COMMISSION IMPLEMENTING REGULATION (EU) 2022/468

of 23 March 2022

imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of calcium silicon originating in the People's Republic of China

THE EUROPEAN COMMISSION,

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

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

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 18 February 2021, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of calcium silicon ('CaSi') originating in the People's Republic of China ('the PRC' or 'the country concerned' or 'China') on the basis of Article 5 of the basic Regulation. It published a Notice of initiation in the *Official Journal of the European Union* ([2]) ('the Notice of initiation').

(2) The Commission initiated the investigation following a complaint lodged on 4 January 2021 by Euroalliages ('the complainant'). The complaint was made on behalf of the Union industry of calcium silicon in the sense of Article 5(4) of the basic Regulation. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

1.2. Provisional measures

(3) In accordance with Article 19a of the basic Regulation, on 17 September 2021, the Commission provided parties with a summary of the proposed provisional duties and details about the calculation of the dumping margins and the margins adequate to remove the injury to the Union industry. Interested parties were invited to comment on the accuracy of the calculations within three working days. No comments on the accuracy of the calculations were received.

(4) The Commission imposed provisional anti-dumping duties on imports of calcium silicon originating in the People's Republic of China by Implementing Regulation (EU) 2021/1811 ([3]) ('the provisional Regulation').

1.3. Subsequent procedure

(5) Following the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed ('provisional disclosure'), the complainant, the Government of the People's Republic of China ('GOC'), the Chinese cooperating exporting producers Ningxia Ketong New Material Technology Co., Ltd ('Ketong'), Ningxia Shun Tai Smelting Co., Ltd and its related trader Overseas Metallurgy Co., Ltd ('Shun Tai') and Shaanxi Shenghua Metallurgy-Chemical Co., Ltd ('Shenghua') and one user (cored wire manufacturer Filo d.o.o.), made written submissions making their views known on the provisional findings.

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

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

([3]) Commission Implementing Regulation (EU) 2021/1811 of 14 October 2021 imposing a provisional anti-dumping duty on imports of calcium silicon originating in the People's Republic of China (OJ L 366, 15.10.2021, p. 17).

(6) The parties who so requested were granted an opportunity to be heard. Hearings took place with Filo d.o.o. and one of the cooperating exporting producers, Ketong.

(7) The Commission continued to seek and verify all the information it deemed necessary for its definitive findings. When reaching its definitive findings, the Commission considered the comments submitted by interested parties and revised its provisional conclusions where appropriate.

(8) The Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of calcium silicon originating in the People's Republic of China ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure.

(9) Parties who so requested were also granted an opportunity to be heard. A hearing took place with Ketong.

1.4. **Comments on initiation**

(10) In the absence of comments on the initiation of the investigation after the imposition of provisional measures, the Commission confirmed its conclusions set out in recital (12) of the provisional Regulation.

1.5. **Sampling**

(11) In the absence of comments concerning sampling of Union producers, importers and exporting producers in the PRC, the Commission confirmed its conclusions set out in recitals (15), (17) and (19) of the provisional Regulation.

1.6. **Investigation period and period considered**

(12) In the absence of comments concerning the investigation period and the period considered, the Commission confirmed its conclusions set out in recital (25) of the provisional Regulation.

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

(13) In the absence of any comments concerning the product scope, the Commission confirmed the findings in recitals (26) to (29) of the provisional Regulation.

3. **DUMPING**

(14) Following provisional disclosure, the complainant, the GOC and the cooperating exporting producers commented on the provisional dumping findings.

3.1. **Normal value**

3.1.1. *Significant distortions*

(15) Upon provisional disclosure, the GOC, as well as Ketong and Shenghua submitted comments in which they, inter alia, contested the legality of Article 2(6a) of the basic Regulation, as well as the existence of significant distortions described by the Commission. The comments are addressed in detail below.

(16) The GOC submitted, first, with respect to the Report, that there is no evidence that the Report was approved or endorsed by the Commission, for which reason there are doubts whether the Report can represent the official position of the Commission. On the factual side, the Report is, according to the GOC, misrepresentative, one-sided and out of touch with reality. Moreover, the fact that the Commission has issued country reports only for a few selected countries raises concerns about MFN treatment. Furthermore, in the GOC's view, the Commission should not rely on the evidence in the Report, as this would be not in line with the spirit of fair and just law, as it effectively amounts to judging the case before trial.

(17) Second, the GOC argued that constructing normal value in accordance with Article 2(6a) of the basic Regulation is inconsistent with the WTO Anti-Dumping Agreement ('ADA'), in particular with Article 2.2 of the ADA which provides an exhaustive list of situations where the normal value can be constructed, with '*significant distortions*' not being listed. Moreover, using data from an appropriate representative country is, according to the GOC, inconsistent with GATT Article 6.1(b) and Article 2.2.1.1 of the ADA, which require using the cost of production in the country of origin when constructing normal value.

(18) Third, the GOC claimed that the Commission investigating practices under Article 2(6a) of the basic Regulation are inconsistent with WTO rules insofar as the Commission, in violation of Article 2.2.1.1 of the ADA, disregarded records of the Chinese producer without determining whether those records are in accordance with the generally accepted accounting principles in China. In this connection, the GOC recalled that the Appellate Body in DS473 and the panel in DS494 asserted that according to Article 2.2.1.1 of the ADA, as long as the records kept by the exporter or producer under investigation correspond – within acceptable limits – in an accurate and reliable manner to all the actual costs incurred by the particular producer or exporter for the product under consideration, they can be deemed to 'reasonably reflect the costs associated with the production and sale of the product under consideration', and the investigation authority should use such records to determine the production costs of the investigated producers.

(19) Fourth, the GOC submitted that the Commission should be consistent and fully examine whether there are so-called market distortions in the representative country. According to the GOC, readily accepting the representative country's data without such evaluation represents 'double standards'. The GOC pointed in particular to the pricing mechanism in the Brazilian electricity market, previously raised by the Chinese cooperating exporting producers in the course of the investigation. The same applies, in the GOC's view, to evaluating the price and costs of the EU industry. The GOC referred in this connection to widespread situations within the EU that may raise concerns about market distortions.

(20) With regard to the argument on the status of the Report under the EU legislation, the Commission recalled that Article 2(6a)(c) of the basic Regulation does not prescribe a specific format for the reports on significant distortions, neither does that provision define a channel for publication. The report is a fact-based technical document used only in the context of trade defence investigations. The report was therefore appropriately issued as a Commission staff working document as it is purely descriptive and does not express any political views, preferences or judgements. That does not affect its content, namely the objective sources of information concerning the existence of significant distortions in the Chinese economy relevant for the purpose of the application of Article 2(6a)(c) of the basic Regulation. As to the remarks on the Report being one-sided and misrepresentative, the Commission noted that the Report is a comprehensive document based on extensive objective evidence, including legislation, regulations and other official policy documents published by the GOC, third party reports from international organisations, academic studies and articles by scholars, and other reliable independent sources. The Report has been publicly available since December 2017 so that any interested party would have ample opportunity to rebut, supplement or comment on it and the evidence on which it is based. The Commission further noted in this connection that while pointing to the Report's flaws in purely generic and abstract terms, the GOC has refrained from ever providing any rebuttal on the substance to the evidence contained in the report.

(21) In response to the GOC's claim concerning a violation of MFN treatment, the Commission recalled that, as provided for by Article 2(6a)(c) of the basic Regulation, a country report shall be produced for any country only where the Commission has well-founded indications of the possible existence of significant distortions in a specific country or sector in that country. Upon the entry into force of the new provisions of Article 2(6a) of the basic Regulation in December 2017, the Commission had such indications of significant distortions for China. The Commission also published a report on distortions in Russia in October 2020 ([4]), and, where appropriate, other reports may follow. Furthermore, the Commission recalled that the reports are not mandatory for the application of Article 2(6a). Article 2(6a)(c) describes the conditions for the Commission to issue country reports, and according to Article 2(6a)(d) the complainants are not obliged to use the report nor is the existence of a country report a condition to initiate an investigation under Article 2(6a) following Article 2(6a)(e). According to Article 2(6a)(e), sufficient evidence proving significant distortions in any country brought by complainants fulfilling the criteria of Article 2(6a)(b) is sufficient to initiate the investigation on that basis. Therefore, the rules concerning country-specific significant distortions apply to all countries without any distinction, and irrespective of the existence of a country report. As a result, by definition the rules concerning country distortions do not violate the most favoured nation treatment.

([4]) Commission Staff Working Document SWD(2020) 242 final, 22.10.2020, available at https://trade.ec.europa.eu/doclib/docs/2020/october/tradoc_158997.pdf

(22) Concerning GOC's second and third arguments on the alleged incompatibility of Article 2(6a) of the basic Regulation with WTO law, in particular the provisions of Article 2.2 and 2.2.1.1 ADA, as well as the findings in DS473 and DS494, the Commission reiterated its view expressed in recitals (72) and (73) of the provisional Regulation that Article 2(6a) of the basic Regulation is fully in line with the EU's obligations under the WTO law. Moreover, concerning the claim that the concept of significant distortions included in Article 2(6a) of the basic Regulation is not listed among the situations in which it is permissible to construct the normal value pursuant to Article 2.2 ADA, the Commission recalled that domestic law does not need to use the exact same terms as the covered Agreements in order to be compliant with those Agreements, and that it considers Article 2(6a) to be fully compliant with the relevant rules of the ADA (and, in particular, the possibilities to construct normal value provided in Article 2.2 ADA). In addition, with respect to DS494, the Commission recalled that both the EU and the Russian Federation appealed the findings of the Panel, which are not final and therefore, according to standing WTO case-law, have no legal status in the WTO system, since they have not been adopted by the Dispute Settlement Body. In any event, the Panel Report in that dispute specifically considered the provisions in Article 2(6a) of the basic Regulation to be outside the scope of that dispute.

