II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2023/99

of 11 January 2023

imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of certain aluminium road wheels originating in Morocco

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union [1] ('the basic Regulation') and in particular Article 9(4) thereof,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 17 November 2021, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of certain aluminium road wheels ('ARW') originating in Morocco ('the country concerned') on the basis of Article 5 of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* [2] ('the Notice of Initiation').

(2) The Commission initiated the investigation following a complaint lodged on 4 October 2021 by the Association of European Wheel Manufacturers ('the complainant' or 'EUWA'). The complaint was made on behalf of the Union industry in the sense of Article 5(4) of the basic Regulation. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

1.2. Provisional measures

(3) On 17 June 2022, in accordance with Article 19a of the basic Regulation, the Commission provided parties with a summary of the proposed duties and details about the calculation of the dumping margins and the margins adequate to remove the injury to the Union industry. Interested parties were invited to comment on the accuracy of the calculations within three working days. No comments on the accuracy of the calculations were made.

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

[2] Notice of initiation of an anti-dumping proceeding concerning imports of certain aluminium road wheels originating in Morocco (OJ C 464, 17.11.2021, p. 19).

(4) On 15 July 2022 the Commission published in the *Official Journal of the European Union* Commission Implementing Regulation (EU) 2022/1221 ([3]) imposing provisional anti-dumping duties on imports of certain aluminium road wheels originating in Morocco ('the provisional Regulation').

1.3. **Subsequent procedure**

(5) Following the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed ('provisional disclosure'), Dika Morocco Africa S.A.R.L ('Dika'), Hands 8 S.A. ('Hands'), the European Automobile Manufacturers' Association ('ACEA') and EUWA filed written submissions making their views known on the provisional findings within the deadline provided by Article 2(1) of the provisional Regulation. In addition, after the expiry of the deadline for submitting comments on the provisional disclosure, the Government of Morocco provided a submission supporting the claims made by other parties on dumping and injury.

(6) The parties who so requested were granted an opportunity to be heard. Hearings took place with Dika, Hands, ACEA and EUWA. Additionally, further to the request of Dika, a hearing was held with the Hearing Officer in trade proceedings on 7 July 2022.

(7) The Commission continued to seek and verify all the information it deemed necessary for its definitive findings. One verification visit was held on the premises of a user. When reaching its definitive findings, the Commission considered the comments submitted by interested parties and revised its provisional conclusions when appropriate.

(8) The Commission informed, on 17 October 2022, all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of certain aluminium road wheels originating in Morocco ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure.

(9) Following final disclosure, ACEA, Dika, EUWA, Hands and the Government of Morocco submitted comments.

(10) On 21 November 2022, the Commission sent an additional final disclosure to Hands regarding certain corrections and clarifications made with regard to its dumping calculations ('additional final disclosure') and granted a period within which the company could make comments. In addition, all interested parties received a clarification of the basis for the amounts of SG&A costs used in the construction of the normal value for Hands. Hands submitted comments which were addressed in the Regulation.

(11) Parties who so requested were also granted an opportunity to be heard. Hearings took place with ACEA, Dika, EUWA and Hands.

1.4. **Claims on initiation**

(12) Following provisional disclosure no interested party submitted any claims or comments other than those referred to in Section 1.4 of the provisional Regulation. The Commission therefore confirmed its findings and conclusions as set out in recitals 6 to 28 in the provisional Regulation.

1.5. **Sampling**

(13) No comments were made in respect of the sampling. The Commission therefore confirmed recitals 29 to 34 of the provisional Regulation.

1.6. **Questionnaire replies and verification visit**

(14) As set out in recitals 35 of the provisional Regulation, the Commission sent questionnaires to three Union producers, the complainant, the two known users and the two exporting producers in the country concerned.

([3]) Commission Implementing Regulation (EU) 2022/1221 of 14 July 2022 imposing provisional antidumping duties on imports of certain aluminium road wheels originating in Morocco (OJ L 188, 15.7.2022, p. 114).

(15) As explained in recitals 36 and 37 of the provisional Regulation, questionnaire responses where either cross-checked or verified at the premises of the responding party.

(16) Verification visit pursuant to Article 16 of the basic Regulation was carried out at the premises of one user. The name of this user is not disclosed for confidential reasons in accordance with recital 5 of the provisional Regulation.

1.7. **Investigation period and period considered**

(17) As stated in recital 38 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 October 2020 to 30 September 2021 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2018 to the end of the investigation period ('the period considered').

1.8. **Registration**

(18) The Commission made imports of the product concerned subject to registration by Commission Implementing Regulation (EU) 2022/934 ([4]) ('the registration Regulation').

(19) Hands claimed that the decision for registration of imports was unfounded, as the conditions were not met pursuant to Article 14(5) of the basic Regulation.

(20) The Commission recalled that the legal basis for registration is Article 14(5a) of the basic Regulation, according to which, the Commission shall register the imports of the product concerned during the period of pre-disclosure pursuant to Article 19a of the basic Regulation, unless there is sufficient evidence that the requirements of Article 10(4)(c) and (d) are not met. In this respect, the Commission established that there was no conclusive evidence showing that the registration of imports of the product concerned during the period of the pre-disclosure was not warranted in this case. Indeed, since the publication of the notice of initiation, when exporting producers were aware or should have been aware of the alleged dumping and injury, imports of the product concerned have further increased in a manner which may seriously undermine the remedial effect of the anti-dumping duties also during the pre-disclosure period. Therefore, the Commission rejected the claims.

(21) Hands claimed that by publishing the registration Regulation the Commission violated the principle of sound administration. According to the party no information regarding the Commission's intention to make imports of the product under investigation subject to registration has been communicated to them before the registration Regulation was published and the import registration came into force, whereas such registration measure does potentially adversely affect its interests. Absence of communicating necessary information about possibly making imports subject to registration to Hands in a timely, effectively and personal manner before adopting such registration measure and allowing Hands to present its views and to be heard, while Hands is directly affected by that measure, the Commission is in violation of Hands' fundamental right of defence. Consequently, the Registration Regulation is invalid and should be repealed.

(22) The Commission considered that registration is only a preparatory administrative step that may or may not lead to the retroactive imposition of duties at definitive stage. Registration in itself does not produce any adverse effect on importers and cannot be said to affect their interests ([5]). Hands itself did not point to any concrete adverse effects referring merely to 'potential' effects. The only effect of registration is that the Commission instructs the national customs authorities to register the imports into the Union of the product under investigation. Furthermore, there is no procedural requirement in Article 14(5a) or elsewhere in the basic Regulation to consult importers or other parties before registration takes place. The requirement laid down in Article 10(4)(b) of the basic Regulation that parties be given an opportunity to comment only applies when there is a decision to collect duties retroactively after registering, but not for the registration itself. This is clearly from the fact that Article 14(5a) of the basic Regulation only refers to points (c) and (d) of Article 10(4) that need to be fulfilled for registration under this provision, but it deliberately does not refer to point (b) of Article 10(4). This is in line with the effect of such registration discussed above. Therefore, the Commission is not under the obligation to give the importers an opportunity to comment before instructing customs authorities to register imports. Therefore, the claim was rejected.

([4]) Commission Implementing Regulation (EU) 2022/934 of 16 June 2022 making imports of certain aluminium road wheels originating in Morocco subject to registration (OJ L 162, 17.6.2022, p. 27).

([5]) Order of 28 September 2021, *Airoldi Metalli SpA*, T-611/20, EU:T:2021:641, paras 48 and 49.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(23) The Commission recalled that, as set out in recital 39 of the provisional Regulation the product concerned is aluminium road wheels of the motor vehicles of HS headings 8701 to 8705 whether or not with their accessories and whether or not fitted with tyres, originating in Morocco, currently falling under CN codes ex 8708 70 10 and ex 8708 70 50 (TARIC codes: 8708 70 10 15, 8708 70 10 50, 8708 70 50 15 and 8708 70 50 50) ('the product concerned').

(24) Aluminium road wheels are traditionally sold in the Union via two distribution sales channels: to the Original Equipment Manufacturers ('OEM'), which are mainly car manufacturers, and to the Aftermarkets (or 'AM'), which includes for example distributors, retailers, repair shops, etcetera. The product concerned from Morocco was exclusively sold through the OEM channel during the period considered. In the OEM distribution channel, car manufacturers organise tender procedures for ARW and are often involved in the process of developing a new wheel, which is associated with their brand. Both Union producers and Moroccan exporters can compete in the same tenders.

2.2. Like Product

(25) In the absence of comments, the conclusions in recitals 39 to 42 of the provisional Regulation were confirmed.

3. DUMPING

3.1. Cooperation of exporting producers

(26) As explained in recitals 43 to 51 of the provisional Regulation, the Commission considered that Dika had not cooperated with the Commission in this investigation and provisionally determined its dumping margin on the basis of facts available in accordance with Article 18 of the basic Regulation.

(27) Following provisional disclosure Dika maintained that it had fully cooperated with the Commission and that it should receive an individually calculated dumping margin. It set forward the following arguments.

(28) First, Dika reiterated that it believes that the sales listings contained no errors, since the total values of the sales listings could be reconciled with the company's accounting system. In addition, the sales were listed in accordance with international financial reporting standards ('IFRS'). Moreover, Dika argued that the Commission had plenty of time to cross-check the revised sales listings provided by its related company CITIC Dicastal Co., Ltd ('CITIC') and could still do so before the imposition of definitive anti-dumping measures.

(29) The claim made by Dika was similar to that made at the provisional stage, while no new information was provided. At provisional stage the Commission had concluded that the sales listings were not provided on an invoice basis, that the difference between the invoice value and the amount actually received was not systematically reflected in the company's sales listings and that the revised listings could not be cross-checked. The fact that the company's sales were listed in accordance with IFRS standards did not change the fact the company did not provide the information requested by the Commission.

(30) Moreover, CITIC had provided several (at least four) different and incomplete versions of its sales listings in the course of the investigation. The last version, provided together with Dika's reply to the Commission's Article 18 letter of 5 May 2022, was still incomplete and contained a number of transactions where either the amount received was left empty with the note 'AR outstanding to date', or where there remained a mismatch between the amount invoiced and the amount received. Such incomplete data cannot be a reliable basis for cross-checking or verification. In addition, as also stated in recital 48 of the provisional Regulation, an additional remote cross-check ('RCC') should not be used as a way to remedy the lack of timeliness or errors established during the RCC that already took place within the set time limits. The Commission therefore rejected this claim.

(31) Second, Dika claimed that the transaction specific data on dates and amounts of payments requested by the Commission did not qualify as 'necessary information' in the sense of Article 18(1) of the basic Regulation, Article 6.8 and Annex II of the WTO Antidumping Agreement ([6]). According to Dika, the Commission did not request this information in the questionnaire or deficiency letters, nor was such information required for the dumping margin calculation. In addition, Dika claimed that in the provisional Regulation a different basis for the application of facts available was used than the one set out in the Commission's letter on the application of Article 18 dated 5 May 2022 ('Article 18 letter').

(32) The Commission disagreed with this claim. From the outset, it had asked the company to provide transaction specific data based on the invoice date. For example, section E of the anti-dumping questionnaire sent to Dika and its related company CITIC stated in the very first section that respondents should 'use invoice date as the date of sale'. However, the issue at hand is not (only) the date on which the sale took place, but rather the amount that was actually paid to the company by its clients. This is the issue which was explained in the Article 18 letter and which was set out in the provisional Regulation. Dika's assertion that the reasons set out in the letter were 'totally different' from those in the basic Regulation could not be accepted. In both cases the Commission explained that it considered the sales listings unreliable since they contained a number of mistakes and discrepancies.

(33) The sales data originally provided by the company did not correspond to the amounts actually received as payments. In addition, CITIC had clarified during the RCC that the difference between the invoice amount and the amount actually received is normally recorded in the sales listings as a discount, a rebate, a credit note or otherwise. As indicated in recital 47 of the provisional Regulation, and in recital 29 above, this was however not systematically done by the company. The sales listings could therefore not be used a reliable source to establish a normal value or export price under Articles 2(1) and 2(8) of the basic Regulation which states that the normal value 'shall normally be based on the prices paid or payable'. It logically follows that since a normal value or export price for Dika could not be established on the basis of the company's own data, a dumping margin could not be calculated either. The sales listings were therefore not only necessary, but fundamental to the investigation. Without reliable sales listings (including a full list of transactions of all product types sold and their prices), the Commission cannot arrive at a reasonably accurate finding with regard to dumping.

(34) After final disclosure, Dika reiterated its claim that since their sales listings were in accordance with IFRS standards, the Commission could not claim that the listings were incomplete and could not be verified. In addition, Dika claimed that since Article 2(8) of the basic Regulation refers to the export price being normally based on the 'prices paid or payable', the sales listings were correct since they reflected the prices payable. Finally, Dika reiterated its claim that data on payments did not qualify as 'necessary' under Article 18(1) of the basic Regulation.

(35) Whether or not the sales listings were overall reported in line with IFRS standards was irrelevant for the problems found with the reported prices. As the Commission has pointed out at several instances, the problem with the EU and domestic sales listings existed on a transaction basis. As stated by Dika during the hearing after the provisional measures and reiterated in their comments on final disclosure, in around 20 % of the transactions in the EU sales listings the payment amount did not match the reported invoice amount. The term 'price payable' refers to the total payment made or to be made by the buyer to the seller, including situations where for instance the goods have been sold, but the customer has not yet paid. This was not the case for most of the transactions in the EU sales listing. In fact, the price that was already paid by the customer, in these cases, was different from the price which was recorded as payable at the time of invoicing.

