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

THE EUROPEAN COMMISSION,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ('basic Regulation') ([1]), and in particular Article 9(4) thereof,

Whereas:

A. PROCEDURE

1. Provisional Measures

(1) On 13 May 2015, the European Commission ('the Commission') imposed a provisional anti-dumping duty on imports of certain grain-oriented flat-rolled products of silicon-electrical steel ('GOES') originating in the People's Republic of China ('PRC'), Japan, the Republic of Korea ('Korea'), the Russian Federation ('Russia') and the United States of America ('USA') (together, referred to as 'the countries concerned') by Regulation (EU) No 2015/763 ('the provisional Regulation') ([2]).

(2) The proceeding was initiated on 14 August 2014 following a complaint lodged on 30 June 2014 by the European Steel Association ('Eurofer' or 'the complainant') on behalf of producers representing more than 25 % of the total Union producers of GOES.

(3) As set out in recital (15) of the provisional Regulation the investigation of dumping and injury covered the period from 1 July 2013 to 30 June 2014 ('the investigation period or IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2011 to the end of the investigation period ('the period considered').

2. Subsequent procedure

(4) Subsequent to the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed ('the provisional disclosure'), several interested parties made written submissions making known their views on the provisional findings. The parties who so requested were granted an opportunity to be heard. Hearings with the Hearing Officer in trade proceedings were held with the Japanese exporting producers JFE Steel Corporation and Nippon Steel & Sumitoma Metal Corporation.

(5) As set out in recitals (27), (224) and (239) of the provisional Regulation, the Commission continued to seek and verify all information it deemed necessary for its definitive findings. Five additional verification visits were carried out after the imposition of the provisional measures at the premises of the following users in the European Union:

— Siemens Aktiengesellschaft, München, Germany

— ABB AB, Brussels, Belgium

— SGB-Smit Group, Regensburg, Germany

— Končar — Distribution and Special Transformers, Inc., Zagreb, Croatia

— Schneider Electric S.A., Metz, France

([1]) OJ L 343, 22.12.2009, p. 51.

([2]) Commission Regulation (EU) No 2015/763 of 12 May 2015 imposing a provisional anti-dumping duty on imports of imports of certain 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 ('Russia') and the United States of America (OJ L 120, 13.5.2015, p. 10).

(6) In addition, three verification visits were carried out at the premises of the following Union producers:

— ThyssenKrupp Electrical Steel UGO SAS, Isbergues, France

— ThyssenKrupp Electrical Steel GmbH, Gelsenkirchen, Germany

— Tata Steel UK Limited (Orb Electrical Steels), Newport, United Kingdom

(7) All parties were informed of the essential facts and considerations on the basis of which the Commission intended to impose definitive anti-dumping measures. They were also granted a period within which they could make representations subsequent to this disclosure. A hearing with the Hearing Officer in trade proceedings was held with a user association.

(8) The Commission considered the oral and written comments submitted by the interested parties and, where appropriate, modified the findings accordingly.

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

(9) As set out in recital (16) of the provisional Regulation, the product concerned is 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 within CN codes ex 7225 11 00 and ex 7226 11 00 ('the product concerned').

(10) Some interested parties argued that the product concerned, as set out in recital (16) of the provisional Regulation, and the like product are not alike as stated in recital (22) of the provisional Regulation since they do not share the same physical and chemical characteristics and are not used for the same purposes. Three exporting producers, a user association and two individual users claimed that high permeability and/or domain refined types of the product concerned should be excluded from the scope of the investigation since these types are either not produced in sufficient quantities or not produced at all in the Union. One of these exporting producers specified that this should be types of the product concerned with a maximum core loss of 0,90 W/kg and below with a magnetic polarisation of more than 1,88 T. Another exporting producer requested the exclusion of types with a maximum core loss of 0,95 W/kg and below due to the limited competitive overlap with products offered by the Union industry. Another exporting producer argued that types of the product concerned with a maximum core loss of 0,90 W/kg at 1,7 T/50 Hz or less and a permeability (induction) of 1,88 T or more as well as types with a maximum core loss of 1,05 W/kg at 1,7 T/50 Hz or less and a permeability (induction) of 1,91 T or more should be excluded. Furthermore, one user argued that types of the product concerned with a maximum core loss of 0,80 W/kg at 1,7 T/50 Hz or less as well as low noise types with a B800 factor of 1,9 T or above should be excluded. Some of them also argued that the product types with the lowest core losses have significantly different properties, end-uses, and therefore are not bought by the same customers and do not compete with other types of the product concerned. Furthermore, another user argued that two separate injury, causal link and Union interest analyses should be carried out. Finally, another user asked for the withdrawal of the provisional measures, and, if this would not be possible, that at least the high permeability types (i.e. types with a maximum core loss of 0,90 W/kg and lower) should be excluded from the product scope.

(11) Following final disclosure, several interested parties reiterated the same request. One user argued that the fact that the Commission established separate minimum import prices for three different categories of GOES showed the relevance of considering the different categories separately and would therefore justify an exclusion.

(12) The Commission considered that the product concerned, irrespective of core loss or noise levels, whether conventional or high-permeability products, are flat-rolled alloy steel products having a grain-oriented structure that permits the product to conduct a magnetic field. The grain orientation narrows the technical and physical characteristics of the steel to a unique product having an extraordinarily large grain structure. Accordingly, the product definition comprises a well-defined product. It was also found that all types of the product concerned share common chemistry and have one principal use, i.e. in the production of transformers. In addition, there is some degree of interchangeability among the different types of the product concerned.

(13) Concerning the argument that exclusion would be justified due to the insufficient production of some particular types of the product concerned by Union producers, it should firstly be recalled that nothing in the basic Regulation requires that all types of the product concerned are produced by the Union industry at commercial scale. In addition, several high permeability product types were produced by the Union industry in the IP. As mentioned in recital (131) below, the verification also showed that Union producers have been investing in the production of high permeability types of the product concerned which will allow them to increase the production of high permeability GOES. Furthermore, as stated in recital (12), the definition of the scope of the product under investigation is governed by the technical characteristics of the GOES. The requested exclusion could reduce the level of protection against further injurious dumping with regard to the particular high permeability types and thus perpetrate their current production rates by the Union industry. In these circumstances, the fact that certain product types of high permeability GOES are not produced by the Union industry is not a sufficient reason to exclude them from the product scope.

(14) Concerning the allegation that the separation into three different categories of GOES (see recital (11)) showed that an exclusion is justified, it is recalled that the investigation covers the product concerned as defined in recital (9) and therefore, one comprehensive injury analysis, causation analysis and Union interest analysis was carried out. The fact that the Commission acknowledged differences in quality between the different product types and that these differences in quality were taken into account in the decision about the form of the measures in the framework of the Union interest test, as explained below in recital (172), cannot be a reason to change the scope of the measures.

(15) In view of the above, the Commission rejected the requests to exclude these product types from the product scope. The Commission considered the differences in quality, though, for the form of the measure (see recital (172)).

(16) One Russian exporting producer argued that on the one hand their 'first choice' exported types of the product concerned (with higher flatness and fewer welding seams) and on the other hand their 'second' and 'third choice' exported types (with multiple defects, number of stitches and lack of flatness) are, as per the Russian industry practice, not interchangeable to any extent (both ways) and constitute different products. Therefore, they argued that 'second' and 'third choice' material be excluded from the product scope.

(17) Following final disclosure, the Russian exporting producer repeated its claim and alleged that these 'second' and 'third choice' exported types can only be used in the transformer industry in some limited applications if they are further processed in steel service centres and should therefore be excluded.

(18) The current description and the CN code of the product concerned potentially include a wide variety of types from a quality perspective. However, production of a lower quality product by both the Union and exporting producers is inherent to the production process and lower quality types are made from the same basic material and on the same production equipment. The so-called 'second' and 'third choice' exported types are also sold for use in the transformer business, and fully meet the definition of the product concerned. The fact that further processing is needed is not unusual and cannot be a reason to exclude a product type. Therefore, the Commission rejected this request.

(19) In view of the above, the Commission concluded that the product concerned produced and sold in the countries concerned and the one produced and sold by the Union industry are alike, within the meaning of Article 1(4) of the Basic Regulation. Recitals (16) to (21) of the provisional Regulation are hereby confirmed.

C. **DUMPING**

1. **General methodology**

(20) In the absence of any further comments on the Commission's general methodology used for the dumping calculations, recitals (33) to (45) of the Provisional Regulation are hereby confirmed.

2. **Republic of Korea**

2.1. *Normal value*

(21) Following provisional disclosure, the sole exporting producer pointed out that the company's inland freight and handling charges should have been deducted from the normal value. Moreover, the conversion cost from full coils to slit coils had to be slightly adjusted. In line with the general methodology as set out in recital (56) of the provisional Regulation, this claim was accepted and the calculations were amended accordingly. Consequently, the findings in recital (46) of the Provisional Regulation are amended with regard to the exporting producer.

2.2. *Export price*

(22) The exporting producer claimed that it formed a single economic entity with its trading companies and its related companies in the Union and that therefore no adjustment under Article 2(9) of the basic Regulation to determine the export price should have been done.

(23) It is undisputed that the exporting producer and the related importers belong to the same group of companies. Therefore, an association is deemed to exist between them. In such circumstances, the Commission has to construct the export price under Article 2(9) of the basic Regulation. The claim was therefore rejected and recitals (50) to (54) of the provisional Regulation are confirmed.

2.3. *Comparison*

(24) The exporting producer also claimed a level of trade adjustment under Article 2(10) of the basic Regulation arguing that domestic sales were made by the related traders to end-users whereas export sales were *de facto* constructed as a price to distributors because the Commission deducted the SG&A and profit margins of the related traders in the Union under Article 2(9) of the basic Regulation.

(25) The fact that the export price was constructed under Article 2(9) of the basic Regulation does not imply that the level of trade at which the export price was determined changed. The basis for the constructed export price remains the price charged to end-users. A level of trade adjustment is not warranted in this case as the exporting producer was selling at the same level of trade on both the domestic market and on the Union market. In any event, the exporting producer did not provide evidence that the alleged difference in levels of trade had affected price comparability, as demonstrated by consistent and distinct differences in functions and prices of the seller for the different levels of trade in the domestic market of the exporting country. Rather, it only claimed that the adjustment should be equal to the adjustment made under Article 2(9) of the basic Regulation for constructing the export price. This claim was therefore rejected.

