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Contents

[1] Text with EEA relevance.

EN

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

The titles of all other acts are printed in bold type and preceded by an asterisk.

RECOMMENDATIONS

Corrigenda

II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) 2022/555

of 5 April 2022

amending Regulation (EC) No 168/2007 establishing a European Union Agency for Fundamental Rights

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 352 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the consent of the European Parliament ([1]),

Acting in accordance with a special legislative procedure,

Whereas:

(1) The European Union Agency for Fundamental Rights (the 'Agency') was established by Council Regulation (EC) No 168/2007 ([2]) to provide the Union institutions, bodies, offices and agencies and Member States with assistance and expertise relating to fundamental rights.

(2) In order to adapt the Agency's scope and to enhance the governance and the efficiency of the Agency's operation, it is necessary to amend certain provisions of Regulation (EC) No 168/2007 without changing the objective and the tasks of the Agency.

(3) In view of the entry into force of the Treaty of Lisbon, the Agency's scope should also cover police cooperation and judicial cooperation in criminal matters, areas which are particularly sensitive with regard to fundamental rights.

(4) The area of common foreign and security policy should be excluded from the Agency's scope. This should be without prejudice to the Agency's provision of assistance and expertise, for example training activities on fundamental rights issues, to the institutions, bodies, offices and agencies of the Union, including to those working in the area of common foreign and security policy.

(5) Furthermore, some targeted technical amendments of Regulation (EC) No 168/2007 are necessary in order for the Agency to be governed and operated in line with the principles of the Common Approach annexed to the Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralised agencies of 19 July 2012 (the 'Common Approach'). The alignment of Regulation (EC) No 168/2007 with the principles set out in the Common Approach is tailored to the specific work and nature of the Agency and aims to bring simplification, better governance and efficiency gains to the Agency's operation.

([1]) Consent of 6 July 2021 (not yet published in the Official Journal).

([2]) Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights (OJ L 53, 22.2.2007, p. 1).

(6) The definition of the areas of activity of the Agency should be based on the Agency's programming document alone. The current approach of setting in parallel a broad thematic Multiannual Framework every five years should be discontinued, as it has been made redundant by the programming document that the Agency has adopted annually since 2017, to conform with Commission Delegated Regulation (EU) No 1271/2013 ([3]), succeeded by Commission Delegated Regulation (EU) 2019/715 ([4]). Based on the Union policy agenda and on stakeholders' needs, the programming document clearly sets out the areas and specific projects on which the Agency is to work. This should enable the Agency to plan its work and thematic focus over time and to adapt it annually to emerging priorities.

(7) The Agency should submit its draft programming document to the European Parliament, the Council and the Commission as well as to the national liaison officers and to the Scientific Committee by 31 January each year. The purpose is for the Agency, while carrying out its tasks in full independence, to draw inspiration from discussions or opinions on such draft programming document in order to design the most relevant work programme to support the Union and the Member States by providing assistance and expertise relating to fundamental rights.

(8) In order to ensure smooth communication between the Agency and the Member States, the Agency and the national liaison officers should work together in a spirit of mutual and close cooperation. This cooperation should be without prejudice to the Agency's independence.

(9) To ensure better governance and functioning of the Agency's Management Board, a number of provisions in Regulation (EC) No 168/2007 should be amended.

(10) Given the important role of the Management Board, its members should be independent and have sound knowledge in the fundamental rights area as well as appropriate management experience, including administrative and budgetary skills.

(11) It should also be clarified that, while Management Board members' and alternate members' terms cannot be renewed consecutively, it should be possible to reappoint a former member or alternate member for one more non-consecutive term. If, on the one hand, not allowing consecutive renewals is justified to ensure their independence, on the other hand, allowing a reappointment for one more non-consecutive term would make it easier for Member States to appoint suitable members meeting all the requirements.

(12) With regard to the replacement of Management Board members or alternate members, it should be clarified that in all cases of termination of the term of office before the expiry of the five-year period, not only in case of loss of independence, but also in other cases such as in case of resignation or death, the new member's or alternate member's term will complete his or her predecessor's five-year term, unless the remaining term is less than two years, in which case a new five-year term may run afresh.

(13) To align with the situation within the Union institutions, the Agency's Management Board should be given the powers of the appointing authority. Except for the appointment of the Director, those powers should be delegated to the Director. The Management Board should exercise appointing authority powers regarding staff of the Agency in exceptional circumstances only.

(14) To avoid stalemates and simplify the voting proceedings for the election of the Executive Board members, it should be provided that the Management Board elects them by a majority of the members of the Management Board with voting rights.

(15) To further align Regulation (EC) No 168/2007 with the Common Approach and strengthen the Management Board's capacity to supervise the administrative, operational and budgetary management of the Agency, it is necessary to attribute additional tasks to the Management Board and to further specify the tasks attributed to the Executive Board. The additional tasks of the Management Board should include adopting a security strategy, including rules on the exchange of EU classified information, a communication strategy, and rules for the prevention and

([3]) Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 328, 7.12.2013, p. 42).

([4]) Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (OJ L 122, 10.5.2019, p. 1).

management of conflicts of interest in respect of its members and of those of the Scientific Committee. It should be made clear that the Executive Board's task to supervise the preparatory work for the decisions to be adopted by the Management Board entail scrutinising budgetary and human resources matters. In addition, the Executive Board should be tasked with adopting the anti-fraud strategy prepared by the Director and ensuring adequate follow-up to audit findings and to investigations of the European Anti-Fraud Office (OLAF) or of the European Public Prosecutor's Office (EPPO). Moreover, it should be provided that, where necessary, in case of urgency, the Executive Board may take provisional decisions on behalf of the Management Board.

(16) In order to simplify the existing procedure of replacing the members of the Scientific Committee, the Management Board should be allowed to appoint the person next in line on the reserve list for the remaining term of office where a member needs to be replaced before the end of his or her term.

(17) Given the very selective appointment procedure and the fact that the number of candidates potentially meeting the selection criteria is often low, the term of office of the Agency's Director should be extendable once for up to five years, taking into account in particular his or her performance and the Agency's duties and requirements in the coming years. Moreover, given the importance of the position and the thorough procedure which involves the European Parliament, the Council and the Commission, such procedure should start in the course of the 12 months preceding the end of the Director's term.

(18) Furthermore, to enhance the stability of the Director's mandate and hence that of the Agency's operation, the majority required to propose his or her dismissal should be raised from the current one third to a two-thirds majority of the members of the Management Board. Finally, to specify the Director's overall responsibility for the administrative management of the Agency, it should be provided that it is the Director's responsibility to implement the decisions adopted by the Management Board, to prepare an anti-fraud strategy for the Agency, and to prepare an action plan to follow up on internal or external audit reports and OLAF or EPPO's investigations.

(19) To align Regulation (EC) No 168/2007 with the Common Approach it is necessary to provide that the Commission should commission the evaluation of the Agency every five years.

(20) Regulation (EC) No 168/2007 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EC) No 168/2007

Regulation (EC) No 168/2007 is amended as follows:

(1) Article 2 is replaced by the following:

'*Article 2*

Objective

The objective of the Agency shall be to provide the relevant Union institutions, bodies, offices and agencies and the Member States when implementing Union law with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights.';

(2) Article 3 is replaced by the following:

'*Article 3*

Scope

1. The Agency shall carry out its tasks for the purpose of meeting the objective set out in Article 2 within the competences of the Union.

2. In carrying out its tasks, the Agency shall refer to fundamental rights as referred to in Article 6 of the Treaty on European Union (TEU).

3. The Agency shall deal with fundamental rights issues in the Union and the Member States when implementing Union law, except for Union or Member States' acts or activities in relation with or in the framework of the common foreign and security policy.';

(3) Article 4 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (a) is replaced by the following:

'(a) collect, record, analyse and disseminate relevant, objective, reliable and comparable information and data, including results from research and monitoring communicated to it by Member States, Union institutions, bodies, offices and agencies, research centres, national bodies, non-governmental organisations, third countries and international organisations, in particular by the competent bodies of the Council of Europe;';

(ii) points (c) and (d) are replaced by the following:

'(c) carry out, cooperate with or encourage scientific research and surveys, preparatory studies and feasibility studies, including, where appropriate and compatible with its priorities and its annual and multiannual work programmes, at the request of the European Parliament, the Council or the Commission;

(d) formulate and publish conclusions and opinions on specific thematic topics, for the Union institutions and the Member States when implementing Union law, either on its own initiative or at the request of the European Parliament, the Council or the Commission;';

(b) paragraph 2 is replaced by the following:

'2. The conclusions, opinions and reports referred to in paragraph 1 may concern proposals from the Commission under Article 293 of the Treaty on the Functioning of the European Union (TFEU) or positions taken by the institutions in the course of legislative procedures only where a request by the respective institution has been made in accordance with paragraph 1, point (d). They shall not deal with the legality of acts within the meaning of Article 263 TFEU or with the question of whether a Member State has failed to fulfil an obligation under the Treaties within the meaning of Article 258 TFEU.';

(c) the following paragraphs are added:

'3. The Scientific Committee shall be consulted before adoption of the report referred to in paragraph 1, point (e);

4. The Agency shall submit the reports referred to in paragraph 1, points (e) and (g) no later than 15 June each year to the European Parliament, the Council, the Commission, the Court of Auditors, the European Economic and Social Committee and the Committee of the Regions.';

(4) Article 5 is replaced by the following:

'*Article 5*

Areas of activity

The Agency shall carry out its tasks on the basis of its annual and multiannual work programmes, which shall be in accordance with the available financial and human resources. This shall be without prejudice to the responses of the Agency to requests from the European Parliament, the Council or the Commission under Article 4(1), points (c) and (d) outside the areas determined by the annual and multiannual work programmes, provided that its financial and human resources so permit.';

(5) the following Article is inserted:

'*Article 5a*

Annual and multiannual programming

1. Each year the Director shall draw up a draft programming document, containing in particular the annual and multiannual work programmes, in accordance with Article 32 of Commission Delegated Regulation (EU) 2019/715 (*).

2. The Director shall submit the draft programming document to the Management Board. The Director shall submit the draft programming document to the European Parliament, the Council and the Commission no later than 31 January each year, as endorsed by the Management Board. In the Council, the competent preparatory body shall discuss the draft multiannual work programme and may invite the Agency to present that draft.

3. The Director shall also submit the draft programming document to the national liaison officers referred to in Article 8(1) and to the Scientific Committee no later than 31 January each year with a view to allowing the relevant Member States and the Scientific Committee to issue their opinions on the draft.

4. In light of the outcome of the discussion within the competent Council preparatory body and of the opinions received from the Commission, the Member States and the Scientific Committee, the Director shall submit the draft programming document to the Management Board for adoption. The Director shall submit the adopted programming document to the European Parliament, the Council, the Commission and the national liaison officers referred to in Article 8(1).

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(*) Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (OJ L 122, 10.5.2019, p. 1).';

(6) in Article 6(2), point (a) is replaced by the following:

'(a) Union institutions, bodies, offices and agencies, as well as the bodies, offices and agencies of the Member States;';

(7) Article 7 is replaced by the following:

'*Article 7*

Relations with relevant Union bodies, offices and agencies

The Agency shall ensure appropriate coordination with relevant Union bodies, offices and agencies. The terms of cooperation shall be laid down in memoranda of understanding where appropriate.';

(8) Article 8 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Each Member State shall nominate a government official as a national liaison officer.

The national liaison officer shall be the main contact point for the Agency in the Member State.

