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⁽¹⁾ Text with EEA relevance.

EN

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) 2020/1404

of 30 September 2020

establishing a fisheries closure for mackerel in areas 6, 7, 8a, 8b, 8d and 8e; Union and international waters of 5b; international waters of 2a, 12 and 14 for vessels flying the flag of Poland

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy ⁽¹⁾, and in particular Article 36(2) thereof,

Whereas:

- (1) Council Regulation (EU) 2020/123 ⁽²⁾ lays down quotas for 2020.
- (2) According to the information received by the Commission, catches of the stock of mackerel in areas 6, 7, 8a, 8b, 8d and 8e; Union and international waters of 5b; international waters of 2a, 12 and 14 by vessels flying the flag of or registered in Poland have exhausted the quota allocated for 2020.
- (3) It is therefore necessary to prohibit certain fishing activities for that stock,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to Poland for the stock of mackerel in areas 6, 7, 8a, 8b, 8d and 8e; Union and international waters of 5b; international waters of 2a, 12 and 14 for 2020 referred to in the Annex shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

1. Fishing for the stock referred to in Article 1 by vessels flying the flag of or registered in Poland shall be prohibited from the date set out in the Annex. In particular it shall be prohibited to search for fish, shoot, set or haul a fishing gear for the purpose of fishing that stock.

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ Council Regulation (EU) 2020/123 of 27 January 2020 fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters (OJ L 25, 30.1.2020, p. 1).

2. Transshipping, retaining on board, processing on board, transferring, caging, fattening and landing of fish and fishery products from that stock caught by those vessels shall remain authorised for catches taken prior to that date.
3. Unintended catches of species from that stock by those vessels shall be brought and retained on board the fishing vessels, recorded, landed and counted against quotas in accordance with Article 15 of Regulation (EU) No 1380/2013 of the European Parliament and of the Council ⁽³⁾.

Article 3

Entry into force

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

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

Done at Brussels, 30 September 2020.

*For the Commission,
On behalf of the President,
Virginijus SINKEVIČIUS
Member of the Commission*

⁽³⁾ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22).

ANNEX

No	15/TQ123
Member State	Poland
Stock	MAC/2CX14- and special condition MAC/*8C910
Species	Mackerel (<i>Scomber scombrus</i>)
Zone	6, 7, 8a, 8b, 8d and 8e; Union and international waters of 5b; international waters of 2a, 12 and 14
Closing date	9.9.2020

COMMISSION REGULATION (EU) 2020/1405**of 1 October 2020****establishing a fisheries closure for redfish in Union and international waters of 5; international waters of 12 and 14 for vessels flying the flag of Spain**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy ⁽¹⁾, and in particular Article 36(2) thereof,

Whereas:

- (1) Council Regulation (EU) 2020/123 ⁽²⁾ lays down quotas for 2020.
- (2) According to the information received by the Commission, catches of the stock of redfish in Union and international waters of 5; international waters of 12 and 14 by vessels flying the flag of or registered in Spain have exhausted the quota allocated for 2020.
- (3) It is therefore necessary to prohibit certain fishing activities for that stock,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to Spain for the stock of redfish in Union and international waters of 5; international waters of 12 and 14 for 2020 referred to in the Annex shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

1. Fishing for the stock referred to in Article 1 by vessels flying the flag of or registered in Spain shall be prohibited from the date set out in the Annex. In particular it shall be prohibited to search for fish, shoot, set or haul a fishing gear for the purpose of fishing that stock.
2. Transshipping, retaining on board, processing on board, transferring, caging, fattening and landing of fish and fishery products from that stock caught by those vessels shall remain authorised for catches taken prior to that date.
3. Unintended catches of species from that stock by those vessels shall be brought and retained on board the fishing vessels, recorded, landed and counted against quotas in accordance with Article 15 of Regulation (EU) No 1380/2013 of the European Parliament and of the Council ⁽³⁾.

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ Council Regulation (EU) 2020/123 of 27 January 2020 fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters (OJ L 25, 30.1.2020, p. 1).

⁽³⁾ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22).

*Article 3***Entry into force**

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

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

Done at Brussels, 1 October 2020.

*For the Commission,
On behalf of the President,
Virginijus SINKEVIČIUS
Member of the Commission*

ANNEX

No	14/TQ123
Member State	Spain
Stock	RED/51214D
Species	Redfish (deep pelagic) (<i>Sebastes</i> spp.)
Zone	Union and international waters of 5; international waters of 12 and 14
Closing date	28.8.2020

COMMISSION IMPLEMENTING REGULATION (EU) 2020/1406**of 2 October 2020****laying down implementing technical standards with regard to procedures and forms for exchange of information and cooperation between competent authorities, ESMA, the Commission and other entities under Articles 24(2) and 25 of Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC ⁽¹⁾, and in particular the third subparagraph of Article 24(3) and the third subparagraph of Article 25(9) thereof,

Whereas:

- (1) Article 24(2) of Regulation (EU) No 596/2014 requires competent authorities to provide the European Securities and Markets Authority (ESMA) with all necessary information to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽²⁾. Article 25 of Regulation (EU) No 596/2014 requires competent authorities to cooperate and exchange information with each other and with ESMA, with the Commission (in relation to commodities which are agricultural products listed in Annex I to the Treaty), with the Agency for the Cooperation of Energy Regulators (ACER) and national regulatory authorities (in relation to wholesale energy products), and with relevant national and third-country regulatory authorities responsible for related spot markets, including, in relation to emission allowances, the auction monitor and competent authorities, registry administrators, including the Central Administrator, and other public bodies charged with supervision of the greenhouse gas allowance trading scheme.
- (2) Commission Implementing Regulation (EU) 2018/292 ⁽³⁾ has already established procedures and forms for exchange of information and assistance between competent authorities, pursuant to Article 25 of Regulation (EU) No 596/2014. It is expected that separate rules with regard to cooperation with third-country regulatory authorities responsible for related spot markets will be established. This Regulation should therefore cover for cooperation and for exchange of information with ESMA under Article 24(2) of that Regulation, and cooperation with other entities under Article 25 of that Regulation.
- (3) Information should normally be exchanged in writing. However, oral communications should be possible in appropriate cases, including in particular before a written request for cooperation or exchange of information is sent, to provide information about that upcoming request for cooperation or to discuss any issues that might make it difficult to carry out that request. In urgent cases, it should also be possible for a request for cooperation to be communicated orally, provided such urgency is not simply due to a delay on the part of the requesting party.
- (4) A request should contain sufficient information about the subject matter of the cooperation, including the reasons for the request and its context, to enable the requested authority to process the request easily and efficiently. Indicating the facts giving rise to suspicion should not be considered as a precondition for a requesting authority to receive assistance where that requested information is necessary for that authority to fulfil its duties.

⁽¹⁾ OJ L 173, 12.6.2014, p. 1.

⁽²⁾ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

⁽³⁾ Commission Implementing Regulation (EU) 2018/292 of 26 February 2018 laying down implementing technical standards with regard to procedures and forms for exchange of information and assistance between competent authorities according to Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse (OJ L 55, 27.02.2018, p. 34).

- (5) Where ESMA and ACER jointly specify a secure communication interface to be used by competent authorities and ESMA for exchanging information with ACER and national regulatory authorities, the use of that particular interface should be required for the relevant specified purposes.
- (6) The procedures and forms for the exchange of information and the provision of cooperation should ensure that any information exchanged or transmitted is kept confidential, and that rules with regard to the processing of personal data and the free movement of personal data are complied with.
- (7) This Regulation is based on the draft implementing technical standards submitted to the Commission by ESMA.
- (8) ESMA did not conduct open public consultations on the draft implementing technical standards on which this Regulation is based, nor did it analyse the potential related costs and benefits of introducing the procedures and forms to be used by the authorities and entities to which this Regulation applies as this would have been disproportionate in relation to the scope and impact of those draft implementing technical standards, taking into account that this Regulation would only affect those authorities and entities and would not affect market participants.
- (9) ESMA has requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation shall apply to cooperation and exchanges of information between the following bodies (referred to in this Regulation as 'specified bodies') under the following provisions:

- (a) between competent authorities and ESMA under Article 24(2) or Article 25(1), (5) or (7) of Regulation (EU) No 596/2014;
- (b) between competent authorities and the Commission under the second subparagraph of Article 25(1) of that Regulation, in relation to commodities which are agricultural products;
- (c) between competent authorities and the Agency for the Cooperation of Energy Regulators (ACER) or national regulatory authorities under Article 25(3) or (5) of that Regulation, in relation to wholesale energy products;
- (d) between ESMA and ACER or national regulatory authorities under Article 25(3) and (5) of that Regulation, in relation to wholesale energy products;
- (e) between competent authorities and relevant national regulatory authorities responsible for related spot markets under the first subparagraph of Article 25(8) of that Regulation;
- (f) between competent authorities and the entities referred to in points (a) and (b) of the second subparagraph of Article 25(8) of that Regulation, in relation to emission allowances.

Article 2

Definition

For the purposes of this Regulation, 'electronic means' are means of electronic equipment for the processing (including digital compression), storage and transmission of data, employing wires, radio, optical technologies, or any other electromagnetic means.

Article 3

Contact points

1. By 26 November 2020 ESMA shall ask each of the other specified bodies to provide ESMA with details of one or more contact points designated by that body for the purposes of cooperation and exchange of information referred to in Articles 24 and 25 of Regulation (EU) No 596/2014, and to keep ESMA informed of any subsequent changes to those details.

2. ESMA shall ask each of the other specified bodies to confirm or update the details provided by them under paragraph 1 at least once a year.
3. ESMA shall maintain an up-to-date list of the details provided or updated under paragraphs 1 and 2, together with details of ESMA's own contact points designated for the purposes of this Regulation, and shall circulate the up-to-date list to each of the other specified bodies.
4. The most recent list circulated under paragraph 3 shall be used by the specified bodies for the purposes of cooperation and exchanges of information falling within the scope of this Regulation.

Article 4

Means of communication

1. Except where otherwise stated in this Regulation, any communications to be made for the purposes of cooperation or exchanges of information falling within the scope of this Regulation shall be made either by post, fax or electronic means.
2. When determining the most appropriate means of communication in any particular case, due account shall be taken of confidentiality considerations, the time necessary for correspondence, the volume of material to be communicated and the ease of access to the information.
3. Without limiting the generality of paragraph 2, where electronic means are used, the electronic means shall be one that ensures the completeness, integrity and confidentiality of the information during its transmission.
4. If ESMA and ACER jointly specify the use of a particular electronic system for communications with ACER and the national regulatory authorities falling within the scope of this Regulation, that system shall be used for the purposes so specified.

Article 5

Requests for information or cooperation

1. When requesting cooperation or exchange of information falling within the scope of this Regulation, the requesting body shall use the form set out in Annex I and shall:
 - (a) specify details of the information or cooperation that it is seeking; and
 - (b) identify, where appropriate, any issues relating to the confidentiality of any information that may be obtained.
2. The requesting body may attach to the request any document or supporting material deemed necessary to support that request.
3. In urgent cases, the requesting body may make the request orally. Unless the specified body to whom the oral request is made ('the requested body') agrees otherwise, that oral request shall subsequently be confirmed in writing without undue delay.

Article 6

Acknowledgement of receipt

Within the period specified in the written request or in the written confirmation confirming an oral request made in accordance with Article 5 or, where no period is specified, within 10 working days after receipt of that written request or written confirmation, the requested body shall acknowledge receipt to the requesting body. The acknowledgement of receipt shall be made using the form set out in Annex II and shall include, where possible, an indication of the estimated date of reply for responding to the request.

Article 7

Reply to a request

1. If the requested body requires clarification of a request made in accordance with Article 5, it shall seek that clarification from the requesting body, without undue delay, using any means appropriate, either orally or in writing. The requesting body shall provide the clarification without undue delay.

2. In executing a request made in accordance with Article 5, the requested body shall:
 - (a) use the form set out in Annex III;
 - (b) take all reasonable steps within its powers to provide the requested cooperation or information; and
 - (c) act without delay and in a manner which ensures that any necessary regulatory action can proceed expediently taking into account the complexity of the request concerned and whether it is necessary to involve third parties.
3. If the requested body is a competent authority who refuses to act on the request, in full or in part, in one of the exceptional circumstances listed in Article 25(2) of Regulation (EU) No 596/2014, it shall inform the requesting body without delay using any means appropriate, either orally or in writing. It shall subsequently confirm its decision in writing, indicating which of those exceptional circumstances it has relied upon for its refusal.

Article 8

Procedures for processing pending requests

1. Where the requested body becomes aware of circumstances that may lead to its estimated date of reply having to be deferred by more than 10 working days, it shall notify the requesting body without undue delay.
2. Where appropriate, the requested body shall provide the requesting body with regular updates on the progress of a pending request, including revised estimates of the targeted date of reply.
3. Where the request has been marked as urgent, the requested body shall consult with the requesting body on the frequency of updates that are required.
4. The Specified bodies shall cooperate with each another in order to solve any difficulties that may arise in executing a request.

Article 9

Unsolicited cooperation or exchange of information

1. For the purposes of any cooperation or exchange of information falling within the scope of this Regulation that is not the subject of a specific request, including any subsequent communications relating to it, the form set out in Annex IV shall be used.
2. In the case of an exchange of information referred to in Article 25, paragraphs 3, 5 and 8 of Regulation (EU) No 596/2014 falling within the scope of this Regulation, if the competent authority believes that the information should be supplied urgently, it may transmit the information orally provided that the information is subsequently transmitted in writing without undue delay using the form set out in Annex IV.

Article 10

Cooperation procedures

1. For the purposes of ensuring a coordinated action under Article 25(3) of Regulation (EU) No 596/2014 on cross-border cases involving financial instruments related to wholesale energy products, competent authorities shall participate, when requested to do so by ACER, in a cross-border investigatory group established under Article 16(4), point (c), of Regulation (EU) No 1227/2011 of the European Parliament and of the Council ^(*).
2. For the purposes of ensuring a consistent approach to the enforcement of relevant rules under Regulations (EU) No 596/2014 and (EU) No 1227/2011, irrespective of the existence of a specific case, ESMA and ACER shall consult each other regularly.

^(*) Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ L 326, 8.12.2011, p. 1).

3. Where ESMA is requested under the second subparagraph of Article 25(6) of Regulation (EU) No 596/2014 to coordinate an investigation or inspection with cross-border effect, ESMA may establish a temporary group on an ad hoc basis to include the competent authorities of the Member States affected by that investigation or inspection.

Article 11

Referral to ESMA under Article 25(7)

Referral to ESMA under Article 25(7) of Regulation (EU) No 596/2014 of a rejection or absence of action within a reasonable timeframe shall be made in writing and shall include:

- (a) a copy of the request for cooperation or exchange of information and any reply received;
- (b) the reasons for referring to ESMA the rejection or absence of action.

Article 12

Restrictions and permissible uses of information

1. When using the forms in the Annexes, specified bodies shall include an appropriate confidentiality warning in accordance with the relevant form.
2. The requested body shall not disclose the existence and content of a request for cooperation or exchange of information falling within the scope of this Regulation unless the requesting body consents to such disclosure. Where such consent is not given and where it is not reasonably practicable to comply with the request without disclosing its existence or content, the requesting body shall withdraw or suspend its request until the requesting body is able to provide such consent to disclosure.
3. Information received as part of a request for cooperation or exchange of information falling within the scope of this Regulation shall be used by the specified body receiving the information solely for the performance of its duties and the exercise of its functions or for the purposes of securing compliance with or enforcement of Regulation (EU) No 596/2014 or, where applicable, Regulation (EU) 1227/2011, including but not limited to initiating, conducting, or assisting in, criminal, administrative, civil or disciplinary proceedings resulting from a breach of those Regulations.

Article 13

Entry into force

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, 2 October 2020.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX I

Form for a request for assistance

REQUEST FOR ASSISTANCE

Reference number:

Date:

Annexes: *[specify the number of documents/supporting documents attached]***General information****FROM:**

Member State:

Requesting Authority:

Legal address:

[Insert the contact details of the contact point designated in accordance with Article 3 of Commission Implementing Regulation (EU) 2020/1406¹, for dealing with this request and identified below]

Name:

Telephone:

Email:

TO:

Member State:

Requested Authority:

Legal address:

[Insert the contact details of the contact point designated in accordance with Article 3 of Implementing Regulation (EU) 2020/1406]

Name:

Telephone:

Email:

Dear Ms/Mr *[insert appropriate name]*

In accordance with Article 5 of Implementing Regulation (EU) 2020/1406 laying down implementing technical standards with regards to procedures and forms for exchange of information and assistance between competent authorities, the European Securities and Markets Authority and specific authorities and entities according to Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse, your assistance is sought in relation to the matter(s) set out in further detail below.

I would be grateful for the above assistance by *[Insert indicative date for the reply and in case of an urgent request, insert a deadline for the information to be provided by]* or, where that is not possible, for an indication as to when you anticipate being in a position to provide the assistance.

Reasons for the request for assistance

.....
.....
.....
.....

[Insert provision(s) of the sectoral legislation under which the requesting authority is competent to deal with the matter]

The request concerns assistance in:

.....
.....
.....
.....
.....

[Insert description of the subject matter of the request, the purpose for which the assistance is sought, facts relating to the investigation as contextual information for the request and explanation for its helpfulness for fulfilling its duties]

Further to

.....
.....
.....

[Where applicable, insert details of any previous request for assistance in order to enable it to be identified]

1. Provision of information**(a) Detailed description of the information:**

.....
.....
.....
.....

[Please provide a detailed description of the specific information sought with reasons why that information will be of assistance and, where known, a list of the persons considered possessing the information sought or the places where such information may be obtained.]

(b) Product ID:

.....

[Where the request concerns information relating to a transaction or order in a specific financial instrument, please provide a precise description of the financial instrument, including any applicable identification standard code such as the ISIN code the AII or the transaction identification code for emission allowances]

Person ID:

.....

[Insert the identity of any person connected with the transaction or order, including a person dealing in the financial instrument or on whose behalf the dealing is considered to have taken place, and any applicable identification code, such as LEI code or client Id code under Regulation (EU) No 600/2014 of the European Parliament and of the Council ²⁾

Dates:

.....

[Insert the dates between which transactions or orders in those financial instruments took place including in the case of a significant period of time, reasons why the entirety of the time period is beneficial]

(c) Details of the person whose business or activities information relates to:

.....
.....
.....
.....
.....

[Where the request concerns information relating to the business or activities of a person, please provide information as precise as possible to enable that person to be identified.]

(d) Sensitivity of the information:

.....
.....
.....
.....

[where there are special considerations on the sensitivity of the information sought, please provide an indication of the sensitivity of the information contained in the request and any special precautions that have to be taken in collecting the information due to investigatory considerations.]

(e) Additional information:

.....
.....
.....
.....

[Please provide any additional information, such as whether the requesting authority has been or will be in contact with any other authority or law enforcement agency in the Member State of the requested authority in relation to the subject matter of the request or any other authority which the requesting authority is aware that has an active interest in the subject matter of the request]

(f) Urgency:

.....
.....
.....
.....

[In case of an urgent request and the setting of any deadlines, please provide full explanation of the urgency of the request and an explanation of any deadlines that the requesting authority has asked for the information to be provided by]

2. Taking of a statement (Where relevant and permitted by the law of the authority or entity receiving the request for assistance)

Please indicate:

(a) Nature of the statement sought:

.....
.....

[Insert indication of preference, if any, as to the nature of the statement sought, e.g. affirmation or other legal instructions; on a voluntary or obligatory basis where applicable]

(b) Need for the taking of a statement and its purpose:

.....
.....

(c) Name of person(s) from whom the statement is to be obtained:

.....

[Insert details of the persons from which the statement will be taken, including where relevant the person's position and the name of the company, to enable the requested authority to organise the taking of the statement including the summoning process where applicable]

(d) Detailed description of the information sought, including a preliminary list of questions (where available at the time of the request).

.....

(e) Any additional information which may be useful:

.....

[Please provide any additional information, such as whether the requesting authority's staff is requesting participation in the taking of the statement, and where that is the case, details of the participating officials of the requesting authority, where appropriate, description of any legal and procedural requirements that must be complied with to ensure the admissibility of statements made in the interview in the jurisdiction of the requesting's authority]

[Insert any confidentiality warnings or any restrictions on the permissible uses of information (provided those restrictions are compliant with Union law)].

[For competent authorities and ESMA, it should read:

"The information included in this request shall be kept confidential in accordance with Article 12 of Implementing Regulation (EU) 2020/1406 and Article 27 of Regulation (EU) No 596/2014 of the European Parliament and of the Council³. The requirements of Article 28 of Regulation (EU) No 596/2014 shall be complied with as regards any personal data included in this request."

Your contact point for any queries you might have in relation to any aspects of this request is *[Insert relevant contact point name and contact point details: telephone, email]*

Yours sincerely,

[Name and signature]

¹ Commission Implementing Regulation (EU) 2020/1406 of 2 October 2020 laying down implementing technical standards with regard to procedures and forms for exchange of information and cooperation between competent authorities, ESMA, the Commission and other entities under Articles 24(2) and 25 of Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse (OJ L 325, 7.10.2020, p. 7).

² Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

³ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

ANNEX II

Form for the acknowledgment of receipt of a request for assistance

ACKNOWLEDGMENT OF RECEIPT OF A REQUEST FOR ASSISTANCE

Reference number:

Date:

FROM:

Member State:

Requested Authority:

Legal address:

[Insert the contact details of the contact point designated in accordance with Article 3 of Commission Implementing Regulation (EU) 2020/1406¹ and complete the corresponding footnote] or the person designated as contact point for dealing with this request and identified below]

Name:

Telephone:

Email:

TO:

Member State:

Requesting Authority:

Legal address:

[Insert the contact details of the contact point designated in accordance with Article 3 of Implementing Regulation (EU) 2020/1406 unless otherwise specified by the requesting authority]

Name:

Telephone:

Email:

Dear Ms/Mr *[Insert appropriate name]*

In accordance with Article 6 of Implementing Regulation (EU) 2020/1406, we hereby acknowledge receipt of your request for assistance with reference *[Insert request reference number]* on *[Insert date]*.

The relevant person(s) within *[Insert name of the requested authority]* dealing with your request is/are *[Insert name, telephone, email]*.

Estimated date of response:

Yours sincerely,

[Name and signature]

¹ Commission Implementing Regulation (EU) 2020/1406 of 2 October 2020 laying down implementing technical standards with regard to procedures and forms for exchange of information and cooperation between competent authorities, ESMA, the Commission and other entities under Articles 24(2) and 25 of Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse (OJ L 325, 7.10.2020, p. 7).

ANNEX III

Form for the reply to a request for assistance

REPLY TO A REQUEST FOR ASSISTANCE

Reference number:

Date:

Annexes: *[specify the number of documents/supporting documents attached]***General information****FROM:**

Member State:

Requested Authority:

Legal address:

[Insert the contact details of the contact point designated in accordance with Article 3 of Commission Implementing Regulation (EU) 2020/1406¹ unless otherwise specified by the requested authority]

Name:

Telephone:

Email:

TO:

Member State:

Requesting Authority:

Legal address:

[Insert the contact details of the contact point designated pursuant to Article 3 of Implementing Regulation (EU) 2020/1406 unless otherwise specified by the requesting authority]

Name:

Telephone:

Email:

Dear Ms/Mr *[Insert appropriate name]*

In accordance with Article 7 of Implementing Regulation (EU) 2020/1406, your request dated *[dd.mm.yyyy]* with reference *[insert request reference number]* has been processed by us.

Information gathered

[If the information has been gathered, please set out the information here or provide an explanation of how it will be provided, including where relevant a description of any supporting documents or material]

The information provided is confidential and is disclosed to *[insert name of the requesting authority]* pursuant to the *[insert provision of the applicable sectoral legislation]* and on the basis that the information shall remain confidential in accordance with Article 12 of Implementing Regulation (EU) 2020/1406 *[where the requesting authority is a competent authority, add "and Article 27 of Regulation (EU) No 596/2014 of the European Parliament and of the Council²"]*.

The *[Insert name of the requesting authority]* shall observe the requirements of Article 12 of Implementing Regulation (EU) 2020/1406 with respect to the permissible uses of that information *[Where the requesting authority is a competent authority or ESMA, add "and of Article 28 of Regulation (EU) No 596/2014 with respect to personal data processing and transfer."]*

Where the *[Insert name of the requesting authority]* intends to use or disclose information provided in this reply for any purpose other than those stated in its request for assistance, it shall notify *[Insert name of the requested authority]* and obtain the prior consent of *[Insert name of the requested authority]*. Where *[Insert name of the requested authority]* consents to such a use or disclosure of the information, it may subject it to certain conditions.

