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

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II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) 2020/507

of 7 April 2020

amending Regulation (EC) No 1907/2006 of the European Parliament and of the Council as regards the percentage of registration dossiers to be selected for compliance checking*(Text with EEA relevance)*

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC ⁽¹⁾, and in particular Article 41(7) thereof,

Whereas:

- (1) In order to ensure that registration dossiers comply with Regulation (EC) No 1907/2006, Article 41 of that Regulation requires the European Chemicals Agency ('the Agency') to select a specific percentage of registration dossiers for compliance checking. This check may lead to a draft decision requiring the registrant(s) to submit any information needed to bring the registration(s) into compliance with the relevant information requirements.
- (2) The assessment by the Agency ⁽²⁾ and the Commission ⁽³⁾ concerning the operation of Regulation (EC) No 1907/2006 as well as a study conducted by the German competent authorities ⁽⁴⁾ indicate that likely a significant number of the registration dossiers are non-compliant, hampering the effective achievement of the objectives of Regulation (EC) No 1907/2006.
- (3) In the 'General Report on the operation of REACH and review of certain elements', the Commission identified non-compliance of registration dossiers as an issue requiring urgent action.
- (4) Following the expiry of the last registration deadline, better advance planning with regard to compliance checks is possible based on improved knowledge of the actual numbers of registered substances and the dossier evaluation experience acquired by the Agency.

⁽¹⁾ OJ L 396, 30.12.2006, p. 1.

⁽²⁾ European Chemicals Agency's annual evaluation reports and reports on the operation of the Regulation (EC) No 1907/2006: <https://echa.europa.eu/about-us/the-way-we-work/plans-and-reports>

⁽³⁾ Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee 'Commission General Report on the operation of REACH and review of certain elements', COM(2018) 116 final.

⁽⁴⁾ <https://www.bfr.bund.de/cm/349/data-quality-of-environmental-endpoints-in-registrations.pdf>

- (5) Following consultation with the Agency as reflected in the REACH evaluation Joint Action Plan ⁽⁵⁾ agreed by the Commission services and ECHA, which the Council has requested in its Conclusions of 26 June 2019 ⁽⁶⁾, the Commission considers that in order to enhance compliance with the relevant information requirements, the minimum percentage of registration dossiers to be checked for compliance on all elements listed in Article 41(1) of Regulation (EC) No 1907/2006 should be increased from 5 % to 20 % of the total received by the Agency for each tonnage band by the 2018 deadline. Such percentage is considered realistic for the Agency in view of its resources.
- (6) In the Joint Action Plan agreed by the Commission services and ECHA, it has been agreed that the target of 20 % should be achieved by 31 December 2023 for registrations in tonnage bands of 100 tonnes or more per year and by 31 December 2027 for registrations in tonnage bands of less than 100 tonnes per year, submitted by the 2018 deadline.
- (7) Regulation (EC) No 1907/2006 should therefore be amended accordingly.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Committee established under Article 133 of Regulation (EC) No 1907/2006,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 41(5) of Regulation (EC) No 1907/2006, the first and the second sentences are replaced by the following:

‘To check compliance of registration dossiers with this Regulation, the Agency shall select, until 31 December 2023, a percentage of those dossiers no lower than 20 % of the total received by the Agency for registrations in tonnage bands of 100 tonnes or more per year.

The Agency shall, until 31 December 2027, also select a percentage no lower than 20 % of the total received by the Agency for registrations in tonnage bands of less than 100 tonnes per year.

When selecting dossiers for compliance checking, the Agency shall give priority, but not exclusively, to dossiers meeting at least one of the following criteria:’.

Article 2

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

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

Done at Brussels, 7 April 2020.

For the Commission

The President

Ursula VON DER LEYEN

⁽⁵⁾ REACH Evaluation Joint Action Plan – Ensuring compliance of REACH registrations –

https://echa.europa.eu/documents/10162/21877836/final_echa_com_reach_evaluation_action_plan_en

⁽⁶⁾ Towards a Sustainable Chemicals Policy Strategy of the Union – Council conclusions of 26 June 2019, <http://data.consilium.europa.eu/doc/document/ST-10713-2019-INIT/en/pdf> – point 18.

COMMISSION IMPLEMENTING REGULATION (EU) 2020/508**of 7 April 2020****imposing a provisional anti-dumping duty on imports of certain hot rolled stainless steel sheets and coils originating in Indonesia, the People's Republic of China and Taiwan**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation'), and in particular Article 7 thereof,

After consulting the Member States,

Whereas:

1. PROCEDURE**1.1. Initiation**

- (1) On 12 August 2019, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports into the Union of certain hot rolled stainless steel sheets and coils ('SSHR' or 'the product under investigation') originating in Indonesia, the People's Republic of China ('PRC') and Taiwan ('the countries concerned'), on the basis of Article 5 of Regulation (EU) 2016/1036. It published a Notice of Initiation in the *Official Journal of the European Union* ⁽²⁾ ('Notice of Initiation').
- (2) The Commission initiated the investigation following a complaint lodged on 28 June 2019 by the European Steel Association ('Eurofer' or 'the complainant') on behalf of four Union producers representing the entirety of Union production of the product under investigation. The complaint contained evidence of dumping from the countries concerned and resulting material injury that was sufficient to justify the initiation of the investigation.
- (3) The Commission made imports of the product concerned subject to registration under Article 14(5) of the basic Regulation by Commission Implementing Regulation (EU) 2020/104 ⁽³⁾.

1.2. Interested parties

- (4) 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 complainant, known exporting producers in the countries concerned and the authorities of the countries concerned, known importers and users in the Union about the initiation of the investigation, and invited them to participate.
- (5) Interested parties had the 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. The Commission received comments that are addressed in Sections 2.3 and 5.2.3.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Notice of Initiation of an anti-dumping proceeding concerning imports of certain hot rolled stainless steel sheets and coils originating in the People's Republic of China, Taiwan and Indonesia (OJ C 269 I, 12.8.2019, p. 1).

⁽³⁾ Commission Implementing Regulation (EU) 2020/104 of 23 January 2020 making imports of certain hot rolled stainless steel sheets and coils originating in the People's Republic of China, Taiwan and Indonesia subject to registration (OJ L 19, 24.1.2020, p. 5).

1.3. Sampling

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

1.3.1. Sampling of Union producers

- (7) In the Notice of Initiation, the Commission stated that it had decided to limit to a reasonable number the Union producers that would be investigated by applying sampling, and that it had provisionally selected a sample of Union producers. The Commission selected the provisional sample on the basis of production and Union sales volumes reported by the Union producers in the context of the pre-initiation standing assessment analysis, taking also into account their geographical location. The provisional sample thus established consisted of three Union producers accounting for over 78 % of production and 88 % of sales in the Union of the like product, and located in three different Member States. Details of this provisional sample were made available in the file for inspection by interested parties, with the possibility for them to make comments. No comments were made.
- (8) As a result of the above, the provisional sample of Union producers was confirmed. It consisted of Aperam Belgium ('Aperam'), Acciai Speciali Terni S.p.A. ('AST') and OTK Stainless Oy ('OTK'). The definitive sample is representative of the Union industry.

1.3.2. Sampling of importers

- (9) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known unrelated importers to provide the information specified in the Notice of Initiation.
- (10) Two unrelated importers made themselves known as interested parties and provided the requested information. In view of the low number of replies received, sampling was not necessary. Both importers were invited to complete a questionnaire.

1.3.3. Sampling of exporting producers in the countries concerned

- (11) Taking into account the number of known producers of the product concerned in the countries concerned, the Notice of Initiation provided only for sampling in the PRC and therefore, the Commission asked all Chinese exporting producers to provide the information specified in the Notice of Initiation to decide whether sampling was necessary and, if so, to select a sample.
- (12) In addition, the Commission asked the Embassy of the Republic of Indonesia in Brussels, the Mission of the People's Republic of China to the European Union and the Taipei Representative Office in the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

1.3.3.1. Indonesia

- (13) There were only two exporting producers in Indonesia known to the Commission at the initiation of the investigation. Therefore, the Commission did not intend to select a sample. No further exporting producers came forward. Consequently, the Commission carried out the investigation on the two exporting producers in Indonesia.

1.3.3.2. The People's Republic of China

- (14) Five exporting producers in the PRC provided the information requested in the Notice of Initiation and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three companies, which could reasonably be investigated within the time available. The basis for the selection of the sample were the largest volumes of exports to the Union.
- (15) In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned, and the authorities of the PRC, were consulted on the selection of the sample. No comments were made.

- (16) Following the verification visits, given the shortcomings of the information provided by one sampled Chinese exporting producer, the Commission decided to disregard the information given by this producer on the basis of Article 18(1) of the basic Regulation ⁽⁴⁾.
- (17) As a result of the above, the sample of the Chinese exporting producers was reduced to two companies, covering around 92 % of Chinese exports of the product concerned to the Union in the investigation period, which was still considered a high level of cooperation.

1.3.3.3. Taiwan

- (18) In the Notice of Initiation, sampling was not foreseen for Taiwan as there was only one exporting producer known to the Commission. However, shortly before the initiation, the Commission was informed by the Taipei Representative Office in the European Union that there might be a total of 12 additional exporting producers of the product concerned in Taiwan. Therefore, upon initiation, the Commission asked the 13 parties to reply to sampling questions and, subsequently, to reply to a couple of other questions destined to clarify their role and exact activities. On that basis, the Commission could eventually identify two exporting producers of the product concerned in Taiwan. Therefore, sampling was not necessary.
- (19) The two exporting producers represented around 56 % of the total volume of exports from Taiwan to the Union. The replies of 7 of the Taiwanese parties contacted by the Commission upon initiation revealed that these companies were in fact independent service centres and/or traders and that most if not all of the remaining Taiwanese exports to the Union were eventually made by these parties. These service centres did not have any hot-rolling or cold-rolling facilities and therefore did not qualify as a producer of the product concerned. In addition, their added value was minor in relation to the cost of their inputs. However, in view of the replies received from them on the questions referred to in recital (18) above, the Commission followed up by providing these parties with a concise questionnaire in order to obtain a sound understanding of the functioning of the Taiwanese domestic and export sales of the product under investigation.

1.4. Individual examination

- (20) Originally, four Chinese exporting producers that returned the sampling form requested individual examination under Article 17(3) of the basic Regulation. The Commission made the questionnaire available online on the day of the initiation ⁽⁵⁾. Moreover, when announcing the sample, the Commission informed the exporting producers that were not sampled that they were required to provide a questionnaire reply if they wished to be examined individually. However, none of the companies provided a questionnaire reply. Therefore, no individual examination was granted.

1.5. Questionnaire replies and verification visits

- (21) The Commission sent a questionnaire concerning the existence of significant distortions in the PRC within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of the People's Republic of China ('GOC').
- (22) Furthermore, the complainant provided in the complaint sufficient *prima facie* evidence of raw material distortions in Indonesia and the PRC regarding the product concerned. Therefore, as announced in the Notice of Initiation, the investigation covered those raw material distortions to determine whether to apply the provisions of Article 7(2a) and 7(2b) of the basic Regulation with regard to Indonesia and the PRC. For this reason, the Commission sent additional questionnaires in this regard to the Government of Indonesia ('GOI') and the GOC.
- (23) The Commission sent questionnaires to the three sampled Union producers, the complainant, the two unrelated importers and two users that had made themselves known, the nine exporting producers in the countries concerned and all other economic operators that made themselves known and requested a questionnaire. The same questionnaires had also been made available online ⁽⁶⁾ on the day of initiation.

⁽⁴⁾ See section 3.2 of the Regulation.

⁽⁵⁾ Available at https://trade.ec.europa.eu/tdi/case_details.cfm?id=2411

⁽⁶⁾ Available at https://trade.ec.europa.eu/tdi/case_details.cfm?id=2411

- (24) Questionnaire replies were received from the three sampled Union producers, two unrelated importers, two users, the two known exporting producers from Indonesia, the three sampled exporting producers from the PRC, the two exporting producers in Taiwan and an unrelated service centre in Taiwan. A questionnaire reply was also received from the GOI. No reply was received from the GOC for any of the two questionnaires sent.
- (25) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following parties:

(a) *Union producers and their association*

- Acciai Speciali Terni S.p.A., Terni, Italy ('AST')
- Aperam Stainless Belgium, Châtelet and Genk, Belgium ('Aperam')
- Outokumpu Stainless Oy, Tornio, Finland ('OTK')
- Eurofer, Brussels, Belgium.

(b) *Users in the Union*

- Marcegaglia Specialties S.p.A., Mantova, Italy ('Marcegaglia').

(c) *Exporting producers*

Exporting producers in Indonesia:

- PT Indonesia Tsingshan Stainless Steel, Jakarta ('ITSS')
- PT Indonesia Guang Ching Nickel and Stainless Steel Industry, Jakarta ('GCNS').

Exporting producers in the PRC:

- Shanxi Taigang Stainless Steel Co., Ltd., Taiyuan ('STSS'), its related exporter in the third country – Tisco Stainless Steel (H.K.) Ltd., HongKong ('Tisco HK'), and five related companies located in the PRC: Beijing Taigang Sales Co., Shanxi Taigang Bonded & Comprehensive, Taiyuan Iron & Steel (Group) Fly Ash Comprehensive Utilization Co. Ltd., Taiyuan Taigang Daming Metal Products Ltd., and Tianjin Tisco and TPCO Stainless Steel
- Fujian Fuxin Special Steel Co., Ltd., Ximen ('FSS')
- Zhenxhi Group Eastern Special Steel Co., Ltd., Jiaxing ('Zhenshi').

Exporting producers in Taiwan:

- Yieh United Steel Co. ('Yusco'); its related producer Tang Eng Iron Works Co. Ltd. ('Tang Eng'); its related service centre Yieh Mau Co. ('YMC'); and its related trader Yieh Co. Ltd. ('YCL'), Kaohsiung (together referred to as 'Yusco Group')
- Walsin Lihwa Co., Tainan ('Walsin').

Independent service centre in Taiwan:

- YC INOX Ltd., Changhua County ('YC INOX').

- (26) With regard to the procedure of Articles 7(2a) and 7(2b) of the basic Regulation, a consultation with the GOI took place.

1.6. Investigation period and period considered

- (27) The investigation of dumping and injury covered the period from 1 July 2018 to 30 June 2019 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2016 to the end of the investigation period ('the period considered').

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

- (28) In view of the sufficient evidence available at the initiation of the investigation pointing to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation with regard to the PRC, the Commission considered it appropriate to initiate the investigation with regard to the exporting producers from this country having regard to Article 2(6a) of the basic Regulation.
- (29) 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 exporting producers in the PRC to provide the information requested in Annex III to the Notice of the Initiation regarding the inputs used for producing SSHR. Five Chinese exporting producers submitted the relevant information.
- (30) In order to obtain information it deemed 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, the Commission sent a questionnaire to the GOC as described in recital (21). No reply was received from the GOC. Subsequently, the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in the PRC.
- (31) 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*. Two exporting producers made comments on the existence of significant distortions.
- (32) 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.
- (33) On 9 September 2019, the Commission published a first note for the file ('the Note of 9 September') seeking the views of the interested parties on the relevant sources that the Commission may use for the determination of the normal value, in accordance with Article 2(6a)(e) second paragraph of the basic Regulation. In that note, the Commission provided a list of all factors of production such as materials, energy and labour used in the production of the product concerned by the exporting producers. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified possible representative countries (namely Brazil, Malaysia, South Africa and Turkey).
- (34) The Commission gave all interested parties the opportunity to comment. The Commission received comments from two Chinese exporting producers and the complainant. The GOC did not provide any comments.
- (35) The Commission addressed the comments received in the second note on the sources for the determination of the normal value of 10 October 2019 ('the Note of 10 October'). The Commission also established a provisional list of factors of production and concluded that, at that stage, Brazil was the most appropriate representative country under Article 2(6a)(a), first indent of the basic Regulation. The Commission invited interested parties to comment and no comments were received.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (36) The product concerned by this investigation is flat-rolled products of stainless steel, whether or not in coils (including products cut-to-length and narrow strip), not further worked than hot-rolled and excluding products, not in coils, of a width of 600 mm or more and of a thickness exceeding 10 mm, currently falling under HS codes 7219 11, 7219 12, 7219 13, 7219 14, 7219 22, 7219 23, 7219 24, 7220 11 and 7220 12 and originating in the People's Republic of China, Taiwan and Indonesia. The HS codes are given for information only.

2.2. Like product

- (37) The investigation showed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:
- the product concerned;
 - the product produced and sold on the domestic markets of the countries concerned;
 - the product produced and sold on the domestic market of Brazil, which served as representative country in the meaning of Article 2(6a) of the basic Regulation; and
 - the product produced and sold in the Union by the Union industry.
- (38) The Commission decided at this stage that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

2.3. Claims regarding product scope

- (39) Marcegaglia and the two exporting producers in Indonesia claimed that black coils should be excluded from the scope of the investigation. They claimed the present investigation covers two different types of stainless steel coils, namely white and black coils, and that although both black and white coils are classified under the same HS codes (as defined in the Notice of Initiation), their properties and intended uses differ. With regard to physical and chemical properties, Marcegaglia, inter alia, argued that black coils are, in terms of corrosion resistance, not even stainless steel products. According to Marcegaglia they are semi-finished products, neither annealed nor pickled.
- (40) Moreover, according to Marcegaglia, black SSHR are made by hot rolling of slabs and they are mainly, if not exclusively, supplied to re-rollers. Marcegaglia argued that black SSHR can in fact only be used for further processing (re-rolling) into pickled coils or stainless steel cold-rolled coils and that there are only two re-rollers in the Union, namely Marcegaglia and another much smaller party. It claimed that black SSHR, as product category, is more similar to stainless steel slabs than to white SSHR due to its intrinsic nature of semi-finished product.
- (41) Further according to Marcegaglia, white SSHR are a stainless steel finished product made by annealing and pickling of black SSHR. The latter are therefore the indispensable raw material to manufacture white SSHR to the same extent as slabs are the indispensable raw material to manufacture black SSHR. As such, white SSHR can be used without further processing by end-users for direct industrial application (e.g. automotive, machinery and petrochemical industries). It is supplied to plate cutting companies, tube manufacturers and cold rolling companies for further processing.
- (42) Finally, the parties concerned claimed that the Union industry is not interested in supplying the market with black coils as they rather use themselves the black coils they produce for further conversion into white coils and further downstream products. Therefore, according to them, the security of supply of black coils is at stake if they would be included in the scope of measures, if any.
- (43) Eurofer opposed the claims referred to in recitals (39) to (42). It, inter alia, insisted that black and white coils are both flat stainless steel products with the same physical characteristics and chemical composition for the same grades, manufactured from the same raw materials (essentially chromium, stainless steel scrap and nickel) and that the added value for processing black coils into white coils is limited and represents less than 8 % of the production cost of a white coil. Eurofer also referred to an overall unused capacity of more than 2 million tonnes among Union producers and indicated that the Union industry can and is willing to satisfy the entire demand of SSHR on the Union market, regardless of the product type needed. Moreover, it submitted that several Union producers notified on their websites that they are capable and willing to deliver black coils. Consequently, it argued that the security of supply of black coils is not at risk but pointed at the risk of circumvention if black coils would be excluded.
- (44) The Commission analysed the claims. On the product characteristics, the investigation found that black coils and white coils have the same chemical composition. In particular, black coils are manufactured from the same basic material and thus have the same characteristics as white coils depending on the steel grade. It follows that black coils fall under the same Combined Nomenclature headings as the white coils covered by the proceeding, starting with 7219 or 7220. These headings both fall under the Section 'stainless steel' in Chapter 72 (Iron and Steel) of the

Combined Nomenclature. Black and white coils also have the same physical properties as they have similar dimensions. Black and white coils are interchangeable for re-rollers with annealing and pickling facilities, which indeed means that there is a risk of circumvention if black coils would be excluded from the scope of the product concerned.

