COMMISSION IMPLEMENTING REGULATION (EU) 2023/100

of 11 January 2023

imposing a provisional anti-dumping duty on imports of stainless steel refillable kegs originating in the People's Republic of China

THE EUROPEAN COMMISSION,

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

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

After consulting the Member States,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 13 May 2022, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of stainless steel refillable kegs originating in the People's Republic of China ('China' or '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 31 March 2022 by the European Kegs Committee ('the complainant'). The complaint was made on behalf of the Union industry of stainless steel refillable kegs 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. Registration

(3) Pursuant to Article 14(5a) of the basic Regulation, the Commission should register imports subject to an anti-dumping investigation during the period of pre-disclosure unless it has sufficient evidence within the meaning of Article 5 that the requirements either under point (c) or (d) of Article 10(4) are not met. Given that the evidence on the file did show that the requirement under point (d) was not met, the Commission did not make imports of the product concerned subject to registration under Article 14(5a) of the basic Regulation.

1.3. Interested parties

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

(5) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. No hearing was requested.

1.4. Sampling

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

(1) OJ L 176, 30.6.2016, p. 21.
(2) OJ C 195, 13.5.2022, p. 24.

Sampling of Union producers

(7) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of production and sales volumes, taking into account their geographical location. This sample consisted of three Union producers. The sampled Union producers accounted for 73 % of the estimated total Union production and 74 % of sales in the Union. The Commission invited interested parties to comment on the provisional sample. No comments were received in that regard. The sample is representative of the Union industry.

1.4.1. *Sampling of importers*

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

(9) Only one unrelated importer provided the requested information and agreed to be included in the sample. The Commission thus decided that sampling of unrelated importers was not necessary.

1.4.2. *Sampling of exporting producers in China*

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

(11) Six producers in the country concerned that exported kegs to the Union during the IP, provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of two exporting producers on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available. In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned and the authorities of the country concerned were consulted on the selection of the sample. No comments were received.

1.5. **Questionnaire replies and verification visits**

(12) The Commission sent a questionnaire concerning the existence of significant distortions in China within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of the People's Republic of China ('GOC'). No reply was received.

(13) The Commission published online ([3]) the questionnaires for the sampled exporting producers, the unrelated importers and the Union producers and sent the macro data questionnaire to the Complainant on 20 May 2022.

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

Union producers

— Blefa GmbH, Hüttenstraße 43, 57223 Kreuztal, Germany

— Schäfer - Sudex s.r.o., Podolí 5, 584 01 Ledeč nad Sázavou, Czechia

— Thielmann Portinox Spain S.A., Carr. de Pulianas, 18197 Granada, Spain

(15) In view of the outbreak of COVID-19 and the confinement measures put in place the Commission carried out remote crosschecks ('RCC') in line with its Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations of the following Chinese exporting producers:

([3]) https://tron.trade.ec.europa.eu/investigations/case-view?caseId=2602

— Penglai Jinfu Stainless Steel Products Co., Ltd, Shandong, China

— Ningbo Major Draft Beer Equipment Co., Ltd, Ningbo, Zhejiang, China

1.6. **Investigation period and period considered**

(16) The investigation of dumping and injury covered the period from 1 January 2021 to 31 December 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').

2. PRODUCT UNDER INVESTIGATION, PRODUCT CONCERNED AND LIKE PRODUCT

2.1. **Product under investigation**

(17) The product under investigation is kegs, vessels, drums, tanks, casks and similar containers, refillable, of stainless steel, commonly known as 'stainless steel refillable kegs', with bodies approximately cylindrical in shape, with a wall thickness of 0,5 mm or more, of a kind used for material other than liquefied gas, crude oil, and petroleum products, of a capacity of 4,5 litres or more, regardless of the type of finish, gauge, or stainless steel grade, whether or not with additional components (extractors, necks, chimes or any other component), whether or not painted or coated with other materials ('kegs' or 'the product under investigation').

(18) The following products do not fall under the scope of this investigation when imported separately from the product under investigation: necks, spears, couplers or taps, collars, valves and other components of the product under investigation (extractors, necks, chimes or any other component).

2.2. **Product concerned**

(19) The product concerned is the product under investigation originating in China, currently falling under CN codes ex 7310 10 00 and ex 7310 29 90 (TARIC codes 7310 10 00 10 and 7310 29 90 10) ('the product concerned').

2.3. **Like product**

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

— the product concerned when exported to the Union;

— the product under investigation produced and sold on the domestic market of China; and

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

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

3. DUMPING

3.1. **China**

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

(22) In view of the sufficient evidence available at the initiation of the investigation pointing to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation with regard to China the Commission considered it appropriate to initiate the investigation with regard to the exporting producers from this country having regard to Article 2(6a) of the basic Regulation.

(23) Consequently, in order to collect the necessary data for the eventual application of Article 2(6a) of the basic Regulation, in the Notice of Initiation the Commission invited all exporting producers in China to provide information regarding the inputs used for producing kegs. Six exporting producers submitted the relevant information.

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

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

(26) On 20 July 2022, the Commission informed by a note ('the First Note') interested parties on the relevant sources it intended to use for the determination of the normal value. In that note, the Commission provided a list of all factors of production such as raw materials, labour and energy used in the production of kegs. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified possible representative countries, namely Mexico, Brazil and Russia as appropriate representative countries. The Commission received no comments on the First Note.

(27) On 19 September 2022, the Commission informed by a second note ('the Second Note') interested parties on the relevant sources it intended to use for the determination of the normal value, with Brazil as the representative country. It also informed interested parties that it would establish selling, general and administrative costs ('SG&A') and profits based on producer KHS Industria de Maquinas LTDA in Brazil. The Commission invited interested parties to comment. Comments were received from the two sampled exporting producers.

(28) After having analysed the comments and information received on the Second Note, the Commission concluded that Brazil was an appropriate choice as representative country from which undistorted prices and costs would be sourced for the determination of the normal value at the provisional stage. The underlying reasons for that choice are further described in detail in Section 3.2.1.1 and following.

3.2. **Normal value**

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

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

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

3.2.1. *Existence of significant distortions*

(32) In recent investigations concerning the steel sector in China [4], which is the main raw material to produce kegs, the Commission found that significant distortions in the sense of Article 2(6a)(b) of the basic Regulation were present.

(33) In those investigations, the Commission found that there is substantial government intervention in China resulting in a distortion of the effective allocation of resources in line with market principles [5]. In particular, the Commission concluded that in the steel sector not only does a substantial degree of ownership by the GOC persist in the sense of Article 2(6a)(b), first indent of the basic Regulation [6], but the GOC is also in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation [7]. The Commission further found that the State's presence and intervention in the financial markets, as well as in the provision of raw materials and inputs have an additional distorting effect on the market. Indeed, overall, the system of planning in China results in resources being concentrated in sectors designated as strategic or otherwise politically important by the GOC, rather than being allocated in line with market forces [8]. Moreover, the Commission concluded that the Chinese bankruptcy and property laws do not work properly in the sense of Article 2(6a)(b), fourth indent of the basic Regulation, thus generating distortions in particular when maintaining insolvent firms afloat and when allocating land use rights in China [9]. In the same vein, the Commission found distortions of

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

(5) See Implementing Regulation (EU) 2022/191 recital 208, Implementing Regulation (EU) 2022/95 recital 59, Implementing Regulation (EU) 2021/2239 recitals 67-74 and Implementing Regulation (EU) 2021/635 recitals 149-150.

(6) See Implementing Regulation (EU) 2022/191 recital 192, Implementing Regulation (EU) 2022/95 recital 46, Implementing Regulation (EU) 2021/2239 recitals 67-74 and Implementing Regulation (EU) 2021/635 recitals 115-118.

(7) See Implementing Regulation (EU) 2022/191 recitals 193-194, Implementing Regulation (EU) 2022/95 recital 47, Implementing Regulation (EU) 2021/2239 recitals 67-74, and Implementing Regulation (EU) 2021/635 recitals 119-122. While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights, CCP cells in enterprises, state owned and private alike, represent another important channel through which the State can interfere with business decisions. According to the China's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline. In 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of the product under investigation and the suppliers of their inputs.

(8) See Implementing Regulation (EU) 2022/191 recitals 195-201, Implementing Regulation (EU) 2022/95 recitals 48-52, Implementing Regulation (EU) 2021/2239 recitals 67-74, and Implementing Regulation (EU) 2021/635 recitals 123-129.

(9) See Implementing Regulation (EU) 2022/191 recital 202, Implementing Regulation (EU) 2022/95 recital 53, Implementing Regulation (EU) 2021/2239 recitals 67-74, and Implementing Regulation (EU) 2021/635 recitals 130-133.

wage costs in the steel sector in the sense of Article 2(6a)(b), fifth indent of the basic Regulation ([10]), as well as distortions in the financial markets in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, in particular concerning access to capital for corporate actors in China ([11]).

(34) Like in previous investigations concerning the steel sector in China, the Commission examined in the present investigation whether it was appropriate or not to use domestic prices and costs in China, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the request, as well as in the including the Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence Investigations ([12]) ('Report'), which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in China's economy in general, but also the specific market situation in the relevant sector including the product under investigation. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in China as also found by its previous investigations in this respect.

(35) The request alleged that the Chinese State engages in an interventionist economic policy in pursuance of goals, which coincide with the political agenda set by the Chinese Communist Party ('CCP') rather than reflecting the prevailing economic conditions in a free market. The request pointed out in this connection not only to the distortions in the stainless steel market (stainless steel accounting for between 40 % and 60 % of the cost of kegs production) but it claimed that all other factors of production – land, capital, labour - are equally distorted. As a consequence, the request concluded that not only the domestic sales prices of stainless steel are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs, including raw materials, energy, land, financing or labour, are also affected because their price formation is affected by substantial government intervention.

(36) To support its position, the request referred to a number of publicly available information sources, such as the Report, the conclusions reached by the EUCCC ([13]), the Commission's recent investigations of the Chinese steel sector ([14]) as well as the conclusions of the G20 Global Forum on Steel Excess Capacity ([15]).

(37) As indicated in recital (24), the GOC did not comment or provide evidence supporting or rebutting the existing evidence on the case file, including the Report and the additional evidence provided by the complainant, on the existence of significant distortions and/or on the appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand.

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

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

([12]) Commission staff working document SWD(2017) 483 final/2, 20.12.2017, available at: https://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156474.pdf

([13]) European Union Chamber of Commerce in China, Overcapacity in China : an impediment to the Party's reform agenda, available at: https://www.europeanchamber.com.cn/en/publications-overcapacity-in-china (accessed on 16 November 2022).

([14]) Implementing Regulation (EU) 2021/635 and Commission Implementing Regulation (EU) 2020/508 of 7 April 2020 imposing a provisional anti-dumping duty on imports of certain hot rolled stainless steel sheets and coils originating in Indonesia, the People's Republic of China and Taiwan (OJ L 110, 8.4.2020, p. 3).

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

(38) Specifically in the sector of the product under investigation, i.e. the steel sector, a substantial degree of ownership by the GOC persists. While the nominal split between the number of state-owned enterprises ('SOEs') and privately owned companies is estimated to be almost even, from the five Chinese steel producers ranked in the top 10 of the world's largest steel producers, four are SOEs ([16]). At the same time, while the top ten producers only took up some 36 % of total industry output in 2016, the GOC set the target in the same year to consolidate 60 % to 70 % of steel production to around ten large-scale enterprises by 2025 ([17]). This intention has been repeated by the GOC in April 2019, announcing a release of guidelines on steel industry consolidation ([18]). Such consolidation may entail forced mergers of profitable private companies with underperforming SOEs ([19]). Since there was no cooperation by the GOC, given the presence of a number of SMEs active in the sector, the exact ratio of the private and state-owned steel producers could not be determined. In any event, the investigation revealed that at least one producer of kegs is an SOE, namely Penglai Jinfu Stainless Steel Products Co., Ltd.