(23) With regard to the fourth argument requesting the Commission to ascertain that third-country data used in the Commission proceedings are not affected by market distortions, the Commission recalled that, in accordance with Article 2(6a)(a) of the basic Regulation, it proceeds to construct the normal value on the basis of chosen data other than domestic prices and costs in the exporting country only where it establishes that such data is the most appropriate to reflect undistorted prices and costs. In this process, the Commission is bound to use only undistorted data. In that respect, interested parties are invited to comment on the proposed sources for the determination of the normal value in the early stages of the investigation. The Commission's ultimate decision as to which undistorted data should be used to calculate the normal value takes full account of those comments. As to the situation on the Brazilian electricity market, this issue was already addressed in detail in recitals (132), (133) and (152) of the provisional Regulation, and is also addressed in recital (45) below. Concerning the GOC's request for the Commission to evaluate possible distortions in the EU's internal market, the Commission failed to see the relevance of this point in the context of assessing the existence of significant distortions in accordance with Article 2(6a) of the basic Regulation.

(24) Consequently, the Commission rejected the GOC's arguments.

(25) Ketong submitted that Article 2(6a) of the basic Regulation is incompatible with the WTO agreements – including China's WTO Accession Protocol and the ADA – as well as with the DSB rulings, in particular DS473. Ketong pointed out that the Commission did not elaborate in the provisional Regulation on the WTO compatibility of Article 2(6a) of the basic Regulation, other than providing very general statements without specifying the relevant WTO legal basis. Moreover, referring to DS473, Ketong submitted that the Commission was not entitled to discard its costs or prices on the basis of the alleged existence of significant distortions, given that the existence of such distortions is in any event not a sufficient basis for concluding that the producer's records do not reasonably reflect the costs of the raw material associated with the production and sale of the product concerned.

(26) In addition, Ketong objected to the Commission having invoked a number of cross-cutting factors existing in China to demonstrate the existence of significant distortions. In particular, Ketong argued that being recognized as '2020 Autonomous Region Enterprise Technology Center' was merely a recognition of its dedication and investment in R & D activities and it did not amount to state intervention in Ketong's operations. Similarly, Ketong submitted that, as a privately-owned company, it was entirely subject to modern market-oriented corporate governance rules and its operational activities were exclusively responsible to the company's private shareholders under the PRC Company Law. Furthermore, Ketong claimed that existence of state intervention would not equal to significant distortions and that the Commission bears the legal obligation to establish the distortive effect of the alleged state interventions over its prices and costs.

(27) Concerning the argument on compatibility of Article 2(6a) of the basic Regulation with the WTO agreements and DSB jurisprudence, in addition to recitals (72) and (73) of the provisional Regulation, reference is made to recital (22) above where the argument is addressed.

(28) As to the alleged lack of significant distortions despite existing government interventions, Ketong's arguments cannot be accepted. First, Ketong did not provide any information which would put in question the Commission's observations (see recitals (57) and (58) of the provisional Regulation) on the calcium silicon being considered an encouraged industry and therefore subject to distortions. The same applies to the distortions concerning inputs necessary for the manufacturing of the product under investigation (see in particular recitals (62) and (63) of the provisional Regulation). Second, while Ketong considered the '2020 Autonomous Region Enterprise Technology

Center' a mere recognition of its R & D activities, it did not dispute the existence of the financial support by the Chinese authorities, nor the other forms of support provided to the sector as referred to in recitals (57) and (58) of the provisional Regulation. Third, as to Ketong's claim that it is a privately-owned company with modern corporate governance, the Commission has described in recitals (40) to (63) of the provisional Regulation the substantial government interventions in the PRC resulting in a distortion of the effective allocation of resources in line with market principles. Those distortions affect the commercial operators irrespective of the ownership structure or managerial setup.

(29) Upon definitive disclosure, Ketong argued, first, that the Commission still failed to provide any further elaboration concerning the exact legal basis or to underpin its legal reasoning in relation to the compatibility of Article 2(6a) of the basic Regulation with the WTO agreements and the WTO ruling in DS473. According to Ketong, the Commission's mere reiteration that Article 2(6a) of the basic Regulation is fully in line with the EU's obligations under the WTO law did not provide any additional clarity on the issue. Second, Ketong reiterated that data from a third country in normal value construction on the ground of alleged existence of significant distortions is incompatible with the Article 2.2 and Article 2.2.1.1 ADA and the WTO Appellate Body's ruling in DS473. Third, Ketong argued that pursuant to Article 2(6a)(a) of the basic Regulation the Commission bears the legal obligation to assess the existence of significant distortions for each exporter and producer separately and to individually establish the distortive effect of the alleged state interventions over the producer's prices and costs. In the company's opinion, it is not up to Ketong to produce evidence showing that the country-wide distortions are not applicable to it and the Commission has in that respect not fulfilled its legal obligation to establish the distortive effect of the alleged state interventions over its prices and costs.

(30) The Commission disagreed. As to the request for additional elaboration on the compatibility of Article 2(6a) of the basic Regulation with WTO law, the Commission clearly stated its legal position, namely that constructing the normal value in a situation where the existence of significant distortions pursuant to 2(6a) of the basic Regulation has been established, is in line with WTO law, including with the relevant provisions of Article 2.2 and Article 2.2.1.1 ADA, as well as with WTO dispute settlement reports, in particular in DS473. The Commission therefore reiterated its view expressed in recitals (72) and (73) of the provisional Regulation and re-stated in recitals (22) and (27) above. Furthermore, and also with respect to Ketong's submission concerning the use of third country data, the Commission pointed out that a situation existing in respect of the market for the like product or its inputs, such as the one found in China, may amount to a situation where the exporter's domestic sales of the like product do not permit a proper comparison with the exporter's sales of the product under consideration. This is the situation in this case where the significant distortions in the Chinese market may create an imbalance compared to the situation in the export market. The Commission noted further that other than referring to its previous submission, Ketong did not bring any additional argument concerning the use of third country data. Concerning Ketong's argument on the burden of proof resting with the Commission, the claim is misplaced. The Commission recalled that once it is determined that, due to the existence of significant distortions for the exporting country in accordance with Article 2(6a)(b), it is not appropriate to use domestic prices and costs in the exporting country, the Commission may construct normal using undistorted prices or benchmarks in an appropriate representative country for each exporting producer according to Article 2(6a)(a). Such determination has been made on the basis of the assessment carried out in recitals (40) to (63) of the provisional Regulation and applied individually to Ketong. The Commission recalled further that Article 2(6a)(a) allows the use of domestic costs only if they are positively established not to be distorted. However, none of the arguments presented by Ketong (see recital (26)) demonstrated that this would be the case.

(31) In view of the above, the arguments of Ketong were rejected.

(32) Shenghua referred to its previous comments, reiterating its position that Article 2(6a) of the basic Regulation is not in line with the ADA and concluding that the lack of justification, on the Commission's part, of compatibility of Article 2(6a) of the basic Regulation with the WTO agreement results in the preliminary disclosure not meeting the legal standard of adequate statement of reasons justifying the Commission's decision to apply Article 2(6a) of the basic Regulation.

(33) Second, Shenghua pointed out, that even if the use of data from a third country may not be prohibited in view of the DS473 ruling, the Commission has to use the cost data from a representative third country in order to arrive at the cost of production in China. Shenghua submitted that the Commission failed to do so and the company claimed in this respect that a constructed normal value based on the production factors in a representative third country can in no way reflect the price and cost level in the exporting country, which in turn will result in a normal value significantly different from that in the records of the exporting producer.

(34) Third, Shenghua submitted that the EU legislation introduced a concept that does not exist in the ADA, insofar as it provides for constructing normal value if existence of significant distortions is established, while Article 2.2 of the ADA mandates the construction of normal value only if there are no sale in the ordinary course of trade.

(35) Moreover, Shenghua claimed that no significant distortion exists in the calcium silicon sector in China given that: (i) even though Shenghua is a state-owned company, the government's holding ownership does not necessarily result in the government intervening into the company's commercial conduct in the market; on the contrary, Shenghua's purchase of factors of production was based on negotiations and contracts with suppliers and Shenghua is market-oriented, (ii) the alleged government interventions in the calcium silicon market were established based on the Report, which is in Shenghua's view not objective, outdated and affected by circular reasoning as it had been prepared by the Commission as basis for the conclusion on significant distortions, (iii) the Commission relied on references to laws not relevant for the present investigation – such as property or bankruptcy laws – or on mere guidelines without binding effects – such as the 13th Five-Year Plan – and it invoked factors which have nothing to do with the management and operation of Shenghua – such as the CEO holding simultaneously the position of Party Secretary.

(36) Concerning the alleged lack of justification and the legal standard of adequate statement of reasons, Shaanxi Shenghua appears to conflate the obligation to state the reasons for the substantive application of Article 2(6a) of the basic Regulation with a purported obligation to explain the WTO legal basis supporting the application of Article 2(6a) of the basic Regulation. The Commission has explained in detail in recitals (40) to (63) of the provisional Regulation the reasons for the application of Article 2(6a) of the basic Regulation thereby fully complying with its legal obligation of providing an adequate statement of reasons.

(37) As to Shenghua's arguments on compatibility of Article 2(6a) of the basic Regulation with ADA and the DSB findings, they largely overlap with similar arguments raised by the GOC and Ketong and they were already addressed in recital (22) above.

(38) With respect to Shenghua's claim on the alleged lack of significant distortions, the Commission recalled that (i) according to Article 2(6a)b of the basic Regulation, state ownership can be an important indicator of the existence of the significant distortions; even the privately owned calcium silicon producers operate in the environment dominated by state presence and state guidance of the calcium silicon industry, as well as of related industries, such as producers of raw materials; (ii) the Report is based on extensive objective evidence, as explained in detail in recital (20) above; (iii) the significant distortions resulting from the inadequate functioning of the property and bankruptcy laws, the system of planning, including its binding nature, as well as the State presence in firms, not least through the ever growing influence of the CCP over the commercial conduct of economic operators, are relevant also in the case of Shenghua, as these laws and rules are generally applicable in China and impact all companies, including Shenghua. Shenghua did not submit any evidence to demonstrate that those distortions present at the country-wide level would not affect the company, nor did it show why the Commission's argument that the company's CEO being simultaneously a Party Secretary points to influence of the CCP over the company would not be valid.

