atlas ('GTA') and the Russian Customs Statistic of Foreign trade, where it appears that both sources provide almost the same result. On that basis, the average Russian export sale price to the Union was 1 149 EUR per tonne (or 8,1 %) higher than the overall average Russian export sale price during the review investigation period. Only in two out of 36 countries, the Russian exporting producers sold at prices which were, on average, higher than in the Union. Those sales represented less than 1 % of the total export volume. Therefore, the Commission found that exporting to the Union is significantly more attractive for Russian exporters than exporting to almost all of the other countries.

(192) Following disclosure, the two Russian exporting producers mentioned in recital 191 above disagreed with the Commission's findings regarding the attractiveness of the Union market to the Russian ferro-silicon industry. They doubted the prices reported in the Russian Customs Statistic of Foreign trade, as they would be unreliable. However, this claim was not further substantiated and no alternative way of comparing Russian export prices to different markets was proposed. It is recalled that the two parties concerned are two of the largest Russian exporting producers and had they decided to cooperate with the investigation, *quod non*, then the Commission would have been in a position to closely assess the Russian export prices of comparable products on the different world markets on the basis of their own export sales. The two exporting producers further argued that the volume of Russian exports to the Union would be at negligible levels making it impossible to draw any conclusions from the prices of these imports. As indicated in recital 157 above, Russian imports in the review investigation period constituted roughly 0,4 % of the total Union consumption and the Commission considered that such level of imports was sufficiently representative. Finally, these parties claimed that the PRC would set the price of ferro-silicon and other market participants would generally follow those prices, allowing for small deviations only. Whether or not this is the case, the Commission considered this irrelevant for the purpose of assessing the attractiveness of the Union market in terms of prices as compared to other markets The claims were thus rejected.

(193) As mentioned in recital 172 above, further to the prices prevailing on the Union market, the size of the Union market is a second important factor contributing to its attractiveness.

3.3.3. *Conclusion on the likelihood of continuation or recurrence of dumping*

(194) In view of the continued dumping during the review investigation period, the pricing behaviour of the exporters in third markets, the existing spare capacity in Russia, the size of the Union market and the prevailing prices on that market and the expected reduced availability of another important export market market, there is a strong likelihood that dumping from Russia would continue or recur should the measures lapse.

3.4. **Overall conclusions on the likelihood of continuation or recurrence of dumping**

(195) The investigation showed that Chinese and Russian imports continued to enter the Union market at dumped prices during the review investigation period.

(196) The Commission also found evidence that there is a significant spare capacity in both of the countries concerned, that the Union market is attractive in terms of prices and size and the other exports might be redirected.

(197) In the light of the above, the Commission concluded that the expiry of the anti-dumping measures would be likely to lead to a continuation or recurrence of dumping.

4. INJURY

4.1. Definition of the Union industry and Union production

(198) The like product was manufactured by five producers in the Union during the period considered. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

(199) The total Union production during the review investigation period was established at around 241 000 tonnes, based on the information provided by the Union industry. As indicated in recital 11, four Union producers were selected in the sample representing more than 90 % of the total Union production of the like product.

4.2. Union consumption

(200) The Commission established the Union consumption as a sum of Union industry's sales volume on the Union market and total imports into the Union obtained from the Comext database (Eurostat).

(201) Throughout the period considered, the consumption in the Union remained stable, with the exception of 2016 when a sharp decrease took place. A strong fall in prices started during the fourth quarter of 2015 and negatively impacted the whole market throughout 2016. Steel is the main end-use sector for ferro-silicon and steel production in the European union fell from 165,9 million tonnes in 2015 to 162,1 million tonnes in 2016 (–2,3 %) ([91]). In addition in the second half of 2015, there was a large decrease in inventories which caused prices to fall. Low prices then reduced output and over the next two years 2016 and 2017 inventories gradually reduced.

Table 1

Union Consumption (tonnes)

	2015	2016	2017	2018	Review Investigation Period
Total consumption	752 111	578 894	700 509	776 354	740 144
Index (2015 = 100)	*100*	*77*	*93*	*103*	*98*

Source: Eurostat, data submitted by the Union industry and verified questionnaire replies

4.3. Imports from the countries concerned

4.3.1. *Cumulative assessment of the effects of the imports from the countries concerned*

(202) The Commission examined whether imports of ferro-silicon originating in the countries concerned should be assessed cumulatively in accordance with Article 3(4) of the basic Regulation.

(203) The margin of dumping established in relation to the imports from each of the countries concerned was above the *de minimis* threshold as defined in Article 9(3) of the basic Regulation and the volume of imports from each of the countries concerned was sufficiently representative, as set out in recitals 43 and 157.

