

COMMISSION IMPLEMENTING REGULATION (EU) 2023/1618**of 8 August 2023****imposing a definitive anti-dumping duty on imports of tungsten carbide, fused tungsten carbide and tungsten carbide simply mixed with metallic powder originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

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

Whereas:

1. PROCEDURE**1.1. Previous investigations and measures in force**

- (1) By Council Regulation (EEC) No 2737/90 ⁽²⁾, the Council imposed a definitive anti-dumping duty of 33% on imports of tungsten carbide and fused tungsten carbide, originating in the People's Republic of China ('PRC', 'China' or 'the country concerned') ('the original measures'). The investigation that led to the imposition of the original measures will hereinafter be referred to as 'the original investigation'. By Commission Decision 90/480/EEC ⁽³⁾, the European Commission ('the Commission') accepted undertakings given by two major exporters concerning the product subject to measures.
- (2) Following the withdrawal of the undertakings by the two Chinese exporters concerned, the Council, by Council Regulation (EC) No 610/95 ⁽⁴⁾, amended Regulation (EEC) No 2737/90 so that the definitive duty of 33% became applicable also on tungsten carbide and fused tungsten carbide exported to the Union by them.
- (3) By Council Regulation (EC) No 771/98 ⁽⁵⁾, following an expiry review, the original measures were extended for another five-year period.
- (4) By Council Regulation (EC) No 2268/2004 ⁽⁶⁾, following an expiry review, the Council extended the original measures for another five-year period.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Council Regulation (EEC) No 2737/90 of 24 September 1990 imposing a definitive anti-dumping duty on imports of tungsten carbide and fused tungsten carbide originating in the People's Republic of China and definitively collecting the provisional duty (OJ L 264, 27.9.1990, p. 7).

⁽³⁾ Commission Decision 90/480/EEC of 24 September 1990 accepting undertakings given by certain exporters in connection with the anti-dumping proceeding concerning imports of tungsten carbide and fused tungsten carbide originating in the People's Republic of China and terminating the investigation with regard to the exporters in question (OJ L 264, 27.9.1990, p. 59).

⁽⁴⁾ Council Regulation (EC) No 610/95 of 20 March 1995 amending Regulations (EEC) No 2735/90, (EEC) No 2736/90 and (EEC) No 2737/90 imposing a definitive anti-dumping duty on imports of tungsten ores and concentrates, tungstic oxide, tungstic acid, tungsten carbide and fused tungsten carbide originating in the People's Republic of China, and definitively collecting the amounts secured by way of the provisional anti-dumping duty imposed by Commission Regulation (EC) No 2286/94 (OJ L 64, 22.3.1995, p. 1).

⁽⁵⁾ Council Regulation (EC) No 771/98 of 7 April 1998 imposing a definitive anti-dumping duty on imports of tungsten carbide and fused tungsten carbide originating in the People's Republic of China (OJ L 111, 9.4.1998, p. 1).

⁽⁶⁾ Council Regulation (EC) No 2268/2004 of 22 December 2004 imposing a definitive anti-dumping duty on imports of tungsten carbide and fused tungsten carbide originating in the People's Republic of China (OJ L 395, 31.12.2004, p. 56).

- (5) By Council Regulation (EC) No 1275/2005 ⁽⁷⁾, the Council amended the definition of the product scope to also cover tungsten carbide simply mixed with metallic powder.
- (6) By Council Implementing Regulation (EU) No 287/2011 ⁽⁸⁾, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 ⁽⁹⁾, the Council extended the measures for another five-year period.
- (7) By Commission Implementing Regulation (EU) 2017/942 ⁽¹⁰⁾, the Commission extended the anti-dumping measures on imports of tungsten carbide, fused tungsten carbide and tungsten carbide simply mixed with metallic powder originating in the PRC for another five-year period, following an expiry review pursuant to Article 11(2) of the basic Regulation ('the previous expiry review').

1.2. Request for an expiry review

- (8) Following the publication of a notice of impending expiry ⁽¹¹⁾, the Commission received a request for a review ('the request') pursuant to Article 11(2) of the basic Regulation.
- (9) The request for review was submitted on 25 February 2022 by Global Tungsten & Powders spol. s.r.o., H.C. Starck Tungsten GmbH, Tikomet Oy, Treibacher Industrie AG, Umicore Specialty Powders France and Wolfram Bergbau und Hütten AG ('the applicants') on behalf of the Union industry of tungsten carbide, fused tungsten carbide and tungsten carbide simply mixed with metallic powder, in the sense of Article 5(4) of the basic Regulation. The request was based on the grounds that the expiry of the measures would be likely to result in continuation or recurrence of dumping and recurrence of injury to the Union industry.

1.3. Initiation of an expiry review

- (10) Having determined, after consulting the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of an expiry review, on 1 June 2022, the Commission initiated an expiry review with regard to imports of tungsten carbide, fused tungsten carbide and tungsten carbide simply mixed with metallic powder originating in the PRC on the basis of Article 11(2) of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ⁽¹²⁾ ('the Notice of Initiation').

1.4. Review investigation period and period considered

- (11) The investigation of continuation or recurrence of dumping covered the period from 1 January 2021 to 31 December 2021 ('review investigation period'). The examination of trends relevant for the assessment of the likelihood of a recurrence of injury covered the period from 1 January 2018 to the end of the review investigation period ('the period considered').

⁽⁷⁾ Council Regulation (EC) No 1275/2005 of 26 July 2005 amending Regulation (EC) No 2268/2004 imposing a definitive anti-dumping duty on imports of tungsten carbide and fused tungsten carbide originating in the People's Republic of China (OJ L 202, 3.8.2005, p. 1).

⁽⁸⁾ Council Implementing Regulation (EU) No 287/2011 of 21 March 2011 imposing a definitive anti-dumping duty on imports of tungsten carbide, tungsten carbide simply mixed with metallic powder and fused tungsten carbide originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ L 78, 24.3.2011, p. 1).

⁽⁹⁾ Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51). This Regulation has been codified by the basic Regulation.

⁽¹⁰⁾ Commission Implementing Regulation (EU) 2017/942 of 1 June 2017 imposing a definitive anti-dumping duty on imports of tungsten carbide, fused tungsten carbide and tungsten carbide simply mixed with metallic powder originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 142, 2.6.2017, p. 53).

⁽¹¹⁾ Notice of the impending expiry of certain anti-dumping measures (OJ C 354, 3.9.2021, p. 2).

⁽¹²⁾ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of tungsten carbide, fused tungsten carbide and tungsten carbide simply mixed with metallic powder originating in the People's Republic of China (OJ C 217, 1.6.2022, p. 17).

1.5. Interested parties

- (12) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. In addition, the Commission specifically informed the applicants, other known Union producers, the known producers in the PRC and the authorities of the PRC, known importers, users, as well as associations known to be concerned, about the initiation of the expiry and invited them to participate.
- (13) Interested parties had an opportunity to comment on the initiation of the expiry review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.
- (14) One hearing was held with a user.

1.6. Comments on initiation

- (15) Comments were received from three Chinese producers, namely Chongyi Zhangyuan Tungsten Co., Ltd. ('Zhangyuan Tungsten'), Guangdong Xianglu Tungsten Co., Ltd. ('Xianglu Tungsten'), Xiamen Golden Egret Special Alloy (H.C.) Co., Ltd. ('Golden Egret'). The applicants also reacted to the claims raised by the three Chinese producers.
- (16) The Commission noted that these Chinese producers submitted their claims almost three months after the deadline for parties to submit comments on the request without any justification (i.e. on 26 September 2022). Nevertheless, to the extent possible, the Commission exceptionally addressed these claims.
- (17) Zhangyuan Tungsten, Xianglu Tungsten and Golden Egret claimed that the request lacked evidence that supported the likelihood of recurrence of dumping.
- (18) The Commission disagreed with this assessment and considered that the requirements for initiation of an investigation were met. The analysis of the request has shown that there was sufficient evidence at initiation stage pointing to a likelihood of continuation or recurrence of dumping should the anti-dumping measures applicable to imports from the PRC be allowed to lapse. The applicants submitted evidence that even though the imports from PRC had decreased since 2018, they still held a significant share of the total imports, as well as of the Union market. The applicants based their analysis not only on the spare capacity in the PRC, but also on the unfair pricing behaviour of the PRC on other markets. For the export price, the expiry review request used three methods, i.e., the average Chinese import price at TARIC level, average export price of an equivalent Chinese product as published in the publicly available Argus Metal Report and the average Chinese export price to all third countries. These three methods were found to be sufficiently substantiated to comply with the legal standard at initiation stage. Therefore, the claims that the request did not provide sufficient evidence were rejected.
- (19) Zhangyuan Tungsten, Xianglu Tungsten and Golden Egret claimed that the request lacked evidence concerning overall distortion of the tungsten sector and input prices in China. According to these three exporting producers, State ownership *per se* did not automatically lead to market distortions. Furthermore, the three Chinese producers claimed that the allegation in the request concerning State presence, control, restrictions, government intervention, which allegedly result in price distortion, were speculative. Furthermore, the three Chinese exporting producers claimed that the request did not include sufficient evidence to prove that raw material prices were distorted by government intervention. They also argued that the following two claims in the request were contradictory: (i) that China controlled over 60% of the world's tungsten ore reserves, produced 80% of the world output, imposed export restrictions and granted licenses to state-owned enterprises; and (ii) that, despite this, China still participated in the bidding process on the Union scrap metal markets to drive up the scrap metal prices to or above the Chinese Ammonium Paratungstate ('APT') prices. Finally, the three Chinese exporting producers further argued that China enjoyed a natural competitive advantage in terms of tungsten reserves and that (i) export restrictions and licences granted to State-owned enterprises worked in favour of the supply to the Union market because they protect the stability and availability of supply, (ii) they were intended to protect and secure mineral resources in China, and (iii) export licenses were granted irrespectively of the fact that the beneficiary companies were State-owned or not.

- (20) In this respect, the Commission noted that Article 2(6a)(d) of the basic Regulation sets out that when filing a request for a review in accordance with Article 11 of the basic Regulation, the Union industry may rely on the evidence of the Commission Staff Working Document on significant distortions in the economy of the PRC for the purpose of trade defence investigations, when meeting the standard of evidence in Article 5(9) of the basic Regulation, in order to justify the calculation of the normal value. The applicants also submitted evidence that the Government of China ('GOC') intervenes in the tungsten carbide sector and that these interventions lead to significant distortions in general and regarding specific production factors and costs of tungsten carbide producers. None of the three Chinese exporting producers provided any information that would have questioned this evidence. Furthermore, these parties did not further explain in what way the two statements mentioned in recital (19) were contradictory. The Commission considered thus that the applicants provided sufficient evidence in the request on the distortions of the tungsten sector and raw material prices justifying the initiation of the current review. Those claims were therefore rejected.
- (21) Zhangyuan Tungsten, Xianglu Tungsten and Golden Egret argued also that the request included insufficient evidence to prove the existence of circumvention and that the applicants' allegation of circumvention by imports of slightly modified products was not substantiated.
- (22) While no circumvention practices from Chinese exporting producers within the meaning of Article 13 of the basic Regulation have been established by the Commission, this has not been a substantial consideration based on which the current expiry review has been initiated. The Commission carried out the examination of the request based to the product scope as defined in the measures already in force and this claim was therefore rejected.
- (23) Zhangyuan Tungsten, Xianglu Tungsten and Golden Egret claimed that there was no evidence in the request to support the claim that China's spare capacity was of 18 000 tonnes.
- (24) The Commission noted that the request included information regarding the production capacity in China of 80 000 tonnes based on the Report on the Development of China's Tungsten Industry 2020 published by the China Tungsten Industry Association ⁽¹³⁾. The applicants also estimated the demand in China to 30 000 tonnes based on the market knowledge of the Union industry. By deducting from the production capacity the volume of demand in China and the total volume of Chinese exports, the applicants obtained the spare capacity in China. The Commission also analysed the spare capacity in the course of the investigation (see Section 4.1), resulting in higher volumes than originally calculated by the applicants in the request. The potential underestimation of spare capacity in the application did not imply that the Commission did not have sufficient evidence of likely injury, as this was only one among other elements that the Commission assessed.
- (25) On 4 May 2023 the applicants provided a correction for the calculation of the spare capacity in China reported in the request for review. It was explained that due to a clerical error (in the calculation of spare capacity the applicants inadvertently used the price data instead of the volume data) the applicants underestimated the spare capacity in China by initially estimating the spare capacity at 18 102 tonnes instead of 41 348 tonnes.
- (26) On 7 June 2023, Zhangyuan Tungsten, Xianglu Tungsten and Golden Egret claimed that the Union industry allegedly submitted revised data regarding export volume from China of tungsten carbide. It was stated that in the revision of the data the applicants did not specify the source of information and whether the HS codes used included also other types of related products. The company further asserted that the revised data understated the export volume data and overstated the domestic demand and that the revised data misled the Commission and other interested parties regarding the high spare capacity in China.
- (27) The Commission noted that the applicants did not change the data reported in the request for review for Chinese exports of tungsten carbide, but only corrected a clerical error. Therefore, the claim stated in recital (26) is factually wrong and therefore it was rejected.

⁽¹³⁾ <http://www.ctia.com.cn/en/news/31091.html>

- (28) In the same submission of 7 June 2023 Zhangyuan Tungsten, Xianglu Tungsten and Golden Egret questioned the authenticity and the reliability of the data used by the applicants for the calculation of the spare capacity in the request for review. In particular, it was stated that the request for review did not indicate an official source for the Chinese demand amounting to 30 000 tonnes. Furthermore, it was stated that the source for the production capacity in China used by the applicants in the request for review was not authentic and reliable as it came from a company and not an industry association and therefore the Commission should disregard it. Zhangyuan Tungsten, Xianglu Tungsten and Golden Egret asked the Commission to use instead the data allegedly reported by the China Tungsten Industry Association regarding consumption in China of tungsten carbide which they included in a table in their submission.
- (29) The Commission noted that Zhangyuan Tungsten, Xianglu Tungsten and Golden Egret raised the claim regarding the source of the data for the Chinese demand and the production capacity in China of tungsten carbide in the request for review 10 months after the deadline for parties to submit comments on the request. Furthermore, while the source of the information provided on 7 June 2023 regarding the consumption of tungsten carbide in China was allegedly the China Tungsten Industry Association, in their submission Zhangyuan Tungsten, Xianglu Tungsten and Golden Egret did not provide any supporting evidence in this regard. Therefore, the claim was rejected.
- (30) The three Chinese exporting producers claimed further that there was evidence, which they provided in their submission, showing that the main export destinations for Chinese tungsten producers were Japan and South Korea, which accounted for more than 60% of the Chinese exports of tungsten carbide (with the exception of 2020 which was impacted by restrictions related to Covid-19). Moreover, export volumes to Japan and South Korea increased again substantially after 2020. Therefore, the three exporting producers argued that it was reasonable to foresee that China's exports of tungsten carbide to Japan and South Korea will continue to maintain a strong growth trend in addition to the increase of Chinese domestic market. The Chinese exporting producers also argued that this formed a sharp contrast between imports from China to the Union, as the Union market represented only a share of Chinese exports when compared to other Chinese export markets.
- (31) The Commission noted that the arguments provided by the three Chinese exporting producers concerning future export trends to Japan and South Korea were not supported by any evidence and were therefore purely speculative. The Commission considered that the applicants provided sufficient evidence regarding exports to other third country markets. These arguments were therefore rejected. The same exporting producers claimed that the request did not include sufficient evidence of likelihood of recurrence of injury. In particular, they stated that there was no supporting evidence in the request for the applicants' claims that without the measures, the development of the secondary raw materials (i.e. scrap) and of the creation of different business models (normal agreements or outright business vs. tolling agreements or conversion business) would not have been possible.
- (32) The applicants in their request described two main different business models of the Union industry, that is, the normal agreements or outright business (the Union industry purchases the raw material), and tolling agreements or conversion business (the customer of tungsten carbide remains the owner of the raw material and pays a processing fee to the Union producers for the conversion of the raw material into tungsten carbide). Furthermore, the applicants provided sufficient evidence regarding the profitability of both business models. Even though the profitability of the outright business model was positive during the period covered by the request, it decreased significantly between 2018 and 2020, whereas the profitability of the conversion business model improved even though it remained negative throughout the whole period covered by the request. The applicants also provided evidence that the Union industry's sales on the Union market of tungsten carbide produced from scrap represented a significant share in total sales volume in the Union, intending to reduce dependence on imports of raw materials from China and to contribute to the EU's green agenda through recycling activities.

