COMMISSION IMPLEMENTING REGULATION (EU) 2019/1693

of 9 October 2019

imposing a provisional anti-dumping duty on imports of steel road wheels originating in the People's Republic of China

THE EUROPEAN COMMISSION,

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

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

After consulting the Member States,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 15 February 2019, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports into the Union of steel road wheels ('SRW') originating in the People's Republic of China ('PRC' or 'the country concerned') on the basis of Article 5 of Regulation (EU) 2016/1036 ('the basic Regulation'). It published a Notice of Initiation in the *Official Journal of the European Union* ([2]) ('Notice of Initiation').

(2) The Commission initiated the investigation following a complaint lodged on 3 January 2019 by the Association of European Wheels Manufacturers ('EUWA' or 'the complainant') on behalf of producers representing more than 25 % of the total Union production of steel road wheels. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

(3) Following the Notice of Initiation the Commission received a number of questions and comments concerning the definition of the product concerned. In this respect, the Commission clarified the product scope in the notice amending the Notice of Initiation ([3]).

(4) Pursuant to Article 14(5a) of the basic Regulation, the Commission shall register imports subject to an anti-dumping investigation during the period of pre-disclosure unless it has sufficient evidence that certain requirements are not met. One of these requirements, as mentioned in Article 10(4)(d) of the basic Regulation, is that there is a further substantial rise in imports in addition to the level of imports which caused injury during the investigation period. According to Eurostat data, imports in kilograms of SRW from the PRC declined during the first four months following the initiation of the investigation (i.e. from March 2019 to June 2019) by 72 % as compared with the same period in 2018 and by 74 % in relation to the four months average during the investigation period (2018 — see recital (23)). The Commission further observes that the import volumes of the product concerned according to

([1]) OJ L 176, 30.6.2016, p. 21.
([2]) Notice of initiation of an anti-dumping proceeding concerning imports of steel road wheels originating in the People's Republic of China (OJ C 60, 15.2.2019. p. 19).
([3]) Notice amending the notice of initiation of an anti-dumping proceeding concerning imports of steel road wheels originating in the People's Republic of China (OJ C 111, 25.3.2019, p. 52).

Surveillance 2 database show a similar strong decrease in imports. Therefore, the Commission did not make imports of the product concerned subject to registration under Article 14(5a) of the basic Regulation as the second substantive condition of Article 10(4), i.e. a further substantial rise in imports, was not met.

1.2. **Interested parties**

(5) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainant, other known Union producers, the known exporting producers and the PRC authorities, known importers and users about the initiation of the investigation and invited them to participate.

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

1.3. **Sampling**

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

1.3.1. *Sampling of Union producers*

(8) In the Notice of Initiation, the Commission stated that it had decided to limit its investigation to a reasonable number the Union producers by applying sampling, and that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of the information available to the Commission at initiation stage. It was based on the volume of production and sales of the like product in the EU during the investigation period. This sample consisted of three Union producers. The sampled Union producers, located in three different Member States, accounted for over 35 % of the estimated total EU production and sales volume of the like product. The Commission invited interested parties to comment on the provisional sample. Only EUWA made comments and asked for the inclusion of an additional company in order to improve the representativity of the sample. Following these comments, the Commission decided to add one company. However, that Union producer refused to co-operate with the investigation. The provisional sample consisting of three Union producers was thus confirmed. The sample is representative of the Union industry.

(9) The sampled Union producers as well as the other Union producers participating in this investigation have requested the Commission that their identity is kept confidential throughout the proceeding, pursuant to Article 19 of the basic Regulation, on grounds of a fear of retaliatory measures by some of their customers. The Commission, based on good cause shown in the request, accepted to grant anonymity to the Union producers.

1.3.2. *Sampling of importers*

(10) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.

(11) Two unrelated importers provided the requested information. In view of the low number, the Commission decided that sampling was not necessary.

1.3.3. *Sampling of exporting producers in the PRC*

(12) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

(13) Twenty-seven companies in the country concerned provided the requested information and agreed to be included in the sample. The Commission found twenty exporting producers/groups of exporting producers to be admissible to the sample. Seven producers reported no exports of the product concerned to the EU during the investigation period and therefore were not considered admissible to the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three companies, which could reasonably be investigated within the time available. The basis for the selection of the sample were the largest volumes of exports to the Union but consideration was also given to covering in the sample all types of SRW (SRW used for passenger and commercial purposes).

(14) In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned, and the authorities of the country concerned, were consulted on the selection of the sample. No comments were made.

(15) Subsequently, one of the sampled companies refused to cooperate and was replaced by the next largest exporting producer.

(16) Following the verification visit, given the significant shortcomings of the information provided by one sampled exporting producer, the Commission decided to disregard this information on the basis of Article 18(1) of the basic Regulation ([4]).

(17) Furthermore, as a result of the exclusion of certain types of products from the scope of this investigation as set out in Section 2.3 below, one of the cooperating sampled exporting producers was no longer concerned by this investigation.

(18) As a result of the above, the sample was reduced to only one company, covering around 20 % of the Chinese exports of the product concerned to the Union in the investigation period. Taking into account the degree of non-cooperation in the sample and insufficient time to select a new sample, the Commission provisionally decided on the basis of Article 17(4) of the basic Regulation to apply the relevant provisions of Article 18 of the basic Regulation.

1.4. **Individual examination**

(19) Originally, ten of the exporting producers that returned the sampling form requested individual examination under Article 17(3) of the basic Regulation. The Commission made the questionnaire available online on the day of the initiation. Moreover, when announcing the sample, the Commission informed the exporting producers that were not sampled that they were required to provide a questionnaire reply if they wished to be examined individually. However, none of the companies followed with a submission of the questionnaire reply. Therefore, no individual examination was granted.

1.5. **Questionnaire replies and verification visits**

(20) The Commission sent a questionnaire concerning the existence of significant distortions in PRC within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of the People's Republic of China ('GOC'). The questionnaires for the Union producers, importers, users, and exporting producers were made available online ([5]) on the day of initiation.

(21) Questionnaire replies were received from the three sampled Union producers and the three sampled exporting producers. One unrelated importer provided the Commission with a questionnaire reply; however, that reply was incomplete and the party stopped its cooperation with the investigation when it was requested to further complete its questionnaire reply. No reply was received from the GOC.

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

Union producers

— Company C, European Union;

— Company E, European Union;

([4]) See section 3.1 of the Regulation.
([5]) Available at http://trade.ec.europa.eu/tdi/case_details.cfm?id=2383 (last viewed 15 July 2019).

— Company H, European Union.

Association of Union producers

— EUWA, Brussels, Belgium;

Exporting producers in the PRC

— Hangtong Group:

  — Zhejiang Hangtong Machinery Manufacture Co., Ltd. (producer), Taizhou, China;

  — Ningbo Hi-Tech Zone Tongcheng Auto Parts Co., Ltd. (trader), Ningbo, China;

  — Ningbo Wheelsky Company Limited (off shore trader), Ningbo, China;

— Xingmin Group:

  — Xingmin Intelligent Transportation Systems Co., Ltd. (exporting producer), Longkou, China;

  — Tangshan Xingmin Wheels Co., Ltd. (producer), Tangshan, China;

  — Xianning Xingmin Wheels Co., Ltd. (producer), Xianning, China.

1.6. **Investigation period and period considered**

(23) The investigation of dumping and injury covered the period from 1 January 2018 to 31 December 2018 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2015 to the end of the investigation period ('the period considered').

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

(24) In view of the sufficient evidence available at the initiation of the investigation pointing to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission considered it appropriate to initiate the investigation having regard to Article 2(6a) of the basic Regulation.

(25) Consequently, in order to collect the necessary data for the eventual application of Article 2(6a) of the basic Regulation, in the Notice of Initiation the Commission invited all exporting producers in the country concerned to provide the information requested in Annex III to the Notice of the Initiation regarding the inputs used for producing SRW. Twenty-three exporting producers submitted the relevant information.

(26) In order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission also sent a questionnaire to the GOC. No reply was received from the GOC. Subsequently, the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in the PRC.

(27) In the Notice of Initiation, the Commission also invited all interested parties to make their views known, submit information and provide supporting evidence regarding the appropriateness of the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of this Notice in the Official Journal of the European Union. One exporting producer made comments on the existence of significant distortions.

(28) In the Notice of Initiation, the Commission also specified that, in view of the evidence available, it may need to select an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks.

(29) On 6 March 2019, the Commission published a first note for the file ('the Note of 6 March 2019') ([6]) seeking the views of the interested parties on the relevant sources that the Commission may use for the determination of the normal value, in accordance with Article 2(6a)(e) second ident of the basic Regulation. In that note, the Commission provided a list of all factors of production such as materials, energy and labour used in the production of the product concerned by the exporting producers. In addition, based on the criteria guiding the choice of

([6]) No t19.001009.

undistorted prices or benchmarks, the Commission identified possible representative countries (namely, Argentina, Brazil, Colombia, Malaysia, Mexico, Russia, South Africa, Thailand and Turkey).

(30) The Commission gave all interested parties the opportunity to comment. The Commission received comments from one exporting producer and the complainant. The GOC did not provide any comments.

(31) The Commission addressed the comments received on the Note of 6 March 2019 in the second note on the sources for the determination of the normal value of 16 April 2019 ('the Note of 16 April 2019') ([7]). The Commission also established the list of factors of production and concluded that, at that stage, Brazil was the most appropriate representative country under Article 2(6a)(a), first indent of the basic Regulation. At that stage, it was not possible to determine a definitive list of the HS codes under which the factors of production should be classified. Since there were no imports under some of the potential HS codes into Brazil, the Commission concluded at that stage that Turkey and South Africa could also be considered as an appropriate representative country if necessary. The Commission invited interested parties to comment. The Commission received comments only from the complainant. This Regulation addresses those comments.

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. **Product concerned**

(32) The product concerned, as amended by the notice referred to in recital (3) is road wheels of steel, whether or not with their accessories and whether or not fitted with tyres, designed for

— Road tractors,

— Motor vehicles for the transport of persons and/or the transport of goods,

— Special purpose motor vehicles (for example, fire fighting vehicles, spraying lorries),

— Trailers, semi-trailers, caravans, and similar vehicles, not mechanically propelled,

originating in PRC, currently falling within CN codes ex 8708 70 10, ex 8708 70 99 and ex 8716 90 90 (TARIC codes 8708 70 10 80, 8708 70 10 85, 8708 70 99 20, 8708 70 99 80, 8716 90 90 95 and 8716 90 90 97) ('the product concerned').

(33) The following products are excluded:

— Road wheels of steel for the industrial assembly of pedestrian-controlled tractors currently falling under subheading 8701 10,

— Wheels for road quad bikes,

— Wheel centres in star form, cast in one piece, of steel,

— Wheels for motor vehicles specifically designed for uses other than on public roads (for example, wheels for agricultural tractors or forestry tractors, for forklifts, for pushback tractors, for dumpers designed for off-highway use).

2.2. **Like product**

(34) The investigation showed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:

— the product concerned;

— the product produced and sold on the domestic market of the PRC;

— the product produced and sold on the domestic market of Brazil, which served as representative country in the meaning of Article 2(6a) of the basic Regulation; and

— the product produced and sold in the Union by the Union industry.

(35) The Commission decided at this stage that those products are therefore like products within the meaning of Article 1 (4) of the basic Regulation.

([7]) No t19.001778.

2.3. **Claims regarding product scope**

(36) One of the sampled exporting producers claimed that steel road wheels designed specifically for passenger car trailers and caravans which are classified under CN code 8716 90 90 with a rim diameter equal to or less than 16 inches, should be excluded from the product scope as they are not manufactured in the Union and do not have the same basic technical characteristics as all other products falling within the product scope.

(37) As far as technical characteristics are concerned, the company in question submitted that the specifications for passenger car trailer and caravan wheels, in particular with regard to strength (hence also testing), are lower than for passenger car wheels. Furthermore, they have to meet particular specifications related to the higher load and lower speed requirements of such wheels to be sold in the Union. That would also entail that a steel road wheel for a caravan or a trailer used by a passenger car cannot legally be sold and used as a passenger car steel wheel. The company also indicated that steel road wheels for caravans or trailers used by passenger cars are to be classified under CN code 8716 90 90 whereas steel wheels for passenger cars should be classified under heading 8708.

(38) In the course of the investigation, the Commission furthermore received comments concerning the potential exclusion from the scope of the investigation of wheels for agricultural trailers and other trailed agricultural equipment used in fields, found to have a rim diameter equal to or of less than 16 inches. The Notice of Initiation explicitly excluded 'wheels for motor vehicles specifically designed for uses other than on public roads (for example, wheels for agricultural tractors or forestry tractors, for forklifts, for pushback tractors, for dumpers designed for off-highway use)'. However, the steel wheels for not mechanically propelled vehicles, such as agricultural trailers and other trailed agricultural equipment used in fields, were originally included in the product scope. It was claimed that like steel wheels for caravans and trailers used by passenger cars, such wheels also have different technical characteristics and are not interchangeable with the other products falling under the product scope.

(39) On 24 June 2019, the Commission published a note to the file inviting all interested parties to comment on the above claims concerning the product scope. The complainant, three exporting producers and one Union importer submitted comments on the above note. All those parties supported the product exclusion claim summarized in recitals (36) and (38) above.

