COMMISSION IMPLEMENTING REGULATION (EU) 2022/2247

of 15 November 2022

imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of electrolytic chromium coated steel products originating in the People's Republic of China and Brazil

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]) ('the basic Regulation'), and in particular Article 9(4) thereof,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 24 September 2021, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of electrolytic chromium coated steel ('ECCS') originating in the People's Republic of China ('the PRC' or 'China') and Brazil (together 'the countries concerned') on the basis of Article 5 of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ([2]) ('the Notice of Initiation').

(2) The Commission initiated the investigation following a complaint lodged on 13 August 2021 by the European Steel Association ('EUROFER') ('the complainant'). The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

(3) The complaint was made on behalf of the following Union producers: ArcelorMittal Atlantique et Lorraine (France), ArcelorMittal Etxebarri S.A. (Spain) and ThyssenKrupp Rasselstein GmbH (Germany), allegedly representing 100 % of the Union industry. In the course of the investigation, it came to the Commission's attention the existence of an additional Union producer of ECCS, namely Acciaierie d'Italia. Since the complainants nonetheless represented [85-95] % of the production and sales of the Union industry, the complaint was considered to have been made by the Union industry in accordance with Article 5(4) of the basic Regulation.

1.2. Interested parties

(4) 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, known Union producers, the known exporting producers and the authorities of the PRC and Brazil, known importers, suppliers and users, traders, as well as associations known to be concerned about the initiation of the investigation, and invited them to participate.

1.3. Provisional measures

(5) In accordance with Article 19a of the basic Regulation, on 25 April 2022, the Commission provided parties with a summary of the proposed duties and details about the calculation of the dumping margins and the margins adequate to remove the injury to the Union industry four weeks before the imposition of provisional duties ('the pre-disclosure period'). Interested parties were invited to comment on the accuracy of the calculations within three working days. As explained in recitals (29) to (34) of the provisional Regulation, the Commission concluded that the requirements for registration under Article 14(5a) of the basic Regulation were not met. Therefore, imports from the countries concerned have not been subject to registration during the pre-disclosure period.

([1]) OJ L 176, 30.6.2016, p. 21.

([2]) Notice of initiation of an anti-dumping proceeding concerning imports of electrolytic chromium coated steel (ECCS) products originating in the People's Republic of China and Brazil (OJ C 387, 24.9.2021, p. 2).

(6) The Commission received comments from Baoshan Iron & Steel Co., Ltd ('Baosteel'), Handan Jintai Packing Materials Co., Ltd ('Jintai'), and CANPACK. The submission of Baosteel led to the correction of a clerical error in the calculations. The comments of Jintai were related to Article 7(2a) of the Basic Regulation and therefore not related to the accuracy of calculations. Therefore they were considered after the disclosure of provisional measures and are addressed in Section 3.1 below. As the comments of CANPACK related to Union interest, they have been addressed in Section 7 below.

(7) On 23 May 2022, the Commission published in the *Official Journal of the European Union* Implementing Regulation (EU) 2022/802 imposing a provisional anti-dumping duties on imports of electrolytic chromium coated steel products originating in the People's Republic of China and Brazil ([3]) ('the provisional Regulation').

1.4. **Subsequent procedure**

(8) Following the disclosure of the essential facts and considerations on the basis of which provisional anti-dumping duties were imposed ('provisional disclosure'), Eurofer (complainant), Eviosys (Union user), CANPACK, representing CANPACK Slovakia s.r.o., Can-Pack Food and Industrial Packaging Sp. z o.o. and Tapon France S.A.S. (Union users), Astir Vitogiannis Bros Single Member S.A. ('Astir Vitogiannis') (Union user), Baosteel (exporting producer from China), Jintai (exporting producer from China), Companhia Siderurgica Nacional ('CSN') (exporting producer from Brazil), the China Iron and Steel Association ('CISA'), the Government of the PRC ('GOC') and the Government of Brazil ('GOB') filed written submissions making their views known on the provisional findings within the deadline provided by Article 2(1) of the provisional Regulation.

(9) The parties who so requested were granted an opportunity to be heard. Hearings took place with Baosteel, CISA and Astir Vitogiannis.

(10) The Commission continued to seek and verify all the information it deemed necessary for its final findings. When reaching its definitive findings, the Commission considered the comments submitted by interested parties and revised its provisional conclusions when appropriate.

(11) On 31 August 2022, the Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of electrolytic chromium coated steel products originating in the People's Republic of China and Brazil ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure.

(12) Following comments from interested parties, the Commission informed, on 16 September 2022, interested parties about some clarifications and minor corrections in the final disclosure that did, however, not have an impact on the definitive duties. Parties were granted a period within which they could make comments. Only CISA made comments.

(13) Parties who so requested were also granted an opportunity to be heard. Hearings took place with CISA, Baosteel, Eviosys and Eurofer.

1.5. **Comments on initiation**

(14) As explained in recitals (6) and (7) of the provisional Regulation, the China Iron and Steel Association ('CISA') submitted comments following initiation claiming that the complaint relied too much on confidential information and that the non-confidential version was therefore insufficient to allow a proper understanding of the evidence underlying the complaint. CISA reiterated this claim following the imposition of provisional measures.

(15) The Commission confirmed its conclusion in recital (8) of the provisional Regulation that the non-confidential version of the complaint available in the file for inspection by interested parties contained all the essential evidence and non-confidential summaries of the confidential data allowing interested parties to properly exercise their rights of defence, and thus rejected the claim.

([3]) OJ L 143, 23.5.2022, p. 11.

1.6. **Sampling**

(16) In the absence of comments regarding the sampling of Union producers, importers and exporting producers, recitals (9) to (17) of the provisional Regulation are confirmed.

1.7. **Individual examination**

(17) As explained in recital (18) of the provisional Regulation, an exporting producer in China, GDH Zhongyue (Zhongshan) Tinplate Industry Co., Ltd. requested individual examination under Article 17(3) of the basic Regulation and provided a questionnaire reply within the deadline. This request was reiterated after the final disclosure. The Commission had provisionally found that an examination of this request would have been unduly burdensome and would not have allowed the completion of the investigation within the time period established in the basic Regulation. The Commission recalled that it had limited its sample to two companies representing the largest volume of imports from China that could reasonably be investigated within the time available. Both companies fully cooperated, which included examination and verification (by means of remote cross-checks or 'RCCs') of information provided by several related entities both in China and in the Union which precluded the Commission from individually examining GDH Zhongyue (Zhongshan) Tinplate Industry Co., Ltd. in addition to the sampled companies. This conclusion remained valid also during the definitive stage. The Commission therefore confirmed its decision not to grant individual examination to this company.

1.8. **Questionnaire replies and verification visits**

(18) As set out in recitals (19) and (21) of the provisional Regulation, the Commission sent questionnaires to three Union producers, the complainant, one unrelated importer and known users, and three exporting producers in the countries concerned. It also sent questionnaires to the Government of the People's Republic of China ('GOC') concerning the existence of significant distortions in the PRC within the meaning of Article 2(6a)(b) of the basic Regulation as well as concerning raw material distortions in China regarding the product under investigation.

(19) In addition to RCCs mentioned in recital (23) of the provisional Regulation, the Commission further carried out a verification visit at the following Union user:

— Eviosys, Paris (France)

1.9. **Investigation period and period considered**

(20) As stated in recital (24) of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2020 to 30 June 2021 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2018 to the end of the investigation period ('the period considered').

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. **Product concerned**

(21) The Commission recalled that, as set out in recital (25) of the provisional Regulation, the product concerned is flat-rolled products of iron or non-alloy steel, plated or coated with chromium oxides or with chromium and chromium oxides originating in the PRC and Brazil, currently falling under CN codes 7210 50 00 and 7212 50 20 ('the product concerned').

(22) ECCS is used in a wide range of applications, typically for consumer and industrial packaging. It is most frequently used for food packaging, for example in can tops and bottoms, screw and lug caps, tabs, etcetera. Other types of uses include external parts for home appliances, photographic film cases, protective material for optical fibre protection or other electrical and electronic parts.

2.2. **Like product**

(23) In the absence of any related claim or comment, the conclusions in recital (27) and (28) of the provisional Regulation are hereby confirmed.

3. **DUMPING**

3.1. **China**

(24) Following provisional disclosure, the Commission received written comments from the two sampled exporting producers, CISA and the Government of the People's Republic of China ('GOC') on the provisional dumping findings.

3.1.1. *Normal value*

(25) The details of the calculation of the normal value were set out in recitals (42) to (109) of the provisional Regulation.

3.1.2. *Existence of significant distortions*

(26) Following provisional disclosure, CISA and the GOC commented on the application of Article 2(6a) of the basic Regulation in the current investigation. In addition, Baosteel endorsed CISA's comments.

Arguments concerning the Report ([4])

(27) The GOC submitted that the Report is factually and legally flawed and decisions based on it lack legitimacy. On the factual side, the Report is, according to the GOC, misrepresentative, one-sided and out of touch with reality. Moreover, the fact that the Commission has issued country reports for a few selected countries raises concerns about most favoured nation ('MFN') treatment. Further, relying by the Commission on the evidence in the Report is, in the GOC's view, not in line with the spirit of fair and just law, as it provides unfair advantages to the Union industry and as it effectively amounts to judging the case before trial.

(28) Similarly, CISA submitted that the Commission relied excessively on the Report, which in CISA's opinion is one-sided, non-objective, outdated, and deliberately omits factual elements to facilitate lodging of the complaints based on the application of Article 2(6a) of the basic Regulation. CISA furthermore disagreed with the Commission's reply in Section 3.1.3 of the provisional Regulation, where the Commission argued that both the GOC as well as other parties had the opportunity to submit information rebutting the sources included in the Report by specifying that the burden of proof lies in this case with the investigating authority and not the third country exporters. In addition, CISA underlined that the Report did not concern the ECCS industry but it is simply a one-size-fits-all document which the Commission uses for various investigations indiscriminately. Furthermore, CISA submitted that the Five-Year Plans ('FYP') to which the Commission refers in its investigation to prove the existence of significant distortions are merely guiding documents expressing policy views for the future, similar to such documents published also in the European Union, and hence not distortive. Finally, CISA submitted that the 13th FYP referred to in the Report only covers the period until 2020, meaning it was not relevant for the second part of the investigation period.

(29) The Commission disagreed. These arguments were already largely addressed in the provisional Regulation and the Commission therefore confirmed the conclusions from recitals (68) to (70) of the provisional Regulation. The Commission failed to see how, for example, referring to Chinese legislation in force can be out of touch with reality. Similarly, CISA claimed that the Commission omits factual circumstances, elements and conclusions which would contradict the purpose of the Report, without pointing out which specific factual circumstances or elements would put in question the existence of significant distortions in the sense of Article 2(6a) of the basic Regulation. Concerning the burden of proof, the Report as well as the other evidence put forward meant that the Commission had satisfied its burden of proof, and that neither CISA nor other interested parties had been able to rebut the evidence put forward. The Commission further underlined that the FYPs published by the GOC are not merely general guidance documents, but are of a legally binding nature. In this respect, the Commission referred to the detailed analysis of the plans in Chapter 4 of the Report, with a section specifically dedicated to the binding nature of plans in Section 4.3.1.

([4]) 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.

(30) With regard to the claim that 13th FYP was irrelevant for the second part of the investigation period (1 January – 30 June 2021), the Commission reiterated, as already stated in recital (69) of the provisional Regulation, that the 14th FYPs only started being published throughout 2021. As an example, the General 14th FYP was published on 12 March, the 14th FYP on Scrap Steel on 15 September and the 14th FYP on Developing Raw Materials on 21 December 2021. The Commission noted that during the period between the date of application of the 13th FYP and the publication of the 14th FYP, the provisions of the 13th FYP were still applicable. In any event, irrespective of when exactly individual 14th FYPs were published, the fact that the 13th FYP was applicable during the first half of the investigation period is already indicative of the existence of significant distortions within the meaning of Article 2(6a) of the basic Regulation. This claim was therefore dismissed.

(31) Upon final disclosure, the GOC re-submitted its claims concerning the Report, without adding any further elements to its argumentation. The Commission therefore noted that these claims were already addressed in recitals (68) to (70) of the provisional Regulation, as well as in recital (29) above.

(32) Similarly, CISA repeated its criticism of the Report following the final disclosure, restating its view that the Report fails to meet the standards of impartial and objective evidence. In addition, CISA raised again the issue of the 13th FYP, pointing out that, on the one hand, the plan should not be considered to be binding law but rather a general policy document, which exists also in the EU, and that, on the other hand, half of the IP falls outside of the period covered by the 13th FYP. In that connection, CISA invited the Commission to explain how the content of the 13th FYP can be considered as evidence of significant distortions after its application expired.

(33) The Commission disagreed. First of all, as already pointed out in recital (29) above, China operates a periodic five year planning cycle. In that cycle, individual planning documents for the following cycle are being prepared already in the course of the previous one while, at the same time, individual planning documents of the following cycle may be formally issued with some delay after the expiry of the corresponding planning documents of the previous cycle. The fact that the formal end date of the 13th FYP may fall into the middle of the IP or that the relevant 14th FYPs were published with a certain time gap following the end of the previous planning period cannot alter the nature of Chinese planning system in which the authorities and business operators always find themselves being part of a planning cycle. The Commission also disagreed with CISA's argument that the 13th FYP was a mere general policy document on public investment priorities. To start with, CISA did not bring any argument calling into question the Commission's analysis in Section 4.3.1. of the Report, as referred to in recital (29) above. Moreover, CISA's comparison of the Commission's 'New Industrial Strategy' with the 13th FYP is misplaced on a number of levels, such as the typology of the documents (a Commission communication to the European Parliament and other EU institutions compared to a document actually adopted by the Chinese highest legislative body) as well as their nature and substance (an explanatory document outlining policy priorities compare to a prescriptive guidance replete with industrial output targets and explicit implementation obligations for all subjects concerned).

(34) Consequently, the arguments brought by the GOC and CISA were rejected and the Commission's confirmed its conclusions in recitals (68) to (70) of the provisional Regulation.

Arguments concerning WTO compatibility of Article 2(6a) of the basic Regulation

(35) First, the GOC, as well as CISA, argued that constructing the normal value in accordance with Article 2(6a) of the basic Regulation is inconsistent with the WTO Anti-Dumping Agreement ('ADA'), in particular with Article 2.2. of the ADA which provides an exhaustive list of situations where the normal value can be constructed, the 'significant distortions' not being listed among such situations.

