

Λευκωσία, 9 Δεκεμβρίου 2021

Προς: Όλους τους ενδιαφερόμενους

Θέμα: Επιβολή οριστικού δασμού (αντί-ντάμπινγκ)

Κυρία/ε,

Η Ευρωπαϊκή Επιτροπή προτίθεται να επιβάλει οριστικά μέτρα αντί-ντάμπινγκ στις εισαγωγές ορισμένων προϊόντων:

- A. Στην εισαγωγή σωλήνων και εξαρτημάτων σωλήνων από σίδηρο και χάλυβα και στην εισαγωγή ακεσουλφάμης καλίου από την Κίνα.**
- B. Στην εισαγωγή πλατέων προϊόντων έλασης με προσανατολισμένους κόκκους από πυριτιούχο χάλυβα για ηλεκτρικές εφαρμογές από την Κίνα, την Ιαπωνία, την Κορέα, την Ρωσία, και τις Ηνωμένες Πολιτείες Αμερικής.**

Στα επισυναπτόμενα έγγραφα μπορείτε να βρείτε τις κατηγορίες προϊόντων και τους προτεινόμενους δασμούς. Καθώς η διαδικασία βρίσκεται ακόμη στο στάδιο διαβούλευσης, παρακαλώ όπως μας αποστείλετε τις απόψεις – εισηγήσεις σας σχετικά με το θέμα, μέχρι την **Τρίτη 14 Δεκεμβρίου 2021** στην ηλεκτρονική διεύθυνση m.koullouros@ccci.org.cy έτσι ώστε να τις προωθήσουμε στο Υπουργείο Ενέργειας, Εμπορίου και Βιομηχανίας.

Ευχαριστούμε για την συνεργασία.

Με εκτίμηση,

Μιχάλης Κούλλουρος,
Λειτουργός Τμήματος Βιομηχανικής Ανάπτυξης,
Καινοτομίας και Περιβάλλοντος,
για Γενικό Γραμματέα.



EUROPEAN COMMISSION

Directorate-General for Trade
Directorate G – Trade Defence

Trade Defence Instruments

Brussels, 1 December 2021
trade.g.2(2021)8226894

SENSITIVE*

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

Subject: R726 – Expiry review of the anti-dumping measures applicable to imports of certain tube and pipe fittings of iron or steel originating in the People's Republic of China.

Proposal to impose definitive measures

Consultation under the examination procedure

Given the evolving situation of the Coronavirus COVID-19, please be informed that we have decided to resume 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 15 December 2021** to the mailbox: anti-dumping-subsidy@ec.europa.eu.

* 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)

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 9 December 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 teams in charge.

<p>DUMPING TEAM</p> <p>HEAD OF SECTION:</p> <p>Mr Lukas Pejcoch</p> <p>OFFICIALS IN CHARGE:</p> <p>Mrs Claire Dabin</p> <p>Mr Alessandro Mattucci</p> <p>E-mail:</p> <p>TRADE-R726-TPF-DUMPING@ec.europa.eu</p>	<p>INJURY/UNION INTEREST TEAM</p> <p>HEAD OF SECTION:</p> <p>Mrs Cathy De Backer</p> <p>OFFICIALS IN CHARGE:</p> <p>Mr Filip Dobes</p> <p>Mr Arto Leppilahti</p> <p>E-mail:</p> <p>TRADE-R726-TPF-INJURY@ec.europa.eu</p>
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(signed)
Zsuzsana JÁMBOR
Chairperson
Trade Defence Instruments Committee

Encl. Draft Commission Implementing Regulation



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

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

of XXX

imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel, originating in the People's Republic of China, as extended to imports of certain tube and pipe fittings, of iron or steel consigned from Taiwan, Indonesia, Sri Lanka and Philippines, whether declared as originating in these countries or not, following an expiry review pursuant to Article 11(2) of the Regulation (EU) 2016/1036 of the European Parliament and of the Council

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

of XXX

imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel, originating in the People's Republic of China, as extended to imports of certain tube and pipe fittings, of iron or steel consigned from Taiwan, Indonesia, Sri Lanka and Philippines, whether declared as originating in these countries or not, following an expiry review pursuant to Article 11(2) of the 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 ('basic Regulation'), and in particular Article 11(2) thereof,

Whereas:

1. PROCEDURE

1.1. Measures in force

- (1) Anti-dumping measures on imports of certain tube and pipe fittings ('TPFs' or the 'product concerned') originating in the People's Republic of China (the 'country concerned' or 'China') and Thailand were originally imposed by Council Regulation (EC) No 584/96² (the 'original measures').
- (2) Pursuant to Article 13(3) of the basic Regulation the original measures were extended to imports consigned from Taiwan, Indonesia, Sri Lanka and the Philippines whether declared as originating respectively in Taiwan, Indonesia, Sri Lanka and the Philippines or not, by Council Regulations (EC) No 964/2003³, (EC) No 2052/2004⁴, (EC) No 2053/2004⁵ and (EC) No 655/2006⁶.

¹ OJ L 176, 30.6.2016, p. 21.

² Council Regulation (EC) No 584/96 of 11 March 1996 imposing a definitive anti-dumping duty on imports of certain tube or pipe fittings, of iron or steel, originating in the People's Republic of China, Croatia and Thailand, and collecting definitively the provisional duty imposed (OJ L 84, 3.4.1996, p. 1).

³ Council Regulation (EC) No 964/2003 of 2 June 2003 imposing definitive anti-dumping duties on imports of certain tube or pipe-fittings, of iron or steel, originating in the People's Republic of China and Thailand, and those consigned from Taiwan, whether declared as originating in Taiwan or not (OJ L 139, 6.6.2003, p. 1).

⁴ Council Regulation (EC) No 2052/2004 of 22 November 2004 extending the definitive anti-dumping duty imposed by Regulation (EC) No 964/2003 on imports of tube or pipe fittings, of iron or steel, originating in the People's Republic of China to imports of tube or pipe fittings, of iron or steel, consigned from Indonesia, whether declared as originating in Indonesia or not (OJ L 355, 1.12.2004, p. 4).

⁵ Council Regulation (EC) No 2053/2004 of 22 November 2004 extending the definitive anti-dumping duty imposed by Regulation (EC) No 964/2003 on imports of tube or pipe fittings, of iron or steel, originating in the People's Republic of China to imports of tube or pipe fittings, of iron or steel, consigned from Sri Lanka, whether declared as originating in Sri Lanka or not (OJ L 355, 1.12.2004, p. 9).

- (3) The measures currently in force is a definitive anti-dumping duty imposed by Commission Implementing Regulation (EU) 2015/1934, of 27 October 2015, imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel, originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of the basic Regulation⁷.
- 1.2. Measures in force with respect to other third countries
- (4) Anti-dumping measures are currently in force on imports of certain tube and pipe fittings originating in the Russian Federation, in the Republic of Korea and in Malaysia⁸.
- 1.3. Request for an expiry review and initiation
- (5) Following the publication of a notice of impending expiry⁹ of the anti-dumping measures in force on the imports of certain tube and pipe fittings, of iron or steel, ('TPF'), originating in the People's Republic of China ('the PRC', 'China' or 'the country concerned'), the Commission received a request for review pursuant to Article 11(2) of the basic Regulation ('the request').
- (6) The request was lodged on 25 June 2020 by the Defence Committee of the steel butt-welding fittings industry of the European Union ('the applicant') on behalf of producers representing more than 60 % of the total Union production of TPF.
- (7) The request is 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.
- (8) 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 27 October 2020 the Commission initiated an expiry review with regard to imports into the Union of TPF originating in PRC on the basis of Article 11(2) of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union*¹⁰ ('the Notice of Initiation').
- 1.4. Interested parties
- (9) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the applicant, other known Union producers, producers in the PRC, importers and users in the Union known to be concerned, and the Chinese authorities of the initiation of the expiry review and invited them to participate.

⁶ Council Regulation (EC) No 655/2006 of 27 April 2006 extending the definitive anti-dumping duty imposed by Regulation (EC) No 964/2003 on imports of tube or pipe fittings, of iron or steel, originating in the People's Republic of China to imports of tube or pipe fittings, of iron or steel, consigned from the Philippines, whether declared as originating in the Philippines or not (OJ L 116, 29.4.2006, s. 1).

⁷ OJ L 282, 27.10.2015, p. 14.

⁸ Commission Implementing Regulation (EU) 2019/566 of 9 April 2019 imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings originating in the Russian Federation, the Republic of Korea and Malaysia following an expiry review pursuant to Article 11(2) of the Regulation (EU) 2016/1036 of the European Parliament and of the Council and terminating the investigation concerning the imports of the same product originating in the Republic of Turkey (OJ L 99, 10.04.2019, p.9).

⁹ OJ C 38, 5.2.2020, p. 2.

¹⁰ OJ C 361, 27.10.2020, p.6.

- (10) All interested parties had the 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.

1.5. Sampling

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

1.5.1. Sampling of Union producers

- (12) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. In accordance with Article 17(1) of the basic Regulation, the Commission selected the sample on the basis of the largest representative volume of sales and production in the Union which could reasonably be investigated within the time available, ensuring also geographical representativeness. This sample consisted of three Union producers. The sampled Union producers accounted for 56 % of the estimated total production in the Union and for 49% of the estimated total sales volume to unrelated customers in the Union in the review investigation period. The Commission invited interested parties to comment on the provisional sample, but did not receive any comments. The provisional sample was therefore confirmed and is considered representative of the Union industry.

1.5.2. Sampling of producers in China

- (13) In order to enable the Commission to decide whether sampling would be necessary in respect of the producers in the country concerned, those parties were requested to make themselves known and to provide the Commission with the information requested in the Notice of Initiation. In addition, the Commission requested the Mission of China to the Union to identify and/or contact other producers, if any, that could be interested in participating in the investigation. However, since only one exporting producer initially came forward, sampling was not necessary. In addition, since this exporting producer has decided to withdraw its cooperation, the findings with regard to the imports from the PRC were made on the basis of the facts available pursuant to Article 18 of the basic Regulation.

1.6. Sampling of unrelated importers

- (14) In order to enable the Commission to decide whether sampling was necessary and, if so, to select a sample, all unrelated importers were invited to participate in this investigation. Those parties were requested to make themselves known by providing the Commission with the information on their companies requested in Annex of the Notice of Initiation. Only two importers came forward. Consequently, the Commission decided that sampling was not necessary.

1.7. Questionnaires and verification visits

- (15) The Commission sent a questionnaire concerning the existence of significant distortions in the PRC within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of China ('GOC').
- (16) Questionnaires for the sampled Union producers, as well as those for importers, users and exporting producers were made available online¹¹ on the day of the initiation.

¹¹ https://trade.ec.europa.eu/tdi/case_details.cfm?id=2490.

- (17) The Commission received questionnaire replies from the three sampled Union producers, the applicant, and two importers.
- (18) In view of the outbreak of COVID-19 and the confinement measures put in place by various Member States, 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 investigations¹². The Commission carried out remote crosschecks ('RCC') of all sampled Union producers, that is:
 - ERNE Fittings GmbH , Austria
 - INTERFIT S.A., France
 - Virgilio CENA & Figli S.p.A., Italy

1.8. Subsequent procedure

- (19) On 9 November 2021, the Commission disclosed the essential facts and considerations on the basis of which it intended to maintain the anti-dumping duties in force. All parties were granted a period within which they could make comments on the disclosure.
- (20) No comments were received by the Commission from any of the interested parties.

1.9. Review investigation period and period considered

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

1.10. Withdrawal of the United Kingdom from the Union

- (22) This case was initiated on 27 October 2020, i.e. during the transition period agreed between the United Kingdom ('UK') and the EU in which the UK remained subject to the Union law. This period ended on 31 December 2020. Consequently, as of 1 January 2021, companies and associations from the UK no longer qualified as interested parties in this proceeding.
- (23) By a note to the case file of 18 January 2021, the Commission invited UK operators that considered that they still qualified as interested party to contact it. No company came forward.

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

- (24) The product subject to this review is the same as in the previous expiry review, namely certain tube or pipe fittings (other than cast fittings, flanges and threaded fittings), of iron or steel (not including stainless steel), with a greatest external diameter not exceeding 609,6 mm, of a kind used for butt-welding or other purposes, originating in the People's Republic of China ('the product under review'), currently classified under CN codes ex 7307 93 11, ex 7307 93 19 and ex 7307 99 80 (TARIC codes 7307 93 11

¹² Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations OJ C 86/6, 16.3.2020.

91, 7307 93 11 93, 7307 93 11 94, 7307 93 11 95, 7307 93 11 99, 7307 93 19 91, 7307 93 19 93, 7307 93 19 94, 7307 93 19 95, 7307 93 19 99, 7307 99 80 92, 7307 99 80 93, 7307 99 80 94, 7307 99 80 95 and 7307 99 80 98).

2.2. Like product

(25) As shown in the investigation imposing the measures in force¹³ the following products have the same basic physical and technical characteristics as well as the same basic uses:

- the product under review;
- the product produced and sold on the domestic market of China;
- the product produced and sold in the Union by the Union industry.

(26) The Commission concluded that these products are like products within the meaning of Article 1(4) of the basic Regulation.

3. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

3.1. Preliminary remarks

(27) During the review investigation period, imports of the product under review from the PRC continued (5192 tonnes) albeit at lower levels than in the review investigation period of the last expiry review (8 058 tonnes from July 2013 to June 2014). According to Comext (Eurostat)¹⁴ statistics, imports of TPF from the PRC accounted for 10% of the Union market in the review investigation period, compared to a market share of 16% during the previous expiry review.

(28) As mentioned in recital (11), none of the exporters/producers from the PRC cooperated in the investigation.

(29) 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.

(30) 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 combined with other sources of information, such as trade statistics on imports and exports (Comext (Eurostat), Dun & Bradstreet D&B¹⁵, Global Trade Alert - GTA¹⁶ and OECD¹⁷).

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

3.2.1. Normal value

3.2.1.1. Introduction

(31) According to Article 2(1) of the basic Regulation, “*the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country*”.

¹³ OJ L 282, 27.10.2015, p. 14.

¹⁴ http://comext.eurostat.ec.europa.eu/ANALYTICAL_S10_V17_ECAS/Analytical.html

¹⁵ Dun & Bradstreet (D&B): <https://sso.dnb.com/>

¹⁶ Global Trade Alert - GTA: https://www.globaltradealert.org/data_extraction

¹⁷ OECD database: http://qdd.oecd.org/subject.aspx?Subject=ExportRestrictions_IndustrialRawMaterials

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

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

- (34) 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 on the basis of Article 2(6a) of the basic Regulation. In order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions, the Commission sent a questionnaire to the GOC. In addition, in point 5.3.2. of the Notice of Initiation, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the Official Journal of the European Union. No questionnaire reply was received from the GOC and no submission on the application of Article 2(6a) of the basic Regulation was received within the deadline. Subsequently, the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in the PRC.
- (35) In the Notice of Initiation, the Commission also specified that, in view of the evidence available, it may need to select an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks.
- (36) On 30 March 2021, 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 the Russian Federation, Thailand and Turkey).
- (37) The applicant argued that the Russian Federation is not a suitable representative country namely for the existence of export ban on mother pipes (HS code 730419) in place since 1 May 2015, representing a significant source of distortions on the Russian market for the main raw material of TPFs. The Commission took note of the comments and agreed that Russia does not constitute an appropriate representative country within the meaning of Article 2(6a)(a) of the basic Regulation.
- (38) The applicant argued further that imports of mother pipes from the PRC into Turkey are significant. Moreover, the applicant argued that none of the three companies

identified by the Commission in the First Note were genuine producers of TPF. After further investigation, the Commission concurred that the three indicated producers in Turkey were not genuine TPF producers. The Commission therefore concluded at that stage that Turkey did not appear to be an appropriate representative country within the meaning of Article 2(6a)(a) of the basic Regulation.

- (39) Moreover, the applicant argued that the company identified by the Commission in Thailand was in fact not a TPF producer and proposed three other companies. The Commission concurred that the company originally identified was not a producer of TPF and verified that the three companies proposed by the applicant (Thai Benkan Co., Ltd., Awaji Material Thailand Co., Ltd. and TTU Industrial Corp. Ltd.) were producing TPF and that recent financial data concerning these companies was readily available.
- (40) On 28 June 2021, 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 Thailand as the representative country. It also informed interested parties that it would establish selling, general and administrative costs ('SG&A') and profit based on available information from three producers (Thai Benkan and Awaji Material Thailand and TTU Industrial Corporation) in the representative country. No comments on the Second Note were received.

3.2.2. Existence of significant distortions

- (41) In recent investigations concerning the steel sector in the PRC¹⁸, the Commission found that significant distortions in the sense of Article 2(6a)(b) of the basic Regulation were present.
- (42) In above referred investigations, the Commission found that there was substantial government intervention in the PRC resulting in a distortion of the effective allocation of resources in line with market principles¹⁹. 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 Regulation²⁰, 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 Regulation²¹. The Commission

¹⁸ 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

¹⁹ See Commission Implementing Regulation (EU) 2021/635 recitals 149-150 and Commission Implementing Regulation (EU) 2020/508 recitals 158-159

²⁰ See Commission Implementing Regulation (EU) 2021/635 recitals 115-118 and Commission Implementing Regulation (EU) 2020/508 recitals 122-127

²¹ 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 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

further found that the State's presence and intervention in the financial markets, as well as in the provision of raw materials and inputs have an additional distorting effect on the market. Indeed, overall, the system of planning in the PRC results in resources being concentrated in sectors designated as strategic or considered politically important by the GOC, rather than being allocated in line with market forces²². 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 PRC²³. 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 Regulation²⁴, 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 PRC²⁵.

- (43) 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 Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defense Investigations²⁶ ('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.
- (44) In addition to referring to the Report, the request also pointed out practices affecting the costs and prices in the steel sector, mother pipe being the main input in the production of the TPF):
- Steel production is dominated by state-owned enterprises ('SOEs') whose actions are determined by the State and the CPC to achieve the overall objectives set out in the five year plans;

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.

²² See Commission Implementing Regulation (EU) 2021/635 recitals 123-129 and Commission Implementing Regulation (EU) 2020/508 recitals 133-138.

²³ See Commission Implementing Regulation (EU) 2021/635 recitals 130-133 and Commission Implementing Regulation (EU) 2020/508 recitals 139-142.

²⁴ See Commission Implementing Regulation (EU) 2021/635 recitals 134-135 and Commission Implementing Regulation (EU) 2020/508 recitals 143-144.

²⁵ See Commission Implementing Regulation (EU) 2021/635 recitals 136-145 and Commission Implementing Regulation (EU) 2020/508 recitals 145-154.

²⁶

- A party committee must be established in any public or private entity where there are more than three Communist Party of China (‘CPC’) members. In the case of steel enterprises, the committees plays a major role in the direction of the activities of the enterprise. Most of the enterprises active in the steel sector are in the process of changing their articles of association to extend the influence of the CPC in management and direction;
 - There are significant distortions in the steel sector related to the 13th Five Year Plan, known as ‘the Steel Industry Adjustment and Upgrade Plan for 2016-2020’²⁷, , which also shows evidence of past irrational build-up of overcapacity in the face of decreasing domestic demand;
 - The China Iron and Steel Association assists enterprises in price setting and in production coordination. State-owned enterprises are exempted from the application of competition law and in accordance with the ‘the Steel Industry Adjustment and Upgrade Plan for 2016-2020’ *“cut throat competition should be avoided”*²⁸ and *“it should be prevented that numerous companies rush headlong into action and engage in disorderly competition”*²⁹;
 - the costs of raw-materials and energy in the PRC are not the result of free market forces as they are affected by substantial government interventions;
- (45) As indicated in recital (26), 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.
- (46) Specifically in the steel sector, which is the main raw material to produce TPF, 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. 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 production, processing, delivery and trading”*³⁰. Baosteel is another major Chinese State-owned enterprise that engages in steel manufacturing and is part of the China Baowu Steel Group Co. Ltd. (formerly Baosteel Group and Wuhan Iron & Steel)³¹. While the nominal split between the number of SOEs and privately owned companies in the steel sector 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 SOEs³². At the same time, while the top ten producers only took up some 36% of total industry output

²⁷ The full text of the plan is available on the MIIT website:
<http://www.miit.gov.cn/n1146295/n1652858/n1652930/n3757016/c5353943/content.html> (last viewed 2 March 2020)

²⁸ The Steel Industry Adjustment and Upgrade Plan for 2016-2020, page 24

²⁹ The Steel Industry Adjustment and Upgrade Plan for 2016-2020, page 25The Steel Industry Adjustment and Upgrade Plan

³⁰ TISCO, ‘Company profile’, <http://en.tisco.com.cn/CompanyProfile/20151027095855836705.html> (last viewed 2 March 2020)

³¹ Baowu, ‘Company profile’, <http://www.baowugroup.com/en/contents/5273/102759.html> (last viewed 6 May 2021)

³² 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.

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 2025³³. This intention has been repeated by the GOC in April 2019, announcing a release of guidelines on steel industry consolidation³⁴. Such consolidation may entail forced mergers of profitable private companies with underperforming SOEs³⁵. Since there was no cooperation from Chinese TPF producers, the exact ratio of the private and state owned TPF producers could not be determined.

- (47) 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, due to the lack of cooperation from the side of the TPF producers, the Commission recalls that both public and privately owned enterprises in the steel sector are subject to policy supervision and guidance. Indeed, while the right provided for in Chinese legislation to appoint and to remove key management personnel in SOEs by the relevant State authorities can be considered to reflect the corresponding ownership rights³⁶, 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 Constitution³⁷) 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 discipline³⁸. 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 companies³⁹. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of TPF and the suppliers of their inputs .
- (48) 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 TPF sector.
- (49) Even though TPF is a specialised industry, it benefits from governmental guidance and intervention concerning the main raw material to manufacture TPF, namely steel.

³³ Available at: www.gov.cn/zhengce/content/2016-02/04/content_5039353.htm (last viewed 6 May 2021); https://polycn.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).

³⁴ 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).

³⁵ 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).

³⁶ Report, Part I, Chapter 5, p. 100-1.

³⁷ Report, Part I, Chapter 2, p. 26.

³⁸ Report, Part I, Chapter 2, p. 31-2.

³⁹ Available at <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU> (last viewed 22 October 2021)

- (50) The steel industry is regarded as a key industry by the GOC⁴⁰. 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’, applicable during the RIP. This Plan stated that the steel industry is “*an important, fundamental sector of the Chinese economy, a national cornerstone*”⁴¹. The main tasks and objectives set out in this Plan cover all aspects of the development of the industry⁴². The 13th Five-Year Plan on Economic and Social Development⁴³, applicable during the RIP, envisaged support to enterprises producing high-end steel product types⁴⁴. It also focuses on achieving product quality, durability and reliability by supporting companies using technologies related to clean steel production, precision rolling and quality improvement⁴⁵. The ‘Catalogue for Guiding Industry Restructuring (2011 Version) (2013 Amendment)’⁴⁶ (‘the Catalogue’) lists steel as an encouraged industry.
- (51) As can be seen from the above examples concerning steel, which is the main raw material to produce TPF, the GOC further guides the development of the TPF 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.
- (52) 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 as the main raw material used in the manufacturing of TPF. Such measures impede market forces from operating freely.
- (53) 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 TPF sector referred to above in recital (38) would not affect the manufacturers of the product under review.
- (54) The TPF 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 (38). 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)⁴⁷.
- (55) Moreover, no evidence was submitted in the present investigation demonstrating that the TPF 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

⁴⁰ Report, Part III, Chapter 14, p. 346 ff.

⁴¹ Introduction to The Plan for Adjusting and Upgrading the Steel Industry.

⁴² Report, Chapter 14, p. 347.

⁴³ 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).

⁴⁴ Report – Chapter 14, p. 349.

⁴⁵ Report – Chapter 14, p. 352.

⁴⁶ 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.

⁴⁷ See Commission Implementing Regulation (EU) 2021/635 recitals 134-135 and Commission Implementing Regulation (EU) 2020/508 recitals 143-144.

above in recital (37). Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

- (56) Finally, the Commission recalls that in order to produce TPF, a number of inputs is needed. When the producers of TPF 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.
- (57) As a consequence, not only the domestic sales prices of TPF are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts I and II of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that in itself was produced in the PRC by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth.
- (58) No evidence or argument to the contrary has been adduced by the GOC or the exporting producers in the present investigation.
- (59) 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.

3.2.3. Representative country

3.2.3.1. General remarks

- (60) 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 Bank⁴⁸;
 - Production of the product under review in that country⁴⁹;
 - Availability of relevant public data in the representative country;

⁴⁸ World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>.

⁴⁹ 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.

- Where there is more than one possible representative country, preference should be given, where appropriate, to the country with an adequate level of social and environmental protection.
- (61) As explained in recital (26), the Commission informed interested parties in the Second Note of its conclusion that Thailand was considered an appropriate representative country.

3.2.3.2. A level of economic development similar to the PRC

- (62) In the First Note, the Commission identified the Russian Federation, Thailand 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 and production of the product under review appeared to take place in them.
- (63) No comments were received concerning the level of economic development following that note.

3.2.3.3. Production of the product under review in the representative country

- (64) In the First Note, the Commission indicated that production of the product under review was identified in the Russian Federation, Thailand and Turkey. However, the Russian Federation was excluded due to the existence of export ban on mother pipes (see recital (23) above), important raw material used in the production of TPF and more in general of steel. Turkey was excluded because none of the three companies identified in the First Note, and for which recent financial information was readily available, manufactured TPF.

3.2.3.4. Availability of relevant public data in the representative country

- (65) For the countries mentioned above, the Commission further verified the availability of the public data, and in particular public financial data from the producers of the product under review.
- (66) The Commission looked for TPF producers with publicly available financial data that could be used to establish undistorted and reasonable amounts for SG&A and profit. The Commission focused the search in particular on profitable companies with publicly available profit and loss statements for the RIP. Thus, the Second Note listed three companies in Thailand.
- (67) The Commission analysed all relevant data available in the file for the factors of production in Thailand and noted the following:
- The Commission analysed the import statistics of mother pipe, and concluded that there were sufficient imports of mother pipe necessary for the production of the product under review in the RIP;
 - Energy and water statistics for the RIP were readily available from the local statistic or providing authorities⁵⁰;
 - Statistics for labour cost for the RIP were available on the website of the National Statistical Office of Thailand⁵¹ and KPMG⁵².

⁵⁰

Electricity (<http://www.mea.or.th/en/profile/109/114>), natural gas (<http://www.eppo.go.th/index.php/en/en-energystatistics/energy-economy-static>), fuel oil (<http://www.eppo.go.th/index.php/en/en-energystatistics/petroleumprice-statistic>) and water (<https://en.pwa.co.th/contents/service/table-price>).

- (68) Based on the above considerations, the Commission considered that Thailand was an appropriate representative country.

3.2.3.5. Level of social and environmental protection

- (69) Having established that Thailand was the only available 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.

3.2.3.6. Conclusion on representative country

- (70) In view of the above analysis, Thailand 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, Thailand had a sufficient production of the product under review and relevant data available concerning all factors of production, SG&A and profit.

3.2.4. Sources used to establish undistorted costs

- (71) In the First Note, the Commission listed the factors of production such as materials, energy and labour used in the production of the product under review and invited the interested parties to comment and propose publicly available information on undistorted values for each of the factors of production.
- (72) 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 mother pipe in the representative country.
- (73) The Commission further stated that the statistics of the National Statistical Office of Thailand and KPMG would be used to establish the undistorted costs of labour in the representative country; while national statistics, as referred to in recital (65), would be used to establish undistorted energy costs.

3.2.5. Undistorted costs and benchmarks

- (74) In the absence of cooperation by Chinese producers, the Commission had to rely on the Union industry in order to establish the factors of production used in the production of TPF.
- (75) Considering all the information submitted by the Union industry and the absence of comments from the exporting producers 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 their sources have been identified in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

Table 1
Factors of production of TPF

Factor of Production	Commodity code	Source of data	Unit undistorted value
Raw Material			
Mother pipe	7304 19	GTA	1,843 EUR/Kg

⁵¹ <http://www.nso.go.th/sites/2014en/Pages/Statistical%20Themes/Population-Society/Labour/Labour-Force.aspx>

⁵² <https://home.kpmg/xx/en/home/insights/2011/12/thailand-other-taxes-levies.html>

Energy/ water			
Electricity	[N/A]	Metropolitan Electricity Authority ⁵³	0,09945 EUR/KWh
Natural Gas	[N/A]	Ministry of Energy of Thailand ⁵⁴	0,035 EUR/KWh
Fuel Oil	[N/A]	Ministry of Energy of Thailand ⁵⁵	0,37 EUR/litre
Water	[N/A]	Thai Provincial Waterworks Authority ⁵⁶	0,026 EUR/m ³
Labour			
	[N/A]	KPMG ⁵⁷ for social security charges paid by the employer National Statistical Office of Thailand for the actual labour cost ⁵⁸	3,04 EUR/hour
By-product/waste			
Steel scrap	7204 49	GTA	0, 237940 EUR/Kg

- (76) The Commission included a value for manufacturing overhead costs in order to cover costs not included in the factors of production referred to above. Given the absence of relevant data in the publicly available financial data of the companies used in Thailand, to establish this amount, the Commission made use of the financial data provided by the cooperating Union producers mentioned in recital (14) above. The methodology is duly explained in Section 3.2.2(d).

3.2.5.1. Raw materials

- (77) In order to establish undistorted prices of raw materials as delivered at the gate of a representative country producer's factory, the Commission used as a basis the weighted average import prices into the representative country as reported in GTA to which import duties were added.
- (78) 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 and countries which are not members of the WTO, listed in Annex 1 of Regulation (EU) 2015/755 of the European Parliament and the Council. The Commission decided to exclude imports from the PRC into the representative country as it concluded in recital (56) 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

⁵³ See: <http://www.eppo.go.th/index.php/en/en-energystatistics/energy-economy-static>, in particular Table 7.2.4 - Final Energy Consumption Per Capita.

⁵⁴ <http://www.eppo.go.th/index.php/en/en-energystatistics/energy-economy-static>

⁵⁵ <http://www.eppo.go.th/index.php/en/en-energystatistics/petroleumprice-statistic>

⁵⁶ <https://en.pwa.co.th/contents/service/table-price>

⁵⁷ The "social security paid by the employer" in Thailand was extracted from the statistics of KPMG Thailand insights: <https://home.kpmg/xx/en/home/insights/2011/12/thailand-other-taxes-levies.html>

⁵⁸ The labour benchmarks with the specific IP period and corresponding exchange rates was extracted from the NSO "National Statistical Office of Thailand" <http://www.nso.go.th/sites/2014en/Pages/Statistical%20Themes/Population-Society/Labour/Labour-Force.aspx>

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.

3.2.5.2. Labour

- (79) The Commission used the publicly available statistics obtained from the National Statistical Office of Thailand⁵⁹ to compute the labour cost per hour and from KPMG⁶⁰ to compute the additional social security charges paid by the employer.

3.2.5.3. Electricity

- (80) The Commission used the electricity price statistics published by the "Metropolitan Electricity Data"⁶¹ of the Thailand Authority, which covers the whole of Thailand.

3.2.5.4. Natural Gas

- (81) The Commission used the publicly available price of gas for industrial users in Thailand published by the Energy Policy and Planning Office – Ministry of Energy of Thailand.⁶²

3.2.5.5. Fuel Oil

- (82) The Commission used the publicly available price of fuel oil published by the Thai Ministry of Energy.⁶³

3.2.5.6. Water

- (83) The Commission used the water tariff of the Provincial Waterworks Authority.⁶⁴

3.2.6. Manufacturing overhead costs, SG&A and profits

- (84) Further to the factors of production summarised under recital (73) above, manufacturing overheads were calculated, i.e. other direct production costs, utilities and depreciation. In view of the lack of cooperation from Chinese producers, the manufacturing overhead costs was based on the manufacturing overheads reported by the Union industry, that amounted to 15,7% of the cost of manufacturing. This percentage was applied to the undistorted costs of manufacturing.
- (85) 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 profit. As stated in recital (35), the Commission identified three Thai companies (TTU Industrial Corporation, Thai Benkan and Awaji Material Thailand) which had publicly available financial information (as published in Global Financials by Dun & Bradstreet⁶⁵) that

⁵⁹ The labour benchmarks with the specific IP period and corresponding exchange rates was extracted from the NSO "National Statistical Office of Thailand" <http://www.nso.go.th/sites/2014en/Pages/Statistical%20Themes/Population-Society/Labour/Labour-Force.aspx>

⁶⁰ The "social security paid by the employer" in Thailand was extracted from the statistics of KPMG Thailand insights: <https://home.kpmg/xx/en/home/insights/2011/12/thailand-other-taxes-levies.html>

⁶¹ <http://www.mea.or.th/en/profile/109/114> with the following average calculated based on European standards, since there was no cooperation: 3,85 Baht/KWH, 0,10 Euro/KWH 0,77 CNY/KWH.

⁶² See: http://www.eppo.go.th/index.php/en/en-energystatistics/energy-economy-static_in_particular Table 7.2.4 - Final Energy Consumption Per Capita.

⁶³ Thailand's Ministry of Energy, Energy policy and planning office, Energy statistics, 8.1. Petroleum price statistics, Table 8, Retail Price of Petroleum Products available at: <http://www.eppo.go.th/index.php/en/en-energystatistics/petroleumprice-statistic>.

⁶⁴ Thai Provincial Waterworks Authority: <https://en.pwa.co.th/contents/service/table-price>

⁶⁵ <https://globalfinancials.com/index-admin.html>

could be used as a proxy to determine an undistorted and reasonable amount for SG&A and profit. Publicly available financial information of these companies was made available to the interested parties as an attachment to the Second Note.

3.2.7. Calculation

- (86) On the basis of the above, the Commission constructed the normal value on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (87) 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 Union industry on the consumption of each factor of production (raw materials, labour and energy) for the production of the product under review. These consumption ratios were multiplied by the undistorted costs per unit established in Thailand, as described in recitals (85) and (86).
- (88) Second, to the Commission applied the manufacturing overheads determined as described in recital (82) to the undistorted costs of manufacturing.
- (89) Finally, the Commission applied the SG&A and profit in the representative country established as explained in recital (86) to the cost of production established as described in recital (89). The SG&A and profit expressed as a percentage of the Costs of Goods Sold ('COGS') and applied to the undistorted costs of production amounted to 14,1% and 1,7% respectively. Such profit level is considered unreasonable due to its low level but, since dumping was already established even before adding a reasonable level of profit, the COM decided to use such low level as it would not have any practical impact on the dumping calculation for the purpose of the findings of this review.
- (90) Due to the fact that no exporting producers cooperated, the normal value was established on a countrywide basis.

3.2.8. Export price

- (91) In the absence of cooperation from Chinese exporting producers, and thus in the absence of specific information on Chinese prices, the export price was determined on the basis of facts available in accordance with Article 18 of the basic Regulation, i.e. on the basis of Eurostat Comext imports statistics. As these prices are reported on a Cost, Insurance, Freight ('CIF') basis, they were adjusted to an ex-works level by deducting ocean freight and insurance, based on OECD data⁶⁶ and inland transport based on World Bank data⁶⁷.

3.2.9. Comparison and dumping margin

- (92) The Commission compared the constructed normal value in accordance with Article 2(6a)(a) of the basic Regulation with the export price on an ex-works basis. On that basis, the dumping margin found, expressed as a percentage of the CIF Union frontier price, duty unpaid, was 100,3%. The Commission therefore concluded that dumping continued during the review investigation period.

3.3. Likelihood of continuation of dumping

⁶⁶ Source: OECD : https://stats.oecd.org/Index.aspx?DataSetCode=CIF_FOB_ITIC

⁶⁷ World Bank 2020 "Doing Business" report: <https://www.doingbusiness.org/en/reports/global-reports/doing-business-2020> and <https://www.doingbusiness.org/en/methodology/trading-across-borders>

- (93) To examine the likelihood of continuation of dumping the following elements were examined by the Commission: the production capacity and spare capacity in the PRC, as well as the attractiveness of the Union market.

3.3.1. Production capacity and spare capacity in the PRC

- (94) 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.
- (95) According to the data provided in the request, the production capacity of TPF in 2019 amounted to 890 000 tonnes. The applicant also computed that the spare production capacity of the product under review in the PRC amounted to around 197 000 tonnes in 2019. This is equivalent to six times the volume of EU sales into the Union and four times the volume of EU consumption.
- (96) Based on the above, the Commission concluded that the Chinese TPF producers have significant spare capacities, which they could use to produce TPF to export to the Union if the measures were allowed to lapse.

3.3.2. Attractiveness of the Union market

- (97) The Union market has always been attractive to Chinese exporting producers of TPF. This is shown by their continuous presence dating back to the original investigation as well as by the efforts deployed trying to circumvent the measures in place in the past via Taiwan, Indonesia, Sri Lanka and the Philippines as mentioned in recital (1).
- (98) Finally, considered that apart from the EU, Argentina⁶⁸, Japan⁶⁹, Mexico⁷⁰, Turkey⁷¹ and USA⁷² have high anti-dumping measures in place regarding imports of TPFs from the PRC, it is likely that large quantities of these spare capacity is directed to the Union market, should measures be allowed to lapse.

3.3.3. Conclusion on the likelihood of continuation of dumping

- (99) The investigation showed that imports from the PRC continued to enter the Union market at dumped prices during the review investigation period. Considering the dumped price levels of TPFs to the Union during the RIP, the large spare capacity in the PTC and the attractiveness of the Union market, the Commission concluded that significant quantities of TPFs from the PRC would likely enter the Union market at dumped price levels, should measures be allowed to lapse.
- (100) In the light of the above, the Commission concluded that the expiry of the anti-dumping measures would be likely to lead to a continuation of dumping.

4. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF INJURY

⁶⁸ World Trade Organization, SemiAnnual Report under Article 16.4 of the Agreement: Argentina, G/AD P/N/195/ARG, February 22, 2010

⁶⁹ <https://www.globaltradealert.org/intervention/56880/anti-dumping/japan-definitive-antidumping-duty-on-imports-of-carbon-steel-butt-welding-fittings-from-china-and-the-republic-of-korea3>

⁷⁰ <https://books.google.pt/books?id=7rKrOuKDNMMC&pg=SL9-PA26&lpg=SL9-PA26&dq=Mexico+China+dumping+fittings&source=bl&ots=kp3iTJjBIU&sig=ACfU3U1RIWaGPCCQZZ#v=onepage&q=Mexico%20China%20dumping%20fittings&f=false>

⁷¹ <https://www.globaltradealert.org/intervention/16725/anti-dumping/turkey-extension-of-antidumping-duties-on-imports-of-tube-or-pipe-fittings-from-brazil-bulgaria-china-india-indonesia-and-thailand-as-well-as-on-imports-from-chinese-taipei-following-an-anti-circumvention-investigation5>

⁷² https://www.usitc.gov/publications/701_731/pub4628.pdf

4.1. Definition of the Union industry and Union production

(101) During the review investigation period, the like product was manufactured by eighteen producers in the Union. They constitute the ‘Union industry’ within the meaning of Article 4(1) of the basic Regulation.

4.2. Union consumption

(102) The Commission established the Union consumption by adding the Union industry's sales on the Union market to the imports from the PRC and other third countries using Eurostat data at TARIC (integrated tariff of the European Union) code level.

(103) On this basis, Union consumption developed as follows:

Table 1 – Union consumption				
	2017	2018	2019	RIP
Union consumption (tonnes)	46 277	52 737	49 237	49 684
Index (2017=100%)	100	114	106	107
<i>Source: Verified data of the sampled Union producers, the applicant and Eurostat</i>				

(104) As TPFs are used mainly in the petrochemical industry, construction, energy generation, shipbuilding and industrial installations to connect tubes or pipes, the demand for TPF is therefore notably coupled with the activity in the energy infrastructure sector, which in turn is driven by the evolution of energy prices.

(105) Consequently, following a recovery in the oil and gas prices in 2018⁷³, the Union consumption rose by around 14% in 2018 compared to 2017. This increase of consumption was followed by a decline of 8% in 2019 (due to drop of oil and gas price) and a slight increase in the RIP, resulting nevertheless in a 7 % increase in Union consumption over the period considered.

4.3. Imports from China

4.3.1. Volume and market share of imports from China

(106) The Commission established the volume of imports on the basis of Eurostat.

Table 2 — Import volume (tonnes) and market share from China				
	2017	2018	2019	Review investigation period
TPF originating in China	5.864	4.925	5.047	5.192
Index (2017=100%)	100	84	86	89

⁷³

See <https://www.statista.com/statistics/262858/change-in-opec-crude-oil-prices-since-1960/> and <https://www.statista.com/statistics/252791/natural-gas-prices/> for evolution of oil and natural gas prices in the period considered.GG

Market share	13%	9%	10%	10%
<i>Source: Eurostat</i>				

(107) During the period considered the total volume of imports from China decreased from 5864 tonnes in 2017 to 5192 tonnes in the RIP. The Chinese market share followed the same trend and decreased in the period considered from 13 % in 2017 to 10 % in the RIP.