(36) As Dika and its related company stated during the RCC, the on-spot verification and the reply to the Article 18 letter, these differences would normally be recorded in the sales listings as a discount, a rebate, a credit note or otherwise, as also stated in recital 33. This was done for many transactions in the sales listings, but not systematically for all transactions. The fact that this is normally done, means that normally the price recorded as payable would become equal to the price finally paid after certain actions are performed related to the aforementioned credit notes, rebates, etc. This is how Dika itself explained it and how corrections were made in the company's SAP system after payments were made. However, in some cases the prices recorded in the domestic and EU sales listings were corrected in this manner, but in other cases they were not. The difference between the prices finally paid and the prices recorded as payable went both ways and were not accounted for, meaning in some cases the company received more than was invoiced, and in other cases less.

([6]) WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

(37) Reliable sales listings (thereby including a full list of transactions of all product types sold as well as their prices) containing accurate and verifiable data are fundamental to establish a dumping margin and hence qualify as necessary information under Article 18(1) of the basic Regulation. Since the difference between prices actually paid and recorded as payable affected a significant number of the transactions in the EU sales listing, this listing could not be used to establish a reliable export price on a transaction or product type basis. The Commission therefore rejected these claims.

(38) Third, Dika argued that, as the Commission verified the cost of production for Dika and found no discrepancies, the normal value should have been constructed for Dika on the basis of its verified cost of manufacturing. The Commission was, according to Dika, in error when concluding that the domestic and EU sales listings were crucial for the determination of a normal value and an export price, since the domestic sales listings would not have been used for the construction of a normal value in any case. Therefore, under Article 18(3) of the basic Regulation, the Commission should have used Dika's own data and calculated an individual dumping margin on that basis.

(39) Indeed, the Commission concluded in recital 60 of the provisional Regulation that Dika did not have any domestic sales listings for the construction of the normal value, as Dika's sales in Morocco were made between economic zones and the goods never entered the customs territory of Morocco. Accordingly, in absence of the application of facts available, the normal value for Dika could have been constructed. However, in order to establish a dumping margin, such normal value would need to be compared with the export price. However, the export price could not be calculated due to the unreliability of Dika's sales listings.

(40) During a hearing on 6 September 2022, Dika suggested that the Commission could establish an export price by using those transactions in the EU sales listings for which (according to the company) the invoice amounts matched the payments amounts. This would allegedly be the case for around 80 % of all transactions. For the remaining 20 %, Dika suggested that the Commission could apply the residual duty as calculated for Hands. Such an approach would, according to Dika, be in line with what the Commission did in a recent investigation concerning imports of corrosion resistant steels from Russia and Türkiye ([7]).

(41) Apart from the fact that Dika confirmed during the hearing that there were discrepancies in the sales listing for one fifth of their sales to the Union during the investigation period, the revised sales listings were not and could not be cross-checked (as explained in recitals 29 and 30) and hence could not be used for the purpose of establishing an export price. In addition, the investigation regarding corrosion resistant steels from Russia and Türkiye concerned a very different set of facts. In that case, a Russian producer claimed that it was unrelated to one of the two traders via which it sold its products to the EU. That particular trader did not cooperate in the investigation. The Commission disagreed with the Russian company's claim and considered that the relevant trader was related. However, as the trader did not cooperate in the investigation, no information was available on resale prices from that trader. The Commission therefore decided to use the information from the second cooperating trader as facts available under Article 18 of the basic Regulation.

(42) However, the set-up of the company structure and sales channels in that case is different from that in the case at hand. While in the corrosion resistant steels from Russia and Türkiye case there were two sales channels, in the current case all sales went through the same related entity, namely CITIC. There was thus no alternative reliable set of data available to the Commission for the calculation of an export price for Dika. This is a situation very different from the investigation to which Dika referred, where the export sales made via the remaining trader were cross-checked and deemed reliable. In the investigation at hand there was no export price that could be compared with the normal value, regardless of the way in which the normal value would have been calculated for Dika.

([7]) Commission Implementing Regulation (EU) 2022/1395 of 11 August 2022 imposing a definitive anti-dumping duty on imports of certain corrosion resistant steels originating in Russia and Türkiye (OJ L 211, 12.8.2022, p. 127).

(43) Article 18(3) of the basic Regulation states that 'where the information submitted by an interested party is not ideal in all respects, it shall nevertheless not be disregarded, provided that any deficiencies are not such as to cause undue difficulty in arriving at a reasonably accurate finding, and that the information is appropriately submitted in good time and is verifiable'. As explained in recitals 32 and 33, the deficiencies with regard to the sales listings submitted by Dika were such that no reasonably accurate finding could be made on that basis. In addition, as mentioned in recital 30, the sales listings were not verifiable since even the last version still had discrepancies and missing data and was not submitted in good time. Since no export price could be determined, it would also be without purpose to construct a normal value for Dika on any basis. This is also in line with the judgment of the General Court in steel road wheels from China, where it held that 'any determination of the normal value would have been superfluous, since no dumping margin could have been established in the absence of the possibility of establishing the export price' ([8]). The Commission therefore rejected this claim.

(44) After final disclosure, the Government of Morocco and Dika claimed that both the Commission's approach and the General Court judgment quoted in recital 43 are in violation of the requirements of the WTO Anti-Dumping Agreement under which all data provided by an exporter should be used to the extent it satisfied the requirements of Article 18(3) of the basic Regulation. In addition, Dika claimed that the quoted General Court Judgment is not applicable in view of the circumstances of this case. In contrast with the case subject to the General Court judgment, Dika was assigned an individual dumping margin and (according to Dika) it was possible to establish with certainty which products it exported to the Union.

(45) The Commission disagreed. As already set out in recital 50 of the provisional Regulation and recital 43 above, the reason for not establishing a normal value based on Dika's data simply was that it was without purpose since there was no export price with which to compare it. Whether the underlying facts in the aforementioned General Court judgment were different or not than in this case, did not invalidate the conclusion that establishing a normal value in the absence of an export price would be superfluous. This is not in violation of the WTO Anti-Dumping Agreement, since that Agreement does not require investigating authorities to perform calculations which cannot be used to establish a dumping margin. The Commission therefore rejected this claim.

(46) Dika specifically claimed that the circumstances of the case in the quoted General Court judgment are different from this case, since Dika was assigned an individual dumping margin. However, this claim was based on a misunderstanding. Dika was not assigned an individual dumping margin at any point in this investigation. As explained in recital 98 below, the Commission decided at the time of final disclosure to establish an individual duty rate for Dika by individually identifying the company and its corresponding duty rate in the relevant parts in this Regulation. This individual duty rate was set at the level of the residual duty rate, which was not based on Dika's own data. Similarly, the dumping and injury margins applicable to Dika mentioned in this Regulation were set at the level of the residual dumping and injury margins, and not based on Dika's own data. Dika's claim was therefore rejected.

(47) Dika also claimed that instead of applying the residual duty rate to Dika, the Commission should have constructed the normal value based on Dika's cost of manufacturing and the product type specific composition, which should then have been compared against the verified export price of Hands to calculate Dika's dumping margin.

(48) This methodology could not be accepted. First, because a comparison between the constructed normal value for one company and the export price of another company could not lead to an accurate dumping margin. This would mean comparing a value based on one company's data with the export price of another company. Second, even if the Commission were to apply this method, it would not have been possible to carry it out on a product type level. Although the product types sold by Dika overlapped to a large extent those sold by Hands, they did not match completely. Some product types sold by Hands were not sold by Dika, and vice versa. Such methodology would thus not result in an accurate dumping margin which would be consistent with the reality of the export transactions carried out by Dika ([9]). Moreover, such approach would be contrary to the requirement of Article 2(11) of the basic

([8]) Case T-278/20, Zhejiang Hangtong Machinery Manufacture Co. Ltd and Ningbo Hi-Tech Zone Tongcheng Auto Parts Co. Ltd v Commission [2022] ECLI:EU:T:2022:417, para. 97.

([9]) In line with Case T-278/20 quoted in recital 92 and referred to by Dika in their submission.

Regulation, which explicitly provides that, when calculating the dumping margin and regardless of the method of comparison of normal value and export price chosen, 'the prices of all export transactions' must be taken into account ([10]). Finally, this methodology would imply the disclosure of Hands' confidential data to Dika, both regarding the product types sold and the export price. This cannot be accepted as Hands is the only other known producer of ARW in Morocco and in direct competition with Dika. The Commission therefore rejected this claim.

3.2. **Normal value**

(49) As set out in recitals 52 to 65 of the provisional Regulation, the Commission constructed the normal value under Articles 2(3) and 2(6) of the basic Regulation due to the absence of domestic sales of the like product by Hands. Following provisional disclosure, EUWA claimed that there were in fact domestic sales, and indicated that it would provide evidence thereof at a hearing. However, the information subsequently provided by EUWA did not prove their statement that sales by the Moroccan companies in Morocco could be deemed domestic sales. Given the sensitivity of the corporate data involved, EUWA did not have the relevant information regarding the timing, quantities or prices of the Moroccan companies' sales, nor the exact location of the clients to whom they were allegedly sold.

(50) In addition, neither the Commission nor any interested party denied the fact that Hands had made ARW sales in Morocco. The reason for disregarding these sales as domestic sales was due to the location of both Hands and the clients in economic zones, as concluded in recital 60 of the provisional Regulation. In addition, none of these sales were made in the ordinary course of trade and could in any event not be used for establishing the normal value. On the other hand, Hands accepted that it had no domestic sales and that the normal value needed to be constructed. The Commission therefore rejected this claim.

(51) Following final disclosure, the Government of Morocco claimed that the Commission erred in considering that sales in economic zones did not constitute domestic sales. In support of this claim, the Moroccan Government stated that since ARW were sold to companies in the economic zones in order to be used in the production of new vehicles either in the EU or in Morocco and hence would be consumed either in the EU or in Morocco, such sales in economic zones in Morocco should be considered domestic sales. This would allegedly be in line with the approach of the US Department of Commerce, which considers sales in economic zones for the use in a product which would be ultimately exported outside of the United States as consumed in the domestic market.

(52) However, as already explained in recitals 53 and 54 of the provisional Regulation, this is not the approach which was adopted by the Commission in the current or previous investigations. Whether the United States adopts a different approach in their determinations is irrelevant for the case at hand. Sales between economic zones are not considered domestic sales by the Commission for the purpose of dumping calculations because at the time of the sale it is unknown whether the product would be released for free circulation in the domestic market, or destined for export (see recital 53 and 54 of the provisional Regulation). The Commission therefore rejected this claim.

(53) The Government of Morocco also argued that the Commission's approach was contradictory to its treatment of sales in exclusive economic zones of the EU which can be subject to anti-dumping duties ([11]), as well as to its practice of including inward and outward processing imports to economic zones in the import statistics used in the injury analysis in anti-dumping investigations.

([10]) See Cases C-376/15 P and C-377/15 P, Changshu City Standard Parts Factory and Ningbo Jinding Fastener Co. Ltd v Council of the European Union, ECLI:EU:C:2017:269, para. 53.

([11]) Commission Implementing Regulation (EU) 2019/1131 of 2 July 2019 establishing a customs tool in order to implement Article 14a of Regulation (EU) 2016/1036 of the European Parliament and of the Council and Article 24a of Regulation (EU) 2016/1037 of the European Parliament and of the Council (OJ L 179, 3.7.2019, p. 12).

(54) First, the reference to exclusive economic zones is irrelevant for the case at hand. Exclusive economic zones are zones which are declared as such by a Member State pursuant to the United Nations Convention on the Law of the Sea. The economic zones referred to in the current case are not such exclusive economic zones and do not fall under the rules cited by the Moroccan government ([12]).

(55) Second, inward and outward processing imports in economic zones in the EU are included in the injury analysis because the imported goods 'do not just transit through the Union but also undergo added value processing operations, such as assembly and transformation, in the Union. Consequently, these imports do clearly compete with the products manufactured by the Union industry' ([13]). However, sales to or between economic zones could not be considered as domestic sales, since it was unknown whether the product would be released for free circulation in the domestic market, or destined for export. The Commission therefore rejected these claims.

(56) Following provisional disclosure, both Dika and Hands contested the use of Brazilian SG&A and profit for the construction of the normal value. Hands argued that the data of Brazilian companies should not be used to establish SG&A and profit to construct the normal value. The company stated that the Commission did not provide supporting evidence to show that data from Brazil would be appropriate for constructing the normal value. Instead, Hands suggested using the SG&A and profit of Korean aluminium wheel producers which would be considerably lower. Hands claimed that this would be more appropriate since Hands is ultimately owned by a Korean ARW manufacturer, and the resulting SG&A and profit would be in line with that of one of the two Brazilian companies used by the Commission.

(57) Dika claimed that the data of one of the Brazilian companies should be disregarded, as the Commission used the consolidated accounts which included the results of subsidiaries in other countries and concerning other products than ARW. Hands and Dika both claimed that the SG&A for one of the Brazilian companies had been wrongly calculated.

