

**COMMISSION IMPLEMENTING REGULATION (EU) 2017/336****of 27 February 2017****imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain heavy plate of non-alloy or other alloy steel originating in the People's Republic of China**

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 <sup>(1)</sup> ('the basic Regulation'), and in particular Article 9(4) thereof,

Whereas:

**1. PROCEDURE****1.1. Provisional Measures**

- (1) On 7 October 2016 the European Commission ('the Commission') imposed a provisional anti-dumping duty on imports into the European Union ('the Union') of flat products of non-alloy or alloy steel (excluding stainless steel, silicon-electrical steel, tool steel and high-speed steel), hot-rolled, not clad, plated or coated, not in coils, of a thickness exceeding 10 mm and of a width of 600 mm or more or of a thickness of 4,75 mm or more but not exceeding 10 mm and of a width of 2 050 mm or more ('heavy plate') originating in the People's Republic of China ('the PRC') by Commission Implementing Regulation (EU) 2016/1777 <sup>(2)</sup> ('the provisional Regulation').
- (2) The Commission initiated the investigation on 13 February 2016 by publishing a Notice of Initiation in the *Official Journal of the European Union* ('the Notice of Initiation') following a complaint lodged on 4 January 2016 by the European Steel Association ('Eurofer') on behalf of producers representing more than 25 % of the total Union production of heavy plate.
- (3) As stated in recitals 28 and 29 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 January 2015 to 31 December 2015 ('the investigation period' or 'IP') and the examination of trends relevant for the assessment of injury covered the period from 1 January 2012 to the end of the investigation period ('the period considered').

**1.2. Registration**

- (4) The Commission made imports of heavy plate originating in the PRC subject to registration as of 11 August 2016 by Commission Implementing Regulation (EU) 2016/1357 <sup>(3)</sup> ('the registration Regulation'). The registration of imports ceased with the imposition of provisional measures on 8 October 2016.
- (5) Interested parties had 20 days after the start of registration to submit comments. No comments were received.

**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 ('provisional disclosure'), Eurofer, an association of steel producers from the PRC ('CISA'), an exporting producer from the PRC, an importer of heavy plate in the Union referred to in recital 34 of the provisional Regulation ('one importer'), and an *ad-hoc* association of users in downstream industry (wind turbine towers) made written submissions making known their views on the provisional findings.

<sup>(1)</sup> OJ L 176, 30.6.2016, p. 21.

<sup>(2)</sup> Commission Implementing Regulation (EU) 2016/1777 of 6 October 2016 imposing a provisional anti-dumping duty on imports of certain heavy plate of non-alloy or other alloy steel originating in the People's Republic of China (OJ L 272, 7.10.2016, p. 5).

<sup>(3)</sup> Commission Implementing Regulation (EU) 2016/1357 of 9 August 2016 making imports of certain heavy plate of non-alloy or other alloy steel originating in the People's Republic of China subject to registration (OJ L 215, 10.8.2016, p. 23).

- (7) The parties who so requested were granted an opportunity to be heard. Hearings took place with one exporting producer from the PRC, CISA and one importer.
- (8) The Commission considered the oral and written comments submitted by the interested parties and, where appropriate, addressed them below.
- (9) The Commission continued seeking and verifying all information it deemed necessary for its definitive findings. In order to verify the questionnaire replies of unrelated importers, verification visits were carried out at the premises of the following parties:
- Network Steel S.L., Madrid, Spain,
  - Primex Steel Trading GmbH, Düsseldorf, Germany,
  - Salzgitter Mannesmann International GmbH, Düsseldorf, Germany.
- (10) The Commission informed all parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports into the Union of heavy plate originating in the PRC and definitively collect the amounts secured by way of provisional duty ('final disclosure').
- (11) All parties were granted a period within which they could make comments on the final disclosure. Eurofer, CISA and one importer made their comments in written submissions following final disclosure and at a hearing. The comments submitted by the interested parties were considered and taken into account where appropriate.

