

**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**

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 ('the basic Regulation')<sup>(1)</sup>, and in particular Article 7 thereof,

After consulting the Member States,

Whereas:

**1. PROCEDURE****1.1. Initiation**

- (1) On 17 February 2021, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of certain graphite electrode systems originating in the People's Republic of China ('the PRC', 'China' or 'the country concerned') on the basis of Article 5 of Regulation (EU) 2016/1036. It published a Notice of Initiation in the *Official Journal of the European Union* <sup>(2)</sup> ('the Notice of Initiation').
- (2) The Commission initiated the investigation following a complaint lodged on 4 January 2021 by Graphite Cova GmbH, Showa Denko Carbon Holding GmbH and Tokai ErftCarbon GmbH ('the complainants'). The complaint was made by the Union industry of certain graphite electrode systems in the sense of Article 5(4) of the basic Regulation. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

**1.2. Registration**

- (3) Pursuant to Article 14(5a) of the basic Regulation, the Commission should register imports subject to an anti-dumping investigation during the period of pre-disclosure unless it has sufficient evidence within the meaning of Article 5 that the requirements either under point (c) or (d) of Article 10(4) are not met.
- (4) One of these requirements, as indicated in Article 10(4)(d) of the basic Regulation, is that there is a further substantial rise in imports in addition to the level of imports which caused injury during the investigation period. The imports of graphite electrodes originating in the PRC showed a decrease of 59,1 % in the four months following initiation (1 March to 30 June 2021) as compared to the investigation period (1 January to 31 December 2020). The data following initiation was compared to the monthly average imports from the PRC for the investigation period. The sources of the data are the Comext database (Eurostat) and the Surveillance Database. An adjustment aiming at deducing which products do not fall under the product scope was performed (see recital (187)).
- (5) Consequently, the Commission did not make imports of the product concerned subject to registration under Article 14(5a) of the basic Regulation, as the condition in Article 10(4)(d) of the basic Regulation, that is a further substantial rise in imports, was not met.

<sup>(1)</sup> OJ L 176, 30.6.2016, p. 21.

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

### 1.3. Interested parties

- (6) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainants, other known Union producers, the known exporting producers, the authorities of the People's Republic of China, known importers, suppliers and users, traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.

### 1.4. Comments on initiation

- (7) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.
- (8) China Chamber of Commerce for Import and Export of Machinery and Electronic Products ('CCCME'), Eurofer, Misano, Sangraf, Trasteel and the complainants requested a hearing with the Commission services. They made such requests within the stipulated deadlines and were granted an opportunity to be heard.
- (9) Several interested parties commented on initiation. Comments concerned especially the product scope, the product control number, the Union industry's injury, causation and the Union interest. Regarding the latter, Union interest is not a relevant criterion for assessing whether a complaint justifies the initiation of an anti-dumping proceeding under Article 5 of the basic Regulation. Therefore, those comments were not considered in relation to claims regarding the initiation of the proceedings. Furthermore, comments received after the deadline for comments as set in the Notice of Initiation were not considered either at this stage and will be addressed at definitive stage. Claims regarding product scope and product exclusion requests were addressed in Section 2.3 of this Regulation.
- (10) Regarding the claims on injury and causation, complainants, based on TARIC data have shown the increase of imports from China and the decrease of the price thereof. They demonstrated how substantially the prices of these imports undercut the Union industry's prices. They further argued that reduced Chinese imports price forced the EU industry to lower its price below the cost of production. This led to reduction of sales and profitability, thus placing the industry in a situation of injury. Based on industry figures, they further exemplified that, from mid-2019 onward, the Union producers significantly reduced their production, capacity use, sales, as well as prices and profits.
- (11) Several interested parties mentioned that Chinese producers were not very present on the market of UHP-grade electrodes. Allegedly, China was mainly on the HP/SHP-grades market, where the Union industry was not producing in sufficient quantities. This allegedly broke the causal link. However, the complainants provided sufficient evidence that Chinese imports increasingly contained UHP grades as well, which was confirmed by the investigation. This claim was therefore rejected.

### 1.5. Sampling

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

#### 1.5.1. Sampling of Union producers

- (13) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample based on the production and Union sales volume of the product under investigation, taking also into account geographic location of the Union producers. This sample consisted of three Union producers, located in three different Member States. The sampled Union producers accounted for more than 55 % of the estimated total volume of production and more than 65 % of the sales of the like product in the Union. The Commission invited interested parties to comment on the provisionally selected sample. No comment was received.

### 1.5.2. *Sampling of importers*

- (14) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (15) Ten unrelated importers provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three unrelated importers based on the largest volume of sales of the product under investigation in the Union. The sample accounted for 64 % of the total volume of reported sales of the product under investigation by the cooperating importers and 34,7 % of the estimated total import volume of the product under investigation from the People's Republic of China. In accordance with Article 17(2) of the basic Regulation, all known importers concerned were consulted on the selection of the sample. No comment was received.

### 1.5.3. *Sampling of exporting producers in the PRC*

- (16) To decide whether sampling is 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 People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (17) Thirty-six exporting producers in the country concerned provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three exporting producers based on the largest representative volume of exports to the Union, which could reasonably be investigated within the time available. In addition, the selected companies sold significant quantities of the product under investigation on the People's Republic of China's domestic market. This sample covered 33 % of the estimated total export volume to the European Union from the PRC in the investigation period (see recital (24)). In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned and the authorities of the country concerned were consulted on the selection of the sample. No comments were received.

### 1.6. **Individual examination**

- (18) Twelve exporting producers in the country concerned requested individual examination under Article 17(3) of the basic Regulation, including the three sampled producers mentioned above. However, no exporting producer but for the sampled ones submitted a completed questionnaire reply within the deadline. Therefore, no individual examination request could be considered.

### 1.7. **Questionnaire replies and verification visits**

- (19) The Commission sent a questionnaire concerning the existence of significant distortions in the PRC within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of the People's Republic of China ('GOC').
- (20) Furthermore, the complainants provided in the complaint sufficient evidence of raw material distortions in the PRC regarding the product concerned. Therefore, as announced in the Notice of Initiation, the investigation covered those raw material distortions to determine whether to apply the provisions of Article 7(2a) and 7(2b) of the basic Regulation with regard to the PRC. For this reason, the Commission requested additional information in this regard from the GOC.
- (21) The Commission sent questionnaires to the three sampled Chinese exporting producers/group of exporting producers, the three sampled Union producers and the three sampled unrelated importers. The same questionnaires were made available online <sup>(?)</sup> on the day of initiation.

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(?) [https://trade.ec.europa.eu/tdi/case\\_details.cfm?id=2515](https://trade.ec.europa.eu/tdi/case_details.cfm?id=2515)

- (22) The Commission received questionnaire replies from three sampled Union producers, three unrelated importers, eight users and three exporting producers. Sangraf Italy initially provided a user questionnaire. Eventually Sangraf Italy was considered a producer and as such part of the Union industry (see recitals (183) and (184)).
- (23) In view of the outbreak of COVID-19 and the confinement measures put in place by various Member States as well as by various third countries, the Commission could not carry out verification visits pursuant to Article 16 of the basic Regulation at provisional stage. The Commission instead cross-checked remotely all the information deemed necessary for its provisional findings in line with its Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations<sup>(4)</sup>. The Commission carried out remote crosschecks ('RCC') of the following companies/parties:

#### Union producers

- GrafTech France S.N.C., France
- Showa Denko Carbon Spain S.A., Spain
- Tokai Erftcarbon GmbH, Germany

#### Exporting producers in the PRC

- Liaoning Dantan Technology Group Co., Ltd
- Fangda Carbon New Material Co., Ltd
- Nantong Yangzi Carbon Co., Ltd

### 1.8. Investigation period and period considered

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

## 2. PRODUCT CONCERNED AND LIKE PRODUCT

### 2.1. Product concerned

- (25) At initiation, the product concerned was defined as graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,5 g/cm<sup>3</sup> or more and an electrical resistance of 7,0 μΩ.m or less, and nipples used for such electrodes, whether imported together or separately, originating in the PRC, currently falling under CN codes ex 8545 11 00 and ex 8545 90 90 (TARIC codes 8545 11 00 10, 8545 11 00 15, 8545 90 90 10 and 8545 90 90 15).
- (26) Following the request for exclusion of nipples from the product scope (see Section 2.3 below), the Commission revised the product scope and defined the product concerned as graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,5 g/cm<sup>3</sup> or more and an electrical resistance of 7,0 μΩ.m or less, whether or not equipped with nipples, originating in the PRC, currently falling under CN code ex 8545 11 00 (TARIC codes 8545 11 00 10 and 8545 11 00 15).
- (27) Graphite electrodes are consumable products used mainly in electric arc furnace steel production. As such, graphite electrodes are an essential component for the world's recycling industry since they are the only product that can conduct the power and withstand the heat necessary to melt scrap. Graphite electrodes contribute therefore to the mitigation of climate change through the reduction of the use of raw materials as well as through the reduction of the quantity of untreated waste.

### 2.2. Like product

- (28) The investigation showed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:
- the product concerned,

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

- the product produced and sold on the domestic market of the People's Republic of China, and
- the product produced and sold in the Union by the Union industry.

(29) The Commission decided at this stage that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

### 2.3. Claims regarding product scope and product exclusion request

(30) Four claims regarding the product scope were received respectively by a Union producer (Sangraf Italy), a user (NLMK Verona), an unrelated importer (CTPS Srl) and the China Chamber of Commerce ('CCCME').

(31) Sangraf Italy requested to exclude the nipples (or connecting pins) from the scope of the investigation, as there is no more production of nipples in the Union. Sangraf claimed that it cannot purchase these from its competitors.

(32) It is recalled that nipples are an integral and necessary part of a graphite electrode system. However, the Commission also noted that nipples have different characteristics than graphite electrodes bodies. The Commission also took note that there is no more production of nipples in the Union and that there is no distinct competitive market for nipples. Nipples are sold to the final end-user (the steel producers) either attached to the graphite electrode or occasionally as a spare part to the final user. Nipples are, however, specific to any given body of graphite electrode and are not sold by graphite electrode systems suppliers to other such suppliers.

(33) Therefore, the Commission concluded that the product scope should be defined as graphite electrodes, whether or not equipped with nipples, as described in recital (26) above.

(34) NLMK Verona, a steel producer, requested the exclusion of electrodes with a diameter of 350 mm from the product scope. NLMK claims that the Union industry does not provide a stable supply of electrodes with such a diameter, as the Union industry is focusing on larger diameter electrodes, which are more profitable. COMAP SAS, an importer of graphite electrodes, put forward similar arguments for small electrodes (diameter between 130 and 250 mm). CCCME, similarly, requested the exclusion of electrodes with a diameter of less than 450 mm.

(35) The Commission considered that these graphite electrodes, irrespective of size, have the same basic physical, technical and/or chemical characteristics. These claims were therefore rejected.

(36) CTPS Srl, an unrelated importer, requested the exclusion of HP electrodes<sup>(?)</sup> from the product scope. CTPS Srl claimed that there is not enough Union production of HP electrodes. In addition, CTPS Srl points out that HP and UHP electrodes differ regarding their raw materials, their technical characteristics and their uses. Misano S.p.A. developed similar arguments in its submission. CCCME put forward similar claims and requested to exclude non-UHP grade graphite electrodes.

(37) The complainants, on the other hand, claimed that there is no clear distinction between graphite electrodes' grades. There is no official industry standard, which would allow for a clear distinction between HP and UHP graphite electrodes. In addition, they claimed that, for some sizes, different grades of electrode can be used interchangeably.

(38) The Commission considered that these electrodes have the same basic physical, technical and/or chemical characteristics and that there is a certain level of overlap of the use of different grades, whose description is in any case largely based on a self-declaration by producer given that there is no commonly recognised industry standard for the grading. Excluding any of these types would therefore undermine the effectiveness of any anti-dumping measure and facilitate possible circumvention. The requests to exclude HP and non-UHP grades were therefore rejected.

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<sup>(?)</sup> Graphite electrodes are generally referred to in different grades: regular or normal power ('RP'), high power ('HP'), and ultra-high power ('UHP'). RP graphite electrodes are low quality graphite electrodes, mainly used for regular power furnaces whereas HP and UHP graphite electrodes are mainly used in electric arc furnace steel production with a higher current density.

### 3. DUMPING

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

- (39) The evidence available at the initiation of the investigation pointed to the existence of significant distortions in the PRC within the meaning of Article 2(6a), point (b) of the basic Regulation. The Commission therefore considered it appropriate to initiate the investigation having regard to Article 2(6a) of the basic Regulation.
- (40) In order to collect the necessary data for a possible application of Article 2(6a) of the basic Regulation the Commission invited all exporting producers in the country concerned to provide information regarding the inputs used for producing graphite electrodes. Thirty-two exporting producers submitted the relevant information.
- (41) 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*.
- (42) In point 5.3.2 of the Notice of Initiation the Commission also informed interested parties that based on the information available at that stage possible appropriate representative countries pursuant to Article 2(6a)(a) of the basic Regulation could be Mexico. The Commission also stated that it would examine other possibly appropriate representative countries in accordance with the criteria set out in 2(6a)(a) first indent of the basic Regulation.
- (43) On 22 March 2021, the Commission issued the First Note on the sources for the determination of the normal value ('the First Note' <sup>(6)</sup>) in which it informed the interested parties on the relevant sources it intended to use for the determination of the normal value. In that note, the Commission provided a list of all factors of production such as raw materials, labour and energy used in the production of graphite electrodes. Three possible representative countries were analysed: Mexico, Malaysia and the Russian Federation. Based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified Mexico as an appropriate representative country. The Commission received comments on the First Note from Fangda Carbon New Material Co., LTD., Liaoning Dantan Technology Group Co., LTD., from the exporting producers represented by the China Chamber of Commerce for Import and Export of Machinery and Electronic Products ('CCCME'), as well as from the European Carbon and Graphite Association.
- (44) On 17 June 2021, and after having analysed the comments received, the Commission issued the Second note on the sources for the determination of the normal value (the 'Second Note' <sup>(7)</sup>) (the First Note and Second Note are collectively referred to as the 'Notes'). In the Second Note, the Commission updated the list of factors of production and informed interested parties of its intention to use Mexico as the representative country under Article 2(6a)(a), first indent of the basic Regulation. It also informed interested parties that it would establish selling, general and administrative costs ('SG&A') and profits based on readily available financial statements of a producer active in non-clay refractory business in Mexico. The Commission invited interested parties to comment. The Commission received comments on the Second Note from Fangda Carbon New Material Co., LTD., Liaoning Dantan Technology Group Co., LTD., from the exporting producers represented by CCCME, as well as from the European Carbon and Graphite Association.
- (45) After having analysed the comments and information received on the Second Note, the Commission provisionally concluded that Mexico was an appropriate choice as representative country from which undistorted prices and costs would be sourced for the determination of the normal value. The underlying reasons for that choice are further described in detail in Section 3.4 below.

#### 3.2. Application of Article 18 of the basic Regulation

- (46) Upon initiation of the investigation on the basis of Article 2(6a)(a) of the basic Regulation, the Commission sent two questionnaires concerning the existence of distortions to the GOC. The GOC however did not submit any replies. The Commission informed the GOC by Note Verbale on 15 June 2020 that it intended to make use of the provision of Article 18 of the basic Regulation with regard to the possible existence of significant distortions on the Chinese

<sup>(6)</sup> Document registered t21.002670.

<sup>(7)</sup> Document registered t21.004605.

domestic market for graphite electrodes within the meaning of Article 2(6a) of the basic Regulation, and the possible existence of raw material distortions within the meaning of Article 7(2a) of the basic Regulation. The Commission invited the GOC to submit its comment on the application of Article 18. No comments were received.

