

**COMMISSION IMPLEMENTING REGULATION (EU) 2019/1267****of 26 July 2019****imposing a definitive anti-dumping duty on imports of tungsten electrodes originating in the People's Republic of China following an expiry review under Article 11(2) of Regulation (EU) 2016/1036**

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>, and in particular Article 11(2) thereof,

Whereas:

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

- (1) In March 2007, following an anti-dumping investigation ('the original investigation'), the Council imposed by Regulation (EC) No 260/2007 <sup>(2)</sup> ('the definitive Regulation'), a definitive anti-dumping duty on imports of certain tungsten electrodes currently falling under CN codes ex 8101 99 10 and ex 8515 90 80 (TARIC codes 8101 99 10 10 and 8515 90 80 10) and originating in the People's Republic of China ('the PRC').
- (2) The definitive Regulation imposed an anti-dumping duty at rates ranging between 17,0 % and 41,0 % on imports from the sampled cooperating exporting producers and a duty rate of 63,5 % on imports of all other exporting producers in the PRC.
- (3) Following an expiry review (the 'previous expiry review'), the Council decided, by means of Implementing Regulation (EU) No 508/2013 <sup>(3)</sup>, to maintain the anti-dumping duty in force.

**1.2. Initiation of an expiry review**

- (4) On 2 September 2017, the Commission published a notice of impending expiry of the anti-dumping measures in force on the imports of tungsten electrodes originating in the PRC in the *Official Journal of the European Union* <sup>(4)</sup>.
- (5) On 27 February 2018, two Union producers (Gesellschaft für Wolfram Industrie mbH and Plansee SE) ('the applicants'), representing 100 % of the total production of tungsten electrodes in the European Union ('the Union'), lodged a request for review ('the Request') under Article 11(2) of the 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>(5)</sup> ('the basic Regulation').
- (6) The applicants based their Request on the grounds that the expiry of the measures would be likely to result in continuation or recurrence of dumping and injury to the Union industry.
- (7) Having determined that sufficient evidence existed for the initiation of an expiry review, on 31 May 2018 the Commission published a notice of initiation in the *Official Journal of the European Union* <sup>(6)</sup> ('the Notice of Initiation').

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

<sup>(2)</sup> Council Regulation (EC) No 260/2007, OJ L 72, 13.3.2007, p. 1.

<sup>(3)</sup> Council Implementing Regulation (EU) No 508/2013, OJ L 150, 4.6.2013, p. 1.

<sup>(4)</sup> OJ C 292, 2.9.2017, p. 6.

<sup>(5)</sup> OJ L 176, 30.6.2016, p. 21, as last amended as last amended by Regulation (EU) 2018/825 of the European Parliament and of the Council of 30 May 2018 (OJ L 143, 7.6.2018, p. 1).

<sup>(6)</sup> OJ C 186, 31.5.2018, p. 13.

### 1.3. Review investigation period and period considered

- (8) The investigation of the likelihood of continuation or recurrence of dumping and injury covered the period from 1 April 2017 to 31 March 2018 ('the review investigation period' or 'RIP').
- (9) The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2014 to the end of the review investigation period ('the period considered').

### 1.4. Interested parties

- (10) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the applicants, known importers and users of tungsten electrodes in the Union, the authorities in the PRC and known producers in the PRC about the initiation of the expiry review and invited them to cooperate.
- (11) All interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. No comments on the initiation or requests for a hearing were received.

### 1.5. Sampling

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

#### 1.5.1. Sampling of unrelated importers

- (13) The Commission invited in the Notice of Initiation importers to make themselves known and to provide specific information necessary to decide whether sampling was necessary and, if so, to select a sample.
- (14) From the 46 unrelated importers that were contacted, five companies made themselves known. Two of them, however, did not import tungsten electrodes originating in the PRC during the review investigation period and the three remaining ones claimed to be users, not importers, and only one of them wanted to be an interested party. One additional importer came forward at a later stage of the investigation and it was accorded the status of an interested party. Thus, no sample of importers was selected.

#### 1.5.2. Sampling of producers in the PRC

- (15) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked all known producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the PRC to the European Union to identify and/or contact other producers in the PRC, if any, that could be interested in participating in the investigation.
- (16) Three producers in the PRC provided the requested information and agreed to be included in the sample. In view of the low number of cooperating producers, the Commission decided that sampling was not necessary and requested all Chinese producers that submitted sampling replies to complete the questionnaire.

### 1.6. Users

- (17) The Commission invited in the Notice of Initiation the users to make themselves known and cooperate. As explained in recital (14) three users came forward, but only one wanted to be registered as an interested party.

### 1.7. Replies to the questionnaires

- (18) The Commission sent questionnaires to the two Union producers, to the three producers in the PRC which made themselves known in the sampling exercise and to the Government of the People's Republic of China ('GOC'). Replies to the questionnaires were received only from the two Union producers and one Chinese company Shaanxi Yuheng Tungsten & Molybdenum Industrial Co., Ltd. This company used to be a producer of the product under review as defined in recital (32), but with currently suspended production engaged in trading activities only.
- (19) Therefore, there was no cooperation by the GOC or producers <sup>(7)</sup> of the product under review in the PRC, irrespective of whether or not they exported. The Commission informed the producers of the consequences of the lack of cooperation; yet, no producer cooperated in the investigation.

### 1.8. Verification visits

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

#### *Union producers*

- Gesellschaft für Wolfram Industrie mbH, Traunstein, Germany,
- Plansee SE, Reutte, Austria;

#### *Exporter in the PRC*

- Shaanxi Yuheng Tungsten & Molybdenum Industrial Co., Ltd, Baoji, Shaanxi, PRC.

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

- (21) In view of the sufficient evidence available at the initiation of the investigation tending to show the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission considered it appropriate to initiate the investigation on the basis of Article 2(6a) of the basic Regulation.
- (22) Consequently, in order to collect the necessary data for the eventual application of Article 2(6a) of the basic Regulation, in the Notice of Initiation the Commission invited all known producers in the PRC to provide the information requested in Annex III to the Notice of Initiation regarding the inputs used for producing the product under review. Two Chinese producers provided information in this regard.
- (23) In order to obtain information it deems necessary for its investigation with regard to the alleged significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, as explained in recital (18) the Commission also sent a questionnaire to GOC. No reply was received from the GOC.
- (24) In the Notice of Initiation, the Commission also invited all interested parties to make their views known, submit information and provide supporting evidence regarding the appropriateness of the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of this Notice in the *Official Journal of the European Union*. No submissions or additional evidence were received in that respect from the GOC or the producers in the PRC.
- (25) In the Notice of Initiation, the Commission also specified that, in view of the evidence available, it may need to select an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks.

<sup>(7)</sup> A producer is any company in the country concerned which produces the product under review, including any of its related companies involved in the production, domestic sales or exports of the product under review.

- (26) On 8 November 2018, the Commission made available a first note for the file ('Note of 8 November 2018') seeking the views of the interested parties on the relevant sources that the Commission may use for the determination of the normal value. The Note of 8 November 2018 provided a list of all factors of production such as materials, energy and labour used in the production of the product under review by the exporting producers. In addition, taking into account the criteria guiding the choice of undistorted prices or benchmarks, the Commission services identified, at that stage, Brazil, Mexico, Russia and Turkey as a potential representative countries. The note of 8 November 2018 further indicated the intention to use international benchmarks for the cost of the main raw material.
- (27) All interested parties were given the opportunity to comment, within 10 days. Comments were received from the two Union producers. In particular the Union industry submitted that costs in Turkey provide a better basis than Mexico, Brazil or Russia.
- (28) The Commission addressed the comments received by the two Union producers in the Second note on the sources for the determination of the normal value of 6 March 2019 ('the Note of 6 March 2019'). In the Note of 6 March 2019, based on the information available at that stage, Turkey was identified as the most appropriate representative country under Article 2(6a)(a), first indent of the basic Regulation. The Note of 6 March 2019 further indicated that in respect of the labour and electricity costs, the Commission intended to use the data published by the Turkish Statistical Institute. It was further indicated that, based on the information available, it would appear that there was no production of the product under review outside the PRC and the Union. Therefore, the Commission indicated that it intended to use the publicly available data from the two cooperating Union producers for manufacturing overhead costs, SG&A and profits. For the net price of the raw material (tungsten oxide included in the ammonium paratungstate ('APT')), the international benchmark of Platts Metals Week as published by the National Minerals Information Center of the U.S. Geological Survey would be used.
- (29) All interested parties were given the opportunity to comment, within 10 days, but no comments were received.

#### 1.9.1. *Subsequent procedure*

- (30) On 6 May 2019, the Commission disclosed the essential facts and considerations on the basis of which it intended to maintain the anti-dumping duties ('final disclosure'). All parties were granted a period within which they could make comments on the disclosure and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.
- (31) One party submitted comments, highlighting issues already duly explained in this regulation. No requests for a hearing were received.