(39) Following the final disclosure, Shenghua contested the applicability of Article 2(6a) of the basic Regulation, claiming that the Commission provided only a broad statement to justify its application, thereby ignoring that even if the basic Regulation does not need to use the exact same terms as the covered WTO agreement, the EU domestic law should not contradict the WTO agreements. In that respect, Shenghua considered that the Commission failed to provide sufficient justification for the application of Article 2(6a) of the basic Regulation. Second, Shenghua submitted that state ownership does not contribute to significant distortions. More specifically, Shenghua pointed out that its operation is market-oriented and its decisions responsive to market demand. Nevertheless, the Commission neither clarified the link between the property and bankruptcy laws and significant distortions, nor did it explain why the CEO holding the position of the Party Secretary would cause significant distortions. Shenghua referred to existence of political parties in other countries including in the EU. Furthermore, Shenghua recalled that it has two shareholders of which only one is state-owned – with the other being a natural person – and that according to its articles of association the state-owned shareholder could not solely control the company's

operations. In addition, Shenghua referred to Article 6 of the Chinese SOE law ([5]), according to which public administrative functions are to be separated from those of the state-owned asset investor. In Shenghua's view, the operation of Shengua is therefore independent from the government and the state ownership does not contribute to significant distortions.

(40) Shenghua's argument concerning the compatibility of Article 2(6a) of the basic Regulation with WTO law is of similar nature to the one submitted by Ketong and was addressed in recital (30). With respect to Shenghua's arguments on the relation between state ownership, as well as property and bankruptcy laws, and significant distortions, the Commission recalled that according to the first and fourth indent of Article 2(6a)(b) of the basic Regulation, presence in the market in question of enterprises which operate under State ownership, control or policy supervision, as well as the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws, are among the elements relevant for the assessment of existence of significant distortions. The Commission noted in this connection that other than presenting this general point, Shenghua did not call into the question the Commission's detailed analysis in recitals (43), (44) and (46) of the provisional Regulation and recital (38). Shenghua's arguments concerning the company's independence from the government are more specific, however, they cannot alter the Commission's assessment in recitals (47) and (48) of the provisional Regulation. First, while Shenghua's reference to political parties in other countries is in any event irrelevant in the present context, the Commission noted the ever stronger CCP control over businesses in general (see recital (41) of the provisional Regulation) and of the calcium silicon sector in particular (see recitals (47) and (48) of the provisional Regulation). Second, as to Shenghua's CEO being at the same time the Party Secretary, the Commission observed that not only did Shenghua not contest the Commission's analysis of the party building activities and the CCP's role in the company in recital (48) of the provisional Regulation. To the contrary, the company openly confirmed its reliance on the 'strong support of the government and all sectors of society' and its intentions to 'be guided by the spirit of the Sixth Plenary Session of the 18th CPC Central Committee and the series of important speeches by General Secretary Xi' on its own website ([6]). The Commission recalled in this connection also recital (41) of the provisional Regulation and the corresponding assessment on the CCP's influence over the Chinese economy, in particular Chapter 2 of the Report. Shenghua's reference to its articles of association is therefore misleading. The minority shareholder which at the same time serves as the company's executive director is by virtue of his CCP membership explicitly obliged to implement the party's principles and policies ([7]). Consequently, the articles of association, far from showing Shenghua's independence from the state, in fact demonstrates clear ties between the party/State policies and the company's business conduct. Third, Shenghua's reading of the Chinese SOE law is plainly selective. While the company emphasized the formal division between the administrative and shareholder roles of the State according to Article 6 of the SOE law, it chose to omit a reference to Article 1. Article 1 defines the overall purpose of the law as, inter alia, supporting the leading role of the State-owned economic sector in the national economy, and promoting the development of the socialist market economy. Shenghua also failed to refer to Article 7 which mandates the State to encourage greater investment of State capital in key industries and areas important for the national economy; as well as to Article 36 according to which SOEs, when making investments, shall comply with the national industrial policies.

(41) For the above reasons, the arguments of Shenghua were rejected.

(42) The comments submitted by the complainant mirrored to a large extent the Commission's above response to Shenghua's arguments. In particular, the complainant considered that Article 2(6a) of the basic Regulation is fully in line with the Union's obligation under the WTO and that Shenghua in fact represents a perfect example of significant distortions existing in the calcium silicon sector in China, not least in view of the government's control over the corporate structure of state-owned part of the economy, as well as of the CCP influence over management bodies of individual companies. In addition, referring to the Report and to the recent ferro-silicon investigation ([8]), the complainant submitted that the calcium silicon sector in China is heavily distorted by State intervention. On this basis, the complainant concluded that the use of Article 2(6a) of the basic Regulation to calculate the normal value was fully justified.

([5]) Law of the People's Republic of China on the State-Owned Assets of Enterprises, adopted at the 5th session of the Standing Committee of the 11th National People's Congress of the People's Republic of China on 28 October 2008 and promulgated on the same date.

([6]) See Shenghua's website at: http://sxshyh.cn/index/index/about (accessed on 11 January 2022).

([7]) See Article 3(2) of the CCP Constitution on duties of CCP members, in connection with Article 10 concerning the principle of democratic centralism.

([8]) OJ L 208, 1.7.2020, p. 2.

3.1.2. *Representative country*

(43) In the provisional Regulation, the Commission selected Brazil as the representative country in accordance with Article 2(6a)(a), first indent, of the basic Regulation. The details on the methodology used for the selection were set out in the First and Second notes made available to parties in the open file on 7 May 2021 and 14 June 2021 ('First Note' and 'Second Note'), and in recitals (86) to (139) of the provisional Regulation.

(44) Following provisional disclosure, Ketong and Shenghua reiterated their claims made with their comments on the First and Second Notes that Brazil is not an appropriate representative country. Ketong repeated that there are significant distortions in the electricity market in Brazil and maintained that therefore Brazil is not an appropriate representative country and that, to be consistent, the Commission must apply the same criteria to the candidate representative country as those listed in Article 2(6a)(b) of the basic Regulation, which it applied in assessing whether a country under investigation has a distorted market. This was also claimed by the GOC. Ketong claimed finally that there were no meaningful public data available in Brazil for quartzite, a major input material and reiterated that Russia is a more appropriate representative country.

(45) The Commission noted that neither Ketong nor the GOC submitted evidence showing that the benchmark price for electricity as established by the Commission following the methodology set out in recital (152) of the provisional Regulation was distorted by intervention from the Government of Brazil. The Commission also refers to recital (133) of the provisional Regulation in this regard. EDP Brasil is one of the largest Brazilian electric utility companies and privately owned. It generates, distributes and sells electricity to different kinds of customers, including industrial consumers. The Commission did not have any indication on file that the electricity prices charged by EDP Brasil and published on its website were actually distorted. Therefore, this claim was dismissed.

(46) With respect to the absence of meaningful public data in Brazil for quartzite, the Commission noted that Ketong did not bring forward any other arguments than those set out already, and addressed, in recitals (94) and (129) of the provisional Regulation. For this reason, the claim was rejected.

(47) As to the claim that Russia was a more appropriate representative country, the Commission noted that Ketong reiterated its arguments set out in recital (114) of the provisional Regulation without providing new arguments. For the reasons explained in recitals (90), (115) and (116) of the provisional Regulation, the claim was dismissed.

(48) Upon definitive disclosure, Ketong reiterated its claim that Brazil was not a suitable representative country because of a claimed lack of undistorted and reliable data for the two most important inputs, electricity and quartzite. Ketong maintained that the electricity market in Brazil was distorted and the Commission had ignored this fact. It claimed further that the Commission failed to clarify why the absence of meaningful publically available data for quartzite did not affect the selection of Brazil as representative country. Ketong repeated that Russia was a more suitable representative country than Brazil.

(49) The Commission noted that Ketong did not put forward any new arguments than those raised already with its comments to the provisional disclosure and which could have altered the conclusions as set out in recitals (45), (46) and (47). Therefore, the claim from Ketong was dismissed.

(50) Shenghua reiterated its claim that Brazil was not an appropriate representative country for the reasons set out in recitals (96) and (123) of the provisional Regulation, and that Kazakhstan should be chosen instead. As Shenghua did not provide new arguments that could have altered the conclusions of the Commission as set out in recitals (118) and (124) of the provisional Regulation, the claim was dismissed.

(51) In the absence of any other comments on the choice of Brazil as representative country, the Commission confirmed its conclusion set out in recital (139) of the provisional Regulation.

3.1.3. *Sources used to establish undistorted costs for factors of production*

(52) The Commission set out the details concerning the sources used to establish the normal value in recitals (140) to (141) of the provisional Regulation. After publication of the provisional Regulation, the Commission received claims from one exporting producer on different sources used to determine the normal value.

3.1.3.1. Raw materials

(53) Ketong claimed that the undistorted value for quartzite established by the Commission by reference to the average purchase price paid by the Union industry did not meet the legal standards of Article 2(6a) and contradicted the facts. First, Ketong argued that the undistorted value should originate from a representative third country having an economic development level similar to that of China. Second, Ketong pointed out that source data used for establishing the benchmark price were from the questionnaire replies of the Union producers and therefore not publically available. Third, Ketong referred to information submitted with its comments to the Second Note, which would show that the benchmark price established by the Commission deviated from the price for quartzite stated in one of the Union producer's price list for the same material.