- (33) Furthermore, according to the evidence provided in the request, the volumes of the product concerned from the PRC that would penetrate the EU market in the absence of measures are likely to increase due to the existence of unused capacity in the country concerned. The applicants provided sufficient evidence that the production capacity in the PRC has increased by more than 50% since the latest expiry review and that it could fulfil its domestic supply of tungsten carbide more than twice. If the measures were allowed to expire, Chinese import prices could undercut the Union industry's prices and would result in recurrence of injury to the Union industry.
- (34) The Commission therefore considered the evidence in the request concerning the likelihood of recurrence of injury as sufficient evidence at the stage of the request, which was reasonably available to the applicants. Thus, the claim was rejected.
- (35) The three exporting producers further argued that anti-dumping measures would have achieved their intended effects. In particular, they stated that compared to the previous expiry review, imports from China decreased, whereas sale volumes and market shares of the Union industry and imports from other third countries increased. There was therefore no continuation of injury. The recurrence of injury was also not likely, because imports from China remained too low and, as shown in the sampling replies, the Union market was not an important export market for Chinese exporting producers. In their opinion, the fact that the Union industry claimed a deterioration of its competitive situation could not reconcile with the effectiveness of the measures.
- (36) In respect to these claims, the Commission noted that the purpose of anti-dumping measures is to eliminate the trade distorting effects of injurious dumping and to restore effective competition by having a positive effect on the state of the Union industry. The fact that the Union industry did not suffer material injury in the period covered by the request does not exclude that such injury may recur should measures be allowed to lapse. In addition, when assessing material injury, not all injury factors must show a deteriorating trend, but the state of the Union industry as a whole has to be considered. Thus, the fact that the Union industry's market share increased on its own does not allow the conclusion that it did not suffer material injury. In addition, the Notice of Initiation clarifies in point 4.2. that the applicants alleged the likelihood of recurrence of injury from the PRC, and not its continuation. In this respect the applicants have provided sufficient evidence that, should measures be allowed to lapse, the current import level of the product under review from the country concerned to the Union was likely to increase due to the existence of unused production capacity in the PRC.
- (37) Furthermore, the applicants submitted evidence that even though the imports from the PRC had decreased during the period of the request, the Union market remained the fourth main exporting destination of the product concerned for the PRC even with measures in place. Moreover, according to the evidence provided in the request and analysed by the Commission, the volumes of the product concerned from the PRC that would penetrate the Union market in the absence of measures were likely to increase due to the existence of unused capacity in the country concerned. As stated, the Commission considered the evidence present in the request concerning the likelihood of recurrence of injury as sufficient evidence at the stage of the request, which was reasonably available to the applicants. Therefore, this claim was rejected.
- (38) The three exporting producers argued that the deterioration experienced by the Union industry could not be attributed to the Chinese exports. In particular, they claimed that (i) production, capacity utilization and sale price of the Union industry moved in line with consumption; (ii) the overall decrease in sale price was linked to a certain extent to the decrease in cost of production and not to price pressure from Chinese exports; (iii) the performance of the conversion business was not influenced by Chinese imports; and (iv) the profitability of the Union industry witnessed an increase when imports from China were at their lowest level.
- (39) The Commission recalled that the evidence of the applicants in the request did not point to material injury but to the likelihood of recurrence of injury should measures be allowed to lapse. Therefore, the examination of causation during the RIP is not necessary in this case. The Commission also considered that as explained in recital (37), there was sufficient evidence in the request showing the likelihood of recurrence of injury from exports from China should measures be allowed to lapse. Therefore, these claims were misplaced and were rejected.

1.7. Sampling

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

1.7.1. Sampling of Union producers

- (41) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of representability in terms of size of the production and sales volume on the free market in the Union in the review investigation period and geographic location. This sample consisted of three Union producers. The sampled Union producers accounted for more than 69% of the estimated total volume of Union production and more than 59% of the estimated total volume of sales in the Union and they also ensured a geographical spread. In accordance with Article 17(2) of the basic Regulation, the Commission invited interested parties to comment on the provisional sample. No comments were received. Therefore, the provisional sample was confirmed. The sample is representative of the Union industry.

1.7.2. Sampling of importers

- (42) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (43) Six companies provided the requested information and agreed to be included in the sample. However, all of them were users and were thus requested to complete the users' questionnaire. Therefore, the Commission decided that sampling of unrelated importers was not necessary.

1.7.3. Sampling of exporting producers in the PRC

- (44) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the PRC to the European Union to identify and/or contact other producers, if any, that could be interested in participating in the investigation.
- (45) Three exporting producers in the country concerned provided the requested information and agreed to be included in the sample. In view of the limited number of exporting producers, the Commission decided that sampling was not necessary. No comments were made.

1.8. Replies to the questionnaire

- (46) The Commission sent a questionnaire concerning the existence of significant distortions in the PRC within the meaning of Article 2(6a)(b) of the basic Regulation to the GOC.
- (47) The Commission invited the three exporting producers replying to the sample, the three sampled Union producers and known users to complete the relevant questionnaires. The same questionnaires, together with the questionnaire for unrelated importers, had also been made available online ⁽¹⁴⁾ on the day of initiation. In addition, the Commission sent a questionnaire to the applicants.
- (48) Questionnaire replies were received from the applicants, the three sampled Union producers and seven users. None of the three Chinese exporting producers that provided information for the selection of a sample replied to the questionnaire. Likewise, the GOC did not reply to the questionnaire.

⁽¹⁴⁾ <https://tron.trade.ec.europa.eu/investigations/case-view?caseId=2604>

1.9. Verification

- (49) The Commission sought and verified all the information deemed necessary for the determination of likelihood of continuation or recurrence of dumping and injury, and of the Union interest. The Commission carried out verification visits pursuant to Article 16 of the basic Regulation ⁽¹⁵⁾:

Union producers

- Tikomet Oy, Jyväskylä, Finland
- H.C. Starck Tungsten GmbH, Goslar, Germany
- Wolfram Bergbau und Hütten AG, Mittersill and Sankt Martin im Sulmtal, Austria

Users

- Betek GmbH & Co. KG, Aichhalden, Germany.

1.10. Subsequent procedure

- (50) On 7 June 2023, 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 tungsten carbide, fused tungsten carbide and tungsten carbide simply mixed with metallic powder originating in the PRC ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure. Comments were received from Zhangyuan Tungsten, Xianglu Tungsten and Golden Egret, as well as Betek GmbH & Co. KG ('Betek'). The applicants also reacted to the comments made by Zhangyuan Tungsten, Xianglu Tungsten and Golden Egret and by Betek.
- (51) On the day of the final disclosure, i.e. on 7 June 2023, Zhangyuan Tungsten, Xianglu Tungsten and Golden Egret also submitted additional comments on the request for review. These comments are also addressed in this Regulation.
- (52) Following final disclosure, interested parties were granted an opportunity to be heard as provided for in point 5.8 of the Notice of Initiation. A hearing on final disclosure took place with Betek and the Union industry.
- (53) Based on the comments on final disclosure received, the Commission decided not to implement in the context of this investigation a restructuring of the TARIC codes and descriptions within CN code 3824 30 00, initially proposed in the final disclosure. Due to the complexity and the technical nature of the issue, the matter required further analysis which could not be dealt with within the statutory time limit of the expiry review investigation. On 30 June 2023, the Commission informed all interested parties of this decision by a Note for the File.

2. PRODUCT UNDER REVIEW, PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product under review

- (54) The product under review is the same as in the previous expiry review, namely tungsten carbide, fused tungsten carbide and tungsten carbide simply mixed with metallic powder, currently falling under CN codes 2849 90 30 and ex 3824 30 00 (TARIC code 3824 30 00 10) ('the product under review').
- (55) Tungsten carbide, fused tungsten carbide and tungsten carbide simply mixed with metallic powder are compounds of carbon and tungsten produced by heat treatment. The product under review is an intermediate product, used as input material in the manufacture of hard metal components such as cemented carbide cutting tools and high-wear components, in abrasion-resistant coatings, in bits for oil drilling and mining tools as well as in dies and tips for the drawing and forging of metals.

⁽¹⁵⁾ The Commission also verified the macro-economic data in the premises of the legal representative of the applicants.

- (56) During the period considered, the product under review was manufactured in the Union either from 'virgin' or 'primary' raw materials (which are, from upstream to downstream: ore, tungsten concentrate, and other intermediate compounds, namely APT and tungsten oxide – 'WO₃') under a process called 'virgin production', or from 'secondary' raw materials, namely scrap, under a process called 'recycling production'. The hard metal scrap is generated in the production process of hard metal companies, in the production process of tools and at end users of hard metal products. In the tungsten industry, the scrap can be recycled by using either the chemical recycling or the zinc reclamation process.
- (57) The virgin production and the chemical recycling share the same production process. The only difference lies in the starting point of the process: while the virgin production can start at any level of the production process (i.e. from the ore, which is the initial upstream products, or from downstream intermediate products, which are tungsten concentrate, APT and WO₃), the chemical recycling in its first step transforms the scrap always in APT.
- (58) Instead, the zinc reclamation process is based on the reaction of zinc with the minor quantity of cobalt present in the scrap in a furnace. In the zinc reclamation process, the quality of the input (i.e., the scrap used) determines the quality of the output (i.e., the tungsten carbide). However, as ascertained in the previous expiry review ⁽¹⁶⁾, tungsten carbide obtained from the zinc reclamation process, has similar physical and chemical characteristics and similar applications as tungsten carbide manufactured through virgin production or from scrap through the chemical recycling process.
- (59) The type of tungsten carbide purchased and sold in commercial transactions is identified based on its 'grade', i.e., based on the dimensions of its grains, from coarse grade to ultrafine and nano grades.

2.2. Product concerned

- (60) Product concerned by this investigation is the product under review originating in the PRC ('the product concerned').

2.3. Like product

- (61) As established in the previous expiry review, this expiry review investigation confirmed that the following products have the same basic physical and chemical characteristics as well as the same basic uses:
- the product concerned when exported to the Union;
 - the product under review produced and sold on the domestic market of the PRC; and
 - the product under review produced and sold in the Union by the Union industry.
- (62) These products are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

2.4. Claims regarding product scope

- (63) Technogenia S.A.S. ('Technogenia'), a user which came forward within the time limits granted but did not provide a questionnaire reply, claimed that the only known producer of fused tungsten carbide in the Union stopped its production in 2022 and that, therefore, fused tungsten carbide was not produced in the Union anymore. Since the purchase of fused tungsten carbide represented a considerable percentage of its turnover and there were no alternative raw materials, this user requested the Commission to repeal the anti-dumping measures on fused tungsten carbide from China. China is still producing fused tungsten carbide.

⁽¹⁶⁾ Commission Implementing Regulation (EU) 2017/942, recital (37).

- (64) The Commission recalled that in an expiry review in accordance with Article 11(2) of the basic Regulation, the investigation is limited to the determination as to whether measures should be extended or not based on the conditions set out in this Article, while any amendment of measures in place, including their scope, can only be investigated in the framework of an interim review in accordance with Article 11(3) of the basic Regulation.
- (65) The Commission recalled however, that fused tungsten carbide is part of the product scope of the anti-dumping measures since the original investigation and was also subject to the original measures. The need for the continued inclusion in the product scope of fused tungsten carbide was assessed a number of times by the Commission in several expiry review investigations ⁽¹⁷⁾.
- (66) In the context of the current investigation, the Union industry confirmed that, at the time of the investigation, there was no production of fused tungsten carbide in the Union anymore. However, the current investigation also confirmed that tungsten carbide and fused tungsten carbide are partially interchangeable (tungsten carbide and fused tungsten carbide are interchangeable in surface hardening and coating but not interchangeable in the production of cemented carbide, where only tungsten carbide is used) and therefore fused tungsten carbide cannot be excluded from the product scope even if an expiry review investigation would legally allow such exclusion. Therefore, the Commission rejected this claim.

3. DUMPING

3.1. Preliminary remarks

- (67) As mentioned in recital (48), none of the exporters/producers from the PRC cooperated in the investigation. Therefore, on 12 August 2022 the Commission informed the authorities of the PRC that due to the absence of cooperation, the Commission might apply Article 18 of the basic Regulation concerning the findings with regard to the PRC. The Commission did not receive any comments or requests for an intervention of the Hearing Officer in this regard.
- (68) Consequently, in accordance with Article 18 of the basic Regulation, the findings in relation to the likelihood of continuation or recurrence of dumping were based on facts available, in particular the information received in the request, the information received from the Union producers, and from available statistics, namely those from the 14(6) and the Global Trade Atlas ('GTA') ⁽¹⁸⁾ databases.
- (69) During the review investigation period, imports of tungsten carbide from the PRC continued. According to Eurostat, imports of tungsten carbide from the PRC accounted for about 2,2% of the Union market in the review investigation period compared to 5,3% market share during the original investigation period and 8,9% during the previous expiry review. In absolute terms the level of imports decreased since the previous review but nonetheless remained at substantial levels above the *de minimis* threshold defined in Article 5(7) of the basic Regulation. The Commission concluded that such volume of imports was sufficiently representative to examine whether dumping continued during the review investigation period.

3.2. Procedure for the determination of the normal value under Article 2(6a) of the basic Regulation for the imports of the product under review originating in the PRC

- (70) Given the sufficient evidence available at the initiation of the investigation tending to show, with regard to the PRC, the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission initiated the investigation on the basis of Article 2(6a) of the basic Regulation.

⁽¹⁷⁾ Council Regulation (EC) No 771/98, recital (11); Council Regulation (EC) No 2268/2004, recitals (17)-(19); and Commission Implementing Regulation (EU) 2017/942, recital (196).

⁽¹⁸⁾ <http://www.gtis.com/gta/secure/default.cfm>

- (71) In order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions, the Commission sent a questionnaire to the GOC. In addition, in point 5.3.2 of the Notice of Initiation, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the *Official Journal of the European Union*. No questionnaire reply was received from the GOC and no submission on the application of Article 2(6a) of the basic Regulation was received within the deadline. Subsequently, on 12 August 2022 the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in the PRC.
- (72) In point 5.3.2 of the Notice of Initiation, the Commission also specified that, in view of the evidence available, it might need to select an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks and suggested Türkiye and Russia in that regard based on the information of the request. The Commission further stated that it would examine other possibly appropriate countries in accordance with the criteria set out in first indent of Article 2(6a) of the basic Regulation.
- (73) On 9 March 2023, the Commission informed interested parties on the relevant sources it intended to use for the determination of the normal value in a Note to the file ('the Note'), with Türkiye as a representative country. It also informed interested parties that, given that it could not identify any producers of tungsten carbide with readily available financial data in appropriate representative countries, it would establish selling, general and administrative costs ('SG&A') and profits based on data of companies active in the industry sector of basic precious and other non-ferrous metals that was published by the Turkish Central Bank, as per the request for review. The sector of basic precious and other non-ferrous metals was considered as the general category as the product under review.
- (74) In their comments to the Note, the applicants claimed that the Commission should take into account the benchmark of Fastmarkets or Argus data prices in Europe instead of the Argus Metal data obtained from the National Minerals Information Center of the U.S. Geological Survey. They further requested to consider depreciation, spare parts, and others (i.e., consumables such as acids, liquors or gases, as well as maintenance costs and costs for waste) in the calculation of consumables. With regards to direct and indirect labour, the applicants requested to calculate the cost for each category of personnel. These comments have been addressed in recitals (124) to (125), (128) to (129) and (134).
- (75) In the Note, the Commission presented the main factors of production. In the absence of cooperation from the Chinese exporting producers, the Commission identified the main factors of production based on the information contained in the request.

3.3. Normal value

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

3.3.1. Existence of significant distortions

- (79) In a recent investigation concerning the tungsten sector in the PRC ⁽¹⁹⁾, the Commission found that significant distortions in the sense of Article 2(6a)(b) of the basic Regulation were present.
- (80) In that investigation, the Commission found that there is substantial government intervention in the PRC resulting in a distortion of the effective allocation of resources in line with market principles ⁽²⁰⁾. In particular, the Commission concluded that in the tungsten sector not only does a substantial degree of ownership by the GOC persist in the sense of Article 2(6a)(b), first indent of the basic Regulation ⁽²¹⁾, but the GOC is also in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation ⁽²²⁾. The Commission further found that the State's presence and intervention in the financial markets, as well as in the provision of raw materials and inputs have an additional distorting effect on the market. Indeed, overall, the system of planning in the PRC results in resources being concentrated in sectors designated as strategic or otherwise politically important by the GOC, rather than being allocated in line with market forces ⁽²³⁾. Moreover, the Commission concluded that the Chinese bankruptcy and property laws do not work properly in the sense of Article 2(6a)(b), fourth indent of the basic Regulation, thus generating distortions in particular when maintaining insolvent firms afloat and when allocating land use rights in the PRC ⁽²⁴⁾. In the same vein, the Commission found distortions of wage costs in the tungsten sector in the sense of Article 2(6a)(b), fifth indent of the basic Regulation ⁽²⁵⁾, as well as distortions in the financial markets in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, in particular concerning access to capital for corporate actors in the PRC ⁽²⁶⁾.
- (81) Like in the previous investigation concerning the tungsten sector in the PRC, the Commission examined in the present investigation whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the request, as well as the Commission Staff Working Document on Significant Distortions in the Economy of the PRC for the Purposes of Trade Defence Investigations ⁽²⁷⁾ ('Report'), which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in the PRC's economy in general, but also the specific market situation in the relevant sector including tungsten carbide. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in the PRC, as also found by its previous investigations in this respect.
- (82) The request ⁽²⁸⁾ alleged that the Chinese economy, as a whole, is widely influenced and affected by various all-encompassing interventions by the GOC or other public authorities on various levels of government and the market, in view of which domestic prices and costs of the Chinese tungsten industry cannot be used in the present investigation.
- (83) The request provided examples of elements pointing to existence of distortions, as listed in the first to sixth dash of Article 2(6a)(b) of the basic Regulation. Referring to previous Commission investigation in the tungsten sector ⁽²⁹⁾, to the Report, as well as to additional sources, the applicants submitted that: (1) the Chinese State engages in an interventionist economic policy in pursuance of goals that coincide with the political agenda set by the Chinese

⁽¹⁹⁾ Commission Implementing Regulation (EU) 2019/1267 of 26 July 2019 imposing a definitive anti-dumping duty on imports of tungsten electrodes originating in the People's Republic of China following an expiry review under Article 11.

