

**COMMISSION IMPLEMENTING REGULATION (EU) 2022/1394****of 11 August 2022**

**imposing a definitive anti-dumping duty on imports of silicon originating in the People's Republic of China, as extended to imports of silicon consigned from the Republic of Korea and from Taiwan, whether declared as originating in the Republic of Korea or Taiwan or not, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and the Council**

THE EUROPEAN COMMISSION,

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

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

Whereas:

**1. PROCEDURE****1.1. Measures in force**

- (1) The measures currently in force are a definitive anti-dumping duty on imports of silicon originating in the People's Republic of China imposed by Commission Implementing Regulation (EU) 2016/1077 <sup>(2)</sup> following an expiry review pursuant to Article 11(2) and a partial interim review pursuant to Article 11(3) of Council Regulation (EC) No 1225/2009 <sup>(3)</sup> ('the previous review investigation'). The measures are in the form of duties ranging between 16,3 % and 16,8 % of the value of the imported goods.
- (2) The measures were extended to imports consigned from the Republic of Korea whether declared as originating in the Republic of Korea or not by Council Regulation (EC) No 42/2007 <sup>(4)</sup>.
- (3) The measures were further extended to imports consigned from Taiwan, whether declared as originating in Taiwan or not by Council Implementing Regulation (EU) No 311/2013 <sup>(5)</sup>.

**1.2. Request for an expiry review**

- (4) Following the publication of a notice of impending expiry <sup>(6)</sup> the European Commission ('the Commission') received a request for a review pursuant to Article 11(2) of the basic Regulation.

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

<sup>(2)</sup> Commission Implementing Regulation (EU) 2016/1077 of 1 July 2016 imposing a definitive antidumping duty on imports of silicon originating in the People's Republic of China following an expiry review under Article 11(2) and a partial interim review under Article 11(3) of Council Regulation (EC) No 1225/2009 (OJ L 179, 5.7.2016, p. 1).

<sup>(3)</sup> Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).

<sup>(4)</sup> Council Regulation (EC) No 42/2007 of 15 January 2007 extending the definitive anti-dumping duty imposed by Regulation (EC) No 398/2004 on imports of silicon originating in the People's Republic of China to imports of silicon consigned from the Republic of Korea whether declared as originating in the Republic of Korea or not (OJ L 13, 19.1.2007, p. 1).

<sup>(5)</sup> Council Implementing Regulation (EU) No 311/2013 of 3 April 2013 extending the definitive antidumping duty imposed by Implementing Regulation (EU) No 467/2010 on imports of silicon originating in the People's Republic of China to imports of silicon consigned from Taiwan, whether declared as originating in Taiwan or not (OJ L 95, 5.4.2013, p. 1).

<sup>(6)</sup> OJ C 331, 7.10.2020, p. 13.

- (5) The request for review was submitted on 30 March 2021 by Euroalliages ('the applicant'), an association that represents all three of the Union producers, which therefore represents more than 25 % of the total Union production of silicon, in the sense of Article 5(4) of the basic Regulation. The request for review was based on the grounds that the expiry of the measures would be likely to result in continuation of dumping and continuation of injury to the Union industry.

### 1.3. Initiation of an expiry review

- (6) Having determined, after consulting the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of an expiry review, on 2 July 2021 the Commission initiated an expiry review with regard to imports into the Union of silicon originating in People's Republic of China ('China' or 'the country concerned') on the basis of Article 11(2) of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* <sup>(7)</sup> ('the Notice of Initiation').

### 1.4. Review investigation period and period considered

- (7) The investigation of continuation or recurrence of dumping covered the period from 1 July 2020 to 30 June 2021 ('the review investigation period' or 'RIP'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2018 to the end of the review investigation period ('the period considered').

### 1.5. Interested parties

- (8) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. In addition, the Commission informed the three Union producers representing 100 % of the Union industry, the known producers in China and the authorities of the country concerned, the known importers, users, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.
- (9) Interested parties had an opportunity to comment on the initiation of the expiry review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

### 1.6. Comments on initiation

- (10) Comments were received from EUSMET regarding the initiation of the expiry review.
- (11) EUSMET claimed that the state of the non-confidential request for review did not comply with the requirements of Article 19(1) and 19(2) of the basic Regulation.
- (12) This argument was rejected. Following the relevant comments from EUSMET, the applicant provided additional information to further facilitate the understanding of the facts presented in the request. This additional information has been included in the file for inspection by interested parties, thereby making it possible for EUSMET to have a reasonable understanding of the confidential information in accordance with Article 19(2) of the basic Regulation.
- (13) The Commission therefore considered the information provided in the non-confidential version of the request to be sufficiently detailed for the interested parties to exercise their rights of defence throughout the proceeding.
- (14) In their comments on initiation EUSMET requested that at disclosure stage the Commission should disclose information concerning the quantities of factors of production used to calculate the normal value; and the Commission should also disclose the AlloyConsult report referred to in the request for review.
- (15) EUSMET reiterated these two requests in their comments after disclosure. As set out in recitals 178 to 181 and recital 191, both claims have been rejected.

<sup>(7)</sup> OJ C 258, 2.7.2021, p. 8.

*1.6.1. Comments on substance*

- (16) EUSMET claimed that the request for review did not contain sufficient evidence to initiate an expiry review and that it contained incorrect allegations concerning dumping, the continuation of dumping, injury, and the continuation of injury. EUSMET supported its allegations by the following arguments.
- (17) First, EUSMET alleged there was a six-month gap between the end of the period used to present the data and the filing of the review request.
- (18) With regard to this argument, the Commission pointed out that considering the time until the data from various sources become available and the time needed to compile them in a request, there is inherently a time gap, typically of several months until the request is lodged. In this case, acceptance of a 6-month difference is compliant with the established guidance the Commission provides to the complainants.
- (19) Second, EUSMET claimed that the applicant excluded the imports made under the inward processing from China from the dumping and injury margin calculations.
- (20) Before initiation, the Commission analysed both imports with and without inward processing and in both cases it made the necessary adjustments to compare the normal value and the export prices. The Commission noted that the methodology used by the applicant, as well as the methodology where the inward processing would be included, both result in findings of significant dumping. The methodology chosen by the applicant thus could not render the initiation of this expiry review unlawful. Consequently, the argument must be rejected.
- (21) Third, EUSMET claimed that the use of Article 2(6a) of the basic Regulation and the selection of a representative country is WTO-inconsistent, as country-wide distortions are incompatible with the concept of dumping, which applies to individual companies. Furthermore, EUSMET submitted that distortion of the domestic input costs is not one of the factors that permits the construction of normal value under Article 2.2 of the WTO Anti-dumping Agreement ('ADA'). Moreover, by imposing an obligation to use only undistorted input costs reflecting costs/prices from 'sources' not affected by any distortions, Article 2(6a) precludes the calculation of the cost of production for an exporter or producer based on its records even if they are GAAP-consistent and reflect the recorded input costs. Finally, EUSMET claimed that the applicant did not provide sufficient evidence of the existence of distortions in the silicon metal sector.
- (22) EUSMET's arguments concerning the application of Article 2(6a) of the basic Regulation could not be accepted. With respect to the argument that the existence of distortions should not be assessed on a country-wide basis but individually for each exporting producer, 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 normal value may be constructed using undistorted prices or benchmarks in an appropriate representative country, for each exporting producer, according to Article 2(6a)(a) of the basic Regulation. In this context, and also in response to EUSMET's argument on the use of only undistorted input costs reflecting costs/prices from a representative country not affected by any distortions, the Commission notes that Article 2(6a)(a) of the basic Regulation explicitly allows the use of domestic costs, if they are positively established not to be distorted. The Commission examined this during the investigation. However, since none of the exporting producers cooperated, the costs of production and sale of silicon could not be established as undistorted considering the evidence available.
- (23) As to EUSMET's argument on the concept of distortions not being among the factors that permit the construction of normal value under Article 2.2 of the WTO Anti-dumping Agreement, the Commission points out that domestic law does not need to use the exact same terms as the covered Agreements in order to be compliant with those Agreements. Consequently, the Commission considers Article 2(6a) of the basic Regulation to be fully compliant with the relevant rules of the ADA, including the possibilities to construct normal value provided in Article 2.2 of the ADA. Moreover, the Commission recalls that the WTO law, as interpreted by WTO panels and the Appellate Body, 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) of the basic Regulation envisages the construction of costs of production and sale based on undistorted prices or benchmarks, including those in an appropriate representative country with a similar level of development as the exporting country.

- (24) As for the argument on evidence of the existence of distortions in the silicon metal sector, the Commission found that the applicant provided sufficient evidence of distortions in the silicon metal sector, based on the Commission's Report on distortions in China <sup>(8)</sup>, as well as on a more specific independent study of 2018 commissioned by Euroalliages. Although the applicant referred specifically to distortions on raw materials and on electricity in the narrative of the request, they also provided the more detailed reports as an annex. These reports contain ample evidence on all aspects of significant distortions in the sense of Article 2(6a)(b) of the basic Regulation.
- (25) Fourth, EUSMET alleged that the dumping margin calculation was inflated, since the applicant 'cherry-picked' the time periods to calculate the constructed normal value.
- (26) The methodology proposed by the applicant is reasonable, as it was based on data available to the applicant and covering the period used for the dumping calculation (i.e. October 2019 to June 2020). This claim was thus rejected.
- (27) Fifth, concerning the likelihood of continuation of dumping, EUSMET noted that the evidence provided by the applicant was based solely on the analysis of Chinese export prices to India, South Korea and Japan, which were in any case inaccurate.
- (28) The Commission noted that the applicant did not only take into consideration Chinese export prices to other countries, but also referred to the more detailed analysis in chapter VI of the expiry review request, concerning the likelihood of recurrence of injury. This chapter concerns spare capacities in China, as well as Chinese export volumes to the EU and to third countries, which is also relevant for the likelihood of continuation of dumping. Therefore, the Commission considered that the information provided by the applicant was sufficient to satisfy the legal standard for initiation under Article 11(2) of the basic Regulation in respect to the likelihood of continuation of dumping. The applicant also provided a reasonable comparison between the normal value and the export prices to third countries. The adjustments proposed by EUSMET would not have led to a different conclusion, as the Chinese export prices would still have been significantly lower than the normal value. This claim was therefore dismissed.
- (29) Sixth, as concerns the volume of Chinese imports of silicon into the Union, EUSMET claimed that between 2017 and 2020 these have decreased faster than the Union consumption of silicon. In other words, the Chinese exporters could not have taken sales or market share from the Union producers.
- (30) The Commission considered the evidence present in the request as sufficient evidence reasonably available to the applicant. According to the evidence provided in the request and analysed by the Commission, the import volumes from China that would penetrate the Union market in the absence of measures would be likely to increase due to the existence of unused capacity in the country concerned. The effect of such volumes at prices that would in all likelihood continue to undercut the Union industry's prices would be likely to result in continuation of injury to the Union industry. Furthermore, the existence of other factors which may have an impact on the situation of the Union industry does not necessarily imply that the effect of dumped Chinese imports on the Union industry would not be material, in particular in the case of a prospective analysis where the focus lies on what would happen should measures be repealed. Therefore, EUSMET's argument must be rejected.
- (31) Seventh, EUSMET claimed that the price effects analysis and the price undercutting and underselling calculations in the review requests were unrepresentative as they did not take into account the prices of the imports under inward processing. Moreover, EUSMET claimed that the undercutting calculations were wrong because (i) the Chinese import prices of aluminium grade silicon were compared to the EU sales of all silicon metal, which also include the chemical grade, (ii) the post-importation costs have not been added to the Chinese import prices, (iii) no level of trade adjustment was made to the Chinese imports, although these are made via traders to the EU, whereas EU sales are normally made from the Union producers to the end users. Finally, EUSMET claimed that the price underselling calculations were wrong for the same reasons as in the case of the undercutting calculation, in addition to which they were also based on artificially high production costs linked to, inter alia, a 15 % target profit, without any legal basis.