(36) Second, using data from an appropriate representative country is, according to the GOC and CISA, inconsistent with GATT Article VI.1(b) and Article 2.2.1.1. of the ADA which require using the cost of production in the country of origin when constructing the normal value. In CISA's view, the Commission ignored the finding of the Appellate Body in European Union – Anti-Dumping Measures on Biodiesel from Argentina ('DS473') that the permissible use of data from the source outside the exporting country '*does not mean that an investigating authority may simply substitute the cost from outside the country of origin for the cost of production in the country of origin*.' CISA further recalled that according to the Appellate Body in DS473, when relying on any out-of-country information to determine the '*cost of production in the country of origin*' under Article 2.2 of the ADA, an investigating authority has to ensure that

such information is used to arrive at the '*cost of production in the country of origin*' and this may require the investigation authority to adapt that information. However, according to CISA, no record has shown that the Commission has made efforts to adapt the data from the appropriate representative country to arrive at the cost of production in China. This appears to be in CISA's view inconsistent with the EU's obligation under Article 2.2 of the ADA.

(37) Third, the GOC and CISA claimed that the Commission's investigating practices under Article 2(6a) of the basic Regulation are inconsistent with WTO rules insofar as the Commission, in violation of Article 2.2.1.1. of the ADA, disregarded records of the Chinese producers without determining whether those records are in accordance with the generally accepted accounting principles in China and whether they reasonably reflect the costs associated with the production and sales. CISA claimed in this connection that the Commission's practice was already found WTO-inconsistent in DS473. The GOC further recalled that the Appellate Body in DS473 and the Panel Report in European Union – Cost Adjustment Methodologies II (Russia) ('DS494') asserted that according to Article 2.2.1.1 of the ADA, as long as the records kept by the exporter or producer under investigation correspond – within acceptable limits – in an accurate and reliable manner, to all the actual costs incurred by the particular producer or exporter for the product under consideration, they can be deemed to '*reasonably reflect the costs associated with the production and sale of the product under consideration*' and the investigating authority should use such records to determine the cost of production of the investigated producers.

(38) As to the first claim, CISA brought the identical argument already in its comments on the First Note and the Commission addressed it in detail in recital (66) of the provisional Regulation. The Commission therefore confirmed its conclusions in that recital.

(39) Concerning the second argument, it is to a large extent a reiteration of the claim already addressed in recitals (65) and (66) of the Provisional Regulation. In addition, the Commission noted that when applying Article 2(6a) of the basic Regulation, it is bound to use undistorted costs in an appropriate representative country to ensure that the applied costs are not affected by distortions and are based on readily available data. In the absence of any specific information by CISA which would substantiate further adjustments, the undistorted costs in the representative country based on the readily available data, were considered to fulfil the criteria of Article 2(6a) of the basic Regulation. Therefore, the Commission confirmed its findings in recital (66) of the provisional Regulation and rejected this claim.

(40) With respect to the third argument, other than reiterating the position which CISA communicated already in its comments on the First Note and claiming that the Commission allegedly repeats its legal mistakes established in DS473, the argument appears to be of the same nature as the one already addressed in recitals (66) and (67) of the provisional Regulation. The Commission therefore rejected the claim and confirmed its provisional findings.

(41) Upon final disclosure, the GOC re-submitted its claims concerning the compatibility of Article 2(6a) of the basic Regulation with WTO rules, as well as concerning the Commission's investigating practices under Article 2(6a) of the basic Regulation with respect to the use of records of the Chinese producers, without adding any further elements to its argumentation. The Commission therefore noted that these claims were already addressed in recitals (65) to (67) of the provisional Regulation, as well as in recitals (35) – (37) above. The Commission therefore rejected also these arguments and confirmed its provisional findings.

Other arguments concerning significant distortions

(42) The GOC submitted that the Commission should be consistent and fully examine whether there are so-called market distortions in the representative country. Readily accepting the representative country's data without such an evaluation represents 'double standards'. The GOC pointed out that under the EU law, the Commission is obliged to use undistorted prices to construct the normal value. Therefore, the Commission should, in the GOC's view, take the initiative to investigate and prove the existence or non-existence of distortions in the representative countries, rather than passively waiting for the parties involved in the case to submit evidence. The GOC further submitted that the Commission should examine whether there are market distortions in the EU domestic market, not least because there are allegedly many situations within the EU that should raise concerns of the potential of 'market distortions'.

(43) The GOC re-submitted these claims also following definite disclosure, reiterating its position that a government's necessary regulation of economic operation should not be regarded as market-distorting nor should it be considered a basis for artificially raising the dumping margin of imported products without assessing the impact of similar behaviours on production costs within the domestic market.

(44) CISA pointed out that according to Article 2(6a) of the basic Regulation, the assessment of the significant distortions should be done for each exporter separately, which was not done in the current investigation.

(45) Concerning the arguments by the GOC, the Commission recalled that, in accordance with Article 2(6a)(a) of the basic Regulation, it proceeds to construct the normal value on the basis of chosen data other than domestic prices and costs in the exporting country only where it establishes that such data is appropriate to reflect undistorted prices and costs. In this process, the Commission is bound to use only undistorted data. In that respect, far from waiting passively, the Commission does its own analysis and also invites interested parties to comment on the proposed sources for the determination of the normal value in the early stages of the investigation, namely via the notes on the undistorted sources it intends to use released early on in the proceeding. The Commission's ultimate decision as to which undistorted data should be used to calculate the normal value takes full account of all comments received by parties. As to the GOC's request for the Commission to evaluate possible distortions in the EU's internal market, the Commission failed to see the relevance of this point in the context of assessing the existence of significant distortions in accordance with Article 2(6a) of the basic Regulation.

(46) The argument by CISA was already discussed and rejected in recitals (71) and (72) of the provisional Regulation. The Commission noted that CISA appears to have chosen to read only the first sentence of recital (72) of the provisional Regulation. The Commission therefore referred to the second sentence of that recital and to the underlying analysis in Section 3.1.3 of the provisional Regulation. Absent any additional arguments by the interested parties, the Commission therefore definitively confirmed its findings in the aforementioned recitals of the provisional Regulation.

3.1.3. *Representative country*

(47) No comments were received from interested parties refuting the appropriateness of Brazil as a representative country and of CSN as a producer in the representative country. The conclusion of recital (87) of the provisional Regulation was therefore confirmed.

3.1.4. *Benchmarks used to establish the normal value*

(48) Following the publication of the provisional Regulation, CISA and Baosteel commented on some of the benchmark prices and claimed that other more representative benchmark prices should be used.

(49) Firstly, CISA and Baosteel questioned the use the Brazilian domestic steel prices to establish the benchmark prices for hot rolled steel and cold rolled steel. According to these parties, the Brazilian domestic steel prices were significantly higher than those in other major steel producing countries, such as Turkey and India. In their view, the Brazilian domestic steel prices were distorted during the investigation period, and therefore could not be considered as a representative benchmark.

(50) The Commission pointed out that Brazil was selected as an appropriate representative country in accordance with objective criteria established in Article 2(6a)(a) of the basic Regulation. The Commission considered that the Brazilian domestic hot rolled steel coils ('HRC') and cold rolled steel coils ('CRC') prices published by Metal Bulletin were appropriate in that regard.

(51) In particular, the Commission did not find any indication that that these domestic prices were distorted and inappropriate to use as benchmarks. The Commission did not consider that there were measures implemented in Brazil that could be considered as distorting the domestic prices of steel coils, to the extent that those should be disregarded.

(52) CISA and Baosteel pointed to the limited number of steel producers in Brazil and the consequent low level of competition. CISA and Baosteel indicated that according to a report of the US International Trade Commission (ITC) ([5]), a 'vast majority' of the cold rolled steel in Brazil was produced by three companies. CISA and Baosteel also pointed to some recent developments of the Brazil cold rolled steel industry summarized in the same report. These developments included changes in operations by the three Brazilian steel producers, such as halted production, closings and shutdowns, temporary idling and expansions during the period 2015 – 2021. In addition, gross production and gross consumption decreased in Brazil between 2018 and 2020. This situation was allegedly exacerbated by the depreciation of the Brazilian Real. The Commission noted, however, that all these allegations were of a general nature and did not demonstrate that the domestic prices were affected by distortions.

(53) In this respect, the Commission noted that Brazil has a significant production of steel products, it is in the top 10 world steel producing countries with an output of 36,2 million tons of crude steel and 34,8 million tons of steel products in 2021 ([6]). There are 31 steel plants in Brazil, run by 12 business groups ([7]). A market of three main competitors, as detailed in the ITC report, and several secondary players, cannot be considered as such as a non-competitive market, without specific evidence that this market is not functioning properly. Therefore, the allegation that the Brazilian prices were distorted due to a high concentration and limited competition cannot be accepted. In any event, even if the Brazilian market structure as alleged, would be considered a concentrated market, the Commission could not consider the purported level of concentration on the market in itself as a 'distortion' in the sense of Article 2(6a). There was no evidence that the domestic prices were a consequence of State direction or intervention with normal market forces. On the contrary, the evidence suggests a competitive market, and the recent developments of the Brazil cold rolled steel industry described in recital (52) did not contradict this finding. This renders the Brazilian steel market and its prices representative, and at least partly protected from the effect of currency fluctuations.

(54) CISA and Baosteel also mentioned the existence of import tariffs of 12 % on HRC and CRC as a further price distortion. The Commission considered that the mere existence of import tariffs in itself, could not lead to the conclusion that the domestic prices were distorted, and most countries apply some level of import tariffs. Moreover, as set out in recital (55), for most of the year Brazilian prices closely followed those of other emerging markets, and there was thus no evidence of structural or systemic distortions.

(55) CISA and Baosteel also referred to an alleged imbalance on the Brazilian flat steel market in 2020 which led to an increase in prices. However, this increase in prices was observed globally. According to the OECD ([8]), in January 2021, flat steel prices stood 47 % higher than one year earlier. Moreover, according to the price data submitted by CISA and Baosteel, Brazilian prices generally followed those in other developing countries' economies except for the last two months of the investigation period; yet in those two months prices rose similar to those in Europe. So price developments in Brazil did not appear de-coupled from global trends rendering those prices unrepresentative or distorted.

(56) Concerning the claim that Brazilian prices were significantly higher than those in other major steel producing countries, such as Turkey and India, the Commission noted that simple price differentials as such between different potential representative countries are not a sufficient justification to reject prices in the representative country. There are always bound to be some price differences and local variations between the several factors of production in the different potential representative countries. These objective price differences are not in themselves an indication of distortions in the chosen representative country. If this was the case, it would lead to using systematically the lowest values in all the potential representative countries. This would not be in line with the letter and rationale of the provisions in Article 2(6a) of the basic Regulation. Instead, the Commission considers it appropriate to use, to the extent possible (that is, absent distortions or abnormal situations), domestic prices in the same representative country chosen in order to ensure coherence, as the market conditions are similar for all the inputs in that country. Moreover, as noted in recital (55), Brazilian prices generally followed those of other

([5]) https://www.usitc.gov/investigations/701731/2021/cold_rolled_steel_flat_products_brazil_china_india/first_review_full.htm
([6]) Brazil Steel Institute (https://acobrasil.org.br/).
([7]) Ibid.
([8]) OECD, Steel market developments, Q2 2021, available at: https://www.oecd.org/industry/ind/steel-market-developments-Q2-2021.pdf

developing countries' economies. The rise in the last two months of the investigation period was not decoupleddevelopments-Q2-2021.pdf from the global trend of rising prices during that period, and the Commission noted that in any event, the price increase during that period did not have an appreciable impact on the dumping margin calculation. This claim was therefore rejected.

(57) Baosteel also contested the benchmark from the GTA used for Hot-Pressed Iron Block. Baosteel argued that CN code 7326 90 ('other articles of iron or steel wire') contains a large scope of products, most of which are more expensive than Hot-Pressed Iron Block.

(58) The Commission noted that GTA prices of 'other articles of iron or steel wire' falling under HS code 7326 90 were of a completely different range as compared to prices generally observed for iron blocks and scrap actually used for steelmaking at converter smelting stage (that is a factor of more than 30) and that the value linked to this code was thus not representative of the specific factor of production. Therefore, it accepted that the benchmark provisionally used was inappropriate. The Commission found that the closest resembling product to hot-pressed iron blocks used for steelmaking and for which a benchmark price was available was hot-briquetted iron (or 'HBI'). According to Metal Bulletin, the price of hot-briquetted iron including freight ([9]) was 2 464 CNY/tonne on average during the investigation period. The Commission therefore decided to definitively use this as a benchmark price.

(59) Thirdly, Baosteel contested the benchmark from GTA used for 'Aluminium Extrusions'.

(60) After analysing the product actually used by Baosteel it found that the raw material used in the converter and refining process was aluminium scrap rather than 'Aluminium Extrusions'. The Commission thus decided to replace the benchmark with the GTA price of aluminium scrap and waste falling under HS code for this raw material (7602 00). The undistorted benchmark price of aluminium scrap was determined at 15 132 CNY/tonne.

(61) Lastly, Baosteel contested the use of the GTA benchmark for Iron Ore Powder. According to Baosteel the vast majority of this raw material were imported from market economy countries (mostly from Australia and Brazil) and in USD. Consequently, Baosteel requested the Commission to use the actual import price reported by Baosteel instead of the benchmark price.

(62) In this respect, the Commission noted that Baosteel did not import directly, but via a related company established in Hong Kong and that it had not provided sufficient appropriate evidence allowing the Commission to positively conclude that the final purchase price of Baosteel was not affected by the relationship between the related companies and/or by the prevailing significant distortions in China as requested by Article 2(6a)(a), third indent, of the Basic Regulation. Thus, the claim was rejected.

(63) The Commission therefore used for its final determination of the normal value for Baosteel the benchmarks set out in recitals (93) to (102) of the provisional Regulation, with the exception of two raw materials, as explained above in recitals (58) and (60).

(64) On this basis, the Commission constructed the normal value per product type on an ex-works basis. The methodology of the calculation of the normal value was set out in recitals (103) to (109) of the provisional Regulation, which in the absence of any comments is herewith confirmed.

3.1.5. *Export price*

(65) The details of the calculation of the export price were set out in recital (110) and (111) of the provisional Regulation. In the absence of any comments with respect to this section, the Commission confirmed its provisional conclusions.

([9]) The price CFR Italian ports was used. It was the only CFR price available for this product on the Metal Bulletin database.

3.1.6. *Comparison*

(66) The details concerning the comparison of the normal value and the export price were set out in recitals (112) and (113) of the provisional Regulation. In the absence of any comments with respect to this section, the Commission confirmed its provisional conclusions.

3.1.7. *Dumping margins*

(67) In the absence of any claim concerning the methodology used for the dumping margin calculation, recital (114) of the provisional Regulation is hereby confirmed. As explained in recitals (116) and (117) of the provisional Regulation, for the cooperating companies that were not sampled, the Commission calculated the weighted average of the dumping margins of the two sampled exporting producers. For all other exporting producers in China, the Commission established the dumping margin on the basis of facts available, in accordance with Article 18 of the basic Regulation. As the level of cooperation in this case was low, the Commission decided that it was appropriate to establish the residual dumping margin for all other companies at the level of the highest dumping margin found for product types sold in representative quantities by the sampled cooperating exporting producer with the highest dumping margin.

