

Λευκωσία, 27 Ιουλίου 2021

ΠΡΟΣ: Όλους τους ενδιαφερόμενους

ΘΕΜΑ: Επιβολή προσωρινού δασμού (αντι-νταμπιγκ) για προϊόντα σιδήρου και φύλλα αλουμινίου

Κυρίες/οι

Η Γενική Διεύθυνση Εμπορίου της Ευρωπαϊκής Επιτροπής προτίθεται να επιβάλει προσωρινά μέτρα αντί-νταμπιγκ στις εισαγωγές προϊόντων σιδήρου παραγωγής Κίνας και Ταιβάν και προϊόντα αλουμινίου παραγωγής Κίνας και Ταϊλάνδης.

Στα επισυναπτόμενα μπορείτε να βρείτε τις κατηγορίες προϊόντων και τους προτεινόμενους δασμούς, που στη φάση αυτή γίνεται καθαρά για ενημερωτικούς σκοπούς.

Καθώς η διαδικασία βρίσκεται ακόμη στο στάδιο διαβούλευσης, παρακαλώ όπως μας αποστείλετε τις απόψεις – εισηγήσεις σας σχετικά με το θέμα **μέχρι τις 4 Αυγούστου 2021** στο email: k.antoniou@ccci.org.cy έτσι ώστε να τις προωθήσουμε στο Υπουργείο Ενέργειας, Εμπορίου και Βιομηχανίας.

Ευχαριστούμε για την συνεργασία σας.

Με εκτίμηση,

Κύπρος Αντωνίου,
Λειτουργός Τμήματος Βιομηχανίας,
για Γενικό Γραμματέα.



Brussels, **XXX**
[...](2021) **XXX** draft

COMMISSION IMPLEMENTING REGULATION (EU) .../...

of **XXX**

extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) 2015/2384 and Implementing Regulation (EU) 2017/271 on imports of certain aluminium foil originating in the People's Republic of China to imports of certain aluminium foil consigned from Thailand, whether declared as originating in Thailand or not

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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 Union¹ ('the basic Regulation') and in particular Article 13 thereof,

Whereas:

1. PROCEDURE

1.1. Previous investigation and existing measures

- (1) In October 2009, by Council Regulation (EC) 925/2009,² the Council imposed a definitive anti-dumping duty on imports of certain aluminium foil ('jumbo rolls') originating in, amongst others, the People's Republic of China ('PRC') following an anti-dumping investigation ('the original investigation'). The measures took the form of an ad valorem duty ranging between 6,4 % and 30,0 %.
- (2) In December 2015, by Implementing Regulation (EU) 2015/2384,³ the European Commission ('the Commission') maintained the definitive measures ('the measures in force') on imports from the PRC following an expiry review pursuant to Article 11(2) of the basic Regulation ('the review investigation').
- (3) In February 2017, by Implementing Regulation (EU) 2017/271,⁴ the Commission extended the measures in force to imports of slightly modified certain aluminium foil

¹ OJ L 176, 30.6.2016, p. 21.

² Council Regulation (EC) No 925/2009 of 24 September 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium foil originating in Armenia, Brazil and the People's Republic of China, OJ L 262, 6.10.2009, p. 1.

³ Commission Implementing Regulation (EU) 2015/2384 of 17 December 2015 imposing a definitive anti-dumping duty on imports of certain aluminium foils originating in the People's Republic of China and terminating the proceeding for imports of certain aluminium foils originating in Brazil following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009, OJ L 332, 18.12.2015, p. 63.

⁴ Commission Implementing Regulation (EU) 2017/271 of 16 February 2017 extending the definitive anti-dumping duty imposed by Council Regulation (EC) No 925/2009 on imports of certain aluminium foil originating in the People's Republic of China to imports of slightly modified certain aluminium foil, OJ L 40, 17.2.2017, p. 51, and amended by Commission Implementing Regulation (EU) 2017/2213 of 30 November 2017 amending Commission Implementing Regulation (EU) 2017/271 extending the definitive anti-dumping duty imposed by Council Regulation (EC) No 925/2009 on imports of certain aluminium foil originating in the People's Republic of China to imports of slightly modified certain aluminium foil. OJ L 316, 1.12.2017, p. 17.

from the PRC, following an anti-circumvention investigation pursuant to Article 13(3) of the basic Regulation ('the previous anti-circumvention investigation').

1.2. Request

- (4) The Commission received a request pursuant to Articles 13(3) and 14(5) of the basic Regulation to investigate the possible circumvention of the anti-dumping measures imposed on imports of certain aluminium foil originating in the PRC by imports consigned from Thailand, whether declared as originating in Thailand or not, and to make such imports subject to registration.
- (5) The request was lodged on 9 November 2020. The applicant requested anonymity both at application stage and for the duration of the investigation. The applicant duly substantiated its request, which was accepted by the Commission as it considered there were sufficient grounds to grant confidentiality of its identity.
- (6) The request contained sufficient evidence of a change in the pattern of trade involving exports from the PRC and Thailand to the Union that had taken place following the imposition of measures on jumbo rolls. This change appeared to stem from the consignment of jumbo rolls via Thailand to the Union after having undergone assembly operations in Thailand. The request also contained sufficient evidence showing that such assembly operations constituted circumvention as Chinese parts accounted for more than 60 % of the total value of the assembled product, while the value added during the assembly operation was lower than 25 % of the manufacturing cost.
- (7) Furthermore, the request contained sufficient evidence that the practice described above was undermining the remedial effects of the existing anti-dumping measures in terms of quantities and prices. In addition, there was sufficient evidence that the prices of jumbo rolls consigned from Thailand were dumped in relation to the normal value previously established for jumbo rolls.

1.3. Product concerned and product under investigation

- (8) The product concerned is aluminium foil of a thickness of not less than 0,008 mm and not more than 0,018 mm, not backed, not further worked than rolled, in rolls of a width not exceeding 650 mm and of a weight exceeding 10 kg, classified on the date of entry into force of Commission Implementing Regulation (EU) 2015/2384 under CN code ex 7607 11 19 (TARIC code 7607 11 19 10), aluminium foil of a thickness of not less than 0,007 mm and less than 0,008 mm, regardless of the width of the rolls, whether or not annealed, classified on the date of entry into force of Commission Implementing Regulation (EU) 2017/271 under CN code ex 7607 11 19 (TARIC code 7607 11 19 30), aluminium foil of a thickness of not less than 0,008 mm and not more than 0,018 mm and in rolls of a width exceeding 650 mm, whether or not annealed, classified on the date of entry into force of Implementing Regulation (EU) 2017/271 under CN code ex 7607 11 19 (TARIC code 7607 11 19 40), aluminium foil of a thickness of more than 0,018 mm and less than 0,021 mm, regardless of the width of the rolls, whether or not annealed, classified on the date of entry into force of Regulation (EU) 2017/271 under CN code ex 7607 11 19 (TARIC code 7607 11 19 50), and/or aluminium foil of a thickness of not less than 0,021 mm and not more than 0,045 mm, when presented with at least two layers, regardless of the width of the rolls, whether or not annealed, classified on the date of entry into force of Implementing Regulation (EU) 2017/271 under CN code ex 7607 11 90 (TARIC codes 7607 11 90

45 and 7607 11 90 80) and originating in the People's Republic of China ('the product concerned'). This is the product to which the measures in force currently apply.

- (9) The product under investigation is the same as that defined in the preceding recital, currently falling under CN codes ex 7607 11 19 (TARIC codes 7607 11 19 10, 7607 11 19 30, 7607 11 19 40, 7607 11 19 50) and ex 7607 11 90 (TARIC codes 7607 11 90 44, 7607 11 90 46, 7607 11 90 71, 7607 11 90 72), but consigned from Thailand, whether declared as originating in Thailand or not (TARIC additional code C601), ('the product under investigation').
- (10) The investigation showed that jumbo rolls exported from the PRC to the Union and jumbo rolls consigned from Thailand, whether originating in Thailand or not, have the same basic physical and chemical characteristics and have the same uses, and are therefore to be considered as like products within the meaning of Article 1(4) of the basic Regulation.

1.4. Initiation

- (11) Having determined, after having informed the Member States, that sufficient evidence existed for the initiation of an investigation pursuant to Article 13(3) of the basic Regulation, the Commission initiated an investigation by Commission Implementing Regulation (EU) 2020/2162 on 21 December 2020⁵ ('the initiating Regulation') and made imports of jumbo rolls consigned from Thailand, whether declared as originating in Thailand or not, subject to registration in accordance with Article 14(5) of the basic Regulation.

1.5. Comments on initiation

- (12) After initiation, Dingheng New Materials Co., Ltd, Thai Ding Li New Materials Co., Ltd and their related companies (together "the Dingsheng Group") argued that the initiation of the investigation was unwarranted.⁶
- (13) According to the Dingsheng Group, the request leading to the opening of the investigation did not contain the required *prima facie* evidence. It claimed that the information in the request was outdated, as it was based on a period until December 2019, while the investigation was initiated in December 2020. The Dingsheng Group argued that this is in contrast with Article 6(1) of the basic Regulation, which states that the investigation period "shall, normally, cover a period of no less than six months immediately prior to the initiation of proceedings".
- (14) In addition, the Dingsheng Group claimed that the export statistics reported in the request were inaccurate and unreliable. These statistics were based on CN codes and HS codes⁷, which include a number of different products other than those relevant to the investigation and thus cannot be considered sufficient evidence.

⁵ Commission Implementing Regulation (EU) 2020/2162 of 18 December 2020 initiating an investigation concerning possible circumvention of the anti-dumping measures imposed by Implementing Regulation (EU) 2015/2384 and Implementing Regulation (EU) 2017/271 on imports of certain aluminium foil originating in the People's Republic of China by imports of certain aluminium foil consigned from Thailand, whether declared as originating in Thailand or not, and making such imports subject to registration, OJ L 431, 21.12.2020, p. 48.

⁶ On 15 March 2021 the Dingsheng group also filed an application with the EU General Court for the annulment of the initiating Regulation, partly based on the same reasoning as set out in section 1.5 of the current Regulation. That Court case was still pending during the current investigation.

⁷ HS (Harmonized System) codes, developed by the World Customs Organization, are international standardized product classifications applied by over 200 countries in the world. The first six digits of a common tariff number (commodity code) is the same in all these countries. CN codes (Common

- (15) The Commission disagreed. With regard to the reference period used in the request, Article 6(1) of the basic Regulation concerns the investigation period to be used during the investigation, not the period on which the request is based. The Dingsheng Group has not argued that the use of more recent data would have led to a different conclusion with regard to the alleged circumvention practices. With regard to the customs statistics on which the request was based, the applicant provided those statistics that were reasonably available to it for the purpose of the request, as required by Article 5(2) of the basic Regulation. In any case, when analysing the request, the Commission cross-checked the data provided by the applicant against statistics at 10-digit TARIC level and including data until September 2020. This analysis confirmed the allegations in the request.
- (16) Following disclosure the Dingsheng Group reiterated its claim that the request was based on outdated information and that Article 6(1) in conjunction with Article 13(3) of the basic Regulation requires the Commission to carry out an overall examination of the accuracy of the request, including whether the information contained therein is up-to-date. Therefore, according to the Dingsheng Group, the Commission should have requested the applicant to update the figures contained in the request with more recent information. Otherwise, *‘applicants requesting the initiation of an anti-circumvention investigation would be free to base the request on the period that suits better to them, without any limitation’*.
- (17) In addition, the Dingsheng Group claimed that, although the Commission cross-checked the information provided by the applicant with more recent TARIC level data, there is no trace in the file of such cross-check, nor is it mentioned in the initiating Regulation, which refers only to the evidence provided in the request. According to the Dingsheng Group the fact that the use of more recent data would have led to the same conclusion is irrelevant for the determination of whether the request satisfied the standard of evidence requested by the law to initiate the proceeding.
- (18) As explained in recital (15) above, the reference to Article 6(1) of the basic Regulation is irrelevant for the data used in the request, since it refers to the period used during the investigation, not the request. Furthermore, Article 13(3) of the basic Regulation requires that the initiation of the investigation is based on “*sufficient evidence*”, the determination of which leaves a certain level of discretion to the Commission. In any event, as explained above in recitals (6)-(7), this criteria was fulfilled. Article 5(2) of the basic Regulation requires an applicant to base the request on those statistics reasonably available to the applicant. This does not open the door for applicants to pick and choose the most convenient period, as suggested by the Dingsheng Group. The cross-check of slightly more recent and specific data carried out by the Commission before initiation showed that there were no indications that the information used in the request was outdated, rather the contrary since using more recent data would have shown similar trends and would have led to the same conclusions. The Commission therefore rejected these claims.
- (19) The Dingsheng Group also claimed that the available evidence was not sufficient to demonstrate the existence of circumvention. Due to the alleged unreliability of the statistics mentioned in recital (14), the Dingsheng Group claimed that these statistics cannot constitute evidence of the change in the pattern of trade as required by Article

Nomenclature) are the commodity codes used by the EU to classify products, These codes are eight digits long, of which the first six are identical to HS codes. A TARIC code is based on the CN code, with an additional two digits to reveal information concerning anti-dumping and other duties or quotas.

13(1) of the basic Regulation. In addition, it was argued that the requirement of the existence of injury in terms of both quantities and prices undermining the remedial effects of the original anti-dumping investigation was not fulfilled since the underlying analysis was based on the abovementioned allegedly unreliable data and therefore inconclusive. In addition, the calculations in the request were based on only one of the two relevant CN codes. Finally, the injury margin calculated in the request was negligible, according to the Dingsheng Group, and thus not convincing evidence of any undermining of the effects of the measures in force. The additional evidence provided by the applicant in the request, such as quotes from EU producers, was claimed to be an invalid basis for the injury calculations in the request.

- (20) The Commission disagreed. Regarding the alleged unreliability of the data used for the analysis, the applicant based its analysis on the data that was reasonably available to it, as set out in recital (15), and the evidence thus provided was considered sufficient to initiate the investigation. The fact that calculations were based on only one of the CN codes (7607 11 19) did not undermine the accuracy of the request. As pointed out by the applicant in its rebuttal of Dingsheng Group's submission, the General Court held that "*the basic regulation does not require, where the product concerned contains several types of products, as in the present case, that the complaint should provide information on all those product types*".⁸ It was not contested by the Dingsheng Group that this particular CN code covered the most representative product types. In fact, import data from Comext at 10-digit TARIC level showed that during the investigation period there were no imports at all of the products falling under the other CN code (7607 11 90). Therefore, including that CN code would not have changed the outcome of the analysis in the request.
- (21) With regard to the level of the injury margin, the margin found by the applicant of 3,2 % was considered sufficient to conclude at initiation that the remedial effects of the duty are being undermined in terms of the prices of the like product. As the applicant set out in its comments to Dingsheng Group's submission, the product under investigation is very price sensitive, with competition largely based on price. In such a context, an injury margin of 3,2 % can be considered to undermine the remedial effect of the duties in terms of prices, in particular in a situation where the quantities of the imports increased significantly.
- (22) Concerning the data used for the undercutting calculations, the applicant based its calculations on the information that was reasonably available to it, which in this case were several quotes from suppliers in combination with London Metal Exchange ("LME") prices. In its submission, the Dingsheng Group did not put forward a more reasonable methodology for performing the calculations, which could have been available to the applicant. The Commission therefore considered that the methodology used was sufficiently reliable to perform the necessary calculations in the request.
- (23) Following disclosure, the Dingsheng Group claimed that the Commission, by stating that "*the Dingsheng Group did not put forward a more reasonable methodology for performing the calculations*", tried to reverse the burden of proof onto the interested parties. Instead of examining the accuracy and adequacy of the information provided by the applicant, the Commission "*seemingly accepted the data provided in the request at face value, without any further examination*".

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Judgment of 15 December 2016 in Case RENV, Gul Ahmed Textile Mills v Council, T-199/04, paragraph 100.

- (24) The Commission rejected these claims. As with all requests for initiation of an investigation, the Commission thoroughly examined all data and other evidence provided by the applicant and considered that the data used was reasonable and sufficiently accurate to justify the initiation of the investigation. Moreover, the Commission objected to the inference made by the Dingsheng Group that it had tried to reverse the burden of proof. The Commission had simply taken note of the fact that the Dingsheng Group did not put forward an alternative method to substantiate its claim that the methodology used by the applicant had been unreliable.
- (25) The Dingsheng Group also argued that the normal value was calculated using the normal value of the review investigation, thus not taking into account the extended product scope of the previous anti-circumvention investigation. In addition, it stated that the export price used by the applicant in the request was based on Eurostat statistics for a CN code that did not concern jumbo rolls, but rather small rolls⁹. The Dingsheng Group thus claimed that the dumping margin in the request was unreliable as it was based on incorrect figures.
- (26) The Commission disagreed. To determine the existence of dumping, Article 13(1) of the basic Regulation requires a comparison with the normal value previously established for the like product. In accordance with this provision, the applicant used the normal value as established in the review investigation. Moreover, the inclusion of the normal values of the previous anti-circumvention investigation as well would only have increased the dumping margin, since these normal values were higher than the ones applied in the review investigation. Accordingly, the Commission considered the use of the normal value as established in the review investigation a conservative estimate for the calculation of the dumping margin.
- (27) After disclosure, the Dingsheng Group repeated its claim that the extended product scope should have been taken into account in the calculation of the normal value in the request, since Article 13(1) of the basic Regulation requires considering all normal values previously established, not only those of the last review investigation. However, Article 13(1) of the basic Regulation refers to “*the normal values previously established for the like product*”. There is no requirement that all normal values from all previous investigations need to be taken into account. In any event, as stated in recital (26), there was sufficient evidence based on the normal values from the review investigation alone, which represent the majority of imports (see recital (20)) to justify the initiation of the investigation. The Commission therefore rejected this claim.
- (28) The claim of the Dingsheng Group about the use of Eurostat statistics for small rolls to calculate the export price of jumbo rolls was factually incorrect. Indeed the applicant mistakenly referred to the CN code for small rolls in Annex 10 to the request, but a

⁹ With small rolls is meant aluminium foil of a thickness of 0,007 mm or more but less than 0,021 mm, not backed, not further worked than rolled, whether or not embossed, in low weight rolls of a weight not exceeding 10 kg. Imports of small rolls from the PRC are subject to anti-dumping measures (originally imposed by Council Implementing Regulation (EU) No 217/2013 of 11 March 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium foils in rolls originating in the People’s Republic of China, OJ L 69, 13.3.2013, p. 11). Imports of small rolls from Thailand are also subject to an anti-circumvention investigation (Commission Implementing Regulation (EU) 2020/2161 of 18 December 2020 initiating an investigation concerning possible circumvention of the anti-dumping measures imposed by Implementing Regulation (EU) 2019/915 on imports of certain aluminium foil in rolls originating in the People’s Republic of China by imports of certain aluminium foil in rolls consigned from Thailand, whether declared as originating in Thailand or not, and making such imports subject to registration, OJ L 431, 21.12.2020, p. 42).

closer look at the Eurostat extraction that was part of the request in Annex 3 showed that the export price used was correctly based on the extraction for CN code 7607 11 19, which is jumbo rolls. As stated in recital (20) above, this code includes the most representative product types.

- (29) Based on the reasoning set out in recitals (12)-(28) above, the Commission rejected the arguments put forward by the Dingsheng Group and considered that the request contained sufficient evidence to warrant the initiation of the investigation.

1.6. Investigation period and reporting period

- (30) The investigation period covered the period from 1 January 2016 to 30 June 2020 ('the investigation period' or 'IP'). Data were collected for the IP to investigate, inter alia, the alleged change in the pattern of trade following the imposition of the measures on the product concerned as well as the extension of the measures to the slightly modified product by Implementing Regulation (EU) 2017/271, and the existence of a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty. More detailed data were collected for the period from 1 July 2019 to 30 June 2020 ('the reporting period' or 'RP') in order to examine if imports were undermining the remedial effect of the measures in force in terms of prices and/or quantities and the existence of dumping.

1.7. Investigation

- (31) The Commission officially informed the authorities of the PRC and Thailand, the exporting producers in those countries, the importers in the Union known to be concerned and the Union industry of the initiation of the investigation. Questionnaires/Exemption Claim Forms were made available to the producers/exporters in Thailand and the PRC and to the importers in the Union known to the Commission or which made themselves known within the deadlines specified in Article 3 of the initiating Regulation.
- (32) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the initiating Regulation. All parties were informed that the non-submission of all relevant information or the submission of incomplete, false or misleading information might lead to the application of Article 18 of the basic Regulation and to findings being based on the facts available.
- (33) One group of companies from Thailand, five unrelated importers in the Union, one unrelated importer outside the Union and the European Aluminium Foil Association made themselves known. No unrelated Chinese exporting producers came forward during the investigation.
- (34) The following companies, part of the Chinese owned Dingsheng Group, submitted a complete exemption claim form:
- Dingheng New Materials Co., Ltd. ("Dingheng", an exporting producer in Thailand),
 - Thai Ding Li New Materials Co. ("Thai Dingli", a trader in Thailand), and
 - several related Chinese entities within the group.
- (35) The following Union unrelated importers, part of the SPHERE Group, submitted complete replies to the questionnaires:
- SPHERE FRANCE SAS, and

– COMSET S.r.l.

- (36) In view of the outbreak of COVID-19 and the confinement measures put in place by various Member States as well as by various third countries, the Commission could not carry out verification visits pursuant to Article 16 of the basic Regulation at the premises of the cooperating legal entities. The Commission considered the information submitted by the parties, such as replies to questionnaires and replies to deficiency letters, in line with the Notice of 16 March 2020 on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations.¹⁰ No remote-cross check of the information was deemed necessary in light of the issues set out in recital (75) below.
- (37) Two unrelated importers in the Union, Cofresco Poland sp. z o.o. Manufacturing Sp. k. and Cuki Cofresco Srl., provided a highly deficient questionnaire reply within the set time limits. Neither company replied to additional questions or deficiency letters addressed to them. However, after informing both companies that their incomplete submissions would be disregarded under Article 18 of the basic Regulation, the companies provided full questionnaire replies and answered related follow-up questions. Nevertheless, since these replies were received only several months after the initial deadlines and could not benefit from a full deficiency process or a remote cross-check examination, the information provided was taken into account in the investigation only insofar as it was considered complete and reliable.
- (38) One unrelated importer from Switzerland, Transparent Paper Ltd. (“TPL”), also registered as an interested party and provided submissions. The applicant, however, claimed that an unrelated importer outside the Union should not be registered as an interested party, and that any comments made by TPL should be disregarded for two reasons. First, because TPL claimed that it did not import the product concerned or the product under investigation, but rather aluminium converter foil. Second, because, according to the applicant, it is unlikely that TPL did not import the product concerned or under investigation since there is a significant overlap between the products imported by TPL and the product under investigation. Therefore, according to the applicant, TPL should have reported its purchases.
- (39) The Commission disagreed. TPL has a legitimate interest in the outcome of the case. It was established in the previous anti-circumvention investigation that often the only way to distinguish between aluminium converter foil (the product imported by TPL) and jumbo rolls (the product under investigation) is by their end-use, i.e. either for household purposes or for other uses (such as conversion). To this end, any exemptions from the definitive anti-dumping duty on jumbo rolls are subject to the conditions laid down in the relevant customs provisions of the Union on end-use procedure, particularly Article 254 of the Union Customs Code.¹¹ The extension of the existing anti-dumping duties in force on imports of jumbo rolls from the PRC to the imports of jumbo rolls consigned from Thailand, also extends the application of this end-use procedure.¹² Any importer of converter foil from Thailand, including TPL, who clears their products in the Union, will now have to resort to the end-use procedure or otherwise pay the extended anti-dumping duties.