(58) In view of the arguments put forward concerning the use of Brazilian data for the construction of the normal value, the Commission reassessed the method it applied at provisional stage. The Commission disagreed with Hands that the Republic of Korea would be a more suitable alternative for Morocco than Brazil. The rationale behind article 2(6)(c) of the basic Regulation is to use a reasonable method to find a proxy for the SG&A and profit of the exporting producer under investigation. The chapeau of Article 2(6) of the basic Regulation, as well as subparagraphs (a) and (b) of that Article, show a clear preference for data related to production and sales in the domestic market of origin. Under Article 2(6)(c) therefore, a reasonable alternative for the domestic market would ideally be close to the domestic market, for example, in terms of economic development since that has an impact on the companies' level of costs and profits. While Brazil was considered slightly more economically developed than Morocco, Korea as a highly developed economy could not be considered as a reasonable alternative for Morocco ([14]).

(59) However, the Commission considered that instead of using data for Brazilian ARW producers, it was more reasonable to use the data available for the cooperating producer, Hands. The SG&A for Hands could not be used for the construction of the normal value under the chapeau of Article 2(6) of the basic Regulation, since Hands had no domestic sales in the ordinary course of trade. However, as a proxy for the SG&A related to Hands' domestic sales, the Commission considered that the SG&A for all sales by Hands would be a reasonable alternative. Furthermore, the investigation did not show any differences between the SG&A for domestic and the SG&A for export sales, as all relevant costs were allocated on turnover. In addition, the number of sales made in Morocco by Hands was so small,

([12]) The rules laid down in Regulation (EU) 2019/1131 quoted in footnote 11.

([13]) Commission Implementing Regulation (EU) 2021/2012 of 17 November 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia (OJ L 410, 18.11.2021, p. 153), recital 136.

([14]) The World Bank database has the following classifications for 2021 based on the gross national income ('GNI') per capita: lower-middle income economy between USD 1 086 and USD 4 255, upper-middle income between USD 4 256 and USD 13 205, high income economy above USD 13 205. According to this classification, Morocco is considered as a lower-middle income economy (with a GNI for 2021 at USD 3 350), Brazil as an upper-middle income economy (with GNI for 2021 at USD 7 720) and Korea as a high income economy (with GNI for 2021 at USD 34 980). See https://databank.worldbank.org/home.aspx

that no meaningful comparison could be made. Hands' data was verified and concerned sales by a company located in Morocco, which only produces and sells ARW. In addition, that data covered the investigation period only. The Commission considers the use of Brazilian data as less reasonable since the information available dated from 2019, and covered multiple products and production sites in several countries. The SG&A thus established on the basis of Hands' own data, adjusted for items not directly related to the production of the product concerned and items that were not realized, was [12 % – 16 %].

(60) Following final disclosure, Hands reiterated its claim that Korea would the most appropriate choice to determine the level of SG&A and profit for constructing Hands' normal value since that data concerned the Korean parent company of Hands. The fact that Korea did not have a similar level of economic development as Morocco was irrelevant, according to Hands, since the economic development of an alternative country is relevant only in case of the application of Article 2(6a)(a) of the basic Regulation in case of significant distortions, which is not the case for Morocco.

(61) The Commission disagreed. Although indeed the term 'similar level of economic development' is used in Article 2(6a)(a) of the basic Regulation, this does not mean that the level of economic development cannot be a relevant factor to determine whether or not a country other than Morocco would be reasonable for determining an appropriate level of SG&A under Article 2(6)(c) of the basic Regulation. The Commission considered that using data from ARW producers in a highly developed economy would be less reasonable than using data from a country which would be more similar in terms of economic development, as explained in recital 58 above.

(62) Hands also claimed that the Commission addressed none of its claims about the Brazilian data, as used in the provisional Regulation. However, by using Hands' own data instead of Brazilian data, these claims became moot. Hands argued that the only reason for switching from the Brazilian data to Hands' own data was that it would be more convenient for the Commission. However, as the Commission explained in recital 59 above, it determined that Hands' own data was more reasonable than Brazilian data, not more convenient. Accordingly, the Commission rejected these claims.

(63) Following final disclosure, the Government of Morocco, Dika and Hands disagreed with the use of Hands' SG&A for the construction of the normal value.

(64) In their comments on final disclosure the Government of Morocco and Dika claimed that the use of Hands' SG&A was not in line with Article 2.2.2 of the WTO Anti-Dumping Agreement. Both parties noted that 'any other reasonable method' in Article 2.2.2(iii) of the WTO Anti-Dumping Agreement involves an inquiry into whether the amount for profits is approximating the profit margin to what would have been realized if the product under consideration had been sold in the ordinary course of trade in the exporting country. The parties also noted that the SG&A costs used by the Commission referred solely to export SG&A costs which, according to Dika, are by definition incapable of approximating the profit margin that would have been realized if the product under consideration had been sold in the ordinary course of trade in Morocco. Finally, Dika argued that the fact that Hands' SG&A for export was a reasonable basis for its domestic sales could not be factually checked as Hands had no domestic sales.

(65) In their comments on final disclosure Hands essentially argued using its own SG&A was contrary to the letter and rationale of Article 2(6) of the basic Regulation as Hands had no domestic sales in the ordinary course of trade. According to Hands, the Commission used the application of Article 2(6)(c) of the basic Regulation to circumvent the fact that it could not resort to the general rule of Article 2(6) of the basic Regulation which requires sales to be in the ordinary course of trade.

(66) The Commission noted that the general function of Article 2(6) of the basic Regulation (and Article 2.2.2 of the WTO Anti-Dumping Agreement) is to approximate what the profit margin as well as SG&A would have been for the like product in the ordinary course of trade in the domestic market of the exporting country. 'Any other reasonable method' in Article 2.2.2(iii) of the WTO Anti-Dumping Agreement involves an enquiry into whether the determination of the amount for profits and SG&A is the result of a reasoned consideration of the evidence available. In this respect, contrary to what Dika and Hands claimed, the Commission also noted that, in the process of considering all the available evidence, it did not use either SG&A for export sales or SG&A for domestic sales that were not in the ordinary course of trade; rather, the Commission used as a reasonable proxy the SG&A concerning all sales made by Hands.

(67) The Commission considered it reasonable within the meaning of Article 2(6)(c) of the basic Regulation (and Article 2.2.2(iii) of the WTO Anti-Dumping Agreement) to use SG&A for all Hands' sales as a proxy for what the SG&A would have been for the like product in the ordinary course of trade in the domestic market of the exporting country for several reasons.

(68) First, Hands itself did not dispute the fact that the SG&A on all its transactions would be similar to that on its domestic sales, should it have had such sales. On the contrary, by allocating total SG&A costs incurred on turnover as explained in paragraph (45) of the final disclosure document, Hands recognized that such costs are identical irrespective of the different geographical markets in which the sales are made.

(69) Second, the way Hands was actually set up and how it dealt with sales in a tender-driven market also confirmed that the reported allocation of SG&A (based on the turnover regardless of the geographical destination of the product) reflected the reality. During the investigation period no differentiation with regard to the sales process and its related costs between markets could be noted, while parts of this process were done by Hands' parent company in Korea.

(70) Third, ARW tender procedures, also those in which Hands participated, were not divided by market, but rather by client (e.g. any tenders for ARW sold to car producer X, whether finally delivered in the Union or in Morocco, were dealt with by car producer X's headquarters). Therefore, the Commission concluded that, from the point of view of Hands' SG&A, it did not matter whether a subject of a transaction was destined to be consumed in Morocco or, for example, in France. Accordingly, Hands' SG&A realised on all its transactions amounted to a reasonable proxy for what the SG&A would have been in the ordinary course of trade in Morocco.

(71) Following the additional final disclosure, Hands argued that not all SG&A were allocated on turnover as transport associated costs, for example, were based on actual costs per market. In addition, and for the same reason, a reference to the tender and bidding processes was allegedly unwarranted as this did not take into account the different delivery and transport conditions which may differ per market. Finally, Hands argued that the sales activity may differ for each market. Consequently, Hands argued that the Commission violated the basic Regulation when choosing Hands' own data as being reasonable for constructing Hands' normal value.

(72) What was not mentioned in the claim is that Hands' SG&A on all its transactions was adjusted to approximate it to what its SG&A would have been for the like product in the ordinary course of trade in the domestic market of the exporting country. As explained in the additional final disclosure, and as welcomed by Hands in its subsequent comments, transport associated costs were deducted from both the net sales and the total SG&A and therefore not taken into account in the SG&A calculations. Transport associated costs was the only cost item identified by Hands in its SG&A as specific to geographical markets. For other sales related costs, no notable difference could be discerned between markets. The fact that some other sales related costs were not directly correlated to the tender procedures, as argued by Hands, does not mean that these costs were not influenced by the organization of the tender procedures and client relations. As set out in the recitals above, the Commission determined that some costs, such as transport related costs, were market related and removed such costs. Other costs were not market related because of the tender driven market or because they were related to (salaries, financial or other) operations which, by nature and due to the set-up of the company, were not differentiated by geographical markets. Furthermore, the company itself allocated all non-transport related costs on turnover without distinction between geographical markets.

(73) In its comments on the additional final disclosure, besides making the claims with regard to the Commission's understanding on how its SG&A was reported, which are addressed above, Hands did not substantiate further its claim of violation of the basic Regulation. Notably, Hands did not provide any comments on the Commission's explanation given in recital 74, addressing this part of Hands' comments on the final disclosure. Hands also failed to explain why the SG&A figure used by the Commission, which did not include transport associated costs, was an unreasonable proxy for what its SG&A would have been for the like product in the ordinary course of trade in the domestic market of the exporting country. Finally, besides disagreeing with the Commission approach, in their comments on additional final disclosure, Hands did not point to a more reasonable alternative. Notably, neither Hands nor any other interested party provided any comments on the Commission's explanation, given in recital 75, as to why the alternatives considered during the investigation were not more reasonable than Hands' own data. The Commission therefore rejected these claims.

(74) None of the interested parties provided convincing evidence on why SG&A for all sales was not a reasonable proxy. Concerning the lack of comparable sales in the ordinary course of trade on the domestic market, the Commission noted that the very purpose of Article 2(6)(c) of the basic Regulation (as well as Article 2.2.2(iii) of the WTO Anti-Dumping Agreement) is to approximate what would such SG&A have been precisely because there are no such sales. Considering the particular situation of how Hands sold its ARWs and allocated its SG&A, as well as how the market on which it operated functions, the Commission used the right proxy.

(75) No interested party provided another more reasonable alternative. Indeed, the alternatives, IOCHPE MAXION S.A. in Brazil or Hands Corporation in Korea were not better proxies for what the SG&A would have been for the like product in the ordinary course of trade in the domestic market of the exporting country. Unlike in the case of Hands' SG&A, SG&A taken from Brazil would be far removed from the like product (relating mostly to sale of products other than ARW). This is of particular importance when one deals with a product that is sold in a very particular way, as it is the case at hand to the point that such alternatives must be disqualified. As for the alternative based on Korean data, the Commission already explained that such data may not be a reasonable alternative in view of the differences between Morocco and Korea in terms of economic development, which may have an impact on the companies' level of costs and profits.

(76) Finally, the reference to the profit margin used in the establishment of the constructed normal value made by Dika appeared irrelevant. The profit margin was not based on Hands' sales, but rather on the target profit set for the Union industry and capped by the profit normally realised by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin, in line with Article 2(6)(c) of the basic Regulation.

(77) Hands also made several claims concerning errors in the calculation of Hands' SG&A. The Commission accepted one claim related to the deduction of sales commissions from Hands' SG&A, and rejected the remaining claims. The dumping margin was recalculated accordingly. The reasons for rejecting some of the claims were provided to Hands in the additional final disclosure. No new information was brought forward on these claims in Hands' submission following the additional final disclosure.

(78) Following the additional final disclosure, Hands also referred to its prior comments on final disclosure, where it argued that the Commission should not have used a formula to convert the SG&A ratio on turnover into an SG&A ratio per cost of goods sold, but instead have directly calculated SG&A on the actual verified cost of goods sold of Hands. However, this was based on a misunderstanding since the Commission did not calculate the SG&A on cost of goods sold, but on the cost of manufacturing. Also, Hands did not provide any explanation why the use of the cost of manufacturing, as opposed to the use of the cost of goods sold, was not appropriate. The Commission therefore rejected this claim. The relevant calculations were shown in the final disclosure and clarified in the additional final disclosure. First, the Commission identified, based on the actual costs of Hands, the total amount of SG&A costs, which was then expressed as a percentage of the total sales value. The percentage for SG&A was then, together with the percentage of profit, added to the cost of manufacturing in order to construct the normal value.

(79) Following provisional disclosure, EUWA contested the method used to construct the normal value since the resulting dumping duty would not remedy the injurious dumping suffered by the Union industry. Instead, EUWA argued that the target profit of Union producers established in recital 160 of the provisional Regulation should be applied in the dumping calculations, as this would lead to a more reasonable normal value.

(80) The Commission disagreed with EUWA that the outcome of the calculations justified the need for applying a higher profit to construct the normal value. However, the Commission decided to no longer use the Brazilian data in its calculations as explained in recitals 44 and 45 above but instead revert to Hands' own verified data to calculate SG&A in Morocco. A reasonable profit for Hands, on the other hand, could not be determined based on the verified data, since the company's sales were not profitable during the investigation period. Instead, the Commission decided to use the basic profit established for the Union industry under normal conditions of competition as a reasonable alternative for the reasons set out below.

(81) Both the Union and Moroccan ARW producers sell to the same clients in a homogeneous market, where they compete in the same tenders, and have factories with a similar set-up and in particular similar costs. They should therefore be expected to achieve comparable profits in comparable circumstances. For the calculation of the normal value under Article 2(6)(c), the Commission thus applied the basic profit of 7,9 % as established in recital 158 of the provisional Regulation, to which it applied a profit cap as required under Article 2(6)(c) of the basic Regulation.