Yours sincerely,

[Name and signature]

¹ Commission Implementing Regulation (EU) 2020/1406 of 2 October 2020 laying down implementing technical standards with regard to procedures and forms for exchange of information and cooperation between competent authorities, ESMA, the Commission and other entities under Articles 24(2) and 25 of Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse (OJ L 325, 7.10.2020, p. 7).

² Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

ANNEX IV

Form for the provision of unsolicited exchange of information

UNSOLICITED EXCHANGE OF INFORMATION

Reference number:

Date:

Annexes: *[Specify the number of documents/supporting documents attached]***General information****FROM:**

Member State:

Transmitting Authority:

Legal address:

[Insert the contact details of the contact point designated in accordance with Article 3 of Commission Implementing Regulation (EU) 2020/1406¹]

Name:

Telephone:

Email:

TO:

Member State:

Recipient Authority:

Legal address:

[Insert the contact details of the contact point designated in accordance with Article 3 of Implementing Regulation (EU) 2020/1406]

Name:

Telephone:

Email:

Dear Ms/Mr *[Insert appropriate name]*

In accordance with Article 9 of Implementing Regulation (EU) 2020/1406, we are providing the following information we believe may be of assistance in carrying out your duties.

Information provided

.....

[Please set out the details of the information provided, including if relevant a description of any supporting documents or material attached]

The information provided is confidential and is disclosed to *[insert name of the authority receiving the unsolicited information]* pursuant to Article 25 of Regulation (EU) No 596/2014 and on the basis that the information shall remain confidential in accordance with Article 12 of Implementing Regulation (EU) 2020/1406 and Article 27 of Regulation (EU) No 596/2014 of the European Parliament and of the Council² *[When the recipient is ACER, add, "and to Article 17 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council³].*

The *[Insert name of the authority receiving the unsolicited information]* shall observe the requirements of Article 12 of Implementing Regulation (EU) 2020/1406 with respect to the permissible uses of that information *[where the authority receiving the unsolicited information is ESMA, add "and of Article 28 of Regulation (EU) No 596/2014 with respect to personal data processing and transfer"; where the authority receiving the unsolicited information is ACER, add "and of Article 11 of Regulation (EU) No 1227/2011 with regard to personal data processing and transfer"]*.

Where the *[Insert name of the competent authority receiving the unsolicited information]* intends to use or disclose the information received for purpose other than those stated in Article 12(3) of Implementing Regulation (EU) 2020/1406 it shall notify *[Insert name of the competent authority providing the unsolicited information]* and shall obtain the prior consent of *[Insert name of the competent authority providing the unsolicited information]*. If *[Insert name of the competent authority providing the unsolicited information]* consents to such a use or disclosure of the information, it may subject it to certain conditions.

Yours sincerely,

[Name and signature]

¹ Commission Implementing Regulation (EU) 2020/1406 of 2 October 2020 laying down implementing technical standards with regard to procedures and forms for exchange of information and cooperation between competent authorities, ESMA, the Commission and other entities under Articles 24(2) and 25 of Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse (OJ L 325, 7.10. 2020, p. 7).

² Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

³ Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ L 326, 8.12.2011, p. 1).

COMMISSION IMPLEMENTING REGULATION (EU) 2020/1407**of 6 October 2020****accepting a request for new exporting producer treatment with regard to the definitive anti-dumping measures imposed on imports of ceramic tableware and kitchenware originating in the People's Republic of China and amending Implementing Regulation (EU) 2019/1198**

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 the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (the 'basic regulation') ⁽¹⁾,

Having regard to Commission Implementing Regulation (EU) 2019/1198 of 12 July 2019 imposing a definitive anti-dumping duty on imports of ceramic tableware and kitchenware originating in the People's Republic of China ⁽²⁾ following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036, and, in particular, Article 2 thereof,

Whereas,

A. MEASURES IN FORCE

- (1) On 13 May 2013, the Council imposed a definitive anti-dumping duty on imports into the Union of ceramic tableware and kitchenware ('the product concerned') originating in the People's Republic of China (the PRC) by Council Implementing Regulation (EU) No 412/2013 ('the original regulation') ⁽³⁾.
- (2) On 12 July 2019, following an expiry review pursuant to Article 11(2) of the basic Regulation, the Commission extended the measures of the original regulation for another five years by Implementing Regulation (EU) 2019/1198.
- (3) On 28 November 2019, following an anti-circumvention investigation pursuant to Articles 13(3) and 14(5) of the basic Regulation, the Commission amended Regulation (EU) 2019/1198 by Commission Implementing Regulation (EU) 2019/2131 ⁽⁴⁾.
- (4) In the original investigation, sampling was applied for investigating the exporting producers in the PRC in accordance with Article 17 of the basic Regulation.
- (5) The Commission imposed individual anti-dumping duty rates ranging from 13,1 % to 23,4 % on imports of the product concerned for the sampled exporting producers from PRC. For the cooperating exporting producers that were not included in the sample, a duty rate of 17,9 % was imposed. The cooperating exporting producers not included in the sample are listed in Annex I of Implementing Regulation (EU) 2019/1198 as replaced by Implementing Regulation (EU) 2019/2131. Furthermore, a country-wide duty rate of 36,1 % was imposed on the product concerned from companies in the PRC which either did not make themselves known or did not cooperate with the investigation.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ OJ L 189, 15.7.2019, p. 8.

⁽³⁾ Council Implementing Regulation (EU) No 412/2013 of 13 May 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tableware and kitchenware originating in the People's Republic of China (OJ L 131, 15.5.2013, p. 1).

⁽⁴⁾ Commission Implementing Regulation (EU) 2019/2131 of 28 November 2019 amending Implementing Regulation (EU) 2019/1198 imposing a definitive anti-dumping duty on imports of ceramic tableware and kitchenware originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 321, 12.12.2019, p. 139).

- (6) Pursuant to Article 2 of Implementing Regulation (EU) 2019/1198, the Commission may amend Annex I of that Regulation, by granting a new exporting producer the duty rate applicable to the cooperating companies not included in the sample, namely the weighted average duty rate of 17,9 %, where any new exporting producer in the PRC provides sufficient evidence to the Commission that:
- (a) it did not export to the Union the product concerned during the period of investigation on which the measures are based, that is from 1 January 2011 to 31 December 2011 ('the original investigation period');
 - (b) it is not related to any of the exporters or producers in the PRC which are subject to the anti-dumping measures imposed by the original Regulation; and
 - (c) it has actually exported to the Union the product concerned after the end of the original investigation period or has entered into an irrevocable contractual obligation to export a significant quantity to the Union.

B. REQUEST FOR NEW EXPORTING PRODUCER TREATMENT

- (7) The company Liling Yuanmei Ceramic Co., Ltd. ('Yuanmei' or the 'applicant') submitted a request to the Commission to be granted new exporting producer treatment ('NEPT') and hence be subject to the duty rate applicable to the cooperating companies in the PRC not included in the sample, which is 17,9 %. The applicant claimed that it met all three conditions set out in Article 2 of Implementing Regulation (EU) 2019/1198.
- (8) In order to determine whether the applicant fulfilled the conditions for being granted NEPT, as set out in Article 2 of Implementing Regulation (EU) 2019/1198 ('the NEPT conditions'), the Commission first sent a questionnaire to the applicant requesting evidence showing that it met the NEPT conditions.
- (9) Following the analysis of the questionnaire reply, the Commission requested further information and supporting evidence, which was submitted by the applicant.
- (10) The Commission sought to verify all information it deemed necessary for the purpose of determining whether the applicant met the NEPT conditions. To this end, the Commission analysed the evidence submitted by the applicant in its questionnaire reply, consulting various online databases including Orbis ⁽⁵⁾ and Qichacha ⁽⁶⁾ and cross-checking company information with information submitted in previous cases. In parallel, the Commission also informed the Union industry about the applicant's request and invited it to provide any comments if needed. No comments from Union industry were received.

C. ANALYSIS OF THE REQUEST

- (11) With regard to the condition set out in Article 2(a) of Implementing Regulation (EU) 2019/1198 that the applicant did not export the product concerned to the Union during the period of investigation on which the measures are based, that is from 1 January 2011 to 31 December 2011 ('the original investigation period'), the Commission established that the applicant did not exist as a company at the time. The Articles of Association of Yuanmei and its business licence date from May 2017. Therefore, the applicant could not have exported the product concerned to the Union during the period of investigation and thus fulfils this condition.
- (12) With regard to the condition set out in Article 2(b) of Implementing Regulation (EU) 2019/1198 that the applicant is not related to any exporters or producers which are subject to the anti-dumping measures imposed by the original Regulation, the Commission established that Yuanmei is not related to any of the Chinese exporting producers, which are subject to the original anti-dumping measures. According to Qichacha, a Chinese business database, the sole shareholder of Yuanmei, Mr Xingfen Liu, does not own or hold shares in any company dealing with the production, processing, sale or purchase of the product concerned other than Yuanmei itself. Moreover, the Union Industry did not submit any comment regarding potential corporate links with other companies. It also followed

⁽⁵⁾ Orbis is a global data provider of corporate information covering more than 220 million companies across the globe. It mainly provides standardised information on private companies and corporate structures.

⁽⁶⁾ Qichacha is a private, for-profit Chinese-owned database that delivers business data, credit information, and analytics on China-based private and public companies to consumers/professionals.

that the key company documents setting out Yuanmei's structure and its articles of association pointed to the applicant having no related companies of any kind. Finally, the examination of Yuanmei's sales ledger did not raise suspicion of any client related to Yuanmei. In sum, the Commission did not identify any relationship as defined by Commission Implementing Regulation (EU) 2015/2447 ⁽⁷⁾. Therefore, the applicant fulfils this condition.

- (13) With regard to the condition set out in Article 2(c) of Implementing Regulation (EU) 2019/1198, that the applicant has actually exported the product concerned to the Union after the original investigation period or has entered into an irrevocable contractual obligation to export a significant quantity to the Union, the Commission established that the applicant had exported to the Union in 2019, therefore after the original investigation period. The applicant submitted invoices, a packing list, a bill of lading and a receipt of payment for an order placed in 2019 by a company in Spain.
- (14) Consequently, the Commission concluded that the applicant complies with the condition set out in Article 2 of Implementing Regulation (EU) 2019/1198.
- (15) Accordingly, the applicant fulfils all three conditions to be granted NEPT, as set out in Article 2 of Implementing Regulation (EU) 2019/1198 and the request should therefore be accepted. Consequently, the applicant should be subject to an anti-dumping duty of 17,9 % for cooperating companies not included in the sample of the original investigation.

D. DISCLOSURE

- (16) The applicant and the Union industry were informed of the essential facts and considerations based on which it was considered appropriate to grant the anti-dumping duty rate applicable to the cooperating companies not included in the sample of the original investigation to Liling Yuanmei Ceramic Co., Ltd. ('Yuanmei').
- (17) The parties were granted the possibility to submit comments. No comments were received.
- (18) The Regulation is in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The following company is added to Annex I of Implementing Regulation (EU) 2019/1198 containing the list of cooperating companies not included in the sample:

Company	TARIC additional code
Liling Yuanmei Ceramic Co., Ltd.	C556

⁽⁷⁾ Article 127 of Commission Implementing Regulation (EU) 2015/2447 (OJ L 343, 29.12.2015, p. 558) (the EU Customs Code), stipulates that two persons shall be deemed to be related if one of the following conditions is fulfilled: (a) they are officers or directors of the other person's business; (b) they are legally recognised partners in business; (c) they are employer and employee; (d) a third party directly or indirectly owns or controls or holds 5 % or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they control a third person directly or indirectly; (h) they are members of the same family. Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related only if they fall within the criteria referred to in the preceding sentence.

Article 2

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

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

Done at Brussels, 6 October 2020.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2020/1408**of 6 October 2020****imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed 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 9(4) thereof,

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' or 'China') and Taiwan ('the countries concerned'), on the basis of Article 5 of Regulation (EU) 2016/1036 of the European Parliament and of the Council ('the basic Regulation'). 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.

1.2. Registration

- (3) The Commission made imports of the product under investigation originating in and consigned from the countries concerned subject to registration by Commission Implementing Regulation (EU) 2020/104 ⁽³⁾. The registration of imports ceased with the entry into force of the provisional measures referred to in recital (5) below.

1.3. Provisional measures

- (4) In accordance with Article 19a of the basic Regulation, on 18 March 2020 the Commission provided parties with a summary of the proposed duties and details about the calculation of the dumping margins and the margins adequate to remove the injury to the Union industry. Interested parties were invited to comment on the accuracy of the calculations within three working days. In view of the comments received, corrections were made to the calculations of one Taiwanese exporting producer. The comments submitted by the Indonesian and Chinese exporting producers did not alter the calculations.

⁽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).

- (5) On 8 April 2020, the Commission imposed a provisional anti-dumping duty on imports into the Union of SSHR originating in Indonesia, the PRC and Taiwan by Commission Implementing Regulation (EU) 2020/508 (*) ('the provisional Regulation').
- (6) As stated in recital (27) of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2018 to 30 June 2019 ('the investigation period' or 'IP') and 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').

1.4. Subsequent procedure

- (7) Following the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed ('provisional disclosure'), the complainant, one user of the product concerned, one importers' association, two Indonesian, three Chinese and two Taiwanese exporting producers, as well as the Governments of China ('GOC') and Indonesia ('GOI') filed written submissions making their views known on the provisional findings within the deadline provided by Article 2(1) of the provisional Regulation.
- (8) The parties who so requested were granted an opportunity to be heard. Hearings took place with the complainant on 5 May 2020 and with the exporting producer Walsin Lihwa Co. ('Walsin') on 22 April 2020. On 19 May 2020, the Commission sent to one Union producer an additional disclosure regarding its individual target price calculation. Comments further to that additional disclosure were received on 25 May 2020.
- (9) The Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports into the Union of SSHR originating in Indonesia, the PRC and Taiwan ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure.
- (10) Comments were received from the GOC and GOI, two Indonesian, two Chinese and one Taiwanese exporting producers, from the complainant and from one user. The complainant was afforded two hearings, one with the Commission services and one on 12 August 2020 in the presence of the Hearing Officer. Further to that hearing, the complainant was provided with additional final disclosure on an element of the analysis concerning the effect on supply chains for European companies under the Union interest test under Article 7(2b) of the basic Regulation (see section 6.2.3.3 below). In addition, in view of the comments received an additional final disclosure on the undercutting and underselling calculations was provided to the Chinese exporting producers Fujian Fuxin Special Steel Co., Ltd ('FSS') and Shanxi Taigang Stainless Steel Co., Ltd ('STSS'). Furthermore, an additional final disclosure with a revised dumping margin calculation was sent to FSS as the Commission accepted the company's claim mentioned in recital (143) below.

1.5. Sampling

- (11) In the absence of comments concerning sampling, recitals (9) to (19) of the provisional Regulation were confirmed.

1.6. Investigation period and period considered

- (12) In the absence of comments concerning the investigation period and period considered, recital (26) of the provisional Regulation was confirmed.

1.7. Completeness of provisional and final disclosure

- (13) The Chinese exporting producer FSS requested the disclosure of the percentage of selling, general and administrative costs used in establishing the target price of the Union industry. Furthermore, FSS as well as the exporting producer STSS requested to disclose the Union producers' sales volumes, unit sales prices and non-injurious prices and undercutting and underselling amounts per model, claiming that this was common practice in trade defence investigations. Those claims were rejected, as most product types are produced by one or two of the sampled producers. Therefore to disclose the sales volumes or prices per product type would reveal company confidential

(*) 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 (OJ L 110, 8.4.2020, p. 3).

data. With regard to SG&A costs of the sampled producers, such data, as provided by the cooperating Union producers and verified by the Commission, was by nature confidential and therefore cannot be disclosed in the light of Article 19 of the basic Regulation.

- (14) After final disclosure, the Chinese exporting producers FSS and STSS reiterated their request to provide more details on the undercutting and underselling calculations, in particular they requested product type specific information with regard to Union industry sales volumes and sales prices and undercutting and underselling rates per product type. Within the limits of protection of confidential data submitted by other parties, additional disclosure was provided to the two requesting parties in the form of indexes or ranges. Subsequently, no further comments were received.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Claims regarding the product scope

- (15) After provisional and final disclosures, the user Marcegaglia Specialities S.p.A. ('Marcegaglia') reiterated its claim referred to in recital (39) of the provisional Regulation, which is to exclude black coils from the scope of the investigation. Marcegaglia recalled differences in surface roughness and surface finishing and distinctions in the aesthetic appearance between black and white coils. With reference to the last sentence of recital (44) of the provisional Regulation, Marcegaglia argued that with regard to interchangeability, black coils could not replace white coils for relevant industrial applications. On this point, Marcegaglia added that black coils did not withstand high pressure and corrosion requirements of white coils.
- (16) In addition, Marcegaglia claimed that any risk of circumvention, as referred to in recital (44) of the provisional Regulation, seemed remote since black and white coils target different categories of customers, thus are not in direct competition with each other and are directly recognisable, and the Commission could introduce specific TARIC codes for the two product codes to avoid any possible risk of circumvention.
- (17) With reference to recital (45) of the provisional Regulation, Marcegaglia requested the Commission to disclose the volumes of black coils that the Union industry sold to customers other than Marcegaglia. The Commission does not have information at product type level for the whole Union industry; it only has this information with regard to the sampled producers. In any event, sales information at product type level is by nature confidential within the meaning of Article 19(1) of the basic Regulation and therefore it cannot be disclosed.
- (18) In the same context, the Indonesian exporters ITSS and GCNS claimed that the Commission should use the Union industry's profit margin concerning black coils only for the purpose of calculating a separate injury margin calculation, as Indonesian exports consisted almost exclusively of black coils, for which the profit margin was lower as black coils were semi-finished products.
- (19) With regard to the above claims, the Commission noted that the product under investigation has been defined under Section 2 of the Notice of initiation, based on the definition provided in the complaint. The complainant has identified the products which the concerned industry has produced and sold and whose imports from the countries concerned have been dumped and caused injury.
- (20) As concerns the claims for exclusion of black coils, in recitals (44) to (46) of the provisional Regulation the Commission had explained why such exclusion is not warranted.
- (21) Further to the reasoning in the provisional Regulation, during the investigation period the black coils free market sales accounted for [20 to 30] % ^(*) of the entire free market sales. Moreover, the exclusion of black coils from the scope of the investigation would jeopardize the entire 'green' circular business model of the Union industry, which is to produce the product concerned from stainless steel scrap for sale or for further processing into downstream products. Indeed, under such circumstances also the viability of the production of stainless steel white coils and further downstream products by the Union industry is likely to be fundamentally affected in a negative way as white coils would be increasingly produced in the Union from dumped black coils produced less environmentally-friendly in the countries concerned. In view of the rapid increase of dumped imports, such development would, in the medium to long-term, force the Union industry to shut down important production lines. These severe consequences would thus not remain limited to the production of black coils from stainless steel scrap, as users of

^(*) Precise figures cannot be given without disclosing confidential information. The range is considered accurate in the light of the information provided by interested parties in this investigation.

white coils and also of further downstream products would continue to have the possibility to purchase these products with a significant dumped content. Therefore, fair conditions of competition on the Union's SSHR market and its downstream markets would be dramatically reduced if black coils were to be excluded, to the detriment of the Union industry.

- (22) In addition, the Commission noted that it is its consistent case practice in trade defence investigations to divide a product under investigation into different models and types (product control numbers 'PCNs') to allow for a fair comparison for the determination of dumping and injury. The resulting PCNs usually distinguish models of different size and with different features but each of them is part of the product under investigation. In the current case, the finishing of SSHR is likewise identified by the second-last character of the PCN, i.e. B stands for black and W for white. Therefore, for the determination of undercutting, underselling and dumping, a fair comparison is ensured as black coils are not compared with white coils and vice versa.
- (23) Finally, the Commission noted that Union producers as well as exporting producers in the countries concerned have a vertically integrated business model that includes the production of both black and white coils. This means that any such producer has a choice as to whether to sell black or white coils to the free market.
- (24) Further to final disclosure, Marcegaglia reiterated the request to disclose the number of Union producers' customers and the quantities of black coils sold by the Union industry to re-rollers other than Marcegaglia in 2018 and the investigation period. The Commission recalled that this information is by nature confidential. The Commission could however provide a meaningful summary, which is that during the investigation period [1-2] sampled Union producers sold to [2-4] customers [1 50 000 – 1 80 000] ⁽⁶⁾ tonnes of black coils.
- (25) Marcegaglia further claimed that the investigation had confirmed that, with the sole exception of Marcegaglia, there was virtually no free market in the Union for black coils, and it criticized the Commission for not drawing any conclusion from this crucial circumstance. This criticism was found groundless. The mere fact that Marcegaglia is the most important user of black coils on the Union market cannot be inferred to justify a special treatment with regard to black coils or an exclusion of black coils from the scope of the product concerned.
- (26) After final disclosure Marcegaglia also referred to recital (21) above and argued that the black coils imported by them were exclusively used as a raw material for the production of downstream products (SSCR, stainless steel tubes). Black coils were not used by Marcegaglia to produce white coils in order to be sold on the Union free market. In view of the above, it claimed that the relevance of the Commission's assertion that, should black coils be excluded from the scope of the measures, white coils would be increasingly produced in the Union from dumped black coils produced less environmentally-friendly in the countries concerned was difficult to perceive.
- (27) This claim had to be rejected. Should no duties be imposed on black coils, Union producers are likely to get at least indirectly harmed on the downstream market where they compete with Marcegaglia. An increase in annealing and pickling capacity in the Union – a process which is needed to turn black coils into white – can then also be expected to take place, in particular by turning cheap imported black coils into white coils to the detriment of the Union industry, who invested significant resources to be fully-integrated. If the Union industry cannot compete any longer on that basis, it will be forced to turn to cheap and dumped imports and hence indeed abandon their integrated and more environmentally-friendly business model.
- (28) The claims aiming at excluding black coils from the scope of the investigation are therefore rejected.
- (29) Several parties reiterated the claim to exclude coils with a width exceeding 1 800 mm from the scope of the investigation. According to these parties, the width has an impact on the properties, such as the resistance to pressure.
- (30) For the reasons set out in recitals (47) and (48) of the provisional Regulation, these claims are rejected.

⁽⁶⁾ Precise figures cannot be given without disclosing confidential information. The range is considered accurate in the light of the information provided by interested parties in this investigation.

2.2. Conclusion

- (31) In the absence of any other comments with respect to the product scope, the Commission confirmed the conclusions set out in recitals (39) to (46) of the provisional Regulation, as clarified in recitals (19) to (30) above.

3. DUMPING

3.1. Indonesia

- (32) Following the provisional disclosure, the Commission received comments from the Indonesian exporting producers PT Indonesia Guang Ching Nickel and Stainless Steel Industry ('GCNS') and PT Indonesia Tsingshan Stainless Steel ('ITSS'), and the complainant Eurofer ('submission of 4 May 2020') on the dumping findings with regard to the Indonesian exporting producers. In addition, Eurofer submitted comments concerning the dumping calculation for the Indonesian exporting producers on 7 February 2020 ('submission of 7 February 2020'), which, due to the timing of the investigation, could not be addressed in the provisional Regulation.

- (33) All comments included in the submissions mentioned in recital (32) are addressed in this Regulation.

3.1.1. Exporting producers

- (34) In the absence of comments concerning the description of the Indonesian exporting producers and their related suppliers established in the Indonesia Morowali Industrial Park ('MIP'), the Commission confirmed its conclusions set out in recitals (50) to (51) of the provisional Regulation.