¹⁰ Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations (OJ C 86, 16.3.2020, p. 6 - 8).

¹¹ Recital (72) and Article 1(4) of Commission Implementing Regulation (EU) 2017/271, OJ L 40, 17.2.2017, p. 51.

¹² On the application of the end-use procedure to imports from Thailand, see also recitals (101)-(103) below.

- (40) As an importer of a product other than the product under investigation, TPL was under no obligation to provide the information the applicant referred to in its submission, such as its purchases of converter foil. The Commission had not requested this information from TPL either. TPL was entitled, however, to make submissions in its capacity as an interested party.

2. RESULTS OF THE INVESTIGATION

2.1. General considerations

- (41) In accordance with Article 13(1) of the basic Regulation, the following elements should be analysed successively in order to assess possible circumvention:

- whether there was a change in the pattern of trade between the PRC, Thailand and the Union,
- if this change stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the anti-dumping measures in force,
- if there is evidence of injury or the remedial effects of the anti-dumping measures in force were being undermined in terms of the prices and/or quantities of the product under investigation, and
- whether there is evidence of dumping in relation to the normal values previously established for the product concerned.

- (42) In the present investigation, since the evidence provided by the applicant in the request pointed to assembly operations in Thailand, the Commission more specifically analysed whether the criteria set out in Article 13(2) of the basic Regulation were met, in particular:

- whether the assembly operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation and whether the parts concerned are from the country subject to measures, and
- whether the parts constitute 60 % or more of the total value of the parts of the assembled product and whether the added value of the parts brought in, during the assembly or completion operation, was greater than 25 % of the manufacturing costs.

2.2. Level of cooperation

- (43) The cooperating group of companies in Thailand, the Dingsheng Group, accounted for more than 95 % of all exports to the EU during the reporting period. The level of cooperation was thus considered high. There was no cooperation by exporting producers in the PRC, other than those companies in the PRC that were part of the Dingsheng Group. Therefore, findings with respect to imports of jumbo rolls from China into the Union and exports from China to Thailand were based on facts available in accordance with Article 18 of the basic Regulation. As such, the information provided by the cooperating group of companies was complemented by data extracted from databases such as the 14(6) database, which provides information at company-specific level, the Global Trade Atlas¹³, Eurostat and other publically available information.

2.3. Change in the pattern of trade

¹³ <https://www.gtis.com/gta/>.

- (44) Table 1 below shows the development of imports from the PRC and Thailand in the investigation period.¹⁴

Table 1
Imports of jumbo rolls in the investigation period (tonnes)

	2016	2017	2018	2019	RP
PRC	8 948	7 484	17 982	26 814	26 466
<i>index (base = 2016)</i>	<i>100</i>	<i>84</i>	<i>201</i>	<i>300</i>	<i>296</i>
Share total imports	16 %	18 %	33 %	42 %	39 %
Thailand	18	28	1 027	2 659	5 801
<i>index (base = 2016)</i>	<i>100</i>	<i>156</i>	<i>5 706</i>	<i>14 772</i>	<i>32 228</i>
Share total imports	0,03 %	0,07 %	1,88 %	4,12 %	8,53 %
Total imports	55 887	41 929	54 735	64 531	67 947

Source: Eurostat

- (45) Between 2016 and the end of the reporting period there was a large increase in imports from Thailand, which went from only 18 tonnes to 5 801 tonnes. At the same time, its share of total imports increased from 0,03 % to 8,53 %. Imports from the PRC also increased but at a much smaller pace, from 8 948 to 26 466 tonnes. The Chinese share of total imports also increased, from 16 % to 39 %.
- (46) However, a closer look at the 14(6) database shows that the bulk of these imports were made by Chinese exporting producers that were exempted from the measures in the previous anti-circumvention investigation. At the time of the previous anti-circumvention investigation, it was determined that these exporting producers did not export aluminium household foil, but rather converter foil, which is not the product under investigation.¹⁵
- (47) When the figures are examined without the imports from those four companies, there is a significant decrease in the import volumes to only 307 tonnes in the reporting period. This is also confirmed by the replies of one of the cooperating unrelated importers in the Union, who provided information showing that prior to 2017, they purchased their jumbo rolls in the PRC. However, from 2019 onwards, jumbo rolls were no longer sourced from the PRC but from Thailand. The other unrelated importers started importing from Thailand in 2019 and 2020.
- (48) Table 2 shows the development of exports of raw materials necessary for the production of jumbo rolls from the PRC to Thailand during the investigation period.

¹⁴ The import data presented in this Regulation cannot be compared as such to the data published in the regulations following the original or review investigations. The previous investigation used data related to the EU28, including the United Kingdom, while the current investigation includes only the EU27 following the United Kingdom's withdrawal from the Union in 2020.

¹⁵ Recitals 73 – 80 of Commission Implementing Regulation (EU) 2017/271 (OJ L 40, 17.2.2017, p. 51). See also recital (39) above.

Table 2**Exports of raw materials from the PRC to Thailand in the investigation period ¹⁶
(tonnes)**

	2016	2017	2018	2019	RP
Foil stock (tonnes)	50 111	52 950	62 799	68 755	71 668
index (base = 2016)	100	106	125	137	143

Source: Global Trade Atlas

- (49) The main raw material for the production of aluminium household foil is primary aluminium. This raw aluminium is then processed to produce foil stock, which in turn is further worked into jumbo rolls. The evidence available to the Commission from the request and from the cooperating Thai exporting producer shows that the jumbo rolls exported to the Union from Thailand are produced from foil stock.
- (50) Table 2 shows that since 2016, there has been a continuous increase in the exports of foil stock from the PRC to Thailand. In this respect, the Commission noted that foil stock was possibly not only used for the production of jumbo rolls in Thailand, but also, for example, for the production of small rolls. In addition, foil stock is used as a raw material in a number of other industries, such as the packaging industry or for isolation purposes. Therefore, only a portion of these foil stock imports is actually used in the jumbo rolls production process.
- (51) Nevertheless, the significant increase in foil stock import volumes from the PRC to Thailand indicated an increasing demand for such raw materials in Thailand. This can, at least in part, be explained by the increase in the production and exports of jumbo rolls in and from Thailand. This is also corroborated by the information provided by the cooperating Thai companies.
- (52) The cooperating Dingsheng Group accounted for almost all (more than 95 %) imports of the product under investigation from Thailand during the reporting period. The Thai entities consist of one exporting producer (Dingheng) and one trader (Thai Dingli) who claimed to sell to the Union only the products produced by Dingheng. Dingheng is a Chinese-owned company, which set up production facilities in Thailand in 2018 and sold its first products to the EU in the first half of 2019. In its questionnaire reply it stated that it purchased all raw materials (foil stock) from the PRC.
- (53) The increase of jumbo rolls exported from Thailand to the Union, the parallel decrease of jumbo rolls exported from the PRC to the Union, and the increase in exports of foil stock from the PRC to Thailand in the same period constitutes a change in the pattern of trade between the PRC, Thailand and the Union within the meaning of Article 13(1) of the basic Regulation. This is especially true for the cooperating Thai companies, which only started importing raw materials from the PRC and producing and exporting jumbo rolls to the Union after the extension of the measures following the previous anti-circumvention investigation.
- 2.4. Nature of circumvention practices for which there was insufficient due cause or economic justification

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The foil stock quantities have been adapted, in as far as possible, to reflect foil stock which can actually be used to produce aluminium household foil, and not, for example, for the printing industry, based on the specific product descriptions in the Global Trade Atlas.

- (54) Article 13(1) of the basic Regulation requires that the change in the pattern of trade stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty. The practice, process or work includes the consignment of the product subject to the existing measures via third countries, and the assembly of parts/completion operations in a third country in accordance with Article 13 (2) of the basic Regulation.
- (55) Dingheng produces jumbo rolls from foil stock. The production process, according to the company's exemption request, consists of operations such as further rolling, slitting, annealing and packaging. The Commission considered these operations as relatively minor.
- (56) The Dingsheng Group claimed that the aforementioned operations are not minor, since the foil stock undergoes different processes requiring different and specific machines and argued that its claim was further supported by the fact that the products manufactured by Dingheng are classifiable under a different customs heading compared to the input material.
- (57) The Commission acknowledged that the input material undergoes several processes before it is sold as the product under investigation by Dingheng. However, these cannot be seen as major operations, at least not when compared to the production process that takes place before the input material arrives at the Dingheng production site. The production process of aluminium foil stock involves melting aluminium ingots, casting, sawing, scalping, heating, several stages of hot- and cold rolling and annealing. The following steps to turn the foil stock into jumbo rolls are therefore comparatively relatively minor in scope and, as shown in recital (82) below, of a relatively limited added value, which is the relevant criterion in this respect. In addition, the change in customs heading cannot be considered as proof of the impact of the operations performed on the input material. In fact, Article 13(1)(a) of the basic Regulation explicitly mentions as a circumvention practice *“the slight modification of the product concerned to make it fall under customs codes which are normally not subject to the measures”*. The claims made by the Dingsheng Group were therefore rejected.
- (58) As set out in recital (34), Dingheng is a subsidiary of a Chinese company, and as such, part of the Chinese-owned Dingsheng Group. This group is made up of, among others, companies that produce aluminium household foil and related products, provide raw materials for such production and / or trade such raw materials or finished products. In previous investigations concerning jumbo rolls it was found that certain Chinese entities within the Dingsheng Group were exporting jumbo rolls at dumped prices,¹⁷ and circumventing the duties imposed by the original and review investigations by slightly modifying the product.¹⁸ According to the 14(6) database, no imports from the relevant Chinese exporting producer in the Dingsheng Group were made since the previous anti-circumvention investigation, which coincides in time with when Dingheng started exporting to the Union from Thailand. The information provided by the Chinese entities in the Dingsheng group confirmed that no exports were made by these companies to the Union during this period.
- (59) Dingheng explained that the rationale for starting jumbo rolls production in Thailand was to establish a presence abroad of the Dingsheng Group, in line with “its mission of

¹⁷ Section 4.4 of Council Regulation (EC) No 925/2009 (OJ L 262, 6.10.2009, p. 1), and recitals 80 – 82 of Commission Implementing Regulation (EU) 2015/2384 (OJ L 332, 18.12.2015, p. 63).

¹⁸ Recitals 46 – 49 of Commission Implementing Regulation (EU) 2017/271 (OJ L 316, 1.12.2017, p. 17).

globalization and transnational blueprint”. The public listing of Dingheng’s mother company on the stock exchange in 2018 provided the necessary financial funds to allow for its expansion into Thailand. In addition, establishing a production site in Thailand would allow the group to hedge metal risks in international markets, to enable purchasing aluminium raw materials at LME price instead of the Shanghai market price and to expand its business in other, more profitable markets than the PRC. Dingheng also explained that, although during the investigation period it was producing jumbo rolls from aluminium foil stock, the intention according to its investment plan was to establish a casting line aimed at production from aluminium ingots. Once the casting line would be in operation, Dingheng would globally source aluminium ingots and significantly decrease the percentage of Chinese raw materials, thereby mitigating the risk to raw material volatility.

- (60) The Commission noted that the situation during the reporting period did not reflect the company’s intentions as laid out in its investment plan. In practice, during the reporting period Dingheng sourced all its raw materials from the PRC, and produced all jumbo rolls from imported aluminium foil stock. Moreover, Dingheng complemented its own production of jumbo rolls by jumbo rolls purchased from its related companies in the PRC, as its own production was not sufficient to satisfy the demand of its customers during the reporting period. Although Dingheng provided proof showing that the planned casting line was under construction, it was neither completed nor used during the reporting period.
- (61) In addition, the company’s investment plan is in fact a feasibility study report, which analysed whether it would be economically feasible to add production capacity in the Dingheng production site, through among other things, the addition of a casting line. The report dates from August 2019, which is after Dingheng had already started the production of jumbo rolls from imported aluminium foil stock. In addition, the report mentions importing raw materials (aluminium ingots) from the PRC also in the future, which counters the company’s argument of establishing production outside of the PRC to purchase raw materials at a lower price. Although the company might in practice indeed start purchasing its raw materials outside of the PRC, the Commission could not draw any conclusions about an unknown future situation on the basis of the facts available during the reporting period.
- (62) Moreover, the company could not provide any evidence of due cause or economic justification for exporting jumbo rolls from Thailand to the Union other than the aforementioned plans or intentions for future investments or production. The feasibility report presented as an investment plan dates from after the establishment of the production site in Thailand, and can thus not be presented as evidence of economic justification for exporting jumbo rolls from Thailand to the Union during the reporting period. In addition, an internet search revealed that the avoidance of paying anti-dumping duties was used by Dingheng as an argument to attract customers, where one website mentions “*We can provide you alu foil from our Thailand or Italy factory to avoid anti-dumping tax*”.¹⁹
- (63) After disclosure, the Dingsheng Group submitted a report from 2018 (‘the 2018 report’), claiming that it was a first version of the 2019 feasibility study report (‘the 2019 report’). The Dingsheng Group also emphasized that, although it was called a feasibility study report and not an investment plan, it was analysed by the Board of

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See <https://www.europages.co.uk/DING-HENG-NEW-MATERIALS-COLTD/00000005395623-719214001.html> (last accessed 26 April 2021).

Directors of Dingsheng's main shareholder in the context of the approval of the investment of Thailand.

- (64) The Commission examined the 2018 report and found that it, although very similar to the 2019 report, is much more limited in scope of envisaged activities. Whilst the 2018 report mentions a rolling mill only and lists projected equipment that includes machinery meant only for rolling, winding, slitting and annealing, the 2019 report, on the other hand, mentions a rolling and casting line. The casting line is crucial since, according to the company's earlier submitted information, its establishment would eliminate the need for procuring foil stock from China as it would enable the production of foil stocks in Thailand by using raw materials (aluminium ingots) sourced globally (see also recital (59) above).
- (65) As explained in recital (61) above, the 2019 report dates from after the establishment of the Dingheng production site. The Dingsheng Group, however, claimed that the 2019 report was *"nothing else than an integration and a revision of the First Plan which was prepared in 2018 and which could not be implemented by the Dingsheng Group"*. In addition, the Dingsheng Group claimed that the 2019 report suggested to downsize the initial project, envisaging a production capacity of [40 000 – 60 000] tonnes per year instead of [50 000 – 70 000] tonnes per year. However, the Commission considered this claim to be factually incorrect given that the 2019 report explicitly mentions in several instances that the purpose of the report is to enable an additional production capacity of [40 000 – 60 000] tonnes to reach an annual output of [90 000 – 130 000] tonnes. In fact, the title of the report is *"Add [40 000 – 60 000] tons of aluminum foil production capacity project"*.
- (66) The Dingsheng Group has not provided any information demonstrating that at the time of the 2018 report and the investment decision, there was any intention of establishing a production site in Thailand that would not require importing aluminium foil stock from China. On the contrary, the information provided indicates an intention to establish a facility for producing jumbo rolls from imported foil stock by performing relatively minor operations only. The situation during the reporting period in fact reflected the production facility as envisaged in the 2018 report. The only document provided that mentions the possibility of establishing a casting line dates from 2019, which is after the establishment of the Dingheng production facility.
- (67) The Dingsheng Group also claimed that the fact that the 2019 report mentions importing raw materials (aluminium ingots) from China (as mentioned in recital (61) above), cannot be taken as a lack of economic justification for the setting up of operations in Thailand. In this context, the Dingsheng Group pointed to information provided to the Commission in a deficiency reply where it claimed it would be *"economically illogical"* to import raw material from China, since a 30 % export tax is levied on aluminium ingots from China. The Dingsheng Group thus claimed that this raw material will be sourced from other countries. In addition, the Group argued that the introduction of the planned casting line will eliminate the need to purchase foil stock from China.
- (68) However, both the 2018 and the 2019 reports mention sourcing raw materials from China, whether it concerns foil stock or ingots. The 30 % export tax on ingots from China was not mentioned anywhere in the report, even though, allegedly, this (or a similar) tax already existed at the time of those studies. In addition, the envisaged production of aluminium foil stock within the Dingheng production site is not enough to cover the planned aluminium foil production. In fact, the 2019 report states *"The*

annual production of aluminum foil blanks requires [70 000 – 90 000]t, part of which is produced by the newly-built casting and rolling workshop, and the rest is imported from China.”

- (69) Whether Dingheng will in the future procure raw material from China or from other countries in the future and whether those choices would be economically logical or not are, in any event, not decisive for the current investigation. The Commission has to base its conclusions on the facts and figures that relate to the investigation period. As already stated in recital (61) above, it is impossible to draw any conclusions about an unknown future situation based on the facts available during the reporting period.
- (70) The Dingsheng Group also argued that an advertisement where the avoidance of anti-dumping duties is mentioned as a way to attract customers (see recital (62) above), is by nature “*subsequent to corporate business decisions*” and “*a mere statement of facts*”. It can therefore not “*shed any light in relation to the alleged lack of economic justification*”. The Dingsheng Group is correct in stating that the advertisement as such cannot be seen in itself as conclusive proof for the reason for establishing a production facility in Thailand. It does indicate, however, that the avoidance of anti-dumping duties played a role in the economic (marketing) decisions that the Dingsheng Group made. Decisions, for example, on how to ensure potential clients will purchase Dingsheng Group products from any of its production sites. No other argument was brought forward for clients to choose the Thai production site as their supplier, such as the quality or price of the product, rather than the other production sites. The advertisement, which has been removed in the period after disclosure, only mentioned the avoidance of the anti-dumping duties.
- (71) In addition, the Dingsheng Group provided arguments concerning due cause or economic justification for expanding its operations from China to Thailand in 2018. These included the ability to expand production capacity, the more lenient environmental regulations in Thailand, the need to establish a presence on other markets since the Chinese foil market is saturated, and the need to overcome recent fluctuations in aluminium futures markets. However, as the Dingsheng Group itself acknowledged, these arguments do not explain the current production situation and might be relevant for the future situation only, when Dingheng will allegedly start producing jumbo rolls from globally sourced aluminium ingots.
- (72) Finally, the Dingsheng Group claimed that the Commission should not base its analysis on a temporary situation but also take the future situation into account. However, as already mentioned in recital (69) above, the Commission is legally obliged to base its analysis on facts and figures that related to the investigation period. These facts showed that Dingheng produced jumbo rolls from foil stock imported from China and sold these mainly to international customers. Only in 2019, after the establishment of the production site, there was a first mention of changing the production process in Thailand and adding a casting line to the production site. Most of the aforementioned reasons for establishing a presence outside China have therefore yet to come to fruition and cannot be accepted as an economic justification for establishing the current production site in Thailand.
- (73) In view of the above, the claims put forward by the Dingsheng Group were rejected. The investigation did not reveal sufficient due cause or an economic justification of

the establishment of a production site in Thailand as described above, other than to avoid the payment of the anti-dumping duties currently in force.²⁰

2.5. Start or substantial increase of operations

- (74) Article 13(2) of the basic Regulation requires the assembly operation to have started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation, while the parts concerned are from the country subject to anti-dumping measures.
- (75) Even though the information provided by the companies in the exemption request and two subsequent replies to deficiency letters was not perfect in all respects, the Commission considered that the information was sufficient to determine whether the criteria of Article 13 were fulfilled.
- (76) As shown in Table 2, imports of jumbo rolls from Thailand were negligible in 2016 and 2017. After the extension of the anti-dumping duties to the slightly modified product from the PRC in the previous anti-circumvention investigation in 2017, imports from Thailand started increasing significantly in 2018 and doubled in volume each year since. As already mentioned above, more than 95% of all imports of jumbo rolls during the reporting period came from Dingheng and Thai Dingli, which were established in 2018.
- (77) After disclosure the Dingsheng Group claimed that the Commission was factually incorrect to assert that imports from Thailand increased in 2018, and that more than 95 % of all imports of jumbo rolls in the reporting period came from Dingheng and Thai Dingli. According to the Dingsheng Group, Dingheng only started commercial production in 2019 and cannot be responsible for 95 % of imports in 2018.
- (78) The Commission noted that Dingsheng Group's claim was based on an incorrect interpretation of what was stated above in recital (76). Dingheng and Thai Dingli accounted for 95 % of imports in the reporting period, meaning from 1 July 2019 to 30 June 2020 and not in 2018. During the reporting period, as the exemption request showed and as the Dingsheng Group confirmed in its submission, both Dingheng and Thai Dingli exported jumbo rolls to the Union. The data available to the Commission from the request, statistical databases and information provided by the Dingsheng Group itself, showed that other companies cannot be responsible for more than 5 % of imports into the Union during the reporting period. The claim was therefore rejected.
- (79) Even when assuming that only Dingheng's own produced jumbo rolls were exported to the Union during the reporting period (and not the ones purchased from the PRC), according to the information provided by Dingheng, 100 % of all raw materials (aluminium foil stock) was purchased from (related and unrelated) Chinese companies. Therefore, the Commission concluded that the assembly operation started since the initiation of the anti-dumping investigation, while the parts concerned are from the country subject to measures.

²⁰ TPL also provided some arguments to explain why it believes that its (confidential) Thai supplier should be exempted from the scope of the measures, providing what, in TPL's opinion, is sufficient economic justification for setting up production in Thailand. However, TPL is not an importer of the product under investigation but of converter foil, and cannot in any event argue for an exemption on behalf of its supplier. Moreover, the relevant statements were based on TPL's "best knowledge and market intelligence", and no further proof was provided to support the arguments. However, the arguments put forward by TPL are in part similar to those used by Dingheng, and are as such addressed in this Regulation.

2.6. Value of parts and added value

- (80) Article 13(2)(b) of the basic Regulation states that, as far as assembly operations are concerned, another condition to establish circumvention is that the parts (of Chinese origin, in this case) constitute 60 % or more of the total value of the parts of the assembled product and that the added value of the parts brought in, during the assembly or completion operation, is less than 25 % of the manufacturing cost.
- (81) As mentioned in recital (79), Dingheng produced the jumbo rolls sold to the Union from raw materials which were 100 % purchased in the PRC, thus well over 60 % threshold of the total value of the parts. It was therefore concluded that the first criterion set out in Article 13(2)(b) of the basic Regulation was met.
- (82) For carrying out the 25 % test, the value added to the parts brought in was determined as the sum of labour costs and factory overheads incurred by the assembler with respect to those parts. Selling, general and administrative expenses as well as profit were not considered for the purpose of this calculation. The value added thus established was then expressed as a percentage of the manufacturing cost which consists of the value of all parts, based on the factory-delivered, arm's length purchase prices of these parts plus the value added to the parts during the assembly or completion operation. The average value added thus established during the reporting period was found to be significantly below the 25 % threshold set by Article 13(2)(b) of the basic Regulation. It was therefore concluded that the second criterion set out in Article 13(2)(b) of the basic Regulation was also met.

2.7. Undermining of the remedial effects of the duty

- (83) In accordance with Article 13(1) of the basic Regulation, the Commission examined whether the imports of the product under investigation, both in terms of quantities and prices, undermined the remedial effects of the measures currently in force.
- (84) The increase of imports of jumbo rolls from Thailand was significant, as explained in recitals (44) and (45) above. These imports increased from less than 1 % of the total volume of imports of jumbo rolls in 2016 to almost 9 % during the reporting period. In comparison, the imports from Chinese companies that were not exempted during the last anti-circumvention investigation, decreased from 13 % in 2016, to less than 1 % during the reporting period.
- (85) Regarding prices, the Commission compared the average non-injurious price as established in the previous expiry review²¹ with the weighted average export CIF prices determined on the basis of the information provided by the cooperating producer, duly adjusted to include conventional customs duties and post clearance costs. This price comparison showed the existence of underselling of 49 % and undercutting of 40 %.
- (86) The Commission concluded that the existing measures were undermined in terms of quantities and prices by the imports from Thailand subject to this investigation.
- (87) Following disclosure the Dingsheng Group argued that insufficient information had been provided to it to verify the accuracy of the calculations, since the non-injurious price and the target profit level to calculate underselling and undercutting levels had not been disclosed.