The Agency and the national liaison officers shall work together in a spirit of mutual and close cooperation.

The Agency shall communicate to the national liaison officers all documents drawn up in accordance with Article 4(1).';

(b) paragraph 3 is replaced by the following:

'3. The administrative arrangements for cooperation pursuant to paragraph 2 shall comply with Union law and shall be adopted by the Management Board on the basis of the draft submitted by the Director after the Commission has delivered an opinion. Where the Commission expresses its disagreement with those arrangements the Management Board shall re-examine and adopt them, with amendments where necessary, by a two-thirds majority of all members.';

(9) Article 9 is replaced by the following:

'*Article 9*

Cooperation with the Council of Europe

In order to avoid duplication and in order to ensure complementarity and added value, the Agency shall coordinate its activities with those of the Council of Europe, particularly with regard to its annual and multiannual work programmes and cooperation with civil society in accordance with Article 10.

To that end, the Union shall, in accordance with the procedure provided for in Article 218 TFEU, enter into an agreement with the Council of Europe for the purpose of establishing close cooperation between the latter and the Agency. That agreement shall include the appointment of an independent person by the Council of Europe to sit on the Agency's Management Board and on its Executive Board, in accordance with Articles 12 and 13.';

(10) in Article 10(4), point (a) is replaced by the following:

'(a) make suggestions to the Management Board on the annual and multiannual work programmes to be adopted pursuant to Article 5a;';

(11) Article 12 is amended as follows:

(a) paragraph 1 is amended as follows

(i) the introductory part is replaced by the following:

'1. The Management Board shall be composed of persons with sound knowledge in the field of fundamental rights and with appropriate experience in the management of public or private sector organisations, including administrative and budgetary skills, as follows:';

(ii) the following subparagraph is added:

'The Member States, the Commission and the Council of Europe shall endeavour to achieve an equal representation of women and men on the Management Board.';

(b) paragraphs 3, 4 and 5 are replaced by the following:

'3. The term of office of the members and alternate members of the Management Board shall be five years. A former member or alternate member may be reappointed for one more non-consecutive term.

4. Apart from normal replacement or death, the term of office of the member or the alternate member shall end only when he or she resigns. However, where a member or an alternate member no longer meets the criteria of independence, he or she shall resign forthwith and shall notify the Commission and the Director. In those cases apart from normal replacement, the party concerned shall appoint a new member or a new alternate member for the remaining term of office. The party concerned shall also appoint a new member or a new alternate member for the remaining term of office if the Management Board has established, based on a proposal of one third of its members or of the Commission, that the respective member or alternate member no longer meets the criteria of independence. Where the remaining term of office is less than two years, the term of office of the new member or alternate member may be extended to a full term of five years.

5. The Management Board shall elect its Chairperson and Vice-Chairperson and the other two members of the Executive Board referred to in Article 13(1) from its members appointed pursuant to paragraph 1, point (a) of this Article to serve for a two-and-a-half year term, which may be renewed once.

The Management Board's Chairperson and Vice-Chairperson shall be elected by a majority of two thirds of the members of the Management Board referred to in paragraph 1, points (a) and (c) of this Article. The other two members of the Executive Board referred to in Article 13(1) shall be elected by a majority of the members of the Management Board referred to in paragraph 1, points (a) and (c) of this Article.';

(c) paragraph 6 is amended as follows:

(i) points (a) and (b) are replaced by the following:

'(a) adopt the Agency's annual and multiannual work programmes;

(b) adopt the annual reports referred to in Article 4(1), points (e) and (g), comparing, in the latter one, in particular, the results achieved with the objectives of the annual and multiannual work programmes;';

(ii) point (e) is replaced by the following:

'(e) in accordance with paragraphs 7a and 7b of this Article, exercise, with respect to the staff of the Agency, the powers conferred by the Staff Regulations of Officials of the European Union (the "Staff Regulations") and by the Conditions of Employment of Other Servants of the Union (the "Conditions of Employment") laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 (*) on the appointing authority and on the authority empowered to conclude a contract of employment, respectively ("the appointing authority powers");

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(*) OJ L 56, 4.3.1968, p. 1.';

(iii) point (i) is replaced by the following:

'(i) adopt the implementing rules for giving effect to the Staff Regulations and the Conditions of Employment, in accordance with Article 110(2) of the Staff Regulations;';

(iv) the following points are added:

'(m) adopt a security strategy, including rules on the exchange of EU classified information;

(n) adopt rules for the prevention and management of conflicts of interest in respect of its members as well as of the Scientific Committee;

(o) adopt and regularly update the communication strategy referred to in Article 4(1), point (h).';

(d) the following paragraphs are inserted:

'7a The Management Board shall adopt, in accordance with Article 110(2) of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations and on Article 6 of the Conditions of Employment, delegating relevant appointing authority powers to the Director and defining the conditions under which that delegation of powers can be suspended. The Director shall be authorised to sub-delegate those powers.

7b Where exceptional circumstances so require, the Management Board may by way of a decision temporarily suspend the delegation of the appointing authority powers to the Director and those sub-delegated by the Director and exercise them itself or delegate them to one of its members or to a staff member other than the Director.';

(e) paragraphs 8, 9 and 10 are replaced by the following:

'8. As a general rule, decisions by the Management Board shall be taken by a majority of all members.

Decisions referred to in paragraph 6, points (a) to (e), (g), (k) and (l) shall be taken by a two-thirds majority of all members.

Decisions referred to in Article 25(2) shall be taken by unanimity.

Each member of the Management Board, or in his or her absence his or her alternate, shall have one vote. The Chairperson shall have the casting vote.

The person appointed by the Council of Europe may vote only on decisions referred to in paragraph 6, points (a), (b) and (k).

9. The Chairperson shall convene the Management Board twice a year, without prejudice to extraordinary meetings. The Chairperson shall convene extraordinary meetings on his or her own initiative or at the request of the Commission or of at least one third of the members of the Management Board.

10. The Chairperson or Vice-Chairperson of the Scientific Committee and the Director of the European Institute for Gender Equality may attend meetings of the Management Board as observers. The Directors of other relevant Union agencies and bodies as well as of other international bodies mentioned in Articles 8 and 9 may also attend as observers when invited to do so by the Executive Board.';

(12) Article 13 is replaced by the following:

'*Article 13*

Executive Board

1. The Management Board shall be assisted by an Executive Board. The Executive Board shall supervise the necessary preparatory work for the decisions to be adopted by the Management Board. In particular, it shall scrutinise budgetary and human resources matters.

2. The Executive Board shall also:

(a) review the Agency's programming document referred to in Article 5a, based on a draft prepared by the Director, and submit it to the Management Board for adoption;

(b) review the Agency's draft annual budget and submit it to the Management Board for adoption;

(c) review the draft annual report on the Agency's activities and submit it to the Management Board for adoption;

(d) adopt an anti-fraud strategy for the Agency, proportionate to the fraud risks, taking into account the costs and benefits of the measures to be implemented and based on a draft prepared by the Director;

(e) ensure adequate follow-up to the findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations of the European Anti-Fraud Office (OLAF) or of the European Public Prosecutor's Office (EPPO);

(f) without prejudice to the responsibilities of the Director set out in Article 15(4), assist and advise him or her in the implementation of the decisions of the Management Board with a view to reinforcing the supervision of administrative and budgetary management.

3. Where necessary, for reasons of urgency, the Executive Board may take provisional decisions on behalf of the Management Board, including on the suspension of the delegation of the appointing authority powers in accordance with the conditions referred to in Article 12(7a) and (7b) and on budgetary matters.

4. The Executive Board shall be composed of the Chairperson and the Vice-Chairperson of the Management Board, two other members of the Management Board elected by the Management Board in accordance with Article 12(5) and one of the representatives of the Commission in the Management Board.

The person appointed by the Council of Europe in the Management Board may participate in the meetings of the Executive Board.

5. The Executive Board shall be convened by the Chairperson. It may also be convened at the request of one of its members. It shall adopt its decisions by a majority of its members present. The person appointed by the Council of Europe may vote on items related to the decisions on which that person has a right to vote in the Management Board in accordance with Article 12(8).

6. The Director shall take part in the meetings of the Executive Board, without voting rights.';

(13) Article 14 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The Scientific Committee shall be composed of 11 independent persons, highly qualified in the field of fundamental rights, with adequate competences in scientific quality and research methodologies. The Management Board shall appoint the 11 members and approve a reserve list established by order of merit following a transparent call for applications and selection procedure and after having consulted the competent committee of the European Parliament. The Management Board shall ensure even geographical representation and shall endeavour to achieve an equal representation of women and men on the Scientific Committee. The members of the Management Board shall not be members of the Scientific Committee. The rules of procedure referred to in Article 12(6), point (g) shall lay down the detailed conditions governing the appointment of the Scientific Committee.';

(b) paragraph 3 is replaced by the following:

'3. The members of the Scientific Committee shall be independent. They may be replaced only at their own request or in the event of their being permanently prevented from fulfilling their duties. However, where a member no longer meets the criteria of independence, he or she shall resign forthwith and shall notify the Commission and the Director. Alternatively, the Management Board may declare, on a proposal of one third of its members or of the Commission, a lack of independence and revoke the appointment of the person concerned. The Management Board shall appoint the first available person in line on the reserve list for the remaining term of office. Where the remaining term of office is less than two years, the term of office of the new member may be extended to a full term of five years. The list of members of the Scientific Committee shall be made public and shall be updated by the Agency on its website.';

(c) in paragraph 5, the following subparagraph is added:

'The Scientific Committee shall in particular advise the Director and the Agency on the scientific research methodology applied in the Agency's work.';

(14) Article 15 is amended as follows:

(a) paragraphs 3 and 4 are replaced by the following:

'3. The Director's term of office shall be five years.

In the course of the 12 months preceding the end of that five-year period, the Commission shall carry out an evaluation in order to assess in particular:

(a) the performance of the Director;

(b) the Agency's duties and requirements in the coming years.

The Management Board, acting on a proposal from the Commission, taking into account the evaluation, may extend the term of office of the Director once for no more than five years.

The Management Board shall inform the European Parliament and the Council about its intention to extend the Director's term of office. Within a period of one month before the Management Board formally takes its decision to extend that term of office, the Director may be asked to make a declaration before the competent committee of the European Parliament and to answer questions from its members.

If his or her term of office is not extended, the Director shall remain in office until the appointment of his or her successor.