4.3.2. Prices of imports from China and price undercutting

(108) The Commission established the prices of imports on the basis of Eurostat. On this basis, the average price of imports into the Union from the country concerned developed as follows.

Table 3 —China import prices (EUR/tonne)				
	2017	2018	2019	Review investigation period
TPF originating in China	1.265,05	1.696,70	1.870,44	1.852,77
Index (2017=100%)	100	134	148	146
<i>Source: Eurostat</i>				

(109) During the period considered the average import price increased by 46%, from 1265 EUR/tonne in 2017 to 1852 EUR/tonne in the RIP.

(110) As set out in recital (13), no Chinese exporting producer cooperated in the investigation. Consequently the Commission determined the price undercutting during the investigation period by comparing the weighted average sales price of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level and the average price of the imports from the country concerned established on a cost, insurance, freight (CIF) basis on the basis of Eurostat, with appropriate adjustments for customs duties and post-importation costs. Chinese import prices, without factoring in the AD duties, undercut Union sales prices by 16.4% . Taking into account the AD duties, Chinese imports were entering the Union market at prices 28% above the Union sales price level.

4.4. Imports from other third countries

(111) The volume, market share and prices of imports from other third countries developed as follows:

Table 4 — Import volume (tonnes) and market share from other third countries (excl. China)					
Country		2017	2018	2019	Review investigation period

Total third countries excl. China	Imports	10 506	13 632	12 883	13 563
	Index	100	130	123	129
	Market share	23%	26%	26%	27%
	Price (€/tonne)	2 083	2 209	2 396	2 478
	Index (2016=100)	100	106	115	119
Turkey	Imports	1 498	1 907	2 800	2 860
	Market share	3%	4%	6%	6%
	Price (€/tonne)	1 825	1 978	2 032	2 090
Vietnam	Imports	2 527	2 958	1 976	2 240
	Market share	5%	6%	4%	5%
	Price (€/tonne)	1 504	1.554	1.794	1.850
Cambodia	Imports	1 905	2 471	2 076	2 172
	Market share	4%	5%	4%	4%
	Price (€/tonne)	1 328	1 541	1 663	1 597
Other third countries (excl. China, Turkey, Vietnam and Cambodia)	Imports	4 576	6 296	6 031	6 291
	Market share	10%	12%	12%	13%
	Price (€/tonne)	2 801	2 849	3 015	3 182
<i>Source: Eurostat</i>					

(112) Imports from other third countries totalled 13.563 tonnes in RIP and grew by 29% compared to 2017. This increase occurred mainly between 2017 and 2018, whereas import volumes remained relatively stable afterwards and until the end of the RIP. The increase in imports is reflected in the market share of these imports which grew from 23 % in 2017 to 27 % in the RIP. The average import price went steadily up throughout the period considered, increasing by 19 % in the RIP compared to 2017. On average these prices were lower than the prices of the Union industry.

4.5. Economic situation of the Union industry

4.5.1. General remarks

- (113) 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.
- (114) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of the data provided by the applicant and verified questionnaire replies of the sampled Union producers. The data related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. The data related to the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.
- (115) 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.
- (116) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments and ability to raise capital.

4.5.2. Macroeconomic indicators

4.5.2.1. Production, production capacity and capacity utilisation

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

Table 5 — Production, production capacity and capacity utilisation of Union producers				
	2017	2018	2019	Review investigation period
Production volume (tonnes)	38 617	50 562	46 812	41 162
Index (2017=100)	100	131	121	107
Production capacity (tonnes)	144 702	158 271	150 526	150 526
Index (2017=100)	100	109	104	104
Capacity utilisation	27%	32%	31%	27%
<i>Source: Data provided by the applicant and verified questionnaire replies of the sampled Union producers.</i>				

- (118) The Union production increased by 7 % over the period considered and followed largely the evolution of the energy prices. More specifically, a relatively sharp increase of 31% in 2018 was followed by a drop in both 2019 and the RIP.
- (119) The production capacity followed a similar trend as production, i.e. larger increase in 2018 followed then by a drop in 2019 and the RIP. Overall, the production capacity increased by 4% over the period considered.

- (120) Capacity utilisation, that followed similar trends, remained very low over the period considered (27-32%). In line with the previous expiry investigation⁷⁴, the low level of capacity utilisation is partly due to the method to calculate total capacity, where the reported capacity is a theoretical maximum capacity (3 shifts/day), which does not necessarily reflect accurately the actual capacity.

4.5.2.2. Sales volume and market share

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

Table 6 — Sales volume and market share of Union producers				
	2017	2018	2019	Review investigation period
Sales volume in the Union (tonnes)	29 907	34 180	31 306	30 929
Index (2017=100)	100	114	105	103
Market share	65%	65%	64%	62%
<i>Source: Data provided by the Union industry and verified questionnaire replies of the sampled Union producers.</i>				

- (122) Sales volume of the like product by the Union industry over the period considered essentially followed the market trends and evolution of the Union consumption, growing mainly in 2018 to then decrease almost to 2017 levels in the RIP (+3% increase).
- (123) The market share of the Union industry remained stable at 65% in the period 2017-2018, then decreased to 62% in RIP. This compares to the Union industry's market share of 64% in the previous expiry review investigation period⁷⁵.

4.5.2.3. Growth

- (124) Despite an increased sales volume of 3% in the period considered, the Union industry's sales did not grow at the same pace as demand, that increased by 7%, so the market share of the Union industry went down from 65% on 2017 to 62% in the RIP.

4.5.2.4. Employment and productivity

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

Table 7 — Employment and productivity of Union producers				
	2017	2018	2019	Review

⁷⁴ See recitals 81-82 of the COMMISSION IMPLEMENTING REGULATION (EU) 2015/1934 of 27 October 2015 imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel, originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009.

⁷⁵ 1 July 2013 – 30 June 2014 (TPF China).

				investigation period
Number of employees	953	1 035	996	958
Index (2017=100)	100	109	105	101
Productivity (tonnes/employee)	41	49	47	43
Index (2017=100)	100	121	116	106
<i>Source: Data provided by the applicant and verified questionnaire replies of the sampled Union producers.</i>				

(126) Both employment and productivity rose in 2018 compared to 2017 to then drop in the RIP to levels moderately above 2017 levels (1% for employment and 6% for productivity respectively).

4.5.3. Magnitude of the dumping margin and recovery from past dumping

(127) The dumping margin established by the investigation in the present case is well above the *de minimis* level. The impact of the magnitude of the actual margin of dumping on the Union industry is therefore substantial, not only in light of the prices of imports from the country concerned, but also given the volumes of those imports.

(128) Furthermore, the Union industry is still in a recovery process from the effects of past injurious dumping by imports of TPFs originating in the Russian Federation, Republic of Korea and Malaysia.

4.5.4. Microeconomic indicators

4.5.4.1. Prices and factors affecting prices

(129) The average sales prices of the Union industry to unrelated customers in the Union and unit cost developed over the period considered as follows:

Table 8 — Average sales prices in the Union and unit cost				
	2017	2018	2019	Review investigation period
Average unit selling price in the Union (€/tonne)	2 479	2 547	2 709	2 583
Index (2017=100)	100	103	109	104
Unit cost of production (€/tonne)	3 096	2 878	3 007	3 079
Index (2017=100)	100	93	97	100

Source: verified questionnaire replies of the sampled Union producers.

- (130) The Union industry's average unit selling price to unrelated customers in the Union increased by 4 % over the period considered, reaching the highest levels in 2019 (+9% compared to 2017). The unit cost of production decreased 7% from 2017 to 2018 to then increase until it reached the same level in the RIP as in 2017.

4.5.4.2. Labour costs

- (131) The average labour costs developed over the period considered as follows:

Table 9 — Average labour costs per employee				
	2017	2018	2019	Review investigation period
Average labour costs per employee (€/employee)	55 627	63 259	62 588	60 718
Index (2017=100)	100	114	113	109
<i>Source: verified questionnaire replies of the sampled Union producers.</i>				

- (132) The average labour costs per employee increased by 9 % over the period considered.

4.5.4.3. Stocks

- (133) Stock levels developed over the period considered as follows:

Table 10 — Stocks				
	2017	2018	2019	Review investigation period
Closing stocks (tonnes)	7 416	7 716	8 830	6 938
Index (2017=100)	100	104	119	94
<i>Source: verified questionnaire replies of the sampled Union producers.</i>				

- (134) The level of closing stocks of the sampled Union producers gradually increased over the years 2018-2019, while dropping below 2017 levels (by 3%) in the RIP.

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

- (135) Profitability, cash flow, investments and return on investments developed over the period considered as follows:

Table 11 — Profitability, cash flow, investments and return on investments				
	2017	2018	2019	Review investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	-22%	-4%	-6%	-12%
Index (2017=100)	-100	-20	-27	-53
Cash flow (€)	-712 306	3 885 489	-2 909 316	-3 154 172
Index (2017=100)	-100	545	-408	-443
Investments (€)	5 206 064	4 312 069	4 030 480	3 429 405
Index (2017=100)	100	83	77	66
Return on investments	-12%	7%	-7%	-14%
Index (2017=100)	-100	56	-61	-116
<i>Source: verified questionnaire replies of the sampled Union producers.</i>				

- (136) The investigation established the profitability of the Union industry 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. The profitability of the sampled producers was negative during the period considered, going from -22% in 2017 to -12% in the RIP. It was -4% and -6% respectively in years 2018-2019, in line with an increase in demand coupled with a decrease in the cost of production.
- (137) The net cash flow is the Union industry's ability to finance its activities. The net cash flow remained negative over the entire period considered with the exception of 2018 due to favourable market conditions.
- (138) The investments (mainly focused on upgrades of the production equipment, increase of quality, productivity and flexibility in the production process) gradually decreased over the period considered and were 34% lower in RIP compared to 2017. Such trend is indicative of market uncertainty resulting from the COVID pandemic and decline in demand triggered by lower energy prices in 2019 and the RIP.
- (139) The return on investment from the production and sale of the like product showed a similar trend as profitability, sharply increasing in 2018 to then drop in 2019 and in the RIP.

4.5.5. Conclusion on the situation of the Union industry

- (140) Despite improvements especially in years with a favourable market climate (e.g. in 2018, i.e. prior to the COVID-19 outbreak and following the increase in energy infrastructure investments thanks to recovering oil and gas prices), the situation of the Union industry continues to be precarious. It could not take full advantage of the increase in demand over the period considered, resulting in a decrease of market share from 65% to 62%. The Union industry remained heavily loss-making during the entire period considered. Its losses amounted to – 12 % in the RIP. Cash flow and return on investments have been largely negative over the period considered.
- (141) Having said the above, slightly increased productivity over the period considered and the consistently strong export performance of the Union industry, with the exports of Union producers representing around 20% of their total sales has contributed to the continued viability of the Union industry, and demonstrates the Union industry's continued efforts to penetrate new markets and remain competitive on the global stage.
- (142) 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.
- (143) The Commission then assessed whether there is a causal link between the imports from the country concerned and the injury suffered by Union industry. The imports quantities from the PRC remained significant throughout the period considered, but decreased by 11%. Chinese import prices increased by 46% over the period considered. Taking into account the measures in place, these imports entered the Union market at prices 28% higher than the Union industry prices, and therefore at non-injurious levels.
- (144) Considering the above, the Commission concluded that the material injury suffered by the Union industry could not have been caused by the imports from the country concerned.
- (145) Against this background, the Commission assessed, in accordance with Article 11(2) of the basic Regulation, whether there would be a likelihood of recurrence of injury originally caused by dumped imports from PRC if the measures were repealed.

5. **LIKELIHOOD OF RECURRENCE OF INJURY ORIGINALLY CAUSED BY DUMPED IMPORTS FROM THE COUNTRY CONCERNED IF THE MEASURES WERE REPEALED**

- (146) In order to establish whether there is likelihood of recurrence of injury originally caused by the dumped imports from the PRC, the Commission considered the following elements: (1) the spare capacity in the country concerned and the attractiveness of the Union market; and (2) the impact of potential imports and price levels of such imports from the PRC on the Union industry's situation should the measures be allowed to lapse.
- (147) As mentioned above in recital (99), available spare production capacity in China represented four times the Union consumption during the review investigation period. Without the AD duties in place, the Chinese imports would undercut the Union producers' prices by 16.4%. Given that the undercutting calculations have been based on Union industry sales prices with which the industry is loss making, injury margins would be much higher. Therefore, should the measures be repealed, it is likely that high volumes of dumped imports at injurious prices will penetrate the Union market.
- (148) The continued interest of Chinese exporting producers in the Union market is shown by the relatively stable import volumes during the period considered despite the measures in force. In addition, Chinese exporters have been found to circumvent the

anti-dumping measure in force via 4 different third countries. These repeated circumvention practices clearly show the interest of the Chinese exporting producers in accessing the Union market without restrictions and thus the attractiveness of the Union market for Chinese exports. Finally, as explained in recital (104), other third countries also have anti-dumping measures in place regarding imports of TPFs from the PRC, making it likely that large quantities of TPFs from the PRC are directed to the Union market, should measures be allowed to lapse.

- (149) The likely increase of dumped imports at injurious prices would lead to a further deterioration of the situation of the Union industry. The price pressure would not allow the Union industry to increase its prices to profitable levels and would likely lead to further financial losses and scaling-down of production or even closures of Union producers' plants. Furthermore, these imports would continue to take up market share on the Union market at the Union Industry's expense, resulting in reducing even further the already low capacity utilisation by the Union industry.
- (150) The Commission therefore concluded that the repeal of the measures in force would very likely result in a recurrence of injury to the Union Industry originally caused by imports from the PRC within the meaning of Article 11(2) of the basic regulation.

6. UNION INTEREST

- (151) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures against China 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 and users.
- (152) All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.
- (153) On this basis, the Commission examined whether, despite the conclusions on the likelihood of continuation of dumping and the likelihood of recurrence of injury, compelling reasons existed which would lead to the conclusion that it was not in the Union interest to maintain the existing measures.

6.1. Interest of the Union industry

- (154) As concluded in recitals (140) and (142) and as confirmed by the negative trends of numerous injury indicators, the Union industry continued to be in a very fragile situation during the review investigation period. Furthermore, it was concluded in recital (1), that if the anti-dumping measures against China were allowed to lapse injury would recur.
- (155) Overall, despite the injurious situation of the Union industry on the Union market, the Commission considered that the industry remains viable. Not only is the export performance of the Union industry consistently strong, with the export sales accounting for a significant share of the sales volume, but the productivity levels have also increased over the period considered. However, the Union industry still shows very low levels of capacity utilisation and continues to have a negative profitability.
- (156) Any further deterioration would have an impact on its overall situation with the risk of a scaling-down of production or even definitive closure of production sites in the Union. Therefore, it can be concluded that the continuation of the measures against China would be in the interest of the Union industry.

6.2. Interest of importers/traders and users

- (157) Two unrelated importers, accounting for approximately 6% of the total imports of TPF from China in the RIP came forward following the publication of the notice of initiation. Both importers expressed support for the continuation of the measures. Their business activity related to the product concerned has been profitable in the RIP. Therefore, it is concluded that from the importers' perspective, there are no compelling reasons not to extend the existing measures.
- (158) No user came forward following the publication of the notice of initiation and during the investigation. It is recalled that TPFs are only accessories used to connect tubes or pipes together and hence their cost represent generally only a minor part of the overall project cost.
- (159) Therefore, there were no indications that the maintenance of the measures would have a negative impact on the users outweighing the positive impact of the measures.

6.3. Conclusion on Union interest

- (160) In view of the above, the Commission concluded that there were no compelling reasons of Union interest against the extension of the current anti-dumping measures on imports from China.

7. ANTI-DUMPING MEASURES

- (161) It follows from the above considerations that, under Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of certain tube and pipe fittings, of iron or steel, originating in the People's Republic of China, applicable under Regulation (EU) No 2015/1934 should be maintained.
- (162) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to make representations subsequent to this disclosure. No comments were received.
- (163) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council⁷⁶, 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.

(164) [The Committee established by Article 15(1) of the basic Regulation...],

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of tube and pipe fittings (other than cast fittings, flanges and threaded fittings), of iron or steel (not including stainless steel), with a greatest external diameter not exceeding 609,6 mm, of a kind used for butt-welding or other purposes, currently falling within CN codes ex 7307 93 11, ex 7307 93 19 and ex 7307 99 80 (TARIC codes 7307 93 11 91, 7307 93 11

⁷⁶

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).

93, 7307 93 11 94, 7307 93 11 95, 7307 93 11 99, 7307 93 19 91, 7307 93 19 93, 7307 93 19 94, 7307 93 19 95, 7307 93 19 99, 7307 99 80 92, 7307 99 80 93, 7307 99 80 94, 7307 99 80 95 and 7307 99 80 98) and originating in the People's Republic of China.

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

Country	Company	Duty rate (%)	TARIC additional codes
China	All companies	58,6	-

Article 2

1. The definitive anti-dumping duty imposed by Article 1 on imports originating in the People's Republic of China is hereby extended to imports of the same fittings (TARIC codes: 7307 93 11 91; 7307 93 19 91; 7307 99 30 92; 7307 99 90 92) consigned from Taiwan (TARIC additional code A 999), with the exception of those produced by Chup Hsin Enterprise Co. Ltd, Kaohsiung (Taiwan) (TARIC additional code A 098), Rigid Industries Co. Ltd, Kaohsiung (Taiwan) (TARIC additional code A 099) and Niang Hong Pipe Fittings Co. Ltd, Kaohsiung (Taiwan) (TARIC additional code A 100).
2. The definitive anti-dumping duty imposed by Article 1 originating in the People's Republic of China (PRC) is hereby extended to imports of tube or pipe fittings (other than cast fittings, flanges and threaded fittings), of iron or steel (not including stainless steel), with a greatest external diameter not exceeding 609,6 mm, of a kind used for butt-welding or other purposes, currently classifiable within CN codes ex 7307 93 11 (TARIC code 7307 93 11 93), ex 7307 93 19 (TARIC code 7307 93 19 93), ex 7307 99 30 (TARIC code 7307 99 30 93) and ex 7307 99 90 (TARIC code 7307 99 90 93) consigned from Indonesia, whether declared as originating in Indonesia or not.
3. The definitive anti-dumping duty imposed by Article 1 originating in the People's Republic of China is hereby extended to imports of tube or pipe fittings (other than cast fittings, flanges and threaded fittings) of iron or steel (not including stainless steel), with a greatest external diameter not exceeding 609,6 mm, of a kind used for butt-welding or other purposes, currently classifiable within CN codes ex 7307 93 11 (TARIC code 7307 93 11 94), ex 7307 93 19 (TARIC code 7307 93 19 94), ex 7307 99 30 (TARIC code 7307 99 30 94) and ex 7307 99 90 (TARIC code 7307 99 90 94) consigned from Sri Lanka, whether declared as originating in Sri Lanka or not.
4. The definitive anti-dumping duty imposed by Article 1 originating in the People's Republic of China is hereby extended to imports of tube or pipe fittings (other than cast fittings, flanges and threaded fittings), of iron or steel (not including stainless steel), with a greatest external diameter not exceeding 609,6 mm, of a kind used for butt-welding or other purposes falling within CN codes ex 7307 93 11 (TARIC code 7307 93 11 95), ex 7307 93 19 (TARIC code 7307 93 19 95), ex 7307 99 30 (TARIC code 7307 99 30 95) and ex 7307 99 90 (TARIC code 7307 99 90 95) consigned from the Philippines, whether declared as originating in the Philippines or not.

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

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



EUROPEAN
COMMISSION

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

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

of XXX

imposing a definitive anti-dumping duty on imports of acesulfame potassium originating in the People's Republic of China, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council

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

of **XXX**

imposing a definitive anti-dumping duty on imports of acesulfame potassium originating in the People's Republic of China, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council

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 11(2) thereof,

Whereas:

1. PROCEDURE

1.1. Previous investigations and measures in force

- (1) By Regulation (EU) 2015/1963² the European Commission imposed definitive anti-dumping duties on imports of acesulfame potassium ('Ace-K'), originating in the People's Republic of China ('the PRC', 'China' or 'the country concerned') ('the original measures'). The investigation that led to the imposition of the original measures will be referred to as 'the original investigation'.
- (2) The rates of anti-dumping duty currently in force range from 2.64 euro to 4.58 euro per kg net on imports from the cooperating exporting producers, and a duty rate of 4.58 euro per kg net applies to imports from all other companies.

1.2. Request for an expiry review

- (3) Following the publication of a notice of impending expiry³ the European Commission ('the Commission') received a request for a review pursuant to Article 11(2) of the basic Regulation.
- (4) The request for review was lodged on 31 July 2020 by Celanese Sales Germany GmbH ('the applicant'), the sole manufacturer in the Union and thus representing 100% of the total Union production of Ace-K. The request for review was based on

¹ OJ L 176, 30.6.2016, p. 21.

² Commission Implementing Regulation (EU) 2015/1963 of 30 October 2015 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of acesulfame potassium originating in the People's Republic of China (OJ L 287, 31.10.2015, p. 1).

³ Notice of the impending expiry of certain anti-dumping measures (OJ C 46, 11.2.2020, p. 8).

the grounds that the expiry of the measures would be likely to result in continuation of dumping and recurrence of injury to the Union industry⁴.

1.3. Initiation of an expiry review

- (5) 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 30 October 2020 the Commission initiated an expiry review with regard to imports of Ace-K originating in the PRC on the basis of Article 11(2) of the basic Regulation. It published a Notice of initiation in the *Official Journal of the European Union*⁵ ('the Notice of initiation').

1.4. Review investigation period and period considered

- (6) The investigation of continuation 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 recurrence of injury covered the period from 1 January 2017 to the end of the review investigation period ('the period considered')⁶.

1.5. Interested parties

- (7) 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, the known producers of Ace-K in the country concerned and the authorities of the People's Republic of China, the known importers and users about the initiation of the investigation and invited them to participate.
- (8) Interested parties also 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.
- (9) Hearings took place with one exporting producer Anhui Jinhe Industrial Co. Ltd. ('Anhui Jinhe') and the applicant.

1.6. Comments on initiation

- (10) The Commission received comments on initiation from Anhui Jinhe. The applicant also provided comments in this regard.
- (11) Anhui Jinhe requested a disclosure and a meaningful summary of certain data in the request. In particular, it argued that the applicant should have disclosed in the non-

⁴ Due to the fact that there is only one producer of Ace-K in the Union, some of the data in this Regulation are presented in ranges or in index form to preserve the confidentiality of the data of the Union producer.

⁵ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of acesulfame potassium (Ace-K) originating in the People's Republic of China (OJ C 366, 30.10.2020, p. 13).

⁶ On 31 January 2020, the United Kingdom withdrew from the Union. The Union and the United Kingdom jointly agreed on a transition period during which the United Kingdom remained subject to Union law, which ended on 31 December 2020. The United Kingdom is no longer a Member State of the Union and therefore the figures, findings and conclusions in this Regulation treat the United Kingdom as a third country.

confidential version of the request data on the total volume and average prices of imports from China in the period considered referred to in the request. Anhui Jinhe claimed that this data was not confidential as it had been disclosed by the Commission in the original investigation. Furthermore, Anhui Jinhe claimed that the respective data was not based on any actual commercially sensitive data but on the applicant's estimates and that any reference to copyright could not be relied upon to withhold this data. In addition, Anhui Jinhe also requested that the applicant provide a meaningful summary of the relevant injury indicators in order to provide sufficient detail to permit a reasonable understanding of the data submitted in confidence. It further claimed that in the request this data was either confidential or presented based on meaningless ranges that failed to show any trend, while the Commission provided this data in an indexed form in the original investigation. Therefore, Anhui Jinhe requested the applicant to disclose in indexed form data on Union consumption, production capacity, capacity utilization, market shares, undercutting, cost of production, profitability, export sales and cost of raw materials. Anhui Jinhe also requested the applicant to provide a meaningful summary of its current level of profitability indicating whether it was above 5% in the review reference period as well as indexed data starting from 2011 as the applicant referred to this year as the relevant year for comparison.

- (12) In its reply, the applicant claimed that most of the information was confidential by nature as it was based on data from one company only and argued that ranges of indexes were necessary to prevent reconstruction of the underlying confidential data. In particular, the applicant claimed that providing the exact figures of total volume of imports from China combined with the indexation of market shares would enable the reconstruction of the sole Union producer's sales. In its submission, the applicant revised its non-confidential data and provided additional information. In this respect, the applicant provided ranges of volume of total imports, additional information concerning the trend of consumption, ranges of indexation for production, market shares, an indexation of profitability, other injury indicators (such as stocks, employment, cash flow, investments, return on net investments) and of evolution of the Union producer's sales outside the Union. Concerning the rest of the data requested by Anhui Jinhe, the applicant claimed that the non-confidential version of the request contained a sufficiently meaningful summary and that giving additional information would not be possible without revealing confidential information.
- (13) In reaction to the revised data of the applicant, Anhui Jinhe maintained that the request still did not contain sufficient information such as the volume of imports from China or the Union and global demand for Ace-K. Anhui Jinhe argued that the rights of defence should be considered when analysing the meaningfulness of the non-confidential version of the request and that it was not in the position to understand whether there was any factual basis for the allegations of the applicant.
- (14) The applicant disagreed with the above claims and argued that the open version of the request provided factual basis for its allegations and data was redacted where it was not possible to provide ranges of indexed trends without revealing confidential information. In particular, the applicant claimed that the non-confidential version of the request showed the evolution of total imports of Ace-K from China and enabled

Anhui Jinhe to comment on it. Concerning data on demand, the applicant claimed that the regulation imposing provisional measures on imports of Ace-K from China⁷ did not indicate the total Union consumption in absolute terms, and therefore the applicant did not have to show this either.

- (15) It is noted that as the applicant is the sole producer of Ace-K in the Union, confidential information had to be presented in ranges and indexes in order not to reveal company specific business information. The Commission considered that the data in the non-confidential version of the request as complemented by the applicant in its submission was in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. The applicant provided a meaningful summary with ranges that were sufficiently narrow when compared to the actual figures that allowed interested parties to assess the volume of imports and its trends. Thus, the Chinese exporting producers were able to exercise their rights of defence.
- (16) Anhui Jinhe argued that the request failed to demonstrate the attractiveness of the Union market as it showed that average export prices of Chinese exporters to the Union and other markets were the same. Arguably, this showed that Chinese producers were indifferent between selling to the Union and to third countries. In this respect, Anhui Jinhe cited the *Bioethanol*⁸ and *Urea*⁹ investigations where the Commission concluded that the Union market was attractive to exporting producers when average export prices to the Union were higher than to third markets.
- (17) In this respect, the applicant claimed that the request clearly showed that the Union market was attractive for Chinese exporting producers as, in the absence of the anti-dumping measures, they would be able to obtain higher volumes of sales on the Union market than on other markets. The applicant also argued that the Union market was attractive to Chinese producers before the anti-dumping duties were imposed.
- (18) The Commission considered that the request indicated that if the anti-dumping measures were allowed to expire, the Chinese exporting producers would be likely to substantially increase sales volumes to the Union market.
- (19) Anhui Jinhe also argued that the applicant's price underselling allegations were manifestly erroneous as the applicant's cost of production used in the underselling calculation of the request was too high as compared to the original investigation and could not be relied upon. Moreover, Anhui Jinhe argued that the applicant had considerably increased its price levels since the original investigation and that the anti-dumping measures brought it excessive profits, which were far beyond what was

⁷ Commission Implementing Regulation (EU) 2015/787 of 19 May 2015 imposing a provisional anti-dumping duty on imports of acesulfame potassium originating in the People's Republic of China as well as acesulfame potassium originating in the People's Republic of China contained in certain preparations and/or mixtures (OJ L 125, 21.5.2015, p. 15).

⁸ Commission Implementing Regulation (EU) 2019/765 of 14 May 2019 repealing the anti-dumping duty on imports of bioethanol originating in the United States of America and terminating the proceedings in respect of such imports, following an expiry review pursuant to Article 11(2) of the Regulation (EU) 2016/1036 of the European Parliament and of the Council, recital (89).

⁹ Council Regulation (EC) No 240/2008 of 17 March 2008 repealing the anti-dumping duty on imports of urea originating in Belarus, Croatia, Libya and Ukraine, following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96, recital (76).

recorded in the original investigation. In this respect, Anhui Jinhe cited the *Dicyandiamide*¹⁰ and the *Urea*¹¹ investigations where the Commission allowed the measures to lapse in view of the Union industry's high profitability. Anhui Jinhe also argued that the Union industry's production capacities were fully utilized and were insufficient to satisfy growing Union demand and referred to the *Ferro-Silicon* case where the Commission discontinued the measures¹². In addition, Anhui Jinhe claimed Chinese producers still had a [28-34%] market share on the Union market despite the prohibitive measures because users always maintained two or more suppliers of Ace-K to ensure the safety of the supply chain especially after recent disruptions due to COVID-19. Finally, Anhui Jinhe stressed that the Union industry successfully competed with Chinese imports in third markets where there were no measures in place and sold significant volumes in these markets. Anhui Jinhe claimed that this demonstrated that the applicant was capable of successfully competing with Chinese imports without anti-dumping measures, which pointed to the lack of likelihood of recurrence of injury.

- (20) The applicant contested the above claims. In fact, the applicant claimed that it used the profit margin established by the Commission in the original investigation in the underselling calculations of its request. Also, the applicant argued that the anti-dumping duties ensured that prices of imports from China were at a non-injurious level. The applicant claimed that if anti-dumping measures were to expire, Chinese exporting producers would increase their market share in the Union to the same percentage level as in the rest of the world. The applicant also submitted detailed scenarios to demonstrate how its business would be affected if anti-dumping duties were to expire.
- (21) The Commission's analysis confirmed that none of the elements mentioned by Anhui Jinhe, whether factually correct or not, were sufficient to call into question the conclusion that the request contained sufficient evidence tending to show that the expiry of the measures would likely result in a continuation of dumping and recurrence of injury. These aspects had been established on the basis of the best evidence available to the applicant at the time, and were sufficiently representative and reliable. Furthermore, the claims put forward by Anhui Jinhe and the rebuttals by the applicant were examined in detail in the course of the investigation and are further addressed below.
- (22) On the basis of the above, the Commission confirmed that the request provided sufficient evidence that the expiry of the measures would likely result in a

¹⁰ Council Implementing Regulation (EU) No 135/2014 of 11 February 2014 repealing the anti-dumping duty on imports of dicyandiamide originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009, recital (70).

¹¹ Council Regulation (EC) No 240/2008 of 17 March 2008 repealing the anti-dumping duty on imports of urea originating in Belarus, Croatia, Libya and Ukraine, following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96, recital (102).

¹² Commission Decision of 21 February 2001 terminating the anti-dumping proceeding concerning imports of ferro-silicon originating in Brazil, the People's Republic of China, Kazakhstan, Russia, Ukraine and Venezuela, OJ L84/36, 23 March 2001.

continuation of dumping and recurrence of injury, thereby satisfying the requirements set out in Article 11(2) of the basic Regulation.

- (23) In their comments following final disclosure, Anhui Jinhe argued that the information contained in the request was either not relevant (e.g. evidence of distortions concerning sulfamic acid referred to alleged distortions of urea and the evidence of distortion for potassium hydroxide referred to potassium salt) or not based on publically available sources (e.g. the acetic acid distortion relies on a report purchased by the applicant, which at the same time is not consistent with the China Country Report).
- (24) In this regard, since sulfamic acid is produced from urea and potassium hydroxide is produced from potassium salt, any market distortions that affected the raw materials affect also the final product. Moreover, contrary to what Anhui claims, in the request the applicant refers to the China Report in addition to another confidential source. As pointed out by the applicant there was an inconsistency in the Country Report between the text and the figures regarding the capacity utilisation of acetic acid in China. However, there is no inconsistency between the China Report and the confidential source, because the updated capacity information provided by the applicant, which was checked by the Commission, was consistent with the capacity utilisation figures in the China Report. Therefore, the claims were rejected.

1.6.1. Sampling

- (25) In view of the apparent large number of producers in the country concerned and unrelated importers in the Union, the Commission stated in the Notice of initiation that it might sample the producers and unrelated importers in accordance with Article 17 of the basic Regulation.

1.6.2. Sampling of producers in the PRC

- (26) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all producers in the PRC 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 to identify and/or contact other producers, if any, that could be interested in participating in the investigation.
- (27) Two exporting producers in the country concerned provided the requested information and agreed to be included in the sample. In view of the low number of replies, the Commission decided that sampling was not necessary and informed all the interested parties by a note to the file. The Commission invited these companies to participate in the investigation and sent them a link to the questionnaire.

1.6.3. Sampling of importers

- (28) To decide whether sampling was necessary and, if so, to select a sample, the Commission invited unrelated importers to provide the information specified in the Notice of initiation.
- (29) No unrelated importer provided the requested information and agreed to be included in the sample.

1.7. Replies to the questionnaire

- (30) The Commission sent a questionnaire concerning the existence of significant distortions in the PRC within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of the People's Republic of China ('GOC').
- (31) The Commission sent links to the questionnaire to the two exporting producers that returned the sampling form. The same questionnaires had also been made available online¹³ on the day of initiation.
- (32) Complete questionnaire replies were received from one exporting producer and the sole Union producer.

1.8. Verification

- (33) The Commission sought and cross-checked all the information it deemed necessary for the determination of likelihood of continuation or recurrence of dumping and injury and of the Union interest. Due to the outbreak of the COVID-19 pandemic and the consequent measures taken to deal with the outbreak ('the COVID-19 Notice')¹⁴ the Commission was however unable to carry out verification visits at the premises of the cooperating companies. Instead, the Commission performed remote cross-checks ('RCCs') of the information provided by the following companies via videoconference:

(a) Union producer

- Celanese Sales Germany GmbH, Celanese Production Germany GmbH & Co. KG Sulzbach, Germany and the Principal Operating Company Celanese Europe BV, Amsterdam, the Netherlands;

(b) Exporting producers in the PRC

- Anhui Jinhe Industrial Co., Ltd, Chuzhou, Anhui.

1.9. Subsequent procedure

- (34) On 27 October 2021, the Commission disclosed the essential facts and considerations on the basis of which it intended to maintain the anti-dumping duties ('final disclosure'). All parties were granted a period within which they could make comments on the disclosure and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.
- (35) Comments were received from Anhui Jinhe and the applicant.
- (36) Hearings took place with Anhui Jinhe and the applicant.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product under review

- (37) The product under review is the same as in the original investigation namely acesulfame potassium (potassium salt of 6-methyl-1,2,3-oxathiazin-4(3H)-one 2,2-

¹³ https://trade.ec.europa.eu/tdi/case_details.cfm?id=2491

¹⁴ Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations (OJ C 86, 16.3.2020, p. 6).

dioxide; CAS RN 55589-62-3) originating in the People's Republic of China currently classified under CN code ex 2934 99 90 (TARIC code 2934 99 90 21) ('the product under review'). Acesulfame potassium is also commonly referred to as Acesulfame K or Ace-K.

- (38) Ace-K is used as a synthetic sweetener in a wide range of applications, for example in food, beverage, and pharmaceutical products.

2.2. Like product

- (39) As established in the original investigation, this expiry review investigation confirmed that the following products have the same basic physical and chemical characteristics as well as the same basic uses:

- the product under review;
- the product produced and sold on the domestic market of the PRC; and
- the product produced and sold in the Union by the Union industry.

- (40) These products are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

3. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

3.1. Preliminary remarks

- (41) 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.

- (42) During the review investigation period, imports of Ace-K from the PRC continued albeit at lower levels than in the investigation period of the original investigation (i.e. from 1 July 2013 to 30 June 2014). According to the data reported to the Commission by the Member States in accordance with Article 14(6) of the basic Regulation ('Article 14(6) database'), imports of Ace-K from the PRC accounted for [31–37%] of the Union market in the review investigation period compared to [65–80%] market share during the original investigation. In absolute terms, imports from the PRC have fallen by [47–56%] since the investigation period of the original investigation.

- (43) As mentioned in recital (32) only one of the exporters/producers from the PRC submitted a questionnaire response and was therefore, considered to be cooperating in the investigation.

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

- (44) In view of the sufficient evidence available at the initiation of the investigation pointing to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation with regard to the PRC, the Commission considered it appropriate to initiate the investigation with regard to the exporting producers from this country having regard to Article 2(6a) of the basic Regulation.

- (45) Consequently, in order to collect the necessary data for the eventual application of Article 2(6a) of the basic Regulation, in the Notice of initiation the Commission invited all Chinese exporting producers to provide information regarding the inputs

used for producing Ace-K. One Chinese exporting producer submitted the relevant information.

- (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 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 reply to the requested information was provided by the GOC. Subsequently, the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in the PRC.
- (47) Submissions on the application of Article 2(6a) of the basic Regulation were received from the exporting producer Anhui Jinhe.
- (48) According to Article 2(1) of the basic Regulation, *‘the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country’*.
- (49) However, according to Article 2(6a)(a) of the basic Regulation, *‘in case it is determined [...] that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions within the meaning of point (b), the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks’*, and *‘shall include an undistorted and reasonable amount of administrative, selling and general costs and for profits’*.
- (50) As further explained below, the Commission concluded in the present investigation that, based on the evidence available and in view of the lack of cooperation of the GOC, the application of Article 2(6a) of the basic Regulation was appropriate.

3.2.1. Existence of significant distortions

3.2.1.1. Introduction

- (51) Article 2(6a)(b) of the basic Regulation stipulates that ‘significant distortions are those distortions which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces as they are affected by substantial government intervention. In assessing the existence of significant distortions regard shall be had, *inter alia*, to the potential impact of one or more of the following elements:
- the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country;
 - state presence in firms allowing the state to interfere with respect to prices or costs;
 - public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces;

- the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws;
 - wage costs being distorted;
 - access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the state’.
- (52) As the list in Article 2(6a)(b) of the basic Regulation is non-cumulative, not all the elements need to be given regard to for a finding of significant distortions. Moreover, the same factual circumstances may be used to demonstrate the existence of one or more of the elements of the list. However, any conclusion on significant distortions within the meaning of Article 2(6a)(a) must be made on the basis of all the evidence at hand. The overall assessment on the existence of distortions may also take into account the general context and situation in the exporting country, in particular where the fundamental elements of the exporting country’s economic and administrative set-up provides the government with substantial powers to intervene in the economy in such a way that prices and costs are not the result of the free development of market forces.
- (53) Article 2(6a)(c) of the basic Regulation provides that ‘[w]here the Commission has well-founded indications of the possible existence of significant distortions as referred to in point (b) in a certain country or a certain sector in that country, and where appropriate for the effective application of this Regulation, the Commission shall produce, make public and regularly update a report describing the market circumstances referred to in point (b) in that country or sector’. Pursuant to this provision, the Commission has issued a country report concerning the PRC (hereinafter ‘the Report’)¹⁵, showing the existence of substantial government intervention at many levels of the economy, including specific distortions in many key factors of production (such as land, energy, capital, raw materials and labour) as well as in specific sectors (such as steel and chemicals). Interested parties were invited to rebut, comment or supplement the evidence contained in the investigation file at the time of initiation. The Report was placed in the investigation file at the initiation stage.
- (54) The applicant provided information additional to the findings of the Report affecting the raw materials used to produce Ace-K. The applicant has commissioned a report to identify the characteristics and the distortions relating to one of the main raw materials of Ace-K, sulphur trioxide, in the two Chinese provinces where it is produced, Jiangsu and Anhui. The relevant evidence includes the *Chemical Industry Development Plan* dated 24 October 2016 that indicates objectives and production targets which affect the supply level in the chemical sector, including the ones of sulphur trioxide sulfonation and Ace-K and the Anhui Province by referring to *Opinions of CPC Anhui Provincial Committee and Anhui Provincial People’s Government on Promoting High-quality Economic Development*, issued on 14 March 2018. This policy document sets out several industrial policy initiatives to promote high-quality economic development, in particular in the province of Anhui, such as the use of financial

¹⁵ 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 (hereafter ‘Report’).

incentives and tax reductions if the industrial and logistics companies operate in line with the ‘encouraged’ industries in the *Central Structural Adjustment Catalogue*. The applicant furthermore explained how *State Council Decision on Promulgating the Implementation of the Interim Provisions on the Promotion of Industrial Restructuring* of 2 December 2005 defines the economic and industrial policy objectives and directs all provincial governments to identify specific measures to guide investments. This includes supporting policies concerning land, credit, taxation, import and export. It also pointed to other state intervention policy tools, such as the *Guidance Catalogue for the Structural Adjustment of Industry* issued in January 2013 which divides industry segments into ‘encouraged,’ ‘restricted,’ and ‘eliminated’. Sulphur trioxide sulfonation falls into the ‘encouraged’ category in this catalogue.