(39) However, while specific information may not be available for the product under investigation, the sector represents a sub-sector of the steel industry and the findings concerning the steel sector are therefore deemed indicative also for the product under investigation. The latest Chinese policy documents concerning the steel sector confirm the continued importance which GOC attributes to the sector, including the intention to intervene in the sector in order to shape it in line with the government policies. This is exemplified by the Ministry of Industry and Information Technology's draft Guiding Opinion on Fostering a High Quality Development of Steel Industry which calls for further consolidation of the industrial foundation and significant improvement in the modernization level of the industrial chain ([20]) or by the 14th Five Years Plan on Developing the Raw Material Industry according to which the sector will 'adhere to the combination of market leadership and government promotion' and will 'cultivate a group of leading companies with ecological leadership and core competitiveness ([21])'. Similar examples of the intention by the Chinese authorities to supervise and guide the developments of the sector can be seen at the provincial level, such as in Shandong which not only foresees 'building a steel industry ecology […], establish manufacturing parks, extend the industrial chain and create industrial clusters' but want the steel industry to 'provide a demonstration for the transformation and upgrading […] in our province and even the whole country ([22])'.

(40) As to the GOC being in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation, due to the lack of cooperation by the GOC, and since most kegs producers are SMEs, it was impossible to systematically establish existence of personal connections between producers of the product under investigation and the CCP. However, the investigation has shown that the management of Shandong Gold Group, an SOE and controlling shareholder of Penglai Jinfu Stainless Steel Products, is closely linked to the CCP: the Chairman of the Board of Directors of Shandong Gold Group is also Secretary of the Party Committee and was a representative at the 20th National Congress of the CCP and the Director and Executive Manager of Shandong Gold Group is also Deputy Secretary of the Party Committee.

(41) Given that the product under investigation represents a subsector of the steel sector, information available with respect to steel producers is relevant also to the product under investigation. In the broader category of the steel sector, there is ample evidence of personal connections between the steel producers and the CCP. To provide an example, Baowu's Chairman of the Board of Directors serves at the same time as the Party Committee Secretary

([16]) Report – Chapter 14, p. 358: 51% private and 49% SOEs in terms of production and 44% SOEs and 56% private companies in terms of capacity.
([17]) Available at: www.gov.cn/zhengce/content/2016-02/04/content_5039353.htm; https://policycn.com/policy_ticker/higher-expectations-for-large-scale-steel-enterprise/?iframe=1&secret=c8uthafuthefra4e, and www.xinhuanet.com/english/2019-04/23/c_138001574.htm (accessed on 28 October 2022).
([18]) Available at http://www.jjckb.cn/2019-04/23/c_137999653.htm (accessed on 28 October 2022).
([19]) As was the case of the acquired majority stake of China Baowu Steel Group in Magang Steel in June 2019, see https://www.ft.com/content/a7c93fae-85bc-11e9-a028-86cea8523dc2 (accessed on 28 October 2022).
([20]) See: https://www.miit.gov.cn/gzcy/yjzj/art/2020/art_af1bef04b9624997956b2bff6cdb7383.html (accessed on 16 November 2022).
([21]) See Section IV, Subsection 3 of the Plan, available at: https://www.miit.gov.cn/zwgk/zcwj/wjfb/tz/art/2021/art_2960538d19e34c66a5eb8d01b74cbb20.html (accessed on 16 November 2022).
([22]) See the 14th Five-Years Plan on the Steel Industry development, Foreword.

with the General Manager being the Deputy Secretary of the Party Committee ([23]). Similarly, the Chairman of Baosteel's Board of Directors occupies the position of the Party Committee's secretary while the Executive Manager is the Deputy Secretary of the Party Committee ([24]). More generally, in view of the general applicability of the legislation on CCP presence in companies, it cannot be assumed that the ability of the GOC to interfere with prices and costs through State presence in firms would be different with relation to the product under investigation compared to the steel sector in general.

(42) Both public and privately owned enterprises in the steel sector are subject to policy supervision and guidance. Since there was no cooperation by the GOC in this investigation and the kegs producers are mostly SMEs, it was difficult to establish the exact scale of party building in the enterprises from the kegs industry. However, the investigation has shown that Shandong Gold Group (controlling shareholder of Penglai Jinfu Stainless Steel Products) actively supports Party building activities. The role of the company's party committee was described as follows: 'We must firmly seize the great opportunity of the central government, the Shandong Provincial Party Committee and the Provincial Government supporting state-owned enterprises to speed up the construction of world-class enterprises, keep an eye on strategic goals, maintain strategic focus, strengthen strategic implementation, and adhere to the overall arrangement of overall targets, intermediate targets, and annual targets, adhere to the combination of strategic planning and tactical promotion' and further 'unswervingly and comprehensively run the party, fully implement the general requirements of party building in the new era, and provide a strong guarantee for high-quality development. It is necessary to comprehensively strengthen the party's political construction, strictly comply with the political discipline and political rules, to effectively improve the political judgment, political comprehension and political implementation of party organizations at all levels and party members and cadres, and to always maintain a high degree of consistency with the Party Central Committee with Comrade Xi Jinping at its core , establish "four consciousness", enhance "four self-confidence", and achieve "two maintenance"' ([25]).

(43) Further, policies discriminating in favour of domestic producers or otherwise influencing the market in the sense of Article 2(6a)(b), third indent of the basic Regulation are in place in the sector of the product under investigation. Even though no policy documents guiding specifically the development of the kegs industry as such could be identified during the investigation, the industry benefits from governmental guidance and intervention into the steel sector, given that the product under investigation represents one of its subsectors.

(44) The steel industry keeps being regarded as a key industry by the GOC ([26]). This is confirmed in the numerous plans, directives and other documents focused on steel, which are issued at national, regional and municipal level. Under the 14th Five Years Plan adopted in March 2021, the GOC earmarked the steel industry for transformation and upgrade, as well as optimization and structural adjustment ([27]).

(45) Furthermore, the 14th Five Years Plan on Developing the Raw Materials Industry, applicable also to the steel industry, lists the sector as the 'bedrock of the real economy' and 'a key field that shapes China's international competitive edge' and sets a number of objectives and working methods which would drive the development of the steel sector in the time period 2021-2025, such as technological upgrade, improving the structure of the sector (not least by means of further corporate concentrations) or digital transformation ([28]).

([23]) See the group's website, available at: http://www.baowugroup.com/about/board_of_directors (accessed on 7 September 2022).

([24]) See the company's website, available at: https://www.baosteel.com/about/manager (accessed on 7 September 2022).

([25]) Shandong Gold Group conveys, learns and implements the spirit of the 20th National Congress of the Communist Party of China (original text in Chinese), press article available on China Gold News' website: https://www.gold.org.cn/ky1227/kydj/202210/t20221028_193328.html (accessed on 17 November 2022).

([26]) Report, Part III, Chapter 14, p. 346 ff.

([27]) See People's Republic of China 14th Five-Year Plan for National Economic and Social Development and Long-Range Objectives for 2035, Part III, Article VIII, available at: https://cset.georgetown.edu/publication/china-14th-five-year-plan/ (accessed on 28 October 2022).

([28]) See in particular Sections I and II of the Plan.

(46) The 14th FYP on Developing the Raw Materials Industry also includes some specific targets for the development of the steel sector. Section IV Point 3 of the document includes the following provisions: 'Optimizing the organizational structure: make leading enterprises bigger and stronger. Adhere to the combination of market leadership and government promotion, remove obstacles to cross-regional mergers and reorganizations, remove restrictions such as market segmentation and regional blockades, coordinate and solve major problems encountered in enterprises' cross-regional mergers and reorganizations, support enterprises to speed up cross-regional and cross-ownership mergers and reorganizations, and increase the industry's concentration level, develop international business. In …, steel, … and other industries, cultivate a group of leading enterprises in the industrial chain with ecological leadership and core competitiveness'.

(47) The above mentioned FYPs on the central level are there echoed in the provincial and/or municipal FYPs or FYP implementation plans. As an example, the Henan Implementation plan for the transformation and upgrade of the steel industry during the 14th FYP includes the provisions regarding: point 2(1): strict control of the total production capacity; point 2(2): acceleration and promotion of mergers and acquisitions; point 2(3): construction of characteristic steel production bases ([29]).

(48) Apart from the 14th FYP, the steel industry is also strictly regulated in other policy documents. As an example, Hebei, the largest steel producing province in China, issued a Three-Year Action Plan on Cluster Development in the Steel Industry Chain 2020 - 2022 (applicable during the IP). This document regulates the steel industry in the following way: 'Adhere to structural adjustment and highlight product diversification. Unswervingly promote the structural adjustment and layout optimization of the iron and steel industry, promote the joint reorganization, transformation and upgrade of enterprises, and comprehensively promote the development of the iron and steel industry towards large-scale enterprises, modernization of technical equipment, diversification of production processes, and diversification of downstream products.' Furthermore, the plan sets specific targets for the structure of steel enterprises in the province: 'Steadily foster the development of groups. Accelerate the reform of mixed ownership of state-owned enterprises, focus on promoting the cross-regional merger and reorganization of private iron and steel enterprises, and strive to establish 1-2 world-class large groups, 3-5 large groups with some domestic influence as pillars, and 8-10 new, outstanding and specific enterprise groups'.

(49) Finally, the plan envisages state support to improve the global competitiveness of the steel enterprises located in Hebei: 'Appropriately ensure a relevant and diversified development. Support iron and steel enterprises to develop strategic emerging industries such as new generation of information technology, high-end equipment and new materials, and accelerate the development of modern service industries such as modern logistics, financial services, e-commerce etc. Encourage eligible iron and steel enterprises to develop towards deep processing such as automobiles and mechanical parts, steel wire ropes, steel strands welding electrodes etc. Strengthen international production capacity cooperation, encourage iron and steel enterprises to participate in mergers and reorganization of foreign iron and steel enterprises through multiple channels, and guide competitive iron and steel enterprises in the province to invest and build factories abroad' ([30]).

([29]) The provisions of this section are very detailed and set out strict targets for the future: 'For iron and steel enterprises that plan to relocate or renovate in different places, the governments of the places where they move in and move out should strengthen communication and coordination, and transfer relevant energy consumption and coal consumption indicators through the energy use rights trading market to achieve win-win cooperation and ensure the smooth and orderly progress of the project. Build 6 characteristic steel production bases in Anyang, Jiyuan, Pingdingshan, Xinyang, Shangqiu, Zhoukou, etc., and improve the scale, intensification, specialisation and distinction of the industry. Among them, by 2025, the production capacity of pig iron in Anyang City will be controlled to stay below 14 million tonnes, and the production capacity of crude steel will be controlled within 15 million tonnes and an 8,5 million-tonnes production centre of high-quality special steel will be formed in Anyang Base of Anyang Iron and Steel Group Co., Ltd.; support Henan Jiyuan Iron and Steel (Group) Co., Ltd. to build a production base for excellent and special steel bars and wires and a regional processing centre; to support Angang Group Xinyang Iron and Steel Co., Ltd., Minyuan Iron and Steel Group Co., Ltd., and Henan Angang Zhoukou Iron and Steel Co., Ltd. to build regional iron and steel complexes.'

