COMMISSION IMPLEMENTING REGULATION (EU) 2023/1122

of 7 June 2023

imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ([1]) ('the basic Regulation'), and in particular Article 11(2) thereof,

Whereas:

1. PROCEDURE

1.1. Previous investigations and measures in force

(1) By Commission Implementing Regulation (EU) 2017/649 ([2]), the European Commission ('the Commission') imposed definitive anti-dumping duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel, originating in People's Republic of China ('the PRC' or 'the country concerned' or 'China') ('the original measures'). The investigation that led to the imposition of the original measures will hereinafter be referred to as 'the original investigation'. The anti-dumping duties currently in force are ranging between 0 % and 31,3 % ([3]). The duty rates were established based on the injury margin in accordance with the lesser duty rule, as provided for in Article 9(4) of the basic Regulation.

1.2. Request for an expiry review

(2) Following the publication of a notice of impending expiry ([4]) the Commission received a request for a review pursuant to Article 11(2) of the basic Regulation.

(3) The request for review ('the request') was submitted on 4 January 2022 by EUROFER, the European Steel Association ('the applicant'), on behalf of the Union industry of certain hot-rolled flat products of iron, non-alloy or other alloy steel in the sense of Article 5(4) of the basic Regulation. The request for review was based on the grounds that the expiry of the measures would be likely to result in recurrence of dumping and recurrence of injury to the Union industry.

(4) China Iron and Steel Association ('CISA') claimed that EUROFER exercised excessive confidentiality in the review request, to the extent that interested parties were not able to comment on it meaningfully and that the request therefore should have been rejected. According to CISA, the deliberate use of excessive confidentiality prevented them from gaining any reasonable understanding of the situation during the period of investigation. In particular with reference to the cost template of Union producers, CISA argued that the WTO Anti-dumping Agreement ('ADA'), in particular Article 6.5.1 thereof, as well as the basic Regulation, in particular Article 19 thereof, contain a similar wording with regard to interested parties' obligation to disclose non-confidential information.

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

([2]) Commission Implementing Regulation (EU) 2017/649 of 5 April 2017 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 92, 6.4.2017, p. 68).

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

([4]) OJ C 277, 12.7.2021, p. 3.

(5) Article 19 of the basic Regulation allows for the safeguarding of confidential information in circumstances where disclosure would be of significant competitive advantage to a competitor or would have a significant adverse effect upon the person providing the information or upon a person from whom that person has acquired the information. The information provided in the limited annexes to the request falls under these categories. In particular, with regard to the Union producers' specific consumption ratios of the factors of production ('FOPs') needed to produce the product under review provided in the expiry review request, the Commission observed that this data contains business secret information and is not liable to summary. The consumption ratios of the FOPs were used by the applicant to construct the normal value. At the same time, the non-confidential version of the expiry review request contained sufficient evidence regarding the FOPs actually used for the construction of the normal value. Similarly, in the course of the investigation, cooperating exporting producers are not required to disclose or summarise certain confidential information such as the actual recipe for their product types containing the consumption ratios of the FOPs. The Commission thus considered that the version open for inspection by interested parties of the request contained all the essential evidence, and that the information provided in the non-confidential version of the complaint was sufficient for interested parties to exercise their rights of defence. Therefore, the claim was rejected.

1.3. **Initiation of an expiry review**

(6) Having determined, after consulting the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of an expiry review, the Commission initiated, on 5 April 2022, an expiry review with regard to imports into the Union of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the PRC on the basis of Article 11(2) of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ([5]) ('the Notice of Initiation').

(7) CISA claimed that the Union industry profitability levels as reported in the request should have prompted the Commission to reject the request, and that the request did not demonstrate that the expiry of measures could reasonably lead to the continuation of injury. According to CISA, the state of the Union industry is not as fragile as EUROFER claimed. It argued that not a single injury indicator during the entire period considered has declined to a level below the consumption decline index and that the Union industry, to some extent, had been able to recover during the time it enjoyed the protection of the measures in place. Finally, CISA also noted that imposing measures would be against the Union interest because of the impact of EU sanctions, as well as inter-related supply chain disruptions and the post COVID-19 recovery.

(8) The Commission recalled that the request was based on the grounds of a likelihood of recurrence of injury and not a continuation of injury. Thus, the profitability figures indicated in the review request did not preclude the initiation of a review investigation, which is forward looking. In any event, profitability is only one of many indicators used to analyse the economic situation of the Union industry. Contrary to CISA's view, the Commission's analysis of the request showed that the applicant had provided sufficient evidence at initiation stage pointing to a likelihood of recurrence of injury should the anti-dumping measures applicable to imports from the PRC be allowed to lapse. In this regard the Commission recalled that there is no legal obligation to consider the Union interest when assessing the merits of an expiry review request. Hence, the initiation of the review investigation was warranted.

1.4. **Review investigation period and period considered**

(9) The investigation of continuation or recurrence of dumping covered the period from 1 January 2021 to 31 December 2021 ('review investigation period'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2018 to the end of the review investigation period ('the period considered').

1.5. **Interested parties**

(10) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. The Commission specifically informed the applicant, all known Union producers, the known producers in the People's Republic of China and the authorities of the People's Republic of China as well as known importers, users and traders about the initiation of the expiry review and invited them to participate.

([5]) OJ C 150, 5.4.2022, p. 3.

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

1.6. **Sampling**

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

1.6.1. ***Sampling of Union producers***

(13) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of the largest volume of production of the like product in the Union during the review investigation period that could reasonably be investigated within the time available. This sample consisted of three Union producers. The sampled Union producers accounted for around 29 % of the estimated total production in the Union during the review investigation period. In accordance with Article 17(2) of the basic Regulation, the Commission invited interested parties to comment on the provisional sample. No comments were received, and the Commission confirmed the provisionally selected sample. The sample is representative of the Union industry.

(14) Although no comments were provided during the sample selection procedure, CISA argued in a later submission that the level of representativeness was low, especially compared to the sample selected in the original investigation, which accounted for 45 % of Union production. CISA invited the Commission to consider in detail whether the low figure does not affect the level of representativeness of the domestic industry.

(15) The Commission recalled first that differences in the sample between the original investigation and the expiry review investigation do not invalidate the representativity of the sample. Second, the Commission noted that CISA did not put forward any substantive elements, other than a comparison with the sample in the original investigation, showing that the sample was unrepresentative. Given that the sample was selected pursuant to Article 17 of the basic Regulation, on the basis of production volumes of the like product in the Union during the review investigation period, as well as geographical representativity, and was limited to a number of Union producers which can reasonably be investigated within the time available, the Commission re-affirmed that the sample was considered representative.

1.6.2. ***Sampling of importers***

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

(17) No unrelated importer, however, came forward and provided the requested information.

1.6.3. ***Sampling of exporting producers in the People's Republic of China***

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

(19) At initiation, the Commission made available a copy of the questionnaires in the file for inspection by interested parties and on DG TRADE's website ([6]).

(20) No Chinese producers provided the requested information and/or agreed to be included in the sample. The Commission informed the Mission of the People's Republic of China to the European Union about its intention to apply facts available in accordance with Article 18 of the basic Regulation. No comments were received.

([6]) https://trade.ec.europa.eu/tdi/case_details.cfm?id=2594

(21) Therefore, since there was no cooperation from the exporting producers from the PRC, the findings with regard to the imports from the PRC were made on the basis of the facts available pursuant to Article 18 of the basic Regulation, in particular using trade statistics on imports and exports (Eurostat, the Global Trade Atlas ('GTA') ([7]) and the expiry review request).

(22) The Commission sent a questionnaire concerning the existence of significant distortions in the People's Republic of China within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of the People's Republic of China ('GOC') ([8]). No reply was received. Consequently, the Commission informed the Mission of the PRC to the European Union about its intention to apply facts available in accordance with Article 18 of the basic Regulation. No comments were received.

1.7. **Replies and verification**

(23) Questionnaire replies were received from the sampled Union producers.

(24) The Commission sought and verified all the information deemed necessary for the determination of likelihood of continuation or recurrence of dumping and injury and of the Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

— Union producers

— Arcelor Mittal Poland (Dąbrowa Górnicza, Poland)

— Tata Steel Ijmuiden (IJmuiden, The Netherlands)

— ThyssenKrupp Steel Europe AG (Duisburg, Germany) and its related company ThyssenKrupp Material Processing (Krefeld, Germany).

1.8. **Disclosure**

(25) On 4 April 2023, the Commission disclosed the essential facts and considerations on the basis of which it intended to maintain the anti-dumping duties in force. All parties were granted a period within which they could make comments on the disclosure.

(26) The comments made by interested parties were considered by the Commission and taken into account, where appropriate. The parties who so requested were granted a hearing. CISA requested and was granted a hearing with the Commission services on 12 April 2023.

2. **PRODUCT UNDER REVIEW, PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. **Product under review**

(27) The product subject to this review is certain flat-rolled products of iron, non-alloy steel or other alloy steel, whether or not in coils (including 'cut-to-length' and 'narrow strip' products), not further worked than hot-rolled, not clad, plated or coated ('HRF' or 'product under review').

The following products are not covered by this review:

(i) products of stainless steel and grain-oriented silicon electrical steel,

(ii) products of tool steel and high-speed steel,

(iii) products, not in coils, without patterns in relief, of a thickness exceeding 10 mm and of a width of 600 mm or more, and

([7]) https://www.gtis.com/gta

([8]) The term 'GOC' is used in this Regulation in a broad sense, including the State Council, as well as all Ministries, Departments, Agencies and Administrations at central, regional or local level.

(iv) products, not in coils, without patterns in relief, of a thickness of 4,75 mm or more but not exceeding 10 mm and of a width of 2 050 mm or more.

The product under review is currently falling under CN codes 7208 10 00, 7208 25 00, 7208 26 00, 7208 27 00, 7208 36 00, 7208 37 00, 7208 38 00, 7208 39 00, 7208 40 00, 7208 52 10, 7208 52 99, 7208 53 10, 7208 53 90, 7208 54 00, 7211 13 00, 7211 14 00, 7211 19 00, ex 7225 19 10 (TARIC code 7225 19 10 90), 7225 30 90, ex 7225 40 60 (TARIC code 7225 40 60 90), 7225 40 90, ex 7226 19 10 (TARIC codes 7226 19 10 91, 7226 19 10 95), 7226 91 91 and 7226 91 99. The CN and TARIC codes are given for information only, without prejudice to a subsequent change in the tariff classification.

(28) Hot-rolled flat steel products are produced through hot rolling. This is a metal forming process in which hot metal is passed through one or more pairs of hot rolls to reduce the thickness and to make the thickness uniform, whereby the temperature of the metal is above its recrystallization temperature. They can be delivered in various forms; in coils (oiled or not oiled, pickled or not pickled), in cut lengths (sheet) or in narrow strips.

There are two main uses of the hot-rolled flat steel products. First, they are the primary material for the production of various value-added downstream steel products, starting with cold-rolled flat and coated steel products. Second, they are used as an industrial input purchased by end users for a variety of applications, including in construction (production of steel tubes), shipbuilding, gas containers, cars, pressure vessels and energy pipelines.

2.2. **Product concerned**

(29) Product concerned by this investigation is the product under review originating in the People's Republic of China.

2.3. **Like product**

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

— the product concerned, exported to the Union;

— the product under review produced and sold on the domestic market of the People's Republic of China; and

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

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

3. **DUMPING**

3.1. **Preliminary remarks**

(32) During the review investigation period, imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel from the PRC continued albeit at lower levels than in the investigation period of the original investigation (i.e. from 1 January 2015 and 31 December 2015). According to Eurostat data, imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel from the PRC accounted for less than 0,1 % of the Union market in the review investigation period compared to 4,32 % ([9]) market share during the investigation period of the original investigation. In absolute terms, China exported about 28 743 tonnes to the Union during the review investigation period, which is a significant decrease compared to about 1 519 304 tonnes ([10]) that it exported to the Union during the investigation period of the original investigation.

([9]) Recital 76, Commission Implementing Regulation (EU) 2016/1778 of 6 October 2016 imposing a provisional anti-dumping duty on imports of certain hot-rolled flat steel products originating in the People's Republic of China (OJ L 272, 7.10.2016, p. 33).

([10]) See previous footnote.

(33) As mentioned in recital (20), none of the exporters/producers from the PRC cooperated in the investigation. Therefore, the Commission informed the authorities of the PRC that due to the absence of cooperation, the Commission might apply Article 18 of the basic Regulation concerning the findings with regard to the PRC. The Commission did not receive any comments or requests for an intervention of the Hearing Officer in this regard.

(34) Consequently, in accordance with Article 18 of the basic Regulation, the findings in relation to the likelihood of continuation or recurrence of dumping with regard to the PRC were based on facts available, in particular the information contained in the request for the expiry review and in the submissions by the interested parties, combined with other sources of information, such as trade statistics on imports and exports (Eurostat, the GTA ([11])).