- (45) On the alleged lack of interest of the Union industry to sell black coils, this claim was not substantiated by any evidence. On the contrary, the investigation showed that the Union industry has a significant spare capacity, which is equally available for black and white coils, and that, in spite of the difficult market circumstances, it sold in the investigation period very significant volumes of black coils on the Union market, including (but not exclusively) to Marcegaglia. That shows it has a genuine interest in serving the market.
- (46) On that basis, it is provisionally concluded that black and white coils share the same basic physical and chemical characteristics and that they form one product group. The claims referred to in recitals (39) to (42) are therefore rejected.
- (47) Several parties claimed that SSHR of a width of 1 600 mm and more, including SSHR of a width of 2 000 mm, should be excluded from the scope of the investigation because introducing anti-dumping measures on this special material would further reduce the purchase possibility of a material which is already very hard to procure. It would also limit their competitiveness against non-Union producers of large diameter welded tubes.
- (48) This claim is rejected. SSHR of a width of 1 600 mm or more have the same basic chemical characteristics as smaller SSHR. They also share the same basic physical characteristics except for the width. SSHR of larger width could easily be transformed into smaller SSHR by simple cutting operations. There is therefore a risk of circumvention if larger coils would be excluded from the scope of the product concerned.
- (49) The Consortium for imports of SST HRF (7) claimed that coils with a thickness above 10 mm should be excluded, as there are only two plants in the Union able to produce SSHR with a thickness above 13 mm. The Commission sees no valid reasons to exclude these coils, which beyond any doubt share the same basic physical and chemical characteristics and uses as all other product types under the product scope. Moreover and as indicated by the Consortium itself, the Union industry has the capacity to supply them. The claim is therefore rejected.

3. DUMPING

3.1. Indonesia

3.1.1. Exporting producers

- (50) During the investigation period, there were two exporting producers in Indonesia, the companies ITSS and GCNS. The companies were related to each other via their ultimate parent, the Chinese steel producer Tsingshan Steel Group.
- (51) Together with the Indonesian company PT Bintang Delapan, Tsingshan Steel Group established the Indonesia Morowali Industrial Park ('IMIP') in Sulawesi, Indonesia (8). The following companies related via Tsingshan Steel Group and located in IMIP were involved in the investigation:
- GCNS is an integrated exporting producer of the product under investigation processing nickel ore into black SSHR;
 - ITSS is an integrated exporting producer processing nickel ore into stainless steel slab;
 - PT Sulawesi Mining Investment ('SMI') is a smelter processing the nickel ore into ferronickel and further to stainless steel slabs;

(7) This consortium is a group of 20 distributors and users, representing altogether approximately 500 000 tonnes of Union consumption and collectively employing ca. 30 000 people in the Union.

(8) Unless otherwise provided, the information on IMIP was sourced from: IMIP. 2017 Annual Report, available at: <https://static1.squarespace.com/static/584e20fe197aea0e29105534/t/5c986900eb393132e86a5f1a/1553492333714/IMIP+2017+Annual+Report.pdf> (last viewed 3 March 2020).

- PT Indonesia Ruipu Nickel and Chrome Alloy ('IRNC') is a producer of ferrochrome and downstream products of the product under investigation being able to further process white SSHR by cold-rolling;
- PT Tsingshan Steel Indonesia ('TSI') is a producer of nickel pig iron (produced from nickel ore with a low nickel content).

3.1.2. Application of Article 18 of the basic Regulation

- (52) Both exporting producers failed to provide a meaningful worldwide structure of the group in their questionnaire replies and during the verification visits. Furthermore, the related traders involved in export sales did not provide any questionnaire reply.
- (53) Therefore, the Commission was not able to verify the relationship between the exporting producers and their suppliers of nickel ore, which is considered a crucial raw material giving the product under investigation its stainless characteristics. In particular, the Commission was not able to establish whether the allegedly unrelated suppliers were indeed independent from the exporting producers.
- (54) Consequently, the Commission was not able to assess whether the nickel ore supplied by positively identified related parties was purchased at an arm's length price.
- (55) Moreover, the Commission was not able to verify the relationship with the allegedly unrelated customer of a related domestic trader. Thus, the Commission disregarded the sales between the related trader and the allegedly unrelated customer when determining the normal value.
- (56) Finally, due to the non-cooperation of the related traders involved in export sales, the Commission was not able to determine the export price to the first unrelated customer and the actual costs incurred by those related traders. Thus, the Commission was not able to calculate the export price based on the data provided by the exporting producers although all information provided by GCNS and ITSS could be verified against the companies' records.
- (57) By a letter of 20 December 2019, the Commission informed GCNS and ITSS of its intention to apply Article 18 of the basic Regulation with regard to certain aspects of the dumping margin calculation. In this respect, the exporting producers submitted comments on 7 January 2020.
- (58) In their comments on the application of Article 18 of the basic Regulation, the exporting producers submitted that the basic Regulation does not allow the Commission to conclude that the information provided by the exporting producers concerning the purchases of nickel ore are not reliable solely on the grounds that the relationship between the exporting producers and their suppliers could not be established. GCNS and ITSS referred to World Trade Organisation ('WTO') jurisprudence⁽⁹⁾ and the WTO Customs Valuation Agreement⁽¹⁰⁾, from which followed that transactions between related parties cannot be considered *a priori* unacceptable or not at arm's length. Finally, the exporting producers recalled that the Commission verified the purchases of nickel ore during the verification visit.
- (59) In this respect, the Commission confirmed that indeed the information provided by the companies in the group (GCNS, ITSS, SMI, and TSI) on the identity of the supplier, the volumes and values of the raw material purchases were verified. Nevertheless, and notwithstanding the WTO rules and jurisprudence on transactions between related parties, by not supplying the worldwide structure of the group, the exporting producers prevented the Commission from even examining whether the purchase transactions were carried out at arm's length price.
- (60) Therefore, the Commission confirmed its intention to disregard the reported purchase price of nickel ore and replace it with facts available under Article 18 of the basic Regulation.

⁽⁹⁾ WTO Panel Report, United States – Anti-dumping measures on Certain Oil Country Tubular Goods from Korea (WT/DS488/15), para. 7.198.

⁽¹⁰⁾ Article 1.2(a) of Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994.

- (61) As for the calculation of the export price, the exporting producers reiterated their best efforts to secure the cooperation of the related traders involved in export sales. The exporting producers also suggested that the Commission use information available on the file as facts available.
- (62) In this respect, the Commission provisionally decided to use the data available on the file provided by interested parties in the Union, which cooperated with the investigation from its initiation and sent questionnaire replies.
- (63) As a conclusion, the Commission provisionally used facts available in order to establish or replace certain information in accordance with Article 18 of the basic Regulation to the extent described above.

3.1.3. *Normal value*

- (64) The Commission first examined whether the total volume of domestic sales for each cooperating exporting producer was representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales are representative if the total domestic sales volume of the like product to independent customers on the domestic market per exporting producer represented at least 5 % of its total export sales volume of the product concerned to the Union during the investigation period.
- (65) On this basis, the total sales by GCNS of the like product on the domestic market were found not to be representative.
- (66) Therefore, where a product type was not sold on the domestic market, the Commission constructed the normal value in accordance with Article 2(3) and (6) of the basic Regulation.
- (67) Normal value was constructed by adding the following to the average cost of production of the like product of GCNS during the investigation period:
 - (a) the weighted average selling, general and administrative ('SG&A') expenses incurred by GCNS on domestic sales of the like product, in the ordinary course of trade, during the investigation period; and
 - (b) the weighted average profit realised by GCNS on domestic sales of the like product, in the ordinary course of trade, during the investigation period.
- (68) The cost of nickel ore was adjusted as explained in recitals (79) to (82).
- (69) GCNS purchased certain services and inputs in the form of semi-finished products from the related suppliers located in IMIP. The Commission examined whether those purchases were carried out at an arm's length price. In this respect, where available, the Commission compared the purchase price with the price of the related supplier to an unrelated customer. Where such price was not available, the Commission compared the purchase price with a constructed market price taking into account the costs of production, SG&A, and a reasonable profit of the related supplier. Where appropriate, the Commission adjusted the costs of those services and inputs incurred by GCNS in accordance with Article 2(5) of the basic Regulation.
- (70) On the basis of the representativity test explained in recital (64), the total sales by ITSS of the like product on the domestic market were representative.
- (71) The Commission subsequently identified the product types sold domestically that were identical or comparable with the product types sold for export to the Union for ITSS with representative domestic sales.
- (72) The Commission then examined whether the domestic sales by ITSS on its domestic market for each product type that is identical or comparable with a product type sold for export to the Union were representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the investigation period represents at least 5 % of the total volume of export sales of the identical or comparable product type to the Union. The Commission established that the sales of one product type on the domestic market were representative.
- (73) The Commission next defined the proportion of profitable sales to independent customers on the domestic market for this product type during the investigation period in order to decide whether to use actual domestic sales for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.

- (74) The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if:
- (a) the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of this product type; and
 - (b) the weighted average sales price of that product type is equal to or higher than the unit cost of production.
- (75) In this case, the normal value is the weighted average of the prices of all domestic sales of that product type during the investigation period.
- (76) The normal value is the actual domestic price per product type of only the profitable domestic sales of the product types during the investigation period, if:
- (a) the volume of profitable sales of the product type represents 80 % or less of the total sales volume of this type; or
 - (b) the weighted average price of this product type is below the unit cost of production.
- (77) The analysis of domestic sales showed that 13,7 % of all domestic sales of the product type were profitable and that the weighted average sales price was higher than the cost of production. Accordingly, the normal value was calculated as a weighted average of the profitable sales only.
- (78) Where a product type was not sold in representative quantities on the domestic market, the Commission constructed the normal value in accordance with Article 2(3) and (6) of the basic Regulation.
- (79) Normal value was constructed by adding the following to the average cost of production of the like product of ITSS during the investigation period:
- (a) the weighted average SG&A expenses incurred by ITSS on domestic sales of the like product, in the ordinary course of trade, during the investigation period; and
 - (b) the weighted average profit realised by ITSS on domestic sales of the like product, in the ordinary course of trade, during the investigation period.
- (80) The cost of nickel ore was adjusted as explained in recitals (79) to (82).
- (81) ITSS purchased certain services and inputs from the related suppliers located in IMIP. The Commission examined whether those purchases were carried out at an arm's length price. In this respect, where available, the Commission compared the purchase price with the price of the related supplier to an unrelated customer. Where such price was not available, the Commission compared the purchase price with a constructed market price taking into account the costs of production, SG&A, and a reasonable profit of the related supplier. Where appropriate, the Commission adjusted the costs of those services and inputs incurred by ITSS in accordance with Article 2(5) of the basic Regulation.
- (82) As explained in recitals (52) to (54) and (57) to (60), the Commission disregarded the costs of nickel ore as reported by the two exporting producers and by their related suppliers of certain inputs mentioned in recitals (69) and (78). The Commission intended to use the market price of nickel ore in Indonesia as facts available and replace the actual costs of nickel ore with that price.
- (83) In this respect, in the framework of the consultations with the GOI on potential raw material distortions under Article 7(2a) of the basic Regulation, the Commission requested statistical information on domestic sales volumes and values, which the GOI normally collected under the applicable legislation ⁽¹¹⁾. The GOI, however, only provided information on domestic sales volumes. Thus, this information was incomplete and could not be used to establish a domestic Indonesian market price of nickel ore.
- (84) As a consequence, the Commission used the actual price paid by the one exporting producer that provided information on the nickel content of the nickel ore for all its purchase transactions. The Commission considered that the nickel content, which influences the price of nickel ore, should be taken into account when replacing the costs of nickel ore reported by the companies in the group. The Commission identified the most expensive purchase transactions for each nickel content and considered that those transactions and prices were least likely to be affected by a relationship between the supplier and the buyer. The Commission established the adjusted costs of nickel ore based on the weighted average of the purchase price of the selected transactions taking into account the total volume purchased by the company within each nickel content group.

⁽¹¹⁾ Article 11 of Regulation of the Minister of Energy and Mineral Resources No 7/2017 concerning procedures for determining the benchmark prices for sales of metal minerals and coal.

- (85) The adjusted costs of nickel ore were also used to recalculate the production costs of semi-finished inputs bought from the related suppliers mentioned in recitals (69) and (78), when examining whether the relevant inputs were purchased by the exporting producers at arm's length price. Where it was evident that the suppliers used nickel ore with a lower nickel content, the adjusted costs reflected the difference.

3.1.4. *Export price*

- (86) The exporting producers provided information that they exported to the Union through related traders in third countries and an unrelated trader in a third country.
- (87) As explained in recitals (52) and (56), the related traders involved in export sales did not cooperate with the investigation. Therefore, the export price was established in accordance with Article 18 of the basic Regulation on the basis of the information available on file and verified by the Commission. To determine the export price, the Commission first established the import price into the Union based on the information on the file provided by the cooperating interested parties in the Union. The Commission further adjusted that price for all costs incurred between importation and resale, including transport, insurance, handling and loading, SG&A expenses, and for profits accruing, based on verified information provided by the exporting producers or publicly available information (e.g. publicly available audited financial statements of one of the claimed related traders).

3.1.5. *Comparison*

- (88) The Commission compared the normal value and the export price of the exporting producers on an ex-works basis.
- (89) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments to the normal value were made for transport, insurance, handling and loading. Adjustments to the export price were made for credit costs and the commission of the unrelated trader in a third country.

3.1.6. *Dumping margins*

- (90) The Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product under investigation, in accordance with Article 2(11) and (12) of the basic Regulation.
- (91) On this basis, the provisional weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are 19,3 % for GCNS and 16,2 % for ITSS.
- (92) As explained in recitals (50) and (51), the exporting producers are related. Therefore, the Commission established a single weighted average dumping margin for both companies at the level of 19,2 %.
- (93) As the imports of the cooperating exporting producers constituted 100 % of the total exports to the Union during the investigation period, the Commission considered it representative to set the residual dumping margin at the level of the cooperating exporting producers.
- (94) The provisional dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional dumping margin
PT Indonesia Guang Ching Nickel and Stainless Steel Industry PT Indonesia Tsingshan Stainless Steel	19,2 %
All other companies	19,2 %

3.2. The PRC

3.2.1. Preliminary remarks

- (95) As explained in the recital (16) with regard to one of the three sampled Chinese exporting producers the Commission decided to make use of the provisions of Article 18 of the basic Regulation and disregarded the information provided by this exporting producer.
- (96) The Commission took this decision because during the verification visit the company failed to explain in time several figures presented in the questionnaire reply and link them with the audited accounts, cost management accounts and data in the internal IT applications used. Some figures, such as production volumes per product type, energy inputs consumption, by-products allocation and manufacturing overheads, that were considered crucial for the calculation of the individual dumping margin, could not be reconciled with the above mentioned documents or their allocation keys could not be sufficiently explained. Furthermore, due to delays in providing requested data and explanations, the Commission could not verify at all certain parts of the questionnaire replies related to the normal value determination. Therefore, the Commission did not receive the necessary information within the time limits set in the basic Regulation to establish a dumping margin for the company.
- (97) In accordance with Article 18(4) of the basic Regulation, by letter of 18 December 2019, the interested party was informed of the reasons of the Commission's intention to disregard the information provided and it was granted the opportunity to provide further explanations.
- (98) The company replied to the Commission's letter on 7 January 2020. In its reply, the company did not contest the fact that the deficiencies listed in the Commission's letter had existed. However the company claimed that such deficiencies were not *serious enough* to apply Article 18 of the basic Regulation. The company argued that the deficiencies identified by the Commission in its letter were caused by the fact that the information supplied by one related company was generally compiled and treated manually rather than through an IT system. Hence, it was more prone to contain deficiencies. The company concluded that despite this, the Commission could calculate an individual dumping margin on the basis of the information verified on the spot.
- (99) The Commission disagreed with the company's statement that, on the basis of the information verified on the spot, it was possible to calculate an individual dumping margin. As set out in recital (93) above, the nature and amount of deficiencies identified onspot – irrespective of what their origin may have been – and the fact that the company was not able to resolve them during the entirety of the verification visit, effectively prevented the Commission from calculating a dumping margin on the basis of verified data. Accordingly, the Commission provisionally disregarded the information provided by the exporting producer and confirmed, at this stage, the use of facts available with regard to this exporting producer.
- (100) Thus, the description of the dumping margin calculation below refers to the remaining two Chinese exporting producers in the sample.

3.2.2. Normal value

- (101) 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'.
- (102) However, according to Article 2(6a)(a) of the basic Regulation, '(i)n 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, the application of Article 2(6a) of the basic Regulation was appropriate.

3.2.2.1. Existence of significant distortions

(a) Introduction

- (103) Article 2(6a)(b) of the basic Regulation defines ‘significant distortions are those distortions which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces as they are affected by substantial government intervention. In assessing the existence of significant distortions regard shall be had, *inter alia*, to the potential impact of one or more of the following elements:
- the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country;
 - state presence in firms allowing the state to interfere with respect to prices or costs;
 - public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces;
 - the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws;
 - wage costs being distorted;
 - access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the state’.
- (104) 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 to demonstrate the existence of one or more of the elements of the list. However, any conclusion on significant distortions within the meaning of Article 2(6a)(a) must be made on the basis of all the evidence at hand. The overall assessment on the existence of distortions may also take into account the general context and situation in the exporting country, in particular where the fundamental elements of the exporting country’s economic and administrative set-up provides the government with substantial powers to intervene in the economy in such a way that prices and costs are not the result of the free development of market forces.
- (105) 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’.
- (106) Pursuant to this provision, the Commission has issued a country report concerning the PRC (hereinafter ‘the Report’) ⁽¹²⁾, showing the existence of substantial government intervention at many levels of the economy, including specific distortions in many key factors of production (such as land, energy, capital, raw materials and labour) as well as in specific sectors (such as steel and chemicals). The Report was placed on the investigation file at the initiation stage. The complaint also contained some relevant evidence complementing the Report. Interested parties were invited to rebut, comment or supplement the evidence contained in the investigation file at the time of initiation.
- (107) In particular, the complaint referred to practices affecting the costs and prices in the stainless steel sector:
- the Chinese stainless steel market is to a significant extent served by enterprises which operate under the ownership, control and policy supervision of the GOC;
 - the costs of raw materials and energy in the PRC are not the result of free market forces as they are affected by substantial government intervention, including policies favouring domestic suppliers;

⁽¹²⁾ Commission Staff Working Document on Significant Distortions in the Economy of the People’s Republic of China for the purposes of Trade Defence Investigations, 20 December 2017, SWD(2017) 483 final/2.