(54) Concerning Ketong's first argument, the Commission disagreed. Contrary to what Ketong claimed, Article 2(6a) of the basic Regulation does not stipulate that undistorted prices or benchmarks should originate exclusively in an appropriate representative country with a similar level of economic development as the exporting country. If it considers it appropriate, the Commission may use also undistorted international prices, costs, or benchmarks under Article 2(6a)(a), second indent. This provision does not contain any qualifier as to the choice of the appropriate international prices, costs or benchmarks. Nor is there any reference to the source of these potential benchmarks having to be in a country with a similar level of development as the exporting country. The Commission therefore enjoys discretion to choose an appropriate benchmark in those situations where it is not possible to use the import value in the appropriate representative country chosen. In this investigation, given the absence of relevant data for quartzite in Brazil and because of the lack of other suitable international prices, costs or benchmarks available on file for quartzite, the Commission considered it appropriate to revert to the price of quartzite on the Union market as a suitable benchmark in accordance with Article 2(6a)(a), second indent.

(55) Following definitive disclosure, Ketong maintained that the Union industry purchase price of quartzite used as benchmark price by the Commission was not an appropriate benchmark as it did not reflect the conditions in the PRC in the absence of the significant distortions. Ketong claimed that the Commission has to ensure that the information it uses, including international prices, costs or benchmarks, has to reflect the cost of production in the exporting country, or at least adapt that information to meet the market conditions in the exporting country in the absence of significant distortions. Ketong claimed further that the Commission produced no evidence proving that the average purchase price paid by the Union industry for quartzite is the 'international prices, costs or benchmarks' referred to under Article 2(6a)(a), second indent. Ketong argued also that the price paid in the Union can hardly represent the international price level, as there are many other supplying countries of quartzite, whose data it claimed should be part also of the international dataset to establish an undistorted and reasonable benchmark price for quartzite, instead of the Union price alone.

(56) The Commission disagreed. First, it noted that with its comments Ketong had not provided an international price for quartzite that the Commission could have used as an alternative to the benchmark that it had established. Second, Ketong did not bring forward any evidence that the benchmark as established by the Commission was distorted. Absent other alternatives, the Commission considered that the price of quartzite on the Union market constitutes a suitable undistorted benchmark. Therefore, the claim was dismissed.

(57) As to Ketong's claim that the source data that the Commission used to establish the benchmark was not publically available, the Commission notes that the open file contained the actual aggregated source data submitted by the Union producers, which gave their specific permission to reveal that information pursuant to Article 19(5) of the basic Regulation. As a result, the data is considered to be readily available. The Commission further noted that the source data in question was verified by the Commission and found to reflect the actual cost of the quartzite that is suitable for the production of the product concerned, being both reliable and representative.

(58) With respect to Ketong's third argument, the investigation from the Commission revealed that the quartzite price on the website of the Union producer concerned reflected rejected quartz (waste) that was not suitable for the production of calcium silicon and, therefore, that price was not representative of the cost of quartzite used for the production of the product concerned.

(59) For the above reasons, the arguments of Ketong were rejected.

3.1.3.2. Electricity

(60) Following provisional disclosure, Ketong claimed that the Commission should not have used the allegedly regulated electricity price published on the website of EDP Brazil as appropriate source to establish the undistorted benchmark price of electricity, but rather the free market price as this would be the price at which calcium silicon producers would purchase their electricity.

(61) The Commission noted that Ketong repeated its arguments set out in recital (131) of the provisional Regulation, which the Commission rejected with its conclusions set out in recitals (132) and (133) of the provisional Regulation. The Commission therefore rejected the claim.

(62) Upon definitive disclosure, Ketong maintained that the benchmark price for electricity should be based on the free market prices in Brazil and not on the regulated prices and argued further that its claims were not sufficiently addressed in recitals (132) and (133) of the provisional Regulation.

(63) As explained in recital (45), Ketong did not provide any evidence showing that the benchmark price for electricity as calculated by the Commission was distorted by intervention from the Government of Brazil. Ketong did not specify either how the Commission could have addressed more sufficiently its claims in recitals (132) and (133) of the provisional Regulation. Therefore, the Commission rejected the claim.

(64) Shenghua claimed that in recital (281) of the provisional Regulation that the Commission provisionally concluded that electricity was not subject to a distortion in the PRC and that, therefore, its electricity rate should not be replaced by the electricity rate of the representative country.

(65) The Commission disagreed. As explained in recital (52) of the provisional Regulation, the Commission found that the electricity prices in the PRC are not market-based and are also affected by significant distortions within the meaning of Article 2(6a)(b) of the basic Regulation. The Commission's provisional conclusion regarding electricity as set out in recital (281) of the provisional Regulation was that electricity was not subject to any distortions within the meaning of Article 7(2a) of the basic Regulation. The calculation of the normal value and the assessment related to the application of the lesser duty rule were different analyses based on different articles of the basic Regulation. While the conclusions reached under Article 2(6)(b) were based on the situation in the exporting country and many different factors being taken into account, the investigation under Article 7(2a) is more limited and conducted in the context of determining the applicability of the lesser duty rule and refers to the closed list of situations contained in that article. That electricity was not subject to any of the distortions within the meaning of Article 7(2a) of the basic Regulation in China does not mean that such an input is not affected by the significant distortions in China as found in accordance with Article 2(6a) of the basic Regulation. Therefore, the claim of Shenghua was dismissed.

3.1.4. *Factors of production and sources of information*

(66) Following the publication of the provisional Regulation, the Commission noted that GTA data on imports into Brazil became available at CIF level. Using this new dataset and considering all the information submitted by the interested parties, the following factors of production and their sources have been identified in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

Table 1

Factors of production of calcium silicon

Factor of Production (FOP)	Commodity codes in Brazil	Undistorted value in CNY/Unit of measurement	Source of information
Raw materials			
Anhydrous stemming/Anhydrous cannon clay	3816 00 11 3816 00 12 3816 00 19 3816 00 21 3816 00 29 3816 00 90	10,2791/kg	GTA
Bituminous coal	2701 12 00	0,6997/kg	GTA
Coal	2701 19 00	0,6997/kg (*)	GTA
Coke/semi-coke	2704 00 11 2704 00 12 2704 00 90	1,7616/kg	GTA
Electrode paste	3801 30 10 3801 30 90	6,3301/kg	GTA
Graphite brick	3801 90 00	46,7364/kg	GTA
Limestone	2521 00 00	0,1500/kg	GTA
Quartzite/silica rock	2506 20 00	0,2705/kg (**)	Union industry
Steel products (other bars and rods of iron or non-alloy steel)	7215 50 00	11,6723/kg	GTA
Labour			
Labour costs in the manufacturing sector	[N/A]	29,7989/Man hour	ILO statistics
Energy			
Electricity	[N/A]	0,4487/Kwh	EDP Brasil
By-products/waste			
Slag, ash and residues	2620 99 90	0,0442/kg (***)	GTA
Silica-calcium precipitated fine powder	7202 99 90	10,2812/kg (***)	GTA

(*) The establishment of the undistorted value is explained in recital (145) of the provisional Regulation
(**) The establishment of the undistorted value is explained in recital (146) of the provisional Regulation
(***) The establishment of the undistorted value is explained in recital (148) of the provisional Regulation

3.1.4.1. Raw materials

(67) Following provisional disclosure, Ketong claimed that the method used by the Commission to establish the CIF import prices for Brazil as set out in recital (144) of the provisional Regulation was distortive. Ketong argued that one single coefficient could not be representative of transport and insurance costs that were likely to vary depending on the raw material type and supplying country and claimed that the Commission should establish a coefficient for each input raw material and per each supplying country.

(68) As explained in recital (66), a new dataset became available in GTA, which included import data at CIF level for Brazil. The Commission used this new dataset to establish the undistorted values of the raw materials mentioned in Table 1. Therefore, the claim of Ketong was not considered further.

3.1.4.2. Electricity

(69) Following provisional disclosure, Ketong claimed that the methodology that the Commission used to calculate the benchmark for electricity in Brazil was flawed. Ketong noted that the Commission applied a simple average of the electricity and distribution tariffs as available on the website of EDP Brasil for 2021, adjusted for inflation. Ketong argued that the Commission should use available electricity tariff data for the investigation period and not 2021 data corrected for inflation. Ketong pointed out further that the Commission should take into account also peak and off-peak tariffs and limit its calculation to prices charged to high power industrial consumers like calcium silicon producers.

(70) The Commission considered Ketong's claim and found it reasonable. It accepted the claim and recalculated the benchmark for electricity on the basis of tariff data available for the investigation period on the website of EDP Brasil ([9]), taking into account the different tariffs for peak and off-peak periods and relevant prices charged to high power industrial consumers.

(71) Upon definitive disclosure, Ketong claimed that also a more recent tariff data set was available for the investigation period on the website of EDP Brasil than the set used by the Commission and that the Commission should have taken also this data set into account for the calculation of the benchmark price for electricity.

(72) The Commission noted that this argument was unsubstantiated. In particular, the tariff data set referred to by Ketong was not available on the website of EDP Brasil or for the IP, and could thus not be verified for its accuracy or be used for this investigation. Therefore, the Commission did not consider the claim further.

3.1.4.3. By-products

(73) Following provisional disclosure, Ketong claimed that the methodology of the Commission to establish the undistorted benchmark of micro silica as set out in recital (148) of the provisional Regulation was deficient as it linked, artificially, the value of the by-product to that of the input materials, where no such relation existed. Ketong suggested that export data from the representative country be used for the construction of the undistorted benchmark, as it claimed that it was established practice of the Commission to do so in case representative import data was not available in the representative country.

(74) The Commission noted that this item represented a negligible part (less than 0,1 %) of the cost of materials and that the issue at hand thus did not affect the level of the measures. The issue was thus not further considered.

(75) Upon definitive disclosure, Ketong reiterated that the methodology used by the Commission was distortive. However, the Commission noted that Ketong did not put forward any new arguments that could alter the conclusions set out in recital (74). Its claim was therefore dismissed.