(68) The definitive dumping margins expressed as a percentage of the cost, insurance and freight (CIF) Union frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin
Baoshan Iron & Steel Co., Ltd.	30,7 %
Handan Jintai Packing Material Co., Ltd.	53,9 %
Cooperating companies	34,6 %
All other companies	77,9 %

3.2. **Brazil**

(69) Following provisional disclosure, the Commission received written comments from the cooperating exporting producer, CSN, on the provisional dumping findings.

3.2.1. *Normal Value*

(70) The details of the calculation methodology of the normal value were set out in recitals (119) to (127) of the provisional Regulation. In the absence of any comments with respect to this section, the Commission confirmed its provisional conclusions.

3.2.2. *Export price*

(71) The details of the calculation of the export price were set out in recital (128) of the provisional Regulation. In the absence of any comments with respect to this section, the Commission confirmed its provisional conclusions.

3.2.3. *Comparison*

(72) The details concerning the comparison of the normal value and the export price were set out in recitals (129) and (130) of the provisional Regulation.

(73) After provisional disclosure, the exporting producer CSN claimed that in its questionnaire reply it had emphasized that quality issues should be considered by the Commission, that it had indicated such issues in its domestic and export sales data and that it had provided further demonstration in this sense during the RCCs. CSN therefore requested the Commission to consider in its dumping calculations the differences in quality, as such differences impact price comparability.

(74) The Commission considered that, although CSN had indeed provided information regarding quality differences of the product under investigation, it had not made a claim for an adjustment on this basis in its questionnaire reply, nor during the RCC. However, in light of the claim made after provisional disclosure, the Commission re-examined the information provided with regard to quality differences. Apart from the request to consider quality differences, no additional information or data was provided by CSN after provisional disclosure.

(75) A difference in quality of the product concerned, in this case first and second quality ECCS, is due to the physical characteristics of the product. Second quality ECCS has certain flaws or defects which might prevent the use of the ECCS in the application for which it was produced. As explained by CSN during the deficiency process and the RCC, such second quality ECCS is sold by CSN to third country customers in bulk via a small tender-like procedure, where the product is sold to the highest bidder.

(76) Article 2(10)(a) of the basic Regulation states the following: '*An adjustment shall be made for differences in the physical characteristics of the product concerned. The amount of the adjustment shall correspond to a reasonable estimate of the market value of the difference.*'

(77) The Commission considered that no reasonable estimate of the market value of the difference was provided by CSN. In reply to one of the Commission's questions during the deficiency process, CSN had mentioned that second quality ECCS is usually a certain percentage lower than first quality. However, when examining the data supplied by the company at product type level for both export and domestic sales, it was clear that no such general statement could be made with regard to the price difference.

(78) First, second quality was not always cheaper than first quality. The price differences between first and second quality during the investigation period ranged from a negative two digit percentage to a positive two digit percentage. This was true for the investigation period as a whole, while the differences were even larger when examined on a monthly basis.

(79) Second, the difference in price between the two qualities could differ from month to month. For example, for one specific product type the Commission noticed that the first quality product was indeed slightly more expensive than the second quality in one month, but it had been substantially cheaper than the second quality only a few months earlier.

(80) It was clear from the analysis that the price differences occurred on a monthly basis, where the price difference between first and second quality ECCS could be either positive or negative, depending on the month. For Union sales, this was most likely caused by the tender-like procedure for sales of second quality mentioned in recital (75), where the second quality price-setting did not depend on first quality prices, but rather on supply and demand at the time of a particular second quality tender. This was confirmed by statements made by CSN during the RCC.

(81) Since (i) the price differences between first and second quality were inconsistent and erratic, (ii) they did not reflect the overall price difference mentioned by CSN in their deficiency letter reply and (iii) CSN did not provide any new evidence substantiating their claim, the Commission considered that no reasonable market value of the difference as required by Article 2(10)(a) had been demonstrated or could be estimated. The Commission therefore rejected CSN's claim for an adjustment for quality differences.

3.2.4. *Dumping margins*

(82) In the absence of any accepted claim concerning the dumping margin calculation, recital (133) of the provisional Regulation is hereby confirmed.

(83) The definitive dumping margins expressed as a percentage of the cost, insurance and freight (CIF) Union frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin
Companhia Siderúrgica Nacional	66,8 %
All other companies	66,8 %

4. **INJURY**

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

(84) In recital (135) of the provisional Regulation, the Commission explained that as data relating to the injury assessment was primarily derived from the three sampled Union producers, two of which belong to the same group, all figures are given in an indexed form or as ranges to protect the confidentiality of the data provided.

(85) Following provisional disclosure, CISA claimed that the presentation of the economic indicators in the form of ranges, especially concerning Union consumption and including Eurostat data regarding foreign exporters with reference to Table 1 and Table 4 of the provisional Regulation, prevented it from being able to meaningfully comment on these indicators and requested the Commission to provide accurate data. CISA further argued that considering that there are four Union producers, which represent three independent Union producer groups, there is no danger of interested parties being able to reverse engineer information specific to Union producers.

(86) In this respect, as explained in recitals (31) and (135) of the provisional Regulation, data relating to the injury assessment was primarily derived from the three sampled Union producers, two of which belong to the same group. Therefore, all figures had to be provided in an indexed form or as ranges to protect the confidentiality of the data provided. In addition, although there are four Union producers representing three Union producer groups, two of the groups are related because ArcelorMittal has a stake in Acciaierie d'Italia ([10]). Therefore, the Commission considered that there is a need to protect the confidentiality of the data provided and thus use ranges.

(87) The Commission estimated that also data on Union consumption and the data regarding imports and market share contained in Tables 1 and 4 of the provisional Regulation needed to be presented in ranges because the absolute figures would render it possible to calculate the total sales and their market share of the Union producers and, therefore, divulge business confidential information specific to individual Union producers. Consequently, the claim was rejected.

(88) Therefore, recitals (134) to (139) as well as recitals (144) to (146) of the provisional Regulation are confirmed.

4.2. **Union consumption**

(89) In the absence of comments regarding Union consumption, recitals (137) to (139) of the provisional Regulation are confirmed.

4.3. **Imports from the countries concerned**

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

(90) In the absence of comments regarding the cumulative assessment of the effects of imports from the countries concerned recitals (140) to (143) of the provisional Regulation are confirmed.

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

(91) The GOB claimed that under the ADA, the basic parameters for carrying out an undercutting test are the prices of the dumped imports and the like product in the importing Member as a whole and that there is no basis in paragraphs 1 and 2 of Article 3 of the ADA nor in any other provision in the Agreement for excluding imports from companies not composing the producers/exporters sample, since they are considered to be dumped. In the same way, according to the GOB, for an undercutting analysis there is nothing in the ADA authorizing the exclusion of transactions between related parties or any other kind of sales not considered to be in the ordinary course of trade for the calculation of the price of a like product of the importing Member. The GOB referred to the decisions of the Panels in *EC – Fasteners (China)* and *Morocco – Definitive anti-dumping measures on exercise books (Tunisia)* in this respect.

([10]) https://corporate.arcelormittal.com/media/press-releases/arcelormittal-completes-investment-agreement-with-invitalia, accessed on 28 August 2022.

(92) Furthermore, the GOB claimed that the wording of recital (151 ([11])) of the provisional Regulation suggests that the undercutting analysis was performed on a country-by-country basis for China and Brazil although in accordance with recital (33) of the provisional Regulation, *'the Commission decided to cumulate the imports from the countries concerned for the purpose of the analysis described in the recitals above'*. The GOB's understanding is that once the imports have been cumulated for injury analysis, the same procedure should be followed regarding all examinations required by Article 3 of the ADA, including price effects, and referred to the decision of the Panel in *EC – Tube or Pipe Fittings* in this respect.

(93) The GOB requested the Commission to clarify whether its understanding of the investigation facts is correct and, if so, to perform the following adjustment in the calculations:

— to consider the price of all sales of the like product by the Union producers, including operations between related parties;

— to consider all the imports of the product under investigation from China and Brazil, regardless of producers/exporters sample made under Article 6.10 of the ADA; and

— to cumulate the imports from all the investigated origins (China and Brazil) when assessing the effect of the dumped imports on prices in the domestic market for like products.

(94) The Commission underlined that as stated in recitals (186) and (194) of the provisional Regulation, the Union industry's prices in the investigation period had been seriously suppressed by dumped imports from both Brazil and China, which led to increasing financial losses during the period considered. By contrast, the arguments by the GOB focus on the other standard of price comparison, that is, price undercutting (see recitals (91)-(92)). The Commission maintained therefore that prices on the Union market had been suppressed from 2018 to the end of the investigation period. Even if the arguments of the GOB were meant to refer to price suppression, there is no information on the file that the prices of non-sampled Union producers would be substantially different from the prices of the sampled producers, and hence that the conclusions on price suppression would be different. In fact, a comparison between import prices and Union prices in tables 5 and 6 of the provisional Regulation already shows that import prices were lower than Union prices (see recital (149) of the provisional Regulation). The Commission was thus, as part of its price effects analysis, taking into account the price effects of all imports on all sales of the Union industry. In any event, the Commission noted that the selection of a sample is provided in the basic Regulation, and the corresponding provisions of the WTO ADA when there is a large number of parties and therefore the investigation can be limited to a reasonable number of representative parties to reach representative findings. The case-law cited by the GOB did not support the assertion that representative findings with respect to the sampled companies could not be used to reach conclusions regarding the remainder of sales and imports. These claims by the GOB were therefore rejected.

(95) As for the claims concerning price undercutting and the set of the Union industry sales used for the undercutting calculations, the Commission confirmed that imports of ECCS of the sampled exporting producers were compared solely to Union industry sales of the same product type. In this respect, the Commission calculated undercutting for all imports from the countries concerned and conducted the price effects analysis together. The result was an undercutting ranging between 1,9 % and 21,8 %, that is a weighted average for both countries of 11,2 %.

(96) Following final disclosure, the GOB reiterated its claim that the Commission should have taken into account sales transactions between related parties. The GOB also argued that the sales of the non-sampled Union and exporting producers should have also been taken into account when carrying out undercutting and underselling calculations. The GOB referred to a Panel report where the Panel rejected the investigating authority's approach to construct the prices of the domestic industry for the purpose of price undercutting because the prices were found not to be profitable ([12]). The Commission failed to see how this report is relevant for the GOB's assertion that the sales transactions between related parties should have been also taken into account for its undercutting calculations. In any event, that Panel Report has not been adopted. Furthermore, as explained in recital (94) above, the Commission was entitled to apply sampling and to use the representative findings with respect to the sampled companies to reach conclusions regarding the remainder of sales and imports. Consequently, it rejected the claim. In any event, for analysing the price effects of the dumped imports on the Union industry, the Commission considered that the price

([11]) The GOB erroneously referred to recital (158) of the provisional Regulation.

([12]) WT/DS578/R, Morocco – Definitive Anti-Dumping Measures on School Exercise Books from Tunisia, Panel Report of 27 July 2021, para. 7.207.

suppression as established in recitals (186), (188), (193), (194) and (208) of the provisional Regulation is already a sufficient indicator. The findings of price suppression at the macro level was also confirmed by the findings of significant underselling with respect to each sampled exporting producer during the investigation period. As set out in recital (185), underselling margins ranged from 23,9 % to 53,2 %, that is a weighted average for both countries of 37,7 %. In addition, as indicated in table 9 of the provisional Regulation, in the investigation period the average sales price of the Union industry on the Union market was EUR/tonne [780-910], while the unit cost of production was EUR/tonne [840-980]. Consequently, due to the price suppression the Union industry sold at prices which did not even cover their cost of production let alone a normal profit margin. Therefore, the findings of price suppression of the dumped imports from the countries concerned were confirmed at definitive stage.

(97) The Commission noted that these unequivocal findings of significant price suppression are already alone legally sufficient to confirm that the dumped imports caused significant injury to the Union industry. In these circumstances there is no legal requirement to have a separate analysis and findings on price undercutting, because it is an alternative standard of price effects analysis under Article 3(3) of the basic Regulation. Consequently, despite the findings on price undercutting made in the provisional Regulation, given the above findings on price suppression, the analysis and findings of price undercutting are unnecessary for the outcome of the investigation. Furthermore, in its recent judgments the General Court confirmed the Commission's analysis of significant price suppression as a tool to assess the price effects under Article 3(3) of the basic Regulation ([13]). In view of this, the comments by the parties concerning price undercutting are also without object. Nevertheless, for the sake of completeness the Commission decided to address the claims from interested parties.

(98) Following final disclosure, the GOB took issue with the Commission's statement that the findings of price undercutting are unnecessary to the outcome of the investigation as, according to GOB, the injury margin was based on price undercutting. However, as explained in sections 6.1 and 6.2 below, and contrary to GOB's assertion, the injury margin was not based on the undercutting found but rather on the underselling margin established for each sampled exporting producer, except for Jintai for which the injury margin equalled the dumping margin found.

(99) With respect to the claim of the GOB that the Commission should consider the price of all sales of the like product in the Union market, including transactions between related parties, the Commission noted that in its investigations it collects all information, including sales prices between related parties. In this context, the Commission also asks Union producers to explain the transfer pricing policies of sales transactions with related parties. If these sales are affected by the relationship and their prices are not at arm's length, they are not taken into account in the undercutting analysis because the resulting calculations would be tainted by this relationship. By contrast, if the sales between related parties are at arm's length and reflect a market transaction, they may be fully taken into account in the undercutting calculation (provided there are no adjustments concerning level of trade). This approach is fully in line with the rules of the basic Regulation and the WTO jurisprudence quoted by the GOB. This claim was therefore dismissed.

(100) Baosteel raised a procedural and rights of defence issue with respect to the Commission's disclosure document where the Union industry's unit sales prices and target unit prices relied on for the purposes of these calculations are provided in broad ranges, and the same ranges irrespective of the difference in price between different PCNs, which prevented the company from providing meaningful comments. As the underselling amount is calculated as a difference between the exporter's CIF value and the Union industry's target price, without a meaningful disclosure of the latter, exporters would not be able to verify the accuracy of the Commission's underselling margin calculations. Jintai expressed similar concerns.

(101) In this respect, the Commission pointed out that because of the confidentiality concerns already explained in recital (86), it was necessary to present the data in ranges. Following the claim of Baosteel, the Commission revised the ranges taking into account the price differences between the different PCNs.

([13]) See judgments of the General Court of 14 September 2022, *Methanol Holdings (Trinidad) v Commission*, Case T-744/19 ECLI:EU:T:2022:558, para. 100 and of 14 September 2022, *Nevinnomysskiy Azot and NAK 'Azot' v Commission*, Case T-865/19, ECLI:EU:T:2022:559, paras 195, 261-268.

(102) Moreover, Baosteel requested the Commission to clarify whether it has compared the prices at the same level of trade. In particular, Baosteel claimed that since on the exporter's side the Commission has deducted the SG&A and profits of the related traders, it must do the same on the Union producer's side, if they do sell the product concerned via related traders on the Union market.