### 3.3. Normal value

- (47) 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'*.
- (48) 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' ('administrative, selling and general costs' is referred hereinafter as 'SG&A').*
- (49) In their comments on the Notes, Fangda Carbon New Material Co., LTD., Liaoning Dantan Technology Group Co., LTD., and the exporting producers represented by CCCME argued that:
- (1) Article 2(6a) of the basic Regulation is inconsistent with the Article 2.2 and 2.2.1.1 of the WTO Anti-Dumping Agreement ('ADA') and the WTO jurisprudence;
  - (2) there is lack of evidence with regard to the alleged 'significant distortions' in relation to the Chinese graphite electrode industry. To the contrary, the Chinese graphite electrode industry is operating under market-oriented conditions.
- (50) More specifically, with respect to WTO compatibility of Article 2(6a) of the basic Regulation, the parties pointed out that the notion of significant distortions does not exist in the ADA. They submitted that the methodology stipulated in Article 2 of the ADA does not permit the use of information other than that in the exporting country in order to establish the normal value and that there is nothing in the ADA which would allow disregarding the costs and prices of the exporting producer or those existing in the exporting country, and replace them instead with allegedly undistorted prices or benchmarks in a so-called appropriate representative country. The parties further referred to the WTO disputes DS473 European Union – Anti-dumping measures on biodiesel from Argentina and DS494 European Union – Cost Adjustment Methodologies and Certain Anti-Dumping measures on Imports from Russia, recalling that according to those rulings, for the purpose of calculating the costs in order to obtain the normal value of the product concerned when the domestic price in the exporting country cannot be used, the investigating authorities are not allowed to evaluate the costs reported in the records kept by the exporter/producer pursuant to a benchmark unrelated to the costs of production in the country of origin.
- (51) Concerning the alleged lack of evidence on 'significant distortions', the parties considered first that the country report concerning the PRC (hereinafter 'the Report')<sup>(8)</sup> fails to meet the standards of impartial and objective evidence and evidence of sufficient probative value since it was prepared by the Commission, it has been tailored to facilitate lodging complaints and it therefore deliberately omits factual circumstances, elements, and conclusions, which would contradict or weaken that purpose. Moreover, the Report is, in the parties' view, outdated and therefore not able to reflect the alleged distortions during the investigation period or with respect to the product under investigation. Moreover, the Report does not specifically address the graphite electrode sector which calls into question its relevance for the present investigation. Second, the parties submitted that the Chinese graphite electrode sector is highly market-oriented, with only limited presence of State-owned enterprises ('SOEs'), operating on the basis of market and commercial principles and with no specific regulations or policies adopted by the GOC to 'encourage' the production or exports of graphite electrodes.
- (52) Consequently, the parties argued that the Commission ought not to apply Article 2(6a) of the basic Regulation but should accept instead the domestic prices and costs reported in the PRC. Should the Commission nonetheless apply Art 2(6a), the parties considered that the assessment should be done separately for each exporting producers, and each factor of production.

<sup>(8)</sup> Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 20 December 2017, SWD(2017) 483 final/2.

- (53) Section 3.3.1. below contains the Commission's assessment on the existence of significant distortions. That assessment addresses the parties' specific comments on the alleged lack of evidence with respect to significant distortions in the graphite electrodes sector in China. As to the general claim that the Report is purpose-driven and therefore not impartial and objective, the Commission noted first of all that the Report is a comprehensive document based on extensive objective evidence, including Chinese legislation, regulations and other official policy documents published by the GOC, third party reports from international organisations, academic studies and articles by scholars, and other reliable independent sources. It was made readily available since December 2017 so that any interested party would have ample opportunity to rebut, supplement or comment on it and the evidence on which it is based. Since the parties have not put forward any rebuttal on the substance and evidence contained in the Report other than pointing to the Report's abstract flaws in terms of its probative value, the Commission must reject the argument. In the same vein, the argument that the Report is too outdated and too generic to reflect the alleged distortions during the investigation period or with respect to the product under investigation cannot be accepted. Legislation and policies pertaining to wider areas of the Chinese economy or to the country as a whole cannot be considered irrelevant just because it may not specifically mention the product under investigation. Similarly, as long as applicable legislation and government policies remain in force, they are relevant for the present investigation, irrespective of when they were enacted or referred to in the Report. Finally, the Commission recalled that the analysis in Section 3.3.1. relies on a number of sources, among which the Report represents only one piece of evidence.
- (54) As to the parties' arguments concerning the WTO compatibility of Article 2(6a) of the basic Regulation, the Commission considers that the provisions of Article 2(6a) are fully consistent with the European Union's WTO obligations and the jurisprudence cited by CCCME. At the outset, the Commission notes that the WTO rulings in DS473 and DS494 did not concern the application of Article 2(6a) of the basic Regulation, but of a specific provision of Article 2(5) of the basic Regulation. In any event, WTO law as interpreted by the WTO Panel and the Appellate Body in DS473, allows the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. The existence of significant distortions renders costs and prices in the exporting country inappropriate for the construction of normal value. In these circumstances, Article 2(6a) envisages the construction of costs of production and sale on the basis of undistorted prices or benchmarks, including those in an appropriate representative country with a similar level of development as the exporting country. Moreover, in relation to the case DS494, the Commission further recalls that both the Union and the Russian Federation appealed the findings of the Panel, which are not final and therefore, according to standing WTO case-law, have no legal status in the WTO system, since they have not been endorsed through decisions by WTO Members. In any event, the Panel Report in this dispute specifically considered the provisions in Article 2(6a) of the basic Regulation to be outside the scope of the dispute.
- (55) Concerning the parties' claim that the existence of distortions should be assessed for each exporting producer and factor of production individually, the Commission recalls that once it is determined that, due to the existence of significant distortions for the exporting country in accordance with Article 2(6a)(b) of the basic Regulation, it is not appropriate to use domestic prices and costs in the exporting country, the Commission may construct normal value using undistorted prices or benchmarks in an appropriate representative country for each exporting producer according to Article 2(6a)(a). Article 2(6a)(a) allows the use of domestic costs only if they are positively established not to be distorted. However, no costs of production and sale of the product under investigation could be established as undistorted in light of the evidence available on the factors of production of individual exporting producers. The claim was therefore rejected.
- (56) For the above reasons and as further explained below, the Commission concluded in the present investigation that, based on the evidence available and given the lack of cooperation of the GOC, the application of Article 2(6a) of the basic Regulation was appropriate.

### 3.3.1. Existence of significant distortions

#### 3.3.1.1. Introduction

- (57) Article 2(6a)(b) of the basic Regulation stipulates that 'significant distortions are those distortions which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces as they are affected by substantial government intervention. In assessing the existence of significant distortions regard shall be had, inter alia, to the potential impact of one or more of the following elements:
- the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country,
  - state presence in firms allowing the state to interfere with respect to prices or costs,



- public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces,
  - the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws,
  - wage costs being distorted,
  - access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the state’.
- (58) As the list in Article 2(6a)(b) of the basic Regulation is non-cumulative, not all the elements need to be given regard to for a finding of significant distortions. Moreover, the same factual circumstances may be used to demonstrate the existence of one or more of the elements of the list. However, any conclusion on significant distortions within the meaning of Article 2(6a)(a) must be made on the basis of all the evidence at hand. The overall assessment on the existence of distortions may also take into account the general context and situation in the exporting country, in particular where the fundamental elements of the exporting country’s economic and administrative set-up provides the government with substantial powers to intervene in the economy in such a way that prices and costs are not the result of the free development of market forces.
- (59) Article 2(6a)(c) of the basic Regulation provides that *‘[w]here the Commission has well-founded indications of the possible existence of significant distortions as referred to in point (b) in a certain country or a certain sector in that country, and where appropriate for the effective application of this Regulation, the Commission shall produce, make public and regularly update a report describing the market circumstances referred to in point (b) in that country or sector’.*
- (60) Pursuant to this provision, the Commission issued the Report, showing the existence of substantial government intervention at many levels of the economy, including specific distortions in many key factors of production (such as land, energy, capital, raw materials and labour) as well as in specific sectors (such as steel and chemicals). Interested parties were invited to rebut, comment or supplement the evidence contained in the investigation file at the time of initiation. The Report was placed in the investigation file at the initiation stage.
- (61) The complaint contained information additional to the findings of the Report. It quoted additional sources, including the 2019 US Report on China’s WTO compliance <sup>(9)</sup>, which points to distortions at different levels of the Chinese economy. The complaint further underlined that the sector of graphite electrodes was investigated by authorities of other countries who found irregularities in the sector <sup>(10)</sup>. The complaint furthermore indicated that a large number of key graphite electrodes manufacturers are SOEs, including: Sinosteel Engineering & Technology (former Sinosteel Jilin Carbon), Shanxi Jinneng Group, Henan General Machinery, Jilin Songjiang Carbon and Kaifeng Carbon. It also pointed out that there are initiatives to create large producers of graphite electrodes in China, for example Shanghai Baosteel Chemical, a subsidiary of Baosteel Group, joined the leading private graphite electrode manufacturer Fangda Carbon to establish Baofang Carbon Material Technology, a joint-venture aiming at UHP graphite electrode production in Lanzhou Economic and Technological Development Zone, Gansu Province in the amount of 100 000 tonnes annually <sup>(11)</sup>. Fangda Carbon, even though it is privately owned, underlines in its annual report that it closely aligns its activities with the goals of the GOC (its *‘normal business operations are closely related to national policy’*, further insisting on the fact that *‘the company will closely focus on the goal of building the world’s first and largest carbon leading enterprise, and (...) fully implement the spirit of the 19th National Congress of the Communist Party of China’*, as well as ensuring that it *‘will adhere to the guidance of Xi Jinping’s new era of socialism with Chinese characteristics’* <sup>(12)</sup>).

<sup>(9)</sup> United States Trade Representative, ‘2019 Report on China’s WTO Compliance’, March 2020.

<sup>(10)</sup> The complaint quoted the following investigations from other authorities: Secretary of Foreign Trade of Brazilian Ministry of Development, Resolução No 19, 8.4.2009; Government of India Ministry of Commerce & Industry, Anti-Dumping Investigation concerning import of ‘Graphite Electrodes of all diameters’ originating in or exported from China PR, Final findings, 19 November 2014; United States Department of Commerce, Eighth Administrative Review of Small Diameter Graphite Electrodes from the PRC: Surrogate Values for the Preliminary Result, 5 March 2018, A-570-929.

<sup>(11)</sup> Xinhua Silk Road, ‘100 000 tons ultra-high power graphite electrode project settled in Lanzhou, Gansu’, 21 August 2018 <https://www.imsilkroad.com/news/p/107255.html>

<sup>(12)</sup> See Fangda Carbon, 2018 Annual Report.

- (62) The complaint further explains that even the privately owned enterprises are often under direct influence of the government, for example the municipal branch of SASAC has a minority stake in Fushun Carbon, the largest graphite electrode producer in Liaoning, meaning it has direct influence over the company. Similarly, a state-owned investment company CITIC has a minority stake in Heifei Carbo, an important graphite electrodes producer.
- (63) The complaint further indicated that the producers of the main raw material, needle coke, are also to a large extent SOEs. According to the complaint, the main producer of petroleum- and coal-based needle coke in China is CNPC Jinzhou Petrochemical Company, a subsidiary of PetroChina, whose sole controlling shareholder is China National Petroleum Corporation, a large state-owned enterprise managed by the SASAC. Also Shanghai Baosteel Chemical, a subsidiary of the state-owned company China Baowu Steel Group is a leading producer of needle coke.
- (64) The complaint also pointed out that the major producers of graphite electrodes, whether SOEs or private companies, are members of China Carbon Industry Association, which is directly supervised by SASAC and the Ministry of Civil Affairs. This organisation has the objective to follow the Party commandment and implement the main goals and key tasks determined by the 19th National Congress of the Communist Party.
- (65) The complaint further listed a number of examples of personal connections between the management of the graphite electrode producers and the Chinese Communist Party ('CCP'), including presence of CCP members among the higher management of graphite electrode producers, including in Fushun Carbon, Fangda Carbon, CIMM Group and in the companies producing main raw materials, such as Ansteel Chemical and Shaanxi Coal and Chemical Industry Group.
- (66) The complaint also mentioned a large capacity expansion in Inner Mongolia <sup>(13)</sup>.
- (67) The complaint also lists guidance documents which guide the development of the graphite electrodes industry, including: 2013 and 2019 version of Guidance Catalogue for the Industrial Structure Adjustment – an implementing measure of Decision No 40, which provides support to the production of UHP graphite electrodes with a diameter of 600 mm and above; Strategic Emerging Industries Key Products and Services Catalogue and the 2018 Classification of Strategic Emerging Industries, which include graphite electrodes in the 'new materials' provisions; 13th FYP for chemical industry of Shanxi Province; 13th FYP of Shanxi Province on New Materials Industry and 13th FYP of Shanxi Province on Industrial and Information Development; Western Henan 2019–2025 Five-Year Plan; Inner Mongolia Implementation Plan for the High-quality Development of Emerging Industries in the Autonomous Region; the Implementation Plan for the Project of Building a National New Raw Material Base in Liaoning Province or Construction Plan to Strengthen the Industry of Heilongjiang Province; and Made in China 2025. A number of documents target needle coke, including the Catalogue for Guiding Industry Restructuring and the Guidance Catalogue for the Adjustment of Industrial Structure of 2019 and at the provincial level. Shanxi's 13th FYP for New Material Industry Development directly targets needle coke which is defined as an encouraged industry. Moreover, the 13th Five Year Plan of Shanxi Province on Industrial and Information Development targets needle coke with regard to its aim to accelerate the transformation of traditional industries and to speed up the development of potential industry.
- (68) As indicated in recital (46), the GOC did not comment or provide evidence supporting or rebutting the existing evidence on the case file, including the Report and the additional evidence provided by the complainants, on the existence of significant distortions and/or on the appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand.
- (69) Comments in this regard were received from the sampled exporting producers. As indicated in recital (51), the exporting producers claimed that Chinese graphite electrode sector is highly market-oriented, with only limited presence of SOEs, operating on the basis of market and commercial principles and with no specific regulations or policies adopted by the GOC to 'encourage' the production or exports of graphite electrodes.

<sup>(13)</sup> Mining News Agency, Is China's Inner Mongolia Region becoming Manufacturing Hub for Graphite Electrode Industry?, <https://www.miningnewspro.com/news/230134/is-china%E2%80%99s-inner-mongolia-region-becoming-manufacturing-hub-for-graphite-electrode-industry> SteelMint's China Roadshow: Precious Insights into Graphite Electrodes and Needle Coke – SteelMint Events, <https://www.steelmintevents.com/blog/steelmints-china-roadshow-precious-insights-into-graphite-electrodes-and-needle-coke/>

- (70) The Commission examined 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 Report, which relies on readily available sources. That analysis covered the examination of the substantial government interventions in the PRC's economy in general, but also the specific market situation in the relevant sector including the product concerned. 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.

### 3.3.1.2. Significant distortions affecting the domestic prices and costs in the PRC

- (71) The Chinese economic system is based on the concept of a '*socialist market economy*'. That concept is enshrined in the Chinese Constitution and determines the economic governance of the PRC. The core principle is the '*socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people*'. The State-owned economy is the '*leading force of the national economy*' and the State has the mandate '*to ensure its consolidation and growth*'<sup>(14)</sup>. Consequently, the overall set-up of the Chinese economy not only allows for substantial government interventions into the economy, but such interventions are expressly mandated. The notion of supremacy of public ownership over the private one permeates the entire legal system and is emphasized as a general principle in all central pieces of legislation. The Chinese property law is a prime example: it refers to the primary stage of socialism and entrusts the State with upholding the basic economic system under which the public ownership plays a dominant role. Other forms of ownership are tolerated, with the law permitting them to develop side by side with the State ownership<sup>(15)</sup>.
- (72) In addition, under Chinese law, the socialist market economy is developed under the leadership of the CCP. The structures of the Chinese State and of the CCP are intertwined at every level (legal, institutional, personal), forming a superstructure in which the roles of CCP and the State are indistinguishable. Following an amendment of the Chinese Constitution in March 2018, the leading role of the CCP was given an even greater prominence by being reaffirmed in the text of Article 1 of the Constitution. Following the already existing first sentence of the provision: '*[t]he socialist system is the basic system of the People's Republic of China*' a new second sentence was inserted which reads: '*[t]he defining feature of socialism with Chinese characteristics is the leadership of the Communist Party of China*'<sup>(16)</sup>. This illustrates the unquestioned and ever growing control of the CCP over the economic system of the PRC. This leadership and control is inherent to the Chinese system and goes well beyond the situation customary in other countries where the governments exercise general macroeconomic control within the boundaries of which free market forces are at play.
- (73) The Chinese State engages in an interventionist economic policy in pursuance of goals, which coincide with the political agenda set by the CCP rather than reflecting the prevailing economic conditions in a free market<sup>(17)</sup>. The interventionist economic tools deployed by the Chinese authorities are manifold, including the system of industrial planning, the financial system, as well as the level of the regulatory environment.
- (74) First, on the level of overall administrative control, the direction of the Chinese economy is governed by a complex system of industrial planning which affects all economic activities within the country. The totality of these plans covers a comprehensive and complex matrix of sectors and crosscutting policies and is present on all levels of government. Plans at provincial level are detailed while national plans set broader targets. Plans also specify the means in order to support the relevant industries/sectors as well as the timeframes in which the objectives need to be achieved. Some plans still contain explicit output targets while this was a regular feature in previous planning cycles. Under the plans, individual industrial sectors and/or projects are being singled out as (positive or negative) priorities in line with the government priorities and specific development goals are attributed to them (industrial upgrade, international expansion, etc.). The economic operators, private and State-owned alike, must effectively adjust their business activities according to the realities imposed by the planning system. This is not only because of the binding nature of the plans but also because the relevant Chinese authorities at all levels of government adhere to the system of plans and use their vested powers accordingly, thereby inducing the economic operators to comply with the priorities set out in the plans (see also Section 3.3.1.5 below)<sup>(18)</sup>.

