COMMISSION IMPLEMENTING REGULATION (EU) 2022/558

of 6 April 2022

imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of certain graphite electrode systems originating in the People's Republic of China

THE EUROPEAN COMMISSION,

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

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

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 17 February 2021, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of certain graphite electrode systems originating in the People's Republic of China ('the PRC', 'China' or 'the country concerned') on the basis of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* [2].

1.2. Registration

(2) Since the conditions laid down in Article 14(5a) of the basic Regulation were not met, imports of the product concerned during the pre-disclosure period were not made subject to registration.

1.3. Provisional measures

(3) The Commission provided, on 17 September 2021, 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 in accordance with Article 19a of the basic Regulation (pre-disclosure). Three parties submitted comments. The comments were, however, of a general nature and did not relate to the accuracy of the calculations. Those comments were therefore only addressed at definitive stage.

(4) On 14 October 2021, the Commission imposed a provisional anti-dumping duty on imports of certain graphite electrode systems originating in China by Commission Implementing Regulation (EU) 2021/1812 [3] ('the provisional Regulation').

1.4. Subsequent procedure

(5) Following the disclosure of the essential facts and considerations on the basis of which the provisional anti-dumping duty was imposed ('the provisional disclosure'), the complainants, the sampled exporting producers, the China Chamber of Commerce ('CCCME'), several users including the European Steel Association ('Eurofer'), several importers and the Government of the People's Republic of China ('the GOC') filed written submissions making their views known on the provisional findings within the deadline provided by Article 2(1) of the provisional Regulation.

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

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

[3] Commission Implementing Regulation (EU) 2021/1812 of 14 October 2021 imposing a provisional anti-dumping duty on imports of certain graphite electrode systems originating in the People's Republic of China (OJ L 366, 15.10.2021, p. 62).

(6) Following the imposition of provisional measures, the interested parties who so requested were granted an opportunity to be heard. Hearings took place with the complainants, Eurofer, NLMK Europe ('NLMK'), Misano S.p. A. ('Misano') and Imerys France ('Imerys').

(7) The Commission continued to seek and verify all the information it deemed necessary for its final findings. For this purpose, additional remote cross-checkings ('RCC's') were organised with two sampled Union producers, namely GrafTech France S.N.C. ('GrafTech France') and Showa Denko Europe GmbH ('Showa Denko'), and one exporting producer, namely Nantong Yangzi Co., Ltd. ('Yangzi Group').

(8) On 19 January 2022, 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 certain graphite electrode systems originating in China ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure.

(9) Following final disclosure, the interested parties who so requested were granted an opportunity to be heard. Hearings took place with the complainants, CCCME and Fangda Carbon New Material Co., Ltd ('Fangda Group').

(10) Comments submitted by the interested parties were considered and taken into account where appropriate in this Regulation. Based on the comments submitted by Liaoning Dantan Technology Group Co., Ltd. ('Liaoning Dantan'), the Commission revised its findings concerning the calculation of its dumping margin and disclosed it to the party.

1.5. **Claim of excessive use of confidential information**

(11) CCCME claimed that the complaint relied excessively on confidential figures and requested the Commission to take steps necessary in these proceedings and future ones to ensure that parties can make relevant and meaningful comments.

(12) The Commission considered that the version of the complaint that was open for inspection by interested parties contained all the essential evidence and non-confidential summaries of data marked as confidential in order for interested parties to make meaningful comments and exercise their right of defence throughout the proceeding.

(13) The Commission further recalled that Article 19 of the basic Regulation and Article 6.5 of the WTO Anti-Dumping Agreement ('ADA') allow for the safeguarding of confidential information in circumstances where disclosure would be of significant competitive advantage to a competitor or would have a significant adverse effect upon a person supplying the information or upon a person from whom that person has acquired the information.

(14) The claim was therefore rejected.

1.6. **Request that the Commission considers the suspension of the anti-dumping measures pursuant to Article 14(4) of the basic Regulation**

(15) Following provisional and final disclosure, Misano, Fangda Group and CCCME argued that the anti-dumping measures should be suspended pursuant to Article 14(4) of the basic Regulation due to market changes occurring after the end of the investigation period.

(16) Without prejudice to the Commission's exclusive prerogative to decide on the application of Article 14(4) of the basic Regulation, the Commission noted at this stage that these parties did not provide any evidence to support a finding that the Union industry is no longer injured. Rather, the parties referred to growth expectations, price increases and expected decreases in the volume of imports to claim that injury is unlikely to continue or recur. As explained in recital (138) below, the Commission found that the alleged price increases of imports from China does not necessarily mean that injury had or would cease to occur. Therefore, the Commission considered that no further action was required at this stage.

1.7. **Sampling**

(17) In the absence of comments concerning sampling, recitals (12) to (17) of the provisional Regulation were confirmed.

1.8. **Investigation period and period considered**

(18) As stated in recital (24) of the provisional Regulation, the investigation of dumping and injury covered the period from 1 January 2020 to 31 December 2020 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2017 to the end of the investigation period ('the period considered').

(19) Some interested parties, including Trasteel International SA ('Trasteel'), pointed out that the period considered included a period with exceptionally high prices linked to shortages of supply and increased prices of the main raw material (2017–2018) and ended with a period affected by the COVID-19 pandemic (2020). They requested that the period considered includes 2016 when the market was considered 'normal'. Following final disclosure, Trasteel reiterated their request.

(20) This request was rejected. The period considered was determined upon initiation and covered, according to well established practice, the investigation period and the three preceding calendar years. The analysis of this period provided the Commission with the necessary data to come to accurate findings, whereby any exceptional circumstances could be taken into consideration.

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. **Claims regarding product scope and product exclusion**

(21) At provisional stage, four claims regarding the product scope were received respectively by a Union producer (Sangraf Italy), a user (NLMK), an unrelated importer (CTPS Srl) and CCCME. As explained in recitals (30) to (38) of the provisional Regulation, the Commission rejected three of the exclusion requests but accepted to exclude the nipples imported separately from the scope of the investigation.

(22) Following provisional disclosure the GOC, Eurofer, NLMK, Imerys, Misano, Fangda Group and Liaoning Dantan claimed that the Commission had not fully considered the differences in the types of graphite electrode products. According to these interested parties, on the one hand, most of the graphite electrodes exported by China to the Union are small diameter high power ('HP') or super high power ('SHP') electrodes used in ladle furnaces, and a small number of large diameter ultra-high power ('UHP') electrodes. On the other hand, the Union industry produces mostly large diameter UHP electrodes used in electric arc furnaces. These interested parties added that HP/SHP electrodes on one hand, and UHP electrode on the other hand, are different in material input (coke), production technology, product use and quality, and belong to different market segments. There is no possibility of mutual substitution. They requested that the small electrodes (with different definitions): of a diameter of 500 mm or less for Eurofer, of a diameter of 350 mm or less for NLMK, of a diameter of 500 mm or less for Imerys, of a diameter of 130–250 mm for COMAP, of a diameter of 450 mm or less for Fangda Group and CCCME, should be excluded from the scope.

(23) Following final disclosure, Eurofer, Fangda Group and CCCME repeated their claims. In addition, CTPS Srl requested that the electrodes of a diameter of 400 mm or less should be excluded. Trasteel however requested that electrodes of a diameter of 450 mm or less should be excluded. They argued that there is not enough Union production of these small diameter electrodes. Additionally they argued that a large number of graphite electrodes with a diameter above 350 mm are HP electrodes used in ladle furnaces and that they should equally be excluded from the scope. The Commission rejected these claims in view of the finding in recitals (27) to (31) below.

(24) At the same time, following final disclosure, the Union producers opposed the exclusion of graphite electrodes of a diameter of 350 mm or less from the product scope. The Union producers argued that they are in a position to increase the production of graphite electrodes with a diameter of 350 mm. In their view, the decline in the Union production and sales of graphite electrodes with a diameter of 350 mm over the period considered was the result, and not the cause, of the increasing flow of low-priced unfair imports from China.

(25) The Commission however noted that the Union production of graphite electrodes of a diameter of 350 mm or less started to decline in 2018, at a time where the market share of the Union industry was increasing and the Chinese market share was decreasing. Subsequently, when the Chinese market share started increasing in 2019 and 2020, the Union production of all sizes of electrodes decreased. These trends did not allow the Commission to confirm the statements of the Union producers in this respect.

(26) Following final disclosure, Henschke GmbH requested to use the RP/HP/SHP/UHP classification and to exclude RP/HP/SHP graphite electrodes from the imposition of the anti-dumping measures. The Commission rejected this claim. As explained in recital (37) of the provisional Regulation, there is no official industry standard which would allow for a clear distinction between the various grades of graphite electrodes, in particular between HP/SHP and UHP grades.

(27) The Commission found that smaller diameter graphite electrodes are mainly HP/SHP grade graphite electrodes, whereas larger graphite electrodes are of UHP grade. However, in the absence of a precise definition of the various grades, there appeared to be an overlap in sizes around diameters of 400–500 mm. In addition, the Commission also found that HP/SHP grade graphite electrodes are normally used in ladle furnaces whereas UHP grade graphite electrodes are almost exclusively used in electric arc furnaces. While the complainants provided examples where it is not the case, it appeared nonetheless that this interchangeability is very limited.

(28) The Commission also found that smaller size electrodes used to a large extent lower grade petroleum coke in the production process whereas high-quality and expensive needle coke was used to produce the larger sized UHP electrodes. It also appeared that the production process, while varying from one producer to the other, was generally shorter and more straightforward for HP/SHP electrodes than for UHP electrodes (e.g. shorter graphitisation process, lower number of impregnation and rebaking). The Commission therefore concluded that there is thus to a certain degree a difference in both technical characteristics and uses between smaller and larger diameter graphite electrodes.

(29) Some Union users reported difficulties to procure small diameter graphite electrodes from Union producers and argued that the Union industry did not produce this type of electrodes in sufficient quantities, because it focussed on larger diameter / higher grade electrodes. They also argued that, apart from China, few alternative sources of supply of adequate quality are available. The Commission noted at the same time that the Union industry's capacity utilisation during the IP was at 55,8 % and that the Union industry thus has spare capacity to produce more quantities of all diameters.