²¹ Updated for the reporting period to reflect LME fluctuations.

- (88) The Commission rejected this claim and considered that the information disclosed to the Dingsheng Group had been sufficient to allow it to effectively comment on the Commission's findings as set out in the disclosure documents. In this respect the Commission noted that the analysis performed in anti-circumvention investigations is limited to establishing whether the remedial effects of the duty are being undermined in terms of prices and/or quantities. This analysis is done by using the information on the non-injurious price level from the previous investigation, *in casu* the review investigation. The non-injurious price level was provided to the Dingsheng Group in the specific disclosure of 24 June 2021, and presented in ranges. From the information provided in the specific disclosure, it could also easily be determined that the target profit used was 6 %. The information provided was therefore considered sufficient to verify the accuracy and adequacy of the Commission's calculations. In addition, it should be noted that the one cooperating company in the review investigation is also part of the Dingsheng Group, and the Group was thus provided with more details at that point in time. The claims were therefore rejected.

2.8. Evidence of dumping

- (89) In accordance with Article 13(1) of the basic Regulation, the Commission also examined whether there was evidence of dumping in relation to the normal values previously established for the like product.
- (90) To this end, export prices of the cooperating exporting producer were determined as described in recital (85) above and compared to the normal values established during the last expiry review (for the original like product) and anti-circumvention investigation (for the slightly modified product), and duly adjusted to London Metal Exchange (LME) fluctuations. In line with the calculations done in the last expiry review and the previous anti-circumvention investigation, this adjustment was necessary due to the fact that prices of aluminium products refer to price fluctuations of the basic raw material, primary aluminium. LME prices are considered the global benchmark for primary aluminium.
- (91) Following disclosure the Dingsheng Group claimed that the LME adjustment was incorrect. According to it the upward adjustment should have been a downward adjustment, as the LME price experienced a decreasing trend between the review investigation and the reporting period.
- (92) As required by Article 13(1) of the basic Regulation the calculations were based on the normal values previously established for the like product. This includes the LME values that were used at the time of those investigations. The LME values for the review investigation period cited by the Dingsheng Group in their submission are not in line with the values used in previous investigations and cannot serve therefore as a basis for comparison. Using the values established in the previous investigations and comparing these to the LME data from the same data source as originally used (Bloomberg) for the reporting period. i.e. applying the same methodology as in the previous investigations, showed that the upward adjustment done by the Commission was accurate. The Commission therefore rejected this claim.
- (93) Following disclosure, two unrelated Union importers requested the Commission to examine whether jumbo rolls are currently still being dumped, and provided some information regarding current import prices of jumbo rolls from the PRC into the United Kingdom. However, the Commission's analysis was limited to the information which related to the investigation and reporting periods, and not to information relating to a subsequent period, as follows from Article 6(1) of the basic Regulation.

Moreover, the information provided by the unrelated importers pertain to current import prices from the PRC, which is not the country concerned, into the United Kingdom, which is not a Member State of the Union. The Commission therefore rejected this request.

- (94) The comparison of normal values and export prices at product-type level shows that jumbo rolls were imported at dumped prices during the reporting period by the cooperating companies.

3. REQUESTS FOR EXEMPTION

- (95) One exporting producer in Thailand requested an exemption from the possible extended measures in accordance with Article 13(4) of the basic Regulation and submitted a questionnaire reply.
- (96) As set out above, however, the investigation has confirmed that this producer circumvented the measures in place. It was therefore concluded to reject the request.

4. MEASURES

- (97) Based on the above findings, the Commission concluded that the anti-dumping duty imposed on imports of jumbo rolls originating in the PRC are being circumvented by imports of the product under investigation consigned from Thailand. Since the exports of the cooperating company constitute more than 95 % of the total imports of the product under investigation and no other exporting producer cooperated, this conclusion extends to the whole country.
- (98) Therefore, in accordance with Article 13(1) of the basic Regulation, the anti-dumping measures in force should be extended to imports of the product under investigation.
- (99) Pursuant to Article 13(1), second paragraph of the basic Regulation, the measure to be extended should be the one established in Article 1(2) of Commission Implementing Regulation (EU) 2015/2384 for ‘all other companies’ and previously extended by Article 1 of Implementing Regulation (EU) 2017/271, which is a definitive anti-dumping duty of 30 % applicable to the net, free-at-Union-frontier price, before customs duty.
- (100) Pursuant to Article 13(3) of the basic Regulation, which provide that any extended measure should apply to imports that entered the Union under registration imposed by the initiating Regulation, duties are to be collected on those registered imports of the product under investigation.
- (101) As explained in recital (39) above, the previous anti-circumvention investigation had established an end-use mechanism aimed at providing genuine importers of aluminium converter foil with the possibility to request an exemption from paying the anti-dumping duties. TPL, an unrelated importer of aluminium converter foil, argued that requiring genuine importers of aluminium converter foil in the current investigation to comply with such an end-use procedure would unfairly penalize importers of a product that falls outside the scope of the investigation. In this respect, TPL pointed to the recent creation of specific TARIC codes for converter foil, which were created after the previous anti-circumvention investigation.
- (102) However, a decision on whether or not to have an end-use procedure in place for imports of jumbo rolls from Thailand does not fall within the scope of the current investigation. The purpose of this anti-circumvention investigation is to determine whether or not to extend the measures in place to imports from Thailand of the like

product. The investigation can change neither the level nor the form of the measures, and therefore cannot change the existence of the end-use procedure.

- (103) In any event, the possibility to distinguish between converter foil and household foil currently still depends on the declaration as to its end-use by the importer concerned, even if there are currently specific TARIC codes for converter foil. The description of TARIC code 7607 11 19 60, for example, includes the wording “for other uses than household aluminium foil”. Imports under this code, which was created specifically to include converter foil, are subject to end-use provisions to enable the possibility to actually declare the imports under this code. The creation of specific codes for converter and household foil, therefore, did not remove the need for the end-use procedure. The existing end-use procedures thus appear still necessary.
- (104) Following disclosure TPL reiterated its request to not extend the end-use procedure established in the previous anti-circumvention investigation. According to TPL, the end-use procedure is not necessary since it was established only to ensure importers of converter foil were importing genuine converter foil and not slightly modified aluminium household foil. TPL argued that this distinction is not necessary in the current investigation, since the issue at hand now is the determination of whether the product exported from Thailand is of Thai or Chinese origin.
- (105) The Commission disagreed with this argumentation. Extending the anti-dumping measures inevitably includes the extension of the previously established end-use procedure as well. The fact that the end-use procedure is not a measure but a special customs procedure, as argued by TPL, does not detract from the fact that the application of the measures in the previous anti-circumvention investigation was explicitly combined with this end-use procedure. In addition, since the current investigation also included the slightly modified product, the differentiation between converter foil and household foil remains relevant, also for products imported from Thailand. As explained in recital (103), the difference between the two product types still depends on the declared end-use by the importer. Such declaration is an indispensable element to determine whether the product can be imported under the specific TARIC code for converter foil, or under one of the TARIC codes for aluminium household foil. The Commission therefore rejected the request by TPL.
- (106) Following disclosure, two unrelated Union importers provided evidence of a recent increase in the cost of raw materials and conversion costs faced by manufacturers of household foil in the Union, and requested to balance the interest of Union producers of jumbo rolls with those of Union producers of household foil and final customers. However, the data provided by those Union importers concerned the period after the investigation period of the current investigation and was therefore not taken into account. Moreover, an analysis regarding the effect of the measures does not fall within the scope of an anti-circumvention investigation, which is limited to establishing whether the remedial effect of the original measures are being undermined by the circumvention practices. A full analysis, including the effect of the measures on the Union interest, may however be done in other types of investigations, such as interim or expiry reviews.²² The Commission therefore rejected this request.

5. DISCLOSURE

²² An expiry review investigation of the existing anti-dumping measures on the imports of jumbo rolls from China was initiated on 17 December 2020 (OJ C 436, 17.12.2020, p. 10).

- (107) On 24 June 2021, the Commission disclosed to all interested parties the essential facts and considerations leading to the above conclusions and invited them to comment. Comments were received from the cooperating producer in Thailand, two unrelated importers in the Union and one unrelated importer in Switzerland, TPL. The written comments submitted by the parties were taken into consideration where appropriate as described in the foregoing.
- (108) 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. The definitive anti-dumping duty imposed by Commission Implementing Regulation (EU) 2015/2384 on imports of certain aluminium foil originating in the People's Republic of China and terminating the proceeding for imports of certain aluminium foil originating in Brazil following an expiry review under Article 11(2), and extended by Commission Implementing Regulation (EU) 2017/271 of 16 February 2017 to imports of slightly modified certain aluminium foil, is hereby extended to imports of:

- aluminium foil of a thickness of not less than 0,008 mm and not more than 0,018 mm, not backed, not further worked than rolled, in rolls of a width not exceeding 650 mm and of a weight exceeding 10 kg,
- aluminium foil of a thickness of not less than 0,007 mm and less than 0,008 mm, regardless of the width of the rolls, whether or not annealed,
- aluminium foil of a thickness of not less than 0,008 mm and not more than 0,018 mm and in rolls of a width exceeding 650 mm, whether or not annealed,
- aluminium foil of a thickness of more than 0,018 mm and less than 0,021 mm, regardless of the width of the rolls, whether or not annealed,
- aluminium foil of a thickness of not less than 0,021 mm and not more than 0,045 mm, when presented with at least two layers, regardless of the width of the rolls, whether or not annealed,

currently falling under CN codes ex 7607 11 19 (TARIC codes 7607 11 19 10, 7607 11 19 30, 7607 11 19 40, 7607 11 19 50) and ex 7607 11 90 (TARIC codes 7607 11 90 44, 7607 11 90 46, 7607 11 90 71, 7607 11 90 72) and consigned from Thailand, whether declared as originating in Thailand or not (TARIC additional code C601).

2. The product described in paragraph 1 of this Article shall be exempted from the definitive anti-dumping duty if it is imported for other uses than household foil. An exemption shall be subject to the conditions laid down in the customs provisions of the Union on the end-use procedure, in particular Article 254 of the Union Customs Code.

3. The duty extended by paragraph 1 of this Article shall be collected on imports consigned from Thailand, whether declared as originating in Thailand or not, registered in accordance with Article 2 of Implementing Regulation (EU) 2020/2162 and Articles 13(3) and 14(5) of Regulation (EU) 2016/1036, with the exemption of those which can demonstrate that they were used for other uses than household foil in accordance with paragraph 2.

3. The amount of anti-dumping duties to be retroactively collected shall be that resulting from applying the anti-dumping duty of 30,0 % applicable to 'all other companies'.

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

Article 2

Customs authorities are directed to discontinue the registration of imports established in accordance with Article 2 of Implementing Regulation (EU) 2020/2162.

Article 3

The exemption request submitted by Dingheng New Materials Co., Ltd. is rejected.

Article 4

1. Requests for exemption from the duty extended by Article 1 shall be made in writing in one of the official languages of the European Union and must be signed by a person authorised to represent the entity requesting the exemption. The request must be sent to the following address:

European Commission
Directorate-General for Trade
Directorate G Office:
CHAR 04/39
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

2. In accordance with Article 13(4) of Regulation (EU) 2016/1036, the Commission may authorise, by decision, the exemption of imports from companies which do not circumvent the anti-dumping measures imposed by Implementing Regulations (EU) 2015/2384 and (EU) 2017/271, from the duty extended by Article 1.

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,

For the Commission
The President



EUROPEAN COMMISSION

Directorate-General for Trade
Directorate G – Trade Defence

Trade Defence Instruments

Brussels, 20 July 2021
TRADE G3/2 CK(2021)5269246

SENSITIVE*

NOTE FOR THE ATTENTION OF ALL DELEGATIONS OF THE TRADE DEFENCE INSTRUMENTS COMMITTEE

Subject: R732 - Anti-circumvention investigation concerning imports of certain aluminium foil (jumbo rolls) originating in the People's Republic of China via Thailand

Consultation under the examination procedure

Given the situation of the Coronavirus COVID-19, please be informed that we have decided to continue using the written procedure to consult the Trade Defence Instruments Committee until further notice. The consultation on the above-mentioned draft implementing act is in accordance with Article 3(5) of the Comitology Regulation (EU) No 182/2011¹ and Article 15(5) of the basic anti-dumping Regulation².

Please find attached the sensitive draft Commission Implementing Regulation concerning the subject mentioned above.

Committee members are therefore requested to provide the Commission with their opinion concerning the above draft implementing act in writing **by 3 August 2021** to the mailbox: anti-dumping-subsidy@ec.europa.eu.

You will be informed of the outcome of the written consultation immediately after the expiry of the time limit set above.

* This document is for internal use only. It is protected pursuant to Article 4 of Regulation (EC) 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p.43). It is a confidential document pursuant to Article 19 of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 176, 30.06.2016, p. 21) and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-dumping Agreement) / pursuant to Article 29 of Regulation (EU) 2016/1037 of the European Parliament and of the Council (OJ L 176, 30.06.2016, p.55) and Article 12 of the WTO Agreement on Subsidies and Countervailing Measures. Handling instructions for SENSITIVE information are given at: <https://europa.eu/db43PX>

¹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p.13)

² 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 OJ L 176, 30.6.2016, p. 21)

Questions and comments concerning the draft implementing act, if any, may be provided in writing **by 27 July 2021** to the same functional mailbox. The Commission services will reply to those questions in writing as soon as possible and in any event prior to the deadline for the submission of the Member States' opinion. The Commission's replies will be addressed to all Committee members.

Please be reminded that according to Article 8(1) of the Committee's rules of procedure, *"any committee member who does not oppose the draft implementing act or who does not explicitly abstain from voting thereon before the expiry of that time limit shall be regarded as having tacitly agreed to the draft implementing act"*.

We thank you for your cooperation and understanding to ensure that the Trade Defence Instruments Committee continues its work successfully in this extraordinary situation.

Should you have any questions please do not hesitate to contact me or the team in charge.

CASE TEAM

HEAD OF SECTION:

Mr Per AIDEMARK

OFFICIALS IN CHARGE:

Ms Catharina KOOPS

Mr Pedro DA CUNHA MONTEIRO

(signed)
Zsuzsana JÁMBOR
Chairperson

Trade Defence Instruments Committee

Encl. Draft Commission Implementing Regulation

COMMISSION IMPLEMENTING REGULATION (EU) .../...

of **XXX**

imposing a definitive anti-dumping duty on imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union¹, and in particular Article 11(2) thereof,

Having regard to Regulation (EU) 2015/477 of the European Parliament and of the Council of 11 March 2015 on measures that the Union may take in relation to the combined effect of anti-dumping or anti-subsidy measures with safeguard measures², and in particular Article 1 thereof,

Whereas:

1. PROCEDURE

1.1. Previous investigation and measures in force

- (1) By Commission Implementing Regulation (EU) 2015/1429 of 26 August 2015³, the European Commission ('the Commission') imposed a definitive anti-dumping duty on imports of stainless steel cold-rolled flat products originating in the People's Republic of China ('PRC') and Taiwan ('the original measures').
- (2) On 11 August 2016, the Commission announced the reopening of the anti-dumping investigation with regard to Taiwan⁴, pursuant to Article 12 of the Regulation (EU) 2016/1036 ('the basic Regulation'). The anti-absorption investigation in question was terminated on 11 April 2017 without amending the measures in force⁵.
- (3) The anti-dumping duties currently in force on imports of stainless steel cold-rolled flat products originating in the PRC are at the rate of 24,4 % for the sampled exporting producers, 24,6 % for the non-sampled cooperating companies and a duty rate of 25,3 % for all other companies.
- (4) The anti-dumping duties currently in force on imports originating in Taiwan are at a rate of 6,8 %. The measures in force apply to all imports of stainless steel cold-rolled flat products originating in Taiwan, with the exception of those produced by Taiwan

¹ OJ L 176, 30.6.2016, p. 21.

² OJ L 83, 27.3.2015, p. 11.

³ Commission Implementing Regulation (EU) 2015/1429 of 26 August 2015 imposing a definitive anti-dumping duty on imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan (OJ L 224, 27.8.2015, p. 10).

⁴ OJ C 291, 11.8.2016, p. 7.

⁵ OJ L 98, 11.4.2017, p. 10.

Chia Far Industrial Factory Co., Ltd. A zero duty rate was originally determined for this company, as no dumping was found.

1.2. Request for an expiry review

- (5) Following the publication of a Notice of impending expiry⁶, the Commission received a request for a review pursuant to Article 11(2) of 'the basic Regulation.
- (6) The request for review was lodged on 27 May 2020 by the European Steel Association ('Eurofer' or 'the applicant') representing more than 25% of the total Union production of stainless steel cold-rolled flat products. The request for review was based on the grounds that the expiry of the measures would be likely to result in continuation or recurrence of dumping and injury to the Union industry.

1.3. Initiation of an expiry review

- (7) Having determined, after consulting the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of an expiry review, on 25 August 2020 the Commission initiated an expiry review with regard to imports of stainless steel cold-rolled flat products originating in the PRC and Taiwan ('the countries concerned') on the basis of Article 11(2) of the basic Regulation. It published a Notice of Initiation in the Official Journal of the European Union⁷ ('the Notice of Initiation').

1.4. Parallel anti-dumping investigation concerning India and Indonesia.

- (8) On 30 September 2020, the Commission initiated an anti-dumping proceeding concerning imports of stainless steel cold-rolled flat products originating in India and Indonesia, pursuant to Article 5 of the basic Regulation⁸. That investigation is ongoing.

1.5. Review investigation period and period considered

- (9) The investigation of continuation or recurrence of dumping covered the period from 1 July 2019 to 30 June 2020 ('review investigation period' or 'RIP'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2017 to the end of the review investigation period ('the period considered').

1.6. Interested parties

- (10) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. In addition, the Commission specifically informed the applicant, other known Union producers, the known producers in the PRC and Taiwan and the authorities of those countries, known importers, users, traders, as well as associations known to be concerned about the initiation of the expiry and invited them to participate.
- (11) Interested parties had an opportunity to comment on the initiation of the expiry review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.7. Sampling

⁶ OJ C 405, 2.12.2019, p.11.
⁷ OJ C 280, 25.8.2020, p.6.
⁸ OJ C 322, 30.9.2020, p.17.

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

1.7.1. Sampling of Union producers

- (13) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of production and sales volumes of the product under review, ensuring a good geographical spread. This sample consisted of three Union producers. The sampled Union producers accounted for more than 60 % of the estimated total Union production and around 70 % of the estimated total Union sales volume of the product under review.
- (14) In accordance with Article 17(2) of the basic Regulation, the Commission invited interested parties to comment on the provisional sample. The Commission received no comments on the sample. The sample is representative of the Union industry.

1.7.2. Sampling of importers

- (15) In order to decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (16) Three unrelated importers made themselves known as interested parties and provided the requested information. In view of the low number of replies received, sampling was not necessary. No comments were made to this decision. The importers were invited to complete a questionnaire.

1.7.3. Sampling of exporting producers in the countries concerned

- (17) In order to decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in the PRC and Taiwan to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the People's Republic of China to the European Union and the Taipei Representative Office in the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (18) One exporting producer from Taiwan came forward, expressing its willingness to participate in the investigation. Given the reduced number of producers that came forward, the Commission considered that sampling was not necessary. The exporting producer in question was requested to complete the questionnaire intended for the exporting producers.
- (19) No producers from the PRC provided the requested information and agreed to be included in the sample. The Commission notified the Mission of the PRC that due to the lack of cooperation from exporting producer in the PRC, it intended to apply Article 18 of the basic Regulation and therefore base its findings on continuation or recurrence of dumping and injury in respect of the PRC on the facts available. No comments were received in response to this notification. Therefore, there was no cooperation from the Chinese producers and the findings with regard to the imports from the PRC are made on the basis of the facts available pursuant to Article 18 of the basic Regulation.

1.8. Replies to the questionnaire

- (20) The Commission made the questionnaires for the sampled Union producers, unrelated importers, and exporting producers available on DG Trade's website when the case was initiated. An additional questionnaire was sent to the applicant.
- (21) The Commission also sent a questionnaire concerning the existence of significant distortions in the PRC within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of the People's Republic of China ('GOC').
- (22) Questionnaire replies were received from the three sampled Union producers and Eurofer.
- (23) None of the unrelated importers provided a questionnaire reply.
- (24) No questionnaire reply was received from the exporting producer in Taiwan which had come forward and initially agreed to cooperate. The Commission informed the company concerned that it considered it therefore no longer cooperating and that it would apply Article 18 of the basic Regulation. The Taipei Representative Office in the European Union was also informed of the matter. Neither the company concerned nor the Taipei Representative Office in the European Union reacted to these letters. Therefore, there was no cooperation from the Taiwanese exporting producers, and as in the case of China (see recital (19) above), the findings with regard to continuation or recurrence of dumping and injury in respect of Taiwan are made on the basis of the facts available pursuant to Article 18 of the basic Regulation.

1.9. On spot verification and remote cross-checking

- (25) The Commission sought and verified all the information deemed necessary for the determination of likelihood of continuation or recurrence of dumping and injury and of the Union interest. In view of the outbreak of COVID-19 and the confinement measures put in place by various Member States as well as by various third countries, the Commission could not carry out verification visits pursuant to Article 16 of the basic Regulation. The Commission instead cross-checked remotely all the information deemed necessary for its determinations in line with its Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations⁹.
- (26) The Commission carried out remote crosschecks ('RCC') of the following companies / parties:

Union producers and their association:

- Acciai Speciali Terni S.p.A., Terni, Italy ('AST')
- Aperam Stainless Europe, consisting of Aperam France, La Plaine Saint-Denis Cedex, France and Aperam Belgium, Châtelet and Genk, Belgium ('Aperam')
- Outokumpu Stainless Oy, Tornio, Finland ('OTK')
- Eurofer, Brussels, Belgium.

1.10. Subsequent procedure

- (27) On 2 July 2021, the Commission disclosed the essential facts and considerations on the basis of which it intended to maintain the anti-dumping duties in force regarding

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

imports from the countries concerned. All parties were granted a period within which they could make comments on the disclosure.

- (28) The comments made by a consortium of importers and distributors ('Euranimi'¹⁰) and two unrelated importers ('LSI'¹¹ and 'MFT'¹²) were considered by the Commission and taken into account, where appropriate. All the parties in question also requested and were granted a hearing.

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

- (29) The product under review is the same as in the original investigation, namely flat-rolled products of stainless steel, not further worked than cold-rolled (cold-reduced), currently falling under CN codes 7219 31 00, 7219 32 10, 7219 32 90, 7219 33 10, 7219 33 90, 7219 34 10, 7219 34 90, 7219 35 10, 7219 35 90, 7219 90 20, 7219 90 80, 7220 20 21, 7220 20 29, 7220 20 41, 7220 20 49, 7220 20 81, 7220 20 89, 7220 90 20 and 7220 90 80 ('product under review' or 'SSCR').
- (30) In the Union, SSCR is mainly manufactured by integrated producers transforming stainless steel scrap and alloying elements in SSCR after melting, hot rolling and cold rolling. In the PRC and, to an increasing extent, Taiwan, SSCR producers seem to mainly rely on the use of virgin raw materials, which are transformed into nickel pig iron before being melted, hot rolled and cold rolled.
- (31) The product under review is used in a wide range of downstream industries, for example construction and energy equipment, infrastructure, consumer goods, and vehicles.

