

**COMMISSION IMPLEMENTING REGULATION (EU) 2016/2303****of 19 December 2016****imposing a provisional anti-dumping duty on imports of certain concrete reinforcement bars and rods originating in the Republic of Belarus**

THE EUROPEAN COMMISSION,

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

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

After consulting the Member States,

Whereas:

**1. PROCEDURE****1.1. Initiation**

- (1) On 31 March 2016, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports into the Union of certain concrete reinforcement bars and rods originating in the Republic of Belarus ('Belarus' or 'the country concerned') on the basis of Article 5 of Council Regulation (EC) No 1225/2009 <sup>(2)</sup> ('the basic Regulation'). The relevant Notice of Initiation was published in the *Official Journal of the European Union* <sup>(3)</sup> ('the Notice of Initiation').
- (2) The Commission initiated the investigation following a complaint lodged on 15 February 2016 by the European Steel Association ('the complainant') on behalf of producers representing 44 % of the total Union production of certain concrete reinforcement bars and rods. No other producer expressing either opposition or neutral position had come forward.
- (3) Therefore, the relevant thresholds as set out in the Article 5(4) of the basic Regulation <sup>(4)</sup> were met at the time of the initiation of the case. Once the investigation is opened, it is not necessary that the conditions for standing are met throughout the entire investigation. The Court has confirmed this for the situation where a company withdraws its support for the complaint <sup>(5)</sup>; the same reasoning applies by analogy in a situation where the product scope changes.

**1.2. Interested parties**

- (4) In the Notice of Initiation, the Commission invited interested parties to come forward in order to participate in the investigation. In addition, the Commission specifically informed the complainant, other known Union producers, the one known Belarusian exporting producer and the authorities of the Republic of Belarus as well as known importers and users about the initiation of the investigation and invited them to participate.

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

<sup>(2)</sup> Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).

<sup>(3)</sup> Notice of Initiation of an anti-dumping proceeding concerning imports of certain concrete reinforcement bars and rods originating in the Republic of Belarus (OJ C 114, 31.3.2016, p. 3).

<sup>(4)</sup> 'An investigation shall not be initiated pursuant to paragraph 1 unless it has been determined, on the basis of an examination as to the degree of support for, or opposition to, the complaint expressed by Union producers of the like product, that the complaint has been made by, or on behalf of, the Union industry. The complaint shall be considered to have been made by, or on behalf of, the Union industry if it is supported by those Union producers whose collective output constitutes more than 50 % of the total production of the like product produced by that portion of the Union industry expressing either support for or opposition to the complaint. However, no investigation shall be initiated where Union producers expressly supporting the complaint account for less than 25 % of total production of the like product produced by the Union industry'.

<sup>(5)</sup> Judgment of the Court (Grand Chamber) of 8 September 2015, Case C-511/13 P, Philips Lighting Poland S.A., Philips Lighting BV v Council of the European Union, Hangzhou Duralamp Electronics Co., Ltd, GE Hungary Ipari és Kereskedelmi Zrt. (GE Hungary Zrt.), Osram GmbH, European Commission.

- (5) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

### 1.3. Analogue country producers

- (6) In the Notice of Initiation, the Commission also informed interested parties that it envisaged South Africa or the United States of America ('the USA') as a third market-economy country ('the analogue country') within the meaning of Article 2(7)(a) of the basic Regulation. Interested parties had an opportunity to comment and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

### 1.4. Sampling

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

#### 1.4.1. Sampling of Union producers

- (8) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers on the basis of production and sales volume of the product under investigation and geographic location. This sample consisted of five Union producers. The sampled Union producers accounted for 22,4 % of the total Union production and 24,4 % of the total Union sales of the product concerned. The companies are located in France, Germany, Italy, Poland and Spain, covering a broad geographic variety. The Commission invited interested parties to comment on the provisional sample. No comments were received. Therefore, it was concluded that the sample is representative of the Union industry.

#### 1.4.2. Sampling of unrelated importers

- (9) In order to decide whether sampling is necessary and, if so, to select a sample, the Commission requested unrelated importers to provide the information specified in the Notice of Initiation.
- (10) Six unrelated importers provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three importers on the basis of the largest volume of imports into the Union. The three sampled companies accounted for 80 % of the unrelated imports of the product concerned originating in Belarus. In accordance with Article 17(2) of the basic Regulation, all known importers concerned were consulted on the selection of the sample. No comments were received.

### 1.5. Replies to the questionnaire

- (11) The Commission sent questionnaires to the five sampled Union producers, the cooperating exporting producer in the country concerned, one producer in the USA, selected as the analogue country as explained in recital 32 below, three sampled importers, eight users known at the moment of initiation of the investigation and to one additional user who made itself known at a late stage of the procedure.
- (12) Questionnaire replies were received from five sampled Union producers, the cooperating exporting producer in the country concerned, one producer in the USA ('the analogue country') and two unrelated importers.

### 1.6. Verification visits

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

#### (a) Union producers

- Celsa Huta Ostrowiec sp. z.o.o., Ostrowiec Swietokrzyski, Poland,
- Feralpi Sideruglica SpA, Lonato del Garda, Italy,

- Riva Acier SA, Gargenville, France,
- Certain macro data were also verified at the premises of the complainant (Brussels, Belgium);

(b) *Exporting producer in Belarus*

- Open Joint-Stock Company 'Byelorussian Steel Works — Management Company of "Byelorussian Metallurgical Company" Holding', Belarus ('BMZ');

(c) *Traders related to the exporting producer*

- Bel Kap Steel LLC, Miami (Fl), the USA,
- BMZ Polska Sp. z.o.o., Katowice, Poland,
- UAB 'Prekybos namai BMZ-Baltija', Šiauliai, Lithuania;

(d) *Producer in an analogue country*

- Commercial Metals Company, Dallas (TX), the USA.

### 1.7. Investigation period and period considered

- (14) The investigation of dumping and injury covered the period from 1 January 2015 to 31 December 2015 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2012 to the end of the investigation period ('the period considered').

## 2. PRODUCT CONCERNED AND LIKE PRODUCT

### 2.1. Product concerned

- (15) The product concerned is certain concrete reinforcement bars and rods, made of iron or non-alloy steel, not further worked than forged, hot-rolled, hot-drawn or hot-extruded, but including those twisted after rolling and also those containing indentations, ribs, grooves or other deformations produced during the rolling process, originating in Belarus and currently falling within CN codes ex 7214 10 00, ex 7214 20 00, ex 7214 30 00, ex 7214 91 10, ex 7214 91 90, ex 7214 99 10, ex 7214 99 71, ex 7214 99 79 and ex 7214 99 95 ('the product concerned'). High fatigue performance iron or steel concrete reinforcing bars and rods are excluded.