([30]) See points 2, 8 and 16, respectively, of the Hebei Province's Three year action plan on cluster development in the steel industry chain 2020 2022.

(50) Moreover, the Guiding Catalogue for Industry Restructuring (2019 Version) ([31]) lists steel as an encouraged industry.

(51) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives of supporting encouraged industries, including the production of the main raw materials used in the manufacturing of the product under investigation. Such measures impede market forces from operating freely.

(52) The present investigation has not revealed any evidence that the discriminatory application or inadequate enforcement of bankruptcy and property laws according to Article 2(6a)(b), fourth indent of the basic Regulation in the kegs sector referred to above in recital (33) would not affect the manufacturers of the product under investigation.

(53) The kegs sector is also affected by the distortions of wage costs in the sense of Article 2(6a)(b), fifth indent of the basic Regulation, as also referred to above in recital (33). Those distortions affect the sector both directly (when producing the product under investigation or the main inputs), as well as indirectly (when having access to inputs from companies subject to the same labour system in China) ([32]).

(54) Moreover, no evidence was submitted in the present investigation demonstrating that the sector of the product under investigation is not affected by the government intervention in the financial system in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, as also referred to above in recital (33). Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

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

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

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

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

([31]) Guiding Catalogue for Industry Restructuring (2019 Version), approved by Decree of the National Development and Reform Commission of the People's Republic of China No. 29 of 27 August 2019; available at: http://www.gov.cn/xinwen/2019-11/06/5449193/files/26c9d25f713f4ed5b8dc51ae40ef37af.pdf (accessed on 28 October 2022).

([32]) See Implementing Regulation (EU) 2021/635, recitals 134-135 and Implementing Regulation (EU) 2020/508, recitals 143-144.

3.2.1.1. Representative country

General remarks

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

— A level of economic development similar to China. For this purpose, the Commission used countries with a gross national income per capita similar to China on the basis of the database of the World Bank ([33]);

— Production of the product under investigation in that country;

— Availability of relevant public data in the representative country.

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

(60) As explained in recitals (26) - (27), the Commission issued two notes for the file on the sources for the determination of the normal value: the First Note on production factors of 20 July 2022 and the Second Note on the production factors of 19 September 2022. These notes described the facts and evidence underlying the relevant criteria. In the Second Note on production factors, the Commission informed interested parties of its intention to consider Brazil as an appropriate representative country in the present case if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation were confirmed.

A level of economic development similar to China and production of the product under investigation

(61) In the First Note on production factors, the Commission identified Brazil, Mexico and Russia as countries with a similar level of economic development as China according to the World Bank, i.e. they were all classified by the World Bank as 'upper-middle income' countries on a gross national income basis, and where production of the product under investigation was known to take place. No comments were received concerning the countries identified in that note.

(62) In the Second Note the Commission indicated that for one of the countries identified as countries where product under investigation is being produced, i.e. Mexico, the producer of kegs stopped production before the investigation period and no financial data were available after 2017 in Orbis database ([34]). Mexico was therefore no longer considered a possible representative country for this investigation.

Availability of relevant public data in the representative country

(63) In the Second Note the Commission indicated that the sole producer of kegs in Russia identified in the First Note did not have a reasonable amount of profit, neither in 2021, nor in 2020.

(64) In the Second Note, the Commission indicated that it had at its disposal data showing a reasonable amount of profits within the meaning of Article 2(6a)(a) of the basic Regulation only for one producer in Brazil, KHS Industria de Maquinas LTDA and only for the year 2020. No updated financial data were available yet for 2021.

(65) In light of the above considerations, the Commission informed the interested parties with the Second Note that it intended to use Brazil as an appropriate representative country and the company KHS Industria de Maquinas LTDA, in accordance with Article 2(6a)(a), first indent of the basic Regulation in order to source undistorted prices or benchmarks for the calculation of normal value. Interested parties were invited to comment on the appropriateness of Brazil as a representative country and of KHS Industria de Maquinas LTDA as producer in the representative country.

([33]) World Bank Open Data – Upper Middle Income, https://data.worldbank.org/income-level/upper-middle-income.
([34]) bvdinfo.com

(66) Following the Second Note, comments were received from the two sampled exporting producers, that argued the following:

(a) The producer KHS Industria de Maquinas LTDA in Brazil suggested in the Second Note on the sources for the determination of the normal value was not appropriate, because it was specialised in engineering and production of refilling or accessory equipment, rather than manufacturing of kegs.

(b) The existence of market distortions in Brazil (anti-dumping duties on stainless steel flat rolled products originating in China, export quotas on stainless steel flat rolled products towards the United States and import tariffs in imports of stainless steel flat rolled products originating in Indonesia, Belgium, Finland, South Africa, China and Germany) made the Brazilian market of stainless steel flat rolled products (HS721933) distorted and thus, the value of this most important factor of production in Brazil was unreliable.

(c) Brazil applied higher import tariff than many other countries on the three main raw materials (steel, spears and neck). The Brazilian local market was thus more protective than other markets.

(d) A part of imports of the major factors of production of kegs to Brazil were imported from China (37 % of steel flat rolled products, 50 % of spears and 54 % of neck), thus the market prices of these factors of production in Brazil were also tainted by the distortive prices.

(67) As a result, the parties claimed that the reliability of the market data in Brazil for the purpose of establishing undistorted market value for these factors of production was questionable.

(68) The two sampled exporting producers proposed Malaysia as an appropriate representative country, because it had a level of economic development similar to China, even if there was no keg producer in Malaysia.

(69) However, Malaysia could not be considered as a potential representative country, since, as acknowledged by the parties themselves, there was no production of kegs in Malaysia.

(70) The Commission further reviewed the evidence [35] on likely market distortions of stainless steel flat rolled products (HS721933) in Brazil. The existence of market anti-dumping duties on stainless steel flat rolled products originating in China is not relevant, since imports from China are excluded when establishing a benchmark price of the raw material. The export quotas on stainless steel flat rolled products towards the United States do not seem to limit the imports from the United States, since it is still the third largest exporter for this product to Brazil (after China and Indonesia). Furthermore, imports of stainless steel flat rolled products to Brazil from the United States are slightly higher priced than the imports from the ten largest importing countries excluding China (16,3 EUR/kg and 14,5 EUR/kg of stainless steel flat rolled products, respectively). In the light of these facts, the Commission rejected the argument that the Brazilian market of stainless steel flat rolled products (HS721933) was distorted due to the anti-dumping duties towards China and the export quotas towards the United States.

(71) Regarding the import tariff level on the three main raw materials, the Commission noted that the undistorted values used for the calculation of normal value do take into account import duties as they constitute a proxy for a price in the domestic market of the possible representative countries. Therefore, an abstract comparison of the respective levels of import duties for the raw materials is in principle not a relevant factor to compare the appropriateness of the representative countries. In any event, the Commission noted that the level of the import duties is only one of the elements to assess whether a certain market is open or protected, and the party submitted no other specific evidence to show that this was the case for Brazil for the raw materials concerned. Therefore the Commission rejected this argument.

(72) Regarding the imports from China of the main raw materials, the Commission also compared Brazil and Russia, the two potential representative countries, where production of kegs was confirmed. The analysis of import data showed that the imports from China into Russia of the major factor of production, stainless steel coil (HS721933), representing above 50 % of the cost of production of kegs, were higher than to Brazil (60 % of stainless steel coil to

[35] https://www.globaltradealert.org/data_extraction

Russia was imported from China, while for Brazil the proportion was much lower (37 %)). Furthermore, the imports from China into Russia of spears, representing above 20 % of the cost of production of kegs, were also higher than to Brazil (68 % and 50 %, respectively). Considering the weight of these two main raw materials (stainless steel coil and spear) in the cost of production of kegs, these differences in import volume from China alone would undermine the quality of data for undistorted values in Russia more than in Brazil. In the light of this, Russia was not considered an appropriate representative country within the meaning of Article 2(6a)(a) of the basic Regulation.

(73) The Commission also reviewed the evidence on KHS Industria de Maquinas LTDA in Brazil and confirmed that the company was specialised in engineering and production of the filling technology and system for racking beer in kegs, refilling or accessory equipment, rather than manufacture of kegs. It could thus not be considered anymore as a producer of kegs.

(74) In fact, the Commission had identified two additional producers of kegs in the First Note. Nonetheless, the Commission could not find appropriate financial data for any of the remaining identified kegs producers in Brazil. In the absence of an appropriate benchmark to establish a reasonable SG&A and profit for the product under investigation in Brazil, the sole remaining representative country where production of kegs and hence the availability of the main raw materials was confirmed, the Commission provisionally considered that data of companies in a sector producing a similar product could be appropriate in these circumstances. Therefore, it searched for data on producers of a similar range of products to kegs, namely, products that were similar in terms of the raw material used, the form and the purpose of the final product. The research was based on the NACE codes ([36]). The data from five companies with NACE code 2592 (light metal packing), producing metal cans, packing products, containers for the food industry, was available in the Orbis database ([37]) and the products manufactured by those companies could be considered similar to kegs in terms of the raw material used, the form and the purpose of the final product. In addition, in the Orbis database, the two sampled exporting producers in China were also registered under the same NACE code 2592, as the producers of the metal cans, packing products, containers for the food industry. Finally, out of these five producers of metal cans, packing products, containers in Brazil, only one of them, Metalurgica Mococa SA ([38]), had financial data for the IP.

(75) Based on the analysis of the available data, the Commission decided to use Brazil as the appropriate representative country at the provisional stage of the investigation and use the financial data of one company, Metalurgica Mococa SA, for the constructed normal value in accordance with the Article 2(6a)(a) of the basic Regulation.

Level of social and environmental protection

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

Conclusion

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

([36]) NACE code is the standard European nomenclature of productive economic activities. Following codes were researched: 2591 (steel drums and similar containers), 2592 (light metal packing), 2599 (other fabricated metal products), 2829 (general purpose machinery), 2893 (machinery for food, beverage and tobacco processing).

([37]) Orbis database, provided by Bureau Van Dijk (https://orbis.bvdinfo.com).

([38]) https://www.mococa.com

Sources used to establish undistorted costs

(78) In the First Note, the Commission listed the factors of production such as materials, energy and labour used in the production of the product under investigation by the exporting producers and invited the interested parties to comment and propose publicly available information on undistorted values for each of the factors of production mentioned in that note.

(79) Subsequently, in the Second Note, the Commission stated that, in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it would use the Global Trade Atlas ('GTA') database to establish the undistorted cost of most of the factors of production, notably the raw materials. In addition, the Commission stated that it would use the ILO for establishing undistorted costs of labour ([39]) and the Global Electricity Prices research for electricity ([40]).

(80) In the Second Note, the Commission also informed the interested parties that due to the negligible weight of some of the raw materials in the total cost of production of the sampled exporting producers, these negligible items were grouped under 'consumables'. The Commission calculated the percentage of the consumables on the total cost of the raw materials and applied this percentage to the recalculated cost of raw materials when using the established undistorted benchmarks in the appropriate representative country.