2.4. *Dumping margins*

(26) As a result of the amendments made to the normal value according to recital (21) above, the definitive dumping margins for Korea are amended as follows:

Country	Company	Definitive dumping margin
Republic of Korea	POSCO, Seoul	22,5 %
	All other companies	22,5 %

3. **The People's Republic of China**

3.1. *Analogue country*

(27) No further comments were received on the use of the Republic of Korea as an analogue country. The Commission confirms the findings in recitals (65) to (71) of the Provisional Regulation.

3.2. *Normal value*

(28) The normal value for the two exporting producers in the PRC was determined on the basis of the price or constructed normal value in the analogue country, in this case Korea, in accordance with Article 2(7)(a) of the Basic Regulation.

(29) The normal value of the Chinese companies was amended in accordance with the amendment of the normal value determined for Korea, as explained in recital (21) above.

3.3. *Export price*

(30) In the absence of any further comments with regard to the export price, recitals (73) and (74) of the provisional Regulation are confirmed.

3.4. *Comparison*

(31) In the absence of any comments with regard to the comparison of the normal value and the export prices, recitals (75) to (78) of the provisional Regulation are confirmed.

3.5. *Dumping margins*

(32) Based on their questionnaire replies, the Commission established in recital (80) of the provisional Regulation that the two cooperating exporting producers were related through common ownership. A single dumping margin was therefore provisionally established for the two companies on the basis of the weighted average of their individual dumping margins.

(33) Both cooperating Chinese exporting producers (Baosteel and WISCO) contested the decision of the Commission to treat them as related companies and therefore having one weighted average dumping duty. They argued that they compete both on the domestic market and on export markets.

(34) The Commission reiterates that the two cooperating exporting producers are related through common state ownership. However, in the circumstances of this case, these companies would have little interest to coordinate their export activities after the imposition of measures in view of the fact that, as set out in detail in recitals (175) and (176) below, the measures consist of a variable duty based on the same minimum import price for all exporting producers. Therefore at the definitive stage the Commission considered that it is not necessary to conclude whether the two companies should be treated as a single entity under Article 9(5) of the basic Regulation. For the purposes of the current investigation, two separate dumping margins were therefore established.

(35) Following final disclosure the complainant argued that two individual duty rates for the two Chinese exporting producers could lead to coordinated export activities when prices fall below the minimum import price (MIP). They claimed that one single duty rate for both should be established. However, as mentioned above, in the particular circumstances of this case the Commission has indications that international prices are likely to remain above the MIPs in the medium to long term. Accordingly, it finds the risk of coordination between the two exporting producers to be insignificant, and that the possibility of an interim review in case of a change in circumstances is a more proportionate way to address this risk. This claim was therefore rejected.

(36) The level of cooperating was high as the imports of the two cooperating exporting producers constituted 100 % of the total exports from the PRC to the Union during the IP. On this basis, the Commission decided to establish the country-wide dumping margin at the level of the cooperating company with the highest dumping margin.

(37) On this basis the definitive dumping margins for the People's Republic of China are amended as follows:

Country	Company	Definitive dumping margin
People's Republic of China	Baoshan Iron & Steel Co., Ltd., Shanghai	21,5 %
	Wuhan Iron & Steel Co., Ltd., Wuhan	54,9 %
	All other companies	54,9 %

4. **Japan**

4.1. *Normal value*

(38) In the absence of any comments, the determination of the normal value, as set out in recitals (84) and (85) of the provisional Regulation, is confirmed.

4.2. *Export price*

(39) In the absence of any comments, the determination of the export price, as set out in recitals (86) to (88) of the provisional Regulation, is confirmed.

4.3. *Comparison*

(40) In the absence of any comments with regard to the comparison of the normal value and the export prices, recitals (89) to (92) of the provisional Regulation are confirmed.

4.4. *Dumping margins*

(41) In the absence of any further comments with regard to dumping margins recitals (93) to (95) of the provisional Regulation are confirmed.

5. **The Russian Federation**

5.1. *Normal value*

(42) All production of the product concerned in Russia comprised of conventional GOES and both prime and non-prime qualities were sold on the Union market. The Russian exporting producer claimed that an adjustment to the normal value should be made to take account of the fact that non-primary grades were exported to the Union market at lower prices than primary grades.

(43) The possibility of adjustments to the normal value for non-primary grades was considered by the Commission. It should be pointed out that, as requested by the exporting producer, a differentiation was made at the provisional stage between primary and non-primary grades whereby the prices and costs of each grade were separated to ensure a fair comparison. This differentiation for the purpose of ensuring a fair comparison between normal value and export price is to be maintained.

(44) However, an adjustment to the normal value itself in terms of a reduction to the cost of production of non-primary grades is not warranted. Such an adjustment would mean that a substantial proportion of costs would not be allocated to the product concerned while they were incurred in relation to that product. The normal value for all product types was calculated on the basis of actual data submitted by the exporting producer and verified on spot. The Commission verified the distribution of costs and there are no grounds to justify an artificial distribution of such costs or other adjustments. Any differences in prices between different product types are necessarily accounted for as normal value is determined by product type. This claim should therefore be rejected.

(45) The company claimed that differences in dumping margins between primary grades and non-primary grades prove the point. However, it is quite normal for different groups of product types to have different dumping margins than others. A difference in dumping margin cannot justify an adjustment of the normal value. This claim should therefore be rejected as well.

(46) The Union industry claimed that the Commission erred by making no adjustments to the Russian producers' costs of production pursuant to Article 2(5) of the basic Regulation. It further submitted that even if the Commission concluded that the Russian producers charge similar prices within the group compared to those of external sales, the question is whether the transaction prices within the group reasonably reflect the full costs associated with the product in question. The Commission compared these prices with prices to third parties and, on this basis, established that the purchase prices for raw materials by the two related Russian producers were made at market prices in the investigation period and therefore reflected normal purchase costs. Furthermore, the investigation did not reveal any indications that the full costs were not reflected in the setting of the prices. No adjustment was therefore considered necessary.

(47) In the absence of any further comments with regard to normal value recitals (98) and (99) of the provisional Regulation are confirmed.

5.2. *Export price*

(48) The Russian exporting producer claimed that exports of third grade material should be excluded from the dumping calculation. However, as third grade material is also product concerned, there is no basis to exclude these products. This claim should therefore be rejected.

(49) The Russian producer claimed that the adjustments for the profit and SGA of the related importer (Novex) are not warranted and stated that it does not agree with the Commission's interpretation of Articles 2(8) and 2(9) of the basic Regulation in this regard.

(50) The Russian exporting producer argued that an adjustment for SGA and profit under Article 2(9) is only warranted where the terms of sales require that a product be delivered with duties paid. On the other hand, when products are sold duty unpaid, Article 2(8) applies, that is to say no deduction of SGA and profit is warranted. The exporting producer further claimed that Novex acted as 'an exporting arm' of the NLMK Group, Novex did not perform any import functions and it did not incur costs 'normally born by an importer'.

(51) However, as explained in the provisional Regulation and contrary to the claims, the investigation established that Novex did perform the same import functions for all sales of the product concerned during the investigation period. In fact, Novex performed such functions for a much larger range of steel products than simply the product concerned. The different incoterms (DDP, DAP or CIF) do not alter the fact that Novex was operating as a related importer to the Union market for all transactions. No evidence was provided that could invalidate this finding. It is therefore confirmed that adjustments for SGA and profit should be applied in accordance with Article 2(9) of the basic Regulation.

(52) Following final disclosure the Russian exporting producer reiterated its claim that the adjustment under Article 2(9) is not warranted for sales made on a DDU/DAP basis. However, no new evidence was submitted to support the claim. The Commission maintains its view that all sales should be adjusted in accordance with Article 2(9) because, as explained in the provisional regulation, Novex was operating as an importer for all transactions and the prices from the Russian exporting producers to Novex were unreliable because of the relationship between them.

(53) In the absence of any further comments with regard to export price recital (100) of the provisional Regulation is confirmed.

5.3. *Comparison*

(54) In the absence of any further comments with regard to the comparison, recitals (101) and (102) of the provisional Regulation are confirmed.

5.4. *Dumping margins*

(55) In the absence of any further comments with regard to dumping margins recitals (103)-(105) of the provisional Regulation are confirmed.

6. **The United States of America**

6.1. *Normal value*

(56) In the absence of comments with regard to the normal value in the United States of America, the findings in recital (107) of the provisional Regulation are confirmed.

6.2. *Export price*

(57) In the absence of any comments, the determination of the export price, as set out in recitals (108) to (111) of the provisional Regulation, is confirmed.

6.3. *Comparison*

(58) In the absence of any comments with regard to the comparison of the normal value and the export prices, recitals (112) and (113) of the provisional Regulation are confirmed.

6.4. *Dumping margins*

(59) No comments have been made on the Commission's provisional findings with regard to the cooperating exporting producer. Therefore, the dumping margins, as set out in recitals (114) to (116) of the provisional Regulation, are confirmed.

7. **Dumping margins concerning all countries concerned**

(60) On the basis of the above, the definitive dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are:

Country	Company	Definitive dumping margin
People's Republic of China	Baoshan Iron & Steel Co., Ltd., Shanghai	21,5 %
	Wuhan Iron & Steel Co., Ltd., Wuhan	54,9 %
	All other companies	54,9 %
Japan	JFE Steel Corporation, Tokyo	47,1 %
	Nippon Steel & Sumitomo Metal Corporation, Tokyo	52,2 %
	All other companies	52,2 %
Republic of Korea	POSCO, Seoul	22,5 %
	All other companies	22,5 %
Russian Federation	OJSC Novolipetsk Steel, Lipetsk; VIZ Steel, Ekaterinburg	29,0 %
	All other companies	29,0 %
United States of America	AK Steel Corporation, Ohio	60,1 %
	All other companies	60,1 %

D. **INJURY**

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

(61) In the absence of any comments with respect to the definition of the Union industry and Union production the conclusions set out in recitals (117) and (118) of the provisional Regulation are confirmed.