- (55) The request also mentioned a document titled *Sulphur Trioxide’s Export Tax and VAT Refund Withdrawal* which identifies a VAT cost related to export equal to 13% which results in an export restriction.
- (56) Concerning electricity, gas, steam and water, the request explained the role of pricing controls in the Jiangsu and Anhui provinces and it drew attention to the state and provincial interventions in the coal sector. The document titled *Opinions of the State Council on the Reduction of Overcapacity in the Coal Industry and its Development*, issued on 1 February 2016, confirmed the existence of overcapacity problems as well as the significant state intervention in the market in this sector.
- (57) Finally, the request lists specific subsidies for Nantong Acetic Acid, a company related to the Ace-K producer, Nantong Hongxin. According to a public announcement by Nantong Acetic Acid and Nantong Acetic Acid’s Annual Report of 2018, Nantong Acetic Acid enjoys a preferential income tax rate of 15% (rather than 25%) under the *Preferential Income Tax Program for High- or New-Technology Enterprises*.
- (58) In addition, the request referred to a number of distortions identified in the Report concerning other raw materials used to produce Ace-K such as diketene, sulfamic acid, tri-ethylamine, potassium hydroxide, acetic acid, dichloromethane and ammonia. Indeed, the request provided evidence on overcapacity in the chemical sector showing that the Chinese acetic acid capacity utilisation rate was about 69% in the fourth quarter of 2019 and was forecasted by the request to be about 63% in the first quarter of 2020, rising to about 67% by the end of 2020. In addition to excess production capacity, investment in acetic acid production in China is subject to controls of the Catalogue for Guiding Industrial Restructuring (as revised in 2013). These two elements combined make the Chinese market for acetic acid distorted, and by consequence, also the downstream production of diketene.
- (59) Furthermore, the request mentioned state interference in the policy objectives and targets in the *Hebei province Petrochemical 13th FYP*. The plan highlights how the Chinese state controls sulphur mining and sets limits on entry into the market for sulphuric acid production. By imposing controls on the mining of sulphur, and by limiting investment in sulphuric acid production, the GOC distorts not only the market for these two products, but also the market for the production of sulphur trioxide.
- (60) The request further referred to other types of state interference in the urea market such as the existence of strict import quotas for urea and export taxes. Urea is an upstream raw material used for the production of sulfamic acid together with sulphur trioxide

and sulphur acid. Moreover, the GOC has exempted the domestic sales of urea from VAT since 1 July 2005. Finally, the GOC intervened in the market through the State Fertiliser System, operating since 2004. According to the Report, urea producers benefit from preferential electricity rates and preferential railway freight rates.

- (61) Referring to the Report, the request indicated that potassium salt is in the list of raw materials in the *13th FYP for Mineral Resources* which includes a number of detailed provisions with regard to different mineral groups. Under the heading ‘Phosphorus’ the Commission’s Report finds that one of the objectives is to stabilise the supply in important mineral resources used in agriculture such as phosphorus, sulphur and potassium, in accordance with the food security strategy. Moreover, ‘potash and other natural crude potassium salts’ are also mentioned in the Report among the items subject to export duties. Further state interventions mentioned by the request also concern ammonia, an additional raw material purchased for the recycling of waste sulphuric acid.
- (62) The applicant further pointed out that according to the Report, the GOC itself recognised that an effective competition mechanism for the sale of electricity has not yet been established. This implies that significant distortions exist in the Chinese market for electricity supplies for industrial use. The request finally mentioned other areas where state intervention affects the costs of an industrial operator in China such as access to land-use rights (Report, Chapter 9), access to capital and financing (Report, Chapter 11) and the labour market (Report, Chapter 13).
- (63) As indicated in recital (46), 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 applicant, 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.
- (64) Comments in this regard were received from the cooperating exporting producer, Anhui Jinhe, which claimed that the argument provided to justify the application of Article 2(6a) of the basic Regulation is unfounded and not applicable to the company. Anhui Jinhe argued that the findings on distortions concerning diketene, sulphur trioxide and sulphuric acid identified by the report commissioned by the applicant are not relevant for Anhui Jinhe because Anhui Jinhe produces these inputs in-house. The relevant upstream raw materials are glacial acetic acid, sulfamic acid and potassium hydroxide.
- (65) In this regard, Anhui Jinhe referred to the Commission’s recent practice under Article 2(6a)(a) and (c) of the basic Regulation, such as in *Aluminium Extrusions*¹⁶, according to which exporting producers are required to submit evidence on undistorted prices and costs in order to ‘positively establish’ that their own domestic costs are not affected by significant distortions. The company submitted that domestic prices of the relevant raw materials are market-oriented and negotiated on the basis of prevailing market conditions. In particular, the company submitted evidence by comparing their

¹⁶ Commission Implementing Regulation (EU) 2021/546 of 29 March 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of aluminium extrusions originating in the People’s Republic of China (OJ L 109, 30.3.2021, p. 1).

own prices with the Turkish ones on the basis of COMTRADE to demonstrate that lower input prices of glacial acetic acid, sulfamic acid, and potassium hydroxide compared to international prices are mainly due to much lower transport costs in China since the company relies exclusively on domestic supply.

- (66) Furthermore, the company argued that it does not operate under the control of the authorities of the exporting country. In addition, the company claimed that there is no state interference with respect of prices and costs of inputs for the production of Ace-K. Rebuttals to these claims are discussed in the sections 3.2.1.3 and 3.2.1.4.
- (67) In its comments, the exporting producer further pointed out that Article 2(6a) is inconsistent with the WTO Anti-Dumping Agreement ('ADA'). This is because, first, Article 2.2 ADA recognises three scenarios which allow for the normal value construction: (i) sales are not made in the ordinary course of trade, (ii) there is a particular market situation or (iii) because of the low volume of sales on the domestic market, such sales are not representative. Anhui Jinhe submitted that significant distortions meet none of the three criteria. It further submitted that even if the concept of significant distortions could possibly be considered to fall under the second of the above criteria, the WTO Panel in DS529 Australia — Anti-Dumping Measures on A4 Copy Paper confirmed that the fact that the domestic price of the product concerned and its inputs are affected by governmental distortions was not enough to consider that the proper comparison between domestic market sales and export sales is affected 'because of the particular market situation'. In addition, Anhui Jinhe commented that the Commission constructs the normal value systematically, while it should be checking on a case by case basis if the conditions of Article 2.2 ADA are met.
- (68) Anhui Jinhe further submitted that Article 2.2 ADA requires that the construction of the normal value must reflect 'a cost in the country of origin', as confirmed in the cases WTO DS529 Australia — Anti-Dumping Measures on A4 Copy Paper and WTO DS473 European Union — Anti-Dumping Measures on Biodiesel from Argentina. Furthermore, Anhui Jinhe argued that the normal value should be constructed in accordance with the requirements of Article 2.2.1.1 ADA, and it added that the findings in case WTO DS427 China — Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States required the investigating authorities to take into account the recorded costs of the exporting producers unless they are not in accordance with the generally accepted accounting principles or do not reasonably reflect the costs associated with the production and sale of the product under consideration. Article 2(6a) of the basic Regulation is, according to Anhui Jinhe, inconsistent with Article 2.2.1.1 ADA because the costs of the exporting producer are disregarded systematically, irrespective of whether the recorded costs satisfy the two above conditions.
- (69) The Commission considered that the provisions of Article 2(6a) of the basic Regulation are fully consistent with the European Union's WTO obligations. As explicitly clarified by the WTO Appellate Body in DS473, WTO law permits the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. The Commission recalled that the cases DS529 Australia — Anti-Dumping Measures on A4 Copy Paper and DS427 China — Broiler Products (Article 21.5 – US) did not concern the interpretation of Article 2(6a) of the basic Regulation

and the conditions for its application. Furthermore, the underlying factual situations in those cases was different from the underlying situation and criteria giving rise to the application of the methodology under this provision of the basic Regulation, which concerns the existence of significant distortions in the exporting country. Under Article 2(6a) of the basic Regulation, it is only when significant distortions are found to be present and to affect costs and prices that normal value is constructed by reference to undistorted costs and prices sourced in a representative country or by reference to an international benchmark. In any event, Article 2(6a) second subparagraph, 3rd dash of the basic Regulation provides for the possibility to use domestic costs to the extent they are established not to be distorted. The Commission therefore rejected these claims.

- (70) Furthermore, Anhui Jinhe submitted that Article 2(6a) of the basic Regulation is inconsistent with Article 2.2.2 ADA. It pointed out that the Appellate Body in DS219 EC – Tube or Pipe Fittings confirmed that the investigating authority is obliged to use the actual SG&A and profit of the exporting producers, as long as such data exists. Anhui Jinhe therefore submitted that the Article 2(6a) of the basic Regulation was incompatible with Article 2.2.2 ADA.
- (71) The Commission noted that once it is determined that due to the existence of significant distortions in the exporting country in accordance with Article 2(6a)(b) of the basic Regulation it is not appropriate to use domestic prices and costs in the exporting country, the normal value is constructed by reference to undistorted prices or benchmarks in an appropriate representative country for each exporting producer according to Article 2(6a)(a) of the basic Regulation. As explained above, the same provision of the basic Regulation also allows the use of domestic costs if they are positively established not to be distorted. In that context, the exporting producers had the possibility to provide evidence that their individual SG&A costs and/or other input costs were actually undistorted. However, as evidenced in sections 3.2.1.2 to 3.2.1.9, the Commission has established the existence of distortions in the Ace-K industry and there was no positive evidence as to the factors of production of individual exporting producers being undistorted. Therefore, these claims were rejected.
- (72) Finally, Anhui Jinhe submitted that the Commission was obliged, according to the provisions of Article 2(6a) of the basic Regulation, to conduct a company-specific and cost-specific analysis. Therefore, there should have been a specific analysis of Anhui Jinhe on the basis of the questionnaire it submitted.
- (73) The Commission noted that the existence of significant distortions giving rise to the application of Article 2(6a) of the basic Regulation is established on a country-wide level. If the existence of significant distortions is established, then the provisions of Article 2(6a) of the basic Regulation apply, *a priori*, to all exporting producers in the PRC and concern all costs relating to their factors of production. In any event, the same provision of the basic Regulation provides for the use of domestic costs which are positively established not to be affected by significant distortions. However, no domestic costs have been established to be undistorted based on accurate and appropriate evidence. In particular, the exporting producers did not submit accurate and appropriate evidence on undistorted prices and costs. In any event, the calculations concerning Anhui Jinhe reflect the data submitted by the company itself, including the

factors of production and amounts as reported by the company in the questionnaire reply, but duly taking into account the existence and impact of significant distortions in the PRC, in accordance with the provisions of the basic Regulation, in particular Article 2(6a) of the basic Regulation. These claims were therefore, rejected.

- (74) In their comments following final disclosure, Anhui Jinhe reiterated its arguments laid out in recitals (67) and (68) above concerning the WTO compatibility of Article 2(6a) of the basic Regulation with WTO law. They argued that the European Commission should refrain from applying the Article 2(6a) methodology or precisely explain how this methodology can be applied consistently with the obligations set forth in Articles 2.2, 2.2.1.1 and 2.2.2 of the ADA. Indeed, Anhui Jinhe stated that the Commission could only reconstruct the normal value if one of the three conditions of Article 2.2 was present. If the Commission relies on the second (or third) condition, then it must examine whether 'a proper comparison' of the domestic and the export price is permitted or not.
- (75) Furthermore, concerning the argument according to which WTO law (as clarified in DS473) permits the use of data from a third country, "*duly adjusted when such adjustment is necessary and substantiated*", Anhui Jinhe stated that this legal test was not mentioned in the Panel or Appellate Body's report. According to the Anhui Jinhe's interpretation, the Commission adopted a biased and limited reading of the Report which explicitly mentions that "[w]hen relying on any out-of-country information to determine the 'cost of production in the country of origin' under Article 2.2, an investigating authority has to ensure that such information is used to arrive at the 'cost of production in the country of origin', and this may require the investigating authority to adapt that information".
- (76) Moreover, Anhui Jinhe argued that a "significant distortion" was not in itself one of the conditions to resort to normal value construction. Finally, on the possibility to use domestic costs to the extent they were established not to be distorted, according to the Anhui Jinhe, the Commission could have used the possibility opened by Article 2(6a) to use the actual data of the company.
- (77) As to the Anhui Jinhe's arguments on compatibility of Article 2(6a) of the basic Regulation with ADA and the DSB findings, these were already addressed in recital (69), including the explanation that DS473 did not concern the application of Article 2(6a) of the basic Regulation. Concerning the claim that the concept of "significant distortions" included in Article 2(6a) of the Basic Regulation does not appear in any rule of the WTO ADA or the GATT 1994, the Commission recalled that domestic law does not need to use the exact same terms as the covered Agreements in order to be compliant with those Agreements, and that it considers Article 2(6a) to be fully compliant with the relevant rules of the ADA (and, in particular, the possibilities to construct normal value provided in Article 2.2 ADA). Therefore, the claims were rejected.
- (78) In addition, Anhui Jinhe stated that the Commission had not provided any explanation as to why it did not consider the elements mentioned in recitals (65) and (66) as constituting "positive evidence" within the meaning of Article 2(6a) that its costs were not distorted. Anhui Jinhe reiterated this claim and further added that its prices were not distorted due to its acquisition practices (online platform) and the absence of

government intervention from any governmental authorities or agencies that are controlled by the government of China.

- (79) As stated in recital (65), the evidence submitted by Anhui Jinhe was just a comparison of their own domestic purchase prices for one raw material with Turkish import prices extracted from the COMTRADE database and with Thai prices extracted from GTA database. The comparison showed that the domestic price were lower than the Turkish and Thai import prices for the two raw materials. Anhui Jinhe claimed that this was due to its lower domestic transport cost. Anhui Jinhe also claimed that it purchased glacial acetic acid from the applicant.
- (80) The Commission notes that Anhui Jinhe did not provide any evidence to substantiate its claim regarding transport cost. Furthermore, such price comparison is not sufficient to demonstrate that domestic prices in China are not distorted. Furthermore, the fact that the purchases on the domestic market were made online, does not mean that these prices were not distorted. In addition, the investigation revealed that contrary to what Anhui Jinhe stated, Anhui Jinhe did not purchase glacial acetic acid from the applicant for the production of Ace-K. Therefore, the claims were rejected.
- (81) 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 concerned. 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.

3.2.1.2. Significant distortions affecting the domestic prices and costs in the PRC

- (82) The Chinese economic system is based on the concept of a 'socialist market economy'. That concept is enshrined in the Chinese Constitution and determines the economic governance of the PRC. The core principle is the '*socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people*'. The State-owned economy is the '*leading force of the national economy*' and the State has the mandate '*to ensure its consolidation and growth*'¹⁷. Consequently, the overall setup of the Chinese economy not only allows for substantial government interventions into the economy, but such interventions are expressly mandated. The notion of supremacy of public ownership over the private one permeates the entire legal system and is emphasised as a general principle in all central pieces of legislation. The Chinese property law is a prime example: it refers to the primary stage of socialism and entrusts the State with upholding the basic economic system under which the public ownership plays a dominant role. Other

¹⁷ Report – Chapter 2, p. 6-7.

forms of ownership are tolerated, with the law permitting them to develop side by side with the State ownership¹⁸.

- (83) In addition, under Chinese law, the socialist market economy is developed under the leadership of the Chinese Communist Party ('CCP'). The structures of the Chinese State and of the CCP are intertwined at every level (legal, institutional, personal), forming a superstructure in which the roles of CCP and the State are indistinguishable. Following an amendment of the Chinese Constitution in March 2018, the leading role of the CCP was given an even greater prominence by being reaffirmed in the text of Article 1 of the Constitution. Following the already existing first sentence of the provision: '[t]he socialist system is the basic system of the People's Republic of China' a new second sentence was inserted which reads: '[t]he defining feature of socialism with Chinese characteristics is the leadership of the Communist Party of China.'¹⁹ This illustrates the unquestioned and ever growing control of the CCP over the economic system of the PRC. This leadership and control is inherent to the Chinese system and goes well beyond the situation customary in other countries where the governments exercise general macroeconomic control within the boundaries of which free market forces are at play.
- (84) The Chinese State engages in an interventionist economic policy in pursuance of goals, which coincide with the political agenda set by the CCP rather than reflecting the prevailing economic conditions in a free market²⁰. The interventionist economic tools deployed by the Chinese authorities are manifold, including the system of industrial planning, the financial system, as well as the level of the regulatory environment.
- (85) First, on the level of overall administrative control, the direction of the Chinese economy is governed by a complex system of industrial planning which affects all economic activities within the country. The totality of these plans covers a comprehensive and complex matrix of sectors and crosscutting policies and is present on all levels of government. Plans at provincial level are detailed while national plans set broader targets. Plans also specify the means in order to support the relevant industries/sectors as well as the timeframes in which the objectives need to be achieved. Some plans still contain explicit output targets while this was a regular feature in previous planning cycles. Under the plans, individual industrial sectors and/or projects are being singled out as (positive or negative) priorities in line with the government priorities and specific development goals are attributed to them (industrial upgrade, international expansion etc.). The economic operators, private and State-owned alike, must effectively adjust their business activities according to the realities imposed by the planning system. This is not only because of the binding nature of the plans but also because the relevant Chinese authorities at all levels of government adhere to the system of plans and use their vested powers accordingly, thereby

¹⁸ Report – Chapter 2, p. 10.

¹⁹ Available at http://www.fdi.gov.cn/1800000121_39_4866_0_7.html (last viewed 15 July 2019).

²⁰ Report – Chapter 2, p. 20-21.

inducing the economic operators to comply with the priorities set out in the plans (see also section 3.2.1.7 below)²¹.

- (86) Second, on the level of allocation of financial resources, the financial system of the PRC is dominated by the State-owned commercial banks. Those banks, when setting up and implementing their lending policy need to align themselves with the government's industrial policy objectives rather than primarily assessing the economic merits of a given project (see also section 3.2.1.8 below)²². The same applies to the other components of the Chinese financial system, such as the stock markets, bond markets, private equity markets etc. Also these parts of the financial sector other than the banking sector are institutionally and operationally set up in a manner not geared towards maximizing the efficient functioning of the financial markets but towards ensuring control and allowing intervention by the State and the CCP²³.
- (87) Third, on the level of regulatory environment, the interventions by the State into the economy take a number of forms. For instance, the public procurement rules are regularly used in pursuit of policy goals other than economic efficiency, thereby undermining market based principles in the area. The applicable legislation specifically provides that public procurement shall be conducted in order to facilitate the achievement of goals designed by State policies. However, the nature of these goals remains undefined, thereby leaving broad margin of appreciation to the decision-making bodies²⁴. Similarly, in the area of investment, the GOC maintains significant control and influence over destination and magnitude of both State and private investment. Investment screening as well as various incentives, restrictions, and prohibitions related to investment are used by authorities as an important tool for supporting industrial policy goals, such as maintaining State control over key sectors or bolstering domestic industry²⁵.
- (88) In sum, the Chinese economic model is based on certain basic axioms, which provide for and encourage manifold government interventions. Such substantial government interventions are at odds with the free play of market forces, resulting in distorting the effective allocation of resources in line with market principles²⁶.
- 3.2.1.3. Significant distortions according to Article 2(6a)(b), first indent of the basic Regulation: the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country
- (89) In the PRC, enterprises operating under the ownership, control and/or policy supervision or guidance by the State represent an essential part of the economy.
- (90) The GOC and the CCP maintain structures that ensure their continued influence over enterprises, and in particular State-owned enterprises (SOEs). The State (and in many aspects also the CCP) not only actively formulates and oversees the implementation of

²¹ Report – Chapter 3, p. 41, 73-74.

²² Report – Chapter 6, p. 120-121.

²³ Report – Chapter 6, p. 122 -135.

²⁴ Report – Chapter 7, p. 167-168.

²⁵ Report – Chapter 8, p. 169-170, 200-201.

²⁶ Report – Chapter 2, p. 15-16, Report – Chapter 4, p. 50, p. 84, Report – Chapter 5, p. 108-9.

general economic policies by individual SOEs, but it also claims its rights to participate in operational decision making in SOEs. This is typically done through rotation of cadres between government authorities and SOEs, through presence of party members on SOEs executive bodies and of party cells in companies (see also section 3.2.1.4), as well as through shaping the corporate structure of the SOE sector²⁷. In exchange, SOEs enjoy a particular status within the Chinese economy, which entails a number of economic benefits, in particular shielding from competition and preferential access to relevant inputs, including finance²⁸. The elements that point to the existence of government control over enterprises in the Ace-K sector is further developed in section 3.2.1.4.

- (91) Specifically in the Ace-K sector, even if the level of state ownership is relatively low, a substantial degree of policy supervision by the GOC persists. There are indeed only a few companies other than the applicant with large-scale production capacity in the world. Among them, the exporting company, Anhui Jinhe currently has the largest production capacity in the world.
- (92) With the high level of government intervention in the Ace-K industry, even privately owned producers are prevented from operating under market conditions. Indeed, even privately owned enterprises in the Ace-K sector are indirectly subject to policy supervision and guidance as set out in section 3.2.1.5.

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

- (93) Apart from exercising control over the economy by means of ownership of SOEs and other tools, the GOC is in a position to interfere with prices and costs through State presence in firms. While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights²⁹, 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 Constitution³⁰) 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 discipline³¹. 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

²⁷ Report – Chapter 3, p. 22-24 and Chapter 5, p. 97-108.

²⁸ Report – Chapter 5, p. 104-9.

²⁹ Report – Chapter 5, p. 100-1.

³⁰ Report – Chapter 2, p. 26.

³¹ Report – Chapter 2, p. 31-2.

to have a final say over the business decisions within their respective companies³². These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of Ace-K and the suppliers of their inputs.

- (94) In addition, on 15 September 2020 a document titled ‘General Office of CCP Central Committee’s Guidelines on stepping up the United Front work in the private sector for the new era’ (‘the Guidelines’)³³ was released, which further expanded the role of the party committees in private enterprises. Section II.4 of the Guidelines state: ‘[w]e must raise the Party’s overall capacity to lead private-sector United Front work and effectively step up the work in this area’; and section III.6 states: ‘[w]e must further step up Party building in private enterprises and enable the Party cells to play their role effectively as a fortress and enable Party members to play their parts as vanguards and pioneers.’ The Guidelines thus emphasise and seek to increase the role of the CCP in companies and other private sector entities³⁴.
- (95) The following examples illustrate the above trend of an increasing level of intervention by the GOC in the Ace-K sector.
- (96) According to the information collected on Anhui Jinhe³⁵, the Chairman of the Supervisory Board is also the Anhui Jinhe’s Party Committee Secretary whose objectives are to focus on enterprise’s production and business targets and ‘to set up and improve the Party Committee’s discussion mechanism and decision process, as regards development and planning, main reform plans, main changes to the management system...’. The State’s presence and intervention in the financial markets (see also section 3.2.1.8 below) as well as in the provision of raw materials and inputs further have an additional distorting effect on the market³⁶. Thus, the State presence in firms, including SOEs, in the Ace-K and other sectors (such as the financial and input sectors) allow the GOC to interfere with respect to prices and costs.
- 3.2.1.5. Significant distortions according to Article 2(6a)(b), third indent of the basic Regulation: public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces
- (97) The direction of the Chinese economy is to a significant degree determined by an elaborate system of planning which sets out priorities and prescribes the goals the central and local governments must focus on. Relevant plans exist on all levels of government and cover virtually all economic sectors. The objectives set by the planning instruments are of binding nature and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government. Overall, the system of planning in the PRC results in resources being

³² Available at <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU> (last viewed on 15 July 2019).

³³ Available at www.gov.cn/zhengce/2020-09/15/content_5543685.htm (last viewed on 10 March 2021).

³⁴ Financial Times (2020) ‘Chinese Communist Party asserts greater control over private enterprise’, available at: <https://on.ft.com/3mYxP4j>

³⁵ Anhui Jinhe Industrial’s website (jinheshiye.com).

³⁶ Report – Chapters 14.1 to 14.3.

driven to sectors designated as strategic or otherwise politically important by the government, rather than being allocated in line with market forces³⁷.

(98) The Ace-K industry is regarded as a key industry by the GOC. In particular, in the last ten years, while the global demand for Ace-K balanced supply, the production capacity of Anhui Jinhe was gradually expanded. Moreover, due to the gradual squeeze of production of other sweeteners like saccharin and cyclamate, an expansion of the market of Ace-K has taken place thanks to government support and it is expected to expand further³⁸. This is confirmed in a number of plans, directives and other documents focused on Ace-K and its main raw materials, which are issued at national, regional and municipal level such as:

- 13th FYP on Petrochemical and Chemical Industry³⁹. The plan considers fine chemicals a key industry to support through a national and industry innovation platform. More specifically, in Section III-2, the plan promotes the transformation and upgrading of traditional industries by controlling the newly added capacity of urea, among others, and implements advanced technological transformation and upgrade projects complying with policy requirements that shall be subject to an equal or reduced capacity renewal requirement.
- Hebei's 13th Five Year Plan on the development of the petrochemical industry. The plan, in accordance with the national industry policy and in accordance with the requirements of Hebei's list of industry restrictions and eliminations, strictly implements the sector entry conditions, controls any new production capacity project regarding sulphuric acid, among others.
- Agreement signed by Anhui Jinhe with the Dingyuan District⁴⁰ (Anhui Province) in view to develop the Jinhe Industrial Circular Economy Industrial Park Project Framework Agreement of 24 November 2017. The agreement, aimed at developing upstream raw materials for existing chemical products, expanding the industrial chain and supporting its vertical integration, stipulates that the company would invest RMB 2.25 billion in the Dingyuan Salt Chemical Industrial Park to build a circular economy industrial park and it implied an annual output of 310 000 tons of diketene (which is internally produced by the company for the production of Ace-K); an annual production of 30 000 tons of high-efficiency food preservative potassium sorbate; and the use of sulphur as raw material to develop a series of chemical products.

(99) The GOC further guides the development of the sector in accordance with a broad range of policy tools and directives. As explained in the recital above, the government's support of the vertical integration of the industrial chain in the Ace-K sector helped Anhui Jinhe become an undisputed world leader in the sector. The

³⁷ Report – Chapter 4, p. 41-42, 83.

³⁸ Zhongtai securities' analysis of Anhui Jinhe Industrial, February 2020(dfcfw.com).

³⁹ 13th Five Year Plan on the development of the petrochemical and chemical industry 2016-2020, displayed on the NDRC website.

⁴⁰ Announcement of Anhui Jinhe Industrial signing a framework agreement with the Dingyuan County on a circular economy industry park project - 24 NOV 2017 as released on the financial information website cninfo.com.cn

company further received large amounts of governmental subsidies which amounted to RMB 41 685 378 in 2020 and RMB 40 900 000 in 2019 as stated in the company's financial account (amounting to 1.2% of the total turnover)⁴¹. It cannot be ruled out that the other producers, which did not cooperate with this investigation and still represent a substantial part of the market, may have also benefitted from similar financial supports. Through these and other means, the GOC directs and controls virtually every aspect in the development and functioning of the sector.

- (100) 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 urea, diketene and sulphur trioxide among others as the main raw materials used in the manufacturing of the product under review. Such measures impede market forces from operating freely.

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

- (101) According to the information on file, the Chinese bankruptcy system delivers inadequately on its own main objectives such as to fairly settle claims and debts and to safeguard the lawful rights and interests of creditors and debtors. This appears to be rooted in the fact that while the Chinese bankruptcy law formally rests on principles that are similar to those applied in corresponding laws in countries other than the PRC, the Chinese system is characterised by systematic under-enforcement. The number of bankruptcies remains notoriously low in relation to the size of the country's economy, not least because the insolvency proceedings suffer from a number of shortcomings, which effectively function as a disincentive for bankruptcy filings. Moreover, the role of the State in the insolvency proceedings remains strong and active, often having direct influence on the outcome of the proceedings⁴².
- (102) In addition, the shortcomings of the system of property rights are particularly obvious in relation to ownership of land and land-use rights in the PRC⁴³. All land is owned by the Chinese State (collectively owned rural land and State-owned urban land). Its allocation remains solely dependent on the State. There are legal provisions that aim at allocating land use rights in a transparent manner and at market prices, for instance by introducing bidding procedures. However, these provisions are regularly not respected, with certain buyers obtaining their land for free or below market rates⁴⁴. Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land⁴⁵.
- (103) Much like other sectors in the Chinese economy, the producers of Ace-K are subject to the ordinary rules on Chinese bankruptcy, corporate, and property laws. That has the effect that these companies, too, are subject to the top-down distortions arising from the discriminatory application or inadequate enforcement of bankruptcy and property

⁴¹ Anhui Jinhe Industrial's 2020 annual report (dfcfw.com).

⁴² Report – Chapter 6, p. 138-149.

⁴³ Report – Chapter 9, p. 216.

⁴⁴ Report – Chapter 9, p. 213-215.

⁴⁵ Report – Chapter 9, p. 209-211.

laws. The present investigation revealed nothing that would call those findings into question. As such, the Commission concluded that the Chinese bankruptcy and property laws do not work properly, thus generating distortions when maintaining insolvent firms afloat and when allocating land use rights in the PRC. Those considerations, based on the evidence available, appear to be fully applicable also in the Ace-K sector.

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

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

- (105) A system of market-based wages cannot fully develop in the PRC as workers and employers are impeded in their rights to collective organisation. The PRC has not ratified a number of essential conventions of the International Labour Organisation ('ILO'), in particular those on freedom of association and on collective bargaining⁴⁶. Under national law, only one trade union organisation is active. However, this organisation lacks independence from the State authorities and its engagement in collective bargaining and protection of workers' rights remains rudimentary⁴⁷. Moreover, the mobility of the Chinese workforce is restricted by the household registration system, which limits access to the full range of social security and other benefits to local residents of a given administrative area. This typically results in workers who are not in possession of the local residence registration finding themselves in a vulnerable employment position and receiving lower income than the holders of the residence registration⁴⁸. Those findings lead to the distortion of wage costs in the PRC.

- (106) No evidence was submitted to the effect that the Ace-K sector would not be subject to the Chinese labour law system described. The Ace-K sector is thus affected by the distortions of wage costs both directly (when making the product concerned or the main raw material for its production) as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in the PRC).

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

- (107) Access to capital for corporate actors in the PRC is subject to various distortions.
- (108) Firstly, the Chinese financial system is characterised by the strong position of State-owned banks⁴⁹, which, when granting access to finance, take into consideration criteria other than the economic viability of a project. Similarly to non-financial SOEs, the banks remain connected to the State not only through ownership but also via personal relations (the top executives of large State-owned financial institutions are ultimately

⁴⁶ Report – Chapter 13, p. 332-337.

⁴⁷ Report – Chapter 13, p. 336.

⁴⁸ Report – Chapter 13, p. 337-341.

⁴⁹ Report – Chapter 6, p. 114-117.

appointed by the CCP)⁵⁰ and, again just like non-financial SOEs, the banks regularly implement public policies designed by the government. In doing so, the banks comply with an explicit legal obligation to conduct their business in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State⁵¹. This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important⁵².

- (109) While it is acknowledged that various legal provisions refer to the need to respect normal banking behaviour and prudential rules such as the need to examine the creditworthiness of the borrower, the overwhelming evidence, including findings made in trade defence investigations, suggests that these provisions play only a secondary role in the application of the various legal instruments.
- (110) For example, the GOC has recently clarified that even private commercial banking decisions must be overseen by the CCP and remain in line with national policies. One of the State's three overarching goals in relation to banking governance is now to strengthen the Party's leadership in the banking and insurance sector, including in relation to operational and management issues in companies⁵³. Also, the performance evaluation criteria of commercial banks have now to, notably, take into account how entities '*serve the national development objectives and the real economy*', and in particular how they '*serve strategic and emerging industries*'.⁵⁴
- (111) Furthermore, bond and credit ratings are often distorted for a variety of reasons including the fact that the risk assessment is influenced by the firm's strategic importance to the GOC and the strength of any implicit guarantee by the government. Estimates strongly suggest that Chinese credit ratings systematically correspond to lower international ratings⁵⁵.

⁵⁰ Report – Chapter 6, p. 119.

⁵¹ Report – Chapter 6, p. 120.

⁵² Report – Chapter 6, p. 121-122, 126-128, 133-135.

⁵³ See official policy document of the China Banking and Insurance Regulatory Commission (CBIRC) of 28 August 2020: *Three-year action plan for improving corporate governance of the banking and insurance sectors* (2020-2022). <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=925393&itemId=928> (last viewed on 3 April 2021). The Plan instructs to '*further implement the spirit embodied in General Secretary Xi Jinping's keynote speech on advancing the reform of corporate governance of the financial sector*'. Moreover, the Plan's section II aims at promoting the organic integration of the Party's leadership into corporate governance: '*we shall make the integration of the Party's leadership into corporate governance more systematic, standardised and procedure-based [...] Major operational and management issues must have been discussed by the Party Committee before being decided upon by the Board of Directors or the senior management.*'

⁵⁴ See CBIRC's *Notice on the Commercial banks performance evaluation method*, issued on 15 December 2020. http://jrs.mof.gov.cn/gongzuotongzhi/202101/t20210104_3638904.htm (last viewed on 12 April 2021).

⁵⁵ See IMF Working Paper 'Resolving China's Corporate Debt Problem', by Wojciech Maliszewski, Serkan Arslanalp, John Caparusso, José Garrido, Si Guo, Joong Shik Kang, W. Raphael Lam, T. Daniel Law, Wei Liao, Nadia Rendak, Philippe Wingender, Jiangyan, October 2016, WP/16/203.

- (112) This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important⁵⁶. This results in a bias in favour of lending to SOEs, large well-connected private firms and firms in key industrial sectors, which implies that the availability and cost of capital is not equal for all players on the market.
- (113) Secondly, borrowing costs have been kept artificially low to stimulate investment growth. This has led to the excessive use of capital investment with ever lower returns on investment. This is illustrated by the growth in corporate leverage in the State sector despite a sharp fall in profitability, which suggests that the mechanisms at work in the banking system do not follow normal commercial responses.
- (114) Thirdly, although nominal interest rate liberalisation was achieved in October 2015, price signals are still not the result of free market forces, but are influenced by government-induced distortions. The share of lending at or below the benchmark rate still represented at least one-third of all lending as of the end of 2018⁵⁷. Official media in the PRC have recently reported that the CCP called for '*guiding the loan market interest rate downwards*.'⁵⁸ Artificially low interest rates result in under-pricing, and consequently, the excessive utilisation of capital.
- (115) Overall credit growth in the PRC indicates a worsening efficiency of capital allocation without any signs of credit tightening that would be expected in an undistorted market environment. As a result, non-performing loans have increased rapidly in recent years. Faced with a situation of increasing debt-at-risk, the GOC has opted to avoid defaults. Consequently, bad debt issues have been handled by rolling over debt, thus creating so called 'zombie' companies, or by transferring the ownership of the debt (e.g. via mergers or debt-to-equity swaps), without necessarily removing the overall debt problem or addressing its root causes.
- (116) In essence, despite the steps that have been taken to liberalise the market, the corporate credit system in the PRC is affected by significant distortions resulting from the continuing pervasive role of the state in the capital markets.
- (117) No evidence was submitted to the effect that the Ace-K sector, would be exempted from the above-described government intervention in the financial system. The Commission has also established that the cooperating exporting producer benefited from preferential long term loans, among others, from 2006 to 2021 released by the Lai'an District Finance bureau. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

3.2.1.9. Systemic nature of the distortions described

- (118) The Commission noted that the distortions described in the Report are characteristic for the Chinese economy. The evidence available shows that the facts and features of the Chinese system as described above in Sections 3.2.1.2 - 3.2.1.5 as well as in Part A of the Report apply throughout the country and across the sectors of the economy. The

⁵⁶ Report – Chapter 6, p. 121-122, 126-128, 133-135.

⁵⁷ See OECD (2019), OECD Economic Surveys: China 2019, OECD Publishing, Paris. p. 29.
https://doi.org/10.1787/eco_surveys-chn-2019-en

⁵⁸ See: http://www.xinhuanet.com/fortune/2020-04/20/c_1125877816.htm (last viewed on 12 April 2021).

same holds true for the description of the factors of production as set out above in Sections 3.2.1.6 - 3.2.1.8 above and in Part B of the Report.

- (119) The Commission recalls that in order to produce Ace-K, a broad range of inputs is needed. According to the evidence on the file, the exporting producer sourced almost all their inputs in the PRC. When the producers of Ace-K purchase/contract the upstream raw materials to produce the 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.
- (120) As a consequence, not only are the domestic sales prices of Ace-K 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 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. No evidence or argument to the contrary has been adduced by the GOC or the exporting producers in the present investigation.

3.2.1.10. Conclusion

- (121) The analysis set out in sections 3.2.1.2 to 3.2.1.9, which includes an examination of all the available evidence relating to the PRC's intervention in its economy in general as well as in the Ace-K sector (including the product concerned) showed that prices or costs of the product concerned, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case.
- (122) Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as discussed in the following section.

3.3. Representative country

3.3.1. General remarks

- (123) 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 Bank⁵⁹;
 - Production of the product concerned in that country⁶⁰;
 - Availability of relevant public data in the representative country.
- (124) Where there is more than one possible representative country, preference should be given, where appropriate, to the country with an adequate level of social and environmental protection.
- (125) As explained in recitals (127) and (128), the Commission issued two notes for the file on the sources for the determination of the normal value. These notes described the facts and evidence underlying the relevant criteria, and addressed the comments received by the parties on these elements and on the relevant sources. In the Second Note, the Commission informed interested parties of its intention to consider Malaysia as an appropriate representative country in the present case if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation was confirmed.
- (126) In point 5.3.2 of the Notice of initiation the Commission identified Turkey as a potential representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value on the basis of 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.
- (127) On 15 March 2021, the Commission informed by a note ('the First Note') interested parties on the relevant sources it intended to use for the determination of the normal value. In that note, the Commission provided a list of all factors of production such as raw materials, labour and energy used in the production of Ace-K. In addition, the Commission identified Argentina, Malaysia and Thailand as possible representative countries. The Commission received comments on the First Note only from the applicant. These comments were addressed in detail in recitals (129) to (147).
- (128) On 11 June 2021, the Commission informed by a second note ('the Second Note') interested parties on the relevant sources it intended to use for the determination of the normal value, with Malaysia as the representative country. It also informed interested parties that it would establish selling, general and administrative costs ('SG&A') and profits on the basis of available information for the relevant company Ajinomoto (Malaysia) Berhad. The Commission received comments on the Second Note only from the applicant. These comments are addressed in detail in recitals (178) to (192).

3.3.2. A level of economic development similar to the PRC

⁵⁹ World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>

⁶⁰ 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.

- (129) In the First Note on production factors, the Commission explained that the product concerned did not appear to be produced in any of the countries with a level of economic development similar to the PRC in accordance with the criteria mentioned in recital (123). It was only produced in the People's Republic of China and in the EU.
- (130) As a result, the Commission considered whether there was production of a product in the same general category and/or sector as the product concerned. The Commission consequently indicated that it would consider production of sweeteners, flavourings and food additives, which were products in the same general category as Ace-K, to establish an appropriate representative country for the application of Article 2(6a) of the basic Regulation.
- (131) In the First Note on production factors, the Commission identified Argentina, Malaysia and Thailand as potential representative countries with a similar level of economic development to the PRC according to the World Bank, i.e. they were all classified by the World Bank as 'upper-middle income' countries on a gross national income basis.
- (132) The applicant commented that within the upper-middle-income category there was a wide range of development levels. It was therefore necessary to give preference to candidate 'representative' countries that were close to China in terms of GNI per capita. They indicated that of the three countries proposed by the Commission, Argentina and Malaysia had similar levels of GNI, but Thailand was substantially lower and should be excluded.
- (133) When constructing the normal value in line with Article 2(6a)(a) of the basic Regulation, the Commission may use a representative country with a similar level of economic development to the exporting country. The basic Regulation does not contain any further requirement to choose the country with the level of economic development closest to the exporting country.
- (134) The fact that a country may have a closer GNI per capita to China than another one is not a factor considered in the selection of the appropriate representative country. Therefore, this claim was rejected.

3.3.3. Availability of relevant public data in the representative country

- (135) In the First Note, the Commission identified one company in Argentina, one company in Malaysia and four companies in Thailand for which financial information for products in the same general category as the product under review was readily available in the Dun and Bradstreet database⁶¹.
- (136) In the Second Note, the Commission indicated that for the countries identified i.e. Argentina, Malaysia and Thailand, it investigated further the availability of public financial data.
- (137) With regard to Argentina, the Commission found readily available financial information for one producer, Laboratorios Argentinos Farnesa, of products in the

⁶¹ <https://globalfinancials.com/index-admin.html>

same general category as Ace-K, in the Dun and Bradstreet database but did not find published financial statements.