(30) The Commission also noted that the Union production of graphite electrodes with a nominal diameter of 350 mm or less was minimal and represented less than 1 % of the Union production of graphite electrodes. Furthermore, the investigation showed that graphite electrodes with a nominal diameter of 400 mm or more were produced in the Union in more significant quantities.

(31) The Commission therefore concluded that, while there is no clear boundary in terms of size between HP/SHP electrodes and UHP graphite electrodes, graphite electrodes with a nominal diameter of 350 mm or less appeared predominantly, if not exclusively, to be HP/SHP electrodes. These have different uses, production processes and technical characteristics compared to UHP electrodes. The UHP electrodes are also the ones produced by the Union industry and on which the dumped imports can exercise some negative effects.

(32) In view of the above considerations the Commission found it appropriate to exclude from the product scope graphite electrodes with a nominal diameter of 350 mm or less.

2.2. **Conclusion**

(33) The Commission confirmed the conclusions set out in recitals (32) to (33) of the provisional Regulation to exclude nipples from the product scope.

(34) In addition, the Commission decided, as explained above, to exclude from the product scope graphite electrodes with a nominal diameter of 350 mm ([4]) or less.

([4]) In view of the standard diameters and the general tolerance observed in the industry, excluding graphite electrodes with a nominal diameter of 350 mm or less will in practice ensure that some slightly larger sized electrodes will still fall under the exclusion.

3. **DUMPING**

(35) Following provisional disclosure, the Commission received written comments from the three sampled exporting producers, the GOC, the CCCME and from the complainant on the provisional dumping findings.

3.1. **Normal value**

(36) The details of the calculation of the normal value were set out in recitals (47) to (168) of the provisional Regulation.

3.1.1. *Existence of significant distortions*

(37) After provisional disclosure, the GOC, as well as CCCME and Liaoning Dantan submitted comments on the application of Article 2(6a) of the basic Regulation.

(38) The GOC submitted, first, that the first country report concerning the PRC (hereinafter 'the Report') ([5]) is flawed and decisions based on it lack a factual and legal basis. More specifically, the GOC claimed that it doubts that 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 for a few selected countries raises concerns about most favoured nation ('MFN') treatment. Further, relying by the Commission on the evidence in the Report is, in the GOC's view, not in line with the spirit of fair and just law, as it effectively amounts to judging the case before trial.

(39) With regard to the first point 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 Commission recalled that 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 factually flawed and one-sided, 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. Since it was made publicly available in December 2017, any interested party had ample opportunity to rebut, supplement or comment on it and the evidence on which it is based. So far no evidence was provided by any party proving that the sources used in the Report would be wrong.

(40) 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 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, 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 MFN treatment.

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

(41) Second, the GOC and CCCME argued that constructing the normal value in accordance with Article 2(6a) of the basic Regulation is inconsistent with the ADA, in particular with Article 2.2. of the ADA which provides an exhaustive list of situations where the normal value can be constructed, the 'significant distortions' not being listed among such situations. Moreover, using data from an appropriate representative country is, according to the GOC, inconsistent with GATT Article VI.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 the normal value.

(42) Third, the GOC, as well as CCCME and Liaoning Dantan claimed that the Commission's 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 producers 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 European Union – Anti-Dumping Measures on Biodiesel from Argentina ('DS473') and the Panel Report in European Union – Cost Adjustment Methodologies II (Russia) ('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 investigating authority should use such records to determine the cost of production of the investigated producers.

(43) Concerning the 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 referred to recital (54) of the provisional Regulation where similar claims by interested parties were already rejected. 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 any event, as these claims do not contain any new elements, they were rejected.

(44) Fourth, the GOC submitted that the Commission should be consistent and fully examine whether there are so-called market distortions in the representative country. Readily accepting the representative country's data without such evaluation represents 'double standards'. The same applies, in the GOC's view, to evaluating the price and costs of the EU industry.

(45) With regard to the fourth point 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 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.

(46) Fifth, Liaoning Dantan argued that the Commission provided a very general statement in recital (54) of the provisional Regulation and did not explicitly explain the legal basis in the WTO Agreements, including China's Protocol of Accession to the WTO, in support of application of Article 2(6a) of the basic Regulation. In the absence of very clear reasoning about why the Commission takes this view, the Commission's disclosure does not meet the legal standards of adequate statement of reasons justifying its decision of applying Article 2(6a) of the basic Regulation.

(47) As to the fifth argument raised by Liaoning Dantan, the Commission disagreed. In recital (54) of the provisional Regulation the Commission set out why the EU legislation in force is WTO compatible. With regard to Liaoning Dantan's argument regarding the China's Accession Protocol, the Commission recalled that in anti-dumping proceedings concerning products from China, the parts of Section 15 of China's Accession Protocol to the WTO that have not expired continue to apply when determining normal value, both with respect to the market economy

standard and with respect to the use of a methodology that is not based on a strict comparison with Chinese prices or costs. Moreover, Lianoning Dantan 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 (57) to (113) 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. Consquently, Liaoning Dantan argument was rejected.

(48) In addition to its arguments on WTO compatibility Article 2(6a) of the basic Regulation, CCCME also claimed that the five year plans in China are merely guiding documents expressing policy views for the future. As such, in CCCME's view, the plans are not binding, given also that they are not adopted in the same manner as laws or decrees. Moreover, CCCME pointed out that similar documents can be also found in Europe, including among others the Commission's policy documents.

(49) The Commission recalled that the Chinese system of planning sets out priorities and prescribes the goals the central and local governments must focus on. Relevant plans exist on all levels of government and cover virtually all economic sectors and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government. As described in detail in the Report, the objectives set by the planning instruments are in fact of binding nature, with the planning system resulting in resources being allocated to sectors designated as strategic or otherwise politically important by the government, rather than being allocated in line with market forces ([6]). Consequently, the Commission rejected this claim.

(50) Furthermore, Liaoning Dantan objected to the Commission having invoked a number of cross-cutting factors existing in China to demonstrate the existence of significant distortions. In particular, Liaoning Dantan argued that being a member and standing director to the China Carbon Industry Association does not amount to state intervention into Liaoning Dantan's operation, let alone any influence over its business decisions. Similarly, Liaoning Dantan 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, Liaoning Dantan 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.

(51) Liaoning Dantan's arguments concerning the alleged lack of significant distortions despite existing government interventions could not be accepted. First, Liaoning Dantan did not provide any information which would put in question the Commission's observations (see recital (90) of the provisional Regulation) on graphite electrodes being considered an encouraged sector 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 (90) and (110) of the provisional Regulation). Second, while Liaoning Dantan considered being a member and standing director to the China Carbon Industry Association did not amount to state intervention, it did not dispute the observation made in recital (86) of the provisional Regulation that the purpose of the association was 'to implement the party's line, guidelines, and policies' and that the association 'adheres to the overall leadership of the Communist Party of China'. Third, as to Liaoning Dantan's claim that it is a privately-owned company with modern corporate governance, the Commission described in recitals (57) to (111) 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. Therefore, these claims were rejected.

(52) Upon final disclosure, the GOC, as well as the CCCME, Liaoning Dantan and the Fangda Group submitted further comments on the application of Article 2(6a) of the basic Regulation.

(53) The GOC reiterated its view that Article 2(6a) of the basic Regulation is inconsistent with the ADA and that the Report has factual and legal defects.

([6]) Report – Chapter 4, pp. 41–42, 83.

(54) More specifically, the GOC argued that the content of the Report exceeds the proper scope of anti-dumping investigations, that it misinterprets China's institutions and treats the legitimate competitive advantages of Chinese companies and the normal institutional differences between China and the EU as the basis for the conclusion that the Chinese economy is affected by significant market distortions. In this connection, the GOC criticised the Commission's practice of giving all parties the opportunity to rebut, supplement or comment on the Report. Instead, the GOC argued that it was China's request from the beginning that the Commission should withdraw the Report, rather than supplementing or modifying it, and that the GOC had no obligation or need comment on the Report.

(55) Moreover, the GOC considered the Commission's investigation practice inconsistent with Article 2.2.1.1 of the ADA and the WTO dispute settlement reports in DS473 and DS494 insofar as the Commission had not complied with its obligation to prove that the significant market distortions result in the accounting records of Chinese enterprises not reasonably reflecting the production and sales costs related to the products under investigation, since the object of that analysis are individual enterprises, not governments or institutions. Consequently, China's broad macroeconomic policies or the membership of an enterprise in an industry association cannot explain specific issues such as the unavailability of enterprise cost data.

(56) The Commission disagreed. First, concerning the alleged factual flaws of the Report, the GOC's merely repeats the argument raised earlier and addressed in recital (39). As to GOC's request to withdraw the Report instead of giving interested parties an opportunity to comment on its content, the Commission recalled that pursuant to Article 2(6a)(c) of the basic Regulation, the Commission is not only obliged to produce and make public reports describing the relevant market circumstances when there are well-founded indications of significant distortions – as is the case for the PRC – but the Commission must also provide interested parties with ample opportunity to rebut, supplement, comment or rely on such reports and the underlying evidence. The Commission took due note of the GOC's choice to refrain from making use of that opportunity, and consequently noted that the GOC's request for the Report to be withdrawn without engaging on its substance and evidence cannot be accepted. Second, as to the WTO compatibility of the Commission's investigation practices, the Commission has already extensively addressed the GOC's argument in recital (54) of the provisional Regulation, as well as in recital (43), including the Commission's view that provisions of Article 2(6a) of the basic Regulation are fully consistent with the Union's WTO obligations. The Commission recalled that the existence of significant distortions renders costs and prices in the exporting country inappropriate for the construction of normal value and that WTO law, as interpreted by the WTO Panel and the Appellate Body in DS473, allows in principle the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated.

(57) CCCME, in its comments on the final disclosure, raised arguments related to the Report and it reiterated its views expressed previously that Article 2(6a) of the basic Regulation was not compatible with the ADA. This argument was echoed in Fangda Group's submission. The Fangda Group, as a CCCME member, explicitly endorsed CCCME's opinion.

(58) As to the Report, CCCME reiterated that by relying on the Report, the Commission continued arguing in a circular manner where exporters need to disprove allegations made in the Report, which was in any event prepared with the specific purpose of serving as a basis for Union producers to initiate trade defence investigations and which, in the present case, does not even mention the sector under investigation. CCCME therefore recalled that the burden of proof rests with the investigating authority.