- there is still a lack of adequate enforcement of bankruptcy laws, corporate or property laws in the PRC;
 - wage costs are distorted since they do not result from normal market forces or negotiation between companies and the work force;
 - stainless steel companies have access to finance granted by institutions which implement public policy objectives or otherwise are not acting independently from the State.
- (108) As indicated in recital (30), the GOC did not comment or provide evidence supporting or rebutting the existing evidence on the case file, including the Report and the additional evidence provided by the complainant, 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.
- (109) Comments in this regard were received from two of the exporting producers, which claimed that the calculation of the normal value pursuant to Article 2(6a) of the basic Regulation is incompatible with the WTO Anti-Dumping Agreement ('ADA'). In this respect, the exporting producers claimed that the Commission should not deviate from the standard methodology in establishing the normal value, unless the ADA permits otherwise, and should follow the standard methodology in accordance with Article 2 of the ADA. Moreover, the interested parties also claimed that the notion of significant distortions does not even exist in the ADA.
- (110) Furthermore, the exporting producers claimed that no evidence was presented on the file that the alleged governmental interventions listed in the Report and complaint had led to price distortions of inputs for the production of the product concerned.
- (111) For the purpose of this investigation the Commission has concluded in recital (157) that it is appropriate to apply Article 2(6a) of the basic Regulation. The Commission considers that Article 2(6a) is thus applicable. In addition, the Commission considers that this provision is consistent with the European Union's WTO obligations. It is the Commission's view that, as clarified in DS473 EU-Biodiesel (Argentina), the provisions of the basic Regulation that apply generally with respect to all WTO Members, in particular Article 2(5), second subparagraph of the basic Regulation, permit the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. The Commission finally recalled that the dispute DS473 EU-Biodiesel (Argentina) did not concern the application of Article 2(6a) of the basic Regulation, which is the relevant legal basis for the determination of normal value in this investigation. Therefore, the Commission rejected this claim.
- (112) 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 relied on publicly available sources. That analysis covered the examination of the substantial government interventions in the PRC's economy in general, but also the specific market situation in the relevant sector including the product concerned.
- (113) Regarding the second claim, the Commission noted that the existence of the significant distortions giving rise to the application of Article 2(6a) of the basic Regulation is not linked to the existence of a specific sectoral chapter covering the product under investigation. The Report describes different types of distortions present in the PRC which are cross-cutting and applicable throughout the Chinese economy and affect the prices and/or the raw materials and costs of production of the product under investigation. As explained in Sections b) to i) below, the SSHR industry is subject to a number of governmental interventions described in the Report (coverage by the Five-Years Plans and other documents, raw material distortions, financial distortions etc.), which are explicitly listed and referenced in this regulation. In addition, recitals (104), (121) to (122), (124) to (128), (135), (138), (141), (151), (153) to (154) of this Regulation have also detailed a number of distortions applicable to the SSHR sector and/or to its raw materials and inputs beyond the significant distortions already contained in the Report. The market circumstances and the underlying policies and plans giving rise to significant distortions are still applicable to the SSHR sector and that of its costs of production, despite the Report being released in December 2017. No party submitted any evidence to the contrary. Also the additional sources of significant distortions contained in the Regulation are still applicable and no party has submitted any evidence to the contrary.

(114) Therefore, the Commission provisionally rejected the claims made by the two exporting producers.

(b) Significant distortions affecting the domestic prices and costs in the PRC

(115) The Chinese economic system is based on the concept of 'socialist market economy'. That concept is enshrined in the Chinese Constitution and determines the economic governance of the PRC. The core principle is the 'socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people'. The State-owned economy is the 'leading force of the national economy' and the State has the mandate 'to ensure its consolidation and growth' ⁽¹³⁾. 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 ⁽¹⁴⁾.

(116) 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 already existing first sentence of the provision: '[t]he socialist system is the basic system of the People's Republic of China' a new second sentence was inserted which reads: '[t]he defining feature of socialism with Chinese characteristics is the leadership of the Communist Party of China.' ⁽¹⁵⁾ This illustrates the unquestioned and ever growing control of the CCP over the economic system of the PRC. This leadership and control is inherent to the Chinese system and goes well beyond the situation customary in other countries where the governments exercise general macroeconomic control within the boundaries of which free market forces are at play.

(117) 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 ⁽¹⁶⁾. The interventionist economic tools deployed by the Chinese authorities are manifold, including the system of industrial planning, the financial system, as well as the level of the regulatory environment.

(118) First, on the level of overall administrative control, the direction of the Chinese economy is governed by a complex system of industrial planning which affects all economic activities within the country. The totality of these plans covers a comprehensive and complex matrix of sectors and crosscutting policies and is present on all levels of government. Plans at provincial level are detailed while national plans set broader targets. Plans also specify the means in order to support the relevant industries/sectors as well as the timeframes in which the objectives need to be achieved. Some plans still contain explicit output targets while this was a regular feature in previous planning cycles. Under the plans, individual industrial sectors and/or projects are being singled out as (positive or negative) priorities in line with the government priorities and specific development goals are attributed to them (industrial upgrade, international expansion etc.). The economic operators, private and State-owned alike, must effectively adjust their business activities according to the realities imposed by the planning system. This is not only because of the binding nature of the plans but also because the relevant Chinese authorities at all levels of government adhere to the system of plans and use their vested powers accordingly, thereby inducing the economic operators to comply with the priorities set out in the plans (see also section e) below) ⁽¹⁷⁾.

(119) Second, on the level of allocation of financial resources, the financial system of the PRC is dominated by the State-owned commercial banks. Those banks, when setting up and implementing their lending policy need to align themselves with the government's industrial policy objectives rather than primarily assessing the economic merits of a given project (see also section h) below) ⁽¹⁸⁾. The same applies to the other components of the Chinese financial system, such as the stock markets, bond markets, private equity markets etc. Also these parts of the financial sector

⁽¹³⁾ Report – Chapter 2, p. 6–7.

⁽¹⁴⁾ Report – Chapter 2, p. 10.

⁽¹⁵⁾ Available at http://www.fdi.gov.cn/1800000121_39_4866_0_7.html (last viewed 2 March 2020).

⁽¹⁶⁾ Report – Chapter 2, p. 20–21.

⁽¹⁷⁾ Report – Chapter 3, p. 41, 73–74.

⁽¹⁸⁾ Report – Chapter 6, p. 120–121.

other than the banking sector are institutionally and operationally set up in a manner not geared towards maximizing the efficient functioning of the financial markets but towards ensuring control and allowing intervention by the State and the CCP ⁽¹⁹⁾.

(120) 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 ⁽²⁰⁾. Similarly, in the area of investment, the GOC maintains significant control and influence over the 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 ⁽²¹⁾.

(121) In sum, the Chinese economic model is based on certain basic axioms, which provide for and encourage manifold government interventions. Such substantial government interventions are at odds with the free play of market forces, resulting in distorting the effective allocation of resources in line with market principles ⁽²²⁾.

(c) 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

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

(123) The GOC and the CCP maintain structures that ensure their continued influence over enterprises, and in particular State-owned enterprises (SOEs). The State (and in many aspects also the CCP) not only actively formulates and oversees the implementation of general economic policies by individual SOEs, but it also claims its rights to participate in operational decision making in SOEs. This is typically done through rotation of cadres between government authorities and SOEs, through presence of party members on SOEs executive bodies and of party cells in companies (see also section d)), as well as through shaping the corporate structure of the SOE sector ⁽²³⁾. In exchange, SOEs enjoy a particular status within the Chinese economy, which entails a number of economic benefits, in particular shielding from competition and preferential access to relevant inputs, including finance ⁽²⁴⁾.

(124) Specifically in the steel sector, a substantial degree of ownership by the GOC persists. While the nominal split between the number of SOEs and privately owned companies is estimated to be almost even, from the five Chinese steel producers ranked in the top 10 of the world's largest steel producers four are SOEs ⁽²⁵⁾. At the same time, while the top ten producers only took up some 36 % of total industry output in 2016, the GOC set the target in the same year to consolidate 60 % to 70 % of iron and steel production to around ten large-scale enterprises by 2025 ⁽²⁶⁾. This

⁽¹⁹⁾ Report – Chapter 6, p. 122–135.

⁽²⁰⁾ Report – Chapter 7, p. 167–168.

⁽²¹⁾ Report – Chapter 8, p. 169–170, 200–201.

⁽²²⁾ Report – Chapter 2, p. 15–16, Report – Chapter 4, p. 50, p. 84, Report – Chapter 5, p. 108–109.

⁽²³⁾ Report – Chapter 3, p. 22–24 and Chapter 5, p. 97–108.

⁽²⁴⁾ Report – Chapter 5, p. 104–109.

⁽²⁵⁾ Report – Chapter 14, p. 358: 51 % private and 49 % SOEs in terms of production and 44 % SOEs and 56 % private companies in terms of capacity.

⁽²⁶⁾ Available at www.gov.cn/zhengce/content/2016-02/04/content_5039353.htm (last viewed 2 March 2020), https://policy.cn.com/policy_ticker/higher-expectations-for-large-scale-steel-enterprise/?iframe=1&secret=c8uthafuthefra4e (last viewed 2 March 2020), and www.xinhuanet.com/english/2019-04/23/c_138001574.htm (last viewed 2 March 2020).

intention has been repeated by the GOC in April 2019, announcing a release of guidelines on steel industry consolidation ⁽²⁷⁾. Such consolidation may entail forced mergers of profitable private companies with underperforming SOEs ⁽²⁸⁾. An example of a recent merger are the steel producers Baosteel Group Corp. and Wuhan Iron & Steel Group Corp. in 2016, creating world's second largest steel producer ⁽²⁹⁾. The major stainless steel producers are state-owned, for example Tisco, Baosteel, Ansteel Lianzhong, Jiujuan Iron and Steel and Tangshan.

- (125) Furthermore, the PRC is the world's leading consumer of nickel. Nickel is an important raw material giving, together with chromium, the stainless steel its stainless properties. The nickel content is also the cost driver for nickel ore, which, in turn, is the cost driver for the immediate inputs of the product concerned. It is used in the production of SSHR in various forms, e.g. nickel ore, nickel pig iron, ferronickel, pure nickel, nickel scrap, stainless steel scrap. The complainant estimated that nickel in its various forms accounted for more than 50 % of the production costs of stainless steel in the PRC ⁽³⁰⁾. In 2016, the country used 1,04 million tonnes, accounting for 52 % of the global nickel consumption. In 2017, Chinese consumption was set to increase by 2,9 % to 1,07 million tonnes. The production of stainless steel represents the dominant use for nickel in the PRC (84 %). This proportion is significantly higher than the international average (64 %). The consumption of nickel has increased strongly in 2016 and 2017 ⁽³¹⁾, as Chinese stainless steel production expanded by 15,7 % to 24,9 million tonnes. Because output in the rest of the world grew by only 4,3 %, the PRC's share of world production reached 54,5 %. The surge in output comes on the back of strong infrastructure spending by the GOC and robust real estate construction. Statistics indicated that much of the PRC's fixed asset investment has been organized by the GOC and its SOEs, both of which have displayed higher investment growth than the private sector ⁽³²⁾.
- (126) With the high level of government intervention in the steel industry and non-ferrous metal industry ('NFM'), and a high share of SOEs in these sectors, even privately owned steel producers are prevented from operating under market conditions. Indeed, both public and privately owned enterprises in the steel sector are also subject to policy supervision and guidance as set out in section e) below.
- (127) On the basis of the above, it is concluded that the SSHR market in the PRC was served to a significant extent by enterprises subject to the ownership, control or policy supervision or guidance by the GOC.
- (d) 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
- (128) Apart from exercising control over the economy by means of ownership of SOEs and other tools, the GOC is in position to interfere with prices and costs through State presence in firms. While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights ⁽³³⁾, CCP cells in enterprises, state-owned and private alike, represent another important channel through which the State can interfere with business decisions. According to the PRC's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution ⁽³⁴⁾) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business

⁽²⁷⁾ Available at http://www.xinhuanet.com/english/2019-04/23/c_138001574.htm (last viewed 2 March 2020) and http://www.jjckb.cn/2019-04/23/c_137999653.htm (last viewed 2 March 2020).

⁽²⁸⁾ As was the case of the merger between the private company Rizhao and the SOE Shandong Iron and Steel in 2009. See Beijing steel report, p. 58, and the acquired majority stake of China Baowu Steel Group in Magang Steel in June 2019, see <https://www.ft.com/content/a7c93fae-85bc-11e9-a028-86cea8523dc2> (last viewed 2 March 2020).

⁽²⁹⁾ See Reuters, 'China's Baosteel's takeover of Wuhan to create world's No 2 steelmaker' <https://www.reuters.com/article/us-china-baosteel-mergers-idUSKCN11Q0U3> (last viewed 10 March 2020).

⁽³⁰⁾ Annex 29 of the complaint.

⁽³¹⁾ The World Nickel Factbook 2018 http://insg.org/wp-content/uploads/2019/03/publist_The-World-Nickel-Factbook-2018.pdf (last viewed 3 March 2020).

⁽³²⁾ 'Analysis of Market-Distortions in the Chinese Non-Ferrous Metals Industry' © THINK!DESK China Research & Consulting – pages 136–138 https://eurometaux.eu/media/1624/study_-analysis-of-market-distortions-in-china.pdf (last viewed 2 March 2020).

⁽³³⁾ Report – Chapter 5, p. 100–101.

⁽³⁴⁾ Report – Chapter 2, p. 26

decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline ⁽³⁵⁾. In 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies ⁽³⁶⁾. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of SSHR and the suppliers of their inputs.

- (129) Specifically in the steel sector, as already pointed out, many of the major producers are owned by the State (see recital (123)). Some are specifically referred to in the 'Steel Industry Adjustment and Upgrading plan for 2016-2020' ⁽³⁷⁾. The main state-owned producing exporters are often the world leading producers of SSHR, whether integrated or not. For instance, the Chinese State-owned Shanxi Taiyuan Iron & Steel Co. Ltd. ('TISCO') mentions on its website that it is '*a super iron and steel giant as well as leading enterprise in global stainless steel industry*', '*the biggest stainless steel enterprise equipped with globally biggest capacity and most up-to-date technology and equipment*'. Accordingly, '*TISCO has developed into an extraordinary large-scale iron and steel complex, which is integrated with business of iron mining, iron and steel production, processing, delivery and trading*' ⁽³⁸⁾. Baosteel is another major Chinese State-owned enterprise that engages in stainless steel manufacturing and is detained by the recently consolidated China Baowu Steel Group Co. Ltd. (formerly Baosteel Group and Wuhuan Iron & Steel) ⁽³⁹⁾.
- (130) The GOC is also present in the stainless steel enterprises by personal appointments. An example of such approach is the stainless steel producer TISCO, where the appointed Deputy Secretary of the CCP Committee was also nominated the President of TISCO by a decision from the Shanxi Province CCP Committee and Government ⁽⁴⁰⁾.
- (131) The State's presence and intervention in the financial markets (see also section h) below) as well as in the provision of raw materials and inputs further have an additional distorting effect on the SSHR market ⁽⁴¹⁾. Thus, the State presence in firms, including SOEs, in the steel and other sectors (such as the financial and input sectors including NFM) allow the GOC to interfere with respect to prices and costs.
- (132) GOC directly intervenes in the pricing of capital, labour, land, raw-materials and basic inputs to the production process. Although the prices for final products are mostly determined by market mechanisms, the price distortions created at the beginning of the value chain cast long shadows at these very prices and create 'wrong' price signals that do not reflect the true scarcities in the industry and distort the profit/loss balances of all players involved.
- (e) 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
- (133) 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 ⁽⁴²⁾.

⁽³⁵⁾ Report – Chapter 2, p. 31232.

⁽³⁶⁾ Available at <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU> (last viewed 2 March 2020).

⁽³⁷⁾ The full text of the plan is available on the MIIT website:

<http://www.miit.gov.cn/n1146295/n1652858/n1652930/n3757016/c5353943/content.html> (last viewed 2 March 2020).

⁽³⁸⁾ TISCO, 'Company profile', <http://en.tisco.com.cn/CompanyProfile/20151027095855836705.html> (last viewed 2 March 2020).

⁽³⁹⁾ Baowu, 'Company profile', <http://www.baowugroup.com/en/contents/5273/102759.html> (last viewed 2 March 2020).

⁽⁴⁰⁾ See Complaint, page 19, quoting MCI, 'Gao Jianbing appointed as the President of TISCO', 12 October 2018, <https://metals-consulting.com/gao-jianbing-appointed-as-deputy-party-secretary-deputy-chairman-of-the-board-and-the-president-of-tisco/> (last viewed 10 March 2020).

⁽⁴¹⁾ Report – Chapters 14.1 to 14.3.

⁽⁴²⁾ Report – Chapter 4, p. 41–42 and 83.

- (134) The steel industry is regarded as a key industry by the GOC ⁽⁴³⁾. This is confirmed in the numerous plans, directives and other documents focused on steel, which are issued at national, regional and municipal level such as the ‘Steel Industry Adjustment and Upgrading plan for 2016-2020’. This Plan states that the steel industry is ‘an important, fundamental sector of the Chinese economy, a national cornerstone’ ⁽⁴⁴⁾. The main tasks and objectives set out in this Plan cover all aspects of the development of the industry ⁽⁴⁵⁾.
- (135) The 13th Five-Year Plan on Economic and Social Development ⁽⁴⁶⁾ envisages support to enterprises producing high-end steel product types ⁽⁴⁷⁾. It also focuses on achieving product quality, durability and reliability by supporting companies using technologies related to clean steel production, precision rolling and quality improvement ⁽⁴⁸⁾.
- (136) The ‘Catalogue for Guiding Industry Restructuring (2011 Version) (2013 Amendment)’ ⁽⁴⁹⁾ (‘the Catalogue’) lists iron and steel as encouraged industries.
- (137) The GOC further guides the development of the sector in accordance with a broad range of policy tools and directives related to, inter alia: market composition and restructuring, raw materials, investment, capacity elimination, product range, relocation, upgrading, etc. Through these and other means, the GOC directs and controls virtually every aspect in the development and functioning of the sector ⁽⁵⁰⁾. The current problem of overcapacity is arguably the clearest illustration of the implications of the GOC’s policies and the resulting distortions.
- (138) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives of supporting encouraged industries, including the production of SSHR, as part of the encouraged steel sector. Such measures impede market forces from operating normally.
- (f) 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
- (139) According to the information on file, the Chinese bankruptcy system delivers inadequately on its own main objectives such as to fairly settle claims and debts and to safeguard the lawful rights and interests of creditors and debtors. This appears to be rooted in the fact that while the Chinese bankruptcy law formally rests on principles that are similar to those applied in corresponding laws in countries other than the PRC, the Chinese system is characterised by systematic under-enforcement. The number of bankruptcies remains notoriously low in relation to the size of the country’s economy, not least because the insolvency proceedings suffer from a number of shortcomings, which effectively function as a disincentive for bankruptcy filings. Moreover, the role of the State in the insolvency proceedings remains strong and active, often having direct influence on the outcome of the proceedings ⁽⁵¹⁾.
- (140) In addition, the shortcomings of the system of property rights are particularly obvious in relation to ownership of land and land-use rights in the PRC ⁽⁵²⁾. 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

⁽⁴³⁾ Report, Part III, Chapter 14, p. 346 ff.

⁽⁴⁴⁾ Introduction to The Plan for Adjusting and Upgrading the Steel Industry.

