

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

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation'), and in particular Article 7 thereof,

After consulting the Member States,

Whereas:

1. PROCEDURE**1.1. Initiation**

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

1.2. Interested parties

- (5) In the Notice of initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainant, known Union producers, the known exporting producers and the authorities of the PRC, known importers, suppliers and users, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

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

- (6) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.
- (7) No hearings were requested at this stage of the investigation.

1.3. Comments on initiation

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

1.4. Sampling

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

1.4.1. Union producers

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

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

1.4.2. *Sampling of importers*

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

1.4.3. *Sampling of exporting producers in the PRC*

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

1.5. **Questionnaire replies and verification visits**

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

Union producers

— OFZ, a.s., Istebné, Slovakia

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

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

— Ferropem, Chambéry, France

Importers

— Affival SAS, Solesmes, France

Exporting producers in the PRC

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

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

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

1.6. Investigation period and period considered

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

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

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

2.2. Like product

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

2.3. Claims regarding product scope

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

3. DUMPING

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

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

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

3.2. Normal Value

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

3.2.1. Existence of significant distortions

- (40) In the recent investigation concerning ferro-silicon originating in the PRC, the producers of which belong to the ferro-alloys sector, similarly to producers of calcium silicon ⁽⁵⁾, the Commission found that significant distortions in the sense of Article 2(6a)(b) of the basic Regulation were present in the said sector. The Commission concluded in that investigation that, based on the evidence available, the application of Article 2(6a) of the basic Regulation was also appropriate.
- (41) In that investigation, the Commission found that there is substantial government intervention in the PRC resulting in a distortion of the effective allocation of resources in line with market principles ⁽⁶⁾. In particular, the Commission concluded that in the ferro-silicon sector, not only does a substantial degree of ownership by the GOC persists in the sense of Article 2(6a)(b), first indent of the basic Regulation ⁽⁷⁾ but the GOC is also in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation ⁽⁸⁾. The Commission found further that the State's presence and intervention in the financial markets, as well as in the provision of raw materials and inputs have an additional distorting effect on the market. Indeed, overall, the system of planning in the PRC results in resources being allocated to sectors designated as strategic or otherwise politically important by the GOC, rather than being allocated in line with market forces ⁽⁹⁾. Moreover, the Commission concluded that the Chinese bankruptcy and property laws do not work properly in the sense of Article 2(6a)(b), fourth indent of the basic Regulation, thus generating distortions in particular when maintaining insolvent firms afloat and when allocating land use rights in the PRC ⁽¹⁰⁾. In the same vein, the Commission found distortions of wage costs in the ferro-silicon sector in the sense of Article 2(6a)(b), fifth indent of the basic Regulation ⁽¹¹⁾, as well as distortions in the financial markets in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, in particular concerning access to capital for corporate actors in the PRC ⁽¹²⁾. Due to the close similarity of inputs used and of the production process, these findings largely apply also to the calcium-silicon sector, the latter also forming part of the ferro-alloys sector.
- (42) Like in the investigation concerning the ferro-silicon sector in the PRC, the Commission examined in the present investigation whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the complaint, as well as in the Report, which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in the PRC's economy in general, but also the specific market situation in the relevant sector including the product under investigation. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in the PRC as also found by its previous investigations in this respect.
- (43) The complaint in this case referred to the Report, in particular to distortions in the energy sector and with regard to certain mineral inputs. Moreover, the complainant also provided a study on State-induced market distortions the Chinese ferro-alloys and silicon industries. This study documented that the Chinese ferro-alloy industry is subject to heavy government guidance and discretionary interference and concluded that the Chinese companies in this

⁽⁵⁾ Commission Implementing Regulation (EU) 2020/909 of 30 June 2020 imposing a definitive anti-dumping duty on imports of ferro-silicon originating in Russia and the People's Republic of China, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 (OJ L 208, 1.7.2020, p. 2).

⁽⁶⁾ Ibid, recitals 54-60 and 111-115.

⁽⁷⁾ Ibid, recitals 61-64.

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

⁽⁹⁾ Ibid, recitals 70-80.

⁽¹⁰⁾ Ibid, recitals 81-86.

⁽¹¹⁾ Ibid, recitals 87-90.

⁽¹²⁾ Ibid, recitals 91-110.

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

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

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

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

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

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

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

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

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

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

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

⁽²⁰⁾ Report – Chapter 10, p. 221-230.

