

COMMISSION IMPLEMENTING REGULATION (EU) 2023/968**of 16 May 2023****imposing a definitive anti-dumping duty on imports of certain heavy plate of non-alloy or other alloy steel originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation'), and in particular Article 11(2) thereof,Having regard to Regulation (EU) 2015/477 of the European Parliament and of the Council of 11 March 2015 on measures that the European Union may take in relation to the combined effect of anti-dumping or anti-subsidy measures with safeguard measures ⁽²⁾, and in particular Article 1 thereof,

Whereas:

1. PROCEDURE**1.1. Previous investigations and measures in force**

- (1) By Implementing Regulation (EU) 2017/336 ⁽³⁾, the European Commission ('the Commission') imposed anti-dumping duties on imports of certain heavy plates of non-alloy or other alloy steel, originating in the People's Republic of China, ('the PRC' or 'China' or 'the country concerned'), ('the original measures'). The investigation that led to the imposition of the original measures will be referred to hereinafter as 'the original investigation'.
- (2) By Implementing Regulation (EU) 2019/1382 ⁽⁴⁾ ('the safeguard Regulation'), the Commission amended certain Regulations imposing anti-dumping or anti-subsidy measures on certain steel products subject to safeguard measures.
- (3) The anti-dumping duties currently in force are at rates ranging between 65,1 % and 73,7 % on imports from the sampled exporting producers; at the rate of 70,6 % on imports from the non-sampled cooperating companies; and at the rate of 73,7 % on imports from all other companies from China.

1.2. Request for an expiry review

- (4) Following the publication of a notice of impending expiry ⁽⁵⁾ the Commission ('the Commission') received a request for a review pursuant to Article 11(2) of the basic Regulation.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ OJ L 83, 27.3.2015, p. 11.

⁽³⁾ Commission Implementing Regulation (EU) 2017/336 of 27 February 2017 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain heavy plate of non-alloy or other alloy steel originating in the People's Republic of China (OJ L 50, 28.2.2017, p. 18).

⁽⁴⁾ Commission implementing Regulation (EU) 2019/1382 of 2 September 2019 amending certain Regulations imposing anti-dumping or anti-subsidy measures on certain steel products subject to safeguard measures (OJ L 227, 3.9.2019, p. 1).

⁽⁵⁾ Notice of the impending expiry of certain anti-dumping measures (OJ C 209, 2.6.2021, p. 24).

- (5) The request for review was submitted on 26 November 2021 by the European Steel Association EUROFER (‘the applicant’) on behalf of the Union industry of certain heavy plates of non-alloy or other alloy steel in the sense of Article 5(4) of the basic Regulation.
- (6) The request for review was based on the grounds that the expiry of the measures would be likely to result in continuation or recurrence of dumping and of injury to the Union industry.

1.3. Initiation of an expiry review

- (7) Having determined, after consulting the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of an expiry review, the Commission initiated, on 25 February 2022, an expiry review with regard to imports into the Union of certain heavy plates of non-alloy or other alloy steel originating in China on the basis of Article 11(2) of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ⁽⁶⁾ (‘the Notice of Initiation’).

1.4. Review investigation period and period considered

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

1.5. Interested parties

- (9) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. In addition, the Commission specifically informed the applicant and other known Union producers, the known producers in the PRC and the authorities of the PRC, known importers, users, traders, as well as associations known to be concerned, about the initiation of the expiry review and invited them to participate.
- (10) Interested parties had an opportunity to comment on the initiation of the expiry review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.
- (11) No parties requested to be heard.

1.6. Comments on initiation

- (12) The Commission received comments on initiation from China Iron and Steel Association (‘CISA’) and Primex Steel Trading GmbH (‘Primex’). The applicant also provided comments in this regard.
- (13) Primex claimed that the request did not contain sufficient evidence of likelihood of recurrence or continuation of dumping. In particular, Primex claimed that the level of imports in the Union in case the measures are terminated will depend not only on the spare capacity in the PRC but also on the demand in the Union, price and cost relations as well as the intensity of competition on the world market, the existence of trade barriers on the world market and the development of exchange rates. Primex also claimed that the different sources for the spare capacity used by the applicant in the request raised doubt about the validity of this data. Primex stated that due to the change of the steel policy in China, including a reduction in certain export VAT refunds, there will be a moderate increase of imports into the Union in case measures were terminated. Primex also claimed that the Union market was not as attractive for the Chinese exporters as the applicant argued in the request for review.

⁽⁶⁾ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain heavy plate of non-alloy or other alloy steel originating in the People’s Republic of China (OJ C 89, 25.2.2022, p. 3).

- (14) The analysis of the request has shown that there was sufficient evidence at initiation stage pointing to a likelihood of continuation or recurrence of dumping should the anti-dumping measures applicable to imports from the PRC be allowed to lapse. The applicant based its analysis not only on the spare capacity in the PRC, but also on the attractiveness of the Union market due to its size and the established network of trading companies that the large Chinese heavy plate producers have in the Union, the trade defence measures imposed by third countries, and the unfair pricing behaviour of the PRC on third country markets. The legal standard of evidence required for an initiation (“sufficient evidence of dumping, injury and a causal link”) is lower than that required to reach a final determination ⁽⁷⁾. The requirement to provide sufficient evidence is limited to information which may be “reasonably available” to the requesting party ⁽⁸⁾. The information provided in the request is not required to constitute irrefutable evidence of the existence of the facts alleged ⁽⁹⁾. Therefore these claims were rejected.
- (15) Primex disagreed with the applicant’s selection for the representative country, i.e. Brazil. In particular, Primex claimed that: the Brazilian market was smaller than the Chinese market: the Brazilian company Usinas Siderúrgicas de Minas Gerais SA (‘Usiminas’), used by the applicant for the calculation of the selling, general and administrative (‘SG&A’) costs and the profit margin, was not appropriate as this company has a dominant market position on the domestic market; the Brazilian market is protected from international import competition by anti-dumping duties against imports from Ukraine, China, South Africa and South Korea ⁽¹⁰⁾; and there are minor imports from Brazil into the Union.
- (16) Based on the information provided by the applicant, the Commission analysed the proposed representative country and considered that Brazil met the statutory requirements to be used as a representative country for the purpose of initiation of the expiry review. In particular, Brazil has a level of economic development similar to China according to the World Bank, it is a significant producer of heavy plate, and it has readily available data for the corresponding costs of production and sale. Therefore, the Commission considered that Brazil was an appropriate choice as a representative country at the initiation stage.
- (17) Primex also argued that the methodology for the dumping calculation in the request for review was not correct. In particular, Primex claimed that the investigation period (i.e. 1 January 2021 to 31 December 2021) was too short to establish a representative normal value and it was different than the period in the request for review. Primex also claimed that the prices of the main raw materials (iron ore, coking coal and scrap) were subject to strong fluctuations, especially the price of iron ore in 2021 and therefore 2021 could not be considered a representative year. Furthermore, Primex claimed that it was questionable whether the data of Union producer used by the applicant in the request for the consumption factors was representative for the whole market. Moreover, Primex claimed that the methodology used by the applicant in the request for review for the calculation of normal value for the PRC was not suitable as the applicant used only the data for labour costs, SG&A and profit from the Brazilian company Usiminas. Primex also claimed that the request for the review did not include evidence that the cost structure of the Union, Brazilian and Chinese producers were comparable with one another. Furthermore, Primex claimed that the request for review did not explain whether the price for the individual factors of production in Brazil are representative. Primex also argued that the applicant wrongly calculated the percentage of profit as a percentage of cost of sales when it should have been as a percentage of sales. Moreover Primex claimed that the representative profit margin should be calculated for a longer period of time and should include 2019 as well, as this year was not affected by the Covid-19 pandemic. Finally Primex claimed that the profit margin of 14 % used by the applicant in the request for review was not achievable under normal market conditions. Primex also claimed that the two methods used by the Applicant to calculate the export price in the request for review were not appropriate.

⁽⁷⁾ See judgments of 11 July 2017, *Viraj Profiles Ltd*, T-67/14, ECLI:EU:T:2017:481, paras. 98-99.

⁽⁸⁾ See judgment of 15 December 2016, *Gul Ahmed Textile Mills Ltd*, T-199/04 RENV ECLI:EU:T:2016:740, para. 92.

⁽⁹⁾ *Id.* para. 94.

⁽¹⁰⁾ Source : Request (t22.001107) page 7 and <https://www.argusmedia.com/en/news/2021033-brazil-renews-antidumping-duties-on-plate-imports>

- (18) An expiry review shall be initiated where the request contains sufficient evidence that the expiry of the measures would likely result in a continuation or recurrence of dumping and injury. The applicant has provided sufficient evidence on the export price and normal value showing that the dumping margins would be significant if measures were allowed to lapse. The figures on which normal value and export price were based were supported by sufficient evidence as confirmed by the Commission services' own analysis. In practice, the calculation of normal value as well as the export price were in accordance with the principles of Article 2 of the basic Regulation and showed that the request contained sufficient evidence of dumping of the product concerned in the Union market. In its statutory analysis, the Commission took into account only those elements for which evidence was adequate and accurate.
- (19) The Commission noted that there is no legal requirement in the basic Regulation regarding the period chosen by the applicant, nor any that the period chosen for the investigation had to be the same as the one chosen by the applicant. Pursuant to Article 6(1) of the basic Regulation, an investigation period shall be selected which in the case of dumping shall, normally, cover a period of no less than six months immediately prior to the initiation of proceeding. The period chosen by the applicant, i.e. 1 July 2020 until 30 June 2021, ended shortly before the submission of the expiry review request on 26 November 2021 and was therefore considered to be representative for the likelihood of continuation or recurrence of dumping and injury at the initiation stage.
- (20) In the original investigation, the Commission found that the product concerned and the product produced and sold in the Union by the Union industry are like products within the meaning of Article 1(4) of the basic Regulation. The expiry review request sets out that the production process of the Union industry, used by the applicant for the consumption factors, was similar to the production process in the PRC and in the representative country. The cost structure and the consumption factors used in the request were therefore considered representative. Pursuant to Article 2(6a) of the basic Regulation, the applicant constructed the normal value using the corresponding costs of production and sale in a representative country, i.e. Brazil. The costs in this country were applied to the consumption rates of the factors of production in order to calculate the costs of manufacturing, whereas SG&A and profit derived from publicly available financial statements of a producer in the representative country. It should be noted that even the comparison of the constructed costs of production, without any SG&A and profit of the producer in the representative country with Chinese export prices of the product under review to third countries showed dumping. Therefore, the claims of Primex on the profitability level are moot.
- (21) For the export price, the expiry review request used three methods, i.e. the average Chinese import price to the Union on a TARIC ⁽¹⁾ level, the published average Chinese export FOB price for one of the main product types to all third countries, and the average Chinese export price to all third countries. These three methods were found to be sufficiently substantiated to comply with the legal standard at the initiation stage.
- (22) CISA submitted that the request for review had an excessive use of confidentiality which precluded them from assessing the economic situation of the Union industry, as well as addressing the applicant's claims in the request for review. This allegedly resulted in a breach of CISA's rights of defence. For example, CISA referred particularly to Annex F1 (Capacity), Annex F2 (Exports), more specifically concerning Chinese exports of heavy plate from August 2020 until July 2021, and Annex N (undercutting and underselling calculations), more specifically in relation to Union industry sales and cost data to EU27 of the request for review.
- (23) The Commission notes that the non-confidential Annex F1 contained ranged data for Chinese heavy plate consumption, capacity and production. The non-confidential Annex F2 contained a comprehensive summary of the average Chinese export price and the Chinese total volume of exports to the rest of the world, as well as to the top five export destinations. The non-confidential Annex N contained the full undercutting and underselling calculations, as well as the aggregated data on the average price and cost of the Union Industry. The non-confidential Annex M contained all applicants' injury indicators indexed per company and non-confidential Annex K contained aggregated values of all data required for the calculation of EU consumption, including sales, as well as indexed per company. The information provided in the non-confidential version of the request for review was therefore considered to have sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence.

⁽¹⁾ 10-digit commodity codes.

- (24) Article 19 of the basic Regulation allows for the safeguarding of confidential information in circumstances where disclosure would be of significant competitive advantage to a competitor or would have a significant adverse effect upon a person providing the information or upon a person from whom that person has acquired the information. The information provided in the limited annexes to the request fell under these categories. The Commission considered that the version open for inspection by interested parties of the request contained all the essential evidence. The non-confidential summaries of data provided under confidential cover were sufficiently detailed to permit a reasonable understanding of the substance of information submitted in confidence in order for interested parties to exercise their rights of defense throughout the proceeding. Therefore, the claim was rejected.
- (25) CISA claimed that the request for review included contradictory information, in particular as regards the export price from the PRC to the Union which had an impact on the findings of dumping.
- (26) The request for review did not contain contradictory information. The applicant constructed the normal value of two product types (S235 and S355) and used the Chinese import price at TARIC level for grade S235, and the published average Chinese export price for grade S355. Therefore, the applicant calculated the dumping margins by comparing similar product types. Moreover, the applicant found dumping when comparing the average Chinese sales price of the product under review to all third countries with both constructed normal values. Therefore, the claim had to be rejected.
- (27) CISA claimed that the request did not contain sufficient evidence of likelihood of continuation or recurrence of injury. In particular, CISA claimed that there was no evidence in the request that demonstrated that the expiry of measures could lead to the continuation of injury. CISA also doubted the alleged fragile state of the Union Industry and claimed that if this state was valid, it could be attributed entirely to the decline of consumption and the contraction of demand. CISA also claimed that there was no indication of recurrence of injury because of the EU safeguard measures on certain steel products, among which heavy plate, and the fact that Chinese heavy plate exports were no longer eligible for VAT export refunds.
- (28) The Commission considered the evidence present in the request as sufficient for dumping, injury and a causal link, which was reasonably available to the applicant. The main injury indicators included in the request showed a negative trend for the reference period chosen by the applicant and the applicant therefore claimed that it continued to suffer material injury.
- (29) However, the applicant also acknowledged in its request for review that imports from the PRC had essentially stopped since the imposition of the original measures and the injurious situation of the Union industry as well as the decline of consumption was caused by other factors, such as the state of the general economy, especially in construction and pipeline projects, and the negative effect of the COVID-19 pandemic. It therefore also claimed the likelihood of recurrence of injury if measures were to lapse and provided sufficient evidence in this regard, showing that in the absence of measures imports from the PRC would likely increase at undercutting prices. The claim of CISA thus has to be rejected.
- (30) Primex claimed that the CIF import price as well as the Union sales price that the applicant used for undercutting and underselling calculations in the request for review were wrong, and no undercutting or underselling margins should be found. In addition, Primex claimed that the profit margin used for the underselling calculation has not been achieved, even with measures in force during the past years.
- (31) The Commission disagreed that the undercutting and underselling calculations in the request were incorrect. The applicant provided a comparison between the export price and the Union sales price for the most common product types, which is a comparison at a more granular level than the comparison of the average export price with the average Union industry's sales price proposed by Primex. The applicant's methodology is clearly explained in the expiry review request under point 3.6 and in Annex N, which contains a calculation for each representative product type, showing undercutting and underselling. Furthermore, regarding the profit margin used by the applicant for the underselling calculations, the Commission considered that this profit margin could be reasonably achieved under normal conditions of competition in the original investigation. It has to be noted that even if the applicant had not provided any underselling calculations, there was still sufficient evidence showing that injury caused by dumped imports from China would recur if measures were allowed to expire. Therefore, the claim was rejected.