(59) In addition, CCCME reiterated its argument that five year plans in China are merely guiding documents, as opposed to '*laws*', '*regulations*' or '*decrees*' which are of a binding nature. CCCME pointed out in this respect that similar guiding documents exist also in Europe.

(60) Concerning the WTO compatibility of Article 2(6a) of the basic Regulation, CCCME submitted, first, that the concept of '*significant distortions*' included in Article 2(6a) of the Basic Regulation does not appear in any rule of the WTO ADA or the GATT 1994. In particular, the concept of 'significant distortions' does not fall within any of the categories provided in Article 2.2 of the ADA. Concerning the use of data from a third country, CCCME submitted that even though according to the Appellate Body in DS473 the use of data from a source outside the exporting country is not prohibited, the Commission seems to ignore the fact that the Appellate Body also emphasized that '*this, however, does not mean that an investigating authority may simply substitute the cost from outside the country of origin for the cost of production in the country of origin*', as well as that *'when relying on any out-of-country information to determine the "cost of production in the country of origin" under Article 2.2 of the Anti-dumping Agreement, an investigating authority has to ensure that such information is used to arrive at the "cost of production in the country of origin" and this may*

require the investigation authority to adapt that information.' The Commission's approach therefore appears, in CCCME's view, to be inconsistent with the Union's obligations under Article 2.2 of the WTO ADA. Second, the CCCME considered that Article 2(6a) of the basic Regulation violates Article 2.2.1.1 of the ADA and the ruling in DS437 because under Article 2(6a) of the basic Regulation, once the Commission establishes the existence of 'significant distortions', it is not required to go through the two conditions of Article 2.2.1.1 of the ADA, namely whether the records are in accordance with the GAAP of the exporting country, and whether the records reasonably reflect the costs associated with the production and sales of the product under consideration.

(61) In addition, CCCME reiterated its previously submitted argument that according to Article 2(6a) of the basic Regulation, the assessment of the alleged significant distortions must be done for each exporter and producer separately and that the Commission should, accordingly, substantiate its assessment for at least each sampled exporting producer. The same argument was raised also by the Fangda Group.

(62) CCCME's arguments could not be accepted. First, as for the alleged circular manner of the Commission's argumentation and the burden of proof, the Commission recalled – as already stated in recitals (53) and (55) of the provisional Regulation – that Section 3.3.1 of the provisional Regulation contains the Commission's full assessment concerning the existence of significant distortions. The Commission failed to see any circularity in how that assessment was carried out, i.e. the Commission relying on available evidence, including the Report, and interested parties having an opportunity to comment on that evidence. Second, concerning the nature of the five year plans, while noting that the existence and nature of planning documents in the Union is not relevant in the context of the present investigation, the Commission recalled, as already explained in detail in recitals (73) and (74) of the provisional Regulation and in recital (49), the specific nature of industrial planning in China is not only comprehensive, covering virtually the entire industrial production in the country, but also directly affects the business decisions of market operators due to financial and other mechanisms, which induce such operators to comply with the five-year plans ('FYPs'). By way of example, the Commission recalled, according to the 13th FYP '[a]*ll local governments and government departments must work hard to organize, coordinate, and guide the implementation of this plan. We will carry out dynamic monitoring and evaluation of the implementation of this plan.* […] *Approval procedures related to the projects and initiatives included in this plan will be streamlined and priority will be given to them in site selection, land availability, and funding arrangements. We will ensure that auditing offices play a role in overseeing implementation*' ([7]). Third, concerning 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, the Commission reiterated its view expressed in recital (54) of the provisional Regulation, as well as in recital (56), that 2(6a) of the basic Regulation is fully in line with the EU's obligations under WTO law and that WTO law, as interpreted by the WTO Panel and the Appellate Body in DS473, allows the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. Furthermore, 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, this argument has already been addressed in recital (43). Fourth, with respect to the individual assessment of significant distortions for each exporting producer, 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) of the basic Regulation, it is not appropriate to use domestic prices and costs in the exporting country, the Commission may construct the normal value using undistorted prices or benchmarks in an appropriate representative country for each exporting producer according to Article 2(6a)(a) of the basic Regulation. Such determination has been made on the basis of the assessment carried out in recitals (57) to (111) of the provisional Regulation and applied individually to each exporting producer. The Commission recalled further that Article 2(6a)(a) of the basic Regulation allows the use of domestic costs only if they are positively established not to be distorted. However, there is no evidence on file demonstrating that this would be the case.

(63) Liaoning Dantan submitted comments related to WTO compatibility of Article 2(6a) of the basic Regulation, as well as to legal standards of adequate statement of reasons justifying the application of Article 2(6a) of the basic Regulation.

(64) More specifically, Liaoning Dantan argued that *(i)* the Commission, by merely repeating that Article 2(6a) of the basic Regulation is WTO compatible, failed to provide any further elaboration concerning the exact legal basis providing for the compatibility of Article 2(6a) with WTO law; and *(ii)* no explanation was provided concerning

([7]) See Section 2 of Chapter 80 of the 13th FYP.

which part of Section 15 of China's Accession Protocol to the WTO is considered to continue to apply, let alone the reasoning to support this view. Consequently, Liaoning Dantan took the view that the use of data from a third country in normal value construction on the ground of alleged existence of significant distortions is incompatible with Article 2.2 and Article 2.2.1.1 of the ADA and with the dispute settlement reports in DS473.

(65) Furthermore, Liaoning Dantan reiterated that Commission bears the legal obligation to establish the distortive effect of the alleged state interventions and that, consequently, it is not up to Liaoning Dantan to produce evidences showing the contrary. Therefore, in Liaoning Dantan's opinion, the Commission did not fulfil its obligation to assess the existence of significant distortions for each exporter and producer separately in line with Article 2(6a)(a) of the basic Regulation.

(66) The arguments of Liaoning Dantan must be dismissed. First, the argument on WTO compatibility of Article 2(6a) of the basic Regulation has been addressed in detail previously. The Commission therefore reiterated its view expressed in recital (54) of the provisional Regulation, as well as in recitals (43) and (56). As for Liaoning Dantan's argument concerning Section 15 of China's Accession Protocol to the WTO, the Commission recalls its position expressed in recital (47). Second, as to the argument on individual assessment for each exporting producer, the Commission referred to recital (62), where this argument has been addressed.

3.1.2. *Conclusion*

(67) In the absence of other comments, the findings made in recitals (57) to (113) of the provisional Regulation regarding the existence of significant distortions and that it is not appropriate to use domestic prices and costs to establish the normal value in this case were confirmed.

3.1.3. *Representative country*

(68) While CCCME reiterated its doubts whether Mexico could be considered a suitable representative country to determine the normal values of the Chinese exporters, it also acknowledged the Commission's efforts to select a reasonable amount of SG&A and profit, which reflect the requirements in Article 2(6a) of the basic Regulation.

(69) As no new arguments were presented and in the absence of other comments, the Commission confirmed the choice of Mexico as a representative country made in recitals (114) to (148) of the provisional Regulation.

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

(70) The Commission set out the details concerning the sources used to establish the normal value in recitals (139) to (168) of the provisional Regulation. After publication of the provisional Regulation, several parties made claims on the different sources used to determine the normal value.

3.1.4.1. Raw materials used in the production process

(71) After provisional disclosure, the European Carbon and Graphite Association ('ECGA') reiterated its claim that the Commission should rely on representative prices of petroleum coke (HS code 2713 12) to construct the normal value and that the prices used at provisional stage were artificially low as those prices mainly covered low quality materials which cannot be used to produce graphite electrodes.

(72) As mentioned in recitals (140) and (145) of the provisional Regulation, the Commission provisionally decided to establish the benchmark based on the Mexican import price, aggregated at the level of the country. The source of information was the Global Trade Atlas (the 'GTA'). Further to the ECGA's claim, the Commission analysed the issue and found, based on the same database used at provisional stage (i.e. GTA), more detailed import information distinguishing between the different points of imports into Mexico that petroleum coke (HS code 2713 12) was imported into Mexico by sea and by land from the US. The Mexican customs statistics contained in GTA provided that the import price was around USD 2 144 per tonne when imported via the Mexican border town Nuevo Laredo

(by land from the US) while imports into other parts of Mexico gave a price of around USD 200 per tonne. Based on publicly available information ([8]), the Commission considered that the price of USD 200 per tonne could not reflect the cost of the high-grade petroleum coke needed for the production of graphite electrodes, but reflected the substantially lower fuel grade used for electricity generation and in cement kilns. Moreover, the Commission found that the Mexican producer of graphite electrodes GrafTech Mexico is located close to Nuevo Laredo and its main supplier of petroleum coke is also located close to that town on the US side. The Mexican producer confirmed that its petroleum coke was imported in significant quantities through the town of Nuevo Laredo and was used to produce graphite electrodes. Therefore, the Commission decided to rely on the import price found in Nuevo Laredo for establishing its petroleum coke benchmark as representative for the high-grade petroleum coke used specifically for the production of graphite electrodes.

(73) In their comments on the provisional disclosure, Liaoning Dantan claimed that the Commission applied an erroneous FOB/CIF conversion coefficient to Mexican FOB import data from GTA. In particular, the party claimed that the transport costs were overstated and that the Commission should use a specific coefficient for Mexican imports as most of the imports considered were made from the US.

(74) As explained in the recital (151) of the provisional Regulation, the Commission established the undistorted price of the raw materials based on a weighted average import price (CIF). While most of the countries report the value of their imports at the level of the customs border (for example CIF in case of delivery by sea), Mexico reports the value of its imports without considering the ocean freight costs (that is, at FOB level). Therefore, for the provisional calculations, the Commission adjusted the values reported by Mexico in order to reach the border customs value (that is, at CIF level).

(75) The Commission examined the claim and considered that the FOB/CIF conversion coefficient used did not reflect in a reasonable way the origin of goods imported in Mexico. Consequently, the Commission decided to establish the FOB/CIF coefficient based on the actual origin of the goods imported. When imported via Nuevo Laredo, no coefficient was applied as the goods were imported by land.