### 2.2. Like product

- (16) The investigation showed that the product concerned and the product produced and sold on the domestic market of the USA, as well as the product produced by the Union industry and sold on the Union market have the same basic physical, chemical and technical characteristics and uses. They are therefore provisionally considered to be alike within the meaning of Article 1(4) of the basic Regulation.

### 2.3. Claims regarding product scope

- (17) The Belarusian exporting producer pointed to an alleged inconsistency in the product scope description between the complaint (referring to two CN codes) and the Notice of Initiation (referring to nine CN codes). It was claimed that for that reason the injury assessment in the complaint does not refer to the same scope as in the subsequent initiated proceeding. It further noted that the company only exported under the two CN codes mentioned in the complaint.
- (18) The complaint indeed mentioned two CN codes in the product description while the Notice of Initiation listed nine of them. The Commission notes that the CN codes provided in the Notice of Initiation are given for information purposes only, as clearly stated. It further notes that the investigation was opened based on the description of the product concerned provided in the complaint which in substance covers nine CN codes regardless of the reference and, therefore, the additional CN codes had no impact on the evidence provided in the Complaint. Therefore this claim of alleged inconsistency in the product description was rejected.

### 3. DUMPING

#### 3.1. General remarks

- (19) According to Article 2(7)(a) of the basic Regulation, Belarus is not considered as a market-economy country. Therefore, the normal value in respect of Belarusian exports to the Union was determined on the basis of data obtained from a producer in a market-economy third country.
- (20) During the IP, imports from Belarus totalled around 488 000 tonnes with a market share of about 5 %. The main importing Member States were Germany, Lithuania, Poland and the Netherlands. The only known Belarusian manufacturer cooperated with the investigation and replied to the questionnaire. This manufacturer sold the product concerned to the Union directly or via related traders established in the Union and the USA.

#### 3.2. Normal value

##### 3.2.1. *Analogue country*

- (21) According to Article 2(7)(a) of the basic Regulation, normal value was determined on the basis of the price or constructed value in a market-economy third country. For this purpose, a market-economy third country had to be selected ('the analogue country').
- (22) As mentioned in recital 6, in the Notice of Initiation, the Commission had informed interested parties that it envisaged South Africa or the USA as a market-economy third for the purpose of establishing the normal value.
- (23) Comments on the proposed analogue countries were received from the sole Belarusian cooperating exporting producer. It claimed that neither South Africa nor the USA was an appropriate choice as an analogue country because, among other reasons, the production capacity, the actual production output, the production process in South Africa and the USA was different in comparison with the Belarusian producer. Moreover, this party claimed that the domestic producers in South Africa and the USA identified by the complainants were directly related to Union producers. Therefore, the objectiveness of the data collected in these countries from such producers may be questionable. This party proposed that Russia would constitute the most appropriate choice as the analogue country since the Russian steel bar industry has the most similar level of development compared to that of Belarus, production process is also based on metal scrap and the steel bar produced is similar in terms of quality and technical specifications. However, the Commission noted that the party did not provide any evidence, showing that South Africa or the USA producers were not using metal scrap for producing the product concerned or that in their cost structure the raw materials did not represent 60 %-70 % of the cost of production. In any event the Commission investigated the appropriateness of South Africa and the USA (as well as Brazil) as an analogue country. The details of these analyses were set out in recitals 28 to 34.
- (24) With the aim of selecting the market-economy third country, the Commission contacted all known producers not only in South Africa and the USA but also in Turkey, Ukraine, the Russian Federation, Bosnia and Herzegovina, Mexico, Korea, the Dominican Republic, Norway and Switzerland. The commission requested information regarding their domestic market and to report the type of products produced, the production capacity, the production output, the volume of domestic sales, to describe the production process, the type of raw material used, the share of raw materials, energy and labour costs in the total manufacturing costs of the product concerned, and finally their willingness to cooperate with the investigation.
- (25) In addition, the authorities of the above mentioned third countries were contacted.
- (26) The Russian authorities informed the Commission that none of the known Russian producers or their associations demonstrated interest in the current investigation. Therefore, in the absence of cooperation from any Russian producers, Russia could not be taken as analogue country.
- (27) Only three producers replied to the initial enquiry. They were located in Brazil, South Africa and the USA. The South African and the US producers were related with some of the complainants. The Brazilian producer was part of group of companies which had production facilities in various countries, including the USA, Mexico and the Dominican Republic. This producer was not related to the complainants.

- (28) The three replies were examined in relation to the complaint and the comments received. It was found that the domestic consumption in South Africa is relatively small, only around 435 000 tonnes, the production capacity of the South African producer is around 10 % of the Belarusian producer and the main raw material used is iron ore whereas the Belarusian exporting producer is using metal scrap. Therefore, the Commission decided to disregard South Africa as a potential analogue country.
- (29) Brazil has a domestic consumption of around 3,5 million tonnes and imports (around 95 % originating in Turkey), subject to an *ad valorem* duty of 12 %, represents around 5,5 % of the Brazilian consumption. The production process of the producer offering to cooperate is based on metal scrap and pig iron, whereas the Belarusian exporting producer uses mainly metal scrap and its production volume is around 50 % of the Belarusian producer.
- (30) The USA's domestic consumption was around 7,7 million tonnes. There were at least eight domestic producers. Imports restrictions were in force <sup>(1)</sup> but imports represented nevertheless around 23 % of the total consumption, mainly originating from Turkey and Japan. The US producer used a similar production process than the Belarusian producer. Its production volume was around 52 % of that of the Belarusian producer.
- (31) On the basis of this analysis, the Commission considered that market situation found in Brazil and in the USA are sufficiently competitive. Therefore, the Commission decided to select Brazil and the USA as potential analogue country.
- (32) The analogue country questionnaires were sent to the two above mentioned cooperating producers. However, after having received the analogue country questionnaire, the Brazilian producer informed the Commission of its decision to withdraw its cooperation in the investigation. The Commission received an appropriate response from the USA producer.
- (33) The Commission observed that the USA cooperating producer was related with one of the complainants, as alleged by the Belarusian exporting producer. However, even if a producer in the analogue country is related to a Union producer, such a link does not invalidate or affect the determination of the normal value <sup>(2)</sup>.
- (34) The Commission concluded at this stage of the proceeding that the USA is an appropriate analogue country under Article 2(7)(a) of the basic Regulation.

### 3.2.2. Normal value (analogue country)

- (35) The information received from the cooperating producer in the analogue country was used as a basis for the determination of the normal value, pursuant to Article 2(7)(a) of the basic Regulation.
- (36) First, the Commission examined whether, in accordance with Article 2(2) of the basic Regulation, the total volume of the sales of the like product to independent customers in the USA was representative. To this end, the total sales volume was compared to the total volume of the product concerned exported by the Belarusian exporting producer to the Union. On that basis, the Commission found that the like product was sold in representative quantities on the US market.
- (37) Second, the Commission identified the product types sold domestically by the producer in the analogue country that were identical or directly comparable with the types sold for export to the Union by the Belarusian exporting producer. It compared on a product type basis the sales volume in US with the exports by the Belarusian exporting producer to the Union. This comparison showed that all product types were sold in representative quantities in the US.