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

(35) Given the sufficient evidence available at the initiation of the investigation tending to show, with regard to the PRC, the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission initiated the investigation on the basis of Article 2(6a) of the basic Regulation.

(36) In order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions, the Commission sent a questionnaire to the GOC. In addition, in point 5.3.2 of the Notice of Initiation, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the *Official Journal of the European Union*. No questionnaire reply was received from the GOC and no submission on the application of Article 2(6a) of the basic Regulation was received within the deadline. Subsequently, the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in the PRC.

(37) In point 5.3.2 of the Notice of Initiation, the Commission also specified that, in view of the evidence available, it had provisionally selected Mexico as an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks. The Commission further stated that it would examine other possibly appropriate countries in accordance with the criteria set out in first indent of Article 2(6a) of the basic Regulation.

(38) On 29 August 2022, the Commission informed the interested parties, by means of a Factors of Production (FOP) Note of the relevant sources it intended to use for the determination of the normal value, with Mexico as the representative country. In the FOP Note the Commission provided a list of all factors of production such as raw materials, labour and energy used in the production of certain hot-rolled flat products of iron, non-alloy or other alloy steel. It also informed the interested parties that it would establish selling, general and administrative costs ('SG&A') and profits based on available information for the company Ternium S.A., a producer in the representative country.

(39) CISA came forward with their comments on 16 September 2022. CISA argued that the GTA import data do not reflect domestic prices but the import ones, which are usually affected by many factors such as the quantity of imports of a particular product, the availability of such product and the distance between the exporting and importing countries. The Commission acknowledged that GTA import data indeed reflects import prices. However, nothing on the file suggested that those prices did not reflect domestic prices in the representative country, or that the quality or quantity of the import data used would render it unfit for constructing the normal value in accordance with Article 2(6a)(a) of the basic Regulation. Consequently, the claim was rejected.

([11]) https://www.gtis.com/gta/

(40) In addition to that, CISA questioned whether the use of weighted average unit price would be able to reflect a meaningful unit cost of raw materials such as ferroalloys, as there were significant differences in unit price depending on the grade of raw materials and/or country of origin. As the producers in the PRC chose not to cooperate with the investigation, the Commission was unable to single out the grade of ferroalloys used by them specifically in the manufacturing of HRF. Therefore, an import price in the representative country was determined as a weighted average import unit price of all grades from all third countries, excluding the PRC and countries which are not members of the WTO, listed in Annex I of Regulation (EU) 2015/755 of the European Parliament and the Council ([12]).

(41) Furthermore, CISA raised an issue of the accuracy of the CIF duty paid unit price of each factor since the GTA import data reported by Mexico is at FOB level rather than at CIF level. In the context of an expiry review the Commission is not obliged to calculate a precise dumping margin but rather to establish whether there is likelihood of either continuation or recurrence of dumping. Given that, as explained in recital (118) below, the findings that the price difference between the normal value and the export price to the rest of the world was above 100 %, even if using another conversion coefficient based on the actual origin of the goods imported, would not have changed the conclusions reached by the Commission. Therefore, the claim was rejected.

3.3. **Normal value**

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

(43) However, according to Article 2(6a)(a) of the basic Regulation, *'in case it is determined […] that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions within the meaning of point (b), the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks'*, and *'shall include an undistorted and reasonable amount of administrative, selling and general costs and for profits'* (*'administrative, selling and general costs'* is referred hereinafter as 'SG&A').

(44) As further explained below, the Commission concluded in the present investigation that, based on the evidence available, and in view of the lack of cooperation of the GOC and the producers, the application of Article 2(6a) of the basic Regulation was appropriate.

3.4. **Existence of significant distortions**

(45) In recent investigations concerning the steel sector in the PRC ([13]), the Commission found that significant distortions in the sense of Article 2(6a)(b) of the basic Regulation were present.

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

([13]) Commission Implementing Regulation (EU) 2022/2068 of 26 October 2022 imposing a definitive anti-dumping duty on imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 277, 27.10.2022, p. 149); Commission Implementing Regulation (EU) 2022/191 of 16 February 2022 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China (OJ L 36, 17.2.2022, p. 1); Commission Implementing Regulation (EU) 2022/95 of 24 January 2022 imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel, originating in the People's Republic of China, as extended to imports of certain tube and pipe fittings, of iron or steel consigned from Taiwan, Indonesia, Sri Lanka and the Philippines, whether declared as originating in these countries or not, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 16, 25.1.2022, p. 36); Commission Implementing Regulation (EU) 2021/2239 of 15 December 2021 imposing a definitive anti-dumping duty on imports of certain utility scale steel wind towers originating in the People's Republic of China (OJ L 450, 16.12.2021, p. 59); Commission Implementing Regulation (EU) 2021/635 of 16 April 2021 imposing a definitive anti-dumping duty on imports of certain welded pipes and tubes of iron or non-alloyed steel originating in Belarus, the People's Republic of China and Russia following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 132, 19.4.2021, p. 145).

(46) In those investigations, the Commission found that there is substantial government intervention in the PRC resulting in a distortion of the effective allocation of resources in line with market principles ([14]). In particular, the Commission concluded that in the steel sector, which is the main raw material to produce the product under review, not only does a substantial degree of ownership by the GOC persist in the sense of Article 2(6a)(b), first indent of the basic Regulation ([15]), but the GOC is also in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation ([16]). The Commission further found that the State's presence and intervention in the financial markets, as well as in the provision of raw materials and inputs have an additional distorting effect on the market. Indeed, overall, the system of planning in the PRC results in resources being concentrated in sectors designated as strategic or otherwise politically important by the GOC, rather than being allocated in line with market forces ([17]). Moreover, the Commission concluded that the Chinese bankruptcy and property laws do not work properly in the sense of Article 2(6a)(b), fourth indent of the basic Regulation, thus generating distortions in particular when maintaining insolvent firms afloat and when allocating land use rights in the PRC ([18]). In the same vein, the Commission found distortions of wage costs in the steel sector in the sense of Article 2(6a)(b), fifth indent of the basic Regulation ([19]), as well as distortions in the financial markets in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, in particular concerning access to capital for corporate actors in the PRC ([20]).

(47) Like in previous investigations concerning the steel sector in the PRC, the Commission examined in the present investigation whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the request, as well as the Commission Staff Working Document on Significant Distortions in the Economy of the PRC for the Purposes of Trade Defence Investigations ([21]) ('Report'), which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in the PRC's economy in general, but also the specific market situation in the relevant sector including the product under review. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in the PRC, as also found by its previous investigations in this respect.

([14]) See Implementing Regulation (EU) 2022/2068 recital 80; Implementing Regulation (EU) 2022/191 recital 208, Implementing Regulation (EU) 2022/95 recital 59, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 149-150.

([15]) See Implementing Regulation (EU) 2022/2068 recital 64; Implementing Regulation (EU) 2022/191 recital 192, Implementing Regulation (EU) 2022/95 recital 46, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 115-118

([16]) See Implementing Regulation (EU) 2022/2068 recital 66; Implementing Regulation (EU) 2022/191 recitals 193-4, Implementing Regulation (EU) 2022/95 recital 47, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 119-122. While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights, CCP cells in enterprises, state owned and private alike, represent another important channel through which the State can interfere with business decisions. According to the PRC's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline. In 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of the product under review and the suppliers of their inputs.

([17]) See Implementing Regulation (EU) 2022/2068 recital 68; Implementing Regulation (EU) 2022/191 recitals 195-201, Implementing Regulation (EU) 2022/95 recitals 48-52, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 123-129.

([18]) See Implementing Regulation (EU) 2022/2068 recital 74; Implementing Regulation (EU) 2022/191 recital 202, Implementing Regulation (EU) 2022/95 recital 53, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 130-133.

([19]) See Implementing Regulation (EU) 2022/2068 recital 75; Implementing Regulation (EU) 2022/191 recital 203, Implementing Regulation (EU) 2022/95 recital 54, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 134-135.

([20]) See Implementing Regulation (EU) 2022/2068 recital 76; Implementing Regulation (EU) 2022/191 recital 204, Implementing Regulation (EU) 2022/95 recital 55, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 136-145.

([21]) Commission staff working document SWD(2017) 483 final/2, 20. 12. 2017, available at: https://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156474.pdf

(48) The request alleged that the Chinese economy as a whole is widely influenced and affected by various all-encompassing interventions by the GOC or other public authorities on various levels of government, in view of which domestic prices and costs of the Chinese steel industry cannot be used in the present investigation. To support its position, the request referred to the Commission's recent investigations of the Chinese steel sector ([22]) or the conclusions of the G20 Global Forum on Steel Excess Capacity ([23]).

(49) More specifically, the request pointed out that against the background of the 'socialist market economy' doctrine enshrined in the PRC Constitution, the omnipresence of the Chinese Communist Party ('CCP') and its influence over the economy by means of strategic planning initiatives – such as the 13th and 14th Five-Years Plans ([24]) – the GOC's interventionism takes various forms, namely administrative, financial and regulatory.

(50) The request provided examples of elements pointing to existence of distortions, as listed in the first to sixth dash of Article 2(6a)(b) of the basic Regulation. In particular, referring to previous Commission investigations in the steel sector, to the Report, as well as to additional sources, the applicant submitted that:

— The Chinese State engages in an interventionist economic policy in pursuance of goals that coincide with the political agenda set by the CCP rather than reflect the prevailing economic conditions in free market. With the high level of government intervention in the steel industry and a high share of State-owned enterprises ('SOEs') in the sector, even privately owned steel producers are prevented from operating under market conditions. As such the steel market is to a significant extent served by enterprises which operate under the ownership, control and policy supervision of the Chinese authorities;

— The Chinese State does not only actively formulate and oversee the implementation of general economic policies by individual SOEs, but it also claims its rights to participate in operational decision-making in SOEs. This is typically done through the rotation of cadres between government authorities and SOEs, through presence of party members in SOEs' executive bodies and of party cells in companies, as well as by shaping the corporate structure of the SOE sector. In exchange, SOEs enjoy a particular status within the Chinese economy. This status entails a number of economic benefits, in particular the shielding from competition and the preferential access to relevant inputs, including financing;

— The steel industry is regarded as a fundamental sector of the Chinese economy, a national cornerstone ([25]) by the Chinese government, and as such is a particularly supported industry ([26]). The current problem of overcapacity ([27]) is arguably the clearest illustration of the implications of the Chinese Government's policies for the industry and the resulting distortions;

([22]) Commission Implementing Regulation (EU) 2017/649 of 5 April 2017 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 92, 6.4.2017, p. 68); Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 146, 9.6.2017, p. 17); Commission Implementing Regulation (EU) 2019/688 of 2 May 2019 imposing a definitive countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China following an expiry review pursuant to Article 18 of the Regulation (EU) 2016/1037 of the European Parliament and of the Council (OJ L 116, 3.5.2019, p. 39).

([23]) Global Forum on steel excess capacity, Ministerial Report, 20 September 2018.

([24]) National People's Congress, 14th Five-Year Plan, translation into English by Center for Security and Emerging Technology, 12 March 2021, https://cset.georgetown.edu/wp-content/uploads/t0284_14th_Five_Year_Plan_EN.pdf

([25]) Introduction to the Plan for Adjusting and Upgrading the Steel Industry.

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

([27]) OECD, 'Latest developments in steelmaking capacity', February 2021, page 11.

— The Chinese bankruptcy system appears to be inadequate to deliver on its own main objectives such as to settle claims and debts fairly and to safeguard the lawful rights and interests of creditors and debtors;

— The Chinese government is controlling raw materials' prices as export volumes are restricted through export quotas and exporters need to apply for an export license. In a previous investigation ([28]) the Commission has found that 'coke (together with iron ore, the major raw material to produce steel) is subject to quantitative restrictions on exports and to an export duty';

— The shortcomings of the system of property rights are particularly obvious in relation to ownership of land and land-use rights in China. All land is owned by the Chinese State (collectively owned rural land and State-owned urban land). Its allocation remains solely dependent on the State ([29]);

— Workers and employers are impeded in their rights to collective organisation and mobility is restricted by the household registration system, which limits access to the full range of social security and other benefits. This leads to wage costs being distorted since they do not result from normal market forces or negotiation between companies and the work force;

— The Chinese financial system is characterised by the strong position of State-owned banks, which, when granting access to finance, take into consideration criteria other than economic viability of a project. Prudential rules such as the need to examine the creditworthiness of the borrower may exist formally, however, the overwhelming evidence, including findings made during trade defence investigations, suggests that these provisions play only a secondary role in the application of the various legal instruments;

— The banks comply with an explicit legal obligation to conduct their business in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State. Furthermore, borrowing costs have been kept artificially low to stimulate investment growth, which has led to the excessive use of capital investment with ever-lower returns on investment.