4. The Director shall be responsible for:

(a) the performance of the tasks referred to in Article 4 and in particular the preparation and publication of the documents drawn up in accordance with Article 4(1), points (a) to (h) in cooperation with the Scientific Committee;

(b) the preparation and implementation of the Agency's programming document referred to in Article 5a;

(c) matters of day-to-day administration;

(d) the implementation of decisions adopted by the Management Board;

(e) the implementation of the Agency's budget, in accordance with Article 21;

(f) the implementation of effective monitoring and evaluation procedures relating to the performance of the Agency against its objectives in accordance with professionally recognised standards and performance indicators;

(g) the preparation of an action plan to follow up on the conclusions of retrospective evaluations assessing the performance of programmes and activities that entail significant spending, in accordance with Article 29 of Delegated Regulation (EU) 2019/715;

(h) reporting annually to the Management Board on the results of the monitoring and evaluation system;

(i) the preparation of an anti-fraud strategy for the Agency and its presentation to the Executive Board for approval;

(j) the preparation of an action plan to follow up on the conclusions of internal or external audit reports and evaluations, as well as investigations by OLAF and reporting on progress to the Commission and the Management Board;

(k) cooperation with national liaison officers;

(l) cooperation with civil society, including coordination of the Fundamental Rights Platform in accordance with Article 10.';

(b) paragraph 7 is replaced by the following:

'7. The Director may be dismissed before his or her term has expired by the decision of the Management Board, on the basis of a proposal of two thirds of its members or of the Commission, in the event of misconduct, unsatisfactory performance or recurring or serious irregularities.';

(15) in Article 17, paragraph 3 is replaced by the following:

'3. Where the Agency takes decisions under Article 8 of Regulation (EC) No 1049/2001, a complaint may be lodged with the Ombudsman or an action may be brought in the Court of Justice of the European Union (Court of Justice), as provided for in Articles 228 and 263 TFEU respectively.';

(16) Article 19 is replaced by the following:

'*Article 19*

Review by the Ombudsman

The operations of the Agency shall be subject to the supervision of the Ombudsman in accordance with Article 228 TFEU.';

(17) Article 20 is amended as follows:

(a) in paragraph 3, the first subparagraph is replaced by the following:

'3. The revenue of the Agency shall, without prejudice to other resources, comprise a subsidy from the Union, entered in the general budget of the Union (Commission section).';

(b) paragraph 7 is replaced by the following:

'7. On the basis of the estimate, the Commission shall enter in the preliminary draft general budget of the Union the estimates it considers necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Article 314 TFEU.';

(18) Article 24 is replaced by the following:

'*Article 24*

Staff

1. The Staff Regulations and the Conditions of Employment and the rules adopted jointly by the Union institutions for the purpose of applying the Staff Regulations and the Conditions of Employment shall apply to the staff of the Agency and its Director.

2. The Management Board may adopt provisions to allow national experts from Member States to be employed on secondment at the Agency.';

(19) Article 26 is replaced by the following:

'*Article 26*

Privileges and immunities

Protocol No 7 on the Privileges and Immunities of the European Union, annexed to the TEU and to the TFEU, shall apply to the Agency.';

(20) in Article 27, paragraph 3 is replaced by the following:

'3. The Court of Justice shall have jurisdiction in actions brought against the Agency under the conditions provided for in Articles 263 and 265 TFEU.';

(21) in Article 28, paragraphs 2 and 3 are replaced by the following:

'2. The participation referred to in paragraph 1 and the relevant modalities shall be determined by a decision of the relevant Association Council, taking into account the specific status of each country. The decision shall indicate in particular the nature, extent and manner in which those countries will participate in the Agency's work, within the framework set in Articles 4 and 5, including provisions relating to participation in initiatives undertaken by the Agency, to the financial contribution and to staff. The decision shall comply with this Regulation and with the Staff Regulations and the Conditions of Employment. The decision shall provide that the participating country may appoint an independent person fulfilling the qualifications for persons referred to in Article 12(1), point (a) as observer to the Management Board without a right to vote. Upon the decision of the Association Council the Agency may deal with fundamental rights issues within the scope of Article 3(1) in the relevant country, to the extent necessary for the gradual alignment to Union law of the country concerned.

3. The Council, acting unanimously on a proposal by the Commission, may decide to invite a country with which a Stabilisation and Association Agreement has been concluded by the Union to participate in the Agency as an observer. If it does so, paragraph 2 shall apply accordingly.';

(22) Article 29 is deleted;

(23) Article 30 is amended as follows:

(a) the title is replaced by the following:

'*Evaluations and review*';

(b) paragraphs 3 and 4 are replaced by the following:

'3. By 28 April 2027, and every five years thereafter, the Commission shall commission an evaluation to assess in particular the impact, effectiveness and efficiency of the Agency and its working practices. The evaluation shall take into account the views of the Management Board and other stakeholders at both Union and national levels.

4. On the occasion of every second evaluation as referred to in paragraph 3, there shall also be an assessment of the results achieved by the Agency having regard to its objectives, mandate and tasks. The evaluation may, in particular, address the possible need to modify the mandate of the Agency, and the financial implications of any such modifications.

5. The Commission shall submit the conclusions of the evaluation referred to in paragraph 3 to the Management Board. The Management Board shall examine the conclusions of the evaluation and issue to the Commission such recommendations as may be necessary regarding changes in the Agency, its working practices and the scope of its mission.

6. The Commission shall report to the European Parliament and the Council on the findings of the evaluation referred to in paragraph 3 and the recommendations of the Management Board referred to in paragraph 5. The findings of that evaluation and those recommendations shall be made public.';

(24) Article 31 is deleted.

Article 2

Entry into force

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

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

Done at Luxembourg, 5 April 2022.

For the Council
The President
B. LE MAIRE

COMMISSION IMPLEMENTING REGULATION (EU) 2022/556

of 1 April 2022

concerning the classification of certain goods in the Combined Nomenclature

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code ([1]), and in particular Article 57(4) and Article 58(2) thereof,

Whereas:

(1) In order to ensure uniform application of the Combined Nomenclature annexed to Council Regulation (EEC) No 2658/87 ([2]), it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation.

(2) Regulation (EEC) No 2658/87 has laid down the general rules for the interpretation of the Combined Nomenclature. Those rules apply also to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific provisions of the Union, with a view to the application of tariff and other measures relating to trade in goods.

(3) Pursuant to those general rules, the goods described in column (1) of the table set out in the Annex should be classified under the CN code indicated in column (2), by virtue of the reasons set out in column (3) of that table.

(4) It is appropriate to provide that binding tariff information issued in respect of the goods concerned by this Regulation which does not conform to this Regulation may, for a certain period, continue to be invoked by the holder in accordance with Article 34(9) of Regulation (EU) No 952/2013. That period should be set at three months.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The goods described in column (1) of the table set out in the Annex shall be classified within the Combined Nomenclature under the CN code indicated in column (2) of that table.

Article 2

Binding tariff information which does not conform to this Regulation may continue to be invoked in accordance with Article 34(9) of Regulation (EU) No 952/2013 for a period of three months from the date of entry into force of this Regulation.

Article 3

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

([1]) OJ L 269, 10.10.2013, p. 1.

([2]) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

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

Done at Brussels, 1 April 2022.

For the Commission,
On behalf of the President,
Gerassimos THOMAS
Director-General
Directorate-General for Taxation and Customs Union

ANNEX

Description of the goods	Classification (CN code)	Reasons
(1)	(2)	(3)
A set described as a "composite system for dental repair" put up for retail sale in a carton box in which all the elements are presented together with an instruction for use. The set is composed of: — Opaquer pastes (2 × 2ml); — Body, Cervical, Incisal, Translucent pastes (4 × 4g); — Metal Photo Primer (1 × 7ml); — Brush (1 handle + 10 tips); — Disposable dishes; — Paper pad; — Light shield cover. The pastes, which are composite materials, are based on methacrylates and an inorganic filler and are presented in syringes ready for use. The photo primer is an adhesive liquid, which bonds metals and composite materials together. The components of the set are presented to be used together in dentistry to manufacture crowns (temporary and permanent), bridges, inlays, onlays, veneers and anterior jacket crowns, as well as for repair of restorations and as dental fillings.	3006 40 00	Classification is determined by general rules 1, 3 (b) and 6 for the interpretation of the Combined Nomenclature, note 4 (f) to Chapter 30 and the wording of CN codes 3006 and 3006 40 00. Classification under heading 9021 is excluded, as the product is not a prefabricated product (such as a crown) that resemble in appearance any defective part of the body (see also the Harmonized System Explanatory Note to heading 9021, Section III, first paragraph and Part (B), point (4) and the first sentence of the second subparagraph). The composite materials filled in syringes are the components that give the set its essential character. They can be used in dentistry as dental fillings, which are covered by heading 3006 (note 4 (f) to Chapter 30, see also the above mentioned Harmonized System Explanatory Note to heading 9021, Section III, Part (B), second subparagraph, first sentence). Classification under heading 3824 and under heading 3906 is excluded as the product is more specifically covered by the wording of Note 4 (f) to Chapter 30, as a dental filling. Consequently, the product is to be classified in CN code 3006 40 00 as other dental fillings.

COMMISSION IMPLEMENTING REGULATION (EU) 2022/557

of 1 April 2022

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THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code ([1]), and in particular Article 57(4) and Article 58(2) thereof,

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(3) Pursuant to those general rules, the goods described in column (1) of the table set out in the Annex should be classified under the CN code indicated in column (2), by virtue of the reasons set out in column (3) of that table.

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

Done at Brussels, 1 April 2022.

For the Commission
Gerassimos THOMAS
Director-General
Directorate-General for Taxation and Customs Union

ANNEX

Description of the goods	Classification (CN code)	Reasons
(1)	(2)	(3)
1) Protein-rich fraction from the separation of pea flour into a protein-rich and a starch-rich fraction presented in the form of a beige, fine powder or in the form of pellets, in small bags (15 to 20 kg) or big bags (500 to 1 000 kg). The product has the following analytical characteristics (dry weight contents): — 7,4 % starch — 54 % proteins The product is produced from dried peas (*Pisum sativum*), which are washed, hulled and milled to obtain pea flour. The flour is then separated into a protein-rich and a starch-rich fraction in a centrifugal separator. After that process, the protein-rich fraction is either left in powder form or agglomerated into pellets. The product is recognisably and exclusively used as animal fodder.	2309 90 31	Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature, Note 1 to Chapter 23 and the wording of CN codes 2309, 2309 90 and 2309 90 31. The product has lost the essential characteristics of the original material by means of fractioning in a centrifugal separator. Therefore, classification under heading 1106 as flour of a dried leguminous vegetable, as well as classification as further prepared vegetable product of heading 2005, is excluded. Classification under heading 2302 is also excluded because the product is not a residue of the sifting, milling or other working of leguminous plants (see the Harmonized System Explanatory Note to heading 2302, Item (C)). The product has been deliberately produced from pea flour. It is further processed and exclusively used as animal fodder (see also the Harmonized System General Explanatory Note to Chapter 23). Therefore, the product is to be classified under CN code 2309 90 31 as other preparation of a kind used in animal feeding, containing less than 10 % by weight of starch.
2) Starch-rich fraction from the separation of pea flour into a protein-rich and a starch-rich fraction, presented in the form of a light-yellow powder or in the form of pellets, in bulk or in big bags (25 to 1 000 kg). The product has the following analytical characteristics (dry weight contents): — 73 % of starch — 13 % of proteins	2309 90 51	Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature, Note 1 to Chapter 23 and the wording of CN codes 2309, 2309 90 and 2309 90 51. The product has lost the essential characteristics of the original material by means of fractioning in a centrifugal separator. Therefore, classification under heading 1106 as flour of a dried leguminous vegetable, as well as classification as further prepared vegetable product of heading 2005, is excluded.

The product is produced from dried peas (*Pisum sativum*), which are washed, hulled and milled to obtain pea flour. The flour is then separated into a protein-rich and a starch-rich fraction in a centrifugal separator. After this process, the starch-rich fraction is either left in powder form or agglomerated into pellets. The product is recognisably and exclusively used as animal fodder.		Classification under heading 2302 is also excluded because the product is not a residue of the sifting, milling or other working of leguminous plants (see the Harmonized System Explanatory Note to heading 2302, Item (C)). The product has been deliberately produced from pea flour. It is further processed and exclusively used as animal fodder (see also the Harmonized System General Explanatory Note to Chapter 23). Therefore, the product is to be classified under CN code 2309 90 51 as other preparation of a kind used in animal feeding, containing more than 30 % by weight of starch.