- (32) CISA claimed that the Report relied on by the Commission failed to meet the standards of impartial and objective evidence and evidence of sufficient probative value, given in particular that it was prepared by the Commission with the specific purpose of facilitating Union industries to lodge a complaint in the area of trade measures. Furthermore, CISA claimed that since the Report was published in 2017, it could not reflect the alleged distortions for the investigation period covering the 2021 calendar year.
- (33) The Commission disagreed. The Commission noted that the Report is a comprehensive document based on extensive objective evidence, including legislation, regulations and other official policy documents published by the Government of the People's Republic of China ('GOC'), third party reports from international organisations, academic studies and articles by scholars, and other reliable independent sources. It was made publicly available since December 2017 so that any interested party would have had ample opportunity to rebut, supplement or comment on it and the evidence on which it is based, and neither the GOC nor other parties have submitted arguments or evidence rebutting the sources included in the Report. Likewise, regarding the argument that the Report was outdated, the Commission noted in particular that the main policy documents and evidence contained in the Report, including the relevant five-year plans and legislation applicable to the product under review were mostly still relevant during the RIP, and that no parties have proven that this was no longer the case. China only started publishing new five-year plans throughout year 2021 and a lot of those plans were only made public in the second half of the year. This was further confirmed through the case-specific research undertaken by the Commission, as summarised above.
- (34) Second, CISA submitted that the WTO Anti-Dumping Agreement ('ADA') does not recognize the concept of significant distortions in Article 2.2 of ADA. Instead, the provision allows the construction of the normal value in a limited number of specific conditions, which significant distortions not featuring among such conditions. Moreover, CISA submitted that Article 2.2 of ADA only permits using the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and profits whereas Article 2(6a) of the basic Regulation allows the use of data from an appropriate representative country, thereby being WTO inconsistent. Furthermore, CISA claimed that any constructed value would need to be calculated in accordance with Article 2.2.1.1 of ADA and in line with the interpretation by WTO Appellate Body given in the EU – Biodiesel (DS 473) case, as well as by the WTO Panel in the EU – Cost Adjustment Methodologies II (Russia) (DS494) case, which do not mention the concept of significant distortions nor the possibility to disregard the exporting company's data.
- (35) The Commission considered that the provisions of Article 2(6a) of the basic Regulation are fully consistent with the European Union's WTO obligations and the jurisprudence cited by CISA. First, the Commission considers concept of 'significant distortions' to be compatible with the ADA. Furthermore, it is the Commission's view that, in accordance with the decision of the WTO Panel and the Appellate Body in DS473, the provisions of the basic Regulation that apply generally with respect to all WTO Members, such as Article 2(5), second subparagraph, permit the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. The existence of significant distortions renders costs and prices in the exporting country inappropriate for the construction of normal value. In these circumstances, Article 2(6a) of the basic Regulation envisages the construction of costs of production and sale on the basis of undistorted prices or benchmarks, including those in an appropriate representative country with a similar level of development as the exporting country. In relation to the DS 494, the Panel Report in this dispute specifically considered the provisions in Article 2(6a) of the basic Regulation to be outside the scope of the dispute. Moreover, the Commission recalled that both the EU and the Russian Federation appealed the findings of the Panel, which are not final and therefore, according to standing WTO case-law, have no legal status in the WTO system, since they have not been endorsed by the Dispute Settlement Body through a decision by the WTO Members. Therefore, the Commission rejected this claim.
- (36) Third, CISA argued that the practice of referring to past investigations as "evidence" of certain allegations, as done by the applicant in the request in the present investigation, would likely not withstand the Appellate Body's approach on the burden of proof, as set out in the WTO Appellate Body's ruling in the US – Definitive Antidumping and Countervailing Duties on Certain Products (China) (DS 379) case.

- (37) The Commission recalled that in DS 379 case, the Appellate Body's ruling explicitly set out that cross referencing from one determination into another is allowed, where there is close temporal and substantive overlap between the two investigations. Such substantive overlap clearly exists between the present investigation and the GOES ('grain-oriented flat-rolled products of silicon-electrical steel') investigation referred to in the Request, as both investigations not only concern the steel sector in China but there was only a six months gap between the investigation period in GOES (1 July 2019 – 30 June 2020) and the RIP in the present investigation (1 January 2021 – 31 December 2021).
- (38) Fourth, CISA raised the issue of the 13th Five-Year Plan ('five years plan ('FYP)'), pointing out that, on the one hand, the plan should not be considered binding law but rather a general policy document which exist also in the EU and that, on the other hand, the RIP falls outside of the period covered by the 13th FYP. Further, CISA argues that the request continues referring to the 13th FYP, indicating that there is nothing in the 14th FYP that reduces State controls over the PRC economy in general or the steel sector in particular.
- (39) This argument could not be accepted. First of all, China operates a periodic five years planning cycle. In that cycle, individual planning documents for the following cycle are prepared already during the previous one while, at the same time, individual planning documents of following cycle may be formally issued with some delay after the expiry of the corresponding planning documents of the previous cycle. The fact that the formal end date of the 13th FYP may not fall into the review investigation period or that the relevant 14th FYPs were published following a certain time gap after the end of the previous planning period cannot alter the nature of Chinese planning system in which the authorities and business operators always find themselves being part of the planning cycle. The Commission further underlined that the FYPs published by the GOC are not merely general guidance documents, but are of a legally binding nature. In this respect, the Commission referred to the detailed analysis of the plans in Chapter 4 of the Report, with a section specifically dedicated to the binding nature of plans in Section 4.3.1. Both the 14th FYP and the 13th FYP explicitly remind all authorities to diligently implement the plans: "We will strengthen planning management systems such as catalogues and lists, compilation and archival, and alignment and coordination, develop lists and catalogs such as the "14th Five-Year" National-Level Special Plans, promote plan archival relying on the national planning integrated management information platform, and bring various plans under unified management. We will establish and improve planning alignment and coordination mechanisms, align plans approved by the [Chinese Communist Party ('CCP')] Central Committee and the State Council and provincial development plans with this plan before submission for approval, ensure that national-level spatial planning, special planning, regional planning, and other levels of planning are coordinated with this plan in terms of main goals, development directions, overall layout, major policies, major projects, and risk prevention and control." ⁽¹²⁾ Furthermore, the 14th FYP on Developing the Raw Materials Industry stipulates that "all localities need to better themselves with this Plan, and include the main contents and major projects herein in their primary local tasks", while "steel and other key sectors shall formulate specific implementation opinions based on the objectives and tasks of this Plan." ⁽¹³⁾ The claim of CISA thus has to be rejected.

1.7. Sampling

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

1.7.1. Sampling of Union producers

- (41) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of the provisions of Article 17 of the basic Regulation. The Commission selected the sample on the basis of production and sales of the like product in the Union during the review investigation period, namely from 1 January 2021 until 31 December 2021. This provisional sample consisted of three Union producers. The sampled Union producers accounted for more than 25 % of the estimated total volume of Union production and more than 31 % of the estimated total Union sales volume of the like product. In accordance with Article 17(2) of the basic Regulation, the Commission invited interested parties to comment on the provisional sample. No comments were received.

⁽¹²⁾ See Article LXIV, Section 2 of the 14th FYP

⁽¹³⁾ See Section VIII of the 14th FYP on Developing the Raw Materials Industry

- (42) In the Note of 8 March 2022, the Commission confirmed the provisionally selected sample as the definitive sample, which is deemed to be representative of the Union industry.

1.7.2. *Sampling of importers*

- (43) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (44) No unrelated importers came forward.

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

- (45) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known exporting producers in the People's Republic of 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.
- (46) None of the exporting producers in the country concerned provided the requested information and agreed to be included in the sample.

1.8. **Replies to the questionnaires**

- (47) The Commission sent a questionnaire concerning the existence of significant distortions in the PRC within the meaning of Article 2(6a)(b) of the basic Regulation to the GOC.
- (48) The Commission sent letters with a link to a questionnaire to the sampled Union producers:
- AG der Dillinger Hüttenwerke, Dillingen, Germany;
 - Ilsenburger Grobblech GmbH, Ilsenburg, Germany;
 - ArcelorMittal España, S.A., Avilés, Spain.
- (49) The same questionnaire had also been made available in the file for inspection by interested parties and on DG Trade's website online ⁽¹⁴⁾ on the day of initiation.
- (50) Questionnaire replies were received from the three sampled Union producers.
- (51) In the notice of initiation, the Commission also invited users and their representative associations, trade unions and representative consumer organisations to provide information on the Union interest and to fill in a specific questionnaire.
- (52) Replies to the questionnaire intended for users of the product under review were received from three companies:
- Vestas Wind Systems A/S, Denmark ('Vestas');
 - Astilleros Gondán S.A., Spain;
 - Europipe GmbH, Germany.

1.9. **Verification**

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

⁽¹⁴⁾ https://trade.ec.europa.eu/tdi/case_details.cfm?id=2583

Union producers

- AG der Dillinger Hüttenwerke, Dillingen, Germany;
- Ilsenburger Grobblech GmbH, Ilsenburg, Germany;
- ArcelorMittal España, S.A., Avilés, Spain.

- (54) The Commission intended to carry out a verification visit at the premises of the main independent user (Vestas) but the company did not offer sufficient cooperation to allow such visit to take place.

1.10. Disclosure

- (55) On 28 February 2023, the Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of heavy plates originating in the PRC ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure. The Commission received comments from the applicant and from CISA.
- (56) Following final disclosure, interested parties were granted an opportunity to be heard according to the provisions stipulated under point 5.8 of the Notice of Initiation. A hearing on final disclosure took place with CISA.

2. PRODUCT UNDER REVIEW, PRODUCT CONCERNED AND LIKE PRODUCT**2.1. Product under review**

- (57) The product under review is the same as in the original investigation, namely flat products of non-alloy or alloy steel (excluding stainless steel, silicon-electrical steel, tool steel and high-speed steel), hot-rolled, not clad, plated or coated, not in coils, of a thickness exceeding 10 mm and of a width of 600 mm or more or of a thickness of 4,75 mm or more but not exceeding 10 mm and of a width of 2 050 mm or more, ('the product under review' or 'heavy plate').
- (58) Heavy plates are used in the manufacture of construction, mining and logging equipment; pressure vessels; oil and gas pipelines; shipbuilding and bridges and buildings.

2.2. Product concerned

- (59) The product concerned by this investigation is the product under review originating in China currently falling under CN codes ex 7208 51 20, ex 7208 51 91, ex 7208 51 98, ex 7208 52 91, ex 7208 90 20, ex 7208 90 80, 7225 40 40, ex 7225 40 60 and ex 7225 99 00 (TARIC codes: 7208 51 20 10, 7208 51 91 10, 7208 51 98 10, 7208 52 91 10, 7208 90 20 10, 7208 90 80 20, 7225 40 60 10 and 7225 99 00 45). The CN and TARIC codes are given for information only, without prejudice to a subsequent change in the tariff classification.

2.3. Like product

- (60) As established in the original investigation, this expiry review investigation confirmed 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 review produced and sold on the domestic market of China; and
 - the product under review produced and sold in the Union by the Union industry.

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

3. DUMPING

Preliminary remarks

- (62) During the review investigation period, heavy plates from the PRC were imported in negligible volume, which could not form the basis for a determination of continuation of dumping. The Commission therefore analysed the likelihood of recurrence of dumping in the next section.

4. LIKELIHOOD OF RECURRENCE OF DUMPING

- (63) The Commission investigated, in accordance with Article 11(2) of the basic Regulation, the likelihood of recurrence of dumping, should the measures be repealed. The following elements were analysed: the production capacity and spare capacity in the PRC, attractiveness of the Union market and export prices to third country markets, as well as possible absorption capacity of third country markets.
- (64) As mentioned in recital (46), none of the producers from the PRC cooperated in the investigation. Therefore, the Commission informed the authorities of the PRC that due to the absence of cooperation, the Commission may apply Article 18 of the basic Regulation concerning the findings with regard to the exporting producers in the PRC. The Commission did not receive any comments or requests for an intervention of the Hearing Officer in this regard.
- (65) Consequently, in accordance with Article 18 of the basic Regulation, the findings in relation to the likelihood of recurrence of dumping were based on facts available, in particular information in the request for review duly updated if available, information obtained from the applicant) and information from other publicly available sources, in particular the Global Trade Atlas ('GTA') ⁽¹⁵⁾.

4.1. Production capacity and spare capacity in the PRC

- (66) According to information provided by the applicant in the request for review, heavy plates production capacity in the PRC in the RIP was based on two sources of information, such as CRU ⁽¹⁶⁾ and MCI ⁽¹⁷⁾. According to the CRU report, China had a heavy plate production capacity of 94 million tonnes in 2021 with actual production of 86 million tonnes, leaving a spare capacity of at least 8 million tonnes. According to MCI, China had a heavy plate production capacity of 113 million tonnes in 2021 with actual production of 99 million tonnes, leaving a spare capacity of at least 14 million tonnes.
- (67) Therefore, it follows that the spare capacity in China is between 8 and 14 million tonnes, which is sufficient to cover the entire Union consumption in the RIP, which was 8,2 million tonnes as indicated in Table 2 in recital (177). The applicant considered that, given such a large spare capacity, imports to the Union from China could increase to over 1 million tonnes per year, as they did in the investigation period (2015) of the original investigation ⁽¹⁸⁾.
- (68) As indicated in recital (13), Primex argued that the Chinese capacity for heavy plates was indicated very differently according to the source, that the origin of the original data was not stated and that the decline in spare capacity between 2018 and 2021 suggested that potential Chinese exports to the Union have become smaller in recent years.

⁽¹⁵⁾ <http://www.gtis.com/gta/secure/default.cfm>

⁽¹⁶⁾ <https://www.crugroup.com> CRU International Limited, Steel Plate Market Outlook (Nov.2021)

⁽¹⁷⁾ <https://www.metalsconsultinginternational.com> Source: James F. King (Metals Consulting International Limited).

⁽¹⁸⁾ Commission Implementing Regulation (EU) 2016/1777 of 6 October 2016 imposing a provisional anti-dumping duty on imports of certain heavy plate of non-alloy or other alloy steel originating in the People's Republic of China, OJ L 272, 7.10.2016, p.5

- (69) The applicant clarified that the capacity estimates were based on two detailed reports provided by independent third parties, i.e. CRU and MCI, based on the data of substantial numbers of Chinese companies. In addition, the applicant argued that the decline in spare capacity was associated with an increase in apparent Chinese consumption until 2020, followed by a decline in consumption from 2021 and a forecast of continuing weakness in the Chinese economy. The Chinese consumption of heavy plates was at around 85 million tonnes in 2021. The applicant also stated that the International Monetary Fund reported that growth in China had weakened significantly since the start of 2022 ⁽¹⁹⁾. Furthermore, according to the OECD, the slowdown in steel consumption started in July 2021 when the construction sector experienced a deceleration ⁽²⁰⁾. According to one of the Union producers' market knowledge, it is expected that China will register a negative heavy plate demand growth in the medium term.
- (70) Therefore, the applicant argued that Chinese consumption of heavy plate would likely decline further, resulting in a continuing increase in spare capacity resulting in greater pressure for Chinese producers to find third country markets for their excess steel capacity.
- (71) The applicant further argued that a sharp increase in imports of Chinese slab (CN code 7207 12 10) into the Union in the period June to August 2022 demonstrates large Chinese spare capacity and their ability to move very large amounts of steel into the Union in a very short timeframe.
- (72) The Commission considered that the information provided in the request, as clarified by the applicant, as well as the evidence they provided with regard to an anticipated reduction in consumption in China and the recent increase in slab imports, suggested that spare capacity of heavy plates in China is substantial and unlikely to decrease in the medium term. The Commission therefore, rejected the arguments put forward by Primex.
- (73) Therefore, the Commission found that there was substantial spare capacity to increase exports to the Union in substantial quantities, if measures were allowed to expire.

4.2. Attractiveness of the Union market and export prices to third countries

- (74) According to the information provided by the applicant in the request for the review, the Union heavy plate market is amongst the largest markets in the world. In addition, the capacity of Chinese producers as stated in recital (66) exceeds the Chinese consumption stated in recital (69) by at least 9 million tonnes, so Chinese producers are searching for export markets to absorb their excess capacity.
- (75) The applicant indicated in the request for review that large Chinese heavy plate producers, like Baoshan Iron & Steel Co., Ltd. ("Baosteel") and Wuhan Iron & Steel Co., Ltd. ("WISCO"), have established trading companies in the Union to facilitate their imports into the Union. This was confirmed in the Commission Implementing Regulation imposing a definitive anti-dumping duty on imports of certain GOES originating, among other countries, in the PRC ⁽²¹⁾.
- (76) As mentioned in recital (67), imports of heavy plate from China reached over 1 million tonnes in 2015, before the imposition of anti-dumping duties. Therefore, it is likely that if the measures are allowed to lapse, Chinese exporters would once again be attracted to export in substantial volumes to the Union market.

⁽¹⁹⁾ IMF, World Economic Outlook, 19 (Oct. 2022) <https://www.imf.org/-/media/Files/Publications/WEO/2022/October/English/text.ashx> (accessed on 5 December 2022).

⁽²⁰⁾ OECD, Steel Market Developments, Q2 2022, 70 (2022) <https://www.oecd.org/industry/ind/steel-market-developments-Q2-2022.pdf> (accessed on 5 December 2022).

⁽²¹⁾ Commission Implementing Regulation (EU) 2022/58 of 14 January 2022 imposing a definitive anti-dumping duty on imports of certain grain-oriented flat-rolled products of silicon-electrical steel originating in the People's Republic of China, Japan, the Republic of Korea, the Russian Federation and the United States of America following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 10, 17.1.2022, p. 17).