2. **Union consumption**

(62) A Japanese exporting producer argued that using ranges for Union consumption data is not appropriate since Union consumption data should not be kept confidential as a matter of principle.

(63) As set out in recital (134) of the provisional Regulation, the imports of the Japanese product concerned into the Netherlands were reported under a confidential CN code during the period considered. Ranges were used to protect the confidentiality of data provided by interested parties. If precise figures instead of ranges for Union consumption data would have been provided, this would have allowed one Japanese exporting producer to precisely calculate the imports from the other Japanese exporting producer. Furthermore, the ranges which were used in the provisional Regulation provided parties with meaningful information. In addition, the indices for the ranges of the Union consumption allow a proper understanding of the trends of the Union consumption.

(64) In the absence of any other comments with respect to Union consumption, the conclusions set out in recitals (119) to (124) of the provisional Regulation are confirmed.

3. **Imports from the countries concerned**

3.1. *Cumulative assessment of the effects of the imports from the countries concerned*

(65) Two exporting producers claimed that the cumulative assessment of the imports from their respective countries in comparison with those from the other countries concerned was unwarranted: one of the Japanese exporting producers argued that they are only exporting high quality types of the product concerned and since its exports are decreasing, they are not exerting any price pressure on the Union market. The American exporting producer argued that imports from the USA decreased by 400 % during the period considered and that it has always set prices at much higher levels than other producers. Furthermore, one user argued that such a cumulative assessment is inappropriate due to the decrease in imports and the difference in price behaviour, on top of the fact that a particular exporting producer is selling types of the product concerned that the Union producers and other producers of the countries concerned do not sell.

(66) As set out in recital (132) of the provisional Regulation, it has been acknowledged that there was a decrease in imports from Japan and the USA during the period considered. Nevertheless, these imports have also contributed to the exerted price pressure for the product concerned on the Union market. Imports from Japan and the USA were found to be dumped and their products are clearly in direct competition with Union products and products from other exporting producers. All types of the product concerned, including the types sold by the Japanese and American exporting producers, are sold for use in the production of transformer cores and they are sold to the same relatively limited group of customers. Therefore, the Commission rejected the claims for de-cumulation.

(67) Following final disclosure, the American exporting producer reiterated its claim for decumulation and alleged that its types of the product concerned do not compete with the products of the Union industry as they are sold on the Union market only as a result of their higher quality compared to the types of products of the Union Industry.

(68) In addition to the arguments advanced in recital (66) above concerning the imports from the USA in general, it should be mentioned that a cumulative assessment is however performed on a country-wide basis with regard to the full scope of the product concerned rather than on a company-specific basis and taking only into consideration certain types of the product concerned. The claim was therefore rejected.

(69) The Commission concluded that all criteria set out in Article 3(4) are met and therefore imports from the countries concerned were examined cumulatively for the purposes of the injury determination. As a result, the conclusions set out in recitals (125) to (132) of the provisional Regulation are confirmed.

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

(70) In the absence of any other comments, the conclusions set out in recitals (133) to (136) of the provisional Regulation are confirmed.

3.3. *Prices of the imports from the countries concerned and price undercutting*

(71) In view of the absence of any comments, the conclusions set out in recitals (137) to (148) of the provisional Regulation are confirmed.

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

4.1. *General remarks*

(72) A Korean exporting producer claimed that the main injury indicators are distorted since they do not sufficiently take into account the evolving product mix, which leads to the thinning of the product concerned and the like product during the period considered. This exporting producer argued that, to have a fair and true picture, data should be requested from the Union industry providing the production in length, either in actual terms or at least by constructing the lengths manufactured based on the product mix.

(73) The Commission considered that the exporting producer did not provide data showing that a length-based approach would have changed any of the injury factors. Furthermore, tonnage is the standard quantity measurement which is used for the product concerned and the like product in connection to its production, procurement and sales. Eurostat data on the product concerned and the like product are also expressed in tonnage. Therefore, the analysis of the tonnages was considered an accurate method and the argument of this interested party is rejected.

(74) Based on the above, the Commission concluded that a fair indicative picture was presented through the use of its injury indicators.

4.2. *Production, production capacity and capacity utilisation*

(75) The same interested party and a user argued that some findings of the Commission in the provisional Regulation were contradictory. As set out in recitals (220) and (222) of the provisional Regulation, the Commission explained on the one hand that the Union Industry is shifting its production from conventional to high permeability types of the like product. On the other hand, as set out in the table in recital (150) of the provisional Regulation, the production capacity increased during the period considered (from 486 600 tonnes to 492 650 tonnes). According to these interested parties, it is generally known that an increased focus on thinner (high permeability) products automatically leads to a reduction of the production capacity.

(76) The Commission rejected these arguments. Firstly, the increase in capacity was mainly the result of an increase in capacity by one of the Union producers during the period considered. This Union producer is currently only producing conventional types of the product concerned. In addition, recital (222) of the provisional Regulation refers mainly to the future, not exclusively to the period considered. This statement is further corroborated by the reference in recital (196) of the provisional Regulation, where it is stated that 'The Union producers will shift to a lower core loss product mix.'

(77) Based on the above, the conclusions set out in recitals (150) to (154) of the provisional Regulation are confirmed.

4.3. *Sales volume and market share*

(78) In the absence of any other comments, the conclusions set out in recitals (155) to (158) of the provisional Regulation are confirmed.

4.4. *Other injury indicators*

(79) In the absence of any comments concerning the development of the other injury indicators, covering the period considered, the conclusions set out in recitals (159) to (174) of the provisional Regulation are confirmed.

4.5. *Conclusion on injury*

(80) In accordance with Article 6(1) of the basic Regulation, the conclusion on injury below was reached on the basis of verified IP data. The collection and verification of post IP data, on the other hand, was done in the framework of the Union interest analysis (see also recitals (110) and (111)). The table in recital (170) of the provisional Regulation showed the record high losses and the negative cash flows from the year 2012 onwards. The conclusion below that the Union industry was in an injurious situation during the IP is therefore confirmed.

(81) Even if post-IP data were taken into account for some injury factors, in particular the small profits made in the period January — May 2015, this would not affect the finding that the Union industry is in an injurious situation.

(82) On the basis of the above and in the absence of any other comments, the conclusions set out in recitals (175) to (179) of the provisional Regulation that the Union industry suffered material injury during the period considered within the meaning of Article 3(5) of the basic Regulation are confirmed.

E. **CAUSATION**

5. **Effect of the dumped imports**

(83) Several parties claimed that the imports from the countries concerned could not have caused the injury suffered by the Union industry, mainly since there is absence of price undercutting. Furthermore, it has been claimed that the Union producers have themselves in many cases been initiating and leading the price reductions, both in the Union and in other large markets. One Japanese exporting producer added that there is no significant increase in dumped imports, and imports do not depress or suppress prices to a significant degree. As a result, these imports could not have caused the injury suffered by the Union industry as they could not have exerted any price pressure on the Union market. Following final disclosure, a Japanese exporting producer argued that the Commission's statement that these imports depressed prices on the Union market to a significant degree is not sufficient to establish that imports have caused price depression. The finding that there has been a decrease in prices merely demonstrates a worldwide trend, which does not imply that imports have caused price depression on the Union market.

(84) It was also argued that the Commission must quantify the actual injury caused by the dumped imports and the injury caused by other known factors, and the duty level may not be higher than what is necessary to remove the injury caused exclusively by the dumped imports. These comments were reiterated following final disclosure.

(85) The allegations that the imports from the countries concerned could not have caused the injury suffered by the Union industry were not supported by the facts of the investigation. As outlined in recitals (137) to (164) of the provisional Regulation, the decrease of the average unit price of the dumped imports was around 30 % during the period considered. As a result, these imports depressed prices on the Union market to a significant degree, even forcing the Union producers to lower their sales prices far below cost in order to align them with the price levels of the imports from the countries concerned. Moreover, there is a clearly established coincidence in time between, on the one hand, the level of dumped imports at continuously decreasing prices and, on the other hand, the Union industry's loss of sales volume and price depression resulting in a loss-making situation, as set out in recitals (181) to (183) of the Provisional Regulation.

(86) The claim that the decrease in prices merely demonstrates a worldwide trend is rejected for the following reasons: Firstly, one worldwide market price for the product concerned does not exist as is the case for certain commodities. Secondly, the dumping findings revealed different dumping margins which show that price levels are different in different markets. Thirdly, the investigation revealed that the price levels and estimated price increases in different regions of the world (for 2014 up to the first quarter of 2015) are not moving at the same pace. Fourthly, even if there are indications that there was a decrease of prices in several regions of the world during the investigation period, such a decrease varies from region to region, whereby in particular prices on the Union market, being an open market, as set out in recital (85) below, decreased sharply.

(87) Even in the absence of undercutting, which was acknowledged in the provisional Regulation, the Union producers were not able to set their prices above their costs which resulted in high losses during the period considered. The absence of undercutting, which is only one of the factors to be looked at in the injury analysis, does thus not mean that the dumped imports could not have caused injury. Union industry prices were the result of the strong price depression exerted by the low-priced dumped imports. Without such strong price pressure, there would have not been any reason for the Union industry to decrease its prices to such low levels. The Union producers had no option but to sell below costs in order to defend their market share and sustain an economical level of production because of the severe price pressure exerted by the dumped imports on their sales prices.

Therefore, these arguments are rejected. Furthermore, concerning the argument that the Commission must quantify the actual injury caused by the dumped imports and the injury caused by other known factors, the Commission considered that, as already set out in recital (201) of the provisional Regulation, all other factors, even considering their possible combined effect, were not found to break the causal link between the injury and the dumped imports.

(88) Concerning prices and price setting during the period considered, a Chinese exporting producer argued that the Union industry initiated the price decreases at the start of the period considered. One user also argued that the intensive price competition had been rather the direct effect of Union and exporting producers having sought to maintain or increase volumes in the face of shrinking demand.