COMMISSION IMPLEMENTING REGULATION (EU) 2022/558

of 6 April 2022

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

THE EUROPEAN COMMISSION,

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

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

Whereas:

1. PROCEDURE

1.1. Initiation

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

1.2. Registration

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

1.3. Provisional measures

(3) The Commission provided, on 17 September 2021, parties with a summary of the proposed provisional duties and details about the calculation of the dumping margins and the margins adequate to remove the injury to the Union industry in accordance with Article 19a of the basic Regulation (pre-disclosure). Three parties submitted comments. The comments were, however, of a general nature and did not relate to the accuracy of the calculations. Those comments were therefore only addressed at definitive stage.

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

1.4. Subsequent procedure

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

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

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

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

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

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

(8) On 19 January 2022, the Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of certain graphite electrode systems originating in China ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure.

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

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

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

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

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

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

(14) The claim was therefore rejected.

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

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

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

1.7. **Sampling**

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

1.8. **Investigation period and period considered**

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

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

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

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

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

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

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

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

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

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

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

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

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

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

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

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

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

2.2. **Conclusion**

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

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

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

3. **DUMPING**

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

3.1. **Normal value**

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

3.1.1. *Existence of significant distortions*

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

(38) The GOC submitted, first, that the first country report concerning the PRC (hereinafter 'the Report') ([5]) is flawed and decisions based on it lack a factual and legal basis. More specifically, the GOC claimed that it doubts that the Report can represent the official position of the Commission. On the factual side, the Report is, according to the GOC, misrepresentative, one-sided and out of touch with reality. Moreover, the fact that the Commission has issued country reports for a few selected countries raises concerns about most favoured nation ('MFN') treatment. Further, relying by the Commission on the evidence in the Report is, in the GOC's view, not in line with the spirit of fair and just law, as it effectively amounts to judging the case before trial.

(39) With regard to the first point on the status of the Report under the EU legislation, the Commission recalled that Article 2(6a)(c) of the basic Regulation does not prescribe a specific format for the reports on significant distortions, neither does that provision define a channel for publication. The Commission recalled that the report is a fact-based technical document used only in the context of trade defence investigations. The report was therefore appropriately issued as a Commission staff working document as it is purely descriptive and does not express any political views, preferences or judgements. That does not affect its content, namely the objective sources of information concerning the existence of significant distortions in the Chinese economy relevant for the purpose of the application of Article 2(6a)(c) of the basic Regulation. As to the remarks on the Report being factually flawed and one-sided, the Commission noted that the Report is a comprehensive document based on extensive objective evidence, including legislation, regulations and other official policy documents published by the GOC, third party reports from international organisations, academic studies and articles by scholars, and other reliable independent sources. Since it was made publicly available in December 2017, any interested party had ample opportunity to rebut, supplement or comment on it and the evidence on which it is based. So far no evidence was provided by any party proving that the sources used in the Report would be wrong.

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

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

(41) Second, the GOC and CCCME argued that constructing the normal value in accordance with Article 2(6a) of the basic Regulation is inconsistent with the ADA, in particular with Article 2.2. of the ADA which provides an exhaustive list of situations where the normal value can be constructed, the 'significant distortions' not being listed among such situations. Moreover, using data from an appropriate representative country is, according to the GOC, inconsistent with GATT Article VI.1(b) and Article 2.2.1.1. of the ADA which require using the cost of production in the country of origin when constructing the normal value.

(42) Third, the GOC, as well as CCCME and Liaoning Dantan claimed that the Commission's investigating practices under Article 2(6a) of the basic Regulation are inconsistent with WTO rules insofar as the Commission, in violation of Article 2.2.1.1. of the ADA, disregarded records of the Chinese producers without determining whether those records are in accordance with the generally accepted accounting principles in China. In this connection, the GOC recalled that the Appellate Body in European Union – Anti-Dumping Measures on Biodiesel from Argentina ('DS473') and the Panel Report in European Union – Cost Adjustment Methodologies II (Russia) ('DS494') asserted that according to Article 2.2.1.1 of the ADA, as long as the records kept by the exporter or producer under investigation correspond – within acceptable limits – in an accurate and reliable manner, to all the actual costs incurred by the particular producer or exporter for the product under consideration, they can be deemed to 'reasonably reflect the costs associated with the production and sale of the product under consideration' and the investigating authority should use such records to determine the cost of production of the investigated producers.

(43) Concerning the second and third arguments on the alleged incompatibility of Article 2(6a) of the basic Regulation with WTO law, in particular the provisions of Article 2.2. and 2.2.1.1. ADA, as well as the findings in DS473 and DS494, the Commission referred to recital (54) of the provisional Regulation where similar claims by interested parties were already rejected. Moreover, concerning the claim that the concept of significant distortions included in Article 2(6a) of the basic Regulation is not listed among the situations in which it is permissible to construct the normal value pursuant to Article 2.2 ADA, the Commission recalled that domestic law does not need to use the exact same terms as the covered Agreements in order to be compliant with those Agreements, and that it considers Article 2(6a) to be fully compliant with the relevant rules of the ADA (and, in particular, the possibilities to construct normal value provided in Article 2.2 ADA). In any event, as these claims do not contain any new elements, they were rejected.

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

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

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

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

standard and with respect to the use of a methodology that is not based on a strict comparison with Chinese prices or costs. Moreover, Lianoning Dantan appears to conflate the obligation to state the reasons for the substantive application of Article 2(6a) of the basic Regulation with a purported obligation to explain the WTO legal basis supporting the application of Article 2(6a) of the basic Regulation. The Commission has explained in detail in recitals (57) to (113) of the provisional Regulation the reasons for the application of Article 2(6a) of the basic Regulation thereby fully complying with its legal obligation of providing an adequate statement of reasons. Consquently, Liaoning Dantan argument was rejected.

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

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

(50) Furthermore, Liaoning Dantan objected to the Commission having invoked a number of cross-cutting factors existing in China to demonstrate the existence of significant distortions. In particular, Liaoning Dantan argued that being a member and standing director to the China Carbon Industry Association does not amount to state intervention into Liaoning Dantan's operation, let alone any influence over its business decisions. Similarly, Liaoning Dantan submitted that, as a privately-owned company, it was entirely subject to modern market-oriented corporate governance rules and its operational activities were exclusively responsible to the company's private shareholders under the PRC Company Law. Furthermore, Liaoning Dantan claimed that existence of state intervention would not equal to significant distortions and that the Commission bears the legal obligation to establish the distortive effect of the alleged state interventions over its prices and costs.

(51) Liaoning Dantan's arguments concerning the alleged lack of significant distortions despite existing government interventions could not be accepted. First, Liaoning Dantan did not provide any information which would put in question the Commission's observations (see recital (90) of the provisional Regulation) on graphite electrodes being considered an encouraged sector and therefore subject to distortions. The same applies to the distortions concerning inputs necessary for the manufacturing of the product under investigation (see in particular recitals (90) and (110) of the provisional Regulation). Second, while Liaoning Dantan considered being a member and standing director to the China Carbon Industry Association did not amount to state intervention, it did not dispute the observation made in recital (86) of the provisional Regulation that the purpose of the association was 'to implement the party's line, guidelines, and policies' and that the association 'adheres to the overall leadership of the Communist Party of China'. Third, as to Liaoning Dantan's claim that it is a privately-owned company with modern corporate governance, the Commission described in recitals (57) to (111) of the provisional Regulation the substantial government interventions in the PRC resulting in a distortion of the effective allocation of resources in line with market principles. Those distortions affect the commercial operators irrespective of the ownership structure or managerial setup. Therefore, these claims were rejected.

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

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

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

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

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

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

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

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

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

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

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

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

(62) CCCME's arguments could not be accepted. First, as for the alleged circular manner of the Commission's argumentation and the burden of proof, the Commission recalled – as already stated in recitals (53) and (55) of the provisional Regulation – that Section 3.3.1 of the provisional Regulation contains the Commission's full assessment concerning the existence of significant distortions. The Commission failed to see any circularity in how that assessment was carried out, i.e. the Commission relying on available evidence, including the Report, and interested parties having an opportunity to comment on that evidence. Second, concerning the nature of the five year plans, while noting that the existence and nature of planning documents in the Union is not relevant in the context of the present investigation, the Commission recalled, as already explained in detail in recitals (73) and (74) of the provisional Regulation and in recital (49), the specific nature of industrial planning in China is not only comprehensive, covering virtually the entire industrial production in the country, but also directly affects the business decisions of market operators due to financial and other mechanisms, which induce such operators to comply with the five-year plans ('FYPs'). By way of example, the Commission recalled, according to the 13th FYP '[a]*ll local governments and government departments must work hard to organize, coordinate, and guide the implementation of this plan. We will carry out dynamic monitoring and evaluation of the implementation of this plan.* […] *Approval procedures related to the projects and initiatives included in this plan will be streamlined and priority will be given to them in site selection, land availability, and funding arrangements. We will ensure that auditing offices play a role in overseeing implementation*' ([7]). Third, concerning the alleged incompatibility of Article 2(6a) of the basic Regulation with WTO law, in particular the provisions of Article 2.2. and 2.2.1.1. ADA, as well as the findings in DS473, the Commission reiterated its view expressed in recital (54) of the provisional Regulation, as well as in recital (56), that 2(6a) of the basic Regulation is fully in line with the EU's obligations under WTO law and that WTO law, as interpreted by the WTO Panel and the Appellate Body in DS473, allows the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. Furthermore, concerning the claim that the concept of significant distortions included in Article 2(6a) of the basic Regulation is not listed among the situations in which it is permissible to construct the normal value pursuant to Article 2.2. ADA, this argument has already been addressed in recital (43). Fourth, with respect to the individual assessment of significant distortions for each exporting producer, the Commission recalled that once it is determined that, due to the existence of significant distortions for the exporting country in accordance with Article 2(6a)(b) of the basic Regulation, it is not appropriate to use domestic prices and costs in the exporting country, the Commission may construct the normal value using undistorted prices or benchmarks in an appropriate representative country for each exporting producer according to Article 2(6a)(a) of the basic Regulation. Such determination has been made on the basis of the assessment carried out in recitals (57) to (111) of the provisional Regulation and applied individually to each exporting producer. The Commission recalled further that Article 2(6a)(a) of the basic Regulation allows the use of domestic costs only if they are positively established not to be distorted. However, there is no evidence on file demonstrating that this would be the case.

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

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

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

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

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

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

3.1.2. *Conclusion*

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

3.1.3. *Representative country*

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

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

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

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

3.1.4.1. Raw materials used in the production process

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

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

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

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

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

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

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

Factors of production of graphite electrodes

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

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

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

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

3.1.4.2. Electricity

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

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

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

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

3.1.4.3. SG&A percentage

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

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

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

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

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

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

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

(86) The Commission noted that for each cooperating exporting producer the costs aggregated under consumables represented between 0,01 % and 2,1 % of the total costs of manufacturing. Therefore, the Commission considered that the consumables had a very limited impact on the cost of production in their totality and thus on the calculation of the normal value. As a result, it decided not to source an individual benchmark for each of the consumables but to express them as a percentage of the total raw material cost on the basis of the cost data reported by the exporting producers and then to apply this percentage to the recalculated cost of materials when using the established undistorted prices. Furthermore, the Commission noted that significant distortions were established in Section 3.3.1 of the provisional Regulation. In that case, according to Article 2(6a) of the basic Regulation, domestic costs may be used but only to the extent that they are positively established not to be distorted, on the basis of accurate and appropriate evidence. No such evidence with regard to factors of production grouped under consumables was put forward by the parties, nor found by the Commission. Therefore, the Commission could not use the data reported by Liaoning Dantan. The Commission considered that its methodology for calculating an undistorted value for consumables was appropriate, and that no better information was available in the file. Liaoning Dantan neither provided an alternative for the use of GTA import values into the representative country, nor provided an alternative undistorted benchmark for consumables. Therefore, the claim with regard to consumables was rejected.