<sup>(1)</sup> Anti-dumping duties are in force against Belarus (115 %), China (133 %), Indonesia (60,4 %), Latvia (17 %), Mexico (20 % to 67 %), Moldova (232 %), Poland (47 % to 52 %), Turkey (3,64 %) and Ukraine (42 %). For more details please refer to the following investigations:

'Steel Concrete Reinforcing Bar from Belarus, China, Indonesia, Latvia, Moldova, Poland and Ukraine. Investigations Nos 731-TA-873-875, 878-880, and 882 (Second Review). Publication 4409, July 2013. U.S. International Trade Commission.' and 'Steel Concrete Reinforcing Bar from Mexico and Turkey. Investigations Nos 701-TA-502 and 731-TA-1227 (Final). Publication 4496. October 2014. U.S. International Trade Commission.'

<sup>(2)</sup> Please refer also to Judgement in case C-687/13, point 67, request for a preliminary ruling from the Finanzgericht München — Germany, Fliesen-Zentrum Deutschland GmbH v Hauptzollamt Regensburg Fliesen-Zentrum, Judgment of the Court (Third Chamber) of 10 September 2015.

- (38) The Commission subsequently examined for the analogue country producer whether each type of the like product sold domestically could be considered as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing for each product type the proportion of profitable sales to independent customers on the domestic market during the investigation period. The sales transactions were considered profitable where the unit price was equal or above the cost of production. The cost of production of each product type produced by the US producer during the investigation period was therefore determined.
- (39) Where the sales volume of a 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 that type, and where the weighted average sales price of that type was equal to or higher than the cost of production, normal value was based on the actual domestic price. This price was calculated as a weighted average of the prices of all domestic sales of that type made during the investigation period. For all product types sold by the analogue country producer, the volume of profitable sales of a product type represented 80 % or more of the total sales volume of that type.
- (40) Finally, all the product types exported from Belarus to the Union were also sold in the USA. Therefore, there was no need to construct the normal value for any product types exported.

### 3.3. Export price

- (41) The Belarusian cooperating exporting producer exported to the Union either through related traders located in Austria, Lithuania, Poland, Germany and the USA or sold directly to the first independent customers. As indicated in recital 13 above the three main related traders were verified on spot.
- (42) For the direct sales from exporting producer to the first independent customers, 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.
- (43) For the sales made through related traders acting as an importer, the export price was established on the basis of the 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 selling, general and administrative (SG&A) expenses (ranging from around 1 % to 2,5 %), and for a reasonable margin of profit for the traders involved in the sale (below 1 %).

### 3.4. Comparison

- (44) The Commission compared the normal value and the export price of the sampled exporting producer on an ex-works basis.
- (45) 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.
- (46) As regards export prices of the exporting producer, adjustments were made for transport, insurance and handling (ranging from around 4 % to 7,5 % depending on the related trader concerned or the exporting producer), credit cost and bank charges (ranging from 0 % to 1,5 % depending on related trader concerned or the exporting producer), representing in total about 8 % of the value of sales. Concerning domestic prices of the analogue country producer, adjustments were made for domestic transportation costs and handling (on average 5,3 % of the value of sales), as well as credit costs (at a yearly rate of 1,15 %).
- (47) The comparison was made for 100 % of the product types exported and sold in the Union by the Belarusian exporting producer and its related traders.

- (48) During a hearing held on 14 October 2016, the representatives of the Belarusian exporting producer claimed the normal value should be adjusted to reflect the average prices of scrap purchases and its consumption ratio in the production of the product concerned in Belarus.
- (49) The Commission, first, underlines that normal value has not been constructed, but was based only on sales, so that such an adjustment is excluded at the level of establishing normal value.
- (50) The Commission, second, understands that this company may have wanted to raise an issue of fair comparison and thus analysed this claim under Article 2(10)(k). The investigation showed that the Belarusian exporting producer purchased scrap material either from local suppliers or from Russian suppliers.
- (51) The Commission notes, that as a non-market economy country, prices and costs in Belarus are considered to be distorted. Thus, granting adjustments relaying on Belarusian prices and cost as well as on the resulting consumption ratio would mean using the distorted Belarusian price. Therefore, the Commission rejected this claim in this regard. Even if the Commission had to demonstrate actual distortion of Belarusian prices, the Commission observes that the complaint has established *prima facie* that such distortions exist, and the Belarusian exporter has not provided substantiated proof to counter those allegations.
- (52) With regard to scrap imported from Russia the Commission observed during the investigation that the price of the raw material in the USA and in the Russian Federation is similar <sup>(1)</sup>. Moreover, the investigation has shown that the US scrap consumption ratio is similar to the ones reported by the Belarusian exporting producer, i.e. between 60-70 %. Therefore, the Commission provisionally concluded that the scrap purchase price in the USA does not affect price comparability. The claim is provisionally rejected.

### 3.5. Dumping margins

- (53) For the cooperating exporting producer, the Commission compared the weighted average normal value of each type of the like product in the analogue country (see recital 47 above) with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation. On this basis, the provisional weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, is 58,4 %.
- (54) The level of cooperation is high because the imports of the cooperating exporting producer constituted the totality of the total exports to the Union during the investigation period. On this basis, the Commission decided to base the residual dumping margin at the level of the cooperating exporting producer with the highest dumping margin.
- (55) The provisional dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional dumping margin
Open Joint-Stock Company 'Byelorussian Steel Works — Management Company of "Byelorussian Metallurgical Company" Holding', Belarus	58,4 %
All other companies	58,4 %

<sup>(1)</sup> Based on the information available, it appears that for April 2015, the price of the raw material imported by the Belarusian exporting producer was around 9 % more expensive compared to the US price.

#### 4. UNION INDUSTRY

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

- (56) The like product was manufactured by 31 Union producers. They are deemed to constitute the Union industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation and will hereinafter be referred to as the 'Union industry'.
- (57) All available information concerning the Union industry, such as information provided in the complaint, data collected from Union producers and their association before and after initiation of the investigation and the questionnaire responses of the sampled Union producers, was used in order to establish the total Union production for the investigation period.
- (58) On this basis, the total Union production was estimated to be around 12,7 million tonnes during the IP. This figure includes the production of all Union producers, both the sampled producers and the non-sampled producers, calculated on the basis of verified data submitted by the complainant.
- (59) As indicated in recital 8 above, the five Union producers included in the sample represent 22,4 % of the estimated total Union production of the like product. In this respect, it should be taken into account that the Union production of the product concerned is very fragmented, which is illustrated by the high number of Union producers mentioned in recital 56 and therefore the sample of five producers is representative for the Union industry.