(51) The GOC did not comment or provide evidence supporting or rebutting the existing evidence on the case file, including the Report and the additional evidence provided by the applicant, on the existence of significant distortions and/or appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand.

(52) Specifically in the sector of the product under review, i.e. the steel sector, a substantial degree of ownership by the GOC persists in the sense of Article 2(6a)(b), first indent of the basic Regulation. Since there was no cooperation from Chinese exporters of the product under review, the exact ratio of the private and state-owned producers could not be determined. However, the investigation confirmed that the two largest producers in the steel sector, namely Angang Steel Group ('Ansteel') and China Baowu Steel Group ('Baowu') are either fully State-owned or the State holds a controlling stake. In any event, even when specific information may not be available for the product under review, the sector represents a sub-sector of the steel industry and the findings concerning the steel sector are therefore deemed indicative also for the product under review.

(53) Both public and privately owned enterprises in the steel sector are subject to policy supervision and guidance. The latest Chinese policy documents concerning the steel sector confirm the continued importance which GOC attributes to the sector, including the intention to intervene in the sector in order to shape it in line with the government policies. This is exemplified by the Ministry of Industry and Information Technology's draft Guiding Opinion on Fostering a High Quality Development of Steel Industry, which calls for further consolidation of the industrial foundation and significant improvement in the modernization level of the industrial chain ([30]), by the 14th

([28]) Council Implementing Regulation (EU) No 214/2013 of 11 March 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain organic coated steel products originating in the People's Republic of China (OJ L 73, 15.3.2013, p. 1).

([29]) Marketplace, 'Industrial Policy: If China does it, why can't we?', 1 March 2021. https://www.marketplace.org/2021/03/01/industrial-policy-if-china-does-it-why-cant-we/

([30]) See:https://www.miit.gov.cn/jgsj/ycls/gzdt/art/2020/art_8fc2875eb24744f591bfd946c126561f.html (accessed on 6 February 2023).

FYP on Developing the Raw Material Industry according to which the sector will '*adhere to the combination of market leadership and government promotion*' and will '*cultivate a group of leading companies with ecological leadership and core competitiveness*' ([31]), or also by the 14th FYP on Developing Scrap Steel Industry whose key objectives is to '*continuously increase the application ratio of scrap steel, and by the end of the 14th FYP, the comprehensive scrap ratio of national steel making will reach 30 %.*' ([32])

(54) Similar examples of the intention by the Chinese authorities to supervise and guide the developments of the sector can be seen at the provincial level, such as in Hebei which plans to '*steadily implement the group development of organizations, accelerate the reform of mixed ownership of state-owned enterprises, focus on promoting the cross-regional merger and reorganization of private iron and steel enterprises, and strive to establish 1-2 world-class large groups, 3-5 large groups with domestic influence as the support*' and to '*further expand the recycling and circulation channels of scrap steel, strengthen the screening and classification of scrap steel.*' ([33]). Moreover, Hebei's plan in the steel sector specifically includes several references to hot-rolled steel products: '*Encourage plate production enterprises to speed up the implementation the transformation of low-level hot-rolling mills (…) and strive to ensure that by 2022 hot-rolled primary plates account for more than 30 % of deep processing operations* ([34])'. Furthermore: '*Consolidate the advantages of the wire and bar market. Encourage wire and bar manufacturers to carry out R & D and production of hot-rolled ribbed steel bars over 500 MPa, and lead product upgrades. Support special steel enterprises to combine technology and equipment transformation and upgrade and develop bearing steel, gear steel and other special steel products*'.

(55) Similarly, the Henan Implementation Plan for the Transformation and Upgrade of the Steel Industry during the 14th FYP foresees the '*construction of characteristic steel production bases* […], *build 6 characteristic steel production bases in Anyang, Jiyuan, Pingdingshan, Xinyang, Shangqiu, Zhouou, etc., and improve the scale, intensification and specialization of the industry. Among them, by 2025, the production capacity of pig iron in Anyang will be controlled within 14 million tons, and the production capacity of crude steel will be controlled within 15 million tons.*' ([35]) The Henan Implementation Plan also includes specific references to hot-rolled products: '*Support independent hot-rolling enterprises to participate in the merger and reorganization of iron and steel enterprises, and improve the resilience and concentration of the industrial chain.* ([36])' Further industrial policy objectives can also be seen in the planning documents of other provinces, such as Jiangsu ([37]), Shandong ([38]), Shanxi ([39]), or Zhejiang ([40]) or municipalities, such as Liaoning Dalian ([41]).

([31]) See Section IV, Subsection 3 of the 14th FYP on Developing the Raw Materials Industry.

([32]) See Section II, Subsection 1 of the 14th FYP on Developing Scrap Steel Industry.

([33]) See the Hebei Province's Three Year Action Plan on Cluster Development in the Steel Industry Chain, Chapter I, Section 3; available at: https://huanbao.bjx.com.cn/news/20200717/1089773.shtml (accessed on 6 February 2023).

([34]) See the Hebei Province's Three Year Action Plan on Cluster Development in the Steel Industry Chain, Setion II, Chapter 4, Para 12; available at: https://huanbao.bjx.com.cn/news/20200717/1089773.shtml

([35]) See the Henan Implementation Plan for the Transformation and Upgrade of the Steel Industry during the 14th FYP, Chapter II, Section 3; available at: https://huanbao.bjx.com.cn/news/20211210/1192881.shtml (accessed on 6 February 2023

([36]) See the Henan Implementation Plan for the Transformation and Upgrade of the Steel Industry during the 14th FYP, Chapter II, Section 3; available at: https://huanbao.bjx.com.cn/news/20211210/1192881.shtml

([37]) Jiangsu Province's Work Plan Steel Sector Transformation and Upgrade and Layout Optimisation 2019-2025; available at: http://www.jiangsu.gov.cn/art/2019/5/5/art_46144_8322422.html (accessed on 6 February 2023).

([38]) Shandong Province's 14 FYP on the Steel Industry Development; available at: http://gxt.shandong.gov.cn/art/2021/11/18/art_15681_10296246.html (accessed on 6 February 2023).

([39]) Shanxi Province's 2020 Steel Industry Transformation and Upgrade Action Plan; available at: http://gxt.shanxi.gov.cn/zfxxgk/zfxxgkml/cl/202110/t20211018_2708031.shtml (accessed on 6 February 2023).

([40]) Zhejiang Province's Action Plan to Foster a High Quality Development of the Steel Industry: '*Foster enterprise mergers and reorganisation, accelerate the concentration process, reduce the number of steel smelting enterprises to approximately 10 enterprises*'; available at: https://www.dl.gov.cn/art/2021/12/20/art_854_1995411.html (accessed on 6 February 2023).

([41]) Liaoning Dalian Municipality's 14 FYP on Developing Manufacturing Industry: '*By 2025, the industrial output value of new materials will reach 15 million yuan, and the level of equipment and key materials guarantee ability is obviously improved.*'; available at: https://www.dl.gov.cn/art/2021/12/20/art_854_1995411.html (accessed on 6 February 2023).

(56) As to the GOC being in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation, due to the lack of cooperation from the side of the exporting producers, it was impossible to systematically establish the existence of personal connections between producers of the product under review and the CCP. However, given that the product under review represents a subsector of the steel sector, information available with respect to steel producers is relevant also to the product under review.

(57) For instance, Ansteel's Chairman serves at the same time as the Secretary of the Party Committee. Similarly, the Director and General Manager of Ansteel occupies the position of the Party Committee's Deputy Secretary ([42]). In the case of Baowu, the Chairman of Baosteel, which is a subsidiary held at 100 % by Baowu, holds at the same time the position of Secretary of the Party Committee, whereas the Managing Director serves also as the Deputy Secretary of the Party Committee and the Deputy General Manager serves as a Member of the Standing Committee of the Party Committee ([43]).

(58) Further, policies discriminating in favour of domestic producers or otherwise influencing the market in the sense of Article 2(6a)(b), third indent of the basic Regulation are in place in the sector of the product under review. As described above in recital (54) concerning the Hebei's action plan and in recital (55) concerning Henan's action plan, the investigation could identify some documents guiding specifically the development of the hot rolled flat steel subsector. Moreover, the investigation identified other documents showing that the industry benefits from governmental guidance and intervention in the steel sector, given that the product under review represents one of its subsectors.

(59) The steel industry keeps being regarded as a key industry by the GOC ([44]). This is confirmed in the numerous plans, directives and other documents focused on steel, which are issued at national, regional and municipal level. Under the 14th Five Years Plan adopted in March 2021, the GOC earmarked the steel industry for transformation and upgrade, as well as optimization and structural adjustment ([45]). Similarly, the 14th Five Years Plan on Developing the Raw Materials Industry, applicable also to the steel industry, lists the sector as the '*bedrock of the real economy*' and '*a key field that shapes China's international competitive edge*' and sets a number of objectives and working methods which would drive the development of the steel sector in the time period 2021-2025, such a technological upgrade, improving the structure of the sector (not least by means of further corporate concentrations) or digital transformation ([46]).

(60) The important raw material used for the production of hot rolled flat steel is iron ore. Iron ore is also mentioned in the 14th FYP on Developing the Raw Materials Industry, in which the State plans to '*rationally develop domestic mineral resources. Strengthen the exploration of iron ore* […], *implement preferential tax policies, encourage the adoption of advanced technology and equipment to reduce the generation of mining solid waste.*' ([47]) In provinces, such as Hebei, the authorities foresee the following for the sector: '*new project investment discount subsidy; explore and guide financial institutions to provide low-interest loans for iron and steel enterprises to switch to new industries, and at the same time, the government will provide discount subsidies.*' ([48]) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives of supporting encouraged industries, including the production of the main raw materials used in the manufacturing of the product under review. Such measures impede market forces from operating freely.

([42]) See the group's web, available at: http://www.ansteel.cn/about/jituangaoguan/ (accessed on 6 February 2023).
([43]) See the company's web, available at: https://www.baosteel.com/about/manager (accessed on 6 February 2023).
([44]) Report, Part III, Chapter 14, p. 346 ff.
([45]) See People's Republic of China 14th Five-Year Plan for National Economic and Social Development and Long-Range Objectives for 2035, Part III, Article VIII, available at: https://cset.georgetown.edu/publication/china-14th-five-year-plan/ (accessed on 6 February 2023).
([46]) See in particular Sections I and II of the 14th FYP on Developing the Raw Materials Industry.
([47]) See the 14th FYP on Developing the Raw Materials Industry, p. 22.
([48]) See the Hebei Tangshan Municipality Iron and Steel 1 + 3 Action Plan 2022, Chapter 4, Section 2; available at: http://www.chinaisa.org.cn/gxportal/xfgl/portal/content.html?articleId=e2bb5519aa49b566863081d57aea9dfdd59e1a4f482bb7acd243e3ae7657c70b&columnId=3683d857cc4577e4cb75f76522b7b82cda039ef70be46ee37f9385ed3198f68a (accessed at 6 February 2023).

(61) The present investigation revealed some evidence of the discriminatory application or inadequate enforcement of bankruptcy and property laws according to Article 2(6a)(b), fourth indent of the basic Regulation in the hot rolled flat steel sector. In particular, concerning the factory of Chaoyang Iron & Steel, which was incurring losses for 5 consecutive years (from 2010 to 2015) and was on the verge of bankruptcy. It was also identified as a 'zombie enterprise' by the State-owned Assets Supervision ([49]).

(62) The hot rolled flat steel sector is also affected by the distortions of wage costs in the sense of Article 2(6a)(b), fifth indent of the basic Regulation, as also referred to above in recital (46). Those distortions affect the sector both directly (when producing the product under review or the main inputs), as well as indirectly (when having access to inputs from companies subject to the same labour system in the PRC) ([50]).

(63) Moreover, no evidence was submitted in the present investigation demonstrating that the sector of the product under review is not affected by the government intervention in the financial system in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, as also referred to above in recital (46). Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

(64) Finally, the Commission recalls that in order to produce the product under review, a number of inputs is needed. When the producers of hot rolled flat steel purchase/contract these inputs, the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system that applies across all levels of government and sectors.

(65) As a consequence, not only the domestic sales prices of hot rolled flat steel are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts I and II of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that, in itself was produced in the PRC by combining a range of factors of production, is exposed to significant distortions. The same applies for the input to the input and so forth.

(66) On 19 May 2022 ([51]) and on 16 September 2022 ([52]), CISA submitted a number of arguments concerning the allegations on significant distortions. First, CISA claimed that the Report relied on by the Commission failed to meet the standards of impartial and objective evidence and evidence of sufficient probative value, given in particular that it was prepared by the Commission with the specific purpose of facilitating Union industries to lodge a complaint in the area of trade measures. Furthermore, CISA claimed that since the Report was published in 2017, it could not reflect the alleged distortions for the investigation period covering the 2021 calendar year.