(76) The table of factors of production of graphite electrodes mentioned in recital (150) of the provisional Regulation was thus replaced by the following table:

Factors of production of graphite electrodes

Factor of Production	Commodity Code	Undistorted value (RMB)	Unit of measurement
Raw materials			
Petroleum coke (calcined)	2713 12	14 789	Tonne
Petroleum coke (non calcined)	2713 11	396	Tonne
Pitch from coal tar	2708 10	7 840	Tonne
Pitch coke from coal tar	2708 20	3 917	Tonne
Coke and semi-coke of coal	2704 00	1 860	Tonne
Coal asphalt	2715 00	5 965	Tonne
Coal	2701 12	836	Tonne
Graphite fragments	3801 10, 3801 90	12 320	Tonne

([8]) Source: 'Petroleum coke: essential to manufacturing' published by the National Association of Manufacturers, available at www.api.org/~/media/files/news/2014/14-november/petcoke-one-pager.pdf; 'Petcoke markets and the cement industry' published by CemNET available at www.cemnet.com/News/story/169503/petcoke-markets-and-the-cement-industry.html accessed on 17 December 2021.

Consumables			
Labour			
Labour wages in manufacturing sector	[N/A]	13,37	Hour
Energy			
Electricity	[N/A]	0,48 ([1])	kWh
Natural Gas	[N/A]	0,70	m3
By product/waste			
Graphite scrap	3801 90	12 320	Tonne
Silicon carbide scrap	2849 20	7 472	Tonne

([1]) Please note that in recital (150) of the provisional Regulation, the electricity was not expressed in kWh but in MWh.

3.1.4.2. Electricity

(77) Following provisional disclosure, Fangda Group and Liaoning Dantan pointed out that, contrary to what was stated in recital (155) of the provisional Regulation, the Commission did not establish the price of electricity on the basis of prices published by the Mexican Federal Electric Commission ('Comisión Federal de Electricidad' or 'CFE').

(78) The Commission accepted the claim and changed the benchmark price for electricity in accordance with recital (155) of the provisional Regulation. The Commission used the CFE set for industrial users of the high-voltage network called 'DIT' ([9]).

(79) Moreover, Liaoning Dantan reiterated its claim already made after the second Note that the prices of electricity in Mexico are distorted upward because the new Mexican administration has allegedly undermined renewable energy production and investment thereby favouring the state owned power generator CFE to the detriment of privately-owned renewable energy operators in 2019. The party further claimed that the direct consequences of this distortion is that the transmission fees in the benchmark price of electricity need to be adjusted to reflect the undistorted value before the Mexican state intervention into the market, i.e. prior to 2019 when the Mexican new administration came to power.

(80) The Commission observed that the party did not submit any new evidence. In addition, as already indicated in recital (157) of the provisional Regulation, the party previously referred only to several press articles arguing that renewable energy is allegedly undermined in Mexico. However, no concrete evidence was provided showing that this has indeed been the case and, more importantly, that the prices of electricity in Mexico have been affected by this alleged policy of the Mexican Government. Consequently, the Commission rejected this claim as well as the request to adjust the transmission fees with values prior to 2019.

3.1.4.3. SG&A percentage

(81) Liaoning Dantan reiterated its claim that the SG&A percentage obtained from GrafTech International Ltd's annual report 2020 was not suitable to be used as benchmark as it came from the consolidated financial data of various companies established in countries with different level of income, including high income countries such as the US.

(82) The Commission clarified that the described methodology was applied on the basis of the only actual financial data readily available in the representative country and that nothing in the file indicated that the level of SG&A used was not reasonable. The interested parties were informed of this fact via two Notes on the sources for the determination of the normal value. The company had thus ample opportunities to provide evidence that the level of the SG&A of GraftTech International Ltd was not reasonable or to propose an alternative benchmark to replace the distorted SG&A percentage, but failed to do so. This claim was therefore rejected.

([9]) Data available on the web site of the Comisión Federal de Electricidad at: https://app.cfe.mx/Aplicaciones/CCFE/Tarifas/TarifasCREIndustria/Tarifas/DemandaIndustrialTran.aspx accessed on 8 December 2021.

(83) The same party also claimed that some expenses reported in GrafTech International Ltd's annual report 2020 should be removed from the list of the SG&A expenses used for the establishment of the SG&A percentage (i.e. stock-based compensation and mark-to-market adjustment).

(84) The Commission examined the claim and considered it justified. Therefore, after removal of these expenses, the SG&A was established at 10,4 % based on the costs of manufacturing.

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

(85) Liaoning Dantan claimed that the Commission should have identified the benchmark of the consumables and manufacturing overheads separately from other inputs. It claimed that the Commission should have used its actual costs of consumables and overheads instead. Liaoning Dantan and CCCME further argued that the same issue was also valid regarding the calculation of the transport costs for the supply of raw materials where the Commission expressed this transport cost as a percentage of the actual cost 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. The parties argued that given that the cost of raw materials was recalculated by applying undistorted prices, it amounted to linking the transport costs also to the value increase of the raw materials, which it claimed was not correct as there was no such link.

(86) The Commission noted that for each cooperating exporting producer the costs aggregated under consumables represented between 0,01 % and 2,1 % of the total costs of manufacturing. Therefore, the Commission considered that the consumables had a very limited impact on the cost of production in their totality and thus on the calculation of the normal value. As a result, it decided not to source an individual benchmark for each of the 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 3.3.1 of the provisional Regulation. 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 the parties, nor found by the Commission. Therefore, the Commission could not use the data reported by Liaoning Dantan. The Commission considered that its methodology for calculating an undistorted value for consumables was appropriate, and that no better information was available in the file. Liaoning Dantan neither provided an alternative for the use of GTA import values into the representative country, nor provided an alternative undistorted benchmark for consumables. Therefore, the claim with regard to consumables was rejected.

(87) With regard to the claim of Liaoning Dantan concerning the Commission's methodology to establish the undistorted value of its manufacturing overhead costs as set out in recital (166) 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 Liaoning Dantan, nor found by the Commission. Therefore, the Commission considered that its methodology for calculating an undistorted value for overheads was appropriate, and that no better information was available. Liaoning Dantan did not suggest an alternative undistorted benchmark for overheads. Therefore, the claim was rejected.

(88) In respect of the claim of Liaoning Dantan and CCCME about the Commission's methodology to establish the undistorted Chinese inland transport costs, for the supply of raw materials as set out in recital (153) of the provisional Regulation, the Commission noted that Liaoning Dantan and CCCME did not put forward any evidence that transport costs were not affected by the significant distortions in the PRC, nor did it put forward an alternative approach as to how the Commission should calculate individually the undistorted transport cost for each raw material. Therefore, the claim was rejected.

3.2. **Export price**

(89) The details of the calculation of the export price were set out in recitals (169) and (170) of the provisional Regulation. As no comments were received, these recitals were confirmed.

3.3. **Comparison**

(90) Liaoning Dantan claimed that the Commission should recalculate SG&A percentage based on a detailed breakdown of expenses (such as transport and all ancillary costs), allowing the establishment of a specific SG&A percentage for the domestic sales in accordance with Article 2(10) of the basic Regulation.

(91) The Commission clarified that the described methodology was applied because the financial data available in the representative country did not contain detailed information on SG&A expenses thereby excluding transport and ancillary costs. The interested parties were informed of this fact via two Notes on the sources for the determination of the normal value. The company had thus ample opportunities to propose a suitable benchmark to replace the allegedly distorted SG&A expenses. However, it failed to do so. Consequently, the claim was rejected.

3.4. **Comments submitted following final disclosure**

(92) Yangzi Group claimed that the Commission did not use the information from the selected representative country, i.e. Mexico, but used US export prices. The party claimed that the Article 2(6a)(a) of the basic Regulation clearly indicates that, once the representative country has been selected, the Commission has to stick to that choice, except in very exceptional and properly motivated circumstances. By using US export prices as the appropriate benchmark, the Commission did not respect that rule.

(93) As explained in recital (72), the Commission established the benchmark of petroleum coke based on Mexican import statistics concerning imports into Nuevo Laredo and not based on US exports statistics. The claim was therefore rejected.

(94) Yangzi Group and Liaoning Dantan also claimed that the Commission should not limit the source of information to one point of entry in Mexico and that the port of import and way of transportation cannot be considered as an objective criterion as it leads to a very distorted and unrepresentative price of petroleum coke.

(95) Article 2(6a)(a) states that in order to establish the costs of production, the Commission may use the corresponding costs of production and sale in an appropriate representative country, provided the relevant data are readily available. Therefore, as long as the information is readily available, the Commission has some discretion in its choice of selecting the most appropriate source of information to be used for establishing the benchmark in an appropriate representative country. The Commission considered that nothing prevents the use of company-specific import data (as for example for the establishment of the profit or SG&A costs) or the use of import statistics concerning one point of entry when that is the most appropraite. This claim was therefore rejected.

(96) Yangzi Group argued that the Commission did not establish that GrafTech Mexico is the only graphite electrodes producer in Mexico and that other companies may be producing lower quality graphite electrodes using lower quality imported petroleum coke.

(97) In the course of the investigation, the Commission identified GrafTech Mexico as the sole producer of the product under investigation in Mexico. Interested parties were informed of this fact via two Notes on the sources for the determination of the normal value referred to in recitals (43) and (44) of the provisional Regulation and were invited to comment. No comments were received either after the first or second note. In addition, the Commission observed that the interested parties did not put forward any evidence of the existence of other producers of graphite electrodes in Mexico. In any case, the Commission considered that the number of graphite electrodes producers had no impact on the establishment of the petroleum coke benchmark used for the production of graphite electrodes as the benchmarck is established at the level of import statistics and not at the level of a producer. The claim was therefore rejected.

(98) Yangzi Group claimed that the Commission did not have supporting evidence showing that the prices around USD 200 per tonne concerned different grades and uses of petroleum coke that were not used in the production of the product concerned. Furthermore, Fangda Group and CCCME claimed that the petroleum coke used forenergy production is not declared under HS code 2713 12, but under HS code 2713 11.

(99) It should be noted that Yangzi Group did not provide any evidence to substantiate its claim. The Commission referred to the claim submitted by ECGA that the prices of petroleum coke (HS code 2713 12) used at provisional stage were artificially low (that is around USD 750 per tonne) and that those prices were not representative of the prices of petroleum coke paid by various companies for the production of graphite electrodes around the world. In particular, ECGA argued that the lowest price quote for such grade was always far above USD 750 per tonne during the investigation period. As explained in recital (72), when examining this claim the Commission noticed that the Mexican import statistics contained in GTA showed significant difference between the average import price of petroleum coke (HS code 2713 12) imported via the Mexican border town Nuevo Laredo (by land from the US) and the imports into other parts of Mexico whereby the latter showed a 10 times lower average price per tonne, for the same input.