#### 5. INJURY

##### 5.1. Preliminary remark

- (60) The Belarusian exporting producer claimed that there was insufficient prima facie evidence of the existence of injury in the complaint, which therefore should not have been accepted. The argument hinges in particular on a wrongful presentation in the complaint of the alleged artificially low scrap procurement costs from which the exporting producer in question benefits. The Belarusian producer claimed that such misconception invalidated the complaint entirely.
- (61) As mentioned in recital 19 above, Belarus is a non-market economy country and, as a result, normal value was determined on the basis of the analogue country methodology. Therefore, no determination on whether scrap was procured at artificially low prices by the Belarusian producer was necessary. The Commission fails to see the substance or relevance of this claim and its relevance to the determination of injury to the EU industry.

##### 5.2. Union consumption

- (62) Union consumption was established on the basis of the total sales volume of the Union industry on the Union market and the total imports. Union consumption decreased between years 2012 and 2013 but returned to its 2012 level in 2014 and moderately increased further in the IP. Union consumption increased overall by 3 % over the period considered.

	2012	2013	2014	IP
Consumption (in tonnes)	9 465 588	8 783 290	9 445 867	9 704 309
Index (2012 = 100)	100	93	100	103

Source: Eurostat, complaint and questionnaire replies.

### 5.3. Imports into the Union from the country concerned

#### 5.3.1. Volume and market share of the imports concerned

- (63) During the period considered the imports into the Union from Belarus were found to have developed in terms of volume and market share as follows:

	2012	2013	2014	IP
Volume (tonnes)	173 664	155 012	260 774	488 759
Index (2012 = 100)	100	89	150	281
Market share on EU consumption (%)	1,8	1,8	2,8	5,0
Index (2012 = 100)	100	96	150	275

Source: Eurostat, complaint and questionnaire replies.

- (64) Import volumes from Belarus almost tripled over the period considered. The market share of imports from Belarus also increased over the period considered, from 1,8 % in 2012 to 5 % in the IP.

#### 5.3.2. Prices of imports and price undercutting

- (65) The table below shows the average price of imports from Belarus:

	2012	2013	2014	IP
Average price in EUR/tonne	500	467	441	376
Index (2012 = 100)	100	93	88	75

Source: Eurostat.

- (66) The average import prices from Belarus decreased during the period considered, following a decrease of prices of scrap, which is used as raw material both in Belarus and in the Union. However, the 25 % decrease in the prices of Belarusian exports to the EU was sharper than the decrease in prices of the sampled Union producers and of average prices of other major exporters of the product concerned to the Union over the same period. As a result, in the IP, prices of imports from Belarus were lower than prices of the Union producers and average prices of imports from any of the other major third countries present on the market.
- (67) In order to determine whether there was price undercutting during the IP, and to what extent, the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level by deducting the actual delivery costs (0,5 %-5 %), commissions (0 %-1,5 %), discounts (0,9 %-2,3 %) and credit costs (0,2 %-0,5 %), were compared to the corresponding weighted average prices per product type of the dumped imports from the Belarusian producer to the first independent customer on the Union market, established on a CIF basis.
- (68) The result of the comparison, when expressed as a percentage of the sampled Union producers' turnover during the IP, showed an undercutting margin of 4,5 %. The lower prices of the dumped imports compared to the Union prices explain the significant increase in Belarusian import volume and in the market share held by the imports from Belarus from 2014 onwards.

- (69) The Belarusian exporting producer submitted certain documents for the comparison of the sales prices of the Polish and Belarusian producers with the aim to claim that Belarusian prices were actually higher in the IP than the prices of the Union producers. In this regard it is recalled that the undercutting calculations and micro indicators concerning price level are based on the data collected from the sampled Union producers while the data submitted by the Belarusian company referred to non-sampled Polish producers. Therefore, the submitted data have no influence on the Commission findings with regard to price undercutting and microeconomic indicator trends in the period considered as described in recital 83. Furthermore, these are aggregated data of all the sampled companies and all their unrelated sales transactions which are taken into account for establishing the undercutting and micro indicators trends. Nevertheless, the Commission confirms that during the IP Belarusian prices undercut each and every single sampled EU producer.

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

##### 5.4.1. Preliminary remarks

- (70) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports from Belarus 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.
- (71) As mentioned in recital 59, sampling was used for the examination of the possible injury suffered by the Union industry.
- (72) For the purpose of the injury analysis, the Commission distinguished between macroeconomic and microeconomic injury indicators. In this regard, the economic situation of the Union industry is assessed on the basis of (a) macroeconomic indicators, namely production, production capacity, capacity utilisation, sales volume, market share and growth, employment, productivity, magnitude of the actual dumping margin and recovery from past dumping, for which the data was collected at the level of the total Union industry; and on the basis of (b) microeconomic indicators, namely average unit prices, unit cost, profitability, cash flow, investments, return on investment and ability to raise capital, stocks and labour costs, for which the data was collected at the level of the sampled Union producers.
- (73) All available information concerning the Union industry including information provided in the complaint, data collected from the Union producers before and after the initiation of the investigation, and the questionnaire responses of the sampled Union producers, was used in order to establish the macroeconomic indicators and in particular the data pertaining to the non-sampled Union producers.
- (74) The microeconomic indicators were established on the basis of information provided by the sampled Union producers in their questionnaire replies.

##### 5.4.2. Macroeconomic indicators

###### (a) Production, production capacity and capacity utilisation

- (75) The trends for Union production, production capacity and the utilisation of the capacity developed as follows during the period considered:

	2012	2013	2014	IP
Production volume (tonnes)	13 387 728	12 563 163	13 255 746	12 689 981
<i>Index (2012 = 100)</i>	100	94	99	95
Production capacity (tonnes)	18 848 442	19 038 334	19 168 491	18 897 474
<i>Index (2012 = 100)</i>	100	101	102	100

	2012	2013	2014	IP
Capacity utilisation (%)	71	66	69	67
<i>Index (2012 = 100)</i>	100	93	97	95

Source: Eurostat, complaint and questionnaire replies.

- (76) The Union production volume decreased 5 % during the period considered. Taking into account that production capacity remained constant during that period, the decrease in output resulted in a reduction of the capacity utilisation by 4 percentage points from 71 % in 2012 to 67 % in the IP.

(b) Sales volume, market share and growth

- (77) The sales of the Union producers included sales to related companies. These sales to related companies represented, over the period considered, around 10 % of the Union consumption. Sales volume, market share and growth were therefore assessed separately for related sales and free market (unrelated sales). With regard to related sales it is confirmed that they are directed to the related users not to the related trading companies therefore they are not double counted in the calculation of the total Union consumption.
- (78) The trends concerning sales volumes, market share and growth developed as follows during the period considered:

	2012	2013	2014	IP
Sales volume unrelated ( <i>tonnes</i> )	7 734 058	7 189 883	7 192 146	7 237 285
<i>Index (2012 = 100)</i>	100	93	93	94
Market share unrelated sales (%)	82	82	76	75
<i>Index (2012 = 100)</i>	100	100	93	91
Sales volume related ( <i>tonnes</i> )	888 325	735 632	1 091 819	1 012 318
<i>Index (2012 = 100)</i>	100	83	123	114
Market share related sales (%)	9	8	12	10
<i>Index (2012 = 100)</i>	100	89	123	111

Source: Eurostat, complaint and questionnaire replies.