<sup>(14)</sup> Report – Chapter 2, p. 6–7.

<sup>(15)</sup> Report – Chapter 2, p. 10.

<sup>(16)</sup> Available at [http://www.fdi.gov.cn/1800000121\\_39\\_4866\\_0\\_7.html](http://www.fdi.gov.cn/1800000121_39_4866_0_7.html) (last viewed 15 July 2019).

<sup>(17)</sup> Report – Chapter 2, p. 20–21.

<sup>(18)</sup> Report – Chapter 3, p. 41, 73–74.

- (75) Second, on the level of allocation of financial resources, the financial system of the PRC is dominated by the State-owned commercial banks. Those banks, when setting up and implementing their lending policy need to align themselves with the government's industrial policy objectives rather than primarily assessing the economic merits of a given project (see also Section 3.3.1.8 below) <sup>(19)</sup>. The same applies to the other components of the Chinese financial system, such as the stock markets, bond markets, private equity markets etc. Also these parts of the financial sector other than the banking sector are institutionally and operationally set up in a manner not geared towards maximizing the efficient functioning of the financial markets but towards ensuring control and allowing intervention by the State and the CCP <sup>(20)</sup>.
- (76) Third, on the level of regulatory environment, the interventions by the State into the economy take a number of forms. For instance, the public procurement rules are regularly used in pursuit of policy goals other than economic efficiency, thereby undermining market based principles in the area. The applicable legislation specifically provides that public procurement shall be conducted in order to facilitate the achievement of goals designed by State policies. However, the nature of these goals remains undefined, thereby leaving broad margin of appreciation to the decision-making bodies <sup>(21)</sup>. Similarly, in the area of investment, the GOC maintains significant control and influence over destination and magnitude of both State and private investment. Investment screening as well as various incentives, restrictions, and prohibitions related to investment are used by authorities as an important tool for supporting industrial policy goals, such as maintaining State control over key sectors or bolstering domestic industry <sup>(22)</sup>.
- (77) In sum, the Chinese economic model is based on certain basic axioms, which provide for and encourage manifold government interventions. Such substantial government interventions are at odds with the free play of market forces, resulting in distorting the effective allocation of resources in line with market principles <sup>(23)</sup>.

3.3.1.3. Significant distortions according to Article 2(6a)(b), first indent of the basic Regulation: the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country

- (78) In the PRC, enterprises operating under the ownership, control and/or policy supervision or guidance by the State represent an essential part of the economy.
- (79) The GOC and the CCP maintain structures that ensure their continued influence over enterprises, and in particular State-owned enterprises (SOEs). The State (and in many aspects also the CCP) not only actively formulates and oversees the implementation of general economic policies by individual SOEs, but it also claims its rights to participate in operational decision making in SOEs. This is typically done through rotation of cadres between government authorities and SOEs, through presence of party members on SOEs executive bodies and of party cells in companies (see also Section 3.3.1.4), as well as through shaping the corporate structure of the SOE sector <sup>(24)</sup>. In exchange, SOEs enjoy a particular status within the Chinese economy, which entails a number of economic benefits, in particular shielding from competition and preferential access to relevant inputs, including finance <sup>(25)</sup>. The elements that point to the existence of government control over enterprises in the graphite electrodes sector is further developed in Section 3.3.1.4 below.
- (80) Specifically in the graphite electrodes sector, a substantial degree of ownership by the GOC persists, as indicated in the complaint and described in recital (61). The investigation confirmed that a large number of companies, including those listed in the complaint are indeed SOEs and that even though no official information exists on the exact split between privately owned companies and SOEs, the presence of SOEs in the graphite electrodes sector is substantial, including, among others, the following entities: Shanxi Jinneng Group Co., Ltd., Henan General Machinery, Kaifeng Carbon. The Commission notes further the presence in the sector of joint-ventures between

<sup>(19)</sup> Report – Chapter 6, p. 120–121.

<sup>(20)</sup> Report – Chapter 6, p. 122–135.

<sup>(21)</sup> Report – Chapter 7, p. 167–168.

<sup>(22)</sup> Report – Chapter 8, p. 169–170, 200–201.

<sup>(23)</sup> Report – Chapter 2, p. 15–16, Report – Chapter 4, p. 50, p. 84, Report – Chapter 5, p. 108–109.

<sup>(24)</sup> Report – Chapter 3, p. 22–24 and Chapter 5, p. 97–108.

<sup>(25)</sup> Report – Chapter 5, p. 104–109.

private and state-owned companies, such as in the case of Baofang Carbon Material Technology (controlled 51 % by the state-owned Baowu group and 49 % by Fangda Carbon New Materials Co., LTD <sup>(26)</sup>) or of Fushun Carbon (with 65,5 % held by Fangda Carbon New Materials Co., LTD and 34,5 % held by Fushun Longsheng State-owned Capital Operation Group Co., Ltd.).

- (81) The Commission notes moreover that various SOEs, such as CNPC Jinzhou Petrochemical <sup>(27)</sup> and Shanghai Baosteel <sup>(28)</sup> chemical, are involved in the production of needle coke, an essential raw material for the production of graphite electrodes. Furthermore, another SOE, Ordos Weiyi High-tech Materials <sup>(29)</sup>, a subsidiary of Baotou, is involved in a needle coke capacity expansion project in Inner Mongolia.
- (82) With the high level of government intervention in the graphite electrodes industry and a significant presence of SOEs in the sector, as well as at the upstream level, even privately owned producers are prevented from operating under market conditions. Indeed, both public and privately owned enterprises in the graphite electrodes sector are also subject to policy supervision and guidance as set out in Section 3.3.1.5 below.

#### 3.3.1.4. Significant distortions according to Article 2(6a)(b), second indent of the basic Regulation: State presence in firms allowing the state to interfere with respect to prices or costs

- (83) Apart from exercising control over the economy by means of ownership of SOEs and other tools, the GOC is in position to interfere with prices and costs through State presence in firms. While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights <sup>(30)</sup>, CCP cells in enterprises, state owned and private alike, represent another important channel through which the State can interfere with business decisions. According to the PRC's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution <sup>(31)</sup>) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline <sup>(32)</sup>. In 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies <sup>(33)</sup>. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of graphite electrodes and the suppliers of their inputs.
- (84) In addition, on 15 September 2020 a document titled General Office of CCP Central Committee's Guidelines on stepping up the United Front work in the private sector for the new era ('the Guidelines') <sup>(34)</sup> was released, which further expanded the role of the party committees in private enterprises. Section II.4 of the Guidelines state: '[w]e must raise the Party's overall capacity to lead private-sector United Front work and effectively step up the work in this area'; and Section III.6 states: '[w]e must further step up Party building in private enterprises and enable the Party cells to play their role effectively as a fortress and enable Party members to play their parts as vanguards and pioneers.' The Guidelines thus emphasise and seeks to increase the role of the CCP in companies and other private sector entities <sup>(35)</sup>.

<sup>(26)</sup> See for example at: Asian Metal, Baosteel Chemical and Fangda Carbon jointly construct graphite electrode project, <http://www.asianmetal.com/news/data/1440613/Baosteel%20Chemical%20and%20Fangda%20Carbon%20jointly%20construct%20graphite%20electrode%20project> (accessed on 2 August 2021).

<sup>(27)</sup> See at: <http://www.cnpc.com.cn/cnpc/lyxgdt/201912/74dfc55f14f84da189c03c7654d143c5.shtml> (accessed on 15 September 2021) Jinzhou Petrochemical's needle coke quality keeps improving, released on 19 December 2019, in China National Petroleum News.

<sup>(28)</sup> See at: [https://www.sohu.com/a/282104808\\_120065805](https://www.sohu.com/a/282104808_120065805) (accessed on 4 August 2021).

<sup>(29)</sup> See at: [https://www.sohu.com/a/314213234\\_120054226](https://www.sohu.com/a/314213234_120054226) (accessed on 4 August 2021).

<sup>(30)</sup> Report – Chapter 5, p. 100–101.

<sup>(31)</sup> Report – Chapter 2, p. 26.

<sup>(32)</sup> Report – Chapter 2, p. 31–32.

<sup>(33)</sup> Available at Reuters, Exclusive: In China, the Party's push for influence inside foreign firms stirs fears, <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU> (last viewed 15 July 2019).

<sup>(34)</sup> Available at [www.gov.cn/zhengce/2020-09/15/content\\_5543685.htm](http://www.gov.cn/zhengce/2020-09/15/content_5543685.htm) (last viewed on 10 March 2021).

<sup>(35)</sup> Financial Times (2020) 'Chinese Communist Party asserts greater control over private enterprise', available at: <https://on.ft.com/3mYxP4j>

- (85) Specifically in the graphite electrodes sector, as already pointed out, many of the producers are owned by the State and declare their commitment to adhere to the government industrial policies, as well as to the leading role of the CCP. For example, the state-owned trading company Henan General Machinery and the producer Kaifeng Carbon have emphasized the importance of CCP guidance since a number of years, with Henan General Machinery declaring that it has been *'guided by the scientific concept of development, [we shall] deeply implement the spirit of the 18th National Congress of the Communist Party of China'* <sup>(36)</sup> and Kaifeng Carbon reporting on the company's first successful Party congress already back in 2016 <sup>(37)</sup>. However, the influence of the State and Party is not limited to state-owned companies but occurs also in privately owned companies, confirming the growing influence of the CCP in the private sector described in recital above. The Commission notes in this connection that the chairman of the board of Fangda Carbon New Materials Co., LTD., is also a member of the CCP <sup>(38)</sup>. Moreover, the company states the following with respect to Party building activities: *'Fangda Carbon, as one of the world's leading carbon enterprise, actively implements the corporate culture considering "Party Building as the Soul". Over the years, the company has closely focused on the corporate development strategy of "building a strong Party to grow strong", unswervingly integrated Party building into the production and business operation of the company, and gathered strong positive energy for the healthy and rapid development of the company. [...] Over the years, Fangda Carbon has continuously strengthened the building of the Party organization [...]. The company's Party committee has received the award of "National Pioneer for Advanced Grassroots Party Organization" [...]'* <sup>(39)</sup>. Similarly, the company Jilin Carbon Co. LTD., part of the Zhongze Group, states: *'Party organizations at all levels of Zhongze Group actively carry out a series of party building activities to celebrate the 99th anniversary of the founding of the Communist Party of China, [...] demonstrating the determination, belief and responsibility of private enterprises to always adhere to the Party's leadership to help build a socialist economy. [...] All companies in the Zhongze Group have always kept doing a good job in Party building, with activities such as developing Party lessons and, organizing party history lessons, and establishing advanced models, inheriting the red gene and maintaining the original aspiration'* <sup>(40)</sup>.
- (86) Moreover, the Commission notes that articles of association of the China Carbon Industry Association, i.e. the graphite electrode sector's industry association of which Fangda Carbon New Materials Co., LTD. is a member and deputy chairman and Liaoning Dantan Technology Group is a member and standing director <sup>(41)</sup>, state unequivocally that the very purpose of the association is *'to implement the party's line, guidelines, and policies'* and that the association *'adheres to the overall leadership of the Communist Party of China and, in accordance with the provisions of the Constitution of the Communist Party of China, establishes the organization of the Communist Party of China, develops party activities, and provides necessary conditions for the activities of the Party organization'* <sup>(42)</sup>.
- (87) The State's presence and intervention in the financial markets (see also Section 3.3.1.8 below) as well as in the provision of raw materials and inputs further have an additional distorting effect on the market <sup>(43)</sup>. Thus, the State presence in firms, including SOEs, in the graphite electrodes and other sectors (such as the financial and input sectors) allow the GOC to interfere with respect to prices and costs.

#### 3.3.1.5. Significant distortions according to Article 2(6a)(b), third indent of the basic Regulation: public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces

- (88) The direction of the Chinese economy is to a significant degree determined by an elaborate system of planning which sets out priorities and prescribes the goals the central and local governments must focus on. Relevant plans exist on all levels of government and cover virtually all economic sectors. The objectives set by the planning instruments are of binding nature and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government. Overall, the system of planning in the PRC results in resources being driven to sectors designated as strategic or otherwise politically important by the government, rather than being allocated in line with market forces <sup>(44)</sup>.

<sup>(36)</sup> See at: <http://www.hngcmc.com/index.php?m=content&c=index&a=show&catid=27&id=451>, 'Innovative development year' released on 28 February 2013 and available on Henan General Machinery's website (accessed on 15 September 2021).

<sup>(37)</sup> See at: <http://www.kfcc.com.cn/news/newsInfo.asp?ID=110> 'The Company's first Party members' congress was a success', released on 28 December 2016 and available on Kaifeng Carbon's website (accessed on 15 September 2021)

<sup>(38)</sup> See at: [https://vip.stock.finance.sina.com.cn/corp/view/vCI\\_CorpManagerInfo.php?stockid=600516&Pcode=30033806&Name=%B5%B3%CE%FD%BD%AD](https://vip.stock.finance.sina.com.cn/corp/view/vCI_CorpManagerInfo.php?stockid=600516&Pcode=30033806&Name=%B5%B3%CE%FD%BD%AD) Information notice on Mr Dang Xijiang, Chairman of Fangda Carbon New Materials, released by the information website sina.com.cn (accessed on 15 September 2021).

<sup>(39)</sup> See at: [http://www.fdtsgs.com/htm/202011/13\\_1830.htm](http://www.fdtsgs.com/htm/202011/13_1830.htm) 'Party Building guides and fosters development', on Fangda Carbon New Materials' website on 25 November 2020, (accessed on 15 September 2021).

<sup>(40)</sup> See at: <http://www.jlts.cn/Html/NewsView.asp?ID=1367&SortID=13> (accessed on 2 August 2021).

<sup>(41)</sup> See at: <http://www.chinacarbon.org.cn/huiyuan.html> (accessed on 2 August 2021).

<sup>(42)</sup> See Point 2 and 3 of the Articles of Association, available at: <http://www.chinacarbon.org.cn/zhangcheng.html> (accessed on 2 August 2021).

<sup>(43)</sup> Report – Chapters 14.1 to 14.3.

<sup>(44)</sup> Report – Chapter 4, p. 41–42, 83.

- (89) The graphite electrodes industry is regarded as a key industry by the GOC. This is confirmed in the numerous plans, directives and other documents focused on graphite electrodes, which are issued at national, regional and municipal level.
- (90) As indicated in the complaint and in recital (67) above, a large number of policy guidance documents exist for the graphite electrodes industry and needle coke, which is the main raw material to produce graphite electrodes. The Commission's research confirmed the information provided in the complaint in that respect. For example, graphite electrodes are listed as encouraged industry in point VIII.2 of the 2019 NDRC Guiding Catalogue for Industry Adjustments. That provision refers to 'ultra-high power electrodes with a diameter of 600 mm and above, microporous and ultra-microporous carbon bricks for blast furnaces, special graphite (high strength, high density, high purity, high modulus), graphite (good quality) cathode, internal graphitization furnace development and production' <sup>(45)</sup>. The same section of the Guiding Catalogue also lists needle coke: 'Resource utilization of desulfurization waste liquid, advanced treatment and reuse of coking wastewater, coal tar and carbon-based materials, needle coke from coal pitch, high value-added utilization of coke oven gas, raw gas and circulating ammonia, etc.' Similarly, at the provincial level, speeding up the transformation and upgrading of the coal industry represents one of the designated priorities of the Shanxi province's 13th FYP on Industrial and Information Development. According to that plan, which refers to both graphite electrodes and needle coke, the province should: 'actively develop further the follow-up fine processing chemicals of washing oil, phenol oil, naphthalene oil, anthracene oil and other fractions, focusing on the promotion of pitch-based needle coke and ultra-high-power graphite electrodes, special carbon black, nuclear graphite, and pitch-based High value-added carbon materials such as carbon fiber. Promote the formation of large-scale production capacity' <sup>(46)</sup>. On the municipal level, an example represents the Xishe Industrial Park of Jishan Economic Development Zone in Datong (Shanxi) where a new built ultra-high power graphite electrode project with an annual output of 60 000 tons of diameter of 600 mm and above with a total investment of RMB 1,2 billion is considered a provincial key project <sup>(47)</sup>. The Commission's research confirmed also that the Western Henan plan for industry transformation and upgrade and for the building of demonstration areas <sup>(48)</sup>, the Inner Mongolia implementation plan for the high-quality development of emerging industries in the autonomous region <sup>(49)</sup>, the Implementation Plan for the Project of Building a National New Raw Material Base in Liaoning Province <sup>(50)</sup>, as well as the Construction Plan to Strengthen the Industry of Heilongjiang Province <sup>(51)</sup> feature among industrial policy documents targeting the graphite electrodes sector.
- (91) In sum, the GOC has measures in place to induce operators active in the graphite electrodes sector to comply with the public policy objectives of supporting encouraged industries, including the production of needle coke as the main raw material used in the manufacturing of the product concerned. Such measures impede market forces from operating freely.