⁽⁴⁵⁾ Report, Chapter 14, p. 347.

⁽⁴⁶⁾ The 13th Five-Year Plan for Economic and Social Development of the People’s Republic of China (2016–2020), available at https://en.ndrc.gov.cn/newsrelease_8232/201612/P020191101481868235378.pdf (last viewed 2 March 2020).

⁽⁴⁷⁾ Report – Chapter 14, p. 349.

⁽⁴⁸⁾ Report – Chapter 14, p. 352.

⁽⁴⁹⁾ Catalogue for Guiding Industry Restructuring (2011 Version) (2013 Amendment) issued by Order No 9 of the National Development and Reform Commission on 27 March 2011, and amended in accordance with the Decision of the National Development and Reform Commission on Amending the Relevant Clauses of the Catalogue for Guiding Industry Restructuring (2011 Version) issued by Order No 21 of the National Development and Reform Commission on 16 February 2013.

⁽⁵⁰⁾ Report – Chapter 14, pp. 375–376.

⁽⁵¹⁾ Report – Chapter 6, p. 138–149.

⁽⁵²⁾ Report – Chapter 9, p. 216.

procedures. However, these provisions are regularly not respected, with certain buyers obtaining their land for free or below market rates ⁽⁵³⁾. Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land ⁽⁵⁴⁾.

(141) Much like other sectors in the Chinese economy, the producers of SSHR are subject to the ordinary rules on Chinese bankruptcy, corporate, and property laws. That has the effect that these companies, too, are subject to the top-down distortions arising from the discriminatory application or inadequate enforcement of bankruptcy and property laws. The present investigation revealed nothing that would call those findings into question. As such, the Commission preliminarily concluded that the Chinese bankruptcy and property laws do not work properly, thus generating distortions when maintaining insolvent firms afloat and when allocating land use rights in the PRC. Those considerations, on the basis of the evidence available, appear to be fully applicable also in the stainless steel sector.

(142) In light of the above, the Commission concluded that there was discriminatory application or inadequate enforcement of bankruptcy and property laws in the steel sector, including with respect to the product concerned.

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

(143) A system of market-based wages cannot fully develop in the PRC as workers and employers are impeded in their rights to collective organisation. The PRC has not ratified a number of essential conventions of the International Labour Organisation ('ILO'), in particular those on freedom of association and on collective bargaining ⁽⁵⁵⁾. 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 ⁽⁵⁶⁾. 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 ⁽⁵⁷⁾. Those findings lead to the distortion of wage costs in the PRC.

(144) No evidence was submitted to the effect that the steel sector, including the producers of SSHR, would not be subject to the Chinese labour law system described. The SSHR part of the steel sector is thus affected by the distortions of wage costs both directly (when making the product concerned) as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in the PRC).

(h) 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

(145) Access to capital for corporate actors in the PRC is subject to various distortions.

(146) Firstly, the Chinese financial system is characterised by the strong position of State-owned banks ⁽⁵⁸⁾, which, when granting access to finance, take into consideration criteria other than the economic viability of a project. Similarly to non-financial SOEs, the banks remain connected to the State not only through ownership but also via personal relations (the top executives of large State-owned financial institutions are ultimately appointed by the CCP) ⁽⁵⁹⁾ and, again just like non-financial SOEs, the banks regularly implement public policies designed by the government. In

⁽⁵³⁾ Report – Chapter 9, p. 213–215.

⁽⁵⁴⁾ Report – Chapter 9, p. 209–211.

⁽⁵⁵⁾ Report – Chapter 13, p. 332–337.

⁽⁵⁶⁾ Report – Chapter 13, p. 336.

⁽⁵⁷⁾ Report – Chapter 13, p. 337–341.

⁽⁵⁸⁾ Report – Chapter 6, p. 114–117.

⁽⁵⁹⁾ Report – Chapter 6, p. 119.

doing so, the banks comply with an explicit legal obligation to conduct their business in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State ⁽⁶⁰⁾. This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ⁽⁶¹⁾.

- (147) While it is acknowledged that various legal provisions refer to the need to respect normal banking behaviour and prudential rules such as the need to examine the creditworthiness of the borrower, the overwhelming evidence, including findings made in trade defence investigations, suggests that these provisions play only a secondary role in the application of the various legal instruments.
- (148) Furthermore, bond and credit ratings are often distorted for a variety of reasons including the fact that the risk assessment is influenced by the firm's strategic importance to the GOC and the strength of any implicit guarantee by the government. Estimates strongly suggest that Chinese credit ratings systematically correspond to lower international ratings ⁽⁶²⁾.
- (149) This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ⁽⁶³⁾. 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.
- (150) 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.
- (151) 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.
- (152) Overall credit growth in the PRC indicates a worsening efficiency of capital allocation without any signs of credit tightening that would be expected in an undistorted market environment. As a result, non-performing loans have increased rapidly in recent years. Faced with a situation of increasing debt-at-risk, the GOC has opted to avoid defaults. Consequently, bad debt issues have been handled by rolling over debt, thus creating so called 'zombie' companies, or by transferring the ownership of the debt (e.g. via mergers or debt-to-equity swaps), without necessarily removing the overall debt problem or addressing its root causes.
- (153) 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 distortions resulting from the continuing pervasive role of the state in the capital markets.
- (154) No evidence was submitted to the effect that the steel sector, including stainless steel production, would be exempted from the above-described government intervention in the financial system. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

⁽⁶⁰⁾ Report – Chapter 6, p. 120.

⁽⁶¹⁾ Report – Chapter 6, p. 121–122, 126–128, 133–135.

⁽⁶²⁾ See IMF Working Paper 'Resolving China's Corporate Debt Problem', by Wojciech Maliszewski, Serkan Arslanalp, John Caparusso, José Garrido, Si Guo, Joong Shik Kang, W. Raphael Lam, T. Daniel Law, Wei Liao, Nadia Rendak, Philippe Wingender, Jiangyan, October 2016, WP/16/203.

⁽⁶³⁾ Report – Chapter 6, p. 121–122, 126–128, 133–135.

(i) Systemic nature of the distortions described

- (155) The Commission noted that the distortions described in the Report were characteristic for the Chinese economy. The evidence available shows that the facts and features of the Chinese system as described above in Sections a)–e) as well as in Part A of the Report apply throughout the country and across the sectors of the economy. The same holds true for the description of the factors of production as set out above in Sections f)–h) above and in Part B of the Report.
- (156) The Commission recalls that in order to produce SSHR, a broad range of inputs is needed. When the producers of SSHR purchase/contract these inputs, the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system that applies across all levels of government and sectors.
- (157) As a consequence, not only the domestic sales prices of SSHR are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also tainted because their price formation is affected by substantial government intervention, as described in Parts A and B of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input produced in the PRC by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth. No evidence or argument to the contrary has been adduced by the GOC or the exporting producers in the present investigation.

(j) Conclusion

- (158) The analysis set out in points a) to i) of this section, 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 steel sector showed that prices or costs of the product concerned, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case.
- (159) Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as discussed in the following section.

3.2.2.2. Representative country

- (160) 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 ⁽⁶⁴⁾;
 - Production of the product under investigation in that country;
 - 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.
- (161) As explained in recitals (33) to (35) the Commission published two notes for the file on the sources for the determination of the normal value.

⁽⁶⁴⁾ World Bank Open Data – Upper Middle Income, available at <https://data.worldbank.org/income-level/upper-middle-income> (last viewed 2 March 2020).

- (162) In the Note of 9 September, the Commission informed interested parties that, on the basis of the criteria listed in recital (157), it had identified the following four possible representative countries: Brazil, Malaysia, South Africa, and Turkey.
- (163) The Commission received comments from three interested parties: the complainant and two of the sampled Chinese exporting producers.
- (164) Both Chinese exporting producers claimed in their submissions that Malaysia would be the best representative country because it fulfils all the criteria of Article 2(6a)(a) of the basic Regulation, while Brazil and South Africa allegedly have a lower level of social and environmental protection.
- (165) On the other hand, the complainant indicated in its submission that there was no production of the product under investigation in Malaysia or Turkey.
- (166) The Malaysian company identified as potential producer of the product under investigation is, according to the submission of the complainant, engaged only in the rerolling of hot-rolled coils into cold-rolled coils and it apparently did not possess either a melting workshop or a hot-rolling line. The complainant based its claims in this regard on the consolidated audited financial statement of the Acerinox Group of 2017. The financial report of the Group of 2018 also confirmed this allegation.
- (167) With regard to Turkey, the complainant claimed that the company in question was only engaged in the production of an insignificant amount of stainless steel products. Furthermore, this production was limited to long products of martensitic steel with billets as a raw material, which would actually exclude the production of the product under investigation.
- (168) The Commission's own research confirmed the claims of the complainant on the basis of the consolidated audited report of 2018 of the Acerinox Group and the official websites of the two companies in question.
- (169) The complainant confirmed that the product under investigation is produced in South Africa by one of the companies of the Acerinox Group, as indicated by the Commission in the Note of 9 September. However, the complainant raised several arguments in favour of choosing Brazil as a representative country rather than South Africa.
- (170) First, the complainant indicated that in terms of economic development measured by the GNI index Brazil is much closer to the PRC than South Africa is (South Africa has a significantly lower position in these statistics).
- (171) However, even if in terms of actual GNI data South Africa is more distant from the PRC than Brazil, all three countries are still classified as upper-middle income countries by the World Bank. Therefore, the Commission rejected this claim.
- (172) Second, the complainant claimed that South Africa was the world's biggest producer of chromium, an important input for stainless steel, and therefore the price level of this input would not be representative.
- (173) The fact that a country produces an input of the product under investigation does not automatically make the price level of imports of that product into that country not representative. The complainant did not provide evidence of the impact of the large domestic production on the import price. Therefore, the Commission found this claim unsubstantiated.
- (174) Finally, the complainant provided the Commission with the publicly available audited accounts of the Brazilian producer of the product under investigation mentioned in the Note of 9 September, which could be used as a source of data for the SG&A costs and profit needed in the calculation of the normal value. For the South African producer identified in the same Note, such data were only available on the consolidated group level.
- (175) Based on the quality and detail of the readily available financial data in Brazil, as provided by the complainant, and also considering the representativeness of the factors of production as explained in section 3.2.2.3 below, the Commission concluded that Brazil should be considered an appropriate representative country in its Note of 10 October.

- (176) Having established Brazil as an appropriate representative country in terms of level of development and availability of relevant import statistics and financial data, the Commission did not consider it necessary to assess the level of social and environmental protection of the potential representative countries.
- (177) No comments from interested parties were received with regard to the Note of 10 October.
- (178) In view of the above analysis, Brazil meets all the criteria laid down in Article 2(6a)(a), first indent of the basic Regulation in order to be considered as an appropriate representative country. In particular, in addition to having a level of economic development similar to the PRC, Brazil has a substantial production of the product under investigation and a complete set of data available for the factors of production, SG&A and profit during the investigation period.

3.2.2.3. Sources used to establish undistorted costs

- (179) On the basis of the information submitted by the interested parties and other relevant information available in the file, the Commission established in the Note of 9 September 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 investigation by the exporting producers. The Commission stated that in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it would use as much as possible Global Trade Atlas ('GTA') to establish the undistorted cost of the factors of production, the statistics of the International Labour Organisation ('ILO') and national statistics to establish the undistorted costs of labour, and other sources depending on the selected representative country to establish the undistorted costs of energy (such as electricity, natural gas, and water). In the same note, the Commission identified the Harmonised System (HS) codes of factors of production which, on the basis of information provided by the interested parties, were initially considered to be used for the GTA analysis.
- (180) In this regard, a comment was received only from the complainant indicating that for some factors of production the HS codes proposed by the Commission had too wide a coverage and might include a mix of products not being representative of the chemical composition of the inputs actually used in the production of the product under investigation. The Commission took note of this remark. It was taken into account in further stages of the investigation depending on the goods codes of the representative country and on the findings from the verification visits of the exporting producers.
- (181) The Commission further analysed the initial information received on HS codes from interested parties and found that certain factors of production, i.e. certain raw materials and consumables, were possibly not correctly classified. The amended HS codes and list of factors of production were published in the Note of 10 October. The Commission analysed also the availability of import data which would be used for the calculation of benchmarks for undistorted costs and checked the existence of restrictions in the representative country concerning exports of the factors of production.
- (182) In the Note of 10 October the Commission confirmed that it would use GTA to establish undistorted costs of the factors of production, the ILO statistics and other publicly available sources ⁽⁶⁵⁾ to establish undistorted labour costs, and the tariffs charged by selected Brazilian suppliers of electricity, natural gas and water to establish undistorted costs of those types of energy.
- (183) In the same note, the Commission also informed interested parties that, to establish the undistorted SG&A and profit, it would use the financial data of the sole known Brazilian producer of the product under investigation for which detailed financial data is publicly available – Aperam Inox America do Sul S.A. Interested parties did not submit, and the Commission did not find, publicly available financial data of any other producer of the product under investigation in Brazil.
- (184) Following the Note of 10 October, the Commission did not receive any further comments concerning the sources for undistorted costs and benchmarks. Therefore, the sources listed in recitals (178) to (180) were provisionally confirmed.

⁽⁶⁵⁾ For example see <https://www.jornalcontabil.com.br/quanto-custa-um-funcionario-aprenda-a-calcular/> or <https://establishbrazil.com/articles/whats-real-cost-employee> (last viewed 3 March 2020).

3.2.2.4. Undistorted costs and benchmarks

- (185) As already stated in recitals (176) and (178) to (179), 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 concerned by the exporting producers.
- (186) The Commission did not receive any comments concerning the list of factors of production following the Note of 10 October where, based on the information received from interested parties, the Commission established a list of all the potential HS codes corresponding to the factors of production used in the manufacturing of the product concerned.
- (187) The Commission then established a definitive list of factors of production and corresponding HS codes after the verification visits at the premises of the sampled exporting producers.
- (188) Considering all the information submitted by interested parties and collected during the verification visits, the following factors of production and HS codes, where applicable, have been identified:

Table 1

Factor of Production	HS code	Undistorted value	Unit
Raw Materials/Auxiliary Materials			
Quartzite	2506 20	1 945,57	CNY/t
Fireclay	2508 30	4 109,80	CNY/t
Serpentine	2516 90	4 257,06	CNY/t
Fused magnesia; dead-burned (sintered) magnesia, whether or not containing small quantities of other oxides added before sintering; other magnesium oxide, where or not pure	2519 90	8 993,25	CNY/t
Fluorspar – Containing by weight 97 % or less of calcium fluoride	2529 21	2 126,27	CNY/t
Iron ore, non-agglomerated (powder); Lump Iron Ore	2601 11	8 300,12	CNY/t
Iron ore, agglomerated (sinter)	2601 12	1 165,36	CNY/t
Chromium Ores and Concentrates	2610 00	4 493,41	CNY/t
Fat coal; Coking coal	2701 12	1 412,62	CNY/t
Lean coal; Electric coal; Gas coal	2701 19	1 268,12	CNY/t
Coke; Coke powder; Metallurgical coke	2704 00	2 703,69	CNY/t
Lubricating Oil	2710 19	73,73	CNY/t
Carbon	2803 00	9 656,11	CNY/t
Calcium (Wire)	2805 12	34 597,60	CNY/t
Sulphuric Acid	2807 00	560,10	CNY/t
Nitric Acid	2808 00	2 582,31	CNY/t
Hydrofluoric Acid	2811 11	11 085,17	CNY/t
Ammonia anhydrous	2814 10	1 920,32	CNY/t
Molybdenum oxide or hydroxide	2825 70	134 622,70	CNY/t
Ferrous sulfide	2830 90	92 317,53	CNY/t
Hydrogen Peroxide	2847 00	15 955,82	CNY/t
Core wire; Casting powder	3824 99	15 192,47	CNY/t

Factor of Production	HS code	Undistorted value	Unit
Medium Nickel pig iron; Low Nickel pig iron	[N/A] (see recital (190))	84 151,00 Adjusted for actual nickel content (!)	CNY/t
Ferro Manganese, containing by weight > 2 % carbon	7202 11	8 143,34	CNY/t
Ferro Manganese, containing by weight <= 2 % carbon	7202 19	12 910,85	CNY/t
Ferro-silicon, > 55 % silicon	7202 21	12 754,53	CNY/t
Ferro-silicon manganese	7202 30	8 077,34	CNY/t
Ferro-chromium, > 4 % carbon	7202 41	9 475,88	CNY/t
Ferronickel	[N/A] (see recital (190))	21 879,38	CNY/t
Ferro-molybdenum	7202 70	130 503,79	CNY/t
Ferrotungsten iron	7202 80	200 436,70	CNY/t
Ferro-titanium	7202 91	25 925,68	CNY/t
Ferro-niobium	[N/A] (see recital (190))	145 667,77	CNY/t
Ferro-boron; Ferro-silico-calcium Alloy	7202 99	14 659,67	CNY/t
Cast iron scrap	7204 10	909,47	CNY/t
Stainless steel scrap	7204 21	6 600,08	CNY/t
Ferrous waste and scrap other than turnings, shavings, chips, milling waste, sawdust, filings, trimmings stampings; of material other than cast iron, alloy steel, tinned iron or steel	7204 49	2 388,92	CNY/t
Granules of pig iron, spiegeleisen, iron or steel	7205 10	9 625,10	CNY/t
Iron Torching Powder	7205 29	8 830,75	CNY/t
Molten iron	[N/A] (see recital (190))	2 715,76	CNY/t
Reinforcing Bars	7214 20	3 961,67	CNY/t
Shot Blast pellets	7326 11	7 016,25	CNY/t
Cathodes Copper	7403 11	42 901,10	CNY/t
Other articles of copper; cast, moulded, stamped or forged, but not further worked; excluding chains and parts thereof.	7419 91	276 619,84	CNY/t
Nickel, Not Alloyed	7502 10	98 182,60	CNY/t
Nickel waste and scrap	7503 00	640,77	CNY/t

Factor of Production	HS code	Undistorted value	Unit
Nickel bars, rods and profiles of nickel alloys	7505 12	172 600,22	CNY/t
Aluminium Ingot; Aluminium, unwrought, unalloyed	7601 10	15 833,50	CNY/t
Aluminium Wire, not alloyed	7605 11	16 103,02	CNY/t
Aluminium plates, sheets and strip	7606 91	22 469,41	CNY/t
Molybdenum bars and rods	8102 95	817 404,83	CNY/t
Cobalt mattes and other intermediate products of cobalt metallurgy	8105 20	180 180,50	CNY/t
Sponge Titanium	8108 20	72 277,73	CNY/t
Manganese	8111 00	17 032,79	CNY/t
Electrodes of graphite	8545 11	57 656,22	CNY/t
Slab	[N/A] (see recital (190))	14 033,74	CNY/t

Labour

Labour costs in manufacturing sector	[N/A]	33,88	CNY/hour
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Energy

Electricity	[N/A]	0,82	CNY/kWh
Natural Gas	[N/A]	3,23	CNY/m ³
Water	[N/A]	68,88	CNY/m ³
Argon	2804 21	8,03	CNY/m ³
Oxygen	2804 40	13,04	CNY/m ³

(¹) As explained in recital (190), the London Metal Exchange was used as the basis for this undistorted value, corrected for the nickel content of the raw material. As the nickel content varied between the sampled companies, the exact undistorted value is given in the company-specific disclosure.