## 2. **PRODUCT UNDER REVIEW AND LIKE PRODUCT**

### 2.1. **Product under review**

- (32) The product under review is the same as in the original investigation, namely tungsten welding electrodes, including tungsten bars and rods for welding electrodes, containing 94 % or more by weight of tungsten, other than those obtained simply by sintering, whether or not cut to length, currently falling under CN codes ex 8101 99 10 and ex 8515 90 80 (TARIC codes 8101 99 10 10 and 8515 90 80 10) ('the product under review').
- (33) The product under review is used in welding and similar processes, including tungsten inert gas (TIG) shielded arc welding, plasma arc welding and cutting. These processes are operated in a wide variety of industrial sectors such as construction, shipbuilding, automobile manufacturing, marine, chemical and nuclear engineering and aerospace as well as oil and gas pipelines. Based on the physical and chemical characteristics and the substitutability of the different types of the product from the perspective of the user, all tungsten electrodes are considered to constitute a single product for the purpose of this proceeding.

## 2.2. Like product

- (34) No interested parties commented on the like product. Hence, as established in the original investigation, this expiry review investigation confirmed that product produced and sold on the domestic markets of the PRC, and the product produced and sold in the Union by the Union producers have the same basic physical and technical characteristics and end-uses. They are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

## 3. LIKELIHOOD OF CONTINUATION OF DUMPING

### 3.1. Preliminary remarks for the PRC

- (35) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether the expiry of the measures in force would be likely to lead to a continuation or recurrence of dumping from the PRC.
- (36) As mentioned in recitals (18) and (19) none of the Chinese producers cooperated in the investigation. The Chinese producers failed to submit questionnaire replies, including any data on export prices and costs, domestic prices and costs, capacity, production, investments, etc. Likewise, the GOC and Chinese producers did not submit any comments on the evidence in the case file, including the Report. Therefore, the Commission resorted to the use of facts available in accordance with Article 18 of the basic Regulation.
- (37) The Commission notified the Chinese authorities and the two Chinese producers, which came forward for the sampling exercise, of the application of Article 18 of the basic Regulation and gave them the opportunity to comment. No comments were received which could alter the use of Article 18 of the basic Regulation.
- (38) On that basis, in accordance with the Article 18 of the basic Regulation, the findings in relation to the likelihood of continuation or recurrence of dumping set out below were based on facts available, in particular, the information contained in the Request, in the submissions by interested parties, the statistics available in the Article 14(6) of the basic Regulation database and other public sources identified where applicable below.

### 3.2. Dumping during the review investigation period

- (39) For the review investigation period, the statistical data from the Article 14(6) of the basic Regulation database show that 45 000-50 000 kg of tungsten electrodes were imported into the Union from the PRC constituting 40-50 % of the total Union consumption. Consequently, the Commission concluded that the actual imports in the review investigation period were representative and, therefore, examined whether dumping continued during the review investigation period.

### 3.3. Normal value

- (40) 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'.
- (41) However, according to Article 2(6a)(a) of the basic Regulation, '*in case it is determined [...] that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions within the meaning of point (b), the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks*', and '*shall include an undistorted and reasonable amount of administrative, selling and general costs and for profits*'. As further explained below, the Commission concluded in the present investigation that based on the evidence available, and in view of the lack of cooperation of the GOC and the exporting producers, the application of Article 2(6a) of the basic Regulation was appropriate.

### 3.3.1. Existence of significant distortions

#### 3.3.1.1. Introduction

- (42) According to Article 2(6a)(b) of the basic Regulation *'significant distortions are those distortions which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces because they are affected by substantial government intervention. In assessing the existence of significant distortions regard shall be had, inter alia, to the potential impact of one or more of the following elements:*
- *the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country;*
  - *state presence in firms allowing the state to interfere with respect to prices or costs;*
  - *public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces;*
  - *the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws;*
  - *wage costs being distorted;*
  - *access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the state'.*
- (43) According to Article 2(6a)(b) of the basic Regulation, the assessment of the existence of significant distortions within the meaning of Article 2(6a)(a) shall take into account, amongst others, the non-exhaustive list of elements in the former provision. Pursuant to Article 2(6a)(b) of the basic Regulation, in assessing the existence of significant distortions, regard shall be had to the potential impact of one or more of these elements on prices and costs in the exporting country of the product concerned. Indeed, as that list is non-cumulative, not all the elements need to be given regard to for a finding of significant distortions. Moreover, the same factual circumstances may be used when assessing different elements of the list. However, any conclusion on significant distortions within the meaning of Article 2(6a)(a) must be made on the basis of all the evidence at hand. The overall assessment on the existence of distortions may also take into account the general context and situation in the exporting country, in particular where the fundamental elements of the exporting country's economic and administrative set-up entrust the government with substantive powers to intervene into market forces and which therefore points to the fact that prices and costs are not the result of free market forces.
- (44) Article 2(6a)(c) of the basic Regulation provides that *'[w]here the Commission has well-founded indications of the possible existence of significant distortions as referred to in point (b) in a certain country or a certain sector in that country, and where appropriate for the effective application of this Regulation, the Commission shall produce, make public and regularly update a report describing the market circumstances referred to in point (b) in that country or sector.'*
- (45) Interested parties were invited to rebut, comment or supplement the evidence contained in the investigation file at the time of initiation. In that respect, the Commission relies on the Report <sup>(8)</sup> showing the existence of substantial government intervention at many levels of the economy, including specific distortions in key factors of production (such as land, energy, capital, raw materials and labour) as well as in specific sectors (such as steel and chemicals). The Report was placed in the investigation file at the initiation stage. The request also contained some relevant evidence complementing the Report.
- (46) The applicant refers in the Request to the distortions in the tungsten industry listed in the Report, and more specifically:
- *measures by the GOC to limit capacity and support downstream products: limits on the numbers of mining and export licenses, production quotas and additional constraints for mining and processing;*

<sup>(8)</sup> Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations.

- plans to reduce output of tungsten concentrates announced in 2016 by eight large producers in the PRC, following the request of the China Tungsten Industry Association;
  - tungsten is part of the 13th Five Year Plan for Mineral Resources and it is extensively regulated;
  - tungsten is subject to export licensing requirements, which only allow certain State Trading Enterprises to trade tungsten;
  - export quotas; and
  - stockpiling.
- (47) The Commission examined whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the Report, which relies on publicly available sources, notably on Chinese legislation, published official Chinese policy documents, reports published by international organisations and studies/articles by academics, specifically identified in the Report. That analysis covered the examination of the substantial government interventions in its economy in general, but also the specific market situation in the relevant sector including the product under review.
- (48) As specified in recitals (18) and (19), neither the GOC nor the Chinese producers commented or provided evidence supporting or rebutting the existing evidence on the case file, including the Report, and the additional evidence provided by the applicants, on the existence of significant distortions and/or on the appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand.

#### 3.3.1.2. Significant distortions affecting the domestic prices and costs in the PRC: general economic context

- (49) The Chinese economic system is based on the concept of a 'socialist market economy'. That concept is enshrined in the Chinese Constitution and determines the economic governance of PRC. The core principle is the '*socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people*'. The State-owned economy is the '*leading force of the national economy*' and the State has the mandate '*to ensure its consolidation and growth*'<sup>(9)</sup>. Consequently, the overall setup of the Chinese economy not only allows for substantial government interventions into the economy, but such interventions are expressly mandated. The notion of supremacy of public ownership over the private one permeates the entire legal system and is emphasized as a general principle in all central pieces of legislation. The Chinese property law is a prime example: it refers to the primary stage of socialism and entrusts the State with upholding the basic economic system under which the public ownership plays a dominant role. Other forms of ownership are tolerated, with the law permitting them to develop side by side with the State ownership<sup>(10)</sup>.
- (50) In addition, under Chinese law, the socialist market economy is developed under the leadership of the Chinese Communist Party ('CCP'). The structures of the Chinese State and of the CCP are intertwined at every level (legal, institutional, personal), forming a superstructure in which the roles of CCP and the State are indistinguishable. Following an amendment of the Chinese Constitution in March 2018, the leading role of the CCP was given an even greater prominence by being reaffirmed in the text of Article 1 of the Constitution. Following the existing first sentence of the provision: '*[t]he socialist system is the basic system of the People's Republic of China*' a new second sentence was inserted which reads: '*[t]he defining feature of socialism with Chinese characteristics is the leadership of the Communist Party of China.*'<sup>(11)</sup> This illustrates the control of the CCP over the economic system of the PRC. This control is inherent to the Chinese system and goes beyond the situation customary in other countries where the governments exercise broad macroeconomic control within the boundaries of which free market forces are at play.

<sup>(9)</sup> Report – Chapter 2, p. 6-7.

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

<sup>(11)</sup> <http://en.pkulaw.cn/display.aspx?cgid=311950&lib=law>.