- (138) The applicant commented that the ratio of profit to sales of 5.3% for this Argentinian producer was not reasonable for the Ace-K business.
- (139) With regard to Malaysia, the Commission found readily available published financial statements for the Malaysian company, Ajinomoto (Malaysia) Berhad ('Ajinomoto Malaysia') mentioned in the First Note, for the financial years ending 31 March 2017, 2018, 2019 and 2020⁶² as well as readily available financial data for that company in the Dun and Bradstreet database.
- (140) The applicant provided the same financial statements that the Commission had identified. It further argued that these annual reports showed different profitability figures for the industrial sector (which allegedly was more appropriate for the Ace-K business) and the consumer sector and gave a breakdown of the income, costs and expenses, which allowed the extraction of appropriate SG&A and profit figures. The applicant argued further that the cost of sales figure in the published financial statements was more reliable than the equivalent cost figures extracted from the Dun and Bradstreet database. Furthermore, the applicant indicated that since profitability was stable for the financial years 2017 to 2020, this provided confidence that the profitability in financial year 2020 was representative.
- (141) With regard to Thailand, the Commission found readily available financial data for four profitable companies of products in the same general category, i.e. flavourings and food additives, as Ace-K, in the Dun and Bradstreet database.
- (142) The applicant argued that although the Commission had found such data for four companies in Thailand, two of the Thai companies, Shimakyu Co. Ltd. and Patchara Products Ltd., were unsuitable because of their low profit to sales ratios of 6.1% and 2.7% respectively.
- (143) The Commission considered that the financial information available for Ajinomoto Malaysia would indeed be the most appropriate source to establish SG&A and profits for the construction of normal value. Audited financial statements overlapping the investigation period by 9 months were readily available for Ajinomoto Malaysia. Furthermore, Ajinomoto Malaysia is a large company and has significant production of products in the same general category as the Ace-K.
- (144) In order to determine an appropriate representative country, the Commission also assessed the existence of market distortions by export and/or import restrictions on the Ace-K as well as on the raw materials, namely those representing the most important items of cost of manufacturing used for producing Ace-K.
- (145) Based on the OECD database⁶³ and the Global Trade Alert⁶⁴ database and in particular the list of export/import restrictions on industrial raw materials, several restrictions were indicated, in the First Note, for the main factors of production. For Argentina the

⁶² <https://www.ajinomoto.com.my/investors/annual-reports>

⁶³ http://qdd.oecd.org/subject.aspx?Subject=ExportRestrictions_IndustrialRawMaterials

⁶⁴ https://www.globaltradealert.org/data_extraction

Commission identified import tariffs on acetic acid (291521) from the USA and import licensing requirements for potassium hydroxide (281520) from Brazil, Korea and USA, sulphur (250300) from Kazakhstan, Russia, Spain and the USA, calcium carbonate (251710) from Paraguay and acetic acid (291521) from the USA. For Thailand, the Commission identified import tariffs on anthracite (270111) from Vietnam and calcium carbonate (251710) from Laos. Finally for Malaysia the Commission identified import tariffs on sulfamic acid (281119) from Namibia; export licensing requirements on exports of acetic acid (291521) to Belgium, India, Indonesia, Japan, Pakistan, Singapore and Thailand; and export licensing requirements on exports of calcium carbonate (251710) to Brunei Darussalam, Indonesia and Singapore.

- (146) The applicant claimed that the import licensing requirements implemented on four raw materials by Argentina (such as potassium hydroxide, sulphur, calcium carbonate and acetic acid) highlighted by the Commission in the First Note, limited the sources of supply and thereby kept prices up in the domestic market. They further argued that export licensing requirements, as implemented by Malaysia on two of these raw materials (such as acetic acid and calcium carbonate), could have the opposite effect by maintaining domestic supply and holding prices down in the domestic market. They therefore considered that Malaysia would be a better choice of representative country than Argentina in this regard.
- (147) With regard to the export licensing requirements applied by Malaysia, the Commission indicated in the First Note that these applied to only two raw materials, acetic acid and calcium carbonate. The impact of export licensing requirements would be to hold domestic prices down, which was also likely to hold import quantities and/or prices down in order to compete with domestic supplies. As such, import prices for these two raw materials were very likely to be understated if used to construct normal value⁶⁵.
- (148) In the light of the above considerations, the Commission informed the interested parties with the Second Note that it intended to use Malaysia as an appropriate representative country and the company, Ajinomoto (Malaysia) Berhad, in accordance with Article 2(6a)(a), first indent of the basic Regulation, in order to source undistorted prices or benchmarks for the calculation of normal value.
- (149) Interested parties were invited to comment on the appropriateness of Malaysia as a representative country and of Ajinomoto (Malaysia) Berhad as producers in the representative country.
- (150) Following the Second Note, comments were received from the applicant only. The applicant provided comments on the basis that Malaysia would be chosen as the representative country.

3.3.4. Level of social and environmental protection

⁶⁵ Given that in expiry reviews anti-dumping duties are not revised, the use of these two raw materials to construct the normal value in principle would not affect the overall findings of this review. In fact, in this particular case, any impact would be to the advantage of the exporting producers since the constructed normal value, and the resulting dumping margin, would be potentially higher in the absence of such licensing requirements.

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

3.3.5. Conclusion

- (152) In view of the above analysis, Malaysia met the criteria laid down in Article 2(6a)(a), first indent of the basic Regulation in order to be considered as an appropriate representative country.
- (153) In their comments following final disclosure, Anhui Jinhe stated that Malaysia was not an appropriate representative country as there was only one company, Ajinomoto (Malaysia) Berhad, operating in the same general product category as Ace-K, and Ajinomoto's financial data was distorted because its costs were highly reliant on purchases from related companies. They argued that the resulting lower raw material and other direct costs incurred by the company explained the high SG&A percentage used for the construction of the normal value.
- (154) The Commission noted that in Note 29 to the Notes to the Financial Statements of Ajinomoto (Malaysia) Berhad for the financial year ended 31 March 2020⁶⁶, a statement from the directors, with regard to transactions with related parties, including purchases, indicated "*The directors are of the opinion that all of the transactions above have been entered into in the normal course of business and have been established on negotiated terms and conditions that are not materially different from those obtainable in transactions with unrelated parties*". Furthermore, this statement, incorporated in the notes to the financial statements, was audited, as part of the statutory audit, by independent auditors, who pronounced⁶⁷ that the financial statements gave a true and fair view of the financial position of the company at 31 March 2020. As such, the Commission considered that it could establish SG&A costs on the basis of Ajinomoto (Malaysia) Berhad's SG&A to production costs ratio and rejected the argument raised by Anhui Jinhe.
- (155) Anhui Jinhe further argued that Argentina was a more suitable representative country because financial information was available, the ratio of profit to sales of 5.3% was reasonable and the Commission's argument that the import licensing requirements by Argentina limited sources of supply was not valid as import tariffs were only applied towards one country (USA) and one product.
- (156) The Commission disagreed with these claims. The Commission did not reject Argentina as a representative country because the ratio of profit to sales of 5.3% was not reasonable, but for other reasons. In fact, as explained in recital (137), no detailed financial statements were available for any relevant company in Argentina, as it was available for Malaysia. Furthermore, in addition to the import tariff mentioned by Anhui Jinhe, the Commission identified import licensing requirements for four other

⁶⁶ Ajinomoto (Malaysia) Berhad Financial Statements for the year ended 31 March 2020, p.84

⁶⁷ Ajinomoto (Malaysia) Berhad Financial Statements for the year ended 31 March 2020, p.45

raw materials, which could limit the sources of supply and thereby increase prices on the domestic market. Therefore, the Commission rejected this claim.

3.4. Sources used to establish undistorted costs

- (157) In the First Note, the Commission listed the factors of production such as materials, energy and labour used in the production of the product concerned by the exporting producers and invited the interested parties to comment and propose readily available information on undistorted values for each of the factors of production mentioned in that note.
- (158) Subsequently, 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 data to establish the undistorted cost of most of the factors of production, notably the raw materials. In addition, the Commission stated that it would use the Institute of Labour Market Information and Analysis (ILMIA)⁶⁸ for establishing undistorted costs of labour and electricity price information published by the electricity company Tenaga Nasional Berhad (TNB) in its website⁶⁹ for electricity costs.
- (159) In the Second Note, the Commission also informed the interested parties that due to the limited importance of some individual raw material items in the total cost of production, some of the factors of production were considered ‘consumables’. Furthermore, the Commission informed interested parties that it would calculate the percentage of the consumables in the total cost of production and apply this percentage to the recalculated cost of production using the established undistorted benchmarks in the appropriate representative country.
- (160) During a hearing, Anhui Jinhe argued that the Commission had not added the First Note to the non-confidential file of the investigation within 65 days of the date of publication of the Notice of initiation, as indicated in section 5.3.2. of the Notice of initiation.
- (161) However, that deadline does not encompass the notes to the file. The Commission issued its First Note on 15 March 2021 and its Second Note on 11 June 2021, and in both of those Notes the interested parties had 10 days to submit comments on those aspects. Anhui Jinhe did not submit any comments in response to either of the notes.
- (162) In their comments following final disclosure, Anhui Jinhe reiterated its claim stated in recital (160). It further argued that by adding the First Note in the investigation file after 4.5 months since the initiation of the investigation and the Second Note after 7.5 months, the Commission did not add the notes to the file “shortly” in line with section 5.3.2 of the Notice of initiation and “promptly” pursuant to Article 2(6a)(e) of the basic Regulation and therefore they should be disregarded. Moreover, it was claimed that the request did not contain any elements regarding distortions of certain specific inputs used in the production process by Anhui Jinhe and the Commission was not provided with such evidence within the 37 days of the date of the Notice on initiation

⁶⁸ <https://www.ilmia.gov.my/index.php/my/labour-cost>

⁶⁹ <https://www.tnb.com.my/commercial-industrial/pricing-tariffs1>
https://www.tnb.com.my/assets/files/Tariff_Rate_Final_01.Jan.2014.pdf

by the applicant. Finally, it was argued that by submitting the First Note after the 37 days since the initiation, Anhui Jinhe's rights of defence were breached.

- (163) The Commission disagrees with these claims. The purpose of the First Note and Second Note to the file is to inform parties about the relevant sources that it intends to use for the purpose of determining the normal value pursuant to Article 2(6a) of the basic Regulation. The Notes do not include an assessment regarding the application of Article 2(6a) of the basic Regulation. In addition, a particularity of this case was the fact that as explained in recital (129), Ace-K was manufactured only in the Union and in the PRC. Therefore, the selection process of the representative country was more complex than usual as the Commission had to consider whether there was production of a product in the same general category and/or sector as the product concerned. Furthermore, an investigation carried out pursuant to Article 11.2 of the basic Regulation, like the current one, needs to be concluded within 12 months and in any event no later than 15 months from the date of the publication of the Notice of initiation (as stated in Section 6 of the Notice of initiation), as compared to an investigation carried out pursuant to Article 5 of the basic Regulation when provisional measures should be imposed no later than 8 months from the initiation of the investigation. Moreover, Anhui Jinhe had enough time to comment on the notes. However, Anhui Jinhe did not make any comments to the First Note, which identified three potential representative countries. Nor did Anhui Jinhe provide comments to the Second Note. Therefore, the Commission rejected the claims that there had been a breach of Anhui Jinhe's rights of defence.
- (164) Regarding the claim that the request did not contain any elements regarding distortions of certain specific inputs, as stated in recital (22), the Commission concluded that the request contained sufficient evidence to initiate the investigation. The applicant is not required to submit additional evidence specifically regarding distortions of certain inputs in order for the Commission to look into the application of Article 2(6a) of the basic Regulation. Therefore, the claim was rejected.

3.5. Undistorted costs and benchmarks

3.5.1. Factors of production

- (165) Considering all the information submitted by the interested parties and collected during the remote cross-checks, the following factors of production and their sources have been identified in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

Table 1 — Factors of production of Ace-K			
Factor of Production	Commodity Code in Malaysia	Undistorted values in CNY	Unit of measurement
Raw materials			
Activated carbon	3802 10 00	17.78	KG
Ammonium phosphate/ diammonium phosphate	3105 30 00	2.87	KG
Anthracite	2701 11 00	0.99	KG

Table 1 — Factors of production of Ace-K			
Factor of Production	Commodity Code in Malaysia	Undistorted values in CNY	Unit of measurement
Butyl acetate	2915 33 00	6.99	KG
Calcium carbonate stone powder/CaCO ₃ /200 mesh	2517 10 00	0.72	KG
Defoaming agent/ Silicones in primary form	3910 00 20 3910 00 90	64.55	KG
Dichloromethane	2903 12 00	4.51	KG
Glacial acetic acid	2915 21 00	6.00	KG
Lime/Powder/250 mesh	2522 10 00	1.07	KG
Potassium hydroxide	2815 20 00	4.14	KG
Sulfamic acid	2811 19 90	18.14	KG
Sulphur/liquid	2503 00 00	0.77	KG
Triethylamine	2921 19 00	47.51	KG
Energy			
Electricity	N/A	0.52	KWH
Labour			
Labour costs in the manufacturing sector	N/A	64.10	Labour hour

(166) The Commission also included a value for manufacturing overhead costs in order to cover costs not included in the factors of production referred to above. The methodology to establish this amount is duly explained in recital (186).

Raw materials and by-products

(167) In order to establish the undistorted price of raw materials as delivered at the gate of a representative country producer, the Commission used as a basis the weighted average import price to the representative country as reported in the GTA to which import duties and transport costs were added. An import price in the representative country was determined as a weighted average of unit prices of imports from all third countries excluding the PRC and countries which are not members of the WTO, listed in Annex 1 of Regulation (EU) 2015/755 of the European Parliament and the Council⁷⁰. The Commission decided to exclude imports from the PRC into the representative country as it concluded in recital (121) 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. After

⁷⁰ Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33).

excluding the imports into Malaysia from China and the countries listed in Annex 1 of Regulation 2015/755, the Commission found that imports of the main raw materials from other third countries remained representative (more than 75% of total volumes imported into Malaysia).

- (168) For a small number of factors of production and by-products the actual costs incurred, or values credited by the cooperating exporting producer, represented a negligible share of total raw material costs in the review investigation period.
- (169) As the value used for these had no appreciable impact on the dumping margin calculations, regardless of the source used, the Commission decided to include the net value of those costs in consumables.
- (170) With regard to steam, a significant cost was reported by the exporting producer in the consumables category. As steam was also a by-product of the production process, the Commission included both the cost and the by-product income value for steam, in consumables.
- (171) The Commission calculated the percentage of the consumables on the total cost of raw materials and applied this percentage to the recalculated cost of raw materials when using the established undistorted prices.
- (172) In order to establish the undistorted price of raw materials, as provided by Article 2(6a)(a), first indent of the basic Regulation, the Commission applied the relevant import duties of the representative country.
- (173) The Commission expressed the transport cost incurred by the cooperating exporting producer for the supply of raw materials as a percentage of the actual cost of such raw materials and then applied the same percentage to the undistorted cost of the same raw materials in order to obtain the undistorted transport cost. The Commission considered that, in the context of this investigation, the ratio between the exporting producer's raw material and the reported transport costs could be reasonably used as an indication to estimate the undistorted transport costs of raw materials when delivered to the company's factory.
- (174) In their comments following final disclosure, Anhui Jinhe argued that the Commission did not construct an accurate benchmark for potassium hydroxide. It argued that the Commission used the Malaysian price for HS 281520 in this regard and this methodology did not take into account the fact that potassium hydroxide could be imported in liquid and solid form which have different prices.
- (175) For constructing the benchmark for potassium hydroxide, the Commission used the HS code submitted by Anhui Jinhe, which was the same for both liquid and solid forms. The 8-digit commodity code in Malaysia for this product does not differentiate between liquid and solid products. Therefore, the claim was rejected.
- (176) Anhui Jinhe also argued that the basic premise underlying the concept of import duties was that, if raw materials were purchased on the domestic market, the purchase price was subject to value-added tax (VAT), whereas if the raw materials were acquired on foreign markets, the countries which exported the raw material generally did not levy VAT. Therefore, at the stage of importation import duties were levied to equalize the tax so that the domestic price was comparable with the import price. However, if a

company purchases raw materials the VAT paid is input VAT which was not a part of cost of production as it was an offset of output VAT. Thus, Anhui Jinhe claimed that for normal value calculation the import duty should not be added.

- (177) The Commission disagreed with this claim. The VAT regime is different than for the import duty. While for the VAT, there is an offset between input and output VAT even for imported raw materials, such offset does not apply for the import duties. Furthermore, the purpose of adding import duties is to obtain the final import price on the domestic market. Therefore, the claim was rejected.

Labour

- (178) In the Second Note, the Commission indicated its intention to use the statistics published by the Institute of Labour Market Information and Analysis (ILMIA)⁷¹ in Malaysia to determine the wages in Malaysia by using the information for average labour cost per employee in the manufacturing sector for the investigation period.
- (179) Following the Second Note, the applicant commented that based on the non-executive labour cost established by the Commission for Ajinomoto (Malaysia) Berhad (RM 38 791 005) and the fact that this related to 452 people, one could deduce that Ajinomoto (Malaysia) Berhad paid each non-executive employee, on average, 85 820.81 RM/year which was equivalent to 7 151.73 RM/month (11 952.8 CNY/month). They indicated that since Ajinomoto (Malaysia) Berhad operated in the same business sector as Ace-K producers, it would be reasonable to calculate the benchmark for labour using non-executive labour hourly labour costs from the Ajinomoto (Malaysia) Berhad financial statements.
- (180) The Commission notes that the Institute of Labour Market Information and Analysis (ILMIA) figures relate to the year 2016. Since the non-executive labour figures proposed by the applicant relate to the financial year ending 31 March 2020 and derive from a company in the same business sector as Ace-K producers, the Commission found appropriate the request from the applicant to establish labour costs on that basis.

Electricity

- (181) Prices for electricity for companies (industrial users) in Malaysia are published by the electricity company Tenaga Nasional Berhad (TNB) in its website⁷². The most recent rates were published on 1 January 2014 and were still applicable in the RIP. The Commission used the rates of the industrial electricity prices in the consumption band 'Tariff E2 - Medium Voltage Peak/Off-Peak Industrial Tariff', from TNB to establish the electricity cost per kWh.
- (182) With regard to the maximum demand element, the exporting producer did not provide details of the maximum demand per half hour, which is an element of the calculation. Therefore, the Commission established this element, conservatively, on the basis of the average demand per half hour for the month with the highest demand.

⁷¹ <https://www.ilmia.gov.my/index.php/my/labour-cost>

⁷² <https://www.tnb.com.my/commercial-industrial/pricing-tariffs1>
https://www.tnb.com.my/assets/files/Tariff_Rate_Final_01.Jan.2014.pdf

- (183) The Commission then established the consumption by the exporting Chinese producer during the peak and off peak periods in the Malaysian tariff system, which corresponded to the peak and flat periods (Malaysian peak period) and valley period (Malaysian off-peak period) in the Chinese tariff system.
- (184) Then the Commission applied the Malaysian prices per unit consumed during the Malaysian peak and off-peak periods to the Chinese exporting producer's consumption in kWh during those periods and added the maximum demand charge established above and the 1.6% feed-in-tariff in order to establish the electricity cost per kWh.

3.5.2. Manufacturing overhead costs, SG&A, and profits

- (185) 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.
- (186) The manufacturing overheads incurred by the cooperating exporting producer were expressed as a share of the costs of manufacturing actually incurred by the exporting producer. This percentage was applied to the undistorted costs of manufacturing.
- (187) For establishing an undistorted and reasonable amount for SG&A and profit, the Commission relied on the financial data ending 31 March 2020 for Ajinomoto (Malaysia) Berhad. The Commission made this data available to interested parties in the Second Note.
- (188) As indicated in the Second Note, the Commission first analysed the audited Profit and Loss account and Notes to the accounts for Ajinomoto (Malaysia) Berhad for the year ending 31 March 2020 in order to establish the Cost of sales and SG&A expenses. Certain types of costs were directly allocated to cost of sales (e.g. plant, machinery and equipment depreciation) or SG&A expenses (e.g. directors' salaries) as appropriate. Other costs were apportioned to cost of sales and SG&A expenses on the basis of the numbers of non-executive (apportioned to cost of sales) and other (apportioned to SG&A) employees. By this analysis the Commission expressed the SG&A expenses as a percentage of the Cost of sales.
- (189) Further to the Second Note, the applicant commented that the interest income of MR 2 894 308 should not be treated as a negative cost of SG&A.
- (190) The Commission concurred that since Ajinomoto (Malaysia) Berhad held significant cash assets, which would have been the source of such income, the interest received should not be included to reduce the SG&A costs associated with production of the product under review. The Commission therefore, adjusted the SG&A costs in this regard.
- (191) The applicant further argued that in establishing the level of profitability, the Commission should take into account the profitability of Ajinomoto (Malaysia) Berhad on its industrial sales rather than on its consumer sales, as both the applicant and Anhui Jinhe sell Ace-K 'business to business'. They indicated that it would be possible to calculate the profitability for the industrial sector using the segmental information available on page 89 of the Annual Report 2020.

- (192) The Commission noted that the figures in the Annual Report would have allowed determination of a profit percentage for industrial sales, but not an equivalent SG&A expenses percentage for industrial sales. Therefore, the Commission rejected this argument and established the profit and SG&A on the basis of the Ajinomoto (Malaysia) Berhad total company figures.
- (193) In their comments following final disclosure, Anhui Jinhe further argued that the Commission over-estimated the SG&A expenses of Ajinomoto, by allocating the entirety of the "other operating expenses" to SG&A. They argued that parts of the "other operating expenses" necessarily constitute costs of sales, rather than SG&A, as for example, none of the expenses not classified as "other operating expenses" appear to include energy expenses, which should, at least partially, be considered as costs of production rather than SG&A.
- (194) The Commission notes that there is no clear indication or break-down of the costs included in the category in the annual report of Ajinomoto. The detailed disclosure of the allocation of costs to determine the SG&A expenses was made as part of the Second Note and interested parties were given 10 days to comment. Anhui Jinhe did not comment on that aspect at that time. Nevertheless, even if the Commission would accept that claim, this would not change the conclusions of the investigation that dumping (at a high rate) continued during the investigation period.

3.5.3. Calculation

- (195) On the basis of the above, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (196) First, the Commission established the undistorted manufacturing costs (covering the consumption of raw materials, labour and energy). The Commission applied the undistorted unit costs to the actual consumption of the individual factors of production of the cooperating exporting producer. The Commission multiplied the usage factors by the undistorted costs per unit observed in the representative country.
- (197) Second, to arrive at the undistorted costs of production, the Commission added manufacturing overheads. Manufacturing overheads incurred by the cooperating exporting producer were increased by the costs of raw materials and consumables referred to in recitals (168) to (171) and subsequently expressed as a share of the costs of manufacturing actually incurred by the cooperating exporting producer. This percentage was applied to the undistorted costs of manufacturing.
- (198) Once the undistorted manufacturing cost was established, the Commission applied the SG&A and profit determined as noted in recitals (188) to (192). They were determined on the basis of the financial statements of Ajinomoto (Malaysia) Berhad as explained in recital (187).
- (199) The SG&A expenses expressed as a percentage of the Costs of Goods Sold ('COGS') and applied to the undistorted costs of production, amounted to 32.7%. The profit expressed as a percentage of the COGS and applied to the undistorted costs of production, amounted to 22.8%.
- (200) On that basis, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.

3.6. Export price

- (201) The cooperating exporting producer exported directly to independent customers in the Union market.
- (202) The export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

3.7. Comparison

- (203) The Commission compared the normal value and the export price of the cooperating exporting producer on an ex-works basis.
- (204) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made to the export price for freight, handling, loading and ancillary costs in the PRC, ocean freight and insurance, credit costs, bank charges and packaging costs.

3.8. Dumping margin

- (205) For the cooperating exporting producer, Anhui Jinhe, the Commission compared the normal value of the like product with the export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.
- (206) On this basis, the weighted average dumping margin expressed as a percentage of the CIF Union frontier price, duty unpaid, was 67.6%.
- (207) Average import prices from China from official statistics are in line with Anhui Jinhe prices. Given the significant dumping margin and the lack of cooperation from other exporting producers, the Commission considered that other companies were also exporting at dumped prices.
- (208) It was therefore, concluded that dumping continued during the review investigation period.

4. LIKELIHOOD OF CONTINUATION OF DUMPING

- (209) Further to the finding of the existence of dumping during the review investigation period, the Commission investigated, in accordance with Article 11(2) of the basic Regulation, the likelihood of continuation of dumping should the measures be repealed. The following additional elements were analysed: the production capacity and spare capacity in the PRC, the attractiveness of the Union market and likely prices and dumping margins should measures be repealed.

4.1. Production capacity and spare capacity in the PRC

- (210) The Commission analysed the situation relating to production capacity and spare capacity on the basis of the information in the request, the sampling forms submitted by Chinese exporting producers, the questionnaire response received from the cooperating exporting producer, the submissions received and websites of producers in China.

- (211) In the request, the applicant indicated that existing capacity in the PRC amounted to 39 500 tonnes and capacity utilisation based on global sales was less than 50% ⁷³.
- (212) Anhui Jinhe claimed that only three companies, Anhui Jinhe, Vitasweet and Yabang were producing Ace-K in the PRC and provided evidence to show that some of the Chinese producers indicated in the request were not producing Ace-K.
- (213) The Commission accepted the evidence⁷⁴ from Anhui Jinhe, which seemed to suggest that Shandong MinghuiFood Co., Ltd, Suzhou PeacockFood Additive Co., Ltd and Suzhou Hope Technology Co., Ltd were no longer producing Ace-K. Nevertheless, there was no evidence indicating that their capacity did not exist anymore or information on whether their capacity could be reinstated in the short term.
- (214) With regard to Hangzhou SanheFood Co., Ltd, in the absence of evidence to the contrary, the Commission considered that they were still a producer and concluded from their website⁷⁵ that they have a capacity of at least 5 000 tonnes and potentially more.
- (215) The applicant provided evidence that a company named Nantong Hongxin had Ace-K capacity under construction totalling 15 000 tonnes with completion expected in 2021⁷⁶ and that a company named Ningxia Wanxiangyuan had plans to build a new Ace-K production facility, with a capacity of 5 000 tonnes per year, which passed the environmental assessment stage in October 2020⁷⁷. The applicant also referred to an announcement in 2017 by Anhui Jinhe regarding a potential increase in production capacity but did not provide any evidence of such expansion taking place or the volume of the production capacity concerned.
- (216) Anhui Jinhe did not dispute this evidence.
- (217) The Commission has also become aware of another possible producer of Ace-K in China named Jiangxi Beiyang, but has not been able to find more detailed information on its potential production or production capacity.
- (218) Considering all the evidence available, the Commission considered that the current Chinese capacity was likely to be in the range of 32 000 to 40 500 tonnes and the capacity was likely to increase in the short term by 20 000 tonnes to within the range of 52 000 to 60 500 tonnes.
- (219) Anhui Jinhe estimated the annual global demand for Ace-K in the range of 18 000 to 20 000 tonnes and argued that with an annual growth rate of 2.3 – 4.5% (for which

⁷³ Open version of Request, p. 41.

⁷⁴ Certificate issued by the China Food Additives and Ingredients Association on 2 March 2021, provided by Anhui Jinhe in Slide 16 of their Open Submission dated 4 March 2021 and Announcement of the Peoples Court confirming bankruptcy of Hope, provided by Anhui Jinhe in Slide 17 of their Open Submission dated 4 March 2021.

⁷⁵ <http://www.hzsanhe.com/default2.asp>

⁷⁶ <http://www.cninfo.com.cn/new/disclosure/detail?plate=sse&orgId=9900023704&stockCode=603968&announcementId=1209844300&announcementTime=2021-04-27%2018:00>, p. 30.

⁷⁷ Applicant's open submission dated 8 June 2021 Annex I.

evidence was provided by the applicant), this would rapidly exhaust any available spare capacity in China.

- (220) However, on the basis of the current capacity in China of 32 000 to 40 500 tonnes, it was clear that China alone could easily fulfil the existing global demand and would be able to for at least the next 10 years.
- (221) The Commission also examined the situation with regard to spare capacity.
- (222) Based on the information available concerning the three companies which Anhui Jinhe claimed were currently producing as well as for Hangzhou SanheFood Co. Ltd., the Commission concluded that these four companies were likely to have a spare capacity of around 5 200 tonnes⁷⁸. This was approximately double the Union consumption in the RIP (see recital (239)).
- (223) The estimated current spare capacity of around 5 200 tonnes, together with additional capacity of 20 000 tonnes to be installed in China in the short term, is higher than Anhui Jinhe's estimate of current global demand and more than 8 times total Union consumption.
- (224) Therefore, there will be substantial production capacity and spare capacity in the PRC, to increase sales to the Union market massively in the event that the anti-dumping measures are allowed to expire.

4.2. Attractiveness of the Union market

- (225) The attractiveness of the Union market for Chinese exports was apparent given their continuing and massive presence even with anti-dumping measures – reaching [31% to 37%] of the Union market share during the RIP as mentioned in recital (242).
- (226) Chinese overcapacity provides a powerful incentive to export in this naturally export-oriented sector because there is only one overseas competitor (the applicant). Chinese exporters have already exhausted the potential of export markets other than the Union because they already dominate them with a market share on average of more than 70%⁷⁹.
- (227) In its comments on final disclosure, Anhui Jinhe claimed that the Commission had failed to demonstrate that the Union was an attractive market to Chinese producers of Ace-K. In this respect, Anhui Jinhe claimed that the applicant sold an increasing part of its production to third markets, which suggested that the Union market was not even attractive for the Union producer. Moreover, Anhui Jinhe claimed that the export price of Chinese producers to the Union was the same, or slightly lower than their export price to non-EU markets. On the basis of the above, Anhui Jinhe concluded that the Union market was less attractive to Chinese producers than any other third market due to the presence of a local competitor.
- (228) In its comments on Anhui Jinhe's submission, the applicant claimed that the anti-dumping duties did not exclude the Chinese exporting producers from the Union

⁷⁸ This includes best estimates of potential spare capacity for two companies based on information in a submission received and/or a sampling form received from a Chinese exporting producer.

⁷⁹ Request non-confidential version, page 41.

market. The applicant further argued that the Union market might be less attractive for Chinese producers because of the anti-dumping duties in force, but if these duties were repealed, the Chinese producers would consider the Union market to be attractive.

- (229) In this respect, the Commission recalls that Chinese exporting producers have maintained a very important market share on the Union market even after the imposition of anti-dumping duties as described in recital (242). If the market were not attractive, such high penetration would not exist. This is more the case where additional anti-dumping duties apply, as landed import prices are higher and make exports to the EU more costly. Under such price circumstances, exporters would not continue to sell significant quantities to an unattractive market. Therefore, on the basis of the findings summarised in recital (234), the Commission dismisses the above argument. If anti-dumping duties were left to expire, the Chinese producers would have an opportunity to increase their sales and market share in the Union.
- (230) The attractiveness of the Union market was further confirmed by the price elements analysed in recitals (232) and (233).

4.3. Likely prices and dumping margins should measures be repealed

- (231) Anhui Jinhe argued that export prices of Ace-K from the PRC to third countries were higher than export prices to the Union. In addition, they argued that there were no restrictions on selling Ace-K to third countries.
- (232) The Commission found that Chinese export prices to third countries were at about the same level as their prices to the Union. This indicates that dumping is a structural strategy to penetrate third-country markets and that it will therefore continue.
- (233) Chinese producers may be able to sell at a higher price to the Union than to other third countries if the existing duties were allowed to lapse, but the substantial excess supply in China would likely push prices down to levels below existing levels on the Union market. Therefore, dumping margins are likely to increase further.

4.4. Conclusion

- (234) The Commission found that there was substantial spare capacity in the PRC, which was likely to grow even further in the short term. The attractiveness of the Union market was clear from the high market share the Chinese producers enjoyed despite the significant anti-dumping duties in place. Furthermore, prices to the Union market were attractive and although there would be potential for the Chinese producers to raise their prices from current levels, should the measures expire, the excess spare capacity in China, coupled with moderate anticipated global market growth rates, was likely to drive prices still lower, in the absence of measures.
- (235) Furthermore, the level of dumping found was substantial.
- (236) Therefore, the Commission's analysis revealed dumping in the review investigation period and the likelihood that imports would continue, in significant volumes, at dumped prices, should the measures expire.

5. INJURY

5.1. Definition of the Union industry and Union production

- (237) The like product was manufactured by one producer in the Union during the period considered. This producer constitutes the ‘Union industry’ within the meaning of Article 4(1) of the basic Regulation.

5.2. Union consumption

- (238) The Commission established the Union consumption on the basis of the free market sales of the Union industry on the Union market and imports from the PRC and other third countries, as indicated in import statistics based on the 14(6) database.

- (239) Union consumption developed as follows:

Table 2 — Union consumption (tonnes)				
	2017	2018	2019	Review Investigation period
Total Union consumption	[2 313-2 800]	[2 339-2 831]	[2 549-3 085]	[2 447-2 962]
Index	100	101	110	106
Source: <i>Data from the Union industry and the 14(6) database</i>				

- (240) The consumption of Ace-K increased by 6% compared to the beginning of the period considered due to an increased demand of sugar-free products in the Union.

5.3. Imports from the country concerned

5.3.1. Volume and market share of the imports from the country concerned

- (241) The Commission established the volume of imports on the basis of the 14(6) database. The market share of the imports was established on the basis of the 14(6) database and data provided by the Union industry.

- (242) Imports from the country concerned developed as follows:

Table 3 — Import volume and market share				
	2017	2018	2019	Review Investigation period
Volume of imports from China (tonnes)	[669-810]	[699-846]	[658-796]	[788-953]
Index	100	104	98	118
Market share (%)	[27-33]	[28-34]	[25-30]	[31-37]

Index	100	103	89	111
Source: <i>Data from the Union industry and the 14(6) database</i>				

- (243) The volume of imports from China showed some fluctuations with an increase by 4% in 2018, followed by a decrease in 2019. During the RIP, the volume of imports increased considerably by 18%, compared to the beginning of the period considered. This increase since 2019 coincided with a slight decrease in consumption in the Union during the same period.
- (244) The market share of imports from China showed a similar development as the volume of imports, with an increase by 3% in 2018, followed by a drop in 2019. This drop could be recovered during the RIP with an increase of 11% compared to the beginning of the period considered. The Commission observed that in the RIP, despite the decrease in Union consumption, the market share of the imports from the PRC increased at the expense of sales volume and market share of the Union industry as described in recitals (257) and (258).

5.3.2. Prices of the imports from the country concerned and price undercutting

- (245) The Commission established the prices of imports on the basis of data from the 14(6) database.
- (246) The average price of imports from the country concerned developed as follows:

Table 4 — Import prices (EUR/ tonne)				
	2017	2018	2019	Review Investigation period
Average import price from the country concerned	[5 202-6 297]	[5 232-6 334]	[5 827-7 054]	[6 207-7 513]
Index	100	101	112	119
Source: <i>14(6) database</i>				

- (247) The average prices of imports from the PRC showed overall a strong increase of 19% during the period considered. Import prices from China remained substantially lower compared to Union prices, as reflected in Table 9.
- (248) The Commission determined the price undercutting during the review investigation period by comparing:
- the weighted average sales prices per product type of the sole Union producer charged to unrelated customers on the Union market, adjusted to an ex-works level; and

- (b) the corresponding weighted average prices per product type of the imports from the sole cooperating Chinese producer to the first independent customer on the Union market, established on a cost, insurance, freight (CIF) basis, including the anti-dumping duty, with appropriate adjustments for post-importation costs.
- (249) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the Union producer's turnover during the RIP. It showed a weighted average undercutting margin of more than 10%. When anti-dumping duties are disregarded, the weighted average undercutting margin reached more than 45%.
- 5.4. Imports from third countries other than the PRC
- (250) The imports of Ace-K from third countries other than the PRC represent a market share of only 1 to 4% over the period considered. As Ace-K is produced only in China and the Union, the Commission considered that these imports were wrongly classified as Ace-K or their origin was wrongly declared. For this reason, the Commission did not consider these imports further in its injury analysis.
- 5.5. Economic situation of the Union industry
- 5.5.1. General remarks
- (251) The assessment of the economic situation of the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- 5.5.1.1. Production, production capacity and capacity utilisation
- (252) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 6 — Union production volume, production capacity and capacity utilisation				
	2017	2018	2019	Review Investigation period
Production volume (tonnes)	[4 271 – 5 171]	[4 833 – 5 850]	[4 860 – 5 883]	[4 873 – 5 899]
Index	100	113	114	114
Production capacity (tonnes)	[5 700 – 6 900]	[5 700 – 6 900]	[5 700 – 6 900]	[5 700 – 6 900]
Index	100	100	100	100

Capacity utilisation	[71 - 86]	[81 - 97]	[81 - 98]	[81 - 98]
Index	100	113	114	114
Source: <i>Data provided by the Union industry</i>				

- (253) The production volume of the Union industry increased by 14% during the period considered. This increase can be related first, to the general increase in the demand for Ace-K and second, to the effect of the anti-dumping duties that allowed the industry to recover and to increase its production volume.
- (254) The production capacity of the Union industry was maintained at the same level during the period considered. Although the anti-dumping duties allowed the Union industry to recover, the market evaluation has not justified any extension of capacity.
- (255) The capacity utilisation increased in line with the annual production volume described in recital (253) and increased by 14% because of the anti-dumping duties and the general increase in the demand of Ace-K.

5.5.1.2. Sales volume and market share

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

Table 7 — Union sales volume and market share				
	2017	2018	2019	Review Investigation period
Sales volume on the Union market (tonnes)	[1 614 – 1 953]	[1 565 – 1 894]	[1 786 – 2 162]	[1 623 – 1 964]
<i>Index</i>	100	97	111	101
Market share (%)	[66-80]	[64-77]	[67-81]	[63-76]
<i>Index</i>	100	96	100	95
Source: <i>Data provided by the Union industry</i>				

- (257) Over the period considered, the volume of sales of the Union producer fluctuated. The sales volume decreased in 2018 by 3%, followed by a strong increase of 11% in 2019 compared to the beginning of the period considered. During the RIP, the sales volume returned to the initial level at the beginning of the period considered.
- (258) The market share of the Union industry fluctuated during the period considered and decreased by 5% during the RIP.

5.5.1.3. Employment and productivity

(259) Employment and productivity developed in the Union over the period considered as follows:

Table 8 — Employment and productivity in the Union				
	2017	2018	2019	Review Investigation period
Number of employees	[73 - 89]	[76 - 93]	[76 - 92]	[76 - 92]
<i>Index</i>	<i>100</i>	<i>113</i>	<i>114</i>	<i>114</i>
Productivity (tonnes/FTE)	[55 - 67]	[60 - 73]	[61 - 74]	[61 - 74]
<i>Index</i>	<i>100</i>	<i>108</i>	<i>110</i>	<i>110</i>
Source: <i>Data provided by the Union industry</i>				

(260) From 2017 to the end of the investigation period, the Union industry increased its personnel by 14%, in line with the increase in production.

(261) At the same time, the productivity increased by 10% over the same period.

5.5.1.4. Magnitude of the dumping margin and recovery from past dumping

(262) The dumping margin for the cooperating exporting producer as stated in recital (206) was significantly above the de minimis level, and the volume and market share of the imports from the PRC as described in recitals (243) and (244) were still significant during the period considered.

(263) However, despite the fact there was still dumping from the PRC, the Union industry managed to recover from past dumping practices.

5.5.1.5. Prices and factors affecting prices

(264) The weighted average unit sales prices of the sole Union producer to unrelated customers in the Union developed over the period considered as follows:

Table 9 — Sales prices in the Union				
	2017	2018	2019	Review Investigation period
Average unit sales price in the Union on the total	[9 840 – 11 911]	[9 833 – 11 903]	[10 941 – 13 245]	[13 279 – 16 075]

market (EUR/tonne)				
<i>Average unit sales price in the Union on the total market (EUR/tonne) Index</i>	<i>100</i>	<i>100</i>	<i>111</i>	<i>135</i>
<i>Unit cost of production (EUR/tonne) Index</i>	<i>100</i>	<i>97</i>	<i>101</i>	<i>101</i>
Source: Data provided by the Union industry				

(265) The Union industry's average unit sales price to unrelated customers increased by 35% over the period considered following the imposition of anti-dumping measures.

(266) The cost of production remained stable during the period considered.

5.5.1.6. Labour costs

(267) The average labour costs of the Union producer developed over the period considered as follows:

Table 10 — Average labour costs per employee				
	2017	2018	2019	Review Investigation period
Average labour costs per employee (EUR)	[88 709 – 107 384]	[91 459 – 110 714]	[96 239 – 116 500]	[98 783 – 119 579]
Index	<i>100</i>	<i>103</i>	<i>108</i>	<i>111</i>
Source: Data provided by the Union industry				

(268) The Union industry average labour costs per employee increased by 11% over the period considered.

5.5.1.7. Inventories

(269) Stock levels of the sole Union producer developed over the period considered as follows:

Table 11 — Inventories				
	2017	2018	2019	Review Investigation period
Closing stocks (tonnes)	[696 - 842]	[979 – 1 186]	[1 150 – 1 392]	[1 226 – 1 484]
Index	100	103	108	111
Source: <i>Data provided by the Union industry</i>				

(270) Inventories increased by 11% during the period considered.