(a) Raw materials and auxiliary materials

(189) During the verification visits, the Commission verified the raw materials and auxiliary materials used in the manufacture of the product concerned.

(190) For all raw materials and auxiliary materials, with the exception of those described in recitals (190) and (192) below, the Commission relied on import prices in the representative country. The import price in the representative country was determined as a weighted average of unit prices of imports from all third countries excluding the PRC. The Commission decided to exclude imports from the PRC into the representative country as it concluded in recital (156) that it is not appropriate to use domestic prices and costs in the PRC due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected export prices. Furthermore, it appears that the import price of the main raw materials exported by the PRC into Brazil are lower than the weighted average of the imports of other countries. Similarly, import data

on imports in the representative country from non-WTO members listed in Annex 1 of Regulation (EU) 2015/755 ⁽⁶⁶⁾ were also excluded. Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value and, in any event, such import data was negligible.

- (191) In order to establish the undistorted price of raw materials, delivered at the gate of the exporting producer's factory as provided by Article 2(6a)(a), first indent of the basic Regulation, the Commission added international transport and insurance costs ⁽⁶⁷⁾ and applied the import duty of the representative country. At a later stage, during the individual dumping margin calculations, the Commission added company specific domestic transport costs to the import price. The international and domestic transport costs for all raw materials as well as insurance costs were estimated based on the verified data provided by the sampled exporting producers.
- (192) For some raw materials for which there was no benchmark or the available benchmark was considered non-representative ⁽⁶⁸⁾ on the basis of the imports statistics into the representative country, the Commission used benchmarks based on undistorted international prices or other reasonable data. This was done for five inputs:
- (a) ferro-nickel and nickel pig iron – benchmarks were based on the London Metal Exchange adjusted for the nickel content of the alloy,
 - (b) ferro-niobium – benchmark was based on GTA, calculated as the weighted average export price of the most relevant exporting country in the IP, Brazil ⁽⁶⁹⁾,
 - (c) molten iron – benchmark was based on GTA – calculated as the weighted average price based on the most relevant worldwide exporter in the IP, Iran ⁽⁷⁰⁾,
 - (d) stainless steel slab – benchmark was on GTA – calculated as the weighted average of all exports from the world's third largest exporter in the IP, South Korea ⁽⁷¹⁾.
- (193) Where the export price ⁽⁷²⁾ was used to determine the undistorted price of a raw material, no further adjustments to the data from GTA were made. The Commission considered that the costs between a Brazilian supplier and an international port accounted for the costs between such supplier and its Brazilian customer. The price from GTA could, therefore, be accepted as price of a raw material as delivered at the gate of the exporting producer's factory.
- (194) For some raw materials and auxiliary materials ⁽⁷³⁾, the sampled exporting producers were not able to determine the consumption volume in their records or no proper benchmark could be established in the representative country. Overall, those inputs were negligible in terms of costs. Those costs were included in the manufacturing overheads as explained in recital (198), as the actual costs of those raw materials represented a negligible share on the total actual costs of manufacturing of the sampled exporting companies. The factors of production moved to overheads were listed in the company-specific disclosures.
- (b) Labour

- (195) To establish the benchmark for labour costs, the Commission used the ILO statistics together with publicly available information on additional labour costs incurred by an employer in Brazil.

⁽⁶⁶⁾ Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33).

⁽⁶⁷⁾ Brazilian imports are reported at FOB level in GTA.

⁽⁶⁸⁾ Due to export restrictions or negligible quantities imported.

⁽⁶⁹⁾ Exports to the PRC were excluded. <https://connect.ihs.com/home> (last viewed 3 March 2020).

⁽⁷⁰⁾ Exports to the PRC were excluded. <https://connect.ihs.com/home> (last viewed 3 March 2020).

⁽⁷¹⁾ South Korea is the third largest exporter of SS slabs – after Indonesia (the country under investigation) and second exporter being the UK. Exports to the PRC were excluded. The remaining exporting countries accounted for substantially smaller volumes.

⁽⁷²⁾ On FOB basis.

⁽⁷³⁾ These materials were listed for each company in their respective specific disclosures. Additionally, one of the energy factors, i.e. steam, for all the companies, was treated in the same way.

- (196) The ILO statistics ⁽⁷⁴⁾ provided data on the mean weekly hours actually worked per employed person and monthly earnings of employees in manufacturing during the investigation period. Using that data, the Commission calculated an hourly salary in manufacturing, to which additional labour related costs ⁽⁷⁵⁾ (social security and unemployment contributions born by the employer) were added.

(c) Energy inputs

- (197) The electricity price charged by one of the largest electricity suppliers in Brazil, the company EDP Brazil, was readily available ⁽⁷⁶⁾. The information was detailed enough to identify the price of electricity and the price for the use of the distribution system (modalidade tarifaria azul) paid by industrial users.
- (198) It should be noted that in Brazil, the regulatory authority Agência Nacional de Energia Elétrica ⁽⁷⁷⁾ (‘ANEEL’), obliges the electricity suppliers to increase their tariffs by a certain percentage to regulate the consumption of electricity in the country. ANEEL uses a flag system ⁽⁷⁸⁾ (green, yellow, red 1, red 2) to signal whether the electricity price should remain as proposed by the supplier (green) or increased by 0,010 BRL/kWh (yellow), 0,030 BRL/kWh (red 1), or 0,050 BRL/kWh (red 2). The flags are published by ANEEL on a monthly basis and for the investigation period were readily available on the website of EDP Brazil ⁽⁷⁹⁾. When determining the undistorted costs of electricity, the Commission took into account the flags applied during the investigation period and adjusted the price accordingly.
- (199) The water tariff is readily available as charged by the company Sabesp that is responsible for water supply, sewage collection and treatment in the State of Sao Paulo. The information enables to identify tariffs ⁽⁸⁰⁾ applicable for industrial users in the investigation period for various sub-regions and municipalities of the State of Sao Paulo ⁽⁸¹⁾. The Commission based its determination of undistorted costs for water and sewage collection on the tariff applicable to industrial customers in the Metropolitan area of the State of Sao Paulo during the investigation period.
- (200) The price of natural gas is readily available as charged by the biggest gas distributor in Brazil, the company Comgas, which focuses on the State of Sao Paulo. The information provided on Comgas’ website ⁽⁸²⁾ enables to determine the price of natural gas supplied to industrial users.

3.2.2.5. Manufacturing overhead costs, SG&A and profits

- (201) The manufacturing overheads incurred by the cooperating exporting producers were increased by the costs of raw materials and auxiliary materials referred to in recital (192) and subsequently expressed as a share of the costs of manufacturing actually incurred by each of the sampled exporting producers. This percentage was applied to the undistorted costs of manufacturing.
- (202) For SG&A and profit, the Commission used the financial data of the sole known Brazilian producer of the product under investigation for which detailed financial data is publicly available – Aperam Inox America do Sul S.A. Publicly available audited accounts of the company were made known to the interested parties as an attachment to the Note of 10 October.

3.2.2.6. Calculation of the normal value

- (203) In order to establish the constructed normal value, the Commission took the following steps.

⁽⁷⁴⁾ Available at https://www.ilo.org/ilostat/faces/oracle/webcenter/portallapp/pagehierarchy/Page21.jspx?_afzLoop=518377340582818&_afzWindowMode=0&_afzWindowId=o8k2wnnrz_1#%40%40%3F_afzWindowId%3Do8k2wnnrz_1%26_afzLoop%3D518377340582818%26_afzWindowMode%3D0%26_adf.ctrl-state%3Do8k2wnnrz_54 (last viewed 28 February 2020).

⁽⁷⁵⁾ Available at <https://establishbrazil.com/articles/whats-real-cost-employee> (last viewed 28 February 2020).

⁽⁷⁶⁾ Available at <http://www.edp.com.br/distribuicao-es/saiba-mais/informativos/tarifas-aplicadas-a-clientes-atendidos-em-alta-e-media-tensao-grupo-a> (last viewed 4 February 2020).

⁽⁷⁷⁾ Available at <http://www.aneel.gov.br/a-aneel> (last viewed 4 February 2020).

⁽⁷⁸⁾ Available at <http://www.aneel.gov.br/bandeiras-tarifarias> (last viewed 4 February 2020).

⁽⁷⁹⁾ Available at <http://www.edp.com.br/distribuicao-es/saiba-mais/informativos/bandeira-tarifaria> (last viewed 4 February 2020).

⁽⁸⁰⁾ <http://site.sabesp.com.br/site/interna/Default.aspx?secaoId=183> (last viewed 28 February 2020).

⁽⁸¹⁾ For example the Metropolitan area http://site.sabesp.com.br/site/uploads/file/asabesp_doctos/comunicado_06_2018.pdf
http://site.sabesp.com.br/site/uploads/file/asabesp_doctos/Comunicado%205-19.pdf
 (last viewed 28 February 2020).

⁽⁸²⁾ <https://www.comgas.com.br/tarifas/historico-de-tarifas/2018-2/> (last viewed 4 February 2020).

- (204) Firstly, the Commission established the undistorted costs of manufacturing. It applied the undistorted unit costs to the actual consumption of the individual factors of production of the sampled exporting producers. The costs of manufacturing were reduced by the undistorted costs of by-products re-used in the production process as reported by the companies.
- (205) Secondly, to arrive at the undistorted costs of production, the Commission added the manufacturing overheads determined as described in recital (199) to the undistorted costs of manufacturing.
- (206) Finally, to the costs of production established as described in recital (203), the Commission applied SG&A and the profit of Aperam Inox America do Sul S.A. as explained in recitals (200).
- (207) The SG&A expressed as a percentage of the Costs of Goods Sold ('COGS') and applied to the undistorted costs of production amounted to 13,90 %.
- (208) The profit expressed as a percentage of the COGS and applied to the undistorted costs of production amounted to 7,65 %.
- (209) The normal value calculated as described in recitals (202) to (206) was reduced by the undistorted value of the by-products sold by the sampled companies.
- (210) On that basis, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation. Since only two Chinese exporting producers were left in the sample, the Commission constructed the normal value per product type for these exporting producers only.

3.2.3. *Export price*

- (211) The Chinese exporting producers in question exported to the Union directly to independent customers or through related companies acting as related exporters in a third country or related importers in the Union.
- (212) Where the exporting producers exported the product concerned directly to independent customers in the Union, the export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.
- (213) Where the exporting producers exported the product concerned to the Union through related importers in the Union, the export price was established on the basis of the price at which the imported product was first resold to independent customers in the Union, in accordance with Article 2(9) of the basic Regulation. In this case, adjustments to the price were made for all costs incurred between importation and resale, including SG&A expenses and a reasonable profit.

3.2.4. *Comparison*

- (214) The Commission compared the normal value and the export price of the Chinese sampled exporting producers on an ex-works basis.
- (215) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made where appropriate for transport, insurance, handling, loading and ancillary costs; credit cost; bank charges; SG&A costs of the related exporters, including mark-up.
- (216) The PRC applies a policy of reimbursing VAT only partially upon export and in this case, depending on the month of the IP, from 0 % to 3 % VAT was not reimbursed. To ensure that the normal value was expressed at the same level of taxation as the export price, the normal value was adjusted upward by that part of VAT charged on exports of the product concerned that was not refunded to the Chinese exporting producers.

3.2.5. *Dumping margin*

- (217) For the sampled exporting producers, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and 2(12) of the basic Regulation.
- (218) On that basis, the provisional weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are 108,4 % for STSS and 55,6 % for FSS.

- (219) The dumping margin of the cooperating non-sampled Chinese companies, Xiangshui Defeng Metals Co., Ltd and Fujian Dingxin Technology Co., Ltd., is the weighted average between the two individual dumping margins for the sampled companies and established at 87,9 %.
- (220) Taking into account the high level of the cooperation of the Chinese exporting producers at a level of 92 % of the total Chinese exports of the product under investigation to the Union, the Commission considered it representative to set the residual dumping margin applicable to all other (non-cooperating) exporting producers, including the company which received Article 18, at a level of 108,4 %, corresponding to the highest individual dumping margin of the sampled Chinese companies.
- (221) On this basis, the provisional weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, is as follows:

Company	Provisional dumping margin (%)
Shanxi Taigang Stainless Steel Co., Ltd. ⁽¹⁾	108,4
Fujian Fuxin Special Steel Co., Ltd	55,6
Xiangshui Defeng Metals Co., Ltd	87,9
Fujian Dingxin Technology Co., Ltd.	87,9
All other companies	108,4

⁽¹⁾ The margin applies to all other Chinese producers of the product under investigation of the TISCO group as listed in the operative part of the Regulation.

3.3. Taiwan

3.3.1. Preliminary remarks

- (222) As mentioned in recital (24), two exporting producers in Taiwan, Yusco Group and Walsin, cooperated with the investigation by providing a questionnaire reply. No other exporting producers in Taiwan were identified or came forward.
- (223) In addition, as also indicated in recital (24), the unrelated service centre YC Inox cooperated with the investigation by providing a questionnaire reply. This company was not related with the two Taiwanese cooperating producers. Its cooperation enabled the Commission to obtain a sound understanding of the functioning of the Taiwanese domestic and export markets of the product under investigation. In particular, on the basis of the information supplied by this party and the verification thereof, the Commission could draw reasonable conclusions as to the most likely destination of the reported domestic sales of the two cooperating exporting producers.
- (224) Yusco Group's domestic sales of the like product in the investigation period were made either directly to unrelated customers or indirectly via a related domestic service centre. In both cases, it could be established that some of these sales were eventually destined for export. Yusco Group's export sales to the Union in the investigation period were made directly to independent customers or indirectly through either a related service centre located in Taiwan or a related trader registered in Hong-Kong but located in Taiwan and the PRC.
- (225) In the case of Walsin, the domestic and export sales of the like product in the investigation period were made directly to unrelated customers.
- (226) The Commission examined the domestic sales reported by Yusco Group and Walsin. Based on the findings during the on-spot verifications in Taiwan, for the transactions where the destination of goods were sea ports or bonded factories ⁽⁸³⁾ (i.e. 0 % VAT), or for certain other reported domestic sales and based on explanations given on the spot by the exporting producers or YC Inox, the Commission reclassified these domestic sales as export sales. These transactions were therefore excluded from the domestic sales transactions used for the calculation of the normal value.

⁽⁸³⁾ Article 6-1 of the Taiwanese law called 'Value-added and Non-value-added Business Tax Act' defines a bonded factory as an entity operating in an export processing zone.

3.3.2. Normal value

- (227) The Commission first examined whether the total volume of domestic sales for each investigated exporting producer was representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales are representative if the total domestic sales volume of the like product to independent customers on the domestic market per exporting producer represented at least 5 % of its total export sales volume of the product concerned to the Union during the investigation period.
- (228) On this basis, the total volume of domestic sales of the product under investigation by Yusco Group and Walsin on the domestic market was found to be representative.
- (229) The Commission subsequently identified the product types sold domestically that were identical or comparable with the product types sold for export to the Union for the investigated exporting producers with representative domestic sales.
- (230) The Commission then examined whether the product types sold by the exporting producers on their domestic market compared with product types sold for export to the Union were representative, in accordance with Article 2 (2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the investigation period represents at least 5 % of the total volume of export sales of the identical or comparable product type to the Union.
- (231) The Commission next defined the proportion of profitable sales to independent customers on the domestic market for each product type during the investigation period in order to decide whether to use actual domestic sales for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.
- (232) The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if:
- (a) the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of this product type; and
 - (b) the weighted average sales price of that product type is equal to or higher than the unit cost of production.
- (233) In this case, the normal value is the weighted average of the prices of all domestic sales of that product type during the investigation period.
- (234) The normal value is the actual domestic price per product type of only the profitable domestic sales of the product types during the investigation period, if:
- (a) the volume of profitable sales of the product type represents 80 % or less of the total sales volume of this type; or
 - (b) the weighted average price of this product type is below the unit cost of production.
- (235) For those product types with no or insufficient sales in the domestic market, the Commission constructed the normal value in accordance with Article 2(3) and (6) of the basic Regulation.
- (236) Normal value was constructed by adding the following to the average cost of production of the like product of the investigated exporting producers during the investigation period:
- (a) the weighted average selling, general and administrative ('SG&A') expenses incurred by the investigated exporting producers on domestic sales of the like product, in the ordinary course of trade, during the investigation period; and
 - (b) the weighted average profit realised by the investigated exporting producers on domestic sales of the like product, in the ordinary course of trade, during the investigation period.
- (237) For the product types not sold in representative quantities on the domestic market, the average SG&A expenses and profit of transactions made in the ordinary course of trade on the domestic market for those types were added. For the product types not sold at all on the domestic market, or where no sales were found in the ordinary course of trade, the weighted average SG&A expenses and profit of all transactions made in the ordinary course of trade on the domestic market were added.

3.3.3. *Export price*

- (238) The exporting producers exported to the Union either directly to independent customers or through related companies.
- (239) The export price was, thus, established on the basis of prices actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

3.3.4. *Comparison*

- (240) The Commission compared the normal value and the export price of the exporting producers on an ex-works basis.
- (241) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and prices comparability, in accordance with to Article 2(10) of the basic Regulation.
- (242) Adjustments were made where appropriate for transport, insurance, handling, loading and ancillary costs, packing fees, credit cost, bank charges, commissions and SG&A.

3.3.5. *Dumping margins*

- (243) For the exporting producers, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.
- (244) On this basis, the provisional dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional dumping margin
Yieh United Steel Co. and Tang Eng Iron Works Co. Ltd.	6,0 %
Walsin Lihwa Co.	7,5 %
All other companies	7,5 %

- (245) The level of cooperation in this case was considered high and no other exporting producers could be identified. Consequently, the Commission considered it representative to set the residual dumping margin at the level of the exporting producer with the highest dumping margin.

4. INJURY

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

- (246) The like product was manufactured by five known (groups of) producers in the Union during the investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (247) The total Union production during the investigation period was established at around 4,6 million tonnes, including production for the captive market. The Commission established this figure on the basis of all the available information concerning the Union industry, namely the verified questionnaire reply received from Eurofer, where possible cross-checked with the verified questionnaire replies of the sampled Union producers.
- (248) As indicated in recital (7), three Union producers were selected in the sample, representing over 78 % of total Union production of the like product. They are all vertically-integrated producers.

4.2. **Determination of the relevant Union market**

- (249) To establish whether the Union industry suffered injury and to determine consumption and the various economic indicators related to the situation of the Union industry, the Commission examined whether and to what extent the subsequent use of the Union industry's production of the like product had to be taken into account in the analysis.

- (250) The Union industry is vertically integrated and SSHR is regarded as an intermediate material for the production of various value added downstream products, namely cold rolled products. The Commission found that a substantial part of the total Union producers' production was destined for captive use.
- (251) The distinction between captive and free market is most relevant for the injury analysis because products destined for captive use are not exposed to direct competition from imports, as they are sold within the same company or groups of companies on the basis of transfer prices set according to internal price policies thus not directly linked to prices on the free market.
- (252) By contrast, production destined for free market sales is in direct competition with imports of the product concerned, and is sold at free market prices.
- (253) To provide a picture of the Union industry that is as complete as possible, the Commission requested data for the entire activity of SSHR and verified whether the production was destined for captive use or for the free market.
- (254) The Commission examined certain economic indicators relating to the Union industry on the basis of data for the free market only. These indicators are: sales volume and sales prices on the Union market; market share; export volume and prices; and profitability. Where possible and appropriate, the findings of the examination were compared with data for the captive market in order to provide a complete picture of the situation of the Union industry.
- (255) However, other economic indicators could meaningfully be examined only by referring to the whole SSHR activity, including the captive use of the Union industry. These are: production; capacity and capacity utilisation; investments; stocks; employment; productivity; and wages. This is because they depend on the whole production activity, whether SSHR is kept for captive use or sold on the free market.