- (51) The Chinese State engages in an interventionist economic policy in pursuance of goals, which coincide with the political agenda set by the CCP rather than reflecting the prevailing economic conditions in a free market <sup>(12)</sup>. The interventionist economic tools deployed by the Chinese authorities are manifold, including the system of industrial planning, the financial system, as well as at the level of the regulatory environment.
- (52) First, on the level of overall administrative control, the direction of the Chinese economy is governed by a complex system of industrial planning which affects all economic activities within the country. The totality of these plans cover a comprehensive and complex matrix of sectors and crosscutting policies and is present on all levels of government. Plans at provincial level are detailed while national plans set broader targets. Plans also specify the means to support the relevant industries/sectors as well as the timeframes in which the objectives need to be achieved. Some plans contain explicit output targets. Under the plans, individual industrial sectors and/or projects are singled out as (positive or negative) priorities in line with the government priorities and specific development goals are attributed to them (industrial upgrade, international expansion etc.). The economic operators, private and State-owned alike, must effectively adjust their business activities according to the realities imposed by the planning system. The binding nature of the plans and the fact that the relevant Chinese authorities at all levels of government adhere to the system of plans and use their vested powers accordingly, induce the economic operators to comply with the priorities set out in the plans (see also section 3.3.1.5 below) <sup>(13)</sup>.
- (53) Second, on the level of allocation of financial resources, the financial system of China is dominated by the State-owned commercial banks. Those banks, when setting up and implementing their lending policy need to align themselves with the government's industrial policy objectives rather than primarily assessing the economic merits of a given project (see also section 3.3.1.8) <sup>(14)</sup>. The same applies to the other components of the Chinese financial system, such as the stock markets, bond markets, private equity markets etc. Even though of lesser significance than the banking sector, these parts of the financial sector are institutionally and operationally set up in a manner not geared towards maximizing the efficient functioning of the financial markets but towards ensuring control and allowing intervention by the State and the CCP <sup>(15)</sup>.
- (54) Third, on the level of regulatory environment, the interventions by the State into the economy take a number of forms. For instance, the public procurement rules are regularly used in pursuit of policy goals other than economic efficiency, thereby undermining market based principles in the area. The applicable legislation specifically provides that public procurement shall be conducted in order to facilitate the achievement of goals designed by State policies. However, the nature of these goals remains undefined, thereby leaving broad margin of appreciation to the decision-making bodies <sup>(16)</sup>. Similarly, in the area of investment, the Chinese government maintains significant control and influence over destination and magnitude of both State and private investment. Investment screening as well as various incentives, restrictions, and prohibitions related to investment are used by authorities as an important tool for supporting industrial policy goals, such as maintaining State control over key sectors or bolstering domestic industry <sup>(17)</sup>.
- (55) In sum, the Chinese economic model is based on certain basic axioms which provide for and encourage manifold government interventions. Such substantial government interventions are at odds with free play of market forces, resulting in distorting the effective allocation of resources in line with market principles <sup>(18)</sup>.

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

- (56) In the PRC, enterprises operating under the ownership, control and policy supervision or guidance by the State represent an essential part of the economy.

<sup>(12)</sup> Report – Chapter 2, p. 20-21.

<sup>(13)</sup> Report – Chapter 3, p. 41, 73-74.

<sup>(14)</sup> Report – Chapter 6, p. 120-121.

<sup>(15)</sup> Report – Chapter 6, p. 122-135.

<sup>(16)</sup> Report – Chapter 7, p. 167-168.

<sup>(17)</sup> Report – Chapter 8, p. 169-170, 200-201.

<sup>(18)</sup> Report – Chapter 2, p. 15-16, Report – Chapter 4, p. 50, p. 84, Report – Chapter 5, p. 108-9.



- (57) With regard to State ownership, a substantial degree of ownership by the Chinese government persists in the tungsten sector. Many of the major tungsten mining companies are State-owned, as tungsten mining licences are mostly granted to SOEs <sup>(19)</sup>.
- (58) With regard to control by the State, the government and the CCP maintain structures that ensure their continued influence over enterprises. The State (and in many respects also the CCP) not only actively formulates and oversees the implementation of general economic policies by individual enterprises, but it also claims its rights to participate in their operational decision making. The elements that point to the existence of government control over enterprises in the tungsten industry include mining licences, investment restrictions and export restrictions <sup>(20)</sup>. Furthermore, there is a large number of detailed goals and quotas set out in the 13<sup>th</sup> Five Year Plan for the Nonferrous Metals Industry ('13<sup>th</sup> FYP for Non-Ferrous Metals Industry') <sup>(21)</sup>.
- (59) As concerns policy supervision and guidance by the State in the sector, the analysis is set out in sections 3.3.1.4 and 3.3.1.5 below. With the high level of government control and intervention in the tungsten sector as described below, even privately owned tungsten producers are prevented from operating under market conditions.
- (60) On the basis of the above, the Commission concluded that the market for tungsten electrodes in the PRC was served to a significant extent by enterprises subject to control or policy supervision or guidance by the Chinese government.

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

- (61) The Chinese State is in position to interfere with prices and costs through State presence in firms. While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights <sup>(22)</sup>, CCP cells in enterprises, state owned and private alike, represent another channel through which the State can interfere with business decisions. According to China's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution <sup>(23)</sup>) and the company is to 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 it claims to control business decision in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline <sup>(24)</sup>. In 2017, it was reported that party cells existed in 70 % of some 1.86 million privately owned companies, with growing pressure for the CCP organisations to have final say over the business decision within their respective companies <sup>(25)</sup>. These rules are of general application throughout the Chinese economy, including the tungsten sector. Hence, it is established that these rules also apply to the producers of tungsten electrodes and the suppliers of their inputs.
- (62) Specifically in the tungsten sector (including the product under review), tight links exist between decision making processes of enterprises active in the sector and the State, in particular the CCP. Tungsten producers are organised within the China Tungsten Industry Association ('CTIA'), which is part of the Chinese Non-Ferrous Metals Industry Association. The latter is clearly following the governmental policy urging the employees and members to among others, convey and implement the spirit of the Lianghui – Two Sessions <sup>(26)</sup>. CTIA is implementing governmental policies resulting in cost and price distortions on the Chinese market. In 2016 eight large producers in the PRC announced plans to reduce output of tungsten concentrates, the China Tungsten Industry Association asked its members to cut production and China's State Reserve Bureau held tenders to purchase tungsten concentrates. Since the PRC produces over 80 % of the world output of tungsten, such actions have an impact on Chinese as well as global prices of tungsten. Secondly, the majority of tungsten mining quota is

<sup>(19)</sup> Report – Chapter 13, p. 322.

<sup>(20)</sup> Report – Chapter 12, p. 298-312.

<sup>(21)</sup> Report – Chapter 12, p. 267-282.

<sup>(22)</sup> Report – Chapter 5, p. 100-1.

<sup>(23)</sup> Report – Chapter 2, p. 26.

<sup>(24)</sup> Report – Chapter 2, p. 31-2.

<sup>(25)</sup> See <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU>.

<sup>(26)</sup> See Chinese Non-Ferrous Metals Industry Association website: <http://www.chinania.org.cn/html/dangjiangongzuo/dangjianhuodong/2019/0326/34906.html> (accessed on 29 March 2019).

divided between six major SOEs: China Minmetals, Aluminium Corporation of China, China Northern Rare Earth Group High-Tech, Xiamen Tungsten, China Southern Rare Earth Group, Guangdong Rare Earth Industry Group <sup>(27)</sup>. Thus, the state presence in the tungsten industry in China is exercised directly in the SOEs, but also via the CTIA.

- (63) The State's presence and intervention in the financial markets (see also section 3.3.1.8) as well as in the provision of raw materials and inputs have an additional distorting effect on the market <sup>(28)</sup>.
- (64) Based on all of the above, it is concluded that the State presence in firms in the tungsten sector, as well as in the financial sector and other input sectors, combined with the framework described in section 3.3.1.3 and in the subsequent sections, allows the GOC to interfere with respect to prices and costs.

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

- (65) The direction of the Chinese economy is to a significant degree determined by an elaborate system of planning which sets out priorities and prescribes the goals the central and local governments must focus on. Relevant plans exist on all levels of government and cover virtually all economic sectors, the objectives set by the planning instruments are of binding nature and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government. Overall, the system of planning in the PRC results in resources being driven to sectors designated as strategic or otherwise politically important by the government, rather than being allocated in line with market forces <sup>(29)</sup>.
- (66) The GOC is closely controlling and regulating the tungsten industry. This is confirmed in the 13<sup>th</sup> FYP for Non-Ferrous Metals Industry and 13<sup>th</sup> FYP for Mineral Resources, but also in the laws on regulating mining and processing, export and investment into the tungsten industry.
- (67) The 13<sup>th</sup> FYP for Mineral Resources lists tungsten as one of the 24 strategic minerals, which are 'key elements of the mineral resources macro-control, supervision and management' <sup>(30)</sup>. The Plan furthermore limits the tungsten ore overall mining volume to 120 000 tonnes per year <sup>(31)</sup> and envisages to stabilize the scale of mining operations and to consolidate the tungsten resource bases in south Jiangxi, Hunan (Chenzhou). It furthermore sets out the target for medium-large sized mines to account for more than 12 % of all mines and it envisages to ensure enterprise concentration and development of large and medium sized mines competitive on the market <sup>(32)</sup>.
- (68) The 13<sup>th</sup> FYP for Non-Ferrous Metals Industry sets the goal to 'improve production restrictions and value protection mechanisms applicable to tungsten etc.; [and] reasonably adjust and control mining volume control indicators for tungsten' <sup>(33)</sup>.
- (69) Furthermore, tungsten is included in the list of products subject to export duties <sup>(34)</sup>, licensing export requirements <sup>(35)</sup> as well as state trading <sup>(36)</sup>. This, together with strict controls of production quotas as well as large reserves held by the State Reserve Bureau <sup>(37)</sup> allows GOC to have control over tungsten supply in China.
- (70) It is therefore established that the GOC has public policies in place influencing free market forces concerning the production of tungsten and tungsten welding electrodes. Such measures impede market forces from operating normally.

<sup>(27)</sup> Report – Chapter 12, p. 322.