⁽²⁰⁾ Commission Implementing Regulation (EU) 2019/1267, recital (49).

⁽²¹⁾ Commission Implementing Regulation (EU) 2019/1267, recitals (56)-(60).

⁽²²⁾ Commission Implementing Regulation (EU) 2019/1267, recitals (61)-(64).

⁽²³⁾ Commission Implementing Regulation (EU) 2019/1267, recitals (65)-(73).

⁽²⁴⁾ Commission Implementing Regulation (EU) 2019/1267, recitals (74)-(77).

⁽²⁵⁾ Commission Implementing Regulation (EU) 2019/1267, recitals (78)-(80).

⁽²⁶⁾ Commission Implementing Regulation (EU) 2019/1267, recitals (81)-(90).

⁽²⁷⁾ Commission staff working document SWD (2017) 483 final/2, 20.12.2017, available at: [https://ec.europa.eu/transparency/documents-register/detail?ref=SWD\(2017\)483&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=SWD(2017)483&lang=en).

⁽²⁸⁾ Expiry review request under Article 11(2) of Regulation 2016/1036 on tungsten carbide from China. Submitted on 25 February 2022 by the EU WC Industry.

⁽²⁹⁾ Commission Implementing Regulation (EU) 2019/1267.

Communist Party ('CCP') rather than reflect the prevailing economic conditions in free market ⁽³⁰⁾; (2) the Chinese tungsten industry specifically is subject to a high level of government intervention and control, as well as a high share of state-owned enterprises ('SOEs'). The further request details, that the GOC sets annual mining quotas and production quotas for SOEs, transferring these quotas to lower level SOEs, private firms and Chinese-foreign joint ventures ⁽³¹⁾. Chinese tungsten producers are further organised in the China Tungsten Industry Association, which is part of the China Non-Ferrous Metals Industry Association underlining in its Articles of Association, that it adheres to party guidelines and policies, thus exercising control over the tungsten industry ⁽³²⁾. The China Tungsten Industry Association is also actively controlling the output of production, as well as influencing tenders to purchase tungsten concentrates ⁽³³⁾.

- (84) The request further elaborates on different examples of guiding plans that show the high level of government intervention into the tungsten industry. First, the request mentions the 13th Five-Year Plan ('FYP') which tasks industrial stakeholder, to further develop high temperature alloy materials, encourage the increase of production and export capacities in the non-ferrous metal industry and directly influence the production process of the non-ferrous metal industry ⁽³⁴⁾. The 14th FYP further promotes the optimization and structural adjustment of the raw material industries including non-ferrous metals ⁽³⁵⁾. The 13th Non-Ferrous FYP mentions tungsten as one of the industries supported by the GOC, outlines the creation of a group of champion enterprises and non-ferrous metal products that can integrate into foreign mid-to-high-end product supply chains, as well as promotes the innovation through the granting of subsidies for the industry sector ⁽³⁶⁾. The 13th Non-Ferrous FYP also provides for more quantitative targets, setting out strict governmental control of production capacity in the field of non-ferrous metals, outlining domestic reserve capacities for tungsten ore, setting the goal to improve production restrictions, adjusting and controlling mining volume control indicators for tungsten, foreseeing the management of rare earths, including tungsten, and strengthening overall control indicators to key rare materials ⁽³⁷⁾. The non-ferrous industries are also defined as encouraged industries under the Made in China 2025 initiative, thus supported by different State and bank funds, with the aim to providing support to the encouraged industries ⁽³⁸⁾.
- (85) The request also further points out State intervention in selected provinces, such as in Hebei, Jiangxi and Hunan. Indeed, the 13th FYP for Mineral Resources lists tungsten in a list of strategic minerals. The GOC consolidates tungsten resource bases in south Jiangxi and Hunan, to stabilize the scale of mining operations and limit the overall mining volume tungsten ore, sets out percentage targets for medium to large-sized mines and stabilizes the level of domestic effective supplies of tungsten ⁽³⁹⁾. The Hebei 2016 New Material Industry Development Plan further sets out the goal to create industry chains in Hebei, including a specific tungsten industry chain ⁽⁴⁰⁾. The 14th FYP for the non-ferrous metal industry in Jiangxi lists the tungsten industry, including the tungsten carbide powder industry, as a key industry to develop ⁽⁴¹⁾. Lastly, tungsten is also included in the list of products subject to export duties, licensing export requirements as well as state trading ⁽⁴²⁾.
- (86) As stated in previous investigation of the Commission on tungsten, there is substantial government intervention in the Chinese tungsten market, as well as significant distortions of different factors of production. This includes significant control over various aspects of the economy, such as energy prices, land ownership, wages, finance, and credit ratings. The request outlines that the primary and secondary raw materials in China are distorted, referring to

⁽³⁰⁾ Expiry review request, para. 60.

⁽³¹⁾ Ibid., para. 62.

⁽³²⁾ Ibid., para. 63.

⁽³³⁾ Ibid., para. 65.

⁽³⁴⁾ Ibid., para. 70.

⁽³⁵⁾ Ibid., para. 71.

⁽³⁶⁾ Ibid., para. 72.

⁽³⁷⁾ Ibid., paras. 72-75.

⁽³⁸⁾ Ibid., para. 78.

⁽³⁹⁾ Ibid., para. 76.

⁽⁴⁰⁾ Ibid., para. 80.

⁽⁴¹⁾ Ibid., para. 81.

⁽⁴²⁾ Ibid., para. 82.

the recent Commission findings concerning distortions in the carbon black industry ⁽⁴³⁾. The request further outlines, that gas is produced and controlled in China mainly by SOEs and gas prices are regulated and controlled by the National Development and Reform Commission (NDRC) ⁽⁴⁴⁾. The NDRC further regulates domestic electricity prices, implementing a differentiated electricity price policy that encourages eligible users to make direct deals with power generation companies. The request provides the example of the Guiding Opinion on creating an excellent market environment, fostering the non-ferrous metal industry's structural adjustment and transformation and increasing benefits which outlines the continued goal of differentiated electricity price policy, favouring different industries ⁽⁴⁵⁾. Similarly, all land in China is owned by the State, and the government allocates it according to specific political goals and economic plans ⁽⁴⁶⁾.

- (87) In addition, the request outlines that wage costs in certain industries, such as tungsten, are distorted by the lack of collective organization rights for workers and employers, as well as China's non-ratification of International Labour Organization conventions. Trade unions are not independent from State authorities and collective bargaining and protection of workers' rights are rudimentary. Moreover, the request points out, that the household registration system restricts labour mobility ⁽⁴⁷⁾.
- (88) Access to finance is also granted by institutions that implement public policy objectives or are linked to the State. Chinese banks, for instance, comply with an explicit legal obligation to conduct their business in accordance with national economic and social development needs and under the guidance of State industrial policies. As a result, the availability and cost of capital are not equal for all players in the market, leading to a bias for lending to State-owned enterprises, large well-connected private firms, and key industrial sectors ⁽⁴⁸⁾. The request also points towards a study by the IMF that found credit ratings are distorted, as Chinese credit ratings systematically correspond to lower international ratings ⁽⁴⁹⁾.
- (89) Furthermore, the request alleges, that the government-induced distortions have resulted in price signals that are not the result of free market forces ⁽⁵⁰⁾. China's borrowing costs have been kept artificially low to stimulate investment growth ⁽⁵¹⁾, and credit ratings are often influenced by the firm's strategic importance to the government and the strength of any implicit guarantee by the government ⁽⁵²⁾. As a result, bad debt issues have been handled by rolling over debt, creating so-called 'zombie' companies, or by transferring the ownership of the debt ⁽⁵³⁾.
- (90) The GOC did not comment or provide evidence supporting or rebutting the evidence on the case file, including the Report and the additional evidence provided by the applicants, on the existence of significant distortions and/or appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand.
- (91) Specifically in the sector of the product under review a substantial degree of ownership by the GOC persists in the sense of Article 2(6a)(b), first indent of the basic Regulation.

⁽⁴³⁾ 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 2021 L366/62, recital 90.

⁽⁴⁴⁾ Expiry review request., para. 86.

⁽⁴⁵⁾ Ibid., para. 87.

⁽⁴⁶⁾ Ibid., para. 88.

⁽⁴⁷⁾ Ibid., para. 89.

⁽⁴⁸⁾ Ibid., para. 90.

⁽⁴⁹⁾ Ibid., para. 91.

⁽⁵⁰⁾ Ibid., para. 94.

⁽⁵¹⁾ Ibid., para. 93.

⁽⁵²⁾ Ibid., para. 91.

⁽⁵³⁾ Ibid., para. 95.

- (92) The investigation confirmed that China Minmetals Co. ⁽⁵⁴⁾, an SOE under SASAC, holds several of the biggest Chinese Tungsten Carbide producing companies, namely Zhuzhou Cemented Carbide Group Co., Ltd. ⁽⁵⁵⁾, Xiamen Golden Egret Special Alloy Co., Ltd. ⁽⁵⁶⁾ and Zigong Cemented Carbide Group Co., Ltd. ⁽⁵⁷⁾. The Zhuzhou Cemented Carbide Group is held by China Minmetals through the intermediary company China Tungsten Advanced Materials Co. Ltd. ⁽⁵⁸⁾, while Xiamen Golden Egret Special Alloy is held through the intermediary company Xiamen Tungsten Co., Ltd. ⁽⁵⁹⁾. Concerning direct distortions, China Minmetals has outlined in its 2021 annual report ⁽⁶⁰⁾ a general financial government grant of RMB 38.7 million ⁽⁶¹⁾, as well as a grant from the central financial fund to support zombie enterprises of RMB 46.8 million ⁽⁶²⁾. Xiamen Tungsten's 2022 annual report noted a financial government grant of RMB 300.3 million ⁽⁶³⁾. Furthermore, a public article on China Minmetals' website underscores the presence of the CCP in the company by outlining that: *'The Party organization of China Minmetals thoroughly implements the spirit of the national State-owned enterprise party building conference, [...] closely focuses on the jointly strengthening of the Party leadership together with improving corporate governance, [...] building a system of modern State-owned enterprises with Chinese characteristics (and) [...] effectively promote the deep integration of Party building work with production operations'* ⁽⁶⁴⁾.
- (93) In addition, given that CCP interventions into operational decision making have become the norm also in private companies ⁽⁶⁵⁾, with CCP claiming leadership over virtually every aspect of the country's economy, the influence of the State by means of CCP structures within companies effectively results in economic operators being under control and policy supervision of the government, given how far the State and Party structures have grown together in the PRC. The privately owned tungsten carbide producer OKE carbide ⁽⁶⁶⁾ has, for example, outlined in their 2022 half-year report ⁽⁶⁷⁾ governmental grants of RMB 44.7 million ⁽⁶⁸⁾.
- (94) This is apparent also at the level of the China Tungsten Industry Association ('CTIA') and the China Nonferrous Metals Industry Association ('CNIA'). According to Article 3 of their Articles of Association, CTIA, as well as CNIA, *'adheres to the overall leadership of the Communist Party of China [and] accepts the business guidance, supervision and management by the entities in charge of registration and management, by entities in charge of party building, as well as by the relevant administrative departments in charge of industry management'* ⁽⁶⁹⁾.
- (95) The investigation has further confirmed that the GOC is interfering with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation, establishing the existence of personal connections between producers of tungsten carbide and the CCP. For example, the Chairmen of the Board of Directors of Zhuzhou Cemented Carbide Group Co., Ltd. holds in parallel the position of Deputy Secretary of the Party Committee ⁽⁷⁰⁾. Similarly, the Chairmen of the Board of Xiamen Golden Egret Special Alloy Co., Ltd. does hold

⁽⁵⁴⁾ See at: <http://www.minmetals.com.cn/> (Accessed 11 May 2023).

⁽⁵⁵⁾ See at: <https://www.601.cn/> & https://aiqicha.baidu.com/company_detail_30386666552710 (Accessed 11 May 2023).

⁽⁵⁶⁾ See at: <http://www.gesac.com.cn> & https://aiqicha.baidu.com/company_detail_29681726678350 (Accessed 11 May 2023).

⁽⁵⁷⁾ See at: <http://www.zgcc.com/> (Accessed 11 May 2023).

⁽⁵⁸⁾ See at: <http://www.minmetals.com.cn/> (Accessed 11 May 2023).

⁽⁵⁹⁾ See at: <http://www.gesac.com.cn> & https://aiqicha.baidu.com/company_detail_29681726678350 (Accessed 11 May 2023).

⁽⁶⁰⁾ China Minmetals 2021 annual report. See at: http://static.sse.com.cn/disclosure/listedinfo/announcement/c/new/2022-03-15/600058_20220315_11_WhMHFybV.pdf (Accessed 11 May 2023).

⁽⁶¹⁾ Ibid., Page 189.

⁽⁶²⁾ Ibid., Page 181/244.

⁽⁶³⁾ Xiamen Tungsten 2022 annual report, Page 237/304 and page 255/304. See at: https://pdf.dcfw.com/pdf/H2_AN202304211585690834_1.pdf?1682102399000.pdf (Accessed 11 May 2023).

⁽⁶⁴⁾ See at: <http://www.minmetals.com.cn/ddjj/gztx/> (Accessed 11 May 2023).

⁽⁶⁵⁾ See for example Art. 33 of the CCP Constitution.

⁽⁶⁶⁾ See at: www.oke-carbide.com (Accessed 11 May 2023).

⁽⁶⁷⁾ OKE carbide 2022 half-year report. See at: <http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESHTOOCK/2022/2022-8/2022-08-10/8408838.PDF> (Accessed 11 May 2023).

⁽⁶⁸⁾ Ibid., Page 133.

⁽⁶⁹⁾ China Tungsten Industry Association. Available at: <https://www.ctia.net.cn/about/Charter/> (Accessed 11 May 2023) & China Nonferrous Metals Industry Association Articles of Association. Available at: www.chinania.org.cn (Accessed 11 May 2023).

⁽⁷⁰⁾ See at: <https://minmetalsungsten.com/news/940.html> (Accessed 11 May 2023).

the position of Secretary of the Party Committee ⁽⁷¹⁾. The interference of the CCP into the work of Xiamen Golden Eagle, through the party committee, is also apparent from the Articles of Association of its holding company, the SOE Xiamen Tungsten Co., Ltd., which outlines that: *'the Party organization ensure the function of of (sic) leadership core and political core, setting the direction, managing the overall situation and ensuring implementation'* ⁽⁷²⁾ and *'if the company's Party committee finds that the board of directors and the chairman's team intend to make decisions that do not comply with the party's line, principles, policies and national laws and regulations or may damage the interests of the State, the public interest and the legitimate rights and interests of the company and its employees, it is necessary to draw up an opinion to cancel or postpone the decision'* ⁽⁷³⁾.

(96) Further, policies discriminating in favour of domestic producers or otherwise influencing the market in the sense of Article 2(6a)(b), third indent of the basic Regulation are in place in the sector of the product under review. The investigation identified policy documents showing that the industry benefits from governmental guidance and intervention into the product under review as part of the tungsten sector.

(97) The tungsten industry keeps being regarded as a key industry by the GOC. This is confirmed in the numerous plans, directives and other documents focused mentioning tungsten, which are issued at national, regional and municipal level. The latest Chinese policy documents concerning the tungsten sector confirm the continued importance which GOC attributes to the sector, including the intention to intervene in the sector in order to shape it in line with the government policies. This is exemplified by the Ministry of Natural Resources ('MNR') Notice concerning the control of overall mining quantities and first batch of indicators applicable to rare earth and tungsten ore in 2023 ⁽⁷⁴⁾ which calls to *'strengthen the control and management of the total amount of mining'* ⁽⁷⁵⁾ and further outlines that *'the Ministry of Industry and Information Technology and the Ministry of Natural Resources have assigned the quotas for controlling the total amount of rare earth mining to all rare earth enterprise groups'* ⁽⁷⁶⁾. The document further specifies specific distributions of tungsten: *'In 2023, the total mining control indicator for the first batch of tungsten concentrates (65% tungsten trioxide content) is set at 63 000 tons'* ⁽⁷⁷⁾. The MNR Notice concerning the control of overall mining quantities and first batch of indicators applicable to rare earth and tungsten ore in 2022 ⁽⁷⁸⁾ does also specify the output of tungsten claiming that *'in 2022, the national tungsten concentrate (65% tungsten trioxide content) total mining control indicator was set at 109 000 tons, of which the key mining indicator was 81 170 tons, and the comprehensive utilization indicator was 27 830 tons'* ⁽⁷⁹⁾. Furthermore, the 14th FYP on developing raw materials industry ⁽⁸⁰⁾ does specify that *'domestic mineral resources will be developed rationally'*, outlining that *'measures will be taken to optimize the management mechanism applicable to the annual total mining control indicators, and reasonably regulate the mining scale of RE [Rare Earth], tungsten and other mineral resources'* ⁽⁸¹⁾, and further *'support dominant enterprises to establish recycling bases and industrial agglomeration areas for large-size steel scrap as well as renewable aluminium, copper, lithium, nickel, cobalt, tungsten and molybdenum'* ⁽⁸²⁾.