(67) The Commission disagreed. The Commission noted that the Report is a comprehensive document based on extensive objective evidence, including legislation, regulations and other official policy documents published by the GOC, third party reports from international organisations, academic studies and articles by scholars, and other reliable independent sources. It was made publicly available since December 2017, so that any interested party would have had ample opportunity to rebut, supplement or comment on it and the evidence on which it is based, and neither the GOC nor other parties have submitted arguments or evidence rebutting the sources included in the Report. Likewise, regarding the argument that the Report was outdated, the Commission noted in particular that

([49]) See Article on Ansteel website: **鞍钢集团网站** (ansteel.cn) (Source: Angang Daily 2021-11-24)

([50]) See Commission Implementing Regulation (EU) 2021/635, recitals 134-135 and Commission Implementing Regulation (EU) 2020/508 of 7 April 2020 (OJ. L 110, 8.4.2020, p. 3), recitals 143-144.

([51]) CISA 's *'Comments in the EU expiry review of the e anti-dumping measures applicable to imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the people's republic of China'*, submitted on 19 May 2022.

([52]) CISA's *'Comments on the note on the sources for the determination of the normal value in the EU expiry review on anti-dumping measures concerning imports of certain hot rolled flat products or iron, non-alloy or other alloy steel (HRF) originating in China'*, submitted on 16 September 2022.

the main policy documents and evidence contained in the Report, including the relevant five-year plans and legislation applicable to the product under review were mostly still relevant during the review investigation period, and that no parties have proven that this was no longer the case. China only started publishing new five-year plans throughout year 2021 and a lot of those plans were only made public in the second half of the year. This was further confirmed through the case-specific research undertaken by the Commission, as summarised above.

(68) Second, CISA submitted that the WTO Anti-Dumping Agreement ('ADA') does not recognize the concept of significant distortions in Article 2.2 of ADA. Instead, the provision allows the construction of the normal value in a limited number of specific conditions, with significant distortions not featuring among such conditions. Moreover, CISA submitted that Article 2.2 of ADA only permits using the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and profits whereas, Article 2(6a) of the basic Regulation allows the use of data from and appropriate representative country, thereby being WTO inconsistent. Furthermore, CISA claimed that any constructed value would need to be calculated in accordance with Article 2.2.1.1 of ADA and in line with the interpretation by WTO Appellate Body given in the EU – Biodiesel (DS 473) case, as well as by the WTO Panel in the EU – Cost Adjustment Methodologies II (Russia) (DS494) case, which do not mention the concept of significant distortions nor the possibility to disregard the exporting company's data.

(69) The Commission considered that the provisions of Article 2(6a) of the basic Regulation are fully consistent with the European Union's WTO obligations and the jurisprudence cited by CISA. Furthermore, it is the Commission's view that, in accordance with the decision of the WTO Panel and the Appellate Body in DS473, the provisions of the basic Regulation that apply generally with respect to all WTO Members, such as Article 2(5), second subparagraph, permit the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. The existence of significant distortions renders costs and prices in the exporting country inappropriate for the construction of normal value. In these circumstances, Article 2(6a) of the basic Regulation envisages the construction of costs of production and sale on the basis of undistorted prices or benchmarks, including those in an appropriate representative country with a similar level of development as the exporting country. In relation to the DS 494, the Commission recalled that both the EU and the Russian Federation appealed the findings of the Panel, which are not final and therefore, according to standing WTO case-law, have no legal status in the WTO system, since they have not been endorsed by the Dispute Settlement Body through a decision by the WTO Members. In any event, the Panel Report in this dispute specifically considered the provisions in Article 2(6a) of the basic Regulation to be outside of the scope of that dispute. Therefore, the Commission rejected this claim.

(70) Third, CISA argued that the practice of referring to past investigations as 'evidence' of certain allegations, as done by the applicant in the request in the present investigation, would likely not withstand the Appellate Body's approach on the burden of proof, as set out in the WTO Appellate Body's ruling in the US – Definitive Antidumping and Countervailing Duties on Certain Products (China) (DS 379) case. In particular, CISA referred to the findings made by the Commission in its anti-subsidy investigation as regards HRF ([53]).

(71) The Commission disputes that argument. On the one hand, the request did not only rely on the HRF CVD but also added additional sources to substantiate the claim regarding the distortions in the HRFS market ([54]). On the other hand, the Commission is not making its conclusions about applicability of 2(6a) on the basis of the request but on the basis of all evidence available, as collected during the investigation and presented in its entirety in this section.

(72) Fourth, CISA raised the issue of the 14th FYP, pointing out that, on the one hand, the 14th FYP indeed references the steel sector but only in a general context, noting the importance of generally transforming and upgrading traditional industries and that on the other hand, the plan should not be considered binding law but rather a guiding document expressing policy views for the future. Furthermore, CISA considered that such plans exist also in the EU with the publication of the European Commission's 'White Papers', 'Green Papers' etc.

([53]) OJ L 146, 9.6.2017, p. 17.

([54]) For instance, reference to Implementing Regulation (EU) No 214/2013 (paragraph 80 of the request) (OJ L 73, 15.3.2013, p. 1).

(73) This argument could not be accepted. First of all, 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. The 14th FYP explicitly reminds all authorities to diligently implement the plans: '*We will strengthen planning management systems such as catalogues and lists, compilation and archival, and alignment and coordination, develop lists and catalogues such as the "14th Five-Year" National-Level Special Plans, promote plan archival relying on the national planning integrated management information platform, and bring various plans under unified management. We will establish and improve planning alignment and coordination mechanisms, align plans approved by the CCP Central Committee and the State Council and provincial development plans with this plan before submission for approval, ensure that national-level spatial planning, special planning, regional planning, and other levels of planning are coordinated with this plan in terms of main goals, development directions, overall layout, major policies, major projects, and risk prevention and control.*' ([55]) Furthermore, the 14th FYP on Developing the Raw Materials Industry stipulates that '*all localities need to better themselves with this Plan, and include the main contents and major projects herein in their primary local tasks*', while '*steel and other key sectors shall formulate specific implementation opinions based on the objectives and tasks of this Plan.*' ([56])

(74) No evidence or argument to the contrary has been adduced by the GOC in the present investigation.

(75) After disclosure, CISA further emphasised that the Report fails to meet the standards of impartial and objective evidence and evidence of sufficient probative value. In relation to the above, CISA further referred to the various 'Five-Year Plans' which, according to CISA, should be seen as a general policy document setting various priorities in terms of public investments and not as binding law.

(76) As explained in recitals (67) and (73) these claims were rejected and since no additional evidence or argument was submitted upon disclosure the Commission decision remained unchanged.

(77) In sum, the evidence available showed that prices or costs of the product under review, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation, as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case. Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as described in the following section.

3.4.1. ***Representative country***

3.4.1.1. *General remarks*

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

— A level of economic development similar to the PRC. For this purpose, the Commission used countries with a gross national income per capita similar to the PRC on the basis of the database of the World Bank ([57]);

— Production of the product under review in that country ([58]);

— Availability of relevant public data in the representative country.

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

([55]) See Article LXIV, Section 2 of the 14th FYP.
([56]) See Section VIII of the 14th FYP on Developing the Raw Materials Industry.
([57]) World Bank Open Data – Upper Middle Income, https://data.worldbank.org/income-level/upper-middle-income.
([58]) If there is no production of the product under review in any country with a similar level of development, production of a product in the same general category and/or sector of the product under review may be considered.

(79) As indicated in recital (38), on 29 August 2022, the Commission issued a note for the file on the sources for the determination of the normal value (the 'FOP Note'). The note described the facts and evidence underlying the relevant criteria and informed interested parties of the intention to consider Mexico as an appropriate representative country in the present case if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation would be confirmed.

(80) In line with the criteria listed under Article 2(6a) of the basic Regulation, the Commission identified Mexico as a country with a similar level of economic development as the PRC. Mexico is classified by the World Bank as 'upper-middle income' country on a gross national income basis. Furthermore, Mexico was identified as a country where the product under review is being produced and where relevant data was readily available.

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

3.4.1.2. *Conclusion*

(82) In the absence of cooperation, as proposed in the expiry review request and given that Mexico met the criteria laid down in Article 2(6a)(a), first indent of the basic Regulation, the Commission selected Mexico as appropriate representative country.

3.4.2. ***Sources used to establish undistorted costs***

(83) In the note on relevant sources to use for the determination of the normal value, the Commission explained that, due to the absence of cooperation, it would need to rely on facts available according to Article 18 of the basic Regulation. The choice of representative country was based on the information contained in the expiry review request, combined with other sources of information deemed appropriate according to the relevant criteria laid down in Article 2(6a) of the basic Regulation, in accordance with Article 18(5) of the basic Regulation, including Global Trade Atlas ('GTA') to establish the undistorted cost of most of the factors of production, notably the raw materials. In addition, the Commission stated that it would use the following sources for establishing undistorted costs of energy: for the electricity, the latest available data on electricity industrial prices applicable in Mexico, as published by Globalpetrolprices.com ([59]) and for the gas the price published by Indices de Referencia de Precios de Gas Natural (IPGN) ([60]). Moreover, the Commission stated that for establishing undistorted costs of labour it would use the last publicly available data from International Labour Organisation Department of Statistics (ILOSTAT) ([61]) to determine the wages in Mexico.

(84) The Commission included a value for manufacturing overhead costs in order to cover costs not included in the factors of production referred to above. The Commission established the ratio of manufacturing overheads to the direct costs of manufacturing, based on data of Union producers provided by the applicant, which provided specific information for that purpose.

(85) In the FOP Note the Commission indicated that for the country identified as country where product under review is being produced, i.e. Mexico, the Commission identified the company Ternium S.A. as a producer of the product under review, with recent public financial data showing profits and reasonable amount for SG&A for establishing the undistorted normal value.

([59]) https://www.globalpetrolprices.com/Mexico/electricity_prices/
([60]) https://www.cre.gob.mx/IPGN/index.html
([61]) https://ilostat.ilo.org/data/country-profiles/

(86) The analysis of import data showed that Mexico could be used as an appropriate representative country as their imports of the main factors of production were not materially affected by imports from PRC or any of the countries listed in Annex I to Regulation (EU) 2015/755 ([62]).

(87) In light of the above considerations, the Commission informed the interested parties that it intended to use Mexico as an appropriate representative country and the company Ternium S.A, in accordance with Article 2(6a)(a), first ident of the basic Regulation, in order to source undistorted prices or benchmarks for the calculation of normal value.

(88) Interested parties were invited to comment on the appropriateness of Mexico as a representative country and of Ternium S.A as producers in the representative country.

(89) In their comments, CISA argued that among the several representative countries which the Commission has recently chosen, Mexico is the only one that is unable to report import prices on a CIF level and challenged the Commission's approach to add 5 % to the FOB price in order to convert the FOB price into a CIF one. The Commission observed that even if that conversion ratio was not applied, the price difference between the normal value and the export price to the rest of the world established in recital (118) below would have been significant. Consequently, it rejected the claim.

(90) CISA also argued that the benchmark for ferroalloys was not reliable because the HS codes used consisted of several different alloys with very different unit prices. The Commission observed that CISA failed to indicate which type(s) of alloys should be removed from the aggregated data for that benchmark price. Furthermore, the Commission considered that this claim was without object because even if no benchmark price was established for this input, as explained in recital (118) below, the price difference between the normal value and the export price to the rest of the world established would remain significant. Consequently, it rejected the claim.

(91) CISA also challenged the appropriateness of the financial results of Ternium S.A. since they are reported at a consolidated level covering several countries and other products.

(92) The Commission considered that in the case at hand the use of Ternium S.A.'s consolidated data was appropriate in the absence of more detailed data limited to Ternium Mexico and to the product under review. In addition, the company produces predominantly steel products. Therefore, its data was considered representative for the steel sector and the product under review. Moreover, Article 2(6a)(a) of the basic Regulation requires that the amount for SG&A costs and for profits included in the constructed normal value should be undistorted and reasonable. CISA neither argued nor substantiated the argument that the amount used was either distorted or unreasonable. This claim was therefore rejected.

(93) CISA alleged that the use of Ternium S.A.'s financial data from 2020 was incompatible with the review investigation period that is 2021. The Commission considered the figures of Ternium S.A. as reasonable since the company was profit-making during the review investigation period, its financial statements were readily available and Mexico represents 52 % of its consolidated sales. Furthermore, the Commission considered that, in the context of this investigation, use of 2020 as reference year is justified as it is the most recent year when Ternium S.A. was profitable and showed a reasonable level of SG&A and profit. As explained in the FOP note, in financial year 2021 the profit was exceptionally high, i.e. 58,25 %, likely reflecting the post COVID-19 recovery. Consequently, the Commission considered that using the data for 2020 was more appropriate and rejected the claim.