<sup>(28)</sup> Report – Chapters 14.1 to 14.3.

<sup>(29)</sup> Report – Chapter 4, p. 41-42, 83.

<sup>(30)</sup> Report – Chapter 12, p. 268.

<sup>(31)</sup> Report – Chapter 12, p. 271.

<sup>(32)</sup> Report – Chapter 12 p. 273.

<sup>(33)</sup> Report – Chapter 12 p. 279.

<sup>(34)</sup> Report – Chapter 12 p. 306.

<sup>(35)</sup> Report – Chapter 12 p. 310.

<sup>(36)</sup> Report – Chapter 12 p. 311.

<sup>(37)</sup> Report – Chapter 12 p. 316.

- (71) Furthermore, the Commission notes that while it was not required to perform an analysis with regard to the raw materials used in the production of the product under review to establish that public policies affect free market forces in the tungsten electrode sector, it found that the main raw material, APT, is subject to export licensing in China <sup>(38)</sup>.
- (72) Export licenses have been recognised by the OECD Inventory of Export Restrictions on Industrial Raw Materials as a type of export restrictions <sup>(39)</sup>. Export licences allow the government to control the exporters and the amounts of exported goods <sup>(40)</sup>, giving it thus the possibility to limit the exports significantly by keeping the products on the domestic market. This in turns may lead to increased supply, not necessarily linked with an increased demand, which may drive the domestic prices down. This may point to a distortion in the form of indirect subsidisation of a domestic industry that uses the restricted commodity as an input <sup>(41)</sup>. As such, the export licenses put in place on APT create an additional incentive to the Chinese industry to produce and export at lower prices, since the downstream industry has access to cheaper raw materials in the production of the product concerned. This affects the competitive relationship between the product concerned and the like product, since the Chinese industry is able to produce and export the product under review paying a price that does not result from the free play of market forces due to export licencing.
- (73) In sum, the Commission established that the GOC has public policies in place influencing free market forces also for the main raw material APT used for the production of tungsten electrode.

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

- (74) According to the information on file, the Chinese bankruptcy system appears inadequate to deliver on its own main objectives such as to fairly settle claims and debts and to safeguard the lawful rights and interests of creditors and debtors. This appears to be rooted in the fact that while the Chinese bankruptcy law formally rests on similar principles as corresponding laws in other countries, the Chinese system is characterised by systematic under-enforcement. The number of bankruptcies remains notoriously low in relation to the size of the country's economy, not least because the insolvency proceedings suffer from a number of shortcomings, which effectively function as a disincentive for bankruptcy filings. Moreover, the role of the State in the insolvency proceedings remains strong and active, often having direct influence on the outcome of the proceedings <sup>(42)</sup>.
- (75) In addition, the shortcomings of the system of property rights are particularly obvious in relation to ownership of land and land-use rights in China <sup>(43)</sup>. All land is owned by the Chinese State (collectively owned rural land and State-owned urban land). Its allocation remains solely dependent on the State. There are legal provisions that aim at allocating land use rights in a transparent manner and at market prices, for instance by introducing bidding procedures. However, these provisions are regularly not respected, with certain buyers obtaining their land for free or below market rates <sup>(44)</sup>. Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land <sup>(45)</sup>.
- (76) Therefore, the Chinese bankruptcy and property laws do not appear to properly work, resulting in distortions when maintaining insolvent firms afloat and in relation to the land provision and acquisition in the PRC. These laws also apply with respect to the tungsten sector, including the exporting producers of the product under review.
- (77) In light of the above, the Commission concluded that there was discriminatory application or inadequate enforcement of bankruptcy and property laws in the tungsten sector, including with respect to the product under review.

<sup>(38)</sup> See Mofcom notice No. 208[2018] available at: <http://www.mofcom.gov.cn/article/b/e/201812/20181202821970.shtml> (accessed on 26.4.2019).

<sup>(39)</sup> See p. 298 of the Report.

<sup>(40)</sup> OECD. (2014). Export Restrictions in Raw Materials Trade: Facts, Fallacies and Better Practices (OECD Publishing, 2014), page 26.

<sup>(41)</sup> OECD. (2016). Methodological note to the Inventory of Export Restrictions on Industrial Raw Materials, OECD, 9 March 2016.

<sup>(42)</sup> Report – Chapter 6, p. 138-149.

<sup>(43)</sup> Report – Chapter 9, p. 216.

<sup>(44)</sup> Report – Chapter 9, p. 213-215.

<sup>(45)</sup> Report – Chapter 9, p. 209-211.

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

- (78) A system of market-based wages cannot fully develop in the PRC as workers and employers are impeded in their rights to collective organisation. China has not ratified a number of essential conventions of the International Labour Organisation (ILO), in particular those on freedom of association and on collective bargaining <sup>(46)</sup>. Under national law, only one trade union organisation is active. However, this organisation lacks independence from the State authorities and its engagement in collective bargaining and protection of workers' rights remains rudimentary <sup>(47)</sup>. Moreover, the mobility of the Chinese workforce is restricted by the household registration system, which limits access to the full range of social security and other benefits to local residents of a given administrative area. This typically results in workers who are not in possession of the local residence registration finding themselves in a vulnerable employment position and receiving lower income than the holders of the residence registration <sup>(48)</sup>. Those findings lead to the distortion of wages costs in the PRC.
- (79) The tungsten sector, including tungsten electrodes, is also subject to the Chinese labour law system described. The tungsten sector is thus affected by the distortions of wage costs both directly (when making the product under review) as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in the PRC).
- (80) On the basis of the above, the Commission concluded that wage costs were distorted in the tungsten sector, including with respect to the product under review.

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

- (81) Access to capital for corporate actors in the PRC is subject to various distortions.
- (82) Firstly, the Chinese financial system is characterised by strong position of State-owned banks <sup>(49)</sup>, which, when granting access to finance, take into consideration criteria other than economic viability of a project. Similarly to non-financial SOEs, the banks remain connected to the State not only through ownership but also via personal relations (the top executives of the large State-owned financial institutions are ultimately appointed by the CCP) <sup>(50)</sup> and, again just like non-financial SOEs, the banks regularly implement public policies designed by the government. In doing so, the banks comply with an explicit legal obligation to conduct their business in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State <sup>(51)</sup>. This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important <sup>(52)</sup>.
- (83) While it is acknowledged that there might be various legal instruments referring to the need to respect normal banking behaviour and prudential rules such as the need to examine the creditworthiness of the borrower, the relevant evidence shows that these provisions play only a secondary role in the application of the various legal instruments <sup>(53)</sup>. Findings made in previous trade defence investigations also reached the same conclusion <sup>(54)</sup>.
- (84) Furthermore, bond and credit ratings are often distorted for a variety of reasons including the fact that the risk assessment is influenced by the firm's strategic importance to the Chinese government and the strength of any implicit guarantee by the government. Estimates strongly suggest that Chinese credit ratings systematically correspond to lower international ratings <sup>(55)</sup>.

<sup>(46)</sup> Report – Chapter 13, p. 332-337.

<sup>(47)</sup> Report – Chapter 13, p. 336.

<sup>(48)</sup> Report – Chapter 13, p. 337-341.

<sup>(49)</sup> Report – Chapter 6, p. 114-117.

<sup>(50)</sup> Report – Chapter 6, p. 119.

<sup>(51)</sup> Report – Chapter 6, p. 120.

<sup>(52)</sup> Report – Chapter 6, p. 121-122, 126-128, 133-135.

<sup>(53)</sup> Report, *ibid.*

<sup>(54)</sup> Report – Chapter 14, p. 362-3, listing EU trade defence investigations (concerning certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and concerning certain organic coated steel products originating in the People's Republic of China), as well as trade defence investigation conducted by the Australian, Canadian, Indian or US authorities.

<sup>(55)</sup> Report – Chapter 6, p. 127, in particular with respect to the IMF estimate.

- (85) This results in a bias for lending to SOEs, large well-connected private firms and firms in key industrial sectors, which implies that the availability and cost of capital is not equal for all players on the market.
- (86) Secondly, borrowing costs have been kept artificially low to stimulate investment growth. This has led to the excessive use of capital investment with ever lower returns on investment. This is illustrated by the recent growth in corporate leverage in the state sector despite a sharp fall in profitability, which suggests that the mechanisms at work in the banking system do not follow normal commercial responses.
- (87) Thirdly, although nominal interest rate liberalization was achieved in October 2015, price signals are still not the result of free market forces, but are influenced by government induced distortions. Indeed, the share of lending at or below the benchmark rate still represents 45 % of all lending and recourse to targeted credit appears to have been stepped up, since this share has increased markedly since 2015 in spite of worsening economic conditions. Artificially low interest rates result in under-pricing, and consequently, the excessive utilization of capital.
- (88) Overall credit growth in the PRC indicates a worsening efficiency of capital allocation without any signs of credit tightening that would be expected in an undistorted market environment. As a result, non-performing loans have increased rapidly in recent years. Faced with a situation of increasing debt-at-risk, the Chinese government has opted to prevent defaults. Consequently, bad debt issues have been handled by rolling over debt, thus creating so called 'zombie' companies, or by transferring the ownership of the debt (e.g. via mergers or debt-to-equity swaps), without necessarily removing the overall debt problem or addressing its root causes.
- (89) In essence, despite the recent steps that have been taken to liberalize the market, the corporate credit system in the PRC is affected by significant systemic issues and distortions resulting from the continuing pervasive role of the state in the capital markets.
- (90) Specifically in the tungsten sector, both the 13<sup>th</sup> FYP for Non-Ferrous Metals Industry and 13<sup>th</sup> FYP for Mineral Resources provide for a range of support measures and subsidies to support the relevant industries, including the tungsten industry <sup>(56)</sup>. Since the tungsten industry is included in the list of industries supported by the state in the 13<sup>th</sup> FYP for Non-Ferrous Metals Industry and 13<sup>th</sup> FYP for Mineral Resources, and because banks structure their loan policies in accordance with these plans (see recital (53)), the exporting producers as well as their suppliers have access to preferential financing as described in this section <sup>(57)</sup>.
- (91) In light of the above, the Commission concluded that the producers of tungsten electrodes had access to finance granted by institutions which implement public policy objectives or otherwise not acting independently from the state.