⁽⁷¹⁾ See at: https://aiqicha.baidu.com/company_detail_29681726678350 (Accessed 11 May 2023).

⁽⁷²⁾ Xiamen Tungsten Industry Articles of Association, Article 2. See at: <https://data.eastmoney.com/notices/detail/600549/AN202304211585690826.html#> (Accessed 11 May 2023).

⁽⁷³⁾ Ibid., Article 98.

⁽⁷⁴⁾ Notice 2023/48 concerning the control of overall mining quantities and first batch of indicators applicable to rare earth and tungsten ore in 2023. Available at: http://gi.mnr.gov.cn/202304/t20230412_2781069.html (Accessed 11 May 2023).

⁽⁷⁵⁾ Ibid., Section I.1.

⁽⁷⁶⁾ Ibid.

⁽⁷⁷⁾ Ibid., Section II.5.

⁽⁷⁸⁾ Notice 2022/138 concerning the control of overall mining quantities and first batch of indicators applicable to rare earth and tungsten ore in 2022. Available at: http://gi.mnr.gov.cn/202208/t20220817_2745900.html (Accessed 11 May 2023).

⁽⁷⁹⁾ Ibid., Section I.

⁽⁸⁰⁾ 14th FYP on raw material industry development. See at: https://www.miit.gov.cn/zwgk/zcwj/wjfb/tz/art/2021/art_2960538d19e34c66a5eb8d01b74cbb20.html (Accessed 11 May 2023).

⁽⁸¹⁾ Ibid., Section VII.1.

⁽⁸²⁾ Ibid.

- (98) Similar examples of the intention by the Chinese authorities to supervise and guide the developments of the tungsten sector can also be seen in different Chinese provinces, such as in Jiangxi, which outlines in the provinces 14th FYP on the high-quality development of non-ferrous metals ⁽⁸³⁾ that *‘during the 14th Five-Year Plan period, the average annual growth rate of the operating revenue of Jiangxi’s non-ferrous metals industry will stand at around ten percent. In terms of operating revenue, the non-ferrous metals industry will have a scale of more than RMB one trillion by around 2023, and the industries of tungsten, rare earth, and other strategic resources will have a scale of more than RMB 100 billion by 2025’* ⁽⁸⁴⁾, specifying that *‘the concentration level of copper, tungsten, rare earth, and other key industries will be further increased’* ⁽⁸⁵⁾. The FYP also dedicates a whole section on the development of tungsten ⁽⁸⁶⁾ aiming to develop *‘nano-scale, ultra-fine and ultra-coarse tungsten powder and tungsten carbide powder, high-purity APT, high-purity tungsten powder, as well as tungsten target materials, etc.’* ⁽⁸⁷⁾.
- (99) Similarly, the Henan 14th FYP on developing a high-quality manufacturing industry ⁽⁸⁸⁾ foresees to *‘extend the deep processing industry chain of tungsten, molybdenum, titanium and zirconium, and promote the extension towards high-end products’* ⁽⁸⁹⁾.
- (100) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives of supporting encouraged industries, including the production of the main raw materials used in the manufacturing of tungsten. Such measures impede market forces from operating freely.
- (101) The present investigation has not revealed any evidence that the discriminatory application or inadequate enforcement of bankruptcy and property laws according to Article 2(6a)(b), fourth indent of the basic Regulation in the sector of product under review would not affect the manufacturers of the product under review.
- (102) The tungsten sector is also affected by the distortions of wage costs in the sense of Article 2(6a)(b), fifth indent of the basic Regulation. Those distortions affect the sector both directly (when producing tungsten or the main inputs), as well as indirectly (when having access to inputs from companies subject to the same labour system in the PRC) ⁽⁹⁰⁾.
- (103) Moreover, no evidence was submitted in the present investigation demonstrating that the sector of the product under review is not affected by the government intervention in the financial system in the sense of Article 2(6a)(b), sixth indent of the basic Regulation. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.
- (104) Finally, the Commission recalls that in order to produce tungsten carbide, a number of inputs is needed. When the producers of tungsten carbide purchase/contract these inputs, the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system that applies across all levels of government and sectors.
- (105) As a consequence, not only the domestic sales prices of tungsten carbide is not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts I and II of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that, in itself was produced in the PRC by combining a range of factors of production, is exposed to significant distortions. The same applies for the input to the input and so forth.

⁽⁸³⁾ See Jiangxi 14th FYP on the high-quality development non-ferrous metals. Available at: http://www.jiangxi.gov.cn/art/2021/11/11/art_5006_3717077.html (Accessed 11 May 2023).

⁽⁸⁴⁾ Ibid., Section II.3.

⁽⁸⁵⁾ Ibid.

⁽⁸⁶⁾ Ibid. Section III.2.

⁽⁸⁷⁾ Ibid.

⁽⁸⁸⁾ Henan 14th FYP on developing a high-quality manufacturing industry. Available at: <http://fgw.henan.gov.cn/2022/01-27/2389710.html> (Accessed 11 May 2023).

⁽⁸⁹⁾ Ibid., Section IV.3.

⁽⁹⁰⁾ See Commission Implementing Regulation (EU) 2019/1267, recitals (78)-(80).

3.3.2. Representative country

3.3.2.1. General remarks

- (106) The choice of the representative country was based on the following criteria pursuant to Article 2(6a) of the basic Regulation:
- A level of economic development similar to the PRC. For this purpose, the Commission used countries with a gross national income per capita similar to the PRC on the basis of the database of the World Bank ⁽⁹¹⁾;
 - Production of the product under review in that country ⁽⁹²⁾;
 - Availability of relevant public data in the representative country;
 - Where there is more than one possible representative country, preference should be given, where appropriate, to the country with an adequate level of social and environmental protection.
- (107) As explained in recital (73), the Commission issued a Note on relevant sources to use for the determination of the normal value. This Note described the facts and evidence underlying the relevant criteria. The Note informed interested parties of the Commission's intention to consider Türkiye as an appropriate representative country in the present case if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation were confirmed.
- (108) With regard to the corresponding costs of production and sale of the product under review in an appropriate representative country, the expiry review request proposed to select either Russia or Türkiye as representative country.
- (109) According to the applicants, tungsten carbide is produced in Brazil, Canada, the PRC, Israel, Japan, Russia, South Korea, and the United States. Out of these countries, only Brazil and Russia represent upper-middle income countries according to the World Bank classification. The Commission further identified South Africa as an upper middle income with production of tungsten carbide. The Commission did not consider Russia as an appropriate representative country given the recent geo-political and economic developments. South Africa and Brazil were excluded due to non-available public data.
- (110) The Commission subsequently looked for countries with production of products of the same general category and/or sector of the product under review. As mentioned by the applicants, the production of the product under review belongs to the sector of non-ferrous metals. Relevant public data for producers in this sector was available for Russia and Türkiye.
- (111) The Commission considered further if it would be possible to use the main factors of production of tungsten carbide from appropriate representative countries.
- (112) According to the request, the production process of tungsten carbide is globally identical and produced either from primary (or virgin materials), i.e., ores or secondary materials, i.e. tungsten carbide scrap. However, depending on the upstream integration, producers might start the process either from primary materials, APT, or tungsten oxide ('WO₃').
- (113) The Commission decided to start its normal value calculations from the cost of APT, i.e., the main material, taking into account the information in the request and considering that it is the first production step irrespective of the source of the raw material. APT represents more than 90% of the total cost of manufacturing of the product under review.

⁽⁹¹⁾ World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>

⁽⁹²⁾ If there is no production of the product under review in any country with a similar level of development, production of a product in the same general category and/or sector of the product under review may be considered.

- (114) In line with Article 2(6a)(a) of the basic Regulation, the Commission searched the availability of import price data for APT in all upper-middle income class countries based on the HS code 2841 80. According to GTA APT was imported into Argentina, Brazil, Malaysia, Russia, Thailand, Türkiye and South Africa. However, import volumes in all these countries were very low and therefore considered not to be representative for establishing a reliable benchmark price. Moreover, imports into Argentina originated entirely from the PRC. The majority of imports into Russia (more than 75%) and South Africa (97%) originated also from the PRC. Since no sufficient representative information was available for any of the countries mentioned, the Commission decided to use an international benchmark for this input according to Article 2(6a)(a) second indent, based on Argus Metals International prices.
- (115) In light of the above, the Commission considered that Türkiye had detailed readily available data related to labour, energy, and SG&A and profit for an upper middle-income country available. The Commission considered Türkiye therefore as an appropriate representative country within the meaning of Article 2(6a) of the basic Regulation.
- (116) Interested parties were invited to comment on the appropriateness of Türkiye as a representative country.
- (117) Following the Note, no interested party made any comments regarding the selection of Türkiye as a representative country.
- (118) Finally, given the absence of cooperation and having established that Türkiye was an appropriate representative country, based on all of the above elements, there was no need to carry out an assessment of the level of social and environmental protection in accordance with the last sentence of Article 2(6a)(a) first indent of the basic Regulation.

3.3.2.2. Conclusion

- (119) In the absence of cooperation, as proposed in the expiry review request and given that Türkiye met the criteria laid down in Article 2(6a)(a), first indent of the basic Regulation, the Commission selected Türkiye as the appropriate representative country.

3.3.3. Sources used to establish undistorted costs

- (120) In the Note, the Commission listed the factors of production such as materials, energy and labour used in the production of the product under review by the exporting producers. The Commission also stated that, in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it would use GTA and the international benchmark Argus Metals International prices as published by the National Minerals Information Center of the U.S. Geological Survey to establish the undistorted cost of most of the two factors of production, notably the raw materials. In addition, the Commission stated that it would use the information from the Turkish Statistical Institute for establishing undistorted costs of labour, electricity, and gas suppliers in Türkiye.
- (121) Finally, the Commission stated that to establish SG&A costs and profit, it would use the information on average SG&A costs and profits for companies active in the industry sector of basic precious and other non-ferrous metals that is published by the Turkish Central Bank, as indicated in recital (73).

3.3.3.1. Undistorted costs and benchmarks

3.3.3.1.1. Factors of production

- (122) Considering all the information based on the request and subsequent information collected during the proceeding, the following factors of production and their sources have been identified in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

Table 1

Factors of production of tungsten carbide

Factor of Production	Commodity Code in Türkiye	Undistorted value (RMB)	Unit of measurement
Raw materials			
Ammonium paratungstate	2841 8010	219,12	kg
Labour			
Labour cost per man-hour	N/A	34,88	Hour
Energy			
Electricity	N/A	0,50	kWh
Gas	N/A	1,61	m ³

3.3.3.1.2. Raw materials

- (123) In order to establish the undistorted price of the main raw material APT at the gate of a representative country producer, the Commission noted that imports of APT into Türkiye were insignificant and thus could not be considered representative, as explained in recital (114). The Commission used the weighted average import price based on the international benchmark Argus Metals International prices, obtained from the National Minerals Information Center of the U.S. Geological Survey ⁽⁹³⁾. In this case, even if the benchmark may include imports from distorted sources, the Commission recalled that, in the context of an expiry review, there is no need to re-calculate duties; only to establish likelihood of dumping. Therefore, the Commission considered it appropriate to use Argus Metals International prices as a benchmark in this case.
- (124) Following the Note, the applicants requested to use the Fastmarkets or Argus data for APT prices in Europe instead of the Argus Metal data obtained from the National Minerals Information Center of the U.S. Geological Survey. They argued that in Türkiye, APT is primarily traded according to Fastmarkets quotations for (wider) Europe and not the US.
- (125) The Commission noted that in the request only a summary of the average APT was provided for the period of request, since no permission was received from the copyright holder Fastmarkets to use the data during the investigation. Considering that according to Article 2(6a)(a) of the basic Regulation, the data used has to be publicly available, the Commission based the normal value calculation on the APT benchmark based on Argus Metals International prices obtained from the National Minerals Information Center of the U.S. Geological Survey. The Commission noted also that the difference between the benchmark of Fastmarkets and the U.S. Geological was minor. Consequently, the difference in any dumping margin calculation would have been minor (1%).
- (126) Normally, domestic transport cost should also be added to these import prices. However, considering the nature of expiry review investigations, which are focused on finding whether dumping continued during the review investigation period or could reoccur, rather than finding its exact magnitude, the Commission decided that adjustments for domestic transport, in this case, were unnecessary. Such adjustments would only result in increasing the normal value and hence of the dumping margin.

⁽⁹³⁾ The benchmark is available at <https://www.usgs.gov/centers/national-minerals-information-center/tungsten-statistics-and-information>.

3.3.3.1.3. Labour

- (127) To establish the benchmark for labour costs the Commission used the most recent statistics published by the Turkish Statistical Institute ⁽⁹⁴⁾. This institute publishes detailed information on labour costs in different economic sectors in Türkiye. The Commission established the benchmark based on hourly labour costs for 2020 or the economic activity 'Manufacture of basic metals' NACE code C.24 according to the NACE Rev.2 classification. The values were further adjusted for inflation using the domestic producer price index ⁽⁹⁵⁾ to reflect the costs for the review investigation period.
- (128) Following the Note, the Union industry argued that a detailed breakdown of personnel types should be used for the purpose of the dumping calculation.
- (129) The Commission rejected this comment as the Turkish Statistical Institute does not provide such detailed breakdown, considering the fact that this is an expiry review and as noted above it is not necessary to calculate the exact magnitude of dumping.

3.3.3.1.4. Energy

- (130) To establish the benchmark price for electricity and gas, the Commission used prices for companies (industrial users) in Türkiye published by the Turkish Statistical Institute ⁽⁹⁶⁾. The benchmark was established based on the price for electricity and gas, published on 31 March 2022. The price referred to is the average for 2021. The Commission used the data on the industrial electricity and gas prices in the corresponding consumption bands, net of value added tax.

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

- (131) According to Article 2(6a)(a) of the basic Regulation, '*the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits*'. In addition, a value for manufacturing overhead costs needs to be established to cover costs not included in the factors of production referred to above.
- (132) In order to establish an undistorted value of the manufacturing overheads and given the absence of cooperation from the Chinese producers, the Commission used facts available in accordance with Article 18 of the basic Regulation. Therefore, based on the data provided by the applicants, the Commission established the ratio of manufacturing overheads to the total manufacturing. This percentage was then applied to the undistorted value of the cost of manufacturing to obtain the undistorted value of manufacturing overheads.
- (133) For establishing an undistorted and reasonable amount for SG&A and profit, the Commission relied on the most recent available financial data for companies active in the industry sector of basic precious and other non-ferrous metals that is published by the Turkish Central Bank ⁽⁹⁷⁾. As mentioned in recital (121), this sector is considered as the general category as the product under review. The Commission used the SG&A of 9,50% and profit of 6,61% of the cost of goods sold ('COGS').
- (134) Following the Note, comments were received from the Union industry to consider spare parts and other raw materials, as well as depreciation in the manufacturing overheads. The Commission took these comments into account in the dumping calculation as described in recital (137).

3.3.3.2. Calculation of the normal value

- (135) On the basis of the above, the Commission constructed the normal value per product type on an *ex-works* basis in accordance with Article 2(6a)(a) of the basic Regulation.

⁽⁹⁴⁾ The labour costs are available at <https://data.tuik.gov.tr/Bulten/DownloadIstatistikselTablo?p=tg4QGRdNcBVDQo/mmOOyD/8g3GIHdKhWMOsMnhh4V/APyz9UrZvk0kK90vktK5jo>.

⁽⁹⁵⁾ <https://data.tuik.gov.tr/Bulten/Index?p=Consumer-Price-Index-December-2021-45789>

⁽⁹⁶⁾ <https://data.tuik.gov.tr/Kategori/GetKategori?p=cevre-ve-enerji-103&dil=2>; <https://data.tuik.gov.tr/Bulten/Index?p=Electricity-and-Natural-Gas-Prices-Period-II:-July-December,-2021-45566>; <https://data.tuik.gov.tr/Bulten/Index?p=Electricity-and-Natural-Gas-Prices-Period-I:-January-June,-2021-37459>

⁽⁹⁷⁾ <https://www3.tcmb.gov.tr/sektor/#/en>

- (136) First, the Commission established the undistorted manufacturing costs. In the absence of cooperation by the exporting producers, the Commission relied on the information provided by the applicants in the request on the usage of the two main raw materials for the production of the product under review. For labour and energy, the Commission relied on the information provided by one Union producer.
- (137) Once the undistorted manufacturing cost was established, the Commission added the manufacturing overheads, SG&A and profit. Manufacturing overheads were determined based on data provided by the applicants. SG&A and profit were determined based on the most recent available financial data for companies active in the industry sector of basic precious and other non-ferrous metals that is published by the Turkish Central Bank ⁽⁹⁸⁾ (see Section 3.3.2). The Commission added the following items to the undistorted costs of manufacturing:
- Manufacturing overheads, which accounted in total for 4% of the direct costs of manufacturing;
 - Consumables were taken into account for 1% of the direct costs of manufacturing;
 - SG&A and other costs, which accounted for 9,50% of the COGS of Turkish companies active in the industry sector of basic precious and other non-ferrous metals, and
 - Profits, which amounted to 6,61% of the COGS as achieved by Turkish companies active in the industry sector of basic precious and other non-ferrous metals, were applied to the total undistorted costs of manufacturing.
- (138) On that basis, the Commission constructed the normal value per product type on an *ex-works* basis in accordance with Article 2(6a)(a) of the basic Regulation.