<sup>(8)</sup> Commission staff working document SWD(2017) 483 final/2, 20. 12. 2017, available at: [https://trade.ec.europa.eu/doclib/docs/2017/december/tradoc\\_156474.pdf](https://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156474.pdf)

- (32) The analysis presented by the applicant was based on the basis of the best evidence available to the applicant at the time and the Commission considered it sufficiently representative and reliable and containing sufficient evidence which justified initiation of the investigation.
- (33) Eighth, EUSMET claimed that the Union industry did not face any negative effects on account of the Chinese imports. EUSMET alleged that chemical and aluminium grade silicon are different and that whilst the Union industry's sales are mostly related to chemical grade silicon, imports from China under the normal regime are rather low-quality imports for the secondary aluminium market. Therefore, EUSMET requested the Commission to carry out a segmented injury analysis for the chemical and aluminium silicon grades. Such a request was reiterated in EUSMET's comments after disclosure, but this argument must be rejected. The Commission refers in this respect to section 2.3 below which analyses product homogeneity.
- (34) Ninth, EUSMET submitted that the Union consumption declined between 2018 and 2020, for both cyclical reasons and due to the COVID-19 pandemic outbreak. EUSMET therefore claimed that Chinese imports had no impact on the decrease of the Union consumption.
- (35) Even if the Commission agreed with EUSMET's analysis on the development of the Union consumption, it did not consider that the decrease of the consumption linked to other markets invalidated the allegation in the request, which covered both continuation and recurrence of injury, leading to the initiation of this expiry review. Nevertheless, even if the Union consumption decreased for reasons that are independent from the Chinese imports, the Commission shall still analyse in an expiry review what would be the consequences if measures were allowed to lapse, in terms of sales and market shares.
- (36) Tenth, EUSMET claimed that the fall in the Union Industry's production volumes and capacity cannot be attributed to the Chinese imports but rather to the decision of one Union producer to temporarily shut down production in certain plants. In the same vein, EUSMET claimed that the decline in the Union industry's sale volumes is not linked to the Chinese imports, which declined between 2017 and Q3 of 2020, but rather to a decline in the demand and an increase of imports from third countries. EUSMET claimed further in this context that, despite Chinese imports, Union sales prices remained stable over the 2017-2019 period and fell in the first three quarters of 2020, in coincidence with a global fall of silicon demand. In other words, in a context of falling demand, the Union producers would not be able to increase prices, irrespective of the Chinese silicon imports. For the same reasons, profitability fall cannot be imputable to Chinese imports.
- (37) These arguments cannot be accepted. The Commission recalls that the existence of measures is often associated with a reduction of imports from the country concerned and that existing anti-dumping measures often have a positive effect on the state of the Union industry. In an expiry review investigation the Commission carries out an analysis on what would happen should measures be allowed to lapse. The fact that Chinese imports might not be the main cause of the negative development of certain injury indicators cannot therefore impede the initiation of the investigation.
- (38) Eleventh, EUSMET listed some allegedly key factors affecting the Union industry which, in EUSMET's view, were overlooked or misinterpreted in the review. Those factors include the production strategy of the Union industry and its costs, development in the silicon demand, increase in third country imports and the impact of Brexit. EUSMET required the Commission to consider them in the review.
- (39) The Commission considered the way the applicant interpreted the factors in the request sufficient to initiate the expiry review. In any event the Commission considered all those factors in the framework of its analysis in the Injury and Union interest sections of this Regulation.
- (40) Twelfth, EUSMET claimed that the applicant underestimated the silicon demand outlook, overestimated the Chinese production and capacity and exaggerated the price effects of Chinese imports.
- (41) However, EUSMET did not bring any information that would call into question the estimates presented in the review request. Therefore, the argument could not be accepted.

- (42) In view of the above, the Commission considered that the request provided sufficient evidence to initiate the review investigation.
- (43) In their comments on the disclosure, EUSMET reiterated its claim that the use of Article 2(6a) of the basic Regulation was incompatible with the Anti-Dumping Agreement, without adding any new argument or evidence. The Commission therefore rejected this claim for the same reasons as set out in recitals 22 to 24 above.

#### 1.7. Sampling

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

##### 1.7.1. Sampling of importers

- (45) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (46) No unrelated importers came forward.

##### 1.7.2. Sampling of producers in China

- (47) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all producers in China 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 identify and/or contact other producers, if any, that could be interested in participating in the investigation.
- (48) No replies were received.

#### 1.8. Replies to the questionnaire

- (49) The Commission sent a questionnaire concerning the existence of significant distortions in China within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of China ('GOC').
- (50) The Commission sent questionnaires to the Union industry. Moreover, the questionnaires for Union industry, for unrelated importers and for users were made available on DG Trade's website <sup>(9)</sup>.
- (51) Questionnaire replies were received from three Union producers and from three users.

#### 1.9. Verification

- (52) The Commission sought and verified all the information deemed necessary for the determination of likelihood of continuation or recurrence of dumping and injury and of the Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following cooperating companies:

##### Union producers

- RW Silicium GmbH, Pocking, Germany
- FerroAtlántica S.L., Madrid, Spain
- Ferropem, Chambéry, France

##### Users

- Wacker Chemie AG, Munich, Germany
- Raffmetal SpA, Casto, Italy
- Evonik Industries AG, Essen, Germany

<sup>(9)</sup> <https://tron.trade.ec.europa.eu/investigations/case-view?caseId=2535>

### 1.10. Subsequent procedure

- (53) On 17 June 2022, the Commission disclosed the essential facts and considerations on the basis of which it intended to maintain the anti-dumping duties in force. All parties were granted a period within which they could make comments on the disclosure.
- (54) The comments made by interested parties were considered by the Commission where appropriate.

## 2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

### 2.1. Product under review

- (55) The product under review is the same as in the original investigation and previous expiry reviews namely silicon ('the product under review'), currently falling under CN code 2804 69 00.

### 2.2. Like product

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

### 2.3. Claims regarding product homogeneity

- (58) EUSMET claimed that silicon for chemical and aluminium uses is not a homogenous product and that silicon for the two end uses is not interchangeable.
- (59) First, EUSMET highlighted the different composition, technical and chemical characteristics of silicon, stating that silicon consists of elemental silicon and other by-elements in different concentrations and levels. Moreover, EUSMET explained that each of the by-elements has a source in the basic raw materials or production process of silicon, therefore, based on the different raw material used, the silicon has a certain chemical composition which is specific to a certain use.
- (60) EUSMET argued that different silicon purity levels are required for different uses in both the chemical and the aluminium sectors. Chemical and aluminium grade silicon users cannot use the same material as such and do not compete for the same material from suppliers. Therefore, the fungibility and competitive overlap between the chemical grade silicon and silicon suitable for the aluminium industry is extremely limited.
- (61) EUSMET emphasised that the price of silicon used in different products is impacted by the chemical composition of the silicon requested. More specifically, silicon used to manufacture silicones polymers is generally the highest priced and secondary aluminium grade silicon is the lowest priced. EUSMET claimed that the rationale for such price difference is that specific high-quality raw materials, which are also more expensive, are required for producing higher purity silicon.
- (62) EUSMET further pointed to the differences in distribution channels for the different types of silicon. Since chemical users purchase customised silicon pursuant to rigorous qualification processes of their suppliers, they buy directly from silicon producers. Additionally, chemical users buy silicon based on short/long term contracts and do not buy on the spot market. On the other hand, aluminium users, and generally secondary aluminium users buy silicon from traders or distributors or importers. Furthermore, except for some large users of silicon in the primary aluminium user segment, most aluminium-related sales are spot sales.

- (63) Silicon has always been considered as a homogenous product since the original investigation on imports of silicon from China and in all subsequent expiry review investigations. According to Article 11(9) of the basic Regulation, in all review investigations, the Commission shall apply the same methodology as in the investigation which led to the duty, provided that circumstances have not changed. In the present case, EUSMET did not present any evidence showing that circumstances with regards to the homogenous nature of the product concerned have changed since the last expiry review.
- (64) In their comments on the disclosure, EUSMET noted that, in the past investigations, the Commission only took into account aluminium-grade silicon metal imports to establish injury and that it thus already deployed a segmented analysis. EUSMET also added that the Commission recognised that chemical-grade silicon was mostly imported via the inward processing regime (IPP) and, therefore the imports related to this market segment were exempted from the duties.
- (65) The Commission first notes that, according to Article 11(9) of the basic Regulation, since there is no change in circumstances, the methodology used should be the one used in the investigation that led to the duty <sup>(10)</sup>. No segment-based analysis was conducted in the previous interim review <sup>(11)</sup>. The Commission merely distinguished between two import regimes for the purpose of establishing undercutting and the injury elimination level.
- (66) As noted in recital 48 above, no exporting producer cooperated with the investigation. Furthermore, imports by EUSMET's members constitute only a small proportion of the total imports of the product concerned. Consequently, the Commission was unable to establish a proportion of aluminium- and chemical-grade silicon in the total import of the product concerned or any link between import regime used and silicon grade imported. This claim was therefore rejected.

### 3. DUMPING

#### 3.1. Preliminary remarks

- (67) During the review investigation period, imports of silicon into the Union from China continued but at a lower market share than during the review investigation period of the previous review investigation.
- (68) No producers from China cooperated with the investigation. Therefore, the Commission informed the authorities of the country concerned that due to the absence of cooperation, the Commission might apply Article 18 of the basic Regulation concerning the findings with regard to them. The Commission did not receive any comments on this information, or requests for an intervention of the Hearing Officer.
- (69) Consequently, in accordance with Article 18 of the basic Regulation, the findings in relation to the likelihood of continuation or recurrence of dumping were based on facts available, in particular information contained in the request for review, information obtained from cooperating Union producers and users in the course of the review investigation, as well as Eurostat trade statistics on imports and exports.

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

- (70) Given the sufficient evidence available at the initiation of the investigation tending to show with regard to China the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission initiated the investigation on the basis of Article 2(6a) of the basic Regulation.
- (71) In order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions, the Commission sent a questionnaire to the GOC. In addition, in point 5.3.2 of the Notice of Initiation, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the *Official Journal of the European Union*.

<sup>(10)</sup> OJ L 179, 5.7.2016, p. 1; Council Regulation (EEC) No 2200/90 of 27 July 1990 imposing a definitive anti-dumping duty on imports of silicon metal originating in the People's Republic of China (OJ L 198, 28.7.1990, p. 57).

<sup>(11)</sup> OJ L 179, 5.7.2016, p. 1.

- (72) No questionnaire reply was received from the GOC and no submission on the application of Article 2(6a) of the basic Regulation was received within the deadline. Subsequently, the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in China. The Commission did not receive any comments on this information, or requests for an intervention of the Hearing Officer.
- (73) In point 5.3.2 of the Notice of Initiation, the Commission also specified that, in view of the evidence available, it had provisionally selected Brazil as an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks. The Commission further stated that it would examine other possibly appropriate countries in accordance with the criteria set out in first indent of Article 2(6a)(a) of the basic Regulation.
- (74) On 23 February 2022, the Commission informed interested parties by a note ('Note 1') 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 silicon.
- (75) In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified an additional possible appropriate representative country, namely Malaysia. The Commission received comments on Note 1 from the applicant and EUSMET.
- (76) On 5 April 2022, the Commission informed interested parties by a second note ('Note 2') on the relevant sources it intended to use for the determination of the normal value, keeping Malaysia as the representative country. It also informed interested parties that it would establish selling, general and administrative costs ('SG&A') and profits based on available information for the company PMB Silicon Bhd, a producer of the product in the representative country.
- (77) The Commission received comments on Note 2 from the applicant and EUSMET. EUSMET also submitted comments in reply to those from the applicant.

#### 3.2.1. *Normal value*

- (78) 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'.
- (79) However, according to Article 2(6a)(a) of the basic Regulation, if 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 to as 'SG&A').
- (80) As further explained below, the Commission concluded in the present investigation that based on the evidence available, and in view of the lack of cooperation of the GOC and the producers, the application of Article 2(6a) of the basic Regulation was appropriate.

### 3.2.2. Existence of significant distortions in China

- (81) In recent investigations concerning ferro-silicon <sup>(12)</sup> and calcium silicon <sup>(13)</sup> originating in China, the Commission found that significant distortions in the sense of Article 2(6a)(b) of the basic Regulation were present in the metallurgical sector in China. The Commission concluded in these investigations that, based on the evidence available, the application of Article 2(6a) of the basic Regulation was appropriate.
- (82) The Commission found that there is substantial government intervention in China resulting in a distortion of the effective allocation of resources in line with market principles <sup>(14)</sup>.
- (83) The Commission also concluded that a substantial degree of ownership by the GOC persisted in the sense of Article 2(6a)(b), first indent of the basic Regulation <sup>(15)</sup>.
- (84) The Commission also established that the GOC was in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation <sup>(16)</sup>.
- (85) The Commission also found that the State's presence and intervention in the financial markets, as well as in the provision of raw materials and inputs, have an additional distorting effect on the market. The system of planning in China also results in resources being concentrated in sectors designated as strategic or otherwise politically important by the GOC, rather than being allocated in line with market forces <sup>(17)</sup>.
- (86) The Commission also concluded that the Chinese bankruptcy and property laws do not work properly in the sense of Article 2(6a)(b), fourth indent of the basic Regulation, thus generating distortions in particular when maintaining insolvent firms afloat and when allocating land use rights in China <sup>(18)</sup>.
- (87) The Commission also found distortions of wage costs in the metallurgical sector in the sense of Article 2(6a)(b), fifth indent of the basic Regulation <sup>(19)</sup>, as well as distortions in the financial markets in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, in particular concerning access to capital for companies in China <sup>(20)</sup>.
- (88) As in previous investigations concerning the metallurgical sector in China, the Commission examined in the present investigation whether it was appropriate or not to use domestic prices and costs in China, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation.

<sup>(12)</sup> Commission Implementing Regulation (EU) 2020/909 of 30 June 2020 imposing a definitive anti-dumping duty on imports of ferro-silicon originating in Russia and the People's Republic of China, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 (OJ L 208, 1.7.2020, p. 2).

<sup>(13)</sup> Commission Implementing Regulation (EU) 2021/1811 of 14 October 2021 imposing a provisional anti-dumping duty on imports of calcium silicon originating in the People's Republic of China (OJ L 366, 15.10.2021, p. 17).

<sup>(14)</sup> Regulation (EU) 2020/909, recitals 54-60 and 111-115; Regulation (EU) 2021/1811, recitals 58-63 and 85.

<sup>(15)</sup> Regulation (EU) 2020/909, recitals 61-64; Regulation (EU) 2021/1811, recital 44.

<sup>(16)</sup> Regulation (EU) 2020/909, recitals 66-69; Regulation (EU) 2021/1811, recitals 46-48. While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights, CCP cells in enterprises, state owned and private alike, represent another important channel through which the State can interfere with business decisions. According to the Chinese company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline. In 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of silicon and the suppliers of their inputs.

