

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2023/1404

of 3 July 2023

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

THE EUROPEAN COMMISSION,

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

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

Whereas:

1. PROCEDURE

1.1. Initiation

- (1) On 13 May 2022, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of stainless steel refillable kegs originating in the People's Republic of China ('China' or 'the country concerned') on the basis of Article 5 of Regulation (EU) 2016/1036 of the European Parliament and of the Council ('the basic Regulation'). It published a Notice of Initiation in the *Official Journal of the European Union* ⁽²⁾ ('the Notice of Initiation').
- (2) The Commission initiated the investigation following a complaint lodged on 31 March 2022 by the European Kegs Committee ('the complainant'). The complaint was made on behalf of the Union industry of stainless steel refillable kegs in the sense of Article 5(4) of the basic Regulation. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

1.2. Provisional measures

- (3) In accordance with Article 19a of the basic Regulation, on 15 December 2022 the Commission provided parties with a summary of the proposed duties and details about the calculation of the dumping margins and the margins adequate to remove the injury to the Union industry. Interested parties were invited to comment on the accuracy of the calculations within three working days. Sampled exporting producers jointly submitted comments on pre-disclosure on 19 December 2022. They claimed (i) that the heading of a disclosure table contained a wrong unit of measure, (ii) that the target prices of certain product types did not reflect expected target prices according to their knowledge, and (iii) that certain product types were not included in the injury margin calculations.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ OJ C 195, 13.5.2022, p. 24.

- (4) On 12 January 2023, the Commission imposed provisional anti-dumping duties on imports of stainless steel refillable kegs originating in the country concerned by Commission Implementing Regulation (EU) 2023/100 ^(*) ('the provisional Regulation').
- (5) The Commission addressed the sampled exporting producers' comments under points (i) and (iii) above in recital (259) of the provisional Regulation. Regarding the comment under (ii) above on target prices, the Commission concluded in recital (258) of the provisional Regulation that the comment did not concern the accuracy of the calculations and that it will examine the comment together with all other submissions after the publication of provisional measures (see recital (125)).

1.3. Subsequent procedure

- (6) Following the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed ('the provisional disclosure'), the complainant, sampled exporting producers, the Government of the People's Republic of China ('GOC'), and one unrelated importer filed written submissions making their views known on the provisional findings within the deadline provided by Article 2(1) of the provisional Regulation.
- (7) Interested parties had an opportunity to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. No hearing was requested.
- (8) The Commission continued to seek and verify all the information it deemed necessary for its final findings, particularly those highlighted in recitals (140) and (141) of the provisional Regulation, concerning import quantities of kegs from China. When reaching its definitive findings, the Commission considered the comments submitted by interested parties and revised its provisional conclusions where appropriate.
- (9) On 4 May 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 stainless steel refillable kegs originating in the country concerned ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure.
- (10) On 25 May 2023, the Commission, taking into account certain claims received following final disclosure that had an impact on the outcome of the investigation, disclosed those additional facts and considerations that led the Commission to the modification of the final findings as disclosed previously. Interested parties were also granted a period within which they could make representations subsequent to this additional final disclosure.
- (11) The comments submitted by the interested parties were considered and taken into account where appropriate in this Regulation.

1.4. Sampling

- (12) No comments were received concerning sampling. Therefore, the conclusions from recital (6) to (11) of provisional Regulation were confirmed.

1.5. Investigation period and period considered

- (13) The investigation of dumping and injury covered the period from 1 January 2021 to 31 December 2021 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2018 to the end of the investigation period ('the period considered').

^(*) Commission Implementing Regulation (EU) 2023/100 of 11 January 2023 imposing a provisional anti-dumping duty on imports of stainless steel refillable kegs originating in the People's Republic of China (OJ L 10, 12.1.2023, p. 36).

2. PRODUCT UNDER INVESTIGATION, PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product under investigation

- (14) The product under investigation is kegs, vessels, drums, tanks, casks and similar containers, refillable, of stainless steel, commonly known as 'stainless steel refillable kegs', with bodies approximately cylindrical in shape, with a wall thickness of 0,5 mm or more, of a kind used for material other than liquefied gas, crude oil, and petroleum products, of a capacity of 4,5 litres or more, regardless of the type of finish, gauge, or stainless steel grade, whether or not with additional components (extractors, necks, chimes or any other component), whether or not painted or coated with other materials ('kegs' or 'the product under investigation').
- (15) The following products do not fall under the scope of this investigation when imported separately from the product under investigation: necks, spears, couplers or taps, collars, valves and other components of the product under investigation such as extractors, necks and chimes.

2.2. Product concerned

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

2.3. Like product

- (17) The investigation showed that the following products have the same basic physical and technical characteristics as well as the same basic uses:
- the product concerned when exported to the Union;
 - the product under investigation produced and sold on the domestic market of China; and
 - the product under investigation produced and sold in the Union by the Union industry.
- (18) In the absence of comments to this Section, the Commission confirmed that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

- (19) Following provisional disclosure, GOC and two sampled exporting producers commented on the provisional dumping findings.

3.1. Normal value

3.1.1. Existence of significant distortions

- (20) Following the publication of the provisional measures, the GOC submitted a number of observations on the application of Article 2(6a) of the basic Regulation in the current investigation.
- (21) First, the GOC pointed out that the Report (*) is, in its view, factually and legally flawed and that decisions based on it, lack legitimacy. On the factual side, the Report is, according to the GOC, misrepresentative, one-sided and out of touch with reality. Moreover, the GOC considered that the fact that the Commission issued country reports for a few selected countries raises concerns about most favoured nation ('MFN') treatment. Further, relying by the Commission on the evidence in the Report is, in the GOC's view, not in line with the spirit of fair and just law, as it provides unfair advantages to the Union industry and as it effectively amounts to judging the case before trial.

(*) Referred to in recital (34) of the provisional Regulation (OJ L 10, 12.1.2023, p.40)

- (22) The Commission disagreed. The Commission noted that the Report is a comprehensive document based on extensive objective evidence, including legislation, regulations and other official policy documents published by the GOC, third party reports from international organisations, academic studies and articles by scholars, and other reliable independent sources. It was made publicly available since December 2017 so that any interested party would have had ample opportunity to rebut, supplement or comment on the facts 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. Rather than the Commission not acting in the spirit of fairness and justice, it was therefore the GOC which failed to make use of the procedural rights available to it. Indeed, as noted in recital (24) of the provisional Regulation, the GOC did not reply to the questionnaire on the alleged significant distortions and thus decided not to cooperate with the investigation in this regard. In view of this non-cooperation, the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in China. The Commission invited the GOC to submit its comment on the application of Article 18 of the basic Regulation. No comments were received.
- (23) Concerning the GOC's claim regarding the violation of the MFN treatment, the Commission recalled that, as provided for by Article 2(6a)(c) of the basic Regulation, a country report shall be produced for any country only where the Commission has well-founded indications of the possible existence of significant distortions in a specific country or sector in that country. Upon the entry into force of the provisions of Article 2(6a) of the basic Regulation in 2017, the Commission had such indications of significant distortions for China. The Commission also published a report on distortions in Russia in 2020, and, where appropriate, other reports may follow. Furthermore, the Commission recalled that the reports are not mandatory for the application of Article 2(6a) of the basic Regulation. Article 2(6a)(c) of the basic Regulation describes the conditions for the Commission to issue country reports, and according to Article 2(6a)(d) of the basic Regulation the complainants are not obliged to use the report, nor is the existence of a country report a condition to initiate an investigation under Article 2(6a) of the basic Regulation. According to Article 2(6a)(e) of the basic Regulation, sufficient evidence proving significant distortions in any country brought by complainants fulfilling the criteria of Article 2(6a)(b) of the basic Regulation is sufficient to initiate the investigation on that basis. Therefore, the rules concerning country-specific significant distortions apply to all countries without any distinction, and irrespective of the existence of a country report. As a result, by definition the rules concerning country distortions do not violate the most favoured nation treatment.
- (24) 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 investigation were still relevant during (at least part of) the investigation period, and that no parties have proven that this was no longer the case. In any event, once China started publishing new five-year plans throughout year 2021, of which many were only made public in the second half of the year, the Commission took them into account in its analysis, as summarised above. Consequently, the GOC's claim could not be accepted.
- (25) Second, the GOC argued that constructing the normal value in accordance with Article 2(6a) of the basic Regulation is inconsistent with the Anti-Dumping Agreement ('ADA'), in particular with Article 2.2. of the ADA which provides an exhaustive list of situations where the normal value can be constructed, the "significant distortions" not being listed among such situations. Moreover, using data from an appropriate representative country is, according to the GOC, inconsistent with GATT Article VI.1(b) and Article 2.2.1.1. of the ADA which require using the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits when constructing the normal value.
- (26) The Commission considered that the provisions of Article 2(6a) of the basic Regulation are fully consistent with the European Union's WTO obligations. It is the Commission's view that, in accordance with the relevant WTO jurisprudence, the provisions of the basic Regulation that apply generally with respect to all WTO Members 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. Therefore, the Commission rejected this claim.