(100) The Commission compared the import price of USD 200 per tonne with the evidence obtained during the investigation. Among others, the evidence included: (i) the list of purchases of petroleum coke imported by the sampled Chinese producers; (ii) the copies of purchase invoice of Indian producers provided by ECGA showing that the petroleum coke price was not below USD 800 per tonne; (iii) the information provided by ECGA with its comments on the final disclosure where they referred to a Chinese website ([10]) with import statistics. Moreover, after final disclosure, Fangda Group and Liaoning Dantan provided import prices in the PRC based on the same Chinese website where the prices of the of petroleum coke grade used for the production of graphite electrodes during the investigation period were reported in a range between USD 900 and USD 3 200 per tonne. The Commission thus considered that the low price of USD 200 per tonne could not reflect the cost of the grade of petroleum coke needed for the production of graphite electrodes. As indicated in recital (72), this unit import price of USD 200 per tonne is close to the import price of lower grades of petroleum coke, exclusively used for the production of energy (petroleum coke non-calcined HS code 2713 11), at a price of USD 60 per tonne.

(101) Finally, none of the interested parties provided evidence that petroleum coke imported at USD 200 per tonne could be used for the production of graphite electrodes. Therefore, the Commission rejected the claim and confirmed its decision to exclude the imports at the Mexican customs offices where the weighted average import price was around USD 200 per tonne.

(102) Fangda Group and CCCME further claimed that the Commission did not provide any positive evidence or reasonable explanation why the imports through Nuevo Laredo were used substantively as input material for the production of graphite electrodes. While the Commission has discretion to ensure that the use of import data more accurately reflects the situation of the production of exporting producer, so as to '*ensure that such information is used to arrive at the "cost of production in the country of origin"*', such a selective use of import data must be objective and fair, and supported by positive evidence.

(103) Moreover, the GOC argued that the Commission's practice of further evaluating the comments of all parties was result-oriented, especially with regard to the data of petroleum coke (calcined). If the Commission considered it necessary to further subdivide the import customs data of Mexican under the HS code 2713 12, the Commission or the complainants should have proposed a scientific division method and basis to distinguish the petroleum coke (calcined) used for graphite electrode from other uses. It was unreliable to distinguish by price or customs declaration place. In addition, the GOC claimed that this approach is inconsistent with the decision taken by the Commission in the Fasteners investigation ([11]), where the Commission did not accept CCCME and fastener producers' evidence to prove that the import data from some countries should be excluded. Therefore, the GOC requires the EU to maintain objective neutrality and adopt a consistent treatment method across cases, rather than using the method which yields the highest dumping margin.

(104) As indicated in recitals (140) and (145) of the provisional Regulation, the Commission decided to establish the benchmark based on the Mexican import price, aggregated at the level of the country based on GTA as no other source of information was available for the representative country nor there was a readily available international benchmark. For the HS code 2713 12, there is no subdivision between different types of grades in Mexico's tariff schedule and none of the interested parties provided a methodology allowing for a distinction between the grade of petroleum coke used for the production of graphite electrodes and other grades. The Commission established that the imports at the level of Mexican customs entry points provided the necessary distinction between the different

([10]) www.iccsino.com.cn

([11]) Commission Implementing Regulation (EU) 2022/191 of 16 February 2022 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China (OJ L 36, 17.2.2022, p. 1), recitals (229)–(233).

types of grades whereby the ones entering at Nuevo Laredo reflect as close as possible the petroleum coke that can be used for the production of graphite electrodes. At the same time, the imports at the other entry points were either negligible (see recital (113)) or at a price of USD 200 per tonne. Regarding the latter, as explained in recital (101), none of the interested parties provided evidence that this lower priced grade could be used for the production of graphite electrodes. Thus, the Commission established that only the imports entering at Nuevo Laredo could be considered for the purpose of establishing a benchmark price for petroleum coke used for the production of graphite electrodes. Furthermore, the Commission examined the level of import prices at Nuevo Laredo and found that the weighted average import price, established on a significant volume of imports, was within the range of prices for petroleum coke used for the production of graphite electrodes during the investigation period submitted by the exporting producers as explained in recital (108). In addition, the only producer identified of the product under investigation in the representative country, namely GrafTech Mexico, stated that the majority of its needs were imported through Nuevo Laredo. Therefore, similarly to *the Fasteners investigation*, the Commission took into account all the elements described above and did not base itself only on the price difference between the different Mexican customs entry points. The Commission thus dismissed the claims that the import prices of petroleum coke into Mexico were unrepresentative or unreasonable.

(105) Fangda Group claimed that GrafTech International's letter dated 21 December 2021 regarding Graftech Mexico's imports of needle coke has to be disregarded as GrafTech International was not registered as an interested party. Moreover, the letter was provided after the deadline for comments and that the Commission failed to examine the accuracy and adequacy of the information provided.

(106) Pursuant to the basic Regulation, and in particular Article 2(6a)(e) thereof, the Commission shall collect the data necessary for the purpose of determining the normal value pursuant to point (a) of Article 2(6a) of the basic Regulation. This means that the Commission is obliged to actively search for information as opposed to only take into account the information submitted to it by interested parties. Furthermore, there is nothing in the basic Regulation preventing the Commission as an investigating authority from relying on information which was not submitted by an interested party as long as any evidence on which the Commission relies is included in the file to which interested parties are given access, without prejudice to Article 19 of the basic Regulation. The Commission is therefore fully entitled as an investigating authority, even obliged, to take into account and examine all the information it has at its disposal. The Commission considered that the letter mentioned in the previous recital contained relevant information and it is undisputed that the letter was placed on the non-confidential file to which interested parties had access. Furthermore, the information in the letter was only supplementary to the other elements which the Commission considered in order to arrive at the conclusion that the import point of Nuevo Laredo should be used as a benchmark for the input in question; in particular: that the data is in line with the cost of the input of quality and grade used for the production of the product under investigation in the selected representative country, and that it was readily available in the selected representive country.

(107) Fangda Group, CCCME, Liaoning Dantan and Yangzi Group claimed that the import price of Nuevo Laredo was distorted and not representative for premium petroleum coke of the relevant grade. These import prices were higher than the normal market price and could not be considered to be prices at arm's length. They further claimed that the high price was due to the incentive for the related US supplier to increase its prices because of the income tax rate difference between USA and Mexico. The import price could also reflect the price for super premium petroleum coke, whereas Chinese producers use lower grades. Liaoning Dantan and Yangzi Group submitted that GrafTech International's annual report for 2020 provided that GrafTech used higher quality needle coke blends. GrafTech International Annual Report mentioned that '*our production of petroleum needle coke specifically for graphite electrodes provides us the opportunity to produce super premium petroleum needle coke of the highest quality.*' This would (partially) explain the extremely high price for US exports to Mexico. They also observed that the import prices in Mexico were rather stable in the investigation period, whereas prices of imports into the PRC showed a decrease.

(108) The Commission considered that the benchmark for the petroleum coke used for the production of graphite electrodes should reflect the costs of the representative country and not the import prices which can be found in other countries. It noted that the weighted average import price of USD 2 144 per tonne was well within the range of prices submitted by Fangda Group and Liaoning Dantan, as mentioned in recital (100).

(109) As explained in recital (104) above, the Commission established that this bechmark reflects as close as possible the input used by the exporting producers of graphite electrodes. In addition, contrary to the statement made by the parties in support of their claim that the prices were stable, the Commission found a price variation of around 20 % between the highest and the lowest weighted average monthly import prices in Nuevo Laredo. Finally, the Commission found that GrafTech International Annual Report did not contain any evidence regarding the proportion of different grades of petroleum coke purchased by GrafTech Mexico or that the grade produced by Graftech International is higher than the usual high grade used in the production of graphite electrodes. Consequently, the Commission confirmed that the import price at Nuevo Laredo was an appropriate benchmark price in the representative country.

(110) Fangda Group and CCCME claimed that the Commission excluded imports from other countries without providing explanations.

(111) Contrary to this claim, the Commission took into account all origins (i.e. USA and Germany). However, German imports were considered negligible as these imports represented around 0,009 % of the total quantity imported through Nuevo Laredo ([12]). Therefore, the claims were rejected.

(112) Furthemore, Liaoning Dantan claimed that the Commission did not produce any evidence indicating that the imports at five other entry points ([13]) were not representative of petroleum coke suitable for graphite electrodes production.

(113) The five other entry points mentioned by the parties represented a total of 255 tonnes, or 2,6 % of the total Mexican imports. Therefore, the Commission considered that these quantities were too low to be representative. In any case, even if those other five entry points were to be considered, the benchmark price would have remained almost unchanged (only 0,1 % lower). The claim was therefore rejected.

(114) Liaoning Dantan claimed that the Commission should not have taken into consideration imports only from Nuevo Laredo, as GrafTech International declared that the majority but not all petroleum coke was imported through Nuevo Laredo.

(115) The Commission recalled that it did not establish the benchmark based on GrafTech Mexico import prices but rather on the Mexican import statistics. As explained above, other points of entry were disregarded as the weighted average import price per tonne did not reflect the price of the quality used for the production of graphite electrodes, and the amounts imported were not representative. Therefore, the claim was rejected.

(116) Fangda Group, Liaoning Dantan and CCCME claimed that the Commission should have considered the nature, the characteristics or specifications of the material, and the usage of the goods for establishing the undistorted costs of production. In particular, the parties underlined that the calcined petroleum coke used for the production of graphite electrodes have different grades, and that the price differences between different grades are significant. Furthermore, Fangda Group and CCCME claimed that using Mexico's imports of high-end petroleum coke with high prices (average at USD 2 144 per tonne, which is about the same or even higher than the high-end petroleum coke's market price), disregarded the fact that Chinese companies use both ordinary calcined petroleum coke and high-end calcined petroleum coke.