3.1.2. Application of Article 18 of the basic Regulation

- (35) The details concerning the reasons for the application of Article 18 of the basic Regulation were set out in recitals (52) to (63) of the provisional Regulation.
- (36) In its submission of 7 February 2020, Eurofer argued that all information provided by the Indonesian exporting producers should be disregarded since it could not be considered reliable in the absence of comprehensive disclosure of related companies and in the absence of cooperation of identified related companies active in the production and sale of the product concerned or in the supply of raw materials used in the production process.
- (37) In addition, Eurofer claimed that the Commission should not apply the provisions of Article 18(3) of the basic Regulation. In this respect, the complainant referred to previous jurisprudence of the Court of Justice of the European Union ⁽⁷⁾ and the World Trade Organisation's ('WTO') Appellate Body ⁽⁸⁾.
- (38) These claims were rejected. The Commission considered that the exporting producers made a considerable effort to provide sufficient information on the relationship to their suppliers and customers. Nevertheless, due to the decisions of their ultimate shareholder and their minor shareholder links to certain related customers, their efforts were only partially successful. The Commission verified that suppliers and customers identified by the exporting producers as related, were indeed related. The uncertainty about the relationship to the suppliers and customers identified as unrelated was reflected in the dumping margin calculation, i.e. where warranted, the information provided by the exporting producers was adjusted or rejected and replaced by facts available.

3.1.3. Normal value

- (39) The details of the calculation of the normal value were set out in recitals (64) to (85) of the provisional Regulation.

⁽⁷⁾ Judgment of the General Court of 22 May 2014, Guangdong Kito Ceramics and Others v Council of European Union, Case T-633/11, in particular para. 100 and 111.

⁽⁸⁾ Appellate Body Report, United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, WT/DS184/AB/R, in particular para. 102.

- (40) In the submission of 7 February 2020, Eurofer maintained that the Commission should have disregarded the purchase price of nickel ore reported by the Indonesian exporting producers. Eurofer reasoned that this would be justified by the fact that the exporting producers did not provide the Commission with the necessary elements to assess whether the nickel ore was purchased at an arm's length price. In addition, it suggested that the Commission use as facts available the price of comparable nickel ore in the Philippines provided in the complaint or the nickel price quoted at the London Metal Exchange ('LME').
- (41) As explained in recitals (52) to (54), (60), (68), (80), and (82) to (85) of the provisional Regulation, the Commission indeed used facts available regarding the prices of nickel ore paid by the exporting producers. Nevertheless, in this case, the Commission considered that most aspects of those prices, except for the relationship with the supplier, were reliable. Therefore, when determining the arm's length price of nickel ore, the Commission used the information provided by the exporting producers as facts available taking into account the most expensive purchase transactions, which were considered least likely to be affected by a potential relationship with the supplier. As established in Article 2(5) of the basic Regulation, where available, the Commission gives preference to the costs on the basis of records kept by the party under investigation, where those records reasonably reflect the costs associated with the production and sale of the product under investigation. Therefore, the Commission rejected the claim of Eurofer.
- (42) In the submission of 4 May 2020, Eurofer argued that the Commission failed to adjust the nickel ore costs under Articles 2(3) and 2(5) of the basic Regulation despite having found that Indonesia had maintained several mechanisms amounting to distortions on nickel ore as described in recital (342) of the provisional Regulation. In support of this claim, Eurofer referred to previous Commission's practice ⁽⁹⁾ and WTO jurisprudence ⁽¹⁰⁾.
- (43) As explained in recital (41), the Commission replaced the price of nickel ore influenced by the relationship between the exporting producers and their suppliers under Articles 2(3) and 2(5) of the basic Regulation, i.e. determined the arm's length purchase price. In addition, the Commission noted that the effect of the interventions by the GOI, as a separate issue, was addressed under Article 7(2a) of the basic Regulation as described in section 6 of the provisional and this Regulation.
- (44) Following final disclosure, Eurofer reiterated its views that the Commission should have adjusted the costs of nickel ore to counteract the government induced distortions. Eurofer, first, maintained that the replacement of nickel ore costs described in recitals (41) and (43) was not carried out under Article 2(5) of the basic Regulation but under Article 18 of the basic Regulation. Second, it submitted that the Commission had the right to replace costs affected by government induced distortions under Article 2(5) of the basic Regulation even in the context of the Union's obligations stemming from its membership in the WTO. To this end, Eurofer argued that the most recent WTO jurisprudence ⁽¹¹⁾ did not exclude that under Article 2.2.1.1 of the WTO Anti-dumping agreement the costs of the exporting producer may be replaced in circumstances other than the two mentioned in the article.
- (45) First, the Commission recalls that the costs of nickel ore purchased from related suppliers were indeed replaced under Article 2(5) of the basic Regulation. Article 18 of the basic Regulation was only applied in respect of the methodology and transactions used to determine the arm's length purchase price since the relationship between the exporting producers and their suppliers was not always clear. Second, as explained under section 6 of this Regulation, the Commission maintained its position that, in this case, it was appropriate to impose an anti-dumping duty at the level of the injury margin where it was lower than the dumping margin. In this respect, it must be noted that the injury margin determined for the Indonesian exporting producers was indeed lower than their weighted average dumping margin. Therefore, any further increase of the nickel ore costs would only further increase the dumping margin and thus be without effect on the level of the measures. Consequently, the Commission found that the claim by Eurofer as described in recital (44) became moot.

⁽⁹⁾ Commission implementing Regulation (EU) 2019/576 of 10 April 2019 imposing a provisional anti-dumping duty on imports of mixtures of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America (OJ L 100, 11.4.2019, p. 7).

⁽¹⁰⁾ Appellate Body Report, Ukraine – Anti-Dumping Measures on Ammonium Nitrate, WT/DS493/AB/R, in particular para. 6.85 and 6.105.

⁽¹¹⁾ Appellate Body Report, Ukraine – Anti-Dumping Measures on Ammonium Nitrate, WT/DS493/AB/R, para 6.105.

- (46) With regard to the methodology for the determination of the arm's length price of nickel ore, the exporting producers welcomed that the Commission based the determination of the arm's length price on the actual data provided by the companies. They, however, argued that the method applied by the Commission was disproportionate and led to overstated arm's length costs of nickel ore. In particular, the exporting producers pointed out that purchase prices varied considerably for nickel ore within a difference in nickel content of 0,01 percentage points. As a consequence, the exporting producers suggested that the Commission should take into account the nickel content at two decimal places instead of using only one decimal place for the cost adjustment.
- (47) The Commission examined the claim and found that, based on the information provided by GCNS, the only company in the group that provided a full set of information, a difference in nickel content of 0,01 percentage points was indeed reflected in the purchase price of nickel ore. The Commission, therefore, accepted the claim and adapted the arm's length costs of nickel ore accordingly.
- (48) The exporting producers further claimed that the Commission should have established the arm's length purchase price of nickel ore of the related supplier PT Tsingshan Steel Indonesia ('TSI') on the basis of the purchases from unrelated suppliers of nickel ore.
- (49) The Commission recalled that the reason for rejecting the purchase price of nickel ore of the exporting producers was the lack of meaningful information on the world-wide structure of the group. The fact that the Commission was not able to establish which suppliers of the exporting producers were actually unrelated equally applied to the suppliers of TSI.
- (50) Nevertheless, following the change in the arm's length price calculated for GCNS as explained in recitals (46) and (47), the Commission also adapted the arm's length purchase price of TSI by applying to the benchmark of GCNS the ratio between the average actual price paid by TSI and by GCNS. This was also in line with the technical comments of the exporting producers concerning an alternative determination of the arm's length purchase price of nickel ore for TSI.
- (51) In addition, when examining the comments by interested parties, the Commission found that at the provisional stage, it omitted to take into account certain costs of production reported by ITSS in the calculation of the normal value.
- (52) After correcting this omission, none of the domestic sales by ITSS of the like product were profitable. Therefore, the Commission constructed the normal value 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 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.
- (53) In respect of the determination of the normal value for ITSS, Eurofer, in its submission of 4 May 2020, argued that the Commission should not have given a conclusion on the representativity and profitability of domestic sales to independent customers in the absence of a comprehensive world-wide structure of the group.
- (54) The Commission noted that in view of the corrections to the determination of the normal value for ITSS described in recital (52), its previous conclusions and subsequently the comments by Eurofer became moot.
- (55) In line with the accepted claims and clarifications provided in recitals (39) to (50) above, the Commission confirmed the conclusions set out in recitals (64) to (72) and (80) to (85) of the provisional Regulation. The aspects of the normal value determination for ITSS described in recitals (73) to (79) of the provisional Regulation were adapted as described in recitals (51) to (54).

3.1.4. *Export price*

- (56) The details for the calculation of the export price were set out in recitals (86) and (87) of the provisional Regulation.

- (57) In its submission of 7 February 2020, Eurofer argued that the Commission should not use the import prices by the major customer of the Indonesian exporting producers in the Union as facts available. In particular, the complainant argued that the exporting producers had engaged in a managed non-cooperation and that they had orchestrated facts available that would result in a more favourable dumping determination. Eurofer supported the latter allegation by the sequence of submissions by the customer in question. In particular, Eurofer pointed out that the customer submitted detailed information on prices of import transactions from Indonesia (submission of 4 November 2019, reference number t19.005668) only after the Commission sent its second deficiency letter to the Indonesian exporting producers on 23 October 2019 (reference number t19.005465). Consequently, Eurofer concluded that the Indonesian exporting producers requested the customer in the Union to provide the information as a substitute to their own export sales listing.
- (58) The complainant reiterated its claims described in recital (57) in its submission of 4 May 2020.
- (59) In this respect, it is important to clarify that the customer in the Union cooperated with the investigation from its very beginning. On 18 October 2019, the Commission enquired about the willingness of the company to submit additional information on imports of the product under investigation originating in Indonesia per transaction and product type (reference number t20.003960). The company submitted the requested information on 25 October 2019 (reference number t19.005556). The submission of 4 November 2019 referred to by Eurofer was submitted by the customer in the Union as a clarification following additional questions by the Commission.
- (60) In addition, the Commission recalled that the Indonesian exporting producers provided a full listing of their export sales to the Union. The Commission was able to verify *inter alia* the product types, quantities, values and destination of those sales. However, since the related traders in third countries engaged in the export sales did not cooperate with the investigation, the Commission could not establish the export price based on their resales price to the first independent customer. In the present case, the Commission decided to use the information already available on the file supplemented by detailed information per transaction and product type submitted by the Union customer.
- (61) In addition, the Commission compared those prices with official trade statistics by Eurostat and found that the unit import prices determined from all available sources were very similar. Thus, the Commission considered the information provided by the major customer in the Union suitable to be used as facts available.
- (62) The claims by Eurofer described in recitals (57) and (58) are, therefore, rejected.
- (63) In the absence of any additional comments concerning export price other than those already covered by recitals (56) to (62) above, recitals (86) to (87) of the provisional Regulation were confirmed.

3.1.5. Comparison

- (64) The details concerning the comparison of the normal value and the export price were set out in recitals (88) to (89) of the provisional Regulation.
- (65) In the submission of 4 May 2020, Eurofer argued that the Commission had not drawn appropriate conclusions from the non-cooperation of the related traders involved in the export sales of the Indonesian exporting producers as far as it concerned the determination of the export price for comparison. In particular, Eurofer argued that the Commission should not have taken at face value the information provided by the exporting producers concerning transport, handling and loading, and other allowances (such as commissions, credit costs, banking costs, currency conversion).
- (66) Eurofer, further, doubted the deductions from the export price of SG&A and profit of the related traders involved in export sales as their identity and relationship with the exporting producers could not be verified.
- (67) Finally, Eurofer submitted that the Commission should have disclosed the identity of the related trader whose publicly available financial statements it used to determine the SG&A to be deducted from the export price.

- (68) The Commission considered that it did not treat the Indonesian exporting producers more favourably when it used facts available either from public sources or provided by the exporting producers themselves. The Commission recalled that to determine the export price for the purpose of comparison with the normal value, i.e. at ex-works level, it deducted from the export price at CIF level, established on the basis of the import prices of the customer in the Union, the commission of the unrelated trader involved in the export sales, the SG&A of several related traders involved in the export sales, profit of an unrelated importer, ocean freight and insurance, handling and loading in Indonesia, transport in Indonesia, and credit costs for each export transaction individually.
- (69) In this respect, the Commission deducted, for each transaction, the SG&A of all related traders involved in export sales although the exporting producers claimed that not all of them were involved in each of the sales channels. Moreover, the Commission deducted credit costs based on the Indonesian interest rates and the average duration of the trade credit received by the customer in the Union although the Indonesian exporting producers did not provide any trade credit when exporting to the Union. In this case, the Commission considered that the export credit might have been provided by one of the related traders involved in the export sales.
- (70) With regard to the identity of the related trader whose financial statement were used to determine the SG&A, it must be noted that the exporting producers considered their identity sensitive information. Therefore, the Commission did not disclose this information in the provisional Regulation.
- (71) For the reasons explained in recitals (68) to (70), the Commission rejected the claim of Eurofer.
- (72) The exporting producers claimed that the adjustment to the export price for the SG&A of related traders located outside the Union were unjustified or alternatively, that that adjustment should have been calculated in a different way. The Commission accepted the proposed alternative calculation of the adjustment in question and adapted the export price accordingly. Since the adjustment concerned confidential business data of the exporting producers, details were disclosed to the exporting producers in a company specific definitive disclosure.
- (73) In the absence of any additional comments concerning comparison of normal value to export price, recitals (87) to (88) of the provisional Regulation as far as it concerned the adjustments to the normal value were confirmed.

3.1.6. *Dumping margins*

- (74) As detailed in recitals (32) to (73), the Commission took into account interested parties' comments and recalculated the dumping margins for the Indonesian exporting producers.
- (75) The definitive dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Dumping margin (%)
PT Indonesia Guang Ching Nickel and Stainless Steel Industry PT Indonesia Tsingshan Stainless Steel	17,7
All other companies	17,7

- (76) The calculations of the individual dumping margins after corrections and adjustments made following the comments of the interested parties after provisional disclosure were disclosed to the Indonesian exporting producers.

3.2. **The PRC**

3.2.1. *Preliminary remarks*

- (77) As explained in recitals (95) to (99) of the provisional Regulation, the Commission decided to apply Article 18 of the basic Regulation with respect to one of the sampled Chinese exporting producers – Zhenshi Group Eastern Special Steel Co., Ltd ('Zhenshi'). The Commission was not able to reconcile several figures that were crucial for the

calculation of the company's individual dumping margin, such as production volumes per product type, energy inputs consumption, by-products allocation and manufacturing overheads with the company's audited accounts, cost management accounts and data in the internal IT applications used.

- (78) Therefore, the Commission found that the information provided was unreliable and decided to apply Article 18(1) of the basic Regulation to complete the determination of the exporting producer's dumping and injury margins. This resulted in the imposition of the residual margins for the company in question at provisional stage.
- (79) In its submission after provisional disclosure, Zhenshi commented again on the Commission's decision to apply Article 18 of the basic Regulation and to impose the residual duty. The company claimed that regardless of their failure to provide proper data for the calculation of the normal value, the Commission had at its disposal all the verified export sales data needed to calculate an individual injury margin. In this regard, the company requested the Commission to resort to Article 18(3) of the basic Regulation since *'whereas the information submitted by the company was not ideal in all respects, any deficiency is not such as to cause undue difficulty in arriving at a reasonably accurate finding in this case'*.
- (80) After examination of this claim, the Commission decided, in accordance with Article 18(3) of the basic Regulation, to calculate both an individual dumping and injury margin for Zhenshi on the basis of facts available.
- (81) As far as the dumping margin is concerned, the verified export price data of the company was used to establish the export price. For each product type exported by Zhenshi, the normal value used for the calculation was taken from one of the other two cooperating Chinese exporting producers. Where the normal value for this particular product type existed in both companies in question, the higher of the two figures was used. This was found to be a reasonable methodology given that Zhenshi has not provided sufficient data for the calculation of their normal value. Where, for a particular product type, the normal value did not exist in any of the two companies, the normal value used was that of the product type most closely resembling the product type exported by Zhenshi. The normal values were then compared, per product type, with export prices adjusted to ex-works as provided by Zhenshi and verified during the verification visit.
- (82) As a result of the above calculation, the individual dumping margin for Zhenshi, expressed as the percentage of the company's own CIF value, was set at a level of 71,7 %.
- (83) In accordance with Article 9(6), second paragraph, of the basic Regulation, since the dumping margin of the company was based on facts available, it was not used for the calculation of weighted average dumping margin for the non-sampled cooperating companies.
- (84) The Commission's decision to calculate an individual dumping margin for Zhenshi was contested by Eurofer in its submission after final disclosure. The complainant objected the change in the Commission's position at final disclosure, pointing out that the Chinese exporter only reiterated its previous arguments and did not provide any new information. According to the complainant, the Commission clearly concluded at provisional stage that it was not possible to calculate an individual dumping margin for Zhenshi as several key figures could not be reconciled with the audited accounts, management accounts and IT databases of the company.
- (85) Eurofer further argued that a calculation of the dumping margin should be based on the company's own data, contrary to the methodology applied by the Commission at the definitive stage.
- (86) Finally, the complainant raised doubts on how the Commission could have accepted Zhenshi's export prices, when the questionnaire response could not be reconciled with the audited accounts.
- (87) First, the Commission still upholds its conclusion that no calculation of normal value was possible on the basis of data provided by Zhenshi. The reconciliation problem of the figures concerned production, stocks, costs and input consumption figures only at the level of allocation to the different product types, thus making the calculation of normal value impossible. However Zhenshi provided, and the Commission could verify, all the elements necessary to establish the export price.

- (88) Second, the company came after provisional disclosure with a new valid argument – since the Commission admitted that it could verify the export sales data, an individual injury margin could be calculated. The Commission agreed with this argument and subsequently calculated an individual injury margin and, consequently, a dumping margin in accordance with Article 18(3) of the basic Regulation.
- (89) Contrary to the statement of Eurofer, it is not unusual that the normal value of a company is not based on the data submitted by the exporting producer. The Commission may use facts available, including data from other sources, if the information provided, for instance, was unreliable.
- (90) Thus, following Article 18(3) of the basic Regulation and as it is clear from recital (81), the normal value of Zhenshi is based upon the facts available, which is an objective assessment. In this specific case, this assessment has led to an individual dumping margin in the medium range of the Chinese companies and to the lowest injury margin, because of the level of the company's export prices.
- (91) Finally, the Commission did not find any ground to reject the company sales and turnover data or to reject certain export transactions from the calculation. Despite problems with the allocation of costs and inputs to the produced product types, the export sales and turnover data could be verified and reconciled with the company's audited accounts and also with objective external documents like VAT statements, custom declarations, actual transport and insurance documents.
- (92) For the reasons outlined above in recitals (87) to (91), the arguments of the complainant against the application of Article 18(3) of the basic Regulation with regard to Zhenshi were rejected.

3.2.2. *Normal value*

3.2.2.1. Existence of significant distortions

- (93) With regard to the exporting producers in the PRC, the Commission constructed the normal value in the country of origin exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation.
- (94) Recitals (103) to (157) of the provisional Regulation detailed the examination of all the available evidence relating to the PRC's intervention in its economy in general as well as in the steel sector, showing that prices and 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.
- (95) On that basis, and in the absence of any cooperation from the GOC in the investigation, the Commission provisionally concluded that it was not appropriate to use domestic prices and costs to establish normal value.
- (96) Following provisional disclosure, comments concerning the application of the Article 2(6a) of the basic Regulation were received from the GOC and the Chinese exporting producer FSS.
- (97) Both interested parties claimed that Article 2(6a) of the basic Regulation is inconsistent with WTO rules, namely with GATT Article VI.1(b) and Article 2.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ('ADA') and that the basic Regulation introduces a concept of 'significant distortions' which is not listed in Article 2.2 of ADA as one of circumstances to construct normal value. Furthermore, by referring to costs of production and sale in a representative country, or international prices, costs or benchmarks, the normal value constructed on the basis of Article 2(6a) of the basic Regulation allegedly goes beyond the scope of GATT Article VI.1(b) and Article 2.2 of the ADA which require using costs in the country of origin.

- (98) For the purpose of this investigation the Commission has concluded in recital (95) that it is appropriate to apply Article 2(6a) of the basic Regulation. The Commission did not agree with the submission of the interested parties that the Commission must not apply Article 2(6a). On the contrary, the Commission considered that Article 2(6a) is applicable and must be applied in the circumstances of this case. In addition, the Commission considered 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.
- (99) Additionally, the GOC claimed that the Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations ⁽¹³⁾ cannot be qualified as the 'report' which according to the Article 2(6a) of the basic Regulation should be '*produced, made public and regularly updated*'. The GOC also claimed that the document is misrepresentative and severely deviates from the facts.
- (100) Furthermore, the GOC made the observation that a staff working document of that kind was issued only with regard to China and no such market evaluation is done for other countries including the representative country in the investigation or Member States of the European Union. According to the GOC this has raised concerns about the principles of Most Favoured Nation ('MFN') and National Treatment ('NT').
- (101) In reply to these claims, the Commission notes that the report was made publicly available since December 2017 so that any interested party would have ample opportunity to rebut, supplement or comment on it and the evidence on which it is based. The GOC has refrained from providing any such rebuttal or comment on the substance and evidence contained in the report ever since its release in December 2017. The GOC has also failed to provide evidence that the report is outdated. In any event, the Commission notes in particular that the main policy documents and evidence contained in the report, including namely the relevant five-year plans and legislation applicable to the product concerned during the IP, are still relevant. Regarding the concerns about discrimination, the Commission recalls that, as provided for by Article 2(6a)(c) of the basic Regulation, such a report shall be produced for any country only where the Commission has well-founded indications of the possible existence of significant distortions in a certain country or sector in that country. Upon approval of the new provisions of Article 2(6a) of the basic Regulation in December 2017, the Commission had such indications of significant distortions for the PRC. The Commission is considering similar reports about other countries. Therefore, the Commission rejected these claims.
- (102) Following final disclosure, the GOC reiterated its claims with regard to the status of the Commission Staff Working Document referred to in recital (99), the discriminatory treatment of China and an alleged violation of the MFN and NT clauses and the inconsistency of Article 2(6a) of the basic Regulation with Article 2.2 of the ADA. However, no new arguments or evidence were presented which could change the Commission's provisional rejection of these claims or the conclusions in recital (101) above.
- (103) In the same submission, the GOC claimed that the report was released as a staff working document, and there was no evidence or sign indicating that the document was approved or endorsed by the Commission at or after the publication. Without the formal approval or endorsement from the Commission and made public as a staff working document, there are serious doubts regarding whether such document can be regarded as the official position of the Commission and whether its legal status meets the requirement of Basic Regulation 2(6a) of the Commission making, publishing and updating reports.
- (104) The report is a fact-based technical document used only in the context of trade defence investigations. It is therefore issued as a Commission Staff Working document as it is purely descriptive and does not express any political views, preferences or judgements. That does not affect its content, namely the sources of information concerning the existence of significant distortions in the Chinese economy relevant for the purpose of the application of Article 2(6a)(c) of the basic Regulation. In this investigation, the report, including the evidence contained therein, is part of the evidence on file justifying the application of Article 2(6a). The GOC has not provided any evidence that the information in the report is not valid or inapplicable for this investigation. In any event the Commission recalls that the existence of a country report is not a necessary condition for the application of Article 2(6a) as Article 2(6a)(c)

⁽¹³⁾ SWD(2017) 483 final/2 of 20 December 2017.

states that, where appropriate for the effective application of this Regulation, the Commission shall produce, make public and regularly update a report. What counts for the application of the methodology under Article 2(6a) of the basic Regulation are the findings that the significant distortions are present in the case at hand, as is the case in this investigation. Therefore this claim was rejected.

- (105) In the same submission, the GOC raised the issue of an alleged inconsistency of Article 2(6a) of the basic Regulation with Article 2.2.1.1 of the ADA as the Commission rejected the costs of the Chinese companies without determining that their records were kept in accordance with the generally accepted accounting principles of China, or whether the records reasonably reflected the costs associated with the production and sale of the product under consideration.
- (106) As explained above in recitals (93) to (98), the Commission concluded that it is appropriate to apply Article 2(6a) of the basic Regulation given the existence of significant distortions within the meaning of point (b) of that Article. The Chinese companies were given the opportunity to comment but provided no relevant comments. Therefore whether the Chinese companies records were kept in accordance with the generally accepted accounting principles of China, or whether the records reasonably reflected the costs associated with the production and sale of the product under consideration, does not affect the conclusion concerning the application of the methodology under Article 2(6a) of the basic Regulation. Therefore this claim was rejected.
- (107) Finally, the GOC claimed that the investigation was conducted on the assumption that there were significant distortions in the Chinese market and sector concerned and the interested parties had no opportunity to defend their interests and to prove that their records reasonably reflected the costs associated with the production and sale of the product under investigation.
- (108) Interested parties were invited to comment on alleged market distortions in the PRC and the potential application of Article 2(6a) of the basic Regulation. Some of the Chinese exporting producers did comment on the alleged market distortions in their questionnaire replies and separate submissions. Their comments in this regard were addressed in recitals (111) to (113) of the provisional Regulation and in recitals (98) to (101) above. The GOC did not use the opportunity to comment on the alleged market distortions within the time limit provided for in section 5.3.2 of the Notice of initiation ⁽¹³⁾ and did not reply to the questionnaire with specific questions on the existence of significant distortions in the PRC, sent on 12 August 2019. Therefore, the Commission rejected this claim.
- (109) In the absence of any further comments with respect to the application of the Article 2(6a)(b) of the basic Regulation, the Commission confirmed recitals (103) to (159) of the provisional Regulation.