- (79) The Union industry sales volume to unrelated customers decreased by 6 % in the period concerned, situation which is reflected also in the 7 percentage points decrease of market share between 2012 and the IP. This occurred in spite of an increase in consumption in the Union market during the same period. Rapid decrease in volumes of sales took place between 2012 and 2013 when the sales volume trend followed exactly the trend in consumption — and the Union industry was able to maintain the same market share. However, in the period between 2013 and the IP the situation changed completely. Union market grew by 10 % in this period while in the same time the Union industry lost 7 percentage points of its market share. At the same time the volume of Belarusian imports and their market share increased rapidly. This demonstrates that the Union industry could not benefit from the growth in Union consumption due to the increasing market share of dumped imports.

## (c) Employment and productivity

- (80) In line with the decline in production and sales, it was observed that the level of the Union industry's employment also decreased by 2 % between 2012 and the IP. However, this reduction of employment did not result in increase in productivity, measured as output per person employed per year, as the drop in production volume in the period considered was deeper than the reduction in employment.

	2012	2013	2014	IP
Number of employees	5 363	5 133	5 282	5 239
<i>Index (2012 = 100)</i>	100	96	98	98
Productivity (MT/employee)	2 496	2 447	2 510	2 422
<i>Index (2012 = 100)</i>	100	98	101	97

Source: Complaint and questionnaire replies.

## (d) Magnitude of the actual dumping margin and recovery from past dumping

- (81) The dumping margin of the Belarusian exporting producer is considerable (see recital 55 above). Given the volume, market share and prices of the dumped imports from Belarus, discussed above, the impact on the Union industry of the actual dumping margin cannot be considered to be negligible.
- (82) As no finding on dumped imports of the product concerned was made previously, the Union industry is not recovering from any past dumping practices regarding the product concerned.

## 5.4.3. Microeconomic indicators

## (a) Average unit selling prices on the Union market and unit cost of production

- (83) The average sales prices of the sampled Union producers to unrelated customers have been depressed in the first part of the period considered (2012-2013) by the impact of the 'VAT fraud scheme' (see recitals 106 to 111). In the second part of the period considered (2014-IP), they have been depressed by the dumped imports from Belarus. During the period considered the prices in the Union decreased by 22 % from 2012 to the IP. The price decrease reflects a general lowering trend in the worldwide cost of the main raw material. However, due to the further price depression exerted by the dumped imports from Belarus, where the decrease in prices was deeper than only reflecting the raw material cost, the Union producers could not return prices depressed by the VAT fraud scheme to normal and undistorted levels, benefitting from the reduction in the costs of the main raw material, but had to keep prices lower than under normal competition.
- (84) In the period considered, the costs of the Union industry decreased by 20 % which was less than decrease in prices. This is explained by higher energy and labour costs. As a result, over the period considered profitability of the Union industry deteriorated.

	2012	2013	2014	IP
Average unit selling price in the Union to unrelated customers (EUR/tonne)	493	459	436	383
<i>Index (2012 = 100)</i>	100	93	88	78

	2012	2013	2014	IP
Unit cost of goods sold (EUR/tonne)	487	466	441	391
<i>Index (2012 = 100)</i>	100	96	91	80

Source: Questionnaire replies.

(b) Profitability, cash flow, investments, return on investments and ability to raise capital

- (85) During the period considered the Union producers' cash flow, investment, return on investment and their ability to raise capital developed as follows:

	2012	2013	2014	IP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	1,3	– 1,6	– 1,2	– 2,1
Cash flow (EUR)	35 355 861	15 439 631	17 308 800	5 869 113
<i>Index (2012 = 100)</i>	100	44	49	17
Investments (EUR)	29 266 937	23 168 567	21 554 327	20 818 669
<i>Index (2012 = 100)</i>	100	79	74	71
Return on investments (%)	0,7	– 2,6	– 2,5	– 3,2

Source: Questionnaire replies.

- (86) The profitability of the sampled Union producers is expressed as the pre-tax net profit of the sales of the like product to customers in the Union as a percentage of the turnover of those sales. The sampled Union producers were profitable in 2012, but became loss-making from 2013 onwards. What is more, their profitability reaches its lowest level in the IP which correlates with the highest volumes of the imports from Belarus and its lowest price level in the whole period considered.
- (87) Cash flow, which is the ability of the industry to self-finance its activities, although positive throughout the whole period considered, deteriorated over the whole period considered.
- (88) The Union producers were still able to invest over the whole period considered but the evolution of profitability and cash flow adversely affected also investments which over the period considered decreased by 29 %. Furthermore, the return on investments is constantly negative from 2013 onwards following the trend in profitability.
- (89) In light of the above, it can be concluded that the financial performance of the sampled Union producers was negative during the IP.

## (c) Stocks

- (90) The level of stocks of the sampled Union producers decreased by 25 % during the period considered. However, the ratio of stocks to the production volume remains stable in the period considered (1 % to 1,5 %) — the stock level follows decreasing trend in production volume.

	2012	2013	2014	IP
Closing stocks (tonnes)	184 632	161 698	188 050	138 491
<i>Index (2012 = 100)</i>	100	88	102	75

Source: Questionnaire replies.

## (d) Labour costs

- (91) The average labour costs of the sampled Union producers increased modestly during the period considered. Labour costs represented less than 10 % of the total costs of production. Therefore labour costs do not represent a determining factor in the evolution of the cost of production.

	2012	2013	2014	IP
Average labour costs per employee (EUR)	47 109	47 468	49 305	49 541
<i>Index (2012 = 100)</i>	100	101	105	105

Source: Questionnaire replies.

### 5.5. Conclusion on injury

- (92) The investigation showed that the Union industry did not benefit from the increase in consumption during the period considered. To the contrary, the Union industry suffered a 6 % drop in the sales volumes in the period considered and its market share decreased by 6 percentage points (against the background of a 3 % increase of the total consumption). These trends are more clearly visible when the period from 2013 to the IP is taken into consideration, when import volumes from Belarus were growing rapidly and increasing its market share. Within the same period, the Union industry lost 7 percentage points of market share, in a scenario of increasing consumption (+10 %). The Union industry suffered also a 5 % decrease in production output in the period considered, which resulted in a drop of capacity utilisation from 71 % to 67 %.
- (93) Furthermore, due to increased unfair competition from dumped imports, the Union industry had to reduce its prices on average by 22 % in the period considered which has resulted in a decline from 1,3 % profit in 2012 to 2,1 % loss in the IP despite the reduction of costs and employment.
- (94) Finally, other financial indicators such as return on assets, cash flow and investments were also adversely affected in the period considered.
- (95) In light of the foregoing, it is provisionally concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

## 6. CAUSATION

### 6.1. Introduction

- (96) In accordance with Article 3(6) and (7) of the basic Regulation, the Commission examined whether the dumped imports from Belarus had caused injury to the Union industry to a degree sufficient to be considered as material. Known factors other than the dumped imports, which could at the same time be injuring the Union industry, were also examined to ensure that the possible injury caused by these other factors was not attributed to the dumped imports.