(204) A cumulative assessment was considered appropriate in view of the comparable conditions of competition between the imports from these two countries and the like Union product. The Commission found similar conditions of competition as the product under review imported from the PRC and Russia and the like product produced and sold by the Union industry on the Union market were alike and deemed to be distributed via the same trade channels.

(205) In the light of the above, it was considered that all the criteria set out in Article 3(4) of the basic Regulation were met. The imports from the PRC and Russia were therefore examined cumulatively.

([91]) Source: Applicant's data.

4.3.2. *Volume and market share of the imports from the countries concerned*

(206) The Commission established the volume of imports from the PRC and Russia into the Union on the basis of data from the Comext database (Eurostat) and the market share of the imports by comparing these import volumes with the Union consumption as shown in Table 1.

(207) The volume of imports of the product under review from the countries concerned into the Union market has decreased by 17 % over the period considered. However, the volume of imports from the PRC showed a more than four-fold increase in 2018 and the review investigation period, while the imports from Russia more than halved throughout the period considered, although an increase can be seen between 2016 and the review investigation period.

Table 2

Union import volume (tonnes)

	2015	2016	2017	2018	Review Investigation Period
Volume of import from the PRC	614	305	235	2 719	2 804
Index (2015 = 100)	*100*	*50*	*38*	*443*	*457*
Volume of import from Russia	6 006	318	1 409	2 653	2 722
Index (2015 = 100)	*100*	*5*	*23*	*44*	*45*
Countries concerned	6 620	623	1 644	5 372	5 526
Index (2015 = 100)	*100*	*9*	*25*	*81*	*83*

Source: Eurostat, adjusted to 75 % silicon content

(*) The import volumes were first extracted from the Eurostat import database for the three CN codes covered by this review and then CN codes 7202 29 10 and 7202 29 90 were adjusted to the silicon content of CN code 7202 21 00 (75 %). The import volumes of these CN codes were aggregated and weighted to reflect one average..

(208) The market share of dumped imports from the countries concerned showed a decrease and remained below 1 % throughout the period considered. So, during the period considered, imports from the PRC and Russia continued to enter the Union, through to a limited extent.

Table 3

Union market share (%)

	2015	2016	2017	2018	Review Investigation Period
PRC	0,1 %	0,1 %	0,0 %	0,4 %	0,4 %
Index (2015 = 100)	*100*	*65*	*41*	*429*	*464*
Russia	0,8 %	0,1 %	0,2 %	0,3 %	0,4 %
Index (2015 = 100)	*100*	*7*	*25*	*43*	*46*
Countries concerned	0,9 %	0,1 %	0,2 %	0,7 %	0,7 %
Index (2015 = 100)	*100*	*12*	*27*	*79*	*85*

Source: Eurostat, data submitted by the Union industry and verified questionnaire replies.

4.3.3. *Prices of the imports from the countries concerned and price undercutting*

(209) The Commission established the prices of imports on the basis of data from the Comext database (Eurostat).

(210) The average import prices of the product under review from the PRC showed a sharp increase in 2017, but dropping 74 percentage points in 2018. Overall, the Chinese price showed a decrease over the period considered of 6 %. This trend was opposite for Russia, which showed a lower price level during 2016 and 2017, but an increase of 9 % over the period considered.

Table 4

Import prices (EUR/tonne)

	2015	2016	2017	2018	Review Investigation Period
Import price PRC	1 319	1 317	2 086	1 109	1 234
Index (2015 = 100)	*100*	*100*	*158*	*84*	*94*
Import price Russia	1 113	764	770	1 175	1 211
Index (2015 = 100)	*100*	*69*	*69*	*106*	*109*

Source: Eurostat, adjusted to 75 % silicon content

(*) As with import volumes, import prices were first extracted from the Eurostat import database for the three CN codes covered by this review and then CN codes 7202 29 10 and 7202 29 90 were adjusted to the silicon content of CN code 7202 21 00 (75 %). The import prices of these three CN codes were aggregated and weighted to reflect one average..

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

(212) the weighted average sales price of the product under review of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and

(213) the import price data from Eurostat for the product under review from both the PRC and Russia at a CIF level, adjusted to a landed price, including an amount of conventional customs duty and post importation costs.

(214) The result of the comparison was expressed as a percentage of the Union industry's price during the review investigation period.

(215) The comparison showed for imports from Russia an average undercutting in the Union market during the review investigation period of 1,0 %.

(216) The imports from the PRC did not undercut the Union market, but were 0,4 % higher. However, when looking at Chinese export prices to other third countries ([92]), these latter prices do undercut the Union market by 1,7 %.