2.4. **Conclusion on product concerned**

(40) The investigation has shown that the wheels referred to in recitals (36) and (38) have a limited diameter of 16 inches or less and have different technical characteristics than the other types of wheels in the product scope, since they are not meant to, and cannot, be fitted on the motor vehicles themselves. Therefore, the Commission provisionally concluded that these products should be excluded.

(41) Following the exclusion described in the recital (40) above, one of the sampled exporting producers, which produced and exported to the Union only the excluded types of product, is no longer considered an exporting producer of the product concerned.

(42) Therefore, the product concerned is provisionally defined as road wheels of steel, whether or not with their accessories and whether or not fitted with tyres, designed for:

— Road tractors,

— Motor vehicles for the transport of persons and/or the transport of goods,

— Special purpose motor vehicles (for example, fire fighting vehicles, spraying lorries),

— Trailers or semi-trailers, not mechanically propelled, of road tractors

originating in the People's Republic of China, currently falling within CN codes ex 8708 70 10, ex 8708 70 99 and ex 8716 90 90 (TARIC codes 8708 70 10 80, 8708 70 10 85, 8708 70 99 20, 8708 70 99 80, 8716 90 90 95, and 8716 90 90 97) ('the product concerned').

The following products are excluded:

— Road wheels of steel for the industrial assembly of pedestrian-controlled tractors currently falling under subheading 8701 10,

— Wheels for road quad bikes,

— Wheel centres in star form, cast in one piece, of steel,

— Wheels for motor vehicles, specifically designed for uses other than on public roads (for example, wheels for agricultural tractors or forestry tractors, for forklifts, for pushback tractors, for dumpers designed for off-highway use),

— Wheels for passenger car trailers, caravans, agricultural trailers and other trailed agricultural equipment used in fields, with a diameter of not more than 16 inches.

3. **DUMPING**

3.1. **Preliminary remarks**

(43) As explained in the recital (17) only two exporting producers remained in the sample and were subsequently verified.

(44) With regard to one of these companies the Commission decided to make use of the provisions of Article 18 of the basic Regulation and in particular first sentence of Article 18(1), and disregarded the information provided. This decision was taken because the reported export sales data were considered to be unreliable, as they could not be reconciled with the audited accounts of the company. Therefore, the Commission did not receive the necessary information to establish a dumping margin for the company.

(45) In accordance with Article 18(4) of the basic Regulation, the interested party was informed of the reasons of disregarding the information provided and was granted the opportunity to provide further explanations.

(46) The company commented on the Commission's intention to use Article 18 of the basic Regulation and had a hearing with the Hearing Officer in trade proceedings upon its request. Due to the confidential and company-specific nature of the rejected data and the comments provided in the company's submission and subsequent hearing, the details of the Commission findings in this regard were disclosed to the company in question in a separate specific provisional disclosure.

(47) As the comments made by the company in its submissions and in the hearing with the Hearing Officer did not alter the facts and conclusions established by the Commission during the verification visit at the company's premises, the Commission provisionally confirmed the use of facts available with regard to this exporting producer.

(48) Thus, the description of the dumping margin calculation below refers to the sole remaining company in the sample.

3.2. **Normal value**

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

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

3.2.1. *Existence of significant distortions*

3.2.1.1. Introduction

(51) Article 2(6a)(b) of the basic Regulation defines 'significant distortions are those distortions which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces as they are affected by substantial government intervention. In assessing the existence of significant distortions regard shall be had, inter alia, to the potential impact of one or more of the following elements:

— the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country;

— state presence in firms allowing the state to interfere with respect to prices or costs;

— public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces;

— the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws;

— wage costs being distorted;

— access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the state'.

(52) According to Article 2(6a)(b) of the basic Regulation, the assessment of the existence of significant distortions within the meaning of Article 2(6a)(a) shall take into account, amongst others, the non-exhaustive list of elements in the former provision. Pursuant to Article 2(6a)(b) of the basic Regulation, in assessing the existence of significant distortions, regard shall be had to the potential impact of one or more of these elements on prices and costs in the exporting country of the product concerned. Indeed, as that list is non-cumulative, not all the elements need to be given regard to for a finding of significant distortions. Moreover, the same factual circumstances may be used to demonstrate the existence of one or more of the elements of the list. However, any conclusion on significant distortions within the meaning of Article 2(6a)(a) must be made on the basis of all the evidence at hand. The overall assessment on the existence of distortions may also take into account the general context and situation in the exporting country, in particular where the fundamental elements of the exporting country's economic and administrative set-up provides the government with substantial powers to intervene in the economy in such a way that prices and costs are not the result of the free development of market forces.

(53) Article 2(6a)(c) of the basic Regulation provides that '[w]here the Commission has well-founded indications of the possible existence of significant distortions as referred to in point (b) in a certain country or a certain sector in that country, and where appropriate for the effective application of this Regulation, the Commission shall produce, make public and regularly update a report describing the market circumstances referred to in point (b) in that country or sector'.

(54) Pursuant to this provision, the Commission has issued a country report concerning the PRC (hereinafter 'the Report'), ([8]) showing the existence of substantial government intervention at many levels of the economy, including specific distortions in many key factors of production (such as land, energy, capital, raw materials and labour) as well as in specific sectors (such as steel and chemicals). The Report was placed on the investigation file at the initiation stage. The complaint also contained some relevant evidence complementing the Report. Interested parties were invited to rebut, comment or supplement the evidence contained in the investigation file at the time of initiation.

(55) The complaint contained updated information on the overcapacity in steel production, which is the main raw material for the manufacturing of the product concerned accounting for more than 60 % of the costs of manufacturing. It referred to a report by the European Union Chamber of Commerce in China ([9]), according to which the PRC had failed to deliver on its promises to cut the production capacity to more realistic levels. This situation was specifically driven by:

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

([9]) See p. 15 and Annex 14 of the complaint.

— the desire of a part of the regions to be self-sufficient, which resulted in additional overcapacity at national level;

— the existence of State-owned enterprises, which do not operate according to profit/loss considerations;

— the stimulus package of the GOC, which encouraged large steel mills to add capacity and made small and medium-sized steel mills profitable again;

— the provision of subsidised energy by regional governments ([10]).

(56) The complainant also claimed that the Chinese domestic demand could not sustain elevated steel production levels. To this end, the complaint referred to the World Steel Association, which reported that the monthly production volumes increased in the PRC by 9,1 % in October 2018 in comparison to October 2017 while increasing only by 5,8 % on average in the 64 countries reporting to the World Steel Association.

(57) The complaint contained information that the increased production of steel in the PRC, in combination with a reduction of exports resulting from recently imposed trade remedies by the European Union and the United States, could result in a decline in steel prices.

(58) Finally, the complaint referred to further practices affecting the prices of raw materials:

— the costs of raw materials and energy in the PRC are not the result of free market forces as they are affected by substantial government intervention;

— the Chinese steel market is still to a significant extent served by enterprises which operate under the ownership, control and policy supervision of the GOC;

— there is still a lack of adequate enforcement of bankruptcy laws, corporate or property laws in the PRC;

— wage costs are distorted since they do not result from normal market forces or negotiation between companies and the work force.

(59) As indicated in recitals (26) and (27) respectively, the GOC did not comment or provide evidence supporting or rebutting the existing evidence on the case file, including the Report and the additional evidence provided by the complainant, on the existence of significant distortions and/or on the appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand.

(60) Comments in this regard were received only from one of the exporting producers, which claimed that the calculation of the normal value pursuant to Article 2(6a) of the basic Regulation is incompatible with the WTO Agreements, including China's Protocol of Accession to the WTO ('Protocol') and the Anti-Dumping Agreement ('ADA').

(61) In this respect, the exporting producer claimed that after the expiry of Section 15 of the Protocol, the EU should not deviate from the standard methodology in establishing the normal value that is to use only domestic prices and costs of the exporting country, unless the ADA permits otherwise. In light of the above, the EU should follow the standard methodology in accordance with Article 2 of the ADA. Moreover, the interested party also claimed that the notion of significant distortions does not even exist in the ADA. As there is no legal basis in the ADA or in GATT 1994 for such specific action, the findings of the existence of significant distortions and, as a result of it, the construction of the normal value is not consistent with Articles 1, 2, 6.1 and 18.1 of the ADA.

(62) For the purpose of this investigation the Commission has concluded in recital (112) that it is appropriate to apply Article 2(6a) of the Basic Regulation. The Commission does not agree with the submission of the interested party that the Commission must not apply Article 2(6a). On the contrary, the Commission considers that Article 2(6a) is applicable and must be applied in the circumstances of this case. In addition, the Commission considers that this provision is consistent with the European Union's WTO obligations. It is the Commission's view that, as clarified in DS473 EU-Biodiesel (Argentina), the provisions of the Basic Regulation that apply generally with respect to all WTO Members, in particular Article 2(5), second sub-paragraph, permit the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. Finally, in anti-dumping proceedings concerning products

([10]) Overcapacity in China – an impediment to the Party's reform agenda, European Union Chamber of Commerce in China, p. 19 (Annex 14 of the complaint).

from China, the parts of Section 15 of China's Accession Protocol that have not expired continue to apply when determining normal value, both with respect to the market economy standard and with respect to the use of a methodology that is not based on a strict comparison with Chinese prices or costs.

(63) The exporting producer further argued that the complainant did not provide any evidence of significant distortions on the steel wheel market itself but rather based its claims on distortions on the situation on the Chinese steel market.

(64) The Commission noted that any comments on the situation of the Chinese steel market are relevant for the product concerned itself since, as a steel product, it can be considered a part of the steel sector. In fact, steel represents more than 60 % of the costs of manufacturing of the product concerned. Moreover, the main raw material used in the manufacturing of SRW is hot-rolled flat steel ('HRS') accounted for more than 50 % of the total costs of production, which is also produced on the Chinese steel market and for which findings on distortions were confirmed in previous trade defence investigations ([11]).

(65) The Commission examined whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the Report, which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in the PRC's economy in general, but also the specific market situation in the relevant sector including the product concerned.

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

(66) The Chinese economic system is based on the concept of '*socialist market economy*'. That concept is enshrined in the Chinese Constitution and determines the economic governance of the PRC. The core principle is the '*socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people*'. The State-owned economy is the *'leading force of the national economy'* and the State has the mandate *'to ensure its consolidation and growth'* ([12]). Consequently, the overall setup of the Chinese economy not only allows for substantial government interventions into the economy, but such interventions are expressly mandated. The notion of supremacy of public ownership over the private one permeates the entire legal system and is emphasized as a general principle in all central pieces of legislation. The Chinese property law is a prime example: it refers to the primary stage of socialism and entrusts the State with upholding the basic economic system under which the public ownership plays a dominant role. Other forms of ownership are tolerated, with the law permitting them to develop side by side with the State ownership ([13]).

(67) In addition, under Chinese law, the socialist market economy is developed under the leadership of the Chinese Communist Party ('CCP'). The structures of the Chinese State and of the CCP are intertwined at every level (legal, institutional, personal), forming a superstructure in which the roles of CCP and the State are indistinguishable. Following an amendment of the Chinese Constitution in March 2018, the leading role of the CCP was given an even greater prominence by being reaffirmed in the text of Article 1 of the Constitution. Following the already existing first sentence of the provision: '[t]*he socialist system is the basic system of the People's Republic of China*' a new second sentence was inserted which reads: '[t]*he defining feature of socialism with Chinese characteristics is the leadership of the Communist Party of China.*' ([14]) This illustrates the unquestioned and ever-growing control of the CCP over the

([11]) Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 146, 9.6.2017, p.17), Commission Implementing Regulation (EU) 2019/687 of 2 May 2019 imposing a definitive anti-dumping duty on imports of certain organic coated steel products originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 116, 3.5.2019, p. 5), and Commission Implementing Regulation (EU) 2019/688 of 2 May 2019 imposing a definitive countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China following an expiry review pursuant to Article 18 of Regulation (EU) 2016/1037 of the European Parliament and of the Council (OJ L 116, 3.5.2019, p. 39).

([12]) Report – Chapter 2, p. 6-7.

([13]) Report – Chapter 2, p. 10.

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

economic system of the PRC. This leadership and control is inherent to the Chinese system and goes well beyond the situation customary in other countries where the governments exercise general macroeconomic control within the boundaries of which free market forces are at play.

(68) The Chinese State engages in an interventionist economic policy in pursuance of goals, which coincide with the political agenda set by the CCP rather than reflecting the prevailing economic conditions in a free market ([15]). The interventionist economic tools deployed by the Chinese authorities are manifold, including the system of industrial planning, the financial system, as well as the level of the regulatory environment.

(69) First, on the level of overall administrative control, the direction of the Chinese economy is governed by a complex system of industrial planning which affects all economic activities within the country. The totality of these plans covers a comprehensive and complex matrix of sectors and crosscutting policies and is present on all levels of government. Plans at provincial level are detailed while national plans set broader targets. Plans also specify the means in order to support the relevant industries/sectors as well as the timeframes in which the objectives need to be achieved. Some plans still contain explicit output targets while this was a regular feature in previous planning cycles. Under the plans, individual industrial sectors and/or projects are being singled out as (positive or negative) priorities in line with the government priorities and specific development goals are attributed to them (industrial upgrade, international expansion, etc.). The economic operators, private and State-owned alike, must effectively adjust their business activities according to the realities imposed by the planning system. This is not only because of the binding nature of the plans but also because the relevant Chinese authorities at all levels of government adhere to the system of plans and use their vested powers accordingly, thereby inducing the economic operators to comply with the priorities set out in the plans (see also section 3.2.1.5 below) ([16]).