- (27) Third, the GOC argued that the Commission's investigating practices under Article 2(6a) of the basic Regulation are inconsistent with WTO rules insofar as the Commission, in violation of Article 2.2.1.1. of the ADA, disregarded records of the Chinese producers without determining whether those records are in accordance with the generally accepted accounting principles in China and whether they reasonably reflect the costs associated with the production and sales. The GOC recalled in this connection that the Appellate Body in EU – Biodiesel ('DS473') and the Panel Report in European Union – Cost Adjustment Methodologies II (Russia) ('DS494') asserted that according to Article 2.2.1.1 of the ADA, as long as the records kept by the exporter or producer under investigation correspond – within acceptable limits – in an accurate and reliable manner, to all the actual costs incurred by the particular producer or exporter for the product under consideration, they can be deemed to “*reasonably reflect the costs associated with the production and sale of the product under consideration*” and the investigating authority should use such records to determine the cost of production of the investigated producers. Moreover, by using the data from the appropriate representative country, the Commission has, in GOC's view, disregarded its obligation to arrive at the cost of production in the country of origin.
- (28) As explained in recitals (32) to (58) of the provisional Regulation, the Commission concluded that it is appropriate to apply Article 2(6a) of the basic Regulation given the existence of significant distortions within the meaning of point (b) of that Article. The exporting producers were given the opportunity to comment on the appropriateness of the application of the Article 2(6a), but provided no comments. Therefore whether the Chinese companies records were kept in accordance with the generally accepted accounting principles of China, or whether the records reasonably reflected the costs associated with the production and sale of the product under investigation in China, does not affect the conclusion concerning the application of the methodology under Article 2(6a) of the basic Regulation. The Commission reiterated in this connection that the WTO Appellate Body explicitly clarified in DS473 that WTO law permits the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. In addition, with respect to DS494, 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 adopted by the Dispute Settlement Body. In any event, the Panel Report in that dispute specifically considered the provisions in Article 2(6a) of the basic Regulation to be outside the scope of that dispute. The Commission therefore rejected the claim.
- (29) Fourth, the GOC submitted that the Commission should be consistent and fully examine whether there are market distortions in the representative country. Readily accepting the representative country's data without such evaluation represents “double standards”. The GOC pointed out that under the EU law, the Commission is obliged to use undistorted prices to construct normal values. Therefore, the Commission should, in GOC's view, take the initiative to investigate and prove the existence or non-existence of distortions in the representative countries, rather than passively waiting for the parties involved in the case to submit evidence. The GOC further submitted that the Commission should examine whether there are market distortions in the EU domestic market, not least because there are allegedly widespread situations within the EU that may raise concerns for the so-called “market distortions”.
- (30) In response to this argument, the Commission recalled that, in accordance with Article 2(6a)(a) of the basic Regulation, it proceeds to construct the normal value on the basis of chosen data other than domestic prices and costs in the exporting country only where it establishes that such data is the most appropriate to reflect undistorted prices and costs. In this process, the Commission is bound to use only undistorted data. In that respect, far from waiting passively, the Commission invites interested parties to comment on the proposed sources for the determination of the normal value in the early stages of the investigation. The Commission's ultimate decision as to which undistorted data should be used to calculate the normal value takes full account of those comments. As to the GOC's request for the Commission to evaluate possible distortions in the EU's internal market, the Commission failed to see the relevance of this point in the context of assessing the existence of significant distortions in accordance with Article 2(6a) of the basic Regulation. Accordingly, the Commission rejected these arguments.

3.1.2. Representative country

- (31) In the provisional Regulation, the Commission selected Brazil as the representative country and used the financial data of one company, Metalurgica Mococa SA, for the constructed normal value in accordance with Article 2(6a)(a) of the basic Regulation. The details on the methodology used for the selection were set out in the First and Second note made available to parties in the open file on 20 July 2022 and 19 September 2022 ('First Note' and 'Second Note'), and in recitals (59) to (95) of the provisional Regulation.

- (32) Following the publication of the provisional Regulation, the two sampled exporting producers reiterated their claim that Brazil did not meet the criteria laid down in Article 2(6a)(a) of the basic Regulation, which stated that there must exist undistorted prices or benchmarks in the appropriate representative country, because:
- Brazil had allegedly applied distortive measures on imports of the main raw materials used in kegs production (such as anti-dumping duties on stainless steel flat rolled products originating in China and much higher import tariffs on the three main raw materials for production of kegs than many other countries), which led to the overstated prices of these materials in the domestic market of Brazil and had therefore distorted the prices;
 - the export quotas on stainless steel flat rolled products towards the United States allegedly caused the unbalanced trade flow and thus influenced the price level of this material in Brazil;
 - the high share of imports from China of the main raw materials used in kegs production has exacerbated the distortive effect on the price in Brazil.
- (33) In comparison, these parties claimed that Malaysian market was less distorted by the protective measures and had a lower share of Chinese imports.
- (34) The Commission already replied in recital (70) of the provisional Regulation that the anti-dumping duties towards China and the export quotas towards the United States did not seem to be relevant factors in establishing a benchmark price for the raw material. It noted in recital (71) that the level of import duties is only one of the elements to assess whether a certain market is open or protected and that no additional evidence was provided to show that the Brazilian market was distorted for the raw materials concerned. The Commission also noted in recital (72) that the share of Chinese imports of the main two raw materials (stainless steel coil and spears) was the lowest in Brazil when comparing with other potential representative countries, where kegs were produced.
- (35) In addition, no evidence was provided by these parties that any of these measures or the share of Chinese imports in Brazil affected the reliability of the domestic prices. Second, analysis of the import data for Brazil showed that the import prices of stainless-steel coil from all countries excluding China to Brazil, was rather stable over the last ten years (around 1.83 EUR/kg) and at the same level or even lower than in Malaysia (around 1.88 EUR/kg). Therefore, there was no evidence to conclude that anti-dumping duties on Chinese imports affected the price level of other imports into Brazil, or that any other measures led to overstated prices in Brazil in comparison with Malaysia.
- (36) Based on this analysis and the lack of evidence presented, the claims of the parties were rejected.
- (37) The sampled exporting producers further claimed that the methodology used by the Commission when selecting a representative country gave preferential value to the criterion of the existence of production of the product under investigation and did not consider the quality of the readily available data. This was especially relevant since the Commission did not find appropriate financial data of the kegs producers identified in Brazil, thus leading to the use of financial data from a producer of metal cans, packing products and containers rather than kegs. At the same time, the exporting producers provided evidence of a steel drum producer in Malaysia ⁽⁵⁾, i.e. a similar product to kegs, along with its audited accounts in the IP, stressing that only such detailed financial statements would be sufficient to accurately calculate the selling general and administrative expenses ('SG&A') and profits. The Commission should have therefore given an equal consideration to Malaysia as a potential representative country.
- (38) The sampled exporting producers added that the Brazilian company identified by the Commission did not even manufacture products of any similarity to kegs, but light metal packing, classified under NACE ⁽⁶⁾ code 2592. The alleged differences between the two products resided in the material used, the form, the size and the purpose of the final product, since the light metal packing was made from the light metal to preserve food or drinks for the retail

⁽⁵⁾ <http://www.stantamauser.com/>

⁽⁶⁾ Nomenclature of Economic Activities.

sales, while kegs (produced from stainless steel) or drums (produced from heavy metal) were containers to transport liquids, usually not for the retail sales. The classification of Brazilian light metal packing producer and the sampled Chinese exporting producers under the same NACE code 2592 was allegedly unclear and incorrect due to the different material used, the form, the size and the purpose of the final product.

- (39) In accordance with Article 2(6a)(a) of the Basic Regulation, the constructed normal value should include the corresponding costs of production and sale in an appropriate representative country of a similar level of economic development. The Commission considered the existence of production of the product under investigation a crucial element when assessing the appropriateness of potential representative countries. This is a relevant indicator that all or at least the most important factors of production are present in that country, and hence can be used to construct the totality or majority of the undistorted cost of production. If there is no production of the product under investigation in a certain country, there will be a lower likelihood that all or most of the factors of production will be present in that country. This was confirmed in this case, where the data on the factors of production available in Brazil represented around 75 % of the constructed normal value. Once the Commission established that Brazil was appropriate on this basis, as there were no companies producing kegs with readily available and reasonable financial indicators, it considered it appropriate to source this financial data by reference to Brazilian companies in the same sector and/or producing a similar product. This is to ensure the use of a coherent set of indicators affected by the same market conditions in the same representative country, that is Brazil in this case. The parties also did not provide evidence why the selected broader product category would not be appropriate to determine the SG&A and profits.
- (40) The Commission also did not agree that the steel drums produced by the proposed Malaysian company were a more appropriate product category than the light metal packing producer chosen. Actually, the Commission identified companies in the potential representative country by the industrial sector defined by NACE code. The fact that the two sampled Chinese exporting producers were classified under the same NACE code as the Brazilian light metal packing producer was a good indicator of the similarities of their economic activity. To the contrary, the proposed steel drum producer in Malaysia was classified under the NACE Code 2511, manufacture of metal structures. The statistics produced based on NACE are comparable at world level and this system is used to classify economic activities into codes so that businesses can be associated with them based on the resources used, the production process, as well as the products or services created. Indeed, the products produced by the proposed steel drum producer are of a large capacity ⁽⁷⁾ and are therefore appropriate for industrial packaging and not food storage, unlike kegs or light metal packaging products. Therefore, the size and the purpose of the final product of the steel drum producer in Malaysia is arguably less similar to kegs than the light metal packaging produced by the Brazilian company.
- (41) Based on this analysis and the lack of evidence presented the claims of the parties were rejected.
- (42) Following final disclosure, the sampled exporting producers repeated their claims made at the provisional stage regarding the selection of the representative country without presenting any further evidence. They also argued that the Commission did not provide data for its statement that the import price of stainless-steel coil from all countries excluding China was rather stable over the last ten years. The Commission considered that it sufficiently disclosed the average import price of stainless-steel coil from all countries excluding China, which was at around 1.83 EUR/kg ⁽⁸⁾ and rather stable over the last ten years, in the final disclosure recital (33).
- (43) The sampled exporting producers claimed that in any event, the import price data as referred to in recital (42) could not demonstrate that there was no effect of the anti-dumping duties ⁽⁹⁾ on the price of this raw material in Brazil, since the import price could have decreased over the years if there were no anti-dumping measures, while the measures were imposed for almost ten years. The Commission notes that the exporting producers failed to clarify how the import prices would be affected by the anti-dumping measures, nor did they provide any substantiated estimate of the impact. This claim therefore did not invalidate the reasons that led to the selection of the representative country as explained above. In any event the Commission recalled that, as mentioned in recital (35), this import price was lower than the average import price in Malaysia (the representative country suggested by the parties). The claims of the parties were therefore rejected.