### 6.2. Effect of the dumped imports

- (97) The investigation showed that the Union consumption increased by 3 % over the period considered and at the same time the volume of imports originating in Belarus increased significantly. Over the last 2 years of the period considered the volume of Belarusian imports and its share in the Union market increased by 175 %. The increase of dumped imports coincided with a drop in the market share of the Union industry.
- (98) With regard to the price pressure prevailing on the Union market during the period considered, it was found that the average import prices from Belarus were decreasing rapidly especially in the last 2 years of the period considered. In the IP, the level of prices of Belarusian imports was already lower than the average sales prices of the Union industry and sales prices of imports from the third countries present on the Union market.
- (99) Due to the price pressure exerted by the increasing volumes of Belarusian imports, the Union industry was not able to cover its costs.
- (100) Based on the above, it is concluded that the surge of dumped imports from Belarus at prices undercutting those of the Union industry caused material injury suffered by the Union industry.

### 6.3. Effect of other factors

#### 6.3.1. *Export performance of the Union industry*

- (101) According to data of the sampled Union producers, export volumes to unrelated customers in third countries increased by 5 % during the period considered. Thus, it can be concluded that this part of sales activity of the Union industry could not be a cause of the material injury found.

#### 6.3.2. *Sales to related parties*

- (102) Union industry sales to related parties increased by 14 % during the period considered at price levels which were consistently above those of sales to unrelated parties. Even though these prices are transfer prices, it can be concluded that this part of sales activity of the Union industry could not be the cause of the material injury found. On the contrary, the increase in these sales and the fact those prices are higher than prices to unrelated customers suggest that the injury suffered by the Union industry could have been even more substantial had it not been for these sales to related parties.
- (103) It should also be stressed that undercutting and underselling margins were established by comparing Belarus import prices with sales prices of the Union producers to unrelated customers. Thus, the sales to related companies did not affect the determination of undercutting and underselling.

## 6.3.3. Imports from third countries

Country		2012	2013	2014	IP
Norway	Volume (tonnes)	195 370	184 643	201 617	215 218
	Index (2012 = 100)	100	95	103	110
	Market share (%)	2,1	2,1	2,1	2,2
	Av. Price (EUR/tonne)	551	496	483	431
Bosnia and Herzegovina	Volume (tonnes)	47 702	79 207	105 910	116 927
	Index (2012 = 100)	100	166	222	245
	Market share (%)	0,5	0,9	1,1	1,2
	Av. Price (EUR/tonne)	566	479	455	415
Turkey	Volume (tonnes)	101 900	147 164	207 427	113 012
	Index (2012 = 100)	100	144	204	111
	Market share (%)	1,1	1,7	2,2	1,2
	Av. Price (EUR/tonne)	536	486	465	433
Ukraine	Volume (tonnes)	79 342	20 656	32 025	112 953
	Index (2012 = 100)	100	26	40	142
	Market share (%)	0,8	0,2	0,3	1,2
	Av. price	517	510	452	394
Rest of the World	Volume (tonnes)	245 225	271 092	354 150	407 837
	Index (2012 = 100)	100	111	144	166
	Market share (%)	2,6	3,1	3,7	4,2
	Av. Price (EUR/tonne)	697	645	573	502

(104) In the period considered the individual market shares of the third countries increased only marginally with the exception of Ukraine where the increase in market share was substantial in relative terms but still the market share of this country in absolute terms is negligible. It should be also noted that throughout the period considered the prices of imports from the third countries were on average always higher than the prices of the Union industry. The only exporting country with lower average prices than the Union industry was Belarus in the IP which was the same year when volumes of imports from Belarus increased most rapidly. Therefore, it is concluded that even if imports from third countries may have had some impact on the situation of the Union industry, imports from Belarus clearly remained the main cause of injury.

#### 6.3.4. Costs evolution

- (105) The main cost factor in the production of the product concerned is iron and steel scrap. During the period concerned, the price of this raw material decreased globally. The Union producers producing billets from scrap experienced a decrease in the cost of raw material between 23 % and 32 % and Union producers using billets as raw material of around 24 %. According to the data from the sampled Union producers, the total cost of manufacturing of the product concerned decreased by 20 % in the period considered, the decrease in raw material prices was somewhat offset, mainly by higher labour cost (around 10 % on average). It can be therefore concluded that the costs evolution could not be a cause of the material injury found. On the other hand due to the price depression, mainly from dumped imports from Belarus, the Union industry could not benefit from decreasing costs and these cost savings were not reflected in its financial indicators.

#### 6.3.5. Impact of so called 'VAT fraud scheme'

- (106) The Belarusian exporting producer claimed that one of the important factors affecting the performance of the Union industry in the period considered was the so-called 'VAT fraud scheme'. The scheme affected mainly the Polish market. In 2012, the Euro football championship was organised in this country and, at the time, the construction sector was booming and the demand for rebars was very high. Some unscrupulous traders allegedly operated in the market taking advantage of this opportunity and setting up a VAT carousel fraud. Shell companies were created in Poland purchasing rebar from another member State and reselling it in Poland with the local VAT charged on the invoice. However, these shell companies never accounted for the VAT collected. Allegedly due to the low prices on the Polish market caused by such fraudulent trading companies, the Polish producers lost market share and experienced financial losses.
- (107) Indeed, it was confirmed that the above described VAT fraud had a major impact on the rebar market in Poland. Many regular steelmakers faced a decline in their economic performance due to the market disruption. Some of the companies had even suspended rebar production for a couple of weeks at the beginning of January 2013 as a result of such illegal activities. However, it has to be stressed that there is no overlap between the VAT fraud scheme and the dumped imports from Belarus in terms of timing and impact. The fraud scheme ended when the Polish government applied reverse charge VAT mechanisms as from 1 October 2013. Its impact is visible in the sudden drop of the Union industry sales and production volumes in 2013. However, the situation went back to normal in 2014 while in the meantime the increased flow of dumped imports started adversely affecting the level of prices, market share and financial performance of the Union industry. Hence, the impact of the VAT fraud on the economic situation of the Polish manufacturers is limited to the years where import from Belarus into the Union market was relatively low in volume and relatively high priced. There was also no spill-over effect on the Polish rebar market when the fraudsters ceased their activities. These findings are actually confirmed by the additional submission (and supporting evidence) provided by the Belarusian exporting producer concerning the situation on the Polish market during and after the VAT fraud scheme was active. It is therefore manifest that this issue can be separated from the effects of the dumped imports and is not breaking the causal link between the dumped imports from Belarus and injury suffered by the Union industry.
- (108) The Belarusian exporting producer further claimed that as a result of the VAT fraud scheme described above, certain producing companies located in Latvia and Slovakia went bankrupted. The company indicates therefore that negative trends in the production and sales volumes of the Union industry are caused by the disappearance of certain companies from the market which is not linked with the export activity of the Belarusian exporting producer.
- (109) With regard to this claim, it should be stressed that the estimation of the macro indicators shown in the recitals 75 to 82 did not take into account the companies which did not exist in the IP. For the companies which did not receive questionnaires, information relevant to macro indicators was estimated on the basis of the actual production output in the IP. Thus, disappearance of the companies in question from the market is not reflected in the indicators showing the negative development of production and sales volumes of the Union industry. It should be stressed that if they were taken into account the overall injury picture would have been even worse.
- (110) Finally, the Belarusian exporting producer in question claims that the volumes and import prices of imports from this country in the years 2014 and the IP are not representative of the 'normal' sales strategy of the company. The company claims that its increased export activity in the Union in these years was a result of the gap between demand and supply of the product concerned on the markets of Poland and the Baltic States, which resulted from the disturbances caused by the VAT frauds. The company claims that the Commission should investigate