Undistorted costs and benchmarks

3.2.1.2. Factors of production

(81) Considering all the information submitted by the interested parties and collected during the RCC, the following factors of production and their sources have been identified in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

Table 1

Factors of production of kegs

Factor of Production	Commodity Code	Undistorted value
Raw materials		
Stainless Steel Coil	721933	16,73 CNY/Kg
Spear	84819090	387,18 CNY/Kg
Neck	73269090	100,27 CNY/Kg
Scrap	720421	8,86 CNY/Kg
Labour		
Labour wages in manufacturing sector	N/A	29,20 CNY/hour
Energy		
Electricity	N/A	0,7475 CNY/kWh

Raw materials

(82) In order to establish the undistorted price of raw materials as delivered at the gate of a representative country producer, the Commission used as a basis the weighted average import price to the representative country as reported in GTA, to which import duties and transport costs were added. An import price in the representative country was determined as a weighted average of unit prices of imports from all third countries excluding China and countries which are not members of the WTO, listed in Annex 1 of Regulation (EU) 2015/755 of the European

([39]) https://ilostat.ilo.org/
([40]) https://www.globalpetrolprices.com/Brazil/

Parliament and the Council ([41]). The Commission decided to exclude imports from China into the representative country as it concluded in recital (58) that it is not appropriate to use domestic prices and costs in China due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected export prices. After excluding the imports into the representative country from China and non-market economy countries, the Commission found that imports of the main raw materials from other third countries remained representative.

(83) After the Second Note, the sampled exporting producers claimed that the right HS code for spears which should be used in order to establish the undistorted value of this raw material is HS848180 and not HS848190. The exporting producers argued that the code HS848180 stands for taps, cocks, valves and similar appliances for pipes, boiler shells, tanks, vats or the like, whereas the code HS848190 refers to parts of them. The sampled exporters claimed that a spear is a kind of valve in itself, rather than parts of the latter. As the unit measurement for this code is piece/item in the Brazilian nomenclature, it appropriately reflects the reality of the way this material is procured and pricing is made. Additionally, this is the code also used by the suppliers of spears when they export from the EU. Thus, the code HS848180 is the right classification for spears.

(84) The Commission clarified that the HS heading 8481, among others, also includes ‘gas operated beer dispensing units for bar counters, consisting essentially of one or more hand operated cocks fed by the pressure of carbon dioxide piped into the casks of beer’. The spear of a keg is designed for the maintenance of the pressurized gas (carbon dioxide) within the keg and for the dispense of the carbonized liquid ensuring its conditioned flow. This function is mainly performed by the mechanism included in the body of the keg spear incorporating a valve (or two valves depending on the model). Therefore, a spear can be considered part of the gas operated beer dispensing units covered by the scope of the HS heading 8481 and should be classified under CN code 848190. Furthermore, one of the sampled exporting producers submitted its import documentation of spears, which indicated import of spears under the HS848190. Overall, half of the cooperating exporting producers stated that the code HS848190 is to be used for spears. The claim of the parties to use HS848180 code was therefore rejected.

(85) Data on imports of spears to Brazil was classified under the two relevant extended codes: 84819010 (parts of aerosol valves, appliances used for bathrooms, etc. and 84819090 (parts of taps, other appliances for canalizations, etc.). The 84819090 was selected, since spears were not parts of aerosol valves.

(86) For a number of factors of production, the actual costs incurred by the cooperating exporting producers represented individually a negligible share of total raw material costs in the investigation period. As the value used for these had no appreciable impact on the dumping margin calculations, regardless of the source used, the Commission decided to include those costs into consumables as explained in the recital (80).

(87) In order to establish the undistorted price of raw materials, as provided by Article 2(6a)(a), first indent of the basic Regulation, the Commission applied the relevant import duties of the representative country.

(88) The Commission expressed the transport cost incurred by the cooperating exporting producer for the supply of raw materials as a percentage of the actual cost of such raw materials and then applied the same percentage to the undistorted cost of the same raw materials in order to obtain the undistorted transport cost. The Commission considered that, in the context of this investigation, the ratio between the exporting producer’s raw material and the reported transport costs could be reasonably used as an indication to estimate the undistorted transport costs of raw materials when delivered to the company’s gate.

([41]) Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33).

Labour

(89) The Commission used the ILO ([42]) statistics to determine the wages in Brazil. The ILO statistics provided information on monthly wages of workers in the manufacturing sector and average weekly hours worked ([43]) in Brazil in 2021. Additional labour related costs borne by the employer, based on publicly available sources ([44]), were added to the monthly wage.

(90) During the RCC of one sampled exporting producer the Commission did not find a record for the actual labour hours, only the standard labour hours. The exporting producer reported that actual labour hours were on average 10 minutes higher before and after the shift/day worked to arrive and to leave the production facilities. The Commission therefore increased the standard labour hours of this sampled exporting producer by 20 minutes per shift/day.

Electricity

(91) In the Second Note, the Commission indicated that it will use the Global Electricity Prices research for electricity ([45]) benchmark. The sampled exporting producers claimed that the Commission should use the data from the EDP Brasil ([46]), the major electricity supplier in the local market of Brazil, taking into account the different tariffs for peak and off-peak periods and relevant prices charged to the category of industrial consumers, which was reliable for the electricity benchmark.

(92) The Ministry of Mining and Energy in Brazil (Ministério de Minas e Energia) publishes a yearly report on the energy sector in Brazil ([47]). The report of 2021 includes the average electricity tariff ([48]) from all major electricity suppliers applied for the industrial users in Brazil ([49]). The Commission considered this source as the most reliable to establish the electricity benchmark, since it included the average tariffs applied by all major electricity suppliers in Brazil contrary to the data source proposed by the exporting producers, which referred to only one supplier. It therefore used the average electricity tariff for the industrial users published in the report from The Ministry of Mining and Energy in Brazil in 2021.

Manufacturing overhead costs, SG&A and profits

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

(94) The manufacturing overheads incurred by the cooperating exporting producers were expressed as a share of the costs of manufacturing actually incurred by the exporting producers. This percentage was applied to the undistorted costs of manufacturing.

(95) For establishing an undistorted and reasonable amount for SG&A and profit the Commission relied on the financial data of Metalurgica Mococa SA in 2021, as extracted from the Orbis database.

([42]) https://ilostat.ilo.org/data/data-catalogue/

([43]) Duly adjusted for statutory time not worked, such as vacation and national holidays.

([44]) https://establishbrazil.com/articles/whats-real-cost-employee ; https://ccbc.org.br/en/publicacoes/artigos-ccbc-en/how-much-do-your-employees-in-brazil-really-cost/ ; https://bpc-partners.com/inss-brazilian-salaries-benefits/

([45]) https://www.globalpetrolprices.com/Brazil/

([46]) https://www.edp.com.br/tarifas-vigentes/

([47]) https://www.gov.br/mme/pt-br/assuntos/secretarias/energia-eletrica/publicacoes/informativo-gestao-setor-eletrico

([48]) The peak and off-peak hours and the various additional cost applicable during the period.

([49]) https://www.gov.br/mme/pt-br/assuntos/secretarias/energia-eletrica/publicacoes/informativo-gestao-setor-eletrico/informativo-gestao-setor-eletrico-ano-2021.pdf/view

Calculation

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

(97) First, the Commission established the undistorted manufacturing costs. The Commission applied the undistorted unit costs to the actual consumption of each individual factor of production of the cooperating exporting producers. These consumption rates provided by the exporting producers were verified during the remote cross-check. The Commission multiplied the usage factors by the undistorted costs per unit observed in the representative country, as described in recitals (82) - (88).

(98) Once the undistorted manufacturing cost was established, the Commission applied the manufacturing overheads, as noted in recital (94).

(99) To the costs of production established as described in the previous recital, the Commission applied the SG&A and profit of Metalurgica Mococa SA in Brazil. SG&A expressed as a percentage of the Costs of Goods Sold ('COGS') and applied to the undistorted costs of production, amounted to 8,5 %. The profit expressed as a percentage of the COGS and applied to the undistorted costs of production, amounted to 24,4 %.

(100) On that basis, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.

3.2.2. *Export price*

(101) One sampled exporting producer exported to the Union directly to independent customers. The other one exported directly to independent customers or through an unrelated trading company in Hong Kong. In this case, goods were shipped from the exporting producer directly to the independent customer in the Union, while the invoice was issued to the trading company in Hong Kong.

(102) For the export sales of the product concerned made directly to independent customers in the Union, the export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

(103) For the export sales that were made through an unrelated trading company in Hong Kong, the export price was established on the basis of the price at which the exported product was first sold to that trading company. Although the Commission had evidence (shipping bills etc) that these goods were shipped from the exporting producer directly to the independent customer in the Union, the sales price to the end-customer could not be established. The Commission reached out to the trading company in Hong Kong, however there was no cooperation from that company. The European end-user buying the kegs in question also did not cooperate in the investigation. Therefore, the sales price to the end-customer in the Union was not available at the provisional stage of the investigation.

3.2.3. *Comparison*

(104) The Commission compared the normal value and the export price of the sampled exporting producers on an ex-works basis per product type.

(105) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for transport, insurance, handling, loading costs, customs duty, credit costs and bank charges.

3.2.4. *Dumping margins*

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

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

Company	Provisional dumping margin
Penglai Jinfu Stainless Steel Products Co., Ltd	77,1 %
Ningbo Major Draft Beer Equipment Co., Ltd	65,3 %

(108) For the cooperating exporting producers outside the sample, the Commission calculated the weighted average dumping margin, in accordance with Article 9(6) of the basic Regulation. Therefore, that margin was established on the basis of the margins of the sampled exporting producers, disregarding the margins of the exporting producers with zero and de minimis dumping margins, as well as margins established in the circumstances referred to in Article 18 of the basic Regulation.

(109) On this basis, the provisional dumping margin of the cooperating exporting producers outside the sample is 72,1 %.

(110) For all other exporting producers in China, the Commission established the dumping margin on the basis of the facts available, in accordance with Article 18 of the basic Regulation. To this end, the Commission determined the level of cooperation of the exporting producers.

(111) The Commission considered that the level of cooperation in this case was low since the cooperating exporting producers represented only about 32 % of the estimated total import quantities from China in the IP. Therefore, for all other exporting producers in China, the Commission considered it appropriate to establish the dumping margin on the basis of the representative product type with the highest margin of the sampled exporting producers. Therefore, the country-wide dumping margin applicable to all other non-cooperating exporting producers was set at the level of 91,0 %.

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

Company	Provisional dumping margin
Penglai Jinfu Stainless Steel Products Co., Ltd	77,1 %
Ningbo Major Draft Beer Equipment Co., Ltd	65,3 %
Other cooperating companies	72,1%
All other companies	91,0%

4. **INJURY**

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

(113) According to the information available to the Commission, like product was manufactured by eight producers in the Union during the investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

(114) The total Union production during the investigation period was established at around 1 926 200 kegs. The Commission established this figure on the basis of all the available information concerning the Union industry, such as the reply to the macroeconomic questionnaire provided by the complainant. As indicated in recital (7), sampled Union producers represented around 73 % of the estimated total Union production of the like product.

4.2. **Union consumption**

(115) Union consumption developed as follows:

Table 2

Union consumption (pieces)

	2018	2019	2020	Investigation period
Total Union consumption	3 477 583	2 554 726	1 861 260	1 192 884
Index	*100*	*73*	*54*	*34*

Source: Questionnaire replies of Union producers and customs statistics (see Section 4.3.1).

(116) The Commission established the Union consumption of kegs on the basis of total Union industry's sales in the Union, plus total imports from China. The methodology for determining imports from China is explained in detail in Section 4.3.1 below. Imports from other third countries to the Union were not taken into account as they were considered negligible (see recital (119)).

(117) Sales of the Union industry on the Union market were obtained from the reply to the questionnaire supplied by the complainant, cross checked with the information provided by the sampled Union producers in their questionnaire replies.