3.2.2.2. Representative country

- (110) As explained in recitals (160) to (178) of the provisional Regulation, the Commission provisionally chose Brazil as an appropriate representative country in this procedure, meeting all the criteria laid down in Article 2(6a)(a), first indent of the basic Regulation.
- (111) After provisional disclosure, the user Marcegaglia commented on the choice of the representative country. It claimed that Brazil is not an appropriate representative country as there is only one big producer of the product under investigation which is vertically integrated and driving the market, as it controls the whole supply chain, from the production of slabs to the distribution of downstream products. Furthermore, the user claimed that the Brazilian stainless steel flat products market is protected by several anti-dumping measures.

⁽¹³⁾ 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).

- (112) The Commission disclosed its analysis on the choice of representative country in two consecutive notes ⁽¹⁴⁾. These notes informed interested parties on the criteria used in the choice of the representative country and possible alternatives. The interested parties were encouraged to comment on the Commission's choice and to bring forward their own proposal of most appropriate representative country. Marcegaglia did not come forward with any submission in this regard.
- (113) Nevertheless, the alleged dominant position of some companies or the existence of anti-dumping measures on the domestic market of the representative country with regard to the sector of the product under investigation is meaningless in the choice of a representative country. The Commission used for the construction of the benchmarks the Brazilian import prices for the raw materials, auxiliary materials and energy inputs – including factors of production used to produce slabs or to produce even further upstream inputs such as metallurgical coke, sinter or molten iron. Those inputs are used by many sectors in the representative country and thus the alleged limited internal competition on the stainless steel flat products market or its protection by anti-dumping measures cannot affect significantly the average import price of the inputs in question.
- (114) Marcegaglia pointed out also that the producer in the representative country is related to one of the complainants.
- (115) Indeed, the producer in Brazil, Aperam Inox America do Sul S.A., is related to the sampled Union producer Aperam Stainless Belgium. However, the Commission did not find any evidence that this relationship had a distortive effect on the SG&A and profit of the Brazilian company.
- (116) Taking into account the above, the claim of Marcegaglia was rejected and recitals (160) to (178) of the provisional Regulation are confirmed.

3.2.2.3. Sources used to establish undistorted costs

- (117) Sources used by the Commission to establish the undistorted costs of factors of production in the calculation of the direct manufacturing costs were listed in recitals (179) to (183) of the provisional Regulation.
- (118) In this regard the complainant submitted a claim concerning the use of the International Labour Organisation ('ILO') statistics for the establishment of an undistorted labour cost. Eurofer claimed that since labour costs are much higher in the Brazilian steel industry than in the manufacturing sector as a whole, the Commission should rely on the publicly available statistics published by the Brazilian steel association. The complainant submitted these statistics.
- (119) The Commission analysed the statistics provided in support of this claim. The report of the Brazil Steel Institute, which provides information on total salaries, welfare expenses and total employment of the sector, submitted by Eurofer in support of its claim, differentiates total registered workforce, actually active workforce and sub-contracted workforce. Since the report only has raw figures, without description of the methodology, it is not clear how the total 'pay-roll' and welfare expense figures can be linked with the number of employees. For sub-contracted employees, there is no information on the level of social benefits and average working hours. Furthermore, the average labour cost for the steel sector, as calculated by Eurofer in its submission, is almost four times higher than the labour cost calculated provisionally by the Commission on the basis of the official ILO statistics concerning the manufacturing sector in Brazil. Even with the most conservative approach and taking into account the total number of employees, the statistics of the Brazilian steel association would indicate a per hour salary for the steel sector which is on average almost 20 % higher than in the financial sector and 50 % higher than in the IT sector in Brazil, compared to the figures provided by the official ILO statistics. Therefore, since the figures provided by Eurofer could not be used as a basis for an estimated labour cost per hour, and without knowing the methodology which stands behind them, the Commission found it to be a less reliable source than the ILO statistics for the calculation of the labour cost.
- (120) Taking into account the above, the claim of Eurofer was rejected and recitals (179) to (183) of the provisional Regulation were confirmed.

⁽¹⁴⁾ Note of 9 September 2019 and Note of 10 October 2019 on the sources for the determination of the normal value.

3.2.2.4. Undistorted costs and benchmarks

- (121) A list of the factors of production used for the establishment of the undistorted direct costs of manufacturing, their undistorted value, and the methodology of their calculation were provided in recitals (185) to (200) of the provisional Regulation.
- (122) After provisional disclosure two Chinese exporting producers – FSS and STSS – submitted several claims with regard to the above-mentioned recitals.
- (123) Both interested parties claimed that for several factors of production the undistorted value of the benchmarks is too high, which may result from using too general Brazilian customs codes and thus comparing not the same input or comparing a very small Brazilian import volume with a much larger volume of the input consumed by the Chinese producers.
- (124) Interested parties were informed by the Note of 10 October on the customs codes the Commission intended to use as the benchmarks for the undistorted values for all the factors of production. The interested parties had also access to the corresponding representative country import volumes and values as the extraction from the Brazilian customs statistics were attached to the note. No comments were received at that stage.
- (125) Furthermore, all the factors of production were discussed in detail during the verification visits in the companies in question. This included a discussion on the exact composition of a given input and the proposed HS code, corrected were applicable in agreement with the company.
- (126) Finally, the Commission did not compare the volumes of imports to the representative country with the volumes purchased and consumed by the Chinese exporting producers for the specific inputs. Volumes imported to Brazil could be smaller but were still considered representative.
- (127) Taking into account the above, the claims concerning the benchmarks were rejected, except for two factors of production, where after further analysis the Commission indeed agreed that the imported volumes might be too negligible to be representative.
- (128) For iron ore the Commission decided to revert to an international benchmark based on the average IP price quotation for iron ore by Fast Markets. For oxygen, taking into account the negligible share of this input in the costs of manufacturing, the Commission decided to move its cost to the manufacturing overheads. The detailed calculation of the new iron ore benchmark and the updated list of factors of production moved to overheads are listed in the company-specific final disclosures.
- (129) Both interested parties further claimed that the undistorted costs did not reflect the costs in China. The companies claimed that in principle the international freight, insurance and custom duties should not be added to the benchmark constructed for the inputs which were purchased domestically by the Chinese producers.
- (130) FSS further claimed that even if freight and insurance are added it would be illogical to base the adjustment on the figures for freight and insurance obtained from the Chinese exporters, as those refer to exports from China to the Union, while an adjustment should be done for the FOB price on the Brazilian border to the producer's premises.
- (131) STSS further challenged the actual figure used for the adjustment of domestic transport costs and provided an alternative calculation based on the company's actual data.
- (132) Finally, STSS challenged the exclusion of the Chinese export data from the three benchmarks which were based on export statistics instead of import statistics, i.e. the benchmarks for ferro-niobium, molten iron and stainless steel slabs.
- (133) The construction of the undistorted costs and benchmarks aims at reflecting the situation where the inputs in question are delivered at the producer's premises. Since the basis for the construction of a benchmark is the import price at the border of the representative country, its actual source for a producer in China is irrelevant. As in the case of Brazil, GTA reports import prices at FOB level, international freight and insurance have to be added in order to arrive at CIF level. Further, custom duties and domestic transport costs have to be added to arrive at the price at the producer's premises. The main claim as to the methodology of constructing benchmarks was therefore rejected.

- (134) However, the Commission took note of the specific claim of FSS concerning the methodology of the adjustment for international freight and insurance and decided to revert to the OECD Database on International Transport and Insurance Costs ⁽¹⁵⁾ in order to calculate the average FOB to CIF margin for Brazil for all the inputs in question. Consequently, to get to the CIF level the FOB import values in Brazil were increased by 8,58 %. The details of this calculation and a description of the methodology are provided to the interested parties in the specific final disclosure.
- (135) Following final disclosure, FSS pointed out that at provisional disclosure it had contested the Commission's methodology on the construction of benchmarks, where an adjustment was made to come to the landed cost in the representative country. The company claimed that the Commission had misunderstood its claim at provisional stage by only correcting the calculation of the international transport and insurance costs.
- (136) The Commission did understand the main claim of the company and addressed it in recital (133) above. As explained in that recital, it is not relevant in the construction of the benchmarks whether the Chinese producer actually purchased domestically or imported the given inputs. To bring the cost of the input to the premises of a company within the representative country, an adjustment of the CIF value on the border has to be made.
- (137) STSS' claim concerning the calculation of domestic transport was rejected. However, due to the confidentiality of data a more detailed explanation is given in the company specific disclosure.
- (138) Finally, the exclusion of exports to the PRC from the three benchmarks established on the basis of export statistics from Brazil, Iran and South Korea, as described in recital (192) of the provisional Regulation, was necessary and justified. In accordance with Article 2(6a)(b) of the basic Regulation, the Commission had to establish undistorted benchmarks in order to construct the normal value. In this particular case it was not possible to use imports into the representative country, as no imports existed or benchmarks were considered not representative due to export restrictions or negligible quantities imported, the Commission decided to use export data. However, the Commission found it necessary to exclude exports to the PRC because there was no evidence that the distortions in the PRC did not affect also those prices. Indeed, when producers from third countries want to be competitive in the Chinese market, their pricing will reflect the conditions found in the Chinese domestic market.
- (139) An additional claim from STSS concerned the calculation methodology of the adjustment for revenues from by-products, which are not re-used in the production of the product under investigation. According to the company, these revenues should be calculated also with an undistorted benchmark and should be deducted directly from the cost of manufacturing instead of being deducted from the constructed normal value.
- (140) At provisional stage the Commission adjusted the normal value by deducting the undistorted value of certain by-products that were not re-used in the production of the product under investigation but sold by the company. In order to obtain this undistorted value the percentage of the by-product revenue for each product type on its cost of manufacturing was calculated. Later the same percentage was applied on the undistorted costs of manufacturing.
- (141) Following the comments of the interested party the Commission changed the methodology of this adjustment. In order to obtain the undistorted revenue per product type, the quantities of by-products reported by the company were multiplied by the Brazilian benchmark unit price of these materials. The undistorted revenue was deducted per product type from the constructed normal value. The Commission concluded that a negative adjustment for such by-products has to be done at this level rather than at the level of costs of manufacturing, as these by-products were sold and the revenues should normally also have covered sales costs and profit.
- (142) Following final disclosure, FSS observed that the benchmarks for the energy inputs like electricity, natural gas and water, which were based on Brazilian internal market tariffs, might include indirect taxes, which should have been deducted.

⁽¹⁵⁾ Available at https://stats.oecd.org/Index.aspx?DataSetCode=CIF_FOB_ITIC (last viewed 3 June 2020).

- (143) This claim was accepted with regard to natural gas. The relevant annex of the specific disclosure clearly indicated that the indirect tax (ICMS) was included by the Commission in the calculation of the benchmark. The benchmark in question was recalculated and adjusted downwards from 3,23 CNY per cubic meter to 2,75 CNY per cubic meter. Subsequently, the dumping margin for FSS was revised. This adjustment did not have an impact on the individual dumping margins of STSS and Zhenshi. The dumping margin of the two cooperating non-sampled companies was adjusted accordingly.
- (144) With regard to electricity, the source database did not mention indirect taxes. The Commission considered thus that no indirect taxes were included in the tariff. Since FSS did not prove otherwise, this claim was found to be unsubstantiated. It is noted that no ICMS is charged for water.
- (145) In the absence of any further comments with respect to the calculation of the undistorted costs and benchmarks, the Commission confirmed recitals (179) to (183) of the provisional Regulation, with the corrections done as explained in recitals (127), (134), (137), (141) and (143) above.
- (146) Considering all the adjustments done after the claims submitted by the interested parties, the following factors of production, HS codes and undistorted normal values have been identified at the definitive stage:

Table 1

Factor of Production	HS code	Undistorted value	Unit
Raw Materials/Auxiliary Materials			
Quartzite	2506 20	1 662,69	CNY/t
Fireclay	2508 30	4 012,56	CNY/t
Serpentine	2516 90	4 172,45	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	9 315,74	CNY/t
Fluorspar—Containing by weight 97 % or less of calcium fluoride	2529 21	1 876,11	CNY/t
Iron ore, non-agglomerated (powder); Lump Iron Ore	[N/A] (see recital (128))	548,90	CNY/t
Iron ore, agglomerated (sinter)	2601 12	824,20	CNY/t
Chromium Ores and Concentrates	2610 00	4 437,72	CNY/t
Fat coal; Coking coal	2701 12	1 101,32	CNY/t
Lean coal; Electric coal; Gas coal	2701 19	944,43	CNY/t
Coke; Coke powder; Metallurgical coke	2704 00	2 503,14	CNY/t
Lubricating Oil	2710 19	80,05	CNY/t
Carbon	2803 00	10 484,38	CNY/t
Calcium (Wire)	2805 12	37 565,18	CNY/t
Sulphuric Acid	2807 00	608,14	CNY/t
Nitric Acid	2808 00	2 803,81	CNY/t
Hydrofluoric Acid	2811 11	12 036,01	CNY/t
Ammonia anhydrous	2814 10	2 085,04	CNY/t
Molybdenum oxide or hydroxide	2825 70	146 169,98	CNY/t

Factor of Production	HS code	Undistorted value	Unit
Ferrous sulphide	2830 90	100 236,10	CNY/t
Hydrogen Peroxide	2847 00	17 324,44	CNY/t
Core wire; Casting powder	3824 99	16 490,97	CNY/t
Medium Nickel pig iron; Low Nickel pig iron	[N/A] (see recital (192) of the provisional Reg- ulation)	84 151,00 Adjusted for actual nickel content ⁽¹⁾	CNY/t
Ferro Manganese, containing by weight > 2 % carbon	7202 11	8 841,84	CNY/t
Ferro Manganese, containing by weight <= 2 % carbon	7202 19	14 018,29	CNY/t
Ferro-silicon, >55 % silicon	7202 21	13 848,56	CNY/t
Ferro-silico-manganese	7202 30	8 770,18	CNY/t
Ferro-chromium, > 4 % carbon	7202 41	10 288,69	CNY/t
Ferro-nickel	[N/A] (see recital (192) of the provisional Reg- ulation)	21 879,38	CNY/t
Ferro-molybdenum	7202 70	141 697,92	CNY/t
Ferro-tungsten iron	7202 80	217 629,37	CNY/t
Ferro-titanium	7202 91	28 149,49	CNY/t
Ferro-niobium	[N/A] (see recital (192) of the provisional Reg- ulation)	145 667,77	CNY/t
Ferro-boron; Ferro-silico-calcium alloy	7202 99	15 917,12	CNY/t
Cast iron scrap	7204 10	987,48	CNY/t
Stainless steel scrap	7204 21	7 166,20	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	2 593,84	CNY/t
Granules of pig iron, spiegeleisen, iron or steel	7205 10	10 450,71	CNY/t
Iron Torching Powder	7205 29	9 588,22	CNY/t
Molten iron	[N/A] (see recital (192) of the provisional Reg- ulation)	2 715,76	CNY/t
Reinforcing Bars	7214 20	4 301,49	CNY/t
Shot Blast pellets	7326 11	7 618,08	CNY/t
Cathodes Copper	7403 11	46 580,96	CNY/t

Factor of Production	HS code	Undistorted value	Unit
Other articles of copper; cast, moulded, stamped or forged, but not further worked; excluding chains and parts thereof.	7419 91	300 346,61	CNY/t
Nickel, Not Alloyed	7502 10	106 604,34	CNY/t
Nickel waste and scrap	7503 00	695,72	CNY/t
Nickel bars, rods and profiles of nickel alloys	7505 12	187 405,08	CNY/t
Aluminium Ingot; Aluminium, unwrought, unalloyed	7601 10	17 191,65	CNY/t
Aluminium Wire, not alloyed	7605 11	17 484,28	CNY/t
Aluminium plates, sheets and strip	7606 91	24 396,75	CNY/t
Molybdenum bars and rods	8102 95	887 517,09	CNY/t
Cobalt mattes and other intermediate products of cobalt metallurgy	8105 20	195 635,71	CNY/t
Sponge Titanium	8108 20	78 477,42	CNY/t
Manganese	8111 00	18 493,80	CNY/t
Electrodes of graphite	8545 11	62 601,76	CNY/t
Slab	[N/A] (see recital (192) of the provisional Regulation)	14 033,74	CNY/t
Labour			
Labour costs in manufacturing sector	[N/A]	33,88	CNY/hour
Energy			
Electricity	[N/A]	0,82	CNY/kWh
Natural Gas	[N/A]	2,75	CNY/m ³
Water	[N/A]	68,88	CNY/m ³
Argon	280 421	8,03	CNY/m ³

(¹) As explained in recital (192) point (a) of the provisional Regulation, 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.

3.2.2.5. Manufacturing overheads, SG&A and profits

- (147) The construction of manufacturing overhead costs and the source of SG&A and profit used in the normal value calculation were described in recitals (201) and (202) of the provisional Regulation.
- (148) Following provisional disclosure STSS claimed that by inclusion of certain factors of production into overheads, as described in recitals (194) and (201) of the provisional Regulation, the Commission inflated the manufacturing overheads and thus the final cost of production. Furthermore, the company pointed out that the Commission did not provide any evidence that these factors of production were distorted.

- (149) The Commission rejected this claim. No separate proof of distortion is needed for the inputs which are moved to manufacturing overheads. In recitals (103) to (157) of the provisional Regulation, the Commission clearly explained why all costs of the product under investigation, including the costs of those inputs that were moved to manufacturing overheads are considered distorted. Also, as explained in recital (194) of the provisional Regulation, these inputs were negligible in terms of costs and the Commission moved them to manufacturing overheads because 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.
- (150) After provisional disclosure, both FSS and STSS raised several claims with regard to the level of SG&A costs and profit used in the calculation of the normal value.
- (151) FSS claimed that the Commission did not provide any legal or factual explanation that SG&A costs in China are distorted. However, as already explained in recital (149) above, no such separate evidence is needed for the particular types of costs, as the Commission clearly concluded that distortions exist with regard to all costs of the product under investigation.
- (152) The company further claimed that the SG&A costs of the Brazilian producer of the product under investigation, used in the normal value calculation, should be reduced by the equity costs of the company and the financial costs of its subsidiaries.
- (153) The Commission calculated SG&A costs and profit as a percentage of the Costs of Goods Sold on the basis of publicly available data, that is audited accounts of the Aperam Inox do Sul S.A. On the basis of the information available, it cannot be concluded that part of the financial costs is not linked to the product under investigation. FSS did not provide any evidence or indication that these costs would be overstated. Furthermore, it should be noted that the deduction of part of these financial costs reducing the SG&A costs would necessarily increase the profit accordingly. Consequently, the final result would not change.
- (154) STSS pointed out that while certain labour costs of the Chinese exporting producers (e.g. R&D and Quality Control department labour costs) were moved to the costs of manufacturing, there was no evidence that such labour costs were not included in the SG&A of the representative country producer, which could have led to double counting of these costs in the construction of the normal value.
- (155) STSS however provided no evidence that such costs were included in the SG&A costs of the producer in the representative country. Therefore, the Commission upheld its approach in this regard.
- (156) Finally, FSS invoked Article 2.2.2(iii) of ADA which states that the profit for the purpose of the construction of the normal value might be established by using *'any other reasonable method, provided that the amount of profit so established shall not exceed the profit normally realized by the exporters or producers on sales of products of the same general category in the domestic market of the country of origin'*. The company pointed out that the Commission failed to calculate such in-China cap for profit while applying for the calculation of normal value profit of the representative country company at the level of 7,65 %.
- (157) In reply to this claim, the Commission recalled that the normal value was constructed on the basis of Article 2(6a)(a) of the basic Regulation because it determined, as explained in recitals (103) to (157) of the provisional Regulation, that it was not appropriate to use domestic prices and costs in the exporting country due to the existence of significant distortions in that country. All costs and prices, including profits, which by definition are affected by the underlying costs and prices in the domestic country, are therefore considered distorted. Article 2(6a)(a) of the basic Regulation establishes that the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits. As explained above in recital (98), the provisions in Article 2(6a) of the basic Regulation are fully in line with the EU's international obligations, including all the relevant provisions of the WTO ADA. Therefore, this claim was rejected.
- (158) In the absence of any further comments with respect to the manufacturing overheads, SG&A costs and profit, the Commission confirmed recitals (201) and (202) of the provisional Regulation

3.2.2.6. Calculation of the normal value

- (159) In the absence of comments with regard to the calculation of the normal value, recitals (203) to (210) of the provisional Regulation are confirmed.

3.2.3. *Export price*

- (160) In the absence of comments concerning the establishment of the export price, recitals (211) to (213) of the provisional Regulation are confirmed.

3.2.4. *Comparison*

- (161) The Commission compared the normal value and the export price of the Chinese sampled exporting producers on an ex-works basis as described in recitals (214) to (216) of the provisional Regulation.
- (162) Following provisional disclosure, STSS challenged the fact that the Commission deducted certain freight related expenses from the export price, while these expenses were not deducted from the SG&A costs of the producer in the representative country.
- (163) SSTs however provided no evidence that such expenses were included in the SG&A costs of the producer in the representative country. Therefore, this claim was rejected.
- (164) To calculate the export price for STSS, the Commission carried out an adjustment pursuant to Article 2(10)(i) to those sales made via a related trader located in another country. Following provisional disclosure, the exporting producer contested this adjustment and claimed that the producer and its related trader located in a third country constitute a single economic entity, where the related trader carries out functions of an internal sales department. Accordingly, the exporting producer requested the Commission not to carry out this adjustment.
- (165) The Commission recalled that under EU case law, a single economic entity exists where a producer entrusts tasks normally falling within the responsibilities of an internal sales department to a distribution company for its products which it controls economically ⁽¹⁶⁾. The Court of Justice has also established that 'the EU institutions are required to take account of all factors relevant to the determination as to whether or not that distributor carries out the functions of an integrated sales department within that producer' ⁽¹⁷⁾.
- (166) Accordingly, the Commission analysed the evidence at its disposal and made the following findings. In the first place, the Commission noted that the company structure showed the existence of numerous sales companies within the group, including the related trader subject to the contested adjustment. In this vein, the Commission confirmed that there was more than one related company involved in the sales of the product under investigation to the Union. The Commission assessed the contracts between the exporting producer and the related trader in question and identified certain provisions governing the relations between the producer and the related trader that are difficult to reconcile with the notion that those companies form a single economic entity. ⁽¹⁸⁾
- (167) Moreover the Commission noted that it was another department, and not the related trader in question, which was involved in sales-related aspects. Also, the Articles of Association and business licence of the related trader in question included certain provisions of a nature that falls outside the scope of the tasks usually entrusted to an internal sales department ⁽¹⁹⁾. Furthermore, the negotiation process between the producer and the related trader described in the questionnaire reply, notably with regard to terms of sales ⁽²⁰⁾, casted further serious doubts that they would form a single economic entity. Therefore, this claim was rejected.
- (168) 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 under investigation that was not refunded to the Chinese exporting producers. Following provisional disclosure, FSS and STSS contested this adjustment. The companies claimed that the adjustment is either not warranted at all, as the Commission is not using Chinese domestic prices as a normal value, or the adjustment should be done to actual costs of production rather than the undistorted costs.

⁽¹⁶⁾ Cases C-191/09 P and C-200/09 P: Council and Commission v Interpipe Niko Tube and Interpipe NTRP, paragraph 55.

⁽¹⁷⁾ Case C-468/15 P: PT Perindustrian dan Perdagangan Musim Semi Mas (PT Musim Mas) v Council of the European Union; paragraph 43.

⁽¹⁸⁾ Further details, of confidential nature, are provided in the specific disclosure.

⁽¹⁹⁾ Due to the confidentiality issues more detailed explanations are provided in the specific disclosure.

⁽²⁰⁾ Due to the confidentiality issues more detailed explanations are provided in the specific disclosure.