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

- (92) The Commission noted that the distortions described in the Report are not limited to the tungsten sector in general or the tungsten welding electrodes sector. On the contrary, the evidence available shows that the facts and features of the Chinese system as described above in Sections 3.3.1.1-3.3.1.5 as well as in Part I of the Report apply throughout the country and across the sectors of the economy. The same holds true for the description of the factors of production as set out above in sections 3.3.1.6-3.3.1.8 above and in Part II of the Report.
- (93) In order to produce tungsten welding electrodes, the key input is ammonium paratungstate ('APT'). When the tungsten welding electrodes producers purchase/contract these inputs the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system which applies across all levels of government and sectors.

<sup>(56)</sup> Report – Chapter 12, p. 274 and 281-282.

<sup>(57)</sup> Report – Chapter 6, p. 120.

- (94) As a consequence, not only the domestic sales prices of tungsten welding electrodes cannot be used but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also tainted because their price formation is affected by substantial government intervention, as described in Parts I and II of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that in itself was produced in the PRC by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth.

#### 3.3.1.10. Conclusion

- (95) The analysis laid out in sections 3.3.1.2 to 3.3.1.9, which includes an examination of all the available evidence relating to the PRC's intervention in its economy in general as well as in the tungsten sector (including the product under review) showed that prices or costs, 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. On that basis, and in the absence of any cooperation from the GOC and the producers in the PRC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case.
- (96) 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. The Commission recalled that no Chinese producer cooperated with the investigation and that no claim was presented that some domestic costs would be undistorted under the third indent of Article 2(6a)(a) of the basic Regulation.

#### 3.3.2. Representative country

##### 3.3.2.1. General remarks

- (97) The choice of the representative country was based on the following criteria:
- A level of economic development similar to the PRC. For this purpose, the Commission used countries with a gross national income similar to the PRC on the basis of the database of the World Bank <sup>(58)</sup>;
  - Production of the product under review in that country <sup>(59)</sup>;
  - Availability of relevant public data in that country;
  - Where there is more than one possible representative country, preference was given, where appropriate, to the country with an adequate level of social and environmental protection.
- (98) As mentioned in recital (26), in the Note of 8 November 2018, the Commission informed interested parties that it had identified four possible representative countries: Brazil, Mexico, Russia and Turkey, and invited interested parties to comment and suggest other countries.
- (99) With regard to the representative country, subsequent to the Note of 8 November 2018, the Commission received a submission from the Union industry.
- (100) The Union industry submitted that costs in Turkey provide a better basis than Mexico, Brazil or Russia. This is because the costs in these three countries are distorted for a variety of reasons, including high inflation and government protection.

<sup>(58)</sup> World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>.

<sup>(59)</sup> If there is no production of the product under review in any country with a similar level of development, production of a product in the same general category and/or sector of the product under review may be considered.

- (101) The Union industry contested the appropriateness of Russia in particular, claiming that energy prices are heavily distorted. They corroborated this fact by referring to the recent findings of the Commission in the context of ammonium nitrate case (Commission Implementing Decision (EU) 2018/1703). Given that, as explained in recital (108) the Commission chose Turkey as the appropriate representative country for this investigation because it identified that Turkey has the most detailed statistical data regarding labour costs among the potential representative countries considered, it was not necessary to address this claim and examine the existence of energy distortions in Russia in the context of this proceeding.

#### 3.3.2.2. A level of economic development similar to the PRC

- (102) With regard to the level of economic development, the Commission notes that all countries listed in recital (98) are at the same income level 'Upper Middle Income', according to the World Bank <sup>(60)</sup> and are therefore equally suitable as representative countries in this respect.

#### 3.3.2.3. Production of the product under review in the representative country and availability of the relevant public data in the representative country

- (103) In the Note of 6 March 2019, the Commission informed the interested parties that based on the available information, the product under review was only produced in the PRC and the Union. No comments were received in this respect.
- (104) As more than one possible representative country is available, the Commission, with regard to the Article 2(6a)(a) first indent of the basic Regulation took into account the availability of relevant public data in the representative country.
- (105) The Commission took into account the significance of the factors of production of tungsten electrodes. Apart from the most significant raw material, APT, which accounts for the majority of the final product costs, the second and third most significant factors were labour and electricity. Consequently, the Commission compared the four potential representative countries with regards to the quality of labour and electricity costs information.
- (106) Based on the information available, the Commission identified Turkey as having the most detailed statistical data regarding labour costs among the potential representative countries considered. The Turkish Statistical Institute publishes detailed labour costs for each economic activity. Consequently, specific labour costs for the basic metals manufacturing sector are publically available. Similarly, detailed electricity price data for industrial users were available.
- (107) Taking into account the information provided by the Union industry, together with the availability of relevant public data in the representative country, the Commission proposed to use Turkey as the representative country in its 6 March 2019 Note and invited interested parties to comment. No comments were received.

#### 3.3.2.4. Conclusion on representative country

- (108) In view of the above analysis, and the data available on the file, the Commission used the data of Turkey for establishing corresponding costs of labour and electricity in an appropriate representative country in accordance with Article 2(6a)(a) of the basic Regulation.

#### 3.3.3. Data used for the construction of normal value

- (109) According to Article 2(6a)(a) of the basic Regulation, 'the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices and benchmarks' and 'shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits'.
- (110) In the Note of 8 November 2018, the Commission stated that, in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it could not rely on import data from appropriate representative countries to value the main factor of production. This is due to the extreme inconsistency of the import prices for HS code covering the main raw material (APT) but also other products in the four possible representative countries. The international benchmark published by the National Minerals Information Center of the U.S. Geological Survey was used instead to establish the undistorted cost of the main raw material.

<sup>(60)</sup> World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>.

- (111) The Commission used the information provided by the Turkish Statistical Institute as the source of labour costs and electricity costs.

#### 3.3.4. Factors of production

- (112) In the Note of 8 November 2018, the Commission sought to establish an initial list of factors of production and sources intended to be used for all factors of production such as materials, energy and labour used in the production of the product under review by any cooperating producer.
- (113) In the absence of cooperation by the Chinese producers, the Commission relied on the applicants and the two respondents to the Annex III to the Notice of Initiation in order to specify the factors of production used in the production.
- (114) The Commission did not receive any comments concerning specific factors of production.
- (115) Considering all the information submitted by the applicant, the following factors of production and related tariff heading where applicable, have been identified:

Table 1

#### Factors of production

Factor of Production	HS Code	Source used	Value
<b>Raw materials</b>			
Ammonium paratungstate ('APT')	ex 2841 80	Net price of wolfram oxide included in the APT per international benchmark of Platts Metals Week as published by the National Minerals Information Center of the U.S. Geological Survey	34,81 EUR/kg
<b>Labour</b>			
Direct labour, Wages in manufacturing sector	[N/A]	Turkish statistical institute	8,15 EUR/man hour
<b>Energy</b>			
Electricity	[N/A]	Turkish statistical institute	0,06 EUR/kWh

#### 3.3.4.1. Raw materials

- (116) The major raw material for production of the product under review is APT. In its note of 6 March 2019, the Commission indicated that it intended to use the international benchmark of Platts Metals Week as published by the National Minerals Information Center of the U.S. Geological Survey <sup>(61)</sup> in its monthly mineral surveys.
- (117) APT need to undergo a conversion to tungsten metal powder, prior to being used as a raw material for the production of tungsten electrodes.
- (118) As the international benchmark quote the APT price per its content of tungsten oxides and also the conversion costs need to be added, the benchmark data were adjusted using a factor of 1,26 plus EUR 0,767 per kg of the transformed material. These costs of conversion, suggested by the Union industry were made available to the interested parties and the Commission did not receive any comments on this.

<sup>(61)</sup> <https://minerals.usgs.gov/minerals/pubs/commodity/tungsten/>.



#### 3.3.4.2. Labour

- (119) With regard to labour costs, in its Note of 6 March 2019, the Commission indicated that it intended to use the data published by the Turkish Statistical Institute. In particular, the Commission indicated that it intended to use the hourly labour costs in the manufacturing sector for 2016, for the economic activity C.24 (manufacture of basic metals) according to NACE Rev.2 <sup>(62)</sup>, which are the most recent statistics available <sup>(63)</sup>. It further indicated that the values would be properly adjusted for inflation using the domestic producer price index <sup>(64)</sup> published by the Turkish statistical institute. In the absence of any comments, the Commission adopted this approach.