3.4. Export price

- (139) As mentioned above in recital (48), due to the non-cooperation of the Chinese exporting producers, the export price was based on facts available, in accordance with Article 18 of the basic Regulation, i.e. on the information from Eurostat.
- (140) Exports from China were made under both the inward processing procedure ('IPP') and the normal regime. As shown in recital (191), since the exports made under the normal regime represented only 0,3% of the Union market share during the RIP, they were considered negligible and calculations were performed on the export price under the IPP only, as reasonably available information about the price that would be charged in the absence of measures. The Commission established the export price based on the available statistics, namely the Comext database (Eurostat). Since the prices in Comext are recorded at Cost, Insurance, and Freight ('CIF') level, the *ex-works* level was established based on the evidence provided in the request for transport cost, handling and ocean freight.

3.5. Comparison

- (141) The Commission compared the normal value established in accordance with Article 2(6a)(a) of the basic Regulation and the export price on an *ex-works* basis as established above.

3.6. Dumping margin

- (142) On this basis, the dumping margin was found to be significant (68%). It was therefore concluded that dumping continued during the review investigation period.

⁽⁹⁸⁾ <https://www3.tcmb.gov.tr/sektor/#/en>

4. LIKELIHOOD OF CONTINUATION OF DUMPING

- (143) Further to the finding of the existence of dumping during the review investigation period, the Commission investigated, in accordance with Article 11(2) of the basic Regulation, the likelihood of continuation of dumping, should the measures be allowed to lapse. The Commission considered the IPP prices as reasonably available information about the price that would be charged in the absence of measures. The following additional elements were analysed: (1) the production capacity and spare capacity in the PRC, (2) tungsten ore reserves and export tax on tungsten concentrate, and (3) the attractiveness of the Union market and the export prices to third countries.
- (144) As a consequence of the non-cooperation of Chinese exporting producers and of the GOC, the Commission based its assessment on the facts available in accordance with Article 18 of the basic Regulation, namely on information provided in the request for review, public available information, and information from the GTA database.
- (145) Zhangyuan Tungsten, Xianglu Tungsten and Golden Egret claimed that whether a market was attractive is not a required legal standard to be considered in an expiry review investigation as a dynamic and freely competitive market remains attractive for all the economic operators.
- (146) As outlined below in recitals (156) to (163), the Commission under the heading of the ‘attractiveness of the Union market’ examines whether it is likely that the Chinese exporting producers would increase their exports of tungsten carbide to the Union should measures be allowed to lapse, and whether these exports would be made at dumped prices. This is fully in line with the legal test in Article 11(2) of the basic Regulation and therefore this claim was rejected.

4.1. Production capacity and spare capacity in the PRC

- (147) In the request the applicants provide information regarding production capacity and spare capacity of tungsten carbide in China. According to the Report on the Development of China's Tungsten Industry 2020 published by China Tungsten Industry Association ⁽⁹⁹⁾ the production capacity in China was of 80 000 tonnes. The applicants estimated the demand in China to 30 000 tonnes based on its market knowledge. Furthermore, after deducting the exports of China to all countries the spare capacity was calculated to 18 000 tonnes. However, during the investigation the applicants clarified that in their calculation they inadvertently used the price column instead of the volume column and therefore the correct spare capacity in China was around 41 000 tonnes.
- (148) The Commission also calculated the spare capacity of tungsten carbide in the PRC during the review investigation period. According to the Report on the Development of China's Tungsten Industry 2021 published by China Tungsten Industry Association ⁽¹⁰⁰⁾, the production capacity of tungsten carbide in China amounted to 90 000 tonnes. The production of tungsten carbide in China was estimated at around [30 000 – 35 000] tonnes based on the Roskill Tungsten outlook to 2030 report ⁽¹⁰¹⁾ and considering that about 60% of the production of tungsten is used to produce tungsten carbide ⁽¹⁰²⁾. These estimates result in a spare capacity of [55 000 – 60 000] tonnes or [61% - 67%]. Considering that the Union free market consumption amounted to 15 101 tonnes (see Table 4) during the review investigation period, the Chinese spare capacity was more than 3,5 times the Union consumption in the free market.
- (149) In their comments following the final disclosure, Zhangyuan Tungsten, Xianglu Tungsten and Golden Egret reiterated their claim that the source used for the production capacity of tungsten carbide in China as stated in recital (148) was not reliable and provided the website link of the China Tungsten Industry Association.

⁽⁹⁹⁾ <http://www.ctia.com.cn/en/news/31091.html>

⁽¹⁰⁰⁾ <http://www.ctia.com.cn/en/news/32684.html>

⁽¹⁰¹⁾ The report can be purchased under the following website: <https://www.woodmac.com/reports/metals-roskill-tungsten-outlook-to-2030-528383/>.

⁽¹⁰²⁾ https://www.itia.info/assets/files/newsletters/ITIA_Newsletter_2018_05.pdf

- (150) The Commission noted that Zhangyuan Tungsten, Xianglu Tungsten and Golden Egret did not provide any information concerning production capacity of tungsten carbide in China. The Commission searched the website provided by the Chinese producer and it could not find data regarding production capacity of tungsten carbide in China. Instead, the Commission found that based on the Roskill Tungsten outlook to 2030 report ⁽¹⁰³⁾ the Chinese production capacity of tungsten carbide in 2021 was estimated at [50 000 - 75 000] tonnes per year in terms of tungsten, or [53 000 – 80 000] tonnes of tungsten carbide ⁽¹⁰⁴⁾. Using the production volume stated in recital (148), which was not contested by Zhangyuan Tungsten, Xianglu Tungsten and Golden Egret, the spare capacity of tungsten carbide in China still amounted to [23 000 – 45 000] tonnes which represents more than 1,5 times the Union consumption in the free market during the review investigation period, which was still considered significant.
- (151) The Commission compared also the production capacity of tungsten carbide in the PRC during review investigation period with the capacity during the previous expiry review investigation and noted a substantial increase. While the production capacity was estimated at 42 000 to 50 000 tonnes during the previous expiry review, it is estimated at 90 000 tonnes during the review investigation period of the current investigation. This results in an increase of more than 80%, despite an already existing spare capacity of 12 000 to 20 000 during the previous expiry review, without any indication that such increased capacity could be absorbed by the Chinese domestic market, or any third country market. This situation will ultimately lead to an even greater spare capacity that could be directed to the Union market.
- (152) The Commission further noted substantial spare capacities in the replies of Chinese exporting producers to the sampling exercise. The three exporting producers reported in total a production volume of 13 500 tonnes during the review investigation period, compared to a total production capacity of 17 800 tonnes. This results in a spare capacity of 30%.
- (153) Excess in production capacities is an incentive to continue exporting at dumped prices. It is clear that Chinese exporters must exploit all existing possibilities to increase production to fully benefit from the significant investments they made in installed capacities. The most obvious way is to penetrate any open market worldwide and very likely at dumped prices as it is still the case in the current investigation.
- (154) Based on the above facts and considerations, the Commission concluded that the Chinese exporting producers have significant spare capacities, which would likely be used for exporting tungsten carbide at dumped prices to the Union if the measures were allowed to lapse.

4.2. Tungsten ore reserves and export tax on tungsten concentrate

- (155) The PRC controls more than 55% of the tungsten ore reserves ⁽¹⁰⁵⁾ in the world and, at the same times, levies an export tax of 20% on tungsten concentrate ⁽¹⁰⁶⁾. This restriction leads to a high availability of raw materials in the Chinese market, which permits the Chinese exporting producers to fill in quickly their spare capacity mentioned in recital (151).

4.3. Attractiveness of the Union market and export prices to third countries

- (156) The Commission examined whether it was likely that Chinese exporting producers would increase their export sales at dumped prices should measures be allowed to lapse. Therefore, the Commission analysed the price level of Chinese exports to third country markets and compared them to the price level on Chinese exports to the Union. The Chinese export volumes and the attractiveness of the Union market were established based on facts available in accordance with Article 18 of the basic Regulation and based on GTA data and information in the request.

⁽¹⁰³⁾ The report can be purchased under the following website: <https://www.woodmac.com/reports/metals-roskill-tungsten-outlook-to-2030-528383/>.

⁽¹⁰⁴⁾ The conversion factor from W to WC is 1,065.

⁽¹⁰⁵⁾ <https://www.mdpi.com/2075-163X/11/7/701>

⁽¹⁰⁶⁾ <https://www.argusmedia.com/en/news/2171663-china-to-maintain-ferroalloys-metals-tariffs-in-2021>

- (157) The Commission used the data from the GTA database and focused on the three main export markets for China, namely Japan, South Korea, and the US, which represent approximately 75% of the total exports of the PRC. During the review investigation period, the average price of Chinese exports to the Union of products falling under the Chinese Commodity Code 2849 9020 was at a similar level as the average price of exports to the three main third country markets. However, looking at country level, the Chinese export prices to Germany was higher than the Chinese export price to South Korea and the Chinese export price to the Netherlands was higher than the Chinese export price to Japan. This shows that certain markets within the Union are more lucrative than two of the top three Chinese export markets for the product concerned. The Commission did not consider the Chinese exports under the Chinese Commodity Code 3824 3000 during the analysis, since it might also include products other than the product concerned and therefore the average price would not be only for tungsten carbide.
- (158) In their comments following the final disclosure, Zhangyuan Tungsten, Xianglu Tungsten and Golden Egret claimed that the Commission disregarded the information provided by them regarding the development of Chinese exports of tungsten carbide to other third countries based on the ITC Trade Map ⁽¹⁰⁷⁾. They reiterated that based on these data, Chinese exports to other third countries, rather than exports to the Union market, would further increase. Zhangyuan Tungsten, Xianglu Tungsten and Golden Egret claimed that the Commission did not explain why this information was disregarded.
- (159) It is clarified that the Commission did not disregard the data provided from the ITC Trade Map as such. As explained in recital (157), the Commission used the data from the GTA database, which like the ITC Trade Map showed that the main export markets for China were Japan and South Korea and that there was an increasing trend of exports to these markets between 2019 and 2021. The Commission, however, disagreed with the conclusion that such trend necessarily continued in future to such an extent that it could absorb the high spare capacities available in China. Zhangyuan Tungsten, Xianglu Tungsten and Golden Egret did not provide any evidence in support of this allegation and disregarded the findings of the Commission that the Union market is an attractive market for Chinese exports should measures be allowed to lapse. Therefore, given the high spare capacity in China it is very likely that large part thereof would be directed to the Union, should the measures be allowed to lapse. The same is true for the allegedly increasing consumption in China. The exporting producer has not provided any evidence of current consumption in China or that future domestic demand would be likely to absorb the significant spare capacity in China. Therefore, the claim was rejected.
- (160) In their comments following final disclosure, Zhangyuan Tungsten, Xianglu Tungsten and Golden Egret disagreed with the Commission's conclusion in recital (157) that the export prices to certain countries in the Union appeared to be more lucrative than prices to the top two Chinese exporting markets. They argued that each market has a different competitive situation, whereas prices reflect trends of demand and supply.
- (161) It is true that prices are affected by demand and supply in a certain market. However, this conclusion does not devalue the fact that prices in certain countries in the Union are higher compared to those in main Chinese export markets and that the Union market, in particular the market of certain Member States, is therefore a more attractive market in comparison. Therefore, this claim was rejected.
- (162) It is recalled that tungsten carbide represents an important intermediate product for a high number of sectors in the Union, including personal care products and paper to machines, rail tracks cars, to trains and airplanes and therefore represents an integral part of the industrial value chain in the Union. The importance of tungsten carbide indicates a large market potential for Chinese exporting producers. It is noteworthy that, even with the measures in place, Chinese exports to the Union continued at dumped prices.
- (163) Based on the foregoing and considering in particular the level of Chinese export prices to the Union compared to other export markets and the key role of tungsten carbide in many sectors of the internal market, it follows that Chinese exporters would have a strong incentive to continue exporting at dumped prices to the Union if the measures were allowed to lapse, considering also that other export markets would not be able to absorb the significant amount of Chinese tungsten carbide.

⁽¹⁰⁷⁾ <https://www.trademap.org/Index.aspx>

4.4. Conclusion

- (164) Considering the significant spare capacity in the PRC and taking into account the evidence on the attractiveness of the Union market, the Commission concluded that should the measures lapse, it was likely that the Chinese exporting producers would activate the spare capacity and likely even redirect exports from third countries towards the Union market at dumped prices and in significant volumes.
- (165) In view of its findings on the continuation of dumping during the review investigation period and on the likely development of exports should the measures lapse, the Commission concluded that there was a strong likelihood that the expiry of the anti-dumping measures on imports from the PRC would result in the continuation of dumping.

5. INJURY

5.1. Definition of the Union industry and Union production

- (166) The like product was manufactured by nine producers, belonging to seven groups, in the Union during the period considered. Out of these, seven producers produce and sell on the free market and the remaining two producers produce tungsten carbide mainly as an input for their downstream products ('captive use'). They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (167) The total Union production during the review investigation period was established at 17 026 tonnes. The Commission established this figure on the basis of the verified macro data in the questionnaire reply provided by the applicants. As indicated in recital (41), three Union producers were selected for the sample, representing more than 69% of the total Union production of the like product.
- (168) Zhangyuan Tungsten, Xianglu Tungsten and Golden Egret argued that as the Union industry was composed of two market segments (i.e. virgin and recycling) and that as several recycling producers including an association cooperated in the investigation and were against the removal of the measures, the Commission should carry out two separate injury analyses, one per each segment.
- (169) In this respect, the Commission recalled that pursuant to Article 4(1) of the basic Regulation the definition of the Union industry refers to the like product. Having established in recital (61) that the like product corresponds to the definition of the product under review, the Commission noted that the like product manufactured through virgin production and the like product manufactured through recycling have identical physical and chemical characteristics and the same usage. Their only difference is the raw material: while for the virgin production is tungsten ore or subsequent intermediate products (tungsten concentrate, APT, tungsten oxide), for recycling production the raw material is scrap derived from used hard metal tools incorporating tungsten carbide. The final product is exactly the same. The alleged market segments based on the difference in production process and raw material do not correspond to differences in the output. Therefore, there was no reason for segmenting the market and carrying out different injury analyses. Consequently, this claim was rejected.
- (170) In their comments on the final disclosure, Zhangyuan Tungsten, Xianglu Tungsten and Golden Egret reiterated their comments stated in recital (168), i.e. that the Union industry would be composed of two market segments (i.e. virgin and recycling) and that the Commission should carry out two separate injury analyses, one per each segment. In particular, they argued that the difference in raw materials for virgin and recycling production processes had an effect on costs and financial indicators and could still warrant a market segmentation, even if the tungsten carbide manufactured through virgin production and the tungsten carbide manufactured through recycling are like products. They also requested more details on the impact that the cost of the respective raw materials had on the two production processes.
- (171) However, the difference in raw materials did not correspond to a difference in output and, therefore, a market segmentation between virgin and recycling production was not warranted. The financial indicators presented under section 5.5 include both production processes. Thus, this claim was dismissed.

5.2. Union consumption

- (172) As mentioned in recital (166) some of the Union producers mainly produce the product under review for the captive use as primary raw material for the production of various downstream products and therefore captive and free market consumption were analysed separately.
- (173) The distinction between captive and free market is relevant for the injury analysis because products destined for captive use are not exposed to direct competition from imports. By contrast, production destined for the free market is in direct competition with imports of the product under review and prices are free market prices.
- (174) The Commission established total Union consumption (captive and free market) on the basis of the verified macro data in the questionnaire reply provided by the applicants (for total sales of the Union industry in the Union market) and of Eurostat data (for imports into the Union). Data on total Union consumption is presented in ranges in the table below to protect the confidentiality of data on captive consumption, which during the period considered derived from the activity of only two Union producers, as reported in recital (180).
- (175) Union consumption developed as follows:

Table 2

Union consumption (tonnes)

	2018	2019	2020	Review investigation period
Total Union consumption	[14 875-18 465]	[11 439-14 200]	[10 586-13 141]	[14 458-17 948]
<i>Index</i>	100	77	71	97

Source: Data from the applicants and Eurostat

- (176) The Union consumption decreased by 29% between 2018 and 2020 and then increased by 37% in the review investigation period as compared to 2020. Overall, the Union consumption decreased by 3% during the period considered.
- (177) The trend of the Union consumption resulted from the fact that, according to the applicants, in 2018, the Union demand for the product under review was above the mid- to long-term average of the industry. Indeed, Union consumption in 2018 constituted the peak of the increasing trend in consumption observed in the previous expiry review ⁽¹⁰⁸⁾. Following the increased consumption in 2018, the Union demand then dropped in 2019 by 23%. In 2020, restrictions imposed in relation to the Covid-19 pandemic led to a further, albeit temporary, decrease in the demand for the product under review. In particular, several major users of the product under review, notably operators in the construction and automotive sectors, had to temporarily curtail or close their production. In the review investigation period, demand started to recover in line with the easing of measures related to the Covid-19 pandemic. Throughout the review investigation period, the Union market benefitted from the recovery of the demand as well as from re-stocking. In this regard, the applicants reported that logistical and supply chain issues (such as lack of containers and delays at seaports) triggered concerns about supply security and thus led to additional sourcing in the form of stockpiling or buffer stocking. However, the Union consumption did not reach pre-pandemic levels.
- (178) On the basis of the verified macro data in the questionnaire reply provided by the applicants for the entire activity of the Union industry (captive and free markets), the Commission determined that approximately [8 - 10]% of the total Union production in the review investigation period was destined for captive use.