<sup>(17)</sup> Regulation (EU) 2020/909, recitals 70-80; Regulation (EU) 2021/1811, recitals 49-58.

<sup>(18)</sup> Regulation (EU) 2020/909, recitals 81-86; Regulation (EU) 2021/1811, recital 59.

<sup>(19)</sup> Regulation (EU) 2020/909, recitals 87-90; Regulation (EU) 2021/1811, recital 60.

<sup>(20)</sup> Regulation (EU) 2020/909, recitals 91-110; Regulation (EU) 2021/1811, recital 61.

- (89) The Commission did so based on the evidence available on the file, including the evidence contained in the request, as well as in the Commission's report on significant distortions in China <sup>(21)</sup> ('Report'), which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in China's economy in general, but also the specific market situation in the relevant sector including the product under review.
- (90) The Commission further supplemented these elements with its own research on the various criteria relevant to confirm the existence of significant distortions in China as also found by its previous investigations in this respect.
- (91) The request in this case referred to the Report, in particular to section 12.4.2 regarding export restrictions on silicon and the sections referring to the electricity market. The applicant also referred to a copyrighted study from AlloyConsult in the request for review regarding State-induced market distortions in the Chinese ferro-alloys and silicon industries.
- (92) In the silicon sector, a certain degree of ownership and control by the GOC persists in the sense of Article 2(6a)(b), first indent of the basic Regulation. Since there was no cooperation from any Chinese exporters of the product under review, the exact ratio of private and State-owned silicon producers could not be further determined.
- (93) However, the Commission established that a number of Chinese silicon producers are state owned. One of them is Yunnan Nujiang International Silicon Trade Co, a subsidiary of Xiamen ITG Group Corp., Ltd <sup>(22)</sup>. The ultimate controlling shareholder of Xiamen ITG Group is the City of Xiamen State-owned Assets Supervision and Administration Commission <sup>(23)</sup>.
- (94) Similarly, the Shanghai Puyuan Foreign Economic and Trading Company <sup>(24)</sup> ('SPFC') is a wholly owned subsidiary of the Shanghai National Nuclear Puyuan Group which in turn is wholly owned by China National Nuclear Corporation ('CNNC'), one of the Chinese central level State-Owned Enterprises ('SOEs').
- (95) The investigation found further that in the electricity sector, which is the main factor of production in the manufacturing of the product under review, a substantial degree of ownership by the GOC persists. As found by the Commission in the Report, the electricity market in China is characterised by strong involvement of SOEs in various stages of the supply chain, with the entire transmission grid being owned by two SOEs and significant State ownership existing also at the generation stage.
- (96) As to the GOC being in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation, during the investigation the Commission established the existence of personal connections between the Chinese Communist Party ('CCP') and companies manufacturing the product under review, as well as organisational corporate features placing the CCP in position allowing it to interfere with the companies' conduct of business.
- (97) In the ITG Xiamen Group, the CCP Party committee occupies the highest level of the company's organisational level, at par with the Board of Directors and the Board of Supervisors and above the Senior Management <sup>(25)</sup>.
- (98) Moreover, in SPFC, the Chairman of the Board of Shanghai National Nuclear Puyuan Group holds at the same time the position of the Secretary of the Party Committee while the company's General Manager serves simultaneously as Deputy Secretary of the Party Committee <sup>(26)</sup>.

<sup>(21)</sup> Commission staff working document SWD(2017) 483 final/2, 20.12.2017, available at: [https://trade.ec.europa.eu/doclib/docs/2017/december/tradoc\\_156474.pdf](https://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156474.pdf)

<sup>(22)</sup> See the Xiamen ITG Group annual report 2021, page 261 [http://static.sse.com.cn/disclosure/listedinfo/announcement/c/new/2022-04-21/600755\\_20220421\\_2\\_cFJgASUK.pdf](http://static.sse.com.cn/disclosure/listedinfo/announcement/c/new/2022-04-21/600755_20220421_2_cFJgASUK.pdf) (accessed on 12 July 2022).

<sup>(23)</sup> <http://www.itg.com.cn/en/company/about> (accessed on 12 July 2022).

<sup>(24)</sup> [www.ixin.com/company/472df966-2141-41bc-8209-66d37f0c2d88](http://www.ixin.com/company/472df966-2141-41bc-8209-66d37f0c2d88) (accessed on 27 April 2022), [www.shpcoic.org.cn/Site/Home/\\_InfoShow?Info\\_ID=6720&InfoItem\\_ID=60](http://www.shpcoic.org.cn/Site/Home/_InfoShow?Info_ID=6720&InfoItem_ID=60) (accessed on 27 April 2022).

<sup>(25)</sup> [www.itgholding.com.cn/en/company/organization](http://www.itgholding.com.cn/en/company/organization) (accessed on 27 April 2022).

<sup>(26)</sup> [www.puyuan.com](http://www.puyuan.com) (accessed on 27 April 2022).

- (99) The investigation revealed further that both public and privately owned enterprises in the silicon sector are also subject to policy supervision and guidance. As in any other sector in China, these producers are constrained to host Party-building activities and maintain a close affiliation to the CCP and its ideology. The following examples illustrate the trend of an increasing level of intervention by the GOC also in the silicon sector.
- (100) The ITG Xiamen Group describes on its website extensive Party-building activities. Referring to a February 2022 meeting of the CCP study group, the company emphasizes that it is necessary to 'firmly ensure the correct direction of the construction of the special economic zone, implement the Party's comprehensive leadership over the China International Trade Holding Group, continue to deepen the comprehensive and strict governance of the Party, adhere to the path of socialism with Chinese characteristics, and unswervingly follow General Secretary Xi Jinping's direction forward' <sup>(27)</sup>.
- (101) Claiming allegiance to the CCP leadership is not limited only to the most recent period of time but extends also to the review investigation period, as apparent for instance from the website of SPFC which describes the conclusions of the group's Party Committee meeting which took place on 17 November 2020: '[W]e must strengthen ideological content, raise profile, active thinking, self-discipline and self-examination, attach importance to learning, strengthen understanding, deepen study and implementation of the spirit of the Fifth Plenary Session of the 19th Central Committee of the Communist Party of China [...] The Fifth Plenary Session of the 19th Central Committee of the Communist Party of China required that the focus of economic development should be placed on the real economy, and efforts should be made to improve the modernization level of the industry chain and supply chain, accelerate the development of a modern industrial system [...] [I]t is necessary to study and implement the spirit of General Secretary Xi Jinping's important speeches and the spirit of the Fifth Plenary Session of the 19th CPC Central Committee, (...) with a high degree of political consciousness, ideological and action consciousness, in accordance with the integrated deployment of the Party Central Committee, the group company, and CNNC Puyuan to ensure implementation on the ground, it is necessary to fully integrate the spirit of the Fifth Plenary Session of the 19th Central Committee of the Party [...] Members of the CNNC supply chain leadership team, middle-level cadres, and members of various branches participated in this enlarged study meeting.' <sup>(28)</sup>
- (102) Moreover, according to the working rules of the Silicon industry association <sup>(29)</sup>, a branch of the China non-ferrous metal industry association, the association takes the basic line of the CCP as its own guideline <sup>(30)</sup>. Further, adhering to the Party's line, principles and policies, and possessing good political quality are listed among eligibility requirements for serving as the association's president, vice-president or secretary general <sup>(31)</sup>.
- (103) Further, it was established that policies discriminating in favour of domestic producers or otherwise influencing the market in the sense of Article 2(6a)(b), third indent of the basic Regulation are in place in the silicon sector. Silicon plays a significant role in the production of aluminium, as well as semiconductors (for which the product under review is an input) which in turn qualifies the silicon sector to be considered part of the strategic emerging industries <sup>(32)</sup> which benefit from a wide range of support policies in place.
- (104) The State interferes also in markets of inputs used for the production of silicon, in particular the electricity markets. While electricity is one of the main inputs in the manufacture of silicon, the prices of electricity are not market-based in China and are also affected by significant distortions (through central price-setting, price differentiation and in direct power purchase practices), as established in the Report <sup>(33)</sup>.

<sup>(27)</sup> [www.itgholding.com.cn/cn/News/Detail/4244](http://www.itgholding.com.cn/cn/News/Detail/4244) (accessed on 27 April 2022).

<sup>(28)</sup> [www.puyuan.com/puyuan/djdt11/971216/index.html](http://www.puyuan.com/puyuan/djdt11/971216/index.html) (accessed on 27 April 2022).

<sup>(29)</sup> [www.siliconchina.org/about/rules/index.html](http://www.siliconchina.org/about/rules/index.html) (accessed on 27 April 2022).

<sup>(30)</sup> *ibid*, Article 3.

<sup>(31)</sup> *ibid*, Article 21.

<sup>(32)</sup> See the 14th Five Year Plan on the Development of Strategic and Emerging Industries of the Fujian province (in which ITG Xiamen Group headquarters are located): <http://www.qg.gov.cn/zw/gk/zcfg/sjfgwj/202112/P020211207803152129885.pdf> (accessed 28 April 2022). See further for example the Catalogue of Four Essentials for ten key industries, a policy document released in 2016 in the context of the Made in China 2025 strategy; available at: <http://www.cm2025.org/show-14-126-1.html> (accessed 28 April 2022).

<sup>(33)</sup> Report, Chapter 10, p. 221-230.

- (105) While the energy market in China has undergone a number of changes and reforms, some prices relevant for the energy system are still not market-based. The government recognises that the prices are still largely controlled by the State: 'The current electricity price management is still based on government prices. Price adjustments often lag behind changes in costs and it is difficult to timely and reasonably reflect the electricity usage costs [...] An effective competitive mechanism for the sale of electricity has not yet been established, market transactions between electricity generation enterprises and users are limited and it is difficult to involve the decisive role of the market in the allocation of resources' <sup>(34)</sup>.
- (106) This State-induced market weakness is at the origin of further attempts to manage the market, which is reflected in a number of subsequent administrative documents. For example, in November 2020, the NDRC released the *Notice on promoting the signing of mid to long-term 2021 electricity contracts* <sup>(35)</sup>.
- (107) The document instructs 'the competent departments of local governments [...] to strive to ensure that the contracted electricity volume is not lower than 80 % of the average volume over the past three years', and with regard to pricing to 'establish a deviation settlement mechanism [...] in the local market regulations to deal with deviations between the contracted power volume and the actual implementation' and to '[i]mprove the medium and long-term transaction price mechanism. All localities shall strictly implement the power transmission and distribution prices as approved by the government.'
- (108) The Notice contains also specific provisions on implementation, notably through the establishment of a tracking mechanism for the contract signing progress, or by strengthening contracts monitoring, disclosure and enforcement <sup>(36)</sup>.
- (109) Furthermore, in January 2021, the State Council released the 'NDRC Opinion on standardising urban water, electricity and heating supplies fees to foster a high quality development of the sector' <sup>(37)</sup>. The Notice contains specific provisions with regard to government pricing '[...] For projects subject to government pricing or government-guided prices, reasonably determine the cost composition, strengthen cost supervision and review, improve the price formation mechanism and scientifically determine the price level. [...]'
- (110) Among the main goals of the Notice, specific reference is made to the government input mechanism in relation to pricing, as well as the sectoral differentiation of pricing methods: 'By 2025, clear results shall be achieved in cleaning up and standardizing the charges in the water supply, power supply, gas and heating sector. A basis for a scientific, standardized and transparent price formation mechanism shall be established, and the government input mechanism shall be further improved. Pricing methods applicable to related sectors, cost supervision and review methods, price behaviour and standard comprehensive coverage of services, as well as the quality and efficiency of the supply of water, electricity, heating and other products and services shall be significantly improved'.
- (111) Coal is another raw material used to manufacture the product under review. As found in the Report, the coal market in China is subject to distortions, notably because of subsidisation <sup>(38)</sup> and through the management and control over the exploitation of coal resources <sup>(39)</sup>.

<sup>(34)</sup> Opinions on further deepening the reform of the electric power system, issued 15 March 2015 by the CCP Central Committee and the State Council (ZhongFa [2015] no. 9 <https://chinaenergyportal.org/en/opinions-of-the-cpc-central-committee-and-the-state-council-on-further-deepening-the-reform-of-the-electric-power-system-zhongfa-2015-no-9/>) (accessed on 8 April 2022).

<sup>(35)</sup> [https://www.ndrc.gov.cn/xxgk/zcfb/tz/202012/t20201202\\_1252094.html](https://www.ndrc.gov.cn/xxgk/zcfb/tz/202012/t20201202_1252094.html) (accessed on 8 April 2022).

<sup>(36)</sup> Notably: 'Local government departments shall, in coordination with the National Energy Administration's seconded entity, report to the National Development and Reform Commission and the State Energy Administration in a timely manner on the signing of medium- and long-term contracts as well as on relevant issues, and ensure the connection of medium- and long-term contracts signature with the spot power.'

<sup>(37)</sup> [http://www.gov.cn/zhengce/content/2021-01/06/content\\_5577440.htm](http://www.gov.cn/zhengce/content/2021-01/06/content_5577440.htm) (accessed on 8 April 2022).

<sup>(38)</sup> Report – Chapter 10.

<sup>(39)</sup> Report – Chapter 12, p. 269.