(217) If measures were allowed to lapse, the Union market would become attractive for both Russian and Chinese exporting producers, as the price level in the Union is higher than the other countries they have been exporting to. This attractiveness would encourage the Russian and Chinese to continue their dumping practices on the Union market and use (at least partially) their spare capacity to supply the Union market. Already such an increase in imports would cause prices in the Union to decrease. Besides that, as the Russian export prices to the Union and the Chinese export prices to other third countries show, such imports are likely to undercut the Union industry's prices.

([92]) Export data from Global Trade Atlas.

(218) Because of their magnitude in volume, the Russian and Chinese imports would have, to a significant degree, a depressive effect on the prices of the Union industry. It would be likely that to compete with an increased volume of lower priced imports from the countries concerned, the Union industry would have to accept a loss in market share and/or to be forced to adjust its prices downwards to try to keep its market share.

(219) Therefore, the Commission concluded that it would be likely that imports from Russia and the PRC would undercut the Union industry prices or, by their sheer magnitude and dumped prices, would cause price suppression on the Union market if measures were allowed to lapse.

4.4. **Imports from third countries other than the PRC and Russia**

(220) One exporter claimed that the imports from the countries concerned have been replaced by imports from Norway, Malaysia, Egypt and Brazil.

(221) The imports of ferro-silicon from third countries other than the PRC and Russia were mainly from Norway, representing 39 % of the imports from other countries than the countries concerned during the review investigation period. Malaysia, Egypt and Brazil represented 11 %, 5 %, and 7 % of total imports respectively during the review investigation period. However, the exporter has not provided any evidence that these imports have been dumped on the Union market.

(222) As the overall market share of imports from third countries remained stable over the period considered, with a slight temporary decrease in 2016 and 2017, the claim of the exporter did not hold for the period.

Table 5

Imports and market share of other third countries

	2015	2016	2017	2018	Review Investigation Period
Volume of imports from Norway (tonnes)	204 913	144 649	127 832	208 628	205 858
Index (2015 = 100)	*100*	*71*	*62*	*102*	*100*
Market share Norway	27,2 %	25,0 %	18,2 %	26,9 %	27,8 %
Volume of imports from Malaysia (tonnes)	21 393	12 311	44 252	53 037	57 413
Index (2015 = 100)	*100*	*58*	*207*	*248*	*268*
Market share Malaysia	2,8 %	2,1 %	6,3 %	6,8 %	7,8 %
Volume of imports from Egypt (tonnes)	26 398	25 127	39 836	28 269	24 277
Index (2015 = 100)	*100*	*95*	*151*	*107*	*92*
Market share Egypt	3,5 %	4,3 %	5,7 %	3,6 %	3,3 %
Volume of imports from Brazil (tonnes)	6 772	13 813	15 129	35 731	34 974
Index (2015 = 100)	*100*	*204*	*223*	*528*	*516*
Market share Brazil	0,9 %	2,4 %	2,2 %	4,6 %	4,7 %
Volume of imports from other countries (tonnes)	278 791	180 972	265 243	233 305	207 218
Index (2015 = 100)	*100*	*65*	*95*	*84*	*74*
Market share other countries	37,1 %	31,3 %	37,9 %	30,1 %	28,0 %
Total market share of third countries in the Union (excluding the PRC and Russia)	71,6 %	65,1 %	70,3 %	72,0 %	71,6 %
Index (2015 = 100)	*100*	*91*	*98*	*101*	*100*

Source: Eurostat, corrected to 75 % silicon content.

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

4.5.1. *General remarks*

(223) 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.

(224) As mentioned in recital 10, sampling was used for the assessment of the economic situation of the Union industry.

(225) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data submitted by the Union industry and the verified questionnaire replies from the sampled Union producers.

(226) The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers.

(227) Both sets of data were found to be representative of the economic situation of the Union industry.

(228) 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.

(229) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

4.5.2. *Macroeconomic indicators*

4.5.2.1. Production, production capacity and capacity utilisation

(230) While a decrease in production took place in 2016, the Union industry's production increased by 3 % during the period considered.

Table 6

Union production

	2015	2016	2017	2018	Review Investigation Period
Production (tonnes)	234 694	212 803	231 614	234 691	241 609
Index (2015 = 100)	100	91	99	100	103

Source: Data submitted by the Union industry and verified questionnaire replies.

(231) Production capacity remained stable over the period considered.

Table 7

Union production capacity

	2015	2016	2017	2018	Review Investigation Period
Capacity (tonnes)	300 050	286 050	296 508	301 918	303 329
Index (2015 = 100)	*100*	*95*	*99*	*101*	*101*

Source: Data submitted by the Union industry and verified questionnaire replies.