### 3.3.1.6. Significant distortions according to Article 2(6a)(b), fourth indent of the basic Regulation: the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws

- (92) According to the information on file, the Chinese bankruptcy system delivers inadequately on its own main objectives such as to fairly settle claims and debts and to safeguard the lawful rights and interests of creditors and debtors. This appears to be rooted in the fact that while the Chinese bankruptcy law formally rests on principles that are similar to those applied in corresponding laws in countries other than the PRC, the Chinese system is characterised by systematic under-enforcement. The number of bankruptcies remains notoriously low in relation to the size of the country's economy, not least because the insolvency proceedings suffer from a number of shortcomings, which effectively function as a disincentive for bankruptcy filings. Moreover, the role of the State in the insolvency proceedings remains strong and active, often having direct influence on the outcome of the proceedings <sup>(52)</sup>.

<sup>(45)</sup> See at: [http://www.gov.cn/xinwen/2019-11/06/content\\_5449193.htm](http://www.gov.cn/xinwen/2019-11/06/content_5449193.htm) (accessed on 30 July 2021).

<sup>(46)</sup> See at: [https://www.jcgov.gov.cn/zwgk/wjgg/sxwj/201611/t20161125\\_137333.shtml](https://www.jcgov.gov.cn/zwgk/wjgg/sxwj/201611/t20161125_137333.shtml) (accessed on 30 July 2021).

<sup>(47)</sup> See at: <http://www.dt.gov.cn/dtzww/sxyw/202106/42ef183ea0ab4ab084a2dad8fd5c7b5.shtml> (accessed on 30 July 2021).

<sup>(48)</sup> See at: <https://www.ndrc.gov.cn/fzggw/jgsj/zxs/sjdt/202004/P020200401627899644473.pdf> (accessed on 3 August 2021). This plan was referred to in the complaint as Western Henan 2019–2025 Five-Year Plan.

<sup>(49)</sup> See at: [http://www.nmg.gov.cn/zwgk/zfxgk/zfxgkml/zzqzfbgtwj/202012/t20201208\\_315136.html](http://www.nmg.gov.cn/zwgk/zfxgk/zfxgkml/zzqzfbgtwj/202012/t20201208_315136.html) (accessed on 3 August 2021).

<sup>(50)</sup> See at: [http://www.ln.gov.cn/zwgk/zfwj/szfbgtwj/zfwj2011\\_136268/201901/t20190122\\_3424162.html](http://www.ln.gov.cn/zwgk/zfwj/szfbgtwj/zfwj2011_136268/201901/t20190122_3424162.html) (accessed on 3 August 2021).

<sup>(51)</sup> See at: <https://www.hlj.gov.cn/zwfb/system/2019/07/02/010903336.shtml> (accessed on 3 August 2021).

<sup>(52)</sup> Report – Chapter 6, p. 138–149.

- (93) In addition, the shortcomings of the system of property rights are particularly obvious in relation to ownership of land and land-use rights in the PRC .<sup>(53)</sup> All land is owned by the Chinese State (collectively owned rural land and State-owned urban land). Its allocation remains solely dependent on the State. There are legal provisions that aim at allocating land use rights in a transparent manner and at market prices, for instance by introducing bidding procedures. However, these provisions are regularly not respected, with certain buyers obtaining their land for free or below market rates<sup>(54)</sup>. Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land<sup>(55)</sup>.
- (94) Much like other sectors in the Chinese economy, the producers of graphite electrodes are subject to the ordinary rules on Chinese bankruptcy, corporate, and property laws. That has the effect that these companies, too, are subject to the top-down distortions arising from the discriminatory application or inadequate enforcement of bankruptcy and property laws. The present investigation revealed nothing that would call those findings into question. As such, the Commission concluded that the Chinese bankruptcy and property laws do not work properly, thus generating distortions when maintaining insolvent firms afloat and when allocating land use rights in the PRC. Those considerations, on the basis of the evidence available, appear to be fully applicable also in the graphite electrodes sector.
- (95) In light of the above, the Commission concluded that there was discriminatory application or inadequate enforcement of bankruptcy and property laws in the graphite electrodes sector, including with respect to the product concerned.

#### 3.3.1.7. Significant distortions according to Article 2(6a)(b), fifth indent of the basic Regulation: wage costs being distorted

- (96) A system of market-based wages cannot fully develop in the PRC as workers and employers are impeded in their rights to collective organisation. The PRC has not ratified a number of essential conventions of the International Labour Organisation ('ILO'), in particular those on freedom of association and on collective bargaining<sup>(56)</sup>. Under national law, only one trade union organisation is active. However, this organisation lacks independence from the State authorities and its engagement in collective bargaining and protection of workers' rights remains rudimentary<sup>(57)</sup>. Moreover, the mobility of the Chinese workforce is restricted by the household registration system, which limits access to the full range of social security and other benefits to local residents of a given administrative area. This typically results in workers who are not in possession of the local residence registration finding themselves in a vulnerable employment position and receiving lower income than the holders of the residence registration<sup>(58)</sup>. Those findings lead to the distortion of wage costs in the PRC.
- (97) No evidence was submitted to the effect that the graphite electrodes sector would not be subject to the Chinese labour law system described. The graphite electrodes sector is thus affected by the distortions of wage costs both directly (when making the product concerned or the main raw material for its production) as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in the PRC).

#### 3.3.1.8. Significant distortions according to Article 2(6a)(b), sixth indent of the basic Regulation: access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the State

- (98) Access to capital for corporate actors in the PRC is subject to various distortions.
- (99) Firstly, the Chinese financial system is characterised by the strong position of State-owned banks<sup>(59)</sup>, which, when granting access to finance, take into consideration criteria other than the economic viability of a project. Similarly to non-financial SOEs, the banks remain connected to the State not only through ownership but also via personal relations (the top executives of large State-owned financial institutions are ultimately appointed by the CCP)<sup>(60)</sup> and, again just like non-financial SOEs, the banks regularly implement public policies designed by the government. In

<sup>(53)</sup> Report – Chapter 9, p. 216.

<sup>(54)</sup> Report – Chapter 9, p. 213–215.

<sup>(55)</sup> Report – Chapter 9, p. 209–211.

<sup>(56)</sup> Report – Chapter 13, p. 332–337.

<sup>(57)</sup> Report – Chapter 13, p. 336.

<sup>(58)</sup> Report – Chapter 13, p. 337–341.

<sup>(59)</sup> Report – Chapter 6, p. 114–117.

<sup>(60)</sup> Report – Chapter 6, p. 119.



doing so, the banks comply with an explicit legal obligation to conduct their business in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State <sup>(61)</sup>. This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important <sup>(62)</sup>.

- (100) While it is acknowledged that various legal provisions refer to the need to respect normal banking behaviour and prudential rules such as the need to examine the creditworthiness of the borrower, the overwhelming evidence, including findings made in trade defence investigations, suggests that these provisions play only a secondary role in the application of the various legal instruments.
- (101) For example, the GOC has very recently clarified that even private commercial banking decisions must be overseen by the CCP and remain in line with national policies. One of the State's three overarching goals in relation to banking governance is now to strengthen the Party's leadership in the banking and insurance sector, including in relation to operational and management issues in companies <sup>(63)</sup>. Also, the performance evaluation criteria of commercial banks have now to, notably, take into account how entities '*serve the national development objectives and the real economy*', and in particular how they '*serve strategic and emerging industries*' <sup>(64)</sup>.
- (102) Furthermore, bond and credit ratings are often distorted for a variety of reasons including the fact that the risk assessment is influenced by the firm's strategic importance to the GOC and the strength of any implicit guarantee by the government. Estimates strongly suggest that Chinese credit ratings systematically correspond to lower international ratings <sup>(65)</sup>.
- (103) This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important <sup>(66)</sup>. This results in a bias in favour of lending to SOEs, large well-connected private firms and firms in key industrial sectors, which implies that the availability and cost of capital is not equal for all players on the market.
- (104) Secondly, borrowing costs have been kept artificially low to stimulate investment growth. This has led to the excessive use of capital investment with ever lower returns on investment. This is illustrated by the growth in corporate leverage in the State sector despite a sharp fall in profitability, which suggests that the mechanisms at work in the banking system do not follow normal commercial responses.
- (105) Thirdly, although nominal interest rate liberalization was achieved in October 2015, price signals are still not the result of free market forces, but are influenced by government-induced distortions. The share of lending at or below the benchmark rate still represented at least one-third of all lending as of the end of 2018 <sup>(67)</sup>. Official media in the PRC have recently reported that the CCP called for '*guiding the loan market interest rate downwards*' <sup>(68)</sup>. Artificially low interest rates result in under-pricing, and consequently, the excessive utilization of capital.

<sup>(61)</sup> Report – Chapter 6, p. 120.

<sup>(62)</sup> Report – Chapter 6, p. 121–122, 126–128, 133–135.

<sup>(63)</sup> See official policy document of the China Banking and Insurance Regulatory Commission (CBIRC) of 28 August 2020: *Three-year action plan for improving corporate governance of the banking and insurance sectors (2020–2022)*. <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=925393&itemId=928> (last viewed on 3 April 2021). The Plan instructs to '*further implement the spirit embodied in General Secretary Xi Jinping's keynote speech on advancing the reform of corporate governance of the financial sector*'. Moreover, the Plan's Section II aims at promoting the organic integration of the Party's leadership into corporate governance: '*we shall make the integration of the Party's leadership into corporate governance more systematic, standardised and procedure-based [...] Major operational and management issues must have been discussed by the Party Committee before being decided upon by the Board of Directors or the senior management.*'

<sup>(64)</sup> See CBIRC's *Notice on the Commercial banks performance evaluation method*, issued on 15 December 2020. [http://jrs.mof.gov.cn/gongzuotongzhi/202101/t20210104\\_3638904.htm](http://jrs.mof.gov.cn/gongzuotongzhi/202101/t20210104_3638904.htm) (last viewed on 12 April 2021).

<sup>(65)</sup> See IMF Working Paper '*Resolving China's Corporate Debt Problem*', by Wojciech Maliszewski, Serkan Arslanalp, John Caparusso, José Garrido, Si Guo, Joong Shik Kang, W. Raphael Lam, T. Daniel Law, Wei Liao, Nadia Rendak, Philippe Wingender, Jiangyan, October 2016, WP/16/203.

<sup>(66)</sup> Report – Chapter 6, p. 121–122, 126–128, 133–135.

<sup>(67)</sup> See OECD (2019), *OECD Economic Surveys: China 2019*, OECD Publishing, Paris. p. 29. [https://doi.org/10.1787/eco\\_surveys-chn-2019-en](https://doi.org/10.1787/eco_surveys-chn-2019-en).

<sup>(68)</sup> See: [http://www.xinhuanet.com/fortune/2020-04/20/c\\_1125877816.htm](http://www.xinhuanet.com/fortune/2020-04/20/c_1125877816.htm) (last viewed on 12 April 2021).

- (106) Overall credit growth in the PRC indicates a worsening efficiency of capital allocation without any signs of credit tightening that would be expected in an undistorted market environment. As a result, non-performing loans have increased rapidly in recent years. Faced with a situation of increasing debt-at-risk, the GOC has opted to avoid defaults. Consequently, bad debt issues have been handled by rolling over debt, thus creating so called 'zombie' companies, or by transferring the ownership of the debt (e.g. via mergers or debt-to-equity swaps), without necessarily removing the overall debt problem or addressing its root causes.
- (107) In essence, despite the steps that have been taken to liberalize the market, the corporate credit system in the PRC is affected by significant distortions resulting from the continuing pervasive role of the state in the capital markets.
- (108) No evidence was submitted to the effect that the graphite electrodes sector, would be exempted from the above-described government intervention in the financial system. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

#### 3.3.1.9. Systemic nature of the distortions described

- (109) The Commission noted that the distortions described in the Report are characteristic for the Chinese economy. The evidence available shows that the facts and features of the Chinese system as described above in Sections 3.3.1.2–3.3.1.5, as well as in Part A of the Report apply throughout the country and across the sectors of the economy. The same holds true for the description of the factors of production as set out above in Sections 3.3.1.6–3.3.1.8 above and in Part B of the Report.
- (110) The Commission recalls that in order to produce graphite electrodes, a range of inputs is needed, such as, among others, petroleum coke, needle petroleum coke, needle pitch coke, as well as electricity (see Section 2.1). According to the evidence on the file, the PRC is one of the major producers of needle coke – the key raw material in the graphite electrodes production process and the sampled exporting producers sourced most of their inputs in the PRC (i.e. more than 70 % in terms of purchase value). When the producers of graphite electrodes 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.
- (111) As a consequence, not only the domestic sales prices of graphite electrodes are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts A and B of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that in itself was produced in the PRC by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth. No evidence or argument to the contrary has been adduced by the GOC or the exporting producers in the present investigation.

#### 3.3.1.10. Conclusion

- (112) The analysis set out in Sections 3.3.1.2 to 3.3.1.9, which includes an examination of all the available evidence relating to the PRC's intervention in its economy in general as well as in the graphite electrodes sector showed that prices or costs of the product concerned, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission rejected the arguments by the exporting producers concerning the lack of significant distortions (see recital (69)) and concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case.
- (113) Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as discussed in the following section.

### 3.3.2. Representative country

#### 3.3.2.1. General remarks

- (114) 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 <sup>(69)</sup>,
  - Production of the product under investigation in that country,
  - Availability of relevant public data in the representative country,
  - Where there is more than one possible representative country, preference was given, where appropriate, to the country with an adequate level of social and environmental protection.
- (115) As explained in recitals (43) and (44), the Commission issued and placed on the file two notes for the file on the sources for the determination of the normal value. The Notes described the facts and evidence underlying the relevant criteria and addressed the comments received by the parties on these elements and on the relevant sources. In the Second Note, the Commission informed interested parties of its intention to consider Mexico as an appropriate representative country in the present case if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation would be confirmed. The Commission's assessment can be summarised as follows.

#### 3.3.2.2. A level of economic development similar to China and production of the product under investigation

- (116) In the First Note on production factors, the Commission identified the countries with a similar level of economic development as China. In the investigation period, the World Bank classified these countries as 'upper-middle income' countries on a gross national income basis. However, a sizeable production of the product under investigation was found to exist only in three countries, namely Malaysia, Mexico and Russia.
- (117) Following the Second Note, CCCME and Fangda Carbon New Material Co., LTD claimed that Malaysia, Mexico and Russia are not appropriate choices for the representative country, and recommended other possible countries, in particular Ukraine and India. Both parties noted that the Commission had in a recent proceeding chosen India as the representative country <sup>(70)</sup>.
- (118) Regarding the investigation mentioned above by the parties, the Commission used India as a representative country as the product subject to that investigation appeared to be produced only in India and the United States of America. Moreover, since that investigation was an expiry review where the question was whether dumping is likely to continue or recur irrespective of the actual level of dumping, the Commission considered that India could exceptionally constitute the basis to establish the costs of production and sale in the particular circumstances of that case.
- (119) Moreover, the Notes contain a specific annex to guide parties in submitting information on possible additional representative countries and/or companies for the purpose of Article 2(6a)(a) of the basic Regulation. Both parties failed to provide the information to the requisite standard and level of detail prescribed by the said annex.
- (120) The Commission noted that India and Ukraine have a level of economic development inferior to the one of the PRC as defined by the World Bank's classification whereas Malaysia, Mexico and Russia have a similar level of economic development as the PRC. In accordance with Article 2(6a)(a), first indent of the basic Regulation, which mandates the normal value to be established based on corresponding costs of production and sales in an appropriate representative country with a similar level of economic development as the exporting country, these countries were considered appropriate potential representative countries, and there was no reason to consider countries with a lower level of economic development such as India and Ukraine. Therefore, the Commission rejected these claims.

<sup>(69)</sup> World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>

<sup>(70)</sup> Commission Implementing Regulation (EU) 2021/441 of 11 March 2021 imposing a definitive anti-dumping duty on imports of sulphonic acid 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 85, 12.3.2021. p. 154), recital (111).