(89) As set out in recital (158) of the provisional Regulation, these arguments are rejected. First, there is no evidence that the Union industry initiated these price decreases. Second, it would not make sense economically for the Union industry to start selling products at high losses without being forced to do so. Finally, it is recalled that there is a clear coincidence in time between the level of dumped imports at continuously decreasing prices and the Union industry's loss of sales volume and price depression, resulting in higher losses for the Union producers.

(90) Furthermore, the Chinese exporting producer claimed that it is difficult to see how higher prices, charged by the exporting producers, can cause price depression. A Japanese producer argued that the Commission fails to demonstrate any correlation between the price declines in the Union and the imports of the product concerned from the countries concerned. A user questioned the validity of the main arguments of the Commission since it disregarded the absence of price undercutting. In the same context, one user made the comment that the ability of a producer to sustain a long-term price war depends on a number of factors, such as efficiency, input costs and product quality, apart from the size, strength and strategy of the group to which the producers belong.

(91) The arguments of the interested parties are rejected for the following reasons. Apart from the comments made in recital (87) aggressive price strategies in particular on the Union market can be sustained longer by the exporting producers than the Union producers for the following reason: the market share of the exporting producers on their domestic markets is much higher than the market share of the Union producers in the Union. The Union market is also an open market whereas the domestic markets of the exporting producers of the countries concerned cannot be easily penetrated by other competitors, including the Union producers. As a result of the overcapacity on the world market due to the booming business during the years 2003-2010, the aggressive price setting between the competing Union and exporting producers started during the period considered. In this context, the Commission noted that all but one exporting producer reported a higher production capacity than the actual production during the IP. Finally, concerning the correlation between the price declines in the Union and the imports of the product concerned, there is a direct correlation as regards the decrease of prices, although not to the same extent as regards volume.

(92) For all the above reasons, the Commission considered that, as already set out in recital (145) of the provisional Regulation, the injury is particularly illustrated by the restrain the Union producers experienced because of the severe price pressure exerted on their sales prices. This pressure forced them to sell below costs to defend their market share on the Union market, which allowed them to maintain a sustainable level of production.

(93) In the absence of any other comments as regard the effects of the dumped imports, the conclusions set out in recitals (181) to (183) of the provisional Regulation are confirmed.

6. **Effect of other factors**

6.1. *The economic crisis*

(94) One interested party alleged that, contrary to the conclusions reached in recital (185) of the provisional Regulation, the Union industry was underperforming during the period considered, in particular by the falling demand for conventional types of the product concerned on the Union market. Another interested party claimed that the decrease of the Union consumption by around 11 % is the crucial element why the Union industry has not suffered material injury from the imports of the exporting producers. This interested party argues that the trend in the pattern of the Union industry's performance in terms of sales volume follows precisely the same path as the decrease of the Union consumption and therefore is the most crucial element for the injury suffered by the Union industry.

(95) As acknowledged in recitals (121) and (156) of the provisional Regulation there was indeed a similar development of the Union consumption and of the sales volume performance of the Union industry, even though the decrease of the Union industry's sales volume slightly exceeded the decrease in consumption. However, as mentioned before, the crucial factor for the determination of injury is that the Union producers were forced to sell below costs. The interested party's claims in this respect should therefore be rejected. Furthermore, the Commission maintains that the economic crisis caused a contraction of demand in the Union as acknowledged in recital (184) of the provisional Regulation but that it is not the root cause for the injury. In this respect, while the consumption in the Union fell between 2011 and 2012, the consumption in 2012 was approximately the same as that in 2010. Nevertheless, in 2010, the Union industry had a profit of 14 %, while it recorded a loss of almost 10 % in 2012. As a result, even if the economic crisis contributed to the injury, it could not be concluded that it would break the causal link between the dumped imports and the material injury suffered by the Union industry.

(96) The conclusions reached in recitals (184) and (185) of the provisional Regulation are therefore confirmed.

6.2. *Union producers are not sufficiently competitive*

(97) The Chinese exporting producer claimed that there are many other factors than the dumped imports that explain the challenges of the Union producers, such as high raw material pricing, CO_2 allowance trading and most importantly perhaps, the economic uncertainties and sharply reduced consumption levels, in particular in Southern Europe.

(98) There may be a comparative disadvantage for Union producers if many other factors (including the high raw material pricing, etc.) would be compared to the exporting producers, such as in Russia, China and USA.

(99) However, these arguments do not provide a sufficient explanation why the Union industry was still able to achieve profits of about 14 % in 2010 and the years before, given that this possible comparative disadvantage in cost terms was no different in 2010 and the years before.

(100) Therefore, this claim is rejected.

6.3. *Imports from third countries*

(101) In the absence of any comments as regard the imports from third countries, the conclusions set out in recitals (189) and (190) of the provisional Regulation are confirmed.

6.4. *Export sales performance of the Union industry*

(102) Two exporting producers argued that the data relating to the exports of the Union producers constitutes evidence of their aggressive pricing policy, since these prices are significantly below the weighted average Union sales prices in the Union market and even below their cost price. Another exporting producer argued that the Commission should properly separate and distinguish the injurious effect of the economic crisis and the Union industry poor export sales performance. Another user argued that the conclusion of the Commission that the exporting performance has been maintained at a high level, and has not been decisive for the Union's industry's injury, is not supported by the data because export sales decreased by 22,7 % whereas the domestic sales decreased by 11 % during the period considered.

(103) These claims were rejected for the following reasons. The lower unit sales export price charged by the Union producers compared to the one on the Union market should be seen in the light of the fact that it includes a large proportion of second quality GOES which is mainly exported and sold at a discount. Furthermore, it has already been acknowledged in recital (193) of the provisional Regulation that the export performance contributed to the injury, but that it did not break the causal link between the dumped imports and the injury suffered by the Union industry.

(104) In the absence of any other comments regarding the effect of the Union industry's export performance, the conclusions reached in recitals (191) to (193) are confirmed.

6.5. *The overcapacity of the Union industry*

(105) Another interested party mentioned that the Union industry suffers from a massive overcapacity, and that the decrease in production volumes by the Union producers is mainly attributable to the decline of consumption levels within the Union and the severe reduction in export volumes of the Union producers, in particular between 2012 and 2013.

(106) This claim was rejected since the alleged overcapacity is more a result of the dumped imports rather than a cause of injury suffered by the Union industry, as set out in recitals (194) to (197) of the provisional Regulation.

(107) In the absence of any other comments concerning the above, the conclusions reached in recitals (194) to (197) of the provisional Regulation are confirmed.

6.6. *Russian Imports are Conventional Grade*

(108) In the absence of any comments concerning the above, the conclusions reached in recital (198) and (199) of the provisional Regulation are confirmed.

7. **Conclusion on causation**

(109) In the absence of any other comments with regard to causation, the conclusions reached in recitals (200) to (202) of the provisional Regulation are confirmed.

F. **UNION INTEREST**

1. **Preliminary remarks**

(110) Pursuant to Article 6(1) of the Basic Regulation, information relating to a period subsequent to the investigation period shall normally not be taken into account. However, in the context of determining whether there is a Union interest as contemplated in Article 21(1) of the basic Regulation, information relating to a period subsequent to the investigation period may be taken into account for those purposes ([1]).

(111) Comments relating to the need to take into consideration important post-investigation period ('post-IP') developments were received both from users and from exporting producers. Most comments and allegations received after the imposition of provisional measures related to the following developments after the investigation period. High permeability types of the product concerned are increasingly scarce on the Union market, mainly in view of the entry into force of tier 1 of the EcoDesign Regulation (as already mentioned in recital (233) of the provisional Regulation), but also because the Union producers are allegedly not able to supply the market with the required quality of these high-permeability product types. In addition, prices of the product concerned and the like product increased significantly after the IP. Parties also argued that the impact of the provisional measures on the transformer industry had been underestimated by the Commission, in particular by understating the share of the product concerned in the total cost of production of users. Finally, it was argued that the Union producers returned to profitability, so they would not need any protection anymore.

(112) These alleged post-IP developments, in particular the combination of a change in the legal framework, a steep increase of prices and a shortage on the market of certain product types, if confirmed, are, given the specific circumstances of the case, relevant for the assessment of the Union interest in imposing appropriate measures. Therefore the Commission decided, exceptionally, to further investigate these post-IP developments in the period between July 2014 and May 2015. As set out in recital (5) above, and in view of the statements made in recitals (27), (224) and (239) of the provisional Regulation, additional information on the post-IP developments was collected and a number of users and Union producers were visited following the imposition of the provisional measures

([1]) Judgment of the General Court of 25 October 2011 in case No. T-192/08. Transnational Company 'Kazchrome' AO, paragraph 221.

2. **Interest of the Union industry**

(113) Some interested parties claimed that the imposition of measures was unnecessary as the profitability of the Union industry attained high levels post-IP due to significantly increased prices and that the market had regulated itself. As a result, the Union industry was allegedly no longer suffering any injury after the IP.

(114) As set out in recital (5) above, eight additional verifications on spot were carried out in order to verify these claims. These verifications revealed that the profitability of each individual Union producer is varying, but on average, the Union producers were incurring losses amounting to – 16,6 % during the period July-December 2014 and returned to a profit of 1,1 % during the period January – May 2015. Therefore, it was concluded that the recovery of the Union industry was modest after the IP. These percentages are the weighted average pre-tax profitability figures of all Union producers, as shown in their respective income statements for the period January - May 2015, expressed as a percentage in relation to their sales in the Union to unrelated customers.

(115) Following final disclosure, a user association claimed that the Union producers are no longer facing any injurious situation, given that they are running at full speed and are barely able to follow the demand. A user made a similar comment, namely that due to the continuing price increases they would expect to see profit margins exceeding 5 % already during the spring of 2015.

(116) However, in accordance with Article 6(1) of the basic Regulation, the conclusion on injury was reached on the basis of verified IP data. The collection and verification of post IP data, on the other hand, was done in the framework of the Union interest analysis. The table in recital (170) of the provisional Regulation showed the record high losses and the negative cash flows from the year 2012 onwards.