(82) In this respect EUWA claimed that Article 2(6)(c) of the basic Regulation allows the Commission discretion to not apply the cap in view of the specific circumstances of the case. According to EUWA, the Commission did not resort to a product in the same general category as ARW for the application of the cap. The product category used by the Commission is destined to be further processed by downstream industries, which is demonstrated by the fact that ARW and the products used by the Commission are classified in the statistical nomenclature under different chapters. According the EUWA, they therefore could not be considered as falling in the same general category of products. In fact, EUWA claimed that there are no sales at all in Morocco of products in the same general category as ARW.

(83) EUWA then argued that there is no obligation for the Commission to apply the cap in a situation where there are no sales of products of the same general category in the domestic market of the country of origin. In addition, it argued that the application of the cap is merely intended to avoid the application of excessively high profit levels in the normal value calculations. EUWA stated that, in its view, a profit level of 8,3 % (the non-injurious target profit established in the provisional Regulation) would not be excessive, while a profit capped at of 4,16 %, as applied by the Commission, was insufficient.

(84) The Commission rejected this claim as the application of the cap is required by the basic Regulation, and is also supported by several WTO Dispute Settlement Body panel reports ([15]). There is thus, contrary to EUWA's claim, no discretion for the Commission to decide not to apply the cap.

(85) In fulfilling its obligation to apply a profit cap, however, the Commission does have a wide margin of discretion in determining that cap. EUWA commented on the appropriateness of the general category applied by the Commission in the provisional Regulation, but did not propose any alternative, let alone a more appropriate one. The mere fact that the profit cap is insufficiently high in the view of the Union industry, does not mean that the cap itself is not reasonable, appropriate or correct. Therefore, in the absence of more suitable alternatives put forward by the parties, the Commission maintained the profit cap of 4,16 % as established in recital 64 of the provisional Regulation.

(86) After final disclosure, EUWA reiterated its claim that a too low level of profit (the profit cap) was used in the construction of the normal value. However, as EUWA did not provide any new information or propose any alternative method to establish the profit cap, the Commission rejected this claim.

3.3. **Export price**

(87) The details of the calculation of the export price were set out in recitals 66 to 68 of the provisional Regulation. Absent any comments regarding this methodology the Commission confirmed its provisional conclusions.

3.4. **Comparison**

(88) Following provisional disclosure no interested party commented on the methodology used to compare the export price with the constructed normal value. Hence, the Commission confirmed recitals 69 and 70 of the provisional Regulation.

([15]) WTO, Report of the Panel, WT/DS480/R, 25 January 2018, par. 7.51, and WT/DS405/R, 28 October 2011, par. 7.300.

3.4.1. *Dumping margin*

(89) The Commission revised the dumping margins following claims from interested parties as described in recitals 57 to 59 and 77. In addition to these claims, both Dika and EUWA contested the Commission's method used to establish the residual duty.

(90) Following provisional disclosure, Dika claimed that the residual duty was set too high. By using the highest dumping margins as facts available the Commission penalized Dika for its non-cooperation. According to Dika, this is prohibited by Article 18 of the basic Regulation as well as corresponding WTO provisions.

(91) However, the Panel in another WTO dispute (Canada – Welded Pipe) stated that 'There may be a fine line between, on the one hand, incentivizing cooperation and preventing circumvention and, on the other hand, punishing non-cooperating exporters' ([16]). In this regard, one cannot 'go beyond what was appropriate and necessary to achieve the objectives of encouraging cooperation and preventing circumvention' ([17]). In the Commission's view, that is precisely the objective of the method that was used in the provisional Regulation. Recital 73 of that Regulation explained that the Commission applied the highest dumping margin found for product types sold in representative quantities by Hands, which account for around 50 % of all of Hands' exports to the Union.

(92) In selecting product types accounting for 50 % of the exports to the Union by Hands, the Commission applied a reasonable method based on an assessment of all the available information. This is also in line with previous investigations and what the General Court held in its judgment regarding steel road wheels from China: 'although the applicants describe the residual dumping margin as 'punitive', it is common ground that that margin was determined by the Commission not in an arbitrary or punitive manner, but after it had found that sampling had failed and properly applied Article 18 of the basic regulation to the applicants. That residual margin was established on the basis of a not insignificant proportion of the exports of the single exporting producer, so that the use of such a classification with regard to that margin, however high, is not justified' ([18]). A representativity of 50 % of the export volumes, as described in recital 57 above, is similar to or higher than that used in other anti-dumping investigations ([19]).

(93) The Commission had calculated the residual duty on the basis of an established methodology using verified data, in line with previous investigations as explained in recital 58 above. In addition, the data used to establish the residual duty was representative in view of the information provided by the product types imported from the Moroccan companies. The fact that the result is lower than what the EUWA would have liked, or than the duty set on imports from China, does not invalidate that method.

(94) The Commission therefore rejected both Dika's claim that the residual duty was punitive and too high, and EUWA's claim that the residual duty was too low and a bonus for non-cooperation.

(95) Following final disclosure, Dika reiterated its claim that the method to establish the residual duty was punitive and that the Commission did not explain how it determined that the methodology used was appropriate or using the best fitting information for establishing the duty rate for Dika. In addition, Dika claimed that this method is outlawed by a WTO Panel in *China – GOES* where it was stated that 'the recourse to facts available is not intended to lead to excessive margins of dumping in order to encourage cooperation by interested parties.' The Government of Morocco made similar claims.

([16]) WTO, Report of the Panel, WT/DS482//R, 25 January 2016, par. 7.143.

([17]) Ibid.

([18]) Case T-278/20, Zhejiang Hangtong Machinery Manufacture Co. Ltd and Ningbo Hi-Tech Zone Tongcheng Auto Parts Co. Ltd v European Commission [2022] ECLI:EU:T:2022:417, para. 134.

([19]) For example, a residual duty of 29 % established in recital 186 of Commission Implementing Regulation (EU) 2019/1693 of 9 October 2019 imposing a provisional anti-dumping duty on imports of steel road wheels originating in the People's Republic of China (OJ L 259, 10.10.2019, p. 15), or 50 % in recital 290 of 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).

(96) However, the residual duty as established in the current case did not lead to any 'excessive margins of dumping'. The method used to establish the residual duty was considered reasonable as it was based on the dumping margins of product types which accounted for 50 % of Hands' exports and were therefore highly representative. In addition, these product types accounted for almost 25 % of Dika's exports. The Commission therefore rejected this claim.

(97) Following provisional disclosure, Dika also claimed that individual dumping and injury margins should be calculated for the company, since Articles 9(5) of the basic Regulation and 6.10 of the WTO Anti-dumping Agreement indicate that such individual margins should be calculated for each supplier irrespective of its degree of cooperation.

(98) Although the calculation of individual margins on the basis of the company's own data was not possible, as explained above in recitals 26 to 48, Dika is a Moroccan producer known to the Commission, which will be subject to a company-specific anti-dumping duty at the level of the residual duty. The Commission therefore accepted the claim in so far as it decided to establish an individual duty rate for Dika by individually identify the company and its duty rate in the relevant parts in this Regulation.

(99) In its comments on final disclosure, Dika also reiterated its request to receive dumping and injury margin calculations as well as price undercutting and price suppression calculations for Dika. In the absence of such disclosure, Dika argued, Dika was prevented from submitting a price undertaking offer and of the possibility to meaningfully comment on the Commission findings.

(100) However, for the same reasons as set out in recital 46 and 48 and as also explained to Dika following such disclosure requests after both provisional and final disclosure, a specific disclosure to Dika was not possible. Since no individual dumping or injury margin was calculated for Dika there was no calculation to be disclosed. In addition, the calculations to determine the residual duty (applicable to Dika) were based on the verified data of Hands, which could not be disclosed to Dika for confidentiality reasons. The provisional Regulation, the information provided to Dika following provisional disclosure ([20]), the final disclosure document and the current Regulation contained all facts and considerations on which the Commission based its proposal and decision to impose provisional and definitive measures on ARW from Morocco as well as the methodology used to calculate the residual duty applicable to Dika. The Commission therefore rejected this claim.

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

Company	Definitive dumping margin
HANDS 8 S.A.	9,01 %
DIKA MOROCCO AFRIKA S.A.R.L	17,54 %
All other companies	17,54 %

4. **INJURY**

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

(102) In the absence of any related claim or comment, the conclusions in recitals 75 and 76 of the provisional Regulation were confirmed.

([20]) Dika requested and received (per email on 22 July 2022) information regarding the reasonable SG&A and profit used in the provisional Regulation, the profit cap, compliance costs, IRI (investments, R & D and innovation) as well as Eurostat data on TARIC level.

4.2. **Union consumption**

(103) ACEA claimed that the conversion ratio used as described in recital 78 of the provisional Regulation for establishing Union consumption was incorrectly established for Morocco based on information provided by Hands and User A regarding imports from Morocco. User A was one of the two users cooperating with the investigation, whose request for anonymity was accepted by the Commission. The conversion ratio should be 13,5 kg per unit, according to ACEA. For Türkiye, ACEA calculated that the conversion ratio should be 9,3 kg per item. This calculation was based on information provided by an ACEA member which did not cooperate with the investigation ('the non-cooperating user') and never submitted a questionnaire reply.

(104) For the establishment of its conversion ratio, the Commission used the questionnaire replies submitted by Hands, Dika and the three sampled Union producers. The weighted average weight per item for Moroccan wheels was thus established based on the information reported by the two producers, i.e. Hands and Dika. The conversion ratio established was 11,3 kg per item. Moreover, the Commission noted that ACEA did not provide any supporting evidence regarding the conversion ratio allegedly provided to it by Hands. In any event, this ratio did not match with the information provided by Hands in its verified questionnaire reply. Therefore, the claim was rejected.

(105) After final disclosure, ACEA claimed that the conversion ratio should not include Dika's data as the company's exports sales data was rejected under Article 18 of the basic Regulation.

(106) The Commission excluded the data from Dika for the establishment of the conversion ratio. The result was that the value of 11,3 kg per item remained unchanged. This is explained by the relatively low weight of Dika's figures in the overall dataset which included not only Hands but also the three sampled Union producers. Dika represented only [10 % – 15 %] of the overall number of items considered. Therefore, the conversion ratio calculated at provisional stage was confirmed.

(107) Concerning Türkiye, the Commission noted that the conversion ratio calculated by ACEA was based on a total weight of around 1 680 tonnes, which represented only around 1,7 % of the total imports from Türkiye (around 94 000 tonnes during the investigation period). The Commission, therefore, did not consider this calculation sufficiently accurate.

(108) After final disclosure, ACEA referred to an exhibit collected on spot from User B and also submitted additional information from User B backing its claim. User B was one of the two users cooperating with the investigation, whose request for anonymity was accepted by the Commission. ACEA estimated, based on the data from User B and the data originating from the non-cooperating user, that the weight per item used as a conversion ratio by the Commission should be lower than 11,3 kg.

(109) The Commission examined the information submitted originating from User B. User B provided a list of [30-45] product types where the total quantity and the weight per product type were mentioned. The Commission noted that only for one product type a supporting document was submitted indicating its weight. As for the additional information provided by ACEA with respect to User B, the Commission was unable to verify it due to its late submission. Regarding the information provided by the non-cooperating user, which consisted of a summary spreadsheet, the Commission was unable to verify it due to the overall lack of cooperation by that user, and thus could not be considered for the purpose of this investigation. In any case, the revised total conversion ratio calculated by ACEA was based on total weight of around 3 900 tonnes, representing only around 4 % of the total imports from Türkiye.

(110) Therefore, the Commission found that the different volumes used by ACEA, both before and after final disclosure, for the establishment of the conversion ratio could not be considered representative for the overall imports. In addition, as indicated in the recital 78 of the provisional Regulation, the market trend is going towards larger wheels diameter resulting in an increase of the weight per item. This trend was confirmed by the conversion ratio calculated based on the questionnaires replies. Therefore, the claim was rejected.

(111) Consequently, in the absence of other comments, recitals 77 to 80 and 137 of the provisional Regulation were confirmed.

4.3. **Imports from the country concerned**

4.3.1. *Prices of the imports from the country concerned and price undercutting*

(112) As indicated in recital 110 above, the claim regarding the volume was rejected and thus the imports prices were confirmed.

(113) Therefore, in absence of other claims concerning the total import values, the recitals 81 to 86 of the provisional Regulation were confirmed.

(114) After final disclosure, ACEA reiterated that the Commission ignored the conditions of competition in the Union ARW market by ignoring the fact that OEM wheels are made-to-order and by focusing on actual sales made by the Union and Moroccan ARW producers during the investigating period, instead of analysing price competition and lost sales that occurred in tenders. By contrast, in a previous investigation ([21]) concerning ARW imports, the Commission applied the approach requested by ACEA. Consequently, ACEA claimed that all price analyses, including undercutting and underselling, should be carried out at the level of the tenders.