### 3.3.2.3. Availability of relevant public data in the representative country

- (121) In the First Note the Commission indicated that for the countries identified as countries where product concerned is being produced, namely Malaysia, Mexico and Russia, the availability of public data needed to be further verified in particular with regard to the public financial data from producers of the product concerned.
- (122) With regard to the Russian Federation, the financial statements of the identified producers' concerned only 2019. In addition, one company in Russia was lossmaking. Furthermore, in the First Note, the Commission identified a number of distortions existing on the Russian market which had an impact on the cost of production of the product under investigation and undermined Russia as a suitable representative country.
- (123) As for Malaysia, readily available financial statements dated back to 2017, rendering them outdated as compared to the investigation period. Also, there were two export restrictions in Malaysia, although they had an immaterial impact on the cost of production of the product under investigation representing approximately 1 % of the cost of production of graphite electrodes of the sampled exporting producers. In the meantime, the Commission obtained access to publically available financial statements for 2020 for Showa Denko Malaysia <sup>(71)</sup> but the company was loss making for that year. As a result, as there was no profitable producer in this country with readily available data for the investigation period, the Commission did not consider Malaysia to be a suitable representative country.
- (124) Concerning Mexico, the Commission identified one producer, namely GrafTech Mexico S.A. de C.V ('GrafTech Mexico'). Although the company's financial statements were not readily available, the Commission identified GrafTech Group's ('GrafTech International') Annual Report for 2020 which contained the group's consolidated financial statements. In light of the above, overall, this appeared to be the best readily available data. Finally, in the First Note, the Commission identified that Mexico has import requirements on graphite electrodes (Tariff codes 8545 11 and 8545 90) in the form of labelling requirements. However, these labelling requirements are not product-specific but apply for all products imported into Mexico. The relevant Mexican regulation <sup>(72)</sup> provides general rules ensuring that labels do not mislead consumers or end users when it comes to imports from third countries and do not as such constitute an import restriction. These requirements therefore do not have an important impact on the cost of production of the product under investigation.
- (125) Following the First Note, Fangda Carbon New Material Co., Ltd., Liaoning Dantan Technology Group Co., Ltd. and the CCCME claimed in their submissions that GrafTech Mexico was an unsuitable option. First, as the only financial statements available were consolidated accounts consisting not only of Mexico, but also the other subsidiaries worldwide, these consolidated accounts would incorporate companies from countries that could not be considered at the same level of development as China and that would not reflect the fixed manufacturing overhead, SG&A and profit of Mexico, if Mexico was to become the representative country for the purposes of this investigation. Furthermore, Liaoning Dantan Technology Group Co., Ltd. claimed that, if Mexico is chosen as representative country then the profit of GrafTech International Ltd must be adjusted to reflect the reasonable level of profit for graphite electrode operation, since the consolidated profit level of GrafTech International Ltd is excessively high, this resulting from the fully vertically integrated nature of GrafTech's operation, where the company produces its own petroleum needle coke rather than relying on third party suppliers. Finally, the CCCME questioned the overall objectivity of any data as provided by GrafTech Mexico, given that GrafTech International Ltd is a supporting party of the Complaint.
- (126) Finally, Liaoning Dantan Technology Group Co., Ltd. brought forward a more general observation, namely that profitability for 2020 will be much reduced compared to 2019 owing to the cyclical phenomenon of this industry and the effects of global pandemic lately. Therefore, unless GrafTech Mexico's individual financial data in 2020 becomes available, Mexico does not meet the requirement as an appropriate representative country under the provision of Article 2(6a).

<sup>(71)</sup> The data for this company was available at the following site <https://www.crif.com.my/> which contains publically available financial data of companies registered in Malaysia and the data comes from SSM which is the national registry for companies and businesses in Malaysia. However, the report is copyright protected and for the time being cannot be put on the open file, but is available for purchase at a nominal fee.

<sup>(72)</sup> NORMA Oficial Mexicana NOM-024-SCFI-2013, Información comercial para empaques, instructivos y garantías de los productos electrónicos, eléctricos y electrodomésticos, available at: [dof.gob.mx/nota\\_detalle.php?codigo=5309980&fecha=12/08/2013](http://dof.gob.mx/nota_detalle.php?codigo=5309980&fecha=12/08/2013)

- (127) As stated in the First Note, the Commission found online the consolidated financial statements of GrafTech International Ltd. In the First Note they concerned the fiscal year 2019 <sup>(73)</sup>, while in the Second Note – fiscal year 2020 <sup>(74)</sup>.
- (128) With regard to the claim that the consolidated accounts of GrafTech International Ltd. would incorporate companies that would not reflect the fixed manufacturing overheads, SG&A and profit of Mexico, the data available from GrafTech International Ltd. is specific to the production of the product under investigation, as the only product the group manufactures is graphite electrodes. In other words, the group's consolidated financial data reflects both the performance of the production of graphite electrodes and its fixed manufacturing overhead, SG&A and profit of graphite electrodes because the group does not manufacture any other product but graphite electrodes. GrafTech International Ltd. also was profit making during the investigation period. Moreover, GrafTech Mexico is also a company of a size similar to the Chinese companies and also has an important production of the product concerned.
- (129) Finally, the data from any other producers considered from other countries could not be used for the reasons explained and none of the parties who submitted comments following the First Note put forward any alternatives.
- (130) However, in light of those comments, the Commission decided to also investigate whether there were any producers in the same or similar categories of products as the product under investigation in Mexico. In particular, the Commission observed that the profit declared in GrafTech International's 2020 consolidated accounts was indeed extraordinarily high (35,5 % expressed on a revenue basis). Among the Mexican producers producing same or similar categories of products as the product under investigation, the Commission identified at this stage only one company which had available data for 2020. That is Reotix Materiales Refractorios S.A. de C.V ('Reotix Materiales Refractorios'), a company active in the non-clay refractory business. The profit achieved by that company in 2020 was 4,7 %. In the absence of any other reliable readily available data at this stage, the Commission considered that this profit could be reasonably achieved by a producer in Mexico of the product under investigation.
- (131) On the other hand, the SG&A of Reotix Materiales Refractorios, was shown to be 39,0 % on a revenue basis. In light of this, the Commission found it more reasonable to rely on the SG&A reported in the Annual Report for 2020 of GrafTech International Ltd, which was 5,9 % on a revenue basis, as this did relate to the product concerned, and, in part, to GrafTech Mexico.
- (132) In view of the above, in the absence of any other reliable data, the Commission considered that the amount of SG&A of GrafTech International Ltd and the profit achieved by Reotix Materiales Refractorios are undistorted and reasonable within the meaning of Article 2(6a)(a) last paragraph, of the basic Regulation.
- (133) In response to the Second Note, CCCME and Fangda Carbon New Material Co., LTD and Liaoning Dantan Technology Group Co., Ltd had opposed the use of SG&A obtained from GrafTech International Ltd as it came from the consolidated financial data of various companies established in countries with different level of income, including high income countries however, without putting forward any new arguments compared to the similar arguments brought after the First Note or submitting evidence in this regard. At the same time, the Commission noted that CCCME and Fangda Carbon New Material Co., LTD supported the Commission's decision to use a reasonable profit.
- (134) Therefore, in the absence of any other comments or the submission of any other readily available data, the Commission provisionally concluded that the sources it proposed to use for SG&A and profit are undistorted and reasonable within the meaning of Article 2(6a)(a) last paragraph of the basic Regulation.

#### 3.3.2.4. Level of social and environmental protection

- (135) Having established that Mexico was the only available 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.

<sup>(73)</sup> Annual report 2019 available at [https://s2.q4cdn.com/282965219/files/doc\\_financials/2019/q4/843539-GrafTech-Bookmarked-Annual-Report.pdf](https://s2.q4cdn.com/282965219/files/doc_financials/2019/q4/843539-GrafTech-Bookmarked-Annual-Report.pdf)

<sup>(74)</sup> Annual report 2020 available at: [https://s2.q4cdn.com/282965219/files/doc\\_financials/2020/q4/2020-Graftech-Bookmarked-Annual-Report.pdf](https://s2.q4cdn.com/282965219/files/doc_financials/2020/q4/2020-Graftech-Bookmarked-Annual-Report.pdf) accessed on 16.6.2021.

### 3.3.2.5. Conclusion

- (136) In view of the above analysis, Mexico met the criteria laid down in Article 2(6a)(a), first indent of the basic Regulation in order to be considered as an appropriate representative country.
- (137) Fangda Carbon New Material Co., Ltd., Liaoning Dantan Technology Group Co., Ltd. and the CCCME stressed in their comments that an alternative fourth representative country must be found. However, none of these parties proposed an alternative representative country. It should be underlined that, indeed, out of all countries with an economic development comparable to the PRC, the Commission identified, on the basis of the information at its disposal that only Mexico, Malaysia and Russia have production of the product under investigation. Moreover, from these three countries, only in Mexico was relevant data readily available.
- (138) In light of those observations and all the relevant facts considered in their totality, the Commission provisionally decided to use Mexico as appropriate representative country for the purpose of establishing the normal value of Chinese exporting producers pursuant to Article 2(6a) of the basic Regulation and the company GrafTech Mexico based in Mexico in accordance with Article 2(6a)(a), first indent, of the basic Regulation.

### 3.3.3. Sources used to establish undistorted costs for factors of production

- (139) On the basis of the information submitted by interested parties and other relevant information available on the file, the Commission established, in the First Note, an initial list of factors of production such as materials, energy and labour used for the production of the product under investigation.
- (140) In accordance with Article 2(6a)(a) of the basic Regulation, the Commission also identified sources to be used for establishing undistorted prices and benchmarks. The main source that the Commission proposed to use included the Global Trade Atlas (the 'GTA'). Finally, in the same note, the Commission identified the Harmonised System (HS) codes of factors of production which, on the basis of information provided by the interested parties, were initially considered to be used for the GTA analysis.
- (141) The Commission invited the interested parties to comment and propose readily available information on undistorted values for each of the factors of production mentioned in that note.
- (142) Subsequently, in the Second Note, the Commission updated the list of factors of production based on the comments of the parties and information submitted by the sampled exporting producers in the questionnaire reply.
- (143) In the Second Note the Commission proposed to use Malaysian import data for establishing the price of petroleum coke (HS 2713 12) instead of the Mexican import price, following comments of the exporting producers and European Carbon and Graphite Association that import statistics of petroleum coke into Mexico did not sufficiently reflect the quality grade of needle coke as used in the manufacturing of graphite electrode systems.
- (144) Following the Second Note, several parties claimed that the Commission should not use the Malaysian import data for establishing price of petroleum coke (HS 2713 12) as the quantity reported in the Malaysian statistics is very low and not representative.
- (145) The Commission accepted the claim and decided to provisionally establish the benchmark for petroleum coke based on the Mexican import price.
- (146) In the Second Note, the Commission further reported that there is no import in Mexico of coal tar (HS 2708 20) and thus decided to use Malaysia for the establishment of that benchmark.
- (147) The Commission noted that the parties did not oppose this decision in their comments on the Second Note.
- (148) One party claimed that the methodology used to establish the Mexican CIF import price is not correct as the Commission used the same freight costs ratio based on a unique HS code (i.e. 2713) for any exporting country and for all benchmarks. Moreover, the dataset used is outdated as the latest available financial year is from 2016.

- (149) While the party claimed that the methodology is not correct, no alternative solution was proposed. The Commission concluded that the estimation remains the most accurate at its disposal.
- (150) Considering all the information submitted by the interested parties and collected during the verification visits, 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:

Factors of production of graphite electrodes			
Factor of Production	Commodity Code	Undistorted value (RMB)	Unit of measurement
Raw materials			
Petroleum coke (calcined)	2713 12	5 240	Tonne
Petroleum coke (non calcined)	2713 11	432	Tonne
Pitch from coal tar	2708 10	8 640	Tonne
Pitch coke from coal tar	2708 20	3 917	Tonne
Coke and semi-coke of coal	2704 00	1 884	Tonne
Coal asphalt	2715 00	6 113	Tonne
Coal	2701 12	881	Tonne
Graphite fragments	3801 90	13 048	Tonne
Consumables			
Labour			
Labour wages in manufacturing sector	[N/A]	13,37	Hours
Energy			
Electricity	[N/A]	1 138	kWh
Natural Gas	[N/A]	0,70	m <sup>3</sup>
By product/waste			
Graphite scrap	3801 90	13 048	Tonne
Silicon carbide scrap	2849 20	8 055	Tonne

### 3.3.3.1. Raw materials used in the production process

- (151) In order to establish the undistorted price of raw materials the Commission used as a basis the weighted average import price (CIF) to the representative country, as reported in the GTA, from all third countries excluding the PRC and countries that are not members of the WTO and listed in Annex I of Regulation 2015/755 of the European Parliament and of the Council<sup>(75)</sup>. The Commission decided to exclude imports from China as it concluded that it is not appropriate to use domestic prices and costs in China due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation (see Section 3.3.1 above). Absent any evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected exports. For Mexico, the exclusion of imports from PRC and of some non-WTO Members did not have a significant impact, as the remaining imports still represented around 99 % of total import volumes into the representative country. In Malaysia, for imports of pitch coke from coal tar, imports from PRC represented 55 % of the total imports. The weighted average import price was adjusted for import duties, where applicable.

<sup>(75)</sup> Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33). Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value.

- (152) For a small number of factors of production the actual costs incurred by the cooperating exporting producers represented a negligible share of total raw material costs in the investigation period. As the value used for these had no appreciable impact on the dumping margin calculations, regardless of the source used, the Commission treated those factors of production as consumables, as explained in recital (166).
- (153) The Commission expressed the transport costs incurred by the cooperating exporting producers for the supply of raw materials as a percentage of the actual cost of such raw materials and then applied the same percentage to the undistorted cost of the same raw materials in order to obtain the undistorted transport cost. The Commission considered that, in the context of this investigation, the ratio between the exporting producer's raw material and the reported transport costs could be reasonably used as an indication to estimate the undistorted costs of raw materials when delivered to the company's factory.

#### 3.3.3.2. Labour

- (154) The Commission used the ILO statistics, which provide information on average monthly earnings of employees and average weekly hours actually worked per employed person in Mexico in 2020. The monthly earnings do not include social security cost and taxes born by the employer. Such information is available in the OECD Library for the same year <sup>(76)</sup>.

#### 3.3.3.3. Electricity

- (155) The price of electricity in Mexico is published by the Mexican Electric Commission. The Commission used the data on the industrial electricity prices as published in Mexico's Official Journal.
- (156) Following the Second Note, Liaoning Dantan Technology Group Co., Ltd. claimed that the prices of electricity in Mexico are distorted upward and thus should be lowered as the development of the renewable sources of energy was undermined by the Mexican State.
- (157) The Commission noted that the party did not submit any evidence supporting its claim, other than vague statements. Therefore, the claim was rejected.

#### 3.3.3.4. Natural gas

- (158) The Commission used the price of gas for industrial users in Mexico as published by the Comisión Reguladora de Energía <sup>(77)</sup> in its regular press releases. The Commission used the data of the industrial gas prices in the corresponding consumption band in gigajoules covering the investigation period.

#### 3.3.3.5. Waste

- (159) The Commission analysed the accounting practices of the sampled Chinese exporting producers pertaining to by-products and waste. As a result, the Commission adjusted the constructed cost of production in accordance with each companies' accounting practices pertaining to by-products and waste.

#### 3.3.3.6. Manufacturing overhead costs, SG&A, profits and depreciation

- (160) 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.
- (161) The manufacturing overheads incurred by the cooperating exporting producers were expressed as a share of the costs of manufacturing actually incurred by the exporting producers. This percentage was applied to the undistorted costs of manufacturing.
- (162) For establishing an undistorted and reasonable amount for manufacturing overheads, SG&A and profit, the Commission relied on the financial data of GrafTech International Ltd for SG&A and of Reotix Materiales Refractarios for profit.

<sup>(76)</sup> Available at <https://ilostat.ilo.org/data/country-profiles/> (last viewed 28 March 2021).

<sup>(77)</sup> Available at <https://www.cre.gob.mx//IPGN/index.html> (last viewed 28 March 2021).



#### 3.3.4. Calculation of normal value

- (163) Based on the undistorted prices and benchmarks described above, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (164) To establish the undistorted costs of manufacturing for each legal entity manufacturing and exporting the product concerned, the Commission replaced, for each exporting producer, factors of production purchased both from related and unrelated parties by the factors of production identified in the table above.
- (165) First, the Commission established the undistorted costs of manufacturing based on the factors of production purchased by each of the companies. It then applied the undistorted unit costs to the actual consumption of the individual factors of production of each of the cooperating exporting producers. The Commission reduced the costs of manufacturing by the undistorted costs of by-products re-used in the production process.
- (166) Second, to arrive at a total undistorted cost of manufacturing, the Commission added manufacturing overheads. Manufacturing overheads incurred by the cooperating exporting producers were increased by the costs of consumables referred to in recital (152) and subsequently expressed as a share of the costs of manufacturing actually incurred by each of the exporting producers. This percentage was applied to the undistorted costs of manufacturing.
- (167) Finally, the Commission added SG&A and profit which were expressed as a percentage of the cost of goods sold and applied to the undistorted total cost of manufacturing (i.e. SG&A amounted to 12,0 % and profit amounted to 8,9 %).
- (168) 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

- (169) Liaoning Dantan Technology Group Co., Ltd. exported all the production of the product concerned via two related traders in China. Another exporting producer, Chengdu Rongguang Carbon Co., Ltd., which is part of the group Fangda Carbon New Material Co., Ltd., exported only part of its production of the product concerned via a related trader in China. By contrast, Nantong Yangzi Carbon Co., Ltd. only sold directly to the Union.
- (170) Therefore, the export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation for all three sampled exporting producers.