(70) Second, on the level of allocation of financial resources, the financial system of the PRC is dominated by the State-owned commercial banks. Those banks, when setting up and implementing their lending policy need to align themselves with the government's industrial policy objectives rather than primarily assessing the economic merits of a given project (see also section 3.2.1.8 below) ([17]). The same applies to the other components of the Chinese financial system, such as the stock markets, bond markets, private equity markets, etc. Also these parts of the financial sector other than the banking sector are institutionally and operationally set up in a manner not geared towards maximizing the efficient functioning of the financial markets but towards ensuring control and allowing intervention by the State and the CCP ([18]).

(71) Third, on the level of regulatory environment, the interventions by the State into the economy take a number of forms. For instance, the public procurement rules are regularly used in pursuit of policy goals other than economic efficiency, thereby undermining market based principles in the area. The applicable legislation specifically provides that public procurement shall be conducted in order to facilitate the achievement of goals designed by State policies. However, the nature of these goals remains undefined, thereby leaving broad margin of appreciation to the decision-making bodies ([19]). Similarly, in the area of investment, the GOC maintains significant control and influence over the destination and magnitude of both State and private investment. Investment screening as well as various incentives, restrictions, and prohibitions related to investment are used by authorities as an important tool for supporting industrial policy goals, such as maintaining State control over key sectors or bolstering domestic industry ([20]).

(72) In sum, the Chinese economic model is based on certain basic axioms, which provide for and encourage manifold government interventions. Such substantial government interventions are at odds with the free play of market forces, resulting in distorting the effective allocation of resources in line with market principles ([21]).

([15]) Report – Chapter 2, p. 20-21.
([16]) Report – Chapter 3, p. 41, 73-74.
([17]) Report – Chapter 6, p. 120-121.
([18]) Report – Chapter 6, p. 122-135.
([19]) Report – Chapter 7, p. 167-168.
([20]) Report – Chapter 8, p. 169-170, 200-201.
([21]) Report – Chapter 2, p. 15-16, Report – Chapter 4, p. 50, p. 84, Report – Chapter 5, p. 108-9.

3.2.1.3. Significant distortions according to Article 2(6a)(b), first indent of the basic Regulation: the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country

(73) In the PRC, enterprises operating under the ownership, control and/or policy supervision or guidance by the State represent an essential part of the economy.

(74) The GOC and the CCP maintain structures that ensure their continued influence over enterprises, and in particular State-owned enterprises (SOEs). The State (and in many aspects also the CCP) not only actively formulates and oversees the implementation of general economic policies by individual SOEs, but it also claims its rights to participate in operational decision-making in SOEs. This is typically done through rotation of cadres between government authorities and SOEs, through presence of party members on SOEs executive bodies and of party cells in companies (see also section 3.2.1.4), as well as through shaping the corporate structure of the SOE sector ([22]). In exchange, SOEs enjoy a particular status within the Chinese economy, which entails a number of economic benefits, in particular shielding from competition and preferential access to relevant inputs, including finance ([23]).

(75) Specifically in the steel sector, a substantial degree of ownership by the GOC persists. While the nominal split between the number of SOEs and privately owned companies is estimated to be almost even, from the five Chinese steel producers ranked in the top 10 of the world's largest steel producers four are SOEs ([24]). At the same time, while the top ten producers only took up some 36 % of total industry output in 2016, the GOC set the target in the same year to consolidate 60 % to 70 % of iron and steel production to around ten large-scale enterprises by 2025 ([25]). This intention has been repeated by the GOC in April 2019, announcing a release of guidelines on steel industry consolidation ([26]). Such consolidation may entail forced mergers of profitable private companies with underperforming SOEs ([27]).

(76) With the high level of government intervention in the steel industry and a high share of SOEs in the sector, even privately owned steel producers are prevented from operating under market conditions. Indeed, both public and privately owned enterprises in the steel sector are also subject to policy supervision and guidance as set out in section 3.2.1.5 below.

(77) Although the producers of SRW in China are predominantly privately owned companies, the state control and interventions on their main raw material market HRS is not excluded from the general framework described above.

(78) It was established that the verified SRW producers purchased their HRS from both SOEs and private suppliers. However, in the light of the findings of several anti-subsidy investigations concerning Chinese hot-rolled steel products or other steel products where HRS was used as a raw material, the most recent of them being an investigation concerning organic coated steel ('OCS') ([28]), the form of the ownership of the HRS producer is not relevant for the findings on distortions.

([22]) Report – Chapter 3, p. 22-24 and Chapter 5, p. 97-108.
([23]) Report – Chapter 5, p. 104-9.
([24]) Report – Chapter 14, p. 358: 51 % private and 49 % SOEs in terms of production and 44 % SOEs and 56 % private companies in terms of capacity.
([25]) Available at www.gov.cn/zhengce/content/2016-02/04/content_5039353.htm (last viewed 12 September 2019), https://policycn.com/policy_ticker/higher-expectations-for-large-scale-steel-enterprise/?iframe=1&secret=c8uthafuthefra4e (last viewed 15 July 2019), and www.xinhuanet.com/english/2019-04/23/c_138001574.htm (last viewed 11 September 2019).
([26]) Available at http://www.xinhuanet.com/english/2019-04/23/c_138001574.htm (last viewed 12 September 2019) and http://www.jjckb.cn/2019-04/23/c_137999653.htm (last viewed 12 September 2019).
([27]) As was the case of the merger between the private company Rizhao and the SOE Shandong Iron and Steel in 2009. See Beijing steel report, p. 58, and the acquired majority stake of China Baowu Steel Group in Magang Steel in June 2019, see https://www.ft.com/content/a7c93fae-85bc-11e9-a028-86cea8523dc2 (last viewed 11 September 2019).
([28]) OJ L 116, 3.5.2019, p.39.

(79) In the OCS investigation referred to above, the Commission established that SOEs providing OCS producers with hot-rolled steel were public bodies under the test set out by the WTO Appellate Body, as they performed governmental functions and, in doing so, they exercised government authority. Furthermore, the Commission also established that private producers of HRS in the PRC were entrusted and directed by the GOC to provide goods in line with Articles 3(1)(a)(iii) and 3(1)(a)(iv) of the basic Anti-subsidy Regulation ([29]) and acted in the same way as steel SOEs. Finally, it was established that the prices of HRS in the PRC were distorted. This was a result of the strong predominance of SOEs in the HRS market in the PRC and because the prices of HRS of private suppliers were aligned with the prices of SOEs.

(80) Furthermore, most auto manufacturing companies are still (partially) state owned. Foreign automakers have formed joint ventures with larger SOEs, as foreign shareholding has been restricted since 1994 ([30]).

(81) On the basis of the above, it is concluded that the SRW market in the PRC was served to a significant extent by enterprises subject to the ownership, control or policy supervision or guidance by the GOC.

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

(82) Apart from exercising control over the economy by means of ownership of SOEs and other tools, the GOC is in position to interfere with prices and costs through State presence in firms. While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights, ([31]) CCP cells in enterprises, state owned and private alike, represent another important channel through which the State can interfere with business decisions. According to the PRC's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution ([32])) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline ([33]). In 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies ([34]). These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of SRW and the suppliers of their inputs.

(83) Specifically in the steel sector, as already pointed out, many of the major steel producers (including HRS producers) are owned by the State. Some are specifically referred to in the 'Steel Industry Adjustment and Upgrading plan for 2016-2020' ([35]) as examples of the achievements of the 12th five-year planning period (such as Baosteel, Anshan Iron and Steel, Wuhan Iron and Steel, etc.). The public documents of the State-owned HRS producers sometimes stress the connection with the GOC. For example, Baoshan Iron & Steel (or Baosteel) stated in the 2016 Semi-Annual Report that '[t]he company committed itself to matching regional 13th Five Year planning and reached wide consensus with local governments in sharing resources, connecting urban industries and building ecological environment' ([36]). In the recent anti-subsidy investigation of certain hot-rolled flat products of iron, non-alloy or other alloy steel ('HRS') originating in China ([37]), the Commission established that three of the four sampled groups

([29]) OJ L 176, 30.6.2016, p.55
([30]) PwC Automotive Industry Bluebook (2017 Edition) China Automotive Market: Witnessing the Transformation, p.36, available at https://www.pwccn.com/en/automotive/pwc-auto-industry-blue-book.pdf (last viewed 21 August 2019); J.D. Power China Market Insight – China's Five Year Plan, available at https://www.jdpower.com/sites/default/files/china_five_year_plan.pdf (last viewed 21 August 2019).
([31]) Report – Chapter 5, p. 100-1.
([32]) Report – Chapter 2, p. 26.
([33]) Report – Chapter 2, p. 31-2.
([34]) Available at https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU (last viewed 15 July 2019).
([35]) The full text of the plan is available on the MIIT website: http://www.miit.gov.cn/n1146295/n1652858/n1652930/n3757016/c5353943/content.html (last viewed 16 July 2019)
([36]) Available at http://tv.baosteel.com/ir/pdf/report/600019_2016_2e.pdf (last viewed 15 July 2019).
([37]) See Recital (64) of Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 146, 9.6.2017, p. 17).

of exporting producers were SOEs. In all three groups, the Chairmen of the Board or the President also acted as the Party Committee Secretary of the group's CCP organisation.

(84) Intervention by the GOC is also present in the automotive industry. For example, the Annual Report 2018 of SAIC Motor, an automotive SOE, stated that '[t]hanks to vigorous promotion of state governments and the unremitting endeavors of the automobile enterprises, China has ascended itself to the largest global new energy automotive market with booming and globally leading new technologies and new models like Intelligent & Connected Vehicles (ICV) and mobility sharing, and takes the lead in writing the new era of world auto industry.' ([38])

(85) The State's presence and intervention in the financial markets (see also section 3.2.1.8 below) as well as in the provision of raw materials and inputs further have an additional distorting effect on the SRW market ([39]). Thus, the State presence in firms, including SOEs, in the steel, automotive and other sectors (such as the financial and input sectors) allow the GOC to interfere with respect to prices and costs.

3.2.1.5. Significant distortions according to Article 2(6a)(b), third indent of the basic Regulation: public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces

(86) The direction of the Chinese economy is to a significant degree determined by an elaborate system of planning which sets out priorities and prescribes the goals the central and local governments must focus on. Relevant plans exist on all levels of government and cover virtually all economic sectors. The objectives set by the planning instruments are of binding nature and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government. Overall, the system of planning in the PRC results in resources being driven to sectors designated as strategic or otherwise politically important by the government, rather than being allocated in line with market forces ([40]).

(87) The steel industry, including the production of SRW, is regarded as a key industry by the GOC ([41]). This is confirmed in the numerous plans, directives and other documents focused on steel, which are issued at national, regional and municipal level such as the 'Steel Industry Adjustment and Upgrading plan for 2016-2020'. This Plan states that the steel industry is 'an important, fundamental sector of the Chinese economy, a national cornerstone' ([42]). The main tasks and objectives set out in this Plan cover all aspects of the development of the industry ([43]).

(88) The 13th Five-Year Plan on Economic and Social Development ([44]) envisages support to enterprises producing high-end steel product types ([45]). It also focuses on achieving product quality, durability and reliability by supporting companies using technologies related to clean steel production, precision rolling and quality improvement ([46]).

([38]) SAIC Motor Annual Report 2018, p.24, available at https://www.saicmotor.com/english/images/investor_relations/annual_report/2019/7/10/FCA72DB2F082468293A9E76A81E5DFE2.pdf (last viewed 21 August 2019).
([39]) Report – Chapters 14.1 to 14.3.
([40]) Report – Chapter 4, p. 41-42 and 83.
([41]) Report, Part III, Chapter 14, p. 346 ff.
([42]) Introduction to the Plan for Adjusting and Upgrading the Steel Industry.
([43]) Report, Chapter 14, p. 347.
([44]) The 13th Five-Year Plan for Economic and Social Development of the People's Republic of China (2016-2020), available at http://en.ndrc.gov.cn/newsrelease/201612/P020161207645765233498.pdf (last viewed 15 July 2019).
([45]) Report – Chapter 14, p. 349.
([46]) Report – Chapter 14, p. 352.

(89) The 'Catalogue for Guiding Industry Restructuring (2011 Version) (2013 Amendment)' ([47]) ('the Catalogue') lists iron and steel as encouraged industries. The applicability of the Catalogue was confirmed by the recent anti-subsidy investigation of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the PRC ([48]).

(90) The GOC further guides the development of the sector in accordance with a broad range of policy tools and directives related to, *inter alia*: market composition and restructuring, raw materials, investment, capacity elimination, product range, relocation, upgrading, etc. Through these and other means, the GOC directs and controls virtually every aspect in the development and functioning of the sector (including SRW). ([49]) The current problem of overcapacity is arguably the clearest illustration of the implications of the GOC's policies and the resulting distortions.