- (77) Primex argued that the safeguard measures applied to heavy plates (adjusted by Commission Implementing Regulation (EU) 2022/434 ⁽²²⁾) limited imports into the Union until 30 June 2024. They argued that imports from China fall under the quota for other countries and imports in that category in 2021 were around 370 000 tonnes. They argued that as other countries will not stop exporting to the Union, China will not have access to the full quota allotted to other countries.
- (78) The applicant also commented in the request for review that the current EU safeguard measures on imports of certain steel products do not meaningfully restrict the import volumes for heavy plate.
- (79) However, for the period 1 July 2022 until 30 June 2023 the total tariff-rate quota for non-alloy and other alloy quarto plates was set at more than 3,2 million tonnes, out of which around 2,2 million tonnes of this amount was allocated to “other countries”, including China. Furthermore, for the period 1 July 2023 to 30 June 2024 the quota was set at about 3,4 million tonnes, out of which around 2,3 million tonnes were allocated to “other countries”, including China as well ⁽²³⁾. Imports of heavy plates from countries classified as “other countries” (i.e. excluding Ukraine) totalled less than 0,8 million tonnes during the RIP as indicated in tables 3 and 5, so there is scope for China to increase imports to more than 1 million tonnes without being affected by the safeguard measures.
- (80) The Commission considers that the quota available to imports from China is therefore, substantial and the existence of the quota would not detract from the attractiveness of the Union market, if the anti-dumping duties were allowed to expire, while imports within the substantial quota were still available.
- (81) Furthermore, in order to have an indication of the likely pricing behaviour to the Union in the absence of measures, the Commission also compared the Chinese export price to third countries with the Chinese normal value.
- (82) In the absence of cooperation from the Chinese exporting producers and the GOC, the Commission determined normal value based on the information provided in the request for the expiry review and other readily available information as explained in the following section.

4.2.1. *Procedure for the determination of the normal value under Article 2(6a) of the basic Regulation for the imports of heavy plates originating in the PRC*

- (83) Given the sufficient evidence available at the initiation of the investigation tending to show, with regard to the PRC, the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission initiated the investigation on the basis of Article 2(6a) of the basic Regulation.
- (84) 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. Subsequently, the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in the PRC.
- (85) In point 5.3.2 of the Notice of Initiation, the Commission also specified that, in view of the evidence available, it may need to select an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks and suggested Brazil in this regard. The Commission further stated that it would examine other possibly appropriate countries in accordance with the criteria set out in first indent of Article 2(6a) of the basic Regulation.

⁽²²⁾ Commission Implementing Regulation (EU) 2022/434 of 15 March 2022 amending Regulation (EU) 2019/159 imposing a definitive safeguard measure against imports of certain steel products (OJ L 88, 16.3.2022, p. 181).

⁽²³⁾ Commission Implementing Regulation (EU) 2022/978 of 23 June 2022 amending Implementing Regulation (EU) 2019/159 imposing a definitive safeguard measure on imports of certain steel products (OJ L 167, 24.6.2022, p. 58).

- (86) On 16 December 2022, the Commission informed by a Note to interested parties of the relevant sources that it intended to use for the determination of the normal value (the Note), with Brazil as a representative country. It also informed interested parties that it would establish SG&A costs and profits based on available information for the company Usinas Siderúrgicas de Minas Gerais ('Usiminas') and Gerdau S/A ('Gerdau'), producers of the product under review in the representative country.
- (87) In their comments to the Note the applicant claimed that the Commission should take into account also other factors of production used in the manufacturing of heavy plates such as wire of non-alloy aluminium, aluminium waste and scrap, ferro-alloy, ferro-silicon, water, heavy oils, acetylene etc.
- (88) In the Note the Commission presented the main factors of production. In addition to those factors of production the Commission also added consumables and overheads as explained in recitals (139) and (149). Furthermore, considering that the current investigation is an expiry review pursuant to Article 11(2) on the basic Regulation, which does not require a precise dumping margin calculation, but rather to establish the likelihood of continuation or recurrence of dumping, the Commission considered that in this case it could exceptionally focus on the main factors of production for the calculation of the normal value. Furthermore, as specified in recitals (184) and (185), there were negligible imports of product concerned from the PRC during the review investigation period. Therefore, the constructed normal value will be used only for comparison with the Chinese export price to third countries.

4.2.2. Normal value

- (89) 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".
- (90) 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".
- (91) As further explained below, the Commission concluded in the present investigation that, based on the evidence available the application of Article 2(6a) of the basic Regulation was appropriate.

4.2.2.1. Existence of significant distortions

- (92) In recent investigations concerning the steel sector in the PRC ⁽²⁴⁾, the Commission found that significant distortions in the sense of Article 2(6a)(b) of the basic Regulation were present.

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

- (93) In those investigations, the Commission found that there is substantial government intervention in the PRC resulting in a distortion of the effective allocation of resources in line with market principles⁽²⁵⁾. In particular, the Commission concluded that in the steel sector, which is the main raw material to produce the product under review, not only does a substantial degree of ownership by the GOC persist in the sense of Article 2(6a)(b), first indent of the basic Regulation⁽²⁶⁾, 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⁽²⁷⁾. The Commission further found that the State's presence and intervention in the financial markets, as well as in the provision of raw materials and inputs have an additional distorting effect on the market. Indeed, overall, the system of planning in the PRC results in resources being concentrated in sectors designated as strategic or otherwise politically important by the GOC, rather than being allocated in line with market forces⁽²⁸⁾. Moreover, the Commission concluded that the Chinese bankruptcy and property laws do not work properly in the sense of Article 2(6a)(b), fourth indent of the basic Regulation, thus generating distortions in particular when maintaining insolvent firms afloat and when allocating land use rights in the PRC⁽²⁹⁾. In the same vein, the Commission found distortions of wage costs in the steel sector in the sense of Article 2(6a)(b), fifth indent of the basic Regulation⁽³⁰⁾, as well as distortions in the financial markets in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, in particular concerning access to capital for corporate actors in the PRC⁽³¹⁾.
- (94) Like in previous investigations concerning the steel sector in the PRC, the Commission examined in the present investigation whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the request, as well as 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 Defense Investigations⁽³²⁾ ('Report'), which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in the PRC's economy in general, but also the specific market situation in the relevant sector including the product under review. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in the PRC as also found by its previous investigations in this respect.

⁽²⁵⁾ See Implementing Regulation (EU) 2022/2068 recital 80; Implementing Regulation (EU) 2022/191 recital 208, Implementing Regulation (EU) 2022/95 recital 59, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 149-150.

⁽²⁶⁾ See Implementing Regulation (EU) 2022/2068 recital 64; Implementing Regulation (EU) 2022/191 recital 192, Implementing Regulation (EU) 2022/95 recital 46, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 115-118

⁽²⁷⁾ See Implementing Regulation (EU) 2022/2068 recital 66; Implementing Regulation (EU) 2022/191 recitals 193-4, Implementing Regulation (EU) 2022/95 recital 47, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 119-122. While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights, CCP cells in enterprises, state owned and private alike, represent another important channel through which the State can interfere with business decisions. According to the PRC's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline. In 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of the product under review and the suppliers of their inputs.

⁽²⁸⁾ See Implementing Regulation (EU) 2022/2068 recital 68; Implementing Regulation (EU) 2022/191 recitals 195-201, Implementing Regulation (EU) 2022/95 recitals 48-52, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 123-129.

⁽²⁹⁾ See Implementing Regulation (EU) 2022/2068 recital 74; Implementing Regulation (EU) 2022/191 recital 202, Implementing Regulation (EU) 2022/95 recital 53, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 130-133.

⁽³⁰⁾ See Implementing Regulation (EU) 2022/2068 recital 75; Implementing Regulation (EU) 2022/191 recital 203, Implementing Regulation (EU) 2022/95 recital 54, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 134-135.

⁽³¹⁾ See Implementing Regulation (EU) 2022/2068 recital 76; Implementing Regulation (EU) 2022/191 recital 204, Implementing Regulation (EU) 2022/95 recital 55, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 136-145.

⁽³²⁾ Commission staff working document SWD(2017) 483 final/2, 20. 12. 2017, available at: [https://ec.europa.eu/transparency/documents-register/detail?ref=SWD\(2017\)483&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=SWD(2017)483&lang=en)

- (95) The applicant submitted in the request that the prices and costs of steel products in the PRC, including the product under review, are not the result of free market forces. The request alleged that all factors of production – land, energy, capital, raw materials and labour – are equally distorted. To support its position, the request referred to a number of publicly available information sources, such as the Report, the conclusions reached by the U.S. Department of Commerce ⁽³³⁾, the Commission's recent investigations of the Chinese steel sector ⁽³⁴⁾, the 13th FYP for National Economic and Social Development of the PRC as well as the 14th FYP for National Economic and Social Development of the PRC.
- (96) On this basis, the request emphasized that:
- The steel sector is considered a pillar industry in China, in which the GOC controls virtually every aspect of the steel sector's development and functioning by utilizing a range of policies and directives, such as the five-year-plans, to influence market composition and restricting raw materials, investment, capacity elimination, product range, relocation, upgrading, etc.
 - Baoshan Iron & Steel Co., Ltd. ('Baosteel'), one of the main Chinese Heavy Plates producers, is a major State-owned enterprise and is part of the China Baowu Steel Group Co. Ltd. ('Baowu'), which includes Wuhan Iron / Steel Co., Ltd. ('WISCO'). Both Baosteel and WISCO have several party building activities, have party members in the company management and emphasize their association with the CCP.
 - The costs of raw-materials, such as steel and iron ore, and energy in the PRC are not the result of free market forces as the production of these raw materials is subject to State support in the PRC; significant systemic distortions exist also with respect to access to capital, land and labour.
- (97) The GOC did not comment or provide evidence supporting or rebutting the existing evidence on the case file, including the Report and the additional evidence provided by the applicant, on the existence of significant distortions and/or appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand.
- (98) Specifically in the sector of the product under review, i.e. the steel sector, a substantial degree of ownership by the GOC persists in the sense of Article 2(6a)(b), first indent of the basic Regulation. Since there was no cooperation from Chinese exporters of the product under review, the exact ratio of the private and state-owned producers could not be determined. However, the investigation confirmed that the two largest producers in the steel sector, namely Angang Steel Group ('Ansteel') and Baowu are either fully state-owned or the State holds a controlling stake. In any event, even when specific information may not be available for the product under review, the sector represents a sub-sector of the steel industry and the findings concerning the steel sector are therefore deemed indicative also for the product under review.

⁽³³⁾ U.S. Department of Commerce, 'China's Status as a non-market economy', A-570053, 26 October 2017, p. 196; Non-Oriented Electrical Steel from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order, 85 Fed. Reg. 11339 (Feb. 27, 2020); Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Affirmative Determination, 81 Fed. Reg. 35308 (June 2, 2016).

⁽³⁴⁾ Commission Implementing Regulation (EU) 2019/687 of 2 May 2019 imposing a definitive anti-dumping duty on imports of certain organic coated steel products originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 116, 3.5.2019, p. 5); Implementing Regulation (EU) 2021/635; 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); Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 146, 9.6.2017, p. 17) and Implementing Regulation (EU) 2022/58.

- (99) Both public and privately owned enterprises in the steel sector are subject to policy supervision and guidance. The latest Chinese policy documents concerning the steel sector confirm the continued importance which GOC attributes to the sector, including the intention to intervene in the sector in order to shape it in line with the government policies. This is exemplified by the Ministry of Industry and Information Technology's draft Guiding Opinion on Fostering a High Quality Development of Steel Industry which calls for further consolidation of the industrial foundation and significant improvement in the modernization level of the industrial chain ⁽³⁵⁾, by the 14th FYP on Developing the Raw Material Industry according to which the sector will "adhere to the combination of market leadership and government promotion" and will "cultivate a group of leading companies with ecological leadership and core competitiveness" ⁽³⁶⁾ or also by the 14th FYP on Developing Scrap Steel Industry whose key objectives is to "continuously increase the application ratio of scrap steel, and by the end of the 14th FYP, the comprehensive scrap ratio of national steelmaking will reach 30%." ⁽³⁷⁾
- (100) Similar examples of the intention by the Chinese authorities to supervise and guide the developments of the sector can be seen at the provincial level, such as in Hebei which plans to "steadily implement the group development of organizations, accelerate the reform of mixed ownership of state-owned enterprises, focus on promoting the cross-regional merger and reorganization of private iron and steel enterprises, and strive to establish 1-2 world-class large groups, 3-5 large groups with domestic influence as the support" and to "further expand the recycling and circulation channels of scrap steel, strengthen the screening and classification of scrap steel." ⁽³⁸⁾ Similarly, the Henan Implementation Plan for the Transformation and Upgrade of the Steel Industry during the 14th FYP foresees the "construction of characteristic steel production bases [...], build 6 characteristic steel production bases in Anyang, Jiyuan, Pingdingshan, Xinyang, Shangqiu, Zhouou, etc., and improve the scale, intensification, specialisation and distinction of the industry. Among them, by 2025, the production capacity of pig iron in Anyang will be controlled within 14 million tons, and the production capacity of crude steel will be controlled within 15 million tons." ⁽³⁹⁾ Further industrial policy objectives can also be seen in the planning documents of other provinces, such as Jiangsu ⁽⁴⁰⁾, Shandong ⁽⁴¹⁾, Shanxi ⁽⁴²⁾, Liaoning Dalian ⁽⁴³⁾ or Zhejiang ⁽⁴⁴⁾.
- (101) As to the GOC being in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation, due to the lack of cooperation from the side of the exporting producers, it was impossible to systematically establish existence of personal connections between producers of the product under review and the CCP. However, given that the product under review represents a subsector of the steel sector, information available with respect to steel producers is relevant also to the product under review.

⁽³⁵⁾ See: https://www.miit.gov.cn/jgsj/ycls/gzdt/art/2020/art_8fc2875eb24744f591bfd946c126561f.html (accessed on 21 November 2022).

⁽³⁶⁾ See Section IV, Subsection 3 of the 14th FYP on Developing the Raw Materials Industry

⁽³⁷⁾ See Section II, Subsection 1 of the 14th FYP on Developing Scrap Steel Industry

⁽³⁸⁾ See the Hebei Province's Three Year Action Plan on Cluster Development in the Steel Industry Chain, Chapter I, Section 3; available at: <https://huanbao.bjx.com.cn/news/20200717/1089773.shtml> (accessed on 5 December 2022).

⁽³⁹⁾ See the Henan Implementation Plan for the Transformation and Upgrade of the Steel Industry during the 14th FYP, Chapter II, Section 3; available at: <https://huanbao.bjx.com.cn/news/20211210/1192881.shtml> (accessed on 5 December 2022).

⁽⁴⁰⁾ Jiangsu Province's Work Plan Steel Sector Transformation and Upgrade and Layout Optimisation 2019-2025; available at: http://www.jiangsu.gov.cn/art/2019/5/5/art_46144_8322422.html (accessed on 5 December 2022).

⁽⁴¹⁾ Shandong Province's 14 FYP on the Steel Industry Development; Summary available at: <http://www.cbmf.org/cbmf/xgxy/gt79/7120947/index.html> (accessed on 5 December 2022).

⁽⁴²⁾ Shanxi Province's 2020 Steel Industry Transformation and Upgrade Action Plan; available at: http://gxt.shanxi.gov.cn/zfxxgk/zfxxgkml/cl/202110/t20211018_2708031.shtml (accessed on 5 December 2022).

⁽⁴³⁾ Liaoning Dalian Municipality's 14 FYP on Developing Manufacturing Industry: "By 2025, the industrial output value of new materials will reach 15 million yuan, and the level of equipment and key materials guarantee ability is obviously improved."; available at: https://www.dl.gov.cn/art/2021/12/20/art_854_1995411.html (accessed on 5 December 2022).

⁽⁴⁴⁾ Zhejiang Province's Action Plan to Foster a High Quality Development of the Steel Industry: "Foster enterprise mergers and reorganisation, accelerate the concentration process, reduce the number of steel smelting enterprises to approximately 10 enterprises"; available at: https://www.dl.gov.cn/art/2021/12/20/art_854_1995411.html (accessed on 5 December 2022).