⁽⁷⁾ 210-litre, source : <http://www.stantamauser.com/products.html>.

⁽⁸⁾ Source: the Global Trade Atlas database.

⁽⁹⁾ The anti-dumping duties were imposed on imports of stainless-steel flat rolled products (HS 721933) originating in China, Taiwan, Germany and Finland.

- (44) The same parties disagreed with the Commission's view on the importance of existing production of the product under investigation when assessing the appropriateness of potential representative countries. They claimed that the stainless-steel coil is an industrial product commonly available worldwide, while for the other two raw materials (spears and necks), the Commission used import statistics relating to the residual codes of the customs nomenclature (described as "other"), instead of the codes describing specific products. Therefore, there was no advantage of selecting Brazil over Malaysia, particularly considering the fact that the SG&A and profit would be based on the financial data of a Brazilian company producing similar product to kegs, which would be the same, if Malaysia was selected as a representative country.
- (45) The Commission considered that basing the cost on a country producing the product under investigation was a crucial element when assessing the appropriateness of potential representative countries, since all the costs of the producers producing that product would be affected by the same market conditions. The fact that nomenclature codes categorise products under description of "other" does not make them less specific, but only separates them from the other defined descriptions under the same code category. The claims of the parties were therefore rejected.

3.1.3. Sources used to establish undistorted costs for factors of production

Spears

- (46) Following the publication of the provisional Regulation, the two sampled exporting producers argued that using only one HS code 848190 for spears (a valve that is used to regulate the gas pressure inside a keg), as done at the provisional stage, was not correct. They argued that the Commission should have used HS 848180 or both codes, since the European spear producers exported these products to Chinese kegs producers under both codes. Also, they argued that a spear is a single unit, instead of a part of a beer dispensing unit. Moreover, spears are sold per piece. The fact that HS code 848180 in the nomenclature of Brazil uses piece/item as quantity measurement whilst that of HS 848190 is kilogram indicates that the price of the former HS code would be a more appropriate benchmark.
- (47) The investigation revealed that the two sampled exporters imported spears from the Union, one under HS 848180 and the other under HS 848190. In order to select a similar raw material to the one used by the sampled exporting producers, the Commission used the descriptions of the Brazilian statistics to determine under which codes spears may fall in the import data of the selected representative country. Therefore, given the fact that there are different types of keg spears, and considering their interface and degree of interdependence with the dispensing equipment, the Commission decided to use narrower eight-digit codes covering part of both HS codes (HS 848190 and HS 848180) under which spears may fall, namely commodity codes 84819090 (parts of taps, other appliances for canalizations, etc., which was the only code used at the provisional stage), as well as 84818031 (other valves for equipment for gas with a working pressure of less than 50 Megabar, with thermoelectric safety) and 84818039 (other valves used in equipment by gas).
- (48) Following final disclosure, the sampled exporting producers repeated their claims made at the provisional stage regarding the classification of spears without presenting any further evidence. They added that the codes 84818031 and 84818039 were not the correct ones to use for spears, because the codes described gas valves, while valves used in spears were the valves for a liquid beer. The parties concluded that, since the classification of spears was questionable and the import statistics in Brazil was unreliable, the only appropriate benchmark for spears would be their own purchase price from the Union spears' producers, as provided in their questionnaire replies.
- (49) As stated in the recital (84) of the provisional Regulation, the spear used in a keg is designed for the maintenance of the pressurized gas within the keg and for the dispense of the carbonized liquid ensuring its conditioned flow. This function is mainly performed by the mechanism included in the body of the keg spear incorporating one or two valves. Therefore, the Commission considered that a spear could be part of the gas operated beer dispensing unit covered by the scope of the HS heading 8481, under which the Brazilian customs nomenclature codes 84818031 and 84818039 fall.

- (50) Furthermore, even if between 45 % and 60 % of spears were purchased by the sampled exporters from the Union, no relevant evidence (such as the contract of purchase or the invoices) in support of the claim for undistorted purchase prices, within the meaning of Article 2(6a)(a) of the basic Regulation, was provided in the replies of the sampled exporters, as required in the questionnaire. Likewise, none of the sampled exporters distinguished the spears used, whether they were sourced domestically or in the Union, in their cost data, even if the questionnaire provided such opportunity. The claims of the parties were therefore rejected.

Labour cost

- (51) At the provisional stage, the Commission used ILO ⁽¹⁰⁾ statistics to establish the undistorted labour cost for the actual labour hours in Brazil. However, the sampled exporting producers identified flaws in the adjustments made for the inclusion of social charges in the labour cost, implying that the labour cost was incorrectly calculated. In addition, they claimed that the ILO statistics showed 39,09 hours worked per week in Brazil, whereas the other sources of information pointed to 44 hours worked per week. According to them, the discrepancy was due to ILO having already deducted public holidays and non-working days on an annual basis. Therefore, they suggested that either the Commission should not have adjusted the ILO weekly working hours by the vacation and public holidays, or it should have used 44 weekly working hours as the basis for calculating the benchmark for labour cost.
- (52) The Commission therefore performed a more detailed review of the ILO benchmark. The Commission' further analysis of labour cost showed that the ILO earnings data set was understated, as it did not take into account the fact that Brazilian workers received thirteen months of salary per working year, and that it only provided data for the average labour cost in Brazil in the manufacturing sector, regardless of the size or/and specific activity of the company.
- (53) On the other hand, the Commission found that the Brazilian Institute of Geography and Statistics (IBGE) ⁽¹¹⁾ recorded detailed labour costs, including full social adjustments (thus addressing the initial claim of the sampled exporting producers), in a central company register with data per detailed economic activity (manufacture of metal packing) and per company size relevant to the size of the two sampled exporting producers in China. The Commission therefore decided to use the latest data available for 2020 of the IBGE, adjusted by the labour cost index for 2021 for the definitive stage of the investigation to calculate the annual labour cost.
- (54) The Commission also reviewed the weekly working hours provided in ILO statistics and the sources identified by the parties ⁽¹²⁾. One of the two sources indicated a maximum 44 working hours per week, while the other source indicated 44 standard working hours per week. Both sources were private and provided the average number of hours applicable in Brazil, without specifying a sector of activities. The revised ILO statistics actually provided 40,21 mean weekly hours actual worked ⁽¹³⁾ in the manufacture of fabricated metal products (except machinery and equipment), which is the sector relevant to the two sampled exporting producers. Thus, the Commission considered the ILO statistics as more appropriate to establish the weekly hours actually worked.

⁽¹⁰⁾ <https://ilostat.ilo.org/>

⁽¹¹⁾ <https://www.ibge.gov.br/estatisticas/economicas/industria/9042-pesquisa-industrial-anual.html?=&t=destaques>

⁽¹²⁾ <https://www.globalization-partners.com/globalpedia/brazil-employer-of-record/#gref>, <https://www.papayaglobal.com/countrypedia/country/brazil/>

⁽¹³⁾ The concept of hours actually worked within the System of National Accounts (SNA) production boundary relates to the time that persons in employment spend directly on, and in relation to, productive activities; down time; and resting time during a specified time reference period. It thus includes (a) "direct hours" or the time spent carrying out the tasks and duties of a job; (b) "related hours", or the time spent maintaining, facilitating or enhancing productive activities; (c) "down time", or time when a person in a job cannot work due to machinery or process breakdown, accident, lack of supplies or power or Internet access; and (d) "resting time", or time spent in short periods of rest, relief or refreshment, including tea, coffee or prayer breaks, generally practiced by custom or contract according to established norms and/or national circumstances. Source: <https://ilostat.ilo.org/>

- (55) The Commission calculated the annual hours actually worked by multiplying the weekly labour hours actually worked with the number of weeks in a year, and then deducting the days not worked (vacations, national holidays, optional, but not mandatory holidays, regional holidays). This approach was taken instead of the one suggested by the parties, as otherwise, all the weeks of the year would have been considered as having five actual working days, which does not correspond the reality of actual work.
- (56) Consequently, the annual labour cost established was divided by the annual labour hours actually worked to calculate the benchmark labour cost of the actual working hour in Brazil.
- (57) Following final disclosure, the sampled exporting producers claimed that the source used for the labour cost in Brazil (IBGE) was not appropriate, since the statistical method (enterprise survey) and the type of data (survey data) used by IBGE made the quality of the statistics dependant on the willingness of the companies to respond to the survey, which, in the absence of details about the companies in the survey, rendered the representativeness of the data for the relevant industry sector questionable.
- (58) The Commission noted that IBGE was an entity run by the federal administration, under the Ministry of Economy and the main provider of data and information about the country ⁽¹⁴⁾. It therefore considered that the data collected and the methods used by the entity were sufficiently reliable and serving as a primary source of statistical data in Brazil. The availability of the details about the companies participating in a particular survey were not considered necessary to confirm the reliability of such institution, the statistical methods used, and the data collected by it. The claim of the parties was therefore rejected.
- (59) Following final disclosure, the sampled exporting producers argued that, based on questions in the questionnaire of the survey used by IBGE, salaries and social charges were excessive and unrepresentative, because they included cost for staff not linked to the production (non-employee personnel, such as owner, partners, unpaid family members). Also, the number of employees reported in the survey was for the end of the year, instead of the average of the year. Given that the year 2020 was affected by COVID-19 pandemic, many employees were laid off due to low economic activities, therefore dividing the yearly labour cost by the number of employees at the end of the year inflated the labour cost per employee.
- (60) Following the comments received, the Commission reviewed IBGE data and excluded the salaries and social charges for staff that was not linked to the production. Also, based on the change in the unemployment rate at the beginning and the end of the year 2020 ⁽¹⁵⁾, the Commission calculated the average number of employees in 2020, which was then used in its calculation.
- (61) The same parties also argued that, based on the definition provided on ILO website ⁽¹⁶⁾, the public holidays and non-working days were already deducted on an annual basis and there was no need to adjust the ILO weekly working hours statistics by the vacation and public holidays. Otherwise, the Commission shall use 44 weekly working hours as a basis for calculating the benchmark labour cost.
- (62) The Commissions reviewed its calculation. The annual hours actually worked were calculated by multiplying the weekly labour hours actually worked (as provided in the ILO) with the number of weeks in a year without deducting the days not worked.