(91) With regard to the automotive industry, the Policy on Development of Automotive Industry provided for a foreign shareholding restriction in auto manufacturing joint ventures, which was still in force in the investigation period. Therefore, also the customers of the SRW producers were subject to measures discriminating in favour of domestic producers.

(92) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives of supporting encouraged industries, including the production of HRS as the main raw material used in the manufacturing of the product concerned as well as SRW, as part of the encouraged steel sector. Such measures impede market forces from operating normally.

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

(93) According to the information on file, the Chinese bankruptcy system delivers inadequately on its own main objectives such as to fairly settle claims and debts and to safeguard the lawful rights and interests of creditors and debtors. This appears to be rooted in the fact that while the Chinese bankruptcy law formally rests on principles that are similar to those applied in corresponding laws in countries other than the PRC, the Chinese system is characterised by systematic under-enforcement. The number of bankruptcies remains notoriously low in relation to the size of the country's economy, not least because the insolvency proceedings suffer from a number of shortcomings, which effectively function as a disincentive for bankruptcy filings. Moreover, the role of the State in the insolvency proceedings remains strong and active, often having direct influence on the outcome of the proceedings ([50]).

(94) In addition, the shortcomings of the system of property rights are particularly obvious in relation to ownership of land and land-use rights in the PRC. ([51]) All land is owned by the Chinese State (collectively owned rural land and State-owned urban land). Its allocation remains solely dependent on the State. There are legal provisions that aim at allocating land use rights in a transparent manner and at market prices, for instance by introducing bidding procedures. However, these provisions are regularly not respected, with certain buyers obtaining their land for free or below market rates ([52]). Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land ([53]).

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

([48]) See Recital (56) of Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 146, 9.6.2017, p.17).

([49]) Report – Chapter 14, pp. 375 – 376.

([50]) Report – Chapter 6, p. 138-149.

([51]) Report – Chapter 9, p. 216.

([52]) Report – Chapter 9, p. 213-215.

([53]) Report – Chapter 9, p. 209-211.

(95) Much like other sectors in the Chinese economy, the producers of SRW are subject to the ordinary rules on Chinese bankruptcy, corporate, and property laws. That has the effect that these companies, too, are subject to the top-down distortions arising from the discriminatory application or inadequate enforcement of bankruptcy and property laws. The present investigation revealed nothing that would call those findings into question. As such, the Commission preliminarily concluded that the Chinese bankruptcy and property laws do not work properly, thus generating distortions when maintaining insolvent firms afloat and when allocating land use rights in the PRC. Those considerations, on the basis of the evidence available, appear to be fully applicable also in the steel sector and more specifically with respect to HRS (as the main input used in the manufacturing of the product concerned) as well as with respect to SRW as part of the steel sector. In particular, the Commission has established that HRS producers ([54]) benefited from the provision of land use rights for less than adequate remuneration.

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

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

(97) A system of market-based wages cannot fully develop in the PRC as workers and employers are impeded in their rights to collective organisation. The PRC has not ratified a number of essential conventions of the International Labour Organisation ('ILO'), in particular those on freedom of association and on collective bargaining ([55]). Under national law, only one trade union organisation is active. However, this organisation lacks independence from the State authorities and its engagement in collective bargaining and protection of workers' rights remains rudimentary ([56]). Moreover, the mobility of the Chinese workforce is restricted by the household registration system, which limits access to the full range of social security and other benefits to local residents of a given administrative area. This typically results in workers who are not in possession of the local residence registration finding themselves in a vulnerable employment position and receiving lower income than the holders of the residence registration. ([57]) Those findings lead to the distortion of wage costs in the PRC.

(98) No evidence was submitted to the effect that the steel sector, including the producers of SRW and HRS, would not be subject to the Chinese labour law system described. The SRW and HRS parts of the steel sector are thus affected by the distortions of wage costs both directly (when making the product concerned or the main raw material for its production) as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in the PRC).

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

(99) Access to capital for corporate actors in the PRC is subject to various distortions.

(100) Firstly, the Chinese financial system is characterised by the strong position of State-owned banks ([58]), which, when granting access to finance, take into consideration criteria other than the economic viability of a project. Similarly to non-financial SOEs, the banks remain connected to the State not only through ownership but also via personal relations (the top executives of large State-owned financial institutions are ultimately appointed by the CCP) ([59]) and, again just like non-financial SOEs, the banks regularly implement public policies designed by the government. In doing so, the banks comply with an explicit legal obligation to conduct their business in accordance with the needs

([54]) See recitals 281-311 of Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 146, 9.6.2017, p. 17).
([55]) Report – Chapter 13, p. 332-337.
([56]) Report – Chapter 13, p. 336.
([57]) Report – Chapter 13, p. 337-341.
([58]) Report – Chapter 6, p. 114-117.
([59]) Report – Chapter 6, p. 119.

of the national economic and social development and under the guidance of the industrial policies of the State ([60]). This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ([61]).

(101) While it is acknowledged that various legal provisions refer to the need to respect normal banking behaviour and prudential rules such as the need to examine the creditworthiness of the borrower, the overwhelming evidence, including findings made in trade defence investigations, suggests that these provisions play only a secondary role in the application of the various legal instruments.

(102) Furthermore, bond and credit ratings are often distorted for a variety of reasons including the fact that the risk assessment is influenced by the firm's strategic importance to the GOC and the strength of any implicit guarantee by the government. Estimates strongly suggest that Chinese credit ratings systematically correspond to lower international ratings. ([62])

(103) This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ([63]). This results in a bias for lending to SOEs, large well-connected private firms and firms in key industrial sectors, which implies that the availability and cost of capital is not equal for all players on the market.

(104) Secondly, borrowing costs have been kept artificially low to stimulate investment growth. This has led to the excessive use of capital investment with ever lower returns on investment. This is illustrated by the recent growth in corporate leverage in the state sector despite a sharp fall in profitability, which suggests that the mechanisms at work in the banking system do not follow normal commercial responses.

(105) Thirdly, although nominal interest rate liberalization was achieved in October 2015, price signals are still not the result of free market forces, but are influenced by government induced distortions. Indeed, the share of lending at or below the benchmark rate still represents 45 % of all lending and recourse to targeted credit appears to have been stepped up, since this share has increased markedly since 2015 in spite of worsening economic conditions. Artificially low interest rates result in under-pricing, and consequently, the excessive utilization of capital.

(106) Overall credit growth in the PRC indicates a worsening efficiency of capital allocation without any signs of credit tightening that would be expected in an undistorted market environment. As a result, non-performing loans have increased rapidly in recent years. Faced with a situation of increasing debt-at-risk, the GOC has opted to avoid defaults. Consequently, bad debt issues have been handled by rolling over debt, thus creating so-called 'zombie' companies, or by transferring the ownership of the debt (e.g. via mergers or debt-to-equity swaps), without necessarily removing the overall debt problem or addressing its root causes.

(107) In essence, despite the recent steps that have been taken to liberalize the market, the corporate credit system in the PRC is affected by significant distortions resulting from the continuing pervasive role of the state in the capital markets.

(108) No evidence was submitted to the effect that the steel sector, including SRW and HRS production, would be exempted from the above-described government intervention in the financial system. The Commission has also established that the raw material HRS ([64]) benefited from preferential lending constituting subsidies. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

([60]) Report – Chapter 6, p. 120.
([61]) Report – Chapter 6, p. 121-122, 126-128, 133-135.
([62]) See IMF Working Paper 'Resolving China's Corporate Debt Problem', by Wojciech Maliszewski, Serkan Arslanalp, John Caparusso, José Garrido, Si Guo, Joong Shik Kang, W. Raphael Lam, T. Daniel Law, Wei Liao, Nadia Rendak, Philippe Wingender, Jiangyan, October 2016, WP/16/203.
([63]) Report – Chapter 6, p. 121-122, 126-128, 133-135.
([64]) See recitals (83)-(244) of Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 146, 9.6.2017, p. 17).

3.2.1.9. Systemic nature of the distortions described

(109) The Commission noted that the distortions described in the Report were characteristic for the Chinese economy. The evidence available shows that the facts and features of the Chinese system as described above in Sections 3.2.1.1-3.2.1.5 as well as in Part A of the Report apply throughout the country and across the sectors of the economy. The same holds true for the description of the factors of production as set out above in Sections 3.2.1.6-3.2.1.8 above and in Part B of the Report.

(110) The Commission recalls that in order to produce SRW, a broad range of inputs is needed. According to evidence on the file, all the sampled exporting producers sourced all their inputs in the PRC. When the producers of SRW purchase/contract these inputs, the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system that applies across all levels of government and sectors.

(111) As a consequence, not only the domestic sales prices of SRW are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also tainted because their price formation is affected by substantial government intervention, as described in Parts A and B of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input produced in the PRC by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth. No evidence or argument to the contrary has been adduced by the GOC or the exporting producers in the present investigation.

3.2.1.10. Conclusion

(112) The analysis set out in sections 3.2.1.2 to 3.2.1.9, which includes an examination of all the available evidence relating to the PRC's intervention in its economy in general as well as in the steel sector and the automotive industry showed that prices or costs of the product concerned, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case.

(113) Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as discussed in the following section.

3.2.2. *Representative country*

3.2.2.1. General remarks

(114) The choice of the representative country was based on the following criteria:

— A level of economic development similar to the PRC. For this purpose, the Commission used countries with a gross national income similar to the PRC on the basis of the database of the World Bank ([65]);

— Production of the product under review in that country ([66]);

— Availability of relevant public data in that country;

— Where there is more than one possible representative country, preference was given, where appropriate, to the country with an adequate level of social and environmental protection.

([65]) World Bank Open Data – Upper Middle Income, available at https://data.worldbank.org/income-level/upper-middle-income (last viewed 15 July 2019).

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

(115) As explained in recitals (29) to (31) the Commission published two notes for the file on the sources for the determination of the normal value.

3.2.2.2. A level of economic development similar to the PRC

(116) In the Note of 6 March 2019, the Commission identified the following nine countries: Argentina, Brazil, Colombia, Malaysia, Mexico, Russia, South Africa, Thailand, and Turkey, which are regarded by the World Bank as countries with a similar level of economic development as the PRC, i.e. they are all classified as 'upper-middle income' countries on a gross national income (hereinafter 'GNI') basis.

(117) In its submission of 11 March 2019, the complainant claimed that Mexico should not be selected as representative country as the Mexican producers supplied exclusively the NAFTA area. The complainant, however, did not provide any evidence as to how the destination of produced goods should be relevant for the selection of the representative country and what effect this would have on the representativeness of the relevant factors of production. Thus, this claim was rejected.

(118) In the Note of 16 April 2019, the Commission noted that Argentina was classified as a high income country during the investigation period. The Commission, therefore, concluded that only eight of the originally identified upper-middle income countries could be considered for the selection of the representative country.

(119) No further comments concerning the level of economic development were received following the Note of 16 April 2019.

3.2.2.3. Production of the product under investigation in the representative country and availability of the relevant public data in the representative country

(120) In the Note of 6 March 2019, the Commission indicated that production of the product concerned was known to take place in Argentina, Brazil, Colombia, Malaysia, Mexico, Russia, South Africa, Thailand, and Turkey.

(121) The Commission also found that there were not publicly available financial data concerning the producer of SRW in Argentina. The complainant, in its submission of 11 March 2019, confirmed that the producer in Argentina was no longer in operation. For that reason as well as the reason explained in recital (118), the Commission did not consider Argentina as a possible representative country.

(122) The Commission further noted that the financial data relevant for the investigation period had not been available for any producer in the considered countries when the Note of 6 March 2019 was published.

(123) In its submission of 18 March 2019, an exporting producer claimed that India should be selected as a representative country. According to this company, there were at least two producers of the particular product type manufactured by this exporting producer. The company further claimed that gross national income (GNI), used by the World Bank to classify countries, is not an appropriate indicator to assess the level of economic development of a country since GNI per capita does not adequately summarise a country's level of development or measure welfare. The company submitted that the GDP should be used instead.

(124) In this respect, the Commission noted that the basic Regulation established that the representative country should have a similar level of development as the exporting country. It, however, did not contain any further requirement for the selection of the appropriate representative country. The Commission decided that the appropriate source for this information was the World Bank database. This database allowed the Commission to have a sufficient number of potentially appropriate representative countries with a similar level of development to choose the most suitable source of undistorted costs and prices. Furthermore, this is a ranking based on an objective criterion and used consistently in all cases where the determination of the normal value is based on the provisions of Article 2(6a) of the basic Regulation, which ensures uniformity and equal treatment throughout different proceedings. GNI is used by the World Bank in its classification of economies into income groupings as it follows the methodology of the operational lending policy of the World Bank. As it recognises all income that goes into a national economy, regardless of its origin, it adequately reflects the total economic activity within a country.

(125) At the same time, the Commission noted that India was included in the list of 'low and middle income' countries in the World Bank's ranking, and therefore was not at a similar level of development to China. As a result, India could not be considered an appropriate representative country for China. Consequently, the Commission rejected this claim.

(126) In their comments on the Note of 6 March 2019, EUWA and an exporting producer made several claims concerning the existence of production of the product under investigation in some of the considered countries, the availability of financial data that could be sufficiently relevant for the countries considered in case of consolidated annual accounts of international groups, and the availability of financial data for the investigation period.