(103) Jintai also claimed that the Commission has failed to make a comparison of prices at the same level of trade when calculating the undercutting margin. According to Jintai, by carrying out, for the price comparison made in the context of the injury calculations, the assimilation between the prices charged by the sampled Union producers in their direct sales to independent buyers and the prices charged by the related selling entities of those producers to such buyers, the Commission took into account for that product a price which was inflated and therefore unfavourable to Jintai. In other words, by taking into account, in relation to the prices of the sampled Union producers, certain elements which concern a different level of trade from that which it used for the purposes of the comparison (ex-works), the Commission has not made a fair comparison in the calculation of Jintai's price undercutting margin. Jintai argued that if the correct and proper comparison is done at the same level of trade, Jintai's price undercutting margin would likely be far below 0 %. Therefore, Jintai requested the Commission to make a proper and fair level of trade comparison to establish Jintai's correct price 'over-cutting' margin and referred to the Court decisions *Jindal Saw and Jindal Saw Italia v Commission* ([14]) and *Giant Electric Vehicle Kunshan v Commission* ([15]) in this respect.

(104) The Commission first noted that the analysis on price undercutting is supplemented by its separate findings on price suppression as detailed in recitals (185), (186) and (194) of the provisional Regulation. These findings of significant price suppression are already legally sufficient to show the negative impact on the prices charged by the Union industry, as explained in recital (97). Nevertheless, as explained in that recital, the Commission addressed the arguments concerning undercutting for the sake of completeness.

(105) Regarding the claim of Baosteel about an adjustment for SG&A and profits of the related traders of the Union producers, the Commission confirmed that in its undercutting calculations it had not made such an adjustment. As indicated in recitals (150) and (151) of the provisional Regulation, the Commission made a number of other adjustments in order to ensure a fair comparison at the same level of trade. This resulted in bringing back the Union industry prices to ex-works level and the exporting producers' import prices to CIF Union frontier level ([16]). However, the Commission made a simulation by calculating undercutting both with and without the application of Article 2(9) of the basic Regulation by analogy to the sales of Baosteel, and established that the undercutting was significant for Baosteel in both cases, with a minimum level of 7,5 %. Consequently, contrary to Baosteel's claim, even when not deducting, under Article 2(9), the SG&A and profits of the related traders of Baosteel, a significant undercutting was found.

(106) Regarding Jintai, the Commission pointed out that since this exporting producer did not export the product under investigation via related sales entities, no adjustment to its export price through the application of Article 2(9) of the basic Regulation by analogy was made. In the present case, the Commission also did not consider it appropriate to adjust the sales of the Union producers. The Commission noted that in order to ensure symmetry in the price comparison, the respective prices should include as far as possible the same elements, and also reflect as far as possible the same level of trade. As for the former, the export price of Jintai reflected a direct sale from the Chinese legal entity to the independent customers in the Union. In the Union, one sampled producer had direct sales to final customers, and its price reflected the same elements as Jintai's price. The other two sampled Union producers were part of the Arcelor Mittal Group. Both of them did not have direct sales from the producing entities, but sold via related entities. The Commission found that the producing entities did not have their own sales structure, but had to rely on their related selling entities in order to carry out the sales. In other words, the costs associated with the production and sale of the product concerned were split between the producing entities that were bearing just the

([14]) Judgment of the General Court of 10 April 2019, *Jindal Saw and Jindal Saw Italia v Commission*, T-301/16, EU:T:2019:234, para. (184).

([15]) Judgment of the General Court of 27 April 2022, *Giant Electric Vehicle Kunshan v Commission*, T-242/19, EU:T:2022:259, paras (89) and (90).

([16]) Such as for customs duties and post importation costs, as well as adjustments for discounts and rebates.

manufacturing costs, and the related selling entities located in different Member States were bearing the sales and marketing costs. The production entity did not incur any selling expense, and the sales department of Arcelor Mittal was entirely contained in the separate legal sales entities. The SG&A and profit concerning the sales of Arcelor Mittal Group, were incurred by the related selling entities when selling to Union customers. In order to ensure a fair comparison, the Commission took into account the price of the selling entity to the Union customers, as this price reflected the same production and marketing costs reflected in the export price of Jintai, which conducted both production and sale through a single entity, just like the other sampled Union producer. Not taking the price of the Arcelor Mittal Group's relating selling entity would understate the actual price as it would not reflect the necessary selling costs of the entity to independent customers in the Union. The related selling entities of the Union industry, on the one hand, and Jintai, on the other hand, exercised similar sales functions because (1) they both need to find customers in the Union, (2) sign sales contracts and (3) ensure deliveries and payments of invoices, etc. Therefore, in line with the judgments in *Hansol* ([17]), *CRIA and CCCMC* ([18]), and *Giant Electric Vehicles* ([19]), this price comparison reflected the respective economic realities and corresponding roles played by the respective entities on both the export and EU side, and at a point where both entities compete on the Union market.

(107) Nevertheless, even assuming that granting Jintai's request (namely, that the Commission adjusted the Union industry's sales for the purposes of the undercutting calculation through the application of Article 2(9) of the basic Regulation by analogy) would show no undercutting as regards this exporting producer, this would not change the Commission's determination of undercutting as regards China and both countries concerned as a whole. Indeed, Jintai's exports to the Union represent only 6,3 % of the total exports to the Union and only 11,6 % of the exports within the sample. Thus, even if there is no undercutting as regards Jintai's exports, the findings of price undercutting would be confirmed on the basis of the other sampled exporting producer for China as well as for both countries concerned. Likewise, any finding as regards the level of undercutting of Jintai would not affect the Commission's findings with respect to price suppression, as already recalled in recitals (97) and (104). Indeed, Jintai's prices exhibited a high level of underselling (see recital (185)).

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

4.4.1. *General remarks*

(108) Following provisional disclosure, CISA inquired whether the data concerning macroeconomic indicators included data pertaining to Acciaierie d'Italia. The Commission replied by the affirmative.

(109) Therefore, recitals (153) to (157) of the provisional Regulation are confirmed.

4.4.2. *Macroeconomic indicators*

(110) Following provisional disclosure, CISA requested the Commission to confirm whether it has ensured that all producers, including Acciaierie d'Italia, have indeed been included in the relevant datasets concerning the macroeconomic indicators and pointed out that Acciaierie d'Italia alone accounts for [5-15] % of the total production and sales of the product concerned in the Union, which is above the negligible level.

(111) In this respect, the Commission confirmed that data relating to Acciaierie d'Italia have been considered in the macroeconomic indicators.

([17]) Judgment of the Court of Justice of 12 May 2022, *Commission v Hansol Paper*, C-260/20 P, ECLI:EU:C:2022:370, paras (95)-(114).

([18]) Judgment of the General Court of 4 May 2022, *China Rubber Industry Association (CRIA) and China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (CCCMC) v European Commission*, ECLI:EU:T:2022:266, paras (139)-(140).

([19]) See footnote 15 above.

4.4.2.1. Production, production capacity and capacity utilisation

(112) In the absence of comments regarding production, production capacity and capacity utilisation, recitals (158) to (160) of the provisional Regulation were confirmed.

4.4.2.2. Sales volume and market share

(113) In the absence of comments regarding sales volume and market share, recitals (161) and (162) of the provisional Regulation were confirmed.

4.4.2.3. Employment and productivity

(114) In the absence of comments regarding employment and productivity, recitals (163) and (164) of the provisional Regulation were confirmed.

4.4.2.4. Growth

(115) In the absence of comments regarding growth, recitals (165) to (167) of the provisional Regulation were confirmed.

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

(116) Following provisional disclosure, the GOB claimed that in its assessment of the magnitude of the margin of dumping, the Commission simply restated conclusions already reached under other examinations. For instance, the conclusion that the margins of dumping are above the *de minimis* threshold is already expressed in recital (141) of the provisional Regulation related to the assessment of imports cumulation and can be derived from the application of provisional measures itself. Moreover, the analysis of the volume and price of the dumped imports was made under Articles 3.1, 3.2 and 3.5 of the Anti-dumping Agreement and is expressed in recitals (144) – (152) of the provisional Regulation. Therefore, no specific analysis regarding the magnitude of the margin of dumping was performed. Therefore, the GOB requested the Commission to analyse this factor in a non-redundant manner in relation to other indicators contained in Article 3 of the Anti-dumping Agreement.

(117) In this respect, the Commission noted that consideration of the magnitude of the margin of dumping involves an examination of whether, having regard the volume and the price of the dumped imports, the impact on the Union industry cannot be considered negligible.

(118) The Commission recalled that all dumping margins were significantly above the *de minimis* level. The volume of imports from the countries concerned was significant in the period considered and the investigation period, while the prices of the dumped imports have exerted price undercutting and price suppression on the prices of Union industry. Therefore, given the volume and the price of the dumped imports, the impact of the actual margins of dumping cannot be considered negligible and was even substantial, as concluded by the Commission in recital (168) of the provisional Regulation.

(119) Therefore, recitals (168) and (169) of the provisional Regulation were confirmed.

4.4.3. *Microeconomic indicators*

4.4.3.1. Prices and factors affecting prices

(120) In the absence of comments regarding prices and factors affecting prices, recitals (170) to (172) of the provisional Regulation were confirmed.

4.4.3.2. Labour costs

(121) In the absence of comments regarding labour costs, recitals (173) and (174) of the provisional Regulation were confirmed.

4.4.3.3. Inventories

(122) In the absence of comments regarding inventories, recitals (175) and (176) of the provisional Regulation were confirmed.

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

(123) In the absence of comments regarding profitability, cash flow, investments, return on investments and ability to raise capital, recitals (177) to (182) of the provisional Regulation were confirmed.

4.4.4. *Conclusion on injury*

(124) Following provisional disclosure, CISA and Eviosys claimed that the Union industry did not suffer material injury and that any negative economic effects experienced by the Union industry were in fact due to other factors such as the impact of the COVID-19 pandemic. After final disclosure, CISA reiterated its claims.

(125) First, CISA and Eviosys pointed to the fact that the market share held by the Union industry in fact increased during the period considered in the context of a decreasing Union consumption.

(126) Second, concerning the macroeconomic indicators, CISA noted that none of them could possibly result in a finding of the Union industry being materially injured. It pointed out that the levels of production capacity and domestic sales have been constant, against a background of decreasing consumption, thus explaining the clear increase in market shares. Moreover, the Union industry has clearly been able to increase the number of persons employed, again pointing to the contrary of a materially injured status.

(127) Third, in relation to the microeconomic indicators, CISA noted that the Union sales price did not decline between the period considered and the investigation period, and in the intermediate duration had only slightly fluctuated. Eviosys also pointed out that the Union industry's sales prices remained overall stable and disagreed with the Commission's conclusion that the Union industry *'was not able to increase sales prices to cover the increased cost of production'* and that this was allegedly a result of *'price pressure by imports'*. In this respect, Eviosys claimed that the decreasing demand during the period considered combined with the effects of the COVID-19 pandemic prevented the Union industry from increasing its sales prices.

(128) Fourth, CISA pointed to the fluctuation in the profitability figures in spite of the fact that the market share of the Union industry had increased. In this regard, CISA questioned the Union industry's decision to continue significant investments, despite the fact that the Union consumption was clearly not increasing and requested the Commission to clarify the precise legal requirements under which the Union industry must make investments and to ensure their relevance in view of the product concerned. CISA also noted that the increased production costs have no link at all to exports from China, and as a result, this should be treated as a causality-breaking factor by the Commission.

(129) Furthermore, CISA claimed that in contrast to the profitability levels reported in the provisional Regulation, the relevant market outlooks are generally regarded as highly positive. CISA made reference to certain articles ([20]) and pointed out that the three sampled producers (two of which belong to the same group) are all explicitly referenced in these articles, indicating that Arcelor Mittal increased its sales by 44 % last year, and that ThyssenKrupp increased its quarter revenue by 39 % year-on-year in December 2021.

([20]) See *'ArcelorMittal earnings skyrocket, foresees supportive 2022 conditions'*, 10 February 2022, available at https://www.kallanish.com/en/news/steel/market-reports/article-details/arcelormittal-sees-2022-market-conditions-supportive-0222/; *'Thyssenkrupp cashes in on higher steel prices'*, 10 February 2022, available at https://eurometal.net/thyssenkrupp-cashes-in-on-higher-steel-prices/; *'EU mills lift HRC further amid cost escalation'* 10 March 2022, available at https://eurometal.net/eu-mills-lift-hrc-further-amid-cost-escalation/

(130) After final disclosure, CISA reiterated its claim that the Commission should assess the alleged high profitability achieved by Arcelor Mittal and ThyssenKrupp after the investigation period. Furthermore, CISA as well as CANPACK argued that the import prices from China and Brazil have increased significantly after the investigation period and that this should be taken into account by the Commission.

(131) The Commission disagreed with these claims. As stated in recital (183) of the provisional Regulation, economic indicators at both macro and micro level deteriorated during the period considered. Although the Union industry sales volume remained overall stable and it gained some market share in the period considered the financial situation of the Union industry deteriorated mainly due to the increased cost of production, which could not be covered by a corresponding increase of its sales prices. The significant price suppression exercised by the dumped imports led to losses as from 2019, which further increased in the investigation period. Although the number of employees increased during the period considered, this increase mainly occurred in 2019 and 2020. During the investigation period, the Union industry was laying off employees.

(132) As set out in recital (187) of the provisional Regulation, profitability, cash flow and return on investment deteriorated significantly during the period considered. This negatively affected the ability of the Union industry to self-finance operations, to make necessary investments and to raise capital, thus impeding its growth and even threatening its survival.

(133) As far as investments made to comply with legal requirements are concerned, the Commission pointed out that these investments relate to environmental and social obligations and are not linked to any production capacity increase.

(134) The market outlooks, price developments of imports as well as the alleged profitability of the Union producers achieved after the end of the investigation period referred to by CISA and CANPACK are irrelevant for the assessment of the injury suffered by the Union industry during the investigation period.

(135) Following final disclosure, CISA made a link between the increase in the number of employees and Commission's explanation that the investments made related to environmental and social standards, arguing that such investments would not require an increase in employees. It further requested the Commission to elaborate on the precise scope and amounts of the investment undertaken by the industry that were needed to comply with environmental and social obligations.

(136) The Commission did not make a link between the increase in employment and the investments made. Indeed, as pointed out in recital (131) above, employment increased mainly in 2019 and 2020, while it decreased by 8,9 % between 2020 and the investigation period. At the same time investments continued to increase during the investigation period. The Commission also pointed out that it was unable to disclose the precise scope and amount of investments made by the sampled companies since this is confidential information. However, as already indicated in recital (133) above, those investments were not linked to any production capacity increase but rather to adapting and/or replacing already existing capacities.

(137) Therefore, the Commission concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation. Consequently, the Commission rejected the claims of interested parties concerning the absence of material injury and confirmed recitals (183) to (188) of the provisional Regulation.

(138) The claims on other factors causing injury are addressed in Section 5 below.

5. **CAUSATION**

5.1. **Effects of the dumped imports**

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

(139) Following provisional disclosure, CISA argued that the levels of market shares held by the countries concerned, which never exceeded 18 %, and subsequently decreased in the investigation period, cannot be considered as excessively high.