#### 3.5. Comparison

- (171) The Commission compared the normal value and the export price of the sampled exporting producers on an ex-works basis.
- (172) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for transport, insurance, handling and loading, credit costs, bank charges, commissions and customs duties.
- (173) As the Liaoning Dantan Technology Group Co., Ltd. and Chengdu Rongguang Carbon Co., Ltd., part of the group Fangda Carbon New Material Co., Ltd., exported via a related trader in China, the Commission adjusted the export prices of these companies in accordance with Article 2(10)(i) of the basic Regulation as these traders were acting as agents working on a commission basis. The adjustment amounted to the SG&A and profit of the trader.

#### 3.6. Dumping margins

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

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

Company	Provisional dumping margin
Fangda Group composed of 4 producers	24,5 %
Liaoning Dantan Technology Group Co., Ltd.	17,5 %
Nantong Yangzi Carbon Co., Ltd.	24,5 %

- (176) For the cooperating exporting producers outside the sample, the Commission calculated the weighted average dumping margin, in accordance with Article 9(6) of the basic Regulation. Therefore, that margin was established on the basis of the margins of the sampled exporting producers.

- (177) On this basis, the provisional dumping margin of the cooperating exporting producers outside the sample is 21,6 %.

- (178) For all other exporting producers in China, the Commission established the dumping margin on the basis of the facts available, in accordance with Article 18 of the basic Regulation. To this end, the Commission determined the level of cooperation of the exporting producers. The level of cooperation is the volume of exports of the cooperating exporting producers to the Union expressed as proportion of the total imports from the country concerned to the Union in the investigation period, that were established on the basis of Eurostat.

- (179) The level of cooperation in this case is low because the imports of the cooperating exporting producers constituted only around 62 % of the total exports to the Union during the investigation period. On this basis, the Commission considered it appropriate to set the country-wide dumping margin applicable to all other non-cooperating exporting producers at the level of the highest dumping margin established for a product type sold in representative quantities by the exporting producer with the highest dumping margin found. The dumping margin thus established was 66,5 %.

- (180) The provisional dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional dumping margin
Fangda Group composed of 4 producers	24,5 %
Liaoning Dantan Technology Group Co., Ltd.	17,5 %
Nantong Yangzi Carbon Co., Ltd.	24,5 %
Other cooperating companies	21,6 %
All other companies	66,5 %

#### 4. INJURY

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

- (181) The like product was manufactured by five companies or groups of companies in the Union during the investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

- (182) The total Union production during the investigation period was established at around 164 460 tonnes. The Commission established the figure on the basis of the information provided by the Union producers. As indicated in recital (13), the three sampled Union producers represented more than 55 % of the total volume of production and more than 65 % of the sales in the Union of the like product.

- (183) The complainants requested to exclude Sangraf Italy from the definition of the Union industry, as Sangraf Italy and its related company Sangraf Henan from the PRC are both fully controlled by the Hong-Kong based Gaoshuo Group (Hong Kong), which is ultimately owned by Sanergy Group Limited, incorporated in the Cayman Islands.
- (184) The investigation showed that Sangraf Italy imported nipples from its related company in the PRC, but produced graphite electrode bodies in Narni, Italy. Sangraf also demonstrated that it is operating in the EU with a certain degree of operational autonomy. Sangraf Italy is managed from Italy, while the Group (Sangraf international) is managed from the US. From a shareholding perspective, the ultimate controlling holding company is incorporated in the Cayman Islands. Sangraf Italy is also a full member of the European Carbon and Graphite Association.
- (185) Based on these considerations Sangraf Italy was considered part of the Union industry in line with Article 4 of the basic Regulation. The request to exclude Sangraf Italy from the definition of the Union industry was therefore rejected.

#### 4.2. Union consumption

- (186) The Commission established the Union consumption on the basis of the information provided by the Union industry and the imports volumes (TARIC level) reported in Eurostat.
- (187) Union consumption developed as follows:

Table 1

#### Union consumption (in tonnes)

	2017	2018	2019	Investigation period
Total Union consumption	175 738	181 070	153 706	132 454
Index	100	103	87	75

Source: Eurostat (Comext) and Union industry

Note: An adjustment was made to imports under TARIC code 8545 11 00 90 to exclude graphite electrodes with an apparent density of less than 1,5 g/cm<sup>3</sup> or an electrical resistance of more than 7,0 µΩ.m. This adjustment consisted in withdrawing 7,5 % of the total export in volume and 3,3 % of the total export in value. This adjustment followed the methodology used in the complaint, which was based on the share of RP graphite electrodes in the worldwide consumption of graphite electrodes (excluding China) for the year 2019 (\*). In other words, 7,5 % of the total volume of electrodes consumed outside China were RP electrodes in 2019. 3,3 % of the total value of electrodes consumed outside China were RP electrodes in 2019.

(\*) Last year available to the Commission services. It was considered sufficient, as this figure is not displaying a high volatility.

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

#### 4.3. Imports from the country concerned

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

- (189) The Commission established the volume of imports on the basis of the Comext database. The market share of the imports was established on the basis of the import data and Union industry data for sales in the Union market.

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

Table 2

**Import volume (in tonnes) and market share**

	2017	2018	2019	Investigation period
Volume of imports from China	42 256	43 180	45 932	47 429
<i>Index</i>	100	102	109	112
Market share (%)	24,0	23,8	29,9	35,8
<i>Index</i>	100	99	124	149

Source: Eurostat(Comext), Union industry.

(191) In a context of decreasing consumption, Chinese imports increased to the detriment of the Union industry. The volume of imports from China increased by 12 % over the period considered and their market share increased by 49 %, reaching 35,8 % in the investigation period (+ 11,8 percentage points). The market share of the Union industry decreased by 6,4 percentage points, from 60,0 % in 2017 to 53,6 % in 2020 (Table 5). The market share of other countries was reduced to 10,6 % over the period considered (– 5,3 percentage points) (Table 11).

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

(192) The Commission established the prices of imports on the basis of Eurostat Comext database. Price undercutting of the imports was established on the basis of the questionnaire replies by the sampled Union producers and Chinese exporting producers.

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

Table 3

**Import prices (EUR / tonne)**

	2017	2018	2019	Investigation period
China	4 152	9 710	4 845	2 077
<i>Index</i>	100	234	117	50

Source: Eurostat (Comext).

(194) Average import prices from China have been significantly below Union industry prices and costs since 2019. Average import prices from China decreased by 50 % over the period considered, while costs of production increased for the Union industry according to the data provided by the sampled Union producers (see Table 7). Initially import prices went up to very high levels, reached its peak in 2018 and then started decreasing steeply. Following the price peak of 2018, this decrease in prices of Chinese imports was more significant than the decrease in Union sales prices.

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

- (1) the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and
- (2) the corresponding weighted average prices per product type of the imports from the sampled cooperating Chinese producers to the first independent customer on the Union market, established on a cost, insurance, freight (CIF) basis, with appropriate adjustments for customs duties and post-importation costs.

- (196) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the sampled Union producers' theoretical turnover during the investigation period. It showed a weighted average undercutting margin of 51,2 % by the imports from the country concerned on the Union market. All import volumes for which there was matching were found to be undercutting Union prices.

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

##### 4.4.1. General remarks

- (197) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (198) As mentioned in recital (13), sampling was used for the determination of possible injury suffered by the Union industry.
- (199) 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 submission of the Union industry. The data related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers.
- (200) 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.
- (201) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

##### 4.4.2. Macroeconomic indicators

###### 4.4.2.1. Production, production capacity and capacity utilisation

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

Table 4

#### Production, production capacity and capacity utilisation

	2017	2018	2019	Investigation period
Production volume (tonnes)	233 538	250 597	219 526	164 460
<i>Index</i>	100	107	94	70
Production capacity (tonnes)	255 500	283 500	294 900	294 900
<i>Index</i>	100	111	115	115
Capacity utilisation (%)	91,4	88,4	74,4	55,8
<i>Index</i>	100	97	81	61

Source: Questionnaire replies from the sampled Union producers.

- (203) During the period considered, the production volume decreased by 30 %. The production followed closely the variation in consumption: high demand in 2017–2018, drop in demand in 2019 (destocking), further and more pronounced drop in demand in 2020 (COVID-19 outbreak).
- (204) Production capacity increased by 15 % over the period considered. This is partly due to Sangraf Italy, which started its operations in 2018. The Union industry more generally invested to develop capacities. The Union industry expected that the positive market situation in the beginning of the period considered would last and that demand would further increase.
- (205) The two above-mentioned trends (decrease in production, increase in capacity) led to a significant decrease in the capacity utilisation (– 35 %). During the investigation period, the capacity utilisation rate reached a very low level (55,8 %).

#### 4.4.2.2. Sales volume and market share

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

Table 5

#### Sales volume and market share

	2017	2018	2019	Investigation period
Sales volume on the Union market (tonnes)	105 520	118 025	91 949	70 970
<i>Index</i>	100	112	87	67
Market share (%)	60,0	65,2	59,8	53,6
<i>Index</i>	100	109	100	89

Source: Union industry.

- (207) Sales increased between 2017 and 2018 and then decreased over the period 2018–2020. The general trend is in line with the development of consumption. However, the drop in sales (– 33 %) was more pronounced than the drop in consumption (– 25 %) over the period considered.
- (208) As a consequence, the market share of the Union industry dropped by 6,4 percentage points. The market share of third countries other than the PRC dropped by 5,3 percentage points. The Union industry lost market share to Chinese imports, which increased their market share by 11,8 percentage points during the same period.

#### 4.4.2.3. Growth

- (209) The GDP growth rate of the Union (27 countries) over the period 2017–2019 was + 2,2 % (Eurostat <sup>(78)</sup>). It was – 6 % in 2020 (Eurostat <sup>(79)</sup>). Union electric crude steel production showed a downward trend before the COVID-19 outbreak: 68 497 tonnes in 2017, 69 781 tonnes in 2018, 65 171 tonnes in 2019 (source: Eurofer). The demand and production of graphite electrodes followed this trend. In the context of decreasing consumption, the Union industry not only lost sales volumes but also market share as explained above in recital (208).

#### 4.4.2.4. Employment and productivity

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

Table 6

#### Employment and productivity

	2017	2018	2019	Investigation period
Number of employees	1 034	1 164	1 150	1 102
<i>Index</i>	100	113	111	107

<sup>(78)</sup> <https://ec.europa.eu/eurostat/databrowser/view/tec00115/default/table?lang=en>

<sup>(79)</sup> Ibid.

Productivity (tonnes/ employee)	226	215	191	149
Index	100	95	85	66

Source: Union industry.

- (211) Employment in the sector followed similar trend as the production and the consumption on the Union market and grew by 13 % between 2017 and 2018. This is partly due to Sangraf Italy, which started its operations in 2018. Employment then continued to follow similar trend as the production and the consumption and decreased from 2018 toward the end of the period considered yet employment decreased at a slower pace. Overall, employment increased over the period considered by 7 %.
- (212) Given the above, in a situation where production decreased by 30 % over the period considered, the productivity fell. It dropped by 34 % over the period considered.

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

- (213) All dumping margins were significantly above the de minimis level. The impact of the magnitude of the actual margins of dumping on the Union industry was substantial, given the volume and prices of imports from the country concerned.
- (214) Graphite electrodes have already been subject to anti-dumping investigations in the past, and anti-dumping measures on imports of graphite electrodes from India are still in force.
- (215) Previous investigations showed that past dumping had a long-lasting negative effect on the situation of the Union industry. These investigations did not indicate the Union industry had recovered from past dumping. To the contrary, the findings of the latest interim review, that was terminated in October 2020, showed that the good economic state of the Union industry in the years 2017 and 2018 was temporary, and that there was no need to terminate the measures against India <sup>(80)</sup>.

#### 4.4.3. Microeconomic indicators

- (216) When considering sales of the Union industry and microeconomic indicators, the Commission noted that a part of the Union production of the like product (in particular, one Union producer, GrafTech, with around 50 % of the total sales and above 50 % of total production <sup>(81)</sup>) was shielded from direct market competition, whereas the other part (the other two sampled Union producers) was directly exposed to the low-priced Chinese imports (see Section 4.3).
- (217) This situation was due to the existence of long-term contracts that the single largest Union producer of graphite electrodes (GrafTech) had concluded with its customers in the wake of a period of unusually high prices in the years 2017–2018. These contracts are ‘take or pay’ purchase contracts by which GrafTech guaranteed a certain level of supplies at set prices and the buyer committed to buy the agreed volumes at the pre-determined and fixed price, subject to various contractual rights and obligations. The duration of these contracts was three to five years. It appeared that a very large portion of GrafTech sales during the investigation period were made under these long-term contracts (‘LTAs’). To the best knowledge of the Commission, no other Union producer benefits from similar LTAs. In view of the LTAs’ duration, the Commission noted that the impact of the contracts is of a temporary nature.

<sup>(80)</sup> Commission Implementing Decision (EU) 2020/1605 of 30 October 2020 terminating the partial interim review of the anti-dumping and countervailing measures applicable to imports of certain graphite electrode systems originating in India.

<sup>(81)</sup> In the Union, GrafTech France and GrafTech Iberica are producing for GrafTech. The figures in this recital are for the two entities.

- (218) Therefore, in order to properly appreciate the economic relationship between the two parts of the Union industry, the Commission examined, in accordance with WTO jurisprudence <sup>(82)</sup>, in like manner, on the one hand, the part of the industry that was deemed shielded from direct competition with imports and, on the other hand, the other part that was subject to the competitive pressure of imports, as well as the industry as a whole.

#### 4.4.3.1. Prices and factors affecting prices

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

Table 7

#### Sales prices in the Union

	2017	2018	2019	Investigation period
Average unit sales price in the Union on the total market (EUR/tonne)	2 221	8 780	9 900	5 993
<i>Index</i>	100	395	446	270
Unit cost of production (EUR/tonne)	2 071	4 095	5 454	5 016
<i>Index</i>	100	198	263	242

Source: Questionnaire replies from the sampled Union producers.

- (220) The sales prices increased very strongly in 2018 and 2019 before decreasing steeply in 2020. Sales prices in 2020 were, however, still at levels more than twice as high as in 2017 (+ 170 %).
- (221) Thanks to the existing LTAs, GrafTech France could maintain a high price level ([25–50] % above the average unit sales price in the Union) during the IP despite the general fall in prices from which the remainder of the Union industry was not shielded. Based on the information available, and in particular the GrafTech France's sales volumes not subject to LTAs as well as the sales of the other two sampled Union producers, the Commission estimated that the average price on the 'free' market was around [20–40] % lower than the average unit sales price in the Union on the total market. Accordingly, the average Union sales price during the IP does not accurately reflect the competitive price situation on the Union market, which was significantly affected by low-priced and dumped imports from China.
- (222) In the period 2017–2019, sales prices of graphite electrodes increased globally. It was the result of a market imbalance with a rise in global demand and a supply unable to keep up with demand. The key reason for the rise in demand was cited to be the global shift in the steel industry, from blast furnaces to electric arc furnaces, which use graphite electrodes. The key reason for a lag in global supply was cited as the government-mandated shutdowns of Chinese graphite electrode producers for environmental upgrading. Those closures coincided with an increased domestic demand for graphite electrodes from Chinese steel producers and new competition for needle coke (the main raw material used in the production of graphite electrodes) from the lithium ion battery industry.
- (223) The price of needle coke increased steadily and significantly from 2017 to mid-2019. It multiplied by a factor around 9, rising from around 500 USD per tonne to about 4 500 USD per tonne. This volatility in the price of graphite electrodes and its raw materials led some of the industry to engage in LTAs as indicated in recital (217). Prices of needle coke then moved back to normal levels, but costs and prices of graphite electrodes remained higher than in 2017. During the IP, sales prices of the sampled Union producers were back to levels closer to the long-term average. This was linked to a combination of factors: a decrease of the price of needle coke, a decrease in demand linked to the COVID-19 pandemic, and the increased price pressure due to the competition of low-priced imports

<sup>(82)</sup> Appellate Body Report, United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, WT/DS184/AB/R, paras. 195–205.



from China. As already mentioned before (recitals (216) to (218)), this situation did however not affect the entire Union industry in equal measure. The part of the Union industry not shielded by LTAs saw a significant drop in the sales prices of – [48–60] % in the IP, when GrafTech France sales prices only decreased by – [15–35] %.

- (224) For the period considered, production costs increased by 242 %. This was linked to the increase in prices of the main raw materials: needle coke as mentioned above. The labour costs were stable over the period (see Table 8). The price of energy (including electricity) was on the rise, contributing to a certain extent to the increase of production costs.