(127) The Commission examined those claims and in the Note of 16 April concluded that Colombia, Malaysia, Mexico, Russia, and Thailand could not be further considered for the selection of a representative country because no financial data of the producers in Colombia, Malaysia, Russia and Thailand was available for the investigation period. In addition, the consolidated financial data available for the producer in Mexico concerned a group of companies based and active in various countries while the contribution of production and sales in Mexico to the financial results was not possible to identify. The Commission also preliminarily found that one of the Brazilian producers only produced aluminium wheels and thus, could not be considered for the calculation of SG&A and profit.

(128) In the Note of 16 April 2019, the Commission noted that financial data for the investigation period were readily available for an international group operating in Brazil and Turkey (and other countries). The respective annual report contained information on the consolidated results of the group but also detailed information on the individual results of the parent company based in Brazil, which was also a producer of steel wheels, and less detailed information on the results of its two subsidiaries operating in Turkey. The information on the subsidiaries in Turkey was limited to net sales revenue, costs of sales, operating expenses, income tax, and profit. Thus, it did not allow assessing the relevance of costs included in the category operating expenses.

(129) In the Note of 16 April 2019, the Commission also found that it could be reasonably expected that the producer in South Africa would publish its annual report for the investigation period in time to be used in the calculation. Although the producer in South Africa belonged to an international group, the Commission could potentially accept the consolidated financial data as relevant for the producer in South Africa as the share of the turnover generated in South Africa on the total turnover of the group was not negligible.

(130) Notwithstanding the above, the data available for the Brazilian producer referred to in recital (128) was deemed the most complete data for the purposes of determining representative SG&A and profit.

(131) In its comments on the Note of 16 April 2019, the complainant reiterated its preference for Turkey as a representative country; however, it did not oppose the Commission's finding that Brazil could be used as representative country.

(132) Consequently, the Commission concluded that Brazil was an appropriate representative country in terms of production of the product under investigation and the availability and quality of financial data for the investigation period as explained in recital (128).

(133) Following the verification visits to the sampled exporting producers in the PRC, where the Commission determined a final list of raw materials and corresponding HS or tariff codes, it could be confirmed that Brazil provided the most complete set of data for the establishment of undistorted prices and benchmarks needed for the construction of the normal value.

3.2.2.4. Level of social and environmental protection

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

3.2.2.5. Conclusion

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

3.2.3. *Sources used to establish undistorted costs*

(136) In the Note of 6 March 2019, the Commission stated that, in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it would use Global Trade Atlas ('GTA') to establish the undistorted cost of most of the factors of production, the statistics of the International Labour Organisation ('ILO') and national statistics to establish the undistorted costs of labour, and other sources depending on the selected representative country to establish the undistorted costs of energy (such as electricity, natural gas, and water).

(137) In its comments of 18 March 2019, an exporting producer submitted that Brazil should not be considered an appropriate representative country due to the export restrictions in Brazil concerning flat rolled products reported in the OECD Inventory on export restrictions on Industrial Raw Materials ([67]), which may potentially influence not only the domestic price but also the import price of those inputs. In this respect, the exporting producer noted in particular that hot rolled steel is the main raw material representing 40 % to 60 % of total production cost.

(138) The Commission examined the existence of the export restrictions in Brazil and in the Note of 16 April 2019 confirmed that the exports of certain flat steel products were subject to export authorisation under Law No 9.112 of 10 October 1995 ([68]) concerning exports of sensitive goods and related services. At that stage, the Commission noted that the sampled exporting producers did not use in their production flat rolled products falling under the HS codes that were subject to export restrictions in Brazil.

(139) After the verification visits, the Commission, however, found that flat rolled products falling under one of the HS codes subject to the export restriction mentioned in recital (138), namely HS sub-heading 7228 70 ('angles, shapes and sections'), were indeed used by the only examined exporting producer in the manufacturing of the product concerned.

(140) Therefore, the Commission decided to replace the distorted costs of that particular factor of production with an international benchmark instead of an import price in Brazil. This benchmark is explained below in recital (158).

(141) In its submission of 18 March 2019, an exporting producer claimed that consumables should not be included among the factors of production for the purpose of applying Article 2(6a)(a) of the basic Regulation as Article 2(6a)(b) of the basic Regulation refers to raw materials and energy, and does not include consumable items.

(142) In the Note of 16 April 2019, the Commission contended that consumables are included in the scope of Article 2(6a)(a) of the basic Regulation, as that provision covers the totality of the costs of production and sale necessary for the calculation of the normal value without any exclusion whatsoever. By contrast, Article 2(6a)(b) of the basic Regulation clarifies the concept of 'significant distortions' triggering the use of the provisions for the determination of normal value contained in Article 2(6a) of the basic Regulation, but it does mention reported prices and costs, (including, but not limited to, raw materials and energy) in this different context. The Commission, therefore, considered that all of the costs of production and sale, including the consumables and regardless of their share in the total cost of production must be reported by exporting producers and had to be taken into account for the calculation of the normal value. Hence, the Commission rejected this claim.

([67]) Available at https://qdd.oecd.org/subject.aspx?Subject=ExportRestrictions_IndustrialRawMaterials (last viewed 3 July 2019).
([68]) Available at http://portal.siscomex.gov.br/legislacao/legislacao/mais-legislacoes/mcti (last viewed 3 July 2019).

(143) In the Note of 16 April 2019, based on the decision to use Brazil as the representative country, the Commission informed the interested parties that it would use GTA to establish undistorted costs of the factors of production, the ILO statistics and other publicly available sources ([69]) to establish undistorted labour costs, and the tariffs charged by selected Brazilian suppliers of electricity, natural gas and water to establish undistorted costs of those types of energy.

(144) The Commission also informed the interested parties that, to establish the undistorted SG&A and profit, it would use the financial data of the IochpeMaxion group, in particular of the parent company based in Brazil, for which detailed data was available in the *Individual and Consolidated Financial Statements for the Year Ended December 31, 2018 and Independent Auditor's Report* ([70]) of the group.

(145) Following the Note of 16 April 2019, the Commission did not receive any further comments concerning the sources for undistorted costs and benchmarks. Therefore, the sources listed in recitals (143) and (144) were provisionally confirmed.

3.2.4. *Undistorted costs and benchmarks*

3.2.4.1. Factors of production

(146) As already stated in recital (29), in the Note of 6 March 2019, the Commission sought to establish an initial list of factors of production and sources intended to be used for all factors of production such as materials, energy and labour used in the production of the product concerned by the exporting producers.

(147) The Commission did not receive any comments concerning the list of factors of production following the Note of 6 March 2019 or the Note of 16 April 2019.

(148) In the Note of 16 April 2019, based on the information received from interested parties, the Commission established a list of 60 potential HS codes corresponding to the factors of production used in the manufacturing of the product concerned.

(149) The Commission then established a definitive list of factors of production and corresponding HS codes after the verification visits at the premises of the sampled exporting producers.

(150) Considering all the information submitted by the interested parties and collected during the verification visits, the following factors of production and HS codes, where applicable, have been identified:

Table 1

Factor of Production	Code in the Brazilian tariff classification	Undistorted value
Raw Materials		
Hot-rolled flat steel products, not pickled, width of 600 mm or more and thickness		
— Exceeding 10 mm;	7208 36	4,91 CNY/kg
— 4,75 mm but not over 10 mm;	7208 37 00	4,86 CNY/kg
— 3 mm but under 4,75 mm;	7208 38	4,89 CNY/kg
— Less than 3 mm	7208 39	4,57 CNY/kg
Section steel		
— Angles, shapes and sections	[N/A]	5,06 CNY/kg

([69]) For example see https://www.jornalcontabil.com.br/quanto-custa-um-funcionario-aprenda-a-calcular/ or https://establishbrazil.com/articles/whats-real-cost-employee (last viewed 3 July 2019).

([70]) Available at https://www.iochpe.com.br/Download.aspx?Arquivo=Es93IRz+hvwnExFo7bRkrA== (last viewed 4 July 2019).

Factor of Production	Code in the Brazilian tariff classification	Undistorted value
Paint		
— Based on polyesters;	3208 10	42,87 CNY/kg
— Based on acrylic or vinyl polymers;	3208 20	42,12 CNY/kg
— Other;	3208 90	54,65 CNY/kg
— Epoxide resins	3907 30	28,70 CNY/kg
Welding wire		
— Wire of carbon steel;	7217 30	12,51 CNY/kg
— Wire of silico-manganese steel;	7229 20 00	9,73 CNY/kg
— Wire of alloy steel, other	7229 90 00	21,74 CNY/kg
Valve	8481 30 00	10,30 CNY/pcs
Gases		
— Propane, liquefied;	2711 12	3,73 CNY/kg
— Argon;	2804 21	N/A (see recitals (153) and (154))
— Nitrogen;	2804 30 00	10,86 CNY/m^3
— Oxygen;	2804 40 00	6,69 CNY/m^3
— Carbon dioxide	2811 21 00	24,76 CNY/kg
Other chemicals		
— Hydrochloric acid;	2806 10	1,68 CNY/kg
— Caustic soda;	2815 12 00	2,41 CNY/kg
— Disodium carbonate;	2836 20	1,45 CNY/kg
— Lactic acid;	2918 11 00	21,22 CNY/kg
— Sodium hydrogencarbonate;	3402 19 00	15,03 CNY/kg
— Lubricating preparations;	3403 19 00	44,54 CNY/kg
— Pickling preparations;	3810 10	66,46 CNY/kg
— Thinner;	3814 00	40,26 CNY/kg
— Sodium nitrate;	3815 90	74,48 CNY/kg
— Polyacrylamide	3906 90	17,74 CNY/kg
Labour		
Labour costs in manufacturing sector	[N/A]	34,53 CNY/hour

Factor of Production	Code in the Brazilian tariff classification	Undistorted value
Energy		
Electricity	[N/A]	0,69 – 1,01 CNY/kWh
Natural gas	[N/A]	3,42 – 4,03 CNY/m^3
Water	[N/A]	181,92 CNY/month or 35,41 – 70,67 CNY/ton
Wood pellets	4401 31 00	0,65 CNY/kg
By-product/waste		
Steel scrap in turnings, shavings, chips, milling waste, sawdust, filings, trimmings and stampings, whether or not in bundles	7204 41 00	1,70 CNY/kg

(a) Raw materials and scrap

(151) During the verification visits, the Commission verified the raw materials used and the steel scrap generated in the manufacturing of the product concerned.

(152) For all raw materials with the exception of section steel, absent any information on the market of the representative country, the Commission relied on import prices. An import price in the representative country was determined as a weighted average of unit prices of imports from all third countries excluding the PRC. The Commission decided to exclude imports from the PRC into the representative country as it concluded in recital (112) that it is not appropriate to use domestic prices and costs in the PRC due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected export prices. In fact, it appears that the import price of many of the raw materials exported by the PRC into Brazil are lower than other imports. After excluding the PRC, the imports from other third countries remained representative ranging from 40 % to 100 % of total volumes imported to Brazil.

(153) The Commission established that the import volumes of argon to Brazil were negligible and therefore the benchmark could not be considered reliable. With regard to steel scrap, the Commission found that the import price in Brazil was considerably higher than the import price of hot-rolled flat steel products and thus was also considered not to be reliable.

(154) Since the actual costs of argon incurred by the cooperating exporting producer represented a negligible share on total costs of raw material (less than 0,005 %) in the investigation period, having no impact in the dumping margin calculations no matter what source would be used to replace them, the Commission decided to include those costs into manufacturing overheads.

(155) In order to determine the undistorted price of steel scrap, the Commission turned to Brazilian export statistics. For the calculation of the export price of steel scrap, the provisions of recital (152) apply accordingly. In addition, the Commission noted that there were no exports of steel scrap from Brazil to the PRC.

(156) In order to establish the undistorted price of raw materials, delivered at the gate of the exporting producer's factory as provided by Article 2(6a)(a), first indent of the basic Regulation, the Commission added international transport and insurance costs ([71]), applied the import duty of the representative country and added domestic transport costs to the import price. The international and domestic transport costs for all raw materials as well as insurance costs were estimated based on the verified data provided by the cooperating exporting producer.

([71]) Brazilian imports are reported at FOB level in GTA.

(157) Where the export price ([72]) was used to determine the undistorted price of a raw material, no further adjustments to the data from GTA were made. The Commission considered that the costs between a Brazilian supplier and an international port accounted for the costs between such supplier and its Brazilian customer. The price from GTA could, therefore, be accepted as price of a raw material as delivered at the gate of the exporting producer's factory.

(158) For reasons explained in recitals (137) to (140), the Commission used an international benchmark to determine the undistorted costs of section steel. The undistorted international benchmark used is the Latin-American ex-works price of structural sections and beams ([73]). This benchmark was considered undistorted because, being based on an arithmetic average of the transaction values identified in Brazil and Mexico, it was deemed to reflect competitive market conditions in the area. That benchmark showed prices ranging between 4,55 CNY/kg and 5,61 CNY/kg during the investigation period.

(159) For some raw materials, the cooperating exporting producer was not able to determine the consumption volume in its records. The actual costs of those raw materials represented a negligible share on total actual costs of manufacturing of less than 0,5 %. Those costs were included in the manufacturing overheads as explained in recital (169).