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

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

Table 12 — Profitability, cash flow, investments and return on investments				
	2017	2018	2019	Review Investigation period
Profitability of sales in the Union to unrelated customers (Index)	100	116	137	193
Cash flow (EUR)	[12 183 444 – 14 748 380]	[10 422 105 – 12 616 232]	[15 616 733 – 18 904 467]	[21 987 559 - 26616519]
Index	100	86	128	180
Investments (EUR)	[1 360 987 – 1 647 510]	[1 187 387 – 1 437 363]	[1 236 940 – 1 497 348]	[1 182 289 – 1 431 192]
Index	100	87	91	87
Return on investments	[92 - 111]	[92 - 111]	[131 - 159]	[206 - 250]
Index	100	100	142	224
Source: <i>Data provided by the Union industry</i>				

- (272) The Commission established the profitability of the Union producer 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. The profitability showed a strong increase by 93% during the period considered. The anti-dumping duties allowed the Union producer to return to a high level of profitability.
- (273) The investigation showed that the RIP was characterised by exceptional circumstances, which were linked to the outbreak of the COVID-19 pandemic. In particular, large food and pharma grade customers bought higher volumes of Ace-K from the Union industry during the first half of 2020 in order to secure supplies of this ingredient. Also, the yearly maintenance of the Union industry which entails a period where production is stopped, was postponed in 2020 as compared to its usual timing in the year, which has led to increased production in the RIP. These exceptional market developments generated an increase in the Union industry's sales prices as compared to 2019 and an increase in the Union industry's profit in the RIP. The investigation found that by eliminating such one-off impacts, the profit of the Union industry would be in the same order of magnitude as the profitability achieved before the exceptional circumstances took place, i.e. in 2019.
- (274) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow increased similar to the profitability by 80%, reflecting again the positive effect of the anti-dumping duties and exceptional circumstances in the RIP described in recital (273).
- (275) The level of investment decreased by 13% over the period considered. As described in recital (272), the anti-dumping duties allowed to return to healthy business activities but did not justify the need for investments in additional production capacities.
- (276) The return on investment increased considerably by 124% during the period considered.

5.5.1.9. Conclusion on injury

- (277) Most injury indicators, such as production, employment, capacity utilisation, productivity, profitability and cash flow developed positively. While the trend of the financial indicators such as the level of investment and the return on investment is negative, their absolute levels are satisfactory and do not indicate a sign of material injury.
- (278) Therefore, the Commission concluded that the Union industry has recovered from previous injury and did not suffer material injury within the meaning of Article 3(5) of the basic Regulation during the review investigation period.

6. LIKELIHOOD OF RECURRENCE OF INJURY

- (279) The Commission concluded in recital (278) that the Union industry did not suffer material injury during the review investigation period. Therefore, the Commission assessed, in accordance with Article 11(2) of the basic Regulation, whether there would be a likelihood of recurrence of injury originally caused by the dumped imports from the PRC if the measures against Chinese imports were allowed to lapse.
- (280) The Commission examined the production capacity and spare capacity in the PRC, the likely price levels of imports from the PRC in the absence of anti-dumping measures

and their impact on the Union industry, including the level of undercutting in the absence of anti-dumping measures.

- (281) As set out in recitals (210) - (223) above, there is substantial production capacity and spare capacity in the PRC to increase exports to the EU market rapidly in the event that the anti-dumping measures were allowed to expire.
- (282) This significant overcapacity and the attractiveness of the Union market described in recitals (225) to (229) would be likely to generate massive additional exports to the Union at dumped prices, which could easily cover the full Union consumption.
- (283) In the world market outside the Union, where no trade defence measures are in place, Chinese producers have a dominant market share (on average more than 70%).
- (284) In the absence of measures, it is likely that the market share of Chinese producers would reach at least their worldwide market share.
- (285) In its comments on final disclosure, Anhui Jinhe argued that there was no dominant position of China on third markets as the alleged 70% market share of Chinese producers on third markets corresponded to their share in total production capacity in the world, and this market share therefore reflected a well-balanced repartition of the world market between competing producers.
- (286) In its comments on Anhui Jinhe's submission, the applicant claimed that Anhui Jinhe's argument was based on a comparison of total Chinese production capacity with the total production capacity of the applicant and that this argument was invalid because there was significant excess capacity in China.
- (287) Anhui Jinhe's argument reflects China's step-by-step approach to industrial policy: massive overcapacity is built, based on State-led distortions; a large part of that overcapacity is exported globally; decimating competitors in the EU (and elsewhere), not on the basis of genuine competitiveness, but on the basis of unfair trade; Chinese companies attain massive, even dominant positions worldwide. This is then argued to be "normal repartition". Yet markets should not be driven by the size of competitors, but rather by their ability to compete on a fair basis on a level playing field. This argumentation provides a Chinese narrative as to the reasons behind China's massive global presence. But the fact remains that such massive presence has a material impact on competition, and leads to the Commission's findings that in the absence of anti-dumping measures, the market share of Chinese producers on the Union market would very likely increase significantly and that this would entail an important loss of market share for the Union producer. Therefore, the claim was rejected.
- (288) Without the anti-dumping duties, customs cleared prices of Chinese Ace-K would range from about 6.2 to 6.75 EUR/kg. When comparing these prices to the Union industry's unit cost of production, net of freight and warehousing during the RIP and its average ex-works sales price in the Union for food grade Ace-K in the RIP to users and to traders, the analysis showed that prices of imports from China would undercut the Union industry's sales prices by more than 45%.

- (289) In the absence of measures, in a scenario where Chinese exporting producers would have in the EU the same penetration as in other world markets (around 70% on average)⁸⁰, the loss in sales and resulting increase in the costs of the Union industry would entail significant financial losses considering the likely price levels, with profitability becoming negative. Injury would thus become material within a short period and jeopardise the survival of the Union industry.
- (290) This likely scenario is supported by the evidence provided by the applicant of a significant loss of sales and market share in the UK following Brexit and the resulting removal of anti-dumping measures on Ace-K. Indeed, a similar situation is likely to develop in the Union market in the absence of measures.
- (291) In its comments on final disclosure, Anhui Jinhe argued that that the applicant did not suffer a significant loss of sales and market share in the UK following the removal of anti-dumping duties due to Brexit. In addition, Anhui Jinhe claimed that there was no evidence on the open file regarding the UK sales of the applicant and an increase of Chinese exports to the UK.
- (292) In its comments on Anhui Jinhe's submission, the applicant claimed the Anhui Jinhe had access to Chinese export statistics and that the applicant had also provided such export data in the course of the investigation. Moreover, the applicant pointed out that its loss off business took place already in anticipation of the lifting of anti-dumping duties in the UK.
- (293) In this respect, the Commission recalls that the applicant submitted its questionnaire reply first with data including the UK in the EU sales and then a new version with data excluding the UK. The non-confidential versions of the two questionnaire replies are on the open file. The Commission also analysed import statistics of the product under review from China to the UK. In reply to Anhui Jinhe's submission, a note was added to the non-confidential file of the investigation in this regard. Both the questionnaire replies and the statistics confirmed the findings on the loss of market share of the applicant already in anticipation of the removal of anti-dumping duties due to Brexit. Therefore, the above claim of Anhui Jinhe is unfounded.
- (294) The above analysis has shown that the Union industry benefited from the imposition of duties and has recovered from its injurious situation after measures were imposed. However, in the absence of measures, the expected massive increase in imports from China at injurious prices would quickly lead to the deterioration of the economic situation of the Union industry resulting in material injury.
- (295) Therefore, the Commission concluded that the absence of measures would in all likelihood result in a significant increase of dumped imports from the country concerned at injurious prices and material injury would be likely to recur.

7. UNION INTEREST

- (296) 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. The determination of the Union interest was based on an appreciation of

⁸⁰ See recital (255).

all the various interests involved, including those of the Union industry, importers, and users.

- (297) All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.
- (298) On this basis the Commission examined whether, despite the conclusions on the likelihood of continuation of dumping and recurrence of injury, compelling reasons existed which would lead to the conclusion that it was not in the Union interest to maintain the existing measures.

7.1. Interest of the Union industry

- (299) As stated in recital (278), Union industry has recovered from the injury caused by past dumping and its operations are viable when not subject to unfair competition by dumped imports.
- (300) Should the measures be allowed to lapse, the situation of the Union industry is likely to deteriorate quickly as explained in recitals (279) to (294).
- (301) It was therefore concluded that extending the measures in force against the PRC would be in the interest of the Union industry.

7.2. Interest of unrelated importers

- (302) As stated in recital (29), no unrelated importer cooperated during the investigation.
- (303) The current investigation did not reveal any significant adverse impact of the measures in force on importers.
- (304) The previous investigation concluded that importers could be negatively affected by the measures but to a very limited extent. Ace-K is only a small part of the business for importers, which have a wider product portfolio.
- (305) Therefore, from the information available, it is clear that the imposition of measures on importers would have a very limited impact, if at all, and such impact would be clearly outweighed by the benefits that the measures could bring to the Union industry.

7.3. Interest of users

- (306) Ace-K is mainly used as a sugar substitute in the food and beverage sector, for example in soft drinks or dairy products. To a smaller extent, Ace-K is used in the pharma sector.
- (307) No users cooperated in the investigation.
- (308) The current investigation did not reveal any significant adverse impact of the measures in force. The previous investigation against the PRC revealed that in terms of costs, the impact of Ace-K in finished products is minimal. However, it revealed also that the use of Ace-K is essential for products that are already in the market. New products might be developed with alternative sweeteners but to change the formulation of established products would be risky and costly. Hence, the access of users to alternative sources of Ace-K was considered important.
- (309) On these grounds, the Commission concluded that should the measures be extended, the impact on the economic situation of users was likely not to be significant.

7.4. Other factors

7.4.1. Security of supply

- (310) The Union producer claimed that security of supply of Ace-K is crucial to producers of food and beverages and it was not in the Union interest to become dependent on product supplies of only one country. The producer further considered that once a producer of a beverage or food product has chosen to use Ace-K as its low calorie sweetener, it cannot switch to another sweetener without materially changing the taste and affecting consumers' perception of the product.

7.5. Conclusion on Union interest

- (311) On the basis of the above, the Commission concluded that there were no compelling reasons of Union interest against the maintenance of the existing measures on imports of Ace-K originating in the PRC.
- (312) In its comments on final disclosure, Anhui Jinhe argued that the continuation of the measures was not in the Union's interest. In this respect, Anhui Jinhe claimed that the applicant had a limited production capacity and a high capacity utilisation rate and was therefore incapable of supplying the whole market without disengaging from export markets. Moreover, Anhui Jinhe held that users of Ace-K were reliant on alternative sources of supply and therefore had no choice but pay the anti-dumping duties and pass them on to consumers, which inflated food prices. Finally, Anhui Jinhe maintained that the multiple sourcing strategy of users would in any case be a sufficient protection for the applicant, as it would prevent Chinese imports from grabbing substantial market shares from the Union producer.
- (313) In its comments on Anhui Jinhe's submission, the applicant claimed that it had enough production capacity to supply the whole of the Union market as well as its current exports to third countries. The applicant also argued that due to the very small dosage levels of Ace-K used in beverages and food, the effect of anti-dumping duties on the cost of the finished products was negligible. In addition, the applicant claimed that contrary to Anhui Jinhe's claim, the dual sourcing strategy of Ace-K users did not prevent Chinese imports from grabbing substantial market shares to the detriment of the Union producer in the period prior to the original investigation.
- (314) With regard to these arguments, the Commission recalls that no importers, users or consumer organisations cooperated in the present expiry review. In fact, the investigation found that there was sufficient production capacity of Ace-K in the EU to cover consumption as seen in recitals (239) and (252) in addition to the spare capacity in China as described in recital (210) to (223) and therefore there was no risk of insufficient supply of the product under review. Also, the Commission found that in terms of costs, the impact of Ace-K in finished products was minimal as described in recital (308). Therefore, the Commission dismissed the above arguments.

8. ANTI-DUMPING MEASURES

- (315) On the basis of the conclusions reached by the Commission on continuation of dumping, recurrence of injury and Union interest, the anti-dumping measures on Ace-K from the PRC should be maintained.

- (316) In view of Article 109 of Regulation 2018/1046⁸¹, 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.
- (317) [The Committee established by Article 15(1) of Regulation (EU) 2016/1036 did not deliver an opinion on the measures provided for in this Regulation,] OR [The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) Regulation (EU) 2016/1036],

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of acesulfame potassium (potassium salt of 6-methyl-1,2,3-oxathiazin-4(3H)-one 2,2-dioxide; CAS RN 55589-62-3) originating in the People's Republic of China currently falling under CN code ex 2934 99 90 (TARIC code 2934 99 90 21).

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

Company	Anti-dumping duty - euro per kg net	TARIC additional code
Anhui Jinhe Industrial Co., Ltd	4.58	C046
Suzhou Hope Technology Co., Ltd	4.47	C047
Anhui Vitasweet Food Ingredient Co., Ltd	2.64	C048
All other companies	4.58	C999

3. The application of the individual anti-dumping 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 it 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 acesulfame potassium sold for export to the European Union covered by this invoice was manufactured

⁸¹ 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).

by (company name and address) (TARIC additional code) in the People's Republic of China. I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty applicable to 'All other companies' shall apply.

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

Article 2

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

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

Done at Brussels,

For the Commission
The President
Ursula VON DER LEYEN



EUROPEAN COMMISSION

Directorate-General for Trade
Directorate G – Trade Defence

Trade Defence Instruments

Brussels, 1 December 2021
G4/Ares(2021) SN 8309328

SENSITIVE*

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

**Subject: R727 – Anti-dumping investigation concerning imports of Acesulfame Potassium (Ace-K) originating in the People's Republic of China (PRC).
Consultation under the examination procedure**

Given the evolving situation of the Coronavirus COVID-19, please be informed that we have decided to resume 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 15 December 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 10 December 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 teams in charge.

DUMPING TEAM	INJURY/UNION INTEREST TEAM
HEAD OF SECTION:	HEAD OF SECTION:
Adriana ANTAL	Adriana ANTAL
OFFICIALS IN CHARGE:	OFFICIALS IN CHARGE:
Graham TAYLOR	Zsofia WAGNER
Richard LEARIE	Angelika KUBIAK
	Willam DE RUYCK
Email: Trade-R727-ACE-K-Dumping@ec.europa.eu	Email: Trade-R727-ACE-K-Injury@ec.europa.eu

(signed)
Zsuzsana JÁMBOR
Chairperson
Trade Defence Instruments Committee

Encl. Draft Commission Implementing Regulation



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

ANNEXES 1 to 2

ANNEXES

to the

COMMISSION IMPLEMENTING REGULATION (EU)

imposing a definitive anti-dumping duty on imports of certain grain-oriented flat-rolled products of silicon-electrical steel originating in the People's Republic of China, Japan, the Republic of Korea, the Russian Federation and the United States of America following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036

Annex I

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(6):

- The name and function of the official of the entity issuing the commercial invoice.
- The following declaration: 'I, the undersigned, certify that the (volume) and (core loss) of the grain oriented electrical steel sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct.'

Date and signature

Annex II

A declaration signed by an official of the entity issuing the mill certificate, in the following format, must appear on the valid mill certificate referred to in Article 1(6):

- The name and function of the official of the entity issuing the commercial invoice.
- The following declaration: 'I, the undersigned, certify that the grain oriented electrical steel sold for export to the European Union covered by the mill certificate, showing the measurement of the maximum core loss in Watts per kilogram at a frequency of 50 Hz and a magnetic induction of 1,7 Tesla, and the size in mm was manufactured by (company name and address) (TARIC additional code) in (country concerned). I declare that the information provided in this mill certificate is complete and correct.'

Date and signature



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

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

of **XXX**

imposing a definitive anti-dumping duty on imports of certain grain-oriented flat-rolled products of silicon-electrical steel originating in the People's Republic of China, Japan, the Republic of Korea, the Russian Federation and the United States of America following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036

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

of **XXX**

imposing a definitive anti-dumping duty on imports of certain grain-oriented flat-rolled products of silicon-electrical steel originating in the People's Republic of China, Japan, the Republic of Korea, the Russian Federation and the United States of America following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036

THE EUROPEAN COMMISSION,

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

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

Whereas:

1. PROCEDURE

1.1. Original investigation and measures in force

- (1) By Regulation (EU) 2015/1953², the European Commission ('the Commission') imposed anti-dumping duties on imports of certain grain-oriented flat-rolled products of silicon-electrical steel ('GOES') originating in the People's Republic of China ('PRC' or 'China'), Japan, the Republic of Korea ('Korea'), the Russian Federation ('Russia') and the United States of America ('USA') ('the original measures'). The investigation that led to the imposition of the original measures will hereinafter be referred to as 'the original investigation'.
- (2) On the basis of the specific facts of the original investigation, the Commission decided that variable duties under the form of three minimum import prices (MIPs) for three different product categories of GOES were the most appropriate form of measures for the following reasons:
 - First, the three MIPs would allow the Union producers to recover from the effects of injurious dumping. They would be a safety net to enable them to return to a sustainable profitability and incentivise them to make the necessary investments to produce proportionally more of the high permeability product types of the like product.
 - Second, the three MIPs should also prevent any adverse effect of undue price increases after the investigation period which could have a significant negative impact on the users' business.

¹ OJ L 176, 30.6.2016, p. 21.

² Commission Implementing Regulation (EU) 2015/1953 of 29 October 2015 imposing a definitive anti-dumping duty on imports of certain grain-oriented flat-rolled products of silicon-electrical steel originating in the People's Republic of China, Japan, the Republic of Korea, the Russian Federation and the United States of America (OJ L 284, 30.10.2015, p. 109).

- Third, they would also accommodate the concerns of users as they feared a shortage of GOES, in particular of types with a maximum core loss of 0,90 W/kg and below which were at that time highly needed to meet the Tier 1 efficiency targets of the EcoDesign Regulation. More generally, they would prevent serious disturbances in the supply of the Union market.
- (3) The three MIPs currently in force range between 1 536 EUR/tonne up to 2 043 EUR/tonne. They apply to the individually named exporting producers for which individual dumping margins were established from all countries concerned, i.e. the PRC, Japan, the Republic of Korea, the Russian Federation and the United States of America:
- If the CIF Union border price is equal to or above the MIP, no duty is payable.
 - When the export price is below the MIP, the applicable duty rate would be the lower of the difference between the applicable MIP and the net, free-at-Union-frontier price, before duty and the ad valorem anti-dumping duty rates. Accordingly, individual duties apply to each exporting producer. In no event should the amount of the anti-dumping duty be higher than the ad valorem anti-dumping duty rates which are specific for each individual exporting producer of each country concerned.
- 1.2. Request for an expiry review
- (4) Following the publication of a Notice of impending expiry³, the Commission received a request for a review pursuant to Article 11(2) of Regulation (EU) 2016/1036 ('the basic Regulation').
- (5) The request for review was lodged on 29 July 2020 by the European Steel Association ('Eurofer' or 'the applicant') acting on behalf of producers representing more than 50 % of the total Union production of GOES. The request for review was based on the grounds that the expiry of the measures would likely result in a continuation or recurrence of dumping and injury to the Union industry.
- 1.3. Initiation of an expiry review
- (6) Having determined, after consulting the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of an expiry review, the Commission initiated, on 30 October 2020, an expiry review with regard to imports of GOES originating in China, Japan, the Republic of Korea, the Russian Federation and the United States of America ('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 Union⁴ ('the Notice of Initiation').
- 1.4. Review investigation period and period considered
- (7) The investigation of a likelihood of continuation or recurrence of dumping covered the period from 1 July 2019 to 30 June 2020 ('the review investigation period' or 'RIP'). The examination of trends relevant for the assessment of the likelihood of a

³ Notice of the impending expiry of certain anti-dumping measures, OJ C 40, 06.02.2020, p.34.

⁴ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of grain-oriented flat-rolled products of silicon-electrical steel originating in the People's Republic of China (PRC), Japan, the Republic of Korea, the Russian Federation and the United States of America (USA), OJ C 366, 30.10.2020, p. 25.

continuation or recurrence of injury covered the period from 1 January 2017 to the end of the review investigation period ('the period considered').

1.5. Withdrawal of the United Kingdom from the EU

- (8) This case was initiated on 30 October 2020, that is during the transition period agreed between the United Kingdom ('UK') and the EU in which the UK remained subject to the Union law. That period ended on 31 December 2020. Consequently, as of 1 January 2021, companies and associations from the UK no longer qualified as interested parties in this proceeding.
- (9) By a note to the case file⁵ on 14 January 2021, the Commission invited UK operators that considered that they nevertheless would still qualify as interested parties to contact it. No comments were received from UK operators.

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, the known Union producers, the known exporting producers in the countries concerned, importers, users, traders, as well as associations known to be concerned about the review investigation 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.
- (12) The Commission held hearings with several users, several associations of users and exporting producers during the expiry review.

1.7. Sampling

- (13) In the Notice of Initiation, the Commission stated that it might use sampling in accordance with Article 17 of the basic Regulation.

1.7.1. Sampling of Union producers

- (14) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers that would be investigated. However, on the publication day of the Notice of Initiation, on 30 October 2020, the Commission issued a note for the file stating that given the limited number of known producers in the European Union, sampling of EU producers was not deemed necessary and invited interested parties to comment. No comments were received. Therefore, all four known Union producers were requested to submit a detailed questionnaire response as well as agreeing to a verification of the questionnaire replies.

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) Only one unrelated importer came forward and provided the requested information. Consequently, the Commission decided that sampling was not necessary.

1.7.3. Sampling of producers in the countries concerned

⁵ Note to the file for inspection by interested parties, dated 14 January 2021, reference t21.000455.

- (17) In view of the apparent large number of producers in the countries concerned by this expiry review, sampling was envisaged in the Notice of Initiation.
 - (18) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all producers in the countries concerned to provide the information specified in the Notice of Initiation. In addition, the Commission asked the missions of the countries concerned to identify and/or contact other producers, if any, that could be interested in participating in the investigation.
 - (19) Four exporting producers or groups of exporting producers (two companies in Japan, one company in the PRC and one in Russia) provided the requested information and agreed to be included in the sample. None of the US or Korean producers that were contacted came forward and provided the information requested. In view of the low number of cooperating producers, the Commission decided that sampling was not necessary with respect to any of the countries concerned.
- 1.8. Replies to the questionnaire
- (20) Copies of the questionnaires were made available on DG Trade's website⁶ when the case was initiated.
 - (21) The Commission also sent a questionnaire concerning the existence of significant distortions within the meaning of Article 2(6a)(b) of the basic Regulation in the PRC to the Government of the People's Republic of China ('GOC'). The GOC did not provide any reply to the questionnaire and was accordingly informed that the Commission would apply facts available in accordance with Article 18 of the basic Regulation.
 - (22) Questionnaire replies were received from all four known Union producers and the co-operating unrelated importer. Seven users came forward, expressing their willingness to participate in the investigation. They were requested to complete the questionnaire intended for the users. However, only four of them fully cooperated in this investigation by submitting completed questionnaire replies in both open and sensitive versions.
 - (23) One group of exporting producers in the PRC, China Baowu Steel Group Co. Ltd. ('the Baoshan Group') composed of two exporting producers Baoshan Iron & Steel Co., Ltd. ('Baosteel') and Wuhan Iron & Steel Co., Ltd., ('WISCO') - and one group of exporting producers in Japan, Nippon Steel & Sumitomo Metal Corporation, Tokyo, Japan ('Nippon Steel'), provided questionnaire replies. The Russian producer, Novolipetsk Steel ('NLMK'), that had originally agreed to be included in the sample did not provide a full questionnaire reply but provided, in its submission of 10 December 2020, information limited to its specific capacity and production. Consequently, the Commission informed the company and the Russian Federation that it would apply facts available in accordance with Article 18 of the basic Regulation. NLMK responded, but the response was submitted outside the specified deadline, and in any event would not have changed the Commission's assessment.
 - (24) Following disclosure, NLMK claimed that the Commission did not specify any deadline for providing comments on the Commission's application of Article 18 of the

⁶ Available at link:
http://trade.ec.europa.eu/tdi/case_details.cfm?ref=ong&id=2492&sta=1&en=20&page=1&c_order=date&c_order_dir=Down

basic Regulation. Furthermore, NLMK argued that the Commission should not have applied Article 18 in relation to this part of its questionnaire reply.

- (25) The Commission indeed did not specify a deadline for a reply to its letter indicating its intention to apply Article 18. However, NLMK had already indicated in its submission of 10 December 2020 that it had stopped working on the reply to the questionnaire due to special circumstances and would not provide a full questionnaire reply. In sum, NLMK provided only fragmentary information limited to its specific production capacity and production volume.
- (26) Consequently, since NMLK did not provide sufficiently reliable information as regards production capacity and production volumes, as explained in recitals (241) to (245), the Commission used the information available on the file. In any event, as mentioned in recital (242), the Commission used the information provided by NMLK to the extent possible in this regard.
- (27) The other group of exporting producers in Japan, JFE Steel Corporation ('JFE Steel'), that had originally agreed to be included in the sample, provided an incomplete questionnaire reply, which was limited to export sales to the EU and to the rest of the world. Consequently, JFE Steel was informed that the Commission would apply facts available in accordance with Article 18 of the basic Regulation with regards to the missing information.
- (28) There was no cooperation by producers in the USA and Korea. Consequently, the Commission informed the USA and Korea that it will apply facts available in accordance with Article 18 of the basic Regulation.

1.9. Verification

- (29) Without prejudice to the application of Article 18 of the basic Regulation, the Commission sought and checked all the information it deemed necessary for the determination of likelihood of a continuation or recurrence of dumping and injury and of the Union interest.
- (30) Due to 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 determination in line with its Notice on the consequences of the Covid-19 outbreak on anti-dumping and anti-subsidy investigations⁷. The Commission carried out remote crosschecks ('RCC') of the following interested parties
 - Union producers⁸
 - ThyssenKrupp Electrical Steel UGO SAS, Isbergues, France
 - ThyssenKrupp Electrical Steel GmbH, Gelsenkirchen, Germany
 - Stalprodukt s.a., Bochnia, Poland
 - Unrelated importer in the Union

⁷ Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations OJ C 86/6, 16.3.2020.

⁸ For the fourth Union producer, a desk analysis was conducted on the basis of its questionnaire reply and its reply to the deficiency letter.

- Metal One Deutschland GmbH, Düsseldorf, Germany
- Users in the Union
 - SGB-Smit Group, Regensburg, Germany
 - Končar - Distribution and Special Transformers, Inc., Zagreb, Croatia
- Exporting producers in the countries concerned:
 - Baosteel, Shanghai, PRC
 - WISCO Wuhan, PRC
 - Nippon Steel, Tokyo, Japan
- Related importer/traders
 - Wisco Europe, Germany
 - Baosteel Germany, Germany
 - Baosteel Italy, Italy

1.10. Disclosure

- (31) On 21 October 2021, the Commission disclosed the essential facts and considerations on the basis of which it intended to maintain the anti-dumping duties in force. All parties were granted a period within which they could make comments on the disclosure. On 22 November 2021, the Commission sent an additional final disclosure to Nippon Steel regarding a correction of the dumping calculations. No comments were received.
- (32) The comments made by interested parties were considered by the Commission and taken into account, where appropriate. The parties who so requested were granted a hearing.

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

- (33) The product under review is the same as in the original investigation, namely grain-oriented flat-rolled products of silicon-electrical steel, of a thickness of more than 0,16 mm originating in the PRC, Japan, Korea, Russia and the USA, currently falling under CN codes ex 7225 11 00 (TARIC Codes 7225 11 00 11, 7225 11 00 15 and 7225 11 00 19) and ex 7226 11 00 (TARIC codes 7226 11 00 12, 7226 11 00 14, 7226 11 00 16, 7226 11 00 92, 7226 11 00 94 and 7226 11 00 96) ('the product under review').
- (34) GOES is produced from hot-rolled coils of silicon alloyed steel of different thicknesses of which the grain structure is uniformly directed in order to allow for magnetic conductivity with a high degree of efficiency. Inefficiencies with regard to conductivity are called 'core loss', which is the prime indicator of the quality of the product and which is expressed in W/kg. GOES can be produced as high permeability GOES and as regular or conventional GOES. The high permeability types allow achieving lower core losses for any given thickness of the sheets. Moreover, high permeability types can be produced as domain refined ('DR') with even lower core losses as a result of scribing thin lines onto the surface of the steel.

- (35) Despite the differences in permeability, thickness and width, all types of the product under review share basically the same basic physical characteristics and have essentially the same basic use.
- (36) GOES is mainly used in electrical equipment where the magnetic flux can be constrained to align in the “oriented” direction, such as when electrical energy is transmitted across large distances. Accordingly, the product under review is used as the core material in power and distribution transformers.
- (37) GOES is also used in shunt reactors, which are used in high voltage energy transmission systems to stabilize the voltage during load variations. The product under review may also be used in equipment having smaller transformers, including appliances and aerospace, aeronautical and electronic equipment. GOES may further be used in large, high-performance generators when the design permits the directional magnetic characteristics to be used efficiently.

2.2. Like product

- (38) 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;
 - the product produced and sold on the domestic market of the countries concerned; and
 - the product produced and sold in the Union by the Union industry.
- (39) These products are therefore considered to be like products within the meaning of Article 1(4) of the Basic Regulation.

2.3. Claims regarding product scope

- (40) NLMK and the Russian Government argued that the lower average import prices from the Russian Federation are explained by a significant share of ‘second’ and ‘third choice’ exported GOES (with multiple defects, number of stitches and lack of flatness) and that the latter types do not compete with other types of the product under review. The ‘second’ and ‘third choice’ exported GOES constitute different products and do not conform to the European technical standards. Therefore, they argued that their ‘second’ and ‘third choice’ material should either be excluded from the product scope, or be given a separate (fourth) MIP level reflecting their exceptionally low value in the market.
- (41) The Commission rejected the above requests, as neither the product scope nor the MIP can be changed in the framework of an expiry review.
- (42) Following disclosure, NLMK stated that an unbiased investigating authority should have expeditiously initiated a partial interim review limited to the product scope definition and/or form of the measures. The Commission rejected this claim, since it did not have sufficient evidence to initiate such an investigation.

3. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

- (43) 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 continuation or recurrence of dumping from the countries concerned.

3.1. Preliminary remarks

- (44) None of the producers in Russia, the USA and Korea cooperated in the investigation.
- (45) The Commission informed the authorities of all three countries concerned that, due to the absence of cooperation, the Commission might apply Article 18 of the basic Regulation concerning the findings with regard to Russia, the USA and Korea. The Commission did not receive any comments or requests for an intervention of the Hearing Officer from the authorities of the three countries in this regard.
- (46) 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 Russia, the USA and Korea were based on facts available, in particular publicly available information such as official company websites, information in the request for the review, and information obtained from cooperating parties in the course of the review investigation. The Commission also used various import statistics, including Eurostat's COMEXT import statistics and Global Trade Atlas ('GTA').
- (47) In addition, with respect to the Baoshan Group and following the RCC, the Commission applied Article 18(1) of the basic Regulation as far as labour costs were concerned. In fact, as explained in recital (207) below, the company failed to provide verified and trustworthy evidence with regard to the calculation of man hours allocated to the manufacturing of GOES.

3.2. Japan

3.2.1. Preliminary remarks

- (48) Only one Japanese exporting producer (Nippon Steel) cooperated fully in the current investigation. Following initiation, the second known Japanese exporting producer (JFE Steel) came forward and provided an incomplete questionnaire reply limited to the export sales, production and capacity. Consequently, the Commission informed JFE Steel and the Government of Japan of its intention to apply facts available in accordance with Article 18 of the basic Regulation. No comments were received.
- (49) As a result, the findings in this Section were partially based on facts available in accordance with Article 18 of the basic Regulation as far as domestic sales were concerned. For this purpose, the information provided by Nippon Steel, the information provided by JFE on export sales, the request for the expiry review, Eurostat statistics and publicly available information were used.
- (50) The two Japanese exporting producers accounted for 100 % of the exports from Japan to the Union during the RIP.

3.2.2. Dumping during the review investigation period

3.2.2.1. Normal value

- (51) The Commission established the normal value for Nippon Steel on the following basis. The Commission first examined whether the total volume of domestic sales for the fully cooperating exporting producer was representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales are representative if the total domestic sales volume of the like product to independent customers on the domestic market per exporting producer represented at least 5 % of its total export sales volume of the product under review to the Union during the RIP. On this basis, the total sales of the sole cooperating exporting producer of the like product on the domestic market were representative.

- (52) The Commission subsequently identified the product types sold domestically that were identical or comparable with the product types sold for export to the Union for the exporting producer with representative domestic sales.
- (53) The Commission then examined whether the domestic sales by the fully cooperating exporting producer on its domestic market for each product type that is identical or comparable with a product type sold for export to the Union were representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the RIP represents at least 5 % of the total volume of export sales of the identical or comparable product type to the Union. The Commission established that these product types were representative.
- (54) The Commission next defined the proportion of profitable sales to independent customers on the domestic market for each product type during the RIP, for Nippon Steel as a whole, in order to decide whether to use actual domestic sales price for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.
- (55) The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if:
 - (a) the domestic sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of this product type; and
 - (b) the weighted average sales price of that product type is equal to or higher than the unit cost of production.
- (56) In this case, the normal value is the weighted average of the prices of all domestic sales of that product type during the RIP.
- (57) The normal value is the actual domestic price per product type of only the profitable domestic sales of the product types during the RIP, if:
 - (a) the volume of profitable sales of the product type represents 80 % or less of the total sales volume of this type: or
 - (b) the weighted average price of this product type is below the unit cost of production.
- (58) The analysis of domestic sales showed that over 90 % of all domestic sales were profitable and that the weighted average sales price was higher than the cost of production. Accordingly, depending on the product type, the normal value was calculated as a weighted average of the prices of all domestic sales during the RIP in the situation described in recital (56), or as a weighted average of the profitable sales only in the situation described in recital (57).
- (59) Where there were no or insufficient sales of a product type of the like product in the ordinary course of trade, the Commission constructed the normal value in accordance with Article 2(3) and (6) of the basic Regulation.
- (60) For such product types normal value was constructed by adding to the average cost of production of the like product of the sole cooperating exporting producer during the RIP:

- (a) the weighted average selling, general and administrative ('SG&A') expenses incurred by the sole cooperating exporting producer on domestic sales of the like product, in the ordinary course of trade, during the RIP; and
- (b) the weighted average profit realised by the sole cooperating exporting producer on domestic sales of the like product, in the ordinary course of trade, during the RIP.

- (61) For the product types not sold at all on the domestic market, the weighted average SG&A expenses and profit of all transactions made in the ordinary course of trade on the domestic market were added.
- (62) As far as JFE Steel was concerned, in the absence of cooperation, the Commission used facts available in accordance with Article 18 of the basic Regulation as far as domestic sales were concerned. Since reliable data concerning prices of JFE Steel on the domestic market was not available, the Commission established a constructed normal value using the methodology and values contained in the expiry review request.

3.2.2.2. Export price

- (63) Nippon Steel exported to the Union through related traders only. Therefore, the export price was constructed on the basis of Article 2(9) of the basic Regulation, that is on the basis of the price at which the imported products were first resold to an independent buyer. Adjustments to the price were made for all costs incurred between importation and resale, including SG&A expenses, and for profits accruing.
- (64) JFE Steel exported directly to the EU and as a result its export price was the price actually paid or payable for the product under review when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

3.2.2.3. Comparison

- (65) The Commission compared the normal value and the export price as established above on an ex-works basis.
- (66) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for transport, insurance, handling, loading and ancillary costs, packaging, credit costs and bank charges by the cooperating exporting producer where applicable and justified.
- (67) Nippon Steel did not have domestic sales for some of the product types that it exported to the EU. In view of the high volume of export sales for which a comparison could be made and taking into account that, in the context of an expiry review, it is not necessary to establish the exact amount of dumping but only whether dumping is likely to continue or recur in the future, the Commission considered that the comparison, as established, was accurate.
- (68) Following disclosure, Nippon Steel claimed that the Commission should have calculated the dumping margin applicable to Nippon Steel on the basis of all export sales to the EU and referred to existing case law⁹.

⁹ Case C-376/15 P, Changshu City Standard Parts Factory and Ningbo Jinding Fastener v Council, ECLI:EU:C:2017:269, para. 65

- (69) The Commission recalled that the dumping margin did not cover all export sales to the EU because, as explained in recital (67) above, there were no corresponding domestic sales for some of the products types that the company exported to the EU. These product types (making up 38% of the total exported quantity) were initially not included in the dumping calculations as the company had not provided the corresponding costs of production for them. In order to calculate a dumping margin for 100% of the export sales to the EU and in the absence of more precise data from the company, the Commission decided to group the product types on the basis of their width, which is a parameter that has a lower impact on the cost of production and sales price than core loss and thickness. On that basis it constructed the normal value for all product types. The corrected dumping calculations were disclosed to the company and no comments were received.

3.2.2.4. Dumping margin

- (70) For both Nippon Steel and JFE Steel, the comparison between the normal value and the export price showed that their sales to the EU were made at dumped prices during the review investigation period. The dumping margin found for Nippon Steel was around 31 %, while for JFE Steel it was around 19 %.
- (71) The Commission therefore concluded that dumping continued during the review investigation period.

3.2.3. Likelihood of continuation of dumping

- (72) Further to the finding of dumping during the review investigation period, the Commission analysed whether there was a likelihood of continuation of dumping, should the measures on imports of GOES from Japan be allowed to lapse. When doing so, the following elements were analysed: the production capacity and spare capacity in Japan, and the attractiveness of the Union market.
- (a) Spare capacity
- (73) Based on the questionnaire replies of the two known Japanese exporting producers, the Commission established that the Japanese production capacity amounted to [350 000 - 410 000] tonnes during the RIP.
- (74) Based on the same dataset, the Commission established that the spare capacity of GOES in Japan was around [50 000 - 110 000] tonnes.
- (75) Nippon Steel claimed that Japan's spare capacity was overestimated as the Commission did not take account of the fact that Japan focuses on the thinnest gauge type of GOES which yields less volume than the type of GOES produced by the Union industry and other countries concerned.
- (76) The analysis of the models exported to the Union and to the other main export countries, like India and Mexico, showed that the vast majority of the models exported by Nippon Steel had a similar or higher gauge thickness than the products manufactured by the Union industry. Also, the share of thinner gauge type of GOES exported to the EU was significant and there was indeed a demand for this type of product on the Union market. In other words, even if the spare capacity corresponded exclusively, *quod non*, to thinner gauge products, there would be a demand for such products on the Union market.
- (77) Furthermore, the Commission based its assessment of spare capacity on the information provided by the Japanese exporting producers. Hence, the Commission failed to see how it could have overestimated spare capacity when the data stemmed

from the exporting producers themselves. In any case, the Commission considered that the claim related to the yield was neither sufficiently detailed nor substantiated, as it did not provide for a corresponding difference in production capacity or spare capacity linked to the alleged difference in yield. Furthermore, this claim was raised by Nippon Steel only and did not contain any information with regard to the range in gauge thicknesses of the other main Japanese exporting producer. On the basis of the above, the Commission rejected this claim.

- (78) In addition, the Commission considered that Japanese exporting producers also manufacture non-oriented electrical steels ('NOES'). Both GOES and NOES are manufactured using the same equipment. This means that it is technically possible to free up capacity from NOES and switch it to GOES. Such a switch could happen in the future should the Japanese exporting producers have the economic incentive to do so. As a result, the spare capacity found could potentially increase even further.
- (79) Following disclosure, the Japanese Government and Nippon Steel claimed that Japanese producers cannot free up capacity destined for the production of NOES to the benefit of production of GOES for export to the EU as Nippon Steel is bound by contracts with electric vehicle manufacturers to produce NOES. In this context, it argued that the assessment of spare capacity should not be based on that element.
- (80) The Commission took note of the existence of binding contracts with electric vehicle manufacturers to produce NOES which, *per se*, do not allow freeing up capacity for GOES immediately. However, the Commission also considered that, should market conditions on the electric vehicle market develop negatively, Japanese exporting producers could dedicate more capacity to GOES production as the producers use the same equipment for producing both GOES and NOES. In any case, regardless of the development of demand for NOES in the coming years, the Commission considered that its conclusions on the assessment of spare capacity as mentioned in recital (74) remained valid as those were based on the existence of significant spare capacity specific to GOES only, to which no additional freeing up capacity, linked to the production of NOES, was added.

(b) Attractiveness of the Union market

- (81) In terms of size, the Union market (over 265 000 -280 000 tonnes consumption in the review investigation period) is among the largest markets of GOES worldwide. Among the countries concerned, only the PRC has a bigger domestic market than the EU, while the USA, Korea, Russia and Japan have much smaller domestic consumption.
- (82) The established spare capacity is equivalent to [28 – 31 %] of the Union consumption during the RIP, as established in recital (259) below. At the same time it is likely that the spare capacity will be directed to the Union market in large quantities should the measures lapse. Indeed, the Japanese domestic market absorbs roughly one fourth of the Japanese production capacities and it is traditionally almost 100 % satisfied by domestic production.
- (83) In addition, the Japanese GOES industry is export oriented as more than [70 – 80] % of all production is destined for exports. Finally, China and the USA have trade defence duties which in effect reduce the access of the Japanese exporting producers to those important markets. Japanese exports to the PRC in particular declined sharply right after the imposition of measures by the latter.