Even taking into account post-IP data, the Union industry is still in an injurious situation: the small profits during the period January – May 2015 cannot compensate for the four consecutive years of high-end losses. Furthermore, the injury analysis is based on a number of factors, of which profitability is only one of the many.

(117) The conclusion that the Union industry was in an injurious situation during the IP is therefore confirmed. In the absence of any other comments regarding the interest of the Union industry, it is concluded that the imposition of anti-dumping duties would be in the interest of the Union industry as it would allow the Union industry to recover from the effects of injurious dumping found.

3. **Interest of unrelated importers**

(118) In the absence of any comments regarding the interest of unrelated importers and traders, recitals (208) to (212) of the provisional Regulation are confirmed.

4. **Interest of users**

4.1. *Introduction*

(119) As set out in detail in recitals (5) and (6), additional information on the post-IP developments was collected from users and five major users, which provided extensive information after the imposition of provisional measures, were visited.

(120) One interested party argued that it accounts for a very large share of the Union transformer industry, consisting of small, medium-sized and large companies producing in most Union Member States. This interested party argued that there are many small and medium-sized companies, which will be hit hardest by measures. In this context, the association representing Italian transformer companies claimed that 60 % of all turnover within Italy is realised by the Italian small and medium-sized transformer companies.

(121) The claim that there are many small and medium-sized (SME) transformer companies which will be hit the most by measures could not be systematically assessed due to the lack of evidence. However, the allegation seems plausible in view of the information gathered from the five verified users, of which one is a SME.

4.2. *Shortages in supply and differences in quality*

(122) Following the imposition of the provisional measures, several users stated that the availability of high-permeability types in the Union is limited, and that the situation worsened after the IP. They alleged that this limited availability is due to a growing imbalance between the supply side and the growing demand of users for these particular types of the product concerned. In this context, they further argued that the capacity of the Union industry is insufficient to supply the increasing demand in the Union market and that no other alternative sources are available, apart from the exporting producers. Moreover, they maintained that, despite the strategic decision of the Union producers to start producing proportionally more high permeability than conventional types of the product concerned, such a switch will take time due to the need to build up and further deepen the necessary technical expertise. In addition, some users claimed that any anti-dumping measures adopted against imports from the countries concerned would have a further detrimental impact of the availability of high permeability types in the Union, due to the gap in production capacity and high-end technical capability of the Union producers. In this context, the Union industry argued that there is no legal requirement whatsoever on them to supply the entire Union demand for particular types.

(123) The post-IP data showed that the Union producers are so far still not able to supply the total demand for all types of high permeability GOES, in particular product types of with a maximum core loss of 0,90 W/kg and below. Furthermore, backlogs in production and delays in deliveries were noted for these types despite earlier agreed upon delivery terms, in particular after the IP. One Korean exporting producer, which was exporting during the IP mainly high-permeability types of the product concerned, ceased its exports to the Union after the IP. The reasons for this stoppage are unknown. Fourthly, it is expected that the demand for top end high permeability types of the product concerned will continue to increase due to the implementation of the first tier of the EcoDesign Regulation which entered into force in July 2015, as set out further from recital (140) onwards.

(124) With respect to the technical expertise and quality issues, several users commented that, even in cases where the Union industry produced GOES with the required maximum guaranteed low core loss, the product with the similar core loss purchased from the exporting producers is overall of a higher quality in terms of maximum core losses and noise performance.

(125) Evidence submitted by users, relating to the post-IP period, pointed out to quality issues they have encountered, mainly with Union producers. Those users were able to underpin their claims with evidence, based on in-house statistics and technical checks.

(126) Following final disclosure, one user argued that the shortage of high permeability types of the product concerned is the direct result of the lack of investments by the Union producers. This user alleged that it is pure speculation whether the EU GOES industry would invest in the production of high grade GOES or not. Another user alleged that it is not credible that the EU producers would now achieve the quality and capacity to serve the needs of the EU users in the short or medium term.

(127) Following final disclosure, one user alleged that the shortage issue — contrary to the current proceeding — was one of the compelling reasons for not introducing measures in its Union interest assessment in the Polyester Stable Fibres case since the Union industry was not in a position to make the necessary efforts to satisfy the Union demand ([1]).

(128) The Polyester Staple fibres case and the present case cannot be compared for two reasons. Unlike this proceeding, the complaint was withdrawn in the Polyester Staple fibres case. Consequently, the Union interest test was different. Where the complaint is withdrawn, Article 9(1) provides that the proceeding may be terminated unless such termination would not be in the Union interest. In the present case, Article 21(1) applies which provides that measures, […], may not be applied where the authorities, on the basis of all the information submitted, can *clearly* conclude that it is not in the Union interest to apply such measures.

([1]) OJ L 160, 19.6.2007, p. 32, recital (20)

(129) Another difference with the Polyester Staple fibres case was that the Union producers in the Polyester Staple fibres case were converting the product concerned ([1]) into other products (not the product concerned). In the present case, on the contrary, the Union producers are trying to catch up by producing more and more of the higher permeability types.

(130) The Commission cannot foresee whether the EU producers will achieve the quality and capacity to serve the needs of the EU users in the foreseeable future, in particular concerning the availability of some types of the high-permeability GOES. To foster an industrial policy is not the objective of an anti-dumping investigation though; it only aims at a return to conditions of fair competition between the Union and exporting producers.

(131) Nevertheless, the verification showed that Union producers have been investing in the production of high permeability types of the product concerned, even though this has been challenging as a result of the difficult economic situation of the Union producers throughout the whole period considered. One producer showed evidence about a new production line of high end GOES put in place in August 2015.

(132) In view of the above, it is concluded that the availibility of high-permeability types in the Union was limited during the IP, and that the situation worsened after the IP mainly in view of the increasing demand as a result of the entry into force of tier 1 of the EcoDesign Regulation.

4.3. *Price increases*

(133) An exporting producer alleged that prices of the product concerned after the IP increased in the range of 50 to 70 % compared to the average sales prices of the product concerned during the period considered. Another exporting producer claimed that prices rose between March 2014 and March 2015 by around 30 %, based on public indices. Similar comments were received from many users. For example, one user claimed that prices increased by around 8 and 25 % when comparing prices for the second half of 2014 and the first half of 2015 to the prices during the period considered. Another user argued for instance that the price increases for April 2015 have been more than 45 % for high permeability types of the product concerned and more than 25 % for conventional types, when comparing to June 2014. This user also alleged that this price trend is sustainable and will continue in the short-, mid- and long-term. Many users also alleged that all these price increases would ultimately lead to plant closures, the loss of employment within the Union and relocation of certain operations outside the Union.

(134) On the other hand, one interested party, though admitting the price increases after the investigation period, alleged that these price increases after the investigation period were still not above the price levels of 2010 and 2011.

(135) The investigation revealed that alleged price increases in the post-IP period indeed took place. Firstly, on the basis of data from the Union producers, on average, the price increases of the like product amounted to 3 % for the period July – December 2014 and 14 % for the period January – May 2015, when comparing to the actual average prices during the investigation period. Furthermore, on the basis of available data from the cooperating users, price increases of the product concerned of some 30 % were observed, and for some product types even higher, in the post- IP period up to May 2015.

(136) It was found that prices started rising in the second half of 2014, and continued to rise further during the first half of 2015. These price increases have been noted both for high-permeability and conventional types of the product concerned and the like product. In addition, on the basis of spot checks on certain contracts concluded between users and producers for the second half of 2015, the prices for these orders are expected to be between 22 % and 53,5 % higher than during the investigation period.

(137) In view of the above, it is concluded that price increases have been noted in the post-IP period (up to May 2015), both for high permeability types and for conventional types of the product concerned and the like product. Furthermore, as explained in recital (133) above, prices are expected to further increase during the second half of 2015.

4.4. *Competitiveness of the Union users*

(138) As set out in recital (228) of the provisional Regulation, GOES as an input material accounts for about 6-13 % of the full cost to build a transformer, based on data and price levels in the IP. One exporting producer and several

([1]) OJ L 160, 19.6.2007, p. 31, recital (15).

users challenged these percentages, stating that they appear to be significantly understated, even for the IP where the prices of GOES were much lower than in the post-IP period. In addition, all users alleged that the prices started to increase significantly after the end of the investigation period. The percentage of 6-13 % was based on data provided by cooperating users, which was subsequently verified and therefore rightly mentioned in the provisional Regulation. Nevertheless, the Commission acknowledges that, even though the precise percentage of the cost of GOES depends on the type of transformer, the increase of the price of GOES after the IP logically results in an increase of the costs to build a transformer, which will affect the competitive position of the Union transformer producers. Nevertheless, the transformer producers outside the Union are also affected in their competitiveness due to the same trend of increasing prices from the second half of 2014 onwards for GOES in markets such as the PRC, India, and North America, onwards, as is the case in the Union market.

4.5. *Conclusion on the users' interest*

(139) The Commission accepts the claims that the imposition of measures would lead to a further price increase of GOES, at the expense of the users. It also concludes that the competitiveness of the user industry would be even more negatively affected if measures were to be imposed in the form of an *ad valorem* duty, in view of the significant price increases which occurred after the investigation period.

4.6. *Other factors*

(140) As set out in recital (233) of the provisional Regulation, Tier 1 of the EcoDesign Regulation became applicable from 1 July 2015 and covers the new EcoDesign requirements with regard to small, medium and large power transformers aiming to enhance their energy efficiency.

(141) Subsequent to the provisional disclosure, several users commented as follows. Firstly, the implementation of Tier 1 leads to a higher demand of high permeability types of GOES within the Union, in particular of types of GOES with a maximum core loss of 0,90 W/kg and below. Secondly, the trend to procure high permeability types with the lowest core losses is most likely irreversible since tier 2 (with even more strict requirements from 2021) will trigger further demand for high permeability types. Thirdly, other countries worldwide (such as the PRC, India etc.) are also implementing similar energy efficiency requirements, leading to a high demand of high permeability types of GOES on a global level. Fourthly, even if it is true that Tier 1 can, to a certain extent, be met with using conventional types of GOES, this would trigger additional costs to the detriment of the users, since a different, more voluminous transformer needs to be designed, requiring substantially more input of engineering, labour and material. In some cases, the product specification for a given transformer would not allow using conventional types of GOES at all.