(140) The Commission disagreed with this claim. As explained in recital (192) of the provisional Regulation, the market share of the imports from the countries concerned increased from 13,1 % in 2018 to 15,4 % in the investigation period. The Commission considered such a market share to be significant and, in light with the price levels established, able to have an impact on the Union industry within the meaning of Article 3(2) of the basic Regulation. Therefore, the Commission rejected the claim and confirmed recitals (190) to (192) of the provisional Regulation.

5.1.2. *Price of the dumped imports from the countries concerned and price effects*

(141) Following provisional disclosure, Eviosys claimed that there is no evidence of any price pressure by the imports from the countries concerned and that the prices of the Union producers do not seem to have followed Chinese or Brazilian prices, which suggests that they were unaffected by the latter.

(142) As explained in recital (193) of the provisional Regulation, the average import price of the imports from the countries concerned were significantly below the average sales prices of the Union industry in the Union market and these imports undercut the Union industry's prices on weighted average by 11,2 %. The significant import volumes at low prices depressed the Union industry's prices, which could not cover the costs of production, thereby incurring losses.

(143) Moreover, irrespective of whether the prices of the Union industry have followed or not the Chinese and Brazilian prices, it is clear that the imports from the countries concerned at low prices suppressed the Union industry prices and thus had a negative price effect. The existence of price suppression is sufficient in the context of the price effects analysis under Article 3(3) of the basic Regulation to conclude that there was a significant negative impact on the Union prices by the dumped import prices. Consequently, the claim was rejected and recital (193) of the provisional Regulation confirmed.

5.1.3. *Causal link between the dumped imports from the countries concerned and the material injury of the Union industry*

(144) Following provisional disclosure, Eviosys repeated its claim that any injury could not have been caused by the imports from the countries concerned and reiterated that there is very little competitive relationship between the products sold by the Union industry and the imports from the countries concerned because of factors such as lower quality level and non-suitability for certain uses, longer lead times and higher transport costs as well as limited customer support, which also explains the different prices and the fact that they are generally lower than the Union industry's sales prices.

(145) However, Eviosys failed to provide new evidence to substantiate its claims. Therefore, recitals (194) to (197) of the provisional Regulation are confirmed.

5.2. **Effects of other factors**

5.2.1. *Imports from third countries*

(146) Following provisional disclosure, the GOB observed that the non-injurious price calculated in the preliminary determination is EUR/tonne [850-990]. Considering that this value is higher than the import price of imports from non-investigated origins (EUR/tonne 822) and that the volume of imports from non-investigated origins is higher the one originating from Brazil and China, the Commission should recognize the implications in the assessment of the imports from non-investigated origins as a possible other injury factor. Thus, their injurious effects shall be separated and distinguished from the ones arising from the alleged dumped imports.

(147) As stated in recital (199) of the provisional Regulation, the volume of imports from other third countries and their market share decreased during the period considered by 23 % and 21 %, respectively, and their average import price remained close to the average sales price of the Union industry, and were significantly higher than the average import price of imports from the countries concerned. In that context, it was clear that any material injury suffered by the Union industry was being caused by imports from the product concerned, which were keeping price levels down. Although it cannot be excluded that the other import sources would, once duties on the imports of the product concerned have been imposed, be a cause of injury to the Union industry, they were clearly not a cause capable of attenuating the causal link between the dumped imports and the material injury observed during the investigation period.

(148) Furthermore, with respect to the average non-injurious price, this was calculated on the basis of a specific product mix based on the actual exports of the sampled exporting producers and compared with the landed price of the imports from those exporting producers. As such, it was not directly comparable to the average CIF import prices.

(149) Therefore, the claim was rejected and recitals (198) to (201) of the provisional Regulation are confirmed.

5.2.2. *The COVID-19 pandemic*

(150) Following provisional disclosure, CISA, Eviosys and CANPACK claimed that the COVID-19 pandemic and its economic consequences break the causal link between imports and the state of the Union industry. CISA argued that the COVID-19 pandemic is mostly a demand side-crisis and not one of increased imports injuring an industry, with the main result being the suspension of production and consequently a recession on the Union market.

(151) The GOB referred to recitals (203) to (205) of the provisional Regulation and argued that the Commission seemed to minimize the effects of the COVID-19 pandemic on the Union industry on the grounds that *'the deterioration of the situation of the Union industry had already started before the pandemic and continued after the production of the Union industry resumed in the IP'*. The GOB is of the opinion that this argument is not a sufficient reason for mitigating the effects of the COVID-19 pandemic, since the afore-mentioned pandemic may have had negative effects of the Union industry simultaneously with the alleged dumped imports.

(152) In this respect, the Commission referred to recital (203) of the provisional Regulation, where it has acknowledged that the COVID-19 pandemic had a negative impact on the Union industry, especially in 2020 when production sites of the Union industry had to close temporarily and that it is possible that the COVID-19 pandemic might have contributed to the injury suffered by the Union industry. However, the Commission insisted on the fact that the deterioration of the financial situation of the Union industry had already started before the pandemic and continued during the post-COVID-19 recovery period, including in the investigation period. Therefore, the negative impact of the COVID-19 pandemic could not be considered as the main cause of the injury suffered by the Union industry to the extent that it would have attenuated the causal link between such injury and the dumped imports from the countries concerned. Consequently, the Commission rejected these claims.

5.2.3. *The evolution of the cost of production*

(153) In the absence of comments regarding the evolution of the cost of production following provisional disclosure, recitals (206) to (209) of the provisional Regulation are confirmed.

5.2.4. *Export performance of the Union industry*

(154) Following provisional disclosure, CISA pointed out that the exports of the Union industry were significant, amounting to 22 % in the investigation period. It further referred to Table 14 of the provisional Regulation showing that the export volume of the Union industry dropped by 7 percentage points and that export prices dropped by 6 percentage points. CISA claimed that the negative development relating to export sales had significant impact on the overall Union industry's economic performance.

(155) CANPACK disagreed with the Commission's conclusion that export performance of the Union industry was not enough to attenuate the casual link as Table 14 in the provisional Regulation shows clearly that the sales price of Union producers to countries outside the Union was at a similar level as the prices of the ECCS originating in China. CANPACK considered that the argument of the Union producers that the reason for selling outside the Union was that the Union industry is not able to sell it within the Union market, while there was high demand of Union users for ECCS, was not convincing.

(156) The GOB estimated that given that the volume of exports of the Union industry is higher than the alleged dumped imports, the export performance could not be considered as a minor factor.

(157) Regarding the export performance of the Union industry, the export volume first increased in 2019 and 2020 before it decreased in the investigation period, while the average export prices decreased as from 2020. This evolution corresponded to a slight increase of the Union sales of the Union industry between 2020 and the investigation period. The slight decrease of the export performance of the Union industry therefore does not appear to have a strong impact on the overall economic performance of the Union industry, which deteriorated to a higher extent during the same period of time. Moreover, the negative profitability figures in Table 12 of the provisional Regulation are based only on EU sales, and are thus not the result of any potential export losses. Therefore, the Commission confirmed its conclusion in recital (213) of the provisional Regulation that although the decline in export performance could have contributed to the injury suffered by the Union industry, it is not enough to attenuate the causal link between the dumped imports from the countries concerned and the injury suffered by the Union industry considering the high share of Union sales compared to export sales. Consequently, the Commission rejected the claims of interested parties in this respect.

5.2.5. *Effect of yearly contracts*

(158) Following provisional disclosure, CANPACK disagreed with the argument that effect of long-term (yearly) contracts between the Union suppliers and their Union customers on the injury of Union industry found is limited and cannot attenuate the casual link. According to CANPACK, as indicated in recital (214) of the provisional Regulation, sales of the Union industry are based on yearly contracts that fix the quantities and prices for the following year, and give the Union producers minimal (if any) margin to increase sales prices in the context of increasing raw materials prices during the application of the yearly contract. Union producers base their offers on the estimated prices of raw materials and production costs for the next year, considering the risk of changes (in practice negotiations of the prices for the next year take place in Q4 of the previous year).

(159) In this respect, the Commission referred to recital (208) of the provisional Regulation, where it was noted that the Union industry was unable to increase its sales prices during the entire period considered, which covers more than 3 years. Since this pattern was observed during a long period of time, it could not be explained only by the increase of raw materials cost and the effect of the yearly contracts in terms of fixed prices.

(160) Therefore, the Commission rejected the claim and confirmed recitals (214) and (215) of the provisional Regulation.

5.2.6. *Consumption*

(161) Following provisional disclosure, CISA and Eviosys pointed to the consumption decrease as a relevant factor when considering causality. After final disclosure, CISA reiterated its claim arguing that the decrease in consumption could break the causal link found between the dumped imports and the injury found. However, they did not substantiate their claims. Therefore, these claims were rejected.

(162) The GOB disagreed with the conclusion of the Commission in recital (218) of the provisional Regulation that the contraction of the market demand by 3 % could not be considered as a cause of injury attenuating the causal link between the dumped imports and the injury found. According to the GOB, market decrease also has the ability to affect the domestic industry production volume and fixed costs and it should be analysed jointly with other factors resulting in the same effects.

(163) In this respect, the Commission concluded in recital (217) of the provisional Regulation that despite the contraction of the market by 3 %, Union sales figures remained constant, which indicated that the injury suffered by the Union industry was not caused by a loss of volumes due to falling demand, but rather by the price suppression exerted by the imports from the countries concerned. Therefore, the Commission rejected the claim and confirmed recitals (216) to (218) of the provisional Regulation.

5.3. **Conclusion on causation**

(164) The volume of imports from the countries concerned and their market share increased during the period considered, while their prices decreased. This coincided in time with the deterioration of the economic situation of the Union industry. Therefore, the Commission confirmed that there is a clear causal link between these imports and the injury of the Union industry.

(165) Following provisional disclosure, the GOB argued that the Commission did not properly separate and distinguish the effects of the export performance of the Union industry, the Union consumption decrease and the effects of the COVID-19 pandemic from the effects stemming from the dumped imports and made reference to the Appellate Body ruling in *US – Hot-Rolled Steel* (para. 226).

(166) The GOB requested the Commission to reassess these three factors, preferably on a cumulative basis, with regard to their consequences to the Union industry output and fixed costs and to separate and distinguish those effects from the ones arising from the alleged dumped imports.

(167) Eviosys claimed that the Union industry could not increase its sales prices during the period considered, although it faced increasing production cost, because of the decreasing demand and the COVID-19 pandemic. Eviosys considered that the Commission should assess more carefully the impact of other factors on the Union industry's economic situation.

(168) CANPACK also considered that the Commission has underestimated the impact of other factors. In particular, they disagreed that the impact of the COVID-19 pandemic and the lack of raw materials on the Union market was not sufficient to attenuate the causal link between the dumped imports from the countries concerned and the material injury suffered by the Union industry.

(169) After final disclosure, CISA also argued that the Commission did not sufficiently address the effects caused by the COVID-19 pandemic while the entire investigation period was set during the most economically significant impact of this pandemic. Furthermore, CISA claimed that the investments made by the sampled Union producers singlehandedly explained the decreased profitability and the resulting state of the domestic industry.

(170) In this respect, the Commission confirmed, as stated in recital (220) of the provisional Regulation, that it has distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports.

(171) As far as investments are concerned, the Commission observed that the company that had the highest amounts of investments had the best performance among the sampled companies. Therefore, there was no direct link between the profitability of the Union industry and the investments made during the investigation period. Rather, investments were necessary and legally required and, together with the full costs, should have been possible to be financed by reasonable profits in accordance with Article 7(2c) of the basic Regulation, in the absence of the dumped imports. Consequently, this claim was rejected.

(172) The Commission assessed the impact of other factors taking into account the comments of interested parties and concluded that those factors did not attenuate the causal link. Indeed, factors such as the COVD-19 pandemic or the yearly sales contracts with fixed prices for the entire year together with the decreasing demand of ECCS during the period considered, might have had an impact on the performance of the Union industry. However, these factors did not explain the price suppression suffered by the Union industry during the entire period considered and, in particular, during the investigation period.

(173) The deterioration of the economic situation of the Union industry started before the COVID-19 pandemic and the disruption of the raw material supply. Furthermore, in a normal competitive environment, the Union industry should be able to increase its sales prices following the increase of input materials cost; therefore, the effect of the yearly contracts could not explain the fact that the Union industry was unable to increase its sales prices for the entire period considered in order to remain profitable.

(174) Therefore, the Commission confirmed the conclusion in recitals (219) to (221) of the provisional Regulation.

6. **LEVEL OF MEASURES**

6.1. **Underselling margin calculation**

(175) Following provisional disclosure, CISA commented that, according to its understanding, the adjustment linked to future environmental costs did not take into account any existing and future compensations to the Union industry to offset increases in electricity prices. In this respect, the Commission confirmed that such compensations have not been taken into account in the calculation of the future environmental costs.

(176) Following provisional disclosure, CSN submitted that the additional future cost of EUR/tonne [10-20] mentioned in recital (228) of the provisional Regulation, which is added to the non-injurious price, was arbitrary, speculative and distorted the price comparability between Union and Brazilian sales. CSN underlined that within the EU-Mercosur Agreement, Brazil made strong commitments regarding sustainable development, in particular regarding multilateral labour standards and agreements, multilateral environmental agreements, and trade and climate change. According to CSN, the Commission is offering to Union producers a protection in excess of what is necessary to remove injurious dumping and requested the Commission not to add an additional future cost with respect to Brazil.

(177) The GOB argued before and after final disclosure that costs associated with compliance with other international agreements (such as the Paris Agreement and the ones signed under the auspices of the International Labour Organization) were included in the non-injurious price, although they do not reflect the effects of the dumped imports in any way. In addition, the GOB argued that the profit margin used for constructing the non-injurious price of 6 % was never achieved during the period of injury analysis, thus, by using a profit margin of 6 % for constructing the non-injurious price the Commission will more than offset the injurious effects of the alleged dumping imports, deviating from the purpose set out in paragraph 2 of Article VI of GATT 1994. Therefore, the GOB requested the Commission to remove the additional costs from the non-injurious price.

(178) In this respect, the Commission pointed out that future costs were taken into account under Article 7(2d) of the basic Regulation, irrespective of the situation and implementation of environmental and labour standards in a third country, and/or of bilateral and/or multilateral agreements to which the respective countries are parties. The Commission applied the basic Regulation, which focuses exclusively on the cost of production of the Union industry, including, inter alia, possible future costs resulting from Agreements and Conventions referred to in that provision. This provision does not require that these future costs reflect the effects of the dumped imports. The request to assess the implementation by Brazil of similar international agreements or the EU-Mercosur Agreement (which is yet to enter into force), is irrelevant in this context. Consequently, the Commission rejected the claim of the GOB.

(179) Therefore, the Commission confirmed recitals (228) to (232) of the provisional Regulation.