- (169) In this regard it is noted that the Commission adjusted the normal value in line with the Judgment of the General Court in Case T-423/09 ⁽²¹⁾. Therefore, these claims were rejected.
- (170) In absence of further comments regarding the comparison, recitals (214) to (216) of the provisional Regulation are confirmed.

3.2.5. Dumping margins

- (171) As detailed in recitals (121) to (170) above, the Commission took into account some of the comments from STSS and FSS and recalculated the dumping margins for the companies in question.
- (172) The dumping margin of the cooperating non-sampled Chinese companies, Xiangshui Defeng Metals Co., Ltd and Fujian Dingxin Technology Co., Ltd, being the weighted average between the two individual dumping margins for the sampled companies, was adjusted accordingly.
- (173) The Commission considered the high level of cooperation of Chinese exporting producers, representing 92 % of the total Chinese exports of the product under investigation to the Union, appropriate to set the residual dumping margin applicable to all other (non-cooperating) exporting producers. Therefore, the Commission considered appropriate to set the dumping margin for 'all other companies' at a level corresponding to the highest individual dumping margin of the sampled Chinese companies, excluding the company which received Article 18, as explained in recitals (77) to (82).
- (174) Subsequently, the definitive dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Dumping margin (%)
Shanxi Taigang Stainless Steel Co., Ltd ⁽¹⁾	106,5
Fujian Fuxin Special Steel Co., Ltd	57,1
Zhenshi Group Eastern Special Steel Co., Ltd	71,7
Xiangshui Defeng Metals Co., Ltd	87,3
Fujian Dingxin Technology Co., Ltd	87,3
All other companies	106,5

⁽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.

- (175) The calculations of individual dumping margins after corrections and adjustments made following the comments of the Chinese exporting producers after provisional disclosure were disclosed to the companies in question.

3.3. Taiwan

3.3.1. Normal value

- (176) The details for the calculation of the normal value are set out in recitals (227) to (237) of the provisional Regulation.
- (177) In its comments to pre-disclosure and provisional disclosure, the Yusco group claimed that the Commission incorrectly dismissed its request to grant an adjustment for exchange rate difference in the calculation of the SG&A ratio and an adjustment for recycled scraps as cost deduction of the raw material cost. The Commission examined those claims.

⁽²¹⁾ Judgment of 16 December 2011, Case T-423/09, Dashiqiao v Council, ECLI:EU:T:2011:764, paras 34 to 50.

- (178) The repeated claim to adjust for exchange rate difference in the calculation of the SG&A expenses ratio was rejected because Yusco was not able to justify that these differences were related to the domestic sales. The claim was reiterated after final disclosure, but again without any further substantiation. However, in view of newly submitted arguments, which could be reconciled with information provided during the verification, the adjustment for recycled scraps, which concerned both Yusco and its related producer Tang Eng, was accepted. The revised cost of manufacturing was taken into account in the revised dumping calculation.
- (179) In its comments on pre-disclosure and provisional disclosure, Walsin claimed that the Commission incorrectly dismissed its request to grant an adjustment for sales of waste consumables, an adjustment for raw material costs after physical inventory check and an adjustment for processing costs in its Taichung plant. Walsin also contested the Commission's decision to disregard, for the normal value determination, the domestic sales to bonded factories and to seaports, intended for export. The Commission examined those claims.
- (180) Concerning the claim to adjust normal value for sales of waste consumables, in view of clarifications submitted in this regard by Walsin, the Commission considered the claim well-founded and accepted it because Walsin demonstrated that these waste consumables could not be re-introduced into the production and were sold to customers.
- (181) With regard to the claim that raw material cost should be adjusted after physical inventory check, the Commission assessed the additional information provided and decided to confirm its provisional decision to reject this adjustment claim because the company could not justify the origin of the inventory differences. Moreover, these differences were not registered in the cost accounting system, and this adjustment could not be matched with either the trial balance or the response to the questionnaire.
- (182) Concerning the claim to adjust the processing costs in Taichung plant by deducting the estimated profit generated by Taichung plant, the Commission considered the claim unfounded. Walsin could not demonstrate that its internal invoicing for annealing and pickling processing costs covered only costs and did not include any profit margin and the adjustment claimed was not recorded in company cost accounting system.
- (183) Finally, with regard to the claim to include the sales to bonded factories and to seaports in the normal value determination, the Commission rejected it. Indeed, the company itself considered these sales as indirect sales for export in its questionnaire reply and they were therefore not reported in the domestic sales transactions. After the provisional disclosure Walsin changed its opinion and claimed that these sales should be considered as intended for domestic consumption since it did not know if the products were eventually consumed domestically or exported. Absent any more concrete information on this point, the Commission could not determine, on the basis of the evidence provided, whether these sales were consumed domestically or exported. As provided by Article 2(2) of the basic Regulation, the wording 'intended for domestic consumption' is not based on a subjective intention of the seller or on the fact that the exporting producer does not have knowledge if the product is subsequently exported by the trader/bonded factory, but on an objective destination of the product, an objective fact which can be established at any point in time until the final destination is eventually reached and the goods are sold for the purpose of consumption in the domestic market. Therefore, the claim was rejected.
- (184) No further claims were received therefore recitals (227) to (237) of the provisional Regulation were confirmed.

3.3.2. *Export price*

- (185) In the absence of any comments regarding the export price, recitals (238) to (239) of the provisional Regulation were confirmed.

3.3.3. *Comparison*

- (186) In the absence of any comments regarding the comparison, recitals (238) to (239) of the provisional Regulation were confirmed.

3.3.4. Dumping margins

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

Company	Definitive dumping margin (%)
Yieh United Steel Co. and Tang Eng Iron Works Co. Ltd	4,1
Walsin Lihwa Co.	7,5
All other companies	7,5

4. INJURY

4.1. Definition of the Union industry and Union production

- (188) In the absence of any comments with respect to the definition of the Union industry and Union production, the Commission confirmed its conclusions set out in recitals (246) to (248) of the provisional Regulation.

4.2. Determination of the relevant Union market

- (189) The Chinese exporting producer FSS claimed that the Union industry's production volume was driven by captive demand and not by free market sales, which represented a mere fraction of the total production. According to FSS this was shown by the fact that Union industry's production volumes increased from 2016 to 2017 despite the decrease of 94 000 tons in free market sales.
- (190) The Chinese exporting producer STSS claimed, with regard to the relation between free and captive market, that under the market share assessment it should be considered that the market share of the Union industry was 62 % in the free market, but this segment only accounted for about 22 % of the total Union market. Thus in the remaining 78 % of the market, which was captive, the Union industry had a 100 % market share. Moreover, according to STSS, this had to be seen in connection with the only market share that conversely increased – that of Indonesia.
- (191) These claims had to be rejected. As set out in recitals (251) and (252) of the provisional Regulation, only the free market sales of vertically integrated producers, such as the sampled Union producers, are in direct competition with imports. It is therefore the consistent case practice of the Commission not to consider captive production and sales in some injury indicators of such cases, since the captive market is shielded from imports. However, as products for both the captive and free markets are produced on the same production lines, the production and production capacity analysis should also include products destined for the captive market. Indeed, in a capital intensive sector such as steel, capacity utilisation rates should be maintained at their highest level in order to dilute fixed costs and keep production costs at their lowest levels. Moreover, market share evolutions of individual exporting countries should not be regarded in isolation, since in the current investigation the conditions for a cumulative assessment of imports from all countries concerned are met (see section 4.4 below).
- (192) In the absence of any other comments with respect to the determination of the relevant Union market, the Commission confirmed its conclusions set out in recitals (249) to (255) of the provisional Regulation.

4.3. Union consumption

- (193) In the absence of any comments with respect to the Union consumption, the Commission confirmed its conclusions set out in recitals (256) to (262) of the provisional Regulation.

4.4. Imports from the countries concerned

- (194) The Chinese exporting producer FSS claimed that the cumulation of imports from China, Indonesia and Taiwan was inconsistent. As the present anti-dumping investigation was conducted while a separate anti-subsidy investigation concerning the same product was also ongoing, the injury assessment should be the same for both cases. However, Taiwan was not among the countries concerned in the separate anti-subsidy investigation. Therefore, any cumulative assessment in the present anti-dumping investigation, including imports from Taiwan, would subsequently be in conflict with any cumulative assessment in that anti-subsidy investigation, where imports from China and Indonesia would be cumulated but imports from Taiwan not. Moreover, FSS submitted that the cumulation of imports from China and Indonesia was not warranted. Whereas Chinese imports declined, Indonesian imports increased, which allegedly showed that Chinese imports did not compete with Indonesian imports. In addition, in 2017, when Chinese imports were the highest in volume with a 21 % market share and Indonesian imports were absent from the market, the Union industry had its best year as evidenced by the sales and profitability data. These claims had to be rejected.
- (195) First, there is no inconsistency in the fact that in the present investigation imports from three countries, i.e. China, Indonesia and Taiwan are assessed cumulatively whereas in the separate anti-subsidy investigation, imports from only two of these countries, namely China and Indonesia, are assessed cumulatively. Each case is assessed on its own merits. In both cases, the legal conditions for a cumulative assessment of imports are met.
- (196) Second, with regard to the Commission's decision to assess imports from the countries concerned cumulatively in the current anti-dumping investigation, it is recalled that imports from each of the three countries increased over the period considered. For the reasons set out in recital (269) of the provisional Regulation, even if the development of imports from China was different over the period considered than the development of imports from Indonesia, the conditions of a cumulative assessment in accordance with Article 3(4) of the basic Regulation are met.
- (197) The Chinese exporting producer STSS claimed that the cumulation of imports from China, Indonesia and Taiwan was not warranted because different conditions of competition between China and Taiwan on the one hand, and Indonesia on the other hand, exist. Whereas Indonesia has direct access to nickel, one of the main raw materials needed to produce stainless steel, China and Taiwan had to rely on imports, which were less available than previously due to an Indonesian export ban. This claim had to be rejected. A similar access to raw materials is not amongst the conditions for a cumulative assessment as laid down in Article 3(4) of the basic Regulation. Where exporters in different countries may face different conditions for sourcing inputs (such as raw materials or human resources), they can still compete with each other for the same sales destinations on the output side. This is the case here, as illustrated by the fact that in the current case one important cooperating user imported significant volumes from China, Indonesia and Taiwan.
- (198) The exporting producer STSS further claimed that both the prices of Union industry sales and the volumes of Chinese imports increased at the same time, i.e. in 2017. Similarly, there was no correlation between Chinese import volumes and sales volumes of the Union industry. The slight increase in Chinese imports over the period considered (+ 28 000 tons) could mathematically not have caused the more than four times higher decrease of sales of Union producers on the open market (- 116 000 tons). Moreover, in the investigation period Chinese imports accounted for only 4,6 % of the total Union consumption.
- (199) These claims were rejected. As set out in recitals (263) to (270) of the provisional Regulation, Chinese imports should not be assessed in isolation but in cumulation with imports from Indonesia and Taiwan. Cumulated imports from the countries concerned increased over the period considered by 147 000 tons, which clearly exceeds the 116 000 tons loss by the Union industry over the same period. Moreover, the market share achieved by Chinese imports in the investigation period, as a result of the practiced injurious dumping, amounted to 18,3 %, i.e. not 4,6 %, which is the Chinese market share if the volume of the captive market would have been added to the Union market for this investigation.
- (200) In the absence of any other comments with regard to imports from the countries concerned, the Commission confirmed all other conclusions set out in recitals (263) to (270) of the provisional Regulation.

4.4.1. *Volume and market share of imports from the countries concerned*

- (201) In the absence of any comments with regard to the volume and market share of imports from the countries concerned, the Commission confirmed all conclusions set out in recitals (271) to (277) of the provisional Regulation.

4.5. **Economic situation of the Union industry**

4.5.1. *General remarks*

- (202) In the absence of any comments, the Commission confirmed its conclusions set out in recitals (278) to (282) of the provisional Regulation.

4.5.2. *Macroeconomic indicators*

- (203) Further to table 7 of the provisional Regulation, the GOI claimed that the increase in production capacity by the Union industry showed that the industry was in excellent shape. The same claim was reiterated following final disclosure. The Commission noted that production capacity increased by 1 % over the period considered, which supports the conclusion that production capacity remained practically stable over the period considered (recital (284) of the provisional Regulation). The claim was therefore deemed unfounded.
- (204) With reference to table 8 of the provisional Regulation, STSS pointed at the downturn in captive use and sales volumes of the Union producers between 2018 and the investigation period, which it attributed to the decrease in the disproportionately large captive market. This claim was rejected. The Commission noted that there is no connection between the volumes evolution in the free and captive markets, in particular as throughout the period considered the Union industry was operating with a spare production capacity of more than 30 %. Moreover, STSS's allegation seems factually flawed because the evolution in the captive market was stable over the period considered (table 9 and recitals (290) to (292) of the provisional Regulation), whereas the Union industry lost important market share (9,3 percentage points) on the free market during the same period.
- (205) The GOI noted, with reference to table 10 of the provisional Regulation, that the decrease in productivity was caused by an increase in employment. The same claim was reiterated following final disclosure. However, it cannot be deduced that such decrease in productivity, even if only caused by a slight increase in employment by 4 % over the period considered, was responsible for the injury suffered by the Union industry. The material injury suffered was shown by other indicators as set out in recitals (307) to (310) of the provisional Regulation. The Commission recalled that, in accordance with Article 3(5) of the basic Regulation, no any one or more of those factors can necessarily give decisive guidance.
- (206) The GOI claimed, with reference to table 14 of the provisional Regulation, that the effect of the 'captive sales' made by the Union producers was absent in the profitability assessment. The same claim was reiterated following final disclosure. This claim was rejected. The Commission recalled that, in line with the consistent case practice, where an industry is engaged in production for free market sales and production for captive use, the latter are, for the sake of assessing several injury factors, excluded from the scope of the investigation. This was already duly explained in recitals (254) and (255) of the provisional Regulation.
- (207) The GOI further claimed that the share of free market sales made by the Union industry was too small (20 % of total Union sales), as compared to captive consumption, to affect the overall situation of the Union industry and hence there was no injury. The same claim was reiterated following final disclosure. As already mentioned in recital (191) above, the Commission recalled that in line with its consistent case practice, where an industry is equally engaged in free market sales and captive use, the latter are, for the sake of assessing most of the injury factors, excluded from the scope of the investigation. For the following economic indicators relating to the Union industry, it was found that a meaningful analysis and evaluation had to focus on the situation prevailing on the free market: sales volume and sales prices on the Union market, market share and profitability. Where possible and justified, these findings were subsequently compared with the data for the captive market, in order to provide a full picture of the situation of the Union industry.
- (208) In the absence of any other comments with respect to the macroeconomic indicators, the Commission confirmed its conclusions set out in recitals (283) to (296) of the provisional Regulation.

4.5.3. Microeconomic indicators

- (209) The Chinese exporting producer FSS claimed that the Commission has based its finding on an end-to-end analysis without assessing the positive developments in the situation of the Union industry as regards sales prices up until 2018, i.e. over the largest part of the period considered, and by ignoring that the decline in sales occurred when the Union industry was in the most profitable situation. According to FSS, the Commission cannot base its injury findings on the 4 % decline in the sales prices of the Union industry between 2018 and the investigation period versus the 2 % decline in the costs during the same period. In other words, a finding of material injury cannot be sustained on the net 2 % price decline in an isolated period (the investigation period). In addition, so FSS invoked, from 2018 to the investigation period the Union industry was selling comfortably above its production cost. This claim had to be rejected. The Commission agreed that from 2016 to 2018 prices and costs developed in parallel, as shown by an increase by 22 % each, but this was no longer true between 2018 and the investigation period, when prices fell by 5 percentage points but costs only by 2 percentage points. The market of SSHR is very price-sensitive and the Union industry had, due to the further strong increase of low priced dumped imports, no choice but to not fully account for the increase in costs when setting its sales prices. This translated into a strong deterioration of its financial indicators, including a fall in profits from 5,1 % to 3,5 %, as shown in table 14 of the provisional Regulation.
- (210) The Chinese exporting producer FSS claimed that the cost of production of the Union industry had the most significant increase between 2016 and 2017. In the same period, there was the highest increase in the volume of imports from the countries concerned and the price differential between these imports and the Union industry's sales was around EUR 200 per ton, such as it was in the investigation period. Nevertheless, from 2016 to 2017 the Union industry was able to increase its sales prices by 19 % and pass on the full cost increase to its customers. This claim was rejected. From 2016 to 2017, not only the Union producers but also producers in the export countries increased their prices, notably by 21 % or EUR 316 per ton (see table 6 of the provisional Regulation). This shows that in a market environment characterised by at least stable demand, the Union producers could only partly reap the benefit of this trend because they were already under pressure from imports from the countries concerned that undercut the Union industry sales prices. Moreover, due to this pressure and to keep profitability levels, the Union industry lost a considerable market share to the benefit of imports from the countries concerned from 2016 to 2017.
- (211) The Chinese exporting producers FSS and STSS claimed that, while in the investigation period the Union industry claimed to have significantly lower profits than in 2016, their investments were 57 % higher than in 2016. This point was already addressed in recital (306) of the provisional Regulation. The Commission recalled that the increased investment levels did not translate into corresponding capacity increases (see table 7 of the provisional Regulation). Subsequently, the investments merely aimed at retaining the existing capacities and making due replacements of necessary production assets.
- (212) With reference to table 11 of the provisional Regulation, STSS claimed that the minor decrease in sales prices of the Union producers between 2018 and the investigation period would have to be seen in connection with a surge of low-priced imports from Indonesia. The Commission recalled that the conditions for a cumulative assessment of imports from all three countries concerned were met, and therefore imports from one country cannot be regarded in isolation from imports from the other countries concerned.
- (213) With reference to table 13 of the provisional Regulation, the GOI claimed that the decrease in inventory between 2018 and the investigation period pointed at a positive sales performance of the Union industry. The same claim was reiterated following final disclosure. This claim was rejected. Sales on the free Union market decreased by 13 % over the period considered, as shown in table 8 of the provisional Regulation. The small decrease in inventory in that period, as claimed by Indonesia, was not representative and is not apt to question the observed sales trend.
- (214) The GOI claimed, with reference to table 14 of the provisional Regulation, that the injury suffered by the Union industry was caused by a high level of investments in 2017, which constituted a financial burden in the period thereafter, i.e. in 2018 and the investigation period. The same claim was reiterated following final disclosure. This claim was rejected. Investments are typically funded from retained cash or loans. In terms of costs and the impact on profits, such investments are depreciated over a long period of at least five years. As a consequence, a profit

decrease of more than EUR 50 million, as observed from 2017 to 2018, or even more than EUR 80 million, as it occurred between 2017 and the end of the investigation period, cannot be ascribed to the investments made in 2017, which amounted as a whole to EUR 48 million but which were depreciated over at least five years.

- (215) The Chinese exporting producer STSS claimed that a capacity utilisation of ca. 70 % was not a sign of injury, as this was similar to the overall average capacity established in all steel categories in the steel safeguard investigation. This claim was rejected. First, the Commission pointed out that the capacity utilisation rate of the Union industry decreased over the period considered from 69 % to 66 %. Second, anti-dumping and safeguard investigations are subject to different legal frameworks. Any observations or conclusions made in a safeguard investigation can therefore not be transposed into an anti-dumping investigation. The Commission must assess all relevant economic factors and indices having a bearing on the state of the industry in accordance with Article 3(5) of the basic Regulation, and while no any one or more indicators can necessarily give decisive guidance, in the current investigation the evolution as well as the level of capacity utilisation point at injury caused by the dumped imports.
- (216) In the absence of any other comments with respect to the microeconomic indicators, the Commission confirmed its conclusions set out in recitals (297) to (306) of the provisional Regulation.

4.5.4. *Conclusion on injury*

- (217) In the absence of any other comments with respect to the conclusion on injury, the Commission confirmed its conclusions set out in recitals (307) to (310) of the provisional Regulation.

5. CAUSATION

5.1. **Effects of the dumped imports**

- (218) Further to the claim referred to under recital (189) above, the exporting producer FSS claimed that the decrease in Union industry's sales (–94 000 MT) and market share (– 7,3 %) was most pronounced in 2017. However, the Union industry was not injured in that year but made exceptional profits. In FSS's view, it was because of the voluntary withdrawal of sales by the Union industry from the Union free market (driven by increased focus on downstream) that the imports in question increased. This claim was rejected. It cannot be held that the Union industry was under any pressure to withhold sales from the free market. By contrast, the Union industry had throughout the period considered ample spare capacities to sell larger quantities on the free market than it actually did (see recitals (283) to (285) and table 7 of the provisional Regulation).
- (219) With reference to table 7 of the provisional Regulation, the GOI claimed that the increase in imports from the countries concerned had no significant effect on the production of the Union industry as that decreased by 3 % only over the period considered. The same claim was reiterated following final disclosure. The Commission noted that a 3 % decrease is not insignificant although other injury factors showed an even more deteriorating trend over the period considered and refers in that regard to recitals (307) to (311) of the provisional Regulation.
- (220) With reference to table 8 of the provisional Regulation, the GOI claimed that the Union industry's free market sales stabilised after 2017 and increased from 2018 to the investigation period, which would show that the imports of the product under investigation had no impact on the Union industry sales. The same claim was reiterated following final disclosure. The Commission noted that the market share of the Union industry fell from 71,2 % to 63,9 % between 2016 and 2017, and that the decrease between 2017 and the investigation period from 63,9 % to 61,9 % was less pronounced. Even though the overall decrease was indeed more important in the first part of the period considered, it cannot be held that the market share of the Union industry returned to a healthy level, as overall there was a decrease from 71,2 % to 61,9 %. The claim was therefore rejected.

- (221) The Chinese exporting producers FSS and STSS claimed that imports from China did not cause injury to the Union producers but imports from Indonesia did so. They argued that profits of the Union producers were not affected by Chinese imports, because the profit fell from 10,2 % to 5,1 % between 2017 and 2018, which coincided with the surge of imports from Indonesia, whereas in the same timespan Chinese imports decreased. These claims were rejected. As set out in recitals (263) to (270) of the provisional Regulation, the conditions for a cumulative assessment were met. Therefore imports from China cannot be regarded in isolation from imports from Indonesia, or Taiwan.
- (222) In the absence of any other comments with respect to attribution of the injury found to the subject imports, the Commission confirmed its conclusions set out in recital (312) of the provisional Regulation.

5.2. Effects of other factors

- (223) With reference to table 11 of the provisional Regulation, STSS claimed that the cost of production incurred by the Union industry increased by 20 % over the period considered, alleging that this increase was responsible for the injury suffered by the Union industry. This claim was rejected. In recital (319) of the provisional Regulation, it was already explained that, at some point, the Union industry was not anymore able to pass on the global increase in raw material costs to its sales prices due to the price pressure exerted by the dumped imports. Therefore, what caused injury was not the increase in the cost of production as such, but the inability to pass it on due to the dumped imports.
- (224) The GOI claimed that the captive market development caused injury, not the free market development. The same claim was reiterated following final disclosure. This claim was rejected. The development of the captive market did not attenuate the causal link between the dumped imports and the injury suffered by the Union industry. Free market sales decreased by 13 % (– 150 000 tons) over the period considered whereas captive consumption was relatively stable (–20 000 tons).
- (225) The GOI further claimed that the Commission did not address the internal sales prices by the Union industry, as they should have caused the injury. The same claim was reiterated following final disclosure. This claim was rejected. The Commission has established that the internal sales were not made on an arm's length basis and therefore they have not been taken into account for the sake of assessing injury.
- (226) The exporting producer STSS claimed that, subsequent to the imposition of anti-dumping duties, different sources of imports are likely to emerge, e.g. the Republic of Korea. However, as average import prices from the Republic of Korea have constantly been significantly lower than those from China, Union producers would be even more harmed by these imports, rather than by imports from China. This claim was rejected. First, there is not sufficient evidence of injurious dumping with regard to these imports which, as this investigation has evidenced, is different with regard to imports from China. Secondly, although average SSHR import prices from China were higher than prices from the Republic of Korea throughout the period considered, Chinese imports nevertheless constantly undercut Union industry sales. These undercutting calculations, which have not been contested by any interested party, have been made by comparing similar product types which cannot be done on the basis of the statistical data in Eurostat – and the South Korean prices referred to are Eurostat prices. Thirdly, the injury was also caused by the Chinese imports due to their volume, which increased by 14 % over the period considered whereas the volume of imports from the Republic of Korea decreased by 49 % over the same period. Moreover, the volume of Chinese imports was about three times higher in 2016 and about seven times higher in the investigation period as compared to the volume of imports from the Republic of Korea.
- (227) The exporting producer STSS reiterated the claim that overcapacity in the Union was a cause of injury to the Union industry. This claim was rejected for the reasons set out in recital (322) of the provisional Regulation.
- (228) In the absence of any other comments with respect to the attribution of the injury found to factors other than the subject imports, the Commission confirmed its conclusions set out in recitals (319) to (325) of the provisional Regulation.