(94) After disclosure, CISA claimed that the Commission did not provide the disclosure of 'Benchmarks used for the purpose of determining the normal value' which, according to CISA, may lead to an imminent breach of the basic principle of anti-dumping law and procedure, in particular Article 20 of the basic Regulation, and the rights of defence of CISA with respect to fundamental aspects of the expiry review investigation. Furthermore, CISA stated that providing detailed benchmark prices (and the calculations) for the purpose of determining the normal value is a consistent practice of the Commission, both in original investigations and in expiry reviews, and therefore requests the Commission to align its practice in similar proceedings.

([62]) Regulation (EU) 2015/755 of the European Parliament and of the Council (OJ L 123, 19.5.2015, p. 33) as amended by Commission Delegated Regulation (EU) 2017/749 of 24 February 2017 amending Regulation (EU) 2015/755 of the European Parliament and of the Council as regards the removal of Kazakhstan from the list of countries in Annex I thereto (OJ L 113, 29.4.2017, p. 11).

(95) The Commission noted that it provided benchmark prices i.e. unit values of the main factors of production in the FOP Note from 29 August 2022 as well as their sources. CISA, as an interested party, was notified when the FOP Note was placed on the file and had access to it. None of the benchmarks quoted in that Note had been subsequently modified. Furthermore, the Commission used the same methodology to calculate the normal value as in the request which was made available to all interested parties. Finally, the Commission recalled that no company-specific disclosure took place given the lack of cooperation by any of the producers in the PRC. Consequently, the claim was rejected.

3.4.2.1. *Conclusion*

(96) In view of the above analysis, Mexico met the criteria laid down in Article 2(6a)(a), first indent of the basic Regulation in order to be considered as an appropriate representative country.

3.4.3. ***Undistorted costs and benchmarks***

3.4.3.1. *Factors of production*

(97) Considering all the information based on the request and after analysing the comments from interested parties, the following factors of production and their sources have been identified in order to determine the normal value, in accordance with Article 2(6a)(a) of the basic Regulation:

Table 1

Factors of production of certain hot rolled flat products of iron, non-alloy or other alloy steel

Factor of Production	Commodity Code	Undistorted value in CNY	Unit of measurement
Raw materials			
Steel scrap	72041001; 72042101; 72042999; 72044101; 72044999	3 135,04	Tonne
Iron ore	26011101; 260112	3 364,05	Tonne
Coal	270119; 27011201	757,98	Tonne
Coke	27040003; 27131101	1 249,21	Tonne
Ferroalloys	72022102; 72022199; 72022999; 72023001; 72024101; 72024999; 72027001; 72029104; 72029202; 72029301; 72029999	18 560,08	Tonne
Slabs	720712; 72072002; 72241006; 722490	4 980,54	Tonne
By-product:			
Credits & By-products valued as scrap	72041001; 72042101; 72042999; 72044101; 72044999	3 135,04	Tonne
Labour			
Labour		13,00	per man hour
Energy			
Electricity		1 058,69	MWH

Natural gas		34,42	GJ
Oxygen	280440	514,52	Km3

3.4.3.2. *Raw materials*

(98) In order to establish the undistorted price of raw materials as delivered at the gate of a representative country producer, the Commission used as a basis the weighted average import price to the representative country as reported in the GTA, to which import duties were added. An import price in the representative country was determined as a weighted average of unit prices of imports from all third countries, excluding the PRC and countries which are not members of the WTO, listed in Annex I of Regulation (EU) 2015/755. The Commission decided to exclude imports from the PRC into the representative country as it concluded in recital (77) that it is not appropriate to use domestic prices and costs in the PRC due to the existence of significant distortions, in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected export prices. After excluding imports from the PRC and countries which are not members of the WTO into the representative country, the volume of imports from other third countries remained representative.

(99) Normally, domestic transport prices should also be added to these import prices. However, considering the finding in section 3.4 as well as the nature of this expiry review investigation, which is focused on finding whether dumping continued during the review investigation period or could reoccur, rather than finding its exact magnitude, the Commission decided that adjustments for domestic transport were unnecessary. Such adjustments would only result in increasing the normal value and hence the dumping margin.

3.4.3.3. *Labour*

(100) ILOSTAT publishes detailed information on wages in different economic sectors in Mexico. The Commission used the latest available statistics for 2021, for average labour cost and average weekly hours worked in Mexico.

3.4.3.4. *Electricity*

(101) The price of electricity for companies (industrial users) in Mexico is published by Globalpetrolprices.com. The Commission used the data on the industrial electricity prices for September 2021.

3.4.3.5. *Natural gas*

(102) The Commission used the price of gas in Mexico for the review investigation period as published by Indices de Referencia de Precios de Gas Natural (IPGN) ([63]), that enables to determine the price of natural gas supplied to industrial users.

3.4.3.6. *Manufacturing overhead costs, SG&A, profits and depreciation*

(103) According to Article 2(6a)(a) of the basic Regulation, '*the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits*'. In addition, a value for manufacturing overhead costs needs to be established to cover costs not included in the factors of production referred to above.

(104) The Commission used the financial data of Ternium S.A, producer in the representative country, as referred to in recital (85).

(105) In order to establish an undistorted value for the manufacturing overheads and given the absence of cooperation from the exporting producers, the Commission used facts available in accordance with Article 18 of the basic Regulation. Therefore, based on the data provided by the Union producers in the request, the Commission established the ratio of manufacturing overheads to the total manufacturing and labour costs. This percentage was then applied to the undistorted value of the cost of manufacturing to obtain the undistorted value of manufacturing overheads, depending on the model produced.

([63]) https://www.cre.gob.mx/IPGN/index.html

3.4.4. ***Calculation of the normal value***

(106) On the basis of the above, the Commission constructed the normal value on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.

(107) First, the Commission established the undistorted manufacturing costs. In the absence of cooperation by the exporting producers, the Commission relied on the information provided by the applicant in the review request on the usage of each factor (materials and labour) for the production of certain hot rolled flat products of iron, non-alloy or other alloy steel.

(108) Once the undistorted manufacturing cost established, the Commission added the manufacturing overheads, SG&A and profit. Manufacturing overheads were determined based on data provided by the applicant. SG&A and profit were determined based on the financial statements of Ternium S.A for the year 2020 as reported in the company's audited accounts ([64]). The Commission added the following items to the undistorted costs of manufacturing:

— Manufacturing overheads, which accounted in total for 11,30 % of the direct costs of manufacturing,

— SG&A and other costs, which accounted for 10,74 % of the Costs of Goods Sold ('COGS') of Ternium S.A, and

— Profits, which amounted to 16,33 % of the COGS as achieved by Ternium S.A, were applied to the total undistorted costs of manufacturing.

(109) On that basis, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation. The normal value established on this basis is at 1 381,50 EUR/tonnes.

(110) After disclosure, CISA agreed with the Commission's use of the financial data of 2020 instead of 2021, although it also argued that Ternium S.A's 16,33 % profit in 2020 was still not low for iron & steel industry.

(111) After disclosure, CISA contested the normal value established by the Commission. As stated in recital (94), CISA argued that it was unable to verify the accuracy of the normal value established by the Commission and, according to CISA, the normal value established during the investigation was potentially incorrect. This was due to the fact that, whilst the periods used in the request and in the expiry review mostly overlapped, the Commission found a normal value in the expiry review which is more than 80 percent higher than in the request, even though the same calculation methodology was applied and same country was used as the representative country.

(112) In the FOP Note of 29 August 2022 the Commission disclosed the unit values of the main 'factors of production'. From those values, it was evident that the benchmark price for iron ore which is one of the most significant input used for the production of the product under review increased significantly, that is by 186 % during the review investigation period. Moreover, no comments were received upon placing of the FOP Note on the case file regarding differences between prices of the factors of production between the FOP Note and the request. Therefore, the claim was rejected.

3.4.5. ***Continuation of dumping***

(113) In the absence of cooperation from Chinese exporting producers, the export price was determined on the basis of facts available in accordance with Article 18 of the basic Regulation. The Commission tried to use available statistical information from Eurostat to determine export prices.

(114) However, only 28 743 tonnes of certain hot-rolled flat products of iron, non-alloy or other alloy steel were imported from the PRC during the review investigation period according to Eurostat, corresponding to 0,1 % of the free market consumption. For this reason, the Commission concluded that these low volumes do not provide a sufficient basis for a continuation of a dumping analysis. The Commission therefore focused its investigation on the likelihood of recurrence of dumping should the measures be allowed to lapse.

([64]) https://s2.q4cdn.com/156255844/files/doc_financials/quarterly/2021/4Q2021/FS-Ternium-Dec31-2021.pdf

3.4.6. ***Likelihood of recurrence of dumping***

(115) In light of the considerations set out in recitals (113) and (114) above, the Commission further analysed whether there was a likelihood of recurrence of dumping should the measures lapse. In doing so, the following elements were analysed: the export price of certain Chinese hot-rolled flat products of iron, non-alloy or other alloy steel to the rest of the world, the Chinese production capacity and spare capacity and the attractiveness of the Union market.

3.4.6.1. *Comparison between export prices to third countries and the normal value*

(116) The Commission analysed the price pattern of Chinese exports to third countries during the review investigation period. Therefore, it consulted publicly available information such as the Chinese exporting statistics as reported in Global Trade Atlas ('GTA') and extracted the quantities and values of the export of certain hot-rolled flat steel products for the review investigation period.

(117) The Chinese export statistics in GTA reported an average FOB export price from China to other countries amounting to 660 EUR/tonne, which was adjusted to an ex-works price (after adjustments for sea and domestic freight, and unloading charges) amounting to 626 EUR/tonne.

(118) The average export price found during the review investigation period was above 100 % below the normal value established in Section 3.4.4 above. Therefore, it was considered likely that, if the current measures were to be repealed, the Chinese exporting producers would start selling to the Union at levels below the normal value found.

3.4.6.2. *Production capacity and spare capacity in the PRC*

(119) In the absence of cooperation by the exporting producers in the PRC, the Commission based its findings with regard to the capacity of the other exporting producers on facts available and relied on the information contained in the expiry review request, as well as other available sources.

(120) In 2020, China accounted for 56,5 % of the world's crude steel output, against 53,3 % in 2019 ([65]). In September 2020, a statement by the 88th Session of the OECD Steel Committee noted that '*despite the global negative demand shock, production and inventories have significantly increased from year-ago levels in China*'. Moreover, the Steel Committee noted '*with concern the divergence from [the] global trend in China, where steel production reached record volumes in the first semester of 2020, and where inventories have reached historically high levels. These developments pose a risk of oversupply in China exacerbating global imbalances resulting from the COVID-19 demand shocks*.' The trend of ever-expanding steel production capacity in China has been further supported by a '*huge loosening of credit conditions*', combined with increasing investment by large steel producers, while smaller players are still outside of the capacity control system. Also, a recent OECD Report of February 2021 noted an increasing steel making overcapacity worldwide and particularly driven by Asian countries including China ([66]).

(121) The Chinese government has ambitious plans for its steel industry ([67]) as it aims to remove obsolete plants and uncompetitive companies with excessive costs while focusing on boosting and promoting steel producers which are in line with government policies and priorities. The idea is to clean-up the industry, strengthening leading players and clearing underperformers and those who do not comply (or align) with government priorities. The goal is to nurture '*a new generation of industry leaders*'. This is achieved through policies such as capacity swap system, debt-equity swaps, which allow for a very substantial state discretion over the operations of individual firms. The underlying purpose is to increase capacities of 'selected' players, which are high-performer producers that comply with government's current objectives to the steel industry.

([65]) Worldsteel, 26.01.2021, in ThinkDesk China Research & Consulting, 'China's State-Business Nexus Revisited – Government Interventions and Market Distortions in the Chinese Steel Industry', 17 October 2021, p. 92.

([66]) OECD, 'Latest developments in steelmaking capacity', February 2021, page 11.

([67]) ThinkDesk China Research & Consulting, 'China's State-Business Nexus Revisited – Government Interventions and Market Distortions in the Chinese Steel Industry', 17 October 2021.

(122) The information contained in the expiry review request estimated the total Chinese capacity of certain hot-rolled flat products of iron, non-alloy or other alloy steel at more than 345 million tonnes, while production and Chinese consumption were both estimated at 314 million tonnes in 2020. On this basis, the spare capacity in China was estimated at 31 million tonnes in 2020, which is indicative for the spare capacity in the review investigation period and is almost equal to the total Union consumption on the free market (about 35 million tonnes) in the review investigation period.

(123) The deceleration in Chinese steel demand in the beginning in 2021 is and will be a key driver of increasing exports. The resulting imbalance between capacity and demand is likely to increase pressure on producers to export. Chinese capacities are too big compared to the actual needs of the Chinese economy.

(124) In addition, one of main markets, that is the USA, is protected by anti-dumping measures on the product under review, which reduces access of the Chinese exporting producers.