2.2. Like product

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

2.3. Claims regarding the product scope

- (34) After final disclosure, Euranimi and the two importers claimed that the Commission extended the product scope by adding to the definition of the product under review certain CN codes which were not covered by the original measures. According to the parties, such extension of the product scope is in violation of Article 11(2) of the basic Regulation.
- (35) The original measures defined the product concerned as follows:

¹⁰ Association of Non-Integrated Metal Importers and Distributors

¹¹ LSI Lamiera Speciali Inox S.p.a.

¹² European Mold & Form Tec S.L.

“The product concerned is flat-rolled products of stainless steel, not further worked than cold-rolled (cold-reduced), currently falling within CN codes 7219 31 00, 7219 32 10, 7219 32 90, 7219 33 10, 7219 33 90, 7219 34 10, 7219 34 90, 7219 35 10, 7219 35 90, 7220 20 21, 7220 20 29, 7220 20 41, 7220 20 49, 7220 20 81 and 7220 20 89.”

- (36) In the Note put on the file on the day of initiation¹³, the Commission explained that certain product types, which have undergone some specific finishing operations after the cold-rolling, essentially surface treatment, are included in the product definition but the corresponding CN codes (7219 90 20, 7219 90 80, 7220 90 20 and 7220 90 80) were erroneously not mentioned in the product definition although the product types covered by these CN codes were part of the original investigation that resulted in the imposition of the measures.
- (37) While most product types that have undergone finishing operations do not fall under the product definition (because they cannot be qualified as "not further worked than cold-rolled (cold reduced)") and therefore are not within the scope of the measures, the product types which have undergone the finishing operations "polished", "brushed" and "perforated" fall under the CN codes 7219 90 20, 7220 90 20, 7219 90 80, and 7220 90 80 sub-category "other" are part of the product scope. These product types fall under the CN sub-category "other" and were part of the original investigation that resulted in the imposition of the measures. The basic physical, technical and chemical characteristics, the production processes apart from some finishing operations, and end-uses of these product types are no different to those that fall under the CN sub-category "not further worked than cold-rolled".
- (38) Therefore, since these additional CN codes have been part of the product concerned in the original investigation and in the current review investigation the Commission clarified the product definition accordingly in the Note mentioned in recital (36) above.
- (39) The product scope of the original investigation was not extended and its definition was not changed but only clarified. It is recalled that CN codes are given for information only and have no binding effect on the tariff classification of the product under review. Therefore, the claim of the parties was rejected.

3. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

- (40) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether the expiry of the measures in force would be likely to lead to a continuation or recurrence of dumping from the PRC or Taiwan.

3.1. The People's Republic of China

3.1.1. Preliminary remarks

- (41) During the period considered, imports of the product under review from the PRC continued, albeit at much lower levels than in the investigation period of the original investigation (i.e. from 1 January 2013 to 31 December 2013). According to Eurostat statistics, imports of SSCR from the PRC accounted for about 0,4 % of the Union market in the review investigation period. In absolute terms imports of SSCR from the PRC were at 14 111 tonnes in the review investigation period compared to 143 420 tonnes during the original investigation.

¹³

Saved in the open file under save number t20.00021.

- (42) As mentioned in recital (19), none of the exporters/producers from the PRC cooperated in the investigation. Thus, the exporting producers failed to submit questionnaire replies, including any data on export prices and costs, domestic prices and costs, consumption of inputs in the production process, manufacturing overheads, capacity, production, investments, etc. Likewise, the GOC and the exporting producers failed to address the evidence on the case file, including the ‘Commission Staff Working Document on Significant Distortions in the Economy of the People’s Republic of China for the Purposes of Trade Defense Investigations’¹⁴ (‘the Report’).
- (43) Therefore, the Commission informed the authorities of the PRC that due to the absence of cooperation, the Commission might apply Article 18 of the basic Regulation concerning the findings with regard to the PRC. The Commission did not receive any comments.
- (44) Consequently, in accordance with Article 18(1) of the basic Regulation, the findings in relation to the likelihood of continuation or recurrence of dumping with regard to the PRC were based on facts available, in particular the information contained in the request for the expiry review and in the submissions by the interested parties, combined with other sources of information, such as trade statistics on imports and exports (Eurostat and GTA), statistical data from the Chinese tax and custom administration websites¹⁵, reports of the World Bank and OECD, and independent providers of pricing intelligence, news, data, analysis and conferences for the iron and steel industry.

3.1.2. Continuation of dumping during the review investigation period

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

- (45) Given the sufficient evidence available at the initiation of the investigation tending to show, with regard to the PRC, the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission initiated the investigation with regard to this country on the basis of Article 2(6a) of the basic Regulation.
- (46) In order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions, the Commission sent a questionnaire to the Government of China (‘GOC’). In addition, in point 5.3.2 of the Notice of Initiation, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation, within 37 days of the date of publication of the Notice of Initiation in the Official Journal of the European Union. No questionnaire reply was received from the GOC and no submission on the application of Article 2(6a) of the basic Regulation was received within the deadline.
- (47) In point 5.3.2 of the Notice of Initiation, the Commission also specified that, in view of the evidence available, it had provisionally selected Brazil as an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the

¹⁴ Commission Staff Working Document on Significant Distortions in the Economy of the People’s Republic of China for the purposes of Trade Defence Investigations, 20 December 2017, SWD(2017) 483 final/2.

¹⁵ http://www.gov.cn/zhengce/content/2017-12/01/content_5243734.htm
<http://www.chinatax.gov.cn/n810341/n810755/c3377945/content.html>
http://www.gov.cn:8080/gongbao/content/2019/content_5416183.htm

purpose of determining the normal value based on undistorted prices or benchmarks. The Commission further stated that it would examine other possibly appropriate representative countries in accordance with the criteria set out in 2(6a)(a) first indent of the basic Regulation.

- (48) On 30 September 2020, the Commission informed interested parties by a note ('the First Note') of the relevant sources it intended to use for the determination of the normal value. In that note, the Commission provided a list of all factors of production such as raw materials, labour and energy that might be used in the production of the product under review. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified possible representative countries (namely Argentina, Brazil, Mexico, Russia, South Africa and Turkey). The Commission received comments on the First Note from the applicant who doubted on the production of stainless steel cold-rolled flat products in Argentina, Mexico, Russia, South Africa, and Turkey.
- (49) On 23 December 2020, the Commission informed the interested parties by a second note ('the Second Note') of the relevant sources it intended to use for the determination of the normal value, with Brazil as the representative country¹⁶. It also informed interested parties that it would establish selling, general and administrative costs ('SG&A') and profit based on available information from a producer in the representative country - Aperam Inox America do Sul S.A. No comments on the Second Note were received.

3.1.2.2. *Normal value*

- (50) In recent investigations concerning the steel sector in the PRC¹⁷, the Commission found that significant distortions in the sense of Article 2(6a)(b) of the basic Regulation were present. The Commission concluded in this investigation that, based on the evidence available, the application of Article 2(6a) of the basic Regulation was also appropriate.
- (51) In those investigations, the Commission found that there is substantial government intervention in the PRC resulting in a distortion of the effective allocation of resources in line with market principles¹⁸. In particular, the Commission concluded that in the steel sector, which is the main raw material to produce the product under review, not only does a substantial degree of ownership by the GOC persist in the sense of Article 2(6a)(b), first indent of the basic Regulation¹⁹, but the GOC is also in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation²⁰. The Commission further found that

¹⁶ As established in recitals (74) to (84)

¹⁷ Commission Implementing Regulation (EU) 2021/635 of 16 April 2021 imposing a definitive anti-dumping duty on imports of certain welded pipes and tubes of iron or non-alloyed steel originating in Belarus, the People's Republic of China and Russia following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council and 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

¹⁸ See Commission Implementing Regulation (EU) 2021/635 recitals 149-150 and Commission Implementing Regulation (EU) 2020/508 recitals 158-159

¹⁹ See Commission Implementing Regulation (EU) 2021/635 recitals 115-118 and Commission Implementing Regulation (EU) 2020/508 recitals 122-127

²⁰ See Commission Implementing Regulation (EU) 2021/635 recitals 119-122 and Commission Implementing Regulation (EU) 2020/508 recitals 128-132: While the right to appoint and to remove

the State's presence and intervention in the financial markets, as well as in the provision of raw materials and inputs have an additional distorting effect on the market. Indeed, overall, the system of planning in the PRC results in resources being concentrated in sectors designated as strategic or otherwise politically important by the GOC, rather than being allocated in line with market forces²¹. Moreover, the Commission concluded that the Chinese bankruptcy and property laws do not work properly in the sense of Article 2(6a)(b), fourth indent of the basic Regulation, thus generating distortions in particular when maintaining insolvent firms afloat and when allocating land use rights in the PRC²². In the same vein, the Commission found distortions of wage costs in the steel sector in the sense of Article 2(6a)(b), fifth indent of the basic Regulation²³, as well as distortions in the financial markets in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, in particular concerning access to capital for corporate actors in the PRC²⁴.

- (52) Like in previous investigations concerning the steel sector in the PRC, the Commission examined in the present investigation whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the request, as well as in the Report, which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in the PRC's economy in general, but also the specific market situation in the relevant sector including the product under review. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in the PRC as also found by its previous investigations in this respect.
- (53) In addition to the Report, the complaint mentioned that the recent findings in the Regulation imposing provisional AD duties on imports of SSHR from China and

key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights, CCP cells in enterprises, state owned and private alike, represent another important channel through which the State can interfere with business decisions. According to the PRC's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline. In 2017, it was reported that party cells existed in 70% of some 1.86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of SSCR producers and the suppliers of their inputs.

²¹ See Commission Implementing Regulation (EU) 2021/635 recitals 123-129 and Commission Implementing Regulation (EU) 2020/508 recitals 133-138.

²² See Commission Implementing Regulation (EU) 2021/635 recitals 130-133 and Commission Implementing Regulation (EU) 2020/508 recitals 139-142.

²³ See Commission Implementing Regulation (EU) 2021/635 recitals 134-135 and Commission Implementing Regulation (EU) 2020/508 recitals 143-144.

²⁴ See Commission Implementing Regulation (EU) 2021/635 recitals 136-145 and Commission Implementing Regulation (EU) 2020/508 recitals 145-154.

elsewhere²⁵, fully apply to SSCR, as both SSCR and SSHR are essentially similar products, with SSHR being an earlier stage of the SSCR production process. The complaint added that since Chinese SSCR exporters are also producers of SSHR (when integrated) or purchase SSHR locally (re-rollers), all the factors found by the Commission to affect the production and sales of SSHR in China also directly affect the production and sale of SSCR in that country. In this case the request contained information on the distortive effects of the 13th Five Year Steel Plan on the steel industry as well as on the provision in the 13th FYP for Mineral Resources and the 13th FYP for the Non-Ferrous Metal Industry. The complaint underlines steel is a privileged industry in China, which is evidenced by the fact it is included in the Catalogue for Guiding Industry Restructuring and Guiding Opinions on Promoting Cooperation between International Capacity and Equipment Manufacturing. Furthermore, it mentioned the Ministerial Report of the G20 Global Forum on Steel Excess Capacity ("GFSEC"), which identified the following sector-specific subsidies as prospering under the GOC's auspices: preferential financing inconsistent with market-based conditions, equity infusions and conversions inconsistent with market-based conditions, grants and awards, tax exemptions, reductions and refunds, the provision of goods and services, of stainless steel inputs below market price including ferrous scrap, pig iron, coking coal, nickel and ferrochrome/chromium, and, finally, support to bankrupt companies²⁶.

- (54) As indicated in recital (42), the GOC did not comment or provide evidence supporting or rebutting the existing evidence on the case file, including the Report and the additional evidence provided by the complainant, on the existence of significant distortions and/or on the appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand.
- (55) Like in previous investigations concerning the steel sector in the PRC, the Commission examined whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the Report, which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in the PRC's economy in general, but also the specific market situation in the relevant sector including the product under review. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in the PRC as also found by its previous investigations in this respect.
- (56) Specifically in the steel sector, which is the main raw material to produce SSCR, a substantial degree of ownership by the GOC persists. Many of the largest producers are owned by the State. Some are specifically referred to in the 'Steel Industry Adjustment and Upgrading plan for 2016-2020'. For instance, the Chinese State-owned Shanxi Taiyuan Iron & Steel Co. Ltd. ("Tisco") mentions on its website that it is "a super iron and steel giant", which "developed into an extraordinary large-scale iron and steel complex, which is integrated with business of iron mining, iron and steel

²⁵ 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.

²⁶ Global Forum on steel excess capacity, Ministerial Report, 20 September 2018.

production, processing, delivery and trading²⁷. Baosteel is another major Chinese State-owned enterprise that engages in steel manufacturing and is part of the recently consolidated China Baowu Steel Group Co. Ltd. (formerly Baosteel Group and Wuhan Iron & Steel)²⁸. While the nominal split between the number of SOEs and privately owned companies is estimated to be almost even, from the five Chinese steel producers ranked in the top 10 of the world's largest steel producers, four are SOEs²⁹. At the same time, while the top ten producers only took up some 36 % of total industry output in 2016, the GOC set the target in the same year to consolidate 60 % to 70 % of steel production to around ten large-scale enterprises by 2025³⁰. This intention has been repeated by the GOC in April 2019, announcing a release of guidelines on steel industry consolidation³¹. Such consolidation may entail forced mergers of profitable private companies with underperforming SOEs³². Since there was no cooperation from Chinese exporters of SSCR, the exact ratio of the private and state owned SSCR producers could not be determined. However from the list of the Chinese SSCR producers provided by the complainant, a number are SOEs, including Tisco Shanxi Taigang Stainless Steel Co. Ltd, Baosteel Baoshan Iron and Steel Co. Ltd, Lisco Lianzhong Stainless Steel Corporation, Beihai Chengde Stainless Steel Co. Ltd, Jisco Jiuquan Iron and Steel Group Co. Ltd, Shougang Kaixi Stainless Steel, Baosteel Desheng Stainless Steel and Tangshan Stainless Steel Co. Ltd.

- (57) As to the GOC being in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation, the investigation established the existence of personal connections between producers of the product under review and the CCP, such as CCP members among the senior management or members of the board of directors in a number of companies manufacturing SSCR. In the SSCR sector, the main state owned producing exporters are often the world leading producers of SSHR and SSCR, whether integrated or not. For instance, the Chinese State-owned Shanxi Taiyuan Iron & Steel Co. Ltd. (Tisco) mentions on its website that it is “a super iron and steel giant as well as leading enterprise in global stainless steel industry”, “the biggest stainless steel enterprise equipped with globally biggest capacity and most up-to-date technology and equipment”. Accordingly, “Tisco has developed into an extraordinary large-scale iron and steel complex, which is integrated with business of iron mining, iron and steel

²⁷ TISCO, ‘Company profile’, <http://en.tisco.com.cn/CompanyProfile/20151027095855836705.html> (last viewed 2 March 2020)

²⁸ Baowu, ‘Company profile’, <http://www.baowugroup.com/en/contents/5273/102759.html> (last viewed 6 May 2021)

²⁹ Report – Chapter 14, p. 358: 51 % private and 49 % SOEs in terms of production and 44 % SOEs and 56 % private companies in terms of capacity.

³⁰ Available at: www.gov.cn/zhengce/content/2016-02/04/content_5039353.htm (last viewed 6 May 2021); https://policyn.com/policy_ticker/higher-expectations-for-large-scale-steel-enterprise/?iframe=1&secret=c8uthafuthefra4e (last viewed 6 May 2021), and www.xinhuanet.com/english/2019-04/23/c_138001574.htm (last viewed 6 May 2021).

³¹ Available at http://www.xinhuanet.com/english/2019-04/23/c_138001574.htm (last viewed 6 May 2021) and http://www.jjckb.cn/2019-04/23/c_137999653.htm (last viewed 6 May 2021).

³² As was the case of the merger between the private company Rizhao and the SOE Shandong Iron and Steel in 2009. See Beijing steel report, p. 58, and the acquired majority stake of China Baowu Steel Group in Magang Steel in June 2019, see <https://www.ft.com/content/a7c93fae-85bc-11e9-a028-86cea8523dc2> (last viewed 6 May 2021).

production, processing, delivery and trading”³³. Tisco is an example of a SSCR producer where the GOC is present by personal appointments. For example, the appointed Deputy Secretary of the CCP Committee was also nominated the President of TISCO by a decision from the Shanxi Province CCP Committee and Government³⁴.

- (58) Both public and privately owned enterprises in the SSCR sector are subject to policy supervision and guidance. The following examples illustrate the above trend of an increasing level of intervention by the GOC in the SSCR sector. Many SSCR producers explicitly emphasise party building activities on their websites, have party members in the company management and underline their affiliation to the CCP. The investigation revealed party building activities in a number of SSCR producers, including Tisco, Baosteel and Lisco.
- (59) Further, policies discriminating in favour of domestic producers or otherwise influencing the market in the sense of Article 2(6a)(b), third indent of the basic Regulation are in place in the SSCR sector.
- (60) Even though SSCR is a specialised industry and no specific policy documents guiding specifically the development of the SSCR industry as such could be identified during the investigation, the SSCR industry benefits from governmental guidance and intervention concerning the main raw material to manufacture SSCR, namely steel.
- (61) The steel industry is regarded as a key industry by the GOC³⁵. This is confirmed in the numerous plans, directives and other documents focused on steel, which are issued at national, regional and municipal level such as the ‘Steel Industry Adjustment and Upgrading plan for 2016-2020’, valid during the IP period. This Plan stated that the steel industry is “an important, fundamental sector of the Chinese economy, a national cornerstone³⁶”. The main tasks and objectives set out in this Plan cover all aspects of the development of the industry³⁷. The 13th Five-Year Plan on Economic and Social Development³⁸, applicable during the IP, envisaged support to enterprises producing high-end steel product types³⁹. It also focuses on achieving product quality, durability and reliability by supporting companies using technologies related to clean steel production, precision rolling and quality improvement⁴⁰. The ‘Catalogue for Guiding Industry Restructuring (2011 Version) (2013 Amendment)’⁴¹ (‘the Catalogue’) lists steel as an encouraged industry.

³³ TISCO, ‘Company profile’, <http://en.tisco.com.cn/CompanyProfile/20151027095855836705.html> (last viewed 2 March 2020)

³⁴ See Complaint, page 19, quoting MCI, ‘Gao Jianbing appointed as the President of TISCO’, 12 October 2018, <https://metals-consulting.com/gao-jianbing-appointed-as-deputy-party-secretary-deputy-chairman-of-the-board-and-the-president-of-tisco/> (last viewed 10 March 2020).

³⁵ Report, Part III, Chapter 14, p. 346 ff.

³⁶ Introduction to The Plan for Adjusting and Upgrading the Steel Industry.

³⁷ Report, Chapter 14, p. 347.

³⁸ The 13th Five-Year Plan for Economic and Social Development of the People’s Republic of China (2016-2020), available at https://en.ndrc.gov.cn/newsrelease_8232/201612/P020191101481868235378.pdf (last viewed 6 May 2021).

³⁹ Report – Chapter 14, p. 349.

⁴⁰ Report – Chapter 14, p. 352.

⁴¹ Catalogue for Guiding Industry Restructuring (2011 Version) (2013 Amendment) issued by Order No 9 of the National Development and Reform Commission on 27 March 2011, and amended in accordance with the Decision of the National Development and Reform Commission on Amending the Relevant Clauses of the Catalogue for Guiding Industry Restructuring (2011 Version) issued by Order No 21 of the National Development and Reform Commission on 16 February 2013.

- (62) As can be seen from the above examples concerning steel, which is an important raw materials to produce SSCR, the GOC further guides the development of the SSCR sector in accordance with a broad range of policy tools and directives and controls virtually every aspect in the development and functioning of the sector. Thus, the SSCR industry benefits from governmental guidance and intervention concerning the main raw materials to manufacture SSCR, namely steel.
- (63) In addition to the above, the SSCR producers are also beneficiaries of state subsidies, which clearly indicates the interest of the state in this sector. During the investigation, the Commission established that a number of SSCR producers benefited from direct state subsidies, including Tisco, Baosteel and Tangsteel.
- (64) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives of supporting encouraged industries, including the production of steel, iron and ferroalloys as the main raw materials used in the manufacturing of SSCR. Such measures impede market forces from operating freely.
- (65) The present investigation has not revealed any evidence that the discriminatory application or inadequate enforcement of bankruptcy and property laws according to Article 2(6a)(b), fourth indent of the basic Regulation in the SSCR sector referred to above in recital (51) would not affect the manufacturers of the product under review.
- (66) The SSCR sector is also affected by the distortions of wage costs in the sense of Article 2(6a)(b), fifth indent of the basic Regulation, as also referred to above in recital (51). Those distortion affect the sector both directly (when producing the product under review or the main inputs), as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in the PRC)⁴².
- (67) Moreover, no evidence was submitted in the present investigation demonstrating that the SSCR sector is not affected by the government intervention in the financial system in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, as also referred to above in recital (51). Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.
- (68) Finally, the Commission recalls that in order to produce SSCR, a number of inputs are needed. When the producers of SSCR purchase/contract these inputs, the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system that applies across all levels of government and sectors.
- (69) As a consequence, not only the domestic sales prices of SSCR are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts A and B of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that in itself

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See Commission Implementing Regulation (EU) 2021/635 recitals 134-135 and Commission Implementing Regulation (EU) 2020/508 recitals 143-144.

was produced in the PRC by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth.

- (70) No evidence or argument to the contrary has been adduced by the GOC or the exporting producers in the present investigation.
- (71) In sum, the evidence available showed that prices or costs of the product under review, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case. Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as discussed in the following section.
- (72) At final disclosure the Commission received two submissions from LSI and Euranimi concerning the application of Article 2(6a). LSI and Euranimi both argued that the findings concerning significant distortions are based to a large extent on the findings in the China Report, which however according to LSI and Euranimi lacks the formal and substantive characteristics for being considered a formal European Commission's Report and cannot be used as a means of proof for the purpose of determining the existence of significant distortions. This is because, first, the report is published as a Staff Working Document, which according to LSI and Euranimi is not sufficient to give it a formal character and secondly it was not made public nor updated in accordance with the requirements set out in Article 2(6a) of the basic anti-dumping regulation.
- (73) The Commission recalls that the provisions of Article 2(6a)(c) do not prescribe a specific format in which a country report needs to be published, nor its channel of publication. Therefore the publication of the China report as a staff working document, a type of document which does not require translation into all European languages, nor formal publication in the Official Journal, complies with the relevant rules. The Commission further notes that the report has been publicly available since December 2017 on the Commission's website and thus any interested party has ample opportunity to rebut, supplement or comment on it and the evidence on which it is based. No evidence was provided by LSI or Euranimi, or any other interested party, which would have shown that the report is outdated. In fact, the Report is mostly based on the 13th Five-Year Plans covering years 2016-2020, which were applicable during the IP. Therefore, this argument is rejected.
 - (a) Representative country
 - (1) *General remarks*
- (74) The choice of the representative country was based on the following criteria pursuant to Article 2(6a) of the basic Regulation:

- A level of economic development similar to the PRC. For this purpose, the Commission used countries with a gross national income per capita similar to the PRC on the basis of the database of the World Bank⁴³;
- Production of the product under review in that country⁴⁴;
- Availability of relevant public data in the representative country;
- Where there is more than one possible representative country, preference was given, where appropriate, to the country with an adequate level of social and environmental protection.

(75) As explained in recitals (48) and (49), the Commission issued on 30 September and 23 December 2020 two notes to the file on the sources for the determination of the normal value and production factors (the ‘First Note’ and the ‘Second Note’). In the Second Note, the Commission informed interested parties of its conclusion that Brazil was an appropriate representative country in the present case.

(2) A level of economic development similar to the PRC

(76) In the First Note, the Commission identified Argentina, Brazil, Mexico, Russia, South Africa and Turkey as countries with a similar level of economic development as the PRC according to the World Bank, i.e. they are all classified by the World Bank as ‘upper-middle income’ countries on a gross national income basis.