5.2.1. Conclusion

- (229) On the basis of the above and in the absence of any other comments, the Commission concluded that none of the other factors examined at provisional stage as well as at definitive stage was capable of having any relevant impact on the injurious situation of the Union industry. Thus, none of the factors, analysed either individually or collectively, attenuated the causal link between the dumped imports and the injury suffered by the Union industry to the effect that such link would no longer be genuine and substantial, confirming the conclusion in recitals (326) and (327) of the provisional Regulation.

6. LEVEL OF MEASURES

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

- (230) The Chinese exporter FSS claimed that the target price computed for the sake of assessing the underselling margins was inflated by subsidies that the Union producers received. In view of the subsidies received, there was no reason to add an amount for future compliance costs. Likewise, the research and development expenses and labour costs should be reduced to the extent of the subsidies received in the investigation period. Failing this would amount to giving a double benefit to the sampled companies.
- (231) This claim was rejected. First, it was not substantiated by appropriate evidence. Second, there is no double-counting because the verified cost of production data for the Union industry in the investigation period already takes account of any subsidies received by Union producers as well as of their current compliance costs, while any addition only concerns future compliance costs in the sense of Article 7(2d) of the basic Regulation, that will be incurred in a different time period. In line with this, the Commission deducted, where necessary, current costs already taken into consideration to arrive at the future cost.
- (232) After provisional disclosure and again after final disclosure, several parties questioned the application of a target profit of 8,7 %, which was the average of the profit margins achieved by the Union industry in 2016 (7,2 %) and 2017 (10,2 %). The parties argued in particular that the Commission had stated that 2017 was an exceptional year for the Union industry and the profitability of that year was therefore likely to be tainted. The same had also been stated in the Regulation imposing definitive safeguard measures on steel products. Moreover, the market share of imports from the countries concerned in 2017 was already 25 % while in 2016 the market share of those imports was considerably lower than in 2017 (18,3 %). Therefore, the Commission should only use a profit margin of 6 %, or the profit margin achieved in 2016 instead. By contrast, Eurofer stipulated that the Union industry lost in 2017 significant market share (7,3 percentage points) as compared to 2016 in view of the increased level of imports, and that the profitability of 10,2 % achieved in that year was therefore not exceptionally high and should be used as target profit.
- (233) The Commission confirmed that the use of a target profit of 8,7 % is justified for the reasons set out in recital (331) of the provisional Regulation. As provided for in Article 7(2c) of the basic Regulation, the target profit used shall be established taking into account factors such as the level of profitability before the increase of imports from the countries concerned, the level of profitability needed to cover full costs and investments, research and development (R&D) and innovation, and the level of profitability to be expected under normal conditions of competition. Even though imports from the PRC and Taiwan were already manifestly present, in 2017 imports from Indonesia were still at a very low level ⁽²³⁾ and, therefore, the 2017 profit figure reflects the level of profitability before the increase of imports from all countries concerned. Moreover, the combined market share of imports from the countries concerned was in 2017 at 25 %, which indeed is already significant, and therefore the profit margin achieved by the Union industry in that year is likely to be depressed, which could make it an unsuitable year for establishing an appropriate target profit. However, as explained in recital (331) of the provisional Regulation, 2017 was an exceptional year and thus even if the Union industry's profit margin was depressed, it was still at a sufficiently high

⁽²³⁾ Indonesia had a 0,0014 % market share in 2017 but a 3,7 % market share in 2018.

level, even if it is derived from a year which does not fully reflect normal conditions of competition. Therefore the Commission confirmed that including 2017 in the equation and establishing the target profit on the basis of an average of the profits of 2016 and 2017 fully complies with the requirements of Article 7(2c) of the basic Regulation.

- (234) Moreover, further to final disclosure, Marcegaglia claimed that the Commission should have set the target price of black SSHR based on a lower target profit reflecting the specific features of semi-finished black SSHR as opposed to finished white SSHR.
- (235) This claim was rejected. As provided for in recital (30) above and recital (46) of the provisional Regulation, black and white coils share the same basic physical and chemical characteristics and both are therefore considered product concerned. The target profit used by the Commission is therefore based on profit data for both and thus reflects the specific features of semi-finished black SSHR as opposed to finished white SSHR.
- (236) Eurofer claimed that the injury margins established in the provisional Regulation were underestimated. Specifically, Eurofer submitted new evidence that should justify an increase in the adjustments made under Articles 7(2c) and 7(2d) of the basic Regulation, with reference to recitals (332) and (333) of the provisional Regulation. These claims were partly accepted. As a result, the adjustments were corrected upwards with regard to investments foregone (Article 7(2c)) for one Union producer, and also with regard to future compliance costs (Article 7(2d)) for two Union producers. After final disclosure, two claims with regard to one of the sampled producers were reiterated but no further adjustments could be accepted.
- (237) Following final disclosure, Eurofer reiterated its claim that the adjustments to the Union industry's target price made by the Commission under Articles 7(2c) and 7(2d) of the basic Regulation were insufficient. In its view, the Commission should remain flexible and allow companies to present additional evidence supporting their claims, even after on-spot verifications when such information cannot be anymore verified.
- (238) This claim was rejected. The majority of those claims (excluding the claims that were found to be justified and partly accepted and for which an adjustment was granted, as explained in recital (236) above) was raised for the very first time only after provisional disclosure, as the sampled producers had not replied to the relevant questions in the questionnaire, nor raised such claims during on-spot verifications, and no objective reason was provided for the inability to submit this information in a timely manner. Therefore, the Commission considered that the very late submission of information by the sampled producers, consisting in many cases of completely new figures and claims which were impossible to verify at that stage of the investigation, was unjustified.
- (239) As regards to adjustments under Article 7(2d) of the basic Regulation on future social and environmental costs, Eurofer accused the Commission of adopting a discriminatory approach against the Union industry, as the Commission refused to extrapolate data from one sampled producer and to apply it to the other two sampled producers, whereas the Commission had calculated an individual dumping margin for the Chinese exporting producer Zhenshi by using information available from other exporting producers in the PRC.
- (240) This claim was rejected. Eurofer is referring to two different situations – the calculation of an exporting producer's dumping margin under the framework of Article 18(3) and the calculation of an individual company-specific target price – that are therefore not comparable. As explained in recitals (87) to (92) above, the calculation of Zhenshi's normal value was made in accordance with Article 18(3) of the basic Regulation using facts available only for some data, whereas regarding the target price of Union producers there was no issue of non-cooperation and the Commission had all the facts to establish its findings. Moreover, the future environmental investments and operational costs at issue here were of a company-specific nature thus rendering any extrapolation to the other companies of the sample inadequate.
- (241) Eurofer further claimed that the situation of injury further aggravated after 30 June 2019, i.e. after the end of the investigation period, and that the Commission should take account of this aggravation when deciding on the level of definitive measures. In this respect, Eurofer referred to Articles 14(5), 9(4) and 7(2c) and (2d) of the basic Regulation. The Commission noted that adjustments under Article 7(2c) and (2d) were granted as set out under recital (236) above and recital (330) to (334) of the provisional Regulation. Moreover, imports were registered but the conditions for a retroactive collection were not met (see recitals (321) to (325)). Also, the Commission found

that no further substantial rise in imports subject to the investigation occurs during the period of pre-disclosure in light of Article 9(4), which if complied, would have called for reflecting the additional injury resulting from such increase in the determination of the injury margin. The claim was therefore considered groundless.

- (242) In view of the above changes to the underselling calculations and the changes to the dumping margins mentioned in recitals (178) and (180) above, the table under recital (336) of the provisional Regulation is updated as follows:

Country	Company	Dumping margin (%)	Underselling margin (%)
Taiwan	Yieh United Steel Co. and Tang Eng Iron Works Co. Ltd	4,1	24,2
Taiwan	Walsin Lihwa Co.	7,5	18,4
Taiwan	All other companies	7,5	24,2

- (243) In the absence of any other comments with respect to the examination of the margin adequate to remove the injury to the Union industry for Taiwan, the Commission confirmed its conclusions set out in recitals (330) to (336) of the provisional Regulation.

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

6.2.1. Underselling and the comparison between underselling margin and dumping margin

- (244) With reference to the judgement of the General Court of 10 April 2019 in Case T-301/16 Jindal Saw Ltd and Jindal Saw Italia S.p.A. v European Commission ('Jindal Saw') ⁽²³⁾, the Chinese exporter FSS claimed that the comparison between export prices and Union industry sales prices might not have been made at the same level of trade, as Union producers typically sold through subsidiaries (i.e. related undertakings). In this respect, FSS requested to disclose further details on the injury margin calculation. With regard to this claim, the Commission clarifies that for the sake of computing undercutting margins, only Union producers' sales to unrelated undertakings were taken into account. With regard to the underselling calculations, the sales prices of the Union industry have not been used as the target prices were based on the sampled producers' cost of production. Moreover, no other information on file pointed to the need of applying any level of trade adjustment. Last, the Commission must not disclose the underlying data obtained from the Union producers as these data are confidential within the meaning of Article 19 of the basic Regulation.
- (245) Further to the provisional disclosure and after final disclosure, STSS claimed that in comparing its sales prices with the sales prices of the Union industry the Commission should not have deducted SG&A and profit of its related importer, as that would be in violation of *Jindal Saw*, as confirmed by the Judgment of the General Court of 2 April 2020 in Case T-383/17 Hansol Paper Co. Ltd v European Commission ('Hansol Paper') ⁽²⁴⁾.
- (246) The Commission rejected this claim. When it comes to the elements taken into account for calculation of undercutting (in particular the export price), the Commission has to identify the first point at which competition takes (or may take) place with Union producers in the Union market. This point is in fact the purchasing price of the first unrelated importer because that company has in principle the choice to source either from the Union industry or from overseas suppliers.

⁽²³⁾ http://curia.europa.eu/juris/document/document_print.jsf?docid=212842&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&-pageIndex=0&cid=593705

⁽²⁴⁾ <http://curia.europa.eu/juris/document/document.jsf?text=&docid=224910&pageIndex=0&doclang=en&mode=lst&dir=&occ=-first&part=1&cid=14412714>

- (247) In this case, the import price for some of the export sales cannot be taken at face value because the exporting producer and the importer are related. Therefore, in order to establish a reliable import price at arm's length basis, such price has to be constructed by using the resale price of the related importer to the first independent customer as a starting point. In order to carry out this reconstruction, the rules on the construction of the export price as contained in Article 2(9) of the basic Regulation are pertinent, and are applied by analogy, just as they are pertinent for the determination of the export price for dumping purposes. The application by analogy of Article 2(9) of the basic Regulation allows arriving at a price that is fully comparable to the price that is used when examining sales made to unrelated customers and also comparable to the sales price of the Union industry.
- (248) Therefore, in order to allow for a fair comparison, a deduction of SG&A and profit from the resale price to unrelated customers made by the related importer is warranted in order to arrive to a reliable price. ⁽²⁵⁾
- (249) Such deduction must also be applied to the calculation of underselling. Indeed, the target price of the Union industry is based on its cost of production plus the target profit, without taking into consideration whether it is then sold in the Union to related or unrelated customers, and therefore it must be compared to the CIF (landed) price of the exports, which does not include by definition the SG&A and profit of related importers in the Union.
- (250) Further to the provisional disclosure, FSS submitted that as 32 % of its exported volumes constituted PCNs which were not sold by the sampled Union producers and they were therefore not accounted for in the undercutting and underselling calculations, these calculations would be in violation of the judgement of the General Court of 24 September 2019 in Case T-500/17 *Hubei Xinyegang Special Tube Co. Ltd v European Commission* ('Hubei Xinyegang'), para. 74 ⁽²⁶⁾. STSS made a similar claim with regard to 8 % of its Union sales volumes. These claims were reiterated after final disclosure.
- (251) The Commission rejected these claims. First, *Hubei Xinyegang* is under appeal before the Court of Justice. Therefore, the findings of the judgment regarding the issue subject to the claim are not final. Second, the Commission noted that when assessing undercutting and underselling margins, the models exported to the Union from the countries concerned constitute the reference for comparison. It lies in the nature of comparing export sales of exporting producers with sales of the Union industry that not all models exported were sold by the Union industry. In the current case, the matching rate was 84 % for all investigated Chinese exporting producers, which the Commission considered sufficient to ensure a broad and fair comparison of the exported models and those sold by the Union industry. Third, the basic Regulation does not require the Commission to carry out the price analysis for each product type separately. Rather, the legal requirement is a determination at the level of the like product. Finally, the Commission concluded that all PCNs were part of the product concerned and competed with each other, at least to a certain extent. Therefore, the percentage of the exports of the sampled exporting producers not sold by the Union industry does not constitute a separate category of the product concerned but competes in full with the remaining grades for which a matching was found.
- (252) Referring to para. 71 of *Hubei Xinyegang*, STSS observed that the Union industry sample's sales volumes used for the undercutting and underselling calculations did not constitute the total Union industry sales of the like product by the sampled parties. It claimed that this would not be allowed according to para. 71 of that judgement. As mentioned in recital (250) above, this judgement is under appeal. On substance, the Commission noted that it cannot add to the comparison Union industry sales of certain PCNs which are not sold by the exporting producers. Indeed, in order to ensure a fair comparison, the Commission compared like with like and thus did not account for models falling under the product definition and sold by the Union industry, but which were not exported by STSS. Second, as mentioned in the previous recital, the basic Regulation does not require the Commission to carry out the price analysis for each product type separately. Rather, the legal requirement is a determination at the level of the like product. While PCNs are used as the starting point for such assessment, it does not mean that different PCNs are not in competition. Thus, the fact that certain PCNs of the Union industry were not compared to imports into the Union from STSS does not

⁽²⁵⁾ In any event, the amount of sales made by STSS through its related importer was very small so that the impact of adjusting the export price in accordance with Article 2(9) on the undercutting margin would be negligible.

⁽²⁶⁾ <http://curia.europa.eu/juris/document/document.jsf?text=&docid=218162&pageIndex=0&doclang=en&mode=lst&dir=&occ=-first&part=1&cid=14413842>

mean that they do not suffer price pressure from these imports. Third, the Commission further underlined that the Union industry sales volumes of the matching PCNs which are used in the calculations with regard to STSS represented approximately two times the sales volume of STSS on the Union market and it is therefore largely representative. The claim was therefore rejected.

- (253) The GOI questioned whether import prices and Union industry sales prices were comparable in terms of product mix. The Commission clarified that the calculations of undercutting and underselling margins were based on a comparison that takes into account the PCNs, which ensures that only like products within the meaning of Article 1 (4) of the basic Regulation are compared with each other. In any event, the imports from the countries concerned compete with all products sold by the Union industry, and there is no evidence showing that the minor part of total imports which cannot be directly compared to product types sold by the sampled Union producers is not capable of exercising competitive pressure on the Union industry.
- (254) Following the changes to the dumping margins, as explained in section 3 above, and the changes to the underselling margins, as explained in section 6.1 above, the table under recital (337) of the provisional Regulation is updated as follows:

Country	Company	Dumping margin (%)	Underselling margin (%)
Indonesia	PT Indonesia Guang Ching Nickel and Stainless Steel Industry	17,7	17,3
	PT Indonesia Tsingshan Stainless Steel		
PRC	Shanxi Taigang Stainless Steel Co., Ltd	106,5	19,0
	Fujian Fuxin Special Steel Co., Ltd	57,1	14,6
	Zhenshi Group Eastern Special Steel Co., Ltd	71,7	9,2
	Xiangshui Defeng Metals Co., Ltd	87,3	17,5
	Fujian Dingxin Technology Co., Ltd	87,3	17,5
	All other companies	106,5	19

6.2.2. Raw material distortions

(a) Indonesia

- (255) In the absence of comments concerning the existence of raw material distortions in Indonesia and the share of the distorted raw material on the costs of production of the product under investigation, the Commission confirmed its conclusions set out in recitals (342) to (346) of the provisional Regulation.

(b) The PRC

- (256) Following disclosure of provisional findings, two Chinese exporting producers submitted claims with regard to the Commission's application and findings under Article 7(2a) of the basic Regulation. The Commission accepted one claim and rejected the rest, as explained in the following recitals. In addition, the Commission corrected a clerical error affecting one Chinese exporting producer, which nevertheless had no impact on the findings ⁽²⁷⁾.
- (257) One Chinese exporting producer claimed that, when comparing the price difference between the benchmark price and the actual purchase price of the distorted raw material by this company (as mandated by Article 7(2a) second paragraph), the Commission had compared these prices on different delivery terms resulting in an artificially higher difference between the two prices.

⁽²⁷⁾ The Commission explained the details of this clerical error in the specific disclosure document to the exporting producer concerned.

- (258) The Commission agreed with this claim, and revised the calculation accordingly. The Commission provided a revised calculation in the specific disclosure to the company concerned. This change however did not alter the finding that the price of the raw material was significantly lower as compared to the undistorted benchmark price.
- (259) Two Chinese exporting producers claimed that, in calculating the weight of one of the raw materials over its total cost of production, to establish whether the 17 % threshold is reached, the Commission did not choose an appropriate denominator. These companies claimed that the Commission excluded from the cost of production the selling, general and administrative costs (SG&A), thus artificially inflating the weight of this raw material over the companies' cost of production. These companies argued that instead the Commission should have added the SG&A to the denominator.
- (260) The Commission noted that it is undisputed that Article 7(2a) refers to the cost of production of the product concerned as the value that must be used in the calculation (as denominator). The Commission also recalled that the notion of cost of production in the basic Regulation does not include SG&A. This is supported by the reading of Article 2(3) of the basic Regulation, which states that 'the normal value of the like product shall be calculated on the basis of the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs (...)'.
- (261) Therefore, in the Commission's view it is clear that the denominator used in the application of the provisions of Article 7(2a), i.e. the cost of production, should not include SG&A. The Commission accordingly rejected this claim.
- (262) Second, the two exporting producers contested the fact that the Commission had used the undistorted cost of a given raw material as the numerator (multiplied by the quantity consumed) on the one hand, and the actual cost of production as the denominator on the other hand. These companies thus argued that this approach skewed the calculation and thus requested that the Commission revised this aspect of the calculation accordingly, by comparing undistorted values both as numerator and as denominator.
- (263) In this respect the Commission observed that the wording of the relevant legal provision is clear: 'For the purpose of this Regulation, a single raw material, whether unprocessed or processed, including energy, for which a distortion is found, must account for not less than 17 % of the cost of production of the product concerned. For the purpose of this calculation, an undistorted price of the raw material as established in representative international markets shall be used.'
- (264) Therefore the Commission, by using an undistorted value for the raw material(s) in question as numerator, and by using the companies' actual cost of production as denominator, applied properly this provision of the basic Regulation.
- (265) The two sampled Chinese exporting producers made additional claims on the application of Article 7(2a), pertaining to company-specific issues. Accordingly, and to preserve the confidentiality of their data, the Commission addressed their claims in detail in the framework of the individual disclosure. In any event, these additional comments were rejected.
- (266) Lastly, the Commission assessed the specific situation of the Chinese exporting producer for which, due to the lack of sufficient cooperation, it could not verify the relevant information necessary to perform a proper assessment under Article 7(2a) ⁽²⁸⁾. Against this background, the Commission resorted to the application of Article 18 of the basic Regulation. Accordingly, the Commission considered that the findings made with respect to the two sampled Chinese exporting producers, i.e. the existence of raw material distortions in accordance with the provisions of Article 7(2a), which were based on verified information, should also apply to this company.
- (267) In the absence of additional comments concerning the existence of raw material distortions in the PRC and the share of the distorted raw material on the costs of production of the product under investigation, the Commission confirmed its conclusions set out in recitals (347) to (350) of the provisional Regulation.

⁽²⁸⁾ The Commission could not verify essential data to perform a proper analysis. The unverified data, resulting from lack of cooperation included, inter alia, manufacturing overheads and thus total cost of production.

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

6.2.3.1. Spare capacities in the exporting country

- (268) In the absence of any comments concerning the existence of spare capacities in the PRC and Indonesia, the Commission confirmed its conclusions set out in recitals (352) and (353) of the provisional Regulation.

6.2.3.2. Competition for raw materials

- (269) In the absence of any comments concerning the competition for raw materials, the Commission confirmed its conclusions set out in recitals (354) to (357) of the provisional Regulation.

6.2.3.3. Effect on supply chains for Union companies

- (270) After provisional disclosure, Eurofer submitted that the Commission had failed to provide a coherent explanation for its conclusion as it had carried out the 'Effect on supply chains for Union companies' test under the heading of the 'Interest of user' test, thereby committing an error of law. Eurofer further alleged that the Commission conflated two tests of the Union's interest: the Union interest test under Article 7(2b) and the test under Article 21 of the basic Regulation. Eurofer reiterated this claim after final disclosure, arguing that the Commission wrongfully conducted the Union interest test of Article 21 before that of Article 7(2b).
- (271) These allegations were found groundless. Article 7(2b) of the basic Regulation provides that *'Where the Commission, on the basis of all the information submitted, can clearly conclude that it is in the Union's interest to determine the amount of the provisional duties in accordance with paragraph 2a of this Article, paragraph 2 of this Article shall not apply. The Commission shall actively seek information from interested parties enabling it to determine whether paragraph 2 or 2a of this Article shall apply. In this regard, the Commission shall examine all pertinent information such as spare capacities in the exporting country, competition for raw materials and the effect on supply chains for Union companies. In the absence of cooperation the Commission may conclude that it is in accordance with the Union interest to apply paragraph 2a of this Article. When carrying out the Union-interest test in accordance with Article 21, special consideration shall be given to this matter'*.
- (272) The last sentence of that provision contains a specific reference to Article 21 of the basic Regulation. Under the respective assessment of the Union interest under Article 21 of the basic Regulation undertaken in the provisional Regulation, it was established that the main effect on supply chains would be felt at the level of users. As set out in recital (358) of the provisional Regulation, 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. The Commission did in any event not conflate the two tests. Rather, the analysis of the effect on supply chains under 7(2b) of the basic Regulation necessarily takes into consideration the information submitted by users that is also normally used within the framework of the Union interest under Article 21 of the basic Regulation. The Commission therefore rejected the comments made by Eurofer and confirmed that the respective Union interest tests were correctly applied under both Article 7(2b) as well as Article 21 of the basic Regulation.
- (273) On substance, Eurofer claimed that the concerned user on which the analysis was built could replace imports from China by imports from many other sources, including from Indonesia and Taiwan, if the duty on Chinese imports at the level of dumping would be prohibitive.
- (274) The Commission assessed this claim and found that, at face value, this user could indeed replace its imports from China with purchases from [1-2] ⁽²⁹⁾ Union producers. Other Union producers also had significant spare capacities but they had hardly supplied the concerned user over the period considered. Based on import flows during the period considered, there might also be sourcing opportunities in other third countries, in particular the Republic of Korea and South Africa. However, on that basis, potential import volumes from those countries were limited and, at present, at least imports from the Republic of Korea are restricted by the currently applicable safeguard measures ⁽³⁰⁾. As far as imports from Indonesia and Taiwan are concerned, the Commission noted that the important user indeed sourced not only from China but also from Indonesia. However, that does not mean that a switch from one source

⁽²⁹⁾ Precise figures cannot be given without disclosing confidential information. The range is considered accurate in the light of the information provided by interested parties in this investigation.

⁽³⁰⁾ South Africa was excluded from the scope of the steel safeguard as from 15 November 2018 according to Commission Implementing Regulation (EU) 2018/1712 of 13 November 2018 amending Implementing Regulation (EU) 2018/1013 imposing provisional safeguard measures with regard to imports of certain steel products (OJ L 286, 14.11.2018, p. 17).

to another is simple and straightforward. The Commission noted that the product concerned consists of many different PCNs. Moreover, the need for this user to reorganise value chains in order to fend off the impact of measures based on the injury margin and given the likely impact on profitability of these measures, the Commission did not find it warranted to expose this user to further uncertainties by imposing measures at the level of the dumping margins. The concerned user is therefore likely to be able to diversify and adjust its sourcing only to a limited extent. Under such circumstances, the Commission could not reasonably argue that duties at the higher level would not unduly hurt this user since such duties are likely to make the user's business activities unviable.