(180) For the purpose of establishing the underselling margin, in order to address the comments of Baosteel regarding possible asymmetry, the Commission used the constructed export price for Baosteel established pursuant to Article 2(9) of the basic Regulation, applied by analogy, and compared it with a target price of the Union industry which did not include the SG&A of the related sales entities of Arcelor Mittal. The target price thus established was used in the underselling calculations for all exporting producers. Consequently, no costs of the related selling entities of the Union producers were taken into account and, as a result, there was no longer any asymmetry. The approach of not taking into account costs of the related selling entities of the Union producers was recently confirmed by the General Court ([21]).

([21]) See judgment of the General Court of 14 September 2022, *Methanol Holdings (Trinidad) v Commission,* Case T-744/19, ECLI:EU:T:2022:558, para. 103.

(181) Following the same approach as in recital (234) of the provisional Regulation, the Commission then determined the underselling margin on the basis of a comparison of the weighted average import price of the sampled cooperating exporting producers in the countries concerned with the weighted average non-injurious price of the like product sold by the sampled Union producers in 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. For other cooperating companies in the PRC that were not sampled, the Commission used the weighted average margins of the two sampled exporting producers.

(182) As provided for in Article 9(4), third subparagraph, of the basic Regulation, and given that the Commission did not register imports during the period of pre-disclosure, it analysed the development of import volumes to establish if there had been a further substantial rise in imports subject to the investigation during the four weeks period of pre-disclosure described in recital (7), and therefore whether it was necessary to reflect the additional injury resulting from such an increase in the determination of the underselling margin.

(183) Based on data from the Surveillance 2 database, import volumes from the countries concerned during the period of pre-disclosure were 58 % higher than the average import volumes in the investigation period on a four-week basis. On that basis, the Commission concluded that there had been a substantial rise in imports subject to the investigation during the period of pre-disclosure.

(184) To reflect the additional injury caused by the increase of imports, the Commission decided to adjust the injury elimination level based on the rise in import volume, which is considered the relevant weighting factor based on the provisions of Article 9(4) of the basic Regulation. It therefore calculated a multiplying factor established by dividing the sum of the volume of imports during the four weeks of the pre-disclosure period of 10 109 tonnes and the 52 weeks of the investigation period by the import volume in the investigation period extrapolated to 56 weeks. The resulting figure of 4,1 % reflects the additional injury caused by the further increase of imports. The definitive injury margins were thus multiplied by this factor.

(185) Therefore, the definitive underselling margin for the cooperating exporting producers and all other companies is as follows:

Country	Company	Definitive dumping margin (%)	Definitive underselling margin (%)
The People's Republic of China	Baoshan Iron & Steel Co., Ltd.	30,7	33,9
	Handan Jintai Packing Material Co., Ltd.	53,9	23,9
	Other cooperating companies: GDH Zhongyue (Zhongshan) Tinplate Industry Co., Ltd.; Shougang Jingtang United Iron & Steel Co., Ltd.	34,6	32,2
	All other companies	77,9	77,9
Brazil	Companhia Siderúrgica Nacional	66,8	53,2
	All other companies	66,8	53,2

6.2. **Examination of the margin adequate to remove injury to the Union industry in relation to the PRC**

(186) Following provisional disclosure, Jintai commented regarding the application of Article 7(2a) of the basic Regulation. It contested the existence of a distortion (VAT rebate withdrawal), the causality between this distortion and the prices on the Chinese market, as well as the appropriateness of Brazilian prices to be used as international benchmarks.

(187) First, the existence of a distortion concerning the VAT rebate withdrawal was established for hot rolled coils or 'HRC' (CN code 7208 27) and this distortion occurred during the full investigation period. This information is available in the document 'Customs Import and Export Tariff of the People's Republic of China'. A VAT refund reduction or withdrawal is one of the situations specifically listed in Article 7(2a) of the basic Regulation giving rise to raw material distortions.

(188) Second, the Commission recalled that in accordance with Article 7(2a) of the basic Regulation, it is sufficient to establish the existence of a distortion (here the VAT rebate withdrawal) and that the domestic Chinese raw material prices are lower as compared to prices in representative international markets. This provision contains no legal obligation to prove the causality between this distortion and the lower prices on the Chinese market under the applicable legal framework.

(189) Third, a significant price difference was observed during the investigation period between the HRC purchase prices of Jintai and the HRC Brazil domestic ex-works prices as well as those from Turkey (domestic ex-works) (both sourced from Metal Bulletin). As explained at recital (242) of the provisional Regulation, those prices were significantly higher than Jintai's input prices, in the range of [10-30] % and [30-50] %.

(190) Last, the Commission analysed whether the Turkish and Brazilian prices were appropriate prices representative of international markets according to Article 7(2a) of the basic Regulation. The Commission noted at the outset that in the absence of specific rules on the actual prices to be used in the basic Regulation, the Commission enjoys a wide margin of discretion as per the relevant jurisprudence of the European Courts. On the substance of the claim, the Commission noted that a high number of benchmark prices were available from sources such as Metal Bulletin and that there was no more suitable average available, for instance there was no benchmark aggregated by regions that could be used for the purpose of the investigation. By comparing the Turkish and Brazilian HRC domestic prices with the other several potential international benchmarks available in Metal Bulletin, the Commission noted that some were higher and some lower, supporting the conclusion on the representativity of the Brazilian and Turkish prices as an appropriate international benchmark. The Commission also noted that the underlying quantities of HRC traded in Brazil were very significant.

(191) Jintai also claimed that the Brazilian domestic HRC prices were distorted by the COVID pandemic. For this purpose Jintai compared the HRC prices in Brazil and China. However, the Commission could not take into account this comparison as, as established in recital (75) of the provisional Regulation and confirmed in recital (46) above, Chinese prices of raw materials of the product concerned including HRC were subject to significant distortions. Moreover, as indicated above in recital (55), the increase in prices in Brazil domestic market was concomitant with a global increase of steel flat product prices. Finally, Jintai's HRC prices were also significantly lower than the Turkish ex-works domestic prices sourced from Metal Bulletin.

(192) Following final disclosure, Jintai made further comments regarding the application of Article 7(2a) of the basic Regulation. It claimed that the existence of distortion is a necessary condition but not a sufficient condition. The Government of China made a similar comment following final disclosure. The Commission noted that Article 7(2a) of the basic Regulation provides that a distortion exists if, due to a number of measures identified in that provision, a price of a raw material is '*significantly lower as compared to prices in representative international markets*' and that this raw material shall account for no less than 17 % of the costs of production. These two conditions means that the distortion identified is as a serious distortion very likely to impact the competitiveness of the Chinese industry,

while causing additional injury to the Union industry. In addition, the Commission recalled that in accordance with Article 7(2b) of the Basic Regulation, a further analysis was made before deciding on whether or not to apply Article 7(2) of the basic Regulation. In making the relevant analysis in this context, the Commission enjoys a wide margin of discretion ([22]). The application of Article 7(2a) of the basic Regulation is therefore not automatic as claimed by Jintai, but rather the outcome of a comprehensive analysis.

(193) In conclusion, the parties submitted no compelling evidence that the Brazilian and Turkish domestic ex-works prices were not representative of international markets. The Commission, therefore confirmed its provisional conclusion to consider these prices representative as an international benchmark within the meaning of Article 7(2a) of the basic Regulation.

(194) In view of the above, the claim of Jintai was rejected and recitals (235) to (243) of the provisional Regulation were confirmed

(195) In line with recital (239) of the provisional Regulation, the Commission further investigated whether other possible raw materials such as cold-rolled coils were subject to distortions within the meaning of Article 7(2a). The Commission found that none of the raw materials accounting for more than 17 % of the cost of production of the product concerned were subject to distortions within the meaning of Article 7(2a) during the investigation period. The Commission further confirmed that, as regards the other sampled exporting producer, Baosteel, who did not purchase HRC in China, the modulation of the lesser-duty rule became moot since the dumping margin was lower than the underselling margin.

(196) Following provisional disclosure, the GOC referred to Article 7(2a) of the basic Regulation, arguing that the purpose of evaluating whether raw materials are distorted is to examine whether a duty lower than the margin of dumping would be sufficient to remove injury. According to the GOC, the existence of raw materials distortions does not necessarily mean that the injury margin should be raised to the level of the dumping margin. The GOC claimed that the Commission had failed to make any assessment on whether the underselling margin was sufficient to eliminate injury and directly applied the dumping margin, which is contrary to the requirements and purpose of EU law.

(197) Jintai referred to recent investigations where the Commission set the injury margin at the level of underselling margin, and claimed that such margin would remove the injury suffered by the Union industry. Even if the Commission considered that the underselling margin for Jintai is not sufficient to remove the injury, the injury margin should not automatically be set at the level of the dumping margin but should be determined by another reasonable method. Therefore, Jintai requested the Commission to use the calculated underselling margin to determine the injury elimination level, or to calculate another reasonable injury margin for Jintai.

(198) In this respect, the Commission noted that Article 7(2a) of the basic Regulation provides that *'when examining whether a duty lower than the margin of dumping would be sufficient to remove injury, the Commission shall take into account whether there are distortions on raw materials with regard to the product concerned'* and Article 7(2b) stipulates that *'where the Commission, on the basis of all the information submitted, can clearly conclude that it is in the Union's interest to determine the amount of the provisional duties in accordance with paragraph 2a of this Article, paragraph 2 of this Article shall not apply'*. When the Commission establishes the existence of raw material distortions with regard to the product concerned and concludes that it is in the Union's interest to determine the amount of the provisional duties at the level of dumping, the Commission is not required or entitled to calculate *'another reasonable injury margin'* than the dumping margin as requested by Jintai. In all cases where it is concluded that the application of Article 7(2a) of the basic Regulation is warranted, like in the present case, given the additional injury suffered by the Union industry due to the existence of the raw material distortions in the export country, the level of duty considered necessary to remove such additional injury is deemed appropriate to be set by reference to the margin of dumping. Therefore, the Commission rejected the claims of the GOC and Jintai and confirmed the application of the margin to set the amount of the duty at the level of dumping with respect to Jintai, as set out in recital (277) of the provisional Regulation.

([22]) See Judgment of the General Court of 14 September 2022, *Nevinnomysskiy Azot and NAK 'Azot' v Commission, Case* T-865/19, ECLI:EU:T:2022:559, para. 377.

(199) Therefore, recitals (275) to (280) of the provisional Regulation are confirmed.

7. UNION INTEREST

7.1. Union interest under Article 7(2b) of the basic Regulation

(200) At provisional stage, the Commission concluded in accordance with Article 7(2a) of the basic Regulation that it was clearly in the Union interest to set the duty rate for Jintai at the level of dumping margin found because of the existence of raw material distortions.

7.1.1. *Spare capacities in the exporting country*

(201) In the absence of comments regarding spare capacities in the exporting country, recitals (245) and (246) of the provisional Regulation are confirmed.

7.1.2. *Competition for raw materials*

(202) The related question of the HRC Chinese domestic prices was addressed in recitals (186) to (194). In the absence of more specific comments regarding competition for raw materials, recitals (247) and (248) of the provisional Regulation are confirmed.

7.1.3. *Effect on supply chains for Union companies*

(203) Following provisional disclosure, Eviosys, Astir Vitogiannis and CANPACK submitted additional claims that the Union industry is not in a position to provide the necessary quantities of ECCS, forcing them to rely on Chinese imports. They also claimed that imports from other third countries are not an alternative because of the long and complex validation processes, the unavailability of a sufficient range of specifications, and the tariff quotas under the Union safeguard measures.

(204) The Commission carefully assessed all the evidence provided by Union users and Union industry in this respect.

(205) Although the three users rely to a very different extent on Chinese imports, the Commission observed that a very small proportion of ECCS from China has been purchased from Jintai and that most of the quantities were purchased from Baosteel which will not be affected by the application of the provisions of Article 7(2a) of the basic Regulation with respect to Jintai or from the two other non-sampled cooperating Chinese exporting producers..

(206) Therefore, the Commission considered that the application of the provisions of Article 7(2a) of the basic Regulation for Jintai, which will also affect the level of duties for the non-cooperating Chinese exporters, would not lead to serious value chain disruptions for the Union users. Indeed, they could supply ECCS from Baosteel and the other two cooperating but not sampled Chinese companies. All the more so considering that the definitive anti-dumping duty for Baosteel is revised significantly downwards as a result of the adjustments explained at recitals (57)-(60), which also caused a revision downwards of the duty for the non-sampled cooperating exporters. In addition, users could also import ECCS from other third countries that are not subject to anti-dumping measures.

7.1.4. *Conclusion on Union interest under Article 7(2b) of the basic Regulation*

(207) The Commission confirmed its conclusion in recitals (252) and (253) of the provisional Regulation that it is in the Union interest to determine the amount of provisional duties in relation to Jintai in accordance with Article 7(2a) of the basic Regulation.

7.2. Union interest under Article 21 of the basic Regulation

7.2.1. *Interest of the Union industry*

(208) In the absence of comments regarding the interest of the Union industry, recitals (255) and (256) of the provisional Regulation are confirmed.

7.2.2. *Interest of users, unrelated importers and traders*

(209) Following provisional disclosure, three users, namely Eviosys, CANPACK and Astir Vitogiannis, strongly disagreed with the Commission's preliminary conclusion on Union interest and reiterated their claims that there are several serious supply issues when users place orders with Union ECCS producers leading to a shortage on the Union market and that Union producers are exporting a significant portion of their produced ECCS.

(210) The three above-mentioned users submitted certain evidence about a refusal or impossibility of Union producers to supply the requested quantities of ECCS, as well as about problems of delivering fully and regularly on agreed volumes.

(211) Eviosys expressed concerns that the two Union producers, ThyssenKrupp and ArcelorMittal, are taking advantage of their market situation in which they are two key players with a very high combined market share and significant protection already, due to the safeguard measures in place, from imports by pursuing a policy of exorbitant price increases, especially since 2021.

(212) Eviosys, CANPACK and Astir Vitogiannis disagreed with the Commission's conclusion that the Union industry has sufficient production capacity to cover the demand on the Union market. According to them, even if it was true that the Union industry has sufficient capacity and might be theoretically capable to serve the Union market, the reality is that the Union producers are not willing to supply or cannot meet the volume demands of their customers while exporting above 20 % of their total output. According to Astir Vitogiannis, even the theoretical capacity of the Union industry, operating at 100 % utilisation rate, would not be sufficient to meet the entire Union demand. Any disruption or force majeure on the side of the Union producers, which has happened already many times in the past, severely affects their output of ECCS and, as a result, impacts the viability of the downstream industries that depend heavily on this concentrated supplier industry. CANPACK reiterated its claim after final disclosure.

(213) On the contrary, the Union industry insisted that it has sufficient capacity to cover the demand on the Union market and that it could re-direct export sales to the Union market to satisfy demand, which has already happened. The Union producers also claimed that the past supply issues were the result of price considerations rather than due to shortages of production and supply. The Union industry further stated that the demand in the Union is currently falling and that they would therefore have the possibility to supply additional quantities.