(115) The Commission addressed a similar argument in recital 192 below regarding underselling calculations. Indeed, the selection of individual tenders could not substitute the analysis made by the Commission, as this analysis was based on the complete and duly verified actual sales data, i.e. transaction sales listing and price comparison on a per type basis submitted by the sampled Union and exporting producers. This listing provided actual values on the quantity sold and invoiced during the investigation period, which, as explained in recital 136, often ultimately depart from those provided in the terms of a tender. Unlike the latter, the actual sales data takes account of discounts and rebates, deferred or not, which were actually issued and concerned the investigation period. Consequently, tender-base analysis would not reflect accurately the conditions of competition on the ARW market. Furthermore, ACEA did not contest that ARWs produced in Morocco have the same basic physical, chemical and technical characteristics as well as the same basic uses as the ARWs produced by the Union industry. Thus, unlike tender-based analysis, the comparison per product type correctly reflected the competition in prices and volumes between the imports from Morocco and the sales of the Union industry for the purposes of establishing price undercutting and price underselling. As indicated in its comments, ACEA explained that the tender contracts reflect and approximate number of wheels to be supplied, while the exact number is agreed typically within few weeks before the delivery, and that the success of a given car model depends on consumers and thus the volume of production of ARWs. Within each car model, several types of ARWs may be offered and car manufacturers cannot predict the total sales of each type throughout the production life of that car model. Even if the Commission were to consider the price effects at the level of the tenders, it observed that the data received on tenders was incomplete as it originated only from two cooperating users and could not be fully cross-checked with the data provided by the Union industry. In addition, one of the biggest users did not cooperate with the investigation and the partial data received on its behalf from ACEA could not be verified. Therefore, the claim was rejected.

(116) After provisional disclosure, ACEA claimed that ARWs of the same specifications are not substitutable as each ARW is built following a car manufacturer order for a specific car model. The design as well as properties and finishing are all defined by the purchaser. Each wheel being unique to the car-manufacturer that ordered it: there is no substitutability between ARWs destined to different car manufacturers.

(117) The Commission considered that all ARWs, either originating from the Union industry or from Morocco or from other third countries, share the same basic physical, chemical and technical characteristics within the meaning of the Article 1(4) of the basic Regulation. As found during the investigation and clarified by ACEA after final disclosure, all certified producers to certain car manufacturers may compete and supply exactly the same type of wheels to the car manufacturers. For example, a document provided by ACEA indicated that, multiple certified producers located in the Union, Morocco, Türkiye and other third countries competed for the same type of ARW. If needed, various types of wheels can be mounted to a certain car model and not only the ARWs set in the tenders. Therefore, the claim was rejected.

([21]) Commission Regulation (EU) No 404/2010 of 10 May 2010 imposing a provisional anti-dumping duty on imports of certain aluminium road wheels originating in the People's Republic of China (OJ L 117, 11.5.2010, p. 64), recitals 175 to 179.

(118) After final disclosure, ACEA reiterated its claim that there is no interchangeability between different types of wheels as the subject of investigation is OEM wheels and that OEM by definition refers to a wheel that is produced by a manufacturer for a specific car brand and bears its trademark protected by intellectual property rights. ARWs are an integral part of the general aspect and design of a car and need to be consistent between each and every car of a specific model.

(119) ACEA also claimed that the Commission did not have evidence that various types of wheels can be mounted to a certain car model and not only the ARWs determined in the tenders. ARWs are an integral part of the general aspect and design of a car and need to be consistent between each and every car of a specific model. Consumers will typically lose their warranty if they replace ARWs with non-OEM parts. ACEA substantiated its claim on warranty based on two documents issued by two car manufacturers.

(120) The Commission observed that ACEA did not claim or provide additional evidence that all ARWs, either originating from the Union industry or from Morocco or from other third countries, did not share the same basic physical, chemical and technical characteristics in the meaning of the Article 1(4) of the basic Regulation. The Commission also considered that, although there might be some technical limitations not allowing all types of wheels to be mounted to all types of car models, there is a certain degree of interchangeability between ARWs used for different car models. For example, a car manufacturer may decide to revamp a car model by working on the external parts of a car, which may include the ARWs design model. However, most of the technical specifications of the car platform remain identical. Thus, if necessary, a car manufacturer may mount to this car the older ARW design model. ARWs producers are therefore required to keep the older mould years after the end of production in their premises. This was confirmed by those sampled Union producers, which were granted the tender for providing ARWs for a certain car model and subsequently for the redesigned same car model.

(121) Regarding the claim on warranty, the Commission first observed that one of the warranty disclaimers provided did not contain any requirement on the types of wheels to be used. Second, the evidence provided concerned only the warranty period but not the entire usable life of a car. Third, the fact that there is also an After Market channel of sales of ARWs pointed to the fact that the requirement for using OEM parts for repairs was not constantly applied after the end of the warranty period and was technically and legally allowed. Finally, one of the two documents provided by ACEA concerned the USA market, whereas for the other one it was unclear whether it concerned the Union market. Therefore, the claim was rejected.

(122) After final disclosure, ACEA claimed that the product type specifications (the so called 'product control number' or 'PCN') did not capture all characteristics of a specific ARW project and all financial aspects of a particular tender.. As a result, the product control number did not ensure comparability of wheels that are being compared and thus undermined the accuracy of the respective volume and price analysis.

(123) The Commission considered that the definition of the product control number captured the main characteristics of an ARW: the production process (standard cast wheels without flow-forming or flow formed wheels or forged or two or three part wheels), the diameter and the weight, if with heat treatment or not, the type of finish, if with insert or not and if fitted with tyre or not. None of the cooperating parties commented on the product control number definition during the proceedings. ACEA did not explain which additional characteristic should be includedMoreover, as indicated above in recital 115, the Commission concluded that the tenders did not provide the necessary information for the establishment of the price and volume effects of the dumped imports. Therefore, the claim was rejected.

(124) After final disclosure, ACEA argued that there is no support in the non-confidential file or in the disclosure document regarding the significant price undercutting and price suppression found. The Commission observed that recitals 90 and 91 of the provisional Regulation contained the Commission's analyses and quantification of price undercutting as well as its findings regarding price suppression. Moreover detailed calculation of price undercutting was disclosed to the cooperating exporting producers, who could comment on the accuracy of that calculation. Consequently, the Commission rejected the claim.

(125) In the absence of other claims concerning undercutting and price effects, recitals 87 to 91 of the provisional Regulation were confirmed.

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

4.4.1. *General remarks*

(126) In the absence of any comments, the Commission confirmed its conclusions set out in recitals 92 to 96 of the provisional Regulation.

4.4.2. *Macroeconomic indicators*

4.4.2.1. Production, production capacity and capacity utilisation

(127) In the absence of any comments, the Commission confirmed its conclusions set out in recitals 97 to 99 of the provisional Regulation.

4.4.2.2. Sales volume and market share

(128) In the absence of any comments, the Commission confirmed its conclusions set out in recitals 100 to 102 of the provisional Regulation.

4.4.2.3. Employment and productivity

(129) In the absence of any comments, the Commission confirmed its conclusions set out in recitals 103 and 104 of the provisional Regulation.

4.4.2.4. Growth

(130) In the absence of any comments, the Commission confirmed its conclusions set out in recitals 105 to 107 of the provisional Regulation.

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

(131) In the absence of any comments, the Commission confirmed its conclusions set out in recitals 108 to 110 of the provisional Regulation.

4.4.3. *Microeconomic indicators*

4.4.3.1. Prices and factors affecting prices

(132) Regarding recital 113 of the provisional Regulation, ACEA claimed that prices certainly play a role but other considerations are equally important in the selection of an ARW supplier. Moreover, ACEA claimed that there is a fundamental error to allege that the Union producers have to align themselves with prices from Moroccan producers during the tendering process.

(133) The Commission observed that there is an imbalance in the bargaining power between the car manufacturers and the ARW producers. There is a limited number of car manufacturers, which further diminished in January 2021 with the creation of the Stellantis group. The bargaining power of the car manufacturers is demonstrated by the conditions observed in the tenders, which are in their favour. For example, the car manufacturers do not guarantee the quantities needed to be supplied and thus to be produced by the ARW producers and do not provide the possibility to revise upwards the selling price (save for the aluminium costs which are indexed) during the lifetime of the project. These conditions impact negatively the ARW producers as they are unable to optimise the workload of the production plants and, as a result, to achieve optimal economy of scale to maximise their profitability. The car manufacturers' favourable position is reinforced by the overcapacity observed in the ARW market as explained in recital 122 due to the establishment of the Moroccan producers.

(134) Moreover, during the investigation, the Commission received information from the car manufacturers that the price played a key role. User B explained that the main criterion is still the price and that after receipts of the offers, there is a negotiation process, primarily focused on prices, where the producers can improve their offers. EUWA explained that there are commonly price negotiations during the tender process in order to have price adjustments, which can go either way. Similarly, User A explained that other factors such as quality, R & D and supply abilities are very similar among ARW suppliers and therefore the price is the key criterion to determine the choice of the ARW supplier. Furthermore, during a hearing with ACEA, the non-cooperating user confirmed in its presentation that there are several rounds of negotiations with suppliers where their technical capacities, quality rating, logistics, production capability, etc. are verified but, most importantly, producers have to present their most competitive offer in terms of price. In addition, as established in recitals 90 and 91 of the provisional Regulation, the Union industry could not increase its prices despite the increase in its costs in the context of significant price undercutting and price suppression, which showed that the Moroccan exporting producers exercised price pressure on the Union producers during the investigation period. Therefore, the claim was rejected.

(135) ACEA claimed that the provisional Regulation incorrectly suggested that contracts are re-negotiated each year and that the Union ARW producers can somehow increase their prices in order to reflect the increase of the prices of the raw materials. ACEA explained that the pricing mechanism under ARW purchase contracts were based on a formula where only the evolution of the costs of the aluminium ingot was a variable element. Thus, the sales invoices did not reflect market conditions but rather contractual terms.

(136) The Commission confirmed that usually contracts did not provide for any possibility to increase prices over the lifetime of a project to cover costs, save for the cost of aluminium ingots, and improve supplier's profitability. In recital 113 of the provisional Regulation, the Commission did not argue that the possibility of ARW producers to increase their selling prices within the lifetime of a project exists, but rather explained that the ARW producers were unable to increase their prices when negotiating new tenders during the investigation period. In addition, the Commission collected evidence from the users and Union producers showing that the car manufacturers negotiated various types of discounts and rebates during the lifetime of a project, such as discounts calculated on the yearly overall turn-over, etc. Therefore, it is not accurate to argue that the prices are fixed (with the exception of the aluminium indexation) for the full lifetime of a project. Rather, prices could vary because of the aluminium indexation, but could not be increased further in order to take into account other costs such as labour, energy, raw materials or overheads costs. Furthermore, the actual selling prices may go further down throughout the lifetime of the project due to the various discounts and rebates that were applied. For one user, the amount of rebates or discounts obtained from an ARW producer was found to be significant. Therefore, the prices are not only determined based on the initial contract. The claim was therefore rejected.

(137) After final disclosure, ACEA reiterated its claim that prices were only determined based on the initial contract as productivity discounts were fixed in the contract and no productivity discounts were granted outside the contractual arrangements. Moreover, ACEA claimed that the Commission did not have positive evidence on the file which demonstrated that prices were not only determined in the initial contract. Finally, ACEA claimed that the evidence collected from the users did not support this conclusion, and that, in particular, the evidence indicated in the recital above was an anecdotal credit note issued by a third country supplier issued for wheels originating in a third country.

(138) First, the Commission noted that none of the sampled Union producers or the cooperating users submitted comments on the final disclosure, and thus did not put into question the assessment described in recital 136 which was based on the verified evidence collected from them.

(139) Second, based on ACEA's comments and documents provided, the Commission noted that ACEA in their comments referred to the confidential version of the mission reports of the cooperating users, member of ACEA, and thus to the evidence collected during the verification visits of these users. This was evident from the various referrals by ACEA in its submissions to the confidential mission reports of the users in question. In particular, the Commission referred to accounting ledgers extracted from User B system where a list of different types of rebates/discounts could be found. During the verification visit, User B explained that price reductions are directly applied on the selling price. Therefore, any other types of rebates/discounts booked in the accounts should be considered as additional rebates/discounts.

(140) Moreover, the Commission collected evidence from the sampled Union producers showing that the users requested various types of rebates/discounts, such as annual savings, etc. The Commission considered that more detailed information could not be disclosed as the information collected from both the users and the Union industry concerned specific individual transactions which constitute data that is not capable of being summarised within the meaning of Article 19(2) of the basic Regulation. Therefore, the claim was rejected.

(141) After final disclosure, ACEA claimed that sufficient evidence was provided demonstrating that ARW suppliers are awarded their supply volumes in tenders and that no supply volumes are awarded outside of the tenders. In any case, according to the party, there is no evidence on the record – and no such evidence exists – that following a tender award and in the process of execution of a contract signed as a result of such a tender, volumes assigned to the Union producer would be re-allocated in favour of a Moroccan supplier. ACEA argued that in the course of the on-site verification at one cooperating user was provided evidence showing that the volume of supplies agreed in the contract signed following the conclusion of a tender was generally a good indicator of the actual volume of supplies going forward.

(142) The Commission considered that ACEA confirmed the findings described in recital 157 that these producers have no guarantee regarding the volume that will be ultimately allocated to them. As indicated by ACEA in its comments and based on User A verification report 'suppliers quote for a volume: volumes are not secured, but suppliers have an idea of the volumes they are quoting for. If after the end of the project (several years) volumes are substantially lower than expected, suppliers might receive a compensation for the non-amortized equipment'. While the volume quoted was indicated, the typical contract did not mention the exact date of delivery and the planned volume of sales. As stated by ACEA in its comments: 'the exact number of wheels to be supplied is typically agreed within 4-8 weeks prior to the delivery to the assembly line'. Therefore, the claim was rejected.