(b) Labour

(160) To establish the benchmark for labour costs, the Commission used the ILO statistics together with publicly available information on additional labour costs incurred by an employer in Brazil.

(161) The ILO statistics ([74]) provided data on the mean weekly hours actually worked per employed person and monthly earnings of employees in manufacturing during the investigation period. Using that data, the Commission calculated an hourly salary in manufacturing, to which additional labour related costs ([75]) (social security and unemployment contributions born by the employer) were added.

(c) Electricity

(162) The electricity price charged by one of the largest electricity suppliers in Brazil, the company EDP Brasil, was readily available ([76]). The information was detailed enough to identify the price of electricity and the price for the use of the distribution system (modalidade tarifaria azul) paid by industrial users.

(163) It should be noted that in Brazil, the regulatory authority Agência Nacional de Energia Elétrica ([77]) ('ANEEL') obliges the electricity suppliers to increase their tariffs by a certain percentage to regulate the consumption of electricity in the country. ANEEL uses a flag system ([78]) (green, yellow, red 1, red 2) to signal whether the electricity price should remain as proposed by the supplier (green) or increased by 0,010 BRL/kWh (yellow), 0,030 BRL/kWh (red 1), or 0,050 BRL/kWh (red 2). The flags are published by ANEEL on a monthly basis and for the investigation period were readily available on the website of EDP Brasil ([79]). When determining the undistorted costs of electricity, the Commission took into account the flags applied during the investigation period and adjusted the price accordingly.

(164) The undistorted costs of electricity in Table 1 are provided as a range since different tariffs apply to individual consumers depending on their consumption.

(d) Natural gas and wood pellets

(165) The exporting producers used natural gas or wood pellets to produce heat. The average price of natural gas for industrial users in Brazil during the investigation period was readily available in a monthly publication of the Ministry of Mining and Energy ([80]). The undistorted costs of wood pellets were established on the basis of the import price in Brazil as explained in recital (152).

([72]) Brazilian exports are reported at FOB level in GTA.
([73]) Available at http://www.meps.co.uk/L.AmerPrice.htm (last viewed 29 August 2019); the product is described as follows: Sections and Beams — 240mm x 240mm H-Beam — except USA and Canada: 10 inches x 10 inches wide flange beam and China: 300mm x 300mm H-beam (available at http://www.meps.co.uk/definitions.htm (last viewed 29 August 2019)).
([74]) Available at https://www.ilo.org/ilostat/faces/oracle/webcenter/portalapp/pagehierarchy/Page21.jspx?_afrLoop=518377340582818&_afrWindowMode=0&_afrWindowId=o8k2wnnrz_1#!%40%40%3F_afrWindowId%3Do8k2wnnrz_1%26_afrLoop%3D518377340582818%26_afrWindowMode%3D0%26_adf.ctrl-state%3Do8k2wnnrz_54 (last viewed 4 July 2019).
([75]) Available at https://establishbrazil.com/articles/whats-real-cost-employee (last viewed 4 July 2019).
([76]) Available at http://www.edp.com.br/distribuicao-es/saiba-mais/informativos/tarifas-aplicadas-a-clientes-atendidos-em-alta-e-media-tensao-(grupo-a) (last viewed 10 April 2019).
([77]) Available at http://www.aneel.gov.br/a-aneel (last viewed 10 April 2019).
([78]) Available at http://www.aneel.gov.br/bandeiras-tarifarias (last viewed 10 April 2019).
([79]) Available at http://www.edp.com.br/distribuicao-es/saiba-mais/informativos/bandeira-tarifaria (last viewed 10 April 2019).
([80]) Boletim mensal de acompanhamento da indústria de gás natural, available at http://www.mme.gov.br/documents/1138769/0/Boletim_Gas_Natural_nr_142_DEZ_18.pdf/49912e53-03ee-47cc-a45e-7ffa093ff777 (last viewed 16 July 2019).

(166) The undistorted costs of natural gas in Table 1 are provided as a range since different tariffs apply to individual consumers depending on their consumption.

(e) Water

(167) The water tariff was readily available as charged by the company Sabesp that is responsible for water supply, sewage collection and treatment in the State of Sao Paulo. The information gave detailed data on tariffs ([81]) applicable for industrial users in 2018 for various sub-regions and municipalities of the State of Sao Paulo ([82]). The Commission based its determination of undistorted costs for water and sewage collection on the tariff applicable to the industrial customers in the Metropolitan area during the investigation period.

(168) The undistorted costs of water in Table 1 are provided as a range since different tariffs apply to individual consumers depending on their consumption.

3.2.4.2. Manufacturing overhead costs, SG&A and profits

(169) The manufacturing overheads incurred by the cooperating exporting producer were increased by the costs of raw materials for which the consumption volume could not be identified in the records of the exporting producer, and the costs of argon as explained in recitals (153) and (154), and subsequently expressed as a share of the costs of manufacturing actually incurred by the exporting producer. This percentage was applied to the undistorted costs of manufacturing.

(170) For SG&A and profit, the Commission used the financial data of the Brazil-based parent company of the Iochpe Maxion group, as the parent company is located in Brazil and is a producer of the product concerned, ([83]) as announced in the Note of 16 April 2019.

(171) In the calculation of SG&A, the Commission disregarded the item 'share of profit (loss) of subsidiaries' since such cost (or income) was not related to the product concerned and was specific for the international structure of the group. In 2018, the parent company received a share on the profit of subsidiaries. The adjustment resulted in a higher percentage of SG&A but a lower percentage of profit. In total, it had no influence on the level of SG&A and profit taken together.

3.2.4.3. Calculation of the normal value

(172) In order to establish the constructed normal value, the Commission took the following steps.

(173) Firstly, the Commission established the undistorted costs of manufacturing. It applied the undistorted unit costs to the actual consumption of the individual factors of production of the cooperating exporting producer.

(174) Secondly, the Commission increased the undistorted costs of manufacturing by adding the manufacturing overheads determined as described in recital (169), to arrive at the undistorted costs of production.

(175) Finally, to the costs of production established as described in recital (174), the Commission applied SG&A and profit of the parent company of the Iochpe Maxion group explained in recitals (170) to (171).

(176) The SG&A expressed as a percentage of the Costs of Goods Sold ('COGS') and applied to the undistorted costs of production amounted to 11,21 %.

(177) The profit expressed as a percentage of the COGS and applied to the undistorted costs of production amounted to 5,06 %.

(178) On that basis, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation. Since only one exporting producer was left in the sample, the Commission constructed the normal value per product type for this exporting producer only.

([81]) Available at http://site.sabesp.com.br/site/interna/Default.aspx?secaoId=183 (last viewed 10 April 2019).
([82]) For example the Metropolitan area http://site.sabesp.com.br/site/uploads/file/asabesp_doctos/comunicado_06_2018.pdf (last viewed 10 April 2019).
([83]) See Note of 16 April 2019 (No t19.001778).

3.3. **Export price**

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

3.4. **Comparison**

(180) The Commission compared the normal value and the export price of the cooperating exporting producer on an ex-works basis.

(181) Where justified by the need to ensure a fair comparison, the Commission adjusted the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments, based upon the actual figures of the cooperating company, were made for handling and inland freight expenses, packing costs, credit cost and bank charges.

3.4.1. *Dumping margin*

(182) For the sampled cooperating exporting producer, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and 2(12) of the basic Regulation.

(183) On this basis, the provisional weighted average dumping margin expressed as a percentage of the CIF Union frontier price, duty unpaid, is as follows:

Company	Provisional dumping margin (%)
Xingmin Intelligent Transportation Systems Co., Ltd	69,4
Tangshan Xingmin Wheels Co., Ltd.	69,4
Xianning Xingmin Wheels Co., Ltd.	69,4

(184) As explained in recital (18), as a result of the non-cooperation of two sampled exporting producers and the exclusion of another exporting producer because of the reduction in the product scope, the sample was reduced to only one company, namely the Xingmin Group. It was therefore not possible to establish a weighted average margin of dumping for the non-sampled cooperating exporting producers according to Article 9(6) of the basic Regulation. Taking into account the degree of non-cooperation in the sample and the insufficient time to select a new sample at this late stage of the procedure, the Commission decided to apply best facts available with regard to the sample, pursuant to Article 17(4) and Article 18 of the basic Regulation.

(185) On this basis, for the non-sampled cooperating exporting producers, the Commission exceptionally decided to set the dumping margin at the same level as the only remaining sampled exporting producer. This is because it considered that the failure of the sample was also caused by the exclusion of certain product types which, with the consequent exclusion of one of the two cooperating exporting producers left in the sample, had a direct impact on the sample. The Commission also took into account that the remaining company in the sample accounted for around 20 % of imports of the product concerned and exported a wide range of product types to the Union.

(186) For all other exporting producers, the Commission decided to base the residual dumping margin on the level corresponding to the weighted average dumping margin found in the sampled company for the eight product types with the highest individual dumping margins. The volume of exports of these product types represented around 29 % of the total volume exported to the Union by the company in question, which is considered sufficiently representative.

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

Company	Provisional dumping margin (%)
Xingmin Intelligent Transportation Systems Co., Ltd	69,4
Tangshan Xingmin Wheels Co., Ltd.	69,4
Xianning Xingmin Wheels Co., Ltd.	69,4
Other cooperating companies	69,4
All other companies	80,1

4. **INJURY**

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

(188) The like product was manufactured by 11 producers in the Union during the investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

(189) The total Union production during the investigation period was established at around 35 million steel road wheels. The Commission established the figure on the basis of the verified questionnaire reply of EUWA, cross-checked and, where appropriate, updated with the verified questionnaire replies of the sampled Union producers. As indicated in recital (8), the sample was made up of three Union producers representing more than 35 % of the total Union production of the like product.

4.2. **Union market and consumption**

(190) The market for steel wheels covers a variety of product types depending mainly on the type of vehicles on which they are fitted. These product types mainly vary in size, with smaller sizes destined for passenger cars and larger diameter sizes destined for heavy trucks and special purpose motor vehicles. These product types are commonly classified by the industry in two categories: passenger car wheels (for vehicles with not more than 8 seats) and commercial wheels (all others). All these various types share the same basic physical characteristics and uses, and therefore are considered one single product for the purpose of this investigation.

(191) The investigation established that both China and the Union producers are active in both the passenger car wheels and the commercial wheels. Based on the information provided by the complainant, around 45 % of the Chinese imports during the IP were passenger car wheels, and 55 % commercial wheels. In the Union, around 65 % of the sales are for passenger car wheels, and 35 % commercial wheels.

(192) Steel wheels are sold in the Union via two main distribution channels: either directly to car manufacturers (OEMs), or to independent companies who develop and brand SRW which are subsequently sold to wholesalers or retailers. Even though car manufactures demand rather strict specifications, all wheels have the same/comparable characteristics independently of their distribution channel, and ultimately all SRW types constitute one single homogeneous type. Most importantly, there are clear interconnections between the two distribution channels as prices on one distribution channel can exercise pressure on the other.

(193) The Commission established the Union consumption on the basis of the sales volumes of the Union industry on the Union market plus imports from all third countries.

(194) Union consumption developed as follows:

Table 2

Union consumption

	2015	2016	2017	IP
Total Union consumption (thousand pieces)	38 554	38 523	40 161	39 387
Index	*100*	*100*	*104*	*102*

Source: EUWA, sampled producers.

(195) During the period considered the Union consumption increased by 2 %.

4.3. **Imports from the country concerned**

(196) CN codes ex 8708 70 10, ex 8708 70 99 and ex 8716 90 90 include a broader range of products than SRW. Moreover, the only available unit of measurement in Eurostat is weight, which may not necessarily allow for an adequate comparability of data between the various sources of imports given the different types of SRW with a wide range in diameters having different weight, and the potentially different and/or changing product mix (passenger car wheels and commercial vehicle wheels including amongst others tractor wheels and trailer wheels). EUWA raised this issue in its complaint and provided, in addition to the figures in the complaint, its own estimations of the import volumes from China, Turkey and other countries, which was verified by the Commission. On this basis, the Commission informed interested parties and allowed them to comment on the various sources of data, including the estimations of import volumes provided during the course of the investigation by EUWA, as well as import volume and prices based on Eurostat data. No party opposed these estimations of the import volumes, which were therefore considered to be the best source of information available. Even though EUWA expressed doubts as to the level of prices given by Eurostat, in absence of other available source of information, the Commission relied on Eurostat data in order to at the very least establish price trends. The Commission, however, used prices received from the sampled parties in order to compare price levels for the purpose of establishing the price undercutting and injury margin.

4.3.1. *Volume and market share of the imports from the PRC*

(197) The market share of the imports was established by comparing the volume of imports with the Union consumption.

(198) Imports into the Union from the PRC developed as follows:

Table 3

Import volume and market share

	2015	2016	2017	IP
Volume of imports from the PRC (thousand pieces)	1 007	1 257	1 963	2 093
Index	*100*	*125*	*195*	*208*
Market share	2,6 %	3,3 %	4,9 %	5,3 %
Index	*100*	*125*	*187*	*204*

Source: EUWA.