(232) Capacity utilisation followed the same trend as the production, it increased by 2 % during the period considered to 80 %.

Table 8

Union capacity utilisation

	2015	2016	2017	2018	Review Investigation Period
Capacity utilisation (%)	78 %	74 %	78 %	78 %	80 %
Index (2015 = 100)	*100*	*95*	*100*	*99*	*102*

Source: Data submitted by the Union industry and verified questionnaire replies.

4.5.2.2. Sales volume and market share

(233) The sales of the Union industry on the Union market to unrelated customers remained stable during the period considered, showing a slight decrease of 1 % in the review investigation period.

Table 9

Union sales volume

	2015	2016	2017	2018	Review Investigation Period
Union sales volume	207 224	201 399	206 574	212 012	204 878
Index (2015 = 100)	*100*	*97*	*100*	*102*	*99*

Source: Data submitted by the Union industry and verified questionnaire replies.

(234) The market share held by the Union industry showed a sharp increase in 2016, but remained stable in the review investigation period compared to the beginning of the period considered at a level of 27,7 %.

Table 10

Union market share

	2015	2016	2017	2018	Review Investigation Period
Market share of the Union industry (%)	27,6 %	34,8 %	29,5 %	27,3 %	27,7 %
Index (2015 = 100)	*100*	*126*	*107*	*99*	*100*

Source: Data submitted by the Union industry and verified questionnaire replies.

4.5.2.3. Growth

(235) Between 2015 and the review investigation period, the Union consumption slightly decreased by 2 % and the Union industry decreased their sales by 1 %. Therefore, their market share remained stable.

4.5.2.4. Employment and productivity

(236) The employment level of the Union industry decreased by 12 % between 2015 and 2018 and then increased by 6 percentage points in the review investigation period. Overall, employment of the Union industry showed a decrease of 6 % over the period considered. The sudden increase of the employment level during the review investigation period is explained by one plant of one of the European producers which was fully dedicated to the product under review during the review investigation period, thus allocating all its workforce to it.

Table 11

Employment

	2015	2016	2017	2018	Review Investigation Period
Employment in FTE	842	760	743	738	795
Index (2015 = 100)	*100*	*90*	*88*	*88*	*94*

Source: Data submitted by the Union industry and verified questionnaire replies.

(237) Productivity of the Union industry's workforce, measured as output (tonnes) per fulltime equivalent (FTE) per year, started from a level of 279 tonnes per FTE increased by 9 % over the period considered.

Table 12

Union productivity

	2015	2016	2017	2018	Review Investigation Period
Productivity (tonnes/FTE)	279	280	312	318	304
Index (2015 = 100)	*100*	*100*	*112*	*114*	*109*

Source: Data submitted by the Union industry and verified questionnaire replies.

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

(238) The investigation has established the continuation of dumping from both the PRC and Russia, and that the magnitude of the margins of dumping as shown in recitals 155 and 162 are above the *de minimis* level.

(239) However, the level of imports of the product under review from the countries concerned remained limited at 0,7 % during the review investigation period.

4.5.3. *Microeconomic indicators*

4.5.3.1. Prices and factors affecting prices

(240) Unit prices for Union industry's sales to unrelated customers increased over the period considered by 15 % to 1 338 EUR/tonne. The cost of production increased by 20 % to 1 250 EUR/tonne, explaining the increase in sales price.

Table 13

Unit price and unit cost in the Union Market

	2015	2016	2017	2018	Review Investigation Period
Union unit price to unrelated customers (EUR/tonne)	1 163	905	1 197	1 414	1 338
Index (2015 = 100)	*100*	*78*	*103*	*122*	*115*
Union cost of production (EUR/tonne)	1 042	928	1 056	1 215	1 250
Index (2015 = 100)	*100*	*89*	*101*	*117*	*120*

Source: Data submitted by the Union industry and verified questionnaire replies.

4.5.3.2. Labour costs

(241) Between 2015 and the review investigation period, average labour costs per employee increased by 41 %, due to higher total labour costs and lower employment in FTE in the same period.

Table 14

Average labour costs per employee

	2015	2016	2017	2018	Review Investigation Period
Labour costs (EUR/FTE)	30 078	28 043	35 183	40 753	42 269
Index (2015 = 100)	*100*	*93*	*117*	*135*	*141*

Source: Data submitted by the Union industry and verified questionnaire replies.
FTE is a full time equivalent.