(118) The product concerned is imported into the Union under two CN codes (ex 7310 10 00 and ex 7310 29 90), depending on the capacity of the keg. Kegs with the capacity of >= 50 litres but <= 300 litres fall under the CN code 7310 10 00, while those with the capacity of < 50 l fall under the CN code 7310 29 90. These two CN codes include also a broad range of other products besides the product under investigation (e.g., cans, tin boxes, feedthroughs for livestock, buckets, fire extinguishers, canisters, containers and tanks for various uses, water bottles, steel barrels, etc.), thus establishing imports based on CN codes alone was not possible.

(119) As regards imports from other third countries, the Complaint claimed that the Union market is supplied with kegs predominantly by the Union producers and exporters from China. The Commission's examination of data on suppliers, provided by three major users (see further below at recital (130)) indicated that there are no other suppliers on the market. Thus, the Commission concluded that imports into the Union from other third countries, if any, are negligible and would not have any appreciable impact on the Union consumption.

(120) Union consumption decreased by 66 % during the period considered. After the initial drop of 27 % in 2019, a more pronounced drop followed in 2020 and the IP (2021). This drop coincided with the years when the Union was hit the hardest by the Covid-19 pandemic and can be attributed to the corresponding so-called 'lockdowns', namely, measures introduced by the governments throughout the Union to combat the Covid-19 pandemic.

(121) Covid-19 measures affected particularly hotels, restaurants, and cafes ('HORECA sector'). HORECA sector buys beer and other beverages from users, which are most often beer breweries. The beer is delivered to them in kegs which are attached to draught installations through which the beverage is then poured into glasses and served to HORECA sector's customers.

(122) During 2020 and the IP, a vast majority of the HORECA sector in the Union was obliged to either shorten its working hours, and/or limit its capacity or remain completely closed for extended periods of time, pursuant to government measures introduced to supress the spread of the Covid-19 pandemic. Such decrease in HORECA sector activity and, consequently, decrease in demand for draught beer, had a logical consequence of decreasing the users' demand for kegs in which they supply the beer to their HORECA sector customers.

4.3. **Imports from the country concerned**

4.3.1. *Methodology used to quantify imports from the country concerned*

(123) In the complaint, the Complainant put forward a methodology to establish imports from the country concerned. This methodology relied on the Complainant's market knowledge and estimated a notable increase of imports into the Union, 188 % over the period considered, demonstrated in Table 3 below.

Table 3

Sales of Chinese kegs in the Union – Complaint's estimate (units)

	2018	2019	2020	IP
Via tenders	107 148	482 315	898 664	630 438
Via distributors	182 000	198 000	118 000	202 000
Total	289 148	680 315	1 016 664	832 438
Index	*100*	*235*	*352*	*288*

Source: Section 201 of the complaint.

(124) As explained in paragraphs 193 to 203 of the complaint, the above methodology consisted of three main elements. First, the Complainant added up the quantities of kegs sought in all the bidding processes (referred to in the complaint as 'tenders') organised by five major users, i.e., the big brewery groups present on the Union market, namely: AB InBev, Asahi CEE, Carlsberg, Heineken, and Molson Coors ('the major users'). Second, the Complainant deducted their own sales that they made pursuant to the bids they placed on those tenders, operating under the assumption that the remainder of the total lot requested in each tender was won and supplied by the producers from China. Finally, the Complainant added the quantities imported by importers/resellers, estimated based on their market knowledge.

(125) The investigation has shown that the quantities of kegs which the major users effectively purchased following a tender rarely correspond to the quantities initially sought via that tender. While the proportions vary from tender to tender and between the major users, on average, the major users purchased less than 60 % of the quantities originally sought through the tenders over the period considered. This is due to the particular way this market operates, in particular linked to the modalities and follow-up of the tenders by the users, as explained below in Section 5.1, whereby, notably, the users were not under any contractual obligation to purchase the quantities actually tendered.

(126) The Commission therefore sought to verify whether such estimate of imports of the product concerned into the Union by the Complaint was accurate and, in case it was not, to estimate the imports quantities in a more accurate manner. For that purpose, it requested data of all shipments under the two CN codes from customs authorities of six EU Member States ('MS') with the highest imports of the above two CN codes over the period considered, either from China, or from the whole world: Belgium, Czechia, France, Germany, the Netherlands and Poland. Belgium, France, Germany, and the Netherlands were among top five countries with biggest imports in both categories, while Poland was among top five MS with the biggest volume of imports from China, and Czechia with the biggest volume when looking at imports from the rest of the world. These six Member States together represented 73 % of EU imports from China and 66 % of worldwide imports over the period considered.

(127) The Commission analysed the received data and, based on the description of each shipment, it calculated a lower and an upper figure of what could reasonably be considered as imports of the product concerned into the six Member States. In particular, the shipments which were described as '(beer) kegs' were aggregated to form the lower figure, while the ones that had a description consistent with kegs characteristics, were aggregated to form the upper one. In that context, shipments which were described as something else, such as feedthroughs, buckets, gas tanks, boilers, cans, tin boxes, etc., or were incompatible with kegs characteristics, were discarded. In most cases, the customs

authorities would not register the units (number of kegs) in each shipment, but only the weight of such shipment. In those cases, the Commission would rely on the conversion rate of 1 keg = 10 kg ([50]) to calculate the number of kegs. The resulting upper and lower figures for each year were then adjusted by the factor of 0,73, i.e. the percentage which the six Member States represent in the total Union imports of the two CN codes from China, to calculate a full figure of the import quantities of kegs from China into the Union. The results of that analysis are shown in Table 4 below.

Table 4

Imports into the Union based on detailed customs data

Pieces of kegs	2018	2019	2020	IP
Kegs imports – lower figure	217 744	254 996	139 684	136 638
Index	*100*	*117*	*64*	*63*
Kegs imports – upper figure	602 010 ([51])	430 208	381 958	370 107
Index	*100*	*77*	*68*	*66*

Source: detailed transaction data from customs authorities of Belgium, Czechia, France, Germany, the Netherlands, and Poland, adjusted by the factor of 0,73.

(128) The above figures confirmed that the methodology used in the complaint was not the most appropriate to quantify imports of the product concerned into the Union.

(129) In addition, the Commission reached out to the remaining four non-sampled cooperating exporting producers to request their sales data for the entire period considered. All of them provided the requested unverified data that were aggregated with the verified sales quantities declared by the two sampled exporting producers in their questionnaire replies, resulting in the import quantities summarised in Table 5 below.

Table 5

Total export quantity declared by sampled and non-sampled cooperating exporting producers

Pieces of kegs	2018	2019	2020	2021
Total export quantity declared by sampled and non-sampled exporting producers	[600 000 – 675 000]	[350 000 – 425 000]	[200 000 – 275 000]	[100 000 – 175 000]
Index	*100*	*58*	*36*	*20*

Source: Questionnaire replies of sampled exporting producers and unverified data provided by non-sampled cooperating exporting producers in China.

([50]) Since the only available unit of quantity in Comext and Commission Surveillance databases is weight, the conversion of quantities from tonnes/kilograms into units (number of kegs) has been done throughout the investigation under the formula 1 keg=10 kg when relying on those databases. This was the conversion rate used in the complaint and the Commission further analysis confirmed that 10 kg is approximately the average weight of a keg on the market.

([51]) The upper figure for the year 2 018 differs from the value found in the Note to the File from 2 September 2022. This is due to the clerical error identified in aggregation of data from customs authorities that was subsequently corrected.

(130) In view of the discrepancies of the available data, on 2 September 2022, the Commission published a Note to the File indicating the import quantities collected as per Tables 4 and 5 as well as their underlying different methodologies, and invited interested parties to comment. The Commission also reached out to the major users despite their initial non-cooperation, requesting the data on their suppliers and purchase volumes to try and validate the figures received by the exporting producers in Table 5. Only three out of five major users provided the requested data (see further below at recital (136)). The only comments on the note were submitted by the Complainant on 12 September 2022.

(131) The first claim put forward by the Complainant was that the estimation of imports in Table 4 based on the customs data analysis still missed a share of Chinese imports. It referred for instance to the fact that import statistics into other Member States important for consumption of beer and kegs, such as Romania and Spain, were missing, thereby underestimating the totals.

(132) Second, the Complainant claimed that the figures reported by the cooperating exporting producers in Table 5 did not fully reflect the volumes imported in the Union during the period considered because of the limited cooperation of the exporting producers. In its submission, the Complainant claimed that the cooperation rate of exporting producers was only 28 %.

(133) Third, the Complainant claimed that the information on consumption obtained by the three major users only showed a partial picture of the Union consumption of kegs due to the small- and medium-sized breweries not being taken into account and the limited cooperation from users.

(134) The Commission carefully considered all these comments by the Complainant. With regard to the first claim, while the adjustment of the import statistics of the six Member States by the factor of 0,73 as explained in recital (127) was used to determine the remaining imports from the other Member States, it cannot be ruled out at this stage that the actual import quantities into other Member States such as Romania and Spain are underestimated.

(135) As for the second claim, as explained in recital (111), the investigation has provisionally shown that the level of cooperation is low and the cooperating exporting producers represent 32 % of imports of kegs from China in the IP. Therefore, at this stage of the investigation, it cannot be excluded that there are other exporting producers or exporters in China selling to the Union throughout the period considered, in addition to the cooperating exporters.

(136) With regard to the third claim and the very low cooperation by users, the Commission noted that, out of the five major users, which represent around 50 % of the user market, only three users (AB InBev, Asahi, and Molson Coors) provided the requested data. Furthermore, only one of these three users (AB InBev) purchased kegs from Chinese suppliers. In addition, as also specified below in Section 5.1, the remaining 50 % of the user market, composed mainly of smaller breweries, did not cooperate with the investigation.

(137) In light of these comments and considerations, the Commission further noted that the purchased quantities reported by the only cooperating user that sources kegs from China were well below the Union sales reported by the corresponding exporting producers. Furthermore, the Commission considered that there were other exporting producers that did not cooperate with the investigation, and that the figures submitted by the non-sampled cooperating exporting producers were not verified as those producers were not sampled.

(138) On balance, in light of all these elements and in particular contradictory data obtained from users and the very low cooperation by the exporting producers and by the users, whose data on purchases would be instrumental to double-check the quantities reported be the cooperating exporting producers, the Commission provisionally considered that the most appropriate methodology to quantify imports had to be based on the official import statistics in Table 4. Furthermore, given the comments submitted by the industry that even the upper figure of the data based on statistics would probably be underestimated, , the Commission provisionally considered that the upper figures obtained from statistics were the most appropriate to calculate the level of imports at this provisional stage.

(139) To gain additional assurance of the appropriateness of this methodology, the Commission subsequently examined the statistics on imports of kegs at TARIC code level, available from the initiation of this investigation in Surveillance database, to see how big of a share imports of kegs make in the total imports of products under both relevant CN codes. The average share of imports of products at TARIC code level (i.e., imports of kegs) in the imports of all the products at the relevant CN codes' level for the period 13 May 2022 – 6 December 2022 was consistent with the average share of imports of kegs in the CN codes which the Commission established for the period considered.

(140) In order to further check the appropriateness of this methodology, the Commission intends to contact again the major importers identified in the complaint to further refine its assessment of import quantities over the period considered. The Commission will also seek to collect more information concerning the small breweries after provisional stage.

(141) Moreover, the Commission intends to collect post-initiation data from the cooperating sampled and non-sampled exporting producers to reconcile them with the more precise official import statistics available for the post-initiation period. The Commission also intends to verify the import data of the non-sampled cooperating producers and request from the customs authorities of Romania and Spain the detailed customs data on the relevant CN codes to refine the actual import data further.