(77) No comments were received concerning the level of economic development following that note.

(3) Production of the product under review in the representative country

(78) In the First Note, the Commission indicated that production of the product under review was identified in Argentina, Brazil, Mexico, Russia, South Africa and Turkey. However, South Africa was excluded as a potential representative country, since only one producer of the product under review was identified, with no publicly available financial statements for the review investigation period.

(79) Comments were received from the applicant concerning the production of the product under review in possible representative countries following the First Note. The applicant claimed that companies listed in the First Note with the exception of one company in Brazil do not produce the product under review and submitted detailed explanation for each company. The applicant consequently argued that there is no production of the product under investigation in Argentina, Mexico, Russia and Turkey.

(80) After analysing and cross-checking where possible the above mentioned information supplied by the applicant the Commission found that companies in Argentina, Mexico, Russia, and Turkey identified in the First Note as potential producers did not produce the product under review during the review investigation period but rather other types of steel products not covered by the current review investigation.

⁴³ World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>.

⁴⁴ If there is no production of the product under review in any country with a similar level of development, production of a product in the same general category and/or sector of the product under review may be considered.

- (81) With regard to South Africa, no companies that produce the product under review with publicly available financial statements could be identified. No comments have been received in that regard.
- (82) Consequently, the Commission no longer considered Argentina, Mexico, Russia, South Africa and Turkey as a possible representative countries. The Commission therefore concluded in the Second Note that Brazil was the only country with a level of economic development similar to the PRC in which there was a production of the product under review during the review investigation period.

(4) Availability of relevant public data in the representative country

- (83) The Commission further verified the availability of the public data in Brazil, and in particular public financial data from the producers of the product under review.
- (84) The Commission looked for SSCR producers with publicly available financial data that could be used to establish undistorted and reasonable amounts for SG&A expenses and profit. The Commission restricted the search to companies with publicly available profit and loss statements for the RIP and that were profitable in this period. Moreover, preference was given to SSCR producers having their financial statements publicly available at a company level rather than at a consolidated level for the respective entire group. Based on the above, one company in Brazil was identified in the Second Note namely Aperam Inox America do Sul S.A.
- (85) Based on the quality and detail of the publicly available financial data available in Brazil, and also considering the availability and representativeness of the benchmarks for factors of production, the Commission considered that Brazil was an appropriate representative country.
- (86) The Commission carefully analysed all relevant data available in the file for the factors of production in Brazil and noted the following:
- The Commission analysed the import statistics of all factors of production listed in the First Note, as updated by the Second Note, and concluded that there were imports of all the factors of production necessary for the production of the product under review in the RIP except nickel (see recital (101)).
 - Energy statistics (prices for electricity) for the RIP was readily available in the form of data provided by the company EDP Brazil⁴⁵;
 - Statistics for labour cost were available on the website of the International Labour Organisation⁴⁶.
- (87) According to Article 2(6a)(a) of the basic Regulation, the constructed normal value shall include an undistorted and reasonable amount for SG&A and for profits. As stated in recital (112), the Commission held that Aperam Inox America do Sul S.A. had publicly available financial statements that could be used as a proxy to determine an undistorted and reasonable amount for SG&A and profits.

⁴⁵ [https://www.edp.com.br/distribuicao-es/saiba-mais/informativos/tarifas-aplicadas-a-clientes-atendidos-em-alta-e-media-tensao-\(grupo-a\)](https://www.edp.com.br/distribuicao-es/saiba-mais/informativos/tarifas-aplicadas-a-clientes-atendidos-em-alta-e-media-tensao-(grupo-a))

⁴⁶ https://www.ilo.org/ilostat/faces/oracle/webcenter/portalapp/pagehierarchy/Page21.jspx?_afzLoop=2007202804813928&_afzWindowMode=0&_afzWindowId=ejmgka3iz_63#!%40%40%3F_afzWindowId%3Ddejmgka3iz_63%26_afzLoop%3D2007202804813928%26_afzWindowMode%3D0%26_adf.ctrl-state%3Ddejmgka3iz_119

(5) *Level of social and environmental protection*

- (88) Having established that Brazil was an appropriate representative country on the basis of these elements, there was no need to carry out an assessment of the level of social and environmental protection in accordance with the last sentence of Article 2(6a)(a) first indent of the basic Regulation.

(6) *Conclusion on representative country*

- (89) In view of the above analysis, Brazil met all the criteria laid down in Article 2(6a)(a), first indent, of the basic Regulation, in order to be considered as an appropriate representative country. In particular, Brazil had a production of the product under review and a complete set of data available for all factors of production, SG&A and profit.

(b) *Sources used to establish undistorted costs*

- (90) In the Second Note, the Commission stated that, in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it would use GTA to establish the undistorted cost of most of the factors of production in the representative country.
- (91) The Commission further stated that the statistics of the ILO would be used to establish the undistorted costs of labour in the representative country; while national statistics, as referred to in recital (86), would be used to establish undistorted energy costs.
- (92) The Commission included in the calculation a value for manufacturing overhead costs in order to cover costs not included in the factors of production referred to above. To establish this amount, it made use of the financial data of one of the Union producers, namely Aperam Stainless Europe, provided by the applicant (see recital (111)).
- (93) Finally, as stated in the Second Note, the Commission used the financial data from the selected Brazilian company, indicated in recital (112) to establish SG&A costs and profits.

(c) *Undistorted costs and benchmarks*

- (94) Through the two notes on production factors, the Commission sought to establish a list of factors of production and sources intended to be used for all factors of production such as materials, energy and labour used in the production of the product under review by the producers in the PRC.
- (95) In the absence of cooperation by Chinese exporting producers in the review procedure, the Commission had to rely on the applicant in order to establish the factors of production used in the production of SSCR.
- (96) In the request and the comments to the First Note the applicant highlighted that the production process in China is fundamentally different from the production process in the Union. This is in particular the case in the melting phase, where the Chinese producers rely overwhelmingly on the use of nickel pig iron whereas the Union producers' main feedstock is stainless steel scrap. The applicant urged the Commission to account for this difference in production process and recommended the Commission to calculate the value of nickel pig iron on the basis of the average LME

Nickel cash settlement value for 2019 as available from public sources⁴⁷. Other interested parties did not comment.

- (97) The Commission explained in the Second Note that the calculation of the normal value and the corresponding list of factors of production was based only on the steel grade mostly sold in and exported to the Union according to the information submitted in the request and also taking into account the comments received from the applicant on the first Note. No comments have been received in that regard.
- (98) In the absence of cooperation, the Commission did not have more detailed tariff codes for each factor of production than the 6-digit HS codes, which matched fully with the Brazilian tariff codes.
- (99) Considering all the information submitted by the applicant and the absence of any other comments on the two notes on the sources for the determination of the normal value concerning the factors of production, the following factors of production and tariff codes, have been identified:

Table 1
Factors of production of SSCR

Factor of Production	HS Code	Source of data	Unit undistorted value Euro	Unit
Raw Material				
Carbon scrap	7204 49	GTA	0,38	kg
Stainless steel scrap	7204 21	GTA	1,01	kg
Ferro-chromium containing by weight >4% of carbon	7202 41	GTA	1,23	kg
Ferro-chromium alloys	7202 41	GTA	1,23	kg
Nickel (see recital (100))	7502 10	International benchmark Westmetall ⁴⁸	13,51	kg
Ferrous Waste and Scrap	7204 49	GTA	0,38	kg
Stainless Steel Waste And Scrap	7204 21	GTA	1,01	kg
Other ferro-silicon alloys	7202 29	GTA	1,54	kg
Labour				
Labour wages in manufacturing sector (see recitals (105) to (107))	[N/A]	ILO	3,85	EUR/hour
Energy				
Electricity (see recitals (108) to (109))	[N/A]	EDP Brasil	81,32	EUR/MWh

⁴⁷ <https://www.westmetall.com/en/home.html>

⁴⁸ https://www.westmetall.com/en/markdaten.php?action=show_table_average&field=LME_Ni_cash#y2019

(109))				
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(1) *Raw materials*

- (100) In order to establish undistorted prices of materials as delivered at the gate of the producer's factory as provided by Article 2(6a)(a), first indent and considering that there were no cooperating producers in the PRC, the Commission used the import prices into the representative country as reported in the GTA database for each material used in the production of SSCR with the exception of nickel.
- (101) Nickel was used to calculate the input values of Ferronickel and Nickel Pig Iron which were not imported in Brazil during the review investigation period and which represent about one third of the ex work normal value. Moreover, the import volume of nickel in Brazil was considered not representative. Therefore, in order to calculate undistorted benchmarks for Ferronickel and Nickel Pig Iron, the following assumptions have been considered in line with the information presented in the request:
- Ferro-nickel was estimated as containing 21.8% of Nickel and 78.2% of Iron;
 - Low Nickel Pig Iron was estimated as containing 10% of Nickel, 85% of Iron;
 - Iron was assimilated to ferrous waste and scrap; and
 - the remaining chemical elements were not considered.
- This methodology was explained in the Second note (see recital (43)) and no comment was received.
- (102) The import price in the representative country was determined as a weighted average of unit prices of imports from all third countries excluding the PRC. The Commission decided to exclude imports from the PRC into the representative country as it concluded in recital (71) that it is not appropriate to use domestic prices and costs in the PRC due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected export prices.
- (103) Import volumes in the representative country from non-WTO members listed in Annex 1 of Regulation (EU) 2015/755 were also excluded. Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value.
- (104) In order to establish the undistorted price of raw materials, delivered at the gate of the exporting producer's factory as provided by Article 2(6a)(a), first indent of the basic Regulation, the Commission applied an average of import duty in the representative country, at the respective levels. Furthermore, the Commission added domestic transport costs calculated per kg on the basis of information provided by the applicant.

(2) *Labour*

- (105) To establish the benchmark for labour costs, the Commission used the ILO statistics⁴⁹ together with publicly available information on additional labour costs incurred by employers in Brazil⁵⁰.

⁴⁹ Available at <https://ilostat.ilo.org/data/country-profiles/>

⁵⁰ Available at <https://establishbrazil.com/articles/whats-real-cost-employee>

- (106) The ILO statistics provided data on the mean weekly hours actually worked per employed person in the manufacturing sector in Brazil during the RIP⁵¹.
- (107) Using that data, the Commission calculated an hourly salary in manufacturing, to which additional labour related costs borne by the employer were added.

(3) *Electricity*

- (108) The electricity price charged by one of the largest electricity suppliers in Brazil, the company EDP Brasil, was readily available⁵². The information was detailed enough to identify the price of electricity and the price for the use of the distribution system (modalidade tarifaria azul) paid by industrial users.
- (109) It should be noted that in Brazil, the regulatory authority Agência Nacional de Energia Elétrica⁵³ ('ANEEL') obliges the electricity suppliers to increase their tariffs by a certain percentage to regulate the consumption of electricity in the country. ANEEL uses a flag system⁵⁴ (green, yellow, red 1, red 2) to signal whether the electricity price should remain as proposed by the supplier (green) or increased by 0,01343 BRL/kWh (yellow), 0,04169 BRL/kWh (red 1), or 0,06243 BRL/kWh (red 2). The flags are published by ANEEL on a monthly basis and for the investigation period were readily available on the website of EDP Brazil⁵⁵. When determining the undistorted costs of electricity, the Commission took into account the flags applied during the investigation period and adjusted the price accordingly.

(d) Manufacturing overhead costs, SG&A and profits

- (110) According to Article 2(6a)(a) of the basic Regulation, "the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits". In addition, a value for manufacturing overhead costs needs to be established to cover costs not included in the factors of production referred to above.
- (111) In order to establish an undistorted value of the manufacturing overheads and given the absence of cooperation from the Chinese producers, the Commission used facts available in accordance with Article 18 of the basic Regulation. Further to the factors of production summarised under recital (99) above, manufacturing overhead costs were calculated. In view of the lack of cooperation from Chinese producers, the calculation of these manufacturing overhead costs was based on the ratio of manufacturing overhead divided by the cost of manufacturing reported to produce one tonne of the steel grade mostly produced and sold in the Union. This percentage was applied to the undistorted costs of manufacturing.
- (112) For SG&A and profit, the Commission used the financial data of the Brazilian producer Aperam Inox America do Sul S.A.⁵⁶. The Commission calculated the percentage of SG&A and profit over the cost of goods sold ('COGS'). Publicly

<https://www.jornalcontabil.com.br/quanto-custa-um-funcionario-aprenda-a-calcular/>

<https://thebrazilbusiness.com/article/introduction-to-fgts>

⁵¹ Available at https://www.ilo.org/shinyapps/bulkexplorer17/?lang=en&segment=indicator&id=HOW_TEMP_SEX_ECO_NB_A

⁵² Available at [http://www.edp.com.br/distribuicao-es/saiba-mais/informativos/tarifas-aplicadas-a-clientes-atendidos-em-alta-e-media-tensao-\(grupo-a\)](http://www.edp.com.br/distribuicao-es/saiba-mais/informativos/tarifas-aplicadas-a-clientes-atendidos-em-alta-e-media-tensao-(grupo-a))

⁵³ Available at <https://www.aneel.gov.br/>

⁵⁴ Available at <http://www.aneel.gov.br/bandeiras-tarifarias>

⁵⁵ Available at <http://www.edp.com.br/distribuicao-es/saiba-mais/informativos/bandeira-tarifaria>

⁵⁶ <http://www.jornalminasgerais.mg.gov.br/autenticidade> under the following numbers: 320200406203909022, 320200406203909023, 320200406203909024 and 320200406203909025

available audited accounts of this company were made available to the interested parties as an attachment to the Second Note.

(e) Calculation of normal value

- (113) On the basis of the above, the Commission constructed the normal value for a basic product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (114) First, the Commission established the undistorted manufacturing costs. In the absence of cooperation by the exporting producers, the Commission relied on the information provided by the applicant in the request on the consumption of each factor of production (raw materials, labour and energy) for the production of the product under review as described in recitals (100) to (109). The Commission multiplied the consumption ratios by the undistorted costs per unit established in Brazil, as described in Section d) above.
- (115) The calculation was done for one basic type of SSCR, i.e. for grade 304; which was the steel grade mostly sold in and exported to the Union, see recital (97).
- (116) Second, to arrive at the undistorted costs of production, the Commission added the percentage of the manufacturing overheads determined as described in recital (111) to the undistorted costs of manufacturing.
- (117) Finally, in addition to the cost of production established as described in recitals (100) to (116), the Commission applied the SG&A and profit in the representative country established as explained in recital (112). The SG&A and profit expressed as a percentage of COGS and applied to the undistorted costs of production amounted to 7,5% and 14,5% respectively.
- (118) On that basis, the Commission constructed the normal value on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation. Due to the fact that no exporting producers cooperated, the normal value was established on a countrywide basis.

3.1.2.3. *Export price*

- (119) In the absence of cooperation by the Chinese exporting producers, the export price was determined based on CIF Eurostat data corrected to ex-works level. Thus, the CIF export price was reduced by the sea freight and insurance costs⁵⁷ and domestic transport cost in China⁵⁸.

3.1.2.4. *Comparison and dumping margin*

- (120) The Commission compared the constructed normal value for one product type (see recital (115)), established in accordance with Article 2(6a)(a) of the basic Regulation, with the export price as established above.
- (121) On that basis, the weighted average dumping margin for imports from China, expressed as a percentage of the CIF Union frontier price, duty unpaid, amounted to 17,9 %.

3.1.2.5. *Conclusion*

⁵⁷ On the basis of the OECD Dataset: International Transport and Insurance Costs of Merchandise Trade (ITIC) – China-the Netherlands. https://stats.oecd.org/Index.aspx?DataSetCode=CIF_FOB_ITIC

⁵⁸ On the basis of quotation for Tianjin port – Beijing deliveries as provided by World Bank <https://www.doingbusiness.org/content/dam/doingBusiness/country/c/china/CHN.pdf> p.88

- (122) The Commission concluded that imports of the product under review from China were dumped during the review investigation period. However, the volume of imports in question was limited, accounting to 1,8 % of total imports and corresponding to 0,4 % market share. Therefore, the Commission investigated also the likelihood of continuation of dumping.

3.1.3. Likelihood of continuation of dumping should the measures be allowed to lapse.

- (123) Further to the finding of dumping during the review investigation period, the Commission investigated the likelihood of continuation of dumping should the measures be allowed to lapse, in accordance with Article 11(2) of the basic Regulation. The following additional elements were analysed: the production capacity and spare capacity in the PRC, the attractiveness of the Union market and the relation between export prices to third countries and the price level in the Union.

3.1.3.1. Production capacity and spare capacity in the PRC

- (124) Given the non-cooperation of the GOC and Chinese producers, the production capacity and spare capacity in the PRC were established on the basis of facts available and in particular the information provided by the applicant, in accordance with Article 18 of the basic Regulation .
- (125) According to the applicant, the production capacity in the PRC substantially exceeds the current production volumes and internal demand on the Chinese market. Therefore, the Commission considered the discrepancy between the production capacity and the actual production and demand on the Chinese market as shown below to be representative for the product under review.
- (126) According to the data provided in the request, the production of SSCR in the PRC during the review investigation period amounted to 16 million tonnes, while the apparent consumption amounted to 14,8 million tonnes and the production capacity was at 18,0 million tonnes. According to the applicant, the spare production capacity of the product under review in the PRC thus amounted to 2 million tonnes which represented 62,5 % of the Union consumption of SSCR in the review investigation period, and the production capacity increased by 64% from 11,0 million tonnes in the previous proceeding (2013) to 18,0 million tonnes in the RIP.
- (127) Based on the above, the Commission concluded that the Chinese exporting producers have significant capacities, which they could use to produce SSCR to export to the Union if the measures were allowed to lapse.

3.1.3.2. Attractiveness of the Union market

- (128) There is a wide range of trade defence measures and other import restrictions in force against exports of SSCR originating in the PRC. According to Global Trade Alert, anti-dumping measures are applied in Brazil, Canada, Malaysia, Mexico, Taiwan, Thailand, United Kingdom, USA, and Vietnam, and countervailing duties are applied in the USA. Those measures not only demonstrate that the unfair trade practices of the Chinese SSCR producers continue, but they also limit the access of Chinese producers to the above listed markets.
- (129) Moreover, the Union market is a very large market, with a total annual consumption of over 3,2 million tonnes during the review investigation period, representing 62,5 % the Chinese spare capacity.
- (130) Considering the trade defence measures on other markets and the Union market size, the Commission concluded that the Union market is an attractive market for Chinese

producers of SSCR and that it is likely that they would (re-)direct exports towards the Union should the current measures be allowed to lapse.

3.1.3.3. Relationship between export prices to third countries and the export price level to the Union

- (131) As there was no cooperation from Chinese producers, the Commission used the relevant country specific GTA⁵⁹ import statistics to analyse the Chinese export prices to the Union and to third countries.
- (132) The Commission identified the six biggest importers of SSCR from the PRC during the review investigation period: South Korea, Russia, Vietnam, Turkey, India and Indonesia. They represented 36% of the Chinese exports of the product under review during the review investigation period.
- (133) The Commission compared these respective export prices with the Chinese export price to the Union on an ex-works basis. The Commission found that Chinese export prices to these six countries were on average [19 % - 37 %] lower than average Chinese sales prices to the European Union.
- (134) On that basis, the Commission concluded that the price level difference between Chinese export prices to the Union, on the one hand, and Chinese export prices to their other main export markets is a clear incentive for Chinese exporting producers to intensify the dumping practised on the Union market.

3.1.3.4. Conclusion on the likelihood of continuation or recurrence of dumping

- (135) The investigation showed that Chinese imports continued to enter the Union market at dumped prices during the review investigation period.
- (136) Moreover, the Commission found that sales by the Chinese exporting producers to their most important export markets are made at considerably lower prices than to the Union, and that a large number of other countries have imposed trade defence measures against Chinese exports of SSCR.
- (137) Further to the above, the Commission found that the spare capacity in China alone accounts for more than 60 % of Union consumption during the review investigation period and that the Union market is very attractive to Chinese exporting producers in view of its size and prices.
- (138) Consequently, in view of the continued dumping during the review investigation period, the pricing behaviour of the Chinese exporters in third markets, the existing spare capacity in PRC, the size of the Union market and the prevailing prices on that market and trade defence measures and other import restrictions in force against exports of SSCR originating in the PRC on another important markets, the Commission concluded that there is a strong likelihood that dumping from PRC would continue and in any event would recur with significantly increased volumes, should the measures be allowed to lapse.

3.2. Taiwan

3.2.1. Preliminary remarks

- (139) During the review investigation period, imports of the product under review from Taiwan continued at around the same levels as in the investigation period of the

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<https://connect.ihsmarkit.com/gta/data-extracts>

original investigation ((i.e. from 1 January 2013 to 31 December 2013). According to Eurostat, imports of SSCR from Taiwan represented a market share of 5,3 % of the Union market in the review investigation period compared to 5,1 % market share during the original investigation. In absolute terms, the level of imports from Taiwan slightly fell from 169 097 tonnes in the investigation period of the original investigation to 165 540 tonnes in the RIP.

- (140) As indicated in recital (24), none of the exporters/producers from Taiwan cooperated in the investigation. Thus, the exporting producers failed to submit questionnaire replies, including any data on export prices and costs, domestic prices and costs, consumption of inputs in the production process, manufacturing overheads, capacity, production, investments, etc.
- (141) Therefore, the Commission informed the authorities of Taiwan that due to the absence of cooperation, the Commission might apply Article 18 of the basic Regulation concerning the findings with regard to Taiwan. The Commission did not receive any comments.
- (142) Consequently, in accordance with Article 18(1) of the basic Regulation, the findings in relation to the likelihood of continuation or recurrence of dumping with regard to Taiwan were based on facts available, in particular the information contained in the request for the expiry review, combined with other sources of information, such as trade statistics on imports and exports (Eurostat and GTA).

3.2.2. Continuation of dumping of imports during the review investigation period

3.2.2.1. Normal value

- (143) As mentioned in recitals (140)-(142) above, the non-cooperation from exporting producers in Taiwan forced the Commission to use facts available in establishing the normal value. To this end, the information submitted by the applicant was used.
- (144) To establish the normal value, the Commission used the adjusted average Taiwanese domestic selling prices of different grades and dimensions of SSCR in 2019, as provided by the applicant based on market intelligence. According to the applicant, these prices needed to be adjusted to a profitable level as domestic sales prices in Taiwan were deemed loss-making given the price pressure from significant imports penetrating the Taiwanese market.
- (145) The Commission found that the applicant's assumption that domestic sales prices in Taiwan were loss-making and therefore needed to be adjusted reasonable, as it was supported not only by the fact that imports increasingly penetrated the Taiwanese market but also because the largest Taiwanese producer of the product under review reported an overall loss in its 2019 annual report.⁶⁰
- (146) In accordance with Article 2(3) of the basic Regulation, normal value was therefore constructed by adding to the loss making sales price, which is deemed to include cost of production and selling, general and administrative ('SG&A') expenses incurred by the not cooperating exporting producer on domestic sales of the like product, a reasonable profit. In the absence of any other reliable and verified profit the Commission used the profit claimed by the applicant, i.e. 6 %. The Commission had

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https://www.dnb.com/business-directory/company-profiles.yieh_united_steel_corporation.19b5298d581ade1c2273b1ac84f5230c.html#financials-anchor

no indication that this profit would exceed the normal profit margin realised by an exporting producer.