3.1.4.4. Consumables, manufacturing overheads and transportation costs for the supply of raw materials

(76) Ketong claimed that the Commission should have identified the benchmark of the consumables and manufacturing overheads separately from other inputs instead of extrapolating their value using, for the consumables, a calculated percentage on the total cost of raw materials and, for the overheads, a percentage on the total direct cost actually incurred by the Chinese producers. It claimed that the Commission should have used its actual costs of consumables and overheads instead. Ketong argued further that its claim applied equally to the transport costs for the supply of raw materials where the Commission expressed this transport cost as a percentage of the actual cost

([9]) https://www.edp.com.br/distribuicao-sp/saiba-mais/informativos/tabela-de-fornecimento-de-media-e-alta-tensao

of the raw materials and then applied the same percentage to the undistorted cost of the same raw materials in order to obtain the undistorted transport cost. Ketong argued that given that the cost of raw materials was recalculated by applying undistorted prices, it amounted to linking the transport cost also to the value increase of the raw materials, which it claimed was not correct as there was no such link.

(77) The Commission noted that it is its standard practice not to calculate an individual benchmark for consumables but to express them as a percentage of the total raw material cost on the basis of the cost data reported by the exporting producers and then to apply this percentage to the recalculated cost of materials when using the established undistorted prices. Furthermore, the Commission noted that significant distortions were established in Section 3.1.1 above. In that case, according to Article 2(6a) of the basic Regulation, domestic costs may be used but only to the extent that they are positively established not to be distorted, on the basis of accurate and appropriate evidence. No such evidence with regard to factors of production grouped under consumables was put forward by Ketong, nor found by the Commission. Therefore, the Commission could not use the data reported by Ketong. The Commission considered that its methodology for calculating an undistorted value for consumables was appropriate, not least as no better information was available. Ketong also did not provide an alternative for the benchmark as calculated by using GTA import values into the representative country, nor an alternative undistorted benchmark for consumables. Therefore, the claim with regard to consumables was rejected.

(78) With regard to the claim of Ketong concerning the Commission's methodology to establish the undistorted value of its manufacturing overhead costs as set out in recital (154) of the provisional Regulation, the Commission noted that the overheads data was not readily available separately in the financial statements of the producer in the representative country. Furthermore, once significant distortions are established, according to Article 2(6a) of the basic Regulation, domestic costs may be used but only to the extent that they are positively established not to be distorted, on the basis of accurate and appropriate evidence. No such evidence with regard to overheads was put forward by Ketong, nor found by the Commission. Therefore, the Commission considered that its methodology for calculating an undistorted value for overheads was appropriate, not least as no better information was available. Ketong has not suggested an alternative undistorted benchmark for overheads. Therefore, the claim was rejected.

(79) In respect of the claim of Ketong on the Commission's methodology to establish the undistorted transport costs for the supply of raw materials as set out in recital (150) of the provisional Regulation, the Commission noted that Ketong did not suggest how the Commission should calculate individually the transport cost for each raw material. Therefore, the claim was rejected.

(80) Following definitive disclosure, Ketong reiterated that the Commission's methodology to establish the benchmarks for the consumables, manufacturing overheads and transport costs, was distortive. However, the Commission noted that Ketong did not submit any new arguments that could alter the conclusions set out in recitals (77), (78) and (79).

3.1.5. *Calculation of the normal value*

(81) The details of the calculation of the normal value were set out in recitals (156) to (160) of the provisional Regulation.

(82) Following provisional disclosure, Ketong claimed that in the calculation of the normal value the Commission should not have rejected certain adjustments for by-products for the reason that it had not booked them in the accounts. Ketong commented that the applicable legal standard did not require that all cost items must come from the accounts, particularly where Article 2(6a) was applied. It claimed further that what mattered in reconstructing the cost of production was that the cost items were actually incurred and reflected in the company's normal course of business. Ketong claimed finally that it reported the additional cost incurred for the by-products in question in the cost tables submitted with its reply to the questionnaire and that the Commission should remove those costs from the constructed normal value.

(83) The Commission noted that contrary to what Ketong claimed, Ketong did not report the cost of the by-products in question in its cost accounting and in the cost tables in its reply to the questionnaire. In its cost tables, Ketong reported the sales value of the by-products that it claimed should be deducted from the cost of the materials, but did not account for such sales value in its financial and cost accounting. Indeed, the investigation revealed that the company did not receive any income from sales of these by-products, so they remain a cost. The claim was thus dismissed.

(84) Following definitive disclosure, Ketong repeated its claim that the Commission's rejection of an adjustment to the normal value relating to the by-products was unfounded. First, Ketong argued that the booking in the company's financial and cost accounting is not a pre-requisite of constructing normal value under Article 2(6a). Second, Ketong claimed that the Commission has not disputed the fact that these by-products were generated from the company's production process and that their sales transactions took place in the company's normal course of business. According to Ketong, absence of income recording in the financial accounting does not prevent the by-products from being accepted for cost adjustment use. Third, Ketong claimed that if the Commission were to reject the sales income as by-products cost adjustment to the normal value of the product concerned, the corresponding cost actually incurred for collecting the same by-products should be accepted as the cost of these by-products in the accounting records and removed from the constructed normal value accordingly.

(85) The Commission disagreed. The booking of costs and revenue in the accounts of the company is evidence of their existence and quantification. Contrary to what Ketong claimed, it could not be established during the RCC that the sales transactions of the by-products took place in the ordinary course of business, as commercial documentation was not available and the transactions were not accounted for. Indeed, the booking of the by-products as costs in the accounts of the company reflects the fact, as mentioned already in recital (83), that Ketong did not receive any income from sales of these by-products. Therefore, the claims from Ketong were rejected.

(86) Ketong claimed further that the profit margin used in the construction of the normal value (18,96 %) was excessive in light of the Commission's own finding that a profit margin between 9,7 % and 12,5 % was 'deemed to be the basic profit covering full costs under normal conditions of competition in this investigation' (recital (269) of the provisional Regulation). Ketong commented further that the Commission did not explain why a profit margin of 18,96 % was a reasonable profit to construct normal value in light of this finding. Ketong claimed therefore that the target profit level established for Union producers is the reasonable and undistorted profit to be used in constructing normal value.

(87) The Commission noted that the target profit and the profit in the representative country refer to different concepts and to different countries. In particular, the target profit to which Ketong refers is the profit achieved by the Union industry for domestic sales in the Union under normal conditions of competition and it is used to calculate the injury margin. The profit in the representative country is used in the calculation of normal value by reference to the appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation. This profit must reflect the profit achieved by a company producing the product under investigation or a similar product, in a representative country, and is not comparable to the target profit of the EU industry.

(88) Ketong claimed also that the Commission should not have included financial income in the profit calculation as it was the established practice of the Commission not to include such revenue in the calculation of profit or SG&A ('selling, general and administrative expenses'). Ketong claimed further that if the Commission would maintain the inclusion of the financial income in the profit determination, it should include it equally in the total SG&A as an offset.

(89) The Commission disagreed. The Brazilian company reported financial expenses outside the SG&A. At the same time, it compensates the financial expenses with the financial income and adds the difference (a gain) into the profits. There is no evidence showing that such a gain did not relate to the product concerned, so deducting such a gain from the reported profits of the Brazilian company would appear unjustified. In any event, the impact of this claim would be immaterial for the dumping calculation since the financial gain was quite small and the duty in the end is set at the level of the much lower injury margin. As a result this claim was rejected.

(90) Upon definitive disclosure, Ketong continued to disagree with the Commission's view that financial gains should be included in the profit calculation.

(91) The Commission reiterates that it is standard and consistent practice to take account of all costs and income which are related to the production and sales of the product under investigation. The Commission noted that Ketong merely requested that the Commission ignore certain financial gains without providing any explanation, additional information or evidence that such gains were unrelated to the product under investigation. Ketong's claim could therefore not alter the conclusions set out in recital (89).

(92) Ketong claimed that the SGA in the representative country was established without a detailed breakdown, preventing identification of direct selling expenses that could affect the fair comparison between the normal value and the export price at the same level of trade. It claimed further that the Commission should provide such a breakdown and ensure that the export prices are compared to the constructed normal value at the same level of trade.

(93) The Commission disagreed with this claim. It noted that the claim alleging that direct selling expenses were included in the SG&A costs reported for the producer in the representative country was not substantiated. The Commission noted further that there were no indications that the SG&A data from the producer in the representative country included items that should be deducted in order to ensure a fair comparison. Following provisional disclosure, Ketong did not provide any more suitable SG&A data for a producer in Brazil that could have allowed the Commission to quantify such direct selling expenses, that were allegedly included in the SG&A data. Therefore, the claim was rejected.

(94) Following definitive disclosure, Ketong claimed that the Commission should yet again explain on which basis it concluded that the SGA provided in the financial report of the producer in the representative country allowed the Commission to directly construct the normal value at ex-works level, and to demonstrate that that SGA added to the COGS did not include any elements that would cause the constructed normal value to be established at a different level of trade. Ketong argued that the Commission adjusted for transport, insurance, handling, loading and ancillary costs, packing costs, credit costs and bank charges to establish its export price at ex-works level, but did not provide information ensuring that these items were not included in the SGA of the producer in the representative country.

(95) The Commission noted that, on the basis of the SGA data as reported by the producer in the representative country, Ketong failed to demonstrate that the Commission did not make a fair comparison between the constructed normal value and the export price. The Commission noted also that Ketong did not provide any additional information that altered the conclusions set out in recital (93). Therefore, the claim from Ketong was dismissed.

(96) Without prejudice to the above considerations, the Commission also recalls that, according to Article 2(6a)(a) of the basic Regulation, the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits. Ketong did not provide any evidence that the SG&A or profit amounts used by the Commission were unreasonable for constructing the normal value.

3.2. **Export price**

(97) The Commission set out the details of the calculation of the export price in recitals (161) and (162) of the provisional Regulation. In the absence of any comments in this respect, the Commission confirmed its provisional conclusions.

3.3. **Comparison**

(98) Following provisional disclosure, Ketong claimed that the Commission made an erroneous upward adjustment to the normal value for differences in the level of indirect taxation by adding VAT to the normal value whilst the company's export price did not include such VAT.