(143) After final disclosure, ACEA claimed that, as acknowledged by EUWA, a more common practice is to award a tender for a particular ARW project to one supplier rather than two or more suppliers. Based on the tenders conducted by three ACEA members in the investigation period (the non-cooperating user and the two cooperating users), the tenders granted simultaneously to two suppliers were limited. Most of the tenders were granted only to one supplier, and thus the supplier will obtain the approximate quantity specified in the tender. When a tender is granted to one supplier, the re-allocation of supplies to any other supplier is not possible.

(144) The Commission examined the summary spreadsheet provided by ACEA in this respect. First, the listing of tenders provided concerned only tenders concluded during the investigation period, and thus these tenders did not concern actual deliveries during the investigation period as the estimated starting date for the supply under the tenders in question was planned for the time after the investigation period. Second, the Commission observed that most of the tenders listed were reported by the non-cooperating user (around 85 %). Due to the user's non-cooperation, the Commission was unable to verify the correctness of that listing and whether it included all the tenders and could cover the yearly needs of this car manufacturer. Notwithstanding this conclusion, the Commission, nevertheless, analysed the data provided.

(145) The list of tenders from the non-cooperating user showed that most of these tenders were granted to only one supplier. However, the weighted average volume quoted was rather low, around 50 000 items per tender for the complete lifetime of a project, which explained that only one supplier was awarded the tenders in question. Nevertheless, the Commission observed that one project was allocated to two suppliers 'due to high volume' as mentioned during a hearing held with ACEA. Third, the information on tenders provided by the cooperating users concerned three tenders. For User B the data showed that it split a tender for a quantity above 1 million to two suppliers. Moreover, for User A the data provided by ACEA was contradictory. Indeed, on the one hand, it showed that there was one tender which was allocated to one supplier, and, on the other hand, in a separate table regarding offers, the same quantities of that tender were split between two tenders. Consequently, the Commission considered that the information provided by ACEA did not contradict the findings made in recital 157, that the tenders may be allocated to several suppliers based on the quantity quoted which puts into question the actual amount of volumes to be supplied by each supplier throughout the life of the project. In addition, as explained in recital 115 above, ACEA acknowledged the fact that the total volume to be supplied may also depend on the success of the particular car model to be produced.

(146) The claim was therefore rejected.

(147) In the absence of other comments, the Commission confirmed its conclusions set out in recitals 111 and 113 of the provisional Regulation.

4.4.3.2. Labour costs

(148) In the absence of any comments, the Commission confirmed its conclusions set out in recitals 114 and 115 of the provisional Regulation.

4.4.3.3. Inventories

(149) In the absence of any comments, the Commission confirmed its conclusions set out in recitals 116 and 117 of the provisional Regulation.

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

(150) In the absence of any comments, the Commission confirmed its conclusions set out in recitals 118 to 123 of the provisional Regulation.

4.4.4. *Conclusion on injury*

(151) In the absence of any comments, the Commission confirmed its conclusions set out in

5. **CAUSATION**

5.1. **Effects of the dumped imports**

5.1.1. *Quantity and market share of the dumped imports from the country concerned*

(152) In the absence of any comments, the Commission confirmed its conclusions set out in recitals 131 to 136 of the provisional Regulation.

5.1.2. *Prices of the dumped imports from the country concerned and price effects*

(153) ACEA claimed, both after provisional and final disclosure, that imports from Morocco sold in 2020 and during the investigation period were based on tender procedures that took place in 2018-2019. Thus, they could not have had a price impact in 2020 or in the investigation period because they did not result in lost sales in 2020 and in the investigation period but rather before, at the point of the tender procedures.

(154) The Commission considered that the profit or losses materialized when the production or the sales took place and not at the time of the negotiation of the tenders. As further explained in recital 89, there are possible price and volume changes, during the life of a project, which go beyond the terms of a given tender. Moreover, as explained in recital 113 and recitals 146 to 148 of the provisional Regulation, the Commission considered that the impact of Moroccan producers is not only due to the quantity lost through tenders won by Moroccan exporting producers but also because of the overall price pressure on all tenders where they participated. Therefore, the claim was rejected.

(155) ACEA claimed, both after provisional and final disclosure, that the price analysis mentioned in the point 4.4.3.1 of the provisional Regulation should be conducted at the level of tenders, and in this scenario, there was no price difference between Union prices and Moroccan prices as reported in the provisional Regulation.

(156) ACEA also claimed, both after provisional and final disclosure, that the price competition between suppliers occurred during the tenders. Therefore, price undercutting, price suppression and the underselling margin should be calculated at the level of the tenders and not during the deliveries. Sales and deliveries did not reflect current conditions of competition. Moreover, the volume of deliveries did not depend on suppliers, but rather on the relative success of a specific car model and thus on the level of production.

(157) The Commission observed that the information provided by the interested parties showed that the prices did not remain unchanged for the entire duration of a certain tender. As explained in recital 79, when negotiating the tenders, ARW producers have to provide a discount scheme over the lifetime of a certain project. On top of this, during the life of a project, car manufacturers may request additional discounts. Moreover, there is no guarantee regarding the volume of sales for the ARW producers. Car manufacturers may select several producers for a certain project, but these producers have no guarantee regarding the volume that will be ultimately allocated to them. For each ARWs manufacturer, the volume of deliveries depended not only on the relative success of a specific car model, but also on the decision of the car manufacturers regarding the allocation of this volume between the selected producers. Consequently, as indicated in recital 115, the selection of data from individual tenders could not substitute the analysis made by the Commission based on the complete data, i.e. transaction sales listing and price comparisons on a per type basis. Such comparison reflects the largest possible amount of data of actual sales transactions that have taken place.

(158) In view of the above, the Commission considered that, in this case, tenders gave an incomplete picture, while the price effects could be fully grasped only by comparing all imports from the country concerned and all sales of the Union industry on a product type basis, which took place during the investigation period. Consequently, the Commission rejected the claim.

(159) ACEA and Hands claimed that, even in the absence of imports from Morocco, the Union industry would have been injured, thus demonstrating that imports from Morocco were not a cause of material injury. ACEA reiterated this claim after final disclosure. In particular, Union industry sales in 2020 and in the investigation period would have remained far below the 2019 levels in 2020 (-22 % in 2020 with Morocco and -20 % without Morocco) as well as in the investigation period (-18 % in the investigation period with Morocco and -14 % without Morocco). Injury in the investigation period could not be attributed to imports from Morocco, because in the investigation period as compared to 2020, the Union industry actually increased its sales (by 2 281 thousand items) more than the Moroccan exporting producers (by 1 478 thousand items). Thus, imports from Morocco had no volume impact. Furthermore, imports from Morocco could not have had a price impact in the investigation period since there was no significant price undercutting in tenders concluded during the investigation period, while sales prices of the imports from Morocco observed during the investigation period could not have had any negative impact on the contemporaneous sales of the Union industry.

(160) ACEA also claimed, both after provisional and final disclosure, that Union industry's profitability was affected by decreased production and sales resulting from a major decline in the Union car production in 2020 and 2021, which in turn resulted in an increased fixed costs.

(161) The Commission considered that the Union industry could not pass on these increased fixed costs to the car-makers, because, as set out above, under long-term contracts with the car-makers it was not possible to increase the price due to any increases in the fixed costs, except for the indexation of the cost of aluminium ingots.

(162) As indicated in the recitals 140 to 142 of the provisional Regulation, the Commission acknowledged that consumption decreased in 2020, which was due mainly to the COVID-19 pandemic. However, the imports from Morocco had a clearly negative impact on the Union industry in 2020 and especially during the investigation period when their volumes increased exponentially. Thus, when the conditions started to improve during the investigation period in terms of increase in consumption, the Union industry was forced, due to the dumped imports from Morocco which undercut the Union industry's prices by 26,9 %, to also keep its prices low, despite the increase in cost of production. Consequently, due to the price suppression the Union industry sold at prices which did not even cover their cost of production let alone a normal profit margin. This conclusion was valid, even assuming that prices were (mainly) fixed in long term contracts, as the negative effects of those lower prices of Moroccan imports materialised when the actual deliveries under the contracts, negotiated at an earlier stage, started in 2020 and the investigation period. Moreover, the participation of the Moroccan producers in tender procedures and their pricing policy, exerted further price pressure on the market which is currently characterized by an excess of supply. Even if the sales quantities of the Union industry increased during the investigation period, it continued to lose market share due to the imports from Morocco and, as a result, its financial situation further deteriorated significantly. Consequently, the claim was rejected.

(163) Hands claimed that any injury suffered by the Union industry could not be caused by Hands' exports to the Union from Morocco. According to the company, a majority of the injury indicators (e.g., Union consumption, production quantity, production capacity, capacity utilization, sales quantity, sales price) already started to deteriorate between 2018 and 2019, and could not be attributed to Hands, as the production started in January 2020. Hands argued that the plant was also built to meet growing demand in the Moroccan and non-EU markets, and not only to supply the EU. Moreover, Hands claimed that part of its export to the Union corresponded to a shift of production from South Korea to Morocco.

(164) Despite the fact that in 2018 and 2019 the Union consumption as well as the Union industry's sales and production decreased, the Union industry increased its profitability from 7,5 % to 8,2 %. Consequently, no injury was found for those years. Rather injury started to materialise in 2020, at the same time as the imports from Hands, together with other imports from Morocco, started coming into the Union. It had to be noted in this respect, that, in accordance with Article 3 of the basic Regulation, the Commission analysed the effect of all dumped imports from Morocco, and not only those of Hands. In any event, with regard to Hands, its imports undercut the Union industry's prices and its dumping and injury margins were significant during the investigation period. Consequently, it could not be argued that its imports did not contribute to the injury of the Union industry. Therefore, the claim was rejected.

(165) Hands also claimed that the findings in the provisional Regulation did not support a finding of material injury caused by ARW imports from Morocco. The analysis was built on confusing data and unsubstantiated allegations that have no support in the record of the investigation and in fact in the commercial realities of the ARW market.

(166) The Commission was unable to identify in this claim what part of its injury analysis was confusing or unsubstantiated or mere allegation. The findings of the Commission were based on positive evidence gathered during the investigation, which was made available to all interested parties in the case file and described in the provisional Regulation. Consequently, the claim was rejected.

5.1.3. *Volume of the dumped imports from the country concerned*

(167) ACEA claimed that there was no significant increase in the volume of Moroccan imports within the meaning of Article 3(3) of the basic Regulation and Moroccan imports occupied a niche that the Union producers voluntarily vacated causing no negative impact on the volumes sold by the Union industry.

(168) As explained in recital 83 of the provisional Regulation, the imports from Morocco reached 2,5 million items during the investigation period, while they were zero in 2018 and still hardly present in 2019. This resulted in a market share of 3,9 % during the investigation period. Regarding the market share of Moroccan imports, the Commission noted that ACEA contradicted its argument set out in recital 191, that the underselling margins should be calculated at the level of tenders where the competition takes place between the Moroccan producers and the Union producers, demonstrating that there was a direct competition between the Moroccan imports and the Union production. Therefore, the Commission considered that imports were significant, both in absolute terms and relative to the consumption in the Union, within the meaning of Article 3(3) of the basic Regulation. In light of the price levels established, the volumes had a negative impact on the Union industry's prices within the meaning of Article 3(3) of the basic Regulation. Consequently, the Commission rejected the claim and confirmed its findings summarised in recitals 131 to 136 of the provisional Regulation.

(169) After final disclosure, ACEA reiterated that the Moroccan imports had no negative volume impact on the Union industry. Moreover, ACEA claimed that the Commission failed to explain how imports of ARWs from Morocco with a 3,9 % market share led to the decrease in the Union production and sales in the period considered by 17 % (production) and by 21 % (sales).

(170) The Commission noted that ACEA referred to the period considered in its analysis, while as indicated above in recital 162, the decrease of the Union production between 2018 and 2020 was mainly due to the COVID-19 crisis. Moreover, regarding the subsequent period 2020 and the investigation period, when the Union consumption increased by + 8,0 %, the imports from Morocco increased significantly (that is by 244 %) while the Union industry sales increased by only 5,2 %. Furthermore, the increase of the market share of the imports from Morocco between

2020 and the investigation period was around 2,1 percentage points, whereas the Union industry market share decreased by 1,8 percentage points. In addition, when considering all origins of imports other than Morocco, the Commission noted that the increase of import volumes was at around 6,6 % between 2020 and the investigation period. That increase was due to the increase of imports volumes from Türkiye (by 19 %) whereas the imports volumes from all other countries decreased on balance during the same period. However, as described in recitals 171 to 174 below, the Commission established that the imports from Türkiye did not attenuate the causal link found between the imports from Morocco and the materials injury suffered by the Union industry. Consequently, the Commission reiterated its findings in recital 168 above that the volumes of imports from Morocco had a negative impact on the Union industry's prices within the meaning of Article 3(3) of the basic Regulation. The claim was therefore rejected.

5.2. **Effects of other factors**

5.2.1. *Imports from third countries*

(171) Hands and ACEA claimed that the impact of third countries' imports should be properly investigated: other third countries accounted for almost 90 % of the total imports and had a market share of around 25 %. In particular, Türkiye increased its market share in the period considered from 10,3 % to 13,0 %.