⁽¹⁴⁾ <https://www.ibge.gov.br/en/access-to-information/institutional/the-ibge.html>

⁽¹⁵⁾ Source: IBGE, <https://www.ibge.gov.br/en/statistics/social/labor/16809-quarterly-disseminationpnad2.html?=&t=series-historicas>

⁽¹⁶⁾ "Hours actually worked excludes time not worked during activities such as: (a) Annual leave, public holidays, sick leave, parental leave or maternity/paternity leave, other leave for personal or family reasons or civic duty; (b) Commuting time between work and home when no productive activity for the job is performed; (c) Time spent in certain educational activities; (d) Longer breaks distinguished from short resting time when no productive activity is performed (such as meal breaks or natural repose during long trips)". Source: <https://ilostat.ilo.org/resources/concepts-and-definitions/description-wages-and-working-time-statistics/>

Import duties applied to the purchase of raw materials

- (63) The sampled exporting producers argued that adding Brazilian import duties to the import prices of raw materials was incorrect, as the purpose of the reference to a representative country is to establish the undistorted prices the Chinese exporting producers should have paid, which requires the application of the corresponding Chinese import duty rate.
- (64) The normal value should reflect the undistorted price of the raw materials in the representative country (in this case Brazil). It should therefore reflect the price that a producer of kegs would pay in Brazil for the raw materials delivered at the factory gate. If import duties in Brazil were not added, the resulting benchmark would not reflect the undistorted price on the Brazil market, but merely the average CIF price in the countries exporting the raw materials in question. This would be contrary to the Article 2(6a)(a) of the basic Regulation. The argument of the parties was therefore rejected.
- (65) Following final disclosure, the sampled exporting producers repeated their claims made at the provisional stage regarding the import duties applied to the purchase of raw materials without presenting any further evidence. The arguments were already rejected in the previous recital.
- (66) Considering all the information submitted by the interested parties, the following factors of production and their sources were identified with regard to Brazil in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

Table 1

Factors of production of kegs

Factor of Production	Commodity Code	Undistorted value
Raw materials		
Stainless Steel Coil	721933	16,73 CNY/Kg
Spear	84819090, 84818031 and 84818039	386,99 CNY/Kg
Neck	73269090	100,27 CNY/Kg
Scrap	720421	8,86 CNY/Kg
Labour		
Labour cost of the actual working hour in manufacture of metal packaging, companies with 100 to 499 employees	N/A	48,41 – 54,32 CNY/hour (depending on the company-specific situation)
Energy		
Electricity	N/A	0,7475 CNY/kWh

3.1.4. Calculation of the normal value

- (67) The details of the calculation of the normal value were set out in recitals (96) to (100) of the provisional Regulation.
- (68) The two sampled exporting producers claimed that the Brazilian light metal packing producer's profit of 24,4% was not reliable for constructing the normal value due to it being high when compared to the Union's kegs producers target profit of 12%. They proposed to use instead the profit of 12.2% as recorded by a Malaysian steel drums producer, because they considered it to be more reliable as it closely matched the target profit of the Union industry.

- (69) The Commission noted that the target profit of the Union producers is not comparable to the profit of companies in a representative country, be it Brazil or Malaysia. First, the context of and the objective with which these respective profits are established is different. The profit in the representative country is used as a proxy for an undistorted profit that would have been achieved in a country not affected by significant distortions. This country must have a level of development similar to the country concerned affected by significant distortions. By contrast, the Union industry target profit is the profit normally achieved in the Union market by the industry under normal conditions of competition, that is in the absence of dumped imports. In other words, the target profit is based on the profit level of the Union industry during the years before the injurious dumped imports, while the profit of a company in a representative country is based on the realised profit during a specific financial year. Therefore, the variables to establish target profit of the Union industry and the benchmark profit in a representative country are different. Furthermore, these profits are calculated in different ways. The Union industry's target profit is expressed on the turnover, whereas the profit in the representative country is expressed on the cost of goods sold. As a result, these profit levels are incomparable, and the fact that the profit of the proposed Malaysian producer is closer to the Union industry's target profit is thus irrelevant. The claim of the parties was rejected.
- (70) The two sampled exporting producers also claimed that the lack of detailed information in Orbis ⁽¹⁷⁾ concerning 'other operating expenses' used in the calculation of SG&A and profit rendered the Orbis data unusable. They added that the exact source of the Orbis data concerning the Brazilian producer identified by the Commission was unknown, making the Orbis data less reliable than the audited accounts of the proposed Malaysian steel drums producer.
- (71) The Commission pointed out that the provisional disclosure provided information on the source of the Orbis data of the Brazilian producer, which was local official registry information based on the local GAAP ⁽¹⁸⁾. Additionally, the glossary of the data and ratios in Orbis provides a definition of other operating expenses as "*all costs not directly related to the production of goods sold such as commercial costs, administrative expenses, etc. and depreciation of those costs*", thus clarifying the concerns of the parties.
- (72) At the final stage of the investigation, the Commission also corrected a clerical error concerning the calculation of the SG&A and profit of Metalurgica Mococa SA in Brazil. As a result, the SG&A and profit expressed as a percentage of the costs of goods sold and applied to the undistorted costs of production, amounted to 8,67 % and 22,52% respectively.
- (73) 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.
- (74) Following final disclosure, the sampled exporting producers repeated their claims made at the provisional stage regarding the profit level used by the Commission without presenting any further evidence. The arguments were already rejected in the recital (69).

3.2. Export price

- (75) The details of the calculation of the export price were set out in recitals (101) to (103) of the provisional Regulation. Since no comments were received, the Commission confirmed its provisional findings.

3.3. Comparison

- (76) The details concerning the comparison of the normal value and the export price were set out in recitals (104) to (105) of the provisional Regulation. Since no comments were received, the Commission confirmed its provisional findings.

⁽¹⁷⁾ Orbis database, provided by Bureau Van Dijk (<https://orbis.bvdinfo.com>).

⁽¹⁸⁾ Generally accepted accounting principles.

3.4. Dumping margins

- (77) As described in recitals (32) - (73), following claims from interested parties and further investigation, the Commission revised and recalculated the dumping margins.
- (78) As explained in recital (111) of the provisional Regulation, the Commission concluded at provisional stage that the cooperation by the exporting producers was low. However, as explained in recital (97), the Commission established at definitive stage that it was unlikely that other significant Chinese exporting producers were active on the Union market. Consequently, the Commission concluded at definitive stage that the level of cooperation was high (above 90 %) and considered it appropriate to establish the dumping margin for non-cooperating exporting producers at the level of the highest dumping margin found for a sampled exporting producer.
- (79) Following the changes made after the final disclosure, the definitive dumping margins expressed as a percentage of the cost, insurance and freight (CIF) Union frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin
Penglai Jinfu Stainless Steel Products Co., Ltd	85,5 %
Ningbo Major Draft Beer Equipment Co., Ltd	67,3 %
Other cooperating companies	77,9 %
All other companies	85,5 %

4. INJURY

4.1. Definition of the Union industry and Union production

- (80) According to the information available to the Commission, the like product was manufactured by eight producers in the Union during the investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (81) The total Union production during the investigation period was established at around 1 926 200 kegs. The Commission established this figure on the basis of the reply to the macroeconomic questionnaire provided by the complainant and the verified questionnaire replies of the sampled Union producers. As indicated in recital (7) of the provisional Regulation, sampled Union producers represented around 73 % of the estimated total Union production of the like product.
- (82) In the absence of any comments with respect to the definition of the Union industry and its levels of production, the conclusions in recitals (113) and (114) of the provisional Regulation were confirmed.

4.2. Additional investigative steps following the provisional measures

- (83) Following the imposition of provisional measures, as explained in recital (8), the Commission continued to seek and verify the information highlighted in recitals (140) and (141) of the provisional Regulation, concerning import quantities of kegs from China. In that context and as described in sections 4.2.1, 4.2.2, 4.2.3, 4.2.4. and 4.2.5, the Commission: (i) requested detailed customs data from the Custom Authorities of Spain and Romania on imports of goods under CN codes relevant for kegs; (ii) requested data on exports of kegs in 2022 from cooperating sampled and non-sampled exporting producers to reconcile them with the more precise official import statistics available for the post-initiation period; (iii) sent out additional data requests to the five major importers identified in the complaint, asking for information on their suppliers and purchase volumes for the entire period considered; (iv) verified the non-sampled cooperating exporting producers' sales to the EU during the period considered; and (v) sought to collect more information concerning the small breweries after provisional stage.

4.2.1. *Analysis of custom data from the Custom Authorities of Spain and Romania*

- (84) The customs data from Romania and Spain were analysed using the same methodology as for the original analysis, described in recital (127) of the provisional Regulation. While this additional analysis allowed the Commission to refine the estimation of the imports of kegs into the Union based on the Customs data analysis, the inclusion of Spain and Romania did not have a major impact on the overall import quantities or trends of the estimated quantities.