- (275) After final disclosure, Eurofer recalled that South Africa has not been subject to safeguard measures since 15 November 2018, and from 1 July 2020 there has no longer been any country-quota for SSHR but rather a global quota, allowing importers to source significant volumes from countries not affected by individual measures. This adjustment would ensure that Union users had enough flexibility for switching supplying origins, should that be necessary. The Commission agreed on the fact, which however is not apt to alter the results of the above analysis, which is based on the actual data stemming from the investigation period, additionally taking into account the levels of the duties imposed under the present Regulation.
- (276) Eurofer repeatedly criticised what is in its view an overly simplistic Commission's assessment of the impact of measures at the user's financial situation because it was made at constant sources, volumes and price, and it assumed a situation where the user would maintain its supply chains unchanged despite product being available from multiple other sources, including from Union producers at lower prices, and without transferring any part of the cost increase to its downstream customers. This was, in Eurofer's view, not the purpose of the Union interest test.
- (277) The Commission clarified that the analysis it made, which it had described itself as a worst case scenario in the provisional Regulation (recital 373), is the most reasonable approach in the given situation. To be reliable such assessment must be made based on the actual data stemming from the investigation period, additionally taking into account the levels of the duties imposed under the present Regulation. Indeed, as Eurofer pointed out, it is normally to be expected that part of a cost increase is passed on to customers – thus, the impact appears to be overrated. Unknown is, however, how much of the cost increase can be transferred to that level. In the current situation, a large pass on is certainly questionable as the user's main competitors are the same Union producers of SSHR. Where the static analysis might overrate the impact of duty as it does not anticipate any increase in turnover, as explained, it might at the same time underestimate the negative impact of the duty as the Commission's static assumptions also implied that no increase was anticipated for the cost of purchases from the Union industry, which in this case is a major supplier to the user concerned. The Commission further clarified that making assumptions with regard to changing sourcing patterns is also inappropriate in the case at hand, since, as explained in recital (274) above, the user in question is for a variety of reasons likely to be limited in its options in that regard. Any deviation from the methodology applied by the Commission under these circumstances would therefore render the analysis more speculative.
- (278) Therefore, on balance, the Commission considered that the safest approach to estimate the impact of the measures on the user concerned was not anticipating changes either on the turnover side or on the cost side with regard to purchases from countries not subject to the measures.
- (279) Finally, with regard to Eurofer's request to disclose the essential facts underlying the assessment carried out regarding the profitability situation of the user in question, the Commission found that such disclosure could not be granted as the underlying data are by nature confidential within the meaning of Article 19 of the basic Regulation. However, after final disclosure, the Commission provided Eurofer with a non-confidential summary of the impact analysis of the proposed measures pursuant to Article 7(2) of the basic Regulation. As that disclosure only concerned the impact of the measures at the proposed level, Eurofer responded to that disclosure by concluding that the Commission had thus not analysed the impact of measures pursuant to Article 7(2a) of the basic Regulation. That allegation was firmly rejected by the Commission. The Commission had indeed concluded that measures at levels higher than pursuant to Article 7(2) would not be in accordance with the Union interest under Article 7(2b) in view of the already serious consequences of measures with the application of the lesser duty rule as summarized under

recital (274) above. Therefore, it considered not relevant to disclose the calculation it had indeed made of the impact of measures under Article 7(2a). Moreover, whilst the applicable rates for the PRC and Indonesia changed in line with the disclosed dumping margins, that calculation followed the same methodology as the disclosed file.

- (280) Eurofer further claimed that the impact on the single user's profitability would be less negative than assumed by the Commission, but in any case less serious than the impact of lower anti-dumping duties on the whole Union industry. Eurofer specified that the concerned user should be able to deal with a cost increase and that its activities with regard to the product concerned were only a small part of its business and that it would therefore not be unduly affected if measures would be set in accordance with Article 7(2a). To substantiate the claim, Eurofer calculated that if Article 7(2a) was applied, the impact on that user's costs would be 'marginal' and 'less than 2 %'. Eurofer claimed that the carbon steel division of that user significantly outweighed (by 9 times) its stainless steel division and submitted that only operations related to the production of cold-rolled material (and downstream products of the stainless steel division) should be taken into account in the Union interest test. The concerned user is a diversified company whose financial viability did not rely solely on the production of downstream SSHR products. As the added value of that user's stainless steel operations was low, the company had to extensively rely on cheapest possible inputs (black coils) in order to earn a profit. With reference to recital (377) of the provisional Regulation, Eurofer also requested the Commission to disclose the essential facts underlying the assessment carried out regarding the profitability situation of that user.
- (281) These claims were rejected. The Commission found that Eurofer's calculations were flawed and established that the respective user company accounted for [20 to 30] % ⁽³¹⁾ of the turnover made by the whole group it belonged to. Based on verified information, the Commission established that this user's profit in the investigation period on products incorporating SSHR was at [1 to 4] % ⁽³²⁾. 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 imposition of definitive duties at the level of the lesser duty would bring the user's operational result (which also included carbon steel-based products) close to break-even (and [- 2 to - 5] % ⁽³³⁾ on products incorporating SSHR).
- (282) The Commission did not rule out that the user concerned, which employs [500 – 700] ⁽³⁴⁾ FTE's in the SSHR product segment, will be able to diversify and adjust its sourcing and use its market power and that, therefore, such impact of the lesser duty is likely to be partly mitigated. But the Commission concluded that, in line with the above analysis, duties at a level higher than the underselling margin would unduly hurt this important user.
- (283) Further to the additional final disclosure, Eurofer also claimed that the Commission should disclose the precise product types included in the assessment of the profitability of the SSHR product group. According to Eurofer, as the user published catalogues of its products, that information would have no confidential nature. It would allow Eurofer to assess whether all products taken into consideration were relevant for the assessment, if such product prices were directly affected by costs of SSHR and if the proposed measures would not result in additional revenues for these products. The Commission concluded that Eurofer's claim was unwarranted and could reveal some confidential data as regards the user. First, the Commission underlined that the additional disclosure clearly displayed that only the additional costs incurred by the proposed duties on the SSHR purchases of the user, as per the methodology explained under recital (371) of the provisional Regulation and recital (277) above and which was visualized in the additional disclosure, were added to the costs of the products in that product group. Therefore, there cannot be any overestimation of additional costs (and, thus, the negative effect on the profitability) if the Commission would have included products not made from SSHR in that segment. Second, the Commission clarified that the assessment at issue was made in the most comprehensive manner, i.e. it only included sales of all downstream products made from SSHR by the concerned user. The turnover generated by these products

⁽³¹⁾ Precise figures cannot be given without disclosing confidential information. The range is considered accurate in the light of the information provided by interested parties in this investigation.

⁽³²⁾ Precise figures cannot be given without disclosing confidential information. The range is considered accurate in the light of the information provided by interested parties in this investigation.

⁽³³⁾ Precise figures cannot be given without disclosing confidential information. The range is considered accurate in the light of the information provided by interested parties in this investigation.

⁽³⁴⁾ Precise figures cannot be given without disclosing confidential information. The range is considered accurate in the light of the information provided by interested parties in this investigation.

represented the bulk of the turnover of the user concerned (not of the group to which it belonged). Product specific information related to the user, including its downstream products made from SSHR, is available through open sources, including published catalogues. The Commission concluded therefore that Eurofer was provided with all the relevant information about how the Commission estimated the impact of the measures on the profitability of the user as regards the SSHR product group. The request was hence rejected.

- (284) Furthermore, Eurofer claimed that the disclosure did not contain any indication of the level of the overall profit of the user without duties ('profit user concerned was (%)'). That information would however be instrumental to allow assessing the impact of the duties on the user. As for the other actual or theoretical profit information, it could be provided under the form of a range to preserve the confidentiality of data. Absent that information, the complainant suspected that the impact of the duties on the 'SSHR product group' on the overall profit of the user could be negligible.
- (285) This claim had to be rejected. The Commission recalled that the principle of protecting the confidentiality of information provided by parties in trade defence proceedings must not be compromised. In the current case, the disclosure of a profit margin of the user (which also competes with the Union industry in the downstream markets), even if expressed in a range, could harm the legitimate business interests of the user.
- (286) With regard to the effect on supply chains, Eurofer also claimed that the business model of the concerned user, which is based on purchases from low cost (often polluting) countries with limited added value, should not be promoted. In this regard, the Commission underlined that under the basic Regulation the ecological footprint of imports of the product under investigation can only be addressed to a limited extent, in particular by adjusting the Union industry's target price under Article 7(2d) of the basic Regulation. Such adjustments were granted in the current investigation, as explained under recital (333) of the provisional Regulation and confirmed in recital (236) above. With regard to the user's business model, the Commission also noted that the user is sourcing a variety of products in large volumes from producers in the Union and that is also the case for SSHR. Moreover, it has an important role to play on the SSHR downstream markets, where it is the only significant non-integrated European producer.
- (287) Eurofer finally submitted that the Commission cannot limit its conclusion of the effect on the supply chains to the impact of a single user, but that it should make its assessment on all users taken as a whole, regardless of whether or not they import the product concerned or purchase the like product domestically. The Commission rejected the claim. The user concerned alone accounted for [30 to 40] % ⁽³⁵⁾ of consumption on the SSHR free market during the investigation period, whereas the sole other cooperating user accounted for less than 10 % of consumption. Given the importance of the user concerned and its singular position as part of the user industry, the Commission therefore maintained that determining the duties in accordance with Article 7(2a) of the basic Regulation would have a clearly negative effect overall on supply chains for Union companies.
- (288) After final disclosure, Eurofer claimed that the Commission had failed to demonstrate that the findings with respect to the user concerned could be extended to the non-cooperating users. However, as mentioned in recital (287) above, the user in question accounted for [30 to 40] % ⁽³⁶⁾ of the SSHR consumption on the free market. It also accounted for [60 to 70] % ⁽³⁷⁾ of imports of SSHR from the countries concerned. Therefore, it is legitimate to attribute a considerable weight to the findings with regard to this user in the analysis of the effect of the higher duties on the supply chain, even if it is only one party.

⁽³⁵⁾ Precise figures cannot be given without disclosing confidential information. The range is considered accurate in the light of the information provided by interested parties in this investigation.

⁽³⁶⁾ Precise figures cannot be given without disclosing confidential information. The range is considered accurate in the light of the information provided by interested parties in this investigation.

⁽³⁷⁾ Precise figures cannot be given without disclosing confidential information. The range is considered accurate in the light of the information provided by interested parties in this investigation.

6.2.3.4. Comments on the provisional conclusion with regard to the Union interest test under Article 7(2b)

- (289) In the provisional Regulation, the Commission concluded that 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.
- (290) Subsequent to the provisional disclosure, Eurofer claimed that the Commission should not apply the lesser duty rule and act in accordance with Article 7(2a) of the basic Regulation. Eurofer invoked that under the Union interest test, the interest of all Union producers should outweigh the interest of a single user. It claimed that two substantial raw material distortions in China and five in Indonesia justified setting the duty at the level of the dumping margins. It also mentioned significant spare capacities in the exporting countries, and that in Indonesia alone, so Eurofer estimated, the total stainless steel capacity (i.e. not only the product under investigation) would exceed 10 million tons by 2025, surpassing by almost one third the production capacity of the Union. According to Eurofer, the effect on the user's supply chain within the meaning of Article 7(2b) of the basic Regulation has to be weighed against the effects of the distortions, the existence of spare capacities and competition for raw materials. Eurofer added that the non-application of the lesser duty rule was also necessary where the Union had challenged the distortions found in Indonesia at the World Trade Organisation (WTO) ⁽³⁸⁾.
- (291) Subsequent to the final disclosure, Eurofer reiterated the claim already addressed in recitals (270) to (272) above that the Commission wrongfully conducted the Union interest test of Article 21 before that of Article 7(2b) of the basic Regulation. In that regard, Eurofer also referred to recital 21 of Regulation (EU) 2018/825 of the European Parliament and of the Council of 30 May 2018 amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union. According to Eurofer, the Commission artificially extended the Union interest test to replace the binary question of the Union interest test of Article 21 – 'is it in the interest or not of the Union to impose measures?' – by a more open question – 'at which level is it in the interest of the Union to impose measures?' – not provided under the basic Regulation.
- (292) In the same context, Eurofer claimed that the Commission accounted for the 'supply chain' criteria disproportionately in the test of Article 7(2b). In its hearing submission of 12 August 2020, it asked the questions of what level of spare capacities would be significant enough to tip the balance in favour of not applying the lesser duty rule and what kind of comparative disadvantage caused by distortions would tip the balance in favour of not applying the lesser duty rule.
- (293) Moreover, Eurofer claimed that the Commission did not assess nor account for the other 'pertinent information' having a bearing on the conclusion under Article 7(2b), such as:
- (a) the particularly high level of distortion of nickel ore, in particular in Indonesia,;
 - (b) the fact that, for some Chinese SSHR producers, the criteria set in Article 7(2a) of the basic Regulation were met not only for one raw material, but for at least two of them, meaning that at least 34 % (almost twice in reality) of raw materials used as inputs were distorted;
 - (c) the fact that, beside the raw material meeting the requirements of Article 7(2a), a significant number of other factors of production used directly or indirectly in the production of SSHR, both in China and Indonesia, were affected by distortions as documented by the OECD database on industrial raw material restriction and the complaint;
 - (d) the fact that the raw material distortions found to exist were not only of a lasting measure, but are also, as far as Indonesia is concerned, worsening after the investigation period with the implementation of a full export ban on nickel ore instead of a prohibition of exporting ore with a nickel content above 1,7 %;
 - (e) the fact that the Indonesian government appears to have been at the origin of a destabilisation of the LME nickel market – on which the inputs of Union producers are indexed – further increasing the benefits of the Indonesian and Chinese distortions on nickel.

⁽³⁸⁾ WTO, Indonesia – Measures relating to raw materials, DS592, Request for consultations by the European Union, 22 November 2019.

- (294) Furthermore, Eurofer claimed that the Commission committed manifest errors in the assessment of the disproportionality of duties set at the dumping margin. With regard to the duties applicable to Indonesia, Eurofer argued that duties at the level of the dumping margin of 17,7 %, instead of the injury margin of 17,3 %, would have almost no additional financial impact on the main user, and could not be found to disproportionately affect that user. Fair competition would, therefore, be restored at no expense for the user. With regard to the duties applicable to China, Eurofer argued that imports from China exhibit variable but significant differences between the injury and the dumping margin (from 87,5 % for Tisco to 4 % for Fujian Fuxin Special Steel). That difference and the high dumping margins highlight the significant ability of the Chinese producers to cause harm to the Union industry.
- (295) These claims had to be rejected. The Commission acknowledged and confirmed that there are significant spare capacities in China and Indonesia and that the Union industry is at a comparative disadvantage compared to the Chinese and Indonesian exporting producers with regard to access to raw materials. As a consequence, two out of three criteria that are specifically provided by Article 7(2b) of the basic Regulation for assessing whether setting the duty pursuant to Article 7(2a) of the basic Regulation is appropriate indeed call for applying Article 7(2a).
- (296) The fact that only one of the three elements explicitly listed in Article 7(2b) of the basic Regulation would speak against setting the duty pursuant to Article 7(2a) of the basic Regulation and the fact that the complainant, in addition, had identified other non-listed elements which would also call for applying Article 7(2a) cannot be held to invoke that a disproportionate weight was attributed to the third criterion, i.e. the effect on supply chains. If Article 7(2a) would be applied, an analysis of the third criterion, the effect on supply chains, revealed disproportionate repercussions for the user industry, as outlined in recitals (370) to (377) of the provisional Regulation and confirmed in recitals (270) to (287) above. Indeed, if the duties would be based on dumping margins, the user's overall operational result and even more that of its SSHR product group would potentially deteriorate dramatically below the levels indicated in recital (281) above. Therefore, under these circumstances where one user, which provides significant employment in the Union, which accounts for most of the imports and a very significant share of consumption and which will clearly be seriously affected by duties if they would be established on the basis of Article 7(2a), the importance of the findings in the analysis of the effect on the supply chains for companies in the Union leads to the conclusion that it is not in the Union interest to apply Article 7(2a). The fact that other elements, such as the two others explicitly listed under Article 7(2b) and analysed by the Commission but also those invoked by Eurofer as mentioned in recital (291) above, would call for not applying Article 7(2), does not change that conclusion.
- (297) As regards the differences between dumping and injury margins, it cannot be inferred that because the difference in the case of one of the two countries concerned, i.e. Indonesia, is only 0,4 percentage points, the imposition of duties at the level of the dumping margin would be proportionate. Similar as for China, the Commission had to assess comprehensively the impact of a duty at the level of the dumping margin against the criteria stipulated in Article 7(2b) of the basic Regulation. Moreover, as the concerned user's profit margin is already relatively small with a duty set at the level of the injury margin, a 0,4 percentage points higher duty would further exacerbate this situation.
- (298) The Commission agreed with Eurofer that other 'pertinent information', as indicated in recital (287) above, is available. That information does not however alter the result of the above analysis. Indeed, the 'pertinent information' relates to the raw material distortions under article 7(2a) of the basic Regulation and their magnitude and effects, and the Commission has confirmed the existence of such distortions. Given the positive findings, the Commission then carried out the analysis of the Union interest under Article 7(2b) of the basic Regulation. None of the facts outlined by Eurofer as 'pertinent information' has an impact on the Commission's analysis on the effect of applying Article 7(2a) on the supply chains for companies in the Union and therefore does not alter the conclusion of the Commission that it is not in accordance with the Union interest to apply Article 7(2a).
- (299) For these reasons, the Commission concluded that the assessment made pursuant to Article 7(2b) of the basic Regulation was proportionate and adequate.

6.2.3.5. Conclusion

- (300) On that basis, the Commission did carefully weigh all the elements and could not clearly conclude that it is in the Union's interest to determine the amount of duties in accordance with Article 7(2a), and therefore it confirmed that the measures should be set in accordance with Article 7(2) of the basic Regulation. The Commission also clarified that this conclusion is based solely on the evidence and facts gathered for this investigation and without any prejudice to the respective consultations at the WTO.
- (301) On the basis of the above and in the absence of any other comments, the Commission therefore confirmed that 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, as set out in recital (360) of the provisional Regulation.

7. UNION INTEREST

7.1. Interest of the Union industry

- (302) In the absence of any comments regarding the interest of the Union industry, the conclusions set out in recitals (362) to (364) of the provisional Regulation were confirmed.

7.2. Interest of unrelated importers

- (303) In the absence of any comments regarding the interest of unrelated importers, the conclusions set out in recitals (365) to (367) of the provisional Regulation were confirmed.

7.3. Interest of users

- (304) Marcegaglia claimed that the imposition of anti-dumping measures on black coils was not in the interest of independent users because the applicable safeguard measures already limited the presence of imports. Following the imposition of anti-dumping duties, prices by Union producers are likely to increase further. If the Commission were to follow Marcegaglia's claim to exclude black coils from the application of the measures, Union producers would be forced to compete on the black coils market segment with imports at injuriously dumped prices. As set out under Section 2 of the present Regulation, black coils clearly form part of the product concerned and the unfair competition with regard to this product type cannot be left unaddressed. Moreover, black coils are widely available from a variety of sources. Therefore, this claim was rejected.
- (305) In the absence of any other comments regarding the interest of users, the conclusions set out in recitals (368) to (377) of the provisional Regulation were confirmed. Comments that concern the interest of users in the context of the effect on supply chains for Union companies within the meaning of Article 7(2b) of the basic Regulation are addressed under Section 6 of the present Regulation.

7.4. Other comments

- (306) The Chinese exporting producer STSS claimed that imposing anti-dumping duties was not in the Union's interest, as the Union market is already dominated by Union producers. There is a risk of loss of competition and excessive concentration of Union producers in the Union market.
- (307) The Commission recalls that the objective of anti-dumping measures is exactly to restore fair trade and, thus, competition on the Union market. The claim is therefore rejected.

7.5. Conclusion on Union interest

- (308) On the basis of the above and in the absence of any other comments, the conclusions set out in recital (378) of the provisional Regulation were confirmed.

8. DEFINITIVE ANTI-DUMPING MEASURES

8.1. Currently applicable safeguard measures

- (309) After provisional disclosure, several parties claimed that imposing anti-dumping duties would result in overprotection of the Union industry as the Union industry of SSHR was already protected against imports through safeguard measures. The Taiwanese exporting producer Walsin requested the amendment of Implementing Regulation (EU) 2019/1382 ⁽³⁹⁾, which amended certain Regulations imposing anti-dumping or anti-subsidy measures on steel products subject to safeguard measures in order to avoid a double remedy due to the combined effect of the safeguard measures and the anti-dumping duties imposed on stainless steel hot-rolled flat products from Taiwan. Furthermore, it also requested merging the tariff rate quotas for category 8 of Implementing Regulation (EU) 2019/1382 for Taiwan and China.
- (310) First, the Commission wishes to clarify that there is no double remedy in this case. The product under investigation is indeed subject to the steel safeguard measures (product category 8) with country specific quotas for the PRC, the Republic of Korea, Taiwan and the USA, and a quota basket for all other countries. These measures are in place until 30 June 2021. On 3 September 2019, the Commission published Implementing Regulation (EU) 2019/1382 listing all anti-dumping and anti-subsidy measures on products which were also subject to the safeguard measures and specifying that in each of those cases, the anti-dumping and/or anti-subsidy duty applies within the quota and once the quota is exhausted, the higher of the anti-subsidy and/or anti-dumping duty, on the one hand, and the 25 % out of the quota safeguard duty, on the other hand, applies. This principle also applies to the present anti-dumping measures and, consequently, there is no double remedy.
- (311) With regard to the request to merge the tariff rate quotas for Taiwan and China for category 8 of Implementing Regulation (EU) 2019/1382, such request can only be submitted in the framework of the safeguard investigation and is therefore rejected.

8.2. Definitive measures

- (312) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports of the product concerned. For the reasons set out in Section 6, and in particular sub-section 6.2.3.4. of this Regulation, anti-dumping duties should be set in accordance with the lesser duty rule.
- (313) On the basis of the above, the rates at which such duties will be imposed are set as follows:

Country of origin	Company	Dumping margin (%)	Injury elimination level (%)	Anti-dumping duty (%)
Indonesia	PT Indonesia Guang Ching Nickel and Stainless Steel Industry	17,7	17,3	17,3
	PT Indonesia Tsingshan Stainless Steel	17,7	17,3	17,3
	All other companies	17,7	17,3	17,3
China	Shanxi Taigang Stainless Steel Co., Ltd	106,5	19,0	19,0
	Taiyuan Taigang Daming Metal Products	106,5	19,0	19,0
	Tisco Guangdong Stainless Steel Service Center Co., Ltd	106,5	19,0	19,0
	Tianjin TISCO & TPCO Stainless Steel Co. Ltd	106,5	19,0	19,0

⁽³⁹⁾ Commission Implementing Regulation (EU) 2019/1382 of 2 September 2019 amending certain Regulations imposing anti-dumping or anti-subsidy measures on certain steel products subject to safeguard measures (OJ L 227, 3.9.2019, p. 1).

	Fujian Fuxin Special Steel Co., Ltd	57,1	14,6	14,6
	Zhenshi Group Eastern Special Steel Co., Ltd	71,7	9,2	9,2
	Xiangshui Defeng Metals Co., Ltd	87,3	17,5	17,5
	Fujian Dingxin Technology Co., Ltd	87,3	17,5	17,5
All other companies	106,5	19,0	19,0	
Taiwan	Yieh United Steel Co.	4,1	24,2	4,1
	Tang Eng Iron Works Co. Ltd	4,1	24,2	4,1
	Walsin Lihwa Co.	7,5	18,4	7,5
	All other companies	7,5	24,2	7,5

- (314) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflect the situation found during this investigation in respect to these companies. These duty rates are thus exclusively applicable to imports of the product under investigation originating in the countries concerned and produced by the named legal entities. Imports of the product concerned manufactured by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, cannot benefit from these rates and should be subject to the duty rate applicable to 'all other companies'.
- (315) A company may request the application of its individual anti-dumping duty rate if it changes subsequently the name of its entity. The request must be addressed to the Commission ⁽⁴⁰⁾. The request must contain all the relevant information to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it.
- (316) To minimise the risks of circumvention due to the 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'.
- (317) 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.
- (318) 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 that 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.
- (319) 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 also to the producers which did not have exports to the Union during the investigation period.