(172) The Commission analysed imports from third countries. Regarding Türkiye, the main importing country, the Commission pointed out that, as indicated in recital 138 of the provisional Regulation, average prices from Türkiye were significantly higher compared with import prices from Morocco (+ 14 %), and even slightly higher compared to the Union industry's prices (+ 1,0 %). Moreover, the average price of the imports from Türkiye was above the costs of production of the Union industry in 2018, 2019 and 2020. Only in the investigation period it went slightly below by less than 1 %. Moreover in 2020 and in the investigation period, when the profitability of the Union industry went down significantly, prices of Turkish imports were above Union industry's prices. Therefore, these imports did not attenuate the causal link found between the imports from Morocco and the materials injury suffered by the Union industry. The claim was therefore rejected.

(173) After final disclosure, regarding imports originating from Türkiye, Hands reiterated its claim that the Commission failed to consider and simply ignored the injurious effects of imports from Türkiye. The Commission allegedly failed to carry out more refined analysis based on the Hands' own data which shows that its own price offers in tenders were not always the cheapest and was awarded only a small fraction of all tenders. ACEA made a similar claim regarding the same producer.

(174) The Commission rejected Hands' claim for several reasons. First, the Commission observed, as explained in recital 90 of the provisional Regulation, that when comparing the actual sales by product type during the investigation period, it established significant undercutting margin of 26,9 %, which included the sales from Hands. Second, as explained in recitals 115 and 192, the Commission rejected ACEA's claim that the price effects should be analysed at the level of the tenders. Third, Hands did not argue that its price offers in tenders were necessarily more expensive than those of Turkish exporting producers. Rather, its claim concerned 'other ARW manufacturers' in general. In addition, even if Hands' price offers were not necessarily the cheapest, the Commission analysed the price effects on the basis of all imports from Morocco, whereby the share of the other exporting producer, Dika, was significant (representing around [60 % – 70 %] of the market). Finally, as observed in recital 172 above, the import prices from Türkiye were higher than the Union industry's average price during the investigation period. Consequently, the claim was rejected.

(175) After final disclosure, ACEA reiterated its claim indicated in recital 159 that the price undercutting from Morocco, based on tenders, was not significant (i.e. 3,7 %), in particular compared to the price undercutting, calculated by ACEA, for Türkiye or for Thailand, which was respectively around 10 % and 1 %.

(176) First, the Commission assessed the summary spreadsheet submitted by ACEA concerning price offers. This spreadsheet consisted of 15 tenders, originating from three ACEA members (i.e. the non-cooperating user and the two cooperating users). The following information was provided: the user name, the quantity and the item price offered by each suppliers. The Commission noted though that the internal numbering of each tender was not provided, which prevented the Commission from cross-checking the data with the verified information already provided in the course of the investigation by the two cooperating users. Moreover, some price elements were not

provided (such as the planned yearly discounts, also called 'productivity discounts') and thus it was impossible to assess if all of them had been included in the item price offered. More importantly, most of the price offers concerned the non-cooperating user. As indicated in recital 109, due to the overall lack of cooperation by that user, the limited information it provided could not be considered for the purpose of this investigation. Regarding, the additional information provided by ACEA with respect to User A and User B, it concerned price offers which the Commission could not verify due to its late submission. In particular, the Commission was unable to determine if the dataset provided was exhaustive or not. In any case, the dataset listed 14 Moroccan offers, out of 15 tenders, and 5 for Türkiye and Thailand each. The undercutting calculation made by ACEA was based on the quotation price ([22]). The Commission observed that ACEA's own calculations showed that the price offers by the Moroccan producers were lower than the ones of the Union industry. Furthermore, when comparing the volumes reported ([23]) in this spreadsheet with the total imports volumes established for Türkiye and Thailand on the basis of the Eurostat data (see table 11 of the provisional Regulation), it appeared that the volume reported in particular for Türkiye was not representative (below 5 %). Thus no meaningful conclusion could be drawn from that information provided by ACEA. Moreover, the Commission already concluded in recital 139 of the provisional Regulation that Thailand and Türkiye did not attenuate the causal link found between the dumped imports from Morocco and the injury suffered by the Union industry. Therefore the claims were rejected.

5.2.2. *The COVID-19 pandemic*

(177) Hands claimed that Union ARW demand decreased in 2020, that is a decrease by 14 million items, representing 20 times the size of imports of ARW from Morocco. The impact of the pandemic was therefore so significant that the Commission should consider that it broke any causal link that may have existed between imports of ARW from Morocco and any injury suffered by the Union industry.

(178) As indicated in recitals 140 to 142 of the provisional Regulation, the Commission acknowledged the impact of COVID-19 on the Union industry. However, as the investigation period also covered the period of post-COVID recovery, the Commission could establish, as explained in recital 94 above, that when the market rebounded post COVID, the Union industry did not benefit due to the increased imports from the country concerned at dumped prices. Rather the contrary, as the situation of the Union industry further deteriorated in the investigation period. Therefore, the negative impact of the COVID-19 pandemic could not be considered as the only cause of the injury suffered by the Union industry to the extent that it would have attenuated the causal link between such injury and the dumped imports from the country concerned. Therefore, the claim was rejected.

(179) Hands reiterated its request for a satisfactory and detailed explanation is especially needed, given that the Commission explicitly recognised that the COVID-19 pandemic had a negative impact on the Union industry.

(180) In the absence of a more precise and specific request, the Commission considered that the explanations already contained in this section were sufficient to allow the company to understand the Commission's reasoning and exercise its rights of defence. It thus rejected the claim.

5.2.3. *Export performance of the Union industry*

(181) In the absence of comments, recitals 143 to 145 of the provisional Regulation were confirmed.

5.2.4. *Effect of multi-year contracts and evolution of the costs of production*

(182) In the absence of comments, recitals 146 to 148 of the provisional Regulation were confirmed.

([22]) The quotation or offer price is the price offered by each participant in the tenders when submitting a bid.

([23]) In the absence of other information, the Commission assumed that the volumes reported in the spreadsheet concerned the overall volume quoted during the expected lifetime of each project. Based on an average duration of 5 years, the volumes thus reported was allocated accordingly.

5.2.5. *Consumption*

(183) In the absence of comments, recitals 146 to 148 of the provisional Regulation were confirmed

5.2.6. *Competition in tenders*

(184) ACEA claimed that the Commission should have investigated intra-Union competition. ACEA collected information from its members and found that out of a total of 45 tenders Union producers were successful in 31, suppliers from Morocco and from Thailand in 5 each and suppliers from Türkiye in 4, although in terms of items Türkiye won most of the tenders.

(185) At the outset, the Commission recalled that ACEA did not dispute the representativeness of the sample of Union producers, established in accordance with Article 17(1) of the basic Regulation. Thus, ACEA cannot validly maintain that the Commission was required to investigate whether the alleged impact of the dumped imports on prices did not result from price competition from Union producers not included in the sample ([24]). Moreover, as indicated in the Table 5 of the provisional Regulation, the Union producers demonstrated their ability to maintain a market share above 70 % but also a profitability of around 8 % in 2018-2019. This was achieved in a very competitive market, based on tenders organised by car manufacturers, in which all Union producers and producers located in other third countries could compete for the same tenders. This meant that the Union producers were competitive under normal and fair market conditions, without the industry as a whole being injured. Furthermore, the Commission noted that the claim made by ACEA was based on 45 tenders from three ACEA members (4 contracts reported by the two cooperating users and 41 from a non-cooperating user). The information was limited only to the tender winner, estimated quantities and the origin of the other non-Union tenderers (Morocco, Thailand or Türkiye). In addition, that information was not backed by any evidence proving its accurateness and reliability. The tender references were not even provided. The claim was therefore rejected.

(186) ACEA also claimed that, even assuming that it is correct that tender participants must align themselves to the lowest bidder, according to ACEA, there is overwhelming evidence that such alignment is undertaken first and foremost with regard to the cheapest Union producer and secondly by reference to third country imports, with any alignment with the quotations of Moroccan suppliers coming distant third with only 5 cases.

(187) The Commission noted that the analysis made by ACEA was based on a limited number of tenders (i.e. 15) and the information provided by ACEA consisted of a table listing 15 price offers covering all main sources of the product concerned (Union and all main third countries producers) submitted by three ACEA members. 4 contracts reported by the two cooperating users and 11 from a non-cooperating user. In addition, as for the previous claim, that information was not backed by any evidence proving its accurateness and reliability. The tender references were not even provided. For example, no information was provided regarding whether the price reported included all the ancillary costs and the discounts included in the offers. Furthermore, the underlying tender documents were not provided and, as a result, the Commission was unable to verify the information provided and the claim was therefore rejected. Even if the Commission was to take into account this information, it observed that the total volumes of the quoted offers represented around 5 % of the total Union consumption, and thus was not considered to be representative. In addition, in all but two instances the price offers made by the Moroccan producers were below the ones made by the Union producers. Consequently, the Commission considered that ACEA failed to provide evidence showing that the tender participants had to align themselves with the cheapest Union producers and that the Moroccan suppliers were not pushing prices down.

(188) After final disclosure, ACEA claimed that the Commission itself requested ACEA members to provide such data on tender quotations based on the start of production, which was provided by ACEA accordingly. ACEA also provided additional documents from User B. Finally, ACEA considered this dataset to be representative as it was based on 29 tenders, covered almost 100 % of Moroccan ARW purchases, and was backed by evidence.

([24]) See judgment of 14 September 2022, *Nevinnomysskiy Azot et NAK 'Azot'/Commission*, T-865/19, EU:T:2022:559, paras 283 – 286.

(189) The Commission stressed that the information on tenders was only requested from the two users that fully cooperated with the investigation, provided questionnaire replies and had their data verified. The data subsequently submitted by ACEA regarding the non-cooperating user was considered incomplete, unreliable and not verifiable due to the lack of cooperation by that user. The Commission noted that ACEA based its analysis mainly on the non-cooperating user. Also, while ACEA claimed that its dataset was backed by evidence, the Commission considered that the dataset consisted mainly of summary spreadsheets and that the tender references mentioned by ACEA were in fact the internal numbers of each tender. However, the full documentation regarding the tenders, such as copies of the terms of references, the actual offers received, etc., was not provided. Therefore, the claim was rejected.

5.3. **Conclusion on causation**

(190) In the absence of any other comments on causation, the Commission confirmed its conclusions set out in recitals 152 to 154 of the provisional Regulation.

6. **LEVEL OF MEASURES**

6.1. **Underselling margin calculations**

(191) ACEA claimed, after provisional and final disclosure, that the Commission should have conducted underselling margin calculations at the level of tenders as in the original investigation against imports of ARW from China ([25]).

(192) The Commission examined the argument and found that a similar claim during the expiry review investigation of the above mentioned measures ([26]) was made and rejected. In recital 115 above, the Commission explained that a selection of data from individual tenders cannot substitute the price and volume analysis made by the Commission based on the complete data, i.e. transaction sales listing and price comparisons on a per type basis. Such comparison reflects the largest possible amount of data of actual sales transactions that have taken place. Moreover, the underselling margin was expressed as a percentage of the export price during the investigation period. The analysis on the basis of the complete data from the sampled exporting producers and the Union producers showed an underselling of 44 % for Hands and of 51,6 % for other Moroccan producers. Therefore, this argument was rejected.

(193) Hands claimed that the Commission's adjustments linked to future environmental costs are arbitrary and speculative, and affect price comparability, and introduce a distortion to price comparability between Union and Moroccan sales. Hands made reference to Morocco's New Development Model, which was launched in April 2021 and includes investment in sustainable green energy in order to be competitive in low-carbon industries, and the country has vowed to source over 50 percent of its electricity from renewable sources by 2030. Therefore, it is clear that the Commission did not take into account future costs which would be incurred by Hands during the application of the measures, including those connected to the de-carbonization efforts in Morocco.

(194) The Commission stressed that the inclusion of the future environmental costs in the target price for the Union industry was in compliance with Article 7(2d) of the basic Regulation. The inclusion of these costs was not based on pure speculation but on positive evidence of actual investments planned. Whether Morocco may have investments in sustainable green energy is immaterial for the application of the relevant provisions of the basic Regulation regarding the establishment of the Union target price in which future environmental costs must be taken into account. Therefore, the claim was rejected.

(195) Hands claimed that the Commission did not provide any explanation on its calculation of future costs and thus deprived Hands and other interested parties from their right of defence.

([25]) Regulation (EU) No 404/2010, recitals 175 to 179.

([26]) Commission Implementing Regulation (EU) 2017/109 of 23 January 2017 imposing a definitive anti-dumping duty on imports of certain aluminium road wheels originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 18, 24.1.2017, p. 1), recitals 125 and 126.

(196) The Commission provided information regarding the future costs following a request from Dika. The reply was published in the open file which was available to all parties. Therefore, the rights of defence were not breached.

7. UNION INTEREST

7.1. Interest of the Union industry

(197) In the absence of comments, recitals 165 and 166 of the provisional Regulation were confirmed.

7.2. Interest of users

(198) ACEA reiterated its claim, after provisional and final disclosure, described in recital 170 of the provisional Regulation that the Union ARW industry could not satisfy the demand. Allegedly, for more than 15 years, Union market suffered from under-capacity and shortages due to the insufficient investments made by the Union producers. According to ACEA, the Union ARW producers consistently fail to meet their commitment to increase production capacity and ensure security of supply in the Union. ACEA recalled that in the context of the Commission's anti-dumping investigation on ARW from China, Union producers allegedly committed to increase their production capacity and the Commission allegedly extended the anti-dumping measure under a condition that capacities will be increased. According to ACEA, between 2006 and the investigation period, the Union capacity increased by 14 % while the consumption increased by 33 % during the same period.