(87) With regard to the claim of Liaoning Dantan concerning the Commission's methodology to establish the undistorted value of its manufacturing overhead costs as set out in recital (166) of the provisional Regulation, the Commission noted that the overheads data was not readily available separately in the financial statements of the producer in the representative country. Furthermore, once significant distortions are established, according to Article 2(6a) of the basic Regulation, domestic costs may be used but only to the extent that they are positively established not to be distorted, on the basis of accurate and appropriate evidence. No such evidence with regard to overheads was put forward by Liaoning Dantan, nor found by the Commission. Therefore, the Commission considered that its methodology for calculating an undistorted value for overheads was appropriate, and that no better information was available. Liaoning Dantan did not suggest an alternative undistorted benchmark for overheads. Therefore, the claim was rejected.

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

3.2. **Export price**

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

3.3. **Comparison**

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

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

3.4. **Comments submitted following final disclosure**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.5. **Dumping margins**

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

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

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

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

4. **INJURY**

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

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

4.2. **Union consumption**

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

Union consumption developed as follows:

Table 1

Union consumption (in tonnes)

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

Source: Eurostat (Comext) and Union industry

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

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

4.3. **Imports from the country concerned**

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

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

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

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

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

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

Table 2

Import volume (in tonnes) and market share

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

Source: Eurostat (Comext), Union industry

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

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

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

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

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

Table 3

Import prices (EUR/tonne)

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

Source: Eurostat (Comext)

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

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

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

4.4.1. *General remarks*

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

4.4.2. *Macroeconomic indicators*

4.4.2.1. Production, production capacity and capacity utilisation

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

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

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

Table 4

Production

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

Source: Union industry

4.4.2.2. Sales volume and market share

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

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

Table 5

Sales volume and market share

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

Source: Union industry

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

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

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

4.4.2.3. Growth

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

4.4.2.4. Employment and productivity

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

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

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

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

4.4.3. *Microeconomic indicators*

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

4.5. **Conclusion on injury**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. **CAUSATION**

5.1. **Effects of the dumped imports**

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

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

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

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

5.2. **Effects of other factors**

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

5.2.1. *The COVID-19 pandemic*

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

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

5.2.2. *The impact of GrafTech's LTAs*

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

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

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

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

5.2.3. *Imports from third countries*

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

5.2.4. *Export performance of the Union industry*

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

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

5.2.5. *Consumption*

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

5.2.6. *Captive use*

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

5.3. **Conclusion on causation**

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

6. **UNION INTEREST**

6.1. **Interest of the Union industry**

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

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

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

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

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

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

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

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

6.3. **Interest of users**

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

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

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

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

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

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

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

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

6.4. **Other factors**

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

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

6.5. **Conclusion on Union interest**

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

7. **DEFINITIVE ANTI-DUMPING MEASURES**

7.1. **Injury elimination level**

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

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

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

7.2. **Raw materials distortion**

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

7.3. **Definitive measures**

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

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

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

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

(208) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ([14]). The request must contain all the relevant information enabling the company to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a regulation concerning the change of name will be published in the *Official Journal of the European Union*.

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

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

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

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

(212) In view of the dumping margins found and given the level of the injury caused to the Union industry, the amounts secured by way of the provisional anti-dumping duty imposed by the provisional Regulation should be definitively collected.

8. **FINAL PROVISIONS**

(213) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([15]), when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

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

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

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

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

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

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

Article 2

The amounts secured by way of the provisional anti-dumping duty under Implementing Regulation (EU) 2021/1812 shall be definitively collected on the product as defined in Article 1(1) above. The amounts secured in relation to the imports of the excluded products (namely, imports of graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,5 g/cm^3 or more and an electrical resistance of 7,0 μ.Ω.m or less, whether or not equipped with nipples, with a nominal diameter of 350 mm or less) shall be released.

Article 3

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

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

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

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

Article 4

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

'Nantong Yangzi Carbon Co., Ltd.'

is replaced by

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

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

Article 5

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

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

Done at Brussels, 6 April 2022.

For the Commission
The President
Ursula VON DER LEYEN

DECISIONS

COUNCIL IMPLEMENTING DECISION (EU) 2022/559

of 5 April 2022

amending Implementing Decision (EU) 2019/310 as regards the authorisation granted to Poland to continue to apply the special measure derogating from Article 226 of Directive 2006/112/EC on the common system of value added tax

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ([1]), and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By letter registered with the Commission on 26 July 2021, Poland requested an authorisation to continue to apply a special measure derogating from Article 226 of Directive 2006/112/EC in order to apply a split payment mechanism ('the special measure'). The special measure requires the inclusion of a special statement that value added tax (VAT) has to be paid to the blocked VAT account of the supplier on invoices issued in relation to the supplies of goods and services susceptible to fraud and generally covered by a reverse charge mechanism and by joint and several liability in Poland. Poland requested the extension of the special measure for a period of three years, from 1 March 2022 to 28 February 2025.

(2) In accordance with Article 395(2), second subparagraph, of Directive 2006/112/EC, the Commission transmitted the request made by Poland to other Member States by letter dated 27 October 2021. By letter dated 28 October 2021, the Commission notified Poland that it had all the information necessary to consider the request.

(3) Pursuant to Article 2 of Council Implementing Decision (EU) 2019/310 ([2]), Poland submitted a report to the Commission regarding the overall impact of the special measure on the level of VAT fraud and on the taxable persons concerned by letter dated 29 April 2021.

(4) Poland has already taken numerous measures to fight fraud. It has, inter alia, introduced the reverse charge mechanism and joint and several liability of the supplier and the customer, the Standard Audit File, tighter rules for the VAT registration and de-registration of taxable persons, and has increased the number of audits. However, Poland nonetheless considers that those measures are insufficient to prevent VAT fraud.

(5) Poland introduced the voluntary split payment mechanism on 1 July 2018 and the mandatory split payment mechanism on 1 March 2019.

(6) The goods and services that fall within the scope of the special measure are listed in the Annex to Implementing Decision (EU) 2019/310 in accordance with the Polish Classification of Goods and Services of 2008 (PKWiU 2008). The Polish Classification of Goods and Services of 2015 (PKWiU 2015) replaced PKWiU 2008 from 1 July 2020. Under PKWiU 2015, the symbols of the statistical classification and the editorial names of certain goods and services that appear in the Annex to Implementing Decision (EU) 2019/310 have been changed. Although the replacement of PKWiU 2008 with PKWiU 2015 did not result in any change to the scope of goods and services covered by the mandatory split payment mechanism, the Annex should be updated and replaced by the Annex to this Decision for the sake of legal certainty.

([1]) OJ L 347, 11.12.2006, p. 1.

([2]) Council Implementing Decision (EU) 2019/310 of 18 February 2019 authorising Poland to introduce a special measure derogating from Article 226 of Directive 2006/112/EC on the common system of value added tax (OJ L 51, 22.2.2019, p. 19).

(7) The special measure will continue to apply to supplies between taxable persons of goods and services listed in the Annex to Implementing Decision (EU) 2019/310, as updated and replaced by the Annex to this Decision, in business-to-business (B2B) supplies, and will cover only electronic bank transfers. The special measure will continue to apply to all suppliers, including to suppliers not established in Poland.

(8) The report submitted by Poland confirmed that the special measure for supplies of goods and services susceptible to fraud brings effective results in the fight against tax fraud.

(9) Authorisations to apply a special measure are in general granted for a limited period of time to allow the Commission to evaluate whether the special measure is appropriate and effective. The authorisation to apply the special measure should therefore be extended until 28 February 2025.

(10) Given the broad scope of the special measure, Poland should, if it requests a further extension of the authorisation to apply the special measure, submit a report with respect to the functioning and the effectiveness of the special measure on the level of VAT fraud and on the taxable persons regarding, inter alia, the refunds of VAT, the administrative burden and costs for taxable persons.

(11) The special measure will not negatively affect the overall amount of tax revenue collected at the stage of final consumption and will have no adverse impact on the Union's own resources accruing from VAT.

(12) In order to ensure that the objectives pursued by the special measure are achieved, including the uninterrupted application of the special measure, and to provide legal certainty with regard to the tax period, it is appropriate to grant authorisation to extend the special measure with effect from 1 March 2022. As Poland requested authorisation on 26 July 2021 to continue to apply the special measure and has continued to apply the legal regime established under its national law on the basis of Implementing Decision (EU) 2019/310 from 1 March 2022, the legitimate expectations of the persons concerned are duly respected.

(13) Implementing Decision (EU) 2019/310 should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Implementing Decision (EU) 2019/310 is amended as follows:

(1) in Article 2, the second paragraph is replaced by the following:

'Where Poland considers that the extension of the measure referred to in Article 1 is necessary, it shall submit a request for an extension to the Commission, together with a report on its overall impact on the level of VAT fraud and on the taxable persons concerned.';

(2) in Article 3, second paragraph, the date '28 February 2022' is replaced by the date '28 February 2025';

(3) the Annex is replaced by the text appearing in the Annex to this Decision.

Article 2

This Decision shall take effect on the day of its notification.

Article 3

This Decision is addressed to the Republic of Poland.

Done at Luxembourg, 5 April 2022.

For the Council
The President
B. LE MAIRE

ANNEX

'ANNEX

LIST OF SUPPLIES OF GOODS AND SERVICES COVERED BY ARTICLE 1

Article 1 shall apply to the following supplies of goods and services described according to the Polish Classification of Goods and Services (PKWiU 2015)

Item	PKWiU 2015	Name of goods (group of goods) / services (group of services)
1	05.10.10.0	Hard coal
2	05.20.10.0	Lignite
3	ex 10.4	Animal and vegetable oils and fats – exclusively rape oil
4	19.10.10.0	Coke and semi-coke of coal and lignite or of peat; retort carbon
5	19.20.11.0	Briquettes, ovoids and similar solid fuels manufactured from coal
6	19.20.12.0	Briquettes, ovoids and similar solid fuels manufactured from lignite
7	ex 20.59.12.0	Emulsions for surface sensitisation for use in photography; chemical preparations for use in photography, not elsewhere classified (n.e.c.) – exclusively toners without a print head for printers for automatic data-processing machines
8	ex 20.59.30.0	Typewriter ink, draft ink and other inks – exclusively ink cartridges without a print head for printers for automatic data processing machines
9	ex 22.21.30.0	Plates, sheets, film, foil, strip and plastic strips, non-cellular, not reinforced, laminated or combined with other materials – exclusively stretch foil
10	24.10.12.0	Ferro-alloys
11	24.10.14.0	Pig iron and specular pig iron or steel, in the form of granules or powder
12	24.10.31.0	Flat rolled products of non-alloy steel, hot-rolled, of a width of >= 600 mm
13	24.10.32.0	Flat rolled products of non-alloy steel, hot-rolled, of a width of < 600 mm
14	24.10.35.0	Flat rolled products of other alloy steel, hot-rolled, of a width of >= 600 mm, excluding products of electrical silicon steel
15	24.10.36.0	Flat rolled products of other alloy steel, hot-rolled, of a width of < 600 mm, excluding products of electrical silicon steel
16	24.10.41.0	Flat rolled products of non-alloy steel, cold-rolled, of a width of >= 600 mm
17	24.10.43.0	Flat rolled products of other alloy steel, cold-rolled, of a width of >= 600 mm, excluding products of electrical silicon steel
18	24.10.51.0	Flat rolled products of non-alloy steel, of a width of >= 600 mm, clad, plated or coated
19	24.10.52.0	Flat rolled products of other alloy steel, of a width of >= 600 mm, clad, plated or coated
20	24.10.61.0	Bars and rods, hot rolled, in irregularly wound coils, of non-alloy steel