volumes and level of prices of imports from Belarus in the post IP period. The company claims that such investigation of post-IP data was found justified by the Commission in the recent proceeding concerning imports of grain oriented electrical steel ('GOES').

- (111) With regard to the above it is first noted that the existence of a gap between demand and supply of the product concerned is not confirmed by the findings of the investigation. The VAT fraud scheme indeed adversely affected the performance of the producers in Poland in 2013 but its impact was linked with the low level of prices of the product concerned sold by the fraudulent trading companies, not with shortages of supply. After October 2013 this adverse effect was removed as explained in recital 107. The Union producers located in Poland could then freely use their available capacity of production (over 40 %) to supply the customers both in Poland and in Baltic States. Their failure to increase their sales and market share in the year 2014 and IP resulted from competition of sharply increasing dumped imports from Belarus. Secondly, it is noted that the claim to examine post IP data came very late in the procedure. The Commission will collect post-IP data and consider whether or not review of post-IP developments is appropriate in this case at the definitive stage of the investigation. However, already at this stage it should be noted that circumstances in this proceeding cannot be seen as similar to those in the referred GOES investigation.

#### **6.4. Conclusion on causation**

- (112) It has been demonstrated that there was a substantial increase in the volume and market share of the dumped imports originating in Belarus in the period considered. In addition, it was found that these imports were undercutting the prices charged by the Union industry on the Union market in the IP.
- (113) Increase in volume and market share of the dumped imports from Belarus coincided with the deterioration of the financial situation of the Union industry, which is especially visible as of 2014. Thus, despite the recovery in consumption, the Union industry was unable to increase its sales and prices, and consequently financial indicators such as profitability remained negative.
- (114) The examination of the other known factors which could have caused injury to the Union industry revealed that these factors were not such as to break the causal link established between the dumped imports from Belarus and the injury suffered by the Union industry.
- (115) Based on the above analysis, which has distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports, it is provisionally concluded that the dumped imports from Belarus have caused material injury to the Union industry within the meaning of Article 3(6) of the basic Regulation.

### **7. UNION INTEREST**

#### **7.1. General considerations**

- (116) In accordance with Article 21 of the basic Regulation, it has been examined whether, despite the provisional finding of injurious dumping, compelling reasons exist for concluding that it is not in the Union interest to adopt measures in this particular case. The analysis of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, and users.

#### **7.2. Interest of the Union industry**

- (117) The Union industry is composed of more than 65 producers, located in different Member States of the Union, and employing directly more than 4 600 people in relation to the like product during the IP.
- (118) It has been established that the Union industry suffered material injury caused by the dumped imports from Belarus. It is recalled that the Union industry could not fully benefit from the growing consumption and the financial situation of the Union industry remained fragile.
- (119) It is expected that the imposition of anti-dumping duties will restore fair trade conditions on the Union market, allowing the Union industry to align its prices of the like product to the costs of production.

- (120) It can also be expected that the imposition of measures will enable the Union industry to regain at least part of the market share lost during the period considered, with a positive impact on its profitability and overall financial situation. The imposition of measures would enable the industry to maintain and further develop its efforts to be cost efficient.
- (121) Should measures not be imposed, further losses in market share could be expected and the Union industry's profitability would deteriorate.
- (122) It is, therefore, provisionally concluded that the imposition of anti-dumping measures on imports originating in Belarus would be in the interest of the Union industry.

### 7.3. Interest of users and importers

- (123) Cooperation of the users of the product concerned was low. Out of eight known users contacted upon the initiation of the procedure only one company was interested in cooperating. However, even this company failed to reply to the user questionnaire sent by the Commission.
- (124) In the case of importers there were six companies which replied to the sampling questionnaire included in the Notice of Initiation. Three of these companies, representing 81 % of the volume of imports of the product concerned reported by the respondents, were subsequently chosen to the sample.
- (125) Only two out of three sampled importers replied to the questionnaires sent by the Commission. One of them indicated that the company in question is not just an importer of the product concerned but actually a user and should be treated as such in the procedure.
- (126) The importer started to procure the product concerned during the IP of which 78 % was imported from Belarus and it did so with a small profit margin. That illustrates that this importer banked on the opportunity of low import prices from Belarus and created a new customer base. The actions of this importer can therefore not be considered as responding to established trade flows. It will therefore look for other trade opportunities when the market situation changes after the imposition of measures.
- (127) The user made losses on the sales of downstream finished products containing rebars. The latter were procured circa half from the Union industry, a third from Belarus and the rest from third countries such as China and Turkey. This user therefore sources where appropriate in terms of price, availability and quality. The proportion of purchases from Belarus may be affected by the intended measures and somewhat limiting or altering the choice of procured rebars, but does not seem to affect this user fundamentally. The cause of the losses seems structural and unrelated to the raw material sourcing from Belarus.
- (128) Both companies, despite their apparently different role in the procedure, raised nevertheless the same point against the imposition of the measures: (a) insufficient capacity of the Union producers to satisfy the demand of the Union market; (b) insufficient range of products produced by the Union producers; and (c) difficulties in switching between suppliers as allegedly different Member States require different homologation certificates for the product concerned.
- (129) The first claim is not supported by the provisional findings — capacity utilisation of the Union industry is at the level of 67 % which leaves much more free capacity than the whole imports of Belarus to the Union.
- (130) The second claim was not substantiated. On the other hand questionnaire replies of the sampled Union producers show clearly that they are producing and selling the full range of product types.
- (131) With regard to the third claim, it should be stressed that Union producers are already supplying various Member States without any apparent difficulty.