- (102) For instance, Ansteel's Chairman serves at the same time as the Secretary of the Party Committee. Similarly, the Director and General Manager of Ansteel occupies the position of the Party Committee's Deputy Secretary⁽⁴⁵⁾. In the case of Baowu, the Chairman of Baosteel, which is a subsidiary held at 100 % by Baowu, holds at the same time the position of Secretary of the Party Committee, whereas the Managing Director serves also as the Deputy Secretary of the Party Committee and the Deputy General Manager serves as a Member of the Standing Committee of the Party Committee⁽⁴⁶⁾.
- (103) Moreover, Ansteel's Party Committee issued a report on the study and implementation of the spirit of General Secretary Xi Jinping's "July 1" important speech on 22 July 2022: "We must work hard to implement the spirit of General Secretary Xi Jinping's "July 1" important speech, carefully compare the arrangements and arrangements of the Ansteel Group Party Committee, study and formulate "optional actions", closely contact the actual situation of promoting Ansteel Group's "14th Five-Year" development strategy, and conduct in-depth investigations research, do practical things well, and open new affairs well."⁽⁴⁷⁾ On 2 April 2021, their affiliation to the party was emphasized in a trade union meeting of the Ansteel Group that "trade union organizations at all levels of Ansteel Group should adhere to the leadership of the party, reflect the political responsibility of trade unions, and consciously serve the overall high-quality development of Ansteel Group."⁽⁴⁸⁾
- (104) Furthermore, as reported on Baowu's website: "Baowu fully implements the requirements of the "Opinion on Strengthening the Party's Leadership in the Improvement of Corporate Governance by Central Enterprises", systematically optimizes the major decision-making system, and forms the implementation measures for the "three important and one big" decision-making system, the list of decision-making powers and responsibilities for major matters, and the board of directors."⁽⁴⁹⁾
- (105) Further, policies discriminating in favour of domestic producers or otherwise influencing the market in the sense of Article 2(6a)(b), third indent of the basic Regulation are in place in the sector of the product under review. Even though no policy documents guiding specifically the development of the heavy plates 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 review represents one of its subsectors.
- (106) The steel industry keeps being regarded as a key industry by the GOC⁽⁵⁰⁾. 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⁽⁵¹⁾. Similarly, the 14th Five Years Plan on Developing the Raw Materials Industry, applicable also to the steel industry, lists the sector as the "bedrock of the real economy" and "a key field that shapes China's international competitive edge" and sets a number of objectives and working methods which would drive the development of the steel sector in the time period 2021-2025, such a technological upgrade, improving the structure of the sector (not least by means of further corporate concentrations) or digital transformation⁽⁵²⁾.

⁽⁴⁵⁾ See the group's web, available at: <http://www.ansteel.cn/about/jituangaoguan/> (accessed on 21 November 2022).

⁽⁴⁶⁾ See the company's web, available at: <https://www.baosteel.com/about/manager> (accessed on 21 November 2022).

⁽⁴⁷⁾ See at <http://www.ansteel.cn/news/xinwenzixun/2021-07-23/0a6a300e05b3e89e7da1fccf2b1c8e77.html> (accessed on 21 November 2022).

⁽⁴⁸⁾ See at <http://www.ansteel.cn/news/xinwenzixun/2021-04-06/19759181c95ff4e85e2b378a1369fb17.html> (accessed on 21 November 2022).

⁽⁴⁹⁾ See at the group's web, available at: http://www.baowugroup.com/party_building/overview (accessed on 21 November 2022).

⁽⁵⁰⁾ Report, Part III, Chapter 14, p. 346 ff.

⁽⁵¹⁾ 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 7 September 2022).

⁽⁵²⁾ See in particular Sections I and II of the 14th FYP on Developing the Raw Materials Industry.

- (107) The other important raw material used for the production of heavy plates is iron ore. Iron ore is also mentioned in the 14th FYP on Developing the Raw Materials Industry, in which the State plans to “rationally develop domestic mineral resources. Strengthen the exploration of iron ore [...], implement preferential tax policies, encourage the adoption of advanced technology and equipment to reduce the generation of mining solid waste.”⁽⁵³⁾ In provinces, such as Hebei, the authorities foresee the following for the sector: “new project investment discount subsidy; explore and guide financial institutions to provide low-interest loans for iron and steel enterprises to switch to new industries, and at the same time, the government will provide discount subsidies.”⁽⁵⁴⁾ In sum, the GOC has measures in place to induce operators to comply with the public policy objectives of supporting encouraged industries, including the production of the main raw materials used in the manufacturing of the product under review. Such measures impede market forces from operating freely.
- (108) 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 heavy plates sector referred to above in recital (93) would not affect the manufacturers of the product under review.
- (109) The heavy plates 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 (93). Those distortions affect the sector both directly (when producing the product under review or the main inputs), as well as indirectly (when having access to inputs from companies subject to the same labour system in the PRC)⁽⁵⁵⁾.
- (110) Moreover, no evidence was submitted in the present investigation demonstrating that the sector of the product under review is not affected by the government intervention in the financial system in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, as also referred to above in recital (93). Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.
- (111) Finally, the Commission recalls that in order to produce the product under review, a number of inputs is needed. When the producers of heavy plates 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.
- (112) As a consequence, not only the domestic sales prices of heavy plates are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts I and II of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that in itself was produced in the PRC by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth.
- (113) In its comments on the Note, CISA reiterated the comments it had in reaction to the initiation of the investigation (see recitals (32) to (39)). Furthermore, it added that according to Article 2(6a)(a) of the basic Regulation the assessment concerning the existence of significant distortions should be done for each exporting producer separately. Therefore, the Commission had the obligation to analyse the situation of each Chinese producer and decide whether any of the factors of costs of production and sales are distorted for each of them. CISA claimed that while there was an absence of cooperation from individual Chinese producers in this case, “country-wide” or “industry-wide” findings should not be allowed.

⁽⁵³⁾ See the 14th FYP on Developing the Raw Materials Industry, p. 22.

⁽⁵⁴⁾ See the Hebei Tangshan Municipality Iron and Steel 1+3 Action Plan 2022, Chapter 4, Section 2; available at: <http://www.chinaisa.org.cn/gxportal/xfgl/portal/content.html?articleId=e2bb5519aa49b566863081d57aea9dfdd59e1a4f482bb7acd243e3ae7657c70b&columnId=3683d857cc4577e4cb75f76522b7b82cda039ef70be46ee37f9385ed3198f68a> (accessed at 23 November 2022)

⁽⁵⁵⁾ See Implementing Regulation (EU) 2021/635, recitals 134-135 and Implementing Regulation (EU) 2020/508, recitals 143-144.

- (114) The Commission noted that once it is determined that, due to the existence of significant distortions in the exporting country in accordance with Article 2(6a)(b), it is not appropriate to use domestic prices and costs in the exporting country, the Commission may construct normal value using undistorted prices or benchmarks in an appropriate representative country for each exporting producer according to Article 2(6a)(a). Article 2(6a) of the basic Regulation provides that domestic costs of each producer can be used if they are positively established not to be distorted, on the basis of accurate and appropriate evidence. However, no costs of production and sale of the product under review could be established as undistorted in light of the evidence available on the factors of production of individual exporting producers. Therefore this claim was dismissed.
- (115) In their comments on the final disclosure, CISA once again reiterated its comments submitted in reaction to initiation and in reply to the Note (see recitals (32) to (39)). Specifically, while stating that the Commission had addressed its previous comments, CISA expressed its disappointment that the Commission had dismissed the arguments raised. Consequently, CISA insisted on (i) the Report being of doubtful probative value and failing to meet the standards of impartial and objective evidence, (ii) the various FYPs being only general policy documents without binding legal effects – which is in CISA's view also apparent from the lack of explicit sanctions in case of violation - and the EU having in place similar types of policy documents.
- (116) The arguments brought by CISA have already been addressed above in recital (33) concerning the Report and in recital (39) concerning the FYPs. As to CISA's remark on the EU having in place policy documents similar to the Chinese FYPs, the Commission noted that these are completely irrelevant for the assessment of significant distortions in China pursuant to Article 2(6a) of the basic Regulation. Similarly, the reference to absence of sanctions in the FYPs cannot alter the assessment in recital (39), which on the basis of specific provisions from the relevant FYPs, in combination with the facts discussed in the Report, demonstrates the unambiguous obligation of the Chinese authorities concerned to implement the FYPs in question. Consequently, CISA's arguments cannot alter the Commission's conclusions reached in recitals (32) to (39).
- (117) In sum, the evidence available showed that prices or costs of the product under review, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation, as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis 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.

4.2.2.2. Representative country

4.2.2.2.1. General remarks

- (118) The choice of the representative country was based on the following criteria pursuant to Article 2(6a) of the basic Regulation:
- A level of economic development similar to the PRC. For this purpose, the Commission used countries with a gross national income per capita similar to the PRC on the basis of the database of the World Bank ⁽⁵⁶⁾;
 - Production of the product under review in that country ⁽⁵⁷⁾;

⁽⁵⁶⁾ World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>.

⁽⁵⁷⁾ If there is no production of the product under review in any country with a similar level of development, production of a product in the same general category and/or sector of the product under review may be considered.

- Availability of relevant public data in the representative country.
 - Where there is more than one possible representative country, preference should be given, where appropriate, to the country with an adequate level of social and environmental protection.
- (119) As explained in recital (86), the Commission issued a Note on relevant sources to use for the determination of the normal value. This Note described the facts and evidence underlying the relevant criteria. The Note informed interested parties of the Commission's intention to consider Brazil as the appropriate representative country in the present case if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation were confirmed.
- (120) In line with the criteria listed under Article 2(6a) of the basic Regulation, the Commission identified Brazil as a country with a similar level of economic development as the PRC as it was suggested by the applicant in the request for review. Brazil is classified by the World Bank as 'upper-middle income' country on a gross national income basis. It is thus considered to have a similar level of economic development as the PRC.
- (121) The Commission has found that Brazil is a significant producer of heavy plates (installed capacity of about 3,1 million tonnes per year ⁽⁵⁸⁾). The Commission has also established that Brazil meets all of the criteria set out in article 2(6a) of the basic Regulation and that all relevant public data are readily available and accessible, including import statistics, as well as data on costs of raw materials and such factors of production as natural gas, electricity and labour.
- (122) The main Brazilian producer of heavy plates is Usinas Siderúrgicas de Minas Gerais ('Usiminas'). According to the applicant, Usiminas is a large integrated steel producer, manufacturing steel using the same process as the Chinese producers (i.e. from coal and iron ore, to pig iron through blast furnace reduction, to crude steel through the basic oxygen furnace method ("BOF") and then continuous casting and rolling). The Commission noted that financial statements for Usiminas for the financial years ending 31 December 2020 and 31 December 2021 are available in the Orbis Bureau van Dijk database ('Orbis database'). Gerdau S/A ('Gerdau') is another Brazilian producer of heavy plates. The financial statements of Gerdau for the financial years ending 31 December 2020 and 31 December 2021 are also available in the Orbis database. Therefore, the Commission intends to use the financial data of both Brazilian producers of heavy plates.
- (123) Comments regarding the proposed representative country in the request for review were received from the importer Primex.
- (124) As stated in recital (15), Primex disagreed with the selection of Brazil as a representative country in the request for review. In particular, Primex claimed that (1) the Brazilian market was smaller than the Chinese market, (2) the Brazilian company Usiminas, used by the applicant for the calculation of the SG&A and profit margins, was not appropriate as this company had a dominant market position on the domestic market, (3) the Brazilian market was protected from international import competition by anti-dumping duties against imports of heavy plates from Ukraine, China, South Africa and South Korea and (4) there were minor imports of heavy plates from Brazil into the Union.
- (125) The Commission noted that the fact that a country has a smaller market than the Chinese markets does not disqualify it for being a representative country. The requirement of 'appropriateness' in the basic Regulation refers to the similar level of economic development, while there is no reference to the size of the market as such. It was also noted that, as the applicant mentioned in the request, Brazil is one of the three largest producers of heavy plates in the World Bank group of "upper-middle income" countries, together with Russia and the PRC (which is subject to this proceeding). As explained above, there are two suitable producers of heavy plates in Brazil with reasonable data on SG&A and profits.

⁽⁵⁸⁾ <https://sideraconsult.com/gerdau-initiates-production-of-heavy-plates/>

- (126) Furthermore, the claim that Usiminas has a dominant position on the Brazilian market is not substantiated by evidence showing if and how this circumstance would render this company unsuitable to establish undistorted sources. In any event, as explained above, for the calculation of SG&A and profit margins the Commission used the financial data of both Brazilian producers of heavy plates as the financial data of both companies is readily available.
- (127) Moreover, Primex did not substantiate how the imposition of anti-dumping measures on imports of heavy plates from the PRC, South Africa and South Korea affected the appropriateness of SG&A of Usiminas as undistorted source. As regards the profit, while the existence of the anti-dumping measures in Brazil could indeed have an impact on the profit margin of Usiminas, the result of anti-dumping measures is to restore fair competition including the achievement of a regular profit level for the domestic producers. In any event, the Commission noted that the financial statements of both Usiminas and Gerdau are not limited to heavy plates only, but reflect an aggregation of the steel products manufactured by these companies. The Commission also noted that Primex did not suggest an alternative representative country at this stage.
- (128) Interested parties were invited to comment on the appropriateness of Brazil as a representative country and of Usiminas and Gerdau as producers in the representative country.
- (129) Following the Note on the appropriate representative country, no interested party made any comments regarding the selection of Brazil as a representative country.
- (130) In their comments to the Note, CISA argued that for establishing the unit price of the main factors of production, the Commission should use domestic prices and not the GTA import data as the imports prices are affected by several factors such as the quantity of imports of a particular product, the availability of such product and the distance between the exporting and importing countries.
- (131) The Commission noted that Article 2(6a)(a) of the basic Regulation prescribes the use of corresponding data in an appropriate representative country “provided that the relevant data are readily available.” The Commission does not have at its disposal data on domestic prices of the relevant factors of production in the possible representative countries, and such data are not readily available. By contrast, data on import prices in the possible appropriate representative countries are readily available. If, based on the evidence, the application of Article 2(6a)(a) of the basic Regulation is warranted, the Commission further adjusts these import prices (e.g. by adding the relevant customs duties) to arrive at a reasonable proxy representing an undistorted domestic price in these countries. The Commission also verifies that there be sufficient representative undistorted quantities of these import data so that the resulting final average automatically reduces the impact of the potential abnormal prices at the lower and higher end of the range, thereby reflecting a mix of the different qualities and availabilities of a certain input. Moreover, the Commission excludes data on imports into the representative country from China and non-WTO members⁽⁵⁹⁾ to determine the relevant benchmarks. As long as the import quantities of the factors of production are sufficiently representative and there are no other specific circumstances rendering them unsuitable, there is no objective reason to exclude them. CISA also did not submit any evidence in support of their claim. Therefore, in the absence of evidence to the contrary, the Commission rejected this claim.
- (132) Finally, given the absence of cooperation and having established that Brazil was an appropriate representative country, based on all of the above elements, there was no need to carry out an assessment of the level of social and environmental protection in accordance with the last sentence of Article 2(6a)(a) first indent of the basic Regulation.

⁽⁵⁹⁾ These countries are listed in Annex 1 of 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).

4.2.2.2. Conclusion

- (133) In the absence of cooperation and comments on the Note on the appropriate representative country, as proposed in the expiry review request and given that Brazil met all the criteria laid down in Article 2(6a)(a), first indent of the basic Regulation, the Commission selected Brazil as the appropriate representative country.

4.2.2.3. Sources used to establish undistorted costs

- (134) In the Note the Commission listed the factors of production such as materials, natural gas, energy and labour used in the production of the product under review by the exporting producers. The Commission also stated that, in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it would use GTA to establish the undistorted cost of most of the factors of production, notably the raw materials. In addition, the Commission stated that it would use information from: the International Labour Organization ('ILO') for establishing undistorted costs of labour and public tariffs from electricity suppliers in Brazil.
- (135) Finally, the Commission stated that to establish SG&A costs and profit, it would use the financial data from Brazilian producers of the product under review.
- (136) In the Note, the Commission also informed the interested parties that due to the large number of factors of production of the sampled exporting producers that provided complete information and the negligible weight of some of the raw materials in the total cost of production, these negligible items were grouped under 'consumables'. Further, the Commission informed that it will calculate the percentage of the 'consumables' on the total cost of raw materials and apply this percentage to the recalculated cost of raw materials when using the established undistorted benchmarks in the appropriate representative country.

4.2.2.3.1. Undistorted costs and benchmarks

4.2.2.3.1.1. Factors of production

- (137) Considering all the information based on the request and subsequent information submitted by the applicant and interested parties, the following factors of production and their sources have been identified in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

Table 1

Factors of production of heavy plate

Factor of production	Commodity code in Brazil	Undistorted value (CNY)	Unit of measurement
Raw materials (*)			
Quicklime	252210	0,86	kg
Iron ore	260112110	1,50	kg
Coking Coal	270112	0,92	kg
Coke	27040011 27040012	2,42	kg
Ferro-silico-manganese	720230	10,85	kg
Steel scrap	720449	2,5	kg
Unwrought aluminium alloys	760120	17,93	kg
Fine Limestone	252100	0,19	kg
Ferro-manganese, not more than 2 % carbon	720219	14,87	kg

Labour			
Labour	NA	46,69	hour
Energy			
Electricity	NA	0,79	kWh
Natural Gas	NA	7,46	M3

(*) The value of the benchmarks for raw materials are slightly different than the value of these benchmarks in the Note due to a clerical error (in the Note the value of these benchmarks was wrongly calculated based on the import volume for only the first quarter of 2021 instead of the entire 2021).