Item	PKWiU 2015	Name of goods (group of goods) / services (group of services)
21	24.10.62.0	Other bars and rods of steel, not further worked than forged, hot rolled, hot-drawn or extruded, but including those twisted after rolling
22	24.10.65.0	Bars and rods, hot rolled, in irregularly wound coils, of other alloy steel
23	24.10.66.0	Other bars and rods of other alloy steel, not further worked than forged, hot rolled, hot-drawn or extruded, but including those twisted after rolling
24	24.10.71.0	Open sections, not further worked than hot rolled, hot-drawn or extruded, of non-alloy steel
25	24.10.73.0	Open sections, not further worked than hot rolled, hot-drawn or extruded, of other alloy steel
26	24.20.11.0	Line pipe of a kind used for oil or gas pipelines, seamless, of steel
27	24.20.12.0	Casing, tubing and drill pipe, of a kind used in the drilling for oil or gas, seamless, of steel
28	24.20.13.0	Other tubes and pipes, of circular cross section, seamless, of steel
29	24.20.31.0	Line pipe of a kind used for oil or gas pipelines, welded, of an external diameter of <= 406,4 mm, of steel
30	24.20.33.0	Other tubes and pipes, of circular cross section, welded, of an external diameter of <= 406,4 mm, of steel
31	24.20.34.0	Tubes and pipes, of non-circular cross-section, welded, of an external diameter of <= 406,4 mm, of steel
32	24.20.40.0	Tube or pipe fittings of steel, not cast
33	24.31.10.0	Bars, angles, sections and solid profiles of non-alloy steel, cold drawn
34	24.31.20.0	Bars, angles, sections and solid profiles of other alloy steel, cold drawn
35	24.32.10.0	Flat steel products, not further worked than cold rolled, of a width of < 600 mm, uncoated
36	24.32.20.0	Flat rolled steel products, not further worked than cold rolled, of a width of < 600 mm, clad, plated or coated
37	24.33.11.0	Open sections of non-alloy steel, cold formed or cold folded
38	24.33.20.0	Ribbed sheets of non-alloy steel
39	24.34.11.0	Cold drawn wire of non-alloy steel
40	24.41.10.0	Unwrought silver or in semi-manufactured form or in powder form
41	ex 24.41.20.0	Unwrought gold or in semi-manufactured form or in powder form, excluding investment gold within the meaning of Article 121 of the Act on goods and services tax, subject to item 43
42	24.41.30.0	Unwrought platinum or in semi-manufactured form or in powder form
43	irrespective of the PKWiU symbol	Investment gold within the meaning of Article 121 of the Act on goods and services tax
44	ex 24.41.40.0	Base metals or silver, plated with gold, not further worked than in semi-manufactured form – exclusively silver, gold-plated, not further worked than in semi-manufactured form

Item	PKWiU 2015	Name of goods (group of goods) / services (group of services)
45	ex 24.41.50.0	Base metals plated with silver and base metals, silver or gold, plated with platinum, not further worked than in semi-manufactured form – exclusively gold and silver, platinum-plated, not further worked than in semi-manufactured form
46	24.42.11.0	Unwrought aluminium
47	24.43.11.0	Unwrought lead
48	24.43.12.0	Unwrought zinc
49	24.43.13.0	Unwrought tin
50	24.44.12.0	Copper, unrefined; copper anodes for electrolytic refining
51	24.44.13.0	Refined copper and copper alloys, unwrought; master alloys of copper
52	24.44.21.0	Powders and flakes of copper and its alloys
53	24.44.22.0	Flat bars, rods, sections and wire rod, of copper and its alloys
54	24.44.23.0	Wires of copper and its alloys
55	24.45.11.0	Unwrought nickel
56	ex 24.45.30.0	Other non-ferrous metals and products made of the same; cermets; ashes and residues containing metals and metal compounds – exclusively non-precious metal waste and scrap
57	ex 25.11.23.0	Other structures and parts of structures; plates, rods, angles, shapes and the like, of iron, steel or aluminium – exclusively of steel
58	ex 25.93.13.0	Cloth, grills, netting and fencing, of iron, steel or copper wire; expanded metal, of iron, steel or copper – exclusively of steel
59	ex 26.11.30.0	Electronic integrated circuits – exclusively processors
60	26.20.1	Computers and other automatic data processing machines and parts and accessories therefor
61	ex 26.20.21.0	Memory units – exclusively hard drives (HDDs)
62	ex 26.20.22.0	Solid state storage devices – exclusively SSDs
63	ex 26.30.22.0	Cellular phones or other wireless networks – exclusively mobile phones, including smartphones
64	26.40.20.0	Television receivers, whether or not combined with radio-broadcast receivers or sound or video recording or reproduction apparatus
65	ex 26.40.60.0	Video game consoles (such as those used with a television set or a stand-alone screen) and other gaming or game of chance apparatus with electronic display – excluding parts and accessories
66	26.70.13.0	Digital cameras and digital camcorders
67	27.20.2	Electric accumulators and parts thereof
68	28.11.41.0	Parts for spark-ignition internal combustion engines, excluding parts for aircraft engines
69	ex 28.23.22.0	Parts and accessories for office machines – exclusively ink cartridges and print heads for printers for automatic data-processing machines, toners with print head for printers for automatic data processing machines

Item	PKWiU 2015	Name of goods (group of goods) / services (group of services)
70	ex 29.31.10.0	Ignition cable harnesses and other wiring sets of a kind used in vehicles, aircraft or watercraft – exclusively ignition cable harnesses and other wiring sets of a kind used in vehicles
71	29.31.21.0	Sparking plugs; ignition magnetos; magneto-dynamos; magnetic flywheels; distributors; ignition coils
72	29.31.22.0	Starter motors and dual purpose starter-generators; other generators and other equipment for combustion engines
73	29.31.23.0	Electrical signalling equipment, windscreen, defrosters and demisters for motor vehicles
74	29.31.30.0	Parts of other electrical equipment for motor vehicles
75	29.32.20.0	Safety seat belts, airbags and parts and accessories of bodies
76	29.32.30.0	Parts and accessories for motor vehicles n.e.c., excluding motorcycles
77	30.91.20.0	Parts and accessories of motorcycles and side-cars
78	ex 32.12.13.0	Jewellery and other jewellery as well as parts thereof, made of precious metal or metal plated with precious metal – exclusively parts of jewellery and parts of other gold, silver and platinum jewellery, i.e. unfinished or incomplete jewellery and distinct parts of jewellery, including covered or plated with precious metal
79	38.11.49.0	Used vehicles, computers, televisions and other devices intended for scrapping
80	38.11.51.0	Glass waste
81	38.11.52.0	Paper and paperboard waste
82	38.11.54.0	Other rubber waste
83	38.11.55.0	Plastic waste
84	38.11.58.0	Metal-containing waste other than hazardous waste
85	38.12.26.0	Hazardous metal waste
86	38.12.27	Waste and defective electric cells and accumulators; spent galvanic cells and batteries and electric accumulators
87	38.32.2	Metal secondary raw materials
88	38.32.31.0	Secondary raw material of glass
89	38.32.32.0	Secondary raw material of paper and paperboard
90	38.32.33.0	Secondary raw material of plastic
91	38.32.34.0	Secondary raw material of rubber
92		Motor spirit, diesel oil, fuel gas – within the meaning of the provisions on excise duty
93		Heating oil and lubricating oil – within the meaning of the provisions on excise duty
94	ex 58.29.11.0	Operating system software packages – exclusively SSD
95	ex 58.29.29.0	Other software packages – exclusively SSDs
96	ex 59.11.23.0	Other videos and video recordings on disks, magnetic tapes and similar media – exclusively SSDs

Item	PKWiU 2015	Name of goods (group of goods) / services (group of services)
97	irrespective of the PKWiU symbol	GHG emission allowance transfer services referred to in the Act of 12 June 2015 on Greenhouse Gas Emission Trading Scheme (Official Journal of 2021 item 332)
98	41.00.3	Construction work on residential buildings (works on the construction of new buildings, reconstruction or renovation of existing buildings)
99	41.00.4	Construction work on non-residential buildings (works on the construction of new buildings, reconstruction or renovation of existing buildings)
100	42.11.20.0	General construction works involving the construction of motorways, roads, streets and other roads for vehicles and pedestrians and the construction of runways
101	42.12.20.0	General construction works involving the construction of railways and subways
102	42.13.20.0	General construction works involving the construction of bridges and tunnels
103	42.21.21.0	General construction works involving the construction of transmission pipelines
104	42.21.22.0	General construction works involving the construction of distribution networks, including auxiliary works
105	42.21.23.0	General construction works involving the construction of irrigation systems (sewers), bus and water lines, facilities for water treatment and sewage treatment and pump stations
106	42.21.24.0	Works involving the drilling of wells and water intakes and installation of septic tanks
107	42.22.21.0	General construction works involving the construction of telecommunications and power transmission lines
108	42.22.22.0	General construction works involving the construction of telecommunications and power distribution lines
109	42.22.23.0	General construction works involving the construction of power plants
110	42.91.20.0	General construction works involving the construction of wharves, ports, dams, locks and related hydro-technical facilities
111	42.99.21.0	General construction works involving the construction of production and mining facilities
112	42.99.22.0	General construction works involving the construction of stadiums and sports fields
113	42.99.29.0	General construction works involving the construction of other civil engineering structures, n.e.c.
114	43.11.10.0	Works involving demolition of buildings
115	43.12.11.0	Works involving the preparation of the site for construction, excluding earthworks
116	43.12.12.0	Earthworks: digging, ditch digging and earth moving jobs
117	43.13.10.0	Works involving the excavation and geological-engineering drilling
118	43.21.10.1	Works involving the execution of electrical safety installations
119	43.21.10.2	Works involving the implementation of other electrical installations
120	43.22.11.0	Works involving the execution of plumbing and drainage works
121	43.22.12.0	Works involving the execution of heating, ventilation and air conditioning systems