(199) The imports from the PRC and its market share doubled over the period considered. Imports increased from around 1 million to 2 million pieces, corresponding to an increase of market share from 2,6 % to 5,3 % in the investigation period. Imports from the PRC amounted to around 25 % of total imports during the IP. It should be noted that, based on the available data, Chinese imports concerned both passenger car and commercial wheels and that they increased for both types, but the increase was much more marked in the passenger car types of wheels.

4.3.2. *Prices of the imports from the PRC and price undercutting*

(200) As explained above in recital (196), the Commission established the trends of imports prices on the basis of Eurostat data as disclosed to the parties by the Commission during the course of the investigation. It is recalled that even though Eurostat data did not offer a precise picture concerning the absolute level of imports – and therefore of unit prices – it was however the only available source of information to at the very least establish price trends. The data below was therefore considered in that context, and thus was not used to compare price levels.

(201) The price of imports into the Union from the PRC developed as follows:

Table 4

Import prices (EUR/kilo)

	2015	2016	2017	IP
PRC	2,04	1,90	1,85	1,90
Index	*100*	*93*	*91*	*93*

Source: Eurostat.

(202) Import prices from the PRC fell on average by 7 % over the period considered.

(203) The Commission also determined the price undercutting during the investigation period by comparing:

— the weighted average prices per product type of the imports from the sampled cooperating Chinese producer to the first independent customer on the Union market, ([84]) established on a Cost, insurance, freight (CIF) basis, with appropriate adjustments for customs duties and post-importation costs; and

— the corresponding weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level.

(204) The price comparison was made on a product type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the sampled Union producers' turnover during the investigation period. It showed significant undercutting ranging from 8,7 % to 42,6 % resulting in a weighted average margin of 26,2 % for the co-operating exporter.

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

4.4.1. *General remarks*

(205) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

(206) As mentioned in recital (8), sampling was used for the determination of possible injury suffered by the Union industry.

(207) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data contained in the verified questionnaire reply of EUWA. These data related to all Union producers, but were updated where necessary following the verifications at the sampled Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the verified questionnaire replies from the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.

([84]) As mentioned in recital (179), the exporting producer in question exported to the Union directly to independent customers. Thus, the export price used for the undercutting calculations was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

(208) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity and magnitude of the dumping margins.

(209) The microeconomic indicators are: average unit prices, unit cost, average labour costs, profitability, cash flow, investments and return on investments, and ability to raise capital.

4.4.2. *Macroeconomic indicators*

4.4.2.1. Production, production capacity and capacity utilisation

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

Table 5

Production, production capacity and capacity utilisation

	2015	2016	2017	IP
Production volume (thousand pieces)	36 399	35 252	36 860	34 999
Index	*100*	*97*	*101*	*96*
Production capacity (thousand pieces)	52 050	52 226	52 744	52 289
Index	*100*	*100*	*101*	*100*
Capacity utilisation	69,9 %	67,5 %	69,9 %	66,9 %
Index	*100*	*97*	*100*	*96*

Source: EUWA, sampled producers.

(211) The total Union industry's production fluctuated but decreased by 4 % over the period considered. As the production capacity was kept almost at the same level throughout the period considered, capacity utilisation went down from 69,9 % to 66,9 %.

4.4.2.2. Sales volume and market share

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

Table 6

Sales volume and market share

	2015	2016	2017	IP
Total sales volume on the Union market (thousand pieces)	32 731	32 299	32 581	31 451
Index	*100*	*99*	*100*	*96*
Market share	84,9 %	83,8 %	81,1 %	79,8 %
Index	*100*	*99*	*96*	*94*

Source: EUWA, sampled producers.

(213) The sales volume of the Union industry decreased by 4 % over the period considered, while the imports from China doubled. Consequently the market share of the Union industry decreased by 6 % (from 84,9 % to 79,8 %) over the period considered.

4.4.2.3. Growth

(214) The above figures in respect of production, sales, volume and market share demonstrate that the Union industry was not able to grow, either in absolute terms or in relation to consumption, over the period considered.

4.4.2.4. Employment and productivity

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

Table 7

Employment and productivity

	2015	2016	2017	IP
Number of employees	2 970	2 949	2 947	2 985
Index	*100*	*99*	*99*	*100*
Productivity (thousand pieces/employee)	12,3	12,0	12,4	11,6
Index	*100*	*98*	*102*	*95*

Source: EUWA, sampled producers.

(216) During the period considered, employment in the Union remained stable. Indeed, the growth in consumption could not be matched with a similar growth in employment as sales and production volumes decreased. As production fell by 4 %, productivity of the Union industry fell by 5 % over the period considered.

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

(217) All dumping margins were significantly above the de minimis level. The impact of the magnitude of the actual margins of dumping on the Union industry was substantial, given the volume and prices of imports from the PRC.

(218) This is the first anti-dumping investigation regarding the product concerned. Therefore, no data were available to assess the effects of possible past dumping.

4.4.3. *Microeconomic indicators*

4.4.3.1. Prices and factors affecting prices

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

Table 8

Average sales prices in the Union (EUR)

	2015	2016	2017	IP
Average unit EXW sales price in the Union to unrelated customers	15,3	15,8	18,0	18,4
Index	*100*	*104*	*118*	*121*
Unit cost of production	14,4	14,3	17,1	18,5
Index	*100*	*99*	*118*	*128*

Source: sampled producers.

(220) Whereas the Union industry's cost of production increased by 28 % over the period considered, mainly due to a strong increase in the cost of hot-rolled flat steel products, a key raw material, the Union industry's average unit sales price to unrelated customers in the Union increased by only 21 % during the IP. This demonstrates the severe price suppression caused by the strongly increasing imports of the product concerned. As will be explained below in section 4.4.3.4, this had a significant impact on the financial situation of the Union industry which became loss making during the investigation period.

4.4.3.2. Labour costs

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

Table 9

Average labour costs per employee (EUR)

	2015	2016	2017	IP
Average labour costs per employee	51 975	48 466	51 577	53 484
Index	*100*	*93*	*99*	*103*

Source: sampled producers.

(222) Between 2015 and the investigation period, the average labour costs per employee of the sampled Union producers increased slightly by 3 %. The labour cost increased especially in 2017 due to a legal change in the Member State of one of the sampled producers.

4.4.3.3. Inventories

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

Table 10

Inventories

	2015	2016	2017	IP
Closing stocks (thousand pieces)	2 327	1 845	2 155	1 631
Index	*100*	*79*	*93*	*70*
Closing stocks as a percentage of production	6,4 %	5,2 %	5,8 %	4,7 %
Index	*100*	*82*	*91*	*73*

Source: EUWA, sampled producers.

(224) Inventories cannot be considered as a relevant injury indicator as production of steel road wheels takes place to a large extent to order; stock at a determined point in time is mostly the result of goods sold but not yet delivered. Therefore, the trends on inventories are given for information only.

(225) Overall closing stocks decreased by 30 % over the period considered. Closing stocks as a percentage of production decreased slightly from 6,4 % in 2015 to 4,7 % during the investigation period, i.e. by 27 %.

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

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

Table 11

Profitability, cash flow, investments and return on investments

	2015	2016	2017	IP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	2,3 %	7,1 %	3,5 %	– 1,1 %
Index	*100*	*309*	*153*	*– 49*
Cash flow (EUR)	7,9 %	11,9 %	4,3 %	6,1 %
Index	*100*	*151*	*54*	*78*
Investments (000 EUR)	7 326	6 830	9 990	13 713
Index	*100*	*93*	*136*	*187*
Return on investments	16,1 %	48,6 %	24,7 %	–5,5 %
Index	*100*	*301*	*153*	*–34*

Source: Sampled producers

(227) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. Profitability was erratic over the period concerned, but in general followed in decreasing trend as from 2016 and became negative during the investigation period.

(228) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow developed negatively over the period considered, even though the deterioration, in particular at the end of the IP, was less marked than the trend in profitability

(229) The investments increased by 87 % over the period considered. Almost half of the investment concerned production line maintenance. However, there were also significant investments in new capacity in line with a projected increase in demand in the coming years for larger size diameter wheels, requiring additional machining and painting capacity.

(230) The return on investments is the profit expressed as a percentage of the net book value of investments. It developed negatively over the period considered despite an increase in total investments in 2016, reflecting the trends previously described for profitability and cash flow.

4.4.4. *Conclusion on injury*

(231) Over the period considered, the sales prices increased by 21 %, which was not sufficient to cover the increase of the costs of production (28 %) during the investigation period. The Union industry's profit level of 2,3 % in 2015 turned into losses (–1,1 %) during the investigation period. This trend resulted in similar falls in cash flow (– 22 %) and return on investment (– 134 %).

(232) Over the period considered the Union industry level of production fell by 4 %, sales volume fell also by 4 %, and market share went from 84,9 % to 79,8 %, while the consumption increased by 2 %. It should be noted that during the same period China managed to double its market share. These developments left the Union industry in a vulnerable situation.

(233) Very few of the indicators examined showed a positive development over the period considered. Investments increased by 87 %, but these investments concern mainly replacements and upgrades of machinery. Also, stocks have fallen throughout the period considered, but since most of the product is made upon demand, the decrease in stocks cannot be considered as a positive development in this case.

(234) On the basis of the above, the Commission concluded at this stage that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. **CAUSATION**

(235) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the PRC caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the dumped imports from the PRC was not attributed to the dumped imports. These factors are imports from third countries, the export performance of the Union industry and the development of raw material costs.

5.1. **Effects of the dumped imports**

(236) Imports from the PRC increased by 108 % over the period considered, and they also doubled their market share. The market share increase of dumped imports from the PRC accounted for the major part of the market share decrease of the Union industry. Furthermore, the prices of imports from the PRC fell on average by 7 % and, on the basis of best information available, they undercut Union industry prices, during the investigation period, by 26,2 % on average. The low prices of imports from the PRC also exercised significant price suppression during the investigation period, leading the Union industry to make losses since they were not able to increase their prices above their costs of production.

(237) The analysis of the injury indicators in recitals (186) to (211) shows that the economic situation of the Union industry has worsened and this coincides with an increase of dumped imports from the PRC, at prices that undercut Union industry prices. The Union industry lost market shares to cheaper, and dumped, Chinese imports, and some sampled Union producers also confirmed the fact that – as already established in the context of the aluminium

wheels investigation ([85]) – car makers still use Chinese offers as a benchmark to pressure down prices. This has exercised a significant pressure on Union prices, which were not able to pass on the cost increases. Indeed, it is the increase of imports and the substantially low prices found that are the key factors to be considered in this case. The price pressure exerted by the dumped imports from the PRC caused price suppression for the Union industry. In particular in 2017 and during the investigation period, when unit costs of production were increasing due to higher steel prices, the Union industry could not fully pass on these cost increases to its sales prices. This caused the Union industry's performance indicators to deteriorate, resulting in losses during the investigation period.

(238) On that basis it is concluded that the dumped imports from the PRC caused material injury to the Union industry.

5.2. **Effects of other factors**

5.2.1. *Imports from third countries*

(239) The volume of imports from other third countries developed over the period considered as follows:

Table 12

Imports from third countries

Country		2015	2016	2017	IP
Turkey	Volume (thousand pieces)	3 433	3 450	3 557	3 793
	Index	*100*	*100*	*104*	*110*
	Market share	8,9 %	9,0 %	8,9 %	9,6 %
	Index	*100*	*101*	*100*	*108*
	Average price (per kilo)	2,11	1,98	2,00	1,96
	Index	*100*	*94*	*95*	*93*
Other countries	Volume (thousand pieces)	1 383	1 517	2 050	2 050
	Index	*100*	*110*	*148*	*148*
	Market share	3,6 %	3,9 %	5,1 %	5,2 %
	Index	*100*	*110*	*142*	*145*
	Average price (per kilo)	2,85	2,69	2,77	2,85
	Index	*100*	*94*	*97*	*100*

Source: EUWA for volumes, Eurostat for price trends.

(240) Even if imports from Turkey increased during the IP, their development was much less marked than the Chinese imports.

(241) In terms of volume, Turkish imports gained 360 thousand units during the IP while China doubled its Union imports which increased by one million units during the same period. As a result, the Chinese market shares increased by 2,7 percentage points (2,6 % to 5,3 %), while the Turkish increase remained more modest (+ 0,7 percentage points). In terms of prices, as mentioned above, Eurostat data does not allow a precise basis for a price comparison. In its

([85]) Commission Implementing Regulation (EU) 404/2010 of 10 May 2010 imposing a provisional anti-dumping duty on imports of certain aluminium wheels originating in the People's Republic of China (OJ L 117, 11.5.2010, p. 76), recital (133).

complaint, EUWA however provided data showing that — based on 6 representative wheel types — Turkish prices were substantially higher than Chinese prices, i.e. on average around 25 % higher which is comparable to the undercutting margin established in recital (204). Given this, based on the evidence available, the Turkish imports cannot be considered to be made at injurious prices.

(242) The imports from the other countries taken together increased by 48 % over the period concerned, their market share went up from 3,6 % to 5,2 %. Despite this and based on the only available information, prices from other third countries were around 50 % higher than the Chinese dumped prices.

(243) Therefore, it was provisionally concluded that imports from third countries other than the PRC do not attenuate the causal link between the dumped imports and the injury suffered by the Union industry.