(199) The Commission noted that this claim was already addressed in recital 171 of the provisional Regulation and no new elements or evidence were brought forward. The Commission observed that, if needed, the Union ARW industry could increase its capacity at relatively short notice, as the relevant investment referred to by the users did not concern the furnaces or the painting booths, but rather casting machines which can be installed easily. Therefore, if the Union ARW producers did not invest in additional production capacity, it was rather due to their difficult economic situation, and the lack of sufficient future contracts from the car manufacturers to justify such investment. Thus, the Union industry did not have sufficient incentive to invest in additional capacity in the absence of foreseeable increase in demand of its production.

(200) In addition, the Union consumption amounted to 64,31 million items in the investigation period. The total Union industry capacity was 61,29 million items, while the total Union production was 48,75 million items in the investigation period and exports of the Union industry were 2,71 million items, leaving the capacity of 9,83 million items unused. Consequently, the Union industry already had sufficient production capacity to cover almost the total Union demand of ARW. In addition, the Union market could be further supplied by exporting producers in third countries. The total worldwide capacity of ARWs even increased with the arrival of the Moroccan producers. Consequently, the claim was rejected.

(201) After final disclosure, ACEA claimed that the Commission's allegation that the relevant investments do not concern furnaces or the painting booths, but rather casting machines which can be installed easily, was not backed by evidence. ACEA claimed that the cooperating users demonstrated that the lack of sufficient painting booths is precisely one of the major bottlenecks limiting the Union's production capacity.

(202) The Commission observed that the evidence submitted by User A concerned the lack of production capacity from one Union producer for the years 2015-2016, thus before the period considered. Moreover, User A did not provide any document showing production capacity issues during the period considered. Regarding User B, the documents provided were also dated before the period considered (most of them dated in 2016). However, during the verification visit, User B declared that 'during a normal year like 2018/2019, there was no shortage of aluminium wheels'. ACEA or any other users did not provide any evidence of production shortage due to the lack of sufficient painting booths during the period considered.

(203) In the course of the investigation, the Commission collected evidence that the Union industry invested in painting booths when the consumption shifted to more diamond cut wheels, which request two turns in painting lines. Regarding investments in painting booths and casting equipment, the Commission collected copies of purchase invoices showing that the Union industry was able to increase its capacity in the past when demand for its products was certain. The Commission considered that more detailed information could not be included in the non-confidential file as the information in question concerned specific individual transactions which constitute data that is not capable of being summarised within the meaning of Article 19(2) of the basic Regulation. Therefore, the claim was rejected.

(204) ACEA claimed that at the time when Moroccan suppliers won tenders to supply wheels to the Union, the Union industry had no spare production capacity to offer and thus these imports covered strategic needs for the car manufacturers.

(205) The Commission noted that ACEA did not provide evidence of this claim, for example of tenders where there was no price offer from the Union producers, in particular for the tenders won by the Moroccan producers. The Commission also noted that no evidence was provided that the Union ARW industry failed to deliver ARW following requests from car manufacturers during the period considered ([27]). As already mentioned above, the production capacity of the Union industry, together with the one of the exporting producers in third countries is largely sufficient to meet the needs of the car industry. Therefore, the claim was rejected.

(206) After final disclosure, ACEA claimed that none of the Union producers decided to invest in additional production capacity, while the car production in the Union increased constantly since 2013.

(207) The Commission however found that the production capacity of the Union industry increased by around 10,8 million items during that period (51,644 million items ([28]) in 2013 to 62,475 million items ([29]) in 2019). Thus the claim was not supported by any evidence and was therefore rejected.

(208) After final disclosure, ACEA reiterated its claim that the Union industry cannot meet the demand in the Union, even in a disrupted market and a historical drop in demand.

(209) The Commission observed that the capacity utilisation of the Union industry was at 80 % during the investigation period. Therefore, there was additional spare capacity to meet the demand. Also, there was no requirement that the Union industry was obliged to have the capacity to meet the total demand. Users could also import ARW from any of the producing third countries. The claim was therefore rejected.

(210) After final disclosure, ACEA claimed that it provided evidence demonstrating that the Union industry had no spare production capacity to offer and thus the Moroccan imports covered strategic needs for the car manufacturers. Moreover, ACEA provided evidence concerning the lack of Union industry production in 2016.

(211) The Commission considered that the claim was not substantiated by sufficient evidence. For example, ACEA did not provide proof of any tender won by Moroccan suppliers where the Union producers did not participate in the bidding process. Regarding the lack of production, ACEA did not submit evidence showing a systemic issue as the evidence provided dated before the period considered. Therefore, the claim was rejected.

(212) ACEA claimed that the Commission did not address the fact that the costs of the car manufacturers increased due to the cumulative effects of anti-dumping measures applied on other raw materials, parts and components used for car production.

([27]) After provisional disclosure, User A reported that in 2014 for one project an Union producer was not in position to supply 100 % but 85 % of the quantity requested. However, the User is still considering this Union producer as its main supplier and did not raise claims or provide evidence that such reduction of supply by the Union producer occurred during the period considered.

([28]) Implementing Regulation (EU) 2017/109, recital 136.

([29]) Recital 97 of the provisional Regulation.

(213) The Commission noted that ACEA did not provide any supporting evidence regarding this claim. Even if the costs of their suppliers may have increased and passed on, fully or partially, to the car manufacturers, this appeared not to have led to a negative impact on their economic situation. As pointed out in recital 175 of the provisional Regulation, the car manufacturers published financial results for 2021 which exceeded the usual profits reported during the previous years. Finally, as already set out in recital 169 of the provisional Regulation, the percentage of the cost of ARWs in the production of a car is minor, approximately 0,5 %. Therefore, the impact of the measures on car manufacturers was very limited and the claim was rejected.

(214) After final disclosure, ACEA disagreed with the Commission's assessment in the above recital. ACEA submitted that the anti-dumping duties will represent an additional cost of EUR 241-413 million. This is a significant amount for the car manufacturers for an industry that continues to suffer from a low level of car production in the Union while having to absorb additional environmental costs.

(215) The Commission observed that ACEA did not contest the Commission's findings that the share of ARWs in the total cost of production of a car is minor, approximately 0,5 % and the relatively low anti-dumping duty would be only a fraction of this 0,5 %. No evidence was submitted demonstrating that the car manufacturers will not be able to absorb such costs. In addition, notwithstanding the correctness of the additional cost estimated by ACEA, the estimation of the additional costs was based on the Union target price and thus relates to the established injury margins. However, the duty was based on the dumping margins which was lower than the injury margins found and, as a result, the effects of the anti-dumping duty would be lower than the amounts estimated by ACEA. Consequently, the claim was rejected.

(216) ACEA claimed that some of its members estimated that Moroccan suppliers are increasingly committed to monitor the CO_2 impact of the supply chains. Therefore, redirecting supply to other third countries would significantly impact the capacity of car manufacturers to meet their CO_2 reduction goals.

(217) The Commission noted that ACEA did not provide any supporting evidence regarding this claim while information obtained during the verification visit of one cooperating user revealed that Moroccan imports face similar issue of their impact on car manufacturers' CO_2 reduction goals due to the distance between the Moroccan plants and the plant of the car manufacturers in the Union. Therefore, the claim was rejected.

(218) After final disclosure, ACEA referred to its 10-point plan to help implement the European Green Deal ([30]) as well as to the fact that User B provided evidence after the verification visit that Moroccan imports are important regarding the CO_2 impact due to the geographic proximity of the Moroccan plants and the car manufacturer plants.

(219) The Commission observed that the 10 point plan did not mention the impact of imports of wheels in general, and of Morocco in particular. Consequently, the plan did not constitute appropriate evidence with regard to the claim described in recital 216 above. In addition, User B indeed reported that it introduced the CO_2 emission criterion for selecting suppliers and that the target is to decrease the distance between the plants and the suppliers and thus the carbon print. However, User B also stated that the competitiveness remains a very important factor for the selection of a supplier. In addition, the Commission did not find any evidence that this criterion was actually assessed by User B during the tendering process or that a producer was disregarded due to the CO_2 emission criteria. Finally, even if this criterion would play a vital role in the future, the anti-dumping measures do not have as an objective to cease imports from Morocco, but rather to ensure that they enter the Union at fair prices. Therefore, the claim was rejected.

(220) ACEA claimed that German Federal Cartel Office initiated in March 2022 an investigation against a Union producer, based on allegations of a conduct restricting competition. However, the Commission noted that no claim of possible effects on the findings of the investigation of such alleged behaviour was made. In any case, that investigation is still on-going and no findings have been reached yet. Therefore, the claim was rejected.

([30]) https://www.acea.auto/files/ACEA_10-point_plan_European_Green_Deal.pdf

(221) After final disclosure, ACEA claimed that the anti-dumping measures should not be applied pending the outcome of the investigation conducted by the German Federal Cartel Office in such exceptional circumstances and in line with the principles of sound administration and good administrative practice as developed in the seamless pipes case ([31]).

(222) As already explained in recital 220 above, there has been no decision yet taken by the national administration. By contrast, in the seamless pipes case the duties were applied only after a definitive decision sanctioning the anti-competitive practice had been issued and when it had become apparent that that practice concerned the period considered in the investigation and that it covered the product concerned. None of these elements were present in the case at hand. Consequently, the claim was rejected.

7.3. **Conclusion on Union interest**

(223) On the basis of the above and in the absence of any other comments, the conclusions set out in recital 177 of the provisional Regulation were confirmed.

8. **DEFINITIVE ANTI-DUMPING MEASURES**

8.1. **Definitive measures**

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

(225) As indicated in recital 63, the dumping margins were slightly revised at the definitive stage.

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

Country	Company	Dumping margin (%)	Injury margin (%)	Definitive anti-dumping duty (%)
Morocco	HANDS 8 S.A.	9,01	44,0	9,0
	DIKA MOROCCO AFRIKA S.A.R.L	17,54	51,6	17,5
	All other companies	17,54	51,6	17,5

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

([31]) Council Regulation (EC) No 1322/2004 of 16 July 2004 amending Regulation (EC) No 2320/97 imposing definitive anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in, inter alia, Russia and Romania (OJ L 246, 20.7.2004, p. 10).

(228) 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 ([32]). 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*.

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

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

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

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

(233) Statistics of aluminium road wheels of the motor vehicles of headings 8701 to 8705 whether or not with their accessories and whether or not fitted with tyres are frequently expressed in number of pieces. However, there is no such supplementary unit for aluminium road wheels of the motor vehicles of headings 8701 to 8705 whether or not with their accessories and whether or not fitted with tyres specified in the Combined Nomenclature laid down in Annex I to Council Regulation (EEC) No 2658/87 ([33]). It is therefore necessary to provide that not only the weight in kg or tonnes but also the number of items for the imports of the product concerned must be entered in the declaration for release for free circulation. Items should be indicated for CN codes ex 8708 70 10 and ex 8708 70 50 (TARIC codes: 8708 70 10 15, 8708 70 10 50, 8708 70 50 15 and 8708 70 50 50).

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

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

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

([33]) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1) as amended by Commission Implementing Regulation (EU) 2021/1832 of 12 October 2021 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 385, 29.10.2021, p. 1).

8.3. **Retroactive imposition of anti-dumping measures**

(235) As indicated in section 1.2, the Commission made imports of the product under investigation subject to registration.

(236) During the definitive stage of the investigation, the data collected in the context of the registration was assessed. The Commission analysed whether the criteria under Article 10(4) of the basic Regulation were met for the retroactive collection of definitive duties.

(237) The Commission observed that the volume of items imported during the pre-disclosure period (18 June 2022 – 16 July 2022) was around 291 000 items, that is a decrease by 11 % compared to the monthly average import volumes during the post-investigation period analysed in the registration Regulation, that is from 1 December 2021 to 30 April 2022. Therefore, the Commission did not find evidence of possible stock-piling during the pre-disclosure period. In addition, import prices increased by 11 % in line with the increase of LME 3 months prices. Consequently, there was no evidence that the imports undermined the remedial effects of the duties.

(238) On this basis, the legal conditions under Article 10(4) of the basic Regulation were not met and, therefore, the duties should not be levied retroactively on the registered imports.

9. **FINAL PROVISION**

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

(240) The Committee established by Article 15(1) of Regulation (EU) 2016/1036 did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of aluminium road wheels of the motor vehicles of headings 8701 to 8705 whether or not with their accessories and whether or not fitted with tyres, currently falling under CN codes ex 8708 70 10 and ex 8708 70 50 (TARIC codes: 8708 70 10 15, 8708 70 10 50, 8708 70 50 15 and 8708 70 50 50) and originating in Morocco.

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

Country	Company	Definitive anti-dumping duty	TARIC additional code
Morocco	HANDS 8 S.A.	9,0 %	C873
	DIKA MOROCCO AFRIKA S.A.R.L	17,5 %	C897
	All other companies	17,5 %	C999

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

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of (product concerned) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in Morocco. 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 a declaration for release for free circulation is presented in respect of the product referred to in paragraph 1, the number of items of the products imported shall be entered in the relevant field of that declaration, without prejudice to the supplementary unit defined in the Combined Nomenclature.

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

Article 2

The amounts secured by way of the provisional anti-dumping duty under Implementing Regulation (EU) 2022/1221 shall be definitively collected.

Article 3

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, 11 January 2023.

For the Commission
The President
Ursula VON DER LEYEN