(117) The Commission recalled that parties had a number of occasions to comment on the benchmarks proposed and none of the parties concerned provided reliable and readily available data regarding benchmark prices in the representative country reflecting the alleged different grades of either calcinated petroleum coke or high-end petroleum coke. The Commission observed that the interested parties making the claim failed to provide any evidence showing that there are technical and/or chemical differences between the alleged different grades of petroleum coke and how those differences are reflected in the purchases reported by the parties concerned. Their claims were purely based on differences in their own purchase prices. Moreover, one of the exporting producers concerned omitted to report its use of another type of petroleum coke whose purchase price was significantly higher than the benchmark used. In addition, as acknowledged by all interested parties, there is no international benchmark readily available for this input. In light of the above considerations and as indicated in recital (104) above, the Commission established a reliable benchmark for petroleum coke that is readily available and reflects as accurately as possible the factor of production used for producing graphite electrodes in the selected representative country. The claim was therefore rejected.

([12]) Total Mexican imports originating from Germany represented 2,5 % of the total quantity, 97,5 % of imports were originating from the USA.

([13]) That is the imports in the remaining five entry points, excluding those at Nuevo Laredo and the other two points at which the average price was at about USD 200 per tonne.

(118) Fangda Group, CCCME and Liaoning Dantan reiterated their claim mentioned above in recital (88) regarding Chinese transport costs. However, the parties did not submit any new evidence supporting their claim. Therefore, the claim was rejected.

(119) Following final disclosure, Liaoning Dantan claimed that the Commission should have established the costs for gas consumption based on the undistorted price and not include it in the consumables. The Commission accepted the claim and revised the calculation. As mentioned above in recital (9), the Commission disclosed the final calculation to the party and no comments were received.

(120) Yangzi Group claimed that the Commission should have used a different scrap conversion ratio following the additional remote cross-checkings held in December 2021. The Commission examined this claim and found that the proposed ratio was not based on the complete production process of graphite electrodes of the company but only covered a limited number out of many steps of production. The claim was therefore rejected.

3.5. **Dumping margins**

(121) As detailed in recitals (35) to (90), the Commission took into account interested parties' comments submitted after provisional disclosure, and after final disclosure as described in recital (119), and recalculated the dumping margins accordingly.

(122) As indicated in recital (179) of the provisional Regulation, the level of cooperation in this case was low because the exports of the cooperating exporting producers constituted only around 62 % of the total exports to the Union during the investigation period. On this basis, the Commission considered it appropriate to set the country-wide dumping margin applicable to all other non-cooperating exporting producers at the level of the highest dumping margin established for product types sold in representative quantities by the exporting producer with the highest dumping margin found. The dumping margin thus established was 74,9 %.

(123) 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
Fangda Group composed of four producers	36,1 %
Liaoning Dantan Technology Group Co., Ltd.	23,0 %
Nantong Yangzi Group composed of three producers	51,7 %
Other cooperating companies	33,8 %
All other companies	74,9 %

4. **INJURY**

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

(124) In the absence of any comments with respect to this section, the Commission confirmed its conclusions set out in recitals (181) to (185) of the provisional Regulation.

4.2. **Union consumption**

(125) The Commission established the Union consumption on the basis of the information provided by the Union industry and the import volumes (TARIC level) reported in Eurostat. In view of the change in the product scope (recital (34)), the figures were amended but the trends as established in the provisional Regulation remained unchanged.

Union consumption developed as follows:

Table 1

Union consumption (in tonnes)

	2017	2018	2019	Investigation period
Total Union consumption	170 528	175 944	148 753	127 573
Index	*100*	*103*	*87*	*75*

Source: Eurostat (Comext) and Union industry

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

(127) One interested party, Misano, challenged the methodology used by the Commission to adjust the imports under TARIC code 8545 11 00 90 in order to exclude from those imports graphite electrodes with an apparent density of less than 1,5 g/cm^3 or an electrical resistance of more than 7,0 μ.Ω.m, which were not covered by this investigation. However, Misano did not put forward any alternative methodology that could be used by the Commission. The Commission nevertheless considered, as an alternative to using 2019 data, to use the average for 2017–2019, but noted that the difference with the originally used methodology would be marginal and would not change the overall trend. Indeed, this alternative methodology adjustment would consist in deducting 8 % instead of 7,5 % of the total import in volume and 2,8 % instead of 3,3 % of the total import in value. Consequently, the Commission confirmed its methodology used in the provisional Regulation for the adjustment of imports under TARIC code 8545 11 00 90 as described in recital (187) of the provisional Regulation.

4.3. **Imports from the country concerned**

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

(128) The Commission established the volume of imports on the basis of the Eurostat Comext database. To take into account the exclusion of smaller graphite electrodes from the product scope, the Commission deducted 9,1 % from the total volume of Chinese imports as determined based on the methodology set out in the preceding recital. This estimate of the share (in volume) of Chinese imports of a nominal diameter of 350 mm or less was based on the export data provided by the sampled Chinese exporting producers.

(129) Following final disclosure, Fangda Group questioned the accuracy of the adjustment of the total volume of Chinese imports, which decreased by 9,1 % following the exclusion of smaller graphite electrodes, and requested the Commission to consider in more detail the actual import volume from China of the product concerned. However, Fangda Group did not specify in what way the Commission's methodology would be unreasonable or inaccurate, or propose an alternative, more accurate methodology. Indeed, it was not even clear whether the Fangda Group considered that the Commission over- or under-estimated imports of smaller graphite electrodes. Therefore, the claim was rejected.

(130) The trends as established in the provisional Regulation did not change as a consequence of this adjustment.

(131) The market share of the imports was established on the basis of the import data and Union industry data for sales in the Union market.

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

Table 2

Import volume (in tonnes) and market share

	2017	2018	2019	Investigation period
Volume of imports from China	38 410	39 250	41 752	43 113
Index	*100*	*102*	*109*	*112*
Market share (%)	22,5	22,3	28,1	33,8
Index	*100*	*99*	*125*	*150*

Source: Eurostat (Comext), Union industry

(133) In a context of decreasing consumption, Chinese imports increased to the detriment of the Union industry. The volume of imports from China increased by 12 % over the period considered and its market share increased by 50 %, reaching 33,8 % in the investigation period (+ 11,3 percentage points). The market share of the Union industry decreased by 5,9 percentage points, from 61,1 % in 2017 to 55,2 % in 2020 (Table 5).

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

(134) The Commission established the prices of imports on the basis of Eurostat Comext database. To take into account the change in product scope, the Commission deducted 6,5 % from the total value of Chinese imports. This estimate of the share (in value) of Chinese imports of a nominal diameter of 350 mm or less was based on the export data provided by the sampled Chinese exporting producers.

(135) The trends as established in the provisional Regulation did not change as a consequence of this adjustment.

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

Table 3

Import prices (EUR/tonne)

	2017	2018	2019	Investigation period
China	4 271	9 988	4 983	2 136
Index	*100*	*234*	*117*	*50*

Source: Eurostat (Comext)

(137) Noting that there was no significant difference in the trends in Table 3 following the adjustment of the product scope and in the absence of any comments with respect to this section, the Commission confirmed its conclusions set out in recitals (194) to (196) of the provisional Regulation.

(138) Following final disclosure, Fangda Group and CCCME noted that – according to their calculation – between the end of the IP and September 2021, import prices from China increased by 37,5 %. The Commission noted, however, that the findings of dumping and injury were based on the IP. Furthermore, a rise in price in itself does not necessarily mean that imports are no longer made at dumped prices or that injury no longer occurs, especially in a context where, as also acknowleged by Fangda Group and CCCME, the global oil price increase resulted in an increase of the prices of the main input material, petroleum needle coke, thereby further increasing the cost of production of graphite electrodes. Therefore, this claim was dismissed.

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

4.4.1. *General remarks*

(139) In the absence of any comments with respect to this section, the Commission confirmed its conclusions set out in recitals (197) to (201) of the provisional Regulation.

4.4.2. *Macroeconomic indicators*

4.4.2.1. Production, production capacity and capacity utilisation

(140) With respect to this section, the Commission adjusted the production volumes in line with the change in the product scope. The trends as established in the provisional Regulation did not change as a consequence of this adjustment.

(141) In the absence of any comments, the Commission confirmed its conclusions set out in recitals (202) to (205) of the provisional Regulation.

(142) The total Union production over the period considered as follows:

Table 4

Production

	2017	2018	2019	Investigation period
Production volume (tonnes)	229 045	240 787	216 259	164 503
Index	*100*	*105*	*94*	*72*

Source: Union industry

4.4.2.2. Sales volume and market share

(143) In line with the change in the product scope, the Union industry's sales volume and market share were adjusted. This adjustment was based on data provided by the Union industry. The trends as established in the provisional Regulation did not change as a consequence of this adjustment.

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

Table 5

Sales volume and market share

	2017	2018	2019	Investigation period
Sales volume on the Union market (tonnes)	104 156	116 828	91 175	70 405
Index	*100*	*112*	*88*	*68*
Market share (%)	61,1	66,4	61,3	55,2
Index	*100*	*109*	*100*	*90*

Source: Union industry

(145) Sales increased between 2017 and 2018 and then decreased over the period 2018–2020. The general trend is in line with the development of consumption. However, the drop in sales (– 32 %) was more pronounced than the drop in consumption (– 25 %) over the period considered.

(146) As a consequence, the market share of the Union industry dropped by 5,9 percentage points. The market share of third countries other than the PRC dropped by 5,4 percentage points. The Union industry lost market share to Chinese imports, which increased its market share by 11,3 percentage points during the same period (table 2).

(147) Following final disclosure, Fangda Group and CCCME argued that the Union consumption declined (42 955 tonnes between 2017 and end of the IP) and that Union consumption is larger in absolute terms than the corresponding decline in Union industry sales volume (33 751 tonnes between 2017 and end of the IP). The Commission considered that the drop in sales should not be taken in absolute terms but looked at in relation to the drop in consumption. The market share is the relevant indicator in this respect, which showed that the Union industry lost market share in the period considered. The claim was, therefore, dismissed.

4.4.2.3. Growth

(148) In the absence of any comments with respect to this section, the Commission confirmed its conclusions set out in recital (209) of the provisional Regulation.