Raw materials

- (138) In order to establish the undistorted price of raw materials as delivered at the gate of a representative country producer, the Commission used as a basis the weighted average import price to the representative country as reported in the GTA to which import duties were added. An import price in the representative country was determined as a weighted average of unit prices of imports from all third countries excluding the PRC and countries which are not members of the WTO, listed in Annex 1 of Regulation (EU) 2015/755 ⁽⁶⁰⁾. The Commission decided to exclude imports from the PRC into the representative country as it concluded in section 4.2.2.1 that it is not appropriate to use domestic prices and costs in the PRC due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected export prices. After excluding imports into the representative country from the PRC, and from countries which are not members of the WTO, the volume of imports from other third countries remained representative.
- (139) For a number of factors of production the actual costs incurred by the applicant represented a negligible share of total raw material costs in the review 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 all other raw materials. In order to establish an undistorted value of all other raw materials, and given the absence of cooperation from the exporting producers, the Commission used facts available in accordance with Article 18 of the basic Regulation. Therefore, based on the data provided by the applicant, the Commission established the ratio of all other raw materials to the total raw material costs, at 7,5 %. This percentage was then applied to the undistorted value of the raw materials to obtain the undistorted value of other raw materials.
- (140) Normally, domestic transport prices should also be added to these import prices. However, considering the nature of this expiry review investigation, which is focused on finding whether dumping reoccur, should the measures be allowed to lapse, rather than finding its exact magnitude, the Commission decided that adjustments for domestic transport were unnecessary. Such adjustments would only result in increasing the normal value and hence the dumping margin.

Labour

- (141) The Commission used ILO statistics to determine the wages in Brazil ⁽⁶¹⁾. These provide information on monthly wages of employees in the manufacturing sector and average weekly hours worked in Brazil for the investigation period (year 2021).

⁽⁶⁰⁾ Regulation (EU) 2015/755. Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value.

⁽⁶¹⁾ <https://www.ilo.org/ilostat>

Electricity

- (142) For electricity, the Commission used the readily available prices from Cemig Distribuição S.A, one of major electricity suppliers in Brazil ⁽⁶²⁾. This source allows to determine the price of average industrial tariff for the investigation period (year 2021).

Natural gas

- (143) For natural gas, the Commission used the price of gas in Brazil for the review investigation period as published by Companhia de Gás de Minas Gerais (GASMIG) ⁽⁶³⁾ that enables to determine the price of natural gas supplied to industrial users.
- (144) In their comments to the Note, CISA stated that Brazil was used as a representative country in other two investigation such as AD683 - Electrolytic Chromium Coated Steel products ⁽⁶⁴⁾ ('ECCS') and R728 - Certain grain-oriented flat-rolled products of silicon-electrical steel ⁽⁶⁵⁾. CISA stated that while the periods of investigation in each proceeding was not exactly the same, since the two above-mentioned proceedings are recent, the Commission should have extracted data from similar sources in relation to energy and costs, and as a result, found similar unit cost for each factor. CISA argued that in the current investigation the benchmark for the natural gas was established based on the price of gas in Brazil published by GASMIG and it was calculated at 7.46 CNY/M3. In the ECCS investigation, the benchmark for gas was established based on the statistics from the Brazilian Ministry of Energy and it was calculated at 2.257 CNY/M3. In the GOES investigation, the benchmark for gas was established based on the prices reported by GASMIG and it was calculated at 3.42 to 3.72 CNY/M3. CISA stated that, despite the fact that the investigation periods of ECCS and GOES investigations are very close to the investigation period of the current investigation, the difference in prices between the current investigation and the ECCS and GOES investigation are more than double and therefore it exceeded a reasonable range. CISA requests the Commission to compare the prices from those different sources and therefore determine a reasonable price.
- (145) Furthermore, CISA made a similar comment for the labour cost. CISA highlighted that in the current investigation the benchmark for labour was established based on the data from the ILO Statistics and Sustainability Report published by Usiminas and it was calculated at 46.69 CNY/hour. In the ECCS investigation, used only the statistics from ILO and calculated at average labour cost of 27.112 CNY/hour. CISA argued that the labour cost in Brazil could not have increased that much within a short period of time and asked the Commission to use in the current investigation the same methodology as in the ECCS investigation for establishing the benchmark for labour.
- (146) The Commission noted that the investigation period of the current investigation is different than in the two investigations mentioned by CISA. As stated in recital (8), the investigation period on the current investigation is from 1 January 2021 to 31 December 2021, while the investigation period of the ECCS investigation was from 1 July 2020 to 30 June 2021 and for the GOES investigation was from 1 July 2019 to 30 June 2020. Therefore, the value of the benchmarks could be different as it relates to different periods. Furthermore, CISA did not specify whether any of the methodologies used by the Commission to calculate the benchmarks were wrong. CISA seemed to focus only on the value of the benchmark. CISA did not specify what a reasonable value of the benchmark was. CISA seemed to imply that a lower benchmark would be a reasonable benchmark. The Commission also noted that while for gas CISA referred to both ECCS and GOES investigations, for labour CISA referred only to the ECCS investigation. It is noted that in the GOES investigation the benchmark for labour was calculated at 84.59 CNY/hour, double than in the current investigation. Furthermore, the Commission noted that CISA does not comment on the value of the benchmark for electricity in relation to the ECCS and GOES investigations. In the current investigation, the benchmark for electricity was significantly lower as compared to the other two investigation. In the current investigation, the benchmark for electricity was calculated at 0,79 kWh while in the ECCS investigation to 5,034 kWh and in the GOES investigation to 8,251 kWh.

⁽⁶²⁾ <https://www.cemig.com.br/>

⁽⁶³⁾ <http://www.gasmig.com.br>

⁽⁶⁴⁾ Commission Implementing Regulation (EU) 2022/802 of 20 May 2022 imposing a provisional anti-dumping duty of electrolytic chromium coated steel products originating in the People's Republic of China and Brazil (OJ L 143, 23.5.2022, p. 11).

⁽⁶⁵⁾ Implementing Regulation (EU) 2022/58.

(147) In each investigation the Commission calculates the benchmarks based on the information readily available as well as the information specific to the investigation and the Chinese exporting producers. It is recalled that in the current investigation, the Chinese exporting producers did not cooperate, while in the ECCS and GOES investigations the Chinese exporting producers cooperated. Whether in one investigation the value of a benchmark is lower than in another investigation, it is not relevant. Therefore, the claim was rejected.

4.2.2.3.1.2. Manufacturing overhead costs, SG&A, profits and depreciation

(148) 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.

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

(150) For establishing an undistorted and reasonable amount for SG&A and profit, the Commission relied on the most recent available financial data of the companies in Brazil that had been identified in the Note as active and profitable producers of the product under review. Financial data for the following companies as extracted from Orbis Bureau van Dijk was used for the financial year 2021 and 2020: Usiminas and Gerdau.

(151) Following the Note, CISA argued that both Usiminas and Gerdau have recorded exceptionally high revenues and profits in 2020 as compared to 2021. In view of this, CISA asked the Commission not to use the financial data from 2021 but an average of the financial data for 2020 and 2021 to reasonably reflect a normal financial situation of the two Brazilian producers.

(152) The Commission found this claim reasonable. In fact both Usiminas and Gerdau have registered very high profits in 2021. Therefore, the Commission considered that would be more reasonable to use the financial data of both Brazilian producers for 2020 instead of 2021 which seemed to be an exceptional year for both companies.

(153) In its comments following final disclosure, CISA claimed that the SG&A and profit margins used by the Commission were still high. It claimed that in an industry like iron and steel, it was very rare, if not impossible, to achieve a double-digit profit. CISA claimed that the Commission should not use the financial information from Orbis for the two Brazilian companies which did not cover only the product concerned, but should rely instead on the findings of the expiry review investigation published by the Ministry of Economic of Brazil ⁽⁶⁶⁾ concerning imports of heavy plates originating in South Africa, China, South Korea and Ukraine. CISA asked the Commission to take into account the findings of this investigation when adjusting the SG&A and profit margins.

(154) The Commission noted that in its comments to the First Note CISA asked the Commission not to use the financial data from 2021 but an average of the financial data for 2020 and 2021 to reasonably reflect a normal financial situation of the two Brazilian producers as stated in recital (151). The Commission accepted this claim and, to remain even more conservative, used the SG&A and profit margins only for 2020, which were lower than the average SG&A and profit margins for 2020 and 2021 that CISA's suggested. As concerns the investigation mentioned by CISA, the Commission noted that this investigation was completed in October 2019 and it was based on data covering 2013 and 2017, while the investigation period of the current investigation is 2021. Furthermore, CISA did not specify how the Commission should adjust the SG&A and profit margins based on the findings of the Brazilian investigation. Moreover, Article 2(6a)(a) of the basic Regulation requires that the amounts for SG&A and for profit used in the construction of the normal value are undistorted and reasonable. CISA failed to demonstrate that these values were either distorted or unreasonable. Therefore, the claim was rejected.

⁽⁶⁶⁾ <https://www.in.gov.br/web/dou/-/portaria-n-4.434-de-1-de-outubro-de-2019-219471875>

4.2.2.3.2. Calculation of the normal value

- (155) On the basis of the above, the Commission constructed the normal value on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (156) First, the Commission established the undistorted manufacturing costs. In the absence of cooperation by the exporting producers, the Commission relied on the information provided by the applicant in the review request on the usage of each factor (materials and labour) for the production of the product under review.
- (157) Once the undistorted manufacturing cost was established, the Commission added the manufacturing overheads, SG&A and profit as noted in recitals (149) to (152). Manufacturing overheads were determined based on data provided by the applicant. SG&A and profit were determined based on the financial statements of Usiminas and Gerdau for 2020 as reported in the companies' financial statements. The Commission added the following items to the undistorted costs of manufacturing:
- Manufacturing overheads, which, on average, accounted for 8,30 % of the direct costs of manufacturing,
 - SG&A and other costs, which, on average, accounted for 33,51 % of the Costs of Goods Sold ('COGS') of Usiminas and Gerdau, and
 - Profits, which, on average, amounted to 14,44 % of the COGS as achieved by Usiminas and Gerdau
- (158) 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.

4.2.3. Export price

- (159) In the absence of cooperation by exporting producers from the PRC, the export price was determined based on FOB GTA data for exports from China to third countries, adjusted to ex-works.
- (160) In this regard the Commission used the export statistics from the GTA of the following Chinese commodity codes: 7208 51 10, 7208 51 20, 7208 51 90, 7208 52 00, 7208 90 00, 7225 40 91, 7225 40 99 and 7225 99 90. The Commission notes that these commodity codes do not cover only the product concerned but also include also other types of products. However, given the non-cooperation of producers from China, the information in the file does not allow the identification of the volume of the product concerned in the total volume of exports of these Chinese commodity codes. The average export prices range between EUR 619 per tonne and EUR 1 163 per tonne depending on the commodity code. The average export price for all eight Chinese commodity codes was EUR 749 per tonne. The biggest volume of exports to third countries were made via the Chinese commodity code 7225 40 99 which has the lowest export price EUR 619 per tonne out of the eight Chinese commodity codes.
- (161) The FOB GTA data was adjusted to ex works level. Thus the FOB price was reduced by the domestic transport cost based on information provided by the applicant in the request for review.

4.2.4. Comparison

- (162) The Commission compared the normal value established in accordance with Article 2(6a)(a) of the basic Regulation and the Chinese export price to third countries on an ex-works basis as established above.
- (163) On this basis, the price differences between the normal value and the export prices to third countries established as a percentage of the CIF frontier price, range between 9 % and 97 %, depending on the Chinese commodity code. On average, the price difference found as a percentage of the CIF frontier price was 65 %.
- (164) This suggests that if the measures were to expire, and the prices at which the Chinese exporting producers would export the product concerned to the Union are in line with prices to other third countries observed during the review, the dumping margins would likely be significant, similar to the levels found in the original investigation.

- (165) In addition, as indicated in recitals (13) and (27), CISA and Primex claimed that in order to curb exports and redirect Chinese steel production to the Chinese domestic industry, the Chinese Ministry of Finance announced that as of 1 August 2021, certain steel products, including heavy plate, were no longer eligible for VAT export refund ⁽⁶⁷⁾. CISA argued that the GOC's intention behind this change in policy was to decrease exports and redirect Chinese production to the domestic industry. CISA argued that, as a result of this change in policy, a significant decrease of exports of heavy plate from China can be expected in the immediate future, while Primex argued that there would be a moderate increase in imports from China.
- (166) While indeed the Chinese exporting producers lost this export incentive as of 2021, in view of: the (1) decrease in demand on the Chinese market as stated in recital (69); (2) the existence of anti-dumping measures in several other major markets as explained in recital (169); and (3) significant spare capacity as stated in recitals (66) and (69), the loss of this incentive would not preclude the Chinese producers from exporting to the Union market heavy plates in high volumes at dumped prices in case the measures are terminated in order to use their spare capacity. Furthermore, CISA and Primex did not quantify the likely impact the removal of the VAT refund may have on the export price. They also have conflicting views on the impact on import volumes if measures were allowed to lapse. The Commission therefore, rejected these arguments.

4.3. Relation between export prices to third countries and the price level in the Union

- (167) The Commission examined the price levels which the Union producers would be able to attain on the Union market as compared to the Chinese exporting producers' price levels to other third country markets.
- (168) In the absence of cooperation from the Chinese producers, the Commission used GTA. The Commission found that during the review investigation period the average sales price of the Union industry on the free market (749 EUR/tonne) during the review investigation period as stated in Table 9 was the same as the average FOB price to third countries (EUR 749 per tonne) but higher than the average price of the Chinese commodity code with the biggest volume of exports. Therefore, Chinese exporting producers would find it advantageous to shift exports from third countries to the Union, should the measures lapse, thereby taking the opportunity to expand their exports to the Union market.

4.4. Possible absorption capacity of third country markets

- (169) According to information provided by the applicant in the request for review, internet research and examination of the WTO database, the Commission found that anti-dumping measures are imposed on heavy plate imports from the PRC to Brazil, Canada, Indonesia, Thailand, the United States of America ⁽⁶⁸⁾ and the United Kingdom ⁽⁶⁹⁾. Given the Chinese exporters' difficulties to sell to all of these markets, if the current measures were allowed to expire, the Union market would become very attractive to Chinese exporters seeking to export their excess production and use spare capacity.

4.5. Conclusion

- (170) In view of the assessment made in recitals (66) to (169), in particular the significant spare capacity of Chinese exporters, the attractiveness of the Union market and the low absorption capacity of third country markets, the Commission concluded that dumped imports from the PRC are likely to recur if the measures in force were allowed to lapse.
- (171) Primex claimed that the level of imports in the Union in case the measures were terminated will not depend solely on the production capacity in China but on many factors of which the most important one was the consumer demand in the Union. Other factors were price and cost relations as well as the intensity of competition on the world market, the existence of trade barriers on the world market and the development of exchange rates. Primex also stated that how these factors will develop in the future cannot be predicted.

⁽⁶⁷⁾ See http://www.gov.cn/zhengce/zhengceku/2021-04/28/content_5603588.htm and http://www.gov.cn/zhengce/zhengceku/2021-07/29/content_5628266.htm, both in Chinese language only.

⁽⁶⁸⁾ <http://i-tip.wto.org/goods/Forms/MemberView.aspx?mode=modify&action=search>

⁽⁶⁹⁾ <https://www.trade-remedies.service.gov.uk/public/case/TD0014/submission/882d267b-8cbc-48bd-bceb-059a615a0779/>

(172) As stated in recital (170) the Commission's conclusion that dumped imports from the PRC are likely to recur in high volumes if the measures in force were allowed to lapse is not solely based on the spare capacity in China, but also on the attractiveness of the Union market and the low absorption capacity of third country markets. Primex did not substantiate its claim regarding the other factors and therefore it was rejected.

5. INJURY

5.1. Definition of the Union industry and Union production

(173) The like product was manufactured by more than 25 producers in the Union during the period considered. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

(174) The total Union production during the review investigation period was established at around 9,4 million tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry, such as the request for the expiry review, verified questionnaire replies of the sampled Union producers and the verified submission of EUROFER.

(175) As indicated in recital (41) above, three Union producers were selected in the sample. They represent more than 25 % of the total Union production of the like product and more than 31 % of the estimated total Union sales volume of the like product during the review investigation period.