#### 4.4.3.2. Labour costs

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

Table 8

#### Average labour costs per employee

	2017	2018	2019	Investigation period
Average labour costs per employee (EUR)	83 705	91 784	89 456	84 780
<i>Index</i>	100	110	107	101

Source: Questionnaire replies from the sampled Union producers.

- (226) The average labour cost per employee increased by 10 % in 2018, followed by a decrease of 3 % and continued dropping in the IP to reach the level 1 % higher than in 2017.
- (227) When assessing the development of labour costs for the different part of the industry and the industry as a whole, the Commission did not find significant differences in the variation of costs over the period considered.

#### 4.4.3.3. Inventories

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

Table 9

#### Inventories

	2017	2018	2019	Investigation period
Closing stocks (tonnes)	6 142	6 424	9 114	8 163
<i>Index</i>	100	105	148	133
Closing stocks as a percentage of production	4,8 %	4,9 %	8,3 %	8,6 %
<i>Index</i>	100	103	174	180

Source: Questionnaire replies from the sampled Union producers.

- (229) Stocks were on the rise both in nominal terms (+ 33 %) and as a percentage of production (+ 80 %). This was linked to the decrease of the sales of the Union industry both on the Union market and on export markets. The industry indicated that it had to maintain some volume of activity and was therefore not able to reduce production in line with the decrease of sales.

- (230) When examining separately the part of the Union industry which had not concluded LTAs with its customers, the Commission noted that stocks increased more over the period considered ([5–15] percentage points above the average growth of stocks). In contrast, when examining separately GrafTech France, the stocks increased to a lesser extent ([5–15] percentage points below the average growth of stocks). This further demonstrates that the existence of LTAs had (and still has) a significant positive impact on economic indicators of only one Union producer.

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

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

Table 10

#### Profitability, cash flow, investments and return on investments

	2017	2018	2019	Investigation period	Q4 of the investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	8,0	52,7	43,8	16,1	2,6
<i>Index</i>	100	658	547	201	33
Cash flow (EUR)	28 215 108	488 291 957	380 447 375	60 964 690	–22 330 357
<i>Index</i>	100	1 731	1 348	216	– 356
Investments (EUR)	12 662 440	30 259 283	21 600 910	18 670 327	6 542 529
<i>Index</i>	100	239	171	147	208(*)
Return on investments (%)	17,8	552,4	366,5	–3,9	–32,6
<i>Index</i>	100	3 100	2 057	–22	– 183

Source: Questionnaire replies from the sampled Union producers.

(\*) On an annual basis.

- (232) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. Over the period considered, profits skyrocketed in 2018–2019, before dropping steeply and turning into double-digit losses for all Union producers, except GrafTech France. The exceptionally high profits of the years 2018–2019 are linked to the very special situation of these years, characterised by market imbalances very favourable to the graphite electrodes producers. In 2020, in the context of the sudden drop in demand linked to the COVID-19 pandemic, the increased competition of Chinese exports completely reversed the situation and profits hit rock bottom.
- (233) Overall, profitability of sales in the Union increased from + 8,0 % in 2017 to + 16,1 % for the investigation period. However, the situation is highly dissimilar for the different parts of the industry.
- (234) In the first instance, the Commission analysed the situation of the part of the Union industry that had not concluded LTAs and was therefore fully exposed to the changed market dynamics including increased volumes of dumped imports from China. The sampled Union producers falling under this category displayed a sharp drop of their profitability during the period considered from + [5–15] % in 2017 to [– 10 to – 20] % during the IP.

- (235) The Commission then examined GrafTech France. This company is benefiting from LTAs and accordingly still experienced high profits in the IP. The Commission noted however that some of GrafTech France's sales of graphite electrodes also took place on the open market. The prices for those transactions were significantly lower than its transactions under LTAs. When comparing PCN by PCN the prices of GrafTech France's non-LTA transactions with the prices of the other sampled Union producers, it appeared that some displayed higher prices and some lower prices. On average, the prices of these transactions were very close to the prices of the other sampled Union producers. The Commission concluded that in these open market transactions, prices were comparable to the prices of the other sampled Union producers. The competitive pressure of low-priced imports from China was therefore also felt by GrafTech France when not shielded from competition by virtue of the LTAs.
- (236) The Commission noted moreover that the situation of the whole Union industry, including GrafTech France, was worsening at the end of the IP, as shown in particular by the profitability figures for the fourth quarter of the IP, which are well below the profit margin usual for this sector under normal conditions of competition. The worsening of the situation of the industry is mainly due to the worsening of the situation of the part of the industry not covered by LTAs.
- (237) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow developed in a similar manner to profitability: a tremendous increase in 2018–2019 followed by a drastic fall in 2020. The same explaining factors are at play. When examining cash flow for different parts of the Union industry, the same remarks can be made about the disparities between GrafTech France (large cash flow) and the rest of the Union industry (negative cash flow).
- (238) Investments increased over the period considered (+ 47 %). The large profits of the years 2018–2019 enabled the Union industry to invest in their production facilities. Investments decreased again toward the end of the period considered, after the COVID-19 pandemic.
- (239) When analysing the different parts of the industry, no clear pattern was observed. GrafTech France invested more in the middle of the period concerned, while the rest of the industry invested more toward the end of the period.
- (240) The return on investments is the profit in percentage of the net book value of investments. It developed in a similar manner to profitability: a tremendous increase in 2018–2019 followed by a drastic fall in 2020.

#### 4.4.4. Conclusion on injury

- (241) The main macro-indicators showed a negative trend during the period considered: Union sales volume dropped by 33 %, production by 30 % and the Union industry lost market share. Against a background of a shrinking market, the volume of imports from China increased by 12 % over the period considered and its market share by 49 %, reaching 35,8 % in the investigation period. Import prices from China were consistently and significantly below Union industry prices and costs since 2019.
- (242) As regards the micro-indicators, having regard to the industry as a whole, the Union industry showed a mixed picture: profitability of sales in the Union (from + 8,0 % to + 16,1 %) as well as cash flow (+ 116 %) increased, but stocks (+ 33 %) and return on investment (from + 17,8 % to – 3,9 %), all deteriorated significantly.
- (243) However, these aggregated figures are hiding a very disparate situation which affects the market dynamics and the economic relationship among the various producers in the Union. For the reasons stated in recitals (216) to (218), the Commission examined separately the part of the Union industry which had not concluded LTAs with its customers and is operating on the open market (thus, subject to ongoing competition with the dumped imports), on the one hand, and the part of the Union industry which had concluded LTAs with its customers in the period 2017–2018 (that is GrafTech), on the other hand.
- (244) For two out of three sampled Union producers which had not concluded LTAs with their customers, all micro indicators deteriorated significantly: the profitability of sales in the Union dropped from [5–10] % in 2017 to – [10–20] % in 2020, stocks increased (+ [30–60] %), return on investment decreased from [20–50] % to – [200–250] %, and cash flow fell (– [220–260] %).
- (245) On the other hand, the situation of third sampled Union producer, GrafTech France, was different and exceptional. GrafTech France experienced large profits and cash flow during the IP.

- (246) In this respect, the investigation exposed the role of LTAs between GrafTech France and its clients. It appeared that a very large portion of GrafTech France sales during the investigation period were realised under LTAs. As a consequence, GrafTech France's prices were significantly higher than its competitors' during the investigation period. These LTAs had as an effect to disconnect GrafTech France sales prices from the competitive Union market prices. As a matter of fact, GrafTech France, and GrafTech more generally, were to a large extent shielded from external factors such as the drop in demand and the increasing competition of low-priced imports from China due to its LTAs that it concluded with its customers.
- (247) This was however a temporary and exceptional situation as some of the LTAs have already expired and the majority of the remaining LTAs will expire at the end of 2022.
- (248) However, already in the fourth quarter of the investigation period, a further deterioration could already be observed as profitability figures (average of sampled companies, including GrafTech France) dropped to 2,6 %. Once all LTAs expire, GrafTech will have to operate under the same market conditions as the other Union producers.
- (249) The Commission further examined the economic relationship between the part of the Union industry, which had not concluded LTAs with its customers, on the one hand, and the part of the Union industry, which had concluded LTAs with its customers (that is GrafTech France), on the other hand, in order to establish whether the healthier part of the industry would follow the other part of the industry and the Union industry as a whole into the already negative trend observed during the period concerned.
- (250) Looking at production, all three sampled producers informed the Commission that they were producing the same grade of electrodes (UHP-grade electrodes). The range of graphite electrodes produced by these three sampled producers covered diameters from 500 to 720 mm and length above 1 651 cm (and especially above 1 951 cm). The three producers produced in high volumes electrodes around the diameters of 600 mm and 700 mm. The Commission could not establish a different production pattern between the part of the Union industry that had not concluded LTAs with its customers, and GrafTech France.
- (251) Looking at the costs, the costs of production for the sampled Union producers amounted to about EUR 5 000 during the IP. No significant difference was observed between the three sampled producers. Their costs of production were all in the range of +/- 10 % around this average.
- (252) The Commission also noted that for the part of its sales considered not to be under LTAs, GrafTech France was selling at prices very close to the ones of the rest of the industry (see recital (235)). When not shielded by its LTAs, GrafTech France was therefore also clearly experiencing the pressure of imports at low prices from China.
- (253) Therefore, the production sold in the Union market outside the LTAs is representative of the Union industry as a whole. This is because the LTAs are the only elements, which differentiate one Union producer from the rest of the Union industry. However, the relief the LTAs provide to that producer is of temporary nature and does not reflect the overall market dynamics in the investigation period, which is characterised by a continued increase of low-priced Chinese imports. Without the LTAs, even GrafTech France is suffering from the dumped imports (see recital (235)). In view of the fact that GrafTech France's LTAs are due to expire soon, it can be envisaged that GrafTech France will join the same negative trends already established for the other part of the Union industry, and thus for the Union industry as a whole.
- (254) On the basis of the above, the Commission concluded at this stage of the proceeding that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation. The profitable part of the industry will not be able to positively influence the non-profitable part, which is suffering tremendous competitive pressure from low-priced imports from China. Furthermore, when looking at the data of the fourth quarter of the investigation period, a further deterioration of the economic situation of the Union industry as a whole can already be observed. It is expected that these downward trends will be reinforced once the LTAs of GrafTech will expire, also in view of the significant rate of increase of dumped imports at prices, which consistently undercut Union prices significantly, and the increase of the production capacity in the PRC over the last years.

## 5. CAUSATION

- (255) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the country concerned caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the dumped

imports from the country concerned was not attributed to the dumped imports. These factors were the COVID-19 pandemic, the end of the 2017–2018 crisis, the obsolescence of the Union industry, imports from other countries, export performance of the Union industry and Union consumption.

### 5.1. Effects of the dumped imports

- (256) The volume of imports from China increased by 12 % over the period considered from 42 256 tonnes in 2017 to 47 429 tonnes in 2020. During the same period, their market share increased by 49 %, reaching 35,8 % in the investigation period. These increasing imports were made at prices significantly lower than those of the Union industry during the second half of the period considered (2019–2020). This strongly impacted the Union industry in the investigation period, which saw its sales drop from 118 025 tonnes in 2018 to 91 949 tonnes in 2019 and 70 970 tonnes in 2020. This resulted in a very strong drop in profitability for all sampled Union producers except for the one who has LTAs, from profits (of + [5–10] % in 2017) to heavy losses (– [10–20] % in 2020), and the consequent deterioration of other financial indicators such as level of inventories, return on investment and cashflow.
- (257) It is therefore confirmed that – in view of the concomitance in time – the increased imports of graphite electrodes at dumped prices originating in China led to the deterioration of the economic and financial situation of the Union industry. Other factors will be considered in 5.2.

### 5.2. Effects of other factors

#### 5.2.1. The COVID-19 pandemic

- (258) Imports of graphite electrodes from PRC at low prices were recorded from 2019 onwards. In 2019 and 2020, the average price of Chinese imports was respectively 57 % and 51 % of the average price of imports excluding China. Since 2019 (i.e. before the pandemic) Chinese imports started increasing, in a period of decreasing consumption in the Union. This resulted in a consistent increase of Chinese imports since 2018, also in terms of market share. Therefore, the decrease in consumption because of the pandemic did not attenuate the causal link between the dumped imports and the injury of the Union industry.

#### 5.2.2. The end of the 2017–2019 peak period

- (259) After the 2017–2019 period, both domestic and import prices went down. However, as mentioned above, the Chinese prices have decreased at a faster pace than the average of third countries imports excluding China (– 50 % in 2019 and – 57 % in 2020 as compared to – 12 % and – 51 % respectively). Therefore, the price decrease worldwide did not contribute to the injury of the Union industry.

#### 5.2.3. The obsolescence of the Union industry

- (260) While some Union producers may be lagging behind in terms of equipment, it is a dynamic industry that increased its investments to increase their capacity, adapt its production equipment and acquire the latest technology. Investment increased by 47 % during the period considered.

#### 5.2.4. Imports from third countries

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

Table 11

#### Imports from third countries

Country		2017	2018	2019	Investigation period
India	Volume (tonnes)	5 662	6 212	3 700	2 211
	<i>Index</i>	100	110	65	39
	Market share (%)	3,2	3,4	2,4	1,7
	Average price (EUR)	2 339	13 709	10 018	4 072
	<i>Index</i>	100	586	428	174

Mexico	Volume (tonnes)	2 865	1 379	12	896
	<i>Index</i>	100	48	0,4	31
	Market share (%)	1,6	0,8	0	0,7
	Average price (EUR)	2 218	2 525	3 344	3 976
	<i>Index</i>	100	114	151	179
Russia	Volume (tonnes)	4 118	5 244	8 092	5 485
	<i>Index</i>	100	127	197	133
	Market share (%)	2,3	2,9	5,3	4,1
	Average price (EUR)	2 382	9 055	6 879	3 578
	<i>Index</i>	100	380	289	150
USA	Volume (tonnes)	9 689	3 359	1 860	2 950
	<i>Index</i>	100	35	19	30
	Market share (%)	5,5	1,9	1,2	2,2
	Average price (EUR)	2 398	7 997	11 376	5 025
	<i>Index</i>	100	333	474	210
Other third countries	Volume (tonnes)	5 629	3 671	2 162	2 514
	<i>Index</i>	100	65	38	45
	Market share (%)	3,2	2,0	1,4	1,9
	Average price (EUR)	2 427	7 435	9 057	4 285
	<i>Index</i>	100	306	373	177
Total of all third countries except the country concerned	Volume (tonnes)	27 962	19 866	15 826	14 055
	<i>Index</i>	100	71	57	50
	Market share (%)	15,9	11,0	10,3	10,6
	Average price (EUR)	2 371	9 579	8 436	4 111
	<i>Index</i>	100	404	356	173

Source: Eurostat(Comext).

(262) The market share of third countries except the country concerned was at a low levels (around 10–11 %) and remained stable during the period 2018–2020. This means that, in absolute volumes, it decreased in proportion to the decrease in the Union consumption.

- (263) The prices of import from third countries except the country concerned were on average over the period considered at the same levels as the prices of the Union industry. During the investigation period, prices were however, 31 % lower than the Union industry prices, which was the lowest level that was reached in relative terms compared to Union industry prices during the period considered. This is in stark contrast with the prices of Chinese imports, which decreased significantly in 2020 and were 65 % lower than the Union industry prices during the investigation period. However, prices vary depending on the specifications of the electrodes and, though comparing average prices give some indication, such comparison cannot replace a price comparison on a PCN basis.
- (264) Therefore, it was concluded that imports from other countries did not contribute to the injury of the Union industry as they were made at significantly higher prices than Chinese imports.

#### 5.2.5. Export performance of the Union industry

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

Table 12

#### Export performance of the Union producers

	2017	2018	2019	Investigation period
Export volume (tonnes)	134 311	132 850	124 460	102 222
Index	100	99	93	76
Average price (EUR/tonne)	2 377	8 134	9 186	5 660
Index	100	342	386	238

Source: Questionnaire replies from the sampled Union producers and the Union industry.

- (266) During the period considered, Union industry exports were continuously decreasing (– 24 % over the period). The Union industry pointed to the competition of Chinese exports, which is taking place not only on the domestic market but also on third countries markets.
- (267) Overall the export performance showed similar trends as those for the sales of the Union industry on the Union market, but export sales, in relative terms, decreased less than sales on the Union market. On that basis, the Commission provisionally concluded that the decrease in export performance did not contribute to the injury.

#### 5.2.6. Consumption

- (268) As shown in Table 1, over the period considered, the Union consumption of graphite electrodes decreased by 25 %. This was linked to the COVID-19 pandemic whose impact is analysed in recital (258). At the same times, Union industry sales on the EU market fell by 33 %. On that basis, the Commission provisionally concluded that the evolution of consumption did not contribute to the injury of the Union industry.