- (84) Furthermore, the Japanese exporting producers have an established distribution system within the European Union and can therefore readily increase shipments to the Union market.
- (85) In view of the above considerations, it can be reasonably expected that, should the measures be repealed, a substantial part of the current Japanese exports and spare capacity would be re-directed to the Union.
- (86) Following disclosure, the Japanese Government and Nippon Steel claimed that the Union market was no longer as attractive as it was during the original investigation and that Japanese producers intend to actively capture the rising Asian markets and that exports from Japan will not flood the Union market in case the measures were to be terminated.
- (87) Nippon Steel also considered that the Commission's conclusion on the attractiveness of the Union market was unsubstantiated as it was solely based on its size. In this regard, it pointed to other specific elements relating to the attractiveness of the Union market, such as the price level, the presence of a strong domestic industry, the demand for a specific type of product, trade defence measures and/or transportation-associated disincentives.
- (88) The Commission considered that the claim relating to the Asian market was not substantiated with supporting evidence. In any case, Japanese exporting producers continued to export significant quantities and maintained their market share in the Union during the period considered despite all the factors mentioned by Nippon steel, the decrease in consumption and the measures in force.
- (89) In addition, the EU market was the third largest export market for Japanese exporting producers during the RIP¹⁰. Furthermore, an analysis of the evolution of the export sales by the two Japanese exporting producers revealed that their exports to non-EU countries decreased far more over the period considered (-[25-35]%) than exports to the EU (-[5-15]%) over the same period.
- (90) On top of its size and the large quantities that Japanese exporting producers can sell on the EU market, the Commission also noted that the Union market is characterized by high price levels and a significant presence of imports, which show its attractiveness to producers of GOES outside the EU. On this basis, these claims were rejected.

(c) Conclusion on the likelihood of continuation of dumping

- (91) Based on the above, the Commission concluded that dumping would be likely to continue in the future should measures be allowed to lapse. Considering the dumped price levels of GOES to the Union during the RIP, the spare capacity in Japan and the attractiveness of the Union market, the Commission also concluded that significant quantities of GOES from Japan would be likely to enter the Union market at dumped price levels, should measures be allowed to lapse.

3.3. Republic of Korea

3.3.1. Dumping during the review investigation period

3.3.1.1. Preliminary remarks

¹⁰

Source : questionnaire replies of the Japanese exporting producers.

- (92) In the absence of cooperation by any Korean exporting producer, as indicated in recital (28), the Commission based its overall analysis, including the dumping calculation, on facts available pursuant to Article 18 of the basic Regulation.
- (93) Consequently, the likelihood of a continuation or recurrence of dumping was assessed by using the information contained in the expiry review request, combined with Eurostat data and the export statistics contained in GTA.

3.3.1.2. Dumping

- (a) Normal value
- (94) In order to establish normal value, the Commission used the same methodology as the one applied by the applicant in the request. Since reliable data concerning prices on the Korean domestic market was not available, the Commission established a constructed normal value using the methodology and values contained in the expiry review request.
- (b) Export prices
- (95) Export prices to the Union were established on the basis of Eurostat data.
- (c) Comparison
- (96) The normal value and the export price were compared on an ex-works basis. To this end, delivery and insurance costs were deducted on the basis of the information available in the request (115,82 EUR/tonne). The ex-works normal value thus established was 1893 EUR/tonne, while the ex-works export price was 1880 EUR/tonne during the RIP.
- (d) Dumping
- (97) On the basis of the above, the Commission established that the dumping margin of Korean exports to the Union was at *de minimis* level, i.e. less than 2 %, expressed as a percentage of the export price.

3.3.2. Likelihood of recurrence of dumping should measures be repealed

- (98) The Commission analysed whether dumping was likely to recur if the current anti-dumping measures would be allowed to expire. When doing so, it looked into the behaviour of Korean exporters in other markets, production and spare capacity in Korea and the attractiveness of the Union market.
- (a) Exports to third countries
- (99) The Commission analysed the export prices from Korea to other third markets during the RIP, as reported in the official Korean export statistics from GTA, and compared these price levels with the import prices. This analysis showed that Korean exports to several of its other main export markets were made at prices below the export prices to the EU. The average export price to third markets was established at 1442 EUR/tonne during the RIP, which is below the lowest MIP applicable in the EU and much lower than the average ex-works price to the EU. Comparing those prices to third markets with the constructed normal value showed a price difference of around 30 %.
- (100) Therefore, it was considered likely that, if the current measures were to be repealed, the Korean exporting producers would start selling to the Union at dumped levels.
- (b) Spare capacity

- (101) According to the facts available included in the request for review, Korea has an estimated production capacity of 280 000 tonnes and an estimated spare capacity of 24 000 tonnes during the RIP. Korea's spare capacity corresponded therefore to around [7 – 10] % of the Union consumption of GOES in the RIP.

(c) Attractiveness of the Union market

- (102) The Commission established that the Union market is attractive for Korean producers for the following reasons.
- (103) First, as indicated in recital (81) above, the Union market is among the largest markets in the world. Second, the Korean domestic consumption is predominantly satisfied by the domestic production, as only around 19 % of it is made up by imports. As a result, the exporting producers are mostly export oriented.
- (104) Third, following the imposition of anti-dumping measures in the PRC against, inter alia, Korea, and the increase in China's own domestic production capacity, Korean exports to China have declined sharply in recent years. This would in turn make the Union market more attractive, thus creating the risk that certain trade diversion to the Union may take place.

(d) Conclusion on the likelihood of recurrence of dumping

- (105) Based on the above, the Commission concluded that dumping would be likely to recur in the future should measures be allowed to lapse. Considering the spare capacity in Korea, the low price levels of GOES exports to third countries during the RIP, which were made at dumped prices when compared to the normal value, together with the attractiveness of the Union market, the Commission also concluded that significant quantities of GOES from Korea would likely enter the Union market at dumped price levels, should measures be allowed to lapse.

3.4. United States of America

3.4.1. Dumping during the review investigation period

3.4.1.1. Preliminary remarks

- (106) In the absence of cooperation by any USA exporting producer, as indicated in recital (28), the Commission based its overall analysis, including the dumping calculation, on facts available pursuant to Article 18 of the basic Regulation.
- (107) Consequently, the likelihood of a continuation or recurrence of dumping was assessed by using the information contained in the expiry review request, combined with other sources of information such as Eurostat and GTA.

3.4.1.2. Dumping

(a) Normal value

- (108) In order to establish normal value, the Commission used the same methodology as the one applied by the applicant in the request. Since reliable data concerning prices on the USA domestic market was not available, the Commission established a constructed normal value using the methodology and values contained in the expiry review request.

(b) Export prices

- (109) Export prices to the Union were established on the basis of Eurostat data.

(c) Comparison

(110) The normal value and the export price were compared on an ex-works basis. To this end, delivery and insurance costs were deducted on the basis of the information available in the request (166,66 EUR/tonne). The ex-works normal value was thus established at 2310 EUR/tonne, while the export price was 1880 EUR/tonne during the RIP.

(d) Dumping

(111) On the basis of the above, the Commission established a dumping margin of around 21 %. The Commission therefore concluded that dumping continued during the review investigation period.

3.4.2. Likelihood of continuation of dumping should measures be repealed

(112) The Commission analysed whether dumping would be likely to continue if the current anti-dumping measures would be allowed to expire. When doing so, it looked into production and spare capacity in the USA and the attractiveness of the Union market.

(a) Spare capacity

(113) According to the information provided in the expiry review request, the USA had an estimated production capacity of 265 000 tonnes and an estimated spare capacity of 77 000 tonnes during the RIP. The spare capacity in the USA alone can therefore satisfy [27 – 30] % of the entire Union consumption of GOES.

(b) Attractiveness of the Union market

(114) The investigation confirmed that the Union market is attractive for USA producers for the following reasons:

(115) First, as indicated in recital (81) above, the Union market is among the largest markets in the world.

(116) Second, the USA domestic consumption is already predominantly satisfied by the domestic production, as only around 15 % of it was made up by imports during the RIP. As a result, the exporting producers are export oriented.

(c) Conclusion on the likelihood of continuation of dumping

(117) Based on the above, the Commission concluded that dumping would be likely to continue in the future should measures be allowed to lapse. Considering the dumped price levels of GOES to the Union during the RIP, the large spare capacity in the USA and the attractiveness of the Union market, the Commission also concluded that significant quantities of GOES from the USA would likely enter the Union market at dumped price levels, should measures be allowed to lapse.

3.5. People's Republic of China

3.5.1. Dumping during the review investigation period

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

(118) According to Article 2(1) of the basic Regulation, “the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country”.

(119) However, according to Article 2(6a)(a) of the basic Regulation, “in case it is determined [...] that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions within

the meaning of point (b), the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks”, and “shall include an undistorted and reasonable amount of administrative, selling and general costs and for profits” (“administrative, selling and general costs” is referred hereinafter as ‘SG&A’).

- (120) In view of the sufficient evidence available at the initiation of the investigation pointing to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation with regard to the PRC, the Commission considered it appropriate to initiate the investigation with regard to the exporting producers from this country having regard to Article 2(6a) of the basic Regulation.
- (121) Consequently, in order to collect the necessary data for the eventual application of Article 2(6a) of the basic Regulation, in the Notice of Initiation the Commission invited producers of the PRC to provide information regarding the inputs used for producing the product under review. One exporting producer provided the requested information.
- (122) In order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions, the Commission also sent a questionnaire to the GOC. In addition, in point 5.3.2 of the Notice of Initiation, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the Official Journal of the European Union. 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.
- (123) On 30 November 2020, the Commission issued a first note for the file (‘the First Note’) seeking the views of the interested parties on the relevant sources that the Commission may use for the determination of the normal value, in accordance with Article 2(6a)(e) second indent of the basic Regulation. In that note, the Commission provided a list of all factors of production such as materials, energy and labour used in the production of the product under review by the exporting producers. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified two possible representative countries: Brazil and Russia.
- (124) The Commission invited interested parties to submit comments. Comments were received from Eurofer and the Baoshan Group.
- (125) The comments on the First Note were addressed in a second note (‘the Second Note’) which the Commission issued on 20 July 2021 and by which it informed interested parties on the relevant sources it intended to use for the determination of the normal value, with Brazil as the representative country. It also informed interested parties that it would establish selling, general and administrative costs (‘SG&A’) and profits based on Aperam Inox América do Sul S.A. (‘Aperam’), a producer in the representative country. Comments were received from Eurofer and the Baoshan Group.

3.5.1.2. Non-cooperation from the GOC

- (126) Upon initiation of the investigation on the basis of Article 2(6a)(a) of the basic Regulation, the Commission sent a questionnaire concerning the existence of distortions to the GOC. The GOC however did not submit a reply. The Commission informed the GOC by Note Verbale on 24 September 2021 that it intended to make use of Article 18 of the basic Regulation with regard to the possible existence of

significant distortions on the Chinese domestic market for GOES within the meaning of Article 2(6a) of the basic Regulation. The Commission invited the GOC to submit its comment on the application of Article 18. No comments were received.

3.5.1.3. Existence of significant distortions

- (127) In recent investigations concerning the steel sector in the PRC¹¹, 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.
- (128) 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 principles¹². In particular, the Commission concluded that in the steel sector, to which GOES belongs, 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 Regulation¹³, 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 Regulation¹⁴. The Commission further found that the State's presence and intervention in the financial markets, as well as in the provision of raw materials and inputs have an additional distorting effect on the market. 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 forces¹⁵. 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

¹¹ 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.

¹² See Commission Implementing Regulation (EU) 2021/635 recitals 149-150, Commission Implementing Regulation (EU) 2020/508 recitals 158-159.

¹³ See Commission Implementing Regulation (EU) 2021/635 recitals 115-118 and Commission Implementing Regulation (EU) 2020/508 recitals 122-127.

¹⁴ 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 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 GOES producers and the suppliers of their inputs.

¹⁵ See Commission Implementing Regulation (EU) 2021/635 recitals 123-129 and Commission Implementing Regulation (EU) 2020/508 recitals 133-138.

maintaining insolvent firms afloat and when allocating land use rights in the PRC¹⁶. 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 Regulation¹⁷, 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 PRC¹⁸.

- (129) 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.
- (130) The request contained information on the distortive effects of the 13th Five Year Steel Plan on the steel industry. Furthermore, the request referred to the findings made by the US Government concerning the state control over the relatively strong controlling power over the steel sector in China via SASAC and absolute controlling power over electricity¹⁹. The request further observed that GOES like organic coated steel products is produced from hot-rolled coils. Therefore, the same distortions noted by the Commission with respect to organic coated steel in Commission Implementing Regulation (EU) 2019/687²⁰ products also apply to GOES. The request also observed that the two main Chinese exporting producers in the GOES investigation, Baosteel and WISCO, are also exporting producers of organic coated steel products covered by the definitive measures on that product. At the end of 2016, Baosteel and WISCO merged to become China's biggest steelmaker. The request also referred to the anti-subsidy proceeding regarding hot rolled flat steel products²¹, in which the Commission found a number of subsidies which point to the existence of distortions in the sector. Finally, the request mentioned financial support received by Baosteel and other

¹⁶ See Commission Implementing Regulation (EU) 2021/635 recitals 130-133 and Commission Implementing Regulation (EU) 2020/508 recitals 139-142.

¹⁷ See Commission Implementing Regulation (EU) 2021/635 recitals 134-135 and Commission Implementing Regulation (EU) 2020/508 recitals 143-144.

¹⁸ See Commission Implementing Regulation (EU) 2021/635 recitals 136-145 and Commission Implementing Regulation (EU) 2020/508 recitals 145-154.

¹⁹ U.S. Department of Commerce, 'China's Status as a non-market economy', A-570053, 26 October 2017, p. 57.

²⁰ Commission Implementing Regulation (EU) 2019/687 of 2 May 2019 imposing a definitive anti-dumping duty on imports of certain organic coated steel products originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 116, 3.5.2019, p. 5).

²¹ Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 146, 9.6.2017, p. 17).

producers, as evidenced by a report prepared by the Steel Industry Coalition²² and findings made in several U.S. countervailing duty investigations²³.

- (131) As indicated in recital (126), 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.
- (132) Specifically in the steel sector, to which GOES belongs, a substantial degree of ownership by the GOC persists. Many of the largest producers are owned by the State. For instance, Baosteel, the main exporter of GOES, is a major Chinese State-owned enterprise that engages in steel manufacturing and is part of the recently consolidated China Baowu Steel Group Co. Ltd. – formerly Baoshan Iron & Steel Co., Ltd. and Wuhan Iron & Steel²⁴. 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 SOEs²⁵. 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 2025²⁶. This intention has been repeated by the GOC in April 2019, announcing a release of guidelines on steel industry consolidation²⁷. Such consolidation may entail forced mergers of profitable private companies with underperforming SOEs²⁸. The two producers of GOES in China, Baosteel and WISCO (both part of the Baoshan Group) are State owned.
- (133) 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 the Baoshan Group.

²² Steel Industry Coalition, Report on Market Research into the Peoples Republic of China Steel Industry (30 June 2016).

²³ Non-Oriented Electrical Steel from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order, 85 Fed. Reg. 11339 (Feb. 27, 2020); Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Affirmative Determination, 81 Fed. Reg. 35308 (June 2, 2016).

²⁴ Baowu, 'Company profile', <http://www.baowugroup.com/en/contents/5273/102759.html> (last viewed 6 May 2021)

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

²⁶ Available at: www.gov.cn/zhengce/content/2016-02/04/content_5039353.htm (last viewed 6 May 2021); https://policy.cn/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).

²⁷ 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).

²⁸ As was the case of the merger between the private company Rizhao and the SOE Shandong Iron and Steel in 2009. See Beijing steel report, p. 58, and the acquired majority stake of China Baowu Steel Group in Magang Steel in June 2019, see <https://www.ft.com/content/a7c93fae-85bc-11e9-a028-86cea8523dc2> (last viewed 6 May 2021).

- (134) Both public and privately owned enterprises in the GOES 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 sector. The two GOES 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 both Baosteel and WISCO. Baosteel describes the party building activities as follows: “Undertake the main responsibility of administering the party strictly and comprehensively; Lead the company’s ideological and political work, united front work, building of a spiritual civilisation, building of a corporate culture and mass work such as trade unions and the Communist Youth League; Lead the construction of party-style and honest government, support discipline committees to effectively fulfil their supervisory responsibilities²⁹”. WISCO indicates on its website that the first party member congress of the Chinese Communist Party WISCO Group Co., Ltd. held on 22 January 2021 “has decided to give full play to the leadership role of the party committee of “directing, managing the overall situation, and ensuring implementation”, improve political positions, strengthen accountability, and go all out to promote the implementation of the “1345” development strategy³⁰”.
- (135) 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 GOES sector.
- (136) Even though GOES is a specialised industry and no specific policy documents guiding particularly the development of the GOES industry as such could be identified during the investigation, the GOES industry benefits from governmental guidance and intervention concerning steel and the main raw materials to manufacture GOES, namely steel and iron ore.
- (137) The steel industry is regarded as a key industry by the GOC³¹. 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 cornerstone³²”. The main tasks and objectives set out in this Plan cover all aspects of the development of the industry³³. The 13th Five-Year Plan (‘FYP’) on Economic and Social Development³⁴, applicable during the IP, envisaged support to enterprises producing high-end steel product types. It also focuses on achieving product quality, durability and reliability by supporting companies using technologies related to clean steel production, precision rolling and quality improvement³⁵.

²⁹ See Articles of Association of Baoshan, Article 133.4: http://static.sse.com.cn/disclosure/listedinfo/announcement/c/2021-01-08/600019_20210108_8.pdf (last viewed 6 May 2021).

³⁰ <http://www.wuganggroup.cn/zzjs/index.jhtml>, consulted on 9 September 2021.

³¹ Report, Chapter 14.

³² Introduction to The Plan for Adjusting and Upgrading the Steel Industry.

³³ Report, Chapter 14, p. 347.

³⁴ 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)

³⁵ Report – Chapter 14, p. 352.

- (138) The ‘Catalogue for Guiding Industry Restructuring (2011 Version) (2013 Amendment)’³⁶ (‘the Catalogue’) lists steel as an encouraged industry. An important raw material used for the production of GOES is iron. Iron ore was covered by the National Mineral Resource Plan 2016-2020 during the IP period. The plan envisaged, among others, to “ensure enterprise concentration and develop large and medium sized mines competitive on the market”, “ensure guidance of local resources so as to concentrate them towards large-sized mining groups”, “reduce the burden on iron ore enterprises, raise the competitiveness of domestic iron ore enterprises”, “adequately control the development of 1,000 meter-deep mines and small-scale low-grade iron ore mines”.
- (139) Iron ore is also mentioned in the 13th FYP on Steel 2016-2020, which was in force during the review investigation period. The plan envisages for iron ore: “keep on supporting exploration works in domestic key mineral areas, [...], support a number of existing and strongly competitive domestic iron ore enterprises, thanks to a wider and intensified development, [...], and to strengthen the role of domestic mineral resources bases as regards security (of supplies)”.
- (140) Iron ore is classified as a Strategic Emerging Industry (“SEI”) and therefore covered by the 13th FYP on SEIs. Iron ore, pig iron and ferroalloys are also all listed in the NRDC Guiding Catalogue for Industry Adjustment 2019. Ferroalloys are mentioned in the 2018 MIIT Guiding Catalogue for Industry Development and Transfer.
- (141) As can be seen from the above examples concerning steel and iron, the GOC further guides the development of the GOES 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 GOES industry benefits from governmental guidance and intervention concerning steel and the main raw material to manufacture GOES, namely iron ore.
- (142) In addition to the above, the GOES 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 the two GOES producers, Baosteel³⁷ and WISCO³⁸ benefited from direct state subsidies.
- (143) 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 and iron, under which GOES falls. Such measures impede market forces from operating freely.
- (144) 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 GOES sector referred to above in recital (128) would not affect the manufacturers of the product under review.

³⁶ 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.

³⁷ See the 2019 annual report, pages 181 and 187: <http://static.cninfo.com.cn/finalpage/2020-04-29/1207654234.PDF>

³⁸ See Baowu Steel annual report 2019: https://www.shclearing.com/xxpl/cwbg/nb/202005/t20200529_691577.html, page 210.

- (145) The GOES 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 (128). 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)³⁹.
- (146) Moreover, no evidence was submitted in the present investigation demonstrating that the GOES 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 (128). Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.
- (147) Finally, the Commission recalls that in order to produce GOES, a number of inputs is needed. When the producers of GOES purchase or/contract for these inputs, the prices they paid (and which are recorded as their costs) are exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions, they may borrow money that is subject to the distortions on the financial sector/capital allocation and they are subject to the planning system that applies across all levels of government and sectors.
- (148) As a consequence, not only the domestic sales prices of GOES 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 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.
- (149) No evidence or argument to the contrary has been adduced by the GOC. One group of exporting producers, namely Baosteel and WISCO ('the Baoshan Group'), submitted a set of comments concerning the existence of significant distortions.
- (150) First, the Baoshan Group underlined that the allegation on "significant distortions" in China should not become a pre-determined conclusion. The Baoshan Group argued that the Commission should not be collecting the information needed for the calculation of the normal value based on the representative country methodology at the beginning of the investigation, i.e. before the significant distortions are established and confirmed in a given investigation. According to the Baoshan Group, such information should only be collected once the Commission confirmed the facts necessary to apply the provisions of Article 2(6a) of the basic Regulation. It also observed that the request relied heavily on the China Report, which, according to the Baoshan Group, fails to meet the standards of impartial and objective evidence, because it was drafted with the purpose to facilitate filing of complaints for the European industry. Furthermore, the Baoshan Group argued that the accuracy of the information included in the Commission report and the relevance to the current proceeding are very questionable, because the Report was published in 2017, including contents and references in 2016 and the years before and is therefore not applicable to the IP in the current investigation. Also, the Baoshan Group observed that the China Report does not cover

³⁹ See Commission Implementing Regulation (EU) 2021/635 recitals 134-135 and Commission Implementing Regulation (EU) 2020/508 recitals 143-144.

GOES, only the steel sector and that the findings made on steel are not necessarily relevant for GOES.

- (151) The Commission considered that the evidence listed in the Notice of Initiation was sufficient to warrant initiation of an investigation on the basis of Article 2(6a) of the basic Regulation. Indeed, while the determination on the actual existence of significant distortions and the consequent use of the methodology prescribed by Article 2(6a)(a) only occurs at the time of the provisional and/or definitive disclosure, Article 2(6a)(e) lays down an obligation to collect the data necessary for the application of this methodology when the investigation has been initiated on this basis. In this case, the Commission deemed the evidence submitted by the applicant on the significant distortions sufficient to initiate the investigation on this basis. The Notice of Initiation clearly specified this at point 3 in accordance with the obligation stated in Article 2(6a)(e) of the basic Regulation. Therefore, the Commission took the steps necessary to enable it to apply the methodology under Article 2(6a) of the basic Regulation in case the existence of significant distortions would be confirmed during the investigation.
- (152) Regarding the claim on the lack of impartiality of the Report, the Commission notes that this report is a comprehensive document based on extensive objective evidence, including legislation, regulations and other official policy documents published by the GOC, third party reports from international organisations, academic studies and articles by scholars, and other reliable independent sources. It was made publicly available since December 2017 so that any interested party would have ample opportunity to rebut, supplement or comment on it and the evidence on which it is based. Regarding the argument that the Report was outdated, the Commission recalls that so far no evidence was provided showing that the report is outdated. On the contrary, the Commission notes in particular that the main policy documents and evidence contained in the report, including the relevant five-year plans and legislation applicable to the product under review were still relevant during the RIP, and that neither the Baoshan Group nor other parties have proven that this was no longer the case.
- (153) With regard to the argument that the Commission Report does not include a specific chapter on GOES but only on steel in general, the Commission noted that first, GOES is a specialised type of steel, hence the provisions concerning steel are broadly applicable also to GOES. Secondly, the existence of the significant distortions giving rise to the application of Article 2(6a) of the basic Regulation is not linked to the existence of a specific sectoral chapter covering the product under investigation. The Report describes different types of distortions present in the PRC which are cross-cutting and applicable throughout the Chinese economy and affect the prices and/or the raw materials and costs of production of the product under investigation. Hence, the claims made by the Baoshan Group were dismissed.
- (154) 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.

3.5.1.4. Representative country

(a) General remarks

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

- A level of economic development similar to China. For this purpose, the Commission used countries with a gross national income per capita similar to China on the basis of the database of the World Bank⁴⁰;
- Production of the product under review in that country⁴¹;
- Availability of relevant public data in the representative country.
- Where there is more than one possible representative country, preference should be given, where appropriate, to the country with an adequate level of social and environmental protection.

(156) As explained in recitals (123) and (125), the Commission issued two notes for the file on the sources for the determination of the normal value: the first note on production factors of 30 November 2020 (the “First Note”) and the second note on the production factors of 20 July 2021 (the “Second Note”). These notes described the facts and evidence underlying the relevant criteria, and addressed the comments received by the parties on these elements and on the relevant sources. In the Second Note, the Commission informed interested parties of its intention to consider Brazil as an appropriate representative country in the present case, if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation would be confirmed.

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

(157) In the First Note, the Commission identified Brazil and Russia as countries with a similar level of economic development as China according to the World Bank, i.e. they are both classified by the World Bank as ‘upper-middle income’ countries on a gross national income basis where production of the product under review was known to take place. The Union industry had also proposed South Korea as an allegedly appropriate representative country. However, in view of South Korea’s level of economic development, as classified by the World Bank, such country could not be considered.

(158) Further to the First Note, the Union industry claimed that Article 2(6a) of the basic Regulation gave the Commission broad discretion in determining which representative country may be appropriate and did not limit the concept of a similar level of economic development to countries classified in the same group of gross national income by the World Bank. In particular, it claimed that while the World Bank gross national income groupings may make sense in many cases, they do not make sense with respect to the GOES industry subject to this review. The reason is that GOES is a

⁴⁰ World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>.

⁴¹ 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.

unique high-tech steel product and the Chinese exporting producer has GOES mills made to the highest international standards and exports mainly the high permeability (premium) grades ('HGO') of GOES to the European Union. The Union industry also argued that the producer in Brazil was not able to achieve similar levels of quality whereas the Chinese exporting producer was at the same level of economic development and technology as the Korean mill POSCO and Korea was thus the most suitable representative country in its view.

- (159) With regard to the use of the World Bank's classification, when constructing the normal value in case of countries with significant distortions, Article 2(6a)(a) of the basic Regulation establishes that the Commission may use a representative country with a similar level of economic development as the exporting country. In order to define which countries are at similar level of economic development as the exporting country in each case, the Commission uses countries classified in the same income category by the World Bank. The Commission does so by exercising its discretion in the interpretation and application of the basic Regulation as repeatedly confirmed by the Court of Justice in circumstances where it is left to the Commission to do so. The Commission considered that this database allows having a sufficient number of potentially suitable countries with a similar level of development to choose an appropriate representative country according to Article 2(6a)(a) of the basic Regulation.
- (160) In this case, the relevant World Bank category where the PRC is classified was that of the upper-middle income countries. Therefore, Korea did not have a similar level of economic development as the PRC and was considered not to meet the criterion laid down in Article 2(6a)(a) first indent of the basic Regulation.
- (161) Further to the Second Note, Eurofer claimed that the Commission's assessment based on the countrywide level of economic development and reference to the World Bank classification did not make sense and should integrate the economic development of the Chinese GOES industry. In this context, Eurofer argued that the Korean and Japanese GOES industries had a similar level of economic development as the Chinese one. In the absence of cooperation by Korean exporting producers, Eurofer claimed that the Commission could use Japan as representative country for China and the information provided by Nippon Steel to determine normal value.
- (162) The Commission considered that the wording of Article 2(6a)(a), first indent of the basic Regulation does not allow such a narrow reading as it does not refer to a sector specific approach. Furthermore, Eurofer did not provide any independent source on which the Commission could rely in order to establish that the Korean and Japanese GOES industries had a similar level of economic development. On this basis, this claim was rejected.

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

- (163) In the First Note, the Commission indicated that, for the countries identified as countries where the product under review was being produced, i.e. Brazil and Russia, the availability of public data was limited to one producer of the product under review located in Brazil; i.e. Aperam Inox América do Sul S.A. ('Aperam') for the calendar year 2019. In this regard, the Commission invited interested parties to comment, and, if deemed appropriate, propose other producers of the product under investigation in a representative country of their choice fulfilling the criteria of Article 2(6a)(a) first indent of the basic Regulation, where financial statements containing the relevant data are readily available.

- (164) Further to the First Note, no interested parties filed comments regarding Aperam or submitted relevant public financial data of a producer of GOES in a potential representative country.
- (165) Further to the Second Note, Eurofer agreed that Brazil was more suitable than Russia. Nevertheless, it claimed that Aperam was technically not able to produce the high quality grade products exported by the Baoshan Group to the EU as a result of its lack of investment in the technology, processes and know how required for these grades. In particular, Eurofer referred to the level of depreciation, which was allegedly too low and should be adjusted in line with the level of Union or Korean producers.
- (166) As explained in recital (180), the Commission did not rely on the level of depreciation of Aperam to construct normal value. Indeed, the Aperam data used to construct normal value related only to SG&A and profit percentages. As far as depreciation and other overhead costs are concerned, the Commission relied on the Baoshan Group's overhead costs expressed as percentage of cost of other manufacturing costs and applied this percentage to the "re-calculated" cost of manufacturing. On this basis, this claim was rejected.
- (167) Following the Second Note, Eurofer also claimed that the Commission should integrate Aperam's financial data for calendar year 2020 in its calculation of SG&A and profit for the review investigation period.
- (168) The Commission accepted this claim but eventually only relied on 2020 data because, as mentioned in recital (203), the 2019 financial statements did not show a profit when excluding non operating expenses.
- (169) In the First Note, the Commission provided a list of all factors of production such as raw materials, labour and energy used in the production of GOES. In the same Note, the Commission considered that there were trade restrictions on certain factors of production based on the OECD Inventory on export restrictions on Industrial Raw Materials⁴² and in particular the list of export restrictions on industrial raw materials for Brazil (HS 7225 11 and 7226 11) and Russia (HS 7204 10 till 7204 50). Furthermore, with regard to Russia, the Commission Staff Working Document on significant distortions in the economy of the Russian Federation for the purposes of trade defence investigations (SWD(2020) 242) had also identified significant distortions in natural gas⁴³ and electricity⁴⁴, high levels of state intervention and high levels of concentration and vertical integration in key raw material sectors, steel industry and transport⁴⁵, and the existence of import duties on GOES (HS 7225 11 and 7226 11). In view of these trade restrictions and significant distortions, at this stage, the Commission had considered that Brazil would be the appropriate representative country and invited parties to comment on the appropriateness of the possible representative countries.
- (170) Further to the First Note, the Union industry provided additional arguments to the ones set out in the First Note as to why Russia was a less suitable representative country than Brazil.

⁴² http://qdd.oecd.org/subject.aspx?Subject=ExportRestrictions_IndustrialRawMaterials

⁴³ Commission Staff Working document on significant distortions in the economy of the Russian Federation for the purposes of trade defence investigations SWD(2020) 242 final, Chapter 10, in particular pages 267, 269 and 293

⁴⁴ Idem, p. 225, 291-293

⁴⁵ Idem, in particular Chapters 11, 12 and 14.

(171) Furthermore, the Commission noted that no party contested its findings in Section 2 of the First Note regarding the shortcomings identified for Russia as a representative country. Consequently, the Commission concluded that Brazil was an appropriate country as it fulfilled all the criteria, i.e. it is at a comparable level of development to China, it has a producer of GOES and the data of this producer is readily available for the review investigation period.

(d) Level of social and environmental protection

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

(e) Conclusion

(173) In view of the above analysis, the Commission decided to consider Brazil as the appropriate representative country for the purpose of Article 2(6a)(a) of the basic Regulation.

3.5.1.5. Undistorted costs and benchmarks

(a) Sources used to establish undistorted costs

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

(175) In accordance with Article 2(6a)(a) of the basic Regulation, the Commission also identified sources to be used for establishing undistorted prices and benchmarks. The main source that the Commission proposed to use was the Global Trade Atlas (the 'GTA'). Finally, in the same note, the Commission identified the Harmonised System (HS) codes, or the commodity codes used in, inter alia, the EU, Canada or Brazil, of factors of production which, on the basis of information provided by the interested parties, were initially considered to be used for the GTA analysis.

(176) The Commission invited the interested parties to comment and propose publicly available information on undistorted values for each of the factors of production mentioned in that Note.

(177) Based on the proposal to use Brazil as the representative country, the Commission informed the interested parties in the Second Note that it would use GTA to establish the undistorted costs of most of the raw materials.

(b) Data used for the construction of normal value

(178) The Commission established 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 exporting producers. The Commission did not receive any comments concerning the list of factors of production.

(179) Considering all the information submitted by the interested parties and collected during the RCC, the following factors of production and their sources have been identified in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

Table 1 - Factors of production of GOES

Factor of Production	Commodity Code	Undistorted value	Unit of measurement
Raw materials			
Iron ore	2601 11	729,85	Tonne
Sintered Iron ore	2601 12 10, 2601 12 90	945,20	Tonne
Iron slags	2619	712,97	Tonne
Coking coal	2701 12	1076,38	Tonne
Steel scraps	7204 10	865,57	Tonne
Ferro-silicon	7202 21	12766,44	Tonne
Ferro-niobium	7202 93	155625,46	Tonne
Aluminum	7601 10	14547,25	Tonne
Ferro-chromium	7202 41	9107,45	Tonne
Copper	7402	42514,89	Tonne
Limestone	2521	98,65	Tonne
Quicklime	2522 10	1091,01	Tonne
Tin	8001 10	586967,35	Tonne
Ferrophosphorus	7202 99 10	33143,39	Tonne
Manganese	8111 00 10, 8111 00 20, 8111 00 90	16138,58	Tonne
Magnesium oxide (MGO)	2519 90 10, 2519 90 90 (France)	44837,45	Tonne
Consumables			
Labour			
Labour		84,59	per man hour
Energy			
Electricity	2716	8251,91	KWH

Natural gas	2711 11	3,42 – 3,72	M3
Oil	2710 19 11, 2710 19 19, 2710 19 21, 2710 19 22, 2710 19 29, 2710 19 31, 2710 19 32, 2710 19 91, 2710 19 92, 2710 19 93, 2710 19 94, 2710 19 99	2,29	1000 M3
Coke	2704 00 11, 2704 00 12, 2704 00 90	1878,96	Tonne
Coal	2701 11	768,01	Tonne
Coal gas	2705	0,59	1000 M3
Hydrogen	2804 10 (Canada)	2,74	M3

(180) Furthermore, the Commission included a value for manufacturing overhead costs in order to cover costs not included in the factors of production referred to above, such as depreciations and other fixed expenses that cannot be quantified. Given the absence of relevant data in the publicly available financial data of Aperam to establish the amount relating to overhead costs, the company specific data of the exporting producer was used instead and applied on the “re-calculated” cost of manufacturing. The methodology is duly explained in section 3.5.1.6.

(181) Following the Second Note to the file, Eurofer requested the Commission to calculate normal value directly in EUR to avoid distortions caused by CNY exchange rates. As far as the currency used for the dumping calculation, Eurofer did not provide any evidence of distortion. On this basis, the Commission performed the dumping calculation in line with its standard practice, i.e. using the currency of the exporting country.

(c) Raw materials

(182) In order to establish the undistorted price of raw materials as delivered at the gate of a representative country producer, the Commission used as a basis the weighted average import price to the representative country as reported in the GTA to which import duties and transport costs were added. An import price in the representative country was determined as a weighted average of unit prices of imports from all third countries excluding the PRC and countries which are not members of the WTO, listed in Annex 1 of Regulation (EU) 2015/755 of the European Parliament and the Council.⁴⁶ The

⁴⁶

Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33). Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value and, in any event, such import data was negligible.

Commission decided to exclude imports from the PRC into the representative country as it concluded in recital (154) 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. After excluding imports from the PRC into the representative country, the volume of imports from other third countries remained representative (on average above 90%).

- (183) For a number of factors of production the actual costs incurred by the cooperating exporting producers represented a negligible share of total raw material costs in the review investigation period. As the value used for these had no appreciable impact on the dumping margin calculations, regardless of the source used, the Commission decided to include those costs into consumables as explained in recital (209).
- (184) The Commission expressed the transport cost incurred by the cooperating exporting producer for the supply of raw materials as a percentage of the actual cost of such raw materials and then applied the same percentage to the undistorted cost of the same raw materials in order to obtain the undistorted transport cost. The Commission considered that, in the context of this investigation, the ratio between the exporting producer's raw material and the reported transport costs could be reasonably used as an indication to estimate the undistorted transport costs of raw materials when delivered to the company's factory.
- (185) Following the First Note, the Baoshan Group claimed that for certain raw materials (hydrogen, nitrogen, oxygen and tin) the prices in Brazil were much higher than in Russia, mainly due to very low level of imports into Brazil. In this context it invited the Commission to use alternative sources based on Article 2(6a)(a) of the Basic Regulation such as international prices or domestic costs in China.
- (186) The Commission considered that oxygen, nitrogen and tin were imported in representative quantities in Brazil. Consequently, the claim relating to these raw materials was first rejected. However, as far as hydrogen is concerned, the Commission observed that the levels of imports and price differences were indeed significant. Therefore the Commission considered that the use of the data of the largest exporter of hydrogen worldwide; i.e. Canada, was most appropriate. In the absence of significant differences in levels of imports and prices for tin, the Commission relied on the imports into Brazil as a whole.
- (187) Following the Second Note, the Baoshan Group claimed that the calculated import prices for nitrogen and oxygen into Brazil were deficient as there were significant differences in unit price depending on the country of origin. It stated that, the import price for nitrogen and oxygen originating in Paraguay was respectively 11 and 8 times lower than the average import price, thus pointing to significant differences in import prices depending on the country of origin. Furthermore, it argued that Paraguay accounted for respectively over 98 and 70 % of the import volume for nitrogen and oxygen. Moreover, the Baoshan Group argued that the unit cost for these raw materials was very significantly lower than the average import price. On this basis and considering the share of these two raw materials, the Baoshan Group suggested to treat nitrogen and oxygen as consumables or to rely on the import price for nitrogen and oxygen originating in Paraguay only.

- (188) In view of the share of the cost of nitrogen and oxygen in the cost of manufacturing and the price differences observed, the Commission considered that it was appropriate to consider these raw materials as consumables.
- (189) Following the First Note, the Union industry claimed that a particularly high grade of iron ore and magnesium oxide was required in the manufacturing of GOES and that the import statistics, based on HS or the representative country's codes, which usually encompass all the grades, did not capture this.
- (190) The Commission considered that this claim was warranted as GOES is indeed a very sophisticated product, much more expensive than regular types of steel and it requires special recipes and very high quality / high-grade raw materials even at the upstream iron-making level. As the data provided by the exporting producer did not allow the Commission to single out the grades of iron ore used specifically in the manufacturing of GOES, the Commission considered that the price of Iron ore 66 % Fe concentrate as reported by Fastmarkets⁴⁷ was the most appropriate benchmark.
- (191) The Commission considered that the magnesium oxide ('MGO') used in the manufacturing of GOES is of a much higher quality than the one imported into Brazil. The representative country customs codes for MGO encompass more grades of MGO than the very specific one used in the manufacturing of GOES. In addition, such MGO is made by very few producers, located in very few countries, one of them being France. Indeed, the type of MGO used for GOES reported by the Chinese exporting producer and by the Union industry is many times more expensive than the MGO imported into Brazil. Hence, the MGO imported into Brazil is not an adequate benchmark for MGO for the manufacturing of GOES. As a result, the Commission considered that exports, as declared in Comext, from France as a major MGO producer for GOES to the countries where GOES is produced⁴⁸, excluding those going to the PRC and those staying in the Union was an appropriate benchmark reflecting international prices outside the Union and China.
- (192) The Commission considered that import prices into Brazil as reported by Global Trade Atlas ('GTA') were not representative for Coking Coal and Compressed Air. Furthermore, such prices posed serious conversion issues.
- (193) In the absence of specific information concerning the grades of the coking coal used by the Chinese exporting producer, the Commission considered that the price of the premium hard coking coal -which has the highest quality- as reported by Fastmarkets was appropriate. Indeed, the investigation revealed that the benchmark price of the highest grade of coking coal was still lower than the price reported by the exporting producer for its coking coal purchases. This is another indication that the exporting producer used very high quality coking coal in its production process.
- (194) As for compressed air the exporting producer reported its consumption in cubic meters, while the imports into Brazil are only reported in Kg and the Commission was unable to find an appropriate conversion factor. In any case, compressed air accounted for a negligible part of the total manufacturing cost of the exporting producer. On this basis, the Commission treated this factor of production as a consumable.
- (195) There were no imports of Ferro-niobium ('Fe-Nb') reported into Brazil in the investigation period. Therefore, for Fe-Nb, the Commission also used the data of the

⁴⁷ www.fastmarkets.com

⁴⁸ Russian Federation, USA, Korea, Japan and India, thereby excluding China and EU Member States.

largest exporter in the world, that is Brazil, following the same approach as mentioned in recital (186) for hydrogen.