4.5.3.3. Inventories

(242) The level of closing stocks of the Union industry has decreased over the period considered. It decreased sharply by 59 % in 2016 and increased the rest of the period considered, remaining 31 % lower in the review investigation period compared to the start of the period considered.

Table 15

Inventories

	2015	2016	2017	2018	Review Investigation Period
Closing stock (tonnes)	36 846	14 975	15 968	22 625	25 495
Index (2015 = 100)	*100*	*41*	*43*	*61*	*69*

Source: Data submitted by the Union industry and verified questionnaire replies.

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

(243) During the period considered, the profitability of the Union industry's sales, expressed as a percentage of net sales, declined from a profit of 10,7 % in 2015 to 7,4 % in the review investigation period.

(244) The return on investments ('ROI'), expressed as the profit as a percentage of the net book value of investments, broadly followed the profitability trend. It declined from a level of 93,2 % in 2015 to 54,9 % in the review investigation period, thus decreasing by 41 % over the period considered.

(245) The net cash flow is the ability of the Union producers to self-finance their activities. The net cash flow from operating activities followed the profitability trend. It stood at around EUR 25 million in 2015 and decreased to around EUR 23 million in the review investigation period (i.e. a decrease of 8 %).

Table 16

Profitability and Return on Investment

	2015	2016	2017	2018	Review Investigation Period
Union profitability (% of net sales)	10,7 %	- 2,2 %	10,9 %	13,5 %	7,4 %
Index (2015 = 100)	*100*	*-21*	*102*	*126*	*69*
ROI (profit in% of the net book value of investment)	93,2 %	- 16,8 %	59,4 %	83,3 %	54,9 %
Index (2015 = 100)	*100*	*-18*	*64*	*89*	*59*

Source: Data submitted by the Union industry and verified questionnaire replies.

Table 17

Cash Flow

	2015	2016	2017	2018	Review Investigation Period
Cash flow (EUR)	24 809 939	10 679 967	27 923 572	35 928 315	22 945 093
Index (2015 = 100)	***100***	***43***	***113***	***145***	***92***

Source: Data submitted by the Union industry and verified questionnaire replies.

(246) The Union industry's annual investments in the production of the like product fluctuated over the period considered, but showed a decrease from around EUR 11 million in 2015 to around EUR 8 million in the review investigation period, i.e. they decreased by 25 %.

Table 18

Investments

	2015	2016	2017	2018	Review Investigation Period
Net investments (EUR)	10 955 734	3 836 877	10 911 592	6 226 775	8 227 422
Index (2015 = 100)	***100***	***35***	***100***	***57***	***75***

Source: Data submitted by the Union industry and verified questionnaire replies.

4.6. **Conclusion on the situation of the Union industry**

(247) The investigation showed that the imports of low-priced dumped products from the countries concerned further decreased after the previous review investigation. This allowed the Union industry to achieve a high level of production and keep a stable production and sales volume and market share, leading to a relatively stable overall financial situation.

(248) The macro- and micro-indicators examined show that the anti-dumping measures have achieved their intended result of removing the injury suffered by the Union producers.

(249) It is therefore concluded that the Union industry did not suffer material injury within the meaning of Article 3(5) of the basic Regulation during the review investigation period.

5. **LIKELIHOOD OF RECURRENCE OF INJURY**

(250) The Commission concluded in recital 247 that the Union industry did not suffer material injury during the review investigation period. Therefore, the Commission assessed, in accordance with Article 11(2) of the basic Regulation, whether there would be a likelihood of recurrence of injury from the dumped imports from the PRC and Russia if the measures were allowed to lapse. On the basis of the above-described trends, it appears that the anti-dumping measures have achieved their intended result of removing injury suffered by the Union producers.

(251) In that regard, the Commission examined the production capacity and spare capacity in the countries concerned, attractiveness of the Union market and the impact of imports from the countries concerned on the situation of the Union industry should the measures be allowed to lapse.

5.1. **Spare production/processing capacity**

(252) As mentioned in recitals 166 and 176, both Chinese and Russian exporters do have significant spare capacity to increase their exports rapidly. Their spare capacity is estimated around 6 531 000 tonnes and 265 000 tonnes respectively, which is approximately nine times the consumption within the Union.

(253) Following disclosure, two Russian exporters claimed that cumulating the spare capacity of the Russian and Chinese exporters gives a misleading and biased figure.

(254) These claims are factually incorrect as the Commission did not cumulate the spare capacity of the Russian and Chinese exporters. The assessment was made separately for the PRC (recital 166) and Russia (recital 176), as referred to in recital 250. The Commission found in relation to Russia that, *should the measures be repealed, the Russian producers have sufficient spare capacity estimated at 265 000 tonnes to oversupply the Union market, where consumption amounted to 740 144 tonnes during the review investigation period, with dumped ferro-silicon.*

(255) Therefore, the Commission maintains its conclusion that there is significant spare capacity in Russia that might be used to supply the Union market if measures were allowed to lapse, and the claim is rejected.