⁽¹⁰⁸⁾ Commission Implementing Regulation (EU) 2017/942, recitals (105) and (108).

- (179) Furthermore, in the free market the Union industry produces under normal agreements (the Union industry purchases the raw material) and under tolling agreements (the customer of tungsten carbide remains the owner of the raw material and pays a processing fee to the Union producers for the conversion of the raw material into tungsten carbide). The tolling agreements are used for recycling activities as the customers supply the scrap to the Union industry for processing. During the review investigation period, 96% of the total production volume was manufactured under normal agreements, while the rest of production (4%) was manufactured under tolling agreements.

5.2.1. Captive consumption

- (180) The Commission established the Union captive consumption on the basis of the captive use in the Union market of all known producers in the Union. During the period considered, only two Union producers had captive use, therefore the data in the table below is presented in ranges to preserve the confidentiality of the data of the Union producers concerned. On this basis, the Union captive consumption developed as follows:

Table 3

Captive consumption (tonnes)

	2018	2019	2020	Review investigation period
Captive consumption	[1 417-1 759]	[1 154-1 433]	[1 189-1 476]	[1 321-1 639]
Index	100	81	84	93

Source: Data from the applicants

- (181) The Union captive consumption decreased by 16% between 2018 and 2020 and subsequently increased by 11% in the review investigation period as compared to 2020. Overall, the Union captive consumption decreased by 7% during the period considered.
- (182) The Union captive consumption showed a slightly different trend compared to the overall Union consumption. In fact, the Covid-19 pandemic impacted less the internal consumption of the Union producers, which showed a slight increase in 2020 as compared to 2019.

5.2.2. Free market consumption

- (183) The Commission established the Union free market consumption on the basis of: (a) the free sales volume in the Union of all known Union producers, and (b) the total import volumes into the Union as reported by Eurostat. On this basis, the Union free market consumption developed as follows:

Table 4

Free market consumption (tonnes)

	2018	2019	2020	Review investigation period
Free market	15 468	11 822	10 800	15 101
Index	100	76	70	98

Source: Data from the applicants and Eurostat

- (184) The Union free market consumption decreased by 30% between 2018 and 2020 and then increased by 40% in the review investigation period as compared to 2020. Overall, the Union free market consumption decreased by 2% during the period considered.

(185) The trend of the Union free market consumption followed the overall trend of the Union consumption.

5.3. Imports from the country concerned

5.3.1. Volume and market share of the imports from the country concerned

(186) The Commission established the volume of imports on the basis of Eurostat data. Also, the market share of the imports was established on the basis of import data from Eurostat and Union consumption. Imports into the Union from the country concerned developed as follows:

Table 5

Import volume and market share

	2018	2019	2020	Review investigation period
Volume of imports from China (tonnes)	718	462	294	336
<i>Index</i>	100	64	41	47
Market share (%)	4,6	3,9	2,7	2,2
<i>Index</i>	100	85	55	45

Source: Eurostat and data from the applicants

(187) Imports from China decreased by 59% between 2018 and 2020 and then increased by 14% in the review investigation period as compared to 2020. Overall, imports from China decreased by 53% during the period considered.

(188) The market share of Chinese imports decreased by 2,4 percentage points over the period considered.

(189) Imports from China followed the trend of the Union demand. 2021 levels did not reach 2018 levels, and not even 2019 levels. According to the applicant, the recovery in imports in 2021 did not reach higher volumes due to several factors: (i) the continued restrictions affecting supply chains and shipping from China, and (ii) the users' concerns about supply security of deliveries from China. The trend of the market shares of Chinese imports is instead consistently downward, even though import prices consistently lowered, as showed in Table 7, because in the review investigation period the Union consumption increased by a higher magnitude than the Chinese import volume.

5.3.2. Import regimes

(190) The product concerned was imported from China both under the normal import regime and under IPP, as shown below:

Table 6

Import volume and market share by import regime

	2018	2019	2020	Review investigation period
Normal import regime				
Volume of imports from China (tonnes)	33	16	33	38
<i>Index</i>	100	50	100	116
Market share (%)	0,2	0,1	0,3	0,3
<i>Index</i>	100	65	146	120

IPP				
Volume of imports from China (tonnes)	685	446	261	298
<i>Index</i>	100	65	38	44
Market share (%)	4,4	3,7	2,4	2,0
<i>Index</i>	100	85	55	45

Source: Eurostat and data from the applicants

- (191) During the period considered, almost all imports from China were made under the IPP. Imports under IPP decreased by 62% between 2018 and 2020 and then increased by 14% in the review investigation period as compared to 2020. Overall, imports under IPP from China decreased by 56% during the period considered. Imports from China under the normal import regime were negligible throughout the period considered, amounting to a range between 0,1% and 0,3% market share.
- (192) Imports under IPP from China followed the general trend of imports from China and mirrored the trend of the Union consumption. Imports under normal regime showed an increase already in 2020 but their volume did not influence the general trend of imports from China due to their negligible volume.

5.3.3. Prices of the imports from the country concerned and price undercutting

- (193) The Commission established the prices of imports from China on the basis of Eurostat data. As import volumes from the PRC under normal import regime were negligible, they were disregarded in the determination of the average import price and in the price undercutting calculation. Price undercutting of the imports was established on the basis of the questionnaire replies of the sampled Union producers and of Eurostat data.
- (194) The weighted average price of imports into the Union from the country concerned developed as follows:

Table 7

Import prices for IPP (EUR/ tonne)

	2018	2019	2020	Review investigation period
Weighted average of Chinese import prices	36 957	36 159	32 086	30 864
<i>Index</i>	100	98	87	84

Source: Eurostat

- (195) The average price of the product concerned imported under IPP, overall, decreased by 16% over the period considered.
- (196) The Commission, due to the lack of cooperation of Chinese exporting producers, could not verify the reasons for this trend. However, it noted that the decreasing trend was consistent throughout the period considered.
- (197) On the basis of the information provided by the cooperating users and the import regimes used for imports from the PRC, all imports from the PRC of the product under review were made under normal agreements defined in recital (32). Therefore, and for the purpose of a fair comparison, in the calculation of the price undercutting, sales of the Union industry made under tolling agreements were disregarded. Furthermore, as mentioned in recital (191), the imports under normal regime were negligible throughout the period considered and were, consequently, disregarded. Therefore, the calculation of undercutting was based on the IPP import prices only. In addition, the calculation took into consideration the fact that zinc reclamation powders were not imported from the PRC during the review investigation period and were, thus, excluded.

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

- the weighted average sales prices of the sampled Union producers charged to unrelated customers on the Union market under normal agreements and excluding zinc reclamation powders, adjusted to an *ex-works* level; and
- the corresponding weighted average prices of the imports from Eurostat under IPP, with appropriate adjustments for post-importation costs. These prices were free from customs and anti-dumping duties.

(199) The result of the comparison was expressed as a percentage of the sampled Union producers' turnover during the review investigation period. It showed a weighted average undercutting margin of 7% by the imports from the country concerned on the Union market.

5.4. Imports from third countries other than the PRC

(200) The imports of the product under review from third countries other than the PRC were mainly from the United States of America ('USA'), South Korea and India. The quantity and the price trend are based on Eurostat and cover all import regimes (normal regime, inward processing process and outward processing process). The majority of the import volume from third countries is imported under the normal regime.

(201) The (aggregated) volume of imports into the Union as well as the market share and price trends for imports of the product under review from other third countries developed as follows:

Table 8

Imports from third countries other than the PRC

Country		2018	2019	2020	Review investigation period
USA	Volume (tonnes)	1 042	659	304	429
	<i>Index</i>	100	63	29	41
	Market share (%)	6,7	5,6	2,8	2,8
	<i>Index</i>	100	83	42	42
	Average price (EUR/tonne)	34 843	41 222	41 990	40 099
	<i>Index</i>	100	118	121	115
South Korea	Volume (tonnes)	288	228	231	280
	<i>Index</i>	100	79	80	97
	Market share (%)	1,9	1,9	2,1	1,9
	<i>Index</i>	100	100	115	100
	Average price (EUR/tonne)	40 857	37 445	31 415	35 076
	<i>Index</i>	100	92	77	86
India	Volume (tonnes)	161	213	225	250
	<i>Index</i>	100	132	100	95
	Market share (%)	1,0	1,8	2,1	1,7
	<i>Index</i>	100	173	200	159
	Average price (EUR/tonne)	26 562	27 834	28 347	25 921
	<i>Index</i>	100	105	107	98

Others (excluding China)	Volume (tonnes)	877	578	564	573
	Index	100	66	64	65
	Market share (%)	5,7	4,9	5,2	3,8
	Index	100	86	92	67
	Average price (EUR/tonne)	33 468	34 748	29 423	30 627
	Index	100	104	88	92
Total of all third countries except China	Volume (tonnes)	2 368	1 678	1 323	1 531
	Index	100	71	56	65
	Market share (%)	15,3	14,2	12,3	10,1
	Index	100	93	80	66
	Average price (EUR/tonne)	34 501	36 777	32 473	33 323
	Index	100	107	94	97

Source: Eurostat and data from the applicants

- (202) Total imports from all third countries except China decreased by 44% between 2018 and 2020 and then increased by 16% in the review investigation period as compared to 2020. Overall, imports from third countries except China decreased by 35% over the period considered. Their trend followed the general trend of the Union consumption. The market share of these imports decreased from 15,3% in 2018 to 10,1% in the review investigation period while the import prices decreased by 3% over the period considered.
- (203) Imports from India did not follow this overall trend and slightly increased during the period considered, remaining however at a lower level than the Chinese imports in the review investigation period. Their market share decreased by 0,4 percentage points between 2020 and the review investigation period, while overall, it increased by 0,7 percentage points during the period considered. The average Indian import prices were on average lower than Chinese import prices during the period considered. The low level of the import prices from India could be explained by the fact that a certain volume of imports from India were in fact related sales between an Indian producer of tungsten carbide and a Union user, both of them related to a Union producer, and therefore these prices were likely not at arms' length. There are no other known producers of tungsten carbide in India.

5.5. Economic situation of the Union industry

5.5.1. General remarks

- (204) The assessment of the economic situation of the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (205) As mentioned in recital (41), sampling was used for the assessment of the economic situation of the Union industry.
- (206) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data contained in the questionnaire reply provided by the applicants and related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the verified questionnaire replies from the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.

- (207) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.
- (208) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

5.5.2. Macroeconomic indicators

5.5.2.1. Production, production capacity and capacity utilisation

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

Table 9

Production, production capacity and capacity utilisation

	2018	2019	2020	Review investigation period
Production volume (tonnes)	17 980	13 470	11 976	17 026
<i>Index</i>	100	75	67	95
Production capacity (tonnes)	22 850	22 850	22 845	23 215
<i>Index</i>	100	100	100	102
Capacity utilisation (%)	79	59	52	73
<i>Index</i>	100	75	67	93

Source: Data from the applicants

- (210) The data in the above table includes both the production under normal and tolling agreements, for virgin and recycling products.
- (211) The production volume decreased by 33% between 2018 and 2020 and then increased by 42% in the review investigation period as compared to 2020. Overall, the production volume decreased by 5% during the period considered.
- (212) The production trend followed the trend in consumption. In addition to the remarks in recital (177), the Commission noted that in 2020 certain Union producers stopped completely the production for some periods.
- (213) The production capacity remained almost stable between 2018 and 2020 and subsequently increased by 2% in the review investigation period as compared to 2020. Overall, production capacity increased by 2% during the period considered.
- (214) The trend in production capacity is due to the fact that during the period considered the Union producers invested in small expansions of capacity, especially recycling capacity, which materialised in 2021. Moreover, capacity depends on the mix of grades produced: more capacity is needed to produce coarse size grains, whereas less capacity is needed to produce finer grains.
- (215) The capacity utilisation rate decreased by 33% between 2018 and 2020 and then increased by 40% in the review investigation period as compared to 2020. Overall, the capacity utilisation rate decreased by 7% during the period considered.

- (216) The Commission noted that the spare capacity of the Union industry did not correspond simply to the difference between production and production capacity. Indeed, other products resulted from the different production steps before the final transformation of tungsten metal powder in tungsten carbide, notably: APT, tungsten oxide, tungsten metal powder. Therefore, depending on the prices of these products and on business considerations, a certain part of the capacity is always allocated to these other products. Thus, the spare capacity resulting from the data in Table 9 is slightly overstated.

5.5.2.2. Sales volume and market share

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

Table 10

Sales volume and market share

	2018	2019	2020	Review investigation period
Union industry sales volume on Union market (tonnes)	12 383	9 681	9 183	13 234
<i>Index</i>	100	78	74	107
Market share (%)	80,1	81,9	85,0	87,6
<i>Index</i>	100	102	106	109

Source: Eurostat and data from the applicants

- (218) The sales volume of the Union industry on the Union market decreased by 26% between 2018 and 2020 and then increased by 44% in the review investigation period as compared to 2020. Overall, the sales volume of the Union industry on the Union market increased by 7% during the period considered.
- (219) The market share of the Union industry in the Union market increased by 7,5 percentage points during the period considered, reaching 87,6% during the review investigation period.
- (220) The trend of the sales volume of the Union industry followed the trend of the Union consumption stated in recital (177). However, sales volume in the review investigation period was higher than in 2018, contrary to Union consumption and production, where the levels in the review investigation period were slightly below the levels in 2018. This could be due to the factor stated in recital (189) that users were concerned by the supply chain disruptions linked to supplies from overseas, and thus preferred to purchase from the Union industry. Indeed, the Union industry increased its market share over the period considered, whereas Chinese imports and imports from third countries other than China decreased their market share.
- (221) In the Union free market, 3% of the sales of the Union industry derived from tolling and 97% from normal agreements.

5.5.2.3. Growth

- (222) During the period considered, the Union industry of the like product almost regained its 2018 production levels and increased its sales in the Union and the number of employees. Production and sales followed the trend of the Union consumption, which in the review investigation period almost regained its 2018 levels. Furthermore, the increase in the number of employees between 2020 and the review investigation period followed the recovered consumption. As explained in recital (189), factors such as logistical issues and users' concerns over security of supply favoured purchasing from the Union industry compared to importing from third-country in the review investigation period. As a consequence, the market share of the Union industry increased by 7,5 percentage points during the period considered.

- (223) However, production in the review investigation period was still below 2018 levels and investments of the Union industry in the review investigation period still lagged 21% behind the 2018 level. Taking into account also the decreased profitability and cash flow, this showed that the financial situation of the Union industry must still improve.

5.5.2.4. Employment and productivity

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

Table 11

Employment and productivity

	2018	2019	2020	Review investigation period
Number of employees (FTE)	984	987	987	1 015
<i>Index</i>	100	100	100	103
Productivity (tonnes/employee)	18	14	12	17
<i>Index</i>	100	75	66	92

Source: Data from the applicants

- (225) The number of employees in the Union industry slightly increased by 0,3% between 2018 and 2019, remained stable in 2020 and then increased by 3% in the review investigation period as compared to 2020. Overall, the number of employees in the Union industry increased by 3% during the period considered.
- (226) While the increase in the number of employees between 2020 and the review investigation period followed the Union consumption, the stable number of employees between 2019 and 2020 was due to government support measures due to the Covid-19 pandemic.
- (227) As a result of the decrease in production between 2018 and 2020, productivity decreased by 33% between 2018 and 2020. Then, as a result of the increase in production between 2020 and the review investigation period and despite the increase in employees in the same period, productivity increased by 42% in the review investigation period as compared to 2020. Overall, as a result of the overall slight decrease of production during the period considered, productivity decreased by 6% during the period considered.

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

- (228) The dumping margin established during the review investigation period were significantly above the *de minimis* level. At the same time, the level of imports during the review investigation period represented 2,2% of Union free market consumption. Therefore, the impact of the magnitude of the actual margins of dumping on the Union industry was rather limited.