5.2.2. *Export performance of the Union industry*

(244) The volume of exports by the Union producers developed over the period considered as follows:

Table 13

Export performance of the Union producers

	2015	2016	2017	IP
Export volume (thousand pieces)	1 003	1 156	1 401	1 371
Index	*100*	*115*	*140*	*137*
Average price (euro pieces)	16,2	16,0	19,3	17,4
Index	*100*	*99*	*119*	*108*
Export market share	3,0 %	3,5 %	4,1 %	4,2 %
Index	*100*	*116*	*139*	*140*

Source: EUWA (volume), sampled producers (prices).

(245) Over the period considered, the share of exports of the Union industry represented less than 3 % of its total production. Therefore, even if the exports increased by 40 %, i.e. about 300 thousand units, it only represents a small portion of the decrease in production. The Union remained the main market of the Union industry representing 95,8 % of its sales during the investigation period, and these sales decreased both in absolute terms and in terms of market share during the period considered.

(246) It is therefore concluded that, if anything, these export sales have slightly alleviated the injury caused by the dumped imports.

(247) It was therefore provisionally concluded that the exports of the Union industry did not contribute to the injury suffered by the Union industry.

5.2.3. *The price of the steel*

(248) In the complaint it was mentioned that, over the period considered, the price of steel in the Union had increased significantly and this was confirmed during the on spot verifications at the sampled Union producers. Indeed, the average purchase price of hot rolled coils by the sampled producers developed as follows:

Table 14

Average cost of hot rolled coils to produce one wheel

	2015	2016	2017	IP
Index	*100*	*98*	*122*	*133*

Source: sampled producers.

(249) The average cost of hot rolled coils required to produce one wheel increased by 33 % over the period considered. Hot rolled coils represent roughly 50 % of the cost of production. Under normal circumstances, the industry would pass on such cost increases to its customers, in particular if its profitability is low. Under the current circumstances, with high and increasing volumes of abnormally low prized Chinese imports, the Union industry was not in a position to adjust its sales prices accordingly.

(250) It was therefore provisionally concluded that the increase of the cost of the raw material was not a cause of injury, but rather the fact that, as established above, (see recital (249)), the Union industry could not reflect this increase in its prices because of Chinese dumped imports, which led to the fall in profitability.

5.3. **Conclusion on causation**

(251) Over the period considered, import volumes from the PRC and its market shares increased significantly whereas prices from the PRC fell on average by 9 %. More importantly, the PRC dumped imports significantly undercut Union prices for this price sensitive product. Moreover, the price pressure from dumped imports from the PRC undermined the Union industry's sales volumes and sales prices throughout the period considered but was particularly damaging in 2017 and the investigation period when costs were increasing. Such pressure caused severe production, sales and profitability losses in the investigation period.

(252) On the basis of analysis in recitals (236) to (250), the Commission concluded at this stage that none of the other factors, considered individually or collectively, attenuate the causal link between the material injury to the Union industry caused by the dumped imports from the PRC.

6. **UNION INTEREST**

(253) In accordance with Article 21 of the basic Regulation, the Commission examined whether it could clearly conclude that it was not in the Union interest to adopt measures in this case, despite the determination of injurious dumping. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, users and other relevant economic operators.

6.1. **Interest of the Union industry**

(254) The investigation showed that the Union industry is suffering material injury because of the effects of dumped imports which undercut its prices, exercised price suppression and caused a significant loss of market share and led to losses in the investigation period, as elaborated in Sections 4 and 5 above.

(255) It is expected that the Union industry will benefit from measures, which would likely prevent a further surge of imports from China at very low prices. Should measures not be imposed, such imports are expected to continue and even increase, causing further injury to the EU industry.

6.2. **Interest of unrelated importers and users**

(256) Upon initiation, 72 importers, users and their associations were contacted.

(257) Only two importers replied by providing a sampling reply. However, eventually both declined to further co-operate with the investigation and the Commission therefore could not obtain cooperation from importers.

(258) The Commission sent questionnaires to the two groups of car manufacturers that came forward after initiation, but none made submissions or returned a questionnaire reply.

(259) The investigation found that the impact of measures on steel road wheels is limited for car producers. This conclusion stems from the estimate made by a sampled Union producer according to which a full set of steel road wheels represents about 0,6 % of the cost of producing a small passenger car or 0,7 % of the cost of producing a

truck ([86]). There is no other information on file showing that measures would have a significant negative impact on the users outweighing the positive impact of the measures on the Union industry. The same conclusion was reached in the latest investigation on a similar product ([87]).

6.3. **Conclusion on Union interest**

(260) On the basis of the above, the Commission concluded that there were no compelling reasons that it was not in the Union interest to impose measures on imports of steel road wheels originating in People's Republic of China at this stage of the investigation.

7. **PROVISIONAL ANTI-DUMPING MEASURES**

(261) On the basis of the conclusions reached by the Commission on dumping, injury, causation and Union interest, provisional measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.

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

(262) To determine the level of the measures, the Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry.

(263) In this case, the injury would be eliminated if the Union industry was able to cover its costs of production, including those costs resulting from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia of the basic Regulation, and to obtain a reasonable profit ('target profit').

(264) Article 7(2c) of the basic Regulation sets the minimum target profit at 6 %. In accordance with that Article, for establishing the target profit, the Commission took into account the following factors: the level of profitability before the increase of imports from the PRC, the level of profitability needed to cover full costs and investments, costs for research and development (R&D) and innovation, and the level of profitability to be expected under normal conditions of competition.

(265) As shown in Table 3, imports from the PRC increased consistently throughout the period considered. None of these years would therefore qualify for providing a target profit in line with Article 7(2c) of the basic Regulation. None of the sampled producers made a substantiated claim for investments foregone or R&D and innovation costs. In view of the above facts, the Commission resorted to the use of the minimum 6 % target profit which was added to the Union industry's actual cost of production to establish the non-injurious price.

(266) As no claims were made pursuant to Article 7(2d) concerning current or future costs which result from multilateral environmental agreements and protocols thereunder or from the listed ILO Conventions, no further costs were added to the non-injurious price thus established.

(267) The Commission then determined the injury elimination level on the basis of a comparison of the weighted average import price of the sampled cooperating exporting producer in the PRC with the weighted average non-injurious price of the like product sold by the sampled Union producers on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value. The resulting underselling margin was 50,3 %.

(268) The injury elimination level for 'other cooperating companies' listed in annex 1 was the average of the sample, i.e. 50,3 %.

([86]) Details of the calculation are in the limited version of the mission report concerning Company H.
([87]) Commission Implementing Regulation (EU) 2017/109 of 23 January 2017 imposing a definitive anti-dumping duty on imports of certain aluminium road wheels originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 18, 24.1.2017, p. 1), recitals (250) to (268).

(269) The injury elimination level for 'all other companies' is defined, in line with the methodology used for setting the residual dumping margin as explained under recital (185), by calculating the weighted average underselling margin found in the sampled company for the eight product types with the highest individual underselling margins. These product types represented 15 % of the imports from the cooperating Chinese exporter. The resulting residual underselling margin was 66,4 %.

7.2. **Provisional measures**

(270) On the basis of the conclusions reached by the Commission on dumping, injury, causation and Union interest, provisional measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.

(271) Provisional anti-dumping measures should be imposed on imports of steel road wheels originating in the PRC, in accordance with the lesser duty rule in Article 7(2) of the basic Regulation. The Commission compared the injury margins and the dumping margins, also taking into account the circumstances described in recitals (18) and (184). The amount of the duties should be set at the level of the lower of the dumping and the injury margins.

(272) On the basis of the above, the provisional anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Dumping margin (%)	Injury margin (%)	Provisional anti-dumping duty (%)
Xingmin Intelligent Transportation Systems Co., Ltd	69,4	50,3	50,3
Tangshan Xingmin Wheels Co., Ltd.	69,4	50,3	50,3
Xianning Xingmin Wheels Co., Ltd.	69,4	50,3	50,3
Other cooperating companies	69,4	50,3	50,3
All other companies	80,1	66,4	66,4

(273) The individual company anti-dumping duty rates 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 duty rates are exclusively applicable to imports of the product concerned originating in the PRC 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 duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.

(274) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ([88]). The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a notice informing about the change of name will be published in the *Official Journal of the European Union*.

(275) To minimise the risks of circumvention due to the high difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) hereof. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.

(276) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies should apply not only to the non-cooperating exporting producers in this investigation, but to the producers which did not have exports to the Union during the investigation period.

([88]) European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170, 1040 Brussels, Belgium.

(277) Statistics of SRW are frequently expressed in number of pieces. However, there is no such supplementary unit for SRW specified in the Combined Nomenclature laid down in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff ([89]). It is therefore necessary to provide that not only the weight in kg or tonnes but also the number of pieces for the imports of the product concerned must be entered in the declaration for release for free circulation. Pieces should be indicated for TARIC codes 8708 70 10 80, 8708 70 10 85, 8708 70 99 20, 8708 70 99 80, 8716 90 90 95, and 8716 90 90 97.

8. **INFORMATION AT PROVISIONAL STAGE**

(278) In accordance with Article 19a of the basic Regulation, the Commission informed interested parties about the planned imposition of provisional duties. This information was also made available to the general public via DG TRADE's website. Interested parties were given three working days to provide comments on the accuracy of the calculations specifically disclosed to them.

(279) No comments were received on the accuracy of the calculations.

9. **FINAL PROVISIONS**

(280) In the interests of sound administration, the Commission will invite the interested parties to submit written comments within 15 days and/or to request a hearing with the Commission and/or the Hearing Officer in trade proceedings within 5 days.

(281) The findings concerning the imposition of provisional duties are provisional and may be amended at the definitive stage of the investigation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is imposed on imports of road wheels of steel, whether or not with their accessories and whether or not fitted with tyres, designed for:

(1) Road tractors;

(2) Motor vehicles for the transport of persons and/or the transport of goods;

(3) Special purpose motor vehicles (for example, fire fighting vehicles, spraying lorries);

(4) Trailers or semi-trailers, not mechanically propelled, of road tractors

originating in the People's Republic of China, currently falling within CN codes ex 8708 70 10, ex 8708 70 99, ex 8716 90 90 (TARIC codes 8708 70 10 80, 8708 70 10 85, 8708 70 99 20, 8708 70 99 80, 8716 90 90 95, and 8716 90 90 97) ('the product concerned').

The following products are excluded:

(1) Road wheels of steel for the industrial assembly of pedestrian-controlled tractors currently falling under subheading 8701 10;

(2) Wheels for road quad bikes;

(3) Wheel centres in star form, cast in one piece, of steel;

(4) Wheels for motor vehicles, specifically designed for uses other than on public roads (for example, wheels for agricultural tractors or forestry tractors, for forklifts, for pushback tractors, for dumpers designed for off-highway use);

(5) Wheels for passenger car trailers, caravans, agricultural trailers and other trailed agricultural equipment used in fields, with a rim diameter of maximum 16 inches.

([89]) OJ L 256, 7.9.1987, p. 1.

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

Company	Provisional anti-dumping duty (%)	TARIC additional code
Xingmin Intelligent Transportation Systems Co., Ltd	50,3	C508
Tangshan Xingmin Wheels Co., Ltd.	50,3	C509
Xianning Xingmin Wheels Co., Ltd.	50,3	C510
Other cooperating companies listed in Annex I	50,3	See Annex I
All other companies	66,4	C999

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

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

5. Where a declaration for release for free circulation is presented in respect of the product referred to in paragraph 1, the number of pieces of the products imported shall be entered in the relevant field of that declaration.

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

Article 2

1. Interested parties shall submit their written comments on this regulation to the Commission within 15 calendar days of the date of entry into force of this Regulation.

2. Interested parties wishing to request a hearing with the Commission shall do so within 5 calendar days of the date of entry into force of this Regulation.

3. Interested parties wishing to request a hearing with the Hearing Officer in trade proceedings shall do so within 5 calendar days of the date of entry into force of this Regulation. The Hearing Officer shall examine requests submitted outside this time limit and may decide whether to accept to such requests if appropriate.

Article 3

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

Article 1 shall apply for a period of six months.

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

Done at Brussels, 9 October 2019.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX I

Chinese cooperating exporting producers not sampled

Name	TARIC additional code
Dongfeng Automobile Chassis System CO., Ltd (also called 'Dongfeng Automotive Wheel Co., Ltd')	
Hangzhou Forlong Impex Co., Ltd	
Hangzhou Xingjie Auto Parts Manufacturing Co., Ltd	
Jiaxing Henko Auto Spare Parts Co., Ltd	
Jining Junda Machinery Manufacturing Co., Ltd	
Nantong Tuenz Corporate Co., Ltd	
Ningbo Luxiang Autoparts Manufacturing Co., Ltd	
Shandong Zhengshang Wheel Technology Co., Ltd	
Shandong Zhengyu Wheel Group Co., Ltd	
Xiamen Sunrise Group Co., Ltd	
Yantai Leeway Electromechanical Equipment Co., Ltd	
Yongkang Yuefei Wheel Co., Ltd	
Zhejiang Jingu Co., Ltd	
Zhejiang Fengchi Mechanical Co., Ltd	
Zhengxing Wheel Group Co., Ltd	
Zhenjiang R & D Auto Parts Co., Ltd	