5.2. **Attractiveness of the Union market**

(256) Given the more lucrative prices on the Union market compared to third country markets as described in recitals 171 and 191, it is likely that significant quantities currently exported to those countries would be re-directed to the Union market in the event of the anti-dumping measures being allowed to lapse.

(257) On that basis, in the absence of measures, Chinese and Russian producers would likely increase their presence in the Union market in terms of both volume and market share and at dumped prices that would likely undercut the Union industry's prices or, at least, exert increased price pressure on the Union industry's sales prices as explained in recitals 213 to 216.

(258) One exporter claimed that the Union market share previously held by Chinese and Russian imports has been taken up by other third countries and it would be therefore highly unlikely that imports from the countries concerned sharply increase if measures would lapse. This exporter further claimed that the Union market is not as attractive as other third country markets, where well-established relationships have been built up.

(259) However, the investigation has shown that prices on the Union market were higher than in the other export markets of the countries concerned. Furthermore, even though the Chinese and Russian exporters only had a small market share in the Union, they continued their dumping behaviour. This, in combination with the large spare capacities in the PRC and Russia, would make an increased presence in the Union market at dumped prices likely and, therefore, the Commission rejected the claims.

5.3. **Impact of imports from the countries concerned on the situation of the Union industry should the measures be allowed to lapse**

(260) If measures were allowed to lapse, an increase in imports from the countries concerned is expected, due to the attractiveness of the Union market as set out in recitals 254 to 257. These imports are likely to be undercutting the prices of the Union industry or at least put a heavy downward pressure on the non-injurious price level of the Union industry, as set out in recitals 213 to 217.

(261) One exporter claimed that Union consumption will increase because of an increased demand from the downstream steel sector. On the other hand, the applicant claimed the opposite. In any case, even if the Union consumption would show a positive future trend, this would not mitigate the injurious effects of dumped imports from the countries concerned if the measures would be allowed to lapse.

(262) Following disclosure, two Russian exporting producers claimed that the Commission should be bound by a higher standard in relation to evidence required for substantiating a likelihood of recurrence of injury as far as Russia is concerned, as the conclusion on continued dumping was established based on negligible Russian imports to the Union. For the review investigation period, the statistical data from Eurostat showed that 2 735 tonnes of ferro-silicon were imported into the Union from Russia, constituting roughly 0,4 % of the total Union consumption ([93]).

(263) As set out in recital 192, the Commission concluded that such level of imports was sufficiently representative to examine whether dumping continued during the review investigation period. Furthermore, the Commission also analysed the trends in relation to export to third countries and concluded that it was likely that exports to third countries would be redirected to the Union, because the price and size level of the Union market (recitals 191 to 193).Thus, the Commission disagrees that its conclusions on the likelihood of recurrence of injury was based on less than adequate standard of evidence. This claim was therefore rejected.

5.4. **Conclusion on likelihood of recurrence of material injury**

(264) With the likely arrival of large quantities of Chinese and Russian imports at dumped prices, the Union industry would be forced to reduce its production or lower its prices. With regard to the Russian imports, the Union industry would have to lower its prices to compete at the same price level. The spare capacity in the PRC is of such a massive size that even a small shift of sales towards the Union would negatively affect the Union industry, especially as Chinese exports to other third countries have shown that the prices might be decreased to a level undercutting the prices of the Union industry. Decreases in production volumes or sales prices by the Union industry would cause a very quick deterioration of its profitability and other performance indicators.

(265) Following disclosure, two Russian exporting producers claimed that the stable or positive performance of the European industry during the period considered makes the likelihood of recurrence of injury much weaker. The GOR similarly commented that the European ferrosilicon industry is currently in a favourable and stable position.

(266) The Commission's investigation indeed confirmed that the Union industry did not suffer material injury during the review investigation period. However, the significant spare capacities in Russia jeopardise the situation of the Union industry, as it would be forced to lower its production or reduce its prices, should the measures be repealed. The attractiveness of the Union market, which presents more lucrative prices than other export destinations, reinforces the strong possibility that quantities from Russia might be redirected to the Union, should the measures be repealed. The two Russian exporting producers did not present any argument which would invalidate these conclusions of the Commission. Therefore, the absence of current material injury in the Union industry is not a sufficient argument and cannot lead to the conclusion that injury would not recur, should the measures be repealed.