4.4.2.4. Employment and productivity

(149) Following final disclosure, Fangda Group and CCCME noted that the employment figures increased during the period considered in order to support the view that the Union industry will grow in the near future. However, the Commission noted that employment followed the trends of production and consumption on the Union market. After the initial increase between the years 2017 and 2018 the employment kept decreasing from the year 2018 until the end of the period considered. As a consequence, it cannot be concluded from the employment figures that the Union industry expected future growth, and the claim was dismissed.

(150) In the absence of other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (210) to (212) of the provisional Regulation.

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

(151) In the absence of any comments with respect to this section, the Commission confirmed its conclusions set out in recitals (213) to (215) of the provisional Regulation.

4.4.3. *Microeconomic indicators*

(152) The change in product scope had no impact on the micro-indicators. The reason is that none of the sampled Union producers produced electrodes of a nominal diameter of 350 mm or less in the period considered. In the absence of other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (216) to (240) of the provisional Regulation.

4.5. **Conclusion on injury**

(153) Regarding the situation of the Union industry, the Commission first noted that the trends as established in the provisional Regulation did not change as a consequence of the adjustment in the product scope.

(154) Following provisional disclosure some interested parties noted that some indicators (capacity, employment, sale prices, profitability, cash flow) showed a positive trend over the period considered and, given the level of profit of the Union industry considered as a whole, argued that there was no injury. This claim that macro- and microeconomic data available did not provide a basis to consider the Union industry as being materially injured was repeated, following final disclosure, by Trasteel, Fangda and CCCME.

(155) Firstly, it is recalled that all major macro-indicators presented a significant negative trend: Market share (from 61,1 % to 55,2 %), EU sales (– 32 %) and production (– 28 %) during the period considered. The Commission assessed all relevant economic factors and indices having a bearing on the state of the industry, in accordance with Article 3(5) of the basic Regulation, and, while noting that not all injury indicators showed a negative trend, concluded that indicators overall demonstrated material injury.

(156) Secondly, as thoroughly explained in recitals (216) to (218) of the provisional Regulation, part of the industry (the company GrafTech) was to some extent considered temporarily shielded from direct market competition and, in the analysis, the different parts of the industry were distinguished. Overall, the micro-indicators excluding GrafTech showed a very negative picture.

(157) A number of interested parties commented on the methodology used by the Commission for the economic analysis of the Union industry, where the Commission paid particular attention to the performance of GrafTech.

(158) Firstly, one party, Misano, considered that the Commission had mistakenly 'deemed' GrafTech France's sales as being 'shielded from direct competition with imports'. GrafTech France's sales under long-term contracts ('LTAs') were not made in conditions where competition did not take place, but were offered to GrafTech France's unrelated customers at a time when these customers purchased graphite electrodes from the Union industry and non-EU suppliers, including Chinese exporting producers.

(159) The Commission, however, considered that the LTAs had as an objective, and as a result, to secure certain volumes of sales at certain prices. The LTAs provided customers with some certainty of supply/pricing when demand and pricing was high whilst they protected GrafTech against possible future drop in demand as well as possible unfair practices from third countries as from the moment these LTAs were concluded with its customers. Furthermore, the Commission noted that GrafTech France had a very different profit level as compared to the two other sampled companies and that a major difference and a key explanatory factor for this difference was the existence of these LTAs.

(160) Secondly, some parties, including Eurofer, argued that, contrary to what was indicated in the provisional Regulation, these LTAs would not expire by the end of 2022 as some of these will either be prolonged or renewed.

(161) The Commission further investigated this issue and indeed it appeared that GrafTech extended existing LTAs with some of its clients for one or two years following discussions with those customers. The existence of these extended LTAs as such was not an indication that the favourable conditions that existed for this company in the IP would continue given that the extensions included contract modifications resulting from discussions with their customers. A detailed analysis of the further information provided by GrafTech on a confidential basis as regards these contract modifications in the LTAs, including details relating to volumes and prices, allowed the Commission to confirm its provisional findings as set out in recitals (253) and (254), and that GrafTech was subject to the same pressure from

dumped imports as the other Union producers at the time of renegotiating its LTAs. Moreover, the extended LTAs covered only a minor part of GrafTech's total sales. Even including the extended LTAs, the vast majority of the sales volume will at the end of 2023 no longer be covered by the current LTAs. This proportion will further increase at the end of 2024. The Commission also noted that some LTAs had expired in 2021 and were not renewed. Lastly, the Commission noted that GrafTech's average sales prices for the first half of 2021 declined compared to the IP (even including the sales under the LTAs), which indicated that GrafTech was impacted by the imports of graphite electrodes from China at low prices. Therefore, the prolongation and renewal of some LTAs did not change the conclusion about injury.

(162) Thirdly, one party, Trasteel, an importer of graphite electrodes, claimed that the conditions for the use of sectoral analysis as an analytical tool were not satisfied in this case and that the Commission had not conducted an 'objective examination'. Yet, the Commission based its analysis on an objective criterion, namely the existence of LTAs.

(163) Following final disclosure, Trasteel opposed the methodology arguing that only a minority of the Union producers could be considered as having been injured and not the Union industry as a whole.

(164) In accordance with the approach set out in recital (218) of the provisional Regulation and as explained in recitals (253) to (254) of that Regulation, the Commission found that GrafTech was also impacted by the low-priced imports of China and that the profitable part of the industry would not be able to influence the non-profitable part. The Commission's asseement thus referred to the Union industry as a whole. Trasteel failed to explain why this examination was not objective, and did not propose an alternative methodology. This claim was therefore rejected.

(165) On the basis of the above and for the reasons set out in recitals (241) to (254) of the provisional Regulation, the Commission concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. **CAUSATION**

5.1. **Effects of the dumped imports**

(166) Following provisional disclosure, some parties contested the causality arguing that the Union and the Chinese industry are producing different products: large/high-grade electrodes for the former, small/low-grade electrodes for the latter. The investigation showed, however, a large overlap between graphite electrode systems imported from China and those produced by the Union industry. While noting that there is no industry standard and that grades are self-declaratory, the Commission noted that [80-90] % of the exports of the sampled Chinese producers were of UHP grade. The Commission also noted that [70-80] % of the graphite electrodes exported by the sampled Chinese producers were of a diameter of 500 mm or more. There is therefore a large overlap between the Chinese imports and the EU production. The argument that there is no direct competition and that the Union and the Chinese industry are producing different products was therefore rejected.

(167) In addition, some of the products imported from China which were not, or only in small quantities, produced by the Union industry were excluded from the product scope. This is reinforcing further the causal link.

(168) Following final disclosure, Trasteel pointed to the increase in sales prices in the Union over the period considered and argued that the normal market response to Chinese dumping would entail that the Union industry decreased its prices in order not to lose its market share. In the opinion of Trasteel, this showed that there was no injury. Would the Union industry be injured, it would have reduced its prices in order not to lose market share. The Commission already pointed to the decrease in prices during the IP in recitals (219) and (220) of the provisional Regulation. As explained in recitals (221) and (223) of that Regulation, the decrease was even more significant for sales on the 'free market', which was subject to the competitive pressure of imports. However, even a significant reduction of its sales prices did not prevent the Union industry from losing market share, as a result of the increased dumped imports from the PRC.

(169) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (256) and (257) of the provisional Regulation.

5.2. **Effects of other factors**

(170) After provisional disclosure several parties repeated comments regarding the non-attribution analysis and especially regarding the COVID-19 pandemic and the impact of GrafTech's LTAs. Following final disclosure, Trasteel, Fangda Group and CCCME repeated those comments and insisted that the difficulties faced by the Union industry were linked to the impact of COVID-19 and the resulting reduction in the demand for GES by the steel industry.

5.2.1. *The COVID-19 pandemic*

(171) The COVID-19 pandemic was addressed in recital (258) of the provisional Regulation. The Commission reiterates that Chinese imports started increasing before the pandemic despite decreasing consumption in the EU and that there was a consistent increase in the Chinese market share since 2018.

(172) The Commission thus confirmed its conclusions set out in recital (258) of the provisional Regulation.

5.2.2. *The impact of GrafTech's LTAs*

(173) Some parties argued that GrafTech's LTAs – by locking in some of their customers – contributed to the economic disarray of the rest of the industry. In other words, these LTAs allegedly prevented the demand for graphite electrodes to be spread over the different Union producers, especially in difficult times (drop in demand linked to the pandemic).

(174) Following final disclosure, Trasteel claimed that if any causality could be found, it would only be in relation to a minority of Union sales (those that are not subject to LTAs) and not in relation to the majority of the Union industry.

(175) The Commission rejected these claims. Firstly, contrary to what Trasteel claimed, the 'overwhelming majority' of the sales in the Union during the IP were not 'shielded' by LTAs. To the contrary, the majority of the sales in the Union during the IP were done outside LTAs, according to the figures provided by the Union industry. Secondly, the LTAs cannot be considered as a source of injury to the Union industry. Rather the investigation demonstrated that it was the Chinese dumped imports that were the cause of the injury suffered by the industry. In addition, the Commission noted that, during the IP, GrafTech's sales to unrelated customers decreased significantly compared to 2019. Sales of other sampled Union producers without LTAs with their customers decreased less in the same period. Furthermore, as noted in recital (161), GrafTech's average sales prices for the first half of 2021 declined compared to the IP, which indicated that GrafTech was impacted by the imports of graphite electrodes from China at low prices.

(176) Therefore, the Commission concluded that the aforementioned dumped imports have caused material injury to the Union industry during the period considered and that the causal link was not attenuated by GrafTech's LTAs to such an extent that the imports were not causing material injury.

5.2.3. *Imports from third countries*

(177) In the absence of comments with respect to this section, the Commission confirmed its conclusions set out in recitals (261) and (264) of the provisional Regulation.

5.2.4. *Export performance of the Union industry*

(178) Following final disclosure, Fangda Group and CCCME claimed that a large share of Union industry production is used for export, that this has an impact on the overall operating performance of the Union industry and that the export performance broke the causal link. However, the Commission considered the export performance of the Union industry and recalled that, as explained in recital (267) of the provisional Regulation, the overall the export performance showed similar trends as those for the sales of the Union industry on the Union market, but export sales, in relative terms, decreased less than sales on the Union market.

(179) In the absence of other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (265) and (267) of the provisional Regulation.

5.2.5. *Consumption*

(180) In the absence of comments with respect to this section, the Commission confirmed its conclusions set out in recital (268) of the provisional Regulation.