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

(142) As explained in Section 4.3.1 above, the Commission established the volume of imports on the basis of official customs statistics from Member States. The market share of imports was established as a proportion of total reported imports from China in total Union consumption (as established in Section 4.2 above).

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

Table 6

Import volume (pieces) and market share

	2018	2019	2020	IP
Volume of imports from the country concerned (pieces)	602 010	430 208	381 958	370 107
Index	*100*	*71*	*63*	*61*
Market share (%)	17	17	21	31
Index	*100*	*97*	*119*	*179*

Source: Customs statistics from Member States adjusted as explained in Section 4.3.1.

(144) As the table above demonstrates, the volume of imports from China decreased by 39 % during the period considered. Such decreasing volume of imports followed the overall decreasing trend of the consumption of kegs during the period considered (see above Table 2), although to a lesser extent, and in any event significantly less pronounced than the decreasing trend of sales of the Union industry (see below Table 9).

(145) These decreases must be contextualised within the prevalent market situation in 2020 and the IP, namely, a significant decrease in demand for kegs during the Covid-19 pandemic. Within such a shrinking market, imports of kegs decreased by a significantly smaller margin than Union industry's sales. Thus the market share of imports from China, due to their lower prices, has constantly increased over the period considered (by 79 % over the period considered). During the IP, the Chinese market share was quite substantial at 31 %.

4.3.3. *Prices of the imports from the country concerned: price undercutting and price suppression*

(146) In view of the difficulties to establish prices per unit on the basis of official statistics, the Commission established the prices of imports on the basis of the data provided by the cooperating exporting producers. Price undercutting of the imports was established based on the questionnaire replies by the sampled Union producers and Chinese exporting sampled producers.

(147) The average price of imports into the Union from the country concerned developed as follows:

Table 7

Import prices (EUR/ piece)

	2018	2019	2020	Investigation period
China	43,13	37,34	38,40	43,62
Index	*100*	*87*	*89*	*101*

Source: Cooperating Chinese exporting producers.

(148) Import prices from China decreased, respectively, by 13 % and 11 % in 2019 and 2020 and started increasing again in 2020 and the IP reaching back the level of 2018.

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

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

— the corresponding weighted average prices per product type of the imports from the sampled cooperating Chinese exporting producers to the first independent customer on the Union market, established on a cost, insurance, freight (CIF) basis, with appropriate adjustments for customs duties and post-importation costs.

(150) The price comparison was made on a type-by-type basis, duly adjusted where necessary, and after deduction of rebates and discounts. Almost the entirety of sales by both exporting producers and the Union industry were made directly to final users (that is, breweries), and therefore the sales channels and the level of trade were the same on both sides. The result of the comparison was expressed as a percentage of the sampled Union producers' theoretical turnover during the investigation period. It showed a weighted average undercutting margin of between 11,9 % and 14 % by the imports from the country concerned on the Union market.

(151) In addition to price undercutting, there was also significant price suppression within the meaning of Article 3(3) of the basic Regulation. Due to the significant price pressure caused by the low-priced dumped imports from Chinese exporting producers, the Union industry was unable to raise the prices throughout the IP in line with the development of costs of production and in order to achieve a reasonable level of profit.

(152) As shown in Table 11 below, the average EU sales price decreased by almost 10 % over the period considered. At the same time, the cost of production increased by 16 % over the same period, thus the sales price was significantly below the cost of production. Especially in 2020 and over the IP, the cost of production increased substantially, while the price had to be kept stable because of the price pressure by Chinese exports. On the contrary, price levels and resulting profits in export markets not affected by dumped imports or where measures have been imposed to restore fair trade were on average 22 % higher than Union industry's sales prices on the Union market (+ 29 % in the IP) (see recital (196)).

(153) This situation had a clear impact on the Union industry profitability, as shown in Table 14 below. After starting at 12 % in 2018, profitability decreased sharply for the rest of the period, especially in 2020 and during the IP.

(154) The development of these three indicators clearly show that the industry was subject to strong pricing pressure from the Chinese dumped imports, which forced it to sell at very low prices below cost of production. The details of particularities of the market situation, in particular with regard to the price pressure suffered by the Union industry in the selling process, is explained below at Section 5.1. This caused a clear price suppression for the Union industry.

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

4.4.1. *General remarks*

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

(156) As mentioned in recital (7), sampling was used for the determination of possible injury suffered by the Union industry.

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

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

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

4.4.2. *Macroeconomic indicators*

4.4.2.1. Production, production capacity and capacity utilisation

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

Table 8

Production, production capacity and capacity utilisation

	2018	2019	2020	Investigation period
Production volume (Pieces)	5 132 261	3 698 684	1 939 361	1 926 200
Index	*100*	*72*	*38*	*38*
Production capacity (measuring unit)	6 542 683	6 628 049	6 786 585	6 786 585
Index	*100*	*101*	*104*	*104*

Capacity utilisation (%)	78	56	29	28
Index	*100*	*71*	*36*	*36*

Source: Macro questionnaire provided by the complainant.

(161) During the period considered, the production volume decreased by 62 %. The production followed closely the variation in consumption: a first drop in demand in 2019 (by 23 %) and further and more pronounced drop in demand in 2020 and 2021 (Covid-19 outbreak).

(162) Production capacity slightly increased by 4 % over the period considered. This is due to efficiency gains in procedures and staff allocation operated by the Union industry in its production lines over the period considered.

(163) The two above-mentioned trends (decrease in production, increase in capacity) led to a significant decrease in the capacity utilisation (– 64 %). During the investigation period, the capacity utilisation rate reached a very low level (28 %).

4.4.2.2. Sales volume and market share

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

Table 9

Sales volume and market share

	2018	2019	2020	Investigation period
Sales volume on the Union market (Pieces)	2 875 573	2 124 518	1 479 302	822 777
Index	*100*	*74*	*51*	*29*
Market share (%)	83	83	79	69
Index	*100*	*101*	*96*	*83*

Source: Macro questionnaire provided by the complainant.

(165) Sales volume of the Union industry on the Union market decreased steadily (by 71 %) over the period considered, at a trend steeper than the development of consumption.

(166) Market share of the Union industry dropped from 83 % in 2018 to 69 % in the IP, a decrease of 14 percentage points, due to the significant price pressure of the Chinese imports, as explained in section 4.4.3.1 below, that constantly gained market share over the period considered.

4.4.2.3. Growth

(167) The demand and production of kegs followed a decreasing trend over the period considered. In the context of decreasing consumption, the Union industry lost significant sales volumes and market share and it maintained a reduced amount of sales only at the expense of its sales prices, as explained below in section 4.4.3.1.

4.4.2.4. Employment and productivity

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

Table 10

Employment and productivity

	2018	2019	2020	Investigation period
Number of employees	960	822	538	481
Index	100	86	56	50
Productivity (Pieces/ employee)	5 349	4 497	3 606	4 008
Index	100	84	67	75

Source: Macro questionnaire provided by the complainant.

(169) Employment in the sector followed the same trend as the production and the consumption on the Union market and dropped dramatically by 50 % over the period considered. Given the above, in a situation where production decreased by 62 % over the period considered, the productivity fell. Despite the reduction in employment it dropped by 33 % over the period considered and it recovered only partially during the IP thanks to some efficiency gain.

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

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

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

4.4.3. *Microeconomic indicators*

4.4.3.1. Prices and factors affecting prices

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

Table 11

Sales prices in the Union

	2018	2019	2020	Investigation period
Average unit sales price in the Union on the total market (EUR/ piece)	56	55	51	51
Index	*100*	*98*	*90*	*91*
Unit cost of production (EUR/ piece)	55	59	63	64
Index	*100*	*107*	*114*	*116*

Source: Questionnaire replies from the sampled Union producers.

(173) The sales prices decreased by 2 % between 2018 and 2019 before decreasing steeply in 2020 by 8 % and remaining at about the same level in the IP. Overall the average Union industry's sales prices decreased by 9 % during the period considered.

(174) During the same period considered, unit costs of production increased by 16 %. This was linked mostly to the increase of the fixed costs, which followed the drop in the production volume. To counter this, during the years affected by the Covid-19 lockdowns the Union industry managed to decrease its fixed costs by over 20 %. Despite this, the impact of the proportionally higher incidence of fixed costs in a period of low capacity utilisation was significant, as the weight of such costs out of the overall costs of production went from 13 % in 2018 to 23 % in the IP. Over the period considered the Union industry decreased its employment as per Table 10 and labour costs yielded by the dismissals during the Covid-19 period as show at Section 4.4.3.2.

(175) Sales prices and cost of production followed a divergent trend. As explained above at Section 4.3.3 and below at Section 5.1, the Union industry was not able to raise its prices to sustainable levels to cover the increased cost of production and the low capacity utilization as the price negotiation in the market was significantly affected by low-priced and dumped imports from China.

4.4.3.2. Labour costs

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

Table 12

Average labour costs per employee

	2018	2019	2020	Investigation period
Average labour costs per employee (EUR)	48 510	45 157	50 218	52 988
Index	*100*	*93*	*104*	*109*

Source: Questionnaire replies from the sampled Union producers.

(177) The average labour cost per employee decreased in 2019, followed by an increase in 2020 and in the IP. However, as shown in Table 10, at the same time employment decreased by 54 %.

4.4.3.3. Inventories

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

Table 13

Inventories

	2018	2019	2020	Investigation period
Closing stocks (Pieces)	308 350	210 370	157 417	128 525
Index	*100*	*68*	*51*	*42*
Closing stocks as a percentage of production	6	6	8	7
Index	*100*	*95*	*135*	*111*

Source: Questionnaire replies from the sampled Union producers.

(179) Stocks decreased by 58 % over the period considered. This was linked to the decrease of the production and sales. During the period considered, stocks as a percentage of production overall increased by 11 %, as the industry had to maintain some volume of activity and was therefore not able to reduce production in line with the decrease of sales. In any case, given that the majority of the production was based on orders and customers specifications, inventories do not constitute an important indicator of injury.

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

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

Table 14

Profitability, cash flow, investments and return on investments

	2018	2019	2020	Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	12	5	- 18	- 9
Index	*100*	*42*	*- 144*	*- 73*
Cash flow (EUR)	26 413 388	17 979 438	- 4 762 380	- 2 257 500
Index	*100*	*68*	*- 18*	*- 9*
Investments (EUR)	11 655 450	5 408 642	2 536 354	1 220 214
Index	*100*	*46*	*22*	*10*
Return on investments (%)	65	14	- 35	- 19
Index	*100*	*21*	*- 54*	*- 29*

Source: Questionnaire replies from the sampled Union producers.

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

(182) Over the period considered, profits decreased by 58 % in 2019, before dropping steeply and turning into double-digit losses in 2020. It partially recovered in 2021 but still remained negative. Overall, profit decreased by – 173 % over the period considered. In the context of the sudden drop in demand linked to the Covid-19 pandemic, the increased competition of low-priced Chinese exports, as explained below in section 5.1, forced the Union industry to decrease its prices in a period of increasing cost of production, as explained in section 4.4.3.1, and led to significant losses.

(183) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow developed in a similar manner to profitability: a drastic fall in 2019-2020 followed by a partial recovery in the IP, yet remaining negative.

(184) The return on investments is the profit in percentage of the net book value of investments. It developed in a similar manner to profitability: a drastic fall by 129 % over the period considered to the negative values.