⁽⁴⁰⁾ European Commission, Directorate-General for Trade, Directorate G, Rue de la Loi 170, 1040 Brussels, Belgium.

8.3. Definitive collection of the provisional duties

- (320) In view of the dumping margins found and given the level of the injury caused to the Union industry, the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, should be definitively collected up to the levels established under the present Regulation.

8.4. Retroactivity

- (321) As mentioned in section 1.2 above, the Commission made, following a request by the complainant, imports of certain hot rolled stainless steel sheets and coils subject to registration pursuant to Article 14(5) of the basic Regulation.
- (322) During the definitive stage of the investigation, the data collected in the context of the registration were assessed. The Commission analysed whether the criteria under Article 10(4) of the basic Regulation were met for the retroactive collection of definitive duties.
- (323) The Commission's analysis showed no further substantial rise in imports in addition to the level of imports which caused injury during the investigation period, as prescribed by Article 10(4d) of the basic Regulation. For this analysis, the Commission compared the monthly average import volumes of the product concerned during the investigation period with the monthly average import volumes during the period from the month following the initiation of this investigation until the last full month preceding the imposition of provisional measures. Also when comparing the monthly average import volumes of the product concerned during the investigation period with the monthly average import volumes during the period from the month following the initiation of this investigation up to and including the month in which provisional measures were imposed, no further substantial increase could be observed:

SSHR Imports	IP		September 2019 to March 2020		September 2019 to April 2020	
	tons	tons/month	tons	tons/month	tons	tons/month
PRC	222 802	18 567	163 424	23 346	170 743	21 343
Indonesia	111 512	9 293	12 252	1 750	12 300	1 538
Taiwan	36 910	3 076	16 335	2 334	16 870	2 109
Total	371 224	30 935	192 011	27 430	199 913	24 989

Source: Eurostat

- (324) Therefore, the condition under Article 10(4d) of the basic Regulation is not met.
- (325) On that basis, the Commission concluded that the retroactive collection of the definitive duties for the period during which imports were registered was not justified in this case.

9. UNDERTAKING OFFER

- (326) Following final disclosure, two Chinese exporting producers submitted a price undertaking offer in accordance with Article 8 of the basic Regulation.
- (327) The Commission evaluated these offers and concluded that the acceptance of such undertakings would be impractical within the meaning of Article 8 of the basic Regulation. This is mainly so for the reasons of the multitude of indistinguishable product types covered by the offers, which vary significantly in price, the limitations of the proposed indexation system to take into account price fluctuations, and, in the case of one of the companies, the complex company group structure.
- (328) The high number of product types for which an undertaking was offered entails a high risk of cross-compensation with the more expensive product types possibly being sold below the proposed minimum import price ('MIP') and being declared as cheaper product types also subject to the undertaking.

- (329) There are also serious monitoring and cross compensation risks related to the structure of Taiyuan Iron and Steel Group Co., Ltd (TISCO) to which STSS belongs. TISCO is a large iron and steel group, active in iron ore mining, steel production and processing, as well as goods distribution and trading. Given the nature of the products, it cannot be excluded that the group sells or will be selling different products, including the product concerned, to the same clients. Such transactions cannot be monitored by the Commission to ensure that the MIP is respected for the product concerned and that the undertaking is effectively implemented.
- (330) Furthermore, both companies proposed in their undertaking offer a quarterly indexation which refers to price quotations of the finished product instead of the raw material. The suggested indexation was not considered appropriate, and taking into account a number of different types of products, its monitoring will also be burdensome if not impracticable.
- (331) The Commission sent both applicants a letter, setting out the reasons to reject their respective undertaking offer and giving the applicants the opportunity to comment.
- (332) The Commission received a reply from STSS, in which the company revised certain elements of the undertaking offer, including the level of the proposed MIP. However, this revised undertaking offer was submitted after the legal deadline foreseen in Article 8 of the basic Regulation. While the company could have submitted an undertaking since the imposition of provisional measures, it only did so on the last day of the statutory deadline, i.e. 5 days prior to the deadline for comments on final disclosure. As mentioned above, STSS submitted a revised version of the undertaking offer outside the applicable deadline and this was disregarded.
- (333) Furthermore, despite the efforts of the company to simplify its original undertaking offer in terms of number of MIPs and certain commitments offered with regard to sales channels and Union sales of other products by the companies of the TISCO group, the very complex company group structure and the level of the MIP would increase the likelihood of cross-compensation if an undertaking would be accepted. Therefore, the Commission maintained its findings that the effective monitoring of the undertaking would be impracticable.
- (334) Therefore, for the reasons set out in recitals (327) to (333), both price undertaking offers were rejected.

10. FINAL PROVISION

- (335) In view of Article 109 of Regulation 2018/1046 ⁽⁴¹⁾, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.
- (336) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on 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 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.

⁽⁴¹⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

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

Country	Company	Duty rate (%)	TARIC additional code
Indonesia	PT Indonesia Guang Ching Nickel and Stainless Steel Industry	17,3	C541
	PT Indonesia Tsingshan Stainless Steel	17,3	C547
	All other companies	17,3	C999
The People's Republic of China	Shanxi Taigang Stainless Steel Co., Ltd	19,0	C163
	Taiyuan Taigang Daming Metal Products	19,0	C542
	Tisco Guangdong Stainless Steel Service Center Co., Ltd	19,0	C543
	Tianjin TISCO & TPCO Stainless Steel Co. Ltd	19,0	C025
	Fujian Fuxin Special Steel Co., Ltd	14,6	C544
	Zhenshi Group Eastern Special Steel Co., Ltd	9,2	C558
	Xiangshui Defeng Metals Co., Ltd	17,5	C545
	Fujian Dingxin Technology Co., Ltd	17,5	C546
	All other companies	19,0	C999
Taiwan	Yieh United Steel Co.	4,1	C032
	Tang Eng Iron Works Co. Ltd	4,1	C031
	Walsin Lihwa Co.	7,5	C548
	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 name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of (product concerned) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in [country concerned]. I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty applicable to all other companies shall apply.

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

Article 2

The amounts secured by way of the provisional anti-dumping duty under Implementing Regulation (EU) 2020/508 shall be definitively collected. The amounts secured in excess of the definitive rates of the anti-dumping duty shall be released.

Article 3

No definitive anti-dumping duty will be levied retroactively for registered imports. Data collected in accordance with Article 1 of Implementing Regulation (EU) 2020/104 shall no longer be kept.

Article 4

Article 1(2) may be amended to add new exporting producers from the People's Republic of China and make them subject to the appropriate weighted average anti-dumping duty rate for cooperating companies not included in the sample. A new exporting producer shall provide evidence that:

- (a) it did not export the goods described in Article 1(1) originating in the People's Republic of China during the period of investigation (1 July 2018 to 30 June 2019);
- (b) it is not related to an exporter or producer subject to the measures imposed by this Regulation; and
- (c) it has either actually exported the product concerned or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the period of investigation.

Article 5

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

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

Done at Brussels, 6 October 2020.

For the Commission
The President
Ursula VON DER LEYEN

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2020/1409

of 29 September 2020

concerning exemptions from the extended anti-dumping duty on certain bicycle parts originating in the People's Republic of China pursuant to Regulation (EC) No 88/97

(notified under document C(2020) 6574)

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 13 thereof,

Having regard to Commission Implementing Regulation (EU) 2019/1379 of 28 August 2019 imposing a definitive anti-dumping duty on imports of bicycles originating in the People's Republic of China as extended to imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka, Tunisia, Cambodia, Pakistan and the Philippines, whether declared as originating in these countries or not, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 ⁽²⁾,

After informing the Member States,

Whereas:

- (1) An anti-dumping duty applies on imports into the Union of certain essential bicycle parts originating in the People's Republic of China ('the PRC') as a result of the extension of the anti-dumping duty imposed on imports of bicycles originating in the PRC by Council Regulation (EC) No 71/97 ⁽³⁾.
- (2) Under Article 3 of Regulation (EC) No 71/97 the Commission is empowered to adopt the necessary measures to authorise the exemption of imports of essential bicycle parts which do not circumvent the anti-dumping duty.
- (3) Those implementing measures are set out in Commission Regulation (EC) No 88/97 ⁽⁴⁾ establishing the specific exemption system.
- (4) On that basis, the Commission has exempted a number of bicycle assemblers from the extended duty.
- (5) As provided for in Article 16(2) of Regulation (EC) No 88/97, the Commission has published in the *Official Journal of the European Union* subsequent lists of the exempted parties ⁽⁵⁾.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ OJ L 225, 29.8.2019, p. 1.

⁽³⁾ Council Regulation (EC) No 71/97 of 10 January 1997 extending the definitive anti-dumping duty imposed by Regulation (EEC) No 2474/93 on bicycles originating in the People's Republic of China to imports of certain bicycle parts from the People's Republic of China, and levying the extended duty on such imports registered under Regulation (EC) No 703/96 (OJ L 16, 18.1.1997, p. 55).

⁽⁴⁾ Commission Regulation (EC) No 88/97 of 20 January 1997 on the authorisation of the exemption of imports of certain bicycle parts originating in the People's Republic of China from the extension by Council Regulation (EC) No 71/97 of the anti-dumping duty imposed by Council Regulation (EEC) No 2474/93 (OJ L 17, 21.1.1997, p. 17).

⁽⁵⁾ OJ C 45, 13.2.1997, p. 3; OJ C 112, 10.4.1997, p. 9; OJ C 220, 19.7.1997, p. 6; OJ L 193, 22.7.1997, p. 32; OJ L 334, 5.12.1997, p. 37; OJ C 378, 13.12.1997, p. 2; OJ C 217, 11.7.1998, p. 9; OJ C 37, 11.2.1999, p. 3; OJ C 186, 2.7.1999, p. 6; OJ C 216, 28.7.2000, p. 8; OJ C 170, 14.6.2001, p. 5; OJ C 103, 30.4.2002, p. 2; OJ C 35, 14.2.2003, p. 3; OJ C 43, 22.2.2003, p. 5; OJ C 54, 2.3.2004, p. 2; OJ L 343, 19.11.2004, p. 23; OJ C 299, 4.12.2004, p. 4; OJ L 17, 21.1.2006, p. 16; OJ L 313, 14.11.2006, p. 5; OJ L 81, 20.3.2008, p. 73; OJ C 310, 5.12.2008, p. 19; OJ L 19, 23.1.2009, p. 62; OJ L 314, 1.12.2009, p. 106; OJ L 136, 24.5.2011, p. 99; OJ L 343, 23.12.2011, p. 86; OJ L 119, 23.4.2014, p. 67; OJ L 132, 29.5.2015, p. 32; OJ L 331, 17.12.2015, p. 30; OJ L 47, 24.2.2017, p. 13; OJ L 79, 22.3.2018, p. 31; OJ L 171, 26.6.2019, p. 117; OJ L 138, 30.4.2020, p. 8; OJ L 158, 20.5.2020, p. 7.

- (6) The most recent Commission Implementing Decision (EU) 2020/676 ⁽⁶⁾ concerning exemptions under Regulation (EC) No 88/97 was adopted on 18 May 2020.
- (7) For the purposes of this Decision, the definitions set out in Article 1 of Regulation (EC) No 88/97 apply.
- (8) On 20 March 2017, the Commission received from the German company Kenstone Metal Company GmbH ('Kenstone') a request for exemption with the information required to determine whether this request was admissible in accordance with Article 4 of Regulation (EC) No 88/97 ('the exemption Regulation').
- (9) In accordance with Article 5(1) of Regulation (EC) No 88/97, pending a decision on the merits of the request, the payment of the extended duty in respect of any imports of essential bicycle parts declared for free circulation by Kenstone was suspended as from the day on which the Commission received its request for exemption.
- (10) The TARIC additional code C207 was assigned to the party listed in the table, in order to identify the imports of essential bicycle parts declared for free circulation and subject to the suspension of the payment of the extended duty.

Table

TARIC additional code	Name	Address	Date of effect
C207	Kenstone Metal Company GmbH	Am Maikamp 8-12, 32 107 Bad Salzuflen, Germany	20.3.2017

- (11) In August 2018, Kenstone informed the Commission that during the period of the suspension of the payment of the extended duty, namely 1 April 2017-31 March 2018 ('investigation period') the company could not comply with one of the conditions set out in Article 4 of the exemption Regulation. In particular, Kenstone did not use essential bicycle parts for the assembly of bicycles in quantities above the threshold of 299 units per type of essential bicycle parts on a monthly basis ('*de minimis* rule').
- (12) Kenstone justified the non-compliance with the *de minimis* rule with the fact that the company's premises including the bicycles assembly line moved from Flensburg to Bad Salzuflen. In addition, due to a change of the supply chain, the delivery of the bicycle parts purchased was delayed.
- (13) Kenstone stated that with the new assets the assembly of bicycles became fully operational and thus the threshold mentioned above would have been reached in 2018. Therefore, Kenstone asked for an extension of the investigation period to include the whole calendar year 2018 ('extended investigation period'). That extension was granted and therefore the extended investigation period covered the period 1 April 2017-31 December 2018.
- (14) In March 2019, Kenstone informed the Commission that also during the extended investigation period the company purchased on a monthly basis less than 300 units per type of essential bicycle parts subject to the suspension of the payment of the extended duty.
- (15) In July 2019, the Commission carried out a visit at the company's premises in order to examine the merits of the request for exemption. The outcome of the examination can be summarised as follows:
- (a) almost half of the bicycles declared as assembled during the extended investigation period were actually bicycles fitted with an auxiliary motor ('e-bikes') and therefore out of the scope of the exemption Regulation;
 - (b) the main activity of the company was to provide customers with pure assembly services, i.e. Kenstone assembled bicycles parts owned by other parties and charged a service fee to the customers;

⁽⁶⁾ Commission Implementing Decision (EU) 2020/676 of 18 May 2020 concerning exemptions from the extended anti-dumping duty on certain bicycle parts originating in the People's Republic of China pursuant to Regulation (EC) No 88/97 (OJ L 158, 20.5.2020, p. 7).

- (c) the accounting system of Kenstone did not allow keeping records of more than one origin for each bicycle part, even in case that part came from different suppliers with different origins (Chinese or non-Chinese). Kenstone was therefore not able to demonstrate compliance with anti-circumvention rules, as it could not demonstrate the percentage of Chinese parts used.
- (16) The examination of the request for exemption showed that during the extended investigation period Kenstone did not comply with the conditions set out in Regulation (EC) No 88/97. Although no violations of the anti-circumvention rules were identified, the size of the assembly activity of Kenstone for the purpose of Regulation (EC) No 88/97 was manifestly insufficient. In addition, Kenstone maintained an inadequate record-keeping system.
- (17) In May 2020, the Commission received comments from Kenstone concerning the examination of the request for exemption. Kenstone submitted that:
- (a) during the extended investigation period, Kenstone assembled more than 300 units of essential bicycle parts on a monthly weighted average;
 - (b) since January 2020, the assembly activities of Kenstone have significantly increased, so that more than 300 units of bicycle parts have been assembled each individual month;
 - (c) while admittedly the record-keeping system allowed keeping records of only one origin for each bicycle part regardless of whether it might have been obtained from several suppliers and of different origins, Regulation (EC) No 88/97 does not specify that a record-keeping system able to record such information is a prerequisite;
 - (d) the examination of the merits of the request for exemption carried out by the Commission was inadequate.
- (18) With regard to the comment summarised in recital 17 under (a), the Commission wishes to point out that pursuant to Article 2 of Regulation (EC) No 88/97, imports of essential bicycle parts shall be exempt from the extended duty where they are declared for free circulation by, or on behalf of, an exempted party.
- (19) Moreover, pursuant to Article 4 of that Regulation, a request shall be admissible where it contains evidence that the applicant is using essential bicycle parts for the production or assembly of bicycles in quantities above the threshold set out in Article 14(c) of Regulation (EC) No 88/97.
- (20) Furthermore, as stated by Commission Regulation (EU) No 512/2013 ⁽⁷⁾, bicycle parts used for the assembly of e-bikes are not subject to anti-dumping measures and therefore they are out of the scope of the exemption Regulation.
- (21) The Commission observes that Kenstone was aware of its non-compliance with the *de minimis* rule and in March 2019 informed the Commission accordingly, as mentioned in recital 14 above.
- (22) The bicycles parts assembled but neither purchased nor owned by Kenstone, as well as the bicycles parts that Kenstone used for the assembly of e-bikes cannot be considered to determine compliance with the *de minimis* rule.
- (23) Kenstone furthermore argued that more than 300 essential bicycle parts were used on a monthly basis in 2018. However, the number exceeding 300 essential bicycle parts was achieved by adding up the use of all nine essential bicycle parts. In this respect, it should be pointed out that according to Article 14(c) of Regulation (EC) No 88/97 the threshold of 300 units is clearly defined 'per type of essential bicycle parts', not in total for all nine essential bicycle parts.
- (24) Kenstone also argued that, when examining imports of essential bicycle parts per type, the threshold of 300 parts was exceeded for certain parts in January 2018 and for other parts in February 2018, but never more than once per year for a given essential part. Kenstone argued that since the assembly of bicycles is a seasonal activity, it would be disproportionate if an assembler has to exceed the threshold every month.

⁽⁷⁾ Commission Regulation (EU) No 512/2013 of 4 June 2013 amending Regulation (EC) No 88/97 on the authorization of the exemption of imports of certain bicycle parts originating in the People's Republic of China from the extension by Council Regulation (EC) No 71/97 of the anti-dumping duty imposed by Council Regulation (EEC) No 2474/93 (OJ L 152, 5.6.2013, p. 1).

- (25) In this respect, Regulation (EC) No 88/97 indeed provides an element of flexibility, as the threshold, which an exempted party needs to exceed, is defined 'on a monthly basis'. However, exceeding the threshold only once in a given year of 12 months for a given part is insufficient to meet the criterion of being considered above the threshold on a monthly basis.
- (26) Consequently, during the extended investigation period, within the scope of the exemption Regulation, Kenstone purchased on a monthly basis less than 300 units per type of essential bicycle parts subject to the suspension of the payment of the extended duty. Also, Kenstone used essential bicycle parts subject to the suspension for the production or assembly of bicycles in quantities below the threshold set out in Article 14(c) of the exemption Regulation.
- (27) With regard to the comment summarised in recital 17 under (b), the Commission wishes to point out that pursuant to Article 6 of the exemption Regulation, the period 1 April 2017-31 December 2018 was identified as the period to be investigated in order to decide whether to grant an exemption. Therefore, the examination of the assembly activity of Kenstone during other periods is outside the scope of this decision, which concerns the extended investigation period.
- (28) With regard to the comment summarised in recital 17 under (c), the Commission wishes to point out that in April 2017 Kenstone was notified that its exemption request was held admissible. Kenstone was also informed on its status of suspended company as well as on its obligations as a party under examination, including specific instructions on how to keep records order to prove compliance with anti-circumvention rules. These instructions were reiterated in January 2019 at the end of the extended investigation period and in July 2019, before carrying out the verification visit at the company's premises.
- (29) Furthermore, Article 6(2) of Regulation (EC) No 88/97 lists the obligations of suspended parties, notably that such a party 'shall keep records of the essential bicycle parts delivered to it – and of the use made of them'. Such parties also have to demonstrate that their assembly operations do not fall within the scope of Article 13(2) of the basic Regulation. In order to demonstrate that the assembly operation falls outside the scope of Article 13(2)(b) of that Regulation ⁽⁸⁾, Kenstone should have demonstrated that Chinese parts account for 60 % or less of the total value of the parts of the assembled product. Indeed, the origin of the parts has to be part of the records kept by the company, otherwise it is not possible to demonstrate compliance.
- (30) With regard to the comment summarised in recital 17 under (d), the Commission wishes to point out that for the examination of the merits of the request for exemption the standard practice was fully respected. The Commission duly assessed all the documents, data and information acquired before, during and after the verification carried out at the company's premises, that are necessary to determine the admissibility of the exemption request. Therefore, the Commission is in possession of all the elements necessary to adopt a decision.
- (31) Kenstone further argued that while the verification was scheduled for one and a half days, it was completed after a few hours on the first day. This allegation is incorrect. The verification at the company's premises was carried out for a full day. During that day, no verifiable information concerning the origin of the assembled parts or the compliance with the conditions of Article 13(2) of the basic Regulation was provided by Kenstone. Due to the lack of progress during that day, the verification was discontinued for the last half day foreseen for the verification.
- (32) The Commission services concluded their examination of the request for exemption of the party listed in the table above and established that during its examination the party did not fulfil the criteria for exemption.
- (33) On these grounds, and pursuant to Article 7(3) of Regulation (EC) No 88/97, it is appropriate to reject the exemption request and lift the suspension of the payment of the extended duty referred to in Article 5 same Regulation.
- (34) Consequently, the extended duty should be collected as from the date of receipt of the request for exemption submitted by this party, namely the date on which the suspension took effect that is 20 March 2017.
- (35) The Commission informed Kenstone on its conclusions on the merits of its exemption request and gave Kenstone an opportunity to comment.

⁽⁸⁾ There is also an ancillary rule that there is no circumvention taking place where the value added to the parts brought in is greater than 25 % of the manufacturing cost. Kenstone did not argue that they meet this threshold.

- (36) Following disclosure, on 1 September 2020 Kenstone argued that neither the bill of material nor any other proof of origin was requested by the Commission during the on-spot verification. The allegation is however incorrect. The Commission specifically requested this information on 2 July 2019, before the on-spot verification, with the letter Ares(2019)4173972 informing Kenstone on the purpose of the verification visit. To that letter, the Commission attached a list of documents to be made available at the company's premises, including bills of material and certificates of origin. However, these were not provided by Kenstone, neither during the on-spot verification nor in the comments to disclosure.
- (37) Kenstone reiterated the comment made in May 2020 as reported in recital 17 under (c). In particular, Kenstone submitted that the exemption Regulation does not specify how the record-keeping system has to be structured in order to keep records of the origin of the bicycle parts purchased.
- (38) The Commission addressed already the issue in recitals 28 and 29. In addition, the Commission observes that Kenstone had been informed on how to keep records to prove compliance with anti-circumvention rule and never objected thereto, nor did the company avail itself of the possibility to substantively prove compliance in other ways during verification or as a response to the disclosure of findings. Thus Kenstone did not submit any valid evidence in order to demonstrate that its assembly operations fall outside the scope of Article 13(2)(b) of the basic Regulation. In this respect, it is recalled that the burden of proof of compliance with the rules lies with the parties requesting an exemption.
- (39) Kenstone further argued that it had not received full access to the administrative file. While this was already in the company's possession, an additional copy was provided by the Commission services. Kenstone then argued that the administrative file was incomplete, since Document Ares(2020)4002648 dated 29 July 2020 mentions that a letter with the reference Ares(2017)SN2161027 was sent to Kenstone on 12 April 2017. This letter is allegedly not included in the disclosure of files. In this respect, it is noted that the reference number contained in Document Ares(2020)4002648 contains a clerical error. The correct reference number is SN2160934 (instead of Ares(2017)SN2161027) and the document is indeed contained in the administrative file.
- (40) Kenstone further requested access to the register of documents, in accordance with Article 11 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council ⁽⁹⁾. The request and the reply thereto follow the provisions of that Regulation. In any event, the Commission confirmed that the index of the investigation file was provided to Kenstone,

HAS ADOPTED THIS DECISION:

Article 1

The request for exemption from the extended anti-dumping duty submitted by the party listed in the table of this Article is hereby rejected pursuant to Article 7 of Regulation (EC) No 88/97.

Table

Party for which the suspension shall be lifted

TARIC additional code	Name	Address	Date of effect
C207	Kenstone Metal Company GmbH	Am Maikamp 8-12, 32 107 Bad Salzuflen, Germany	20.3.2017

⁽⁹⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

Article 2

The suspension of the payment of the extended anti-dumping duty pursuant to Article 5 of Regulation (EC) No 88/97 is hereby lifted for the party listed in the table of Article 1.

The extended duty should be collected as from the date provided for in the column headed 'Date of effect'.

Article 3

This Decision is addressed to the Member States and to the party listed in Article 1 and published in the *Official Journal of the European Union*.

Done at Brussels, 29 September 2020.

For the Commission
Valdis DOMBROVSKIS
Member of the Commission

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