(214) CANPACK claimed, both after provisional and final disclosure, that the post-investigation period situation and market reality differ significantly from that which constituted the basis for Union ECCS producers to initiate the investigation and which existed during the investigation period. At the moment, the level of ECCS prices offered by Chinese producers is more comparable, or even higher than those on the Union market. CANPACK argued that the level of the measures imposed by the Commission are clearly not adequate as is the provisional duty levels were several times higher than the difference between prices of ECCS originating in the Union and China. In the opinion of CANPACK, the measures would lead to immense differentiation of the prices offered by the Union and Chinese ECCS producers, opening up the possibility of additional price increases by the Union producers, as well as a duopoly of the two major ECCS producers in the Union. Consequently, the imposition of the measurers would result in financial losses on the part of Union ECCS users importing ECCS from China. Moreover, account should be taken of the fact that because of the imposition of anti-dumping duties, Union ECCS users will have lower profit margins and will have to pass on to consumers (already struggling with high inflation) any price increase in ECCS or, in the worst case scenario, even abandon their activities.

(215) Astir Vitogiannis also requested the Commission to consider the post-investigation period developments in the assessment of the Union interest. It pointed out that although Article 6(1) of the basic Regulation provides that *'[I]nformation relating to a period subsequent to the investigation period shall, normally, not be taken into account'*, the settled case-law of the Union courts clearly maintained that Article 6(1) of the basis Regulation only relates to the assessment of dumping and injury and not to the assessment of Union interest. In this respect, Astir Vitogiannis referred to case *Kazchrome* where the General Court confirmed that *'Article 6(1) of the basic Regulation does not apply*

in the context of determining whether there is a Community interest as contemplated in Article 21(1) of the basic Regulation, which means that information relating to a period subsequent to the investigation period may be taken into account for those purposes' ([23]) and case *CPME* where the General Court held that the assessment of Union interest involves a *'forecast based on hypotheses regarding future developments, which includes an appraisal of complex economic situations'* ([24]). More specifically, Astir Vitogiannis claimed that during the post-investigation period, the Union industry had increased their selling prices almost 100 %, while the cost had increased to a much lesser extent, resulting in healthy and strong profit margins according to the latest financial results reported by the complainants themselves.

(216) The Commission carefully considered all of the above arguments, including those concerning the post-investigation period developments. With regard to the price levels after the investigation period, the Commission noted that prices indeed increased but had no evidence at its disposal showing that such higher prices were structural. Rather, to the contrary, concerning import prices from the countries concerned, the Commission established that after their initial peak in the post-investigation period and in particular in February, import prices started to go down, both immediately before and during the pre-disclosure period ([25]) despite the announcement of the upcoming imposition of provisional duties. With regard to the alleged supply issues on the Union market, when weighing the various interests, the Commission was not convinced that these were of a sufficient magnitude and extent to put into question the existence or the level of the measures. In this respect, the Commission took note of the statement of the Union industry that the balance of supply and demand is shifting in favour of the buyers of ECCS with prices already going down as shown by the price development of imports from the countries concerned. The Commission also noted the Union industry's readiness to re-direct export sales to the Union market to satisfy any demand surplus, as has already happened in the past. Moreover, in view of the expected slowdown of the economy for the rest of 2022 and 2023 ([26]), both prices and demand are not expected to increase further. The Commission also recalled that Article 21(1) of the basic Regulation specifies that 'the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition shall be given special considerations'. In this respect, the Commission noted that the users did not make a compelling case that the envisaged level of measures would affect their profitability and operation to such an appreciable extent as to outweigh the need to impose the measures in order to prevent the distortive effects and material injury caused to the Union industry by the dumped imports. Indeed, as explained in recital (265) of the provisional Regulation, based on the data of Eviosys, the sole user which provided a questionnaire reply, it appeared that it would be able to absorb a possible cost increase considering its current profitability from sales of products using ECCS and the share of imports from the countries concerned in its sourcing portfolio. This conclusion has not been put into question following the provisional disclosure. The Commission thus did not find that the post-investigation period developments meant that the imposition of measures would be inappropriate, having regard to all the various interests at stake.

(217) After final disclosure, Eurofer claimed that Astir has recently refused deliveries and did not enquire about possible future deliveries, while Eviosys' demand decreased in 2022. The Commission noted that most of the evidence was provided by the Union producers but was not confirmed by quotations of correspondence with the respective users. Consequently, the Commission was unable to verify the additional evidence provided, especially given its late submission in the course of the proceedings.

(218) Astir Vitogiannis, as well as CISA and CANPACK after final disclosure, also expressed concerns that the anti-dumping measures in the form and at the level imposed by the provisional Regulation disproportionately and unfairly protect and further reinforce the existing duopoly of Union producers to the extreme detriment of independent users and processors. It further claimed that the increase in costs for Union users will make them significantly less competitive compared to suppliers of ECCS-based products (metal packaging, crown corks) in third countries with no anti-dumping measures in force. Such measures will result in significant cost increases for

([23]) See, Case T-192/08, Transnational Company 'Kazchrome' and ENRC Marketing v Council, EU:T:2011:619, paras 221-225

([24]) See, Case T-422/13, Committee of Polyethylene Terephthalate (PET) Manufacturers in Europe (CPME) and Others v. Council, EU:T:2017:251, para. 144, referring to Case T-132/01, Euroalliages and Others v. Commission, EU:T:2003:189, para. 47.

([25]) Pre-disclosure took place on 25 April 2022.

([26]) European Commission, 'Summer 2022 Economic Forecast: Russia's war worsens the outlook', available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4511

users and processors at the expense of their profitability, since they are not able to fully absorb such cost increases themselves, as ECCS constitutes a major part in the cost of final products (food and beverage packaging elements, crown corks, etc.) Astir Vitogiannis claimed that passing on the cost increase in full further down the supply chain is simply unrealistic, and substantiated its claim with supporting evidence.

(219) Furthermore, Astir Vitogiannis is concerned that the anti-dumping measures at such high levels and their application already at the provisional stage are putting at a very high risk the Union users as far as the raw materials and orders already in transit are concerned, who face a situation where they will not to be able to import the material due to the extreme financial impact and collateral guarantees required at importation customs process. Therefore, Astir Vitogiannis requested the Commission to consider these particular circumstances and ensure that measures are taken in order to limit the fallout from provisional anti-dumping measures on goods that were in transit.

(220) As also explained above at recital (216), these users relied on relatively general statements and did not quantify and substantiate the impact of the measures on their profitability and viability. On the contrary, as explained in recital (265) of the provisional Regulation, it appeared that Eviosys, which is the only user that submitted a questionnaire reply and data about costs and profitability, would be able to absorb a possible cost increase. Therefore, the Commission rejected these claims.

(221) Eviosys also expressed its concerns about the simultaneous application of safeguard and anti-dumping measures, the combined effects of which on the same imported products would exacerbate any negative spill-overs of each measure on Union users and consumers. Eviosys referred to previous submissions where it has explained that the safeguard measures in place, in combination with other recent developments in the steel market in Europe and worldwide, have led to significant supply shortages of ECCS in the Union, affecting both Eviosys and the steel packaging industry as a whole. This does not only concern imports from China but also imports from other third countries – some of which are not even allocated a country-specific quota under the safeguard measures. Eviosys disagreed with the statement of the Commission in recital (250) of the provisional Regulation that *'Union users could source the product under investigation from other third countries'*. According to Eviosys, if anti-dumping duties are imposed on Chinese and Brazilian imports, such measures will further exacerbate the situation of limited supply in the Union market, especially given the level of the duties provisionally imposed by the Commission, which were extremely high.

(222) The Commission recalled that the anti-dumping measures only apply if and to the extent that the imports of the product concerned are not subject to the safeguard measures. According to Regulation (EU) 2019/1382 ([27]), there is no double remedy in place at the same time on the same product. That principle will also be reflected in the present Regulation, as set out in recitals (262) and (263) below. In any event the parties failed to substantiate how the combination of the measures would actually affect them in such a negative way to render the imposition of the anti-dumping measures against the Union interest. Therefore this argument was rejected.

(223) Both after provisional and final disclosure, CANPACK disagreed, with the Commission's finding that Union users of ECCS have an alternative in the form of ECCS supplies from third countries, considering that the safeguard tariff quotas granted to other third countries are lower than those granted to China, and are thus being consumed much faster. CANPACK claimed that, contrary to the Commission's statement in the provisional Regulation, the prices of ECCS originating in Japan and South Korea in the investigation period were not significantly higher but comparable to the average import price of imports from China (Japan EUR 776 (+ 8,5 % in comparison to Chinese prices); South Korea EUR 763 (+ 6,7 % in comparison to Chinese prices)), while the cost level in these two countries is higher than in China.

([27]) Commission Implementing Regulation (EU) 2019/1382 of 2 September 2019 amending certain Regulations imposing anti-dumping or anti-subsidy measures on certain steel products subject to safeguard measures (OJ L 227, 3.9.2019, p. 1).

(224) Astir Vitogiannis also pointed out that the very high anti-dumping duties will effectively ban the majority of imports from China and Brazil while there are no realistic and sufficient alternative supplies from other third countries and disagreed with the Commission's assertion that decreasing imports from other, non-investigated countries, is due to allegedly low and dumped import prices from Brazil and China, and that *'[I]n the absence of dumped imports from the countries concerned, imports from other third countries would increase, as the sales prices on the Union market would be more attractive'*. According to Astir Vitogiannis, the available Eurostat data shows that import prices from non-investigated countries (e.g. UK, South Korea) have increased significantly during the most recent past (i.e., following the end of the investigation period) despite the alleged low and dumped prices from China and Brazil, and equally despite the fact that import volumes from these non-investigated countries decreased at the same time. This further demonstrates that imports from other third countries cannot be relied upon as a valid and guaranteed backup for lost imports from Brazil and China. Finally, Astir Vitogiannis argued that imports from other third countries, require long qualification and validation process up to one year due to the nature of the business.

(225) The Commission disagreed. As already explained at recitals (250) of the provisional Regulation, the Commission found that the total volume of imports from other third countries decreased by 23 % over the period considered, while at the same time imports from the countries concerned increased. In the absence of dumped imports from the countries concerned, imports from other third countries would likely increase as the Union market would be more attractive and higher prices could be charged. Furthermore, according to information submitted by the Union industry, prices already started to fall in May 2022, which as explained in recital (216), was confirmed also by the prices of the imports from the countries concerned; the balance was shifting in favour of buyers, and that in any event they are ready to re-direct part of the export sales to supply buyers in the Union. Therefore this claim was rejected.

(226) Following provisional and final disclosure, CISA argued that the current inflationary pressure experienced in the Union economy, together with the pressure on supply chains and the limited availability of the product concerned and its raw materials due to geopolitical developments, as well as the severe global supply chain disruptions, should prompt the Commission to abandon the measures or at least to suspend them. In addition, CISA and the GOC argued that ECCS is primarily used to produce low-cost canned foods, which are relied on extensively by Union consumers at the lower income levels, who are already experiencing increased cost of living expenses due to inflation. CISA and the GOC also referred to the comments made by Eviosys with respect to supply shortages on the Union market and further pointed to the strong market power of the Union producers, to the detriment of the downstream industry's bargaining power. In this regard, they referred to Commission decision of 11 June 2019 prohibiting the Tata steel and ThyssenKrupp joint venture. ([28])

(227) The Commission disagreed. First, it noted that these assertions by CISA were generic and there no actual explanation or evidence of the impact of the factors mentioned on the users' situation was provided. Furthermore, as explained at recital (266) of the provisional Regulation concerning possible effect on food prices, Eviosys did not substantiate its claim to demonstrate that the increase of ECCS prices would result in an increase in food packaging prices, and ultimately in an increase of foodstuff prices, or that such potential increases would be in the same proportion as the increase of ECCS prices. Furthermore, ECCS is only used for food cans' endings, while tinplate, which is more expensive, is used for the cans' body. Therefore, any potential increase of ECCS prices alone is not likely to affect food packaging prices significantly. This conclusion has not been put into question following provisional disclosure. Therefore, the Commission rejected the claims of CISA and the GOC.

(228) In conclusion, the Commission noted that under Article 21(1) of the basic Regulation a determination as to whether the Union interest calls for an intervention shall be based on an appreciation of all the various interests taken as a whole. In such an examination, the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition shall be given special consideration.

([28]) Commission decision in Case M.8713 – Tata Steel/ThyssenKrupp/JV, 11 June 2019, para. 444.

(229) The Commission carefully assessed all claims and evidence in relation to Union interest and verified whether the protection offered the Union industry by measures would be clearly disproportionate when compared to the interest of users, as specified in this section.

(230) In view of the clear dumping and injury picture, the Commission concluded that definitive measures are warranted to enable the Union producers to return to sustainable profit levels. Specifically, the Commission concluded that the injury suffered by the Union industry and the need to protect it from dumped imports from the countries concerned prevailed over the issues raised by users. Nevertheless, in light of the issues described by the users and the market developments after the investigation period, as further explained in recital (244) below, the Commission considered the application of a form of duties that would be better suited to these developments.

(231) Therefore, the Commission confirmed the provisional conclusion that there are no sufficient compelling reasons of Union interest under Article 21 of the basic Regulation against the imposition of definitive measures on imports of the product concerned.

7.2.3. Conclusion on Union interest

(232) Considering the above-mentioned, the Commission confirmed the conclusion in recital (274) of the provisional Regulation that there were no compelling reasons that it was not in the Union interest to impose measures on imports of ECCS originating in the countries concerned.

8. **DEFINITIVE ANTI-DUMPING MEASURES**

8.1. **Definitive measures**

(233) In view of the conclusions reached with regard to dumping, injury, causation, level of measures and Union interest, and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports of the product concerned.

(234) Following the same approach explained in recital (278) of the provisional Regulation, the definitive duty for the other cooperating non-sampled companies in the PRC was based on the weighted average dumping margin as established for the two sampled companies in the PRC, which, contrary to the provisional stage, was lower than the weighted average injury margin.

(235) Following the clarifications and corrections made by the Commission on 16 September 2022, CISA commented that it was still unclear whether the fixed duty for other cooperating companies was based on the dumping margin or injury margin found for these companies. In addition, it reiterated its argument that the Commission did not make findings of raw materials for the cooperating non-sampled companies. As a result, Articles 7(2a) and 7(2b) of the basic Regulation should not apply to those companies.

(236) The Commission clarified that the fixed duty for the cooperating non-sampled companies was based on the weighted average dumping margin which was lower than the weighted average injury margin found. Furthermore, the Commission considered that the sample of the exporting producers in the PRC was representative and, as pointed out in recital (16) of the provisional Regulation, no party challenged or even commented on the selected sample. Consequently, the findings for the sampled companies, including regarding Articles 7(2a) and 7(2b) of the basic Regulation for Jintai, were also considered representative for the non-sampled cooperating companies. Hence, the Commission considered it appropriate to take into account those findings when calculating the weighted average injury and dumping margins of the cooperating non-sampled companies on the basis of the two sampled companies. It therefore rejected the claim.