4.3. Union consumption

4.3.1. Free market consumption on the Union market

- (256) The Commission established Union consumption on the basis of: (a) Eurofer data concerning Union industry's sales of the like product to unrelated customers in the Union, whether direct or indirect sales, cross-checked with the sampled Union producers; and (b) imports of the product under investigation into the Union from all third countries as reported in Eurostat.
- (257) The Union consumption on the free market over the period considered developed as follows:

Table 2

Free consumption on the Union market (tonnes)

	2016	2017	2018	IP
Free Union consumption	1 221 444	1 213 398	1 205 651	1 219 231
<i>Index</i>	<i>100</i>	<i>99</i>	<i>99</i>	<i>100</i>

Source: Eurofer, sampled Union producers and Eurostat.

- (258) During the period considered, Union consumption remained stable.

4.3.2. Captive consumption on the Union market

- (259) The Commission established the Union captive consumption on the basis of the captive use of all known producers in the Union. On this basis, the Union captive consumption over the period considered developed as follows:

Table 3

Captive consumption on the Union market (tonnes)

	2016	2017	2018	IP
Captive Union consumption	3 627 275	3 741 880	3 703 555	3 607 752
<i>Index</i>	100	103	102	99

Source: Eurofer.

- (260) Captive consumption on the Union market remained rather stable with some minor fluctuations over the period considered, and decreased by less than 1 % in the investigation period.

4.3.3. *Overall consumption*

- (261) By merging the two previous tables, the overall consumption – thus totalling the captive and free market consumption – evolved as follows during the period considered:

Table 4

Overall consumption (captive and free market) (tonnes)

	2016	2017	2018	IP
Overall Union consumption	4 848 718	4 955 278	4 909 206	4 826 983
<i>Index</i>	100	102	101	100

Source: Eurofer, sampled Union producers and Eurostat.

- (262) The above table shows that overall consumption followed the same trend as observed in free market consumption and in captive consumption, thus remaining stable over the period considered. Overall consumption was also in line with total Union production (see table 7).

4.4. **Imports from the countries concerned**4.4.1. *Cumulative assessment of the effects of imports from the countries concerned*

- (263) The Commission examined whether imports of SSHR originating in the countries concerned should be assessed cumulatively, in accordance with Article 3(4) of the basic Regulation.
- (264) That provision stipulates that the imports from more than one country shall be cumulatively assessed only if it is determined that:
- the margin of dumping established in relation to the imports from each country is more than *de minimis* as defined in Article 9(3), and the volume of imports from each country is not negligible; and
 - a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between imported products and the like Union product.
- (265) The margins of dumping established in relation to the imports from each of the three countries concerned are summarised under recitals (91), (218) and (241). They are all above the *de minimis* threshold laid down in Article 9 (3) of the basic Regulation.
- (266) The volume of imports from each of the three countries concerned was not negligible. Imports market shares in comparison with free market consumption in the investigation period were 18,3 % for the PRC, 9,1 % for Indonesia and 3,0 % for Taiwan.

- (267) The condition of competition between the dumped imports from each of the three countries concerned, and between them and the Union like product were similar. Indeed, SSHR originating in Indonesia, the PRC and Taiwan competed with each other when imported for sale on the Union market, and with the like product produced by the Union industry, as all of them are sold to similar categories of customers.
- (268) In its submission at initiation, STSS claimed that imports from the PRC should not be cumulated in view of their different development in terms of volume and prices. It claimed that imports from the PRC decreased gradually over the period considered while prices increased, particularly in 2017.
- (269) While it is true that Chinese imports prices increased over the period considered, they were at levels well below the Union industry's sales prices throughout the period considered. Chinese import volumes also increased significantly, and their market share was above 16 % throughout the whole period. The investigation has shown that imports from the countries concerned compete with each other in the light of Article 3(4)(b) of the basic Regulation. The import volumes from the PRC decreased from 2017 until the investigation period (see table 5: from index 135 in 2017 to 129 in 2018 to 114 in the investigation period). At the same time, import volumes from Indonesia sharply increased (from index 16 to 42 726 to 106 202). In absolute figures, the volume increase from Indonesia was greater than the decrease from the PRC from 2017 until the investigation period. Import volumes from Taiwan increased steadily from 2017 to 2018 but then fell in the investigation period (from index 137 to 173 to 128). Overall, imports from the countries concerned taken together continuously increased over the period considered (from index 100 in 2016 over 136 in 2017 and 156 in 2018 to 166 in the investigation period).
- (270) Therefore, and contrary to the claim by STSS, all criteria set out in Article 3(4) of the basic Regulation were met and imports from the countries concerned were examined cumulatively for the purposes of injury determination.

4.4.2. Volume and market share of imports from the countries concerned

- (271) The Commission established the volume of imports on the basis of Eurostat data. The market share of imports was established by comparing the volume of imports with the Union free market consumption.
- (272) Imports into the Union from the countries concerned developed as follows:

Table 5

Import volumes (tonnes) and market share

	2016	2017	2018	IP
PRC	194 962	263 858	250 633	222 802
<i>Index</i>	100	135	129	114
Market share	16,0 %	21,7 %	20,8 %	18,3 %
<i>Index</i>	100	136	130	114
Indonesia	105	17	44 863	111 512
<i>Index</i>	100	16	42 726	106 202
Market share	0,0 % ⁽¹⁾	0,0 % ⁽²⁾	3,7 %	9,1 %
<i>Index</i>	100	100 ⁽³⁾	43 286	106 395
Taiwan	28 992	39 739	50 058	36 910
<i>Index</i>	100	137	173	127
Market share	2,4 %	3,3 %	4,2 %	3,0 %
<i>Index</i>	100	138	175	128

	2016	2017	2018	IP
Total countries concerned	224 059	303 613	345 554	371 224
<i>Index</i>	100	136	154	166
Market share	18,3 %	25,0 %	28,7 %	30,4 %
<i>Index</i>	100	136	156	166

Source: Eurostat.

(¹) The precise market share was 0,0086 % in 2016.

(²) The precise market share was 0,0014 % in 2017.

(³) Considering the precise market share in 2017 (see footnote 2 above), the index is at 16 in that year.

- (273) Imports from the countries concerned increased by 66 % over the period considered, reaching over 30 % of the Union free market consumption in the investigation period.

4.4.3. Prices of the imports from the countries concerned and price undercutting

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

Table 6

Prices of the imports from the countries concerned (EUR/tonne)

	2016	2017	2018	IP
PRC	1 503	1 827	1 826	1 820
<i>Index</i>	100	122	121	121
Indonesia	2 203	2 152	1 688	1 645
<i>Index</i>	100	98	77	75
Taiwan	1 550	1 813	1 954	1 943
<i>Index</i>	100	117	126	125
Total countries concerned	1 510	1 826	1 827	1 780
<i>Index</i>	100	121	121	118

Source: Eurostat.

- (275) Whereas import prices from the PRC and Taiwan increased by 21 % and 25 % respectively, however, import prices from Indonesia fell significantly by 25 % over the period considered (import prices from the countries concerned increased on average by 18 %). Despite the overall increase, import prices from the countries concerned remain constantly lower than Union industry prices over the same period (see Table 11).
- (276) The Commission determined price undercutting during the investigation period by comparing:
- the weighted average sales prices per product type of the three sampled Union producers charged to unrelated customers on the Union free market, adjusted to an ex-works level; and
 - the corresponding weighted average prices per product type of imports from the cooperating exporting producers in the countries concerned to the first independent customer on the Union market ⁽⁸⁴⁾, established on a cost, insurance, freight (CIF) basis, with appropriate adjustments for post-importation costs.

⁽⁸⁴⁾ The vast majority of sales were sales made directly to independent end-customers. Sales to wholesalers represented [1 to 5 %] of the total sales of the countries concerned (whereas the rest were made to end-users). [95 to 100 %] of the sales made by the Chinese, Indonesian, and Taiwanese exporting producers were made directly into the Union (the rest being made via related importers). The sampled Union producers also sell predominantly directly to independent end-customers, including re-rollers and tube-makers, representing [80 to 85 %] of their total sales in the Union. Whereas [10 to 15 %] of their total sales in the Union are to wholesalers.

- (277) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the sampled Union producers' turnover during the investigation period. It showed a weighted average undercutting margin of 10,7 % for imports from Indonesia, 9,3 % for imports from the PRC and 4,1 % for imports from Taiwan.

4.5. Economic situation of the Union industry

4.5.1. General remarks

- (278) 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.
- (279) As mentioned in recital (7), sampling was used for the determination of possible injury suffered by the Union industry.
- (280) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data from the questionnaire reply of Eurofer, which was duly verified, relating to all Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies of the three sampled Union producers, which were duly verified. Both sets of data were found to be representative of the economic situation of the Union industry.
- (281) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, stocks, employment, productivity and magnitude of the dumping margin.
- (282) The microeconomic indicators are: average unit prices, unit cost, labour costs, profitability, cash flow, investments and return on investments.

4.5.2. Macroeconomic indicators

4.5.2.1. Production, production capacity and capacity utilisation

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

Table 7

Production, production capacity and capacity utilisation

	2016	2017	2018	IP
Total Union production (tonnes)	4 786 053	4 807 793	4 768 710	4 636 995
<i>Index</i>	100	100	100	97
Production capacity (tonnes)	6 967 785	6 937 585	7 025 230	7 057 282
<i>Index</i>	100	100	101	101
Capacity utilisation	69 %	69 %	68 %	66 %
<i>Index</i>	100	101	99	96

Source: Eurofer.

- (284) The Union industry's production volume was stable until 2018 then decreased by 3 % in the investigation period. The reported capacity figures refer to actual capacity, which implies that adjustments considered as standard by the industry – for set-up time, maintenance, bottle necks and other normal stoppages – have been taken into account. On this basis, production capacity remained practically stable, with a marginal increase by 1 % over the period considered.
- (285) As a result of decreased production and slightly increased capacity, capacity utilisation decreased by 4 % over the period considered, and was constantly below 70 %.

4.5.2.2. Sales volume and market share

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

Table 8

Free sales volume and market share

	2016	2017	2018	IP
Union industry free sales volumes (tonnes)	869 660	775 692	735 596	754 334
<i>Index</i>	100	89	85	87
Market share on free Union consumption	71,2 %	63,9 %	61,0 %	61,9 %
<i>Index</i>	100	90	86	87

Source: Eurofer and Eurostat.

- (287) The Union industry's sales volume on the free market fell by 13 % over the period concerned.
- (288) The market share of the Union industry also fell significantly, by nearly 10 percentage points, even though consumption in the Union remained stable over the period considered.
- (289) As far as the captive market is concerned, captive volume and market share on the Union market developed over the period considered as follows:

Table 9

Captive volume and market share (tonnes)

	2016	2017	2018	IP
Captive volume on the Union market	3 627 275	3 741 880	3 703 555	3 607 752
<i>Index</i>	100	103	102	99
Total production of Union industry	4 786 053	4 807 793	4 768 710	4 636 995
<i>Index</i>	100	100	100	97
Share of captive market over total Union production	75,8 %	77,8 %	77,7 %	77,8 %
<i>Index</i>	100	103	102	103

Source: Eurofer.

- (290) The captive volume of the Union industry (composed of SSHR kept by the Union industry for downstream use) on the Union market remained stable at around 3,6 million tonnes during the period considered.
- (291) The Union industry's captive market share (expressed as a percentage of total Union production) increased slightly in 2017 then remained stable at around 78 % over the rest of the period.
- (292) Therefore, in view of the stable trend of the Union captive market over the period considered, the decline in Union industry's sales was the result of increased pressure exerted by imports from the countries concerned.

4.5.2.3. Growth

- (293) The above figures in respect of production, sales volume and market share, which all show a decreasing trend over the period considered, demonstrate that the Union industry was not able to grow, either in absolute terms or in relation to consumption.

4.5.2.4. Employment and productivity

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

Table 10

Employment and productivity

	2016	2017	2018	IP
Number of employees	2 274	2 266	2 303	2 372
<i>Index</i>	100	100	101	104
Productivity (tonnes per staff)	2 104	2 122	2 070	1 955
<i>Index</i>	100	101	98	93

Source: Eurofer.

- (295) The level of Union industry employment related to the production of SSHR increased marginally by 4 % over the period considered. In view of the slight decrease in production, productivity of the Union industry's workforce, measured as tonnes per employee produced per year, decreased significantly over the period considered.

4.5.2.5. Magnitude of the dumping margin

- (296) All dumping margins were significantly above the *de minimis* level. The impact of the magnitude of the actual margins of dumping on the Union industry was substantial, given the volume and prices of imports from the countries concerned.

4.5.3. Microeconomic indicators

4.5.3.1. Prices and factors affecting prices

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

Table 11

Sales prices in the Union

	2016	2017	2018	IP
Average unit sales price on the free market (EUR/tonne)	1 699	2 019	2 072	1 991

	2016	2017	2018	IP
<i>Index</i>	100	119	122	117
Unit cost of production (EUR/tonne)	1 581	1 795	1 929	1 894
<i>Index</i>	100	114	122	120

Source: Sampled Union producers.

- (298) Average unit sales prices increased by 17 % over the period considered, which was not sufficient to keep up with the development of cost of production that increased by 20 % over the same period. To a large extent the cost evolution was driven by important raw material price increases, such as for nickel, molybdenum and chromium. Whereas between 2016 and 2018 the Union industry was able to pass on this cost increase in relative terms to its sales prices, in the investigation period it was not able to fully pass on the cost increase, as the increase in cost was greater than the increase in prices.

4.5.3.2. Labour costs

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

Table 12

Average labour costs per employee

	2016	2017	2018	IP
Average labour costs per employee (EUR)	62 423	61 712	60 037	61 534
<i>Index</i>	100	99	96	99

Source: Sampled Union producers.

- (300) The average labour costs per employee of the sampled Union producers fell by 4 % until 2018, then increased again in the investigation period, though to a level that is still 1 % below the level in 2016. This shows that Union producers were able to lower labour costs, in spite of the deteriorating market circumstances.

4.5.3.3. Inventories

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

Table 13

Inventories

	2016	2017	2018	IP
Closing stocks (tonnes)	147 341	152 089	147 018	118 543
<i>Index</i>	100	103	100	80
Closing stocks as a percentage of production	3,1 %	3,2 %	3,1 %	2,6 %
<i>Index</i>	100	103	100	83

Source: Eurofer.

- (302) During the period considered the level of closing stocks decreased by 20 %. Most types of the like product are produced by the Union industry based on specific orders of the users. Therefore, stocks are not considered to be an important injury indicator for this industry. This is also confirmed by analysing the evolution of the closing stocks as a percentage of production. As can be seen above, this indicator remained relatively stable over the period considered at around 3 % of the production volume.

4.5.3.4. Profitability, cash flow, investments and return on investments

Table 14

Profitability, cash flow, investments, return on investments

	2016	2017	2018	IP
Profitability of sales in the Union to unrelated customers (% of sales turn-over)	7,2 %	10,2 %	5,1 %	3,5 %
<i>Index</i>	100	142	71	49
Cash flow (EUR)	20 214 740	48 032 998	25 074 879	- 18 363 974
<i>Index</i>	100	238	124	-91
Investments (EUR)	29 376 840	47 908 280	48 154 124	46 211 563
<i>Index</i>	100	163	164	157
Return on investments	4,8 %	8,5 %	3,1 %	0,2 %
<i>Index</i>	100	179	65	4

Source: Sampled Union producers.

- (303) The Commission established the profitability of the Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales.
- (304) Overall profitability fell from 7,2 % in 2016 to 3,5 % in the investigation period. This drop coincides with the increase of import volumes from the countries concerned at undercutting prices (see recital (276)). Return on investments followed the same downward trend.
- (305) Net cash flow evolved to a large extent in line with profitability and return on investments. It was positive from 2016 to 2018, with the peak in 2017, and turned negative in the investigation period, when profitability was at the lowest point in the period considered.
- (306) The level of yearly investments increased over the period considered by 57 %. However, the increased investment levels did not translate into corresponding capacity increases (see table 7). Subsequently, the investments merely aimed at retaining the existing capacities and making due replacements of necessary production assets.

4.5.4. Conclusion on injury

- (307) Consumption was stable over the period considered. However, the market share of Union producers decreased from 71,2 % to 61,9 %.
- (308) The financial indicators of the sample of Union producers show that the Union industry's cost of production increased (+ 20 %) slightly more than its average sales price (+ 17 %), which meant that the Union industry could not fully pass on the cost increase. This resulted in a significant fall in profit over the period considered, from 7,2 % in 2016 to 3,5 % in the investigation period. A similar negative development is noted in relation to the other financial indicators, return on investment and cash flow.
- (309) The Union industry's sales volume decreased by 13 % and production volume by 3 % over the period considered. The gap is explained by the importance for the Union industry of the captive market, which however did not grow over the period considered. Capacity utilisation was constantly below 70 % and went down by three percentage points over the period considered (66 % in the investigation period).

- (310) On the basis of the above, the Commission concluded at this stage that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

- (311) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the countries concerned caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could, at the same time, have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the dumped imports from the countries concerned was not attributed to the dumped imports. *inter alia*, these factors are: imports from third countries, the export performance of the Union industry, increase in costs of production, decrease in Union demand for SSHR in 2018 and the partial reliance by Union producers on captive production.

5.1. Effects of the dumped imports

- (312) Prices of imports from all three countries concerned undercut the Union industry's prices, resulting in undercutting margins of 4,1 % for Taiwan, 9,3 % for the PRC and 10,7 % for Indonesia (9,5 % on average) in the investigation period. The Union industry was therefore unable to account for the increase in cost of production in its Union sales prices, which demonstrates the price pressure exerted by the imports concerned. This situation had a serious impact on Union industry's profitability, which went down to very low levels in the investigation period.

5.2. Effects of other factors

5.2.1. Imports from third countries

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

Table 15

Country		2016	2017	2018	IP
Republic of Korea	Volume (tonnes)	64 995	32 949	35 535	33 191
	<i>Index</i>	100	51	55	51
	Market share	5,3 %	2,7 %	2,9 %	2,7 %
	<i>Index</i>	100	51	55	51
	Average price (EUR/tonne)	1 404	1 697	1 695	1 654
	<i>Index</i>	100	121	121	118
South Africa	Volume (tonnes)	25 803	29 123	25 923	27 494
	<i>Index</i>	100	113	100	107
	Market share	2,1 %	2,4 %	2,2 %	2,3 %
	<i>Index</i>	100	114	102	107
	Average price (EUR/tonne)	1 436	1 649	1 671	1 728
	<i>Index</i>	100	115	116	120
Other third countries	Volume (tonnes)	36 926	72 022	63 043	32 989
	<i>Index</i>	100	195	171	89
	Market share	3,0 %	5,9 %	5,2 %	2,7 %

Country		2016	2017	2018	IP
	<i>Index</i>	100	196	173	89
	Average price (EUR/tonne)	1 837	1 931	2 084	2 302
<i>Index</i>	100	105	113	125	
Total of all third countries except the countries concerned	Volume (tonnes)	127 725	134 093	124 501	93 674
	<i>Index</i>	100	105	97	73
	Market share	10,5 %	11,1 %	10,3 %	7,7 %
	<i>Index</i>	100	106	99	73
	Average price (EUR/tonne)	1 536	1 813	1 887	1 904
	<i>Index</i>	100	118	123	124

Source: Eurostat.