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

3.4.6.3. *Attractiveness of the Union market*

(126) The Union market is among the largest markets of certain hot-rolled flat steel products worldwide. The Chinese market cannot absorb the excess steel capacity and major third countries markets are closed for Chinese exports as they have anti-dumping, safeguards or other protective measures in place against the PRC ([68]). In addition, price levels in the Union (the average price charged by the Union industry was EUR/tonne 734 during the review investigation period) are above the average price charged by Chinese exporting producers to the rest of the world (EUR/tonne 714 at CIF level). Since, as explained in recital (200) below, HRF is a highly price sensitive commodity product, the Chinese exporters would have a strong incentive to direct their exports to the Union should the measures lapse.

(127) The applicant claimed in its request that the Union steel safeguard measures alone, which apply to the product under review, would not be sufficient to protect the Union market against imports in significant quantities at dumped prices. As China did not receive any country-specific quota for the product under review, Chinese exporting producers have access to a large amount of residual quota volumes under which they could direct their exports to the Union market if the anti-dumping measures were to lapse. As a result, if anti-dumping measures were to be repealed, Chinese export volumes are likely to increase significantly within the residual quota and thus flood the Union market before any out-of-quota duty under the safeguard measure would become applicable.

(128) In light of the above, the Commission concluded that the Union market represents an attractive target for the existing spare capacity in the PRC if anti-dumping measures were to be repealed.

(129) After disclosure, CISA claimed that even if it is based on facts available pursuant to Article 18 of the basic Regulation, it is unreasonable to have the normal value of the Chinese exporters that is almost twice the cost of production of the Union industry.

(130) As stated in the recitals (95) and (112) the Commission provided the unit values of the factors of production and elaborated on the methodology used to calculate the normal value. Since there was no cooperation from the exporting producers from the PRC, the findings with regard to the imports from the PRC were made on the basis of the facts available pursuant to Article 18 of the basic Regulation including Global Trade Atlas ('GTA') to establish the undistorted cost of most of the factors of production, notably the raw materials. Consequently, the claim was rejected.

([68]) Currently there anti-dumping measures in the following countries: Canada, USA, Türkiye, Mexico and UK. GCC (Gulf countries) has safeguard measures and USA has also Section 232 measures.

3.4.6.4. *Conclusion on the likelihood of recurrence of dumping*

(131) In view of the findings of spare capacities, attractiveness of the Union market in terms of size and prices and the fact that the prices charged by the exporting producers from the PRC to third countries are significantly below the established normal value, the Commission concluded that there is a likelihood of recurrence of dumping should the measures be allowed to lapse.

4. **INJURY**

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

(132) According to the applicant the like product was manufactured by 21 producers in the Union during the period considered. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

(133) The total Union production of the product under review during the review investigation period was established at around 70 million tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry, such as the request for the expiry review, the verified questionnaire replies and the macro questionnaire reply submitted by EUROFER. As indicated in recital (13), the Union producers selected in the sample represented 29 % of the total Union production of the like product during the review investigation period.

4.2. **Union consumption**

(134) The product under review is regarded as a primary material for the production of various value-added downstream products, starting with cold-rolled products. Given that the Union industry is mostly vertically integrated and produces both the product under review and downstream products, both the captive and free market were analysed separately, where appropriate.

(135) The distinction between captive and free market is relevant for the injury analysis because products destined for the captive market are not exposed to direct competition from imports, and transfer prices, if any, are set within the groups according to various price policies. By contrast, production destined for the free market is in direct competition with imports of the product concerned, and prices are set according to market conditions. In addition, the total free market includes sales of Union producers to unrelated customers and non-captive sales to related companies.

(136) To provide a picture of the Union industry that is as complete as possible, the Commission obtained data for the entire activity of the like product and determined whether the production was destined for the captive or the free market. The Commission found that around 60 % of the total Union production of the like product was destined for the captive market during the review investigation period.

(137) The Commission established the Union free market consumption on the basis of (a) the sales on the Union market of all known producers in the Union, as reported in the macro questionnaire reply from EUROFER and (b) the imports to the Union from all third countries as reported by Eurostat. The Union captive market consumption was established on the basis of the captive use and captive sales on the Union market of all known producers in the Union, as reported in the macro questionnaire reply from EUROFER.

(138) Union consumption developed as follows:

Table 2

Union consumption (000 tonne)

	2018	2019	2020	Review investigation period
Free market consumption	34 533	32 411	27 899	34 869
Index	*100*	*94*	*81*	*101*
Captive consumption	45 289	42 011	36 989	40 424
Index	*100*	*93*	*82*	*89*
Total Union consumption	79 822	74 422	64 888	75 293
Index	*100*	*93*	*81*	*94*

Source: Eurostat, Macro questionnaire reply from EUROFER.

(139) Total Union consumption declined by 7 % in 2019 and sharply dropped further by another 12 % in 2020 due to a slump in demand caused by the COVID-19 pandemic. This decrease was however followed by a good recovery driven by the rebound in steel demand during the review investigation period but was still 6 % below the level of 2018.

(140) Free market consumption followed a similar trend to that of total Union consumption. It decreased sharply by 19 % up to 2020 and recovered strongly during the review investigation period, reaching even a level 1 % above that of 2018.

(141) The captive market consumption trend was nearly identical to the total Union consumption trend, declining sharply until 2020 by 18 %, followed by a recovery reaching however only 89 % of the 2018 level.

(142) Overall, total Union consumption decreased 6 % during the period considered.

4.3. **Imports from the country concerned**

4.3.1. ***Volume and market share of the imports from the country concerned***

(143) The Commission established the volume of imports on the basis of Eurostat data. The market share of the imports was established on the basis of a comparison between import volumes and the Union free market consumption, as reported in Table 2 above.

(144) Imports into the Union from the country concerned developed as follows:

Table 3

Import volume (000 tonnes), market share and prices (EUR/tonne)

	2018	2019	2020	Review investigation period
Volume of imports from the PRC	1,7	0,5	0,3	28,7
Market share (%)	0,0	0,0	0,0	0,1
PRC import prices	1 674	3 177	2 482	664
Index	*100*	*190*	*148*	*40*

Source: Eurostat, Macro Questionnaire reply from EUROFER.

(145) After the imposition of measures in 2017, imports from China dropped to an insignificant level, with a negligible market share of 0,002 % in 2018. From 2018 to 2020, imports declined even further. During the review investigation period, imports from the PRC however, spiked in April 2021 in comparison to the low levels in the preceding three years. Market share, however, remained very low at 0,1 %.

(146) Chinese import prices as reported in Eurostat were exceptionally high during 2018, 2019 and 2020, though they plummeted during the review investigation period. The exceptionally high import prices from 2018 to 2020 are likely connected with the fact that China exported a negligible volume to the Union, which cannot be considered reliable.

(147) The Commission considered that Chinese import prices reported in Eurostat during the period considered are not representative of HRF average prices due to the very low volume of imports from the PRC during that period and that they could not be used to draw meaningful or relevant conclusions.

(148) The imports of the product under review from other third countries developed as follows:

Table 4

Imports from third countries

Country		2018	2019	2020	Review investigation period
Total of all third countries except the PRC	Volume (1 000 tonnes)	7 997	7 225	5 879	9 635
	Index	*100*	*90*	*74*	*120*
	Market share (%)	23	22	21	28
	Average price (EUR/tonne)	532	482	428	765
	Index	*100*	*90*	*80*	*144*

Source: Eurostat.

(149) Total imports of the product under review from third countries other than the country concerned decreased from 2018 to 2020 by 26 % and sharply increased in 2021 to reach a market share of 28 %, which is 20 % above the 2018 level. Overall, the Union imports HRF from more than 40 countries worldwide. The five biggest exporters of HRF to the EU during the review investigation period were Russia, India, Türkiye, Egypt and Taiwan, representing 18 % of the Union free market and 65 % of all imports of HRF. Individually, Russia was the largest exporter with a market share of 5,8 % whilst the other four countries held a market share between 2 % and 4 %, respectively. No other country holds a market share above 2 %. Among the biggest exporters, imports from Russia ([69]) and Türkiye ([70]) are currently covered by anti-dumping measures.

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

4.4.1. ***General remarks***

(150) The assessment of the economic situation of the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

([69]) OJ L 258, 6.10.2017, p. 24.
([70]) OJ L 238, 6.7.2021, p. 32.

(151) As mentioned in recital (13), sampling was used for the assessment of the economic situation of the Union industry.

(152) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data provided by the applicant that related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.

(153) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, employment, productivity, magnitude of the dumping margin and recovery from past dumping.

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

(155) As explained in recitals (136) – (137), to provide a picture of the Union industry that is as complete as possible, the Commission obtained data for the entire production of the product concerned and determined whether the production was destined for the captive or the free market. Where relevant and possible the Commission analysed separately injury indicators related to the free and the captive market.

4.4.2. ***Macroeconomic indicators***

4.4.2.1. *Production, production capacity and capacity utilisation*

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

Table 5

Production, production capacity and capacity utilisation

	2018	2019	2020	Review investigation period
Production volume (1 000 tonnes)	75 626	70 920	61 096	69 531
Index	*100*	*94*	*81*	*92*
Production capacity (1 000 tonnes)	90 923	92 584	91 965	93 249
Index	*100*	*102*	*101*	*103*
Capacity utilisation (%)	83	77	66	75
Index	*100*	*92*	*80*	*90*

Source: Macro questionnaire reply from EUROFER.

(157) The production volume of the Union industry followed a similar trend as total Union consumption and decreased overall by around 8 % during the period considered, with a significant drop in 2020 followed by a recovery due to the rebound in steel demand during the review investigation period.

(158) While the production capacity of the Union industry slightly increased during the period considered by 3 %, the capacity utilisation followed the same negative trend as production volume and consumption and decreased by 10 % between 2018 and the review investigation period.

4.4.2.2. *Sales volume and market share*

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

Table 6

Sales volume and market share in the free market (000 tonnes)

	2018	2019	2020	Review investigation period
Sales on the free market	26 534	25 185	22 020	25 205
Index	*100*	*95*	*83*	*95*
Market share (%)	77	78	79	72
Index	*100*	*101*	*104*	*99*

Source: Macro questionnaire reply from EUROFER.

(160) The Union industry sales volume on the Union market followed the trend of consumption during the period considered. It decreased between 2018 and 2020 for the reasons explained in recital (139), followed by a rebound in the review investigation period. Yet, the rebound in the review investigation period was still below 2018 levels.

(161) During the period considered, the Union industry's market share in terms of Union consumption increased slightly from 2018 to 2020 from 77 to 79 % to drop by seven percentage points between 2020 and the review investigation period to 72 %. As shown in table 4, this decline is explained by the fact that the market share of imports from third countries increased by 7 % between 2020 and the review investigation period, which explains the loss of the Union industry on the free market share.

Table 7

Captive volume on the Union market and market share (000 tonnes)

	2018	2019	2020	Review investigation period
Captive volume on the Union market	45 289	42 011	36 989	40 424
Index	*100*	*93*	*82*	*89*
Total production of Union Industry	75 626	70 920	61 096	69 531
% of captive volume compared to total production	59,9	59,2	60,5	58,1

Source: Macro questionnaire reply from EUROFER.

(162) The Union industry captive volume (composed of captive use and captive sales on the Union market) decreased by 18 % from 2018 to 2020 and recovered by 7 percentage points in 2021, resulting in an overall decrease of 11 % during the period considered, from about 45 million tonnes to 40 million tonnes from the start to the end of the review investigation period. Overall, the captive and free market followed the same trend. Therefore, the Commission concluded that development of the captive market did not have any significant impact on the Union industry performance on the free market.

(163) The Union industry's captive market share (expressed a percentage of total production) remained relatively stable during the period considered, ranging between 58,1 % and 60,5 %.

4.4.2.3. *Growth*

(164) In a context of decreasing consumption and production, the Union industry lost sales volume and market share on the free market. Overall, there was no growth for the Union industry over the period considered.

4.4.2.4. *Employment and productivity*

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

Table 8

Employment and productivity

	2018	2019	2020	Review investigation period
Number of employees	41 161	38 980	36 207	38 470
Index	*100*	*95*	*88*	*93*
Productivity (unit/employee)	1 824	1 819	1 687	1 807
Index	*100*	*100*	*93*	*99*

Source: Macro questionnaire reply from EUROFER.

(166) Between 2018 and the review investigation period, the number of employees engaged in the production of the product under review followed the trend of the volume of Union production, it decreased sharply between 2018 and 2020 to recover slightly during the review investigation period. Overall resulting in a decrease by 7 % over the period considered.

(167) The productivity of the Union industry's workforce, measured as output (tonnes) per employee, remained overall stable during the period considered.

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

(168) As explained in recital (114), it was not possible to establish an affirmative determination of dumping during the review investigation period. Therefore, no dumping margin could be established. The investigation therefore focused on the likelihood of a recurrence of dumping should the anti-dumping measures be repealed.