- (196) As for the coal gas, the exporting producer reported its consumption in cubic meters, while the imports into Brazil are only reported in Kg and the Commission was unable to find a conversion factor for coal gas. In addition, the imports into Brazil of coal gas were only 58 kg. Therefore, the Commission calculated the benchmark price of coal gas based on the price of natural gas in the representative country, while controlling for the heat value of both gases.
- (197) Following the Second Note, Eurofer submitted comments relating to certain raw materials and consumables used in the manufacturing of GOES. It also requested the Commission to take domestic transport to the Chinese exporting producer into account.
- (198) In this regard, the Commission considered that the information provided by the Baoshan Group reflected all relevant factors of production even if the manufacturing process was different. Furthermore, the Commission's calculation take account of domestic transport as explained in recital (184).

(d) Labour

- (199) In the Second Note, the Commission proposed to use the labour cost of the GOES producer in the representative country, APERAM, to establish the undistorted value for labour cost. No interested party filed comments in this regard. As 2020 financial data became available, the Commission recalculated the labour cost as an average of 2019 and 2020 data to mirror the review investigation period.

(e) Electricity

- (200) In the Second Note, the Commission proposed to use the electricity price tariff reported by CEMIG - the electricity provider in the Brazilian state of Minas Gerais, where the only Brazilian GOES manufacturer is located⁴⁹, to establish the undistorted value for electricity cost. No interested party filed comments in this regard.

(f) Natural gas

- (201) In the Second Note, the Commission proposed to use the price of natural gas for industrial users reported by GASMIG – provider in the Brazilian state of Minas Gerais where the GOES manufacturer is located⁵⁰. More specifically, the Commission used the data of the industrial gas prices in the corresponding consumption bands. The Commission calculated the benchmark price based on the GASMIG tariffs applicable in the investigation period. The benchmark price includes taxes (Tarifa com impostos). No interested party filed comments in this regard.

(g) Manufacturing overhead costs, SG&A, profits and depreciation

- (202) 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

⁴⁹ <https://novoportalcemig.com.br/atendimento/valores-de-tarifas-e-servicos/> last consulted on 21 September 2021.

⁵⁰ <http://www.gasmig.com.br/Institucional/Paginas/Hist%C3%B3rico%20de%20tarifas.aspx> last consulted on 21 September 2021.

needs to be established to cover costs not included in the factors of production referred to above.

- (203) In its First and Second Notes, the Commission indicated that it would use Aperam's financial data and made Aperam's 2019 financial data available in this regard. However, after further analysis and exclusion of non-operating expenses and revenues, it appeared that Aperam was loss making in 2019. Hence, its data for 2019 could not be used.
- (204) Aperam's financial data for calendar year 2020 became available to the Commission in the course of the proceeding. After exclusion of non-operating expenses and revenues, Aperam reported a profit. In line with Eurofer's request to use the 2020 financial statements, the Commission calculated the SG&A and profit percentages on the basis of the Aperam's financial statements for that year. Furthermore, the Commission considered that in the case at hand it was more appropriate to use Aperam's consolidated data than relying on financial statements for the related entities that it controlled. Indeed, the consolidated approach provides a more accurate picture of Aperam's operations and deducts intercompany profits, which are not identifiable in the individual accounts, from its financial results. Also, both Aperam's consolidated and individual accounts do not relate exclusively to the production of GOES. Therefore, the use of the consolidated data does not render the data less accurate. Consequently, the undistorted SG&A and profit were based on Aperam's 2020 financial statements.
- (205) The manufacturing overheads incurred by the cooperating exporting producers were expressed as a share of the costs of manufacturing actually incurred by the exporting producers. This percentage was applied to the undistorted costs of manufacturing.

3.5.1.6. Calculation

- (206) On the basis of the above, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (207) First, the Commission established the undistorted manufacturing costs. The Commission applied the undistorted unit costs to the actual consumption of the individual factors of production of the cooperating exporting producer. These consumption ratios provided by the Baoshan Group were verified during the RCC. As indicated in recital (47) above, further to the RCC, the Commission sent a letter ('the Article 18 letter') to the Baoshan Group indicating its intention to revert to facts available and apply Article 18(1) of the basic Regulation with regard to the calculation of man hours allocated to the manufacturing of GOES. On substance, the Commission considered that the Baoshan Group's labour allocation was not supported by verified and trustworthy evidence. In its comments to the Article 18 letter, the Baoshan Group provided the same supporting evidence as provided during the RCC. Since those documents did not demonstrate how many hours each employee had worked each day, the Commission confirmed its intention and applied facts available with regard to the allocation of man hours to the manufacturing of GOES. In doing so, the Commission recalculated the number of man hours allocated to the manufacturing of GOES by dividing the total labour cost of Baosteel and Wisco by the respective calculated hourly cost per worker for the Silicon steel department of both companies. The calculated man hours reported by Baosteel and WISCO were consequently replaced with the respective values re-calculated by the Commission.

- (208) The Commission multiplied the consumption ratios by the undistorted costs per unit observed in the representative country Brazil, as described in Section 3.5.1.5.
- (209) Second, to arrive at a total undistorted costs of manufacturing, the Commission added manufacturing overheads. Manufacturing overheads incurred by the cooperating exporting producers were increased by the costs of raw materials and consumables referred to in recital (187) and subsequently expressed as a share of the costs of manufacturing actually incurred by each of the exporting producers. This percentage was applied to the undistorted costs of manufacturing
- (210) To the costs of production established as described in the previous recital, the Commission applied SG&A and profit of Aperam. SG&A expressed as a percentage of the Costs of Goods Sold ('COGS') and applied to the undistorted costs of production, amounted to 13,5 %. The profit expressed as a percentage of the COGS and applied to the undistorted costs of production, amounted to 7,6 %.
- (211) On that basis, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (212) Following the Second Note, Eurofer suggested that normal value be calculated on the basis of Chinese export prices to the United States pursuant to Article 2(3) of the basic Regulation.
- (213) As mentioned in recital (154), the Commission concluded that it was not appropriate to use domestic prices and costs to establish normal value in this case. Consequently, the Commission had to construct normal value in accordance with Article 2(6a)(a) of the basic Regulation, which does not foresee the use of export prices to third countries.

3.5.1.7. Export price

- (214) As the Baoshan Group exported the product under review to the Union through several related companies acting as an importer, the export price was established on the basis of the price at which the imported product was first resold to independent customers in the Union, in accordance with Article 2(9) of the basic Regulation. In this case, adjustments to the price were made for all costs incurred between importation and resale, including SG&A expenses, and for profits accruing.

3.5.1.8. Comparison

- (215) The Commission compared the normal value and the export price of the Baoshan Group on an ex-works basis.
- (216) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for sea freight, insurance and credit cost.

3.5.1.9. Dumping margins

- (217) For the Baoshan Group, the sole cooperating exporting producer, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product under review, in accordance with Article 2(11) and (12) of the basic Regulation.
- (218) The comparison as described above showed no dumping.

3.5.2. Likelihood of recurrence of dumping

(219) The Commission investigated in accordance with Article 11(2) of the basic Regulation the likelihood of recurrence of dumping should the measures be repealed. The following elements were analysed: exports to third countries, the production capacity and spare capacity in China, and the attractiveness of the Union market.

(a) Exports to third countries

(220) The Commission found that during the RIP, the Baoshan Group exported very significant quantities of their total export sales to third markets other than the EU, where minimum import prices do not apply.

(221) When comparing the constructed normal value established in accordance with Article 2(6a)(a) of the basic Regulation with the export prices for the largest export sales markets for the group – India and Mexico - accounting for around [35-70 %] of all export sales, the Commission established that the the export prices were 20 % lower than the normal value established for the Baoshan Group.

(222) In the absence of cooperation by other Chinese exporting producers, the Commission had to rely on facts available. In this regard, it used the Chinese export statistics as reported in GTA to assess export prices to third countries. On this basis, the Chinese export statistics reported an average export price from China which was below the lowest MIP applicable in the EU in the review investigation period and thus below the export price of the Baoshan Group.

(223) Therefore, it was considered likely that, if the current measures were to be repealed, the Chinese exporting producers would start selling to the Union at dumped levels.

(b) Production capacity and spare capacity in China

(224) In addition to the Baoshan Group, being the only exporter to the EU, there are at least eight other exporting producers of GOES in China. According to Chinese export statistics as reported in GTA, the other Chinese exporting producers also exported to the rest of the world⁵¹.

(225) The Eurofer's estimates provided in the expiry review request regarding the Baoshan's Group production capacity were very close to the Baoshan Group's actual data. In the absence of cooperation by other exporting producers in China, the Commission had to base its findings on facts available to assess the capacity of the other exporting producers, and relied on the information contained in the expiry review request.

(226) The information contained in the expiry review request estimated the total Chinese capacity at 1 810 000 tonnes, while production was estimated at 1 220 000 tonnes. The Chinese consumption was estimated at 1 020 000 tonnes. On this basis, the spare capacity in China was estimated at 600 000 tonnes, which significantly exceeds the total EU consumption (265 000 – 280 000) in the RIP. In addition, some main markets such as USA are protected by high tariffs of 25 %, which reduces access of the Chinese exporting producers.

(227) On this basis, it is likely that Chinese producers will direct their spare capacities to the Union market in large quantities should the measures lapse and start selling at dumped prices.

(c) Attractiveness of the Union market

⁵¹ Chinese export statistics report export sales of 244,097.56, while the Baoshan Group reported export sales of 203,450.16 in the IP.

- (228) As already found in recital (82) above, the Union market is among the largest markets of GOES worldwide.
- (229) Price levels in the Union are generally significantly higher than the export prices of the Chinese producers to third countries.
- (230) The size of the Union market and the price differentials showed the attractiveness of the Union market.

(d) Conclusion

- (231) On the basis of the above considerations, it was concluded that there was a likelihood of recurrence of dumping should the measures be allowed to lapse.

3.6. Russian Federation

3.6.1. Dumping during the review investigation period

3.6.1.1. Preliminary remarks

- (232) In the absence of cooperation by any Russian exporting producer, as indicated in recital (23), the Commission based its analysis, including the dumping calculation, on facts available pursuant to Article 18 of the basic Regulation.
- (233) Consequently, the likelihood of a continuation or recurrence of dumping was assessed by using the information contained in the expiry review request, combined with other sources of information such as Eurostat and GTA.

3.6.1.2. Dumping

(a) Normal value

- (234) Since reliable data concerning prices on the Russian domestic market was not available, the Commission established a constructed normal value using the methodology and values contained in the expiry review request.

(b) Export price

- (235) The export price to the Union was established on the basis of Eurostat data during the RIP.

(c) Comparison

- (236) The normal value and the export price were compared on an ex-works basis. To this end, delivery and insurance costs were deducted on the basis of information available in the request (202,67 EUR/tonne). The ex-works normal value thus established was 1642 EUR/tonne, while the ex-works export price was 797,5 EUR/tonne during the RIP.

(d) Dumping

- (237) On the basis of the above, the Commission established a price difference of around 80 % and concluded that dumping continued during the review investigation period.
- (238) Following disclosure, the Russian Government claimed that the level of the dumping margin found was questionable in view of its high level and that the Commission should have checked the information concerning normal value supplied in the expiry review request with special circumspection. It also added that, when using secondary information, the Commission should have checked such information against other independent sources in line with paragraph 7 of Annex II “Best information available

in terms of paragraph 8 of article 6” to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (‘ADA’).

- (239) The Commission considered that the information provided in the expiry review request concerning normal value for Russian exporting producers was sufficiently accurate and adequate. In addition, no interested party provided comments concerning the information provided in the expiry review request. Finally, no Russian exporting producer provided any relevant data related to the establishment of the normal value. Also, no other independent sources have been provided either by the Russian Government or any interested party. In these circumstances, and in the absence of any other data source, the Commission considered that it had relied on the best information available to it regarding normal value. Finally, paragraph 8 of Annex II to the ADA also foresees that if an interested party does not cooperate and thus relevant information is being withheld from the authorities, such situation could lead to a result which is less favourable than if the party had cooperated fully. On this basis, this claim was rejected.

3.6.2. Likelihood of continuation of dumping should measures be repealed

- (240) The Commission analysed whether dumping was likely to continue if the current anti-dumping measures would be allowed to expire. When doing so, it looked into production and spare capacity in Russia and the attractiveness of the Union market. In the absence of cooperation by Russian producers, the Commission had to rely on facts available.

(a) Spare capacity

- (241) According to the facts available included in the request for review, Russia has an estimated production capacity of around 332 000 tonnes. The Commission estimated Russian production at 274 000 tonnes. Therefore, the spare production capacity was established at around 58 000 tonnes, representing more than [16 – 22] % of the Union consumption of GOES.
- (242) Even if the Commission used the information submitted by NLMK in its submission of 11 December 2020, the spare production capacity would still amount to [20 000 - 50 000] tonnes and represent around [7 – 19] % of the Union consumption. In this regard, NLMK did not provide supporting evidence regarding its production capacity. In addition, for some past years, the production was higher than the capacity which casts doubts on the actual production capacity reported by NLMK in its submission.
- (243) Following disclosure, NLMK submitted that the Commission should have verified and relied on the information that it had submitted in due course regarding Russian capacity, production and capacity utilisation and that such verification would have allowed the Commission to clarify the doubts raised in recital (242).
- (244) As mentioned in recital (23), NLMK indicated itself, in its submission of 10 December 2020, that it was forced to stop working on the reply to the questionnaire and did not provide a full questionnaire reply by the extended deadline, but only fragmentary information limited to its specific capacity and production.
- (245) In the case at hand, the Commission considered that the information provided by NLMK was too fragmentary to draw meaningful conclusions. In any case, as mentioned in recital (242), the Commission took account of the information provided by NLMK in this regard and came to a similar conclusion as far as the existence of spare capacity is concerned. On this basis, this claim was rejected.

(b) Attractiveness of the Union market

- (246) The investigation confirmed that the Union market is attractive for Russian producers for the following reasons:
- (247) First, the Union market is among the largest ones in the world.
- (248) Second, in terms of prices, as shown in recital (271) below, the average price level of Russian imports on the Union market is below that of the Union producers, and therefore exports are likely to continue to increase should measures be repealed.
- (249) Third, a large part of the production in Russia is directed for exports (more than 86% of the production is destined for exports), while domestic consumption is almost fully satisfied by the producers in Russia.
- (250) In its submission of 11 December 2021, NLMK claimed that the EU is not a priority market as imports have decreased significantly since the original investigation. The Commission noted that, even if NLMK's exports to the EU have decreased since the original investigation, they still account for a significant share of the EU consumption and have increased over the period considered as can be observed in Table 3 below. Therefore, contrary to the claim made by NLMK, the Union market remains an important destination market for exports from Russia.
- (251) Following disclosure, NLMK alleged that the Commission's assumption that a certain market is attractive merely for its large size is flawed and misplaced. In this respect, NLMK referred also to the fact that the Union market did not attract substantial extra imports from non-targeted third countries, even though those countries had advantageous market access compared to the exporters from the countries concerned. It also alleged that the argument regarding the low price level of Russian imports is flawed because average prices of Russian and Union producers are not comparable due to the fact that the product types sold by the respective parties are not in direct competition with each other. In addition, following disclosure, the Russian Government stated that it disagreed with the Commission that the Union market is an attractive market for the Russian exporting producers for the following reasons: Russian exporting producers are focusing on their domestic market, and their exports have been mainly reoriented to Asian countries. In addition, they claimed that the existence of anti-dumping measures distorted the assessment of the import prices to the Union.
- (252) The Commission disagreed with these claims. The size of a market is a tangible aspect when assessing its attractiveness as large volumes can be sold and economies of scale can be made in terms of production, marketing and sales related expenses. Furthermore, imports originating in Russia increased both in volumes and market share during the review investigation period, irrespective of whether the focus of the Russian exporting producers is reoriented to the Russian domestic and / or Asian markets. This showed that the Union market continued to be very attractive to Russian exporting producers. Furthermore, as mentioned in recital (277), the decrease in imports from other third countries was mainly due to the fact that the sole GOES producer in the UK permanently shut down its operations in November 2019.
- (253) In addition, the allegation of NLMK that the Commission's argument of the low price levels is flawed was not accepted for the reasons described in the previous recital. Moreover, as explained in recital (272) below, the imports from Russia were on average made at prices which were about 30 % lower than the applicable MIP (1 536 EUR/tonne) and about 23 % lower than the prices of the Union industry in the RIP for

comparable product types. In this respect, even taking into account the existence of the anti-dumping measures, the Russian import prices give a good indication of the export price behaviour of the Russian exporting producers to the Union and of their likely price level in the absence of measures.

(c) Conclusion on the likelihood of continuation of dumping

- (254) Based on the above, the Commission concluded that dumping would be likely to continue in the future should measures be allowed to lapse. Considering the large spare capacity in Russia, the dumped price levels of GOES to the Union during the RIP, together with the attractiveness of the Union market, the Commission concluded that significant quantities of GOES from Russia would likely continue entering the Union market at dumped price levels, should measures be allowed to lapse.

4. INJURY

4.1. Definition of the Union industry and Union production

- (255) Within the Union, four companies produce the product under review. Based on the available information from the request, there are no other Union producers of the product under review in the Union. Therefore, they constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

- (256) The total Union production during the review investigation period was established at around 249 000 tonnes. The Commission established the figure on the basis of information concerning the Union industry from all known producers in the Union.

4.2. The four known Union producers represent 100 % of the total Union production of the like product. Union consumption

- (257) The Commission established the Union consumption on the basis of the sales on the Union market of all known producers in the Union and the imports from all third countries as reported by Eurostat (Comext database).

- (258) With respect to Japan, a portion of the imports of the product under review into the Netherlands were kept confidential during the period considered.⁵² For this reason, ranges are provided in the table below concerning Union consumption and in the other relevant tables which are related to import volumes and values.

- (259) Union consumption developed as follows:

Table 2 — Union consumption (tonnes)				
	2017	2018	2019	Review Investigation period
Total Union consumption	300 000 – 315 000	277 000 -292 000	298 000 – 313 000	265 000 -280 000
Index	100	93	99	89
Source: Verified questionnaire replies, information contained in the request, Eurostat				

⁵²

This was the result of a special request by a Dutch company to keep its data confidential.

and from Eurofer.

(260) The Union consumption fluctuated during the period considered, and ranged between 265 000 – 280 000 tonnes during the review investigation period and 300 000 - 315 000 tonnes in 2017. Overall, the Union consumption decreased by 11 % between 2017 and the review investigation period although there was a temporary peak in 2019. The drop in consumption is due to a combination of factors such as less imports and less sales by the Union producers during the review investigation period due to a lower demand of GOES.

(261) Following disclosure, the applicant made reference to the extensive use of inward processing schemes by Union importers and the increase of imports of steel laminations and cores through Turkey, both tending to understate the actual foreign-produced GOES being consumed in the Union. The Commission confirmed that, on the one hand, all GOES that was imported through inward processing schemes was taken into account for the calculation of the consumption data. On the other hand, the Commission noted that steel laminations and cores fall outside the scope of the anti-dumping measures and were therefore not investigated.

4.3. Imports from the countries concerned

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

(262) The Commission established the volume of imports on the basis of Eurostat (Comext database). The market share of the imports was established based on the Union consumption, as set out in recital (257) above.

(263) Imports from the countries concerned and their market share developed as follows:

Table 3 — Import volume (tonnes) and market share				
	2017	2018	2019	Review Investigation period
Volume of imports from the countries concerned	86 000 – 101 000	64 000 - 79 000	76 000 – 91 000	70 000 – 85 000
Index	100	80	90	83
Market share of imports from the countries concerned	27,5 %-34,2 %	22,7 %-29,7%	24,1 %-31,3 %	26,5 %-34,0 %
Index	100	87	93	97
Source: Eurostat				

(264) Measures were imposed in 2015. Imports of the product under review from the countries concerned decreased by 17 % during the period considered. However, their

market share only decreased slightly (from 27,5 % - 34,2 % in 2017 to 26,5 % - 34,0 % in the review investigation period) given the parallel decrease in consumption on the Union market.

- (265) Of the countries concerned, only imports from the Republic of Korea and the Russian Federation increased between 2017 and the review investigation period and gained one and two percentage point(s) of market share respectively.

4.3.2. Prices of the imports from the countries concerned

4.3.2.1. Prices

- (266) The Commission established the average prices of imports on the basis of Eurostat statistics.

- (267) The weighted average price of imports from the countries concerned developed as follows:

Table 4 —Import prices (EUR/tonne)				
	2017	2018	2019	Review Investigation period
PRC	2 081	1 994	2 036	1 985
Index	100	96	98	95
Japan	2 167	2 184	2 168	2 140
Index	100	100	100	99
Korea	2 032	2 051	2 022	1 996
Index	100	101	100	98
Russia	1 119	1 205	1 074	1 000
Index	100	108	96	89
USA	2 080	2 057	2 047	2 047
Index	100	99	98	98
Average price of imports (per tonne)	1 865	1 871	1 742	1 718
Index	100	100	93	92
Source: Eurostat and cooperating exporting producers				

- (268) A decrease of the average price was observed between 2017 and the review investigation period for the imports from the countries concerned for all types of GOES, whether conventional or high permeability products. The imports from the

Russian Federation concerned conventional types of GOES, whereas the imports from the four other countries are imports of high permeability GOES products.

- (269) The average prices of the imports decreased from 1 865 EUR/tonne in 2017 to 1 718 EUR/tonne during the review investigation period. During the period considered, the decrease of the average price of the imports was around 7,6 %.

4.3.2.2. Price undercutting

- (270) There was no cooperation from any producer in the Republic of Korea, the Russian Federation and the USA, whereas there was cooperation from one Chinese and one Japanese exporting producer.
- (271) For all imports from the countries concerned apart from Russia, the import prices to the Union were significantly affected by the set-up of the measures in the form of the three MIPs for the reasons explained in recital (2). As mentioned in recital (3), no duty is payable, if the CIF Union border price is equal to or above the MIP. Import prices from the countries concerned, apart from Russia, were in almost all cases equal or just above the MIP throughout the period considered and much higher than the prices of the Union Industry in the RIP. No undercutting was found in respect to the countries concerned apart from Russia.
- (272) For Russia, due to the absence of cooperation from any Russian exporting producer, the Commission compared the average import CIF prices from Russia, based on Eurostat, adjusted for post importation costs (65 EUR/tonne) to the average sales prices of the Union industry for comparable product types. The imports from Russia were on average made at prices which were about 30 % lower than the applicable MIP (1 536 EUR/tonne) and about 23 % lower than the applicable prices of the Union industry in the RIP.
- (273) Following disclosure, Nippon Steel claimed that the Commission should recalculate the undercutting and underselling margin for the following reasons: First, these margins, which included an adjustment under Article 2(9) of the basic Regulation, were made in the original investigation in violation of Articles 3(1), 3(2), 3(3) and 3(6) of the basic Regulation. Second, these margins were not calculated in compliance with the EU Court's case law.
- (274) The Commission rejected this claim. The Commission found no undercutting in respect of Japan during the review investigation period. (see recital (271)). Hence, Nippon Steel's request to recalculate the undercutting margin as established in the original investigation was without object. Furthermore, as an expiry review does not change the level of the duties, a revision of the originally established injury margin was also without object. Moreover, for the analysis of price effects should the measures be allowed to lapse as laid down in recital (336), the Commission determined the likely future price levels of imports to the Union based on the Japanese export prices to third countries for which no adjustment under Article 2(9) of the basic Regulation were, or could have been, made.

4.4. Imports from other third countries

- (275) During the review investigation period, imports from other third countries amounted to [19 000 – 25 000] or [7 % - 10,5 %] of the Union consumption. The main imports of GOES, from other countries than the countries concerned, came from Brazil and the United Kingdom.

(276) The volume of imports as well as the market share and price trends for imports of GOES from other third countries developed as follows:

Table 5 — Imports from third countries (tonnes)					
Total of all third countries except the countries concerned		2017	2018	2019	Review Investigation period
	Volume (tonnes)	30 000-36 000	30 000-36 000	34 000- 40 000	19 000 – 25 000
	Index	100	101	117	62
	Market share	10,2 %-13,5 %	10,5 %-13,8%	12,7 %-16,0%	7,0 %-10,5%
	Average price (EUR/tonne)	1 409	1 217	1 260	1 294
	Index	100	86	89	92
Source: Eurostat					

- (277) Imports of the product under review from the United Kingdom halved between 2017 and the review investigation period, going from about 25 000 – 35 000 tonnes to 10 000 – 20 000 tonnes. This decrease was due to the fact that the sole GOES producer in the UK permanently shut down its operations in November 2019.
- (278) On the other hand, imports of the product under review from Brazil increased substantially during the period considered. However, the Brazilian market share remained low, i.e. below 2 %, during the review investigation period.
- (279) The total imports from third countries, except the countries concerned, decreased by 38 % between 2017 and the review investigation period to reach 7,0 % - 10,5 % market share in the review investigation period compared to 10,2 % - 13,5 % in 2017.
- (280) As far as price levels are concerned, the situation is different from one country to another, depending whether conventional or high permeability products are sold on the Union market.
- (281) Nevertheless, the average sales prices of imports from third countries decreased during the period considered. This trend is consistent with the trend observed for imports from the countries concerned in Table 5 above and the price trend observed for sales of Union industry on the Union market in Table 9 below.

4.5. Economic situation of the Union industry

4.5.1. General remarks

- (282) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the 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.
- (283) For the injury determination, the Commission did not make a distinction between macroeconomic and microeconomic injury indicators since all four known Union producers constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation. The Commission evaluated the injury indicators on the basis of data contained in the questionnaire replies from the cooperating Union producers.
- (284) The four cooperating Union producers belong to two corporate Groups. For this reason, the Commission considered whether there was a need to provide the submitted information in ranges with the aim not to reveal confidential business information, but concluded that the aggregated data were not such as to reveal confidential information. Therefore, no ranges are provided with respect to the injury indicators.

4.5.2. Production, production capacity and capacity utilisation

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

Table 6— Production, production capacity and capacity utilisation				
	2017	2018	2019	Review Investigation period
Production volume (tonnes)	294 301	280 685	279 625	248 865
Index	100	95	95	85
Production capacity (tonnes)	351 000	351 000	331 000	331 000
Index	100	100	94	94
Capacity utilisation	84 %	80 %	84 %	75 %
Index	100	95	101	90
Source: Verified questionnaire replies				

- (286) During the period considered, the Union industry's production volume decreased by 15 %. Apart from the lower demand during the period considered, as explained in recital (260), the significant decrease of the production volume during the review investigation period was also the result of:
- A production stoppage at the production site of a Union producer between December 2019 and February 2020, and;

- The effect of Covid-19, which resulted in less production, in particular during the second quarter of 2020.

- (287) The reported capacity figures refer to technical capacity, which implies that adjustments, considered as standards by the industry, for set-up time, maintenance, bottle necks and other normal stoppages were taken into consideration. The capacity slightly decreased during the period considered. Two out of the four Union producers invested during the period considered to modernise their existing production equipment with a view to producing proportionally more high permeability types than conventional types. As a result of these investments, the Union producers were able, mainly from 2019 onwards, to produce proportionally more high permeability types of GOES which are characterised by a lower thickness, resulting in a lower production capacity in tonnage over the period considered.
- (288) The decrease in capacity utilisation rate during the review investigation period despite a decrease in the production capacity was due to the strong fall in the production volume during the review investigation period, as explained in recital (286) above. The decrease was almost 10 percentage points during the period considered.

4.5.3. Sales volume and market share

- (289) 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	Review Investigation period
Total sales volume on the Union market to unrelated customers (tonnes)	175 000–190 000	174 000–191 000	176 000–191 000	170 000–185 000
Index	100	98	101	96
Market share	55,9 %-62,6 %	60,0 %-66,5 %	56,9 %-63,5 %	61,0 %-66,8 %
Index	100	106	102	108
Source: Verified questionnaire replies and Eurostat.				

- (290) Sales volumes of the Union industry to unrelated customers in the Union remained stable during the period 2017-2019, but decreased slightly in the review investigation period. The decrease of the sales volumes followed the decreasing trend of the production volume during the review investigation period for the same reasons as explained in recital (286). The production volume decreased though more significantly - 15 percentage points between 2017 and the review investigation period - than the decrease in sales volumes of the Union producers.

- (291) Nevertheless, during the period considered, the Union industry's market share slightly increased from 55,9 %-62,6 % to 61,0 %-66,8 % as a result of the fact that the decrease of consumption exceeded the decrease of Union industry's sales volume.
- (292) Another reason for this increase of market share of the Union industry is the measures in place, combined with disrupted international trade and supply chains in the first half of 2020 as a result of the impact of the Covid-19 pandemic.

4.5.4. Growth

- (293) During the period considered, the Union consumption decreased by 11 %, whereas the volume of sales to unrelated customers in the Union decreased by 4 %. Consequently, despite the increase in market share, there was no growth for the Union industry during the period considered.

4.5.5. Employment and productivity

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

Table 8 — Employment and productivity				
	2017	2018	2019	Review Investigation period
Number of employees	2 273	2 309	2 302	2 256
Index	100	102	101	99
Productivity (tonnes/employee)	129,48	121,56	121,47	110,31
Index	100	94	94	85
Source: Verified questionnaire replies				

- (295) The number of employees of the Union industry engaged in the production of the product under review remained stable during the period 2017-2019, but decreased slightly during the review investigation period.
- (296) The productivity of the Union industry's workforce, measured as output (tonnes) per employee, decreased significantly during the review investigation period. This can be explained as the combined effect of:
- A production stoppage at the production site of one main Union producer, leading to the lower production from December 2019 to February 2020, and;
 - Less production by the four Union producers during the second quarter of 2020, as a result of the Covid-19 pandemic.

4.5.6. Magnitude of the dumping margin and recovery from past dumping

- (297) As explained in recital (44), there was no co-operation from exporting producers from Russia, Korea, and the USA. Only one Chinese and one Japanese exporting producer co-operated fully during this proceeding.

- (298) Nevertheless, despite the fact that the import prices to the Union were significantly affected by the current set-up of the measures in the form of the three MIPs, dumping was found concerning imports from Japan (see recital (70)), the USA (see recital (111)) and Russia (see recital (237)) during the review investigation period. No dumping was found for imports from China and Korea.
- (299) The injury indicators show that, notwithstanding the anti-dumping measures in force since 2015, which resulted in some relief and improved performance initially, the economic situation of the Union industry remained fragile and injurious. Thus, no recovery from the past dumping could be established.

4.5.7. Prices and factors affecting prices

- (300) 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	Review Investigation period
Average unit sales price in the Union on the total market (EUR/tonnes)	1 452	1 492	1 501	1 427
Index	100	103	103	98
Unit cost of production (EUR/tonnes)	1 468	1 617	1 647	1 714
Index	100	110	112	117
Source: Verified questionnaire replies				

- (301) The table above shows that the Union unit sales prices decreased slightly during the review investigation period, compared to the previous years. This was mainly the combined effect of:
- The price pressure on the Union market, as also demonstrated by the decrease in import prices of the product under review, which also dropped during the review investigation period, in particular with respect to the GOES imported from Russia, which are characterised by relatively high core losses;
 - Substantial production trials by one main Union producer during the review investigation period in order to improve its production process, whereby a large portion of GOES types were produced, which had to be sold at lower average unit prices.
- (302) The table above also shows the evolution of the cost of production. The production stoppage at one main Union producer and less production (see recital (296)) led to an

increased fixed cost for each produced tonne of the product under review during the review investigation period. The combination of the increase of the cost of production and the slight decrease of the Union industry sales prices led to significant losses for the Union producers.

4.5.8. Labour costs

- (303) 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	Review Investigation period
Average labour costs per employee (EUR)	42 375	43 384	47 219	46 362
Index	100	102	111	109
Source: Verified questionnaire replies				

- (304) Between 2016 and the review investigation period the average labour cost per employee increased by 8,5 %. The impact of this variation is rather minor, given that labour cost represent only about 15 % of the total cost of manufacturing during the review investigation period.

4.5.9. Inventories

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

Table 11 — Inventories				
	2017	2018	2019	Review Investigation period
Closing stocks (tonnes)	21 803	19 308	24 768	16 370
Index	100	89	114	75
Closing stocks as a percentage of production	7,5 %	6,9 %	9 %	6,6 %
Index	100	88	125	88
Source: Verified questionnaire replies				

- (306) During the period considered, the level of closing stocks oscillated but overall decreased as a percentage of production. Most types of the like product are produced by the Union industry based on specific orders of the users. Therefore, stocks cannot be considered to be an important injury indicator for the industry.

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

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

Table 12 — Profitability, cash flow, investments and return on investments				
	2017	2018	2019	Review Investigation period
Profitability (Loss) of sales in the Union to unrelated customers (% of sales turnover)	- 2,1 %	-8,4 %	-11,7 %	-18,6 %
Index	-100	-395	-548	-874
Cash flow (EUR)	26 938 994	-9 640 666	22 630 604	27 476 286
Index	100	-36	84	102
Investments (EUR)	21 144 151	24 000 854	38 265 803	27 991 903
Index	100	114	181	132
Return on investments	-1,7 %	-3,1 %	-10,2 %	-14,4 %
Index	-100	-183	-607	-860
Source: Verified questionnaire replies				

- (308) The Commission established the profitability of the Union producers by expressing the pre-tax net loss of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales.
- (309) The imposition of the measures in 2015 had a positive effect on the profitability of the Union industry, in particular in the year 2017 when the Union industry started to recover. The losses incurred in 2017 by the Union producers were still relatively modest, i.e. 2,1 %. The losses incurred during respectively 2013 and the the investigation period of the initial investigation, covering the period from 1 July 2013 to 30 June 2014, the two periods just before the imposition of the initial measures in

2015, amounted to -26,6 % and -22,3 %. These were much higher than the loss incurred in 2017 (-2,1 %). However, the economic situation started further deteriorating thereafter⁵³, to the extent that the losses reached -18,6 % in the review investigation period.

- (310) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow did not follow a similar downward trend as the profitability and was positive. This positive cash flow can be mainly explained by the existence of two important contracts which were in place at one Union producer, which was incurring losses:
- A profit/loss transfer agreement concluded with its parent company, meaning that its incurred losses were absorbed by its parent company, and;
 - A factoring agreement concluded with an external service provider, leading to cashing in more quickly its outstanding receivables in return of a yearly payable factoring fee.
- (311) Despite the losses incurred during the period considered, investments remained above EUR 21 million in all years of the period considered. These investments were mostly related to upgrade the machinery to produce high permeability types of the product under review.
- (312) The return on investments is in principle the profit in percentage of the net book value of investments. Due to the incurred losses, the return on investments was negative during the period considered. In fact, it followed the same downward trend as the profitability.
- (313) The ability to raise capital is the ability to raise money to invest, expand, or reform. Taking into account the incurred losses during the review investigation period, debt or equity financing are essential for the Union producers to be able to continue to invest. For instance, as laid down in recital (310), a Union producer concluded a profit/loss transfer agreement with its parent company, meaning that its incurred losses were absorbed by its parent company, and enabled the company to further do the necessary investments, mainly in machinery to produce high permeability types of the product under review.

4.6. Conclusion on injury

- (314) As laid down in recital (309), the imposition of the measures in 2015 initially had a positive effect on the economic situation of the Union industry, in particular in 2017 when the Union industry started to recover.
- (315) Nevertheless, the economic situation started constantly deteriorating again thereafter, to the extent that losses reached -18,6 % in the review investigation period.
- (316) Sales volumes on the Union market decreased by 4 %, combined with a slight decrease in sales unit prices by 2 %. The production decreased by 15 %, and the production capacity utilisation went down by 10 %. Against a background of an increasing cost of production, losses reached a level which is not sustainable.

⁵³

The losses incurred in 2018 and 2019 (respectively -8,4 % and -11,7 %) were again about 4x and 5x higher than the loss in 2017 (-2,1 %).

- (317) Due to the losses incurred during the period considered as a result of the factors described above, the other indicators such as return on investment followed the same downward trend as the profitability indicator.
- (318) Following disclosure, NLMK alleged that the injurious situation of the Union industry was due to structural problems and had nothing to do with imports from the countries concerned. NLMK referred to the correlation between the level of losses and the increased production costs, and to the deteriorating performance of the Union producers, including the stoppage at one main Union producer leading to an increased fixed cost per unit of product. In addition, following disclosure, the Russian Government alleged that the decrease in consumption was the main problem for the Union industry, which, according to the Russian Government, was in a stable situation, as indicated by its number of employees and the increase in investments.
- (319) Following disclosure, Nippon Steel commented that each injury indicator can be explained by reasons other than imports of GOES from the countries concerned. For instance, it alleged that the losses of – 18,6 % can be explained by the 32% increase in investment expenditure, whereas the 4 % decline in sales volume can be the result of the 11 % contraction of Union consumption and also the reduction in Union production.
- (320) The Commission rejected these comments of NLMK and Nippon Steel for the following reasons. First, the Commission did not argue that the injurious situation in the review investigation period was caused, or was only caused, by imports from the countries concerned. As set out in recitals (330) and (331), the Commission also considered other factors potentially causing injury as identified by interested parties, but concluded that these other factors were of a temporary nature. Second, as outlined in general in section 5 below and in particular in recital (361), given the past and current injurious situation of the Union industry, the absence of measures would in all likelihood result in a significant increase of dumped imports from the countries concerned at injurious prices, leading to even higher losses for the Union producers. Third, in the analysis of the situation of the Union industry all injury indicators were considered, on the basis of which the Commission came to the conclusion that the Union industry suffered material injury, as laid down in recital (321). Fourth, these comments were not sufficiently substantiated. Finally, the Commission made not only a comprehensive analysis of the injury suffered by the Union industry (section 4), but also a comprehensive analysis of other causes of injury and of what would happen in the absence of any measures (section 5). As explained in recital (361), the Commission concluded that in view of the past and current injurious situation of the Union industry, the absence of measures would in all likelihood result in a significant increase of dumped imports from the countries concerned at injurious prices, leading to even higher losses for the Union producers.
- (321) On the basis of the above, the Commission concluded that the Union industry suffered material injury, as shown by all main injury indicators within the meaning of Article 3(5) of the basic Regulation.

5. LIKELIHOOD OF CONTINUATION AND/OR RECURRENCE OF INJURY IF THE MEASURES WERE REPEALED

- (322) As mentioned in recital (271) the import prices to the Union were significantly affected by the set-up of the measures in the form of the three MIPs. Overall, GOES from China, Japan, Korea, and the USA were imported at prices equal to or above the MIPs and considerably above the sales price and cost of production of the Union

industry and hence at a non-injurious prices. On the other hand, imports from Russia were on average made at prices significantly below the sales price and cost of production of the Union industry and thus at an injurious price level. Indeed, the average Russian import price was found to be more than 20 % below the average Union industry prices for comparable products during the review investigation period.

- (323) Following disclosure, NLMK argued that the GOES types originating in Russia were not in direct competition with the product types mainly produced in the EU and that the low prices of Russian imports reflected their lower quality and their limited applications. It argued that the maintained import volumes of the GOES types originating in Russia merely respond to a still existing but fading demand for lower quality types of GOES.
- (324) The allegation that the Russian imported GOES types were not in direct competition with the product types mainly produced in the EU were, however not supported by the facts of the investigation. First, in the IP there was still competition between imports from Russia and the types produced by Union producers, in particular by two out of the four Union producers, which also produced lower quality types of GOES. Second, the Commission recalls that it has set the three MIPs for three different product categories, based on maximum core loss, which is an objective non-discriminatory criterion covering all different product types of GOES, including the ones imported from Russia. Third, the Russian imported GOES types are part of the product scope, were sold and can still be used on the Union market, even though it is likely that the entry into force of Tier 2 will lead to an increase of demand of the high permeability types of the product under review (see recital (401)) and to a decrease of demand of the types produced by Russian exporting producers.
- (325) Concerning these other factors, the Covid-19 pandemic led to a delay in orders and caused a contraction of demand in the Union during the period considered, followed by declining sales prices. Therefore, the Covid-19 pandemic also impacted negatively the economic situation of the Union industry.
- (326) In addition, the global downturn in the steel industry caused a contraction of the steel demand and steel consumption in the Union during the period considered, followed by declining sales prices.
- (327) Also, export sales (in volume) of the Union producers to unrelated customers decreased by 35 %-38 % over the period considered, from 100 000 – 115 000 tonnes in 2017 to 60 000-75 000 tonnes during the review investigation period. The Union producers became more selective and could increase slightly their export price over the period considered, though.
- (328) Interested parties alleged that the Union producers were not sufficiently efficient due to increased costs and investments. One interested party also argued that the Union producers were prevented from completing certain restructuring plans, in particular because the Commission prohibited the merger between Tata Steel and ThyssenKrupp. These allegations were however not substantiated. Moreover, if the Union industry would not have been able to make these investments, the Union industry would not have been able to continue competing with the exporting producers of the countries concerned, which are mainly importing high permeability types of GOES to the Union. This would have led to an unsustainable situation, which would put into question the survival of the four Union producers. Accordingly, the increased investment costs were necessary for the Union industry to remain competitive, and viable.