- (314) During the period considered, the market share of imports from third countries declined by 27 % (or by close to 3 percentage points) to 7,7 % in the investigation period. Since during the same period, the countries concerned increased their market share by 66 % (see recital (273) and table 5), the loss of market share by the Union industry is attributed to the steep increase in market share from the countries concerned.
- (315) Imports volume from Korea decreased strongly over the period considered, and their market share almost halved, falling to only 2,7 % during the investigation period. Average prices of imports from Korea increased by 18 % over the period considered, slightly less than the total of all third countries except the countries concerned (24 %). Imports from South Africa were stable over the period considered but sold at higher prices than the ones from the countries concerned, and they never reached a market share of more than 2,5 %.
- (316) The Commission therefore provisionally concluded that imports from other countries have not contributed to the injury suffered by the Union industry.

5.2.2. Export performance of the Union industry

- (317) The volumes and prices of exports of the Union industry developed over the period considered as follows:

Table 16

	2016	2017	2018	IP
Export volume (tonnes)	125 237	151 305	156 620	141 448
<i>Index</i>	100	121	125	113
Average price (EUR/tonne)	1 745	1 909	1 940	1 992
<i>Index</i>	100	109	111	114

Source: Sampled Union producers, Eurofer.

- (318) The Union industry was able to increase its export volume by 13 % over the period considered. The additional export sales of around 16 000 tonnes in the investigation period, as compared to the beginning of the period considered, pales compared to the loss of 115 000 tonnes of sales in the Union market during the same period. In addition, Union producers could increase their export unit prices by 14 % over the same period. The export sales of the industry could thus only for a very small part compensate the negative developments both in terms of volumes and prices on the Union market. However, on that basis and contrary to the claim by one interested party, the export performance of the Union industry was positive and could not contribute to the injury suffered by the Union industry.

5.2.3. Other factors

- (319) Cost of production per tonne of SSHR produced increased by 20 % over the period considered (see table 11). This was mainly due to a strong increase in raw material costs, a factor that has impacted on producers worldwide. In particular, the price of nickel, being the second most important input for several Union producers, increased from less than USD 9 000 in early 2016 to over USD 15 000 in mid-2018 and to still more than USD 12 500 in June 2019. The Union industry was initially also able to pass on this cost increase in its sales prices, however that resulted in an important loss of market share and profitability. In the investigation period, this was not possible anymore due to the price pressure exerted by the dumped imports. As a result, profitability decreased dramatically, that is by 51 % over the period considered.
- (320) Several parties claimed that the deterioration affecting the Union industry in the second half of 2018 was in fact due to a decrease in demand; this decrease was, in turn, caused by the imminent imposition of safeguard measures, which resulted in purchases being concentrated in the first half of the year, and to cyclical developments in the global steel market in the second half of the year. Contrary to these claims, the investigation did not reveal any decrease in consumption on the Union market but rather a sharp loss of market share by the Union industry due to a strong increase in imports (see section 4.4.2 and tables 5 and 8). The Commission was also not able to link the decrease to the safeguard measures. The claim was thus rejected.
- (321) Several parties claimed that the Union industry would not, or to a lesser extent, be interested in selling the product concerned on the free market as it would prioritize captive production. Even though the downstream market is important to the Union industry, it is also selling significant volumes of the product concerned on the free market and has still significant spare capacity to produce and thus sell more. In addition, the Union captive market has not grown over the period considered. For these reasons, the claim was rejected.
- (322) One interested party claimed that overcapacity in the Union was a cause of injury to the Union industry. However, the investigation confirmed that Union industry's total production capacity remained stable (+ 1 %) during the period considered, contrary to the PRC and Indonesia, which have been building up significant overcapacities in order to export the output resulting from these excess capacities to the Union, thus taking up market shares from the Union producers. Therefore, this claim was rejected.
- (323) One interested party claimed that, since the Union industry (and the steel sector globally) performed exceptionally well in 2017, particularly as regards profits, the decrease in 2018 was in fact a natural consequence. However, the investigation provisionally found a significant deterioration in certain injury indicators from the beginning to the end of the period considered, meaning that the starting point was 2016 and not 2017. Indeed, as compared to 2016, profitability halved and both sales volumes of the Union industry on the Union market and their market share fell by 13 %. Therefore, this claim was rejected.
- (324) Two interested parties claimed that the additional costs borne by the Union producers of the like product in order to meet the strict EU standards in terms of environment makes them less competitive on the Union market. On this claim, the Commission considers that the high environmental standards in the Union cannot be considered as a self-inflicting cause of injury. To the contrary, the high environmental EU standards are taken into account in the calculation of the target price. Therefore, this claim was rejected.
- (325) One interested party claimed that both Union industry prices and the prices of Chinese imports have increased, therefore Chinese imports cannot be a cause of injury. However, the prices of the Chinese imports constantly remained significantly below the average Union industry prices and also undercut the Union prices during the investigation period. In addition, as regards volumes, there was a significant increase in imports from the PRC over the period considered which added to price pressure. Therefore, this claim was rejected.

5.3. Conclusion on causation

- (326) In light of the above consideration, the Commission provisionally established a causal link between the injury suffered by the Union industry and the dumped imports from the countries concerned.

- (327) The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports. All other identified factors, in particular imports from third countries, export performance of the Union industry, increase in costs of production, decrease in demand for SSHR in 2018, the partial reliance by Union producers on captive production, overcapacity in the Union as a result of global overcapacity, the exceptionally favourable market circumstances in 2017, the additional environmental costs borne by Union producers and the increase in import prices from the PRC were provisionally not found to attenuate the causal link, even considering their possible combined effect.

6. LEVEL OF MEASURES

- (328) To determine the level of the measures, the Commission examined whether a duty lower than the margin of dumping would be sufficient to remove the injury caused by dumped imports to the Union industry.
- (329) In the present case, the complainants claimed the existence of raw material distortions within the meaning of Article 7(2a) of the basic Regulation with regard to two of the countries under investigation, namely Indonesia and the PRC. The assessment concerning these countries is included in section 6.2 below.

6.1. Examination of the margin adequate to remove the injury to the Union industry for Taiwan

- (330) The Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry in the absence of distortions in the sense of Article 7(2a) of the basic Regulation. In this case, the injury would be eliminated if the Union industry was able to cover its costs of production, including those costs resulting from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia of the basic Regulation, and to obtain a reasonable profit ('target profit').
- (331) In accordance with Article 7(2c) of the basic Regulation, for establishing the target profit, the Commission took into account the following factors: the level of profitability before the increase of imports from the country under investigation, the level of profitability needed to cover full costs and investments, research and development (R&D) and innovation, and the level of profitability to be expected under normal conditions of competition. The Union industry claimed that 2017 was a suitable year for establishing a target profit. The Commission considers that 2017 was an exceptionally good year for the industry and that the profit achieved by the sampled Union producers in that year (10,2 %) is thus likely to be tainted if used as a target profit. Moreover, the market share of imports in 2017 was already 29,1 %. By contrast, in 2016 the market share of imports was considerably lower than in 2017 (21,5 %). In the absence of any other information, the Commission decided to provisionally use the average profit achieved over the years 2016 and 2017 as target profit. That profit is 8,7 %.
- (332) In accordance with Article 7(2c) of the basic Regulation, the Commission assessed a claim made by one Union producer on planned investments which were not implemented during the period considered. Based on the documentary evidence received, the Commission provisionally accepted that claim and added the corresponding amount to the non-injurious price of that Union producer.
- (333) In accordance with Article 7(2d) of the basic Regulation, the Commission assessed the future costs resulting from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party, that the Union industry will incur during the period of application of the measure pursuant to Article 11(2). Based on the evidence available, the Commission established an additional cost in a range between EUR 1,5 and 6 per tonne, which was added to the non-injurious price.
- (334) On this basis, the Commission calculated a non-injurious price of the like product for the Union industry by adding the above-mentioned profit margin of 8,7 % and the adjustments under Article 7(2c) and 7(2d) to the cost of production of the sampled Union producers during the investigation period.

(335) The Commission then determined the injury elimination level on the basis of a comparison of the weighted average import price, as established for the verified cooperating exporting producers in the countries concerned on a type-by-type basis, as established for the price undercutting calculations, with the weighted average non-injurious prices of the same product types sold by the sampled Union producers on the Union free market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.

(336) The result of these calculations is shown in the table below.

Country	Company	Dumping margin (%)	Underselling margin (%)
Taiwan	Yieh United Steel Co. and Tang Eng Iron Works Co. Ltd.	6,0	24,1
Taiwan	Walsin Lihwa Co.	7,5	18,3
Taiwan	All other companies	7,5	24,1

6.2. Examination of the margin adequate to remove the injury to the Union industry for Indonesia and the PRC

6.2.1. Comparison between dumping margin and underselling margin

(337) In accordance with Article 7(2) of the basic Regulation, the Commission first examined in relation to Indonesia and the PRC whether the margin of dumping provisionally established would be higher than the margin adequate to remove the injury to the Union industry. To this effect, a comparison between the weighted average import price of the cooperating exporting producers in Indonesia and the PRC with the target price of the Union industry as explained in Section 6.1 above, was made. The result of these calculations is shown in the table below:

Country	Company	Dumping margin (%)	Underselling margin (%)
Indonesia	PT Indonesia Guang Ching Nickel and Stainless Steel Industry	19,2	17,0
	PT Indonesia Tsingshan Stainless Steel		
PRC	Shanxi Taigang Stainless Steel Co., Ltd	108,4	18,9
PRC	Fujian Fuxin Special Steel Co., Ltd	55,6	14,5
PRC	Xiangshui Defeng Metals Co., Ltd	87,9	17,4
PRC	Fujian Dingxin Technology Co., Ltd.	87,9	17,4
PRC	All other companies	108,4	18,9

(338) Since the underselling margin calculated for the Indonesian and the Chinese exporting producers was lower than the dumping margin, the Commission assessed whether there are distortions on raw materials with regard to the product concerned, pursuant to Article 7(2a) of the basic Regulation.

6.2.2. Raw material distortions

(339) The complainant provided sufficient evidence in the complaint that there are raw material distortions within the meaning of Article 7(2a) of the basic Regulation with regard to the product concerned in Indonesia and the PRC. Thus, as announced in the Notice of Initiation, when assessing the appropriate level of measures in relation to Indonesia and the PRC, the Commission examined the alleged distortions and any other distortions in Indonesia and the PRC covered by Article 7(2a) of the basic Regulation.

- (340) The raw materials claimed to be affected by such distortions were nickel (ferronickel, nickel pig iron, nickel ore, scrap nickel), coal, and stainless steel scrap in Indonesia and stainless steel scrap, chromium, coking coal, ferrochromium, ferrosilicon, crude (stainless) steel, and vanadium in the PRC.
- (341) Out of these raw materials, the Commission identified the main raw materials used in the production of the product concerned by each of the sampled exporting producers. The Commission considered as main raw materials those which represent at least 17 % of the cost of production of the product concerned.
- (a) Indonesia
- (342) With regard to Indonesia, the investigation confirmed that distortions within the meaning of Article 7(2a) of the basic Regulation existed on raw materials during the investigation period in the form of an export ban ⁽⁸⁵⁾ on nickel ore with a nickel content of 1,7 % and more, an export tax ⁽⁸⁶⁾ of 10 % on nickel ore with a nickel content of less than 1,7 %, a licensing requirement ⁽⁸⁷⁾ and a *de facto* export quota ⁽⁸⁸⁾ on nickel ore with the latter nickel content, and a *de facto* licensing requirement ⁽⁸⁹⁾ on ferronickel and nickel pig iron.
- (343) The investigation, further, established that nickel ore represented more than 17 % of the total costs of production of the product under investigation.
- (344) Finally, the investigation concluded that the price paid for nickel ore was significantly lower (by more than 30 %) than the price in the representative international market, in line with Article 7(2a) of the basic Regulation.
- (345) In this respect, the Commission compared the purchase price of the Indonesian exporting producers to the FOB price of nickel ore with a nickel content of 1,8 % in the Philippines ⁽⁹⁰⁾. The Commission considered the price in the Philippines suitable as the Philippines, similarly to Indonesia, belong to the countries with the world's highest reserves of nickel ore ⁽⁹¹⁾. Moreover, the nickel content of the nickel ore in this representative international market was very similar to the average nickel content of nickel ore purchased by the Indonesian exporting producers. Finally, the Commission considered that the transport costs between the supplier and the port included in the FOB price reflected the transport costs incurred by the Indonesian exporting producers.
- (346) Therefore, the requisite under Article 7(2a) of the basic Regulation, namely the existence of distortion(s) on a raw material accounting for more than 17 % of the cost of production of the product concerned, was met with regard to Indonesia.
- (b) The PRC
- (347) With regard to the PRC, the investigation confirmed that distortions within the meaning of Article 7(2a) of the basic Regulation existed on raw materials during the investigation period in the form of an export tax on stainless steel scrap, ferrosilicon, nickel pig iron and ferrochromium; and a licensing requirement on ferrosilicon, vanadium, ferronickel and ferrochromium. The Commission based this finding on the data available in the OECD database ⁽⁹²⁾ and on the relevant legislation applicable in the PRC.
- (348) The investigation further established that, for each of the sampled companies, at least one of the above main raw materials represented more than 17 % of their total cost of production of the product under investigation ⁽⁹³⁾.

⁽⁸⁵⁾ Article 4 and Annex IV of Regulation of the Minister of Trade of the Republic of Indonesia No 1/M-DAG/PER/1/2017.

⁽⁸⁶⁾ Articles 2, 12 and 14, and Annexes I(G) and II(G) of Regulation of the Minister of Finance of the Republic of Indonesia No 13/PMK.010/2017.

⁽⁸⁷⁾ Article 7(3) and Annex III of Regulation of the Minister of Trade of the Republic of Indonesia No 1/M-DAG/PER/1/2017.

⁽⁸⁸⁾ Article 4 and Annex III of Regulation of the Minister of Trade of the Republic of Indonesia No 1/M-DAG/PER/1/2017.

⁽⁸⁹⁾ Article 7(1) and Annex I of Regulation of the Minister of Trade of the Republic of Indonesia No 1/M-DAG/PER/1/2017.

⁽⁹⁰⁾ As reported by FerroAlloyNet, available at: <https://www.ferroalloynet.com/> (last viewed 10 March 2020).

⁽⁹¹⁾ International Nickel Study Group. The World Nickel Factbook 2018, p. 7 available at https://insg.org/wp-content/uploads/2019/03/publist_The-World-Nickel-Factbook-2018.pdf (last viewed 10 March 2020).

⁽⁹²⁾ OECD Inventory on export restrictions on Industrial Raw Materials available at https://qdd.oecd.org/subject.aspx?Subject=ExportRestrictions_IndustrialRawMaterials (last viewed 6 March 2020).

⁽⁹³⁾ As the exact quantity of production materials is considered business confidential, those raw materials that constitute more than 17 % of the cost of production of the product concerned and the undistorted price of the raw materials as established in representative international markets are provided to the sampled Chinese companies in an individual specific disclosure.

- (349) The investigation concluded that the price paid by the two sampled Chinese exporting producers in the PRC for these main raw materials was significantly lower than the price in the representative international market used for each respective raw material, for which the same sources were used as for the construction of the normal value in accordance with Article 2 (6a)(a) of the basic Regulation.
- (350) Therefore, the requisite under Article 7(2a) of the basic Regulation, namely the existence of distortion(s) on a raw material accounting for more than 17 % of the cost of production of the product concerned, were met with regard to the PRC.

6.2.3. Union interest under Article 7(2b) of the basic Regulation

- (351) Having concluded that there are raw material distortions as provided for by Article 7(2a) of the basic Regulation in the case of the PRC and Indonesia, the Commission examined whether it could clearly conclude that it was in the Union interest to determine the amount of provisional duties in accordance with Article 7(2b) of the basic Regulation. The determination of the Union interest was based on an appreciation of all pertinent information to this investigation, including the spare capacities in the exporting countries, competition for raw materials and the effect on supply chains for Union companies in accordance with Article 7(2b) of the basic Regulation. In order to conduct this assessment, the Commission inserted specific questions in the questionnaires to all interested parties. The complainant and the sampled Union producers provided response to those questions.

6.2.3.1. Spare capacities in the exporting countries

- (352) On the basis of information provided by Eurofer, spare capacity in the PRC was estimated at 26,4 million tonnes in 2019 ⁽⁹⁴⁾, and spare capacity of the total stainless steel sector in Indonesia was estimated at 4 million tonnes in 2019. ⁽⁹⁵⁾
- (353) According to the GOI questionnaire however, spare capacity in Indonesia is currently at 2,1 million tonnes. By contrast, the Union free market had a size of 1,2 million tonnes. In relative terms, spare capacities in the exporting countries are therefore of an enormous magnitude.

6.2.3.2. Competition for raw materials

- (354) As regards competition for raw materials, the GOC provided no meaningful information on the market for the distorted raw materials in the PRC, as set out in recital (347). The complainant stated that by artificially increasing or decreasing the level of raw materials supply, or simply by centrally setting the prices, the GOC can steer the prices upwards or downwards. As set out in Section 6.2.2 above, the Chinese raw materials market was considered to be distorted.
- (355) With regard to Indonesia, the investigation found that Indonesia has one of the biggest nickel ore mining sectors in the world. Therefore, by having export restrictions on nickel ore brings, the GOI brings prices artificially down on the domestic Indonesian market.
- (356) Both countries have export restrictions on nickel containing inputs, which is also the second most important input of the Union producers, as set out in recital (319).
- (357) All these issues create a comparative disadvantage for the Union industry compared to the exporting producers in the countries concerned. The Commission deems that this situation is unlikely to change in the near future. With regard to Indonesia, the situation even worsened recently. Measures allowing for exports of nickel ore with a nickel content below 1,7 % were supposed to last until January 2022. The GOI, however, decided to expedite their termination. All exports of nickel ore were prohibited as of January 2020 ⁽⁹⁶⁾. There is no evidence that the GOI would reverse its policy in the near future.

⁽⁹⁴⁾ Non-confidential version of the complaint, page 66, para. 336.

⁽⁹⁵⁾ Non-confidential version of the complaint, page 69, para. 352.

⁽⁹⁶⁾ Available at <https://www.reuters.com/article/us-indonesia-nickel/indonesian-nickel-miners-agree-to-stop-ore-exports-immediately-investment-chief-idUSKBN1X7106> (last viewed 11 March 2020).

6.2.3.3. Effect on supply chains for Union companies

- (358) In the lack of full cooperation from importers, the Commission provisionally established that the main effect on supply chains will be felt at the level of users. The possible effect on supply chains for Union companies, stipulated under Article 7(2b) of the basic Regulation, was, in view of the important difference between the dumping and injury margins for exporting countries, assessed in the context of the Union interest test pursuant to Article 21 of the basic Regulation.
- (359) As concluded in recital (373) below, that analysis resulted in the determination that, in view of the effect of measures at the level of the dumping margin, it is not in accordance with the Union interest to apply Article 7(2a) of the basic Regulation.