3.2.2.2. *Export price*

- (147) Due to the non-cooperation from the exporting producers in Taiwan, the Commission had to use facts available in establishing the export price.
- (148) Therefore, the export price was determined based on prices of Taiwanese exports of the product under review as reported in Eurostat. Exports from Chia Far Industrial Factory Co., Ltd, the sole Taiwanese producer with a 0 % AD duty and thus formally excluded from the proceeding, were excluded from this calculation. Those imports represented in volume less than 10 % of imports from Taiwan. The CIF Eurostat prices thus obtained were adjusted to ex-works level by deducting freight and insurance costs and domestic transport cost in Taiwan⁶¹.

3.2.2.3. *Comparison*

- (149) The Commission compared the normal value and the export price of the product under review on an ex-works basis.
- (150) The above comparison showed a countrywide dumping margin for the exports from Taiwan to the Union, expressed as a percentage of the CIF value, of 12 %. It was therefore concluded that dumping continued during the review investigation period.

3.2.2.4. *Conclusion*

- (151) The Commission therefore concluded that dumping from Taiwan continued during the review investigation period. The Commission further notes that dumped exports were made at significant volumes, representing 5,3 % of the Union market during the review investigation period.

3.2.3. **Likelihood of continuation of dumping should measures be allowed to lapse**

- (152) The Commission investigated in accordance with Article 11(2) of the basic Regulation the likelihood of continuation of dumping, should the measures be allowed to lapse. The following additional elements were analysed: the production capacity and spare capacity in Taiwan, the attractiveness of the Union market and the relation between export prices to third countries and the price level in the Union.

3.2.3.1. *Production capacity and spare capacity in Taiwan*

- (153) According to data provided by the applicant, the spare capacities of Taiwanese producers amounted to 638 000 tonnes in 2019, which correspond to a market share of 18,5 % in the Union.
- (154) Based on the above, the Commission concluded that the Taiwanese exporting producers have considerable spare capacities, which they could use to export the product under review to the Union if measures were allowed to lapse.

3.2.3.2. *Attractiveness of the Union market*

- (155) The investigation established that in terms of size, the Union is, with a total consumption of more than 3,2 million tonnes during the review investigation period

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On the basis of the publicly available data in the Taiwan Doing Business Report 2020 (page 264 of the annexes part 2 of the request), an overall cost of 105,70 EUR/tonne was deducted from CIF to ex-works level.

(see recital (172)), the second largest single market for the product under review, only after China. Its size is an important factor contributing to its attractiveness.

- (156) In spite of the anti-dumping measures in place, Taiwanese exporting producers continued to sell significant volumes of SSCR to the Union market, making it by far its most important export market (see recital (158)). That fact also demonstrates that the Union market is an important and interesting destination for the Taiwanese industry.
- (157) These factors demonstrate that the Union is an attractive export market for Taiwanese exporting producers.

3.2.3.3. *Relationship between export prices to third countries and the price level in the Union*

- (158) In the absence of cooperation from the Taiwanese exporting producers, the comparison of Taiwanese export prices to the Union with Taiwanese export prices to other export markets during the review investigation period was based on data from GTA.
- (159) In the review investigation period, according to the GTA database, the Union was Taiwan's most important export market (22 % of exports). The second important export destination for Taiwan was Turkey (7 % of exports), followed by 11 countries which each represented 3 % - 6 % of Taiwanese exports. The Commission found that Taiwanese export prices to Turkey as well as some of these 11 countries were (sometimes significant) below export prices to the Union.
- (160) The constant and still significant market share of Taiwanese exports in the Union during the RIP confirms that price levels to the Union were attractive.
- (161) On that basis, the Commission concluded that the price level difference between Taiwanese export prices to the Union, on the one hand, and Taiwanese export prices to their other main export markets is a clear incentive for Taiwanese exporting producers to further increase the dumping practised on the Union market in the review investigation period.

3.2.3.4. *Conclusion on the likelihood of continuation of dumping*

- (162) The investigation showed that Taiwanese exports continued to enter the Union market at dumped prices during the review investigation period.
- (163) Furthermore, the Commission found that the spare capacity in Taiwan is rather significant and corresponds to 18,5 % of the total Union consumption during the review investigation period.
- (164) Moreover, the attractiveness of the Union market was demonstrated by the fact that it is one of the largest markets worldwide and that Taiwanese exporting producers continued to sell significant volumes on that market in spite of the measures in place
- (165) In addition, the investigation showed that prices of Taiwanese exports to several important third country markets were well below Taiwanese sales prices to the Union.
- (166) In view of the above, the Commission concluded that there is a strong likelihood that dumping from Taiwan would continue and that there will be a likely significant increase of imports at dumped prices should the measures be allowed to lapse.
- (167) Consequently, the Commission concluded that there was a likelihood of continuation of dumping, if measures were not extended.

4. INJURY

4.1. Definition of the Union industry and Union production

- (168) The like product was manufactured by 13 known producers in the Union during the review investigation period. They constitute the ‘Union industry’ within the meaning of Article 4(1) of the basic Regulation.
- (169) The total Union production during the review investigation period was established at around 3,1 million tonnes. The Commission established this figure on the basis of all the available information concerning the Union industry, namely the remotely cross-checked questionnaire replies received from Eurofer and the sampled Union producers.
- (170) As indicated in recital (13), three Union producers were selected in the sample, representing over 60 % of total Union production of the like product. They are all vertically integrated producers.

4.2. Union consumption

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

Table 2 – Union consumption (tonnes)

	2017	2018	2019	RIP
Union consumption	3 691 581	3 725 022	3 450 240	3 197 395
<i>Index</i>	100	101	93	87
<i>Source:</i> Eurofer, sampled Union producers and Eurostat				

- (173) During the period considered, the Union consumption decreased by 13 %.

4.3. Imports from the countries concerned

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

- (174) The Commission established the volume of imports from the countries concerned on the basis of Eurostat statistics. The market share of the imports was established based on of the Union consumption as set out in recital (171).
- (175) Imports from the countries concerned over the period concerned developed as follows:

Table 3 - Import volumes (tonnes) and market share

	2017	2018	2019	RIP
PRC	7 543	7 493	9 816	12 546
<i>Index</i>	100	99	130	166
Market share	0,2 %	0,2 %	0,3 %	0,4 %

<i>Index</i>	100	98	139	192
Taiwan	194 430	213 577	178 758	159 110
<i>Index</i>	100	110	92	82
Market share	5,3 %	5,7 %	5,2 %	5,0%
<i>Index</i>	100	109	98	94
Total countries concerned	201 973	221 070	188 574	171 656
<i>Index</i>	100	109	93	85
Market share	5,5 %	5,9 %	5,5 %	5,4 %
<i>Index</i>	100	108	100	98
<i>Source: Eurostat</i>				

- (176) Imports from the PRC were very low throughout the period considered albeit they increased in the period considered by 66 % and doubled their market share.
- (177) Imports from Taiwan showed an increase of 10 % from 2017 to 2018, but decreased from 2018 to the RIP with 28 percentage points, keeping a market share of around 5,5 % during the period considered.
- (178) The imports from one Taiwanese exporting producer found not to be dumping in the original investigation, as explained in recital (4), were deducted from the dumped imports in the injury analysis. For confidentiality reasons the volume and market share of these imports cannot be disclosed, however they were found to be of a very small volume, with a market share significantly below 1 %, and did not affect the trend of the development of the volume and the market share of the imports from the countries concerned during the period considered.

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

- (179) The Commission established the prices of imports on the basis of Eurostat data.
- (180) The weighted average price of imports from the countries concerned during the period considered developed as follows:

Table 4 - Prices of the imports from the countries concerned (EUR/tonne)

	2017	2018	2019	RIP
PRC	2 376	2 352	2 293	2 228
<i>Index</i>	100	99	96	94
Taiwan	1 658	1 749	1 687	1 657
<i>Index</i>	100	106	102	100

Source: Eurostat

- (181) Regarding imports from Taiwan, an increase of the average unit price was observed between 2017 and 2018, however between 2018 and the review investigation period the price of imports from Taiwan returned to its 2017 level. The average prices of imports from Taiwan were below the average prices of the Union industry throughout the whole period considered.
- (182) Due to its insignificant volume, the imports from the Taiwanese exporting producer found not to be dumping in the original investigation had no impact on the level and trend of the average unit price of imports from Taiwan.
- (183) The Chinese import price showed a decreasing trend during the period considered, resulting in a 6 % lower price in the review investigation period compared to the price at the beginning of the period considered. The average unit price of Chinese imports was higher than those of the Union industry, however the import volumes from the PRC were very small (i.e. 0,4 % in market share).
- (184) Since there was no cooperation from exporting producers in the PRC and Taiwan, the Commission determined price undercutting during the review investigation period by comparing:
- (a) the weighted average sales price of the three sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and
 - (b) the corresponding weighted average prices of imports from the countries concerned to the Union market, established on a cost, insurance, freight (CIF) basis as reported in Eurostat, including the anti-dumping duty with appropriate adjustments for post-importation costs.
- (185) The imports from the Taiwanese exporting producer found not to be dumping in the original investigation, were excluded from this price undercutting calculation.
- (186) The result of the comparison was expressed as a percentage of the sampled Union producers' turnover during the review investigation period.
- (187) The comparison showed for imports from Taiwan an average undercutting in the Union market during the review investigation period of 16,9 %, despite the antidumping duties applied.
- (188) The imports from the PRC did not undercut the prices of the Union market during the review investigation period, as the prices with antidumping duties were higher than Union industry prices. However, when looking at Chinese export prices to other third countries⁶², the latter did undercut the Union market by 29,3 %. Also, as explained in recital (248) the current import prices without anti-dumping duties, though still slightly higher than prices of the Union industry⁶³, would result to an underselling margin of 6,7 %.

4.4. Imports from third countries other than the PRC and Taiwan

- (189) The imports of the product under review from third countries other than the PRC and Taiwan were mainly from Korea, India and Indonesia.

⁶² Export data from Global Trade Atlas

⁶³ Negative undercutting margin of 4 %.

- (190) The volume of imports as well as the market share and price trends for imports of the product under review from other third countries developed as follows:

Table 5 – Imports from third countries

Country		2017	2018	2019	RIP
Republic of Korea	Volume (tonnes)	147 695	165 812	160 947	164 429
	<i>Index</i>	100	112	109	111
	Market share	4,0 %	4,5 %	4,7 %	5,1 %
	<i>Index</i>	100	111	117	129
	Average price (EUR/tonne)	1 858	1 944	1 860	1 855
	<i>Index</i>	100	105	100	100
India	Volume (tonnes)	114 508	120 631	105 251	108 777
	<i>Index</i>	100	105	92	95
	Market share	3,1 %	3,2 %	3,1 %	3,4 %
	<i>Index</i>	100	104	98	110
	Average price (EUR/tonne)	2 079	2 173	2 075	2 073
	<i>Index</i>	100	104	100	100
Indonesia	Volume (tonnes)	13 830	34 648	72 739	89 131
	<i>Index</i>	100	251	526	644
	Market share	0,4 %	0,9 %	2,1 %	2,8 %
	<i>Index</i>	100	248	563	744
	Average price	1 818	1 923	1 917	1 962

	(EUR/tonne)				
	<i>Index</i>	100	106	105	108
Other third countries	Volume (tonnes)	478 128	471 816	392 470	332 866
	<i>Index</i>	100	99	82	70
	Market share	13 %	13 %	11 %	10 %
	<i>Index</i>	100	98	88	80
	Average price (EUR/tonne)	2 267	2 865	2 940	2 978
	<i>Index</i>	100	126	130	131
Total of all third countries except the countries concerned	Volume (tonnes)	754 161	792 907	731 407	695 203
	<i>Index</i>	100	105	97	92
	Market share	20 %	21 %	21 %	22 %
	<i>Index</i>	100	104	104	106
	Average price (EUR/tonne)	2 150	2 205	2 096	2 091
	<i>Index</i>	100	103	97	97
<i>Source:</i> Eurostat					

- (191) Imports from Korea increased in the period considered, resulting in an increase in its market share from 4,0% in 2017 to 5,1% in the RIP. However, prices of Korean imports were around 9 % above those from the countries concerned⁶⁴ during the whole period considered.
- (192) Imports from India increased from 2017 to 2018, but showed a drop afterwards. This resulted in an overall drop in absolute terms during the period considered. However,

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Compared to the weighted average import price of the PRC and Taiwan.

the drop in Indian imports was less severe than the overall drop in Union consumption and thus India's market share still increased from 3,1 % in 2017 to 3,4 % in the RIP.

- (193) Indonesia increased its import volumes almost 6½ times in the period considered and its market share increased from 0,4 % to 2,8 %.
- (194) As explained in recital (8), imports of SSCR originating in India and Indonesia are subject to a parallel antidumping investigation⁶⁵ and were provisionally found⁶⁶ to be dumped and to undercut the prices of the Union industry.
- (195) Imports from other third countries decreased in the period considered both in terms of absolute volumes and market share. The average sales prices of imports from other third countries were consistently higher in the period considered than the weighted average import prices from the countries concerned and the sales prices of the Union producers.

4.5. Economic situation of the Union industry

4.5.1. General remarks

- (196) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (197) As mentioned in recital (13), sampling was used for the determination of possible injury suffered by the Union industry.
- (198) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data from the questionnaire reply of Eurofer relating to all Union producers, cross-checked where necessary with the questionnaire replies from the sampled Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies of the sampled Union producers. Both sets of data were cross-checked remotely and found to be representative of the economic situation of the Union industry.
- (199) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.
- (200) The microeconomic indicators are: average unit prices, unit cost, labour costs, stocks, profitability, cash flow, investments and return on investments.

4.5.2. Macroeconomic indicators

4.5.2.1. *Production, production capacity and capacity utilisation*

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

Table 6 - Production, production capacity and capacity utilisation

⁶⁵ Notice of Initiation of an anti-dumping proceeding concerning imports of stainless steel cold-rolled flat products originating in India and Indonesia, OJ C 322, 30.9.2020, p. 17.

⁶⁶ Commission Implementing Regulation (EU) 2021/854 of 27 May 2021 imposing a provisional anti-dumping duty on imports of stainless steel cold-rolled flat products originating in India and Indonesia, OJ L 188, 28.5.2021, p. 61.

	2017	2018	2019	RIP
Total Union production (tonnes)	3 708 262	3 640 429	3 379 817	3 111 804
<i>Index</i>	100	98	91	84
Production capacity (tonnes)	4 405 623	4 517 379	4 530 146	4 572 365
<i>Index</i>	100	103	103	104
Capacity utilisation	84 %	81 %	75 %	68 %
<i>Index</i>	100	96	89	81
<i>Source: Eurofer</i>				

- (202) The Union industry's production volume decreased sharply by 16 % in the period considered. The reported capacity figures refer to actual capacity, which implies that adjustments considered as standard by the industry – for set-up time, maintenance, bottle necks and other normal stoppages – have been taken into account. After the imposition of the original measures, some Union producers initiated the modernisation of their production capacity. This modernisation has led to a slight production capacity increase of 4 % over the period considered.
- (203) As a result of decreased production and slightly increased capacity, capacity utilisation decreased by 19 % over the period considered and dropped below 70 % in the RIP.

4.5.2.2. Sales volume and market share

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

Table 7 - Sales volume and market share

	2017	2018	2019	RIP
Union industry sales volumes (tonnes)	2 735 448	2 711 044	2 530 259	2 330 537
<i>Index</i>	100	99	92	85
Market share	74,1 %	72,8 %	73,3 %	72,9 %
<i>Index</i>	100	98	99	98
<i>Source: Eurofer and Eurostat</i>				

- (205) The Union industry's sales volume decreased by 15 % over the period concerned. This resulted also in decrease in market share by 1,2 percentage point in the period considered.

4.5.2.3. *Growth*

- (206) The above figures in respect of production and sales volume in absolute terms, which show a clear decreasing trend over the period considered, demonstrate that the Union industry was not able to grow in absolute terms. A slight growth in relation to consumption was possible only because the Union industry chose to respond to the price pressure of the dumped imports by lowering its sales prices.

4.5.2.4. *Employment and productivity*

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

Table 8 - Employment and productivity

	2017	2018	2019	RIP
Number of employees	13 411	13 495	13 968	13 660
<i>Index</i>	100	101	104	102
Productivity (tonnes per staff)	277	270	242	228
<i>Index</i>	100	98	88	82
<i>Source: Eurofer</i>				

- (208) The level of Union industry employment related to the production of SSCR increased by 4 % between 2017 and 2019 and showed a decrease of 2 percentage points between 2019 and RIP, resulting in an increase of 2 % over the period considered. In view of the sharp decrease in production, the productivity of the Union industry's workforce, measured as tonnes per employee (in full time equivalent) produced per year, decreased significantly by 18 % over the period considered.

Magnitude of the dumping margin and recovery from past dumping

- (209) The Commission concluded in recitals (122) and (150) that dumping from the countries concerned continued during the review investigation period. The Commission also concluded that there was a likelihood of recurrence of dumping from the PRC and Taiwan, if measures would not be extended.
- (210) Furthermore, in the parallel anti-dumping procedure concerning imports of the SSCR from India and Indonesia, the Commission provisionally established that the situation of the Union industry was also significantly affected by dumped imports from those countries.
- (211) The macroeconomic indicators examined above show that, notwithstanding the anti-dumping measures in force since 2015, the economic situation of the Union industry has remained injurious. Thus, no recovery from the past dumping could be established

and the Union industry remains highly vulnerable to the injurious effects of any dumped imports in the Union market.

4.5.3. Microeconomic indicators

4.5.3.1. Prices and factors affecting prices

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

Table 9 - Sales prices in the Union

	2017	2018	2019	RIP
Average unit sales price (EUR/tonne)	2 252	2 312	2 206	2 175
<i>Index</i>	100	103	98	97
Unit cost of production (EUR/tonne)	1 958	2 064	2 019	2 013
<i>Index</i>	100	105	103	103
<i>Source:</i> Sampled Union producers				

- (213) After showing a slight increase of 3 % from 2017 to 2018, average unit sales prices decreased by 6 percentage points from 2018 to the RIP, resulting in a decrease of 3 % over the period considered. Over the same period, the costs of production showed a simultaneous increase of 5 %, after which they stabilised at a cost level which was 3 % higher than at the start of the period considered. To a large extent the cost evolution was driven by important raw material price increases, such as nickel and ferrochromium. Due to the price suppression from the dumped imports from Taiwan the Union industry was not able to pass on this cost increase to its sales prices and was even forced to lower its sales prices.

4.5.3.2. Labour costs

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

Table 10 - Average labour costs per employee

	2017	2018	2019	RIP
Average labour costs per FTE (EUR)	72 366	70 663	71 659	70 324
<i>Index</i>	100	98	99	97
<i>Source:</i> Sampled Union producers				

- (215) The average labour costs per employee of the sampled Union producers fell by 3 % in the period considered. This shows that Union producers were able to lower labour costs as a reaction to the deteriorating market circumstances in an attempt to limit their injury.

4.5.3.3. Inventories

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

Table 11 - Inventories

	2017	2018	2019	RIP
Closing stocks (tonnes)	125 626	148 777	125 480	98 835
<i>Index</i>	100	118	100	79
Closing stocks as a percentage of production	5,54 %	6,53 %	6,09 %	5,13 %
<i>Index</i>	100	118	110	93
<i>Source:</i> Sampled Union producers				

- (217) During the period considered the level of closing stocks decreased by 21 %. This trend followed the decrease in production volume. Most types of the like product are produced by the Union industry based on specific orders of the users. Therefore, stocks are not considered to be an important injury indicator for this industry. This is also confirmed by analysing the evolution of the closing stocks as a percentage of production. As can be seen above, this indicator fluctuated between 5 and 7 % of the production volume of the sampled Union producers over the period considered.

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

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

Table 12 - Profitability, cash flow, investments, return on investments

	2017	2018	2019	RIP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	7,6 %	6,0 %	1,5 %	0,4 %
<i>Index</i>	100	79	19	6

Cash flow (EUR)	387 200 359	273 674 277	237 840 311	184 024 688
<i>Index</i>	100	71	61	48
Investments (EUR)	111 578 442	111 637 871	96 541 925	96 585 152
<i>Index</i>	100	100	87	87
Return on investments	20 %	15 %	6 %	4 %
<i>Index</i>	100	75	31	20
<i>Source:</i> Sampled Union producers				

- (219) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales.
- (220) Overall profitability fell from 7,6 % in 2017 to 0,4 % in the RIP. All other financial indicators, i.e. cash flow, investments, and return on assets, clearly followed the same downward trend.
- (221) The net cash flow is the ability of the Union producers to self-finance their activities. The cash flow showed a continuous decrease over the period considered, resulting in the RIP at a level 52 % lower than the start of the investigation period.
- (222) Investments are the net book value of assets. After staying stable from 2017 to 2018, a sharp drop of 13 percentage points can be seen from 2018 to 2019. The return on investments is the profit in percentage of the net book value of investments which reflects the level of depreciation of assets. It decreased continuously and significantly by 80 % over the period considered.
- (223) The poor financial performance of the Union industry between 2017 and the review investigation period limited its ability to raise capital. The Union industry is capital intensive and is characterised by substantial investments. The return on investment during the period considered is not sufficient to cover for such substantial investments.

4.6. Conclusion on continuation of injury

- (224) The evolution of the micro and macro indicators during the period considered showed that the financial situation for the Union industry deteriorated.
- (225) The investigation indicated that the Union industry could only respond to the price pressure of the dumped imports from Taiwan by lowering its sales prices to maintain (and even slightly increase) its market share in the period considered. Prices of the Union industry decreased by 3 % during the period considered, while, under conditions of fair competition, they would have been expected to increase at a ratio comparable to rise of the cost of production, which increased by 3 %. This situation severely impacted the Union industry's profitability, which fell by 94 % over the period considered to end in a very low and unsustainable level during the RIP.

- (226) The Union consumption decreased significantly during the period considered and both sales volumes and production volumes on the Union industry followed this trend. Production capacity increased marginally, caused by a positive outlook for the Union industry following the imposition of the original measures.
- (227) Nevertheless, Union producers experienced a sharp decrease in productivity and capacity utilisation in the period considered. These deteriorating figures can only be explained to a small degree by the small increase in employment and capacity and was mainly caused by the decrease in Union consumption and the simultaneous increase in dumped imports.
- (228) However, it is the financial indicators of the Union producers which fully show the injury suffered. The Union industry experienced an increase in its costs of production in the period considered which, accompanied by a decrease in sales prices, resulted in a profitability drop from 7,6 % in 2017 to 0,4 % in the RIP. A similar negative development can be seen in relation to the other financial indicators: investments (-13%), return on investments (-80%) and cash flow (-52%).
- (229) Accordingly, the injury indicators show that the Union industry was suffering material injury in the RIP, as it decreased its sales prices in spite of rising production costs, resulting in a collapse of its profitability, which negatively affected investments, return on investments and cash flow.
- (230) On the basis of the above, the Commission concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

- (231) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the countries concerned caused material injury to the Union industry.

5.1. PRC

- (232) Regarding the PRC, the investigation revealed that the volume of imports remained below *de minimis* level during the entire period considered. Furthermore, prices of Chinese imports were during the entire period considered higher than prices of the Union industry and did not undercut the prices of the Union industry.
- (233) Considering the above, the Commission concluded that the material injury suffered by the Union industry could not have been caused by the imports from China.

5.2. Taiwan

- (234) Regarding Taiwan, the Commission concluded that continued price suppression from dumped imports is a crucial factor adversely affecting economic situation of the Union industry.
- (235) Apart from dumped imports from India and Indonesia, dumped imports from Taiwan, due to their volume, markets share, and low prices, are affecting price behaviour of the European industry.
- (236) In response for the price competition of Taiwanese exporting producers, the European industry had to decrease its sales prices, which adversely affected its profitability and other financial indicators. Moreover, even with this decrease of prices, the Union producers still could not compete with the prices of the Taiwanese exporters, which, despite the antidumping measures in force, were lower than prices of the Union industry in the entire period considered.