Item	PKWiU 2015	Name of goods (group of goods) / services (group of services)
122	43.22.20.0	Works involving the execution of gas installations
123	43.29.11.0	Insulation work
124	43.29.12.0	Installation of fencing
125	43.29.19.0	Other installation works n.e.c.
126	43.31.10.0	Plastering works
127	43.32.10.0	Installation work for carpentry
128	43.33.10.0	Works involving the laying the floor and facing the walls
129	43.33.21.0	Works involving the laying of terrazzo, marble, granite or slate on floors and walls
130	43.33.29.0	Other works involving the laying of floors and walls (including wallpapering), n.e.c.
131	43.34.10.0	Painting works
132	43.34.20.0	Glass-making works
133	43.39.11.0	Works involving the decoration
134	43.39.19.0	Works involving the execution of other finishing works, n.e.c.
135	43.91.11.0	Works involving the construction of roof structures
136	43.91.19.0	Works involving other roofing work
137	43.99.10.0	Works involving the installation of damp-proof and waterproof insulation
138	43.99.20.0	Works involving the assembly and dismantling of scaffolding
139	43.99.30.0	Works involving the construction of foundations, including pile driving
140	43.99.40.0	Concrete works
141	43.99.50.0	Works involving erection of steel structures
142	43.99.60.0	Works involving the erection of brick and stone structures
143	43.99.70.0	Works involving the assembly and erection of prefabricated structures
144	43.99.90.0	Works involving the performance of other specialized works, n.e.c.
145	45.31.1	Trade services of motor vehicle parts and accessories, excluding motorcycles
146	45.32.1	Specialised store retail trade services of motor vehicle parts and accessories, excluding motorcycles
147	45.32.2	Other retail trade services of parts and accessories of motor vehicles, excluding motorcycles
148	ex 45.40.10.0	Wholesale trade services of motorcycles and related parts and accessories – exclusively sale of parts and accessories for motorcycles
149	ex 45.40.20.0	Specialised store retail trade services of motorcycles and related parts and accessories – exclusively sale of parts and accessories for motorcycles
150	ex 45.40.30.0	Other retail trade services of motorcycles and related parts and accessories – exclusively retail sale of parts and accessories for motorcycles'

COMMISSION IMPLEMENTING DECISION (EU) 2022/560

of 31 March 2022

renewing the authorisation for the placing on the market of products containing, consisting of or produced from genetically modified cotton GHB614 (BCS-GHØØ2-5) pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council

(notified under document C(2022) 1891)

(Only the German text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed ([1]), and in particular Article 11(3) and Article 23(3) thereof,

Whereas:

(1) Commission Decision 2011/354/EU ([2]) authorised the placing on the market of food and feed containing, consisting of or produced from genetically modified cotton GHB614. The scope of this authorisation also covers the placing on the market of products other than food and feed containing or consisting of genetically modified cotton GHB614, for the same use as any other cotton, with the exception of cultivation.

(2) On 22 April 2020, BASF SE, based in Germany, on behalf of BASF Agricultural Solutions Seed US LLC, based in the United States, submitted to the Commission an application, in accordance with Articles 11 and 23 of Regulation (EC) No 1829/2003, for the renewal of that authorisation.

(3) On 7 July 2021, the European Food Safety Authority ('the Authority') issued a favourable scientific opinion ([3]) in accordance with Articles 11 and 23 of Regulation (EC) No 1829/2003. It concluded that the renewal application did not contain evidence for any new hazards, modified exposure or scientific uncertainties that would change the conclusions of the original risk assessment on genetically modified cotton GHB614, adopted by the Authority in 2009 ([4]).

(4) In its scientific opinion, the Authority considered all the questions and concerns raised by the Member States in the context of the consultation of the national competent authorities as provided for in Article 6(4) and Article 18(4) of Regulation (EC) No 1829/2003.

(5) The Authority also concluded that the monitoring plan for environmental effects, consisting of a general surveillance plan, submitted by the applicant, is in line with the intended uses of the products.

([1]) OJ L 268, 18.10.2003, p. 1.

([2]) Commission Decision 2011/354/EU of 17 June 2011 authorising the placing on the market of products containing, consisting of or produced from genetically modified cotton GHB614 (BCS-GHØØ2-5) pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council (OJ L 160, 18.6.2011, p. 90).

([3]) EFSA GMO Panel (EFSA Panel on Genetically Modified Organisms), 2021. Scientific Opinion on the assessment of genetically modified cotton GHB614 for renewal authorisation under Regulation (EC) No 1829/2003 (application EFSA-GMO-RX-018). *EFSA Journal* 2021;19(7):6671, 12 pp.; https://doi.org/10.2903/j.efsa.2021.6671

([4]) EFSA GMO Panel, 2009. Scientific Opinion of the Panel on Genetically Modified Organisms on an application (Reference EFSA-GMO-NL-2008-51) for the placing on the market of glyphosate tolerant genetically modified cotton GHB614, for food and feed uses, import and processing under Regulation (EC) No 1829/2003 from Bayer CropScience. *EFSA Journal* 2009;7(3):985, 24 pp.; https://doi.org/10.2903/j.efsa.2009.985

(6) Taking into account those conclusions, the authorisation for the placing on the market of food and feed containing, consisting of or produced from genetically modified cotton GHB614 and of products containing it or consisting of it for uses other than food and feed, with the exception of cultivation, should be renewed.

(7) A unique identifier has been assigned to genetically modified cotton GHB614, in accordance with Commission Regulation (EC) No 65/2004 ([5]), in the context of its initial authorisation by Decision 2011/354/EU. That unique identifier should continue to be used.

(8) For the products covered by this Decision, no specific labelling requirements, other than those provided for in Article 13(1) and Article 25(2) of Regulation (EC) No 1829/2003 and in Article 4(6) of Regulation (EC) No 1830/2003 of the European Parliament and of the Council ([6]), appear to be necessary. However, in order to ensure that the use of products containing or consisting of genetically modified cotton GHB614 remains within the limits of the authorisation granted by this Decision, the labelling of such products, with the exception of food and food ingredients, should contain a clear indication that they are not intended for cultivation.

(9) The authorisation holder should submit annual reports on the implementation and on the results of the activities set out in the monitoring plan for environmental effects. Those results should be presented in accordance with the requirements laid down in Commission Decision 2009/770/EC ([7]).

(10) The opinion of the Authority does not justify the imposition of specific conditions or restrictions for the placing on the market for use and handling, including post-market monitoring requirements regarding the consumption of food and feed containing, consisting of or produced from genetically modified cotton GHB614, or for the protection of particular ecosystems/environment or geographical areas, as provided for in Article 6(5)(e) and Article 18(5)(e) of Regulation (EC) No 1829/2003.

(11) All relevant information on the authorisation of the products covered by this Decision should be entered in the Community register of genetically modified food and feed referred to in Article 28(1) of Regulation (EC) No 1829/2003.

(12) This Decision is to be notified through the Biosafety Clearing-House to the Parties to the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, pursuant to Article 9(1) and Article 15(2)(c) of Regulation (EC) No 1946/2003 of the European Parliament and of the Council ([8]).

(13) The Standing Committee on Plants, Animals, Food and Feed has not delivered an opinion within the time laid down by its Chair. This implementing act was deemed to be necessary and the chair submitted it to the appeal committee for further deliberation. The appeal committee did not deliver an opinion,

HAS ADOPTED THIS DECISION:

Article 1

Genetically modified organism and unique identifier

Genetically modified cotton (*Gossypium hirsutum*) GHB614, as specified in point (b) of the Annex to this Decision, is assigned the unique identifier BCS-GHØØ2-5, in accordance with Regulation (EC) No 65/2004.

([5]) Commission Regulation (EC) No 65/2004 of 14 January 2004 establishing a system for the development and assignment of unique identifiers for genetically modified organisms (OJ L 10, 16.1.2004, p. 5).

([6]) Regulation (EC) No 1830/2003 of the European Parliament and of the Council of 22 September 2003 concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC (OJ L 268, 18.10.2003, p. 24).

([7]) Commission Decision 2009/770/EC of 13 October 2009 establishing standard reporting formats for presenting the monitoring results of the deliberate release into the environment of genetically modified organisms, as or in products, for the purpose of placing on the market, pursuant to Directive 2001/18/EC of the European Parliament and of the Council (OJ L 275, 21.10.2009, p. 9).

([8]) Regulation (EC) No 1946/2003 of the European Parliament and of the Council of 15 July 2003 on transboundary movements of genetically modified organisms (OJ L 287, 5.11.2003, p. 1).

Article 2

Renewal of the authorisation

The authorisation for the placing on the market of the following products is renewed in accordance with the conditions set out in this Decision:

(a) foods and food ingredients containing, consisting of or produced from genetically modified cotton BCS-GHØØ2-5;

(b) feed containing, consisting of or produced from genetically modified cotton BCS-GHØØ2-5;

(c) products containing or consisting of genetically modified cotton BCS-GHØØ2-5, for uses other than those provided for in points (a) and (b), with the exception of cultivation.

Article 3

Labelling

1. For the purposes of the labelling requirements laid down in Article 13(1) and Article 25(2) of Regulation (EC) No 1829/2003 and in Article 4(6) of Regulation (EC) No 1830/2003, the 'name of the organism' shall be 'cotton'.

2. The words 'not for cultivation' shall appear on the label of and in the documents accompanying the products containing or consisting of genetically modified cotton as referred to in Article 1, with the exception of products referred to in point (a) of Article 2.

Article 4

Method for detection

The method set out in point (d) of the Annex shall apply for the detection of genetically modified cotton BCS-GHØØ2-5.

Article 5

Monitoring plan for environmental effects

1. The authorisation holder shall ensure that the monitoring plan for environmental effects, as set out in point (h) of the Annex, is put in place and implemented.

2. The authorisation holder shall submit to the Commission annual reports on the implementation and the results of the activities set out in the monitoring plan in accordance with the format set out in Decision 2009/770/EC.

Article 6

Community register

The information set out in the Annex shall be entered in the Community register of genetically modified food and feed, as referred to in Article 28(1) of Regulation (EC) No 1829/2003.

Article 7

Authorisation holder

The authorisation holder shall be BASF Agricultural Solutions Seed US LLC, United States, represented in the Union by BASF SE, Germany.

Article 8

Validity

This Decision shall apply for a period of 10 years from the date of its notification.

Article 9

Addressee

This Decision is addressed to BASF Agricultural Solutions Seed US LLC, 100 Park Avenue, Florham Park, New Jersey 07932, United States, represented in the Union by BASF SE, Carl-Bosch-Str. 38, D-67063 Ludwigshafen, Germany.

Done at Brussels, 31 March 2022.

For the Commission
Stella KYRIAKIDES
Member of the Commission

ANNEX

(a) **Applicant and authorisation holder:**

Name:	BASF Agricultural Solutions Seeds US LLC
Address:	100 Park Avenue, Florham Park, New Jersey 07932, United States

Represented in the Union by: BASF SE, Carl-Bosch-Str. 38, D-67063, Ludwigshafen, Germany.

(b) **Designation and specification of the products:**

(1) foods and food ingredients containing, consisting of or produced from genetically modified cotton BCS-GHØØ2-5;

(2) feed containing, consisting of or produced from genetically modified cotton BCS-GHØØ2-5;

(3) products containing or consisting of genetically modified cotton BCS-GHØØ2-5 for uses other than those provided for in points (1) and (2), with the exception of cultivation.

The genetically modified cotton BCS-GHØØ2-5 expresses the *2mEPSPS* gene, which confers tolerance to glyphosate-based herbicides.

(c) **Labelling:**

(1) For the purposes of the labelling requirements laid down in Article 13(1) and Article 25(2) of Regulation (EC) No 1829/2003, and in Article 4(6) of Regulation (EC) No 1830/2003, the 'name of the organism' shall be 'cotton';

(2) The words 'not for cultivation' shall appear on the label of and in documents accompanying the products containing or consisting of the genetically modified cotton BCS-GHØØ2-5, with the exception of the products referred to in point (b)(1).

(d) **Method for detection:**

(1) Event-specific method for the quantification of genetically modified cotton BCS-GHØØ2-5 using real-time PCR;

(2) Validated by the EU reference laboratory established under Regulation (EC) No 1829/2003, published at http://gmo-crl.jrc.ec.europa.eu/StatusOfDossiers.aspx;

(3) Reference Material: AOCS 1108 and 0306 are accessible via the American Oil Chemists Society at https://aocs.org/tech/crm.