6.2.3.4. Conclusion

- (360) In view of the analysis set out above, the Commission concluded that, in accordance with Article 7(2a) of the basic Regulation, it is not in the interest of the Union to set the level of the measures at the level of dumping in view of the disproportionately negative effect this is likely to have on supply chains for Union companies.

7. UNION INTEREST

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

7.1. Interest of the Union industry

- (362) The Union industry is located in several Member States and it employs directly 2 372 employees in relation to the product under investigation. None of the Union producers opposed the initiation of the investigation. As shown in section 4 above when analysing the injury indicators, the whole Union industry experienced a deterioration of its situation and was negatively affected by the dumped imports.
- (363) It is expected that the imposition of provisional anti-dumping duties will restore fair trading conditions on the Union market, end the price depression and enable the Union industry to recover. This would result in an improvement of the Union industry's profitability towards levels considered necessary for this capital intensive industry. The Union industry has suffered material injury caused by imports at dumped prices from the countries concerned. It is recalled that a number of key injury indicators showed a negative trend during the period considered. In particular, market share and sales volume, as well as indicators pertaining to the financial performance of the sampled Union producers, such as profitability and return on investment, were seriously affected. It is therefore important to restore prices to non-dumped or at least non-injurious level in order to allow all producers to operate on the Union market under fair trading conditions. In the absence of measures, a further deterioration of the Union industry's economic situation is very likely. A bad performance on the SSHR segment would impact the downstream segments of Union producers, and in particular their captive production. Union producers heavily rely on the business model of a combination of free market sales and captive production. A deterioration of the free market segment could likewise put at risk the captive production segment, which represents bigger production volumes and employment figures than the former.
- (364) It is therefore provisionally concluded that the imposition of anti-dumping duties would be in the interest of the Union industry as it would allow it to recover from the effects of injurious dumping found.

7.2. Interest of unrelated importers

- (365) Two parties made themselves known as unrelated importers and replied to the relevant questionnaire. However, the reply of one of them was not further followed up as the importer turned out to be operating from outside the Union.

- (366) The second party turned out not be a genuine importer but a service centre for various operations. Therefore, there was no cooperation from genuine importers. According to the cooperating service center operator, increasing the price of the products concerned results in higher cost of manufacturing for European users of the products, causing injury to these users. More specifically, the party made a product exclusion request which is addressed under Section 2.3 along with other such claims.
- (367) On that basis, at this stage there is no indication that measures would be against the interest of importers.

7.3. Interest of users

- (368) Two users cooperated with the investigation.
- (369) One of the users which submitted a questionnaire reply was a producer of stainless steel tubes. With regard to that user, the Commission found that in view of its purchasing and importing volumes, its total profit and its profit derived from output products that involve the product concerned as an input, the imposition of measures would not unduly harm it.
- (370) The second cooperating user is a producer of stainless steel products which competes with the Union industry on several of its key downstream markets. It purchases significant volumes of SSHR from the Union industry as well as from producers outside the Union, including in the countries concerned. That user has raised concerns on the security of supply and purchase prices following any imposition of duties. It is the only large independent user of the product concerned in the Union. Without integrated steel production, it fully depends on coils supplies from other parties to manufacture its downstream products. The party claimed that the Union industry is not interested in selling additional large volumes of SSHR to it, and in particular one product type (black coils), at competitive prices, since the Union producers would prefer to keep them for their own captive use. This claim is rebutted by the fact that the Union industry had spare capacities throughout the period considered that exceeded the total demand of that user at least fourfold. Moreover, as the complainant has submitted, several Union producers are ready to supply black coils as communicated on the producers' websites. Finally, given the user's already established supply chains and contacts with third country producers, it is also reasonable to expect that it will be able also to diversify its supply by purchasing more from third countries.
- (371) Provided that all relevant factors (in particular sources, volumes and prices before duties of purchases and turnover achieved on downstream products) would remain unchanged as compared to the investigation period, the Commission established that the overall annual profit of that user would be seriously affected in a negative way if duties were imposed on imports from the PRC and Indonesia pursuant to Article 7(2a) of the basic Regulation.
- (372) If, under the same assumption as in recital (369), duties were imposed on imports from the PRC and Indonesia pursuant to Article 7(2) of the basic Regulation, the overall annual profit would also be affected but to a much lesser extent.
- (373) The above scenarios are based on static assumptions (i.e. all relevant factors remain unchanged except that duties will be imposed and hence to be factored in). In fact, they are worst case scenarios as, as explained below, in case duties are imposed the other underlying factors are likely to change.
- (374) In the first place, sourcing patterns and purchase prices will not remain the same. If prices of imports from in particular the PRC and Indonesia will be made subject to an upwards correction, imports from other sources of supply are likely to resume in larger volumes. In particular, we note that imports from South Korea were at high levels up to and including 2016, when they amounted to 65 000 tonnes. In view of market developments since then, these imports have lost important market shares over the years (see table 15) but it can be expected that after the imposition of measures exporting producers from Korea but also from other producing countries like South Africa will again increasingly focus on the Union market as they will be in a better position to compete, to the benefit of the users. Also, it is expected that due to the relief offered by the measures the Union industry will be in a position to sell more volumes to the users at competitive prices. The Union industry simply cannot afford to lose important market shares in the Union as this investigation testified. As regards the second user mentioned above, owing to its size and importance as a customer of the Union industry, it may have some leverage that is likely to increase in case it buys even larger volumes from the Union industry.

- (375) It is also to be noted that it is foreseen that in July 2021, the currently applicable steel safeguard measures which also concern the product concerned will expire. This means that from July 2021, users will have increased access to alternative sources as the quota restrictions which have been in place since 19 July 2018 will be lifted.
- (376) It is therefore expected that the users as a whole are likely to be affected negatively by the imposition of duties, but that the impact of the duty at the established levels for the PRC and Indonesia pursuant to Article 7(2) of the basic Regulation is not as such as to be disproportionate, as it is expected that the user industry will then be able to adapt to the new situation. Indeed, if the level of duties were to be set pursuant to Article 7(2) of the basic Regulation, all of the cooperating users are expected to remain profitable.
- (377) However, if duties were to be imposed pursuant to Article 7(2a) of the basic Regulation, the Commission established that the possible impact of measures against the PRC and Indonesia at the level of the dumping margin would be disproportionate in view of the possible strong negative effects on supply chains for certain Union companies and in particular on users. Indeed, the Commission found that in such a scenario the user industry, and in particular users which purchased significant volumes from the PRC and/or Indonesia in the investigation period, might be unduly affected and could become as a result loss making.

7.4. Conclusion on Union interest

- (378) On the basis of the above, and under the condition that duties are to be imposed pursuant to Article 7(2) of the basic Regulation, the Commission provisionally concluded that there were no compelling reasons that it was not in the Union interest to impose measures on imports of certain hot rolled stainless steel sheets and coils originating in the countries concerned at this stage of the investigation.

8. PROVISIONAL ANTI-DUMPING MEASURES

- (379) On the basis of the conclusions reached by the Commission on dumping, injury, causation and Union interest, provisional measures should be imposed imports of flat-rolled products of stainless steel, whether or not in coils (including products cut-to-length and narrow strip), not further worked than hot-rolled originating in Indonesia, the People's Republic of China and Taiwan, to prevent further injury being caused to the Union industry by the dumped imports.
- (380) Provisional anti-dumping measures should be imposed in accordance with the lesser duty rule in Article 7(2) of the basic Regulation. The Commission compared the injury margins and the dumping margins. The amount of the duties was set at the level of the lower of the dumping and the injury margins.
- (381) On the basis of the above, the provisional anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Country	Company	Dumping margin	Injury margin	Provisional anti-dumping duty
Indonesia	PT Indonesia Guang Ching Nickel and Stainless Steel Industry and PT Indonesia Tsingshan Stainless Steel	19,2 %	17,0 %	17,0 %
Indonesia	All other companies	19,2 %	17,0 %	17,0 %
People's Republic of China	Shanxi Taigang Stainless Steel Co., Ltd.	108,4 %	18,9 %	18,9 %
People's Republic of China	Fujian Fuxin Special Steel Co., Ltd	55,6 %	14,5 %	14,5 %
People's Republic of China	Xiangshui Defeng Metals Co., Ltd	87,9 %	17,4 %	17,4 %
People's Republic of China	Fujian Dingxin Technology Co., Ltd.	87,9 %	17,4 %	17,4 %
People's Republic of China	All other companies	108,4 %	18,9 %	18,9 %

Country	Company	Dumping margin	Injury margin	Provisional anti-dumping duty
Taiwan	Yieh United Steel Co. and Tang Eng Iron Works Co. Ltd.	6,0 %	24,1 %	6,0 %
Taiwan	Walsin Lihwa Co.	7,5 %	18,3 %	7,5 %
Taiwan	All other companies	7,5 %	24,1 %	7,5 %

- (382) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the provisional findings of this investigation. Therefore, they reflected the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the countries concerned and produced by the named legal entities. Imports of product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.
- (383) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ⁽⁹⁷⁾. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a notice informing about the change of name will be published in the *Official Journal of the European Union*.
- (384) To minimise the risks of circumvention due to the high difference in duty rates, special measures are needed to ensure the proper application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.
- (385) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this Regulation, the customs authorities of Member States should carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the rate of duty is justified, in compliance with customs law.
- (386) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume, in particular after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances, an anti-circumvention investigation may be initiated, provided the conditions for so doing are met. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.
- (387) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies should apply not only to the non-cooperating exporting producers in this investigation, but to the producers which did not have exports to the Union during the investigation period.

9. REGISTRATION

- (388) As mentioned in recital (3), the Commission made imports of certain hot rolled stainless steel sheets and coils subject to registration. Registration took place with a view to possibly collecting duties retroactively under Article 10(4) of the basic Regulation. Registration was thus ongoing during the pre-disclosure phase.

⁽⁹⁷⁾ European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170, 1040 Brussels, Belgium.

- (389) In view of the findings at provisional stage, the registration of imports should cease/be discontinued.
- (390) No decision on a possible retroactive application of anti-dumping measures has been taken at this stage of the proceeding. Such a decision will be taken at definitive stage.

10. INFORMATION AT PROVISIONAL STAGE

- (391) In accordance with Article 19a of the basic Regulation, the Commission informed interested parties about the planned imposition of provisional duties. This information was also made available to the general public via DG TRADE's website. Interested parties were given three working days to provide comments on the accuracy of the calculations specifically disclosed to them.
- (392) Two exporting producers in the PRC, two exporting producers in Indonesia and three producers and one independent service centre in Taiwan submitted their comments. The Commission took into account comments that were considered of a clerical nature and in necessary, corrected the margins accordingly.

11. FINAL PROVISIONS

- (393) In the interests of sound administration, the Commission will invite the interested parties to submit written comments and/or to request a hearing with the Commission and/or the Hearing Officer in trade proceedings within a fixed deadline.
- (394) The findings concerning the imposition of provisional duties are provisional and may be amended at the definitive stage of the investigation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is imposed on flat-rolled products of stainless steel, whether or not in coils (including products cut-to-length and narrow strip), not further worked than hot-rolled and excluding products, not in coils, of a width of 600 mm or more and of a thickness exceeding 10 mm, currently falling under HS codes 7219 11, 7219 12, 7219 13, 7219 14, 7219 22, 7219 23, 7219 24, 7220 11 and 7220 12 and originating in the People's Republic of China, Taiwan and Indonesia.

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

Country	Company	Provisional anti-dumping duty	TARIC additional code
Indonesia	PT Indonesia Guang Ching Nickel and Stainless Steel Industry	17,0 %	C541
Indonesia	PT Indonesia Tsingshan Stainless Steel	17,0 %	C547
Indonesia	All other companies	17,0 %	C999
People's Republic of China	Shanxi Taigang Stainless Steel Co., Ltd.	18,9 %	C163
People's Republic of China	Taiyuan Taigang Daming Metal Products	18,9 %	C542
People's Republic of China	Tisco Guangdong Stainless Steel Service Center Co., Ltd	18,9 %	C543
People's Republic of China	Tianjin TISCO & TPCO Stainless Steel Co. Ltd.	18,9 %	C025
People's Republic of China	Fujian Fuxin Special Steel Co., Ltd	14,5 %	C544
People's Republic of China	Xiangshui Defeng Metals Co., Ltd	17,4 %	C545
People's Republic of China	Fujian Dingxin Technology Co., Ltd.	17,4 %	C546

Country	Company	Provisional anti-dumping duty	TARIC additional code
People's Republic of China	All other companies	18,9 %	C999
Taiwan	Yieh United Steel Co.	6,0 %	C032
Taiwan	Tang Eng Iron Works Co. Ltd.	6,0 %	C031
Taiwan	Walsin Lihwa Co.	7,5 %	C548
Taiwan	All other companies	7,5 %	C999

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

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

5. Where a declaration for release for free circulation is presented in respect of the product referred to in paragraph 1, the number of pieces of the products imported shall be entered in the relevant field of that declaration.

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

Article 2

1. Interested parties shall submit their written comments on this regulation to the Commission within 15 calendar days of the date of entry into force of this Regulation.

2. Interested parties wishing to request a hearing with the Commission shall do so within 5 calendar days of the date of entry into force of this Regulation.

3. Interested parties wishing to request a hearing with the Hearing Officer in trade proceedings shall do so within 5 calendar days of the date of entry into force of this Regulation. The Hearing Officer shall examine requests submitted outside this time limit and may decide whether to accept to such requests if appropriate.

Article 3

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

Article 1 shall apply for a period of six months.

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

Done at Brussels, 7 April 2020.

For the Commission
The President
Ursula VON DER LEYEN

DECISIONS

COUNCIL DECISION (EU) 2020/509

of 3 April 2020

on the existence of an excessive deficit in Romania

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union and in particular Article 126(6) thereof,

Having regard to the proposal from the European Commission,

Having regard to the observations made by Romania,

Whereas:

- (1) According to Article 126 of the Treaty on the Functioning of the European Union (TFEU), Member States are to avoid excessive government deficits.
- (2) The Stability and Growth Pact (SGP) is based on the objective of using sound government finances as a means of strengthening the conditions for price stability and for strong sustainable growth that is conducive to the creation of employment.
- (3) The excessive deficit procedure (EDP) under Article 126 TFEU, as clarified by Council Regulation (EC) No 1467/97 ⁽¹⁾ (which is part of the SGP), provides for the taking of a decision finding the existence of an excessive deficit. Protocol No 12 on the excessive deficit procedure, annexed to the Treaty on European Union and the TFEU, sets out further provisions relating to the implementation of the excessive deficit procedure. Council Regulation (EC) No 479/2009 ⁽²⁾ lays down detailed rules and definitions for the application of those provisions.
- (4) Article 126(5) TFEU requires the Commission, if it considers that an excessive deficit in a Member State exists or may occur, to address an opinion to the Member State concerned and to inform the Council accordingly. Having taken into account its report adopted pursuant to Article 126(3) TFEU and having had regard to the opinion of the Economic and Financial Committee adopted pursuant to Article 126(4) TFEU, the Commission concluded that an excessive deficit exists in Romania. On 4 March 2020, the Commission therefore addressed an opinion to that effect to Romania and informed the Council accordingly ⁽³⁾.
- (5) Article 126(6) TFEU states that the Council is to consider any observations which the Member State concerned may wish to make before deciding after an overall assessment whether an excessive deficit exists. In the case of Romania, that overall assessment leads to the following conclusions.
- (6) According to the data notified by the Romanian authorities on 30 September 2019 that were subsequently validated by Eurostat, the general government deficit in Romania reached 3 % of gross domestic product (GDP) in 2018, while general government debt stood at 35 % of GDP. Taking into account the revised GDP figures announced by the Romanian national statistical office after the publication of Eurostat's press release, those ratios changed slightly, with the deficit standing at 2,9 % of GDP and debt at 34,7 % of GDP in 2018. For 2019, the notification indicated a planned general government deficit of 2,8 % of GDP.

⁽¹⁾ Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure (OJ L 209, 2.8.1997, p. 6).

⁽²⁾ Council Regulation (EC) No 479/2009 of 25 May 2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community (OJ L 145, 10.6.2009, p. 1).

⁽³⁾ All EDP-related documents for Romania can be found at: https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/stability-and-growth-pact/corrective-arm-excessive-deficit-procedure/ongoing-excessive-deficit-procedures/romania_en

- (7) On 10 December 2019, the government adopted the Fiscal-Budgetary Strategy for 2020–2022 (the 'Fiscal Strategy'), with a general government deficit target of 3,8 % of GDP in 2019. This is above and not close to the TFEU reference value of 3 % of GDP. The excess over the TFEU reference value in 2019 is also not exceptional, as it results neither from an unusual event nor from a severe economic downturn in the sense of the TFEU and the SGP. The Commission 2020 winter forecast projects real GDP growth of 3,9 % in 2019 and 3,8 % in 2020, while the output gap is projected to be around zero. One-off items amounted to 0,1 % of GDP in 2019 and were due to a refund of the environmental stamp duty on cars. The planned excess over the TFEU reference value is not temporary for the purposes of the TFEU or the SGP. The Commission 2020 winter forecast, extended with fiscal variables, projects a general government deficit of 4 % of GDP in 2019, 4,9 % in 2020 and 6,9 % in 2021. The projected increase in the deficit is mostly driven by significant pension increases. In the Fiscal Strategy, the government also projects that the general government deficit will remain above the TFEU reference value in 2020 and 2021, with a forecast deficit of 3,6 % of GDP in 2020 and 3,4 % in 2021. The deficit criterion in the TFEU is therefore *prima facie* not fulfilled.
- (8) Romania's general government debt amounted to 34,7 % of GDP in 2018. Both the the Fiscal Strategy and the Commission's 2020 winter forecast, extended with fiscal variables, project the general government debt to increase until 2021, but to remain below the TFEU reference value. According to the Fiscal Strategy, general government debt is projected to increase to 37,8 % of GDP in 2021. The Commission projects a steeper increase, to 41,9 % of GDP in 2021. Therefore, the debt criterion in the TFEU is fulfilled.
- (9) In accordance with the requirements of Article 126(3) TFEU, the Commission also analysed all the relevant factors in its report under Article 126(3) TFEU. As laid down in Article 2(4) of Regulation (EC) No 1467/97, whenever the government debt-to-GDP ratio does not exceed the reference value, relevant factors are to be taken into account in the steps leading to the decision on the existence of an excessive deficit. The relevant factors, in particular the lack of effective action since 2017 in response to Council recommendations under the significant deviation procedure, the limited progress made by Romania with respect to structural reforms and the high fiscal sustainability risks facing Romania in the medium and long term, have been taken into account in the assessment of Romania's compliance with the deficit criterion. Those factors do not modify the conclusion that the deficit criterion in the TFEU is not fulfilled,

HAS ADOPTED THIS DECISION:

Article 1

From an overall assessment it follows that an excessive deficit exists in Romania due to non-compliance with the deficit criterion.

Article 2

This Decision is addressed to Romania.

Done at Brussels, 3 April 2020.

For the Council
The President
G. GRLIĆ RADMAN

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