- (112) The recent calcium silicon investigation established further elements of State interference in the coal market. In May 2021, the National Energy Administration (NEA) and NDRC jointly released the *Notice on Management measures for coal mine production capacity and approval criteria*, with the aim of regulating coal mine capacities and enforcing relevant limits, calculated based on the notice <sup>(40)</sup>. In December 2020, the NDRC issued the *Notice on ensuring the signature and performance of medium and long-term coal contracts in 2021* <sup>(41)</sup>.
- (113) The Notice expressly emphasizes the goal of increasing the State's influence and supervision in the contractual process: 'Give better play to the role of the government, focus on strengthening system construction, improve transaction rules, strengthen credit supervision, and guide relevant parties to raise awareness of the overall situation, take social responsibilities, standardize contract performance, and ensure the smooth functioning of the coal market.'
- (114) The notice also instructs to '[s]trengthen industry self-discipline. All relevant industry associations shall guide enterprises to strengthen self-discipline, to duly implement the requirements of medium and long-term contracts, and not to use the market supply and demand situation and the advantageous position of the industry to sign unbalanced contracts. Large-scale enterprises shall play an exemplary role, self-regulate contract signatures, enhance their awareness of fulfilling commitments, take the initiative to take social responsibility of ensuring supply and stable prices, and promote the smooth operation of coal market at national level.'
- (115) Particularly worth noting is the clear directive not to use the demand and supply situation in the market when signing contracts. In April 2021, the NDRC issued a further 'Notice on ensuring supervision and management of 2021 coal medium and long-term contracts', which aims at better overseeing sale contracts compliance and to ensure the supply of coal (notably based on the provisions of the pre-cited Notice No 902). On that basis, relevant parties should notably ensure that the monthly compliance rate should not be less than 80 %, and the quarterly and annual compliance rate should not be less than 90 % <sup>(42)</sup>.
- (116) State interventionism in the coal market is also visible in the recent decision on extending for another year the trial operation time for shuttered coal mines with the aim to increase output and supply, to counter the commodity's price increases (after the mines production was previously suspended) <sup>(43)</sup>.
- (117) As can be seen from the above examples, the GOC manages the development of the silicon sector in accordance with a broad range of policy tools and directives and controls virtually every aspect in the functioning of the sector. This governmental guidance and intervention concerns also the main inputs used in the manufacturing of the product under review.
- (118) The present investigation has not revealed any evidence that the discriminatory application or inadequate enforcement of bankruptcy and property laws according to Article 2(6a)(b), fourth indent of the basic Regulation in the metallurgical sector would not affect the manufacturers of the product under review.
- (119) The metallurgical sector is also affected by the distortions of wage costs in the sense of Article 2(6a)(b), fifth indent of the basic Regulation. Those distortions affect the sector both directly (when producing the product under review or the main inputs), as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in China).

<sup>(40)</sup> Available at the NEA website: [www.nea.gov.cn/2021-05/18/c\\_139953498.htm](http://www.nea.gov.cn/2021-05/18/c_139953498.htm) (accessed on 13 April 2022).

<sup>(41)</sup> NDRC Notice No 902 (2020) [https://www.ndrc.gov.cn/xxgk/zcfb/tz/202012/t20201207\\_1252389.html?code=&state=123](https://www.ndrc.gov.cn/xxgk/zcfb/tz/202012/t20201207_1252389.html?code=&state=123) (accessed on 13 April 2022).

<sup>(42)</sup> Notice 338 (2021); available at: [www.ndrc.gov.cn/xxgk/zcfb/tz/202104/t20210429\\_1278643.html](http://www.ndrc.gov.cn/xxgk/zcfb/tz/202104/t20210429_1278643.html) (accessed on 13 April 2022).

<sup>(43)</sup> See Nasdaq website article (original by Reuters Beijing Newsroom). China grants one-year trial extensions at 15 coal mines to boost output. 4 August 2021; available at: <https://www.nasdaq.com/articles/china-grants-one-year-trial-extensions-at-15-coal-mines-to-boost-output-2021-08-04> (accessed on 13 April 2022).

- (120) Moreover, no evidence was submitted in the present investigation demonstrating that the metallurgical sector is not affected by the government intervention in the financial system in the sense of Article 2(6a)(b), sixth indent of the basic Regulation. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.
- (121) Finally, the Commission recalls that in order to produce the product under review, a number of inputs is needed. When the producers of the product under review purchase or contract for these inputs, the prices paid (and which are recorded as their costs) are 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; and they are subject to the planning system that applies across all levels of government and sectors.
- (122) As a consequence, not only the domestic sales prices of the product under review 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 I and II of the Report.
- (123) Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout China. This means, for instance, that an input that in itself was produced in China 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.
- (124) No evidence or argument to the contrary has been submitted by the GOC or the producers in the present investigation.
- (125) In sum, the evidence available showed that prices or costs of the product under review, 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.
- (126) On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case.
- (127) 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.

### 3.2.3. Representative country

#### 3.2.3.1. General remarks

- (128) The choice of the representative country was based on the following criteria pursuant to Article 2(6a) of the basic Regulation:

— A level of economic development similar to China. For this purpose, the Commission used countries with a gross national income per capita similar to China on the basis of the database of the World Bank <sup>(4)</sup>;

<sup>(4)</sup> World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>

- Production of the like product in that country <sup>(45)</sup>;
- Availability of relevant public data in the representative country.
- Where there is more than one possible representative country, preference should be given, where appropriate, to the country with an adequate level of social and environmental protection.

(129) The Commission issued two notes for the file on the sources for the determination of the normal value. These 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.

#### 3.2.3.2. A level of economic development similar to China

(130) In Note 1, the Commission identified Brazil and Malaysia as countries with a similar level of economic development as China according to the World Bank where silicon is being produced. These countries are both classified by the World Bank as 'upper-middle income' countries on a gross national income basis where production of the like product was known to take place.

(131) No further possible representative countries were identified by any interested party.

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

(132) In Note 1 the Commission indicated that the producer of silicon in Brazil identified by the applicant, RIMA Industrial, was not profitable during calendar year 2020, and that no other Brazilian producers had been identified at this stage.

(133) The producer of silicon in Malaysia identified by EUSMET, PMB Silicon Bhd, was profitable during calendar year 2020. On this basis the Commission considered in Note 1 that Malaysia could be an appropriate representative country.

(134) Following the publication of Note 1 the applicant submitted a list of silicon producers in Brazil, indicating the availability of public financial data for each of those producers.

(135) The list supplied by the applicant identified one silicon producer in Brazil, the company MinasLigas, that was profitable in 2020.

(136) The Commission therefore had two profitable producers of silicon, one in Malaysia and one in Brazil.

(137) In Note 2, the Commission further compared the data available from Malaysia and Brazil concerning factors of production. The Commission concluded that Malaysia had a more representative dataset for the factors of production, since there were no imports of medium ash coal into Brazil, and only limited quantities of imports of quartz and wood chips which were also at unrepresentative prices.

(138) The Commission thus informed the interested parties with Note 2 that it intended to use Malaysia as an appropriate representative country and the company PMB Silicon Bhd, in accordance with Article 2(6a)(a), first indent of the basic Regulation in order to source undistorted prices or benchmarks for the calculation of normal value.

(139) Interested parties were invited to comment on the appropriateness of Malaysia as a representative country and of PMB Silicon Bhd as producer in the representative country.

(140) Comments on Note 2 were received from EUSMET, who supported the Commission's decision to use Malaysia, and from the applicant, who maintained that Brazil should be considered an appropriate representative country.

(141) The applicant disputed the use of Malaysia as representative country, based on the financial data of the company PMB Silicon Bhd. The applicant asserted that the company was loss making in 2020, but without providing any evidence.

<sup>(45)</sup> If there is no production of the like product in any country with a similar level of development, production of a product in the same general category and/or sector of the like product may be considered.

- (142) In their submission of 1 April 2022, EUSMET provided locally published accounts for PMB Silicon Bhd showing that they were profitable during 2020. This argument from Euroalliances is therefore rejected.
- (143) The applicant also disputed the representativity of some of the publicly available data from Malaysia regarding by-products and requested again that the Commission uses Brazilian data for those factors where it was appropriate to do so and use data from other countries where it was not.
- (144) The Commission therefore re-examined the data from Malaysia, considering the comments from both the applicant and EUSMET regarding this data. The Commission concluded that Malaysian data concerning the factors of production are reliable. The Commission also noted that as the normal value calculations would be using a percentage to calculate by-product income, the benchmarks in Note 2 for by-products would no longer be used.
- (145) Moreover, the Commission notes that with respect to Brazil, the applicant admitted that some data are not appropriate and that other sources would have to be used. The Commission therefore rejected this argument of the applicant.
- (146) After issuing Note 2, the Commission noted that there was an error in the extraction of data from GTA regarding imports of wood chips into Malaysia. The extraction had been done in EUR rather than in CNY and therefore the price per tonne was incorrect. On analysis however, the actual price in CNY per tonne was far in excess of that paid by the Union industry, and far in excess of the average export price per tonne in GTA for all countries.
- (147) As prices of wood chips were considered to be non-representative, and in the absence of an undistorted international price for wood chips, the Commission found that the average import price into the European Union in CNY per tonne to be a suitable benchmark for this raw material.
- (148) The applicant also disputed the sources of data for electricity and labour costs, deeming them to be 'obsolete' <sup>(46)</sup>.
- (149) The Commission verified these sources again and, concerning electricity, noted that the tariffs indicated in Note 2 are still in force. However, concerning labour costs, the source indicated in Note 2 covers the year 2016. The Commission therefore sought more recent data and identified labour cost statistics from the Department of Statistics of Malaysia, 'Salaries and Wages Survey Report 2020' <sup>(47)</sup> published in July 2021 as a suitable source of data.

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

- (150) Having established that Malaysia 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.

#### 3.2.3.5. Conclusion

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

#### 3.2.4. Sources used to establish undistorted costs

- (152) In Note 1, the Commission listed the factors of production such as raw materials, energy and labour used in the production of the product under review and invited the interested parties to comment and propose publicly available information on undistorted values for each of the factors of production mentioned in that note.

<sup>(46)</sup> 'No longer used or practised; outmoded, out of date.' (Oxford English Dictionary).

<sup>(47)</sup> <https://www.dosm.gov.my/v1/index.php> (accessed on 26 April 2022).

- (153) Subsequently, in Note 2, the Commission stated that, in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it would use GTA to establish the undistorted cost of most of the factors of production, notably the raw materials. In addition, the Commission stated that it would use Malaysian official data for establishing undistorted costs of labour <sup>(48)</sup> and energy <sup>(49)</sup>.

### 3.2.5. Factors of production

- (154) Considering all the information in the request for review and subsequent information submitted by the applicant and interested parties, the following factors of production and their sources have been identified in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

Table 1

### Factors of production of silicon

| Factor of Production | Commodity Code in Malaysia | Undistorted value in CNY | Unit of measurement |
|----------------------|----------------------------|--------------------------|---------------------|
| Raw materials        |                            |                          |                     |
| Quartz               | 2506 10                    | 468,20                   | Tonne               |
| Medium Ash Coal      | 2701 19                    | 437,23                   | Tonne               |
| Wood chips           | 4401 21                    | 412,50                   | Tonne               |
|                      | 4401 22                    | 412,50                   | Tonne               |
| Electrodes           | 8545 11                    | 39 692,39                | Tonne               |
| Labour               |                            |                          |                     |
| Labour               |                            | 21,92                    | Labour hour         |
| Energy               |                            |                          |                     |
| Electricity          |                            | 0,53                     | kWh                 |

### 3.2.6. Raw materials

- (155) Silicon is produced in electric submerged arc furnaces with carbothermic reduction of quartz (silica) in the presence of various types of carbon reductants such as coal and wood chips.
- (156) In order to establish the undistorted price of raw materials as delivered at the gate of a representative country producer, the Commission used as a basis the weighted average import price to the representative country as reported in GTA.
- (157) An import price in the representative country was determined as a weighted average of unit prices of imports from all third countries excluding China and countries which are not members of the WTO, listed in Annex 1 of Regulation (EU) 2015/755 of the European Parliament and the Council <sup>(50)</sup>.
- (158) The Commission decided to exclude imports from China into the representative country 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. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected export prices.

<sup>(48)</sup> <https://bit.ly/3vJD5On> (accessed on 26 April 2022).

<sup>(49)</sup> <https://www.tnb.com.my/commercial-industrial/pricing-tariffs1> (accessed on 26 April 2022).

<sup>(50)</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).

- (159) The remaining import data from other countries excluding China was considered representative for all inputs except wood chips. As noted in recital 146, the import price for wood chips into Malaysia was not considered representative and therefore data from imports into the European Union was used instead.
- (160) For a number of factors of production, the actual costs incurred by the Union producers represented a negligible share of total raw material costs in the review investigation period.
- (161) As the value used for these had no appreciable impact on the dumping margin calculations, regardless of the source used, and in the absence of data from cooperating exporting producers, the Commission decided to include those costs into consumables. The Commission calculated the percentage of the consumables on the total cost of raw materials and applied this percentage to the recalculated cost of raw materials when using the established undistorted benchmarks in the appropriate representative country.
- (162) For by-products, the Commission calculated the percentage of the income from the by-products reported by the Union industry in relation to the total cost of production and deducted this percentage from the recalculated cost of production when using the established undistorted benchmarks in the appropriate representative country.
- (163) Normally, domestic transport prices should also be added to these import prices. However, considering the nature of this expiry review investigation, which is focused on finding whether dumping continued during the review investigation period or could reoccur, rather than finding its exact magnitude, the Commission decided that adjustments for domestic transport were unnecessary. Such adjustments would only result in increasing the normal value and hence the dumping margin.