(99) During the investigation period the PRC applied a VAT rate of 13 % on both domestic and export sales of the product concerned, as confirmed by the claim at hand. The PRC applied also a policy of non-reimbursement of VAT on export of the product concerned. To ensure that the normal value and export prices are compared at the same level of taxation, the Commission determined the normal value on a VAT paid basis using the VAT rate applicable to exports.

(100) In this regard it is noted that the Commission determined the normal value in line with the jurisprudence of the General Court ([10]). The claim from Ketong was therefore rejected.

(101) Following definitive disclosure, Ketong claimed that its reported net export price did not include VAT. Ketong argued further that the comparison of a net of VAT export price with a normal value determined on a VAT included basis was flawed and did not ensure a fair comparison. Ketong asked the Commission to correct this error.

(102) The Commission found that Ketong had misreported its net export price in its questionnaire reply by deducting the VAT from the gross export invoice value, whilst no such deduction appeared on the export invoices. In other words, the export invoices reported by Ketong and verified by the Commission did not mention a gross and a net export value. The Commission corrected this by replacing the net invoice value reported by Ketong by the value mentioned on the invoices, that includes VAT, so that normal value and export price were compared at the same level of taxation as required by article 2(10)(b) of the basic Regulation. These corrections were disclosed to Ketong.

(103) In its comments on the definitive disclosure, Shun Tai contested the adjustments made to its export price for commissions under article 2(10)(i) of the basic Regulation. It claimed that the adjustment should be based on the actual profit of the unrelated trading company or, alternatively, be based on the sales price difference for traders and end-users in the domestic market.

(104) Contrary to what Shun Tai is claiming, the method used to adjust its prices is in line with the Commission's practice and consistent with the two Regulations mentioned in its comments to the definitive disclosure. Furthermore, the Commission adjusted Shun Tai's prices taking full account of the specific findings of the investigation related to its sales organisation. Given that Shun Tai based its claim on erroneous assumptions, it had to be rejected. As Shun Tai requested confidential treatment for its sales channels, further details about the Commission's analysis of the claim were provided to the company bilaterally.

(105) In the absence of any other comments regarding the comparison, the Commission confirmed its conclusions set out in recitals (163) and (164) of the provisional Regulation.

3.4. **Dumping margins**

(106) Given that the Commission accepted some comments from the interested parties submitted after provisional and definitive disclosure, it recalculated the dumping margins accordingly. These changes do not affect the dumping margin calculated for 'all other companies'. In the absence of any comments, recitals (168) and (169) of the provisional Regulation regarding the level of cooperation and the method to establish the residual dumping margin applicable to 'all other companies' are confirmed.

(107) The definitive dumping margins expressed as a percentage of the cost, insurance and freight (CIF) Union frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin
Ningxia Ketong New Material Technology Co. Ltd	52,3 %
Ningxia Shun Tai Smelting Co., Ltd	123,6 %

([10]) See judgment of 16 December 2011, Case T-423/09, Dashiqiao v Council, ECLI:EU:T:2011:764, paras 34 to 50 and judgment of 19 May 2021, Case T-254/18, China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others v Commission, ECLI:EU:T:2021:278, paras 586 to 610.

Shaanxi Shenghua Metallurgy-Chemical Co. Ltd	75,0 %
All other companies	132,6 %

(108) The calculations of the individual dumping margins, including corrections and adjustments made following comments by the interested parties submitted after provisional and definitive disclosure, were disclosed to the cooperating exporting producers.

4. **INJURY**

4.1. **Definition of the Union industry and Union production**

(109) The complainant and a cored wire manufacturer (Filo d.o.o.) made comments relating to recital (285) of the provisional Regulation relating to the restructuring within the Ferroglobe group and the continuation of production by the Union industry. The cored wire manufacturer raised doubts whether Union production was taking place.

(110) Production and sales took place during the investigation period ('IP') by both complainants, as confirmed in the regulation imposing provisional measures. After the IP, both continue to operate as going concerns, as confirmed and documented by Euroalliages. OFZ has continued to produce and sell along the same lines as previous years. Ferropem's on-going restructuring process, which in significant measure is the result of the injurious dumping, does not impinge upon the company's status as a going concern. Indeed, the company continued production and sales after the IP until the restructuring process was formally launched at the end of March 2021. Since then, it has maintained fully operational production assets, and has further decided on 15 November 2021 to maintain production of calcium silicon in France, which will be transferred to a new calcium silicon line in another of its plants in France, becoming operational in September 2022 with significant production capacity. This decision is supported by the French government. In the meantime, Ferropem has sourced calcium silicon from Argentina to continue to service its customers during the transition period until the new line is fully operational. In sum, both companies continue to be Union producers. In fact, anti-dumping measures will help create the conditions for both companies to continue operation, as the distortions generated by unfair trade are addressed.

(111) In the absence of further comments on the definition of the Union industry and Union production after the imposition of provisional measures, the Commission confirmed its conclusions set out in recitals (170) to (172) of the provisional Regulation.

4.2. **Determination of the relevant Union market**

(112) In the absence of comments on the determination of the relevant Union market, the Commission confirmed its conclusions set out in recitals (173) to (177) of the provisional Regulation.

4.3. **Union consumption**

(113) In the absence of comments on the Union consumption, the Commission confirmed its conclusions set out in recitals (178) to (180) of the provisional Regulation.

4.4. **Imports from the PRC**

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

(114) In the absence of comments on volume and market share of the imports from the PRC, the Commission confirmed its conclusions set out in recitals (181) to (184) of the provisional Regulation.

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

(115) Recital (189) of the provisional Regulation explained that the weighted average undercutting found was 10,6 %. One exporter, Shun Tai, claimed that its CIF export prices should be revised because they had not been accurately converted into euros. This claim was accepted and resulted in a revised undercutting margin of 10,5 %.

(116) In the absence of any other comments with respect to this section, the Commission confirmed its findings set out in recitals (185) to (189) of the provisional Regulation.

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

4.5.1. *General remarks*

(117) In the absence of any comments on the general remarks, the Commission confirmed its conclusions set out in recitals (190) and (191) of the provisional Regulation.

4.5.2. *Production, production capacity and capacity utilisation*

(118) In the absence of any comments on the production, production capacity and capacity utilisation, the Commission confirmed its conclusions set out in recitals (192) to (201) of the provisional Regulation.

4.5.3. *Sales volume and market share*

(119) In the absence of any comments on the sales volume and market share, the Commission confirmed its conclusions set out in recitals (202) to (204) of the provisional Regulation.

4.5.4. *Growth*

(120) In the absence of any comments on growth, the Commission confirmed its conclusions set out in recital (205) of the provisional Regulation.

4.5.5. *Employment and productivity*

(121) In the absence of any comments on employment and productivity, the Commission confirmed its conclusions set out in recital (206) to (208) of the provisional Regulation.

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

(122) In the absence of any comments on magnitude of the dumping margin and recovery from past dumping, the Commission confirmed its conclusions set out in recitals (209) and (210) of the provisional Regulation.

4.5.7. *Prices and factors affecting prices*

(123) In the absence of any comments on prices and factors affecting prices, the Commission confirmed its conclusions set out in recitals (211) to (213) of the provisional Regulation.

4.5.8. *Labour costs*

(124) In the absence of any comments on labour costs, the Commission confirmed its conclusions set out in recital (214) and (215) of the provisional Regulation.

4.5.9. *Inventories*

(125) In the absence of any comments on inventories, the Commission confirmed its conclusions set out in recitals (216) to (218) of the provisional Regulation.

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

(126) In the absence of any comments on profitability, cash flow, investments, return on investments and ability to raise capital, the Commission confirmed its conclusions set out in recitals (219) to (224) of the provisional Regulation.

4.5.11. *Conclusion on injury*

(127) In the absence of any other comments with respect to the conclusions in this section, the Commission confirmed its conclusions set out in recitals (225) to (230) of the provisional Regulation.

5. CAUSATION

5.1. Effects of the dumped imports

(128) Following provisional disclosure, Shenghua commented that there was no causal link between the injury suffered by the Union industry and the imports from China. They argued that the import volume trend from China during the period of investigation did not meet the requirement for a significant increase in imports in Article 3(3) in the basic Regulation.

(129) Shenghua further argued that certain economic indicators (production volume, productivity, labour costs, profitability, Return on Investment) mainly declined from 2019 onwards and at the same time import volumes from China declined substantially, so the decline in indicators had nothing to do with imports from China.

(130) These arguments are rejected. As outlined in recital (232) in the provisional Regulation, the Chinese market share increased by 57 % from 2017 to the investigation period to the detriment of the Union industry whose market share decreased by 50 %. As such, there was a significant increase in dumped imports relative to consumption in the Union. From 2019 to 2020 the market share of the Chinese imports increased from 55 % to 61 %, and Chinese import prices decreased by 16 %, which had a substantial impact on the Union Industry as explained in recital (235) of the provisional Regulation.

5.2. Effects of other factors

(131) Following provisional disclosure, Shenghua indicated that according to Article 3(7) of the basic Regulation, known factors other than the dumped imports, which are also injuring the Union industry, should be examined to ensure that the injury caused by other factors is not attributed to the dumped imports.

(132) They argued that the injury suffered by the Union industry was caused by many other factors such as the downturn of the steel industry, imports from third countries (imports and market share from Brazil increased more) and Covid-19 in the year 2020.

(133) With regard to their argument that imports from Brazil were more likely to have caused injury than imports from the PRC, the complainant argued that firstly, imports from China substantially increased market share, secondly, Chinese prices consistently undercut Union industry prices causing downward price pressure and import volumes from Brazil were substantially lower than those from China.

(134) The Commission analysed causation in section 5 of the provisional Regulation in accordance with Article 3(7). The factors mentioned by Sheghua in recital (132) were all individually and collectively examined.

(135) Firstly, with regard to their allegation that the injury was caused by the downturn in steel demand, as outlined in recitals (240) and (241) in the provisional Regulation, against a backdrop of decreasing consumption, the market share of the PRC increased by 57 %, while the Union industry's production, sales volume, market share, profitability, employment and return on investment decreased by more than consumption decreased in the period from 2017 to the investigation period. This is because the Chinese market penetration at low prices was causing substantial damage to these injury indicators. Therefore, the fall in consumption did not break the causal link between the dumped imports from the PRC and the material injury suffered by the Union industry.