- (237) Considering the above, the Commission concluded that the material injury suffered by the Union industry was caused by the imports from Taiwan.
- (238) Following final disclosure, LSI and Euranimi claimed that imports from Taiwan cannot have caused injury to the Union industry as its market share was stable and comparable with the market share of Korea which was not part of this investigation.
- (239) However, imports from Taiwan, despite similar volumes and market share as imports from Korea, were priced significantly lower than the latter. Imports from Taiwan continued also to be dumped, undercut Union industry prices and their prices were set at an injurious level even with the current measures in force. Undercutting and underselling margins are expected to further increase should the measures lapse.
- (240) Therefore, the claim of the parties was rejected.

6. LIKELIHOOD OF CONTINUATION AND/OR RECURRENCE OF INJURY

- (241) The Commission concluded in recital (230) that the Union industry suffered material injury during the review investigation period. In recital (237), the Commission also determined that the material injury suffered by the Union industry was caused by imports from Taiwan. Therefore, the Commission assessed, in accordance with Article 11(2) of the basic Regulation, whether there would be a likelihood of recurrence of injury caused by imports from China, and continuation of injury caused by imports from Taiwan, if the measures were allowed to lapse.
- (242) In order to establish whether there is likelihood of continuation and/or recurrence of injury originally caused by the dumped imports from the countries concerned, the Commission considered the following elements: (1) spare capacity in the countries concerned and the attractiveness of the Union market, and (2) the impact of potential imports and price levels of such imports from these countries on the Union industry's situation should the measures be allowed to lapse.

6.1. PRC

6.1.1. Spare capacity

- (243) As described in recital (126), the exporting producers in the PRC have significant spare capacity, which substantially exceeds the current production volumes and internal consumption in this country. This spare capacity, which amounts to 62,5 % of the total Union consumption in the RIP, could be used to export to the Union if measures were allowed to lapse.

6.1.2. Attractiveness of the Union market

- (244) The Chinese exporting producers exported to their main third markets at prices, which are around 30 % lower than both their export prices to the Union and the average sales prices of the Union producers on the Union market.
- (245) Therefore, taking into account the price level of exports from the PRC to other third markets, exporting to the Union is potentially much more attractive for the Chinese exporters. Furthermore, if following the parallel anti-dumping investigation definitive measures are imposed on imports from India and Indonesia, prices on the Union market are expected to increase to a fair level, further increasing the attractiveness of the Union market. Moreover, in this situation, the Chinese exporting producers would encounter less price competition from Indian and Indonesian exporters on the European market.

- (246) Consequently, it can be reasonably expected that, should the measures lapse, Chinese exporting producers would significantly increase volumes of dumped imports of the product under review to the Union. This expectation is further reinforced by the availability of substantial spare capacity in the PRC.

6.1.3. Impact of potential imports from the PRC on the Union industry's situation should the measures lapse

- (247) The Commission examined the likely price levels of imports from the PRC should the measures be allowed to lapse based on the import price level during the RIP and export prices to third countries, and their effect on the situation of the Union industry.
- (248) As indicated in recital (232), the prices of the Chinese imports in the RIP with current anti-dumping duties included were higher than the prices of the Union industry and their level was not injurious⁶⁷. Nevertheless, the current import prices without anti-dumping duties, though still slightly higher than prices of the Union industry⁶⁸, would result to an underselling margin of 7,1 % when compared to the target price established on the basis of the Union industry's cost of production during the RIP and a target profit of 8,7 %, as established during the parallel anti-dumping investigation against India and Indonesia⁶⁹.
- (249) Furthermore, the current relatively high level of prices of the Chinese exporters on the Union market concerns very limited volumes, of most probably high-end, specialized products, if they can be still be sold on the market, despite the antidumping duties of around 25 %⁷⁰. Therefore, Chinese prices in the export to third countries, where massive quantities are involved, seem to be more representative in the assessment of impact of potential imports from the PRC on the Union industry's situation should the measures lapse. The average Chinese export prices to the third countries, without antidumping duties on the Union border, would result in the underselling margin of 58,4 % when compared to the target price established on the basis of the EU's industry cost of production during the RIP and the target profit of 8,7 % established during the parallel investigation against India and Indonesia.
- (250) This shows that, should the measures be allowed to lapse, Chinese imports are likely to be made at injurious price levels, increasing the price pressure on the Union industry that would then either lose sales volume or be obliged to decrease their price levels.

6.1.4. Conclusion

- (251) In view of the above findings, namely the presence of spare capacity in the PRC, the attractiveness of the Union market and the expected price levels of imports from the PRC in the absence of antidumping measures and their impact on the Union industry, it is concluded that the absence of the measures would in all likelihood result in a significant increase of dumped imports from the PRC at injurious prices and material injury originally caused by dumped imports from the PRC would be likely to recur.

⁶⁷ Negative underselling margin of 18,6 % if compared to the target price in the parallel anti-dumping investigation against India and Indonesia.

⁶⁸ Negative undercutting margin of 4 %.

⁶⁹ Both investigations concerned the same product, have the same sample of Union producers, and the same investigation period and period considered.

⁷⁰ The exact structure of imports from the PRC is not known due to lack of the cooperation of Chinese exporting producers.

- (252) Following final disclosure, LSI and Euranimi claimed that the Commission did not provide sufficient evidence that imports from the PRC would re-appear at undercutting prices and would become injurious in the future.
- (253) Contrary to the claim of the parties, the Commission based its analysis on solid facts.
- (254) First, as explained in recital (121), even with their current relatively high level of prices, the Chinese exporters continued their dumping practice in the review investigation period.
- (255) Second, as explained in recital (248), the current level of Chinese export prices would already be injurious in the absence of the anti-dumping duties, i.e. having an injury margin of 7,1 % when compared to the target price of the Union producers.
- (256) Moreover, as explained in recital (249), this injury margin would rise to an alarming level of 58,4 % should the price level of Chinese exports to the Union decrease to the level of the Chinese export price to third countries. This price level to third countries could be considered much more representative than the current Chinese export price level to the Union, taking into account the very small volumes of the latter in the period considered.
- (257) Finally, recital (243) above showed the significant spare capacity for production of the product under review in the PRC, which could be used to export to the Union should the measures lapse.
- (258) Therefore, the claim of the parties was rejected.

6.2. Taiwan

6.2.1. Spare capacity

- (259) As described in recital (154), the exporting producers in Taiwan have a substantial spare capacity, which exceeds substantially the current production volumes and internal consumption in Taiwan. This spare capacity, which amounts to 18,5 % of the total Union consumption in the RIP, could be used for export to the Union if measures were allowed to lapse.

6.2.2. Attractiveness of the Union market

- (260) The Taiwanese export prices to third countries, even if slightly higher than Taiwanese export prices to the Union, were still found to be around 17 % lower than the Union producers' prices on the Union market.
- (261) Therefore, taking into account the price level on the Union market, exporting to the Union is potentially much more attractive for the Taiwanese exporters than exporting to other countries.
- (262) Furthermore, if definitive anti-dumping measures are imposed on imports from India and Indonesia, prices on the Union market are expected to increase to a fair level, further increasing the attractiveness of the Union market. Moreover, in this situation, the Taiwanese exporting producers would encounter less competition from Indian and Indonesian exporters on the European market.
- (263) Consequently, it can be reasonably expected that, should the measures lapse, Taiwanese exporting producers would significantly increase volumes of dumped imports of the product under review to the Union. This expectation is further reinforced by the availability of substantial spare capacity in Taiwan.

6.2.3. Impact of potential imports from Taiwan on the Union industry's situation should the measures lapse

- (264) The Commission examined the likely price level of imports from Taiwan should the measures be allowed to lapse based on the import price level during the RIP and their effect on the situation of the Union industry.
- (265) As indicated in recital (260), the prices of the Taiwanese imports in the RIP with current antidumping duties included were undercutting the prices of the Union industry by 16,9 %. The corresponding underselling margin amounted to 36,8 %, when compared to the target price established on the basis of the EU's industry cost of production during the RIP and a target profit of 8,7 % established during the parallel anti-dumping investigation against India and Indonesia. Without anti-dumping duties the margins in question would increase to 22,1 % for undercutting and 43,6 % for underselling.
- (266) This shows that, should the measures be allowed to lapse, Taiwanese imports would continue to be made at injurious price levels, increasing the price pressure on the Union industry that would either lose sales volume or would be obliged to decrease its price levels.

6.2.4. Conclusion

- (267) In view of the above findings, namely the presence of spare capacity in Taiwan, the attractiveness of the Union market and the expected price levels of imports from Taiwan in the absence of antidumping measures and their impact on the Union industry, it is concluded that a lapse of the current measures would in all likelihood result in a significant increase of dumped imports from Taiwan at injurious prices and material injury would be likely to continue.

7. UNION INTEREST

- (268) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, distributors and users.
- (269) All interested parties were given the opportunity to make their view known pursuant to Article 21(2) of the basic Regulation.

7.1. Interest of the Union industry

- (270) The Union industry consists of 13 producers located in several Member States and it employs directly 13 660 employees in relation to the product under review. None of the Union producers opposed the initiation of the investigation. As shown in section 4 above when analysing the injury indicators, the whole Union industry experienced a deterioration of its situation and was negatively affected by the dumped imports.
- (271) It is expected that the maintenance of anti-dumping duties will enable the Union industry to cover their increasing costs of production and improve their financial situation despite lost sales due to a shrinking market. This would result in an improvement of the Union industry's profitability towards levels considered necessary for this capital intensive industry. It is recalled that a number of key injury indicators showed a negative trend during the period considered. In particular, indicators pertaining to the financial performance of Union producers were seriously affected.

- (272) Although the anti-dumping measures in force prevented dumped imports from the countries concerned to enter the Union market to a large extent, the Union industry suffered material injury caused by imports at dumped prices from Taiwan during the review investigation period. Union industry's situation is likely to further deteriorate if the measures are not prolonged and the additional injury caused by dumped imports from China recurs.
- (273) The Commission established that there is still continuation of injury caused by the Taiwanese imports and a strong likelihood of recurrence of injury originally caused by imports from China should the measures expire. The influx of substantial volumes of dumped imports from the countries concerned would cause further injury to the Union industry. This would worsen the already very injurious situation of Union industry.
- (274) The Commission thus concluded that the maintenance of the anti-dumping measures against the countries concerned is in the interest of the Union industry.

7.2. Interest of unrelated importers, traders and users

- (275) The Commission contacted all known unrelated importers, traders and users. However, none of them replied to the questionnaire and cooperated in the expiry review.
- (276) After disclosure, Euranimi and LSI claimed that they are currently facing a shortage of supply of the product under review in the Union, caused by a worldwide shortage of supply of raw material. Moreover, the COVID-19 pandemic has caused an imbalance between supply and demand, causing a rise in prices and shortage of raw materials and SSCR. The safeguard measures on steel have further aggravated the shortage of SSCR.
- (277) Disruptions in the supply chain caused by the COVID-19 pandemic are of exceptional nature and are not specific to the SSCR supply chain. Table 5 above shows that there have been various sources of supply and the market share of imports from other third countries have even increased throughout the period considered, while the safeguard measures were already in place. Korea managed in the period considered to increase its export to the Union both in absolute and relative terms and also South Africa remained present on the Union market. Furthermore, despite the anti-dumping measures, imports from Taiwan still seem to be competitive, since they kept being imported to the Union during the period considered.
- (278) On this basis, the Commission concluded that the effects of extending the anti-dumping measures on importers and users do not outweigh the positive impact of the measures on the Union industry.

7.3. Conclusion on Union interest

- (279) On the basis of the above, the Commission concluded that there were no compelling reasons of the Union interest against the maintenance of the existing measures on imports of the product under review originating in the countries concerned.

8. ANTI-DUMPING MEASURES

- (280) On the basis of the conclusions reached by the Commission concerning the continuation of dumping from countries concerned, the continuation and recurrence of injury originally caused by dumped imports from the countries concerned, and the Union interest, the Commission finds that the anti-dumping measures on imports of flat-rolled products of stainless steel, not further worked than cold-rolled (cold-reduced) from the PRC and Taiwan should be maintained.

- (281) The individual company anti-dumping duty rates specified in this Regulation are exclusively applicable to imports of the product under review originating in the PRC and Taiwan and produced by the named legal entities. Imports of the product under review produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.
- (282) A company may request the application of these individual anti-dumping duty rates if it subsequently changes the name of its entity. The request must be addressed to the Commission⁷¹. The request must contain all the relevant information enabling it to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a regulation about the change of name will be published in the Official Journal of the European Union.
- (283) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures on imports of the product under review from the PRC and Taiwan be maintained. They were also granted a period to make representations subsequent to this disclosure. All comments received have been considered by the Commission.
- (284) In view of Article 109 of Regulation 2018/1046⁷², 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.
- (285) By Commission Implementing Regulation (EU) 2019/15973, the Commission imposed a safeguard measure with respect to certain steel products for a period of three years. By Commission Implementing Regulation (EU) 2021/1029⁷⁴, the safeguard measure was prolonged until 30 June 2024. The product under review is one of the product categories covered by the safeguard measure. Consequently, once the tariff quotas established under the safeguard measure are exceeded, both the above-quota tariff duty and the anti-dumping duty would become payable on the same imports. As such cumulation of anti-dumping measures with safeguard measures may lead to an effect on trade greater than desirable, the Commission decided to prevent the concurrent application of the anti-dumping duty with the above-quota tariff duty for the product under review for the duration of the imposition of the safeguard duty.

⁷¹ European Commission, Directorate-General for Trade, Directorate G, Rue de la Loi 170, 1040 Brussels, Belgium.

⁷² 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.

⁷³ Commission Implementing Regulation (EU) 2019/159 of 31 January 2019 imposing definitive safeguard measures against imports of certain steel products, *OJ L 31*, 1.2.2019, p. 27.

⁷⁴ Commission Implementing Regulation (EU) 2021/1029 of 24 June 2021 amending Commission Implementing Regulation (EU) 2019/159 to prolong the safeguard measure on imports of certain steel products, *OJ L 225I*, 25.6.2021, p. 1.

- (286) This means that where the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 becomes applicable to the product under review and exceeds the level of the anti-dumping duties pursuant to this Regulation, only the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 shall be collected. During the period of concurrent application of the safeguard and anti-dumping duties, the collection of the duties imposed pursuant to this Regulation shall be suspended. Where the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 becomes applicable to the product under review and is set at a level lower than the level of the anti-dumping duties in this Regulation, the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 shall be collected in addition to the difference between that duty and the higher of the level of the anti-dumping duties imposed pursuant to this Regulation. The part of the amount of anti-dumping duties not collected shall be suspended.
- (287) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) of the basis Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of flat-rolled products of stainless steel, not further worked than cold-rolled (cold reduced), currently falling under CN codes 7219 31 00, 7219 32 10, 7219 32 90, 7219 33 10, 7219 33 90, 7219 34 10, 7219 34 90, 7219 35 10, 7219 35 90, 7219 90 20, 7219 90 80, 7220 20 21, 7220 20 29, 7220 20 41, 7220 20 49, 7220 20 81, 7220 20 89, 7220 90 20 and 7220 90 80 and originating in the People's Republic of China and Taiwan.
2. The rates of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed below, shall be as follows:

Country	Company	Anti-dumping duty (%)	TARIC additional code
PRC	Shanxi Taigang Stainless Steel Co., Ltd, Taiyuan City	24,4	C024
PRC	Tianjin TISCO & TPCO Stainless Steel Co Ltd, Tianjin City	24,4	C025
PRC	Other cooperating companies listed in Annex	24,6	
PRC	All other companies	25,3	C999
Taiwan	Chia Far Industrial Factory Co., Ltd, Taipei City	0	C030
Taiwan	All other companies	6,8	C999

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

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

Article 2

1. Where the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 becomes applicable to flat-rolled products of stainless steel, not further worked than cold-rolled (cold reduced) and exceeds the equivalent ad valorem level of the anti-dumping duty set out in Article 1(2), only the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 shall be collected.

2. During the period of application of paragraph 1, the collection of the duties imposed pursuant to this Regulation shall be suspended.

3. Where the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 becomes applicable to flat-rolled products of stainless steel, not further worked than cold-rolled (cold reduced) and is set at a level lower than the equivalent ad valorem level of the anti-dumping duty set out in Article 1(2), the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 shall be collected in addition to the difference between that duty and the higher of the equivalent ad valorem level of the anti-dumping duty set out in Article 1(2).

4. The part of the amount of anti-dumping duty not collected pursuant to paragraph 2 shall be suspended.

5. The suspensions referred to in paragraphs 2 and 4 shall be limited in time to the period of application of the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159.

Article 3

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,

For the Commission
The President
 [...]

Annex

Chinese cooperating exporting producers not sampled:

Country	Name	TARIC additional code
PRC	Lianzhong Stainless Steel Corporation, Guangzhou	C026
PRC	Ningbo Qi Yi Precision Metals Co., Ltd, Ningbo	C027
PRC	Tianjin Lianfa Precision Steel Corporation, Tianjin	C028
PRC	Zhangjiagang Pohang Stainless Steel Co., Ltd, Zhangjiagang City	C029



EUROPEAN COMMISSION

Directorate-General for Trade

Directorate G – Trade Defence

Trade Defence Instruments

Brussels, 20 July 2021

SENSITIVE*

**NOTE FOR THE ATTENTION OF ALL DELEGATIONS OF
THE TRADE DEFENCE INSTRUMENTS COMMITTEE**

Subject: R722 – expiry review of the anti-dumping measures on stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan

Consultation under the examination procedure

Given the evolving situation of the Coronavirus COVID-19, please be informed that we have decided to use the written procedure to consult the Trade Defence Instruments Committee on the above-mentioned draft implementing act in accordance with Article 3(5) of the Comitology Regulation (EU) No 182/2011¹ and Article 15(5) of the basic anti-dumping Regulation².

Please find attached the sensitive draft Commission Implementing Regulation concerning the subject mentioned above.

Committee members are therefore requested to provide the Commission with their opinion concerning the above draft implementing act in writing **by 4 August 2021** to the mailbox: anti-dumping-subsidy@ec.europa.eu.

You will be informed of the outcome of the written consultation immediately after the expiry of the time limit set above.

Questions and comments concerning the draft implementing act, if any, may be provided in writing **by 28 July 2021** to the same mailbox. The Commission services will reply to those questions in writing as soon as possible and in any event prior to the deadline for

* This document is for internal use only. It is protected pursuant to Article 4 of Regulation (EC) 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43). It is a confidential document pursuant to Article 19 of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 176, 30.06.2016, p. 21) and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-dumping Agreement) / pursuant to Article 29 of Regulation (EU) 2016/1037 of the European Parliament and of the Council (OJ L 176, 30.06.2016, p. 55) and Article 12 of the WTO Agreement on Subsidies and Countervailing Measures. Full handling instructions <https://europa.eu/db43PX>

¹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p.13)

² 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 (OJ L 176, 30.6.2016, p. 21)

the submission of the Member States' opinion. The Commission's replies will be addressed to all Committee members.

Please be reminded that according to Article 8(1) of the Committee's rules of procedure, "any committee member who does not oppose the draft implementing act or who does not explicitly abstain from voting thereon before the expiry of that time limit shall be regarded as having tacitly agreed to the draft implementing act".

We thank you for your cooperation and understanding to ensure that the Trade Defence Instruments Committee continues its work successfully in this extraordinary situation.

Should you have any questions please do not hesitate to contact me or the teams in charge.

<p>DUMPING TEAM</p> <p><u>HEAD OF SECTION:</u></p> <p>MR ARTHUR BRAAM</p> <p><u>OFFICIALS IN CHARGE:</u></p> <p>MR ENRIQUE ARRIETA</p> <p>MR PAOLO DE CHIARA</p> <p>MR BERND-ANDREAS SCHMIDT</p> <p>MR JEAN-CHARLES WALECHA</p>	<p>INJURY/UNION INTEREST TEAM</p> <p><u>HEAD OF SECTION:</u></p> <p>MS LAURA VAN KAMPEN</p> <p><u>OFFICIALS IN CHARGE:</u></p> <p>MR PATRICK DE BACKER</p> <p>MS AURELIE DE WAGHENEIRE</p> <p>MR ROBERT PRYLINSKI</p>
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(signed)
 Susanne Kellner
 Vice Chairperson
 Trade Defence Instruments Committee
 (20.07.2021, trade.g.5(2021)5261426)



Brussels, XXX
[...] (2021) XXX draft

COMMISSION IMPLEMENTING REGULATION (EU) .../...

of XXX

extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) 2019/915 on imports of certain aluminium foil in rolls originating in the People's Republic of China to imports of certain aluminium foil in rolls consigned from Thailand, whether declared as originating in Thailand or not

COMMISSION IMPLEMENTING REGULATION (EU) .../...

of **XXX**

extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) 2019/915 on imports of certain aluminium foil in rolls originating in the People's Republic of China to imports of certain aluminium foil in rolls consigned from Thailand, whether declared as originating in Thailand or not

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 Union¹ ('the basic Regulation') and in particular Article 13 thereof,

Whereas:

1. PROCEDURE

1.1. Previous investigation and existing measures

- (1) In March 2013, by Implementing Regulation (EU) 217/2013,² the Council imposed a definitive anti-dumping duty on imports of certain aluminium foils in rolls ('small rolls') originating in the People's Republic of China ('PRC') following an anti-dumping investigation ('the original investigation'). The measures took the form of an ad valorem duty ranging between 14,2 % and 35,6 %.
- (2) In June 2019, by Implementing Regulation (EU) 2019/915,³ the European Commission ('the Commission') maintained the definitive measures ('the measures in force') following an expiry review pursuant to Article 11(2) of the basic Regulation ('the review investigation').

1.2. Request

- (3) The Commission received a request pursuant to Articles 13(3) and 14(5) of the basic Regulation to investigate the possible circumvention of the anti-dumping measures imposed on imports of certain aluminium foil in rolls originating in the PRC by imports consigned from Thailand, whether declared as originating in Thailand or not, and to make such imports subject to registration.
- (4) The request was lodged on 9 November 2020. The applicant had requested anonymity both at application stage and for the duration of the investigation. The applicant duly

¹ OJ L 176, 30.6.2016, p. 21.

² Council Implementing Regulation (EU) No 217/2013 of 11 March 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium foils in rolls originating in the People's Republic of China, OJ L 69, 13.3.2013, p. 11.

³ Commission Implementing Regulation (EU) 2019/915 of 4 June 2019 imposing a definitive anti-dumping duty on imports of certain aluminium foil in rolls originating in the People's Republic of China following an expiry review under Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council, OJ L 146, 5.6.2019, p. 63.

substantiated its requests, which were accepted by the Commission as it considered there were sufficient grounds to grant the confidentiality of its identity.

- (5) The request contained sufficient evidence of a change in the pattern of trade involving exports from the People's Republic of China and Thailand to the Union that had taken place following the imposition of measures on small rolls. This change appeared to stem from the consignment of small rolls via Thailand to the Union after having undergone assembly operations in Thailand. The request also contained sufficient evidence showing that such assembly operations constituted circumvention as Chinese parts accounted for more than 60 % of the total value of the parts of the assembled product, while the value added during the assembly operations was less than 25 % of the manufacturing cost.
- (6) Furthermore, the request contained sufficient evidence that the practice described above was undermining the remedial effects of the existing anti-dumping measures in terms of quantities and prices. In addition, there was sufficient evidence that the prices of small rolls consigned from Thailand were dumped in relation to the normal value previously established for small rolls.