#### 3.2.7. Labour

- (164) Labour costs in Malaysia are published by the Department of Statistics of the Government of Malaysia <sup>(51)</sup> and this source was used to determine the wages in Malaysia by using the information published for average mean labour cost per employee in the manufacturing sector for 2020. According to the Department of Statistics this is 2 542 MYR per month. On an average of 186 working hours per month, the Commission calculated a mean average wage of 13,67 MYR per hour.

#### 3.2.8. Electricity

- (165) Prices for electricity for companies (industrial users) in Malaysia are published by the electricity company Tenaga Nasional Berhad (TNB) <sup>(52)</sup>. The most recent rates were published on 1 January 2014 and were still applicable in the RIP. The Commission used the rates of the industrial electricity prices in the consumption band 'Tariff E2 – Medium Voltage Peak/Off-Peak Industrial Tariff' from TNB to establish the electricity cost per kWh.

#### 3.2.9. Manufacturing overhead costs, SG&A, profit and depreciation

- (166) 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.
- (167) In order to establish an undistorted value of the manufacturing overheads and given the absence of cooperation from the Chinese producers, the Commission used facts available in accordance with Article 18 of the basic Regulation. Therefore, based on the data provided by the applicant, the Commission established the ratio of manufacturing overheads to the total manufacturing and labour costs. This percentage was then applied to the undistorted value of the cost of manufacturing to obtain the undistorted value of manufacturing overheads.

<sup>(51)</sup> <https://www.dosm.gov.my/v1/index.php>

<sup>(52)</sup> <https://www.tnb.com.my/commercial-industrial/pricing-tariffs1>

### 3.2.10. Calculation of the normal value

- (168) On the basis of the above, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (169) First, the Commission established the undistorted manufacturing costs. In the absence of cooperation by the exporting producers, the Commission relied on the information provided by the applicant in the review request on the usage of each factor (materials and labour) for the production of silicon. The Commission multiplied the consumption ratios by the undistorted costs per unit observed in Malaysia as described above.
- (170) Once the undistorted manufacturing cost had been established, the Commission added the manufacturing overheads, SG&A and profit as noted above. Manufacturing overheads were determined based on data provided by the applicant. SG&A and profit were determined based on the financial statements of PMB Silicon Bhd for the year 2020 as reported in the company's audited accounts <sup>(53)</sup>.
- (171) The Commission used the following percentages to calculate the normal value from the undistorted cost of manufacturing:
- Addition of manufacturing overheads, which accounted in total for 7,6 % of the direct cost of manufacturing,
  - Addition of SG&A and other costs, which accounted for 17,7 % of the total cost of manufacturing,
  - Removal of by-product income, which accounted for 6,97 % of the cost of production, and
  - Addition of profit, which amounted to 5,05 % of the cost of manufacturing.
- (172) On that basis, the Commission constructed the normal value on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (173) After disclosure, EUSMET commented on the method used to deal with by-product income, which was based on a percentage of the cost of production rather than a percentage of the cost of manufacturing.
- (174) The method used in this case is appropriate, given that no Chinese producer cooperated, and therefore the calculation of normal value was based on the format of the consumption data received from the sampled Union producers where by-product income was expressed as a percentage of cost of their production.
- (175) The simulations in the submission of EUSMET take the indexed normal value from 122,87 to 119,92, a reduction of just under 3 percentage points. The Commission does not consider that this small difference requires any change to the consumption data received from the Union industry, where by-product income is expressed as a percentage of cost of production.
- (176) In any event, the purpose of the normal value calculation in an expiry review is to determine whether there is a continuation of dumping, and regardless of the methods proposed by EUSMET to deal with by-product income, the finding of continuation of dumping would not change.
- (177) However, on considering EUSMET claims regarding the dumping calculations, the Commission noted that there was an error in the calculation (the by-product income had not been deducted from the cost of production) and therefore the normal value had been overstated. This was corrected and re-disclosed to interested parties. No comments were received.
- (178) EUSMET also requested a further detailed disclosure to them of the calculation of the normal value and in particular the data regarding the quantity of the factors of production used to calculate the normal value.

<sup>(53)</sup> <http://www.pmbtechnology.com/investors-relation>

- (179) The Commission placed information regarding the benchmarks and the factors of production on the open file on 17 June 2022 <sup>(54)</sup>, attached to the Note Verbale sent to the Mission of the People's Republic of China to the European Union.
- (180) The Commission has not disclosed to any interested party the quantities of each factor of production used by the sampled Union producers to make 1 tonne of silicon because this information is business confidential.
- (181) The method used to calculate the normal value has been clearly explained to all interested parties in the disclosure document, reproduced as recitals 168 to 172 above.

### 3.3. Export price

- (182) In the absence of cooperation by producers from China, the export price was determined based on CIF Eurostat data corrected to ex-works level by removing 5 % as an estimate of the (sea) freight and insurance cost and domestic transport cost, based on data from previous cases.

### 3.4. Comparison

- (183) The Commission compared the constructed normal value established in accordance with Article 2(6a)(a) of the basic Regulation and the export price on an ex-works basis as established above.
- (184) The Commission made no adjustments to the normal value or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation, as both were already at an ex-works level.

### 3.5. Dumping margin

- (185) Based on the data available the Commission calculated a dumping margin of 26,9 %.
- (186) The Commission therefore concluded that dumping continued during the review investigation period.

## 4. LIKELIHOOD OF CONTINUATION OF DUMPING

- (187) Further to the finding of the existence of dumping during the review investigation period, the Commission investigated, in accordance with Article 11(2) of the basic Regulation, the likelihood of continuation of dumping, should the measures be repealed. The following additional elements were analysed:

- (1) production capacity and spare capacity in China; and
- (2) the attractiveness of the Union market.

### 4.1. Production capacity and spare capacity in China

- (188) The request for review estimated that production capacity in China is between 6 and 8 million tonnes per year, stating also that general agreement exists that production capacity in China is higher than total world consumption. The applicant estimated the Chinese capacity utilisation to be between 20 % and 40 % in 2020. The request also pointed out that in 2014, production capacity in China was between 3 and 5 million tonnes per year, suggesting that in recent years capacity in China has significantly increased.
- (189) Even if a conservative approach was to be taken, with production capacity at 6 million tonnes and utilisation at 40 %, the PRC would have spare capacity of around 3,6 million tonnes. This is around seven times the entire Union consumption.
- (190) In the previous expiry review investigation, the Commission also found significant spare capacity in China and concluded that this spare capacity could indeed be used to supply the Union market if measures lapsed <sup>(55)</sup>. No evidence has been received to call that conclusion into question.

<sup>(54)</sup> Saved as file t22.003563, TRON files 171 to 176.

<sup>(55)</sup> OJ L 179, 5.7.2016, p. 1, recital 66.

- (191) In their comments on the disclosure, EUSMET disputed the amount of spare production capacity in China as set out in the request for review. EUSMET again requested that the applicants disclose the AlloyConsult report referred to in the request for review. The Commission notes that this report is copyrighted, and the open version of the request for review is a sufficient summary of the report's findings.
- (192) EUSMET instead referred to a report from CRU dated April 2021 that suggests that nameplate capacity in China is 5 million tonnes per year, and 'operative capacity' is 4 million tonnes per year.
- (193) EUSMET also disputed the capacity utilisation of 20 % to 40 %, which is based on the estimated capacity of 6 million tonnes and production of 2 million tonnes set out in the request for review.
- (194) EUSMET did not provide any estimates on the production of silicon in China for 2020. Using the estimate of 2 million tonnes of production in the request for review, and the estimate of 4 million tonnes capacity from CRU, this data would show capacity utilisation at 50 %, with an estimated 2 million tonnes of capacity that could be brought into use for export to the Union market.
- (195) The Commission's findings on the existence of significant spare capacity in China that could indeed be used to supply the Union market should measures be allowed to lapse remains therefore unchanged.
- (196) EUSMET also noted that in their submission of 10 August 2021 they had provided evidence that Chinese silicon demand is rising, and that in the future therefore this demand would be supplied from the spare capacity in China, reducing the amount of silicon that could supply the Union market.
- (197) The EUSMET submission of 10 August 2021 states that 'According to the CRU, Chinese silicon metal demand is set to rise at the highest pace in the coming years'. This is referenced to the 'CRU Silicon Metal Market Outlook, April 2021'.
- (198) EUSMET provided no summary of the CRU Outlook for April 2021 in their submission, as the report was protected by copyright.
- (199) At present all the evidence provided to the Commission points to the current significant spare capacity in China, which is not covered by existing Chinese demand. If the predictions in the CRU report that 'Chinese silicon metal demand is set to rise' come to pass, then there is no evidence that this increase would cover all of the spare operative capacity in China, let alone the nameplate capacity.
- (200) The CRU report predictions therefore do not change our conclusions that spare capacity remains in China that could supply the European Union should measures be allowed to lapse.

#### 4.2. Attractiveness of the Union market

- (201) Continued imports into the Union, despite the measures in force, would suggest that the Union market continues to be attractive, and that if measures were to be allowed to lapse, imports at dumped prices would continue.
- (202) The Commission also notes that measures against circumvention remain in force on imports consigned from the Republic of Korea and Taiwan <sup>(54)</sup>. Such efforts deployed to circumvent the measures in place point to the continued attractiveness of the Union market for Chinese exporting producers.
- (203) The UK was the second biggest consumer of silicon in the Union. Although the Union market has been affected by the departure of the United Kingdom from the European Union, the Union remains an attractive market for Chinese exporters. This is because of the continued imports of silicon from China into the remaining Union market as referenced above.
- (204) The Commission further examined whether the Union market was attractive in terms of price levels.

<sup>(54)</sup> OJ L 179, 5.7.2016, p. 1, recital 218.

- (205) First, as set out below under injury and undercutting, the investigation found that Chinese import prices including the anti-dumping duties still undercut those of the Union producers by 9,2 % during the RIP. Without the duties, undercutting would amount to 14,6 %.
- (206) Second, the Commission analysed the export prices from China to other countries extracted from GTA for 2020. The request for review identified the three main open markets for Chinese silicon: Japan, the Republic of Korea and India. Exports to these three countries in 2020 made up 46 % of all Chinese exports of silicon. According to GTA, the average export price to these countries at FOB level for 2020 was 1 800 USD per tonne.
- (207) Using the same data extraction from GTA for the same period showed that the average export price to the Union at FOB level was 1 915 USD per tonne. This suggests that the Union market remains attractive in terms of price for Chinese exporters, despite the measures in force.
- (208) In their comments on the disclosure, EUSMET noted that the FOB price of 1 915 USD per tonne for Chinese exports to European Union countries was higher (when adjusted to EUR) than the CIF price of 1 523 EUR per tonne for Chinese imports into the European Union quoted in Table 4 below.
- (209) The Commission notes that the GTA extraction is based on data obtained from the Chinese customs authority and has been used simply as a baseline to compare export prices to various destinations. It should not be used, and was not extracted for, comparison with data from Eurostat as to the exact value in EUR per tonne of imports into the Union.
- (210) Finally, the fact that the US has high anti-dumping duties on imports of silicon from the PRC in place even further increases the attractiveness of the Union market. Australia, and Canada also have anti-dumping or anti-subsidy measures against imports of silicon from China.

#### 4.3. Conclusion

- (211) Based on the significant spare capacity in China and the attractiveness of the Union market for the Chinese exporting producers the Commission concluded that there is a strong likelihood that the expiry of the anti-dumping measures would result in an increase of dumped exports.
- (212) In view of its findings on the continuation of dumping during the RIP and on the likely development of Chinese exports should the measures lapse, the Commission concluded that there is a strong likelihood that the expiry of the anti-dumping measures on imports from China would result in the continuation of dumping in significant quantities.

### 5. INJURY

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

- (213) The like product was manufactured by three producers, of which two belonging to the same group, in the Union during the period considered. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation. For confidentiality reasons, figures related to the Union industry are therefore indexed and/or given in a range.
- (214) The total Union production during the review investigation period was [120 000 to 160 000 tonnes] <sup>(57)</sup>. The figure was computed on the basis of the questionnaire reply from three Union producers, constituting the Union industry. As indicated in recital 8 the three Union producers represent 100 % of the total Union production of the like product.

<sup>(57)</sup> Ranges given for confidentiality reasons.

## 5.2. Union consumption

(215) The Commission established the Union consumption by adding the Union industry's sales on the Union market to the imports from China and other third countries, based on data from Eurostat and questionnaire replies.

(216) Union consumption developed as follows:

Table 2

### Union consumption (in tonnes)

|                                 | 2018                   | 2019                  | 2020                   | Review<br>Investigation<br>period |
|---------------------------------|------------------------|-----------------------|------------------------|-----------------------------------|
| Total Union consumption ranges) | [500 000 –<br>550 000] | [460 000–<br>510 000] | [430 000 –<br>480 000] | [450 000 –<br>500 000]            |
| Index                           | 100                    | 88                    | 81                     | 84                                |

Source: Questionnaire replies and Eurostat

(217) Union consumption decreased steadily until 2020 and slightly rebounded by 3 percentage points between 2020 and the RIP. Overall, the Union consumption fell by 16 % over the period considered.