5.5.3. Microeconomic indicators

5.5.3.1. Prices and factors affecting prices

- (229) Over the period considered, the weighted average unit sales prices of the Union industry to unrelated customers in the Union for both normal and tolling agreements, adjusted to an *ex-works* level, developed as follows:

Table 12

Sales prices and cost of production in the Union (normal and tolling agreements) (EUR/tonne)

	2018	2019	2020	Review investigation period
Weighted average unit sales price in the Union	34 663	31 560	28 933	30 015
<i>Index</i>	100	91	83	87
Unit cost of production	29 172	29 692	26 787	26 862
<i>Index</i>	100	102	92	92

Source: Questionnaire replies from sampled Union producers

- (230) The average unit sales price for both normal and tolling agreements of the Union industry decreased by 17% between 2018 and 2020 and then increased by 4% in the review investigation period as compared to 2020. Overall, the average unit sales price decreased by 13% during the period considered.
- (231) The average unit sales price of the Union industry followed the trend of consumption. Moreover, it followed also the trend of the price of the main raw material for the like product, i.e., APT, whose price decreased between 2018 and 2020 and then increased in the review investigation period as compared to 2020.
- (232) The unit cost of production for both normal and tolling agreements of the Union industry slightly increased by 2% between 2018 and 2019, then decreased by 10% between 2019 and 2020 and subsequently increased again by 0,3% in the review investigation period as compared to 2020. Overall, the unit cost of production decreased by 8% during the period considered.
- (233) The increase of unit cost of production between 2018 and 2019 was the result of lower production, whereas the decrease between 2019 and 2020 was the result of a decrease in the cost of raw materials.
- (234) In addition, for the purposes of the determination of the price undercutting reported in recital (199), the Commission used the weighted average sales prices of the sampled Union producers to unrelated customers in the Union only under normal agreements, excluding zinc-reclamation powders, adjusted to an *ex-works* level, as all imports from the PRC were made under normal agreements. On this basis, during the period considered, only two sampled Union producers could be considered for the price undercutting, therefore the data in the table below is presented in ranges to preserve the confidentiality of the figures of the Union producers concerned. During the period considered, their trend developed as follows:

Table 13

Sales prices under normal agreements in the Union (EUR/tonne)

	2018	2019	2020	Review investigation period
Weighted average unit sales price in the Union under normal agreements	[29 188 – 42 160]	[28 441 – 41 081]	[24 928 – 36 007]	[26 808 – 38 722]
<i>Index</i>	100	97	85	92
Unit cost of production under normal agreements	[25 996 – 37 550]	[28 339 – 40 935]	[24 193 – 34 946]	[24 080 – 34 783]
<i>Index</i>	100	109	93	93

Source: Questionnaire replies from sampled Union producers

- (235) The average unit sales price of the Union industry under normal agreements decreased by 15% between 2018 and 2020 and then increased by 8% in the review investigation period as compared to 2020. Overall, the average unit sales price under normal agreements decreased by 8% during the period considered.
- (236) The unit cost of production of the Union industry under normal agreements increased by 9% between 2018 and 2019 and then decreased by 15% in the review investigation period as compared to 2019. Overall, the unit cost of production under normal agreements decreased by 7% during the period considered.

5.5.3.2. Labour costs

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

Table 14

Average labour costs per employee

	2018	2019	2020	Review investigation period
Average labour costs per employee (EUR)	80 168	82 390	75 923	83 832
Index	100	103	95	105

Source: Questionnaire replies from sampled Union producers

- (238) The average labour costs per employee of the Union industry slightly increased by 3% between 2018 and 2019, then decreased by 11% between 2019 and 2020 and subsequently increased again by 10% in the review investigation period as compared to 2020. Overall, the average labour cost per employee slightly increased by 5% during the period considered.
- (239) The reduction in average labour costs per employee of the Union industry between 2019 and 2020 despite the stability of the number of employees was due to government support measures due to the Covid-19 pandemic. The increase between the review investigation period and 2020, was due to inflation adjustments, the hiring of R&D professionals and production premiums.

5.5.3.3. Inventories

- (240) Stock levels of the Union industry developed over the period considered as follows:

Table 15

Inventories

	2018	2019	2020	Review investigation period
Closing stocks (tonnes)	922	740	1 009	1 049
Index	100	80	109	114
Closing stocks as a percentage of production (%)	5	5	8	6
Index	100	107	164	120

Source: Questionnaire replies from sampled Union producers

- (241) The level of inventories of the Union industry decreased by 20% between 2019 and 2018 and then increased by 42% in the review investigation period as compared to 2019. Overall, the level of inventories increased by 14% during the period considered.
- (242) The high level of inventories of the Union industry in 2020 followed the low consumption, whereas the high level of inventories in the review investigation period mirrored the increase in production.

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

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

Table 16

Profitability, cash flow, investments and return on investments

	2018	2019	2020	Review investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	11,5	6,5	2,0	7,7
<i>Index</i>	100	56	17	67
Cash flow (EUR)	42 601 601	36 752 500	14 507 327	36 754 191
<i>Index</i>	100	92	59	79
Investments (EUR)	13 364 299	12 282 221	7 843 646	10 537 497
<i>Index</i>	100	92	59	79
Return on investments (%)	65	22	9	38
<i>Index</i>	100	34	14	59

Source: Questionnaire replies from sampled Union producers

- (244) The Commission established the profitability of the Union industry by expressing the pre-tax gross profit (calculated as the difference between the turnover and cost of goods sold) of all sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. The Union industry was profitable during the period considered, having a fluctuating profitability rate. Notably, the profitability of the Union industry decreased by 83% between 2018 and 2020 and then increased by 285% in the review investigation period as compared to 2020. Overall, the profitability decreased by 33% during the period considered.
- (245) Between 2019 and 2021 the profitability was lower than the target profit of 10% established in the previous expiry review ⁽¹⁰⁹⁾. The industry is characterised by a high percentage of fixed costs linked to the production process as furnaces cannot be shut off. Thus, the Commission concluded that a target profit of at least 10% was still valid and in fact achieved during the period considered, in 2018.
- (246) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow showed a decrease by 66% between 2018 and 2020 and then an increase by 153% in the review investigation period as compared to 2020. Overall, the net cash flow decreased by 14% during the period considered. The net cash flow followed the trend of the profitability of the Union industry.

⁽¹⁰⁹⁾ Commission Implementing Regulation (EU) 2017/942, recital (161).

- (247) Investments of the Union industry decreased by 41% between 2018 and 2020 and then increased by 34% in the review investigation period as compared to 2020. Overall, investments decreased by 21% during the period considered. During the period considered, the Union industry's investments exceeded EUR 43 million. Investments were made to improve the recycling process with new production process, to improve production and R&D capacities for finer grain products and to develop additional raw material capacities in order to rely less on third country suppliers of raw material. Investments for expansion of production capacity were made mainly in 2018 and 2019 and showed their effect in 2021, as reported in Table 9. Investments were also made for new, high-tech furnaces and in order to save energy.
- (248) The return on investments is the profit in percentage of the net book value of investments. The return on investments of the Union industry was positive during the period considered. The return on investments of the Union industry showed a decrease by 86% between 2018 and 2020 and then an increase by 322% in the review investigation period as compared to 2020. Overall, the return on investments decreased by 42% during the period considered.

5.6. Conclusion on injury

- (249) Due to the anti-dumping duties in place, the situation of the Union industry is improving.
- (250) During the period considered, imports from China decreased by 53%. In particular, imports under IPP from China decreased by 56%. However, also the price of imports under IPP from China decreased over the period considered, by 16%.
- (251) The import price from China under IPP were slightly higher than the Union prices during the period 2018 and 2020 (3% in 2018, 3% in 2019 and 4% in 2020). This explains why the import volume from China consistently decreased in the same period between 2018 and 2020. However, in the review investigation period the Chinese IPP prices became 7% lower than the Union prices. This coincided with an increase in import volume from China by 14% in the review investigation period as compared to 2020.
- (252) Sales volume, market share and number of employees increased overall during the period considered as the Union industry managed to follow an increase in consumption.
- (253) However, production and capacity utilisation showed an overall slight decrease.
- (254) Injury indicators relating to the financial performance of the Union industry (profitability, cash flow, investments and return on investments) were positive throughout the period considered, even though all had an overall decreasing trend.
- (255) On the basis of the above, the Commission concluded that the Union industry did not suffer material injury within the meaning of Article 3(5) of the basic Regulation during the review investigation period.

6. LIKELIHOOD OF RECURRENCE OF INJURY

- (256) The Commission concluded in recital (255) that the Union industry did not suffer material injury during the review investigation period. Therefore, the Commission assessed, in accordance with Article 11(2) of the basic Regulation, whether there would be a likelihood of recurrence of injury originally caused by the dumped imports from China if the measures were allowed to lapse.
- (257) In this regard, the Commission examined the (i) production capacity and spare capacities in China, (ii) the attractiveness of the Union market, (iii) the likely price levels of imports from China in the absence of anti-dumping measures, and (iv) their likely impact on the Union industry.

Production capacity and spare capacities in China

- (258) As explained in recitals (147)-(154), China has significant production capacity for the production of the product concerned of approximately 90 000 tonnes and a spare capacity of [56 000 – 60 000] tonnes. Such a spare capacity corresponds to more than 3,5 times the Union free market consumption during the review investigation period.

Attractiveness of the Union market

- (259) In the absence of anti-dumping measures, the spare capacity would likely be used to produce for export to the Union, since it is an attractive market for Chinese exporting producers as described in recitals (156)-(163). There are also no indications that there would be an increased demand for the product under review in the markets of third countries and the PRC, while the consumption in the Union showed a steep recovery since 2020. Imports from the PRC are, therefore, likely to re-enter the Union market in significant quantities if measures are allowed to lapse.

Likely price levels of Chinese imports to the Union market

- (260) As an indication of the price level at which it is likely that the product concerned will be imported in the Union market should the measures be repealed, the Chinese export prices to the Union during the review investigation period were taken into account. As set out in recital (191), almost all imports into the Union during the review investigation period were made under the IPP regime. On this basis, the IPP prices without anti-dumping duties and with customs duties included, would still undercut the Union industry's prices by 2% on average. Thus, since Chinese import prices remained lower than the Union industry's prices, it is likely that Chinese imports would increase without the current measures.

Impact on the Union industry

- (261) Given the large spare capacities, it is likely that Chinese import volumes will increase significantly and will exert significant price pressure on the Union market. Under this scenario it is very likely that the Union industry will not be able to maintain its current price levels but will be forced to decrease its prices aligning them to the Chinese import prices.
- (262) Although the Union industry is likely to remain profitable when aligning its prices by 2%, such profitability level would not be sustainable in the medium and short term, because it would be (largely) below the target profit of 10%. However, this scenario does not account for the loss of volume of sales of the Union industry which is likely to happen if measures are terminated as explained in recital (163). As a matter of fact, the Union industry needs a certain level of profits to be able to keep investing to improve the recycling manufacturing process, considering the difficulties in the procurement of virgin raw materials, to continuously improve production and R&D capacities for finer grain products, and to develop additional raw material capacities in order to rely less on third country suppliers of raw material.
- (263) The Commission also considered that the Chinese exporting producers are able to decrease their prices to the Union, while still selling above this price level to other third countries. Based on the significant spare capacities in China and the fact that the investigation did not reveal any evidence showing that those spare capacities could be absorbed by other third country markets or the domestic Chinese market, there is a high incentive for the Chinese exporting producers to decrease price levels even further (i.e., below IPP prices) in order to gain market share in the Union. This will be possible because, as stated in recital (155), China controls 60% of the world's tungsten ore reserves and, at the same time, levies an export tax of 20% on tungsten concentrate. Moreover, Chinese prices from the review investigation period include also a temporary increased ocean freight costs due to the supply chain disruptions caused by Covid-19 pandemic. Under this scenario, the high volumes of cheap tungsten carbide will exert a significant price pressure on the Union industry, that will have to further decrease its prices to still be able to sell on the Union market. At the same time, however, the Union industry will also lose sales volumes as it will not be able to decrease its prices to the same low level as the Chinese export prices. Therefore, the Union industry will react with a combination of strategies in the form of price and volume reduction.
- (264) In this context, the Commission took into account two main factors. First, the Union industry is capital-intensive characterised by high fixed costs as furnaces cannot be shut off. Second, due to this cost structure, price decreases have a higher impact on profitability than sales volume decreases, since a decrease in sales volume can be absorbed as long as fixed costs are covered.
- (265) Against this background, as in the previous expiry review ⁽¹¹⁰⁾, firstly, the Commission analysed the scenario of a decrease in sales volume of 25%. This scenario is likely to happen in the short term. In the review investigation period, such a decrease would amount to 4 250 tonnes or just [10 - 13]% of the Chinese spare capacity. In the most likely response of the Union industry of a mix of price and volume reduction, the Union industry would have become loss-making (already 2% loss making when calculated based on IPP prices) in the review investigation period.

⁽¹¹⁰⁾ Commission Implementing Regulation (EU) 2017/942, recital (183).

- (266) Secondly, the Commission analysed the scenario of a decrease in sales volume of 50%. This scenario is likely to happen in the medium term (2-3 years) especially in the applications of coarse grade and less value-added products, where users will be forced to purchase the cheaper product concerned instead of the like product. In the review investigation period, such a decrease would amount to 8 500 tonnes or [21 - 26]% of Chinese spare capacities. In case of a mixed response of price and volume reduction, the Union industry would have become loss-making (already 16% loss making when calculated based on IPP prices).
- (267) In view of the above, a decrease in the selling price to the level below the IPP import price from the review investigation period, coupled with a decrease in sales volumes, will transform the Union industry in a loss-making industry. In the medium term, it is likely that the non-downstream integrated Union producers will be forced to liquidate their business as they will be directly exposed on the free market to the downward price pressure of the low-priced dumped imports from China. Instead, downstream integrated Union producers will continue to sell tungsten carbide to related users at lower prices. On a longer term, it is likely that also the downstream integrated Union producers will stop their activity as they will not be able to compete with this pressure in the long run, as their related users will opt to purchase tungsten carbide from China as well.
- (268) On this basis, it is concluded that the absence of measures would in all likelihood result in a significant increase of dumped imports from the PRC at injurious prices and material injury would be likely to recur.
- (269) In their comments to the final disclosure, Zhangyuan Tungsten, Xianglu Tungsten and Golden Egret claimed that in view of the overall positive growth of the Union industry, on the one hand and the import prices, import quantity as well as the market share of the Chinese exporters on the Union market on the other hand, the Commission's conclusion of a likelihood of recurrence of injury did not seem to be supported by the evidence.
- (270) The assessment of the likelihood of recurrence of injury was based on the elements presented in recitals (257) to (267) such as (i) production capacity and spare capacities in China, (ii) the attractiveness of the Union market, (iii) the likely price levels of imports from China in the absence of anti-dumping measures, and (iv) their likely impact on the Union industry and thus not on the elements suggested by Zhangyuan Tungsten, Xianglu Tungsten and Golden Egret. Therefore, the claim was rejected.
- (271) Zhangyuan Tungsten, Xianglu Tungsten and Golden Egret also claimed that more than three decades of protection gave the impression that the likelihood of recurrence of injury seemed persistently existent for the Union industry.
- (272) The Commission disagreed with this claim. The current investigation established recurrence of injury based on the elements stated in recital (257). Whether the measures have been in place for a long period of time does not have a bearing on the likelihood of recurrence of injury analysis, which is made at the time of each expiry review. Therefore, the claim was rejected.

7. UNION INTEREST

- (273) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures would clearly be against the interest of the Union as whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, users and suppliers of raw materials. All interested parties were given the opportunity to make their views known under Article 21(2) of the basic Regulation.
- (274) At the outset, the importance of the product under review for a number of industries in the Union should be noted. Tungsten carbide is essential for production of machines, notably in the automobile and aviation sectors, for machines in the construction sector, notably for infrastructure such as roads, motorways and train tracks, and for mining and drilling tools. In addition, tungsten carbide is used in security and defence applications. All these applications suggest that several value chains depend on the continuous and frequent supply of wear parts or surface coatings made of tungsten carbide to keep machines and tools in function.

- (275) Moreover, it should be recalled that, in the previous investigations, the adoption of measures was considered not to be against the interest of the Union. Furthermore, the fact that the present investigation is an expiry review, thus analysing a situation in which anti-dumping measures have already been in place, allows the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.
- (276) On this basis, it was examined whether, despite the conclusions on the likelihood of a continuation of dumping and recurrence of injury, compelling reasons existed which would lead to the conclusion that it is not in the Union interest to maintain measures in this particular case.

7.1. Interest of the Union industry

- (277) As mentioned in recital (166), during the review investigation period the like product was manufactured by nine Union producers, belonging to seven groups. Out of these, there were six applicants, belonging to five groups. In addition, Nashira Hardmetals S.r.l. ('Nashira') cooperated as a user in the investigation, due to the prevalence of the use of the product under review over its production in its activity. Therefore, most of the Union industry participated actively in the investigation.
- (278) In view of the conclusions on the situation of the Union industry set out in recitals (249) to (255), and pursuant to the arguments relating to the analysis on the likelihood of recurrence of injury as explained in recitals (256) to (268), the Commission concluded that the Union industry would be likely to experience a serious deterioration of its financial situation in case the anti-dumping duties were allowed to expire. The measures are proven to be essential for keeping tungsten carbide production in the Union, as the Union industry would not have been able to withstand the pressure of large volumes of dumped imports of tungsten carbide from the PRC, sold in the Union market below the prices levels of the Union industry.
- (279) It is considered that the continuation of measures would benefit the Union industry, as the current measures have reduced the direct competition from unfairly priced tungsten carbide from China. They have allowed Union tungsten carbide producers to invest intensively to innovate the production process and to increase recycling and raw material capabilities, in order to reduce dependence on imports from China and to make a contribution to the circular economy, embedded in the European Green Deal agenda ⁽¹¹¹⁾.
- (280) By contrast, should the measures be repealed, this will likely have a negative effect on the Union industry. It will seriously threaten the viability of the Union industry that, in consequence, may have to close their operations, thus reducing the available sources of supply and competition on the Union market. Should the Union producers stop their production, the Union hard metal tools' and machine parts' producers will be mainly dependent on imports of raw materials from third countries, and primarily from the PRC, which is not only the world's leading producer of tungsten but also owns the majority of the world's reserves.