(136) Secondly, as mentioned in recitals (252) and (254) of the provisional Regulation, the volume of imports from Brazil was always at least 5 times lower than those from China, therefore, these were not significant enough to attenuate the causal link between the substantial quantities of imports of calcium silicon from China at low prices and the injury caused to the Union industry.

(137) Thirdly, with regard to the argument that the Covid-19 pandemic caused the injury, which was also made by the GOC, as mentioned in recitals (238) to (241) in the provisional Regulation, the injurious situation already developed in 2019 when Chinese import penetration caused the Union industry production and sales to fall to levels that did not enable it to cover its rising unit costs. Furthermore, as the Covid-19 pandemic did not begin to have an impact until 2020, the Covid-19 pandemic should be seen as an exacerbating factor in 2020. In any event, Chinese imports continued to gain market share despite a decrease in demand, as explained in recital (240) of the provisional Regulation. Therefore, the Covid-19 did not attenuate the causal link between the low priced imports from China and the injury caused.

(138) Shenghua or the GOC has not provided any further evidence that would warrant a different conclusion.

(139) The GOC also commented after provisional disclosure that the Commission attributed the problems of increased inventories and decreased capacity utilisation of the EU industry to the calcium silicon products from China, but ignored the fact that the EU industry itself rapidly increased its investment and expanded its production capacity in 2018-2019, causing the rise in inventories.

(140) This argument cannot be accepted because the increase in inventories was not caused by investment in new production capacity, but rather because the Union industry was not able to sell all the quantities produced over the period 2018-2019. Production quantities actually fell over this period but were still higher than the sales volume. The increased inventories were thus caused by the increase in dumped imports.

(141) In their comments following definitive disclosure, Shenghua reiterated their claim stated in recital (132) that the Commission had underestimated the impact of other factors such as the downturn of the steel industry and Covid-19. In particular, they argued that according to the annual report of Ferroglobe ([11]) (the parent company of Ferropem) the Union industry admitted that its operation was sensitive to, and relied on, the steel industry and that the downturn of the steel industry would (the report indicated 'could') adversely affect its business and operation. Shenghua also indicated that the comments made by Eurofer in March 2021 supported their position that the main reason for the weaker performance of the CaSi industry was the downturn in the steel production and not the Chinese imports. Furthermore, they commented that Ferroglobe's financial report indicates 'COVID-19 has had a material detrimental impact on our business and financial results'.

(142) For the reasons stated in recitals (135) and (137) of this Regulation these claims were rejected.

(143) Shenghua further commented that the significant increase in energy prices had also heavily injured the performance of the Union industry. Firstly, they cited an article by Fastmarkets MB ([12]) which indicated that OFZ had cut its production by more than half due to a recent, more than 6-fold surge, in energy prices. Secondly, they referred to an article published by Nasdaq indicating that 'Ferroglobe operates in an energy intensive industry, hence the current energy pricing environment, particularly in Spain, is having an adverse impact on our business.' ([13])

(144) The Commission noted that the reference to OFZ concerned the shutting of four ferro-alloy furnaces, not including calcium silicon, in a period after the investigation period, while the Nasdaq article referred particularly to Spain, whereas Ferropem produces calcium silicon in France.

(145) The Commission therefore considered that the information provided was not specifically related to imports of the product concerned during the period considered and did not attenuate the causal link between imports from the PRC and the material injury suffered by the Union industry. Therefore, the claim was rejected.

5.3. **Conclusion on causation**

(146) In the absence of any other comments on causation, the Commission confirmed its conclusions set out in recitals (261) to (265) of the provisional Regulation.

([11]) https://sec.report/document/0001558370-21-005436#gsm-20201231x20f.htm (last accessed on 25 January 2022).
([12]) https://www.metalbulletin.com/Article/4010921/Search-results/OFZ-Slovakia-cuts-ferro-alloy-output-due-to-surging-power-prices.html (last accessed on 25 January 2022).
([13]) https://www.nasdaq.com/articles/factbox-power-crunch-pressures-europes-silicon-and-ferro-alloy-producers-2021-10-07-0 (last accessed on 25 January 2022).

6. **LEVEL OF MEASURES**

6.1. **Injury margin**

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

(148) As provided by Article 9(4), third subparagraph, of the basic Regulation, and given that the Commission did not register imports during the period of pre-disclosure, it analysed the development of import volumes to establish if there had been a further substantial rise in imports subject to the investigation during the period of pre-disclosure described in recital (3) and therefore reflect the additional injury resulting from such increase in the determination of the injury margin.

(149) Based on data from the Surveillance database, import volumes from the PRC during the four-week period of pre-disclosure were 36 % lower than the average import volumes in the investigation period on a four-week basis. On that basis, the Commission concluded that there had not been a substantial rise in imports subject to the investigation during the period of pre-disclosure.

(150) Therefore, the Commission did not adjust the injury elimination level in this regard.

(151) Following provisional disclosure, Ketong indicated that since all product type level details regarding the Union industry's target price were treated as confidential information, they had been deprived of meaningful disclosure enabling them to provide views on the accuracy of the calculations.

(152) The Commission notes that in Annex 3 ([14]) to the provisional disclosure provided to Ketong on 15 October 2021, the Commission indicated that '[f]or confidentiality reasons (Union industry prices related to either one or two producers) detailed undercutting by PCN cannot be disclosed.' The Commission confirms that non-disclosure of this detailed information regarding product types applies equally to the Union industry target price. The Commission therefore, rejected this claim.

(153) The exporter Ningxia Shun Tai Smelting Co., Ltd claimed that the Commission had not converted its CIF Union border export prices into euros correctly for calculating its injury margin. The Commission accepted this claim and recalculated its injury margin in that regard.

(154) As described in recital (115), the Commission revised the CIF export prices of Shun Tai. This revision resulted in a revised definitive injury margin for Shun Tai and the margin for 'all other companies'. The injury elimination level for 'all other companies' is established in the same manner as the dumping margin for these companies. Therefore, the final injury elimination level for the cooperating exporting producers and all other companies is as follows:

Country	Company	Definitive injury margin
PRC	Ningxia Ketong New Material Technology Co. Ltd.	31,5 %
PRC	Ningxia Shun Tai Smelting Co. Ltd.	42,7 %
PRC	Shaanxi Shenghua Metallurgy-Chemical Co. Ltd.	32,8 %
PRC	All other companies	50,7 %

([14]) Annex 3: Details of the undercutting and injury margin calculations and information on the methodology used.

6.1.1. *Raw material distortions*

(155) Following provisional disclosure, Euroalliages claimed that the Commission should reconsider its provisional conclusion set out in recital (281) of the provisional Regulation that electricity was not subject to a distortion within the meaning of Article 7(2a) of the basic Regulation. Euroalliages argued that Section 10 of the Country Report evidenced findings of significant distortions in the energy sector in China and the GOC had not commented on it. It further argued that there were several references in the complaint that all point to the existence of power price distortions. Euroalliages claimed that the evidence found in relation to power subsidies granted in China together with the even partial documentation relating to the energy dual pricing scheme in the PRC could be considered as sufficient evidence to apply article 7(2a) of the basic Regulation.

(156) The significant distortions mentioned in Article 2(6a)(b) of the basic Regulation, as well as those in Section 10 of the Country report, are different from the concrete measures listed in Article 7(2a) of the basic Regulation. Under Article 7(2a) of the basic Regulation, the Commission examined whether electricity is distorted by a dual pricing scheme or any other of the concrete measures listed in Article 7(2a) of the basic Regulation. There is no evidence of the existence of such measures in this investigation and the allegations in the complaint were not confirmed, as explained in recitals (276) to (281) of the provisional Regulation. The claim is dismissed and the Commission confirms its conclusions in recital (281) of the provisional Regulation.

6.2. **Conclusion on the level of measures**

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

Country	Company	Definitive anti-dumping duty
PRC	Ningxia Ketong New Material Technology Co. Ltd.	31,5 %
PRC	Ningxia Shun Tai Smelting Co. Ltd.	42,7 %
PRC	Shaanxi Shenghua Metallurgy-Chemical Co. Ltd.	32,8 %
PRC	All other companies	50,7 %

7. **UNION INTEREST**

7.1. **Interest of the Union industry**

(158) Bearing in mind the facts and conclusions outlined in recital (110), the Commission confirms its conclusion in recital (289) of the provisional Regulation that the imposition of measures would be in the interest of the Union calcium silicon industry. Indeed, anti-dumping measures will help create the conditions for both companies to continue operation, as the distortions generated by unfair trade are addressed.

7.2. **Interest of unrelated importers traders and users**

(159) One cored wire manufacturer (Filo d.o.o.) located in the Union, indicated that since the imposition of the provisional measures, supply problems had been created because the Union industry was not selling adequate quantities on the market and because the anti-dumping measures had increased Chinese prices on the market. This party claimed that because the prices had increased substantially on the Union market, the steel industry (the main user industry) was considering switching or had switched to pure calcium products as a cheaper alternative.

(160) Euroalliages also commented on these post-IP developments. They pointed out that the Union industry had experienced temporary production and sales problems. In respect of Ferropem, these problems related to the restructuring of the Ferroglobe group and the transfer of production to a new site in France—which resulted largely from the injurious dumping practices confirmed by the provisional Regulation. In respect of OFZ, these problems related to increased electricity prices, which had temporarily disrupted their normal production campaign planning. Euroalliages further indicated that pure calcium prices are too high to make substitution for CaSi economically viable. They also provided confidential correspondence from a downstream Union user of CaSi active in cored wire. This correspondence expressed support for measures aiming to restore fair competition and maintain various sources of supply, including from Union producers, on the Union market.