(218) The decrease in demand is partly driven by the lower demand for silicon used for aluminium production, caused by the decreased vehicle production in the EU, largely employing aluminium materials, which are produced using silicon. The decline in the vehicle sector was due to a market saturation which affected most industrialised countries in 2018 besides a fall in 2020 and the RIP, due to the Covid-19 pandemic. During the period considered, also the demand of silicon in the chemical sector decreased, partially influenced by the general disruption of trade flows, during 2020 and the RIP, due to the Covid-19 pandemic.

## 5.3. Imports from the country concerned

(219) The Commission established the volume of imports from China on the basis of Eurostat data. The market share of the imports was established on the basis of the Union consumption as set out in recitals 215 and 216.

(220) Imports into the Union from China developed as follows:

Table 3

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

|                              | 2018   | 2019   | 2020   | Review<br>Investigation<br>period |
|------------------------------|--------|--------|--------|-----------------------------------|
| Volume of imports            | 76 401 | 48 379 | 36 310 | 29 788                            |
| Index                        | 100    | 63     | 48     | 39                                |
| Volume of duty- paid imports | 33 416 | 10 714 | 10 637 | 12 017                            |
| Index                        | 100    | 32     | 32     | 36                                |
| Volume of imports under IPP  | 42 985 | 37 665 | 25 673 | 17 771                            |
| Index                        | 100    | 88     | 60     | 41                                |

| Market share (range) | [12-18 %] | [8-13 %] | [5-10 %] | [4-9 %] |
|----------------------|-----------|----------|----------|---------|
| <i>Index</i>         | 100       | 72       | 59       | 46      |

Source: Eurostat

- (221) Import volumes from the country concerned decreased steadily over the period considered (an overall decrease of 61 %), resulting in halving of their market share during the period considered.
- (222) The majority of silicon (60 % of the total in the RIP) from China are imported under IPP and used as a raw material mainly in the chemical industry. For those imports no duties (conventional or anti-dumping) are paid, provided the downstream products are exported.
- (223) In their comments on the disclosure, EUSMET submitted that there was no competition between imports and Union production as between 56 % and 80 % of the silicon imports from China were made under IPP and that they were related to a special silicon grade, which is not produced in the Union.
- (224) As concluded in recital 65, silicon is considered a homogenous product. As noted in recitals 48, no exporting producers in the PRC cooperated with the investigation and therefore the Commission had to use import statistics. All grades of the product under review are reported under the same CN code and there is no import data available that would allow a differentiation by end-use or product grades, regardless of the import regime. As mentioned in recital 66, due to non-cooperation of the exporting producers in the present investigation, for majority of imports, the Commission is unable to determine which product-types (or grades of silicon) are being imported. This claim was therefore rejected.

#### 5.3.1. Prices of the imports from the country concerned and price undercutting

- (225) The Commission established the prices of imports from China on the basis of Eurostat data. The average price of imports into the Union from the country concerned developed as follows:

Table 4

#### Import prices (EUR/tonne)

|                   | 2018  | 2019  | 2020  | Review<br>Investigation<br>period |
|-------------------|-------|-------|-------|-----------------------------------|
| China             | 1 786 | 1 693 | 1 523 | 1 532                             |
| <i>Index</i>      | 100   | 95    | 85    | 86                                |
| Duty-paid imports | 1 538 | 1 337 | 1 311 | 1 496                             |
| <i>Index</i>      | 100   | 87    | 85    | 97                                |
| IPP imports       | 1 980 | 1 795 | 1 611 | 1 556                             |
| <i>Index</i>      | 100   | 91    | 81    | 79                                |

Figures are CIF Union border, Source: Eurostat

- (226) The average unit price decreased by 15 % between 2018 and 2020 and slightly rose by 1 % in the RIP. Overall, the price decreased by 14 % over the period concerned.
- (227) The import prices of silicon imports under IPP fell steadily during the period considered, whilst the duty-paid imports fell between 2018 and 2020 by 15 % and increased by 12 % in the RIP. Throughout the period considered, the prices of silicon imported under IPP were higher than the imports subject to duties.

### 5.3.2. Price undercutting

- (228) The Commission determined the price undercutting during the review investigation period by comparing:
- the weighted average sales price of the Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and
  - the corresponding weighted average prices of the imports from the country concerned to the first independent customer on the Union market, established on a cost, insurance, freight (CIF) basis as explained in recital 182, with appropriate adjustments for conventional customs duties and anti-dumping duties (if applicable) and post-importation costs of 1 %.
- (229) The undercutting (expressed as a percentage of the Union producers' turnover during the review investigation period) applying the conventional and anti-dumping duty for imports, where applicable, was 9,2 %.
- (230) In their comments of the disclosure, EUSMET claimed that the Commission should have revised the undercutting margin calculation by taking into account post-importation costs, on the one hand, and by adjusting the Union sales prices, on the other hand. EUSMET based this on the assumption that 40 % of the imports from China were mainly made by traders/importers, whereas the EU producers sell their products to the end users in the aluminium sector. Additionally, EUSMET identified that some Union producers had intercompany sales, therefore there is a difference in the level of trade.
- (231) First, it should be recalled that, as noted in recital 48, no exporting producers in the PRC cooperated with the investigation. The undercutting margin was therefore established on facts available. Second, in their comments on the disclosure EUSMET does not explain how the type of the purchaser can be established based on the TARIC level data. Third, contrary to EUSMET's claim, the evidence on file indicates that the cooperating users made a significant number of purchases directly from China (without traders and/or distributors). Fourth, the Commission did not take into account intercompany sales, thus, there is no difference in the level of trade. Therefore, the Commission's findings during the investigation do not support EUSMET's submission.
- (232) Furthermore, the undercutting established in recital 229 was established based on all imports from China. For the avoidance of doubt the Commission found undercutting of 9,2 % when the totality of imports were taken into consideration and of 0,4 % when only duty-paid imports were considered.
- (233) The Commission also calculated the undercutting in absence of anti-dumping duties. While taking the comments after disclosure into account, the Commission noted that in the disclosed version, the total undercutting in absence of anti-dumping duties had a clerical mistake (i.e. the duties were actually not fully removed). After correcting the clerical mistake, the Commission found undercutting of 14,6 % when the totality of imports were taken into consideration and of 13,9 % when only duty-paid imports were considered.
- (234) Therefore, based on the evidence on file and the price analysis conducted by the Commission, EUSMET's claim of margin inflation was rejected.

### 5.4. Imports from third countries other than China

- (235) The imports of silicon from third countries other than China (duty-paid and inward processing) originated mainly from Norway, Brazil and Malaysia.
- (236) The volume of imports into the Union as well as the market shares and price trends for imports of silicon from other third countries developed as follows:

Table 5

**Imports from third countries**

| Country                                                         |                           | 2018      | 2019      | 2020      | Review<br>Investigation<br>period |
|-----------------------------------------------------------------|---------------------------|-----------|-----------|-----------|-----------------------------------|
| Norway                                                          | Volume (tonnes)           | 136 812   | 168 827   | 174 008   | 185 342                           |
|                                                                 | Index                     | 100       | 123       | 127       | 135                               |
|                                                                 | Market share (range)      | [21-26 %] | [35-40 %] | [38-43 %] | [39-44 %]                         |
|                                                                 | Average price (EUR/tonne) | 1 960     | 1 860     | 1 809     | 1 787                             |
|                                                                 | Index                     | 100       | 95        | 92        | 91                                |
| Brazil                                                          | Volume (tonnes)           | 64 467    | 31 721    | 41 663    | 43 467                            |
|                                                                 | Index                     | 100       | 49        | 65        | 67                                |
|                                                                 | Market share (range)      | [10-15 %] | [5-10 %]  | [9-14 %]  | [9-14 %]                          |
|                                                                 | Average price (EUR/tonne) | 1 973     | 1 857     | 1 567     | 1 537                             |
|                                                                 | Index                     | 100       | 94        | 79        | 78                                |
| Malaysia                                                        | Volume (tonnes)           | 0         | 748       | 17 713    | 25 747                            |
|                                                                 | Index                     | n/a       | n/a       | n/a       | n/a                               |
|                                                                 | Market share (range)      | 0 %       | [0-5 %]   | [2-6 %]   | [5-10 %]                          |
|                                                                 | Average price (EUR/tonne) |           | 1 594     | 1 519     | 1 569                             |
|                                                                 | Index                     |           | 100       | 95        | 98                                |
| Other third countries                                           | Volume (tonnes)           | 86 527    | 85 740    | 53 865    | 44 843                            |
|                                                                 | Index                     | 100       | 99        | 62        | 52                                |
|                                                                 | Market share (range)      | [15-20 %] | [16-21 %] | [10-15 %] | [6-11 %]                          |
|                                                                 | Average price (EUR/tonne) | 1 974     | 1 662     | 1 648     | 1 764                             |
|                                                                 | Index                     | 100       | 84        | 83        | 89                                |
| Total of all third<br>countries except the<br>country concerned | Volume (tonnes)           | 287 805   | 287 036   | 287 248   | 299 399                           |
|                                                                 | Index                     | 100       | 100       | 100       | 104                               |
|                                                                 | Market share (range)      | [50-55 %] | [60-65 %] | [65-70 %] | [65-70 %]                         |
|                                                                 | Average price (EUR/tonne) | 1 967     | 1 800     | 1 726     | 1 729                             |
|                                                                 | Index                     | 100       | 92        | 88        | 88                                |

Source: Eurostat

- (237) The import volumes from third countries rose by 4 % over the period considered. Given the 16 % decrease of the Union consumption during the same period, the market share of the imports from third countries increased by 24 % between 2018 and the RIP. Most of these imports originated in Norway, Brazil, and Malaysia. However, whilst the imports from Norway grew by 35 %, the imports from Brazil decreased by 33 % and the imports from Malaysia, absent in 2018, reached 5-10 % market share in the RIP.
- (238) The import price in EUR per tonne from the third countries steadily fell over the period concerned (an overall decrease of 12 %). In the RIP, import prices from Norway, Brazil, Malaysia and all other third countries, were on average all higher than the import prices from China.

### 5.5. Economic situation of the Union industry

#### 5.5.1. General remarks

- (239) The assessment of the economic situation of the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

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

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

Table 6

#### Production, production capacity and capacity utilisation

|                                            | 2018                   | 2019                   | 2020                   | Review<br>Investigation period |
|--------------------------------------------|------------------------|------------------------|------------------------|--------------------------------|
| Production volume (in tonnes)<br>(range)   | [200 000 –<br>240 000] | [150 000 –<br>190 000] | [110 000 –<br>150 000] | [120 000 –<br>160 000]         |
| Index                                      | 100                    | 78                     | 66                     | 71                             |
| Production capacity (in tonnes)<br>(range) | [200 000 –<br>240 000] | [170 000 –<br>210 000] | [170 000 –<br>210 000] | [170 000 –<br>210 000]         |
| Index                                      | 100                    | 84                     | 84                     | 83                             |
| Capacity utilisation – Index               | 100                    | 93                     | 78                     | 86                             |

Source: Questionnaire replies

- (241) The production volume decreased by 34 % between 2018 and 2020 and increased by 5 % in the RIP. Overall, during the period concerned, the production volume fell by 29 %, to adjust to a lower demand. The evolution of the production volume also reflects a supply excess at the beginning of the period considered, also apparent in the volume of closing stocks in 2018 (see recital 256), which was gradually reduced.
- (242) The production capacity also fell but mostly between 2018 and 2019 (16 %) and remained fairly stable until the RIP, when it fell by an additional 1 %. Since the production volumes fell faster than the production capacity, the capacity utilisation fell by 17 % in the period considered.

#### 5.5.1.2. Sales volume and market share

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

Table 7

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

|                                             | 2018                   | 2019                   | 2020                   | Review<br>Investigation period |
|---------------------------------------------|------------------------|------------------------|------------------------|--------------------------------|
| Sales volume on the Union market<br>(range) | [150 000 –<br>190 000] | [120 000 –<br>160 000] | [100 000 –<br>140 000] | [110 000 –<br>150 000]         |
| Index                                       | 100                    | 80                     | 64                     | 71                             |
| Market share (range)                        | [30-35 %]              | [25-30 %]              | [26-31 %]              | [27-32 %]                      |
| Index                                       | 100                    | 90                     | 80                     | 85                             |

Source: Questionnaire replies

- (244) The sales volume on the Union market followed a similar pattern as the production, decreasing steadily by 36 % between 2018 and 2020 and rising in the RIP, by 10 %. Overall, sales in the Union fell by 29 % in the period considered. During the same period, the market share of the Union industry decreased by 15 %.

## 5.5.1.3. Growth

- (245) While the consumption fell by 16 %, both Union industry's production volumes and sales fell by 29 %, resulting in a market share decreased by 15 %. The Union industry's losses in terms of production volume and sales exceeded the contraction of the market.

## 5.5.1.4. Employment and productivity

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

Table 8

**Employment and productivity**

|                                       | 2018 | 2019 | 2020 | Review<br>Investigation period |
|---------------------------------------|------|------|------|--------------------------------|
| Number of employees – Index           | 100  | 88   | 87   | 88                             |
| Productivity (tonne/employee) – Index | 100  | 88   | 75   | 81                             |

Source: Questionnaire replies

- (247) In line with the capacity trend, the employment fell by 12 % between 2018 and 2019, and remained fairly stable until the RIP. Since the production fell even faster (29 %), the productivity decreased by 19 %, between 2018 and the RIP.

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

- (248) Despite the decreasing levels of the import quantities from China, the imports dumped at 39,4 % had a negative impact on the Union industry's performance, making it also difficult for the Union industry to recover from past dumping practices.