#### 5.2.7. Captive use

- (269) From the information provided by the sampled companies, there were no sales to related companies in the Union, but sales were made to related companies in third countries. These sales represented – depending of the year considered – between 5 and 11 % of the total sales in volume. On that basis, the Commission provisionally concluded that the role of the captive consumption evolution on the injury suffered by the Union industry, if any, was limited.

### 5.3. Conclusion on causation

- (270) Chinese import prices were significantly lower than Union industry prices and costs since 2019. The investigation showed a weighted average undercutting margin of 51,2 %. During the same period, the market share of PRC producers increased. Over the period considered, the volume of imports from China increased by 12 % and its market share increased by 49 %, reaching 35,8 % in the investigation period. This increasing market presence was to the detriment of the Union industry. The market share of the Union industry decreased from its peak of 65,2 % in 2018 to 53,6 % in 2020. It led to the negative development in the economic situation of the Union industry.
- (271) The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports.
- (272) The COVID-19 pandemic and the related drop in the Union and global consumption of graphite electrodes weighed negatively on the Union industry's developments but was considered as a temporary factor. Before the pandemic and at the end of the period considered the situation of the Union industry deteriorated. There was also an asymmetry, as – in spite of the economic downturn – imports from China did not abate. To the contrary, they were continuously increasing over the years 2018–2020, a period of diminishing consumption.
- (273) The effect of the end of the 2017–2018 crisis, the obsolescence of the Union industry and imports from other countries on the Union industry's negative developments could only be very limited at most.
- (274) Based on the above, the Commission concluded at this stage that the dumped imports from the country concerned caused material injury to the Union industry and that the other factors, considered individually or collectively, did not attenuate the causal link between the dumped imports and the material injury.

## 6. UNION INTEREST

- (275) Having regard to Article 7(2) of the basic Regulation, the Commission examined whether it could clearly conclude that it was not in the Union interest to adopt measures in this case, despite the determination of injurious dumping, in accordance with Article 21 of the basic Regulation. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and traders, users and final consumers.

### 6.1. Interest of the Union industry

- (276) The Union industry is composed of five groups producing graphite electrodes in the Union. All groups cooperated fully in the investigation.
- (277) The imposition of measures would allow the Union industry to recover lost market share, increase capacity utilisation, increase prices to sustainable levels and improve profitability to levels to be expected under normal conditions of competition.
- (278) While part of the industry is temporarily shielded from dumped imports from China by LTAs, most of these agreements are to expire by the end of 2022 at the latest. Any renewal, at least under the current conditions, is unlikely in view of the steep drop in prices of graphite electrodes globally since 2019.
- (279) The non-imposition of measures would likely lead to further deterioration of profitability, which was already negative for all but one sampled Union producer who is temporarily shielded from the effects of dumped imports because it concluded LTAs with its customers in the period 2017–2018. The non-imposition of measures could lead to the closure of production facilities and dismissals thus endangering the viability of the Union industry.
- (280) The Commission therefore provisionally concluded that the imposition of provisional measures is in the interest of the Union industry.

### 6.2. Interest of unrelated importers and traders

- (281) Ten unrelated importers, representing 63 % in volume of Chinese imports, submitted a sampling form. The weighted average of the profit of the sampled importers during the investigation period was around 4 %.



- (282) These importers were against the imposition of measures. They claimed that the Union producers have no ability to cover the existing Union demand and product variety, especially for small diameter electrodes (up to 400–450 mm). Moreover, they indicated that the possibilities to switch to other sources of supply are marginal. Third countries graphite electrodes producers have usually their own sales departments and have direct contact with Union customers.
- (283) The Commission noted that quality control of graphite electrodes and the technical service provided were some of the key assets of the Union importers. It is therefore likely that some of the additional costs can be passed to the final users of graphite electrodes. The Commission therefore considered that the imposition of anti-dumping measures might have an impact, although limited, on the results of the Union importers.
- (284) Thus any negative impact of measures on unrelated importers as a whole is expected to be limited and not to outweigh the positive effect of measures on Union producers.

### 6.3. Interest of users

- (285) Fifteen users registered as interested parties and questionnaires were received from eight users. These users mainly represent the Union steel industry. The downstream sectors (and especially the steel industry) are larger in terms of turnover and employment than the graphite electrodes industry. According to Eurofer figures, in 2019, the steel industry was directly employing 330 000 people and indirectly 1 620 000 people.
- (286) Users raised concerns that the imposition of measures would be imposed, could have a negative impact on their competitiveness. The cost of graphite electrodes is estimated to be between 1 % and 5 % of the cost of the production of steel. This means that measures will not have a significant impact on the cost of production of the steel producers.
- (287) Moreover, the complainants and the press reported that steel prices are on the rise as demand is exceeding supply. This may allow the steel industry to pass on any additional costs, or a part thereof, to the downstream users.
- (288) The Union steel industry also argued that Union producers were not able to satisfy demand during the investigation period. Regarding the security of supply, the Union industry displays sufficient spare capacity. During the period considered the Union production capacity increased from 255 500 tonnes to 294 900 tonnes (+ 15 %). The capacity utilisation was only at 55,6 % during the investigation period. Other countries, such as India, Mexico, Russia and the USA, are possible alternative sources of supply, though not yet well established on the Union market. These four countries represented together in 2020 11 % of the Union supplies.
- (289) The Commission therefore provisionally concluded that negative impacts of measures on users are expected to be limited and not to outweigh the positive effect of measures on Union producers.

### 6.4. Other factors

- (290) Furthermore, graphite electrodes contribute to the environmental goal of the Union and specifically the fight against climate change. Graphite electrodes are an essential component of the electric arc furnaces, which recycle steel. Electric arc furnace produce steel with lowered CO<sub>2</sub> emissions as compared to traditional method of steel production based on blast furnace.
- (291) Some interested parties claimed that imposing measures would have a negative impact on competition in a sector that is allegedly very concentrated. The Commission noted however that there are five Union groups supplying the market. The Commission also observes that Sangraf Italy is a new Union producer (although noting that the facilities are not new but formerly operated by SGL Group). The Commission therefore concluded that no negative impact of measures on competition within the Union could be expected at this stage.

### 6.5. Conclusion on Union interest

- (292) Based on the above, the Commission concluded that there were no compelling reasons indicating that it was not in the Union interest to impose measures on imports of graphite electrode systems originating in China at this stage of the investigation.

## 7. LEVEL OF MEASURES

- (293) In order to determine the level of the measures, the Commission examined whether a duty lower than the margin of dumping would be sufficient to remove the injury caused by dumped imports to the Union industry.
- (294) In the present case, the complainants claimed the existence of raw material distortions within the meaning of Article 7(2a) of the basic Regulation. Thus, in order to conduct the assessment on the appropriate level of measures, the Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry. Then it examined whether this amount of duty would be adequate to remove the injury taken into account the alleged presence of raw material distortions in accordance with Article 7(2a) of the basic Regulation.

### 7.1. Underselling margin

- (295) The Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry in the absence of distortions under Article 7(2a) of the basic Regulation. In this case, the injury would be eliminated if the Union industry was able to cover its costs of production, including those costs *resulting from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia*, and to obtain a reasonable profit ('target profit').
- (296) In accordance with Article 7(2c) of the basic Regulation, for establishing the target profit, the Commission took into account the following factors:
- the level of profitability before the increase of imports from the country concerned,
  - the level of profitability needed to cover full costs and investments, research and development (R & D) and innovation, and
  - the level of profitability to be expected under normal conditions of competition.
- (297) Such profit margin should not be lower than 6 %.
- (298) The complainants used as target profit 8 % in the complaint, but considered that this is a conservative estimate and that a higher profit margin should be expected in the absence of injurious imports.
- (299) In the previous investigation against imports of graphite electrode systems from India, the Commission concluded that the profit margin that can reasonably be deemed to represent the financial situation of the Community industry in the absence of injurious dumping should be set at 8 % for the purpose of the calculation of the injury margin. This was also the profit obtained by the sampled Union producers in 2017.
- (300) In view of the above considerations, the profit margin was established at 8 % in accordance with the provision of Article 7(2c).
- (301) In accordance with Article 7(2d) of the basic Regulation, as a final step, the Commission assessed the future costs resulting from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia that the Union industry will incur during the period of the application of the measure pursuant to Article 11(2). The Commission established an additional cost ranging from EUR 0 to 42 per tonne, which was added to the non-injurious price for the sampled Union producers concerned. A note to the file on how the Commission established this additional cost is available in the file for inspection by interested parties.
- (302) These costs comprised the additional future costs to ensure compliance with the EU Emissions Trading System (EU ETS). The EU ETS is a cornerstone of the EU's policy to comply with Multilateral Environmental Agreements. Such additional costs were calculated on the basis of the estimated EU Allowances (EUAs) which will have to be purchased during the period of the application of the measures (2021 to 2025). The additional costs also took account of indirect CO<sub>2</sub> costs stemming from an increase in electricity prices over the period 2021 to 2025 linked to the EU ETS and the forecasted prices of EUAs.
- (303) The source for these EUAs prices forecasts is a Bloomberg New Energy Finance extraction dated 30 July 2021. The average projected price for EUAs for this period is 55 EUR/tonne of CO<sub>2</sub> emitted.
- (304) On this basis, the Commission calculated a non-injurious price of the like product for the Union industry.

- (305) The Commission then determined the injury elimination level on the basis of a comparison of the weighted average import price of the cooperating exporting producers, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the sampled Union producers on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.
- (306) In terms of the residual margin, bearing in mind that cooperation of the Chinese exporters was low as explained in recital (179) above, the Commission considered it appropriate to set the residual margin on the basis of facts available. This margin was set at the level of the highest underselling margin established for a product type sold in representative quantities by the exporting producer with the highest underselling margin found. The residual underselling margin so calculated was set at a level of 153,6 %.
- (307) The result of these calculations is shown in the table below.

Company	Dumping margin	Underselling margin
Fangda group composed of four producers: Fangda Carbon New Material Co., Ltd ; Fushun Carbon Co., Ltd; Chengdu Rongguang Carbon Co., Ltd; Hefei Carbon Co., Ltd	24,5 %	139,7 %
Liaoning Dantan Technology Group Co., Ltd	17,5 %	99,5 %
Nantong Yangzi Carbon Co., Ltd	24,5 %	150,5 %
Other cooperating companies	21,6 %	123,6 %
All other companies	66,5 %	159,3 %

## 7.2. Raw material distortions

- (308) As explained in the Notice of Initiation, the complainant provided the Commission sufficient evidence that there are raw material distortions in the country concerned regarding the product under investigation. Therefore, in accordance with Article 7(2a) of the basic Regulation, this investigation examined the alleged distortions to assess whether, if relevant, a duty lower than the margin of dumping would be sufficient to remove injury.
- (309) However, as the margins adequate to remove injury are higher than the dumping margins found, the Commission considered that, at this stage, it was not necessary to address this aspect.

## 8. PROVISIONAL ANTI-DUMPING MEASURES

- (310) On the basis of the conclusions reached by the Commission on dumping, injury, causation and Union interest, provisional measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.
- (311) Provisional anti-dumping measures should be imposed on imports of graphite electrodes originating in the People's Republic of China, in accordance with the lesser duty rule in Article 7(2) of the basic Regulation.
- (312) The Commission compared the underselling margins and the dumping margins as set out in recital (307) above. The amount of the duties was set at the level of the lower of the dumping and the underselling margins.
- (313) On the basis of the above, the provisional anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Provisional dumping margin
Fangda group composed of four producers: Fangda Carbon New Material Co., Ltd; Fushun Carbon Co., Ltd; Chengdu Rongguang Carbon Co., Ltd; Hefei Carbon Co., Ltd	24,5 %
Liaoning Dantan Technology Group Co., Ltd	17,5 %

Nantong Yangzi Carbon Co., Ltd	24,5 %
Other cooperating companies	21,6 %
All other companies	66,5 %

- (314) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflect the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imports of the product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.
- (315) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission <sup>(83)</sup>. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a regulation about the change of name will be published in the *Official Journal of the European Union*.
- (316) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies should apply not only to the non-cooperating exporting producers in this investigation, but to the producers which did not have exports to the Union during the investigation period.
- (317) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.
- (318) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this regulation, the customs authorities of Member States must carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the lower rate of duty is justified, in compliance with customs law.
- (319) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.

## 9. INFORMATION AT PROVISIONAL STAGE

- (320) In accordance with Article 19a of the basic Regulation, the Commission informed interested parties about the planned imposition of provisional duties. This information was also made available to the general public via DG TRADE's website. Interested parties were given three working days to provide comments on the accuracy of the calculations specifically disclosed to them.

<sup>(83)</sup> European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170, 1040 Brussels, Belgium.

(321) Comments on the accuracy of the calculations were received. The comments made by Liaoning Dantan Technology Group Co., Ltd and Fangda Carbon New Material Co., Ltd did not affect the accuracy of the calculations. Furthermore, the companies Misano S.p.A. and COMAP SAS (an importer and a user of the product concerned) made general comments following the pre-disclosure that did not relate to the accuracy of the calculations. Those comments will therefore only be addressed at definitive stage.

#### 10. FINAL PROVISIONS

(322) In the interests of sound administration, the Commission will invite the interested parties to submit written comments and/or to request a hearing with the Commission and/or the Hearing Officer in trade proceedings within a fixed deadline.

(323) The findings concerning the imposition of provisional duties are provisional and may be amended at the definitive stage of the investigation,

HAS ADOPTED THIS REGULATION:

#### Article 1

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

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

Country	Company	Provisional anti-dumping duty	TARIC additional code
PRC	Fangda group composed of four producers: Fangda Carbon New Material Co., Ltd; Fushun Carbon Co., Ltd; Chengdu Rongguang Carbon Co., Ltd; Hefei Carbon Co., Ltd	24,5 %	C731
PRC	Liaoning Dantan Technology Group Co., Ltd.	17,5 %	C732
PRC	Nantong Yangzi Carbon Co., Ltd.	24,5 %	C733
PRC	Other cooperating companies listed in Annex	21,6 %	
PRC	All other companies	66,5 %	C999

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

4. The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security deposit equivalent to the amount of the provisional duty.

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

*Article 2*

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

*Article 3*

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

Article 1 shall apply for a period of six months.

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

Done at Brussels, 14 October 2021.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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## ANNEX

**Cooperating exporting producers not sampled**

Country	Name	TARIC additional code
People's Republic of China	ANSHAN CARBON CO., LTD	C 735
People's Republic of China	ASAHI FINE CARBON DALIAN CO., LTD	C 736
People's Republic of China	DALIAN JINGYI CARBON CO., LTD	C 738
People's Republic of China	DATONG YU LIN DE GRAPHITE NEW MATERIAL CO., LTD	C 739
People's Republic of China	DECHANG SHIDA CARBON CO., LTD	C 740
People's Republic of China	Fushun Jinly Petrochemical Carbon Co., Ltd	C 741
People's Republic of China	FUSHUN ORIENTAL CARBON CO., LTD	C 742
People's Republic of China	Fushun Xinxinda Furnace Charge Factory	C 743
People's Republic of China	Henan Sangraf Carbon Technologies Co., Limited	C 744
People's Republic of China	Jiangsu Jianglong New Energy Technology Co., Ltd	C 746
People's Republic of China	JILIN CARBON CO., LTD	C 747
People's Republic of China	Jilin City Chengxin Carbon Co., Ltd	C 748
People's Republic of China	JILIN CITY ZHAOCHEN CARBON CO., LTD	C 749
People's Republic of China	Kaifeng Pingmei New Carbon Materials Technology Co., Ltd	C 750
People's Republic of China	LIAONING SINCERE CARBON NEW MATERIAL CO., LTD	C 751
People's Republic of China	LIAOYANG CARBON CO., LTD	C 752
People's Republic of China	LIAOYANG SHOUSHAN CARBON FACTORY	C 753
People's Republic of China	LINGHAI HONGFENG CARBON PRODUCTS CO., LTD	C 754
People's Republic of China	MEISHAN SHIDA NEW MATERIAL CO., LTD	C 755
People's Republic of China	SHANDONG ASAHI GRAPHITE NEW MATERIAL TECHNOLOGY CO., LTD	C 756
People's Republic of China	SHANDONG BASAN GRAPHITE NEW MATERIAL PLANT	C 757
People's Republic of China	SHANXI JUXIAN GRAPHITE NEW MATERIALS CO., LTD	C 758
People's Republic of China	SHANXI SINSAGE CARBON MATERIAL TECHNOLOGY CO., LTD	C 759
People's Republic of China	TIANJIN KIMWAN CARBON TECHNOLOGY AND DEVELOPMENT CO., LTD	C 760
People's Republic of China	XINGHE COUNTY MUZI CARBON CO., LTD	C 762