1.3. Product concerned and product under investigation

- (7) The product concerned is aluminium foil of a thickness of 0,007 mm or more but less than 0,021 mm, not backed, not further worked than rolled, whether or not embossed, in low weight rolls of a weight not exceeding 10 kg, classified on the date of entry into force of Commission Implementing Regulation (EU) 2019/915 under CN codes ex 7607 11 11 and ex 7607 19 10 (TARIC codes 7607 11 11 10 and 7607 19 10 10) and originating in the PRC ('the product concerned'). This is the product to which the measures in force currently apply.
- (8) The product under investigation is the same as that defined in the previous recital, currently falling under CN codes ex 7607 11 11 and ex 7607 19 10, but consigned from Thailand, whether declared as originating in Thailand or not (TARIC codes 7607 11 11 11 and 7607 19 10 11) ('the product under investigation').
- (9) The investigation showed that the small rolls exported from the PRC to the Union and those consigned from Thailand have the same basic physical and chemical characteristics and have the same uses, and are therefore to be considered as like products within the meaning of Article 1(4) of the basic Regulation.

1.4. Initiation

- (10) Having determined, after having informed the Member States, that sufficient evidence existed for the initiation of an investigation pursuant to Article 13(3) of the basic Regulation, the Commission initiated an investigation and made imports of small rolls consigned from Thailand, whether declared as originating in Thailand or not, subject to registration, by Commission Implementing Regulation (EU) 2020/2161 on 21 December 2020⁴ ('the initiating Regulation').

1.5. Investigation period and reporting period

⁴ Commission Implementing Regulation (EU) 2020/2161 of 18 December 2020 initiating an investigation concerning possible circumvention of the anti-dumping measures imposed by Implementing Regulation (EU) 2019/915 on imports of certain aluminium foil in rolls originating in the People's Republic of China by imports of certain aluminium foil in rolls consigned from Thailand, whether declared as originating in Thailand or not, and making such imports subject to registration, OJ L 431, 21.12.2020, p. 42.

- (11) The investigation period covered the period from 1 January 2016 to 30 June 2020 ('the investigation period' or 'IP'). Data were collected for the IP to investigate, inter alia, the alleged change in the pattern of trade following the imposition of the measures on the product concerned and the existence of a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty. More detailed data were collected for the period from 1 July 2019 to 30 June 2020 ('the reporting period' or 'RP') in order to examine if imports were undermining the remedial effect of the measures in force in terms of prices and/or quantities and the existence of dumping.

1.6. Investigation

- (12) The Commission officially informed the authorities of the PRC and Thailand, the exporting producers in those countries, the importers in the Union known to be concerned and the Union industry of the initiation of the investigation. Questionnaires and/or Exemption Claim Forms were made available to the producers/exporters in Thailand and the PRC and to the importers in the Union known to the Commission or which made themselves known within the deadlines specified in Article 3 of the initiating Regulation.
- (13) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time-limit set in the initiating Regulation. All parties were informed that the non-submission of all relevant information or the submission of incomplete, false or misleading information might lead to the application of Article 18 of the basic Regulation and to findings being based on the facts available.
- (14) Two Union producers came forward as interested parties, while no replies to questionnaires / exemption claim forms were received from any party in Thailand, the PRC or elsewhere.

2. RESULTS OF THE INVESTIGATION

2.1. General considerations

- (15) In accordance with Article 13(1) of the basic Regulation, the following elements should be analysed successively in order to assess possible circumvention:
- whether there was a change in the pattern of trade between the PRC, Thailand and the Union,
 - if this change stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the anti-dumping measures in force,
 - if there is evidence of injury or the remedial effects of the anti-dumping measures in force were being undermined in terms of the prices and/or quantities of the product under investigation, and
 - whether there is evidence of dumping in relation to the normal values previously established for the product concerned.
- (16) In the present investigation, since the evidence provided by the applicants in the request pointed to assembly operations in Thailand, the Commission more specifically analysed whether the criteria set out in Article 13(2) of the basic Regulation were met, in particular:

- whether the assembly operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation and whether the parts concerned are from the country subject to measures, and
- whether the parts constitute 60 % or more of the total value of the parts of the assembled product and whether the added value of the parts brought in, during the assembly or completion operation, was greater than 25 % of the manufacturing costs.

2.2. Level of cooperation

- (17) Before initiation, the Government of Thailand provided names and addresses of a number of aluminium household foil producers in Thailand. As mentioned in recital (14) above, none of these or any other Thai producer/exporter came forward or submitted an exemption claim.
- (18) By Note Verbale of 11 February 2021, the Commission informed the Government of Thailand that, due to the absence of cooperation from any exporters/producers in Thailand, it intended to base its findings on the existence of circumvention practices on facts available in accordance with Article 18 of the basic Regulation. The Commission also stressed that a finding based on facts available may be less favourable to the party concerned and invited the Government of Thailand to comment.
- (19) The Government of Thailand replied to the Commission that it had been informed of Dingheng New Materials Co., Ltd.'s intention to cooperate, and that, should there be no cooperation from Thai exporting producers, the Commission may use facts available for the findings of circumvention practices with respect to exporting producers in Thailand.
- (20) The Commission noted that the company mentioned by the Government of Thailand did not cooperate in this investigation, but in the parallel anti-circumvention investigation concerning the imports of aluminium foil jumbo rolls.⁵ In this investigation, no Thai producer of the product under investigation came forward.
- (21) Therefore, in accordance with Article 18(1) of the basic Regulation, the findings in relation to the existence of circumvention practices set out below were based on facts available. In particular, the Commission relied on the information contained in the request, combined with other sources of information such as trade statistics on imports and exports (e.g. from Eurostat and Global Trade Atlas ('GTA')), as well as publically available data.

2.3. Change in the pattern of trade

- (22) Table 1 below shows the development of imports from the PRC and Thailand in the investigation period.⁶

⁵ Commission Implementing Regulation (EU) 2020/2162 of 18 December 2020 initiating an investigation concerning possible circumvention of the anti-dumping measures imposed by Implementing Regulation (EU) 2015/2384 and Implementing Regulation (EU) 2017/271 on imports of certain aluminium foil originating in the People's Republic of China by imports of certain aluminium foil consigned from Thailand, whether declared as originating in Thailand or not, and making such imports subject to registration, OJ L 431, 21.12.2020, p. 48.

⁶ The import data presented in this Regulation cannot be compared as such to the data published following the original or review investigation. The previous investigation used data related to the EU28,

Table 1**Imports of small rolls during the investigation period (tonnes)**

	2016	2017	2018	2019	RP
PRC	299	471	308	596	414
<i>index (base = 2016)</i>	<i>100</i>	<i>157</i>	<i>103</i>	<i>199</i>	<i>139</i>
Share total imports	8 %	10 %	6 %	7 %	5 %
Thailand	70	654	814	1 088	1 069
<i>index (base = 2016)</i>	<i>100</i>	<i>934</i>	<i>1 163</i>	<i>1 555</i>	<i>1 527</i>
Share total imports	2 %	13 %	17 %	12 %	14 %
Total imports	3 904	4 891	4 914	8 838	7 751

Source: Eurostat

- (23) Between 2016 and the end of the reporting period there was a large increase in imports from Thailand, which went from 70 tonnes to 1 069 tonnes. At the same time, its share of total imports increased from 2 % to 14 %. Imports from the PRC also increased but at a much smaller pace, from 299 to 414 tonnes. However, the Chinese share of total imports decreased from 8 % to 5 %, or, from quadrupling the amount of Thai imports to around only one third. In addition, imports from the PRC are still at volumes below the 610 tonnes in 2013, at the time of the original investigation.
- (24) Table 2 shows the development of exports of raw materials needed for the production of small rolls from the PRC to Thailand during the investigation period.

Table 2**Exports of raw materials from the PRC to Thailand in the investigation period⁷ (tonnes)**

	2016	2017	2018	2019	RP
Foil stock (tonnes)	50 111	52 950	62 799	68 755	71 668
<i>index (base = 2016)</i>	<i>100</i>	<i>106</i>	<i>125</i>	<i>137</i>	<i>143</i>
Jumbo rolls (tonnes)	31 931	37 697	49 686	63 988	69 248
<i>Index (base = 2016)</i>	<i>100</i>	<i>118</i>	<i>156</i>	<i>200</i>	<i>217</i>

including the United Kingdom, while the current investigation includes only the EU27 following the United Kingdom's withdrawal from the Union in 2020.

The foil stock quantities have been adapted, in as far as possible, to reflect foil stock which can actually be used to produce aluminium household foil, and not, for example, for the printing industry, based on the specific product descriptions in GTA.

Total raw materials (tonnes)	82 042	90 647	112 485	132 743	140 916
index (base = 2016)	100	110	137	162	172

Source: Global Trade Atlas

- (25) The main raw material for the production of aluminium household foil is primary aluminium. The raw aluminium is then processed to produce foil stock, which in turn is further worked into aluminium household foil in rolls weighing more than 10 kilograms (“jumbo rolls”) and / or small rolls (weighing 10 kilograms or less). The information available to the Commission from the request shows that the production of the small rolls which are exported from Thailand to the EU is mainly done from the intermediate raw materials foil stock or jumbo rolls.
- (26) Table 2 shows that since 2016 there has been a continuous increase in the exports of these raw materials from China to Thailand. The Commission noted however that the two raw materials are not only used for the production of small rolls in Thailand. Foil stock, for example, is also used for the production of jumbo rolls in Thailand. These jumbo rolls are then either sold on the Thai domestic market, or exported to third countries, among which the EU. In addition, foil stock is used as a raw material in a number of other industries, such as the packaging industry or for isolation purposes. Therefore, only a portion of these foil stock imports is actually used in the small rolls production process.
- (27) In addition, the data in Table 2 for jumbo rolls also includes converter foil jumbo rolls, which fall under the same commodity codes but are not used for the production of aluminium household foil. It is unknown which percentage of the jumbo rolls imported into Thailand concerns aluminium converter foil, since such detailed Thai import data is not available. However, given the lack of evidence to the contrary, it is reasonable to assume that the ratio of converter foil production versus household foil production in Thailand remained stable throughout the IP. If anything, in light of the trend shown in Table 1 above, the production of household foil has increased. This means that the increasing trend which is seen for all types of jumbo rolls is also true for household foil jumbo rolls.
- (28) In any event, the fact that there is a significant increase in raw material import volumes from the PRC to Thailand indicates an increasing demand for such raw materials in Thailand. This can, at least in part, be explained by the increase in the production and exports of small rolls in and from Thailand.
- (29) The increase of Thai exports to the Union, the parallel decrease of Chinese imports compared with Thai imports of small rolls, and the increase in Chinese exports of raw materials to Thailand over the same period constitutes a change in the pattern of trade between China, Thailand and the Union within the meaning of Article 13(1) of the basic Regulation.
- 2.4. Nature of circumvention practices for which there was insufficient due cause or economic justification
- (30) Article 13(1) of the basic Regulation requires that the change in the pattern of trade stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty. The practice, process or work includes the consignment of the product subject to the existing measures via third countries, and the assembly of parts/completion operations in a third country in accordance with Article 13 (2) of the basic Regulation.

- (31) Since no exporting producer cooperated in the investigation, findings in respect of the existence and nature of circumventing practices in Thailand was based on facts available pursuant to Article 18 of the basic Regulation as explained in section 2.2 above.
- (32) The applicant in its request provided evidence showing that small rolls in Thailand were produced by rewinding jumbo rolls sourced directly from the PRC or indirectly from Thai producers who source the raw materials to produce jumbo rolls from the PRC.⁸ The applicant showed that:
- (1) Thai producers do not possess the machinery necessary to produce small rolls from primary aluminium, but only to rewind, cut, slit, anneal and perform other relatively minor operations on jumbo rolls. This is also corroborated by information on the websites of several Thai producers.⁹
 - (2) Thai producers source their jumbo rolls either directly from the PRC, or from Thai jumbo rolls producers who source their raw material (foil stock) from the PRC. The latter practice is corroborated by the findings in the Commission's parallel investigation on jumbo rolls.¹⁰
 - (3) All known Thai exporting producers of small rolls on which information is available to the Commission from the request and publicly available information are subsidiaries of Chinese companies which are able to, and do, produce small rolls in the PRC. This includes the assembly operation currently situated in Thailand, of which the applicant provided information.
- (33) The investigation has not revealed any evidence of due cause or economic justification for importing to the Union the small rolls from Thailand, other than avoiding the payment of the anti-dumping duties currently in force. In fact, information provided by the applicant shows that the website of a Thai small rolls producer explicitly mentioned the avoidance of antidumping duties as one of the reasons for establishing production in Thailand.¹¹

⁸ The applicant provided information on an ongoing investigation by the European Anti-Fraud Office (OLAF) in coordination with the Member States' relevant authorities. According to the applicant, this investigation regarding the circumvention of the anti-dumping duties resulted in penalizing two Thai exporting producers. Due to confidentiality reasons concerning ongoing investigations by OLAF, no other information is currently publicly available.

⁹ For example, <http://en.wohler.com.cn/index.php/News/view/id/6.html>.

¹⁰ Commission Implementing Regulation (EU) 2020/2162 of 18 December 2020 initiating an investigation concerning possible circumvention of the anti-dumping measures imposed by Implementing Regulation (EU) 2015/2384 and Implementing Regulation (EU) 2017/271 on imports of certain aluminium foil originating in the People's Republic of China by imports of certain aluminium foil consigned from Thailand, whether declared as originating in Thailand or not, and making such imports subject to registration, OJ L 431, 21.12.2020, p. 48.

¹¹ A copy of the webpage mentioning the anti-dumping duties was provided by the applicant in Annex 5 of the request. The current version of the website, which no longer mentions the avoidance of anti-dumping duties, is available here: <http://en.wohler.com.cn/index.php/News/view/id/6.html> (last accessed on 23 February 2021). To note that the company's LinkedIn page still mentions: "Thailand factory is established for eliminating anti-dumping rate of European and Indian markets." (<https://www.linkedin.com/company/qingdao-wohler-household-products-co-ltd/about/>, last accessed 25 February 2021). In addition, another website mentions "to solve the problem of anti-dumping duty, we build another factory in Thailand": https://tigerhuang923.en.ec21.com/company_info.html (last accessed 25 May 2021). Another Thai

2.5. Start or substantial increase of operations

- (34) As far as assembly operations are concerned, Article 13(2) of the basic Regulation requires that the assembly operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation, while the parts concerned are from the country subject to measures.
- (35) Imports from Thailand to the EU were negligible in 2015 and 2016. The year 2017 saw a marked increase in exports to 654 tonnes in 2017, and further increases every year since then. The information provided by the applicant about Thai exporting producers as well as publicly available information show that the construction of small rolls production facilities in Thailand started in 2016 and 2017, and for one company in 2018. Therefore, the assembly operation started since the initiation of the anti-dumping investigation.
- (36) Due to the non-cooperation from Thai exporting producers, the Commission relied on the evidence provided by the applicant in the request and publically available information to establish the origin of the raw materials used in the assembly of the small rolls in Thailand. The Thai producers which are known to export their products to the Union are all subsidiaries of Chinese aluminium household foil producers who are subject to anti-dumping duties when exporting from the PRC. In addition, information from the applicant shows that one of the Thai companies claims to buy all their raw materials from the neighbouring company Dingheng New Materials Co. Ltd., which was shown in the parallel jumbo rolls investigation¹² to circumvent the anti-dumping duties on jumbo rolls from China. The investigation has not uncovered any evidence showing that the raw materials used by Thai exporting producers are of an origin other than Chinese. Therefore, the parts concerned are from the country subject to measures.

2.6. Value of parts and added value

- (37) Article 13(2) of the basic Regulation states that, as far as assembly operations are concerned, another condition to establish circumvention is that the parts (of Chinese origin, in this case) constitute 60 % or more of the total value of the parts of the assembled product and that the added value of the parts brought in, during the assembly or completion operation, is less than 25 % of the manufacturing costs. Due to the non-cooperation of any Thai exporting producer, the Commission relied on the evidence provided by the applicant to establish whether the 60 % and 25 % thresholds were met.
- (38) Taking into account the equipment that the known exporting producers use in their factories, as shown on their respective websites and from information provided in the request, the production process in Thailand can entail at most certain finishing operations such as rewinding, slitting or annealing.
- (39) The applicant showed that for the production of small rolls from either jumbo rolls or foil stock, these raw materials account for almost 90 % of the total value of the parts of the assembled product. The applicant also showed that, for both raw materials, the added value of these parts was less than 18 % and less than 24 %, respectively.

company also mentions the fact that imports from Thailand are free from anti-dumping duties:
<http://www.top-ranking.com.cn/default/html/page/tec/lang/en.html> (last accessed 25 February 2021).
¹² OJ L 431, 21.12.2020, p. 48.

- (40) The Commission therefore concluded that the criteria of Article 13(2) of the basic Regulation are met.

2.7. Undermining of the remedial effects of the duty

- (41) For the assessment of the possible undermining of the remedial effects of the existing measures in terms of the prices and/or quantities, the Commission used the export prices and volumes reported by Eurostat. The Commission compared the average non-injurious price as established in the 2019 expiry review investigation, with the weighted average export CIF prices, duly adjusted to include conventional customs duties and post clearance costs, the difference being the level of underselling.
- (42) This price comparison showed the existence of underselling of 29 %.
- (43) In addition, the investigation established that the quantities exported and found to be circumventing the existing measures are significant, representing almost 14 % of the total volume of imports of small rolls during the reporting period.
- (44) The Commission concluded therefore that the existing measures are undermined in terms of quantities and prices by the imports from Thailand subject to this investigation.

2.8. Evidence of dumping

- (45) In accordance with Article 13(1) of the basic Regulation, the Commission examined whether there was evidence of dumping in relation to the normal value established in the last expiry review for the like product.
- (46) To establish the export prices from Thailand the Commission used the average export price of small rolls during the reporting period, as reported by Eurostat. For the purpose of a fair comparison between the normal value and the export price, due allowance, in the form of adjustments, was made for differences which affect prices and price comparability in accordance with Article 2(10) of the basic Regulation. The average export prices thus established were below the normal value as established in the last expiry review, which demonstrated the existence of dumping.

3. MEASURES

- (47) Based on these findings, the Commission concluded that the anti-dumping duty imposed on imports of small rolls originating in the PRC are being circumvented by imports of the product under investigation.
- (48) Therefore, in accordance with Article 13(1) of the basic Regulation, the anti-dumping measures in force should be extended to imports of the product under investigation.
- (49) Pursuant to Article 13(1), second paragraph of the basic Regulation, the measure to be extended should be the one established in Article 1(2) of Commission Implementing Regulation (EU) 2019/915 for 'all other companies', which is a definitive anti-dumping duty of 35,6 % applicable to the CIF net, free-at-Union-frontier price, before customs duty.
- (50) Pursuant to Article 13(3)) of the basic Regulation, which provide that any extended measures should apply to imports which entered the Union under registration imposed by the initiating Regulation, the anti-dumping duty should be collected on those registered imports of the product under investigation.

4. DISCLOSURE

- (51) On 24 June 2021, the Commission disclosed to all interested parties the essential facts and considerations leading to the above conclusions and invited them to comment. No comments were received.
- (52) 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. The definitive anti-dumping duty imposed by Implementing Regulation (EU) 2019/915 on imports of certain aluminium foil in rolls originating in the People's Republic of China following an expiry review under Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council, is hereby extended to imports of aluminium foil of a thickness of 0,007 mm or more but less than 0,021 mm, not backed, not further worked than rolled, whether or not embossed, in low weight rolls of a weight not exceeding 10 kg, consigned from Thailand, whether declared as originating in Thailand or not, currently falling under CN codes ex 7607 11 11 and ex 7607 19 10 (TARIC codes 7607 11 11 11 and 7607 19 10 11).
2. The duty extended by paragraph 1 of this Article shall be collected on imports consigned from Thailand whether declared as originating in Thailand or not, registered in accordance with Article 2 of Implementing Regulation (EU) 2020/2161 and Articles 13(3) and 14(5) of Regulation (EU) 2016/1036.
3. The amount of anti-dumping duties to be retroactively collected shall be that resulting from applying the anti- dumping duty of 35,6 % applicable to 'all other companies'.
4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

Customs authorities are directed to discontinue the registration of imports established in accordance with Article 2 of Implementing Regulation (EU) 2020/2161.

Article 3

1. Requests for exemption from the duty extended by Article 1 shall be made in writing in one of the official languages of the European Union and must be signed by a person authorised to represent the entity requesting the exemption. The request must be sent to the following address:

European Commission
 Directorate-General for Trade
 Directorate G Office:
 CHAR 04/39
 1049 Bruxelles/Brussel
 BELGIQUE/BELGIË

2. In accordance with Article 13(4) of Regulation (EU) 2016/1036, the Commission may authorise, by decision, the exemption of imports from companies which do not circumvent the anti-dumping measures imposed by Implementing Regulation (EU) 2019/915, from the duty extended by Article 1.

Article 4

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,

For the Commission
The President



EUROPEAN COMMISSION

Directorate-General for Trade
Directorate G – Trade Defence

Trade Defence Instruments

Brussels, 20 July 2021
TRADE G3/2 CK (2021)5269287

SENSITIVE*

**NOTE FOR THE ATTENTION OF ALL DELEGATIONS OF
THE TRADE DEFENCE INSTRUMENTS COMMITTEE**

Subject: R733 - Anti-circumvention investigation concerning imports of certain aluminium foil (small rolls) originating in the People's Republic of China via Thailand

Consultation under the examination procedure

Given the situation of the Coronavirus COVID-19, please be informed that we have decided to continue using the written procedure to consult the Trade Defence Instruments Committee until further notice. The consultation on the above-mentioned draft implementing act is in accordance with Article 3(5) of the Comitology Regulation (EU) No 182/2011¹ and Article 15(5) of the basic anti-dumping Regulation².

Please find attached the sensitive draft Commission Implementing Regulation concerning the subject mentioned above.

Committee members are therefore requested to provide the Commission with their opinion concerning the above draft implementing act in writing **by 3 August** to the mailbox: anti-dumping-subsidy@ec.europa.eu.

You will be informed of the outcome of the written consultation immediately after the expiry of the time limit set above.

* This document is for internal use only. It is protected pursuant to Article 4 of Regulation (EC) 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p.43). It is a confidential document pursuant to Article 19 of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 176, 30.06.2016, p. 21) and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-dumping Agreement) / pursuant to Article 29 of Regulation (EU) 2016/1037 of the European Parliament and of the Council (OJ L 176, 30.06.2016, p.55) and Article 12 of the WTO Agreement on Subsidies and Countervailing Measures. Handling instructions for SENSITIVE information are given at: <https://europa.eu/db43PX>

¹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p.13)

² 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 OJ L 176, 30.6.2016, p. 21)

Questions and comments concerning the draft implementing act, if any, may be provided in writing **by 27 July 2021** to the same functional mailbox. The Commission services will reply to those questions in writing as soon as possible and in any event prior to the deadline for the submission of the Member States' opinion. The Commission's replies will be addressed to all Committee members.

Please be reminded that according to Article 8(1) of the Committee's rules of procedure, *"any committee member who does not oppose the draft implementing act or who does not explicitly abstain from voting thereon before the expiry of that time limit shall be regarded as having tacitly agreed to the draft implementing act"*.

We thank you for your cooperation and understanding to ensure that the Trade Defence Instruments Committee continues its work successfully in this extraordinary situation.

Should you have any questions please do not hesitate to contact me or the team in charge.

CASE TEAM

HEAD OF SECTION:

Mr Per AIDEMARK

OFFICIALS IN CHARGE:

Ms Catharina KOOPS

Mr Pedro DA CUNHA MONTEIRO

(signed)
Zsuzsana JÁMBOR
Chairperson
Trade Defence Instruments Committee

Encl. Draft Commission Implementing Regulation