(161) The Commission notes that the allegations by Filo d.o.o. are unsubstantiated and in any event do not demonstrate any structural change in the market conditions as compared to the IP. Indeed, some market changes may indeed occur for downstream parties in the supply chain when anti-dumping duties are imposed. However, measures are not the disruptive factor, but rather the factor that re-establishes a level playing field, ensures continued Union industry activity in the sector, and guarantees stability of supply from multiple sources. Furthermore, up until October 2021, import prices of CaSi had not shown the magnitude of increase alleged by the cored wire manufacturer to make switching to pure calcium viable, even if measures were taken into account.

(162) In conclusion, the Commission considered that any post-IP supply developments were not structural. It was clear that the measures were essential to restore fair competition on the Union market. This would enable the Union industry to re-establish the position it held on the market prior to the injurious dumping.

(163) The GOC commented that the Commission has failed to fully assess the impact on the steel industry. They indicated that in the steel safeguards review, the Commission considered that Union steel producers need the continued protection of steel safeguard measures covering a broad range of steel products. Thus, to put additional duty on their important inputs is not only detrimental to the development of the steel enterprises, but also contrary to the logic of the Commission's reasoning in the steel safeguards review. The Commission addressed the impact of measures on the steel industry in recital (302) in the provisional Regulation, where it concluded, on the basis of information received from a user, that CaSi is a very minor cost for the steel industry.

(164) The GOC further argued that maintaining an appropriate level of competition in the Union market will not only provide more choices and better products for the downstream industry and consumers, but also help the Union industry to enhance its competitiveness.

(165) Shenghua also commented on competition on the market, stating that there are only two Union producers of CaSi but there are more than sixty importers, traders and users. They considered that imposing measures would lead to less competition and higher prices in the Union market for users such as the steel industry.

(166) However, as mentioned at recital (161) the Commission considers that competition on the Union market should be fair to all parties. It was therefore important that import prices of CaSi from China were subject to anti-dumping duties in order to restore fair competition.

(167) Shenghua also recalled Eurofer's remarks that the Union industry had never supplied more than 42 % of Union demand. They argued that since the two Union producers cannot meet the Union demand, if the supply chain from China was cut, that would adversely affect users. However, the Commission notes that users will also be able to source imports from third countries and that the measures are not intended to cut the supply from China. The intention is to ensure imports from China enter the Union market at fair prices.

(168) Following definitive disclosure, Shenghua commented that the Commission had unduly focused on the interests of the Union industry and not paid sufficient attention to the interests of Union importers and users. In particular, they reiterated Eurofer's and the German Steel Federation's comments on the complaint, respectively, that the domestic industry never supplied more than 42 % of the apparent Union consumption and that the domestic industry cannot meet the demand for calcium silicon. They also referred to Filo d.o.o.'s comments, from September and October 2021, that Union and Brazilian producers are not offering supplies of calcium silicon to the Union market.

(169) Following definitive disclosure, Filo d.o.o. and TDR Legure d.o.o. also reiterated their comment that Union producers temporarily cannot supply the Union market.

(170) Euroalliages responded that the complainant Union producers wish to maintain sales on the Union market and provided evidence of recent offers made to supply CaSi to the Union market.

(171) As indicated in recital (161), the Commission considers that measures are not the disruptive factor, but rather the factor that re-establishes a level playing field, ensures continued Union industry activity in the sector and guarantees stability of supply from multiple sources (including the PRC). Indeed, as part of the Union interest test, Article 21 of the basic Regulation specifies that 'the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition shall be given special consideration'. The Commission therefore, rejected the arguments.

(172) Also following definitive disclosure, Filo d.o.o. and TDR Legure d.o.o. indicated that the greatest problem if the Commission imposes measures could be calcium silicon of Chinese origin being imported to the Union but being declared as originating in another third country (Ukraine, India, Russia, Thailand, Turkey etc.). The Commission noted that this is speculation and is irrelevant for the analysis of the Union interest.

7.3. **Conclusion on Union interest**

(173) In the absence of any other comments on Union interest, the Commission confirmed its conclusions set out in recital (303) of the provisional Regulation that there were no compelling reasons of Union interest why definitive measures should not be imposed in this investigation.

8. **DEFINITIVE ANTI-DUMPING MEASURES**

8.1. **Definitive measures**

(174) In view of the conclusions reached with regard to dumping, injury, causation, level of measures and Union interest, and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports of the product concerned.

(175) As mentioned in recital (115), the CIF export prices of one producer were revised slightly at the definitive stage. The acceptance of this claim also had a small impact on its injury margin and that of 'all other companies'.

(176) On the basis of the above, the definitive anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Country	Company	Dumping margin	Injury margin	Definitive anti-dumping duty
PRC	Ningxia Ketong New Material Technology Co. Ltd, Hongguozi Industrial Zone, Huinong District, Shizuishan City, Ningxia Province	52,3 %	31,5 %	31,5 %
PRC	Ningxia Shun Tai Smelting Co., Ltd, Zhongwei Industrial Park, Zhongwei City, Ningxia Province	123,6 %	42,7 %	42,7 %
PRC	Shaanxi Shenghua Metallurgy-Chemical Co. Ltd, Yangxian Eco- Industrial Park, Hanzhong City, Shaanxi Province	75,0 %	32,8 %	32,8 %
PRC	All other companies	132,6 %	50,7 %	50,7 %

(177) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflect the situation found during this investigation in respect to these companies. These duty rates are thus exclusively applicable to imports of the product under investigation originating in the country concerned and produced by the named legal entities. Imports of the product concerned manufactured by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, cannot benefit from these rates and should be subject to the duty rate applicable to 'all other companies'.

(178) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ([15]). The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a regulation about the change of name will be published in the *Official Journal of the European Union*.

(179) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the proper application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this Regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.

(180) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this Regulation, the customs authorities of Member States should carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the rate of duty is justified, in compliance with customs law.

(181) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume, in particular after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances, an anti-circumvention investigation may be initiated, provided that the conditions for doing so are met. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.

(182) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies should apply not only to the non-cooperating exporting producers in this investigation, but also to the producers which did not have exports to the Union during the investigation period.

8.2. **Price undertaking offers**

(183) Following final disclosure one exporting producer submitted a price undertaking offer in accordance with Article 8 of the basic Regulation. Although it exported several types of the product concerned, it suggested one average minimum import price (MIP).

(184) The Commission evaluated the offer in a context of price volatility of the product under investigation. In the last two years of the period considered, it emerged that the price of calcium silicon imported into the Union market from several sources (Brazil, Thailand, Argentina and China) fluctuated significantly. Faced with such volatility, it cannot be guaranteed that one average MIP will be sufficient to eliminate the injurious effects of dumping over the duration of measures.

([15]) European Commission, Directorate-General for Trade, Directorate G, Wetstraat 170 Rue de la Loi, 1040 Brussels, Belgium.

(185) The exporter concerned further proposed to index the proposed MIP based on electricity prices in Brazil. However, this cost element is not sufficiently large to ensure that indexing would generate prices that would remove injury.

(186) It is of utmost importance that a clear link between the variation of the price of the product concerned sold by the exporting producer concerned to the Union and the price fluctuation of the input material exists. No evidence on file could point to the existence of such a link and the exporter concerned did not demonstrate that such a link exists. This indicates that other factors also playing a role in the observed price fluctuations.

(187) Moreover, the proposed measures are based on injury margins (namely on the costs of the Union industry), and indexing the MIP based on the evolution of the Brazilian electricity price cannot ensure that such a MIP would eliminate injury. The Union industry costs and prices are not determined by the evolution of the electricity prices in that country.

(188) Finally, even if the electricity price in Brazil were to be considered adequate, the publicly available data suggested by the applicant does not have the necessary frequency to reliably reflect electricity price fluctuations.

(189) Failure to comply with one of the preceding issues is sufficient to conclude that the price undertaking offer is not adequate and could thus not be accepted.

(190) Concerning the monitoring of the undertaking, the investigation showed that the applicant's accounting does not meet internationally accepted accounting principles, and that, in particular, no management accounts or computerized customers' list were readily available during the investigation. Some other relevant issues were also found to exist in the official accounts. This questions the reliability of the applicant and points to practical difficulties to reliably monitor an eventual undertaking.

(191) Based on the above facts and considerations, and in line with the provisions of Article 8 of the basic Regulation, it was considered that the offer was not adequate to ensure the elimination of the injurious effects of dumping. Pursuant to Article 8(3) of the basic Regulation it was also considered that its monitoring would be impracticable.

(192) The offer was therefore rejected.

8.3. **Definitive collection of the provisional duties**

(193) In view of the dumping margins found and given the level of the injury caused to the Union industry, the amounts secured by way of provisional anti-dumping duties imposed by the provisional Regulation, should be definitively collected up to the levels established under the present Regulation.

9. **FINAL PROVISIONS**

(194) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 ([16]), 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.

(195) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

([16]) 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).

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of calcium silicon, currently falling under CN codes ex 7202 99 80 and ex 2850 00 60 (TARIC codes 7202 99 80 30 and 2850 00 60 91) and originating in the People's Republic of China.

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

Country	Company	Definitive anti-dumping duty	TARIC additional code
PRC	Ningxia Ketong New Material Technology Co. Ltd, Hongguozi Industrial Zone, Huinong District, Shizuishan City, Ningxia Province	31,5 %	C721
PRC	Ningxia Shun Tai Smelting Co., Ltd, Zhongwei Industrial Park, Zhongwei City, Ningxia Province	42,7 %	C722
PRC	Shaanxi Shenghua Metallurgy-Chemical Co. Ltd, Yangxian Eco- Industrial Park, Hanzhong City, Shaanxi Province	32,8 %	C723
PRC	All other companies	50,7 %	C999

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

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

Article 2

The amounts secured by way of the provisional anti-dumping duty under Implementing Regulation (EU) 2021/1811 shall be definitively collected. The amounts secured in excess of the definitive rates of the anti-dumping duty shall be released.

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, 23 March 2022.

For the Commission
The President
Ursula VON DER LEYEN