7.2. Interest of unrelated importers

- (281) No importers cooperated in the investigation.
- (282) The lack of any response may be, as indicated by the applicants in the request, because importers generally trade a wide portfolio of metals and have alternative sources of tungsten carbide supply besides the Union and China such as Israel, Russia, Japan, South Korea and the USA.
- (283) In line with the findings made in previous investigations, there was no evidence that the importers would not be able to continue to source their supplies from the PRC or that there were important difficulties to find other sources.
- (284) On this basis, the Commission concluded that the importers have no compelling reasons against the maintenance of the existing measures.

⁽¹¹¹⁾ Commission, *The European Green Deal*, COM(2019) 640 final of 11 December 2019.

7.3. Interest of users

- (285) At initiation, 54 known importers/users were contacted and provided with a link to the questionnaire on the Commission's website. Nine of these users came forward within the time limits granted (including, as mentioned in recital (277), Nashira, which was also producing minor volumes of the like product). They used tungsten carbide, *inter alia*, to manufacture cemented carbide to produce hard metal tools for different industries like the automotive, machinery and aerospace industries.
- (286) Questionnaire replies were received from seven of these nine users (three out of the seven are related).
- (287) Another 10 users came forward before disclosure. These users stated their position regarding the continuation of measures in force but did not reply to the questionnaire. Moreover, another user stated its position before disclosure but, since it did not confirm whether this was confidential and did not provide a non-confidential summary of it, its position was not taken into account.
- (288) Among the seven users which replied to the questionnaire, five opposed the continuation of the measures: Betek, Gühring, Konrad Friedrichs and G-ELIT, and Höganäs Germany GmbH ('Höganäs'). Conversely, Nashira supported the continuation of the measures, whereas Saar-Hartmetall und Werkzeuge GmbH ('Saar-Hartmetall'), while generally in favour of anti-dumping measures, submitted that, as a smaller company, it was suffering more than larger companies from anti-dumping measures.
- (289) Moreover, out of the 10 users which made their position known before disclosure but did not submit a questionnaire reply, six supported the continuation of the measures: Ceratizit Austria GmbH, Ceratizit Luxembourg S.à r.l., AB Sandvik Coromant, Seco Tools AB, Dormer Pramet s.r.o., and Hyperion Materials & Technologies ('Hyperion'). Based on public information, five of these users were related to the Union industry. Conversely, four opposed the continuation of the measures: Fabricación Metales Duros S.A.L., Atlas Diamant GmbH, Abitzsch Präzisionsnormteile GmbH and Oerlikon Metco WOKA GmbH.
- (290) The five users related to the Union industry submitted that tungsten was a strategic raw material and tungsten carbide was the basic ingredient for hard metal tools and machine parts which were widely used in the industrial and construction sectors in the Union. They further claimed that as the tools and parts were consumables, a stable supply of tungsten carbide to produce new tools and parts would be essential to the overall functioning of the Union industry value chain and the broader Union economy. They argued that the Union tungsten carbide industry had a key role in ensuring stability of supply.
- (291) Hyperion also supported the continuation of the measures due to the Union industry's role in ensuring security of supply to the Union market, in addition to sustainability, circular economy and environmental considerations.
- (292) Saar-Hartmetall argued that, if measures were repealed, in the short term, users would benefit from low import prices from China and the Union industry would be driven out of the market. However, in the medium to long-term, Chinese producers of the product concerned would become dominant in the market and be able to set prices in the Union. Moreover, Hyperion submitted that the decrease or closure of production of the Union industry would lead to security of supply issues of tungsten carbide on the Union market. As the Covid-19 pandemic showed, long-distance sourcing from China was fragile, therefore local sourcing in the Union must remain a viable option.
- (293) The four users opposing the continuation of the measures, which did not reply to the questionnaire, submitted that anti-dumping duties on tungsten carbide would weaken their global competitiveness.
- (294) Betek, the Gühring Group, Höganäs, Nashira and Saar-Hartmetall ('the cooperating users') purchased an amount of the product under review corresponding to 22,9% of the free market consumption in the Union in the review investigation period. They purchased the product under review from the Union industry, China and other third countries. Most of their imports from China were imported under the IPP. Other third countries supplying tungsten carbide to the cooperating users during the investigation period included: Israel, Russia, Japan and Vietnam.

- (295) The investigation revealed that the turnover deriving from the sale of products incorporating tungsten carbide, for the cooperating users, represented between about 24% and 100% of their total turnover, during the review investigation period. Some of the users were part of vertically integrated groups and sold some products produced to other group companies, while others were independent entities. The independent entities sold cemented carbide tools both on the Union market and outside the Union. For the sales outside the Union, a substantial proportion of the tungsten carbide used as a raw material was purchased from the PRC under the IPP regime and therefore, no import duties were paid.
- (296) The cooperating users were manufacturing a large range of products incorporating the product under review. The importance of the costs of tungsten carbide varied significantly from one user to another. Based on information provided by different users, tungsten carbide represented between 13% and 71% of the costs of products incorporating tungsten carbide, and between 7% and 22% of the total company costs for all products produced. Some users provided cost figures for representative product types which they selected, while others provided costs for the whole company. Therefore, this analysis was carried out on the basis of the figures available to the Commission for each of the two comparisons.
- (297) The cooperating users were generally profitable during the review investigation period, both at the level of the total company and for products incorporating the product concerned. The profitability at company level represented between 1% and 7% of the total turnover, whereas the profitability of products incorporating the product under review represented between 3% and 6% of the turnover generated from sales of products incorporating the product under review.
- (298) One of the cooperating users, Höganäs claimed that, due to the anti-dumping measures in place, it had to compete with companies producing finished products outside the Union, with access to cheaper raw materials. As a result, it had to accept lower margins than users in third countries.
- (299) The Commission noted that the investigation showed, as recalled in recital (297), that users were generally able to achieve some profit during the review investigation period. Against this background, the argument that users in other countries are allegedly generating more profits than Union users is in itself not sufficient to conclude that the measures are clearly against the Union interest. Therefore, the claim was rejected.
- (300) If the measures were maintained, the Gühring Group, which opposed the measures, argued that it would lose market share for its cemented carbide products, because it would be placed at a competitive disadvantage with competitors outside the Union, which could buy Chinese tungsten carbide without paying the anti-dumping duties. It argued that the main cost of its products was the raw materials (i.e., tungsten carbide), a raw material which cannot be replaced by another one. It also would not be possible to absorb higher raw material costs and the only possibility to avoid losing market share would be to relocate production plants outside the Union.
- (301) The continuation of the measures would be limited to the continuation of the anti-dumping duty rate established in the original investigation by maintaining the same duty rate. Therefore, users would not face higher raw material costs than they currently have. The Commission noted that the investigation showed, as recalled in recital (297), that users were generally profitable during the review investigation period. As to the claim concerning the relocation of the users, the Commission noted that users did not relocate the bulk of their production, despite the measures being in place and no evidence was available that would show, to the contrary, that the repeal of the measures would prevent the relocation of users to China or other third countries. Therefore, these claims were rejected.
- (302) Saar-Hartmetall submitted that, while in a scenario of continuation of the measures the Union industry would survive, users which produce hard metal tools would not be competitive for more material-intensive products and for products without a specific technological know-how.
- (303) The Commission noted that, so far, the measures did not prevent the users from processing the product concerned without duties, as the vast majority of imports were under IPP, thus without duties. As set out in Table 7, users paid anti-dumping duties only on 38 tonnes imported under the normal regime during the review investigation period. Moreover, this trade pattern does not seem to be necessarily induced by the measures: as recalled in recital (274), tungsten carbide finds a variety of applications in many industries across all countries, thus hard metal tools made of tungsten carbide are in all likelihood global products prone to export from the Union. Thus, this claim was rejected.

- (304) The investigation found that despite the anti-dumping measures in place, the substantial number of users which provided comments were able to continue their activity in the Union through purchases from the Union industry, imports under IPP from China without the payment of anti-dumping duties and imports from other sources of tungsten carbide. During the review investigation period, anti-dumping duties were actually paid only on 38 tonnes of imports of tungsten carbide under the normal regime. In addition, the users were generally profitable, despite the anti-dumping measures in place. Moreover, several users, both related and unrelated to the Union industry, both involved and not involved also in the production of the like product, supported maintaining the measures. In these circumstances, the Commission concluded that the measures in force do not have a significant negative impact on users.

7.4. Interest of suppliers of raw materials

- (305) Two companies and one association in the upstream recycling industry came forward expressing their support for the continuation of the measures. The two companies were RS-Recycling GmbH and PA Metals Recycling OHG, whereas the association was the European Recycling Industries' Confederation (EuRIC). Another supplier came forward and provided a submission but, since it did not confirm whether this was confidential and did not provide a non-confidential summary of it, its submission was not taken into account.
- (306) The above mentioned two companies and the association argued that they invested substantially in the business of recycling of tungsten and other metal scraps and that, in light of the Union's and global environmental goals, the development of circular economies and sustainable value chains had become increasingly important. They further argued that China had the largest tungsten reserves in the world and that the GOC tended to keep prices of primary-based tungsten products low to discourage the use of secondary raw materials. They argued, therefore, that if the measures were allowed to lapse and dumped imports of tungsten carbide from China (produced mainly from primary raw material) resume, the Union would lose an important part of its circular value chain, which would put the Union recyclers at risk of going out of business and frustrate the Union's efforts to create sustainable and circular supply chains.
- (307) On this basis, the Commission concluded that it is in the interest of the suppliers to maintain the anti-dumping measures in force.

7.5. Other elements being examined

7.5.1. Competition in the Union and new entry in the market

- (308) The exporting producers Zhangyuan Tungsten, Xianglu Tungsten and Golden Egret claimed that the Union market featured closely-interrelated market players, with long-standing commercial relationships, which would have deterred interested parties from openly commenting against the measures. They argued that the Union market was a well-protected and self-reliant market, without the need to diversify sources of supply or to have competition and was dominated by influential players at the expense of the users and importers. They stated that concerns about pricing and profit-making raised by certain users implied that costs and prices in the Union market were set at much higher levels than in other countries.
- (309) It is recalled that there are seven groups of Union producers in the market, using different manufacturing processes and different raw materials. As stated in recitals (56)-(58), some of the Union producers use only virgin raw materials and some are using both virgin raw materials and scrap. The seven groups of Union producers are independent from each other and competing with each other in the Union market. Moreover, the investigation has shown that there are other sources of supply in the Union market, as recalled in recital (294). Finally, the Commission noted that, compared to the previous expiry review – when six groups of Union producers were active in the market – Nashira, a new Union producer, entered the market. This illustrated that the Union market was still dynamic and barriers to entry could be overcome. Therefore, the claim was rejected.

7.5.2. *Tungsten as a critical raw material, as a potential strategic raw material and as a conflict mineral*

- (310) Since 2011, tungsten has been consistently classified as a critical raw material for the Union ⁽¹¹²⁾. Its continued inclusion in the Union's list of critical raw material has been put forward by the Commission in its proposal for a European Critical Raw Materials Act ⁽¹¹³⁾.
- (311) Moreover, in its proposal for a European Critical Raw Materials Act, the Commission put forward tungsten also as a strategic raw material, a notion encompassing those raw materials of high importance to a technology that support the twin green and digital transition and defence and aerospace objectives ⁽¹¹⁴⁾.
- (312) Finally, the attention that the Union devoted to the supply chain of tungsten was further confirmed by the inclusion of tungsten among the conflict minerals in the Conflict Minerals Regulation ⁽¹¹⁵⁾. This implies that the import of tungsten requires due diligence obligations impingent on Union importers to ensure that tungsten trade is not used to finance armed groups, fuel forced labour and other human rights abuses, and support corruption and money laundering in politically unstable areas.
- (313) In view of the complex regulatory framework of the tungsten supply chain, as well as the strategic importance of tungsten, it is, therefore, in the interest of the Union to keep production of tungsten carbide in the Union, to promote recycling in order to reduce the consumption of primary raw materials and to decrease the relative import dependence.

7.5.3. *Possible extension of the measures*

- (314) Höganäs, which opposed maintaining the measures, argued that it had to pay the anti-dumping duty on the tungsten carbide, but at the same time there was no anti-dumping duty on the downstream products.
- (315) Nashira, both a producer and a user, which was in favour of the continuation of the measures, also argued that it was facing strong competition from Chinese hard metal tool producers, which were often vertically integrated, producing also tungsten carbide and, in some instances, owning tungsten mines. Nashira further argued that the anti-dumping measures on tungsten carbide were not sufficient to protect and stabilise the tungsten market in Europe and suggested introducing also anti-dumping measures on tungsten-based products under headings 8207 and 8209.
- (316) The Commission noted that the scope of the current investigation is limited to tungsten carbide, fused tungsten carbide and tungsten carbide simply mixed with metallic powders. In the context of the current investigation, the product scope cannot be modified. Therefore, these claims were rejected.

⁽¹¹²⁾ The first list of critical raw materials included in Commission, *Tackling the challenges in commodity markets and on raw materials*, COM(2011) 25 final of 2 February 2011; the second list in Commission, *On the review of the list of critical raw materials for the EU and the implementation of the Raw Materials Initiative*, COM(2014) 297 final of 26 May 2014; the third list in Commission, *On the 2017 list of Critical Raw Materials for the EU*, COM/2017/0490 final of 13 September 2017; and the fourth list in Commission, *Critical Raw Materials Resilience: Charting a Path towards greater Security and Sustainability*, COM(2020) 474 final of 3 September 2020.

⁽¹¹³⁾ Annex II, section 1 of Proposal for a Regulation of the European Parliament and of the Council establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) 168/2013, (EU) 2018/858, 2018/1724 and (EU) 2019/1020, COM(2023) 160 final of 16 March 2023.

⁽¹¹⁴⁾ Annex 1, section 1 of Proposal for a Regulation of the European Parliament and of the Council establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) 168/2013, (EU) 2018/858, 2018/1724 and (EU) 2019/1020.

⁽¹¹⁵⁾ Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas, OJ L 130, 19.5.2017, p. 1.

7.5.4. Duration of measures

- (317) Zhangyuan Tungsten, Xianglu Tungsten and Golden Egret argued that the anti-dumping measures on the product concerned have been in force for too long and therefore their continuation was unjustified.
- (318) The Commission recalled that pursuant to Article 11(2) of the basic Regulation, in case continuation or recurrence of injurious dumping is established and measures are clearly not against the Union interest as a whole, such measures must be maintained. All conditions were met in the present investigation. Likewise, the parties concerned did not demonstrate any specific reason in terms of the overall Union interest that would clearly speak against the continuation of the measures. The Commission has therefore no other option than to impose anti-dumping measures. This argument is therefore rejected.

7.5.5. Fused tungsten carbide

- (319) Technogenia argued that there was no Union interest supporting anti-dumping measures on fused tungsten carbide anymore, as the Union industry stopped producing it.
- (320) While indeed the investigation revealed that fused tungsten carbide is not produced in the Union market anymore, fused tungsten carbide and tungsten carbide are partially interchangeable as stated in recital (66). In addition, the Commission found that there are alternative sources and fused tungsten carbide can be imported from Canada without anti-dumping duties. Therefore, the claim was rejected.

7.6. Conclusion on Union interest

- (321) On the basis of the above, the Commission concluded that there were no compelling reasons of the Union interest against the maintenance of the existing measures on imports of tungsten carbide, fused tungsten carbide and tungsten carbide simply mixed with metallic powder originating in the PRC.

8. ANTI-DUMPING MEASURES

- (322) On the basis of the conclusions reached by the Commission on continuation of dumping, recurrence of injury and Union interest, the anti-dumping measures on tungsten carbide, fused tungsten carbide and tungsten carbide simply mixed with metallic powder from the PRC should be maintained.
- (323) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽¹¹⁶⁾ 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.
- (324) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) Regulation (EU) 2016/1036,

⁽¹¹⁶⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of tungsten carbide, fused tungsten carbide and tungsten carbide simply mixed with metallic powder, currently falling under CN codes 2849 90 30 and ex 3824 30 00 ⁽¹⁷⁾ (TARIC code 3824 30 00 10) and originating in the People's Republic of China.
2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1, shall be 33%.
3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

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, 8 August 2023.

For the Commission
The President
Ursula VON DER LEYEN

⁽¹⁷⁾ The particles are irregular and not free flowing in contrast to 'ready to press powder' particles, which are spherical or granular shaped, homogeneous and free flowing. The lack of flowability can be measured and established by using a calibrated funnel e.g. a HALL flow meter according to ISO standard 4490.