(169) The anti-dumping measures imposed following the original investigation allowed the Union industry to recover from past dumping, as is shown by the data for 2018. This was also confirmed by the Commission findings in the anti-dumping investigation against hot-rolled flat products from Türkiye ([71]).

4.4.3. ***Microeconomic indicators***

4.4.3.1. *Prices and factors affecting prices*

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

([71]) Recital 139, Commission Implementing Regulation (EU) 2021/9 of 6 January 2021 imposing a provisional anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Turkey (OJ L 3, 7.1.2021, p. 4).

Table 9

Sales prices and cost of production in the Union (EUR/tonne)

	2018	2019	2020	Review investigation period
Average unit sales price on the free market	549	509	450	734
Index	*100*	*93*	*82*	*134*
Unit cost of production	518	557	534	669
Index	*100*	*108*	*103*	*129*

Source: Sampled Union producers questionnaire reply.

(171) The Union industry's average sales prices decreased by 18 % between 2018 and 2020 and increased drastically by 34 % in 2021 compared to 2018. The trend of unit sales prices during the period considered was influenced by the severe disruptions caused by the COVID-19 pandemic and the post-pandemic resumption in demand. In 2021, high steel demand, tight supply, and increased cost of production were the factors that influenced the sudden and significant rise in the unit sales price.

(172) The unit cost of production increased over the period concerned by 29 %. However, in 2019 the cost of production increased whilst the unit sales prices dropped. The inability for the Union industry to reflect the increased cost of production in their sales price was due to large volumes of dumped imports from Türkiye, pushing the prices downwards. In 2020, both cost of production and sales prices dropped, but the former to a smaller extent. This was due to the slump in the market during the COVID-19 pandemic, depressing prices significantly whilst the cost of production was less affected. The unit cost of production surged in 2021 due to a jump in energy and commodity prices. However, due to the post-COVID recovery, demand surged as well and consequently, prices also increased significantly (more than 50 % between 2020 and the review investigation period), even more than the increase in production costs in the same period.

4.4.3.2. *Labour costs*

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

Table 10

Average labour costs per employee

	2018	2019	2020	Review investigation period
Average labour costs per employee (EUR/FTE)	64 164	69 352	69 748	78 444
Index	*100*	*108*	*109*	*122*

Source: Sampled Union producers questionnaire reply.

(174) During the period considered average labour costs increased by 22 %. While the number of employees in the review investigation period went down, compared to 2018, the average labour cost per employee increased.

4.4.3.3. *Inventories*

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

Table 11

Inventories

	2018	2019	2020	Review investigation period
Closing stocks (tonnes)	631 608	533 200	390 880	522 405
Index	*100*	*84*	*62*	*83*
Closing stocks as a percentage of production	5,0	4,5	3,8	4,6
Index	*100*	*90*	*76*	*92*

Source: Sampled Union producers questionnaire reply.

(176) During the period considered, the Union industry stock of HRF decreased continuously, with a drastic fall in 2020, which is explained by the effects of the Covid-19 pandemic, and a rebound in 2021. The HRF industry in the Union is characterised by framework contracts (monthly, quarterly, yearly) between producers and customers that fix the quantities and prices. These framework contracts are implemented through purchasing orders according to customers' needs. As a result, the Union industry can plan its production and inventories. Accordingly, and as also established in the original investigation, stocks are not considered an important injury indicator for this industry, since most types of the like product are produced by the Union industry based on specific orders of the users.

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

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

Table 12

Profitability, cash flow, investments and return on investments

	2018	2019	2020	Review investigation period
Profitability of sales in the Union free market (% of sales turnover)	8,4	- 7,2	- 18,0	14,1
Index	*100*	*- 86*	*- 214*	*168*
Cash flow (EUR)	496 319 788	- 6 211 922	- 130 468 840	645 183 908
Index	*100*	*- 1,3*	*- 26*	*130*
Investments (EUR)	216 927 207	433 154 031	181 406 902	394 535 083
Index	*100*	*200*	*84*	*182*
Return on investments (%)	9,1	- 6,0	- 13,3	17,4
Index	*100*	*- 66*	*- 146*	*191*

Source: Sampled Union producers questionnaire reply.

(178) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the free market sales of the like product in the Union as a percentage of the turnover of those sales.

(179) Profitability fluctuated during the period considered and overall profitability increased by 5,7 percentage points during the period considered. After the imposition of measures in 2017, the industry recovered and recorded a profit in 2018. Losses were, however, incurred in 2019 and profitability reached its lowest level, namely -18 %, in 2020 at the core of the pandemic, while in 2021 profit strongly rebounded to 14,1 %. Following the imposition of measures against the PRC in 2017, dumped imports at low prices from Türkiye rapidly increased, which explains the drop in profitability in 2019. This decrease in profitability was then exacerbated by the shocks caused by the global pandemic in 2020, such as supply chain disruptions and the decline in steel consumption. Spike in steel demand, coupled with increased sales prices, led to exceptionally high profits in 2021, which marked an exceptional year for the Union industry.

(180) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow developed in a similar manner to profitability: a drastic fall in 2019-2020, followed by strong rebound in the review investigation period.

(181) Between 2018 and the review investigation period, investments increased by 82 %. Overall, during the period considered, the investment flows followed a bimodal distribution: investment increased significantly in 2019, followed by a drop in 2020 and a second peak in 2021. In general, the investments were aimed at improving quality and greening of production.

(182) The return on investments (ROI) is the profit in percentage of the net book value of investments. The return on investment significantly improved during the review investigation period as compared to 2018. In fact, during the period considered, the ROI increased by 8,3 percentage points. It developed in a similar way as the profitability: a drastic fall in 2019 and 2020, followed by strong rebound in the review investigation period.

(183) The sampled Union producers' ability to raise capital was not affected during the review investigation period, which saw a speedy recovery from the pandemic.

4.5. **Conclusion on injury**

(184) Following the imposition of anti-dumping measures against imports of HRF from China in 2017, imports from China decreased and remained below the de minimis level during the period considered allowing the Union industry to start recovering from the injurious effects of the dumped imports from China and, as confirmed by the Commission in Commission Regulation (EU) 2021/1100 concerning imports of HRF originating in Türkiye ([72]), had recovered by the end of 2018. However, the recovery of the Union industry's economic situation came to an abrupt halt and was reversed in 2019, when the Union industry had to compete with significant volumes of low priced dumped imports from Türkiye, forcing it to set its prices below costs to keep its market share and thus causing a material injury to the Union industry ([73]). In July 2021, the Commission imposed definitive measures against Türkiye and thanks to various factors at play, as explained in recital (179) the situation of the Union industry improved and recovered by the end of 2021 to an economic situation similar to that of 2018. Hence, during the review investigation period, the Union industry was no longer considered injured.

(185) More particularly, almost all injury indicators, notably production, capacity utilisation, sales volumes and sales prices, employment and productivity, profit, cash flow and ROI followed a similar trend during the period considered. This trend was characterised by a decrease in 2019, a sharper decrease in 2020 and a rebound in the review investigation period to levels similar to those at the beginning of the period considered in 2018. The reason behind this irregular trend lies largely in the coincidence of a considerable influx of low-priced dumped imports of HRF from Türkiye and the unique dynamics created by the COVID-19 pandemic. Lockdowns and interruptions of industrial activity led to extremely low consumption levels and low demand for steel in 2020, whilst steel demand and prices soared in 2021 during the post-COVID recovery leading, amongst others, to exceptionally high profits for the steel industry during the review investigation period.

([72]) Recital 210, Commission Implementing Regulation (EU) 2021/1100 of 5 July 2021 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Turkey (OJ L 238, 6.7.2021, p. 32).

([73]) *Ibid.*

(186) On the basis of the above, the Commission concluded that the Union industry did not suffer material injury within the meaning of Article 3(5) of the basic Regulation during the review investigation period.

(187) However, the indicators cannot be analysed without considering the exceptionally favourable steel market conditions of 2021. In 2020, however, the pandemic-induced slowdown of industrial activity and its consequent decrease of steel demand, led to a severe downturn of the performance of the steel industry, and global economy in general. In 2021, driven by a rebound in demand, steel consumption strongly bounced back, as did steel prices.

5. **LIKELIHOOD OF RECURRENCE OF INJURY**

(188) As explained in recital (186), the Commission concluded that the Union industry did not suffer material injury during the review investigation period. On the other hand, as explained in recital (131), the Commission concluded that dumping would likely recur in the absence of anti-dumping measures. Therefore, the Commission assessed, in accordance with Article 11(2) of the basic Regulation, whether there would be a likelihood of recurrence of injury caused by the dumped imports from the PRC if the measures were allowed to lapse.

(189) In this regard, the Commission examined the production capacity and spare capacity in China, the attractiveness of the Union market, and likely price levels of imports from China in the absence of anti-dumping measures and their impact on the Union industry.

5.1. **Production capacity and spare capacity in the PRC**

(190) As described in recital (122), the producers in China have significant spare capacity. Indeed, Chinese estimated spare capacity corresponds to 89 % of the size of the EU free market consumption. This spare capacity could be used to produce the product under review for export to the Union if measures were allowed to lapse. Moreover, as stated in recital (123), shrinking Chinese steel demand is, and will be, a key driver of increasing exports. The resulting imbalance between capacity and demand in China is likely to increase pressure on Chinese producers to export.

(191) In addition, one of main markets, the USA, is protected by anti-dumping measures on the product under review, which reduces access of the Chinese producers.

5.2. **Attractiveness of the Union market**

(192) As described in recital (126), the Union market is among the largest markets of certain hot-rolled flat steel products worldwide. Moreover, the Chinese market cannot absorb the excess steel capacity and major third countries markets are closed for Chinese exports as they have anti-dumping, safeguards or other protective measures in place against the PRC. Also, the price levels in the Union are higher than the average price charged by the Chinese exporters to the rest of the world. Therefore, the Union market represents an attractive target for the existing spare capacity in the PRC if anti-dumping measures were to be repealed.

(193) After disclosure, CISA contested the conclusions with regards to the attractiveness of the Union market, arguing that the Chinese steel industry relies on its domestic market, and that Chinese domestic consumption is ten times larger than the EU free market segment. It further highlighted that as of 1 August 2021, certain steel products, including hot-rolled flat steel, are no longer eligible for VAT export rebates, thus having a discouraging effect on exports and redirecting Chinese steel production to the Chinese domestic industry.

(194) The Commission acknowledged that Chinese domestic HRF consumption is significantly larger the EU free market but as explained in recital (190), the producers in China have significant spare capacity which they are not able to deploy in their domestic market. There is thus nothing that prevent the Chinese producers to use this spare capacity to produce the product under review for export to the Union if the measures were allowed to lapse. Besides, as stated in recital (123), shrinking Chinese steel demand is, and will be, a key driver of increasing exports. The resulting imbalance between production capacity and demand in China is likely to increase pressure on Chinese producers to export. With regard to the alleged change in the VAT system, the Commission noted that CISA had not provided any

evidence supporting the argument that the change of VAT rebates would have led, or will lead, to any significant changes in the export behaviour of Chinese producers. The Commission therefore rejected this claim as unsubstantiated.

5.3. **Likely Chinese import prices and impact on the Union industry**

(195) Taking into account the low volumes of imports from the PRC from 2018 until 2021, the Commission considered that the import prices reported in Eurostat could not be relied on to establish the likely prices of imports of HRF from China in the absence of anti-dumping measures. Instead, the Commission considered as a representative proxy export prices from the PRC to all third countries other than the Union ('rest of the world' or 'ROW').

(196) As described above in recital (117), the Commission established that during the review investigation period Chinese exports prices (FOB) to the rest of the world was on average 660 EUR/tonne. Based on that price and to determine a likely price at which Chinese exports would arrive at the Union border, the Commission added cost for insurance and freight. In the absence of cooperation from Chinese exporting producers the Commission resorted to the costs used in the original investigation, i.e. 52 EUR/tonnes, or 7,9 % of the price/tonne, as the best facts available. Accordingly, the Commission concluded that the likely import CIF price of Chinese exports of HRF to the Union would, absent measures, be not more than 712 EUR/tonne.

(197) Given that statistical data, in the absence of cooperation of Chinese exporting producers, was used, only an average price per tonne for a large variety of product types could be established. Hence, in the absence of information at product type level the Commission could not carry out a precise undercutting calculation but had to limit itself to a price comparison between average prices per tonne.

(198) The Chinese exports price thus determined was compared with the weighted average sales prices during the review investigation of the sampled Union producers charged to customers on the Union market, adjusted to an ex-works level.

(199) The price comparison was made at the same level of trade and, in analogy with a precise undercutting calculation methodology, the result of the comparison was expressed as a percentage of the sampled Union producers' theoretical turnover during the review investigation period. It showed that on average the Chinese exports to the Union would undercut Union industry's average prices by around 8 %.