([93]) Recital 44.

(267) Furthermore, the GOR claimed a lack of attractiveness of the Union market for the Russian producers, as they would already have switched to third markets since anti-dumping measures were imposed. Therefore, the increase of Russian ferrosilicon to the Union would be extremely unlikely and Russian producers would not be able to increase significantly their supplies to the Union should the measures be repealed.

(268) As set out in recitals 191 to 193, prices in the Union market are higher and make the Union market more attractive to exporters, also for its size. Considering the potential both in terms of prices and volumes when compared to other third countries, there is no reason why Russian exporters would not switch back to supplying the Union market, as claimed by the GOR, in search for larger sales and higher profitability. Therefore, the Commission maintains its conclusion that Russian exports would likely be redirected to the Union if measures were allowed to lapse.

(269) The GOR also expressed concern with the fact that the Commission assessed impact of imports of ferrosilicon from Russia and the PRC cumulatively, whereas ferrosilicon imports from these two countries showed counter-directional trends.

(270) While it is true that there were differences in import flows to the Union between the two countries during the period considered, the GOR did not provide any argument to explain how these differences would affect the finding of the recurrence of injury, should the measures be repealed. As explained, the recurrence of injury is a forward looking assessment and based on the attractiveness of the Union market and the volumes produced by the two countries the investigation showed that there is a likelihood of recurrence of injury. As noted in recital 252, the Commission assessed both the capacity and attractiveness of the Union market for each country separately. Only then, having concluded that there was significant spare capacity and the Union market was attractive to both countries' exports, it concluded that there was a likelihood of recurrence of injury in relation to both countries. The claim was therefore rejected.

(271) On the basis of the above, it can be concluded that there is a likelihood of recurrence of material injury should the current anti-dumping measures lapse.

6. **UNION INTEREST**

(272) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures would be against the interest of the Union as whole. The determination of the Union interest was based on an appreciation of all the various interests involved. All interested parties were given the opportunity to make their views known in accordance with Article 21(2) of the basic Regulation.

6.1. **Interest of the Union industry**

(273) As mentioned in recital 262, the Union industry would likely experience a serious deterioration of its situation in case the anti-dumping measures were allowed to lapse. Therefore, the continuation of measures would benefit the Union industry because the Union producers would be able to maintain their sales volumes, market share, profitability and overall positive economic situation. By contrast, the discontinuation of the measures would seriously threaten the viability of the Union industry, because a shift of the Chinese and Russian imports to the Union market at dumped prices and in considerable volumes would be likely to occur, causing the recurrence of material injury to the Union industry.

(274) One exporter requested the Commission to extend the measures with regard to Russia for a period no longer than two years to achieve a proper balance of deferring interests of all Union industry stakeholders. However, the exporter did not bring further substantiations how a period of two years would strike a better balance of all Union stakeholders interests.

(275) After the final disclosure, two Russian exporting producers reiterated the claim that a shorter extension period would be warranted.

(276) The Commission found that the situation of the Union industry and the absence of material injury during the review investigation period were not exceptional circumstances. The Commission found that the expiry of the measures would likely result in the recurrence of injury. Thus, there are no elements in this case that would justify a shorter extension on the basis of Union interested.

6.2. **Interest of users**

(277) In the previous expiry review investigation, it was concluded that users would not be disproportionally affected, even if measures were to be extended.

(278) One user cooperated in the present investigation and opposed the renewal of anti-dumping measures. However, this user indicated that it used the product under review only as a heating material in the production procedure. As the product under review played a very limited role in the cost structure of this user, the Commission did not find any evidence suggesting that the conclusion of the previous review investigation should be changed in the current review investigation.

(279) In addition, the GOR contested the Commission's statement that the increase of the price of ferrosilicon in the Union market would not cause injury to consumers and claimed that the continuation of the anti-dumping measures on ferro-silicon would lead to the production of overpriced and uncompetitive metallurgical products, taking into account other trade defence measures towards the steel industry. The GOR did not provide any evidence substantiating this claim.

(280) Considering that anti-dumping measures are already in place, the Commission did not agree that there would be a price increase if measures were extended. Besides, anti-dumping duties aim at bringing the price of dumped imports to a fair level. Thus, a possible price increase in that market would not result in overpriced and uncompetitive products but in fair competition. In the absence of any evidence indicating that these conclusions would be incorrect, the Commission rejected the claim.

(281) Accordingly, the Commission concluded that the measures currently in force had no substantial negative effect on the financial situation of users and that the continuation of the measures would not unduly affect them.

6.3. **Interest of importers**

(282) All known importers were informed about the initiation of the review. Four importers came forward, but none imported the product under review from the countries concerned during the review investigation period.