5.2. Union consumption

(176) The Commission established the Union consumption on the basis of Eurostat import statistics and verified sales data from the Union industry.

(177) The Union consumption of the product under review developed as follows:

Table 2

Union consumption (tonnes)

	2018	2019	2020	Review investigation period (2021)
Total Union consumption	9 311 229	8 437 312	7 450 606	8 380 262
<i>Index</i>	100	91	80	90
Captive market	866 715	530 957	492 545	665 731
<i>Index</i>	100	61	57	77
Free market	8 444 514	7 906 355	6 958 061	7 714 531
<i>Index</i>	100	94	82	91

Source: Eurostat and verified data provided by EUROFER.

(178) Total Union consumption first declined by 9 % in 2019 when the GDP growth of the Union slowed down significantly, hitting sectors with strong cyclical characteristics, such as the steel industry. Then, the decline was exacerbated by the economic downturn caused by the COVID-19 pandemic, consumption decreased further in 2020. During the review investigation period, consumption finally recovered but was 10 % below the level of 2018.

(179) The Captive market includes both captive sales and captive use. Overall, the heavy plates destined to the captive market declined by 23 % during the period considered. Captive market accounted only for a marginal part of the heavy plate business, representing less than 10 % of total consumption throughout the period. The share of these sales in total consumption was even lower in 2019 and in 2020 in the context of the slowdown of the economy and the COVID-19 pandemic, it was around 6 % of consumption. This was mainly due to a lower demand by related companies active in the pipe sector.

(180) Union consumption in the free market followed a trend similar to that of total consumption. It steadily decreased by 18 % up to 2020 for the reasons mentioned in recital (178) and started to recover in the review investigation period. However, it did not reach the level of 2018. The investigation showed that certain sale segments, such as the automotive and wind turbines, were growing, in particular during the review investigation period. By contrast, some of the most important sales segments, such as the steel tube industry and shipbuilding, were severely affected by the economic slowdown and did not recover in the review investigation period. This led to a 9 % decrease of total Union consumption in the free market during the period considered.

5.3. Imports from China

5.3.1. Volume and market share of the imports from China

(181) The Commission established the volume of imports from China on the basis of Eurostat import statistics. The market share of the imports was then established by comparing import volumes destined to the free market with the total Union consumption in that market as shown in Table 2 of recital (177) above.

(182) Imports into the Union from China developed as follows:

Table 3

Import volume and market share

	2018	2019	2020	Review investigation period (2021)
Volume of imports from China (tonnes)	13 092	9 515	2 657	1 778
<i>Index</i>	100	73	20	14
Market share (%)	0,16	0,12	0,04	0,02
<i>Index</i>	100	78	25	15

Source: Eurostat.

(183) The import volume from China was as high as 1,4 million tonnes and the market share over 14 % in the original investigation.

(184) Chinese imports to the Union became negligible during the period considered. Their volume was already at a very low level in 2018 and dropped by 86 % over the period considered.

(185) The market share of Chinese imports remained negligible during the period considered, namely below 1 % of Union consumption.

5.3.2. Prices of the imports from China

(186) In the absence of cooperation from Chinese exporting producers, the Commission established the average import price from China on the basis of Eurostat import statistics.

(187) The average price of imports into the Union from China developed as follows:

Table 4

Import price (EUR/tonne)

	2018	2019	2020	Review investigation period (2021)
Average import price from China	459	728	651	925
<i>Index</i>	100	159	142	201

Source: Eurostat.

- (188) The average import prices from China fluctuated significantly in the period considered. As shown in Table 3 in recital (182) above, the import volume remained negligible during the period considered. Hence, the Commission considered that no meaningful or relevant conclusions could be drawn on such a limited volume of imports.
- (189) In addition, throughout the period considered, it is noteworthy that whilst Union producers were selling their heavy plates based on medium term contracts, basically one / two-year contracts, with prices fixed for the contractual period, information available suggests that Chinese exporters were selling their heavy plates on spot basis, namely based on very short term contracts. This has allowed these exporters to adapt their prices relatively quickly to market conditions and rapidly follow the price trend. Nevertheless, as mentioned in recital (185), the market share of Chinese products systematically remained below the de minimis level during the period considered, hence, no meaningful conclusions can be drawn on the pricing for such limited quantities.

5.4. Imports from third countries other than China

- (190) The imports of heavy plates from third countries other than China were mainly from Ukraine, India, the Russian Federation and the Republic of Korea.
- (191) The (aggregated) volume of imports into the Union as well as the share in the free market and price trends for imports of heavy plates from other third countries developed as follows:

Table 5

Imports from third countries and market shares

Country		2018	2019	2020	Review investigation period (2021)
Ukraine	Volume (tonnes)	342 512	307 463	381 846	457 959
	<i>Index</i>	100	90	111	134
	Market share (%)	4,1	3,9	5,5	5,9
	<i>Index</i>	100	96	135	146
	Average price (EUR/tonne)	582	582	494	758
	<i>Index</i>	100	100	85	130

India	Volume (tonnes)	294 240	113 830	145 573	182 440
	<i>Index</i>	100	39	49	62
	Market share (%)	3,5	1,4	2,1	2,4
	<i>Index</i>	100	41	60	68
	Average price (EUR/tonne)	576	579	470	675
	<i>Index</i>	100	100	82	117
The Russian Federation	Volume (tonnes)	174 828	169 196	162 334	179 341
	<i>Index</i>	100	97	93	103
	Market share (%)	2,1	2,1	2,3	2,3
	<i>Index</i>	100	103	113	112
	Average price (EUR/tonne)	538	519	433	661
	<i>Index</i>	100	96	80	123
The Republic of Korea	Volume (tonnes)	200 522	220 171	214 634	127 688
	<i>Index</i>	100	110	107	64
	Market share (%)	2,4	2,8	3,1	1,7
	<i>Index</i>	100	117	130	70
	Average price (EUR/tonne)	592	578	529	726
	<i>Index</i>	100	98	89	123
Total of all third countries except China	Volume (tonnes)	1 226 693	1 001 795	1 069 141	1 190 755
	<i>Index</i>	100	82	87	97
	Market share (%)	14,5	12,7	15,4	15,4
	<i>Index</i>	100	87	106	106
	Average price (EUR/tonne)	579	581	497	731
	<i>Index</i>	100	100	86	126

Source: Eurostat.

- (192) Total imports of the product under review from third countries other than China decreased by 3 % over the period considered.
- (193) Given that the volume of imports from other third countries overall decreased to a lesser extent than the Union consumption over the period considered as described in recital (178), the market share of imports from other third countries increased by 6 % (or 0,9 percentage point) over the period considered.

- (194) In order to calculate imports of heavy plates made of non-alloy steel, the applicant used Eurostat data covering the full CN codes which correspond to these products, rather than only the respective TARIC codes. This is because, in the applicant's view, all products imported under these CN codes should be product under review. As regards in particular tool steel, which is excluded from the product scope, the applicant argued that according to the definition in the Combined Nomenclature ⁽⁷⁰⁾, tool steel can only be made of alloy steel, and therefore, there can be no tool steel products falling under CN codes corresponding to non-alloy steel. In any event, the applicant claimed that the complaint in the original investigation excluded only tool steel made of alloy steel. The applicant considered that the Commission should not have established 10-digit TARIC codes for the main non-alloy heavy plate CN codes 7208 51 20, 7208 51 91, 7208 51 98 and 7208 52 91 and that a calculation using these TARIC codes would significantly underestimate imports due to misclassification. In turn, such underestimation would lead to errors in the calculation of other injury factors, such as consumption and market share, and possibly to a distorted picture of the situation of the Union industry in the injury analysis.
- (195) The Commission found that tool steel products can be made also of non-alloy steel (i.e. carbon steel) ⁽⁷¹⁾ and that at least some quantities of such products have been imported into the Union during the period considered. The existence of tool steel made of non-alloy steel does not contradict the definition of tool steel in the Combined Nomenclature, as that definition is provided only for the purposes of specific subheadings (CN codes), which correspond to alloy steel products. Moreover, the applicant has not provided any evidence of misclassification of imports of the product under review. In view of the above, the Commission confirmed that the basis, which is relevant to calculate import data, should be the respective TARIC codes, where such codes had been created. Finally, the Commission noted that even if there was evidence that a higher estimate resulting from the use of full CN codes would be more accurate, the conclusions on injury would not change.

5.5. Economic situation of the Union industry

5.5.1. General remarks

- (196) The assessment of the economic situation of the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (197) As mentioned in recital (41), sampling was used for the assessment of the economic situation of the Union industry.
- (198) 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 request for review and the verified submission from the applicant, namely the data related to all Union producers. The Commission established the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers, namely the data related to the sampled Union producers. Both sets of data were found to be representative for establishing the economic situation of the Union industry.
- (199) 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.
- (200) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

⁽⁷⁰⁾ 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).

⁽⁷¹⁾ See for instance various grades of non-alloy tool steel described in Annex C of standard EN ISO 4957

5.5.2. Macroeconomic indicators

5.5.2.1. Production, production capacity and capacity utilisation

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

Table 6 A

Production, production capacity and capacity utilisation

	2018	2019	2020	Review investigation period (2021)
Production volume (tonnes)	10 261 491	9 382 766	8 684 523	9 441 069
<i>Index</i>	100	91	85	92
Production capacity (tonnes)	14 172 600	14 479 668	14 645 251	13 445 956
<i>Index</i>	100	102	103	95
Capacity utilisation (%)	72	65	59	70
<i>Index</i>	100	89	82	97

Source: Request for review and verified data provided by EUROFER.

- (202) The investigation showed that the trends in Union industry production closely followed the trends in consumption in the free market. Overall, production declined by 8 % during the period considered. The situation was particularly difficult in 2020 when production was reduced by 15 % because of a low demand caused by the surge of the Covid-19 pandemic that year. Production recovered in the review investigation period, in line with the increases of consumption in the free market and captive use, but did not reach its 2018 level.
- (203) The production capacity dedicated to heavy plates was maintained and even slightly increased in the period 2018 to 2020. However, the investigation showed that the Union industry had to shut down some of its capacity or transferred it to other products in the review investigation period. Overall capacity was reduced by 5 % or by 727 thousand tonnes during the period considered.
- (204) Given the reduction in production capacity by 5 %, the utilization rate at the beginning and at the end of the review investigation period was maintained at around 70 %. However, the utilisation rate was particularly low in 2019 and 2020 when it was as low as 59 %. This low rate was caused by the economic downturn resulting from the Covid-19 crisis which led to a significant reduction in consumption in the free market and in the production intended for captive use and captive sales.

Table 6 B

Union production intended for captive use and captive sales

	2018	2019	2020	Review investigation period (2021)
Production volume (tonnes)	866 715	530 957	492 545	665 731
<i>Index</i>	100	61	57	77

Source: Verified data provided by EUROFER.

- (205) As mentioned under point 5.2 'Union consumption', the consumption for heavy plates declined over the period considered. The effect of the downturn was particularly marked for the production intended for captive use and the captive sales, which dropped by 39 % in 2019 and by a further 4 percentage points in 2020. The recovery observed in the review investigation period was not sufficient to regain the production volume lost in the previous years.

5.5.2.2. Sales volume and market share

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

Table 7

Sales volume and market share

	2018	2019	2020	Review investigation period (2021)
Total sales volume on the Union market (tonnes)	7 977 991	7 317 413	6 233 894	7 006 890
<i>Index</i>	100	92	78	88
Market share (%)	85,7	86,7	83,7	83,6
<i>Index</i>	100	101	98	98
Captive sales	773 262	422 368	347 631	484 892
<i>Index</i>	100	55	45	63
Market share of captive sales (%)	8,3	5,0	4,7	5,8
<i>Index</i>	100	60	56	70
Free market sales	7 204 729	6 895 045	5 886 263	6 521 998
<i>Index</i>	100	96	82	91
Market share of free market sales (%)	77,4	81,7	79,0	77,8
<i>Index</i>	100	106	102	101

Source: Verified data provided by EUROFER.

- (207) The development of the total sales volume of the Union industry by and large followed the trend in consumption during the period considered. It decreased by 8 % in 2019 and even further in 2020, the year when the Covid-19 pandemic occurred. Even if demand recovered in the review investigation period, it did not allow the industry to reach the sales level of 2018. Overall, almost one million tonnes of sales were lost in the period considered.
- (208) The investigation showed that the captive sales were more severely affected than the sales in the free market. The decrease between 2018 and the end of 2020 was as high as 55 % (or around 425 000 tonnes). The recovery in captive sales during the review investigation period was relatively weak and these sales were still 37 % below the 2018 level.
- (209) The sales in the free market were also hit by the general downturn in the market and trends in sales also followed the trends in consumption in that market. The apparent recovery in the review investigation period was weak and not sufficient to recover the sales volume lost in the previous years.

- (210) As the trends in sales volume closely followed the trends in consumption in the free market, the Union Industry did not suffer a loss in market share in that market. This cannot hide the fact that the loss in sales volume in the free market (- 683 000 tonnes) was considerable during the period considered.

5.5.2.3. Growth

- (211) As mentioned in recital (178), the period considered covered the year 2019, when an economic growth slowdown occurred, and 2020 which exacerbated the downturn due to the Covid-19 pandemic. Hence, the market and other volume indicators did not grow in that period even if there were encouraging signs of recovery in the market in the review investigation period.

5.5.2.4. Employment and productivity

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

Table 8

Employment and productivity

	2018	2019	2020	Review investigation period (2021)
Number of employees	18 722	18 979	18 795	16 032
<i>Index</i>	100	101	100	86
Productivity (tonnes/FTE)	548	494	462	589
<i>Index</i>	100	90	84	107

Source: Verified data provided by EUROFER.

- (213) The Union industry kept its employment until the end of 2020 but had to lay-off 14 % of its workforce in the review investigation period due to the severity of the downturn in the market. This included the workforce lost by the closing down of one of the Union's producers' (ThyssenKrupp) heavy plate operations in 2021.
- (214) The Productivity of the Union industry's employees was very low in 2019 and 2020 because production decreased significantly (up to -15 %) and employment was maintained these years. The recovery in productivity in the review investigation period was due to a lower number of employees and the recovery in production (+7 %) compared to 2020.

5.5.2.5. Recovery from past dumping

- (215) Given that the volume of imports from China was negligible during the review investigation period, the Commission did not carry out a dumping calculation for that period. However, it is recalled that such calculations were done in the context of the likelihood of recurrence of dumping in chapter 4 above.
- (216) In the context of recovery from past dumping, it is noteworthy that the current investigation is the first review of the original measures, the level of which ranges from 65,1 % to 73,7 %. In view of the 14,4 % market share then held by the Chinese exporters, the negative impact past dumping had on the Union market and on the Union industry in the long term cannot be underestimated, in particular in a context of economic downturn.
- (217) Given the unfavourable economic situation during the period considered, the Union industry did not recover sufficiently from the effects of past dumping.

5.5.3. Microeconomic indicators

5.5.3.1. Prices and factors affecting prices

- (218) The weighted average unit sales prices to unrelated customers in the Union and the unit cost of production of the sampled Union producers developed over the period considered as follows:

Table 9

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

	2018	2019	2020	Review investigation period (2021)
Unit sales price in the Union on the total market	680	713	674	762
<i>Index</i>	100	105	99	112
Unit sales price on the captive market	[613 - 742]	[744 - 900]	[757 - 917]	[848 - 1 027]
<i>Index</i>	100	121	124	138
Unit sales price on the free market	687	708	671	749
<i>Index</i>	100	103	98	109
Unit cost of production	746	794	776	839
<i>Index</i>	100	106	104	112

Source: Questionnaire replies from the sampled Union producers. Data on the unit sales price on the captive market were ranged for reasons of confidentiality.

- (219) The Union industry could increase the sales price in the free market by 9 % over the period considered. However, the price increase was not sufficient to cover for the parallel cost increase in the period. As explained in recital (189) the Union industry sells on the basis of yearly or two-year contracts where prices are fixed during the contractual term. Besides, there is the effect of the Covid-19 pandemic and its impact on the market that could not be foreseen.
- (220) The investigation showed that prices could be adapted, to a certain extent, in line with the evolution of costs. The unit sales price in the free market was, nevertheless, 12 % below the unit cost of production during the review investigation period.

5.5.3.2. Labour costs

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

Table 10

Average labour costs per employee

	2018	2019	2020	Review investigation period (2021)
Average labour costs per employee (EUR/FTE)	73 799	75 871	69 631	77 009
<i>Index</i>	100	103	94	104

Source: Questionnaire replies from the sampled Union producers.

(222) During the period considered average labour costs slightly fluctuated and showed an overall increase by 4 %.