4.2.2. *Comparison of exporting producers' post-IP sales data with Surveillance ⁽¹⁹⁾ and the Article 14(6) databases ⁽²⁰⁾ imports data.*

- (85) As explained in recital (83), the Commission requested data on exports of kegs in 2022 from all six cooperating (both sampled and non-sampled) exporting producers, in order to compare those figures with the data at TARIC code level ⁽²¹⁾ on imports of kegs and thus check whether there may be some exporters selling kegs into the Union market that were so far unknown in the investigation. All six cooperating exporting producers provided the requested data.
- (86) Data at TARIC code level on imports of kegs are available in Surveillance database as of 14 May 2022, i.e., since the day following the initiation of the investigation. In addition, there is an inevitable time lag from the date on which an exporting producer registers a sale to the date on which that shipment reaches Union customs. The Commission considered that the average time lag was 30 days, based on the information provided by the exporting producers ⁽²²⁾. The Commission thus compared the reported sales data for each month, starting with May, with the Surveillance data on imports for the following month.
- (87) Applying the abovementioned comparison methodology, the total sales of kegs to the Union reported by the cooperating exporting producers in the period of May–September 2022 were around 1 % higher than the total imports recorded in the Surveillance database for the period June–October 2022, on per kilogram basis. Comparing in the same way the sales for May–December 2022 with the Surveillance data for June 2022–January 2023 showed even higher volumes of sales declared by the exporting producers compared to the imports recorded in the Surveillance database which seems to be due to the time lag in recording imports at the Union customs from when they were recorded as sales by the exporting producers.
- (88) Based on this exercise the Commission concluded that the cooperating exporting procedures were the only exporting producers selling kegs to the Union at least from the beginning of May 2022.

4.2.3. *Data from unrelated importers and small breweries*

- (89) Furthermore, the Commission again contacted the five major importers identified in the complaint ⁽²³⁾, asking for their suppliers and purchase volumes for the entire period considered.
- (90) Only two out of five importers (KSM Keg and IMEXA) provided the requested data. One importer (My Kegs) asked for a deadline extension to submit the data, and, despite the extension being granted, failed to provide the requested data.

⁽¹⁹⁾ Database established in line with Article 55 of Implementing Regulation (EU) 2015/2447. More information is available at: https://taxation-customs.ec.europa.eu/online-services/online-services-and-databases-customs/surveillance-system_en

⁽²⁰⁾ Database based on Article 14(6) of the basic Regulation.

⁽²¹⁾ Data detailed at the level of 10-digit commodity codes (TARIC codes').

⁽²²⁾ The cooperating sampled and non-sampled exporting producers estimated the time from the day they record a certain sale to the day this shipment is cleared by the Union customs to be anywhere between 25 and 50 days. The average time lag would thus be 37.5 days. However, since the abovementioned exporting producers reported their sales to the Commission on a monthly basis, the Commission took the time lag to be 30 days (one month) in order to be able to adequately compare the sales data for each month with a respective monthly period in Surveillance database.

⁽²³⁾ Keg Trade s.r.o, Imexa, My Kegs (VP Trading), KegExchange, and KSM Keg.

- (91) The analysis of the data submitted by the two abovementioned importers showed that they only purchased kegs from the two sampled and one non-sampled cooperating exporting producers during the period considered. The sales reported by the relevant cooperating exporting producers largely matched the purchases reported by the two importers.
- (92) The data obtained, whilst admittedly not covering all importers, did not reveal exports by an exporting producer that was not cooperating with the investigation.

4.2.4. *Cross-checking import data provided by the cooperating non-sampled exporting producers*

- (93) The Commission sought to gain assurances that the non-sampled exporting producers did not under-report their sales volumes to the Union during the period considered. As explained in Section 4.2.2 above, the comparison of the sales data of both sampled and non-sampled cooperating exporting producers with official import statistics available in Surveillance database did not indicate that any of the exporting producers would have under-reported their sales to the Union in 2022. The Commission cross-checked the data provided by the non-sampled cooperating exporting producers' reported sales to the Union in 2022 with TARIC code level data. Regarding their share of total imports from China as reported during the period considered ⁽²⁴⁾, the Commission cross-checked the data with the cooperating users and importers. On this basis, Commission found no evidence that the data provided by the exporting producers was inaccurate.

4.2.5. *Information concerning small breweries*

- (94) No small breweries came forward following the imposition of provisional measures. Therefore, the Commission was unable to obtain any further information from that source on imports from China.

4.2.6. *Conclusion on imports*

- (95) From the comparison between the six cooperating exporting producers' sales data with the data at TARIC code level from Surveillance and the data from unrelated importers and users, it appears that the quantities of kegs which the cooperating exporting producers reported to have sold to the Union market in 2022 are, broadly, the total imports of kegs from China to the Union market during that period. Moreover, the Commission analysed imports under C999 TARIC additional code . TARIC additional code C999 is meant to record imports from the non-cooperating exporting producers. Both the Article 14(6) database as well as in the Surveillance database showed that the imports in question were insignificant for the period January – March 2023. This further confirms that the cooperating exporting producers were likely the main exporting producers of kegs to the Union during the period considered.
- (96) Similarly, the examination of the data from the two importers who responded to the Commission's requests for data did not uncover the existence of any other exporting producers.
- (97) Considering the above, the Commission could not positively establish that there were significant Chinese producers active on the Union market before the initiation of the case and which would have stopped their exports at the beginning of May 2022, just shortly before the initiation of the case.
- (98) Furthermore, the Commission recalled that its analysis of detailed customs data, as described in recital (127) of the provisional Regulation, was based on certain assumptions. Potential inaccuracies may lie in the "1 keg = 10 kg" conversion formula, as well as the varying degrees of accuracy of goods descriptions in individual Member States' custom data. In that regard, it is worth pointing out that, with the addition of two more Member States to the customs data analysis (Romania and Spain), Belgian customs data accounted for more than 70 % of the total difference between the lower and the upper figures of potential imports of kegs resulting from the analysis. At the same time, over the period considered, Belgium accounted for a big share of kegs imports out of all the Member

⁽²⁴⁾ The share of kegs sold by non-sampled exporting producers in total annual sales from China varied between 2% and 10% over the four years of the period considered, and was at 7% in 2022.

States whose customs data the Commission analysed. In the case of the import statistics concerning Belgium, many item descriptions in the declarations were fairly wide and may or may not have been kegs specifically. Therefore, without prejudice to the provisional findings as regards import figures as presented in the provisional Regulation, and following a conservative approach, the Commission decided to base its definitive findings on the sales quantities declared by the six cooperating exporting producers into the Union for the entire period considered.

- (99) As a result, the Commission established the import volumes from the PRC, market shares and Union consumption in this regulation on the basis of export quantities to the Union reported by the six cooperating exporting producers for the period considered.

4.3. Union consumption

- (100) Union consumption developed as follows:

Table 2

Union consumption (pieces)

	2018	2019	2020	Investigation period
Total Union consumption	3 493 180	2 481 922	1 703 848	941 237
Index	100	71	49	27

Source: Questionnaire replies of Union producers and cooperating exporting producers' data (see Section 4.4.1)

- (101) The Commission established the Union consumption of kegs on the basis of total Union industry's sales in the Union, plus total imports from China as reported by the six cooperating exporting producers.
- (102) At provisional stage, imports from other third countries to the Union were not taken into account as they were considered negligible. No comments were received on this point. Furthermore, additional data received from two importers after the imposition of provisional measures did not contradict that conclusion. Therefore, the conclusions from the recital (119) of the provisional Regulation were confirmed.
- (103) Using the imports into the Union from China established on the basis of the data reported by the cooperating exporting producers (see Section 4.4.1 below), total Union consumption also showed a decreasing trend during the period considered. Compared to the consumption as published in Table 2 of the provisional regulation, the overall trend in the period 2018-2020 (until the IP) did not substantially change.
- (104) Following the initial 29% drop, the consumption severely diminished during the peak of the Covid-19 pandemic. The lockdowns causing the bar/restaurants closures, heavily reduced the demand for kegs in that period. The overall uncertainty and lack of revenues forced the kegs users (the beverage manufacturers) to postpone their planned kegs purchases.
- (105) The situation continued throughout the investigation period and, as explained in recital (139), the consumption started to improve after the investigation period (as of 2022) as the impact of Covid-19 pandemic diminished and the overall demand for drinks served from the tap increased. As a result, overall demand increased by 122 % in 2022 in comparison with the investigation period to the level slightly below the pre-Covid-19 period (2019).
- (106) No interested parties contested the consumption data following the provisional measures.

4.4. Imports from the country concerned

4.4.1. Methodology used to quantify imports from the country concerned

- (107) The product concerned is imported into the Union under two CN codes (ex 7310 10 00 and ex 7310 29 90), depending on the capacity of the keg. Kegs with the capacity of ≥ 50 litres but ≤ 300 litres fall under CN code 7310 10 00, while those with the capacity of < 50 litres fall under CN code 7310 29 90 (the 'relevant CN codes'). These two CN codes also include a broad range of products other than the product under investigation (e.g., cans, tin boxes, feedthroughs for livestock, buckets, fire extinguishers, canisters, containers and tanks for various uses, water bottles, steel barrels, etc.). Thus, establishing imports based on CN codes alone was not possible.
- (108) As explained in section 4.2.5, in view of the evidence on file and the relevant tests based on the post IP data, at the definitive stage the Commission followed the conservative approach assuming that import quantities reported by the cooperating exporting producers correspond to the totality of imports of kegs from China during the period considered. Consequently, the Commission based its definitive findings regarding the import quantity from China on figures reported by the cooperating exporting producers presented in Table 3 below.

Table 3

Imports into the Union (pieces) and market share

	2018	2019	2020	IP
Volume of imports from the country concerned (pieces)	617 607	357 404	224 546	118 460
Index	100	58	36	19
Market share	18%	14%	13%	13%
Index	100	81	75	71

Source: cooperating exporting producers

- (109) The development of import volumes and market shares changed compared to the import volumes based on the customs statistics as published in the provisional Regulation in Table 6. The market share of the Chinese imports initially decreased 4 percentage points between 2018 and 2019. It then slightly decreased by one percentage point in 2020 during the outbreak of Covid-19 pandemic and lock downs both in the Union and in China to remained unchanged in the investigation period despite continuing stringent sanitary measures and the container crisis affecting exports from China.