(142) The Commission considered that this increasing demand, not only within the Union but worldwide, is most likely to further negatively impact the availability of high permeability types, in particular with a maximum core loss of 0,90 W/kg and below, leading most likely to further price increases. It is therefore in the public interest of the European Union, as reflected in legally binding product standards, to ensure the sufficient supply of high permeability types for producing and marketing transformers in the Union, irrespective of their origin.

(143) In view of the above, it is concluded that measures would lead to a significant further increase in import prices beyond those already seen in the post-IP period.

5. **Conclusion on Union interest**

(144) It is concluded that definitive measures would allow the Union producers to return to sustainable profit levels. If no measures were imposed, it would become uncertain whether the Union industry would be able to make the necessary investments to develop further its high-permeability types of the like product which are both demanded by the users and genuinely needed to make transformers EcoDesign-compliant.

(145) As regards the interest of users, the imposition of measures at the proposed level would have a negative effect on the prices of transformers and the employment in the user's industry, but this effect can, under market circumstances as observed in the IP, not be considered as disproportionate.

(146) Therefore, based on an appreciation of all the various interests taken as a whole, it is concluded that there are no compelling reasons against the imposition of definitive anti-dumping duties against imports of the product concerned originating in the five countries concerned.

(147) Following final disclosure, several interested parties noted that the Commission pointed inter alia to the steady and significant rise of prices of all types during the post-IP period and that the Union producers returned to a profitability of 1,1 % during the period January-May 2015. Therefore, it was alleged that the imposition of duties is against the Union interest. Another user alleged that due to the rise in prices large parts of EU transformer production are currently loss-making, and in particular the SMEs, while the EU GOES industry are making comfortable profits.

(148) Concerning the profitability of the Union producers, reference is made to recital (116). As set out in detail in recitals (149) and (169) below, the significant rise of prices has inter alia led the Commission to change the form of measures to balance the interests of all parties. Also, as already mentioned above, the Commission recalls that the injury is assessed on the basis of verified IP data, whereas post-IP data was only used in the framework of the Union interest analysis.

(149) In view of the post-IP developments and to limit any possible serious impact on the users that are heavily dependent on the supply of the product concerned, in particular of the top end high permeability types, the Commission considered it in line with the Union interest to change the form of the measures and not to impose *ad valorem* duties but instead variable duties. If a duty in the form of an *ad valorem* duty would be imposed on top of the post-IP price increases, users would be harmed disproportionally, which would negatively impact their competitiveness vis-à-vis their competitors outside the Union in view of the increased demand and the shortage on the market of in particular high permeability types. In addition, the objective set out in the EcoDesign Regulation to ensure sufficient supply of high permeability product types, would be undermined by the imposition of measures in the form of an *ad valorem* duty in view of the increased demand of in particular high permeability product types.

G. **DEFINITIVE ANTI-DUMPING MEASURES**

1. **Injury elimination level (Injury margin)**

(150) Following provisional and final disclosure the Union industry contested the target profit used in order to determine the injury elimination level as set out in recital (245) of the provisional Regulation. This party argued again that a pre-tax profit margin of 14 % would be a reasonable and market-related profit level based on the pre-tax net profit margin achieved by the Union industry in 2010.

(151) As explained in recital (243) of the provisional Regulation, the profit margin used to establish the injury elimination level corresponded to the profit margin the Union industry could reasonably expect to achieve under normal conditions of competition in the absence of dumped imports. This was the percentage used during the previous investigation when the Union industry's sales were profitable. As mentioned in recital (242) of the provisional Regulation, the average profit earned in 2010 was considered exceptionally high, taking into account the losses incurred from 2011 and the booming prices, even in 2010, of GOES on the world market. Therefore, it is considered reasonable to establish the target profit margin at a level of 5 %.

(152) A Japanese exporting producer requested to be heard by the Hearing Officer for trade proceedings. The party challenged the application by the Commission of Article 2(9) for the injury calculations, stating that Article 2(9) appears under the dumping provisions of the basic Regulation and could not be used by analogy for calculating injury. This interested party also argued that the processing costs as a result of the slitting of the full coil by a related party on the Union market should not have been deducted and that the used post-importation costs were understated. This comment was reiterated following final disclosure. A Korean exporting producer had a similar request, arguing that the free circulation price should be based on the price actually charged by its related importers in the Union to the first independent customers in the Union.

(153) The purpose of calculating an injury margin is to determine whether applying to the export price of the dumped imports a lower duty rate than the one based on the dumping margin would be sufficient to remove the injury caused by the dumped imports. This assessment should be based on the export price at the Union frontier level which is considered to be a level comparable to the Union industry ex-works price. In the case of export sales via related importers, by analogy with the approach followed for the dumping margin calculations, the export price is constructed on the basis of the resale price to the first independent customer duly adjusted pursuant to Article 2(9) of the basic Regulation. As the export price is an indispensable element in the injury margin calculation and as this Article is the only Article in the basic Regulation which gives guidance on the construction of the export price, the application of this Article by analogy is justified. Article 2(9) also provides the basis for the deduction of processing costs as adjustments for all costs, incurred between importation and resale, shall be made. Therefore, the Commission considered that the approach followed was accurate and rejected these claims.

(154) Another Japanese exporting producer claimed that the information disclosed in the provisional disclosure does not allow commenting on the correctness and relevance of the Commission's findings of injury. In this context, on 27 May 2015 the Japanese exporting producer requested clarifications on and disclosure of certain information omitted. It also argued that the Commission's reply of 4 June 2015 failed to properly address the request and did not allow the company to comment on the correctness and relevance of the injury findings. Following final disclosure, this Japanese exporting producer reiterated its arguments and alleged that the Hearing Officer recommended to disclose further information. Secondly, the company claimed for some of its exported products in a form of a full, untrimmed coil for which the export prices represented the value of the full coil with trimmed edges, that the adjustments for physical differences to its export prices for the purpose of calculating the injury margin did not fully take into account the market value of trimmed coils (compared to untrimmed coils) and are therefore not in line with applicable rules and corresponding case law. A Korean exporting producer also argued that its rights of defence were breached since an insufficient explanation was provided on the comparison of the different product types in the provisional disclosure.

(155) As regards first the request to disclose further information, the Commission considered that it could not be fully accepted since it is bound to protect the confidentiality of the other interested parties, in this case of Union producers. Since there are no other means to protect the confidentiality and, at the same time, to provide parties with meaningful information, the ranges as they were used in the provisional disclosure are considered by the Commission as appropriate. The disclosure was consequently providing all necessary information, balancing the right on meaningful information on the one hand and the protection of confidentiality on the other hand.

(156) Concerning the specific comments from the Japanese exporting producer, following final disclosure, the minutes of the hearing with the Hearing Officer in trade proceedings rather refer to the diverging opinions between the Japanese exporting producer and the Commission services, leading to his recommendation to continue the discussions. The Hearing Officer in trade proceedings also suggested to verify the Commission's calculations as an alternative to disclosing confidential data. A follow-up meeting with the Japanese exporting producer was held on 30 July 2015 with the aim to clarify and provide some additional information. Furthermore, additional information (such as the target price of a certain product type, the total Union sales values and volumes) was disclosed in the final disclosure to this Japanese exporting producer. Finally, the Hearing Officer also verified the injury calculations and did not find any irregularities or errors. This was communicated by the Hearing Officer in trade proceedings to the Japanese exporting producer.

(157) As regards second the adjustments for trimming, a reasonable adjustment could be made based on adjusting the weight (Full untrimmed coils versus Full coil with trimmed edges). Following the imposition of provisional anti-dumping measures, the level of this adjustment has been corrected though, since at the provisional stage the percentages used to adjust the weight were not fully accurate. The percentage of the yield loss which was used for making the adjustment was based on the evidence collected during the on spot investigation at the Japanese exporting producer. Following final disclosure, the Japanese exporting producer reiterated its comments.

(158) The Commission considered that this corrected adjustment accurately reflected the difference in market value between trimmed coils and untrimmed coils. The calculation submitted by the Japanese exporting producer was not considered accurate, as the net weight of trimmed products in the calculation of the difference between average prices of trimmed and untrimmed coils was not taken into account.

(159) The same Japanese exporting producer also argued that the provisional disclosure contained some errors. Indeed, some minor calculation errors were identified in the provisional disclosure which were corrected. As a result of these corrections and the correction explained in the previous recital, the injury margin for this Japanese company was amended to 39,0 %. As set out above, the calculations were reviewed by the Hearing Officer in trade proceedings.

(160) The Russian exporting producer argued that the cost of production values of the Union industry which were used for the underselling calculations were for some product types unrealistically high, when comparing to nearly identical product types. Following final disclosure, this argument was reiterated, alleging irregularities in the Commission's undercutting and underselling calculations, and pointing to a significantly different cost of production for two similar types of the product concerned.

(161) The Commission established however that the cost of production data of the Union industry were accurate. In particular, the two similar types, to which the Russian exporting producer referred, were analysed and compared to the cost of production of other types. Any difference in cost of production values of some product types when comparing to nearly identical product types could be explained by the different mix of Union producers producing these types.

(162) In addition, the Russian exporting producer claimed that there is a lack of symmetry between dumping and injury calculations in terms of the treatment of non-primary grades. The claim pointed to the fact that, as set out in recital (147) of the provisional Regulation, Russian 'second and third choice' product concerned was not compared with Union industry 'first and second choice' products.

(163) The Commission considered that the fact that, for the purposes of a fair comparison of product types, the non-primary grades were not compared to the Union industry products, did neither affect the accuracy of the dumping calculations nor the accuracy of the injury calculations. On the contrary, in the latter only similar product types were compared in order to ensure a fair comparison. This claim was therefore rejected.

(164) The Chinese exporting producers claimed that the underselling calculations in the provisional disclosure were flawed, in particular because the calculations were allegedly based on the average Union prices that were provided in the provisional Regulation.