- (329) Interested parties also alleged that the volume of imports from other third countries was also contributing to the material injury suffered by the Union industry. In this respect, the Commission referred to recitals (275) to (281) of this Regulation and recalled that the total imports from third countries other than the countries concerned decreased by 38 % between 2017 and the review investigation period to reach 7 %-10,5 % market share in the review investigation period compared to 10,2 %-13,5 % in 2017. Therefore, there are no indications suggesting that other imports caused injury to the Union industry.
- (330) The other factors, as set out above, are considered to be of a temporary nature and the situation of the Union industry was already looking more promising again at the end of the review investigation period, in view of the expected higher demand for GOES in the near future as well as the ability of the Union industry to increasingly produce high permeability product types of the product under review.
- (331) Against this background, the Commission assessed, in accordance with Article 11(2) of the basic Regulation, whether there would be a likelihood of continuation of injury caused by the continued dumped imports from Russia and a likelihood of recurrence of injury caused by imports from the other countries concerned if the measures were allowed to lapse absent those temporary and exceptional circumstances. 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.
- 5.1. The spare capacity in the countries concerned and the attractiveness of the Union market
- (332) As already described in recitals (82), (101), (113), (226) and (241), the quantities that could be exported by exporting producers from the countries concerned are significant compared to the size of the Union market. Indeed, the spare capacities represent more than three times the total Union consumption⁵⁴ during the review investigation period. In addition, exporting producers in China, Russia and Japan have a domestic market share of 97 % to 100 %, whereas USA and Korean exporting producers have a domestic market share of 83 % to 86 %. As a result, any available spare capacity of the exporting producers cannot be further absorbed on their respective domestic markets since these markets are already to a very large extent satisfied by the domestic production of the exporting producers. Moreover, the Chinese and USA markets are protected by trade measures.
- (333) In view of the above, it is likely that the exporting producers from all the countries concerned will again start selling high volumes on the Union market if the measures were to lapse.
- 5.2. Price levels of imports from the countries concerned should the measures lapse
- (334) As mentioned in recitals (271) and (322), the imports from China, Japan, Korea and the USA were made at a price level equal to, or above, the relevant MIP, and above the sales price and cost of production of the Union industry. Imports from Russia which were made at prices significantly below the relevant MIP (1 536 EUR/tonne)

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The spare capacity (capacity – actual production) in the PRC is more than twice the total Union consumption during the review investigation period, while the sole cooperating Russian exporting producer has a nominal production capacity that is similar the total Union consumption.

and thus appeared largely unaffected by it, and also at prices below the sales price and cost of production of the Union industry. The Commission therefore considered that the MIP had a significant impact on the pricing behavior of exporting producers from the former four countries and that their actual import prices could not be used as a reliable proxy for the likely future prices should measures be allowed to lapse.

- (335) Under these circumstances, for the GOES from these four countries (China, Japan, Korea, and the USA)⁵⁵, the Commission examined also the current pricing behaviour of their exporting producers on their third country export markets to assess the likely price levels of imports to the Union, should the measures lapse.
- (336) For this purpose, for the co-operating producers in China and Japan, the Commission determined the likely price levels of imports to the Union by comparing, for the product types with a maximum core loss not higher than 0,9W/kg:
- The MIP (2.043 euro EUR/tonne); and
 - The corresponding weighted average sales prices for the same product category produced by these co-operating producers in China and Japan, and sold to the rest of the world established on a CIF basis, with appropriate adjustments for any difference in transport cost for export sales from Japan to the Union on the one hand, and from Japan to the third countries. The Commission used the tables covering the export sales to unrelated customers in third countries which were submitted by the two Japanese exporting producers and its two related traders, and by the sole co-operating exporting Chinese producer to calculate the weighted average sales prices to their unrelated customers sold in the rest of the world. To take into account any possible difference in transport cost when exporting to third countries compared to exporting to the Union, the Commission added 65 EUR/tonne to the corresponding weighted average sales prices for the same product category produced by these co-operating producers in China and Japan. This addition of 65 EUR/tonne is considered to be conservative, since the main third markets of Japanese and Chinese exporting producers (such as India, Thailand and Taiwan) are overall located closer to Japan than to the Union.
- (337) On this basis, it was established that the Japanese and Chinese exporting producers exported to their main third country export markets at prices which were around 10 % lower as compared to the corresponding MIP.
- (338) Moreover, the Commission compared the weighted average Union sales prices for the highest quality types of GOES (GOES types with a maximum core loss not higher than 0,9 W/kg, which represent the majority of imports – compared to the other two different product categories of GOES, as explained in recital (2) - from the co-operating Chinese and Japanese exporting producers on the Union market) to the corresponding weighted average sales prices for the same product category produced by these co-operating producers in China and Japan, and sold to the rest of the world

⁵⁵ As described in recitals (99) and (222), the Commission recalled that it examined the current pricing behaviour of the exporting producers from Korea and China by comparing their prices in the domestic market with their sales prices to third countries. For instance, during the review investigation period, the Commission noted that their average ex-works export prices to third countries were lower than the lowest MIP applicable in the EU in the same period (Korea and China).

established on a CIF basis, with appropriate adjustments for customs duties and post-importation costs.

- (339) It was established that the Chinese and Japanese exporting producers exported to their main third country export markets at prices which were about 3 % higher as compared to the corresponding selling prices by the Union producers.
- (340) In this context, it should nevertheless be recalled that the Union producers already sold below their cost of production during the whole period considered (see table 9, recital (300)), which led to significant losses and an already injurious situation during the review investigation period. Similar prices by Japanese and Chinese exporting producers on the Union market as they apply to their third markets for their highest quality types of GOES would further aggravate the injurious situation of the Union industry, should the measures lapse.
- (341) Following disclosure, Nippon Steel alleged that the Commission's analysis of likely price levels for imports of GOES from Japan in the absence of measures was unsubstantiated. First, the import price from Japan has been consistently and significantly above the highest MIP and therefore, the Commission should have substantiated the reasons why Japan's actual import prices cannot be used to determine the likely prices Japan would charge, should the measures lapse. It also asked the Commission to substantiate its comparison of Japan's export prices to third country markets with their respective MIPs and the export prices of the Union prices. Finally, Nippon Steel alleged that its sales prices to India were higher than in the Union, when comparing its sales of matching product types to India and the Union respectively.
- (342) The Commission acknowledged that the import prices to the Union from Japan were consistently higher than the highest MIP during the review investigation period, as shown in table 4, recital (267).
- (343) Nevertheless, the Commission rejected Nippon Steel's claim that it should have used Japan's actual import prices to the Union to determine the likely prices Japan would charge, should the measures lapse. As explained in recital (334), the MIP had a significant impact on the pricing behavior of exporting producers from four countries concerned, including Japan, that were mainly exporting high quality types of GOES and therefore their import prices to the Union could not be used as a reliable proxy for the likely future prices should measures be allowed to lapse. In the case of Japan, this was shown by the fact that, on average, their export prices to third countries were significantly lower than those to the Union.
- (344) Concerning the substantiation of its comparison of Japan's export prices to third country markets with their respective MIPs and their export prices to the Union, the Commission explained its approach and the reasons for it in recital (336) above. In addition, the claim that Nippon Steel's sales prices were higher in India than those to the Union was flawed since the sales data were based on transactions between Nippon Steel and its related Indian and European traders, which was not considered a reliable basis for any comparison to draw conclusions on the final price levels to their first independent customers. Furthermore, for the two Japanese exporting producers, it should be noted that the comparison of the MIP and the Japanese average sales prices to third countries, as described in recital (336), was based on information provided by both Japanese exporting producers and covered all their unrelated export sales to all their third countries.

- (345) As there was no cooperation from Korean and USA producers, the likely price level to the Union was estimated by comparing the current Korean and USA export prices to third countries, based on the relevant country specific GTA import statistics and the average MIP.
- (346) It was established that, for the non-cooperating Korean and USA producers, their export prices to third countries were respectively 20 % and 15 % lower compared to the average MIP. In case these export prices of the USA and Korea would be compared to the highest MIP level, which is possibly more accurate as the majority of exports of those countries consist of high permeability GOES products, these percentages would even be significantly higher.
- (347) Moreover, the Commission compared the weighted average Union sales prices for the GOES types with a maximum core loss not higher than 0,9 W/kg to the corresponding Korean and USA export prices to third countries, based on the relevant country specific GTA import statistics and on the assumption that the majority of imports of Korea and the USA consist of high permeability GOES products.
- (348) It was established that the Korean and USA export prices to third countries were respectively 22 % and 14 % lower as compared to the selling prices by the Union producers. As mentioned already in recital (340), as the Union producers already sold below their cost of production, similar prices by the Korean and USA exporting producers would further aggravate the injurious situation of the Union industry, should the measures lapse.
- (349) Therefore, taking into account these price levels of exports from the four countries concerned to third countries and the actual injurious situation of the Union industry, the Commission considered it likely that the exporting producers of the four countries concerned would in the absence of anti-dumping measures start exporting to the Union at similar price levels that they apply to their third markets and at least at prices below the applicable MIP levels, i.e. at injurious price levels.
- (350) In view of the above, the Commission concluded that imports to the Union from all the countries concerned, should the measures lapse, would be made at injurious price levels. These imports would continue to cause injury in the case of Russia, and result in a recurrence of injury in the case of the other countries concerned.

5.3. Impact of potential imports from the countries concerned on the Union industry's situation should the measures lapse

- (351) The Commission assessed the possible impact of the imports from the countries concerned on the financial situation of the Union industry by modelling two possible scenarios should the measures be allowed to lapse, namely
 - the countries concerned would export to the Union the same quantities as before the imposition of the measures (i.e. exports ranging between 139 000 tonnes and 154 000 tonnes⁵⁶ during the initial investigation period from 1 July 2013 to 30 June 2014), and that the Union consumption would remain the same as during the review investigation period (i.e. 265 000- 280 000 tonnes) (first scenario);

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During the period considered of the initial investigation, a large portion of the imports of the Japanese product concerned into the Netherlands were reported under a confidential CN Code. For this reason, ranges were provided concerning the imports from the countries concerned in the initial Regulation.

- a drop of prices on the Union market due to the increased competition, all other things being equal, by respectively 5 % and 10 % (second scenario).
- (352) In the first scenario, the Commission also assumed that 100 % of the total imports from the countries concerned would affect the Union industry and not affect imports from other third countries since the market share of the latter countries is insignificant. Furthermore, the Commission assumed that the Union industry would keep the same sales prices as during the review investigation period since it is already loss making.
- (353) The result of this simulation under the first scenario shows that the increase of imports from the countries concerned would be at the expense of the Union industry. The latter would lose sales volume and market share on the Union market, leading to a further drop in its production and a higher fixed cost for each produced tonne of the product under review. This would have an impact on the industry's overall profitability. As a result, the losses incurred by the Union industry would further increase from -18,6 % to an even more unsustainable level of -22,6 %.
- (354) In the second scenario, the effect of a price decrease by 5 % was found to be potentially even more damaging. In case of a decrease of Union prices by 5 % (1 356 EUR/tonne) due to the increased price pressure of the imports from the countries concerned, the losses would even further drop to -29 %. In case of a decrease of Union prices by 10 %, that is from 1 427 EUR/tonne to 1 285 EUR/tonne, the losses would attain -37 %.
- (355) In reality, if measures were allowed to lapse, it is very likely that a combination of the first and the second scenario would occur on the market. This would result in even higher unsustainable losses for the Union industry.
- (356) Following disclosure, the Japanese Government also argued that Japan should be excluded from the scope of the anti-dumping measures as Japanese products do not cause any injury or pose a threat to the Union industry for the following reasons. First, they produce particular types of an exceptional quality, which is used by and becoming increasingly important for particular users in the Union. Second, the fact that the Japanese export prices to the Union are significantly higher than the MIP, illustrates that allowing the existing anti-dumping measures to lapse with respect to Japan would not lead to reduced import prices.
- (357) Following disclosure, and similar to the claim of the Japanese Government, Nippon Steel again argued that the anti-dumping measures should not be maintained with regard to Japan because it is China which poses a significant threat to the Union industry, not Japan in light of its relatively low spare capacity compared to China. The prices that Japanese exporting producers charge on the Union market are the highest in the world, and higher than the highest MIP. Third, Japanese export prices compete with other producers, including the Union industry, at fair prices.
- (358) The Commission acknowledged that the Japanese exporting producers produce product types of high quality, as mentioned in recital (381). On the other hand, as mentioned in recital (337), it was established that the Japanese exporting producers exported to their main third country export markets at prices which were around 10 % lower as compared to the corresponding MIP for these particular types of high quality. On this basis, the Commission maintained that it is likely that there would be a significant increase of dumped imports from all countries concerned, including Japan, at lower injurious prices in the absence of measures. Therefore, the Commission

considered that there was no basis to exclude Japan from the scope of the investigation.

(359) Moreover, as explained in the respective sections above, the Commission established - notwithstanding the spare capacity determined for China - that:

- Japanese exporting producers exported GOES to the EU at dumped prices (recital (71) above);
- there is significant spare capacity for GOES in Japan (recital (74) above); and
- the EU market is attractive to Japanese exporting producers (recitals (81)-(90) above).

(360) In view of the above considerations, the Commission rejected also this claim of Nippon Steel.

5.4. Conclusion on likelihood of a continuation and/or recurrence of injury

(361) On this basis, and noting the past and current injurious situation of the Union industry, the absence of measures would in all likelihood result in a significant increase of dumped imports from the countries concerned at injurious prices, leading to even higher losses for the Union producers. Therefore, the Commission concluded that, whether or not there was sufficient causation as regards Russian imports during the review investigation period, injury as originally established would recur with respect to the countries concerned.

6. UNION INTEREST

(362) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures would be against the interest of the Union as whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, users and the public policy interests with respect to the product under review as embodied in the Directive 2009/125/EC of the European Parliament and of the Council⁵⁷ ('EcoDesign Directive') and its product-specific Regulations. In line with the third sentence of Article 21(1) of the basic Regulation, special consideration was given to the need to protect the industry from the negative effects of injurious dumping.

(363) All interested parties were given the opportunity to make their view known pursuant to Article 21(2) of the basic Regulation.

(1) ⁵⁷ Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of Ecodesign requirements for energy-related products, OJ L 285, 31.10.2009, p. 10. The EcoDesign Directive is implemented through product-specific Regulations directly applicable in all EU countries. The EcoDesign Regulation covers the new EcoDesign requirements with regard to small, medium and large power transformers.

Tier 1 of the EcoDesign Regulation entered into force on 1 July 2015, and Tier 2 on 1 July 2021. The Tier 2 requirements are more stringent than those for Tier 1. Although the full effects cannot yet be assessed on such a short period of time since the entry into force of Tier 2, it is generally believed that these Tier 2 requirements will require the highest quality types of GOES to design and manufacture transformers in a cost-efficient manner and within the required space limitations.

6.1. Interest of the Union industry

- (364) The Union industry is located in four Member States (France, Germany, Czech Republic and Poland), and employs directly over 2 200 employees in relation to the product under review.
- (365) Some interested parties claimed that the measures should be allowed to lapse as the Union producers are no longer facing any injurious situation. For instance, they alleged that the Union producers increased their sales of the product under review on the Union market, and were able to expand their market share by 3 % since 2017 on the Union market. It was also claimed that the Union industry maintained stable production, production capacity, capacity utilization, and employment levels since 2017. The Union industry was also able to invest significant amounts, what is allegedly rather an indication of an industry that is confident about the future of its market.
- (366) As set out in recitals (315) and following, the Union producers were incurring losses amounting to -18,6 % during the review investigation period. In addition, sales volumes on the Union market decreased by 4 %, over the period considered, combined with a slight decrease in sales unit prices by 2 %. Moreover, the production decreased by 15 %, and the production capacity utilisation went down by 10 %. Therefore, the Commission concluded in recital (321) that the Union industry suffered material injury.
- (367) In addition, the Commission established that there is a strong likelihood of a continuation of injury originally caused by imports from these countries should the measures expire. The influx of substantial volumes of dumped imports from the countries concerned would lead to increased unfair competition for the Union industry and would cause further injury to the Union industry. This would worsen the already injurious and very fragile economic situation of Union industry and threaten its viability.
- (368) The Commission thus concluded that the continuation of the measures would be in the interest of the Union industry.

6.2. Interest of unrelated importers

- (369) The Commission contacted all known unrelated importers. Only one unrelated importer came forward and cooperated in this investigation by submitting a questionnaire reply.
- (370) Therefore, the Commission has insufficient information at its disposal to conclude that the continuation of the measures would be detrimental to the interest of the importers. Rather the contrary, as imports from the countries concerned never ceased as a result of the measures but continued in significant volumes.

6.3. Interest of users

6.3.1. Introduction

- (371) Seven users came forward, expressing their willingness to participate in the investigation. Nevertheless, only four of them fully cooperated in this investigation by submitting completed questionnaire replies in both open and sensitive versions.
- (372) The four users that fully co-operated included one of the largest users on the Union market, whereas the three other users were relatively small in terms of employment and turnover.

- (373) The following three users associations also came forward and provided the Commission with information on the Union interest:
- The European Association of the Electricity Transmission and Distribution Equipment and Services Industry ('T&D Europe'). It represents the interest of the European electricity transmission and distribution equipment and services manufacturers;
 - Zvei, the German Electrical and Electronic Manufacturers' Association, also member of T&D Europe, and representing the interests of its German members, mainly manufacturers of transformers;
 - WindEurope, the industry association for wind energy in Europe, representing more than 400 member organisations. In addition to wind turbine manufacturers, its membership encompasses component suppliers, research institutes, national wind and renewables associations, developers, contractors, electricity providers, finance and insurance companies, and consultants.
- (374) The Commission acknowledged that the transformer industry is an important industry in the Union market. T&D Europe stated that the turnover of the Union market for transformers is approximately EUR 3,7 billion, about 10 % of which is made up of imports. The EU transformer production is worth approximately EUR 4,7 billion, making the EU a net exporter of transformers. T&D Europe also stated that the EU transformer industry is made up of hundreds of undertakings and employs more than 30 000 people within the EU, not including sub-contractors and other industries benefitting from the EU transformer industry. Concerning the downstream industry, WindEurope stated that the European wind industry provided over 160 000 direct jobs and supported an additional 140 000 indirect jobs in 2019. The Russian producer ('NLMK') provided, in its submission of 11 December 2020, similar comments, claiming that, due to the importance of the transformer industry, the interest of users should prevail.
- (375) The product under review is mainly used as a core material in the manufacturing of power and distribution transformers. The transformer manufacturers in Europe constitute a long-established industry, which traditionally supplies large energy providers. The transformer industry, in general, belongs to large industrial groups which have a worldwide presence. Some smaller independent companies, however, also operate on the market and some of them are operating in some specific niche markets such as core cutting.
- (376) The product under review is considered a significant cost item for the users. Zvei alleged that the cost of the transformer core (GOES) accounts for between 20 % and 40 % of the total production cost of a transformer. However, based on the collected data from the users questionnaires, the product under review as an input material accounts on average for around 7 % - 17 % of the total cost of production of transformers. This can be higher in some exceptional cases, in particular for a limited number of intermediary companies that are positioned between the producers of the product under review and the transformer manufacturers. The activities of these intermediary companies are limited to longitudinal slitting to width and cutting laminations based on transformers manufacturers' specifications of the coils and/or assembling cores for the transformers.

- (377) The users claimed that the products from the exporting producers are qualitatively better in terms of core loss. They claimed also that, after the imposition of measures during five consecutive years, the Union industry still does not have sufficient capacity to supply the user industry in particular with high permeability types. T&D Europe alleged that the transformer industry is particularly dependent on imports of high permeability domain refined types of GOES and that the EU producers are not able to manufacture high permeability domain refined types of GOES in the quantity and quality that is needed on the Union market. It also alleged that the Union producers are for the foreseeable future only able to supply a minor share of the EU demand. Consequently, they alleged that there is still and will be a shortage on the Union market, in particular for the high permeability types.
- (378) The users associations argued that the maintenance of the existing measures would reduce the competitiveness of the European transformer manufacturers vis-à-vis transformer manufacturers located outside the Union. Should measures be continued in the form of the three MIPs, it would result in a distorted, too high market price and have a material impact on the cost of transformers and electricity across Europe. T&D Europe and Zvei also claimed that in GOES markets without artificial import measures (such as India) the price of GOES has declined to historically low price levels in the first quarter of 2020. They finally alleged that the MIPs increase costs for the EU transformer manufacturers and mostly benefits non-EU mills that sell GOES into EU at higher prices. Zvei added that this could lead to a relocation of the European transformer manufacturers outside of the Union market.
- (379) To summarize the above, the two main arguments against the continuation of the existing measures were the following:
- It would lead to shortages in supply⁵⁸ and differences in quality should measures be continued;
 - The competitiveness of the Union users of the product under review would be undermined vis-à-vis users located outside the Union due to the higher price they have to pay on the Union market.

In order to assess these two main arguments the Commission took into account the following market structure. The number of producers of the product under review worldwide is limited to less than 20 significant producers. The Union is, after the Chinese market, the market with the highest number of producers. It appeared that not all producers are able to supply certain high permeability types of the product under review. The producers of the high permeability types of the product under review are located in the Union, the USA, Japan, Korea and China.

6.3.2. Shortages in supply and differences in quality

- (380) The Commission considered, to start with, that the objective of anti-dumping duties is not to close off the Union market from any imports. Indeed, imports from the countries concerned decreased but did not come to an end between 2015 and the review investigation period, but continued in significant volumes. Imports are thus not expected to come to an end should the measures be maintained but rather to continue.

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The Japanese exporting producer JFE also commented that the continuation of the measures would disproportionately hurt the users, limiting their import channels, whereas the Union industry cannot meet the demand of the users (see initial comments in the submission of JFE Steel, dated 10 December 2020).

- (381) As regards the quality of the product under review, it is recognised in the market that imports from particularly the PRC, Korea, the US and Japan generally concern high permeability types of the product under review. However, two Union producers are able to produce certain quality types with low core losses of the product under review as well. The largest co-operating user stated that two out of the four Union GOES producers have stepped up considerably their efforts to produce high permeability quality types of GOES between 2015 and 2020 and improved their product portfolio considerably in terms of core loss during the same period.
- (382) The production data which were collected from the Union industry, divided per MIP category of product types, indeed confirmed that the Union GOES producers have stepped up considerably their efforts to produce products with a maximum core loss not higher than 0,9 W/kg. Whereas the total production decreased significantly in the period considered, the Union producers were able to produce proportionally more products with a maximum core loss not higher than 0,9 W/kg over the same period, resulting in an increase by 36 %, i.e. more than 20 000 tonnes.
- (383) In the absence of measures, it would become uncertain whether the Union industry would be able to further develop its high permeability types of GOES, taking into consideration their difficult economic situation.
- (384) Considering the available production capacity of the Union producers and their ongoing strategy to produce proportionally more high permeability types in the near future, the Union industry can increasingly supply the user industry, including the high permeability types. The Union producers estimated that they would be able to increase further the production levels of high permeability types, starting from the year 2021.
- (385) Even with a further increase in the production levels of high permeability types, the largest co-operating user estimated that the Union GOES production will still fall short to supply the demand on the Union market concerning high permeability types of the product under review.
- (386) The Union interest test does, however, not require that Union demand would have to be fully met by Union production. The imports from the countries concerned are expected to continue supplying the Union market. In view of the above, the Commission concluded that it is unlikely that the continuation of the existing measures would lead to a shortage in supply of high permeability types of GOES on the Union market.

6.3.3. Competitiveness of the Union users of the product under review

- (387) On the basis of the collected data, the Commission considered that the continuation of the measures will only have a limited impact on the prices of transformers and the employment in the user's industry. The likely effect would be that the cost of the input material, accounting for around 7 %-17 %, would remain unchanged at the same levels since the imposition of the measures in the form of the three MIPs in 2015.
- (388) The Commission also considered that, even assuming a price difference between the higher Union and lower international prices of some 20 %, any impact on the user industry would be minor as follows: If measures were to lapse on the Union market

and if Union prices would drop by 20 %, the GOES costs for users would be on average reduced by less than 2,5 %⁵⁹.

- (389) In addition, as regards the economic situation of the cooperating users, two were profitable and two were loss making. One of the loss making users was nationalised in the meantime. The other user, i.e. the largest user in terms of turnover and employees, stated that its losses incurred during 2019 and during the review investigation period were not attributable to its operational activities, but rather the result of two exceptional events. If these exceptional events would not have occurred, this company would have been also profitable. Accordingly, overall, the Commission concluded that the cooperating users were economically in a better position than the GOES producers.
- (390) Finally, the users sourced a significant quantity of GOES, including the high permeability types, from the Union industry. If the existing measures would lapse, it cannot be excluded that users would become exclusively dependent on imports, in particular for the high permeability types, which would certainly also be detrimental in the sense that it would affect their diversity of supply. In view of the above, the Commission concluded a continuation of the measures would not have any disproportionate negative effects on the competitiveness of the user industry.
- (391) Following disclosure, the applicant argued that the Commission correctly concluded that if the existing measures would lapse, it cannot be excluded that users could become exclusively dependent on imports, which would certainly also be detrimental to them in the sense that it would affect their diversity of supply. The applicant added that it is not just a question of diversity of supply but also a question of security of supply. It argued that, as a necessary component for the production of transformer cores, GOES is for instance crucial for the maintenance and expansion of the Union's electrical grid, which cannot be contingent on the supply from foreign companies in Asia, Russia or the US.
- (392) The Commission reiterated that the objective of anti-dumping duties is not to close off the Union market from all imports (see recital (380)). By extending the measures in the form of MIPs but not closing off the Union market, a secure and diverse supply from different sources, including from exporting and Union producers can be achieved.
- (393) Following disclosure, NLMK argued that the continuation of the measures, as far as Russia is concerned, is not in the Union interest, and that such continuation does not address the structural problems of the Union industry while it hurts the users.
- (394) Concerning these allegations of NLMK, the Commission referred to recital (388) in which it was explained that the continuation of measures would only have a minor impact on the costs of the users. Second, concerning the allegation that the Union industry has structural problems, the Commission refers to its considerations in recital (320).

6.3.4. Conclusion on interest of users

- (395) In view of the above, it is concluded that, on balance, the continuation of measures would be against the interest of users. However, the Commission was unable to accept the claim that the continuation of the measures would lead to a shortage in supply of

⁵⁹ Calculated as 20 % less costs on GOES input material for the users multiplied by 12 %, being the average of 7 % and 17 % .

high permeability GOES. It also concluded that the competitiveness of the user industry would possibly be negatively affected by the continuation of the measures, albeit with a lesser impact on costs than alleged.

6.4. Other factors

- (396) The EcoDesign Directive establishes a framework for ecodesign requirements for energy-related products by setting out minimum mandatory requirements for energy efficiency of these products. It aims at reducing the energy consumption in the Union by enhancing the efficiency of electrical appliances.
- (397) The EcoDesign Directive is implemented through product-specific Regulations directly applicable in all EU countries. The EcoDesign Regulation⁶⁰ covers the new EcoDesign requirements with regard to small, medium and large power transformers. Article 1 of the EcoDesign Regulation defines its scope (applicable for placing on the market or putting into service power transformers with a minimum power rating of 1 kVA used in 50 Hz electricity transmission and distribution networks or for industrial applications). The EcoDesign Regulation is only applicable to transformers purchased after its entry into force.
- (398) Tier 1 of the EcoDesign Regulation entered into force on 1 July 2015, and Tier 2⁶¹ on 1 July 2021. The Tier 2 requirements are more stringent than those for Tier 1.
- (399) A number of interested parties pointed to the entry into force of Tier 2 of the Ecodesign Regulation. T&D Europe claimed that the highest quality types of GOES, which are produced in limited quantities only by the Union industry, are needed to design and manufacture Tier 2 transformers in a cost-efficient manner and within the required space limitations. Zvei claimed that, due to the EU Commission's Green Deal, the increasing electrification of all parts of the economy and the digital transformation of the total EU industry will lead to an increased demand for (highly efficient) transformers. WindEurope stated that the demand for transformers incorporating high permeability types of GOES will further increase due to a growing awareness of life-cycle energy losses of transformers, as well as a result of EU measures to decrease energy costs and improve the environmental performance of transformers, especially in view of the implementation of Tier 2 of the EU's EcoDesign Directive on transformers.
- (400) The largest co-operating users stated that the stricter requirements of Tier 2 can be met in two ways:
- Either by using the same GOES types as before. This would, however, lead to an increase in dimensions and weight, and a higher cost in terms of input material, or;
 - By using GOES types with a lower core loss. This would lead to a relatively smaller transformer in terms of dimensions and weight. This solution will in most cases be preferred by the end users to not exceed existing space requirements.

⁶⁰ Commission Regulation (EU) No 548/2014 of 21 May 2014 on implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to small, medium and large power transformers, *OJ L 152*, 22.5.2014, p. 1.

⁶¹ In October 2019, Regulation (EU) 2019/1783 adjusted the subject matter and scope of the EcoDesign Regulation in light of upcoming implementation of the Tier 2 requirements in relation to power transformers as of 1 July 2021, *OJ L 272*, 25.10.2019, p. 107–120

As a result, this user also believed that a further shift to the highest quality types of GOES will take place as a result of the entry into force of the Tier 2 Eco-design Regulation.

- (401) The Commission considered that, based on the above arguments, it is very likely indeed that the entry into force of Tier 2 will lead to an increase of demand of the high permeability types of the product under review. However, the demand of, and production of, transformers using conventional types of the product under review will continue to exist as well.
- (402) In addition, the Commission aims to boost offshore wind capacity through the EU Strategy on Offshore Renewable Energy⁶² in order to meet the EU's goal of climate neutrality by 2050⁶³. The EU Strategy on Offshore Renewable Energy projected an increase in Europe's offshore wind capacity from its current level of 12 GW to at least 60 GW by 2030 and to 300 GW by 2050. This strategy will also contribute to a rise in demand for high permeability types of the product under review. WindEurope stated that the European wind industry uses transformers in several applications: within the nacelle, in offshore substations, and in onshore grid connection points. In particular, WindEurope stated that high permeability types of the product under review are particularly essential for transformers within the nacelle, since space is at a premium and mass must be minimised.
- (403) Therefore, different legally binding product standards set out the objective to ensure sufficient supply, irrespective of its origin, of high-quality GOES for producing and marketing transformers in Europe. While there is certainty that demand for high permeability types will increase, the future size of this demand is, however, currently unclear as interested parties have not delivered any relevant projections supported by evidence on the question. However, as set out above, the Commission concluded that there is no evidence on file showing that the continuation of the measures would lead to a shortage of supply of high permeability types of GOES such as to undermine reaching the objectives as laid out in Tier 2 of the EU's EcoDesign Regulation. In view of the limited number of producers of GOES worldwide, the continuation of the measures would rather contribute to a diversity of supply, also of high permeability types of GOES, which becomes increasingly important in view of these objectives.

6.5. Conclusion on Union interest

- (404) In view of the above, the Commission considered that the continuation of the existing measures would enable the Union industry to return gradually to profitability and make further investments necessary to manufacture and develop the quality grades needed to meet the increased demand of high permeability GOES products.
- (405) If the measures were to lapse, it is unlikely that the Union industry would be able to further develop its high permeability types of GOES and be able to survive, taking into consideration their difficult economic situation. Thus, a continuation of the measures is clearly in the interest of the Union industry.
- (406) As regards the interest of users, the maintenance of existing measures has only a limited impact on the prices of transformers and the employment in the user's industry.

⁶² https://ec.europa.eu/energy/topics/renewable-energy/eu-strategy-offshore-renewable-energy_en

⁶³ https://ec.europa.eu/cyprus/news_20201119_1_en

- (407) With respect to the objective set out in the EcoDesign Regulation to ensure sufficient supply of high permeability types of GOES in the Union market for reasons of energy efficiency, it has not been established that this objective would be undermined by the continuation of the measures.
- (408) In view of the above, on balance and taking into account that the measures in the form of the MIPs were designed to accommodate the concerns of the users industry as regards the continued need of imports of high-permeability GOES products, the Commission concluded that there were no compelling Union interest reasons against the continuation of the existing measures on imports of GOES originating in the countries concerned. If the existing measures were lapse, it could lead to a price reduction across all types of GOES, whereby the Union industry would need to further lower its selling prices in order to remain attractive. In such circumstances, the economic situation of the Union industry would further worsen and endanger its viability and survival.
- (409) Following disclosure, Nippon Steel argued that the maintenance of the measures would not be in the Union interest as they have been ineffective whilst unnecessarily impacting the users negatively. Moreover, Nippon Steel argued that the Commission did not take into account the fact that certain users in the wind energy sector are already enduring the negative consequences of recent trade defence measures on inputs, such as duties on glass fibre fabrics and glass fibre rovings.
- (410) The Commission rejected these claims for the following reasons. First, as set out in recital (309), the imposition of the measures in 2015 had a positive effect on the economic situation of the Union industry, in particular in the year 2017 when the Union industry started to recover. Second, the Commission referred to recital (388) explaining that the continuation of measures would only have a minor impact on the costs of the users. Third, the main objective of the imposition of trade defence measures is to restore a level playing field among the different producers. Finally, the Commission noted that WindEurope, the industry association for wind energy in Europe, representing more than 400 member organisations, did not claim that its members were already enduring the negative consequences of recent trade defence measures on inputs. Therefore, this claim of Nippon Steel is unsubstantiated.

7. ANTI-DUMPING MEASURES

- (411) On the basis of the conclusions reached on the likelihood of continuation and recurrence of dumping and injury caused by imports from the countries concerned, and in view of the Union interest, the Commission concluded that the anti-dumping measures on imports of the product under review originating in China, Japan, the Republic of Korea, the Russian Federation and the United States of America should be maintained.
- (412) One interested party requested that, should the Commission decide it is essential to keep some protection of the Union industry despite its obvious failure of the anti-dumping measure to address its structural problems of Union producers, the measures be maintained for a limited period of 1 or 2 years.
- (413) The Commission rejected this request based upon the injury suffered by the Union industry, which does not warrant the imposition of measures for a period shorter than five years.
- (414) The individual company anti-dumping duty rates specified in this Regulation are exclusively applicable to imports of the product under review originating in the

countries concerned 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.

- (415) In order to minimise the risks of circumvention, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping measures. These special measures include the following: the presentation to the customs authorities of the Member States of a valid commercial invoice and a valid mill certificate which shall conform to the requirements set out in the Articles of this Regulation. Imports not accompanied by such an invoice and a mill certificate shall be made subject to the applicable ad valorem duty rate for all other companies without reference to the minimum import prices.
- (416) 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 Commission⁶⁴. The request must contain all the relevant information enabling to demonstrate that the change of name 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.
- (417) In view of Article 109 of Regulation 2018/1046⁶⁵, 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.
- (418) 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 grain-oriented flat-rolled products of silicon-electrical steel, of a thickness of more than 0,16 mm, currently falling under CN codes ex 7225 11 00 (TARIC Codes 7225 11 00 11, 7225 11 00 15 and 7225 11 00 19) and ex 7226 11 00 (TARIC codes 7226 11 00 12, 7226 11 00 14, 7226 11 00 16, 7226 11 00 92, 7226 11 00 94 and 7226 11 00 96) and originating in the People's Republic of China, Japan, the Republic of Korea, the Russian Federation and the United States of America.

2. The amount of the definitive anti-dumping duty applicable to the product described in paragraph 1 and produced by the individually named companies as set out in paragraph 4 shall

⁶⁴ European Commission, Directorate-General for Trade, Directorate G, Rue de la Loi 170, 1040 Brussels, Belgium.

⁶⁵ 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).

be the difference between the minimum import prices fixed in paragraph 3 and the net free-at-Union-frontier price, before duty, if the latter is lower than the former. No duty shall be collected where the net free-at-Union-frontier price is equal to or higher than the corresponding minimum import price fixed in paragraph 3. In no event shall the amount of the duty be higher than the *ad valorem* duty rates set in paragraph 4.

3. For the purpose of paragraph 2, the minimum import price set out in the table below shall apply. Where it is found, following post-importation verification, that the net free-at-Union-frontier price actually paid by the first independent customer in the Union (post-importation price) is below the net free-at-Union-frontier price, before duty, as resulting from the customs declaration, and the post-importation price is lower than the minimum import price, an amount of duty equivalent to the difference between the minimum import price set out in the table below and the post-importation price shall apply, unless the application of the *ad valorem* duty set out in paragraph 4 plus the post-importation price lead to an amount (price actually paid plus *ad valorem* duty) which remains below the minimum import price set out in the table below.

Countries concerned	Product range	Minimum Import Price (EUR/tonne net product weight)
People's Republic of China , Japan, United States of America, Russian Federation, Republic of Korea	Products with a maximum core loss not higher than 0,9W/kg	€ 2 043
	Products with a maximum core loss higher than 0,9W/kg but not higher than 1,05W/kg	€ 1 873
	Products with a maximum core loss higher than 1,05W/kg	€ 1 536

4. For the purpose of paragraph 2, the *ad valorem* duty rates set out in the table below shall apply.

Company	<i>Ad Valorem</i> Duty	TARIC additional code
Baoshan Iron & Steel Co., Ltd., Shanghai; PRC	21,5 %	C039
Wuhan Iron & Steel Co., Ltd., Wuhan, PRC	36,6 %	C056
JFE Steel Corporation, Tokyo, Japan	39,0 %	C040
Nippon Steel & Sumitomo Metal Corporation, Tokyo, Japan	35,9 %	C041
POSCO, Seoul, Republic of Korea	22,5 %	C042
OJSC Novolipetsk Steel, Lipetsk; VIZ Steel, Ekaterinburg, Russian Federation	21,6 %	C043
AK Steel Corporation, Ohio, United States of America	22,0 %	C044

5. The rate of the definitive anti-dumping duty applicable to the product described in paragraph 1 and produced by any other company not specifically mentioned in paragraph 4 shall be the ad valorem duty as set out in the table below.

Company	Ad Valorem Duty	TARIC additional code
All other Chinese companies	36,6 %	C999
All other Japanese companies	39,0 %	C999
All other Korean companies	22,5 %	C999
All other Russian companies	21,6 %	C999
All other American companies	22,0 %	C999

6. The application of the measures for the companies mentioned in paragraph 4 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice and a mill certificate, which shall conform to the requirements as set out in respectively Annexes I and II. If neither the mill certificate nor the invoice is presented, the duty applicable to all other companies shall apply. This mill certificate shall list the actual maximum core loss for each coil in Watts per kilogram at a frequency of 50 Hz and a magnetic induction of 1,7 Tesla.

7. For the individually named producers and in cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 131(2) of Commission Implementing Regulation (EU) 2015/2447⁶⁶, the minimum import price set out above shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable. The duty payable will then be equal to the difference between the reduced minimum import price and the reduced net, free-at-Union-frontier price, before customs clearance.

8. For all other companies and in cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 131(2) of Commission Implementing Regulation (EU) 2015/2447⁶⁷, the amount of the anti-dumping duty, calculated on the basis of paragraph 2 above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

Article 2

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

⁶⁶ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

⁶⁷ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

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, 1 December 2021

Ref: trade.g.3(2021)8297837

SENSITIVE*

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

Subject: Expiry Review of the anti-dumping measures applicable to imports of grain oriented flat-rolled products of silicon electrical steel (GOES) originating in the People's Republic of China, Japan, the Republic of Korea, the Russian Federation and the United States of America (R728)

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.

The Committee members are therefore requested to provide the Commission with their opinion concerning the above draft Commission Implementing Regulation in writing **by 15 December 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/ldb43PX>

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 9 December 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 teams in charge, preferably via the functional mailbox.

DUMPING TEAM	INJURY/UNION INTEREST TEAM
HEAD OF SECTION: Milev Mihail (tel: 0032 2 296 2691) Mihail.Milev@ec.europa.eu	HEAD OF SECTION: Per Aidemark (tel: 0032 2 299 4347) per.aidemark@ec.europa.eu
OFFICIAL IN CHARGE: Jan.Pentseretzidis (tel: 0032 2 298 2330) Jan.Pentseretzidis@ec.europa.eu	OFFICIAL IN CHARGE: Stefaan Wouters (tel: 0032 2 296 0457) stefaan.wouters@ec.europa.eu

(signed)
Zsuzsana JÁMBOR
 Chairperson
 Trade Defence Instruments Committee

Encl. Draft Commission Implementing Regulation