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

- (110) As established in section 4.3.3.3 of the provisional Regulation, in addition to establishing price undercutting, the Commission considered that there was also significant price suppression within the meaning of Article 3(3) of the basic Regulation. Due to the significant price pressure caused by the low-priced dumped imports from Chinese exporting producers, the Union industry was unable to raise the prices throughout the investigation period in line with the development of costs of production and in order to achieve a reasonable level of profit.
- (111) The average Union industry's sales price decreased by almost 10 % over the period considered. At the same time, the cost of production increased by 16 % over the same period, putting the sales price of the Union industry significantly below its cost of production. Especially in 2020 and in the investigation period, the cost of production increased substantially, while the price had to be kept stable because of the price pressure by Chinese exports. Underselling during the investigation period was above 50%.

- (112) This situation had a clear impact on the Union industry profitability. After starting at 12% in 2018, profitability decreased sharply for the rest of the period, especially in 2020 and during the investigation period.
- (113) The development of these three indicators clearly show that the industry was subject to strong pricing pressure from the Chinese dumped imports, which forced it to sell at prices below the cost of production. As further explained in section 5.1., this caused a clear price suppression for the Union industry.
- (114) After provisional disclosure the two sampled exporting producers and the GOC argued that the Commission did not provide them with sufficiently detailed disclosure of information and explanation on the calculations of their respective undercutting and underselling margins, without providing a rationale for confidential treatment of that information, thus violating their right of defence, the exporting producers reiterated the same comments at final disclosure.
- (115) The Commission noted in that regard that certain data at PCN level (namely average price and quantity sold) were considered confidential not only in order to protect business confidential information of the Union producers to the Chinese exporters but also to protect the confidentiality of the business information of each of the sampled Union producers against each other. Articles 6(7) and 20 of the basic Regulation provide certain rights of information and disclosure to interested parties. However, consistent with Article 19 of the basic Regulation, the principles governing the right to information must be reconciled with the requirements of confidentiality, in particular the obligation for the institutions to respect business secrecy; ⁽²⁵⁾ the protection of business secrets being a general principle of EU law. ⁽²⁶⁾ Furthermore, neither the exporting producers nor the GOC provided any explanation how the allegedly insufficient disclosure would breach their right of defence. Therefore, these claims were rejected as unsubstantiated.
- (116) In the absence of other comments on prices of imports and price undercutting, the Commission confirmed the conclusions set out in recitals (146) to (154) of the provisional Regulation.

4.5. Economic situation of the Union industry

4.5.1. General remarks

- (117) Following the imposition of provisional measures, no comments were received, or additional findings made on the following macroeconomic indicators: production, production capacity and capacity utilisation, sales volume, growth, employment and productivity, and recovery from past dumping. Therefore, the Commission confirmed its conclusion set out in recitals (160) to (163), (165), (167) to (169), and (171) of the provisional Regulation.

4.5.2. Macroeconomic indicators

4.5.2.1. Sales volume and market share

- (118) The conclusions on sales volume of the Union industry on the Union market from recital (165) of provisional Regulation were confirmed. However, with the use of the conservative approach to determine the import quantities (see Section 4.2.5), the development of the Union industry's market share had to also be adjusted. The Union industry's sales volume and market share thus developed over the period considered as follows:

⁽²⁵⁾ Judgments of 1 June 2017, *Changmao Biochemical Engineering v Council*, T-442/12, EU:T:2017:372, para. 142; of 30 June 2016, *Jinan Meide Casting v Commission*, T-424/13, EU:T:2016:378, para. 94; of 20 March 1985, *Timex v Council and Commission*, 264/82, EU:C:1985:119, para. 24; of 18 December 1997, *Ajinomoto and NutraSweet v Council*, T-159/94 and T-160/94, EU:T:1997:209, para. 83; of 11 July 2013, *Hangzhou Duralamp Electronics v Council*, T-459/07, EU:T:2013:369, para. 115; of 25 September 1997, *Shanghai Bicycle v Council*, T-170/94, EU:T:1997:134, para.122.

⁽²⁶⁾ Judgment of 30 June 2016, *Jinan Meide Casting v Commission*, T-424/13, EU:T:2016:378, para. 165, citing judgment of 29 March 2012, *Interseroh Scrap and Metals Trading*, C-1/11, EU:C:2012:194, para. 43.

Table 4

Sales volume and market share

	2018	2019	2020	Investigation period
Sales volume on the Union market (pieces)	2 875 573	2 124 518	1 479 302	822 777
<i>Index</i>	100	74	51	29
Market share	82%	86%	87%	87%
<i>Index</i>	100	104	105	106

Source: Reply to the macro questionnaire provided by the complainant

- (119) The Union industry's market share development slightly changed compared to the figures based on the import statistics as published in the provisional Regulation. Using the imports statistics, there was a steady situation in 2018 and 2019 with 5 percentage points drop in 2020 and then further 10 percentage points drop in the investigation period.
- (120) The data based on the conservative approach show 4 percentage point increase from 2018 to 2019 and then the market share remained steady until the end of the investigation period. As further discussed in section 5.1.1, the market share of the Union industry decreased by 14 percentage points in 2022 in comparison with the investigation period to the benefit of the imports from China, which increased by the same extent (from 13 % to 27 %).
- (121) The GOC claimed that *"although the market share and sales volume of EU producers have declined during the investigation period, the decline is in line with consumer demand"*, the decrease in which the GOC attributes to the Covid-19 pandemic and inflation in consumer goods. The GOC presented no evidence to suggest that there was either significant inflation in consumer goods during the period considered, nor that such alleged inflation would be the reason behind the decrease in demand for keys. Nonetheless, the Commission itself concluded in recital (120) of the provisional Regulation that the consumption indeed decreased due to the Covid-19 pandemic and the various lockdowns introduced in the Union. However, as explained in recitals of the provisional Regulation and in section 5.1 below, despite Covid-19 which resulted in decrease in demand, the market shares of both the Union industry and the Chinese exporting producers did not change significantly in the period 2019 – 2021 in a significantly smaller market, and the Commission concluded that the imports from China exercised significant price pressure on the Union industry forcing it to keep its price low and below cost of production thereby causing material injury. These arguments were therefore rejected as unfounded.

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

- (122) In its comments on the provisional findings, the complainant claimed that, with the dumping margins established in the provisional stage varying between 65,3 % and 91 %, the magnitude of dumping should be considered substantial and included in the evaluation of injury as provided for in Article 3(5) of the basic Regulation.
- (123) The Commission noted that it had indeed, in the context of evaluation of all factors and indices relevant to assess injury to the Union industry, found that the magnitude of the dumping margins did have a substantial impact on the Union industry, in recital (170) of the provisional Regulation. The Commission subsequently established that dumping margins were even higher, ranging from 70,2% to 92,3 % (see Section 3.4 above). On that basis, the Commission confirmed the conclusion from recital (170) of the provisional Regulation.

4.5.3. *Microeconomic indicators*

- (124) Following the imposition of provisional measures, no comments were received on any of the microeconomic indicators (prices and factors affecting prices, labour costs, inventories, profitability, cash flow, investments, return on investments and ability to raise capital). Therefore, the Commission confirmed its conclusion set out in recitals (172) to (185) of the provisional Regulation.

4.5.4. *Conclusion on injury*

- (125) Despite the modification to consumption, import figures, and market shares, as presented above, the main macro and micro indicators continue to show a negative trend during the period considered. Whilst the market share of the exports from China appears to diminish in 2019 and (slightly) in 2020 to then remains stable in the IP, this has to be seen in the particular situation of the unprecedented COVID-19 pandemic outbreak in 2020 and the collapse of the Union market for kegs that followed. Following a slight market share loss in 2020, despite stringent zero-covid policy measures and the container crisis of 2021, imports from China maintained a substantial market share, considerably suppressing the Union industry's prices in the IP. Indeed, the Commission confirmed the underselling margins as established at provisional stage, ranging from 52,9 % to 58,8 %, causing significant price suppression in the market and negatively impacting the Union industry.
- (126) In their comments to pre-disclosure and reiterated at provisional disclosure and at final disclosure, the two sampled exporting producers claimed that the Union industry's target prices per model were not reliable and against commercial logic. Ningbo and Penglai argued that certain models of a smaller capacity (5 and 10 litres) were more expensive than models with a larger capacity. Furthermore, they argued that it cannot be that one model of keg had the same target price with or without spears, and that was unreasonable that two models of kegs of the same capacity but produced under different standards had a different target price.
- (127) First, the Commission observed that the majority of kegs sold in the Union market have a capacity from 20 litres and up, while kegs of 5 and 10 litres were sold in limited quantities - they represented [0.4% - 0.6%] of the total Union consumption in the IP. It is commercially possible that niche products produced and sold in limited quantities had a higher price than mass products sold in considerably higher quantities. Furthermore, the production quantity had an impact on the cost of production too. Changing the product type requires steps such as changing the mould of the hydraulic press and other operations that slow down the flow of the production process. When the adaptation of the production process is done for the production of few hundreds of units of a certain product type, fixed costs and other costs have a significantly higher impact than for the production of a product type produced in tens of thousands of units.
- (128) Second, the Commission noted that the injury margin was expressed in ranges in order not to disclose confidential information of the Union producers, as explained above in recital (115). Therefore, the exporting producers estimated a minimum and maximum target price per model based on those ranges. The spears have an impact of around 10% on the price of the final product. The ranges in which the target prices of the two models are contained allow for this differentiation. Therefore, contrary to the argument of the exporting producers, the two models do not have the same price.
- (129) Lastly, the Commission noted that the capacity was not the only driver of the price. Other factors, such as the standard, clearly had an impact too. This can equally be observed in the export prices of the two sampled exporting producers, which also showed a difference of almost 50% for those exact same two models of kegs.
- (130) Therefore, these claims were rejected as unfounded.
- (131) With the other comments that the interested parties made on the injury findings addressed in the relevant Sections above, the Commission confirmed its conclusions from recitals (186) to (188), (190), and (191) of the provisional Regulation, and reaffirmed that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