(283) However, one importer made a submission opposing the renewal of the anti-dumping measures on imports originating in the PRC. This importer claimed that the price of Chinese ferro-silicon had become more expensive than the like product in the Union, the structure of the Union industry has changed since the original investigation, and ferro-silicon with a low silicon content should not be covered in the current investigation, as it was excluded from more recent anti-dumping investigations into ferro-silicon from third countries other than the countries concerned.

(284) The import price from the PRC at CIF level during the review investigation period was at an average level of 1 234 EUR/tonne, while the Union price was 1 338 EUR/tonne. The Commission found that the price from the PRC increased by 75,5 % during the last semester of 2017 and reached a peak in December 2017 at 2 005 USD/tonne ([94]), as some Chinese production sites had to be shut down for environmental reasons. Authorities have stopped ferrosilicon production for environmental reasons in the important Ningxia region at the end of 2017. After production was re-established, prices decreased rapidly by 31 % four months later (1 387,5 USD/tonne in April 2018) and by 40 % at the end of the review investigation period (1 195 USD/tonne in March 2019). Therefore, the company's claim that the price of Chinese ferro-silicon was higher than the like product in the Union was rejected, as the alleged increase was sudden, temporary and limited in time.

(285) In relation to the claim that the structure of the Union industry has changed since the original investigation, the investigation found that, even if there had been some changes in the structure of the Union industry, the findings of the Commission are based on current data and refer to over 90 % of the total Union production of ferro-silicon. Besides, the importer did not provide any substantive reasoning how and why the structure of the Union industry would have affected the existence of the measures in place. On this basis, the Commission rejected this claim.

([94]) The price was 1 142,5 USD/tonne in July 2017.

(286) With regard to the inclusion of ferro-silicon with a low silicon content, the product scope in this review is the same as in the original review. The Commission noted that the Union industry still produces this product type. The fact that other anti-dumping investigations did not cover the exact same product as this review does not change the Commission's findings in this investigation on the continuation of dumping and a likelihood on recurrence of injury on the product under review.

(287) The previous expiry investigation concluded that importers can easily buy from different sources that are currently available on the market, in particular from the Union industry and major third countries' exporters selling at non-dumped prices. The Commission did not find in the present review any evidence contradicting this conclusion. Therefore, it was concluded that it would not be disproportionate to maintain measures.

6.4. **Conclusion on Union interest**

(288) The Commission concluded that there were no compelling reasons of the Union interest against maintaining the existing measures on imports of the product under review. Maintaining measures would be in the interest of the Union industry and would not harm the situation of users and importers in the Union.

7. **ANTI-DUMPING MEASURES**

(289) On the basis of the conclusions reached by the Commission on continuation or recurrence of dumping, recurrence of injury and Union interest, the anti-dumping measures on ferro-silicon originating in the PRC and Russia should be maintained.

(290) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. An additional final disclosure was made to the two Russian exporting producers. All parties were also granted a period to make representations subsequent to this disclosure and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. The submissions and comments were duly taken into consideration.

(291) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 ([95]), when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.

(292) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation. The Committee established by Article 15(1) of Regulation (EU) 2016/1036 delivered a positive opinion,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of ferro-silicon currently falling under CN codes 7202 21 00, 7202 29 10 and 7202 29 90, originating in the People's Republic of China and the Russian Federation.

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

([95]) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

Country	Company	Definitive duty	TARIC Additional Code
The People's Republic of China	Erdos Xijin Kuangye Co. Ltd, Qipanjing Industry Park	15,6 %	A829
	Lanzhou Good Land Ferroalloy Factory Co., Ltd, Xi-cha Villa	29,0 %	A830
	All other companies	31,2 %	A999
Russian Federation	Bratsk Ferroalloy Plant, Bratsk	17,8 %	A835
	All other companies	22,7 %	A999

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

Article 2

Article 1(2) may be amended in order to include a new exporting producer and to attribute to that producer the appropriate weighted average anti-dumping duty rate applicable to the cooperating companies not included in the sample of the original investigation, where a new exporting producer in PRC or Russia provides sufficient evidence to the Commission that:

(a) it did not export to the Union the product described in Article 1(1) in the period between 1 October 2005 and 30 September 2006 (original investigation period);

(b) it is not related to any exporter or producer in PRC or Russia which is subject to the anti-dumping measures imposed by this Regulation; and

(c) it has either actually exported to the Union the product under review or it has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the original investigation period.

Article 3

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

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

Done at Brussels, 30 June 2020.

For the Commission
The President
Ursula VON DER LEYEN