(165) This claim was rejected. The Chinese exporting producer produced and sold in the Union only part of the product types, which were then compared to the same product types produced and sold by the Union producers for the purposes of the underselling calculations. No average Union prices were used in these calculations.

(166) In the absence of any other comments regarding the injury elimination level, and apart from the change in injury margin for one Japanese producer from 34,2 % to 39 %, as set out in recital (159), the conclusions reached in recitals (241) to (246) of the provisional Regulation were confirmed.

Country	Company	Definitive injury margin
People's Republic of China	Baoshan Iron & Steel Co., Ltd., Shanghai;	32,9 %
	Wuhan Iron & Steel Co., Ltd., Wuhan	36,6 %
Japan	JFE Steel Corporation, Tokyo	39,0 %
	Nippon Steel & Sumitomo Metal Corporation, Tokyo	35,9 %

Country	Company	Definitive injury margin
Republic of Korea	POSCO, Seoul	37,2 %
Russian Federation	OJSC Novolipetsk Steel, Lipetsk; VIZ Steel, Ekaterinburg	21,6 %
United States of America	AK Steel Corporation, Ohio	22,0 %

2. **Definitive measures**

(167) In view of the definitive conclusions reached with regard to dumping, injury, causation, and Union interest, anti-dumping measures should be imposed in order to prevent further injury to the Union industry resulting from the dumped exports.

(168) Anti-dumping measures may take different forms. While the Commission has a large discretion when choosing the form of measures, the purpose remains to remove the effects of the injurious dumping. An ad valorem duty set in accordance with the lesser duty rule, ranging between 21,5 % and 39 % was established, as follows:

Country	Company	Dumping margin	Injury margin	*Ad valorem* anti-dumping duty
PRC	Baoshan Iron & Steel Co., Ltd, Shanghai	21,5 %	32,9 %	21,5 %
	Wuhan Iron & Steel Co., Ltd., Wuhan	54,9 %	36,6 %	36,6 %
	All other companies		36,6 %	36,6 %
Japan	JFE Steel Corporation, Tokyo	47,1 %	39,0 %	39,0 %
	Nippon Steel & Sumitomo Metal Corporation, Tokyo	52,2 %	35,9 %	35,9 %
	All other companies		39,0 %	39,0 %
Korea	POSCO, Seoul	22,5 %	37,2 %	22,5 %
	All other companies		37,2 %	22,5 %
Russia	OJSC Novolipetsk Steel, Lipetsk, VIZ Steel, Ekaterinburg	29,0 %	21,6 %	21,6 %
	All other companies		21,6 %	21,6 %
USA	AK Steel Corporation, Ohio	60,1 %	22,0 %	22,0 %
	All other companies		22,0 %	22,0 %

(169) As set out above in recital (149), it is appropriate to change the form of the measures. On the basis of the specific facts of the case, the Commission considered that a variable duty under the form of a minimum import price (MIP) duty would be the most appropriate form of measures in this case. On the one hand, such MIP would allow the Union producers to recover from the effects of injurious dumping. It 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. On the other hand, such MIP 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. It would also accommodate the concerns of users as they fear a shortage of the product concerned, in particular types with a maximum core loss of 0,90 W/kg and below which are highly needed to meet the tier 1 efficiency targets of the EcoDesign Regulation. More generally, it would prevent serious disturbances in the supply of the Union market.

(170) Where imports are made at a CIF Union border price equal to or above the MIP established, no duty would be payable. If imports are made at a price below the MIP, the definitive duty should be equal to the difference between the applicable MIP and the net free at Union frontier price, before duty. In no event should the amount of the duty be higher than the *ad valorem* duty rates set in recital (168) and in Article 1 of this Regulation.

(171) Accordingly, if imports are made at a price below the MIP, the lower of the difference between the applicable MIP and the net free at Union frontier price, before duty, and the *ad valorem* duty rates as detailed in the last column of the table in recital (168) would be payable.

(172) As set out in detail in recital (19) above, the investigation covered the product concerned, as defined in recital (9) and therefore one comprehensive injury analysis, causation analysis and Union interest analysis was carried out. At the same time, when deciding about the form of the measure, the Commission considered the differences in quality as follows. For the purposes of the effective application of the MIP, and on the basis of the information collected during the investigation, the Commission decided to establish three different categories of the product concerned that are distinguished on the basis of their maximum core loss. A separate MIP was calculated for each of the three categories. The three categories are as follows:

— Types with a maximum core loss not higher than 0,90 W/kg;

— Types with a maximum core loss higher than 0,90 W/kg but not higher than 1,05 W/kg;

— Types with a maximum core loss higher than 1,05 W/kg.

(173) Types with a maximum core loss of 0,90 W/kg and below are the top subsection of the high permeability types of the product concerned. Types with a core loss higher than 0,90 W/kg up to and including 1,05 W/kg are not the top end but still high permeability types of the product concerned, which are mainly produced up to a maximum core loss of 1,05 W/kg. It also includes some of the better qualities of the conventional types of the product concerned. Types with a maximum core loss higher than 1,05 W/kg are mainly the conventional types of the product concerned. The core loss should be measured in Watts per kilogram at a frequency of 50 Hz and a magnetic induction of 1,7 Tesla.

(174) A non-injurious price, or non-injurious MIP, had to be established in order to apply this rule. For the purpose of calculating the non-injurious price, account has been taken both of the dumping margins found and of the amounts of duties necessary to eliminate the injury sustained by Union industry as set out in the provisional Regulation.

(175) The MIPs are equal to the weighted average of:

— Where duties are based on the injury elimination level: the cost of production during the investigation period of the Union producers and a profit (5 %) as regards the USA, Japanese, Russian and one Chinese exporting producer(s) and;

— Where duties are based on the dumping margin: the normal value, including transport (to arrive at a CIF border Union price) as regards the Korean and one Chinese exporting producer.

(176) Based on this methodology, the MIPs are set at the following levels

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 0,9 W/kg	EUR 2 043
	Products with a maximum core loss higher than 0,9 W/kg but not higher than 1,05 W/kg	EUR 1 873
	Products with a maximum core loss higher than 1,05 W/kg	EUR 1 536

(177) Following final disclosure, the following comments were made by interested parties.

(178) First, a user association alleged that the MIP proposal creates a market distortion, by decoupling the price levels in the Union from the world prices. This user association claimed that the Commission was locking the prices on all types of GOES at a level significantly higher than the average price levels that the Commission had calculated for the IP plus the duty levels established in the provisional Regulation. This association did not see any legitimate need for measures. The association also alleged that the MIPs were too high, and therefore should be adapted by reducing them on a yearly basis by 5 %.

(179) Second, the Korean exporting producer also welcomed the proposal of a MIP which was considered to be more appropriate than ad valorem duties. Nevertheless, this exporting producer claimed that the Commission should revise its methodology and impose for each exporting producer MIPs that are set no higher than what is necessary to remove injurious dumping caused by the (Korean) exporting producer.

(180) Third, another user alleged that the proposed MIPs are too high and in any case higher than the import prices during the IP period plus the ad valorem duty rates set in the final disclosure, at least for two of the countries (Korea and Russia) concerned. Moreover, this user alleged that the Commission should not accept all of the production costs as a basis for calculating the non-injurious level but rather accept any costs which would be borne by an effective and competitive GOES producer.

(181) Fourth, another user commented that it appreciated the choice of a minimum import price duty instead of *ad valorem* duties. However, it requested the Commission to consider establishing one or two MIP levels. In the case of two levels, the separation should reasonably be at the approximate cut-off point between conventional GOES and high permeability types.

(182) Fifth, the Union Industry supported a system of MIPs based upon the three product categories. However, the Union Industry opposed the methodology used for calculating these MIPs, since the result of the Commission's weighted average method was that the proposed MIPs are below the full injury elimination level and as such set at a too low level. It also claimed that the currently proposed MIPs are currently far below current market prices in the EU and third countries. Therefore, the Commission should revise its MIP calculations and base them entirely on the injury elimination levels for all exporting producers by adding a reasonable profit (for each type of the product concerned falling within the relevant product). Furthermore, the Union Industry reiterated its comment that the Commission should use a 14 % target profit which was the profit from the year 2010.

(183) Sixth, the American exporting producer expressed serious doubts as to the usefulness and adequateness of the Commission's MIPs proposal in view of the fact that market prices of the relevant product are currently much higher than the MIPs.

(184) Seventh, another user stated that it rather supports the imposition of minimum import price (MIP) on the whole product scope as a compromise solution to accommodate the conflicting demands of the GOES and transformer industries. This user stated though that the MIPs are too high (in particular for the second and third category, when comparing to the IP sales prices, on which the ad valorem duties were added) and create a concrete danger for the Union transformer industry that it will have to pay duties before the Union industry is able to supply its needs.

(185) Eight, the Russian exporting producer welcomed the proposal of the Commission to adopt a variable anti-dumping duty in the form of a MIP, instead of *ad valorem* duties. However, this exporting producer alleged that the currently proposed methodology of calculating three different MIPs (only based on different ranges of maximum core loss) without distinguishing neither between individual exporting producers nor between individual countries of origin, is in breach of article 9(5) of the basic Regulation. Therefore, this exporting producer claimed that this method does not assess anti-dumping duties at an 'appropriate amount', and discriminated against imports from Russia. Similarly, the Russian exporting producer also requested that the Commission should create a fourth category of the product for the purposes of the minimum import price calculation, which should contain exclusively off-grade or subgrade types of the product concerned with physical characteristics comparable to those of the 'second' and 'third choice' exported types. The Russian exporting producer alleged that the MIPs, based exclusively on maximum core loss, would leave the Russian producer, and ultimately Russia as the only source of supplies of 'second' and 'third choice' exported types, in a substantially different position from any of the exporting countries concerned.

(186) The Commission analysed in detail all comments made, will further explain below the methodology used in view of these comments, and came to the following conclusions.