## 5.5.1.6. Prices and factors affecting prices

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

Table 9

**Sales prices and cost of production in the Union (EUR/tonne)**

|                                                                    | 2018            | 2019            | 2020            | Review<br>Investigation period |
|--------------------------------------------------------------------|-----------------|-----------------|-----------------|--------------------------------|
| Average unit sales price in the Union on the total market – Ranges | [2 000 – 2 200] | [1 700 – 1 900] | [1 700 – 1 900] | [1 700 – 1 900]                |
| Average unit sales price in the Union on the total market – Index  | 100             | 88              | 85              | 87                             |
| Unit cost of production – Ranges                                   | [1 800 – 2 000] | [1 700 – 1 900] | [1 700 – 1 900] | [1 700 – 1 900]                |
| Unit cost of production – Index                                    | 100             | 99              | 92              | 95                             |

Source: Questionnaire replies

- (250) The unit sales price of the Union industry to unrelated costumers in the Union decreased by 12 % in 2019 compared to 2018 and then further decreased by 1 percentage point between 2019 and the RIP.
- (251) Unlike the unit sales price, the unit cost of production of the Union industry remained stable in 2019 and fell by 5 % between 2019 and the RIP. This partly reflected the decision of some producers to shut down certain furnaces, in view of the oversupply that originated from the lower demand.
- (252) As a result, the sales price fell twice as much (13 %) than the cost of production (5 %) during the period considered.

**5.5.1.7. Labour costs**

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

Table 10

**Average labour costs per employee**

|                                                 | 2018 | 2019 | 2020 | Review<br>Investigation period |
|-------------------------------------------------|------|------|------|--------------------------------|
| Average labour costs per employee (EUR) – Index | 100  | 92   | 86   | 88                             |

Source: Questionnaire replies

- (254) The average labour cost per employee decreased by 12 % during the period considered. The employees' bonuses paid out in 2018 and social security programme in the periods of lower output explain the average cost trend.

**5.5.1.8. Inventories**

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

Table 11

**Inventories**

|                                                      | 2018 | 2019 | 2020 | Review<br>Investigation period |
|------------------------------------------------------|------|------|------|--------------------------------|
| Closing stocks (in tonnes) – Index                   | 100  | 79   | 65   | 9                              |
| Closing stocks as a percentage of production – Index | 100  | 101  | 98   | 13                             |

Source: Questionnaire replies

(256) The closing stocks fell by 91 % during the period considered. This reduction was mostly because the stocks in 2018 were high in volumes, given the lower demand for silicon at the beginning of the period considered had created an oversupply in the Union.

(257) Similarly, the ratio between the closing stocks and the production volumes fell by 87 % between 2018 and the RIP.

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

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

Table 12

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

|                                                                                          | 2018          | 2019              | 2020        | Review<br>Investigation period |
|------------------------------------------------------------------------------------------|---------------|-------------------|-------------|--------------------------------|
| Profitability of sales in the Union to unrelated customers (% of sales turnover) (range) | [5 % – 10 %]  | [- 6 % – - 1 %]   | [0 % – 5 %] | [0 % – 5 %]                    |
| Index                                                                                    | 100           | - 107             | 38          | 12                             |
| Cash flow (EUR) – Index                                                                  | 100           | - 11              | 104         | 38                             |
| Investments (EUR) – Index                                                                | 100           | 88                | 8           | 41                             |
| Return on investments (range)                                                            | [70 % – 75 %] | [- 70 % – - 75 %] | [0 % – 5 %] | [- 15 % – 20 %]                |
| Index                                                                                    | 100           | - 105             | 6           | - 29                           |

Source: Questionnaire replies

(259) The Commission established the profitability of the 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. From a situation of positive profitability in 2018 the Union industry became loss making in 2019. The average profitability slowly improved in 2019 and 2020, but overall, the Union industry experienced an 88 % reduction in their profitability over the period considered.

- (260) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow decreased by 111 % in 2019 to grow again by 124 % in 2020 and decreased again by 66 % in the RIP. Despite the increase, the cash flow during the RIP was still 62 % lower than in 2018 and was mostly the consequence of the significant sales decrease of one Union producer during the period considered.
- (261) The level of investments decreased to a very low level in 2020 to slightly rebound in the RIP. Overall, the investments has more than halved during the period considered. Around 70-80 % of the investments relate to replacement of certain equipment by one of the producers. More in general, as a reaction to the falling demand, the companies were reducing their assets used for production during the period considered until the RIP, where some investments were made upon the signs of demand recovery.
- (262) The return on investments needed to produce silicon on the total silicon sales was following the decreasing profits.

#### 5.6. Conclusion on injury

- (263) All injury indicators, apart from the stock levels, showed a negative pattern during the period considered. In a context of demand decrease (16 %), both sales and production fell in a higher magnitude (29 %). This led to a similar decrease in capacity (17 %) and employment (12 %). Since the decrease in production was faster (29 %) than the decrease of capacity and employment, the capacity utilisation and the productivity also fell during the period considered.
- (264) During the same period, the average unit prices also decreased (13 %). As a consequence, despite a decrease of the cost of production (5 %), the profitability fell by 88 %. Along with the profitability, also the investment, cash flow and return on investment fell significantly over the period considered.
- (265) Based on the above, the Commission concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation during the review investigation period.

#### 6. CAUSAL LINK BETWEEN THE INJURY AND THE DUMPED IMPORTS FROM CHINA

- (266) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from China 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, in particular imports from third countries.
- (267) Over the period considered, the import volumes from China decreased from 14 % in 2018 to 7 % in the RIP. These imports entered at price levels which undercut, during the RIP, the Union sales prices by 9,2 %, when considering the anti-dumping duties or 14,6 % when not considering the duties. Against the backdrop of a market which was shrinking during the period considered, the import from the country concerned therefore kept exerting pressure on the Union industry whose profitability remained very low throughout the period considered and even reached negative levels at times.
- (268) At the same time, imports from other countries, such as Norway and Malaysia, kept increasing and their market share went up from 53 % to 66 % between 2018 and the RIP. Imports from these countries were sold at prices lower or close than those of Chinese imports with duties included, thereby also contributing to the injurious situation of the Union industry. Therefore, the effect of third country imports on the Union industry's negative developments, in particular in terms of profitability, attenuating to some extent the causal link between the injury and the dumped imports from China.

- (269) On the basis of the above, the Commission concluded that the dumped imports from China contributed to the material injury suffered by the Union industry, with third country imports attenuating to an extent the causal link between the dumped imports and the material injury.
- (270) In their comments on the disclosure, EUSMET argued that the Commission followed a 'check list' approach in its injury assessment and it failed to consider conflicting evidence, such as the evidence suggesting that the Chinese imports did not constitute the explanatory force of the injury to the Union industry. In particular EUSMET claimed that the Commission did not take into account evidence relating to the fact that (i) the volume of Chinese imports declined over the period considered, (ii) there was no correlation between the Chinese silicon import volumes and prices on the Union industry's situation, (iii) the decline in the Union industry's production, sales volumes, sales prices and other financial indicators corresponded to the period of declining demand and prices in the Union and globally and (iv) the majority of the silicon imports from China in the RIP were under the IPP and basically pertained to the special grade silicon metal imports made by one EUSMET member, (v) the Commission also did not consider the significant imports of silicon metal from South Africa into the Union in the RIP and (vi) the Commission does not explain how the significantly higher volume of Norwegian imports at prices that undercut the EU producers' prices did not affect the economic situation of the Union industry.
- (271) It is clear from recital 269 that the Commission has not attributed to Chinese imports the role of explanatory force behind the injury suffered by Union producers. Nor the Commission concluded that the dumped Chinese import were the main and sole cause for the decrease on Union prices. And finally, the Commission has not neglected the decrease of the demand in the Union and globally, as explained in recital 218 and clearly reported in Table 2. Nevertheless, the Commission has factually noted that these Chinese imports, despite decreasing during the period considered, were still at dumped prices in the RIP and were still undercutting Union prices, thus certainly contributing to the injurious situation of the Union industry.
- (272) Whilst the Commission agrees that the majority of import from China were under IPP it contests that these pertained to a certain grade of silicon used by one EUSMET member. Indeed, even assuming that the totality of imports from EUSMET members during the RIP were entirely of the special grade silicon, these would only be equal to less than a half all the imports from China under IPP, or less than one third of the overall imports from China, during the RIP.
- (273) The Commission considered but did singled out the impact of imports from South Africa, because these are in lower volumes than imports from other countries such as Norway, Brazil and Malaysia, for which detailed data were provided. Impact of imports from South Africa, as well as from other minor exporting countries are still captured in the aggregated figure of 'other imports' in Table 5.
- (274) Finally, the Commission concurs with EUSMET that Norway, along with other countries including China, have contributed to the injurious situation if the Union industry over the period considered. Import volumes and prices of Norwegian imports are clearly reported in Table 5.
- (275) In conclusion, as explained in recital 269, the Commission attributed the injury to both imports of silicon from China and other third countries. Contrary to the EUSMET's claims, the Commission focused on an analysis of recurrence of injury, as described in recitals 276 to 294, identifying the likely situation whereby the Union industry would be injured, should the measures lapse and the imports from China surge at the current undercutting prices.

## 7. LIKELIHOOD OF RECURRENCE OF INJURY

- (276) The Commission concluded in recital 265 that the Union industry suffered material injury during the review investigation period. Nevertheless, given the trend of decreasing volumes and market share of Chinese imports over the period considered, the Commission also examined, in accordance with Article 11(2) of the basic Regulation, whether there would be a likelihood of recurrence of injury caused by the dumped imports from China if the measures against were allowed to lapse.

- (277) In this regard, the Commission examined the production capacity and spare capacity in China, attractiveness of the Union market, the likely price levels of imports from China in the absence of anti-dumping measures, and their impact on the Union industry.
- (278) The capacity and spare capacity in China is discussed in recital 188. Due to the non-cooperation of the Chinese producers, the findings of the investigation were based on the information provided in the expiry review request. The review request estimated the Chinese silicon production capacity between 6 and 8 million tonnes per year and stated that Chinese silicon production capacity is far higher than the total world consumption. This confirms the conclusions of the last expiry review that China has significant spare capacity that could be used to supply the Union market if the measures are allowed to lapse.
- (279) The attractiveness of the Union market is discussed in recitals 201 to 204. In the review investigation period, the Union industry average selling price was well above the average import price of Chinese silicon. In addition, other markets remained closed due to trade defence measures <sup>(58)</sup>, indicating that it is likely that Chinese exports in large quantities putting the spare capacity into use would be directed towards the Union, should the measures lapse.
- (280) The price levels of the Chinese exports to the Union without anti-dumping duties would be a reasonable indicator of future price levels to the Union market. Using the data from the RIP, applying only conventional duties, the undercutting would reach 14,6 % when all imports are considered and 13,9 % when only duty paid imports are taken into account.
- (281) The price pressure would not allow the Union industry to maintain a profitable pattern. Instead, the Union industry would further deteriorate should the measures be allowed to lapse. Indeed, in the absence of measures, Chinese dumped imports at injurious prices would likely exert further downward pressure on the sales prices in the Union market. The Union industry would very likely be obliged to decrease its sales prices which would lead to further loss of profitability and, in all likelihood, important losses in the short term.
- (282) Alternatively, should the Union industry attempt to increase its sales prices to profitable levels, considering the large overcapacity in China, the dumped imports would likely gain significant market share in the Union to the detriment of the Union industry.
- (283) While the volume of imports from China was gradually decreasing over the period considered, the interest of Chinese exporting producers in the Union market is shown by the continued imports during the period considered, despite the measures in force, at prices which undercut the Union industry prices. Moreover, as seen in recital 206 the export prices from China to other countries (i.e. 1 800 USD per tonne) were lower than the average prices of exports to the Union, during the same year (i.e. 1 915 USD per tonne).
- (284) In their comments on the disclosure, EUSMET reiterated its comment that the Commission has overestimated the capacity and spare capacity in China.
- (285) The Commission noted that EUSMET provided no new evidence in this regards and simply reiterated its previous claims. As clarified in recitals 191 to 195, the Commission's findings, that there is significant spare capacity in China, that could be used to supply the Union market should measures be allowed to lapse remain unchanged.
- (286) EUSMET noted that the analysis on the attractiveness of the Union market was based on export prices of Chinese silicon towards the EU vis-a-vis to other markets. EUSMET requested the disclosure of these data.
- (287) As specified in recital 209 the Commission based its analyses on GTA extraction, which is readily available. GTA data are based on data obtained from Chinese customs' authorities, and has been used simply as a baseline to compare export prices to various destinations.

<sup>(58)</sup> Australia, Canada, and the United States of America have anti-dumping or anti-subsidy measures in force against imports of silicon from China.