#### 3.3.4.3. Electricity

- (120) With regard to electricity costs, in its Note of 6 March 2019, the Commission indicated that it intended to apply the average electricity unit price for industrial users, provided in a press release issued by the Turkish statistical institute. In the absence of any comments, the Commission adopted this approach.

#### 3.3.4.4. Manufacturing overhead costs, SG&A and profits

- (121) 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 ('SG&A') and for profits. In addition, a value for manufacturing overhead costs needed to be established to cover costs not included in the factors of production.
- (122) In the Note of 8 November 2018, the Commission had identified only two producers of tungsten electrodes outside of the PRC, which were the cooperating Union producers. In the absence of any comments on this matter, the Commission used the data on manufacturing overhead costs, SG&A and profits from those two producers. As only one of the two Union producers published their financial statements that were readily available in the Orbis database <sup>(65)</sup>, the data used were restricted to only one of the producers.
- (123) In order to establish an undistorted value of manufacturing overheads and SG&A, the Commission used the proportion of the cost of manufacturing that manufacturing overheads and SG&A represent in the cost structure of the cooperating Union producer.
- (124) More precisely, the Commission first expressed the actual manufacturing overheads cost and SG&A of the cooperating Union producer as a percentage of the total actual cost of manufacturing. Then the Commission applied the same percentage on the undistorted value of the cost of manufacturing to obtain the undistorted value of the manufacturing overheads and SG&A.
- (125) For profit the Commission used the financial data from the same Union producer. More precisely, the Commission used the profit figures as reported in the company's audited accounts for the period 1 March 2017 to 28 February 2018.
- (126) As a result, the following items were added to the undistorted cost of manufacturing:
- Manufacturing overheads and SG&A <sup>(66)</sup> of 32,06 % applied to the costs of manufacturing (covering the consumption of raw materials, labour, and energy);
  - A profit <sup>(67)</sup> of 5,58 % applied to the sum of costs of manufacturing.

#### 3.3.4.5. Calculation of normal value

- (127) In order to establish the constructed normal value, the Commission followed the following steps.
- (128) First, the Commission established the undistorted manufacturing costs. In the absence of cooperation from the Chinese producers, the Commission used the same materials, labour and energy consumption ratio as the Union producer with the largest production in the Union. The data used were related to production of the most commonly used WL15 dia. 2,4 × 175 mm electrode.

<sup>(62)</sup> The NACE codes can be found at [http://ec.europa.eu/competition/mergers/cases/index/nace\\_all.html](http://ec.europa.eu/competition/mergers/cases/index/nace_all.html).

<sup>(63)</sup> The labour costs are available at [http://www.turkstat.gov.tr/PreIstatistikTablo.do?istab\\_id=2088](http://www.turkstat.gov.tr/PreIstatistikTablo.do?istab_id=2088).

<sup>(64)</sup> The press release publishing the annual change for the domestic producer price index for the manufacturing sector is available at [http://www.turkstat.gov.tr/PreTabloArama.do?metod=search&araType=hb\\_x](http://www.turkstat.gov.tr/PreTabloArama.do?metod=search&araType=hb_x).

<sup>(65)</sup> Orbis (Bureau Van Dijk) is a global data provider of corporate information, [www.bvdinfo.com](http://www.bvdinfo.com).

<sup>(66)</sup> The Note of 6 March 2019, Annex 2.

<sup>(67)</sup> The Note of 6 March 2019, Annex 2.

- (129) The Commission then multiplied the usage factors by the undistorted costs per unit as established in the Table 1 and added the Manufacturing overheads, SG&A and profit as described in recital (126).
- (130) 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.
- (131) As no Chinese producers cooperated, the normal value was established on a countrywide basis and not for each producer separately.

#### 3.4. Export price

- (132) In the absence of cooperation of Chinese producers, the export price was determined based on CIF import price obtained in the Article 14(6) of the basic Regulation database.

#### 3.5. Comparison

- (133) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation.
- (134) A 17 % export VAT upwards adjustment was applied to the normal value as there is no export VAT discount on exports of the product under review and a downwards adjustment was made to the export price for international and domestic freight and insurance.

#### 3.6. Dumping margin

- (135) In the absence of cooperation from the Chinese producers, the Commission compared the normal value of the like product with the export price at ex-works level, in accordance with Articles 2(11) and (12) of the basic Regulation.
- (136) On this basis, the Commission found a dumping margin, expressed as a percentage of the CIF Union frontier price duty unpaid, at a level of 55 %.
- (137) The Commission therefore concluded that dumping continued during the review investigation period.

#### 3.7. Likelihood of a continuation of dumping should the measures be repealed

- (138) 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: the production capacity and spare capacity in the PRC, the attractiveness of the Union market and the raw material distortions.
- (139) As a consequence of non-cooperation of producers from the PRC, this examination was based on the information available to the Commission, that is, information supplied in the Request and information from other available sources, such as Article 14(6) of the basic Regulation database and information obtained from interested parties during the investigation.

##### 3.7.1. Production capacity and spare capacity in the PRC

- (140) In the situation of non-cooperation of producers from the PRC, the following conclusion rely on the information provided in the Request for review, information provided by the Union industry in the course of the investigation, and information provided by Shaanxi Yuheng Tungsten & Molybdenum Industrial Co., Ltd.,
- (141) The Request for review estimated the Chinese production capacity of tungsten electrodes within a range of 2 000 000 and 4 000 000 kg per year. The capacity established in the previous expiry review investigation was 1 600 000 with the capacity utilisation of 63 %, resulting in an unused capacity of about 600 000 kg, exceeding nearly five times the total Union consumption.
- (142) In the current investigation, the two producers responding in the sampling phase reported 17 % spare capacity. Applying this ratio to the most modest estimation of the production capacity in the PRC, its spare capacity represents much more than the total Union consumption of the like product.

- (143) Consequently, it can be concluded that substantial spare capacity exists in the PRC, which could be directed to the Union should the measures be allowed to lapse. There are also no indications that third country markets or the domestic market could absorb this significant spare capacity.

### 3.7.2. *Attractiveness of the Union market*

- (144) The Chinese producers showed a continuous interest in the Union market and were able to increase the market share to 40-50 %. The Union with its strong industrial base is also a large market, accounting consistently for more than 10 % of the total estimated Chinese production.
- (145) As shown in Table 4 and Table 9, the prices of the Union producers are set well above the import prices. The existence of significant imports from the PRC into the Union despite the anti-dumping duty in place confirms the high attractiveness of the Union market.

### 3.7.3. *Raw material distortions*

- (146) As noted in recitals (71) - (73) and as explained in section 12.4.1 of the Report, the economic situation of companies depends also on the conditions of supply of raw materials<sup>(68)</sup>. As such, if there are government measures in place which favour the domestic consumption of raw materials as opposed to an allocation of raw materials on the basis of international supply and demand, the level playing field of competition is tilted towards the domestic downstream industry.

### 3.7.4. *Conclusion on the likelihood of continuation of dumping*

- (147) Tungsten electrodes are only produced in the PRC and in the Union. The PRC applies export restrictions on the main raw material, which is largely found only in the PRC. Given the attractiveness of the Union market, the large installed spare capacities in the PRC and the continued significant dumping, the Commission concludes that there is a high likelihood of continuation of dumping should the measures be repealed.

## 4. LIKELIHOOD OF CONTINUATION OF INJURY

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

- (148) During the review investigation period, the like product was produced by two known producers in the Union. Both producers cooperated fully with the investigation. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

### 4.2. **Preliminary remarks**

- (149) The Commission assessed injury on the basis of trends concerning production, production capacity, capacity utilisation, sales, market share, employment, productivity and growth, as well as trends concerning prices, profitability, cash flow, ability to raise capital and investments, stocks, return on investment and wages.
- (150) Since there are only two companies which constitute the Union industry, the data referring to the Union industry will be presented in ranges, so as to protect confidentiality pursuant to Article 19 of the basic Regulation.
- (151) In order to protect the confidentiality of the Union industry, also imports from the PRC obtained from Article 14(6) of the basic Regulation database will be presented in ranges, as their disclosure would provide a level of detail which allows for identification of exact production and sales of the Union industry.

### 4.3. **Union production and consumption**

- (152) The total Union production during the review investigation period was in the range of 35-40 tonnes, which is less than in the previous expiry review.
- (153) The Commission established the Union consumption by adding together import statistics at TARIC level using information collected on the basis of Article 14(6) of the basic Regulation database and sales volumes of the Union industry in the Union.

<sup>(68)</sup> The link between export restrictions and prices is further described in the Report, section 12.4.1, p. 298-299.

(154) Union consumption of the product under review developed as follows:

Table 2

**Union consumption**

	2014	2015	2016	2017	RIP
Total Union consumption (kg)	130 000- 140 000	120 000- 130 000	120 000- 130 000	100 000- 110 000	105 000- 115 000
<i>Index (2014 = 100)</i>	100	95	96	83	86

Source: Questionnaire replies, Article 14(6) database

(155) The Union consumption decreased by 14 % in the period considered. A year-by-year analysis shows almost gradual decrease throughout the period until 2017, and then slightly increasing by 3 % between 2017 and the review investigation period.

**4.4. Imports from the PRC**

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

(156) The Commission established the volume of imports from the PRC into the Union on the basis of Article 14(6) of the basic Regulation database and the market shares of the imports by comparing these import volumes with the Union consumption as shown in Table 2.