(200) HRF is a highly price sensitive commodity product and as observed in the original investigation concerning imports of HRF from China and also in the investigation on the identical product from Türkiye, rather modest levels of price undercutting combined with large volumes are susceptible to have significant and immediate impact on the Union industry's performance ([74]). In both those investigations, undercutting margins below 5 % forced the Union industry to lower sales prices (or lose market share) to such an extent that it incurred material injury in the short term.

(201) Given that the Union industry during the review investigation period had just rebounded from a turbulent and economically difficult period, including the Covid-19 pandemic, with accumulated losses, it is still in a fragile situation. It is therefore highly likely that the recurrence of low-priced dumped imports from China in significant volumes that undercut Union prices would have a significant adverse effect on the Union industry's performance, notably with regard to production, sales volumes and prices, profitability and investment needs, resulting in material injury recurring.

(202) After disclosure, CISA challenged the selection of the period considered for the injury analysis. It argued that the dumped imports of HRF at increased volumes from Türkiye in 2019, the COVID-induced economic slowdown, and the post-pandemic recovery boom distorted the evidence serving as a basis for the dumping and injury analysis. It claimed that the Commission should have analysed a different period and suggested to examine an extended period, covering one or two years prior to the period considered (2016 – 2018) as well as post-RIP (2022).

([74]) Recital 98, OJ L 3, 7.1.2021, p. 4.

(203) The Commission rejected this claim. It recalled that the various elements listed by CISA as being capable of distorting the evidence during the period considered had been acknowledged and carefully considered in the Commission's injury analysis. The Commission further observed that even if an extended period prior to the review investigation period would have been considered, as suggested by CISA, the same elements would still have been present. With regard to the review investigation period the Commission recalled that based on Article 6(1) of the basic Regulation, *'an investigation period shall be selected which in the case of dumping shall, normally, cover a period of no less than six months immediately prior to the initiation of proceedings. Information relating to a period subsequent to the investigation period shall, normally, not be taken into account'*. It is established case-law that the Commission cannot be required to incorporate in its calculations factors relating to a period subsequent to the investigation period, unless such factors disclose new developments which make the proposed anti-dumping duty manifestly inappropriate ([75]). The same reasoning, by analogy, should apply to review investigations initiated under Article 11(2) of the basic Regulation. CISA did not provide any evidence tending to show that the developments that followed the review investigation period made the re-imposition of the duty manifestly inappropriate.

5.4. **Conclusion**

(204) On the basis of the above, it is concluded that the absence of measures would in all likelihood result in a significant increase of dumped imports from the PRC at injurious prices and thus material injury would be likely to recur.

6. **UNION INTEREST**

(205) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures would be against the interest of the Union as whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, and users.

6.1. **Interest of the Union industry**

(206) The Union industry is located in 15 Member States (Austria, Belgium, Czech Republic, Finland, France, Germany, Hungary, Italy, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Spain). It employs over 38 000 employees in relation to the product under review.

(207) In the absence of measures, the Union industry will no longer be protected against the likely increase of dumped imports from China, which will cause material injury. The effect of anti-dumping measures will be positive for the Union producers, as measures will help the Union industry to continue its recovery from past dumping. It is therefore clearly in the interest of the Union industry to maintain the measures.

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

(208) The Commission contacted all known users and unrelated importers. No users or unrelated importers came forward and cooperated in this investigation by submitting a questionnaire reply. Given the lack of cooperation of users and unrelated importers and in the absence of any indications to the contrary, the continuation of the measures is not considered against the interest of users and importers.

(209) Moreover, the Commission analysed whether measures against China would have a negative effect on the security of supply, as there are also measures in place on HRF against Türkiye, Brazil, Iran and Russia. The Union industry level of capacity utilisation was 75 % during the review investigation period, and the total production capacity exceeded the total Union consumption by 18 million tonnes, according to EUROFER's macro questionnaire data. In addition, despite measures against some of the major exporters of HRF, almost 40 countries exported the product under review to the Union during the review investigation period, thus showing that the imposition of measures would not impinge upon diversification of supply. For these reasons and in the absence of cooperation by users and importers, the Commission concluded that there were no potential risks at the level of supply for downstream users.

([75]) Judgment of 17 December 2008 in T-462/04, *HEG and Graphite India v Council*, ECLI:EU:T:2008:586, para. 67.

(210) After disclosure, CISA referred to the EU safeguard on imports of, inter alia, HRF from China, which significantly limits the possibility for Chinese producers to export HRF to the EU market and restrict the free trade flows to the detriment of downstream producers and end users.

(211) The Commission recalled that the safeguard in question cannot be considered of a lasting nature, and that the measure currently in place ([76]) has no impact on the assessment of the likelihood of increased imports in the absence of anti-dumping duties. Considering the temporary nature of the steel safeguards, the Commission hence found that they cannot have a bearing on its conclusions in this investigation. On the security of supply, as stated in recital (209), the Union industry's total production capacity exceeded the total Union consumption, and several other third countries exported HRF to the Union during the review investigation period. Moreover, the safeguard measure is regularly review and adjusted if needed in order to ensure sufficient supply of steel in the Union market Therefore, safeguards measures would not constitute a risk to the security of supply for downstream users.

(212) In addition, CISA also claimed that the introduction of the Carbon Border Adjustment Mechanism (CBAM) would deteriorate the access to the EU market given the burdensome reporting obligations and surcharges linked to the CBAM.

(213) The Commission recalled that the CBAM will only enter into force in October 2023 and that during a transitional period, until 2026, importers will only have to report emissions embedded in their goods without incurring any financial charges. The stated reason for this transitional period is to allow parties time to adjust before the final system is put into place and to reduce the risk of trade disruptions. Accordingly, the Commission considered that it is premature to make any assessment of the potential impact of CBAM on future trade flows of HRF and rejected the claim.

6.1.2. ***Conclusion on Union interest***

(214) On the basis of the above, the Commission concluded that there were no compelling reasons of Union interest against the continuation of the existing measures on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the PRC.

7. **CLAIMS THAT THE MEASURES SHOULD BE SUSPENDED**

(215) CISA claimed that the current anti-dumping measures should be suspended in accordance with article 14(4) of the basic Regulation arguing that both conditions set out in the aforementioned Article 14(4) of the basic Regulation are fulfilled. It claimed that market conditions have temporarily changed to such an extent that injury would be unlikely to continue or occur as a result of the suspension. In that view, CISA referred to the growth expectations of the Union downstream industry and the expected economic recovery in the post-COVID period, the price increases of the product concerned, the expected decrease of the volume of imports from Russia and Ukraine and the Implementing Decision to suspend the definitive antidumping duties imposed on aluminium flat-rolled products from the PRC ([77]).

(216) The Commission rejected CISA's claim, as it was generic and unsubstantiated. On the other hand, the review investigation has established that injury would be likely to recur in the absence of measures and, *mutatis mutandis*, also in case of a suspension. Following disclosure, CISA repeated this claim, but did not put forward any new argument.

([76]) By Commission Implementing Regulation (EU) 2019/159, 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, the safeguard measure was prolonged until 30 June 2024.

([77]) Commission Implementing Decision (EU) 2021/1788 of 8 October 2021 suspending the definitive anti-dumping duties imposed by Implementing Regulation (EU) 2021/1784 on imports of aluminium flat-rolled products originating in the People's Republic of China (OJ L 359, 11.10.2021, p. 105).

8. **ANTI-DUMPING MEASURES**

(217) On the basis of the conclusions reached by the Commission on recurrence of dumping, recurrence of injury and Union interest, the anti-dumping measures on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the PRC should be maintained.

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

(219) 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 must 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 lower rate of duty is justified, in compliance with customs law.

(220) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume 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 and provided the conditions are met, an anti-circumvention investigation may be initiated. 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.

(221) The individual company anti-dumping duty rates specified in this Regulation are exclusively applicable to imports of the product under review originating in the PRC and produced by the named legal entities. Imports of the product under review produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.

(222) 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 ([78]). 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*.

(223) An exporter or producer that did not export the product concerned to the Union during the period that was used to set the level of the duty currently applicable to its exports may request the Commission to be made subject to the anti-dumping duty rate for cooperating companies not included in the sample. The Commission should grant such request, provided that three conditions are met. The new exporting producer would have to demonstrate that: (i) it did not export the product concerned to the Union during the period that was used to set the level of the duty applicable to its exports; (ii) it is not related to a company that did so and thus is subject to the anti-dumping duties; and (iii) has exported the product concerned thereafter or has entered into an irrevocable contractual obligation to do so in substantial quantities.

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

(224) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([79]) 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.

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of certain flat-rolled products of iron, non-alloy steel or other alloy steel, whether or not in coils (including 'cut-to-length' and 'narrow strip' products), not further worked than hot-rolled, not clad, plated or coated, currently falling under CN codes 7208 10 00, 7208 25 00, 7208 26 00, 7208 27 00, 7208 36 00, 7208 37 00, 7208 38 00, 7208 39 00, 7208 40 00, 7208 52 10, 7208 52 99, 7208 53 10, 7208 53 90, 7208 54 00, 7211 13 00, 7211 14 00, 7211 19 00, ex 7225 19 10 (TARIC code 7225 19 10 90), 7225 30 90, ex 7225 40 60 (TARIC code 7225 40 60 90), 7225 40 90, ex 7226 19 10 (TARIC codes 7226 19 10 91, 7226 19 10 95), 7226 91 91 and 7226 91 99 and originating in the People's Republic of China.

The following products are not covered by this review:

(i) products of stainless steel and grain-oriented silicon electrical steel,

(ii) products of tool steel and high-speed steel,

(iii) products, not in coils, without patterns in relief, of a thickness exceeding 10 mm and of a width of 600 mm or more, and

(iv) products, not in coils, without patterns in relief, of a thickness of 4,75 mm or more but not exceeding 10 mm and of a width of 2 050 mm or more.

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

Country	Company	Anti-dumping duty	TARIC additional code
People's Republic of China	Bengang Steel Plates Co., Ltd.	0 %	C157
	Handan Iron & Steel Group Han-Bao Co., Ltd.	10,3 %	C158
	Hesteel Co., Ltd. Tangshan Branch ([1])	10,3 %	C159
	Hesteel Co., Ltd. Chengde Branch ([2])	10,3 %	C160
	Zhangjiagang Hongchang Plate Co., Ltd.	31,3 %	C161
	Zhangjiagang GTA Plate Co., Ltd.	31,3 %	C162
	Shougang Jingtang United Iron and Steel Co. Ltd.	0 %	C164
	Beijing Shougang Co. Ltd., Qian'an Iron & Steel branch	0 %	C208
	Angang Steel Company Limited	10,8 %	C150

([79]) 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).

	Inner Mongolia Baotou Steel Union Co., Lt	0 %	C151
	Jiangyin Xingcheng Special Steel Works Co., Ltd.	0 %	C147
	Shanxi Taigang Stainless Steel Co., Ltd.	0 %	C163
	Maanshan Iron & Steel Co., Ltd	10,8 %	C165
	Rizhao Steel Wire Co., Ltd.	10,8 %	C166
	Rizhao Baohua New Material Co., Ltd.	10,8 %	C167
	Tangshan Yanshan Iron and Steel Co., Ltd.	0 %	C168
	Wuhan Iron & Steel Co., Ltd.	10,8 %	C156
	All other companies	0 %	C999

([1]) Formerly 'Hebei Iron & Steel Co., Ltd. Tangshan Branch'.
([2]) Formerly 'Hebei Iron & Steel Co., Ltd. Chengde Branch'.

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: *'I, the undersigned, certify that the (volume) of (product under review) 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. Where any new exporting producer in the People's Republic of China provides sufficient evidence to the Commission that:

(a) it did not export the goods described in Article 1(1) originating in the People's Republic of China during the period between 1 January 2015 and 31 December 2015 (original investigation period);

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

(c) it has either actually exported the product under review originating in the People's Republic of China or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the original investigation period after the end of the period of investigation

Article 1(2) may be amended by adding the new exporting producer to the list of companies identified in the table and subject to an individual duty not exceeding the duty rate applicable to those companies that cooperated in the anti-dumping investigation but not in the anti-subsidy investigation, i.e. 0 %.

5. Should the definitive countervailing duties imposed by Article 1 of Commission Implementing Regulation (EU) 2017/969 be modified or removed, the duties specified in paragraph 2 will be increased by the same proportion limited to the actual dumping margin found or the injury margin found as appropriate per company and from the entry into force of this Regulation.

In cases where the countervailing duty has been subtracted from the anti-dumping duty for certain exporting producers, refund requests under Article 21 of Regulation (EU) 2016/1037 shall also trigger the assessment of the dumping margin for that exporting producer prevailing during the refund investigation period. The amount to be reimbursed to the applicant for refund cannot exceed the difference between the duty collected and the combined countervailing and anti-dumping duty established in the refund investigation.

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

Article 2

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

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

Done at Brussels, 7 June 2023.

For the Commission
The President
Ursula VON DER LEYEN