- (288) EUSMET claimed that the Commission failed to demonstrate that, by allowing measure to lapse, Chinese imports would flood the Union market. This was based on the fact that during the silicon shortage between 2021 and 2022 Chinese imports into the Union did not increase.
- (289) The Commission considered that the situation after the RIP and in particular the steep increase of demand and the consequent shortage of supply was of a temporary nature. Indeed, these shocks in demand and supply have been linked to the COVID-19 pandemic, the Russian aggression against Ukraine and the increase of electricity prices (part of which occurred even before the Russian aggression against Ukraine). Nevertheless, there are no elements supporting the arguments that these are not temporary, nor did EUSMET demonstrate this in its submissions. Furthermore, the Commission noted that a situation where demand temporarily increases is different from a situation where duties are permanently removed. The exporter's reaction to former cannot be considered as a blueprint for their reaction to the latter. Moreover, based on the considerations on Chinese spare capacity and attractiveness of the Union market the Commission still considers that the Chinese silicon imports would enter the Union market in significant quantities at dumped prices, should the measures be allowed to lapse.
- (290) EUSMET further claimed that the Commission's assumption that the Chinese imports would increase should measures be repealed was wrong since: (i) the undercutting margin was inflated; (ii) difference between various grades of the product concerned not being reflected in the analysis; (iii) the Union was not the major Chinese market for exports; (iv) the Chinese silicon metal was not the explanatory force behind the Union industry injury.
- (291) No new evidence to support these claims was provided in the comments on the disclosure. In the light of the above four elements addressed in the previous recitals on undercutting margin (see recital 234), product differentiation (see recital 65), the Union not being the major export market for the PRC (see recitals 206 to 210) and the causation (see recital 275), the Commission's analyses on the potential volumes and prices effects of the Chinese imports on the Union market, should measures be repealed, remained unchanged.
- (292) EUSMET claimed that the Commission failed to consider the market development post-RIP and in particular the sharp increase of the Union prices of silicon, the global supply shortage, including at Union industry level, that would lead the Union producer making significant profits.
- (293) The Commission considered that both the price development as well as the global shortage of silicon after the RIP were temporary trends, mostly linked to the COVID-19 pandemic and geopolitical events in 2021 and 2022. The evidence provided by EUSMET, including the forecast on the increase of silicon demand and prices, do not indicate that the global supply shortage or that the sharp price increase will be of a permanent nature.
- (294) On this basis, the Commission concluded that the absence of measures would in all likelihood result in a significant increase of dumped imports from China at injurious prices and material injury would be likely to recur.

## 8. UNION INTEREST

- (295) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures would be against the interest of the Union as whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users.

### 8.1. Interest of the Union industry

- (296) Three Union producers accounting for 100 % of Union production cooperated in this investigation. As stated in recital 265, the Union industry suffers material injury within the meaning of Article 3(5) of the basic Regulation despite the measures in force.

- (297) The measures in force have largely contained the imports volumes from China, which still occurred at injurious prices that undercut the Union prices and that therefore further contributed to the precarious condition of the Union industry.
- (298) Indeed, if measures were repealed, the import volumes from China would likely surge and, given the spare capacity in China as well as the attractiveness of the Union market, the economic situation of the Union industry would be even further compromised, leading to further reduction of production, sales and employment in the Union.
- (299) Any further deterioration of the Union industry's economic situation would entail the risk of a scaling-down of production or even definitive closure of production sites in the Union. Therefore, it can be concluded that the continuation of the measures against China would be in the interest of the Union industry.
- (300) Interest of unrelated importers
- (301) No importer came forward following the publication of the notice of initiation and during the investigation.
- (302) Therefore, there were no indications that the maintenance of the measures would have a negative impact on the importers outweighing the positive impact of the measures.

## 8.2. Interest of users

- (303) The Commission received replies from three users, two from the chemical sectors (Wacker and Evonik, forming the consortium EUSMET) and one from the aluminium sector (Raffmetal). Moreover, the Commission received comments from the European Aluminium Association, representing the whole value chain of the aluminium industry in Europe.
- (304) The European Aluminium Association along with Raffmetal support the continuation of the existing measures. These users emphasised that silicon is an essential material in the aluminium production. If on the one hand the anti-dumping measures have an adverse impact on the users' cost of production, on the other hand the measures preserve the production of silicon in the Union. As a consequence, the users benefit from a reliable and geographically close supply of silicon.
- (305) EUSMET claimed that the anti-dumping measures should not be maintained. For these users, silicon is of significant importance and it accounts for a large share of their raw materials cost. These users are importing from China and the anti-dumping duties increase their cost of production for silicon-based products. Moreover, they claimed that the effect of the measures on the chemical users would be potentially more significant than in the aluminium industries.
- (306) However, the information supplied by the two cooperating users producing chemical products shows that they import significant amounts under IPP, thereby being to certain extent exempted from the anti-dumping duty. The effect of the measures on part of the imports from these users was therefore considered to be limited.
- (307) EUSMET further pointed to the good financial situation of the Union producers, especially after the RIP.
- (308) The Commission notes that the apparent improvement of the financial situation of the Union producers coincides with the recent global growth of the silicon demand. Such short-term market development, occurring in any event after the RIP, cannot be considered indicative of the Union industry's financial situation, given in particular the conclusions in recitals 211, 212 and 294. Therefore, since the Union industry is not in a stable economic situation and since it would be subject to future negative impact of dumped imports from China should the measures be allowed to lapse, the argument was rejected.

- (309) EUSMET claimed that the demand for silicon has increased while the supply has declined, in the EU, in the last years. EUSMET expressed concern about the security of supply and in particular the inability of the Union industry to fully supply the Union demand. This would lead to a situation of unavailability of the like product to satisfy the demand, which is growing fast, especially after the RIP. EUSMET also pointed out to the fierce competition in their downstream products markets, where the higher silicon costs put EUSMET at a competitive disadvantage compared to other world producers.
- (310) The investigation, however, showed that a variety of sources of silicon exists. First, the Union industry has spare capacity that can be reactivated to meet a growing future demand. Indeed, as shown in Table 2, even if the Union industry reduced their production and production capacity to some degree in reaction to the declining silicon consumption, a significant free capacity (i.e. around 26 % in the RIP) is still available in the Union should the demand surge again. The investigation showed that the furnaces that have been shut down could be reactivated in as short as two weeks to two months, depending of the inactivity time.
- (311) Moreover, silicon can be sourced from other countries, such as Norway, Malaysia, Brazil, Bosnia and Herzegovina. As set out in recital 236 two thirds of the silicon purchased in the Union is imported from Norway, Brazil, Malaysia, and a number of other countries. The Commission noted further that the measures in force did not stop Chinese imports of silicon from entering the Union market.
- (312) In conclusion, the combination between other sources of supplies and the spare capacity in the Union represent a diversified variety of options for the Union users of silicon. The argument therefore could not be accepted.
- (313) EUSMET claimed that the measures should be terminated also in view of the fact that silicon has been classified as a critical raw material ('CRM') by the Commission <sup>(59)</sup> based on its economic importance and supply risk. EUSMET claimed that maintaining the measures would limit the amount of silicon and the variety of sources available on the market.
- (314) The Commission concurs on the critical nature of silicon in the industrial ecosystem in the Union. Nevertheless, the presence of imports at dumped price in the market would significantly endanger the Union industry and jeopardise the reliability of supply of silicon in the Union in the long period. For this reason, the claim was rejected.
- (315) In their comments on the disclosure, EUSMET disagreed with the Commission's conclusions that the special grade silicon, needed by some users to produce products whose demand will increase in the future, is available in sufficient quantities in other markets than the PRC. Moreover, EUSMET claimed that the majority of IPP imports relate to this special grade silicon imported by one of its members.
- (316) The Commission noted that the duties on imports from the PRC are not prohibitive and if the users need a special grade of silicon, this remains available for importation under fair competition conditions.
- (317) Moreover, as already clarified in recital 272, based on Eurostat volumes, the majority of IPP imports relate to other imports than those from the EUSMET member who imports the special grade silicon, even assuming that this member only purchases the special grade silicon under IPP.
- (318) EUSMET submitted that the IPP is only relevant to the extent that goods are exported and cannot be used under several of the EU FTA's, including the EU-Japan FTA. Thus, the access to IPP does not reduce the competitive disadvantage suffered by EUSMET members.

<sup>(59)</sup> See the second CRM list (COM(2014) 297 final of 26 May 2014), the third list (COM(2017) 490 final) and also the last list (COM(2020) 474 final) which was published in September 2020.

- (319) The Commission mentioned in recital 306 that certain volumes imported by EUSMET members are under IPP only to underline that part of their imports were not subject to the duties and that the latter had therefore a limited impact during the RIP. The Commission is aware that EUSMET members cannot only import via IPP and that the residual imports under regular regime made by EUSMET members are subject to the duties and have an impact on the importers. However, it is a fact that if a company is in position to import silicon under IPP, this limits the impact of the duties for the users concerned, even if it does not limit that impact for the entire volume so imported.
- (320) EUSMET noted that the spare capacity of the EU industry is insufficient to supply the growing silicon demand in the Union. Moreover, EUSMET highlighted that due to the development of electricity prices in the Union, Union producers will not be in position to increase their capacity utilisation.
- (321) The spare capacity in the Union was considered to be significant (26 % on average, representing about 10 % of the current Union consumption). In addition, the imports of silicon from other sources, including China, are available. EUSMET also did not demonstrate that the potential electricity prices increase would not be accompanied by the silicon sales price, which would enable to increase the Union producer's capacity utilisation. As the electricity is a major cost component in the production, there is likely to be a correlation between those two, therefore this claim is rejected.
- (322) EUSMET claimed that first, the Commission did not consider the increase in demand for the period after the RIP. In particular, the Commission did not consider that the demand of the special silicon grade not produced in the Union and mostly originating from the PRC will increase. Second, the Commission allegedly did not consider the silicon shortage right after the RIP. Third, the Commission did not consider the increased competition faced by users in the Union from the United Kingdom of Great Britain and Northern Ireland ('the UK') and the PRC. Fourth, the Commission did not consider the effects of sanctions on Russian exports.
- (323) The Commission did considered the situation after the RIP and, as concluded in recital 293, found it to be of a temporary nature.
- (324) Furthermore, the commission agrees with EUSMET that Union users need diversity and security of supply to ensure continued production. However, such diversity and security will not be possible if the Union producers would be driven out of business due to the injurious imports of silicon from China at dumped prices.
- (325) Concerning the increased competition from the UK, the Commission notes that EUSMET did not provide sufficient information necessary to measure the impact of the increased competition from the UK so this claim is dismissed.
- (326) Concerning the effects of the sanctions on Russia, the Commission noted that this would further reduce the potential sources of silicon on the Union market. Nevertheless, based on the RIP data, Russia only represented 2 % of the total imports of silicon in the Union. Given the magnitude of Russian imports and the availability of other sources at global level, the Commission considered that the impact on the users of silicon not will not be substantial in the long period.
- (327) EUSMET finally underlined that silicon metal producers in different countries of the world do not want to increase sales to EUSMET members because of the fear of AD measures.
- (328) This claim was not supported by any factual evidence or fact that the suppliers outside the Union will refuse to supply. Indeed, the Commission noted a continuation of imports from third countries and in some cases even an increase of these, during the period considered.
- (329) On balance, the positive effect of the measures on the Union industry and users in the aluminium industry therefore outweighs the limited negative impact of the measures in force on the other users.

### 8.3. Conclusion on Union interest

- (330) On the basis of the above, the Commission concluded that there were no compelling reasons of the Union interest against the maintenance of the existing measures on imports of silicon originating in China.

## 9. ANTI-DUMPING MEASURES

- (331) Based on the conclusions on continuation of dumping, recurrence of injury and Union interest, the anti-dumping measures on silicon from China should be maintained.
- (332) 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'.
- (333) 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 considered 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.
- (334) 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 examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.
- (335) The individual company anti-dumping duty rates specified in this Regulation are exclusively applicable to imports of the product under review originating in the People's Republic of China and produced by the named legal entities. Imports of the product under review 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.
- (336) 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>(60)</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*.
- (337) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to make representations subsequent to this disclosure. Only one interested party – EUSMET provided comments.
- (338) In their comments on the disclosure, EUSMET requested that, should measures be confirmed, the measures be limited to a period of two years, given the changed market circumstances concerning both demand and supply and Union's high import dependence on specific silicon grades.

<sup>(60)</sup> European Commission, Directorate-General for Trade, Directorate G, Rue de la Loi 170, 1040 Brussels, Belgium.

- (339) However, the Commission noted that there is nothing in the RIP data that would support such conclusion. Moreover, as discussed in recitals 289 and 293, the post-RIP developments appear to be of a temporary nature. In any event, if there are special circumstances warranting that the situation is reassessed in the future, an interim reviews can be requested in accordance with Article 11(3) of the basic Regulation.
- (340) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council <sup>(61)</sup>, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.
- (341) The Committee established by Article 15(1) of Regulation (EU) 2016/1036 did not deliver an opinion on the measures provided for in this Regulation,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A definitive anti-dumping duty is imposed on imports of silicon, currently falling under CN code 2804 69 00 and originating in the People's Republic of China.
2. The rates of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed below shall be as follows:

| Company                                                                         | Anti-dumping duty | TARIC additional code |
|---------------------------------------------------------------------------------|-------------------|-----------------------|
| Datong Jinneng Industrial Silicon Co., Pingwang Industry Garden, Datong, Shanxi | 16,3 %            | A971                  |
| All other companies                                                             | 16,8 %            | A999                  |

3. The definitive anti-dumping duty applicable to imports from 'all other companies' originating in the People's Republic of China, as set out in paragraph 2, is hereby extended to imports of the product described in paragraph 1 consigned from the Republic of Korea, whether declared as originating in the Republic of Korea or not (TARIC code 2804 69 00 10) and to imports of the product described in paragraph 1 consigned from Taiwan, whether declared as originating in Taiwan or not (TARIC code 2804 69 00 20).

4. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States 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 under review) 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.

<sup>(61)</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

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

*Article 2*

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

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

Done at Brussels, 11 August 2022.

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

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