5.5.3.3. Inventories

(223) The stock levels of the sampled Union producers developed over the period considered as follows:

Table 11

Inventories

	2018	2019	2020	Review investigation period (2021)
Closing stocks (tonnes)	288 326	234 287	236 113	294 404
<i>Index</i>	100	81	82	102
Closing stocks as a percentage of production	11,8	10,0	11,7	12,6
<i>Index</i>	100	85	99	107

Source: Questionnaire replies from the sampled Union producers.

(224) Table 11 shows that the stocks of heavy plates dropped by almost 20 % from 2018 to 2019, remained stable in 2020, and increased back to 2018 levels in 2021, at around 12 % of total production. Stocks are not considered an important injury indicator for the industry since the like product is normally produced by the Union industry based on specific orders of the users.

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

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

Table 12

Profitability, cash flow, investments and return on investments

	2018	2019	2020	Review investigation period (2021)
Profitability of sales in the Union to unrelated customers (% of sales turnover)	- 5,7	- 7,6	- 11,0	- 3,4
<i>Index</i>	- 100	- 134	- 194	- 59
Cash flow (EUR)	- 49 630 826	- 39 006 682	- 117 031 312	- 66 865 341
<i>Index</i>	- 100	- 79	- 236	- 135
Investments (EUR)	96 993 957	107 862 764	81 821 894	41 298 553
<i>Index</i>	100	111	84	43
Return on investments (%)	- 10,5	- 15,9	- 20,0	- 5,4
<i>Index</i>	- 100	- 151	- 190	- 51

Source: Questionnaire replies from the sampled Union producers.

- (226) 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, namely the sales in the free market, as a percentage of the turnover of those sales. As expected, profitability reached its lowest level, namely -11 %, in 2020 in the core of the pandemic. It recovered in the review investigation period but remained negative. This result could be achieved because prices were increased by up to 9 %, compared to 2018 and certain costs, such as total labour costs, could be reduced in that period.
- (227) The net cash flow is the ability of the Union producers to self-finance their activities. Cash flow remained negative during the period considered and significantly deteriorated in particular in 2020. It slightly recovered in the review investigation period but remained largely negative.
- (228) The economic downturn, the increases in most costs of production and the losses incurred by the Union industry during the period considered had severe consequences on the level of investments, which had to be consistently and drastically reduced as from 2020. The level of investments in the review investigation period was less than half the level of 2018.
- (229) The return on investments is the profit in percentage of the net book value of investments. As the other performance indicators, it remained negative during the period considered. It is not surprising to note that its lowest level (-20 %) was reached in 2020. The recovery of the market, the reduction of the loss but also a lower level of investments in the review investigation period led to a slightly improved result, albeit negative.

5.6. Conclusion on injury

- (230) The investigation showed that imports from China decreased and remained below the *de minimis* level during the period considered. Hence, no meaningful conclusions could be drawn based on the volume or the price of such limited imported quantities.
- (231) The volume imported from other third countries also decreased in the period considered in a context of decreasing demand. The average import price of heavy plates imported from all other third countries was around 2,5 % below the average Union industry price level. Their market share remained by and large stable in that period.
- (232) The period considered includes the year 2020 which was the trigger for the Covid-19 pandemic which led to a significant general downturn in economies worldwide. In this context, the investigation showed that in a shrinking market all injury indicators of the Union industry developed negatively and / or remained negative during the period considered. Production was reduced and sales on the free market declined by 9 %, the Union Industry had to cut 14 % of its employment. Sales prices could be increased but not sufficiently to cover for the increases in costs of production, hence profitability, cash flow, investments and return on investments remained consistently negative in that period.
- (233) On the basis of the above, the Commission concluded that the Union industry is in a very vulnerable state and suffered material injury within the meaning of Article 3(5) of the basic Regulation during the review investigation period. At the same time, the Commission concluded that given the negligible volume of imports of the product concerned from China, the material injury suffered by the Union industry during the review investigation period could not have been caused by imports from China.
- (234) Primex claimed that the drop in demand was the cause of the Union industry's fragile state and that there was no evidence of a causal link between imports from China and the state of the Union producers. Hence, Chinese exporters could not be considered responsible for any injury suffered by the Union industry on the Union market.
- (235) The drop in consumption likely played a role in the economic situation of the Union industry during the period considered. It is however recalled that other criteria, in particular the likelihood of recurrence of dumping and injury caused by dumped imports from China, is to be taken into account in an expiry review investigation initiated under article 11(2) of the basic Regulation. In this regard, the Commission further examined the likelihood of recurrence of injury originally caused by imports from China.

Comments following final disclosure

- (236) In its comments following final disclosure, the applicant agreed with the Commission's conclusions, stating that the imposition of the anti-dumping measures has led to a general improvement in the economic situation of the Union industry as compared to the original investigation period, but noted that the Union industry remains in an economically fragile and injurious situation.
- (237) In its comments, CISA considered that the fact acknowledged by the Commission that the alleged continued injury suffered by the Union industry was not caused by Chinese imports is crucial in this case.
- (238) However, CISA also questioned the Commission's determination of injury, claiming that it did not meet the standard of objective examination and positive evidence set out in Article 3.1 of the WTO Anti-dumping Agreement. To corroborate this claim, CISA elaborated on the choice of period considered, the interpretation of the major macroeconomic indicators of the Union industry, and the import pricing trends.
- (239) As regards the period considered, CISA referred to the interpretation of the standard of "objective examination" by the WTO Appellate Body, which stated in its report ⁽⁷²⁾ that "investigating authorities are not entitled to conduct their investigation in such a way that it becomes more likely that, as a result of the fact-finding or evaluation process, they will determine that the domestic industry is injured". Moreover, CISA referred to Article 6(1) of the basic Regulation which provides that the investigation period serves, inter alia, "the purpose of a representative finding". CISA considered that, due to the effects of COVID-19 in 2020 and 2021 on the economy in general, and on the steel industry in particular, the period considered by the Commission (1 January 2018 to 31 December 2021) was not representative, and that the Commission should have included in the period considered at least two more years prior to it, as well the post-IP period.
- (240) As regards the interpretation of the major macroeconomic indicators of the Union industry, CISA reiterated the views expressed in its comments on initiation. In particular, CISA focused on the decline of heavy plate consumption in the Union and argued that the indicators of the Union industry should be analysed in relation to this decline. CISA argued that this approach would conclude that the Union industry is in a sound state. Moreover, CISA stressed that the any negative development of such indicators could not be attributed to Chinese imports.
- (241) As regards the import pricing trends, CISA observed that prices of imports from China were higher than the sales prices and the costs of production of the Union industry during the review investigation period, and also that imports prices from China between 2019 and 2021 were higher than import prices from other third countries, which were consistently below the sales prices and the costs of production of the Union industry. In CISA's view, this provided prima facie evidence of price undercutting and underselling by current exporters and provided further evidence that maintenance of the existing anti-dumping measures against China is not warranted, contrary to the Commission's conclusions.
- (242) As stated in in recital (233) the material injury suffered by the Union industry during the review investigation period could not be attributed to dumped imports from China. Therefore, and contrary to CISA's comments, the cause of injury is not a crucial issue in the present case. Furthermore, the analysis of the likelihood of recurrence of injury has demonstrated that the absence of measures would in all likelihood result in a significant increase of dumped imports from the PRC at injurious prices and material injury originally caused by dumped imports from China would be likely to recur. This is explained in detail in recitals (249) to (263) below. Therefore, CISA's claims with regard to the finding of material injury are ineffective.
- (243) In any case and for the sake of completeness, for the reasons explained in the following recitals the Commission also disagreed with CISA's claims that the determination of injury did not meet the standard of objective examination and positive evidence. It also disagreed that any of the arguments provided by CISA lend any support to this claim.

⁽⁷²⁾ Appellate Body Report, United States – Anti Dumping Measures on Certain Hot Rolled Steel Products from Japan, DS 184, para. 193.

- (244) As regards the selection of the period considered, as CISA concedes in its submission, the Commission enjoys considerable discretion. In this case, it followed its normal practice, which is to select a period which includes the investigation period (selected in accordance with Article 6(1) of the basic Regulation) and three full years prior to it. Therefore, any insinuation that the period considered was selected in such a way that it becomes more likely to find injury is entirely unfounded and must be rejected. Concerning the representativeness, a period of four full years would be normally considered as sufficiently representative. It is normal for market conditions to vary over such period, and to include intervals of economic downturn, whether being part of a business cycle, or caused by unexpected developments, such as the COVID-19 outbreak. Moreover, the Commission stressed that market conditions, including the decline in consumption, have been duly taken into account in its assessment, which concluded that injury could not be attributed to imports from China.
- (245) As regards the interpretation of the major macroeconomic indicators, the Commission noted that there is nothing in the basic Regulation to suggest that the economic situation of the Union industry should be assessed only relative to consumption and other market conditions. Instead, the basic Regulation requires that contraction in demand and changes in the patterns of consumption be taken into account for the assessment of causality. As explained above, this requirement has been fully met by the Commission's analysis.
- (246) As regards the import pricing trends, the Commission noted that the comparison of volumes and prices of imports from China to volumes and prices of imports from third countries is not relevant for the determination of injury *per se*, but could be relevant only for the assessment of the existence of a causal link.
- (247) In view of the above, the Commission confirmed its conclusion on injury, noting that in any event, the analysis of existence of material injury during the review investigation period is separate from the positive determination of the likelihood of recurrence of injury if measures are allowed to lapse. The latter is based on a prospective analysis of various factors as explained in recitals (250) to (260).

6. LIKELIHOOD OF RECURRENCE OF INJURY ORIGINALLY CAUSED BY DUMPED IMPORTS FROM CHINA

- (248) The Commission concluded in recital (233) that the Union industry suffered material injury during the review investigation period. As stated in recital (216), the negative impact of past significant dumping cannot be underestimated and the Commission considered that the injury to the Union industry observed during the review investigation period could not have been caused by imports from the PRC due to their very limited volume in that period. As mentioned in recitals (185) and (230) the market share of Chinese imports remained below *de minimis* level, namely below 1 % of consumption, during the period considered. Therefore, the Commission assessed, in accordance with Article 11(2) of the basic Regulation, whether there would be a likelihood of recurrence of injury originally caused by the dumped imports from the PRC if the anti-dumping measures were allowed to lapse.
- (249) In this regard, the Commission examined the production capacity and spare capacity in the PRC, and the attractiveness of the Union market, including the relationship between export prices to third countries and the price level in the Union. Furthermore, it examined the likely price levels of imports from the PRC in the absence of anti-dumping measures, as well as their impact on the Union industry.
- (250) It is recalled that Chinese exporters were increasingly present in the Union market and had a market share as high as 14,4 % in the original investigation period. This shows that these exporters have a particular interest in the Union market. As set out in recital (170), based on the spare capacity in the PRC, the attractiveness of the Union market for Chinese exporting producers and the existence of anti-dumping measures in other countries, which limit the possibilities for exports to these markets, there is a strong likelihood that the expiry of the anti-dumping measures would result in a significant increase of heavy plate exports from the PRC to the Union.

- (251) As regards the price levels at which these imports would enter the Union, the applicant provided estimates using pricing data from S&P Global Platts, an independent market analyst of the steel sector. These data included prices of exports (FOB) from the PRC (Shanghai), prices charged by the Union industry (EXW) in Northern and Southern Europe, as well as prices of imports (CIF) at a South European port. The prices of exports from the PRC refer to the basic structural grade Q355, while the rest of the prices refer to the comparable grade S235 JR. The data showed that in the post-RIP period, the export prices from the PRC were generally significantly lower than the prices charged by the Union industry in Northern and Southern Europe, as well as to the prices of imports at a South European port. In particular for the last three months for which data were available, i.e. August, September and October 2022, the applicant calculated the prices of exports from the PRC (adjusted for transport costs from Shanghai to Antwerp) at a level of 39 % lower than the prices charged by the Union industry in Northern Europe, 29 % lower than the prices charged by the Union industry in Southern Europe and 20 % lower than import prices in Southern Europe. As a result, the applicant estimated that a large volume of Chinese exports into the Union market would likely cause EU market prices to decline by at least 20 % to 29 % if the sales volumes were to be maintained.
- (252) In view of the above, the Commission concluded that a substantial increase of imports from the PRC would put significant additional pressure on Union prices which are already at loss making levels. Given the vulnerable state of the Union industry, this combination would result in further substantial losses of sales, market share, and profitability, deteriorating its situation further, and ultimately putting into question its viability.
- (253) CISA made a number of claims in the context of the likelihood of recurrence of injury. They first claimed that heavy plates already benefit from the protection granted by EU safeguard measures and that these measures alone made it highly unlikely that a recurrence of injury occurs. They invited the Commission to take account of this double protection in its assessment of the current review.
- (254) In this context, two basic principles should be recalled. Firstly, even if both safeguard and anti-dumping measures are meant to address injury, the former is not set to replace the latter. Secondly, there is no double protection for the Union industry in this case. As mentioned by CISA, the safeguard measures were set at 25 % whereas the anti-dumping duties on heavy plates were higher and set at a level between 65,1 % and 73,7 %. As clearly mentioned in annex 2.6 of the safeguard Regulation, only a fraction of the anti-dumping duty would be due after the safeguard measures are paid on heavy plates. These measures are therefore not cumulative and there is no double protection.
- (255) Secondly, the annex 2.6 of the safeguard Regulation shows that the safeguard measures are not set to ensure that heavy plates would be imported from China at the relevant non-injurious level set in the original anti-dumping investigation. An additional duty of at least 40,1 % would be due to reach that requirement. Moreover, as mentioned in recitals (79) and (80), the Commission noted that the global quota provided by the current safeguard measures is substantial and therefore it would not be able to restrict meaningfully imports from the PRC to enter the Union market at injurious prices if the anti-dumping duties were allowed to lapse.
- (256) Based on the above considerations, the claims that the Union industry enjoys double protection and that the safeguard measures would prevent injury to recur are rejected.
- (257) CISA and Primex further claimed that the Chinese Ministry of finance announced that certain steel products, including heavy plates, are no longer eligible for VAT export refunds as from August 2021, and that as a result of this measure, injury would be unlikely to recur if measures were allowed to lapse.
- (258) As mentioned in recital (166), CISA and Primex did not make any claims on the likely impact of the cancellation of the VAT export refund on the export price to the Union, if measures were allowed to lapse. The Commission considered that, in view of the need to use their spare capacity, the cancellation of the VAT export refund would not preclude Chinese producers from flooding the Union market with dumped exports. Therefore, the argument that as a result of this cancellation injury would be unlikely to recur, was not substantiated.

- (259) On this basis, it is concluded that the absence of measures would in all likelihood result in a significant increase of dumped imports from the PRC at injurious prices and material injury originally caused by dumped imports from China would be likely to recur.

Comments following final disclosure

- (260) In its comments following disclosure, the applicant agreed with the Commission's conclusion, stating that the absence of measures would in all likelihood result in a significant increase of dumped imports from the PRC at injurious prices and material injury originally caused by dumped imports from China would be likely to recur.
- (261) By contrast, in its comments, CISA reiterated that imports of heavy plates from China were already negligible and that the cancellation of the VAT export refund would discourage them further. According to CISA, the only conclusion that can be reasonably reached would be that any alleged injury or recurrence of injury to the Union industry cannot be caused by imports from China.
- (262) The Commission considered that in the context of the likelihood of recurrence of injury assessment, the relevant question was not the effect of the cancellation of VAT export refund while the measures are in force, but its effect on the Union market for heavy plates and on the Union industry in case the measures were allowed to lapse. The Commission noted that CISA did not quantify the effects of such cancellation on the possible volume and export price at which Chinese products may reach the Union market. Moreover, it did not provide any arguments against the conclusion that the cancellation of the VAT export refund would not preclude Chinese producers from flooding the Union market with dumped exports in case the measures are allowed to lapse. Therefore, the Commission maintained the conclusion reached in recital (259) above on the likelihood of recurrence of injury.

7. UNION INTEREST

- (263) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers/traders, and users.
- (264) All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.

7.1. Interest of the Union industry

- (265) The Union industry is located in several Member States, such as Germany, France, Italy, Spain, Belgium, Greece, Czech Republic, Poland, Austria and, as mentioned in recital (212), directly employed over 16 000 people in relation to heavy plates during the review investigation period.
- (266) The investigation established that over the period considered, despite the existing measures against the PRC, the Union industry remained loss-making and lost production and sales volume in the Union market. As explained above, should measures be allowed to lapse, there is a high likelihood that Chinese imports would resume in high volumes at dumped prices. This would likely lead to a deterioration of the already vulnerable situation of the Union industry that may put into question the viability of the production of heavy plates, with consequent loss of employment and alternative sources of supply in the Union.
- (267) The interest of the Union industry is that the market is governed by effective and fair trade conditions. Should measures be maintained, it is expected that with the market recovery post pandemic, the Union industry would be able to increase its prices, production and sales volume, employment and gradually return to profit.
- (268) The Commission therefore concluded that maintaining the measures in force against the PRC would be clearly in the interest of the Union industry.