5.1. Effects of the dumped imports

- (132) In Recital (217) of the provisional Regulation, the Commission concluded that the dumped imports from China caused the injury suffered by the Union industry.
- (133) Following the conservative scenario for the import volumes (as explained in Section 4.4.1 above) the Commission assessed whether the conclusions reached in recitals (193) to (209) of the provisional Regulation on causality remained valid.
- (134) The volume of imports from China decreased by 80 % over the period considered, from 617 607 pieces in 2018 to 118 460 pieces in 2021 and their market share decreased from 18% in 2018 to 13% in the investigation period. The import volumes and their market share, although decreasing as compared to the beginning of the period considered, remained significant during the investigation period.
- (135) Furthermore, these imports were made at prices significantly lower than those of the Union industry over the whole period considered. The Union industry had no choice but to follow the low prices set by the Chinese producers in order to preserve its market share in a period of dropping consumption and increasing production costs, as explained in section 4.4.3.1. of the provisional Regulation. This in turn resulted in a significant profitability drop for all sampled Union producers from profits (of + 12 % in 2018) to heavy losses (– 9 % in 2021), and the consequent deterioration of other financial indicators such as return on investment and cash flow. This price suppression, as explained in section 4.3.3 of the provisional Regulation was clearly due to the behaviour of the Chinese exporting producers offering kegs at dumped prices on the EU market.
- (136) As established in recitals (190), (194) and from (196) to (209) of the provisional Regulation, the exporting producers' price pressure started in 2019, when their export price dropped by 13%. During the same period Union industry's prices increased by just 2%, while their cost of production increased by 7%. This had an immediate effect on the profitability that dropped from 12% to 5%. In 2020-2021 Covid-19 pandemic hit the Union and, in consequence of the various lockdowns across Europe, Union consumption dropped dramatically. As a result of the reduced production and capacity utilisation, Union industry's cost of production increased significantly, as explained in recital (174) of the provisional Regulation. Despite the rise in costs the Union industry could not raise its prices to a sustainable level for concerns of losing further sales volume against the low-priced and dumped imports of kegs from China.
- (137) The Union industry's sales of kegs decreased from 2 875 573 pieces in 2018 to 822 777 pieces in the investigation period. While the Union industry managed not to lose its market share during the period considered, in the context of a temporarily shrinking market, it only managed to do so by lowering its prices to unsustainable, below cost levels. Further loss of market share coupled with the collapse in the consumption would most likely mean a closure for the entire industry following the outbreak of the COVID-19 pandemic. As the post IP data demonstrates, that closure coupled with the sharp increase of import volume from China in 2022 would most likely be a death blow to the Union industry. Therefore, the Commission confirmed that in a context of shrinking market and increasing cost of production, the Chinese prices consistently undercut the Union industry prices and suppressed EU market price levels.
- (138) The situation of the Union export performance, as detailed in section 5.2.2. of the provisional Regulation, showed what a normal situation would be in terms of price levels and resulting profits in export markets not affected by dumped imports or where measures have been imposed to restore fair trade, i.e. the USA that constitute its main export market. Over the period considered, the prices these markets were able to offer were significantly higher than the sales prices of the Union industry on the Union market and constantly above its cost of production, except for 2020, the year most significantly affected by the Covid-19 pandemic. Therefore, had it not been for the significant price suppression and price undercutting exercised by Chinese imports, due to the exceptional measures that were taken as described in recital (190) of the provisional Regulation, the Union industry could have weathered most of the outbreak of the Covid-19 pandemic in a profitable state.

5.1.1. Analysis of the 2022 situation

Table 5

Comparison of the major injury indicators for the period 2018 - 2022

	2018	2019	2020	2021	2022
Total Union consumption (pcs)	3 493 180	2 481 922	1 703 848	941 237	2 092 723
Sales volume of the Union industry (pcs)	2 875 573	2 124 518	1 479 302	822 777	1 533 024
Market share	82%	86%	87%	87%	73%
Import quantities from China (pcs)	617 607	357 404	224 546	118 460	559 699
Market share	18%	14%	13%	13%	27%
Average unit sales price of the Union Industry (EUR/piece)	56	55	51	51	76
Average unit import price from China (EUR/piece)	43	37	38	43	51
Union industry's unit cost of production (EUR/piece)	55	59	63	64	75
Union industry's profitability	12%	5%	- 18%	- 9%	1%

Source: Data provided by the complainant. Data provided by the sampled Union producers. Data provided by the cooperating exporting producers. Surveillance database.

- (139) To gain a better understanding of the market situation taking into account that the market in 2020-2021 was affected by the Covid-19 pandemic, the Commission analysed also the post-IP period that is the entire 2022. In 2022 the effects of the lockdowns due to Covid-19 pandemic were over and the market started to rebound. Consumption increased from 941 000 pieces in 2021 to 2.1 million in 2022 i.e., by 122%. The Union industry's sales went up by 86% reaching 1.5 million pieces and its prices went up by 49% reaching 76 EUR/keg (from 51 EUR/keg in 2021).
- (140) At the same time imports from China grew at an impressive rate of 372 %, from 118 000 pieces in 2021 to 560 000 in 2022. As a result, the market share of the Chinese exporters more than doubled from 13 % in 2021 to 27 % in 2022, while the market share of the Union industry dropped from 87 % to 73 % over the same period.
- (141) Import prices from China increased as well in 2022, from 43 EUR/keg to 51 EUR/keg, but to a far lesser extent than the Union industry prices, and the average undercutting margin increased up to 49% in 2022.
- (142) Furthermore, year 2022 was characterised by the significant increase in inflation, driven by the energy costs, and the increase in price of stainless steel in the first half of 2022 compared to 2021. In this situation, the cost of production of the Union industry grew by 17 %, up to 75 EUR/keg (just 1 euro below the average price). Therefore, in spite of the increase in sales volume and selling prices, the profitability of the Union industry barely reached 1 %.
- (143) The Chinese export prices were significantly lower than Union industry's prices and costs since the beginning of the period considered in 2018. This market presence at very low prices was to the detriment of the Union industry that was obliged to decrease sales prices during the period considered to maintain their position in the market. These effects were possibly less evident in 2020-2021 due to the effects of the Covid-19 pandemic and the shipping container crisis that allowed the Union industry to slightly increase its market share, although at the cost of significant losses.

- (144) The data in 2022, when the market was back to pre-Covid-19 conditions, show the true magnitude of the injurious effects of Chinese unfair price competition. In 2022, despite the growing demand, the Union industry was able to sell its product at prices just barely in line with its cost of production and, despite this, in just one year lost 14 percentage points of market share to the Chinese imports. Therefore, the data from 2022 demonstrates the outcome of the trend that started in 2019 and was concealed by a different type of injury caused by Chinese imports throughout the COVID-19 pandemic of 2020 and 2021. Union industry's sharp decrease of prices in 2019 managed to preserve its market position but at a significant cost to its profitability. When the market rebounded in 2022 and the Union industry, unable to compete effectively on prices with the heavily dumped Chinese imports, remained at just slightly above break-even, that led to a massive market loss to the benefit of the imports from China.
- (145) In light of the above considerations, the Commission established that the post-IP developments confirmed its findings in the provisional Regulation and in recital (137) above that the dumped imports caused the injury suffered by the Union industry during the period considered. Indeed, even in the post-IP period where the effects of the Covid-19 pandemic were no longer observed, due to the significant price pressure caused by the low-priced imports from Chinese exporting producers, the Union industry was unable to raise its prices in line with the development of costs of production and as a result, continued to suffer while losing market share.
- (146) In the absence of any other comments with respect to this section, the Commission confirmed the rest of its conclusions, as set out in recitals (194) to (209) of the provisional Regulation.

5.2. Effects of other factors

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

- (147) In recitals (210) and (211) of the provisional Regulation the Commission concluded that the decrease in consumption that was further aggravated by the Covid-19 pandemic did not attenuate the causal link between the dumped imports and the injury of the Union industry.
- (148) The Commission also assessed whether these conclusions reached in the provisional Regulation on the effects of the Covid-19 pandemic remained valid based on the more conservative determination of import volumes.
- (149) Imports of kegs from China at very low prices were recorded from 2018 onwards. Over the period considered, the average price of imports from China was on average 24 % lower than the average sales price of the Union industry. This coincided with a constant decrease of the Union industry's prices despite the increasing production costs. The fact that the decrease in consumption was further aggravated by the Covid-19 pandemic did not attenuate the causal link between the dumped imports and the injury of the Union industry. Over the period considered consumption decreased by 73 % and sales volume of the Union industry by 71 % while the imports from China, limited by the shipping container crisis, decreased by 80 %. However, as discussed in recital (196) of the provisional Regulation and in section 5.1 above, as demonstrated by the prices the Union industry achieved on the US market which is protected by anti-dumping duties on imports of kegs from China, without the Chinese dumped imports and the price pressure exerted, the Union industry would have been able to increase its prices to a more sustainable level and to cover for the increased cost of production while maintaining its market share.
- (150) Furthermore, the post-IP developments assessed in recitals (139) to (143), show that even in the period when the effects of the Covid-19 pandemic were no longer present on the market, Union industry continued to suffer from material injury caused by the low priced imports from China.
- (151) The GOC put forward several arguments concerning the causation analysis as presented in the provisional Regulation, arguing, in essence, that the EU industry's deteriorating situation is wrongly attributed to the Chinese dumped imports.

- (152) The first argument GOC presented was that the Union industry performance deteriorated instead due to decreasing demand brought about by the Covid-19 pandemic and inflation in consumer goods. The Commission already addressed these comments in recitals (132) to (143).
- (153) The second factor which the GOC claimed to be the cause of Union industry's deteriorating performance is the increase in prices in stainless steel as the main raw material, allegedly further exacerbated by Union's steel safeguard measures. The GOC claimed the fact that Union industry's export prices during the period considered were lower than their cost of production reinforces that conclusion.
- (154) However, according to the information available to the Commission, the average price of stainless-steel cold-rolled sheet (grade 304) in the North Europe market decreased from 2018 to 2020 (by 15%) and only in 2021 started increasing again.⁽²⁷⁾ Therefore, the decreasing profitability of the Union industry (that reached its bottom level in 2020) cannot be attributed to the steel prices. In addition, the data of the sampled Union producers do not show a significant increase of the incidence of steel cost in total cost of production over the period considered. As concerns Union industry's export prices, the Commission noted that the Union industry's landed export prices were higher than their cost of production in all years of the period considered, with the exception of 2020, the year most significantly affected by the Covid-19 pandemic and related plunge in demand (see recitals (172) and (212) of the provisional Regulation). Therefore, these arguments were rejected as unfounded.