(157) Market share and imports from the PRC developed as follows:

Table 3

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

	2014	2015	2016	2017	RIP
Volume of imports from the PRC (kg)	45 000- 50 000	50 000- 55 000	50 000- 55 000	40 000- 45 000	45 000- 50 000
<i>Index (2014 = 100)</i>	100	103	109	87	97
Market share of PRC imports (%)	30-40 %	40-50 %	40-50 %	40-50 %	40-50 %
<i>Index (2014 = 100)</i>	100	108	113	105	112

Source: Questionnaire replies, Article 14(6) database

(158) In line with the decrease of the Union consumption, the volume of imports of the product under review originating in the PRC decreased by 3 % over the period considered, keeping a level of 45 000-50 000 kg during the review investigation period (see Table 3). Despite this decrease, the market share of the Chinese exporters has risen by 12 % to almost half of the total Union market.

(159) It is relevant for the analysis of injury to note that imports from the PRC continued to enter the Union, with duties paid, throughout the period considered.

*4.4.2. Prices of imports from the PRC*

(160) The Commission used the prices of imports from the PRC reported in the Article 14(6) of the basic Regulation database.

(161) The average price of imports into the Union from the PRC developed as follows:

Table 4

**Import prices from PRC (EUR/ tonne)**

	2014	2015	2016	2017	RIP
Average PRC import price (EUR per kg)	45-50	50-55	45-50	45-50	45-50
<i>Index (2014 = 100)</i>	100	108	93	93	99

Source: Article 14(6) database

(162) Average prices of imports from the PRC increased by 8 % in 2015, decreased and stayed stable in 2016 and 2017 then increased in the review investigation period to almost the level of 2014.

(163) During the period considered the average import price from the PRC remained significantly lower than both the average sales price and the average cost of production of the Union industry as reported in Table 9.

4.4.3. *Price undercutting*

(164) The Commission determined the price undercutting during the review investigation period by comparing the weighted average sales prices of the two Union producers charged to unrelated customers in the Union market, adjusted to an ex-works level, with the import price data from the Article 14(6) of the basic Regulation database for the product under review from the PRC at a CIF level, adjusted to a landed price.

(165) The result of the comparison was expressed as a percentage of the two Union producers' average price during the review investigation period.

(166) The comparison showed for imports from the PRC an average undercutting of over 50 % in the Union market during the review investigation period, despite the existence of an anti-dumping duty intended to remedy the competitive differences between the two products.

**4.5. Imports from third countries other than the PRC**

(167) The volume of imports into the Union as well as the market share and the price trends for imports of the product under review from other third countries are shown in Table 5. The volume and price trends are based on the Article 14(6) of the basic Regulation database data.

Table 5

**Imports from third countries other than the PRC**

	2014	2015	2016	2017	RIP
Imports from third countries other than the PRC (kg)	60 000-65 000	55 000-60 000	50 000-55 000	45 000-50 000	45 000-50 000
<i>Index (2014 = 100)</i>	100	88	85	76	75
Market share of third countries imports	45-50 %	45-50 %	40-45 %	40-45 %	40-45 %
<i>Index (2014 = 100)</i>	100	92	88	91	87
Average third countries import price (EUR/kg)	50-55	65-70	65-70	55-60	55-60
<i>Index (2014 = 100)</i>	100	129	124	113	111

Source: Article 14(6) database

- (168) Import volumes from other third countries decreased by 25 % over the period considered.
- (169) The market share of the imports from other third countries over the same period decreased by 13 %.
- (170) Average prices of imports from third countries other than the PRC increased by 11 % during the period considered but remained well below the price levels of the Union industry as reported in Table 10.
- (171) As stated in recital (28), the product under review is only produced in the PRC and the Union. Therefore the imports from other third countries most likely originate in the PRC.

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

##### 4.6.1. General remarks

- (172) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (173) For the injury determination, the Commission used the data of the sole two Union producers to establish the injury indicators.
- (174) The injury indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping, as well as average unit prices, unit cost, labour costs, stocks, profitability, cash flow, investments, return on investments, and ability to raise capital.

##### 4.6.2. Injury indicators

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

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

Table 6

#### Production, production capacity and capacity utilisation

	2014	2015	2016	2017	RIP
Production volume (kg)	40 000- 45 000	40 000- 45 000	35 000- 40 000	35 000- 40 000	35 000- 40 000
<i>Index (2014 = 100)</i>	100	101	88	94	94
Production capacity (kg)	100 000- 110 000	100 000- 110 000	100 000- 110 000	100 000- 110 000	100 000- 110 000
<i>Index (2014 = 100)</i>	100	100	100	100	100
Capacity utilisation	35-40 %	35-40 %	35-40 %	35-40 %	35-40 %
<i>Index (2014 = 100)</i>	100	101	88	94	94

Source: Questionnaire replies

- (176) The production volume of the Union industry decreased by 6 % over the period considered in line with the decrease of the Union consumption. There was a significant drop by 12 % in 2016, but in the following year the production increased by 6 % and remained at the same level during the review investigation period.
- (177) The production capacity of the Union industry remained stable throughout the period considered.
- (178) Capacity utilisation fluctuated over the period considered. First, it rose by 1 % between 2014 and 2015, but decreased by 13 % in 2016, and then increased by 6 % in 2017 and remained at this level. Overall, the capacity utilisation rate remained low and decreased by 6 % over the period considered.

- (179) Production and capacity utilisation of the Union industry decreased by 6 %, following the trend of the decrease of the Union consumption of 14 %, but also imports from the PRC and third countries decreased by 3 % and 25 % respectively.

#### 4.6.2.2. Sales volume and market share

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

Table 7

#### Sales volume and market share

	2014	2015	2016	2017	RIP
Sales volume in the Union market (kg)	15 000-20 000	15 000-20 000	15 000-20 000	15 000-20 000	15 000-20 000
<i>Index (2014 = 100)</i>	100	101	100	98	96
Market share	10-15 %	10-15 %	10-15 %	15-20 %	15-20 %
<i>Index (2014 = 100)</i>	100	106	105	118	111

Source: Questionnaire replies

- (181) The sales volume of the Union industry in the Union market decreased by 4 % over the period considered. The decrease followed the decline in Union consumption.
- (182) The Union industry was able to gain market share between 2014 and 2017 by 18 %, but lost 7 % in the review investigation period. Overall, it increased its market share by 11 % during the period considered.

#### 4.6.2.3. Growth

- (183) During the period considered the production of the Union industry decreased by 6 % while Union consumption decreased by 14 % and the sales volume of the Union industry on the Union market decreased by 4 %. The drop in sales volume of the Union industry over the period considered should be seen in the context of the declining consumption over the same period. The market share of the Union increased by 11 %.

#### 4.6.2.4. Employment and productivity

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

Table 8

#### Employment and productivity

	2014	2015	2016	2017	RIP
Number of employees (FTE)	40-50	40-50	40-50	40-50	40-50
<i>Index (2014 = 100)</i>	100	98	100	106	106
Productivity (kg/FTE)	900-1 000	900-1 000	800-900	800-900	800-900
<i>Index (2014 = 100)</i>	100	103	88	88	89

Source: Questionnaire replies

- (185) Despite the reduced production, employment of the Union industry increased by 6 % during the period considered. This affected the productivity of the Union producers, which declined by 11 % over the period considered.

## 4.6.2.5. Prices and factors affecting prices

- (186) The average sales prices and cost of production of the Union producers to unrelated customers in the Union developed over the period considered as follows:

Table 9

**Sales prices in the Union**

	2014	2015	2016	2017	RIP
Average sales price per kg (EUR)	140-180	140-180	140-180	140-180	140-180
<i>Index (2014 = 100)</i>	100	102	101	99	97
Average cost of production per kg (EUR)	130-150	130-150	130-150	130-150	130-150
<i>Index (2014 = 100)</i>	100	101	91	98	100

Source: Questionnaire replies

- (187) The Union industry's average sales price to unrelated customers in the Union fluctuated, but in overall decreased by 3 % during the period considered whilst its cost of production stayed relatively stable over the same period, with a slight increase in 2015 by 1 % followed by a decrease by 10 % in 2016.

## 4.6.2.6. Labour costs

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

Table 10

**Average labour costs per employee**

	2014	2015	2016	2017	RIP
Average labour costs per employee (FTE)(EUR)	52 007	55 772	52 157	54 719	52 362
<i>Index (2014 = 100)</i>	100	107	100	105	101

Source: Questionnaire replies

- (189) The average labour costs per worker of the Union industry fluctuated during the period considered, but overall increased slightly by 1 %.

## 4.6.2.7. Stocks

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

Table 11

**Stocks**

	2014	2015	2016	2017	RIP
Closing stocks (kg)	3 500-4 000	3 500-4 000	2 500-3 000	2 300-2 800	2 500-3 000
<i>Index (2014 = 100)</i>	100	106	71	67	81

Source: Questionnaire replies



- (191) The level of closing stocks fluctuated during the period considered. Overall, it decreased by 19 % over this period.