(185) Given the drop in profitability, cash flow and return on investment, the sampled Union producers' ability to raise capital was severely affected.

4.4.4. *Conclusion on injury*

(186) The main macro-indicators showed a negative trend during the period considered: Union sales volume dropped by 71 %, production by 62 %, employment by 50 %.

(187) A similar picture can be drawn as regards the micro-indicators. Profitability of sales in the Union (from + 12 % to - 9 %), sales prices (- 9 %), as well as cash flow (- 109 %) all deteriorated significantly.

(188) Against a background of decreased consumption due to Covid-19, while cost of production of the Union industry increased by 16 %, import prices from China were consistently and significantly below Union industry prices and costs since 2018.

(189) Chinese exporters' import volumes decreased by 39 % over the period considered. However, at the same time the decrease in consumption was far more pronounced (by 66 %). As a result Chinese exports increased their market share by 79 %, from 17 % in 2018 to 31 % in the IP, and their prices significantly undercut the Union industry's prices throughout the whole period considered. The undercutting margin was on average 13,1 % during the IP, as set out above in section 4.3.3.

(190) The low-priced Chinese dumped imports also caused significant price suppression for the Union industry in view of the underselling margins which ranged from 52,9 % to 58,8 %. The Union industry was unable to increase its prices in line with the increase of cost of production and was thus forced in a dire profitable situation to preserve, at least partially, its sales quantity.

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

5. **CAUSATION**

(192) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the country concerned caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. These factors were the Covid-19 pandemic affecting the Union consumption and the export performance of the Union industry. The Commission ensured that any possible injury caused by factors other than the dumped imports from the country concerned was not attributed to the dumped imports.

5.1. **Effects of the dumped imports**

(193) The volume of imports from China decreased by 39 % over the period considered, from 602 010 pieces in 2018 to 370 107 pieces in 2021; however, during the same period, their market share gained 14 percentage points reaching 31 % in the investigation period, causing injury to the Union industry that, in the same period, had its sales volume dropping by 71 %.

(194) Furthermore, these imports were made at prices significantly lower than those of the Union industry over the whole period considered. The Union industry had no choice but to follow the low prices set by the Chinese producers to preserve a minimum sales volume in a period of dropping consumption and increasing production costs, as explained above in section 4.4.3.1. This in turn resulted in a profound profitability drop for all sampled Union producers from profits (of + 12 % in 2018) to heavy losses (– 9 % in 2021), and the consequent deterioration of other financial indicators such as return on investment and cash flow. This price suppression, as explained in Section 4.3.3, was clearly due to the behaviour of the Chinese exporting producers offering dumped kegs on the Union market.

(195) In a significantly smaller market the Union industry sales went from 2,8 million kegs in 2018 to 800 000 in the IP. Without lowering its prices, the Union industry would have been at risk of losing even this limited amount of sales that would have resulted, for some of the Union producers, in a complete stop of their production.

(196) Union exports, detailed in section 5.2.2, show what a normal situation would be in terms of price levels and resulting profits in export markets not affected by dumped imports or where measures have been imposed to restore fair trade, e.g. the USA, the main export market for the Union producers, where kegs originating in China are subject to anti-dumping measures since 2019. Over the period considered, the landed prices (including transport related costs and import duties) of the Union industry, were on average 22 % higher than its sales prices on the Union market (+ 29 % in the IP) and constantly above its cost of production, except for 2020, the year most significantly affected by the Covid-19 pandemic. These prices are representative of a market on which fair trade has been restored by anti-dumping measures against Chinese imports and are therefore a reasonable proxy for what prices could have been on the Union market without the price suppression described below in recitals (197) to(209).

(197) The Union market is mainly split between two main categories of users for both the Union producers and the Chinese exporting producers, i.e., the small and mid-size independent breweries (which account for around 40 % of the sales) and the major beer conglomerates (which account for more than 50 %).

(198) Small and mid-size independent breweries mostly buy kegs according to their needs in medium and short period. The breweries contact several kegs producers asking for a quote for the requested quantity and a delivery time. This is a very important segment for the Union industry, where the geographical proximity and the delivery time could constitute an advantage. This segment of users did not cooperate with the investigation. Nevertheless, the Union industry provided evidence that several orders were lost to the low-priced Chinese offers for this segment. This forced the Union producers to significantly reduce their prices to remain competitive.

(199) The other half of the market is characterized by the presence of the five major users, accounting for over 50 % of the Union industry's sales in the Union (out of this five the major two, AB InBev and Heineken, are believed to have a combined global share in the beer market of above 50 %/60 %) and at least 55 % of the sales of the two sampled Chinese exporting producers. The Union industry demonstrated that those users organised their kegs purchases for the following year through a bidding process via private tenders. As for the sales to the independent breweries, also the tendering process forced competitors to minimise their prices and the presence of the Chinese exporting producers bidding at very low prices pushed the Union industry to match those low prices and prevented them to pass their cost increases on their customers.

(200) Regarding the tendering process, the investigation showed that this was conducted by the major users in a peculiar way. The tender conditions were specific in terms of prices and maximum quantities sought. There was no contractual obligation for the buyer to purchase the quantity of kegs tendered, whereas there was a contractual obligation for the supplier to supply the tendered quantity at a tendered price. In fact, the actual purchased quantities rarely corresponded to the quantities initially sought on the given tender. At the same time, the tender winners (i.e. the suppliers of kegs) were obliged to respect the tendered delivery quantities at a given price, not being able to take into account for instance the changes of costs of production.

(201) Over the period considered the cooperating users organized an average of seven tenders per year. The quantities ultimately purchased based on these tenders vary from tender to tender and corresponded, on average, to less than 60 % of the quantities tendered. In addition, the price agreed during the tender procedure was used by the users as a starting point for any subsequent price negotiation for spot sales.

(202) The tender process, which worked with red, yellow and green lights to advise any participant (including Union producers and Chinese exporters) how high or low was its offer compared to the other participants, was used as a tool to minimise the prices. The presence of the Chinese exporters, with very low-price bids, forced the Union industry to lower their prices to unsustainable levels. Union industry's prices for sales via tenders were on average 10 % lower than the other sales in 2020 and the IP, while the contract signed at the end of the tendering procedure concerned only potential purchase volumes without any certainty to receive an order. This is confirmed by the significant undercutting and underselling levels established in the investigation.

(203) In addition, AB InBev in its submission 20 June 2022, referred to 'recent pricing from the [Union] keg suppliers that [has been] competitive against Chinese supplier pricing' in the IP and 2022. This further confirms that Union producers have decreased their prices compared to the earlier years of the period considered to remain competitive with Chinese prices.

(204) Another related feature of the tendering process was that there was a substantial amount of sales concluded eventually outside the actual tenders by these subsequent price negotiation relying on this 'lights system'. This is shown by the quantities sold by the Union industry via tenders, which was very low throughout the period considered. This level shrank from above 30 % of their total sales in the period 2019-2020, to less than 16 % in the IP. In practice, the users exploited this peculiar tendering process and the low-priced, dumped Chinese offers to push the EU industry prices down to the Chinese level, eventually agreeing on these prices outside the framework of the tender.

(205) The data provided by the cooperating users shows that the Chinese exporting producers won on average 30 % of the quantities tendered over the period considered. However, this is a conservative estimate since evidence on file shows that one of the biggest non-cooperating users (Heineken) accounted for at least 30 % of the quantities exported by the two sampled Chinese producers during the IP.

(206) In any event, as explained above, whether the sales were formally concluded under a tender or not did not make any difference as concerns the effects and causation of dumped Chinese prices on the EU industry prices and injurious situation.

(207) As explained above in section 4.3.3, the Chinese prices decreased in 2019 and 2020, as compared to 2018, and increased again during the IP, but only reaching again the 2018 levels. Over the same period Union industry's prices dropped by 9 % while its cost of production increased by 16 %.

(208) The price pressure exerted by imports of kegs from China in both segments of the market entailed that, to maintain, at least partially, its market share, the Union industry had to decrease its sales prices despite the spike in cost of production. As a result, profitability shrank from 12 % to -9 % during the period considered and all the financial indicators deteriorated.

(209) It is therefore concluded that – in view of the concomitance in time – the deterioration of the economic situation of the Union industry coincided with a significant presence of Chinese imports at very low prices. In a context of shrinking market and increasing cost of production, the Chinese prices consistently undercut the Union industry prices and suppressed EU market price levels, establishing a genuine and substantial causal nexus between the two.

5.2. **Effects of other factors**

5.2.1. *The Covid-19 pandemic and the decrease in consumption*

(210) Imports of kegs from China at very low prices were recorded from 2018 onwards. Over the period considered, the average price of Chinese imports was on average 24 % lower than the average sales price of the Union industry. This coincided with a constant decrease of the Union industry's prices despite the increasing production costs. The fact that the decrease in consumption was further aggravated by the Covid-19 pandemic did not attenuate the causal link between the dumped imports and the injury of the Union industry. Over the period consumption decreased by 66 % and sales volume of the Union industry by 71 % while the Chinese exports decreased only by 39 %, increasing their market share from 17 % to 31 %. As discussed in recital (196) on the basis of market prices achievable on the US market, without the Chinese imports and the price pressure exerted, the Union industry would have been able to increase its prices to a more sustainable level and to cover for the increased cost of production.

(211) The substantial decrease of the consumption and the capacity utilisation significantly impacted the Union industry performance. However, as explained above in section 4.4.3.1, even when the Union industry managed to substantially decrease their fixed costs, its share on the total costs increased to 23 %. At the same time, the industry also managed to reduce other structural costs such as employment during the Covid-19 period. This management of fixed and other structural costs during this period allowed a minimisation of the impact of such costs on its performance, as also explained above, but could be compensated only partially due to the significant price suppression caused by the Chinese imports.

5.2.2. *Export performance of the Union industry*

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

Table 15

Export performance of the sampled Union producers

	2018	2019	2020	Investigation period
Export volume (pieces)	2 364 368	1 827 572	547 427	1 124 371
Index	*100*	*77*	*23*	*48*
Average EXW price (EUR/piece)	66,04	62,18	58,86	63,05
Index	*100*	*94*	*89*	*95*
Average landed [52] price (EUR/piece)	68,34	64,87	60,83	66,28
Index	*100*	*95*	*89*	*97*

Source: Questionnaire replies from the sampled Union producers.

(213) During the period considered, Union industry's exports decreased by 52 %.

(214) Between 2018 and 2020 the export performance of the Union industry showed somewhat similar trends as the development of volumes of sales of the Union industry on the Union market. Both Union and export sales volume of the Union industry decreased during this first part of the period considered which was the most affected by Covid 19 pandemic. However, the volume of export sales, in relative terms, decreased less than the sales to the Union market. Furthermore, export performance of Union industry clearly started recovering as soon as Covid-19 restrictions were lifted with volumes of export sales more than doubling from 2020 to 2021. Moreover, throughout the period considered Union industry export sales prices were significantly higher than the sales price on the Union market and constantly above its cost of production, except for 2020, the year most significantly affected by the Covid-19 pandemic, which covers also half of the IP. On that basis, the Commission concluded that the temporary decrease in export performance did not contribute to the injury as the export prices level was sufficient to allow the Union industry to be profitable on the majority of its export sales.

5.3. **Conclusion on causation**

(215) The Chinese export prices were significantly lower than Union industry's prices and costs since the beginning of the period considered in 2018. The investigation showed a weighted average undercutting margin of 13,1 %. This increasing market presence at very low prices was to the detriment of the Union industry that was obliged to

([52]) EXW price including transport related costs and import duties applicable on the US market decrease sales prices during the period considered to maintain at least a limited amount of sales in the market during and after the Covid-19 pandemic. This led to the negative development in the economic situation of the Union industry.