- (132) One other cooperating, not sampled, importer raised in his separate submission the issue of the cartel allegedly existing among the Union producers. However, the company did not provide any documents supporting this claim. The issue of alleged cartel agreement was subsequently raised by the Belarusian exporting producer. The Commission is assessing the information provided by the Belarusian exporting producer. However, as this came very late in the procedure, this point cannot be addressed and concluded at this stage. In any event, it is noted that information provided by the company seems to relate to accusations potentially involving only one company which is included in the sample of the Union producers. Furthermore, the verification procedure in question initiated by the Italian Competition Authority is not yet concluded <sup>(1)</sup>. The Commission will investigate this claim in more details at the definitive stage of the investigation.
- (133) Finally, one other user, who did not make himself known to the Commission at an earlier stage of the procedure, submitted a user questionnaire reply at the end of the provisional stage of the investigation. The submission came very late in the procedure for the provisional stage of the investigation and therefore could not be analysed and addressed at this stage. The Commission will examine and analyse this questionnaire reply in detail at the definitive stage of the investigation.
- (134) Taken the above into consideration, the Commission takes at this point in time the view that the overall impact on users and importers, and the possible restrictive effects on competition are limited.

#### **7.4. Conclusion on Union interest**

- (135) In view of the above, it is provisionally concluded that overall, based on the information concerning the Union interest, there are no compelling reasons against the imposition of measures on imports of the product concerned from Belarus.
- (136) Any negative effects on the unrelated users and importers are mitigated by the availability of alternative sources of supply.
- (137) Moreover, when considering the overall impact of the anti-dumping measures on the Union market, the positive effects, in particular on the Union industry, appear to outweigh the potential negative impacts on the other interest groups.

### **8. PROPOSAL FOR PROVISIONAL ANTI-DUMPING MEASURES**

- (138) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, provisional anti-dumping measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports.

#### **8.1. Injury elimination level**

- (139) For the purpose of determining the level of these measures, account was taken of the dumping margins found and the amount of duty necessary to eliminate the injury suffered by the Union industry.
- (140) When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measure should allow the Union industry to cover its costs of production and obtain a profit before tax that could be reasonably achieved by an industry of this type under normal conditions of competition, i.e. in the absence of dumped imports, on sales of the like product in the Union.
- (141) In order to determine the target profit, the Commission considered the profits made on unrelated sales which are used for the purpose of determining the injury elimination level.

<sup>(1)</sup> Provvedimento n. 25674 del 21/10/2015;  
Provvedimento n. 26085 del 21/06/2016;  
Provvedimento n. 2671 del 14/09/2016.

- (142) Within the whole period considered only in 2012 the Union industry was profitable but the minimal profit of 1,3 % achieved in that year was affected by the impact of the 'VAT fraud scheme' and subsequent price depression as explained in recitals 83 and 106 to 111. Therefore, the profit achieved in 2012 cannot be considered a reasonable 'target profit' which would enable financial recovery and encourage investments.
- (143) The target profit proposed by the complainant amounted to 9,9 % and was based on the target profit used in the recent antidumping case against the imports of closely related steel product i.e. wire rods. However, the Commission considers it more appropriate to use the target profit based on the findings of the more recent case concerning high fatigue performance steel concrete reinforcement bars i.e. 4,8 %. It is noted that this profit margin, unlike the one proposed by the complainant, was achieved in 2012 that is within the period considered in this case. Furthermore, the two products are very similar, are produced partially by the same companies and with the use of the same production lines.
- (144) On this basis, the injury elimination level was calculated as a comparison of the weighted average price of the dumped imports, as established for the price undercutting calculations in recital 68 above, and the non-injurious price of the Union industry for the like product.
- (145) Any difference resulting from this comparison was then expressed as a percentage of the average total CIF import price.

## 8.2. Provisional measures

- (146) In the light of the foregoing, it is considered that, in accordance with Article 7(2) of the basic Regulation, provisional anti-dumping duties should be imposed in respect of imports of rebars originating in Belarus at the level of the lower of the dumping and the injury margins, in accordance with the lesser duty rule.
- (147) On the basis of the above, the provisional anti-dumping duty rates have been established by comparing the injury margins, dumping margins. Consequently, the proposed anti-dumping duties are as follows:

Company	Injury margin (%)	Dumping margin (%)	Provisional anti-dumping duty rate (%)
BMZ	12,5	58,4	12,5
All other companies	12,5	58,4	12,5

- (148) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission <sup>(1)</sup> forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will accordingly be amended by updating the list of companies benefiting from individual duty rates.
- (149) In order to ensure a proper enforcement of the anti-dumping duty, the residual duty level should not only apply to the non-cooperating exporting producers but also to those producers which did not have any exports to the Union during the IP.

## 9. FINAL PROVISION

- (150) In the interests of sound administration, the Commission will invite the interested parties to submit written comments and/or to request a hearing with the Commission and/or the Hearing Officer in trade proceedings within a fixed deadline.

<sup>(1)</sup> European Commission, Directorate-General for Trade, Directorate H, CHAR 04/039, 1049 Brussels, Belgium.

- (151) The findings concerning the imposition of provisional duties are provisional and may be amended at the definitive stage of the investigation.

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A provisional anti-dumping duty is imposed on imports of certain concrete reinforcement bars and rods, made of iron or non-alloy steel, not further worked than forged, hot-rolled, hot-drawn or hot-extruded, but including those twisted after rolling and also those containing indentations, ribs, grooves or other deformations produced during the rolling process. High fatigue performance iron or steel concrete reinforcing bars and rods are excluded. The product is originating in Belarus and is currently falling within CN codes ex 7214 10 00, ex 7214 20 00, ex 7214 30 00, ex 7214 91 10, ex 7214 91 90, ex 7214 99 10, ex 7214 99 71, ex 7214 99 79 and ex 7214 99 95 (TARIC codes: 7214 10 00 10, 7214 20 00 20, 7214 30 00 10, 7214 91 10 10, 7214 91 90 10, 7214 99 10 10, 7214 99 71 10, 7214 99 79 10, 7214 99 95 10).

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

Company	Provisional anti-dumping duty rate (%)	TARIC additional code
BMZ- Open Joint-Stock Company 'Byelorussian Steel Works — Management Company of "Byelorussian Metallurgical Company" Holding'	12,5	C197
All other companies	12,5	C999

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

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

#### Article 2

1. Within 25 calendar days of the date of entry into force of this Regulation, interested parties may:

- (a) request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted;
- (b) submit their written comments to the Commission; and
- (c) request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

2. Within 25 calendar days of the date of entry into force of this Regulation, the parties referred to in Article 21(4) of Regulation (EU) 2016/1036 may comment on the application of the provisional measures.

#### Article 3

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

Article 1 shall apply for a period of 6 months.

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

Done at Brussels, 19 December 2016.

*For the Commission*

*The President*

Jean-Claude JUNKER

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