7.2. Interest of unrelated importers and traders

- (269) No unrelated importers or traders submitted a reply to the relevant Commission questionnaire.
- (270) Primex, an importer of heavy plates, opposed to the prolongation of the measures, made a submission on initiation, but made no comments regarding the interest of unrelated importers and traders.
- (271) In the original investigation, it was concluded that the imposition of measures would not have significant negative effects on the interest of the Union importers. This was due to the fact that heavy plates accounted for 20 % or less of the cooperating importers' business, and due to the fact that most importers trade goods from numerous sources, including the Union industry.
- (272) In view of the above, the Commission concluded that if the measures were to be maintained, the impact on unrelated importers and traders is unlikely to be significant.

7.3. Interest of users

- (273) Three users cooperated in the investigation and replied, at least partially, to the Commission's questionnaire. Europipe GmbH ('Europipe') stated that it would be in favour of maintaining the measures. However, this user is owned by two Union producers and its position cannot be considered representative of the users' interest.
- (274) The other two users, Vestas Wind Systems A/S ('Vestas') and Astilleros Gondán S.A. ('Gondán'), stated that they would be against maintaining the measures.
- (275) Vestas, which is active in the construction of wind turbines, stated that the product under review constituted a significant share of the cost of its final products. Although it stated that it had sourced heavy plates exclusively from the Union industry during the review investigation period, it claimed that maintaining the measures would have a negative impact on its activities. However, this user declined to provide information that would be relevant for the verification of this claim.
- (276) To assess the possible impact the prolongation of the measures may have on this user, and more generally on the wind installation business, the Commission also consulted a report of WinEurope⁽⁷³⁾ showing that the wind installation industry consistently grew (+22 %) in the period 2018 to 2020 despite the difficult economic situation mentioned in recital (178) and continued to grow in the review investigation period (+17 %). The forecast up to 2026 suggests that this business will continue to grow significantly.
- (277) Gondán, which is active in shipbuilding, stated that it had also bought exclusively from the Union industry during the review investigation period. The cost of the product under review has been less than 5 % of the full cost of the respective final products.
- (278) Together, the heavy plate consumption of the opposing users represented significantly less than 10 % of the total Union free market consumption in the review investigation period.
- (279) In view of the above, there is no evidence showing that the possible impact of the continuation of the measures would be significant or disproportionate on these users' activities.

(73) <https://windeurope.org/intelligence-platform/product/wind-energy-in-europe-2021-statistics-and-the-outlook-for-2022-2026/>

- (280) Vestas, CISA and Primex argued that the continuation of anti-dumping measures would not be in the Union interest, in particular taking into consideration the impact of Russia's unprovoked and unjustified war of aggression against Ukraine since 24 February 2022, on the supply of heavy plates, and by the subsequent sanctions imposed on Russia and Belarus. According to these parties, these developments have resulted in the cessation of imports of heavy plates originating from Russia and Belarus, and in a significant restriction of imports from Ukraine, both of which are expected to persist. According to Vestas and Primex, the production capacity of Union producers would also be restricted, due to alleged shortages in the supply of steel slabs, or of other inputs such as iron ore pellets, coking coal, scrap and alloying metals. In view of the decrease of imports from the aforementioned countries, CISA and Primex argued that imports originating from China would be able to substitute the missing supply.
- (281) The Commission acknowledged that as of February 2022, the war in Ukraine has resulted in a significant decrease of imports from Russia and Ukraine, and that there was no indication of this situation changing in the near future. However, the Commission observed that the imports from Ukraine and Russia have been largely substituted by imports from India, Indonesia and the Republic of Korea. Moreover, as shown in recital (201), the Union industry maintains a spare capacity of around 4 million tonnes and can accommodate significant increases in demand, while the alleged restrictions in raw materials have not been substantiated. Lastly, the Commission recalled that the purpose of the measures is not to foreclose the market to Chinese imports, and that Chinese exports have always been allowed to sell their heavy plates at a non-injurious price. Therefore, the claims on supply shortages could not be accepted.
- (282) In conclusion, the Commission considered that the impact on users of the continuation of the measures would not be significant, in particular taking into account the need to preserve the production of heavy plate in the Union.

7.4. Other factors

- (283) Vestas argued that due to capacity limitations of the Union industry, the demand of the Union wind sector for heavy plates, and in particular large sized steel plates, could not be met if the measures are maintained. According to Vestas, this would also impact the further penetration of wind into the energy mix, and as a result, the ability of the Union to achieve its targets for renewable energy and for CO₂ reduction.
- (284) The Commissions noted that Vestas did not substantiate the alleged capacity limitations for the particular type of heavy plates. In addition, as noted in recital (281), the Union industry maintains a spare capacity which can accommodate significant increases in demand, and its production is complemented by imports from third countries. In view of the above, there is no evidence that the maintenance of the measures would limit substantially the development of the wind sector.
- (285) Furthermore, the investigation has shown that the Union industry has ambitious plans for investments in 'greening' steel production, including a transition from traditional blast furnaces to electric arc furnaces. Such investments are expected to have a significant contribution to the Union targets for the reduction of carbon emissions. However, they would materialise only if the Union industry can achieve adequate profitability, a prerequisite for which is the maintenance of the measures.
- (286) In conclusion, the Commission considered that on balance, the continuation of the measures would not have a negative effect on the Union's environmental targets.

7.5. Conclusion on Union interest

- (287) On the basis of the above, the Commission concluded that there were no compelling reasons of the Union interest against the maintenance of the existing measures on imports of heavy plates originating in the PRC.

Comments following final disclosure

- (288) In its comments following final disclosure, the applicant agreed with the Commission's conclusions, stating that continuing the measures would benefit the entire Union market ensuring a secure and stable domestic supply of heavy plate and permitting the ongoing transition to green steel production and the reduction of greenhouse gas emissions.
- (289) By contrast, CISA claimed that Union interest considerations require the expiry of the measures in question due to the following reasons: (1) the potential deficit of imports following de-facto exit of Russia and Ukraine from the EU market and the maintenance of steel safeguard measures, (2) the proposed EU Carbon Border Adjustment Mechanism and (3) the economic recession risks linked to high inflation rates in the EU.
- (290) As regards the potential deficit of imports, CISA reiterated its view that the cessation of imports from Russia and Ukraine would create a shortage of supply. To support its claim, it submitted a relevant article ⁽⁷⁴⁾ published by a market analyst.
- (291) The Commission noted that the information provided by CISA confirms the conclusion that that the imports from Ukraine and Russia have been largely substituted by imports from other countries, including India and Indonesia. Taking also into account the fact that no reliable information has been provided by CISA regarding the evolution of Union demand or regarding the production of heavy plates by Union producers, it was considered that the claims regarding the existence of a deficit were not substantiated and could not be taken into account.
- (292) As regards the EU Carbon Border Adjustment Mechanism (CBAM), CISA claimed that, if it is adopted and applied in accordance with the relevant provisional agreement between the European Parliament and the Council ⁽⁷⁵⁾, it will impose significant additional costs, and therefore, it will discourage imports of heavy plates, including in particular imports from China, India, Russia, and Türkiye.
- (293) As CISA itself acknowledged, the CBAM did not have any effect during the review investigation period because it was still a legislative proposal. In any event, the Commission recalled that the aim of the proposed mechanism is to prevent carbon leakage, encourage cleaner industrial production in non-EU countries, and ensure a fair price on the carbon emitted during the production of a limited number of energy-intensive goods that are entering the EU. Therefore, the objectives pursued by CBAM are fully in line with the interest of the Union to pursue its environmental goals. Moreover, the Commission recalled that any possible impact of CBAM on imports of heavy plates from China, India, Russia and Türkiye would depend on the level of decarbonisation in the production process of these countries, which is still too early to assess at this stage. The Commission will proceed in this respect to a review of the CBAM impact at the end of the transitional period of implementation (December 2025) to adjust its application where necessary before the full entry into force of the definitive system in January 2026. In view of the above, this claim was rejected.
- (294) As regards inflation, CISA claimed that in light of the unprecedented levels experienced in the Union in 2022, the increase in prices of the product concerned would put at risk the viability of infrastructure projects and endanger the GDP growth in the EU member states.
- (295) The Commission recalled that the aim of the measures was to ensure fair market conditions in the Union, and noted that an economic environment in which the cost of inputs increases significantly, but producers are not allowed to adjust their prices accordingly due to dumped imports, would not be conducive to economic growth and would threaten the viability of the industry.
- (296) In conclusion, the Commission maintained its position that there are no compelling reasons of the Union interest against the maintenance of the existing measures on imports of heavy plates originating in the PRC.

⁽⁷⁴⁾ European steel plate market: Effects from Russia's war in Ukraine one year on - Fastmarkets (<https://www.fastmarkets.com/insights/european-steel-plate-market-one-year-russias-war-in-ukraine>) – last accessed on 21 March 2023.

⁽⁷⁵⁾ https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7719

8. CLAIMS THAT MEASURES BE SUSPENDED

- (297) CISA claimed that the conditions for suspension of the current anti-dumping measures in accordance with Article 14(4) of the Basic Regulation, have been met. CISA claimed that both conditions set out in the aforementioned Article 14(4) of the basic Regulation are fulfilled. CISA alleged that market conditions have temporarily changed to such an extent that injury would be unlikely to continue or occur as a result of the suspension. In that view, CISA referred to the growth expectations of the Union's downstream industry and the increasing scarcity in the Union market, the expected economic recovery in the post-COVID period, the price increases of the product concerned, the expected decrease of volume of imports from Russia and Ukraine and the Implementing Decision to suspend the definitive antidumping duties imposed on aluminum flat-rolled products from the PRC.
- (298) The Commission rejected CISA's claim, as it was unsubstantiated. CISA did not submit any information in order to substantiate whether the conditions of Article 14(4) of the basic Regulation are being met and that the current antidumping measures should be suspended.

9. ANTI-DUMPING MEASURES

- (299) On the basis of the conclusions reached by the Commission on the likelihood of recurrence of dumping, likelihood of recurrence of injury and Union interest, the anti-dumping measures on heavy plate from the People's Republic of China should be maintained.
- (300) To minimize 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'.
- (301) 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.
- (302) 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.
- (303) The individual company anti-dumping duty rates specified in this Regulation are exclusively applicable to imports of the product under review originating in the People's Republic of China and produced by the named legal entities. Imports of the product under review produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.

- (304) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ⁽⁷⁶⁾. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a regulation about the change of name will be published in the *Official Journal of the European Union*.
- (305) An exporter or producer that did not export the product concerned to the Union during the period that was used to set the level of the duty currently applicable to its exports may request the Commission to be made subject to the anti-dumping duty rate for cooperating companies not included in the sample. The Commission should grant such request, provided that three conditions are met. The new exporting producer would have to demonstrate that: (i) it did not export the product concerned to the Union during the period that was used to set the level of the duty applicable to its exports; (ii) it is not related to a company that did so and thus is subject to the anti-dumping duties; and (iii) has exported the product concerned thereafter or has entered into an irrevocable contractual obligation to do so in substantial quantities.
- (306) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to make representations subsequent to this disclosure.
- (307) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽⁷⁷⁾ when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.
- (308) By Commission Implementing Regulation (EU) 2019/159 ⁽⁷⁸⁾, the Commission imposed a safeguard measure with respect to certain steel products for a period of three years. By Implementing Regulation (EU) 2021/1029 ⁽⁷⁹⁾, the safeguard measure was prolonged until 30 June 2024. The product under review is one of the product categories covered by the safeguard measure. Consequently, once the tariff quotas established under the safeguard measure are exceeded, both the above-quota tariff duty and the anti-dumping duty would become payable on the same imports. As such cumulation of anti-dumping measures with safeguard measures may lead to an effect on trade greater than desirable, the Commission decided to prevent the concurrent application of the anti-dumping duty with the above quota tariff duty for the product under review for the duration of the imposition of the safeguard duty.
- (309) This means that where the above-quota tariff duty referred to in Article 1(6) of Implementing Regulation (EU) 2019/159 becomes applicable to the product under review, the above-quota tariff duty referred to in Article 1(6) of Implementing Regulation (EU) 2019/159 shall be collected in addition to the difference between that duty and the higher anti-dumping duties imposed pursuant to this Regulation. The part of the amount of anti-dumping duties not collected shall be suspended.
- (310) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) Regulation (EU) 2016/1036,

⁽⁷⁶⁾ European Commission, Directorate-General for Trade, Directorate G, Rue de la Loi 170, 1040 Brussels, Belgium.

⁽⁷⁷⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

⁽⁷⁸⁾ Commission Implementing Regulation (EU) 2019/159 of 31 January 2019 imposing definitive safeguard measures against imports of certain steel products (OJ L 31, 1.2.2019, p. 27).

⁽⁷⁹⁾ Commission Implementing Regulation (EU) 2021/1029 of 24 June 2021 amending Commission Implementing Regulation (EU) 2019/159 to prolong the safeguard measure on imports of certain steel products (OJ L 2251, 25.6.2021, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of flat products of non-alloy or alloy steel (excluding stainless steel, silicon-electrical steel, tool steel and high-speed steel), hot-rolled, not clad, plated or coated, not in coils, of a thickness exceeding 10 mm and of a width of 600 mm or more or of a thickness of 4,75 mm or more but not exceeding 10 mm and of a width of 2 050 mm or more, currently falling under CN codes ex 7208 51 20, ex 7208 51 91, ex 7208 51 98, ex 7208 52 91, ex 7208 90 20, ex 7208 90 80, 7225 40 40, ex 7225 40 60 and ex 7225 99 00 (TARIC codes: 7208 51 20 10, 7208 51 91 10, 7208 51 98 10, 7208 52 91 10, 7208 90 20 10, 7208 90 80 20, 7225 40 60 10, and 7225 99 00 45) and originating in the People's Republic of China.

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

Company	Anti-dumping duty	TARIC additional code
Nanjing Iron and Steel Co., Ltd	73,1 %	C143
Minmetals Yingkou Medium Plate Co., Ltd	65,1 %	C144
Wuyang Iron and Steel Co., Ltd and Wuyang New Heavy & Wide Steel Plate Co., Ltd	73,7 %	C145
Other cooperating companies listed in Annex	70,6 %	
All other companies	73,7 %	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 under review) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in [country concerned]. I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty applicable to all other companies shall apply.

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

- (a) it did not export the goods described in Article 1(1) originating in the People's Republic of China during the period between 1 January 2015 and 31 December 2015 (original investigation period);
- (b) it is not related to an exporter or producer subject to the measures imposed by this Regulation; and
- (c) it has either actually exported the product under review originating in the People's Republic of China or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the original investigation period.

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

Article 2

1. Where the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 becomes applicable to flat products of non-alloy or alloy steel (excluding stainless steel, silicon-electrical steel, tool steel and high-speed steel), hot-rolled, not clad, plated or coated, not in coils, of a thickness exceeding 10 mm and of a width of 600 mm or more or of a thickness of 4,75 mm or more but not exceeding 10 mm and of a width of 2 050 mm or more, the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 shall be collected in addition to the difference between that duty and the higher anti-dumping duty set out in Article 1(2).
2. The part of the amount of anti-dumping duty not collected pursuant to paragraph 1 shall be suspended.
3. The suspensions referred to in paragraph 2 shall be limited in time to the period of application of the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159.

Article 3

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

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

Done at Brussels, 16 May 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Chinese cooperating exporting producers not sampled :

Name	City	TARIC additional code
Angang Steel Company Limited	Anshan, Liaoning	C150
Inner Mongolia Baotou Steel Union Co., Ltd	Baotou, Inner Mongolia	C151
Zhangjiagang Shajing Heavy Plate Co., Ltd	Zhangjiagang, Jiangsu	C146
Jiangsu Tiangong Tools Company Limited	Danyang, Jiangsu	C155
Jiangyin Xingcheng Special Steel Works Co., Ltd	Jiangyin, Jiangsu	C147
Laiwu Steel Yinshan Section Co., Ltd	Laiwu, Shandong	C154
Nanyang Hanye Special Steel Co., Ltd	Xixia, Henan	C152
Qinhuangdao Shouqin Metal Materials Co., Ltd	Qinhuangdao, Hebei	C153
Shandong Iron & Steel Co., Ltd, Jinan Company	Jinan, Shandong	C149
Wuhan Iron and Steel Co., Ltd	Wuhan, Hubei	C156
Xinyu Iron & Steel Co., Ltd	Xinyu, Jiangxi	C148