(187) The methodology used by the Commission to calculate the three MIPs was the following. Like in any anti-dumping investigation, the Commission collected data for the IP, which were verified, in order to establish normal values per product type and non-injurious target prices for the Union Industry, also per product type. The target prices for the Union industry consisted of the cost of production to which a reasonable profit was added. On the basis of these data, the methodology as set out in recital (169) and following was applied. The levels of the MIPs are therefore directly based on verified data for the IP. In addition, the lesser duty rule was taken into account. Where the *ad valorem* duties were based on the dumping margin, the normal values, to which transport costs were added to arrive at a CIF border Union price, were used in the calculation of the MIPs. Where the *ad valorem* duties were based on the injury elimination level, the non-injurious target price for the Union industry was used. The MIPs were then calculated as a weighted average of the normal values and non-injurious target prices used. The weighing factor was established on the basis of the proportion of the volume of the imports to the Union from the companies where the *ad valorem* duty is based on the dumping margins and on the proportion of the volume of the imports from the companies where the *ad valorem* duty is based on the injury elimination level. Each MIP is a weighted average of the prices (normal value and target prices) of the different product types within each of the three product categories.

(188) The three MIPs for the three different product categories apply to all exporting producers and to all countries concerned, if the CIF Union border price is equal to or above the MIP (in which case no duty is payable). When duties are payable, i.e. when export prices are 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* duty rates. Accordingly, individual duties apply to each exporting producer. In no event should the amount of the duty be higher than the *ad valorem* duty rates which are specific for each individual exporting producer of each country concerned. An alternative scenario, as suggested by several interested parties, would have been the introduction of different MIPs per exporting producer. However, this would mean at least 21 different MIPs (i.e. three 3 MIPs for the three different categories times the seven cooperating exporting producers), which would render the implementation of the measures very difficult, if not impractical, for customs authorities.

(189) The MIPs were subsequently compared to the sales prices during the post IP period on the Union market. Data on these prices were obtained from the users and from the Union industry during the investigation following the provisional disclosure, as set out in recitals (5) and (6). This investigation revealed that overall the proposed MIPs, particularly the one for the high grades, for the three different product categories are below the post IP sales prices, in which case no duty would be payable. As set out in recitals (182) and (183), this finding of the investigation was corroborated by the statements of the Union industry, several users and the American exporting producer.

(190) In view of the above, the Commission rejected all claims with regard to the methodology used and the level of the MIPs.

(191) Concerning the allegation that the Commission is locking the prices, the Commission recalls that it has set three MIPs for three different product categories to remove the effects of injurious dumping and to prevent users from any adverse effect of undue price increases after the investigation period, as set out in recital (169) above. The Commission is not creating a market distortion for Union market prices which are generally above the proposed MIPs, as explained in recital (189). Moreover, the MIPs are not floor prices, so exporting producers, if they wish so, can still sell at prices below the MIPs. Therefore, exporting and Union producers still can compete with each other by differentiating their prices from each other, irrespective of the set MIPs.

(192) Concerning the allegation that (one or) two MIPs would have been more appropriate than the three proposed MIPs, the Commission noted the objective price difference (about 170 euro per tonne, see recital (176) for the first and the second product category, all consisting of high permeability types of the product concerned. By having only 2 MIPs with a cut-off point between conventional and high permeability types of the product concerned, the price of the first product category (i.e. product types with a maximum core loss not higher than 0,9 W/kg) would basically be combined with the price of the second product category, which mainly consists also of high permeability types of the product concerned, though with a higher maximum core loss. If such a methodology would have been followed, the MIP of the top quality high permeability product types would become proportionally understated. Concerning the allegations that no individual duties apply to each exporting producer, reference is made to recital (187) above, which describes the methodology whereby individual duties apply in case an ad valorem duty has to be paid.

(193) Concerning the allegation that the Commission should not accept all of the production costs as a basis for calculating the non-injurious level, but rather any costs borne by an effective and competitive producer, it is recalled that the calculation was based on verified data. In addition, as this claim was not substantiated and no alternative methodology was provided how such adjustment to the cost of production should be made, the Commission rejected it.

(194) The suggestion to reduce every year the MIP by 5 % would not be in line with the objective of removing injurious dumping. Furthermore, no evidence was provided which would justify such reduction of 5 % annually.

(195) Concerning the request to create a fourth product category, containing exclusively off-grade or subgrade types of the product concerned, the Commission considered that no clear benchmark is available to apply such further split. Also, the MIPs are based on a mixture of product types, irrespective of whether they were full or slit for example, and also irrespective of whether they were downgraded or not. The three different product categories are based on maximum core loss, which is an objective non-discriminatory criterion.

(196) Two users also requested to limit the duration of the measures to a period shorter than five years, alleging that a safety net of more than 2-3 years is not required to provide the EU GOES industry with a sufficient incentive to invest into the production of high grade GOES.

(197) However, the users did not substantiate their claim that a relatively short period of 2-3 years would be sufficient to invest and to achieve at least some return on investment. As set out in Article 11(2) of the basic Regulation, a definitive anti-dumping duty shall expire five year from its imposition.

(198) In case of a change of market circumstances, the basic Regulation provides several options. If the change is lasting, Article 11(3) of the basic Regulation provides that a review of the need for a continued imposition of measures can be requested, provided that a reasonable period of time of at least one year has elapsed since the imposition of the definitive measure. If the change is temporary, pursuant to Article 14 (4) of the basic Regulation measures may be suspended where market conditions have temporarily changed to an extent that the injury would unlikely to resume as a result of the suspension. The Commission will assess expeditiously the merits of any duly motivated request made under one of those two provisions, so as to maintain a balanced level of protection against injurious dumping.

(199) Finally, the claim of the Russian exporting producer that the MIP should not be exclusively based on core loss_ was not accepted for the following reason. Maximum core loss is an objective criterion to distinguish different types of the product concerned from each other, whereas the distinction between first and second quality types of the product concerned is rather a very subjective assessment, which would complicate any monitoring of the implementation of the measures. Furthermore, the MIP does distinguish between individual exporting producers and the countries concerned, as set out in detail in recital (187) above.

(200) The individual company anti-dumping measures specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflected the situation found during this investigation with respect to these companies. These measures are exclusively applicable to imports of the product concerned originating in the countries concerned and produced by the named legal entities. Imports of product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the measures applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping measures.

(201) A company may request the application of these individual anti-dumping measures if it changes the name of its entity or sets up a new production or sales entity. The request must be addressed to the Commission ([1]). The request must contain all the relevant information, including modification in the company's activities linked to production, domestic and export sales associated with, for example, the name change or the change in the production and sales entities. The Commission will update the list of companies with individual anti-dumping measures, if justified.

(202) 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.

(203) Should a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation take place, an anti-circumvention investigation may be initiated and, provided the conditions are met, ad valorem duties may be imposed.

(204) Furthermore, in order to best guard against any possible absorption of the measures, particularly between related companies, the Commission will immediately initiate a review under Article 12(1) of the basic Regulation and may subject importations to registration in accordance with Article 14(5) of the basic Regulation, should any evidence of such behaviour be provided.

3. **No collection of the provisional duties**

(205) The provisional duties in the form of ad valorem duties ranging between 21,6 % and 35,9 % for the imports of the product concerned which applied during the period from 13 May 2015 to 13 November 2015 shall not be collected. The Commission considered that, in the specific circumstances of the case, collection of the provisional duties, that took a different form from the definitive duties, would not be in line with the Union interest, given that prices during this period were generally above those of the established MIPs.

(206) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties. They were also granted a period of time within which they could make representations following this disclosure. The comments submitted by other parties were duly considered but were not such as to change the conclusions.

H. **UNDERTAKINGS**

(207) The Russian and the Korean exporting producer offered price undertakings in accordance with Article 8(1) of the basic Regulation. The Korean exporting producer subsequently withdrew its undertaking offer.

([1]) European Commission, Directorate-General for Trade, Directorate H, 1049 Brussels, Belgium.

(208) The Russian exporting producer exports two types of GOES ('prime' and 'non-prime' types, the latter with e.g. surface defects) all falling within the lowest product range (products with a maximum core loss higher than 1,05 W/kg). Within this product category, it requested two MIPs in addition to those established for the duty, to make a distinction between the two types of the product concerned it is exporting to the Union. The Russian exporting producer has a number of related companies in the Union, though it sold so far the product concerned exclusively via its related trader in Switzerland.

(209) The Commission assessed this offer, against the background of the form of the measures, i.e. MIPs that were established for three categories of product types, applicable to all exporting producers from all countries concerned, as set out above in recitals (175) and (176). The undertaking offer differs substantially from this approach and would require a company specific measure.

(210) The distinction between prime and non-prime products appeared to be highly subjective for the purpose of implementing measures as it is proposed to distinguish the two product types with reference to a Russian standard. The Commission considered that this makes the undertaking impracticable, even more so as this standard would be additional to the distinction between product types based on core loss.

(211) Moreover, the multitude of product types (its entire product range of the product concerned) it is selling in the Union as well as its company structure makes the offer difficult to monitor for the Commission services, in particular against the background of the form of the measures, i.e. the overall MIPs that were established for the three categories of product types instead of the more common *ad valorem* duties. Finally, in this particular case, the overall Union interest and the impact on the users have already been taken into consideration by the overall MIPs as set out in detail in recitals (149) and (169). So this constitutes another reason for rejecting the offered price undertaking.

(212) On the basis of the above, and for reasons of general policy, the Commission rejected the undertaking offer of the Russian exporting producer.

(213) The measures provided for in this Regulation are in accordance with the opinion of 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 grain-oriented flat-rolled products of silicon-electrical steel, of a thickness of more than 0,16 mm, currently falling within 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 named legal entities as set out in paragraph 4 shall 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 0,9 W/kg	EUR 2 043
	Products with a maximum core loss higher than 0,9 W/kg but not higher than 1,05 W/kg	EUR 1 873
	Products with a maximum core loss higher than 1,05 W/kg	EUR 1 536

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

Company	*Ad Valorem* 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 145 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1), 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 145 of Regulation (EEC) No 2454/93, 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.

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

Article 2

The amounts secured by way of the provisional anti-dumping duty pursuant to Regulation (EU) No 763/2015 shall be released.

Article 3

This Regulation shall enter into force on the day following 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, 29 October 2015.

For the Commission

The President

Jean-Claude JUNCKER

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