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

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

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

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

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

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

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

⁽²⁶⁾ Report – Chapter 10.

⁽²⁷⁾ Report – Chapter 12, p. 269.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.3. Representative country

3.3.1. General remarks

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.3.4. Level of social and environmental protection

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

3.3.5. Conclusion

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

3.4. Sources used to establish undistorted costs

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

3.5. Undistorted costs and benchmarks

3.5.1. Factors of production

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

Table 1

Factors of production of calcium silicon

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

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

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

3.5.1.1. Raw materials and scrap/by-products

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

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

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

3.5.1.2. Labour

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

3.5.1.3. Electricity

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

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

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

⁽⁴⁶⁾ https://www.ilo.org/ilostat/faces/oracle/webcenter/portalapp/pagehierarchy/Page21.jspx?_afLoop=2007202804813928&_afWindowMode=0&_afWindowId=ejmnga3iz_63#%40%40%3F_afWindowId%3Dejmnga3iz_63%26_afLoop%3D2007202804813928%26_afWindowMode%3D0%26_adf.ctrl-state%3Dejmnga3iz_119

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

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

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

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

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

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

3.5.2. Calculation of normal value

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

3.6. Export price

- (161) The exporting producers exported to the Union either directly to independent customers or through a related company located outside the Union.
- (162) The export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

3.7. Comparison

- (163) The Commission compared the normal value and the export price of the exporting producers on an ex-works basis.
- (164) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for transport, insurance, handling, loading and ancillary costs, packing costs, credit costs, trader mark-ups, and bank charges.

3.8. Dumping margins

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

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

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

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

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

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

4. INJURY

4.1. Definition of the Union industry and Union production

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

4.2. Determination of the relevant Union market

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

4.3. Union consumption

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

Table 2

Union consumption (tonnes)

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

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

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

4.4. Imports from the PRC

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

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

Table 3

Import volume (tonnes) and market share

	2017	2018	2019	Investigation period
Volume of imports from the PRC ⁽³³⁾	[10 009 – 12 116]	[10 657 – 12 900]	[9 433 – 11 419]	[7 789 – 9 428]
Index	100	106	94	78
Market share (%)	38,7	47,9	55,3	60,8
Index	100	124	143	157

Source: Member States' customs data.

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

⁽³³⁾ The import volume figures quoted here in Table 3 have been extrapolated. The 4 Member States represented 82,6 % in 2017, 72,7 %, in 2018, 95,2 % in 2019 and 94,8 % in the investigation period.

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

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

Table 4

Import prices (EUR/tonne)

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

Source: Member States' national customs data.

- (187) Import prices from the PRC increased by 6 % from 2017 to 2018 and again from 2018 to 2019, but then fell sharply by 15,5 % from 2019 to the investigation period reaching a price level 5 % lower than that in 2017. Import prices from the PRC were below Union sales prices as reported in Table 8, with a difference between 15 %-30 % during the IP.
- (188) The Commission determined the price undercutting during the investigation period by comparing:
- the weighted average sales prices per product type of the two Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and
 - the corresponding weighted average prices per product type of the imports from the three cooperating Chinese producers to the first independent customer on the Union market, established on a Cost, insurance, freight (CIF) basis, with appropriate adjustments for customs duties and post-importation costs.
- (189) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary for discounts and commissions. This type-by-type analysis took into account whether sales were made in bulk or cored wire, as pointed out by Eurofer in its comments on initiation of the investigation described in recital (9). The result of the comparison was expressed as a percentage of the Union producers' theoretical turnover during the investigation period. The weighted average undercutting found was 10,6 %. Bearing in mind that the product under investigation is a commodity, this was considered to be a significant undercutting margin. All product types of the cooperating exporting producers were found to be undercutting. These imports represented around 57 % of total imports.

4.5. Economic situation of the Union industry

4.5.1. General remarks

- (190) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (191) For the injury determination, all indicators were based on the two cooperating Union producers, which represented the totality of the Union industry as stated in recital (15).

4.5.2. *Production, production capacity and capacity utilisation*

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

Table 5

Production, production capacity and capacity utilisation

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

Source: Union producers questionnaires.

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

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

4.5.3. Sales volume and market share

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

Table 6

Sales volume and market share

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

Source: Union producers' questionnaires.

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

4.5.4. Growth

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

4.5.5. Employment and productivity

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

Table 7

Employment and productivity

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

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

Source: Union producers' questionnaires.