(e) **Unique identifier:**

BCS-GHØØ2-5

(f) **Information required pursuant to Annex II to the Cartagena Protocol on Biosafety to the Convention on Biological Diversity:**

[Biosafety Clearing-House, Record ID number: *published in the Community register of genetically modified food and feed when notified*].

(g) **Conditions or restrictions on the placing on the market, use or handling of the products:**

Not required.

(h) **Monitoring plan for environmental effects:**

Monitoring plan for environmental effects in accordance with Annex VII to Directive 2001/18/EC of the European Parliament and of the Council ([1]).

[Link: *plan published in the Community register of genetically modified food and feed*]

(i) **Post-market monitoring requirements for the use of the food for human consumption:**

Not required.

Note: links to relevant documents may need to be modified over time. Those modifications will be made available to the public via the updating of the Community register of genetically modified food and feed.

([1]) Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC (OJ L 106, 17.4.2001, p. 1).

RECOMMENDATIONS

COMMISSION RECOMMENDATION (EU) 2022/561

of 6 April 2022

on monitoring the presence of glycoalkaloids in potatoes and potato-derived products

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

(1) The European Food Safety Authority (EFSA) Panel on Contaminants in the Food Chain (CONTAM) adopted a risk assessment in 2020 on glycoalkaloids in feed and food, in particular in potatoes and potato-derived products ([1]).

(2) In humans, acute toxic effects of potato glycoalkaloids (α-solanine and α-chaconine) include gastrointestinal symptoms such as nausea, vomiting and diarrhoea. For these effects, the CONTAM Panel identified a lowest-observed-adverse-effect level (LOAEL) of 1 mg total potato glycoalkaloids/kg body weight (bw) per day as a reference point for the risk characterisation following acute exposure. A margin of exposure (MOE) higher than 10 indicates that there is no health concern. This MOE of 10 takes into account the extrapolation from a LOAEL to a no-observed-adverse-effect (NOAEL) (a factor of 3) and the interindividual variability in toxicodynamics (a factor of 3,2). Given that acute exposure estimates in certain exposure scenarios resulted in a MOE lower than 10, this indicates a health concern.

(3) The CONTAM Panel recommended that more occurrence data should be gathered on glycoalkaloids and their aglycones in the potato varieties available on the market, in new potato varieties resulting from breeding experiments and in processed potato products, including foods for infants.

(4) Good agricultural practices, good storage and transport conditions and good manufacturing practices can reduce the presence of glycoalkaloids in potatoes and processed potato products. More information must however be gathered on the factors that lead to relatively high levels of glycoalkaloids in potatoes and processed potato products in order to be able to identify the measures to be taken to avoid or reduce the presence of glycoalkaloids in these foodstuffs. It is appropriate, if possible, to analyse in particular in processed potato products also the degradation products β- and γ- solanine and chaconine and the aglycon solanidine, given that these compounds have the same toxicity as α-solanine and α-chaconine.

(5) The results of the monitoring of glycoalkaloids must be reliable and comparable. It is therefore appropriate to provide instructions on their extraction as well as requirements for their analysis. As the presence of glycoalkaloids is higher in unpeeled potatoes than in peeled potatoes, and higher in small potatoes than in larger potatoes, it is important to provide information on these factors when reporting occurrence data.

(6) To advise on when it would be appropriate to identify the factors leading to relatively high levels of glycoalkaloids, it is appropriate to establish an indicative value for potatoes. It is also appropriate to obtain more information on the effects of processing on the level of glycoalkaloids.

([1]) EFSA CONTAM Panel (EFSA Panel on Contaminants in the Food Chain), 2020. Scientific Opinion – Risk assessment of glycoalkaloids in feed and food, in particular in potatoes and potato-derived products. EFSA Journal 2020;18(8):6222, 190 pp. https://doi.org/10.2903/j.efsa.2020.6222.

(7) It is therefore appropriate to recommend the monitoring of glycoalkaloids in potato and potato products and the identification of the factors resulting in their high levels, and to gather more information on the effects of processing on the level of glycoalkaloids,

HAS ADOPTED THIS RECOMMENDATION:

(1) Member States with the active involvement of food business operators should monitor glycoalkaloids α-solanine and α-chaconine in potatoes and potato products. If possible, the degradation products β- and γ- solanine and chaconine and the aglycon solanidine should also be analysed, in particular in processed potato products.

(2) To prevent enzymatic degradation of α-chaconine in particular when analysing raw potatoes (unpeeled/peeled), a solution of 1 % formic acid in methanol should be added to the potatoes in a ratio of 1:2 (volume:weight) when they are blended and homogenized before extraction and clean-up. The recommended methods of analysis are liquid chromatography with ultraviolet photodiode-array detection (LC-UV-DAD) or liquid chromatography mass spectrometry (LC-MS). Other methods of analysis can be applied provided that evidence is available showing that they generate reliable results for individual glycoalkaloids. The limit of quantification (LOQ) for the determination of each glycoalkaloid should preferably be around 1 mg/kg and not be higher than 5 mg/kg.

(3) Member States, with the active involvement of food business operators, should carry out investigations to identify the factors leading to levels above the indicative level of 100 mg/kg as sum of α-solanine and α-chaconine in potatoes and processed potato products.

(4) Member States and food business operators should provide to EFSA, by 30 June of each year, the data for the previous year for compilation into one database in line with the requirements of EFSA's Guidance on Standard Sample Description (SSD) for Food and Feed and EFSA's additional specific reporting requirements ([2]). It is important to report for potatoes and processed potato products the variety and the size of potatoes (average weight of the potatoes, in particular for unpeeled potatoes), early potatoes or storage potatoes (i.e. mature and/or stored over a longer period of time), the place of sampling (producer, wholesale, retail) and if the potatoes were peeled or not ([3]).

Done at Brussels, 6 April 2022.

For the Commission
Stella KYRIAKIDES
Member of the Commission

([2]) https://www.efsa.europa.eu/en/call/call-continuous-collection-chemical-contaminants-occurrence-data-0
([3]) Tests on the effect of peeling on the content of glycoalkaloids should be performed with a (potato) peeler.

CORRIGENDA

Corrigendum to Council Regulation (EU) 2022/110 of 27 January 2022 fixing for 2022 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Mediterranean and Black Seas

(Official Journal of the European Union L 21 of 31 January 2022)

On page 181, in Annex III, point (f):

for: '(f) Fishing opportunities for blue and red shrimp (*Aristeus antennatus*) and giant red shrimp (*Aristaeomorpha foliacea*) in Corsica Island, Ligurian Sea, Tyrrhenian Sea and Sardinia Island (GSAs 8-9-10-11) expressed as maximum level of catches in tonnes live weight

Species:	Blue and red shrimp (*Aristeus antennatus*)		Zone:	GSA 9-10-11 (ARA/GF9-11)
Spain	0			
France	9			
Italy	250			
Union	259			
TAC	Not relevant		Maximum level of catches	

Species:	Giant red shrimp (*Aristaeomorpha foliacea*)		Zone:	GSA 8-9-10-11 (ARS/GF9-11)
Spain	0			
France	5			
Italy	365			
Union	370			
TAC	Not relevant		Maximum level of catches'	

read: '(f) Fishing opportunities for blue and red shrimp (*Aristeus antennatus*) and giant red shrimp (*Aristaeomorpha foliacea*) in Corsica Island, Ligurian Sea, Tyrrhenian Sea and Sardinia Island (GSAs 8-9-10-11) expressed as maximum level of catches in tonnes live weight

Species:	Blue and red shrimp (*Aristeus antennatus*)		Zone:	GSA 8-9-10-11 (ARA/GF8-11)
Spain	0			
France	9			
Italy	250			
Union	259			
TAC	Not relevant		Maximum level of catches	

Species:	Giant red shrimp (*Aristaeomorpha foliacea*)		Zone:	GSA 8-9-10-11 (ARS/GF8-11)
Spain	0			
France	5			
Italy	365			
Union	370			
TAC	Not relevant		Maximum level of catches'	

Corrigendum to Commission Implementing Decision (EU) 2022/505 of 23 March 2022 concerning exemptions from the extended anti-dumping duty on certain bicycle parts originating in the People's Republic of China pursuant to Regulation (EC) No 88/97

(Official Journal of the European Union L 102 of 30 March 2022)

On page 22, Article 3, in the table, the line for entry 8085 is replaced with the following:

'8085	Oxyprod S.r.l. Via G. Morone 4 20121 Milano (MI), Italy	Decathlon Produzione Italia S.r.l. Via Buonarroti 39 20145 Milano (MI), Italy	3.6.2015 for change of name; 20.4.2021 for change of address'

Corrigendum to Commission Implementing Regulation (EU) 2020/469 of 14 February 2020 amending Regulation (EU) No 923/2012, Regulation (EU) No 139/2014 and Regulation (EU) 2017/373 as regards requirements for air traffic management/air navigation services, design of airspace structures and data quality, runway safety and repealing Regulation (EC) No 73/2010

(Official Journal of the European Union L 104 of 3 April 2020)

On page 26, Annex III, point (3)(a), in the amendments to point ATM/ANS.OR.A.085, point (g), of Annex III to Implementing Regulation (EU) 2017/373:

for: '(g) ensure that the information listed in point AIS.OR.505(a) is provided in due time to the AIS provider;',

read: '(g) ensure that the information listed in point AIS.TR.505(a) is provided in due time to the AIS provider;'.

On page 109, Annex III, point (3)(b), in the amendments to Appendix 1, in the table 'Data types referred to in column 4 "Type"', in the second column of the seventh row, of Annex III to Implementing Regulation (EU) 2017/373:

for: 'An angular value',

read: 'A linear value'.

On page 148, Annex III, point (5)(v), in the amendments to Appendix 1, in the table 'Ranges and resolutions for the numerical elements included in METAR', in the row of 'State of the runway', of Annex V to Implementing Regulation (EU) 2017/373:

for:

'State of the runway	Runway designator: (no units)	01–36; 88; 99	1
	Runway deposits: (no units)	0–9	1
	Extent of runway contamination: (no units)	1; 2; 5; 9	—
	Depth of deposit: (no units)	00–90; 92–99	1
	Friction coefficient/braking action: (no units)	00–95; 99	1'

read:

'State of the runway	Runway designator: (no units)	—	—
	Runway deposits: (no units)	—	—
	Extent of runway contamination: (no units)	—	—
	Depth of deposit: (no units)	—	—
	Friction coefficient/braking action: (no units)	—	—'

On page 180, Annex III, point (6), in the amendments to Subpart B, Section 3, Chapter 1, point AIS.TR.330 NOTAM, point (b)(7), of Annex VI to Implementing Regulation (EU) 2017/373:

for: '(7) parachuting when in uncontrolled airspace under visual flight rules (VFR), nor when in controlled airspace at promulgated sites or within danger or prohibited areas;',

read: '(7) parachuting when in uncontrolled airspace under visual flight rules (VFR), or when in controlled airspace at promulgated sites or within danger or prohibited areas;'.

On page 197, Annex III, point (6), in the amendments to Appendix 1, Part 1, title of point GEN 3.4, of Annex VI to Implementing Regulation (EU) 2017/373:

for: '**GEN 3.4 Communication services**',

read: '**GEN 3.4 Communication and navigation services**'.

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