5.2.6. *Captive use*

(181) In the absence of comments with respect to this section, the Commission confirmed its conclusions set out in recital (269) of the provisional Regulation.

5.3. **Conclusion on causation**

(182) On the basis of the above, the Commission concluded that none of the factors, analysed either individually or collectively, attenuated the causal link between the dumped imports and the injury suffered by the Union industry to the effect that such link would no longer be genuine and substantial. It therefore confirmed the conclusion in recitals (270) to (274) of the provisional Regulation.

6. **UNION INTEREST**

6.1. **Interest of the Union industry**

(183) Following provisional disclosure, Trasteel, an importer of graphite electrodes, claimed that the Union industry does not need protection because prices of the product concerned are increasing. However, the investigation established the existence of material injury during the investigation period and, in any event, the claim was not substantiated with any evidence demonstrating that the economic situation of the Union industry had changed. The claim was therefore dismissed as unfounded.

(184) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (276) to (280) of the provisional Regulation.

6.2. **Interest of unrelated importers and traders**

(185) Following provisional disclosure, Trasteel and Misano claimed that the imposition of anti-dumping duties would prejudice the importers' position on the market as customers may be unwilling to purchase at a higher price. A party indicated that 50 % of its turnover is generated from the sale of graphite electrodes imported from China.

(186) Concerning the economic consequences on importers, as described in recital (281) of the provisional Regulation, the investigation established that the sampled importers had a profitable business, with a weighted average profit of around 4 % and that the imposition of measures would only have limited impact on their profitability.

(187) The Commission also noted that the definitive anti-dumping duty rates for the Chinese cooperating companies were below the rate of undercutting. It is therefore expected that unrelated importers and traders should still be able to import graphite electrodes from China at a competitive yet fair price. This claim was therefore rejected.

(188) Trasteel and Misano also made comments on importers' and traders' interest relating to the lack of capacity of the Union industry and the risk of shortage especially for small diameters electrodes. These comments were similar to those of some users and are addressed in Section 6.3 below.

(189) In the absence of any other comments regarding the interest of unrelated importers, the conclusions set out in recitals (281) to (284) of the provisional Regulation were confirmed.

6.3. **Interest of users**

(190) Following provisional disclosure, some parties claimed that anti-dumping duties would threaten users' profitability and competitiveness. They also claimed that the downstream industry cannot reliably source the graphite electrodes it requires to continue its operations without imports from China. Following final disclosure, Eurofer, Fangda Group and CCCME repeated that there is a significant risk of supply shortage, especially for small diameter graphite electrodes.

(191) The users mainly represent the steel industry, but also, as indicated by Imerys, some smaller users such as producers of fused mineral oxides like fused alumina and fused zirconia.

(192) With regard to Imerys, the Commission noted that a large share of the electrodes that it is using are regular power electrodes which – due to their physical characteristics – fall outside of the scope of this investigation. The Commission also noted that Imerys is using small and very small electrodes, which were excluded from the product scope, as mentioned in recital (32), after having analysed all submissions, including the one from Imerys.

(193) Therefore, under the assumption that, given the physical properties of fused mineral oxides, producers of fused mineral oxides faced similar constraints having similar production facilities, the Commission expected that the exclusion of the product scope of graphite electrodes of a nominal diameter of 350 mm or less would limit the possible negative consequences on such users.

(194) With regard to the steel industry, the related findings of recitals (285) to (289) of the provisional Regulation were confirmed, noting also, as exemplified in Eurofer's comments following final disclosure, the sourcing difficulties for small diameter GES that some EU steel producers are currently facing.

(195) The Commission also noted that the complainants in their comments to the final disclosure reiterated the existence of available capacities of the Union producers to produce small diameters graphite electrodes.

(196) Finally, the Commission recalled that the measures will only allow the re-establishment of fair competition between the Union and the Chinese producers of graphite electrode, and will not prevent the users from continuing to supply from China.

(197) The claims that anti-dumping duties would threaten users' profitability and competitiveness and that the downstream industry cannot reliably source graphite electrodes were therefore rejected.

6.4. **Other factors**

(198) In the absence of comments with respect to this section, the Commission confirmed its conclusions set out in recitals (290) and (291) of the provisional Regulation.

(199) Following Final Disclosure, Fangda Group and CCCME requested the Commission to consider the potential adverse effect of measures on the Union environmental objectives. The Commission however considered that the measures will not pose any risk in terms of security of supply as explained in recital (288) of the provisional Regulation and recitals (196) and (197), and therefore will not hamper the achievement of the Union environmental objectives and the green transition. To the contrary, the objective of the measures is to restore a level playing field for the Union producers and will contribute to ensuring a diversity of supply for the users, which favours electric arc furnace steel production in the Union.

6.5. **Conclusion on Union interest**

(200) In view of the above, the Commission confirmed the conclusions set out in recital (292) of the provisional Regulation.

7. **DEFINITIVE ANTI-DUMPING MEASURES**

7.1. **Injury elimination level**

(201) Under Article 9(4), third paragraph, of the basic Regulation, the Commission assessed the development of import volumes during the period of pre-disclosure in order to reflect the additional injury in case there would be a further substantial rise in imports subject to the investigation in that period. According to the Surveillance 2 database, a comparison of the import volumes of the product concerned in the investigation period and those of the pre-disclosure period showed no further substantial rise in imports (there was only a 5,5 % increase). Therefore, the requirements for an increase in the determination of the injury margin under Article 9(4) of the basic Regulation were not met and no adjustment was made to the injury margin.

(202) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (168) to (177) of the provisional Regulation as modified by the table in recital (206).

(203) In terms of the residual margin, bearing in mind that cooperation of the Chinese exporters was low as explained in recital (179) of the provisional Regulation, the Commission considered it appropriate to set the residual margin on the basis of facts available. This margin was set at the level of the highest underselling margin established for product types sold in representative quantities by the exporting producer with the highest underselling margin found. The residual underselling margin so calculated was set at a level of 187,1 %.

7.2. **Raw materials distortion**

(204) Absent any comments concerning recitals (308) to (309) of the provisional Regulation, and as the margins adequate to remove injury remained higher than the dumping margins found also at definitive stage, the Commission considered that Article 7(2a) of the basic Regulation is not applicable in the case at hand and that Article 7(2) applied instead.

7.3. **Definitive measures**

(205) In view of the conclusions reached with regard to dumping, injury, causation 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.

(206) On the basis of the above, the rates at which such duties will be imposed are set as follows:

Company	Dumping margin	Injury margin	Definitive anti-dumping duty
Fangda Group	36,1 %	139,7 %	36,1 %
Liaoning Dantan Technology Group Co., Ltd.	23,0 %	98,5 %	23,0 %
Nantong Yangzi Carbon Group	51,7 %	150,5 %	51,7 %
Other cooperating companies	33,8 %	121,6 %	33,8 %
All other companies	74,9 %	187,1 %	74,9 %

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

(208) 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 ([14]). The request must contain all the relevant information enabling the company 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 concerning the change of name will be published in the *Official Journal of the European Union*.

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

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

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

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

(212) 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 the provisional anti-dumping duty imposed by the provisional Regulation should be definitively collected.

8. **FINAL PROVISIONS**

(213) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([15]), 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

(214) Following provisional disclosure, Nantong Yangzi Carbon Group pointed out that the group is composed of three producers: namely Nantong Yangzi Carbon Co., Ltd., Nantong Jiangdong Carbon Co. Ltd. and Wulanchabu Xufeng Carbon Technology Co. Ltd.' Therefore, it is necessary to amend the provisional Regulation in order to indicate the names of all producers within the Nantong Yangzhi Carbon Group for the purpose of collecting the provisional anti-dumping duty. In addition, their names also need to be indicated for the purpose of imposing the definitive anti-dumping duty.

(215) 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,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,5 g/cm^3 or more and an electrical resistance of 7,0 μ.Ω.m or less, whether or not equipped with nipples, with a nominal diameter of more than 350 mm, currently falling under CN code ex 8545 11 00 (TARIC codes 8545 11 00 10 and 8545 11 00 15), and originating in the People's Republic of China.

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

([15]) 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).

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

Country	Company	Definitive anti-dumping duty	TARIC additional code
PRC	Fangda Group composed of four producers: Fangda Carbon New Material Co., Ltd.; Fushun Carbon Co., Ltd.; Chengdu Rongguang Carbon Co., Ltd.; Hefei Carbon Co., Ltd.	36,1 %	C 731
PRC	Liaoning Dantan Technology Group Co., Ltd.	23,0 %	C 732
PRC	Nantong Yangzi Carbon Group composed of three producers: Nantong Yangzi Carbon Co., Ltd.; Nantong Jiangdong Carbon Co. Ltd.; Wulanchabu Xufeng Carbon Technology Co. Ltd.	51,7 %	C 733
PRC	Other cooperating companies listed in Annex	33,8 %	
PRC	All other companies	74,9 %	C 999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of (product concerned) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in the People's Republic of China. 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) 2021/1812 shall be definitively collected on the product as defined in Article 1(1) above. The amounts secured in relation to the imports of the excluded products (namely, imports of graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,5 g/cm^3 or more and an electrical resistance of 7,0 μ.Ω.m or less, whether or not equipped with nipples, with a nominal diameter of 350 mm or less) shall be released.

Article 3

Article 1(2) may be amended to add new exporting producers from China and make them subject to the appropriate weighted average anti-dumping duty rate for cooperating companies not included in the sample. A new exporting producer shall provide evidence that:

(a) it did not export the goods described in Article 1(1) during the period of investigation (1 January 2020 to 31 December 2020);

(b) it is not related to an exporter or producer subject to the measures imposed by this Regulation; and

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

Article 4

1. Article 1(2) of Commission Implementing Regulation (EU) 2021/1812 is amended as follows:

'Nantong Yangzi Carbon Co., Ltd.'

is replaced by

'Nantong Yangzi Carbon Group composed of three producers: Nantong Yangzi Carbon Co., Ltd.; Nantong Jiangdong Carbon Co. Ltd.; Wulanchabu Xufeng Carbon Technology Co. Ltd.'

2. This Article shall be applicable for the purposes of Article 2 as from 16 October 2021.

Article 5

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, 6 April 2022.

For the Commission
The President
Ursula VON DER LEYEN