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

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

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

4.5.7. Prices and factors affecting prices

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

Table 8

Sales prices in the Union (EUR/tonne)

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

Source: Union producers' questionnaires.

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

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

4.5.8. Labour costs

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

Table 9

Average labour costs per employee (EUR/FTE)

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

Source: Union producers' questionnaires.

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

4.5.9. Inventories

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

Table 10

Inventories

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

Source: Union producers' questionnaires.

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

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

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

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

Table 11

Profitability, cash flow, investments and return on investments

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

Source: Union producers' questionnaires.

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

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

4.5.11. Conclusion on injury

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

5. CAUSATION

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

5.1. Effects of the dumped imports

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

5.2. Effects of other factors

5.2.1. *The fall in consumption*

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

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

5.2.2. *Increases in the cost of production*

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

5.2.3. *Purchases of calcium silicon replacing own production*

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

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

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

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

5.2.5. Imports from third countries

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

Table 12

Imports from third countries

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

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

Source: Member States customs data.

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

5.2.6. Export performance of the Union industry

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

Table 13

Export performance of the Union producers

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

Source: Union producer's questionnaires.

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

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

5.2.7. *Captive use*

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

5.3. **Conclusion on causation**

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

6. LEVEL OF MEASURES

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

6.1. Underselling margin

(267) The injury would be removed if the Union industry were able to obtain a target profit by selling at a target price in the sense of Articles 7(2c) and 7(2d) of the basic regulation.

(268) In accordance with Article 7(2c) of the basic Regulation, for establishing the target profit, the Commission took into account the following factors: the level of profitability before the increase of imports from the country under investigation, the level of profitability needed to cover full costs and investments, research and development (R & D) and innovation, and the level of profitability to be expected under normal conditions of competition. Such profit margin should not be lower than 6 %.

(269) As a first step, the Commission established a basic profit covering full costs under normal conditions of competition. In 2017 and 2018, before the Union industry suffered material injury, the Union industry weighted average profitability rate was between 9,7 % and 12,5 % on turnover as shown in Table 11. Such profit margin was deemed to be the basic profit covering full costs under normal conditions of competition in this investigation.

(270) As one of the Union producers did not produce significant quantities of calcium silicon during the investigation period, its costs were not considered reliable and appropriate for the purposes of establishing the target price. As the sales of this producer were largely made from stocks produced in 2019, the production cost of that year was considered appropriate for this investigation.

(271) On this basis, the non-injurious price is between 1 650 and 1 750 EUR/tonne, resulting from applying the above-mentioned profit margin of between 9,7 % and 12,5 % to the weighted average cost of production of the Union producers.

(272) In accordance with article 7(2d) of the basic Regulation, as a final step, the Commission assessed the future costs resulting from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia that the Union industry will incur during the period of the application of the measure pursuant to Article 11(2). Based on the evidence available at the provisional stage, the Commission established that no additional costs to the Union industry applied in this respect.

(273) The Commission then determined the underselling margin level on the basis of a comparison of the weighted average import price of the cooperating exporting producers in the country concerned, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the Union producers on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.

(274) The injury elimination level for 'other cooperating companies' and for 'all other companies' is defined in the same manner as the dumping margin for these companies (see recital (168)).

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

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

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

6.2.1. Raw material distortions

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

6.3. Conclusion on the level of measures

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

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

7. UNION INTEREST

(283) Having decided to apply Article 7(2) of the basic Regulation, the Commission examined whether it could clearly conclude that it was not in the Union interest to adopt measures in this case, despite the determination of injurious dumping, in accordance with Article 21 of the basic Regulation. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users, such as the cored wire manufacturers and the steel industry.

7.1. Interest of the Union industry

(284) The Union industry represents 100 % of Union production in this investigation. A combination of factors, including increasing penetration of Chinese imports at low prices, created difficult market conditions in 2019 and this situation was made worse in 2020 by further import penetration and falls in consumption caused partly by the Covid-19 pandemic. The Union industry suffered substantial falls in production, sales volume, employment and profitability.

(285) Ferropem, the largest Union producer, was forced to begin to implement a restructuring plan, which involved a possible closure of the main calcium silicon site at Chateau Feuillet. The imposition of measures on Chinese imports would enable Ferropem to restart calcium silicon production at another site in the Union. Employment at Chateau Feuillet site was around 250 FTEs, a significant proportion of which related to calcium silicon throughout the period considered.