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

- (192) The Commission established the profitability of the Union industry by expressing the pre-tax profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales.
- (193) 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

	2014	2015	2016	2017	RIP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	(- 10)-(- 5)	0-5	0-5	0-5	(- 5)-(0)
<i>Index (2014 = 100)</i>	- 100	11	50	34	- 11
Cash flow (EUR)	30 000-35 000	300 000-350 000	400 000-450 000	500 000-550 000	(- 150 000)-(- 75 000)
<i>Index (2014 = 100)</i>	100	1,065	1,329	1,681	- 411
Investments (EUR)	220 000-270 000	200 000-230 000	230 000-250 000	250 000-275 000	410 000-440 000
<i>Index (2014 = 100)</i>	100	80	92	103	163
Return on investments	(- 15)-(- 10)	(- 5)-(0)	5-10	5-10	0-5
<i>Index (2014 = 100)</i>	- 100	- 23	74	64	4

Source: Questionnaire replies

- (194) The profitability of the Union industry fluctuated over the period considered. Although it improved 2015, 2016 and 2017, it collapsed back to a lossmaking level during the review investigation period.
- (195) The net cash flow, the Union industry's ability to self-finance its activities, decreased by 411 % over the period considered. It was at a stable level in 2015, 2016 and 2017 but then declined sharply in the review investigation period.
- (196) During the period considered the annual investments in the like product made by the Union industry fluctuated, but overall increased by 63 %.
- (197) The Union industry's return on investment, the profit as a percentage of the net book value of assets, increased by 104 % over the period considered but remained very low in the review investigation period.

#### 4.6.3. Conclusion on the situation of the Union industry

- (198) The investigation showed that most of the injury indicators developed negatively and the economic and financial situation of the Union industry deteriorated during the period considered.
- (199) With measures in place, and in a declining market, the Union industry was able to increase its market share by 11 %, despite its prices decreasing.

- (200) The Union industry's production and sales volume followed the same negative trend as the Union consumption. Profitability improved, but was still negative in the review investigation period. Cash flow has deteriorated and is negative during the review investigation period. Investments have decreased over the period considered. Return on investment has somehow recuperated, but hovers only slightly over zero in the review investigation period.
- (201) Profitability, cash flow and return on investment developed positively in the beginning of the period considered. However, the Union industry became again loss-making in the review investigation period.
- (202) At the same time, imports from third countries have decreased both in absolute volumes and market share during the period considered. Despite the decrease in Union consumption the market share of Chinese imports has risen by 4 %, while their price has decreased. Although the average prices of imports from third countries were slightly higher than the very low Chinese prices, the Commission could not conclude whether these imports originated in fact in the PRC, as explained in (171). The average unit price from third countries is only slightly higher than the prices at which the imports from the PRC entered the Union market during the review investigation period. Consequently, regardless of whether the imports from third countries are in fact from the PRC or not, the worsening economic and financial situation of the Union industry coincides with the continued presence at representative volumes of dumped imports from the PRC on the Union market, which continue to significantly undercut the Union industry's prices and therefore have continued to put an unfair competitive pressure on the Union industry.
- (203) The Commission concluded that, upon an overall assessment of the injury factors, the Union industry was still suffering material injury, since it has not improved its economic and financial situation and has not recovered from the material injury that the Commission found in the original investigation.

#### **4.7. Likelihood of continuation of injury**

- (204) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether material injury from dumped imports from the PRC would continue should measures be allowed to lapse.
- (205) To establish the likelihood of continuation of injury if the measures against the PRC were repealed the Commission analysed (i) the spare capacity available in the PRC, (ii) the attractiveness of the Union market and (iii) the impact of Chinese imports on the situation of the Union industry should measures be allowed to lapse.

##### **(a) Spare capacity in the PRC**

- (206) As explained in recitals (140) to (143), there is substantial spare capacity of the product under review in the PRC, which largely exceed the total Union consumption during the review investigation period.
- (207) In addition, the Commission has found no elements that could indicate any significant increase of domestic demand of the product under review in the PRC or in any other third country market in the near future. The Commission therefore concluded that domestic demand in the PRC or in other third country markets could not absorb the available spare capacity in the PRC.

##### **(b) Attractiveness of the Union market**

- (208) As explained in recitals (144) to (145), the Union market is an attractive market for exporting producers from the PRC. The market share of imports from the PRC was 76,2 % during the original investigation period (2001 – 2005), showing the possible level of imports from the PRC should the measures lapse.
- (209) Imports from the PRC excluding the anti-dumping duty would have undercut the Union industry's sales prices by over 60 % in the review investigation period. This is an indication of the likely price level of imports from the PRC should measures be repealed. On this basis, it is likely that the price pressure on the Union market would increase should the measures be repealed, thus leading the Union industry to suffer further injury.
- (210) On this basis, in the absence of measures, exporting producers from the PRC will likely increase their presence in the Union market, in terms of both volume and market share, and at dumped prices that would significantly undercut the Union industry's sales prices.

(c) **Impact on the Union industry**

- (211) The continuous presence of dumped imports from the PRC in the Union market and their low pricing policy have prevented the Union industry to benefit fully from the existing anti-dumping measures and recover from past injurious dumping practices. Due to the presence of these dumped imports the Union industry has not been able to reflect its costs into its sales prices, which caused a considerable deterioration of its profitability to loss-making levels in the review investigation period.
- (212) If the measures are repealed, the Union industry would not be able to maintain its sales volume and market share against low priced imports from the PRC. It is highly likely that the market share of the PRC would increase rapidly if the measures are allowed to lapse. Further losing sales volume would lead to an even lower utilisation rate and an increase in the average cost of production. Together with increased price pressure, as the undercutting would exceed 60 % without measures, this would lead to a further deterioration of the already precarious financial situation of the Union industry and ultimately the closures of production sites, and eventually the disappearance of the industry anywhere outside of the PRC.
- (213) Therefore, the Commission concluded that there is a strong likelihood that the expiry of the existing measures would lead to a continuation of injury from dumped imports from the PRC and that the already precarious situation of the Union industry would be likely to further deteriorate.

**4.8. Conclusion**

- (214) The repeal of the measures would in all likelihood result in a significant increase of dumped imports from the PRC at prices far undercutting the Union industry prices. The Commission therefore concluded that there is a strong likelihood of continuation of injury should measures be repealed.

**5. UNION INTEREST**

- (215) 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 a whole.
- (216) The Commission based the determination of the Union interest on an appreciation of all the various interests involved, including those of the Union industry, importers and users. All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.
- (217) On this basis, the Commission examined whether, despite the conclusions on the likelihood of a continuation of dumping and injury, compelling reasons existed which would lead to the conclusion that it was not in the Union interest to maintain the existing measures.

**5.1. Interest of the Union industry**

- (218) The investigation has shown that should the measures be repealed, the fragile situation of the Union industry is very likely to significantly deteriorate further. This could lead to its disappearance and the monopolisation of the market by the Chinese.
- (219) Therefore, the Commission concluded that the continuation of the measures against the PRC would benefit the Union industry.

**5.2. Interest of unrelated importers and users**

- (220) As indicated in recitals (14) and (17), only one importer and one user wanted to be registered as interested parties and neither of them submitted any comments in this investigation. The low level of cooperation by the importers and users, in line with findings of the previous expiry review, can be explained by the low impact of the product under review on their production costs. It appears that the product is seen as commodity and its price and ability to supply all needed types from one supplier are primary criteria for customers. Given the apparent marginal impact of the product under review on the costs of downstream products, it was concluded that measures would not adversely impact importers and users.

### 5.3. Conclusion on Union interest

- (221) In view of the above, the Commission concluded that there are no compelling reasons to conclude that it is not in the Union interest to extend the existing anti-dumping measures on imports of the product under review originating in the PRC.

## 6. ANTI-DUMPING MEASURES

- (222) On the basis of the conclusions reached by the Commission on likelihood of continuation of dumping and injury and Union interest, the anti-dumping measures applicable to imports of tungsten electrodes originating in the PRC should be maintained.
- (223) The individual company anti-dumping duty rates specified in this Regulation are solely applicable to imports of the product under review produced by these companies and thus by the specific legal entities mentioned. Imports of the product under review manufactured by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from those rates and shall be subject to the duty rate applicable to 'all other companies'.
- (224) Any claim requesting the application of these individual anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission <sup>(69)</sup> immediately with all relevant information. In particular any modification in the company's activities linked to production, domestic and export sales associated with, for instance, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefitting from individual duty rates.
- (225) In view of Article 109 of Regulation 2018/1046 <sup>(70)</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.
- (226) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

### Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of tungsten welding electrodes, including tungsten bars and rods for welding electrodes, containing 94 % or more by weight of tungsten, other than those obtained simply by sintering, whether or not cut to length, currently falling under CN codes ex 8101 99 10 and ex 8515 90 80 (TARIC codes 8101 99 10 10 and 8515 90 80 10) and originating in the People's Republic of China.
2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union frontier price, before duty, of the product described in paragraph 1 and manufactured by the companies listed below, shall be as follows:

Company	Duty	TARIC additional code
Shandong Weldstone Tungsten Industry Co., Ltd	17,0 %	A754
Shaanxi Yuheng Tungsten & Molybdenum Industrial Co., Ltd	41,0 %	A755
Beijing Advanced Metal Materials Co., Ltd	38,8 %	A756
All other companies	63,5 %	A999

<sup>(69)</sup> European Commission, Directorate-General for Trade, Directorate H, B-1049 Brussels, Belgium.

<sup>(70)</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.

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

4. 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, 26 July 2019.

For the Commission  
The President  
Jean-Claude JUNCKER

---