(237) As explained in recitals (279) and (280) of the provisional Regulation, given the low level of cooperation from producers in the PRC and the fact that the duty level for Jintai was based on the dumping margin found in accordance with Article 7(2a) of the basic Regulation, the level of the countrywide duty level was based on the highest dumping margins found per product types sold in representative quantities by Jintai. The Commission did not need to calculate the underselling or the injury margins as regards non-cooperating companies because of the findings of raw materials distortions under Article 7(2a).

(238) Regarding Brazil, cooperation was high and as a result, the residual duty was set at the same level as the one applicable to Companhia Siderúrgica Nacional.

(239) At provisional stage, the Commission imposed *ad valorem* duties. Following provisional disclosure, CSN, Eviosys, Baosteel and the Greek Ministry of Foreign Affairs requested the Commission to consider the application of a minimum import price ('MIP') instead of *ad valorem* duties. CSN claimed that a MIP would allow the Union producers to recover from the effects of alleged injurious dumping while preventing any adverse effect of undue price increases after the investigation period which could have a significant negative impact on the users' business. A MIP would also accommodate the concerns of users as they fear a shortage of the product concerned and would prevent serious disturbances in the supply of the Union market.

(240) The Commission assessed these claims and considered that a MIP was not an appropriate form of duties as it tends to set the price at a fixed levels and thus has the potential to interfere on the market in a more forceful way. This could be particularly problematic in the case at hand where the market is characterised by a small number of Union producers. In addition, a MIP is often not an appropriate form of duty for markets that are subject to volatility (e.g. raw material prices volatility), which is the case for steel products. Therefore, the Commission rejected these requests.

(241) After final disclosure, Eviosys and Baosteel reiterated their request for considering the application of a MIP. This request was supported by CANPACK. In addition, Eviosys proposed that a MIP, combined with an *ad valorem* duty that becomes applicable when the MIP is not respected, should be applicable for the first two years of the application of the measures after which a fixed duty would automatically replace the MIP. Eviosys justified its request on the basis of exceptional circumstances regarding the availability of supplies of the product concerned by the Union producers which it considered will be solved within the next two years. Furthermore, it referred to several previous Regulations ([29]) where the Commission changed the duties to a MIP in order to safeguard the interests of the users and prevent shortages of supply. In addition, it made reference to previous investigations where the duration of the anti-dumping measures was limited to two years due to exceptional market circumstances ([30]).

(242) After final disclosure, Eurofer supported the Commission's findings that a MIP would not be an appropriate anti-dumping duty in the investigation at hand because of the sharp recent increase in costs of production for ECCS, which impacts the sales price of ECCS. A MIP would therefore not bring adequate relief to the industry. Moreover, this case was substantially different from previous investigations where a MIP was applied, and MIPs are easy to circumvent or absorb.

(243) The Commission observed that no new information or evidence was submitted by Eviosys or Baosteel in support of their reiterated requests for imposing a MIP. Therefore, the findings made in recital (240) above remained valid. In addition, no evidence was provided by Eviosys in support of its claim that a MIP would be more appropriate than the fixed duty as proposed by the Commission to address the alleged temporary shortage of supply. In addition, the alleged temporary shortage of supply was questioned, given the submissions by the Union industry that it will continue selling sufficient quantities of the product concerned. Finally, even if the alleged shortage of supply would indeed materialise, nothing on the file indicated that the two years' period of imposing a MIP would be the

([29]) Among others, those investigations concerned imports of grain oriented flat-rolled products of silicon-electrical steel from China, Russia, Korea, Japan and USA, hot-rolled flat products from Brazil, Iran, Russia and Ukraine, melamine from China and solar glass from China. For a complete list see pp 4-5 of Eviosys submission dated 13 September 2022.

([30]) Idem, see pp. 6-7.

appropriate and proportionate tool for addressing it. As far as the previous Regulations referred to by Eviosys regarding the imposition of a MIP are concerned, the Commission recalled that the assessment of whether the imposition of a MIP is appropriate is carried out on a case-by-case basis and depend on the particular circumstances of each case. In the case at hand, for the reasons set out in recital (240) above, namely that the MIP only offers a basic level of protection which is not sufficient in this case in view of the clear findings of dumping and injury, and the current difficult and volatile market conditions, it was considered that a MIP would not be a suitable type of anti-dumping measure. Regarding the references to previous Regulations where the overall duration of the respective anti-dumping measures was limited to two years, the Commission failed to see their relevance as they concerned only the overall duration of the measures and not their change in form after several years of application as proposed by Eviosys. In addition, as pointed out by Eviosys itself, in each of those Regulations the reasoning to limit the duration of the measures was very specific to the factual circumstances of that particular investigation and differed substantially among each other. Consequently, the Commission considered that the quoted Regulations concerned different situations than in the case at hand. In view of the above considerations, the Commission rejected these requests.

(244) With regard to the form of measures, in view of the volatility of the ECCS prices after the end of the investigation period, which almost doubled, the Commission considered the application of a fixed duty per tonne instead of *ad valorem* duties. A fixed or specific duty would allow the protection of the Union industry from injurious dumped imports from the countries concerned, while being less prohibitive compared to an *ad valorem* duty in case of an increase of prices, as its weight is significantly reduced in such a case.

(245) The fixed duty will be based on the respective non-injurious or non-dumped price during the investigation period.

(246) Should the import prices from the countries concerned change significantly and should this change be of lasting nature and result in the anti-dumping measures become less effective, the Commission reminds the parties that Article 11(3) of the basic Regulation would allow the Commission to take these lasting changes into account to possibly adapt the measures according to the new circumstances, including by changing their form.

(247) Following final disclosure, Eurofer took issue with the proposed fixed duty arguing that developments in the post investigation period justified the application of an *ad valorem* duty. In particular, it claimed that gas and electricity prices in the Union have increased dramatically and are expected to increase further in the near future. Moreover, energy prices in Brazil and the PRC are not following the same upward trend which would allow the imports from those countries to enter at low prices into the Union. Consequently, Eurofer argued that given the persistent high ECCS price level, *ad valorem* duties are necessary to ensure adequate protection of the Union industry. Finally, given that the ECCS price level will not experience any other highly unusual peaks, there is no risk that *ad valorem* duties would be too prohibitive.

(248) The Commission acknowledged that energy prices have indeed increased. However, no claim was made and no evidence was provided that the ECCS producers would be unable to increase their prices and to pass on their increased overall costs to the users and how a fixed rather than an *ad valorem* duty would be different in this respect. Similarly, no evidence was provided that the fixed duties calculated on the respective non-dumped or non-injurious price found during the investigation period would prevent the Union industry from recovering from the injury suffered during the investigation period. At the same time, as acknowledged by Eurofer, even though prices may have reached their peak in the period February to May 2022 and they have declined since that peak, prices remained, also after this period, well above the price levels of the investigation period. In these circumstances the Commission confirmed its conclusions in recital (244) above that the fixed duty will ensure protection of the Union industry from injurious dumped imports from the countries concerned, whereas at the same time the concerns of users with regard to the high prices were addressed to the extent possible. In any event, as indicated in recital (246) above, should prices from the countries concerned change significantly and should this change be of lasting nature and result in the anti-dumping measures become less effective, the level and/or the form of the measures can be revisited.

(249) Following final disclosure, the Brazilian exporting producer CNS offered a price undertaking on 13 September 2022. Since that offer was received well after the deadline set by Article 8 of the basic Regulation, the Commission rejected the offer on the grounds that it had been submitted out of time. The Commission informed all interested parties of this through a note to the file.

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

Country	Company	Dumping margin (%)	Injury margin (%)	Definitive anti-dumping duty (%)	Definitive anti-dumping duty (EUR/tonne)
The People's Republic of China	Baoshan Iron & Steel Co., Ltd.	30,7	33,9	30,7	239,82
	Handan Jintai Packing Material Co., Ltd.	53,9	53,9	53,9	428,37
	Other cooperating companies: GDH Zhongyue (Zhongshan) Tinplate Industry Co.,Ltd. Shougang Jingtang United Iron & Steel Co., Ltd.	34,6	37,6	34,6	271,01
	All other companies	77,9	77,9	77,9	607,98
Brazil	Companhia Siderúrgica Nacional	66,8	53,2	53,2	348,39
	All other companies	66,8	53,2	53,2	348,39

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

(252) 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 ([31]). 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 regulation about the change of name will be published in the *Official Journal of the European Union*.

(253) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the proper 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) of this Regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.

([31]) European Commission, Directorate-General for Trade, Directorate G, Wetstraat 170 Rue de la Loi, 1040 Brussels, Belgium. Email: TRADE-Defence-Complaints@ec.europa.eu

(254) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this Regulation, the customs authorities of Member States should carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the rate of duty is justified, in compliance with customs law.

(255) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume, in particular after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances, an anti-circumvention investigation may be initiated, provided that the conditions for doing so are met. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.

(256) 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 also to the producers which did not have exports to the Union during the investigation period.

8.2. **Definitive collection of the provisional duties**

(257) In view of the dumping margins found and given the level of the injury caused to the Union industry, the amounts secured by way of provisional anti-dumping duties imposed by the provisional Regulation, should be definitively collected up to the levels established under the present Regulation.

9. **CLAIMS FOR SUSPENSION**

(258) Following provisional disclosure, Astir Vitogiannis, the Greek Ministry of Foreign Affairs, Baosteel and CISA claimed that the measures should be suspended according to Article 14(4) of the basic Regulation. Following final disclosure, the same claims were made by CSN and CISA. CISA also referred to public calls of VDMA, the German and European Mechanical Engineering Industry Association, and of Orgalim, the Union's representative association of EU technology industries, both of which called on the EU to suspend trade remedies duties on steel products due to the military aggression by the Russian Federation against Ukraine. However, none of the articles referred to concerned particularly ECCS or the situation of the market for that particular niche product.

(259) Baosteel did not explain further why a suspension was necessary. CISA and CSN referred to the post-investigation period price increases, the pressure on supply chains and the limited availability of ECCS and its raw materials due to recent geopolitical developments.

(260) Astir Vitogiannis argued that there is limited availability of ECCS and that injury will not resume as the Union industry is allegedly no longer injured based on the overall positive results of the two Union producers. The Greek Ministry of Foreign Affairs only referred to the unprecedented and temporary changes on the market in terms of very high prices in post-investigation period.

(261) In response, the Commission recalled its findings already set out in the context of the Union interest assessment. In particular, as noted in recitals (216) and (225), prices had started to fall. In addition, and in view of the expected slowdown of the economy for the rest of 2022 and 2023, prices and demand are not expected to increase further. In light of the findings of the extent of the injurious dumping caused by the imports from the countries concerned during the investigation period, there was also no evidence that market conditions had temporarily changed to the extent that the immediate resumption of imports from the countries concerned would mean that the Union industry would be unlikely to suffer injury for the duration of nine months. On that basis, the Commission decided that it was not appropriate to further consider the claims about suspending the measures at this time.

10. **FINAL PROVISION**

(262) By Commission Implementing Regulation (EU) 2019/159 ([32]), the Commission imposed a safeguard measure with respect to certain steel products for a period of three years. By Commission Implementing Regulation (EU) 2021/1029 ([33]), the safeguard measure was prolonged until 30 June 2024. The product concerned is one of the product categories covered by the safeguard measure. Consequently, once the tariff quotas established under the safeguard measure are exceeded, the above-quota tariff duty and the anti-dumping duty would become payable on the same imports. As such cumulation of anti-dumping measures with safeguard measures may lead to an effect on trade greater than desirable, the Commission decided to prevent the concurrent application of the anti-dumping duty with the above-quota tariff duty for the product concerned for the duration of the imposition of the safeguard duty.

(263) This means that where the above-quota tariff duty referred to in Article 1(6) of Implementing Regulation (EU) 2019/159 becomes applicable to the product concerned and exceeds the level of the anti-dumping duty pursuant to this Regulation, only the above-quota tariff duty referred to in Article 1(6) of Implementing Regulation (EU) 2019/159 shall be collected. During the period of concurrent application of the safeguard and anti-dumping duty, the collection of the duties imposed pursuant to this Regulation shall be suspended. Where the above-quota tariff duty referred to in Article 1(6) of Implementing Regulation (EU) 2019/159 becomes applicable to the product concerned and is set at a level lower than the level of the anti-dumping duty in this Regulation, the above-quota tariff duty referred to in Article 1(6) of Implementing Regulation (EU) 2019/159 shall be collected in addition to the difference between that duty and the higher of the level of the anti-dumping duty pursuant to this Regulation. The part of the amount of anti-dumping duty not collected shall be suspended.

(264) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 ([34]), when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.

(265) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of flat-rolled products of iron or non-alloy steel, plated or coated with chromium oxides or with chromium and chromium oxides, also designated as electrolytic chromium coated steel products, currently falling under CN codes 7210 50 00 and 7212 50 20 and originating in the People's Republic of China and Brazil.

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

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

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

([34]) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

Country	Company	Definitive anti-dumping duty (EUR/tonne)	TARIC additional code
The People's Republic of China	Baoshan Iron & Steel Co., Ltd.	239,82	C039
	Handan Jintai Packing Material Co., Ltd.	428,37	C862
	Other cooperating companies: GDH Zhongyue (Zhongshan) Tinplate Industry Co., Ltd. Shougang Jingtang United Iron & Steel Co., Ltd.	271,01	C137
	All other companies	607,98	C999
Brazil	Companhia Siderúrgica Nacional	348,39	C212
	All other companies	348,39	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 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 [country concerned]. 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. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 131(2) of Commission Implementing Regulation (EU) 2015/2447 ([35]) the amount of anti-dumping duty, calculated on the basis of the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

Article 2

The amounts secured by way of the provisional anti-dumping duty under Implementing Regulation (EU) 2022/802 imposing a provisional anti-dumping duty on imports of electrolytic chromium coated steel products originating in the People's Republic of China and Brazil shall be definitively collected. The amounts secured in excess of the definitive rates of the anti-dumping duty shall be released.

Article 3

Article 1(2) may be amended to add new exporting producers from the People's Republic of China and make them subject to the appropriate weighted average anti-dumping duty rate for cooperating companies not included in the sample. A new exporting producer shall provide evidence that:

(a) it did not export the goods described in Article 1(1) during the period of investigation (1 July 2020 to 30 June 2021);

(b) it is not related to an exporter or producer subject to the measures imposed by this Regulation; and

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

(c) it has either actually exported the product concerned or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the period of investigation.

Article 4

1. Where the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 becomes applicable to electrolytic chromium coated steel products, referred to in Article 1(1), the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 shall be collected in addition to the difference between that duty and the higher of the equivalent ad valorem level of the anti-dumping duty set out in Article 1(2).

2. The part of the amount of anti-dumping duties not collected pursuant to paragraph 1 shall be suspended.

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

Article 5

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

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

Done at Brussels, 15 November 2022.

For the Commission
The President
Ursula VON DER LEYEN