(286) Measures would improve market conditions for both Union producers, as they would help them recover lost market share and price pressure would be lifted if Chinese import prices were higher due to the anti-dumping duties. The measures would also facilitate Ferropem's implementation of its restructuring plan.

(287) The non-imposition of measures would put the Union industry in jeopardy because any continuation of the unsustainable situation on the market in 2019 and 2020 would threaten future production of calcium silicon in the Union.

(288) Furthermore, the profitability, and even the existence, of the production of other ferroalloys would be threatened if such products use the same facilities as calcium silicon. This is because ferroalloy sites depend on sharing fixed costs to lower unit costs of production in order to make sites profitable.

(289) Clearly the imposition of measures would be in the interest of both the calcium silicon industry and the wider ferroalloy sector.

7.2. Interest of unrelated importers and cored wire manufacturers

(290) The investigation showed that the vast majority of imports from all countries were in powder or lumps and were normally transformed into cored wire products in the Union before being sold to the largest end user industry, the steel industry. Therefore, the interest of cored wire manufacturers is considered here together with the importers.

(291) As mentioned above, two importers submitted questionnaire replies following the decision not to apply sampling. These were Affival SAS in France and Coftech G.m.b.H. in Germany. Another cored wire manufacturer, Filo D.o.o. in Slovenia, cooperated by submitting a user questionnaire as they did not import directly themselves.

(292) The investigation showed that the cored wire producers also manufacture other products in cored wire. For the co-operators mentioned above, the turnover of products containing calcium silicon compared to total turnover varied from below 10 % to almost 50 %.

(293) The cored wire producers source calcium silicon from the country concerned, other third countries and the Union industry. Their main concern was that measures on Chinese imports would disrupt the calcium silicon market in the Union and may limit imports from one of their main sources of supply.

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

7.3. Interest of end users

(295) Information in the complaint shows that the main user industry is the steel sector. However, calcium silicon is also used in foundries and the chemical sector.

(296) Only one steel producer, AFV Acciaierie Beltrame S.p.A., completed a questionnaire. In addition, Eurofer and the German Steel Federation (Wirtschaftsvereinigung Stahl) made submissions relevant to the investigation.

(297) Eurofer and the German Steel Federation submitted that the imposition of anti-dumping duties was not in the Union interest and that there was no economic justification for the imposition of anti-dumping measures. The main concern related to the availability of supply to the steel sector. It was claimed that the Union industry had never supplied more than 42 % of the Union apparent consumption.

(298) In addition, it was claimed that capacity figures published by one of the Union producers indicated only a limited amount of free capacity. Therefore, it would be highly questionable whether the Union industry would be able to supply the users if anti-dumping duties were applied on Chinese imports.

(299) Furthermore, they argued that there was no alternative source that could replace Chinese volumes and that duties were already levied in the Union as customs duties on imports from China.

(300) In this respect, the Union industry submitted that it did not question that there should be space for different sources of supply, as long as such imports were made at fair prices. However, for now imports from the PRC take place at injurious levels which put Union production in jeopardy.

(301) In terms of sources of supply, the Commission concluded that several sources of supply currently exist including the Union producers, which have ample spare capacity, and imports from China, Brazil, and Argentina. However, it was not in the Union interest to continue to allow dumped Chinese imports to threaten the existence of the Union calcium silicon industry which has traditionally supplied a large portion of the Union market. In the absence of measures, supply problems would clearly be created for the steel industry as production in the Union may no longer be possible.

(302) The Commission also examined the likely financial impact of measures on the steel industry if measures are imposed. According to the complainant, restoring fair market conditions would not come at a disproportionate cost for the downstream industry. The information in the response of AFV Acciaierie Beltrame S.p.A. showed that calcium silicon purchases represents a very low percentage of its costs (less than 0,5 %). The imposition of measures on the steel industry will, therefore, have a marginal financial impact on the industry.

7.4. Conclusion on Union interest

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

8. PROVISIONAL ANTI-DUMPING MEASURES

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

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

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

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

9. INFORMATION AT PROVISIONAL STAGE

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

10. FINAL PROVISIONS

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

HAS ADOPTED THIS REGULATION:

Article 1

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

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

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

Article 2

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

Article 3

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

Article 1 shall apply for a period of 6 months.

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

Done at Brussels, 14 October 2021.

For the Commission
The President
Ursula VON DER LEYEN