5.2.2. *Export performance of the Union industry*

- (155) In recitals (212) to (214) of the provisional Regulation the Commission concluded that the temporary decrease in export performance did not contribute to the injury suffered by the Union industry.
- (156) In the absence of comments regarding this section, the Commission confirmed its findings set out in recitals (212) to (214) of the provisional Regulation

5.2.3. *Conclusion*

- (157) Considering the above, and in absence of other comments pertaining to causation analysis, the Commission confirmed its conclusions set out in recitals (211) to (217) of the provisional Regulation, reaffirming that dumped imports from the country concerned caused material injury to the Union industry and that the other factors, considered individually or collectively, did not attenuate the causal link between the dumped imports and the material injury.

6. LEVEL OF MEASURES

6.1. **Injury margin**

- (158) As provided by Article 9(4), third subparagraph of the basic Regulation, and given that the Commission did not register imports during the period of pre-disclosure, it analysed the development of import volumes to establish if there had been a further substantial rise in imports subject to the investigation during the period of pre-disclosure described in recital (3) and therefore reflected the additional injury resulting from such increase in the determination of the injury margin.
- (159) Based on data from the Surveillance database, import volumes from the country concerned during the four weeks period of pre-disclosure⁽²⁸⁾ were 260 % higher than the average import volumes in the investigation period on a four-week basis. On that basis, the Commission concluded that there had been a substantial rise in imports subject to the investigation during the period of pre-disclosure.

⁽²⁷⁾ Source: Fastmarkets database, <https://auth.fastmarkets.com/>, accessed on: 20 February 2023

⁽²⁸⁾ As explained in footnote 50 of the provisional Regulation, since import figures in Surveillance database are expressed in kilogram, the Commission relied on the conversion rate of 1 keg = 10 kg to calculate the number of kegs. Even reducing such an uncontested conversion rate, import volumes from the country concerned during the four weeks period of pre-disclosure would have increased significantly.

- (160) To reflect the additional injury caused by the increase of imports, the Commission decided to adjust the injury elimination level based on the rise in import volume, which is considered the relevant weighting factor based on the provisions of Article 9(4) of the basic Regulation. It therefore calculated a multiplying factor established by dividing the sum of the volume of imports during the four weeks of the pre-disclosure period (32 685 kegs) and the 52 weeks of the IP (118 460 kegs) by the import volume in the IP extrapolated to 56 weeks. The resulting figure of **1,1850** reflects the additional injury caused by the further increase of imports. The provisional injury margins were thus multiplied by this factor.
- (161) In addition, as already explained in recital (78) above, the Commission concluded at definitive stage that the level of cooperation from exporting producers in this case was high (above 90 %) and thus considered it appropriate to establish the injury margin for non-cooperating exporting producers at the level of the highest injury margin found for a sampled exporting producer.
- (162) Therefore, the final injury elimination level for the cooperating exporting producers and all other companies is as follows:

Country	Company	Definitive injury margin
People's Republic of China	Penglai Jinfu Stainless Steel Products Co., Ltd	69,6 %
	Ningbo Major Draft Beer Equipment Co., Ltd	62,6 %
	Other cooperating companies	66,7 %
	All other companies	69,6 %

- (163) In the absence of comments on the underselling margins, recitals (219) to (226) of the provisional Regulation are confirmed as modified by the table above.

7. UNION INTEREST

7.1. Interest of the Union industry

- (164) In the absence of comments regarding this section, the Commission confirmed its findings set out in recitals (230) to (233) of the provisional Regulation.

7.2. Interest of unrelated importers

- (165) Following the provisional Regulation, one importer, IMEXA, argued that the imposition of the duties would cause significant losses that would bring the company into bankruptcy.
- (166) No other importers spoke out against the imposition of measures and overall the cooperation from importers was very low. Therefore, even if IMEXA would incur significant losses because of it, the interests of this importer (representing around [1,1 - 2,4]% of total imports in the Union in the investigation period) do not in balance outweigh the interest of the Union industry as a whole.

7.3. Interest of users

- (167) The GOC argued that imposition of duties is against the Union interests since it would harm the interests of consumers and would stop the imports of kegs into the Union, allowing the Union industry to take over the market.

- (168) As explained in recital (241) of the provisional Regulation, the Commission already found that any impact of the increased cost of kegs on the profitability of the HORECA sector would be limited, while, in recital (243) of the provisional Regulation it was concluded that the cost impact of kegs on the beverage industry overall was minimal. As regards the second point raised by the GOC, the Commission noted that the aim and function of anti-dumping measures is not to stop imports of any product into the Union, but rather to restore a level playing field, allowing domestic and foreign competitors to compete in the Union market at non-dumped prices. These claims were therefore rejected as unfounded.
- (169) In light of the above, the Commission confirmed its findings set out in recitals (238) to (244) of the provisional Regulation.

7.4. Conclusion on Union interest

- (170) On the basis of the above, the Commission maintained its conclusion from recital (245) of the provisional Regulation that there were no compelling reasons to suggest that it was not in the Union interest to impose measures on imports of stainless steel refillable kegs originating in the People's Republic of China.

8. DEFINITIVE ANTI-DUMPING MEASURES

8.1. Definitive measures

- (171) In view of the conclusions reached with regard to dumping, injury, causation, level of measures and Union interest, and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports of the product concerned.
- (172) On the basis of the above, the definitive anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Country	Company	Dumping margin	Injury margin	Definitive anti-dumping duty
People's Republic of China	Penglai Jinfu Stainless Steel Products Co., Ltd	85,5 %	69,6 %	69,6 %
People's Republic of China	Ningbo Major Draft Beer Equipment Co., Ltd	67,3 %	62,6 %	62,6 %
People's Republic of China	Other cooperating companies listed in Annex	77,9 %	66,7 %	66,7 %
People's Republic of China	All other companies	85,5 %	69,6 %	69,6 %

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

- (174) 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 ⁽²⁹⁾. 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*.
- (175) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the proper application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this Regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.
- (176) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this Regulation, the customs authorities of Member States should carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the rate of duty is justified, in compliance with customs law.
- (177) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume, in particular after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances, an anti-circumvention investigation may be initiated, provided that the conditions for doing so are met. This investigation may, *inter alia*, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.
- (178) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies should apply not only to the non-cooperating exporting producers in this investigation, but also to the producers which did not have exports to the Union during the investigation period.
- (179) Exporting producers that did not export the product concerned to the Union during the investigation period should be able to 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 IP; (ii) it is not related to an exporting producer that did so; and (iii) has exported the product concerned thereafter or has entered into an irrevocable contractual obligation to do so in substantial quantities.
- (180) Statistics of stainless steel refillable kegs are frequently expressed in number of pieces. However, there is no such supplementary unit for kegs specified in the Combined Nomenclature laid down in Annex I to Council Regulation (EEC) No 2658/87 ⁽³⁰⁾. It is therefore necessary to provide that not only the weight in kg or tonnes but also the number of pieces for the imports of the product concerned must be entered in the declaration for release for free circulation. Pieces should be indicated for TARIC codes 7310 10 00 10 and 7310 29 90 10, provided this indication is compatible with Annex I to Regulation (EEC) No 2658/87.

⁽²⁹⁾ European Commission, Directorate-General for Trade, Directorate G, Wetstraat 170 Rue de la Loi, 1040 Brussels, Belgium.

⁽³⁰⁾ Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1) as amended by Commission implementing Regulation (EU) 2022/1998 of 20 September 2022 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 282, 31.10.2022, p. 1).

8.2. Definitive collection of the provisional duties

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

9. FINAL PROVISION

(182) In view of Article 109 of Regulation 2018/1046 ⁽³¹⁾, 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.

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

HAS ADOPTED THIS REGULATION:

Article 1

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

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

Country	Company	Definitive anti-dumping duty	TARIC additional code
People's Republic of China	Penglai Jinfu Stainless Steel Products Co., Ltd	69,6 %	A024
People's Republic of China	Ningbo Major Draft Beer Equipment Co., Ltd	62,6 %	A030
People's Republic of China	Other cooperating companies listed in Annex	66,7 %	
People's Republic of China	All other companies	69,6 %	C999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of (product concerned) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in the People's Republic of China. 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.

⁽³¹⁾ 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).

4. Where a declaration for release for free circulation is presented in respect of the product referred to in paragraph 1, the number of pieces of the products imported shall be entered in the relevant field of that declaration, provided this indication is compatible with Annex I to Regulation (EEC) No 2658/87.
5. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 131(2) of Commission Implementing Regulation (EU) 2015/2447 ⁽³²⁾ the amount of anti-dumping duty, calculated on the basis of the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.
6. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

The amounts secured by way of the provisional anti-dumping duty under Commission Implementing Regulation (EU) 2023/100 of 11 January 2023 imposing a provisional anti-dumping duty on imports of stainless steel refillable kegs originating in the People's Republic of China shall be definitively collected. The amounts secured in excess of the definitive rates of the anti-dumping duty shall be released.

Article 3

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

- (a) it did not export the goods described in Article 1(1) during the period of investigation (01 January 2021 to 31 December 2021);
- (b) it is not related to an exporter or producer subject to the measures imposed by this Regulation, and which could have cooperated in the original investigation; and
- (c) it has either actually exported the product concerned or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the period of investigation.

Article 4

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, 3 July 2023.

For the Commission
The President
Ursula VON DER LEYEN

⁽³²⁾ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558)

ANNEX

Cooperating exporting producers not sampled

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