(216) The Commission distinguished and examined the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports. The effect of the Covid-19 pandemic and the related drop in the Union and global consumption of kegs weighed negatively on the Union industry's developments but was considered as a temporary factor with limited impact. The situation of the Union industry deteriorated already before the Covid-19 pandemic and continued to do so until the end of the period considered.

(217) On the basis of the above, the Commission concluded that the dumped imports from the country concerned caused material injury to the Union industry and that the other factors, considered individually or collectively, did not attenuate the causal link between the dumped imports and the material injury.

6. **LEVEL OF MEASURES**

(218) To determine the level of the measures, the Commission examined whether a duty lower than the margin of dumping would be sufficient to remove the injury caused by dumped imports to the Union industry.

6.1. **Injury margin**

(219) The injury would be removed if the Union Industry were able to obtain a target profit by selling at a target price in the sense of Articles 7(2c) and 7(2d) of the basic regulation.

(220) In accordance with Article 7(2c) of the basic Regulation, for establishing the target profit, the Commission considered the following factors: the level of profitability before the increase of imports from the country concerned, the level of profitability needed to cover full costs and investments, research and development (R&D) and innovation, and the level of profitability to be expected under normal conditions of competition. Such profit margin should not be lower than 6 %.

(221) The sampled Union producers proposed in their questionnaire replies that the target profit should be set between 12 % and 20 % as, in their view, this is the level needed to finance the necessary investments in processes and products and to ensure the long term viability of the Union industry. The industry also showed that in the years in which there were normal conditions of competition their average profitability was 15 %.

(222) In light of this evidence, the Commission provisionally decided to use the profit margin of 12 %, which is at the low end of the range of the figures as detailed in the previous recital, thus adopting a very conservative approach.

(223) In view of the above considerations, the profit margin was provisionally established at 12 % in accordance with the provision of Article 7(2c).

(224) As regards the level of investments, research and development (R&D) and innovation during the period considered, the Commission verified the information provided and concluded that the difference between investments, R&D and innovation ('IRI') expenses under normal conditions of competition as provided by the EU Industry and verified by the Commission was already included in the target profit of 12 %.

(225) On this basis, the Commission calculated a non-injurious price per piece for the like product of the Union industry by applying the above-mentioned target profit margin (see recital (223)) to the cost of production of the sampled Union producers during the investigation period on a type-by-type basis.

(226) The Commission then determined the injury margin level on the basis of a comparison of the weighted average import price of the sampled cooperating exporting producers in the country concerned, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the sampled Union producers on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.

(227) The injury elimination level for 'other cooperating companies' and for 'all other companies' is defined in the same manner as the dumping margin for these companies.

Country	Company	Dumping margin	Injury margin
People's Republic of China	Penglai Jinfu Stainless Steel Products Co., Ltd	77,1 %	58,8 %
	Ningbo Major Draft Beer Equipment Co., Ltd	65,3 %	52,9 %
	Other cooperating companies	72,1 %	56,3 %
	All other companies	91,0 %	112,0 %

6.2. **Conclusion on the level of measures**

(228) Following the above assessment, provisional anti-dumping duties should be set as below in accordance with Article 7(2) of the basic Regulation:

Country	Company	Provisional anti-dumping duty
People's Republic of China	Penglai Jinfu Stainless Steel Products Co., Ltd	58,8 %
	Ningbo Major Draft Beer Equipment Co., Ltd	52,9 %
	Other cooperating companies	56,3 %
	All other companies	91,0 %

7. **UNION INTEREST**

(229) Having decided to apply Article 7(2) of the basic Regulation, the Commission examined whether it could clearly conclude that it was not in the Union interest to adopt measures in this case, despite the determination of injurious dumping, in accordance with Article 21 of the basic Regulation. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users.

7.1. **Interest of the Union industry**

(230) There are eight companies producing kegs in the Union. They employ over 400 workers directly (they were more than 800 in 2018), located in Austria, Czechia, Germany, Italy and Spain.

(231) The imposition of measures would allow the Union industry to maintain its market share, increase capacity utilisation, increase prices to sustainable levels and improve profitability to levels to be expected under normal conditions of competition.

(232) The non-imposition of measures would likely lead to further deterioration of profitability, which was already negative. The non-imposition of measures could lead to the closure of production facilities and dismissals thus endangering the viability of the Union industry.

(233) The Commission therefore provisionally concluded that the imposition of provisional measures is in the interest of the Union industry.

7.2. **Interest of unrelated importers and traders**

(234) One unrelated importer, representing 1,6 % in volume of Chinese imports, submitted a sampling form and replied to the questionnaire. The average profit of the cooperating importer during the investigation period was 16 %.

(235) This importer was against the imposition of measures. It claimed that, in the light of increasing price of stainless steel and shipping, the imposition of measures would have a further negative impact on its profitability, resulting in liquidation of the company. The company also stressed that it made significant R&D investments from its own resources over the past years to develop new intellectual property, as well as investments to develop new solutions in keg production which could benefit the Union users and that the imposition of measures may end this project.

(236) The Commission concluded that it is likely the importer can pass part of the anti-dumping duty to the final users. The good profit level of the importer also mitigates the impact of the duty on the importer's viability. On balance, the very limited cooperation of only one importer in this investigation suggests the measures will not have a highly negative impact on importers overall and would thus not outweigh the positive effect of measures on Union producers.

(237) The traders/service providers that are in the business of personalisation and customisation of kegs will be able to continue this business, competing on the merits and not with the dumped imports.

7.3. **Interest of users**

(238) At initiation two users, Appie and Carlsberg, came forward but provided only limited information in their questionnaire replies. Another user, AB InBev, registered as interested party and provided comments but did not provide a questionnaire reply. These users represent breweries or brewing conglomerates.

(239) At a later stage, as explained above in section 4.3.1, the Commission contacted again the major users requesting data on their suppliers and purchase volumes. Three users (AB InBev, Asahi, and Molson Coors) provided some data, but did not provide the key questionnaire narrative.

(240) In its initial submission AB InBev opposed the imposition of measures claiming that:

— the duties would result in an increase of cost of kegs that will negatively affect the HORECA sector, which has been already significantly affected by the Covid-19 pandemic;

— the Union industry does not have sufficient capacity to supply the full Union demand of kegs.

(241) As regards the first claim, the information collected during the investigation showed that the HORECA sector do not buy kegs from the beer producers, they just buy its content (i.e. the beer). Pubs and bars pay a deposit for the kegs which is refunded when empty and returned to the beer producers. Therefore the impact of the cost of kegs on the profitability of the HORECA sector is expected to be limited.

(242) As regards the second claim, the Union industry appears to have sufficient spare capacity. At its peak, in 2018, the Union consumption was around 3,2 million kegs while the Union industry has a total production capacity of almost 6,8 million kegs. Even considering the export sales, the Union industry has still almost 2 million kegs of spare capacity.

(243) Given the long lifetime (typically 30 years) and its refillable nature, the cost impact of kegs on the beverage industry is minimal.

(244) The Commission therefore provisionally concluded that negative impacts of measures on users are expected to be limited and not to outweigh the positive effect of measures on Union producers.

7.4. **Conclusion on Union interest**

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

8. **PROVISIONAL ANTI-DUMPING MEASURES**

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

(247) Provisional anti-dumping measures should be imposed on imports of stainless steel refillable kegs originating in the People's Republic of China in accordance with the lesser duty rule in Article 7(2) of the basic Regulation. The Commission compared the injury margins and the dumping margins. The amount of the duties was set at the level of the lower of the dumping and the injury margins.

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

Country	Company	Provisional anti-dumping duty
People's Republic of China	Penglai Jinfu Stainless Steel Products Co., Ltd	58,8 %
	Ningbo Major Draft Beer Equipment Co., Ltd	52,9 %
	Other cooperating companies	56,3 %
	All other companies	91,0 %

(249) 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 with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imports of the product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.

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

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

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

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

(254) Statistics of stainless steel refillable kegs are frequently expressed in number of pieces. However, there is no such supplementary unit for stainless steel refillable kegs specified in the Combined Nomenclature laid down in Annex I to Council Regulation (EEC) No 2658/87 ([53]). It is therefore necessary to provide that not only the weight in kg or tonnes but also the number of pieces for the imports of the product concerned must be entered in the declaration for release for free circulation. Pieces should be indicated for TARIC codes 7310 10 00 10 and 7310 29 90 10, provided this indication is compatible with Annex I to Regulation (EEC) No 2658/87.

9. **REGISTRATION**

(255) As mentioned in recital (3), the Commission did not make imports of the product concerned subject to registration.

10. **INFORMATION AT PROVISIONAL STAGE**

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

(257) Ningbo Major and Penglai Jinfu jointly submitted comments on the pre-disclosure, where they requested the Commission to refrain from applying the provisional measures. They highlighted that the target prices of some product types did not reflect the expected target prices according to their knowledge. They also claimed some product types were not part of the injury margin calculation and that a heading of a disclosure table was not properly annotated.

(258) The Commission examined the comments in detail and considered that none of them concerned the accuracy of the calculations, therefore it will consider them, together with all other submissions after the publication of the provisional measures.

(259) Regarding the units used in the disclosure table, as the exporting producers rightly noted, these are indeed pieces rather than tonnes. Moreover, some product types were not included in the injury margin calculation, because the Union industry did not produce the corresponding product types and therefore were not relevant to calculate the underselling margin.

([53]) 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) 2022/1998 of 20 September 2022 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 282, 31.10.2022, p. 1).

11. **FINAL PROVISION**

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

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is imposed on imports into the Union of kegs, vessels, drums, tanks, casks and similar containers, refillable, of stainless steel, commonly known as 'stainless steel refillable kegs', with bodies approximately cylindrical in shape, with a wall thickness of 0,5 mm or more, of a kind used for material other than liquefied gas, crude oil, and petroleum products, of a capacity of 4,5 litres or more, regardless of the type of finish, gauge, or stainless steel grade, whether or not with additional components (extractors, necks, chimes or any other component), whether or not painted or coated with other materials, currently falling under CN codes ex 7310 10 00 and ex 7310 29 90 (TARIC codes 7310 10 00 10 and 7310 29 90 10) and originating in the People's Republic of China, excluding necks, spears, couplers or taps, collars, valves and other components imported separately.

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

Country	Company	Provisional anti-dumping duty	TARIC additional code
People's Republic of China	Penglai Jinfu Stainless Steel Products Co., Ltd	58,8 %	A024
	Ningbo Major Draft Beer Equipment Co., Ltd	52,9 %	A030
	Other cooperating companies listed in Annex	56,3 %	
	All other companies	91,0 %	C999

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

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

5. Where a declaration for release for free circulation is presented in respect of the product referred to in paragraph 1, the number of pieces of the products imported shall be entered in the relevant field of that declaration, provided this indication is compatible with Annex I to Regulation (EEC) No 2658/87.

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

Article 2

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

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

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

Article 3

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

Article 1 shall apply for a period of six months.

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

Done at Brussels, 11 January 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Cooperating exporting producers not sampled

Country	Name	TARIC additional code
People's Republic of China	Kingyip – Guangzhou JingYe Machinery Co., Ltd.	A031
	Ningbo Hefeng Container Manufacturer Co., Ltd.	A032
	Qingdao HenKeg Craft Beer Technology Co., Ltd.	A033
	Yantai Toptech Ltd.	A034