#### 1.4. Sampling

- (12) CISA submitted that a sample of Union producers representing 28,5 % of the total sales of the Union industry was too small and did not cover enough sales.
- (13) As stated in recital 12 of the provisional Regulation the sample of Union producers was made on the basis of the biggest sales volume in the Union during the investigation period which could reasonably be investigated within the time available.
- (14) Already for that reason, the argument has to be rejected. As indicated in recital 197 below, there is an almost complete matching of more than 90 % (by volume) and around 70 % (by Product Control Number ('PCN') used to differentiate product types for the investigation purposes) between the product types exported by the sampled exporting producers from the PRC and the product types sold by the sampled Union producers on the Union market.
- (15) Following final disclosure CISA returned to this issue in their comments and at the hearing, stating that it is more than difficult to believe that there is an almost complete matching of PCNs if the majority of the PCNs are not sold by all three sampled Union producers. The Commission notes that the matching of PCNs was subsequently verified again, and the percentages given in recital 14 above were found to be correct.
- (16) The Commission observes in this context that 'matching' means that for a product type exported by the sampled exporting producers from the PRC under a given PCN, there is at least one transaction for the product type under the same PCN for the sampled Union producers. A 90 % matching by volume means that 90 % of the import transactions of the sampled exporting producers from the PRC during the investigation period fall under a PCN for which there is at least one transaction for the sampled Union producers. A 70 % matching by PCN means that for 70 % of the product types that are imported under a given PCN, there is at least one matching transaction of the sampled Union producers.
- (17) The Commission concludes therefore that the sample of Union producers is representative, even if the mere fact that it is based on the biggest volume that could reasonably be investigated was not sufficient.
- (18) In the absence of further comments concerning the method of sampling, the provisional findings set out in recitals 11 to 24 of the provisional Regulation are confirmed.

### 1.5. Individual examination

- (19) Recital 25 of the provisional Regulation noted that seven exporting producers in the PRC indicated that they wished to request individual examination under Article 17(3) of the basic Regulation.
- (20) Whilst none of these exporting producers replied to the questionnaire and therefore no requests were considered to have been received, one of these seven exporting producers did return a Market Economy Treatment ('MET') claim form and following the publication of the provisional Regulation, requested that the Commission assess its MET claim.
- (21) Given that the exporting producer did not return a questionnaire, the company's request for individual examination was rejected, because the exporting producer has not demonstrated that it meets the conditions for being granted individual examination. It was in that context informed that the submission of the MET claim form alone was not sufficient to support their request. The Commission did not assess their MET claim, in accordance with Article 2(7)(d) of the basic Regulation, as they had not been sampled, nor had they successfully claimed individual examination.
- (22) In the absence of any further comments concerning individual examination, the provisional findings set out in recital 25 of the provisional Regulation are confirmed.

## 2. PRODUCT CONCERNED AND LIKE PRODUCT

### 2.1. Claims regarding the product scope

- (23) Recitals 30 and 31 of the provisional Regulation set out the provisional definition of the product concerned.
- (24) Recitals 34 and 41 of the provisional Regulation set out the claims of one importer and their assessment by the Commission regarding the product scope.
- (25) Following the imposition of provisional measures one importer and CISA submitted further claims arguing along the same lines that certain product types, that is:
- structural steel of steel grade S500 and above,
  - steels for case-hardening, quenching and tempering,
  - pipeline steel,
  - abrasion-resistant steel,
  - other steel <sup>(1)</sup>,
  - all heavy plate with a thickness exceeding 150 mm,

referred to by them as 'special heavy plate' should be excluded from the product scope.

- (26) The Commission notes that both 'special heavy plate' and other heavy plate can be made to measure, so this is not a relevant criterion to differentiate between them.
- (27) A number of arguments supporting this claim for exclusion were brought forward, and they are individually analysed below.

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<sup>(1)</sup> Steel other than structural steel, shipbuilding steel, pressure vessel steel, steels for case-hardening, quenching and tempering, pipeline steel and abrasion-resistant steel.

- (28) At the outset, the Commission recalls that according to the case-law, neither the basic Regulation nor the WTO Antidumping Agreement specifies the scope of the concept of 'product under consideration'. The Court therefore considers that the Commission enjoys broad discretion when defining the product under consideration. In particular, there is no requirement for homogeneity or similarity between the products at issue. Rather, the Union Courts considered it relevant whether all products at issue share the same basic physical and technical characteristics. The General Court has also considered that end use and interchangeability may constitute relevant criteria.
- (29) The Commission will first set out the analysis of those criteria in the present case, and then explain how it decided to exercise its broad discretion on that basis.

#### 2.1.1. *Difference in physical, chemical and technical properties*

- (30) One importer claimed that 'special heavy plate' can be easily distinguished from the 'commodity heavy plate' by chemical properties such as the carbon content, physical properties such as the yield strength or the Brinell Hardness, technical properties such as the grade designations, or the thickness.
- (31) CISA claimed that the most important criterion (by export volume) to differentiate 'special heavy plate' is the thickness of the plate, which covers more than half of the products to be excluded. CISA based this argument for exclusion from the product scope on the structure of the PCN used to group the different product types for the investigation purposes.
- (32) The PCN structure is used to ensure that products with comparable costs and prices are compared — it does not say anything about the use of the product or the interchangeability of the product. In case of thickness, it also does not say anything about the physical, chemical or technical properties of the product. In particular, none of the interested parties could demonstrate that a heavy plate with a thickness of 155 mm would not have the same end use and not be interchangeable with a heavy plate of a thickness of 145 mm, all other parameters being equal.
- (33) Furthermore, while there may be indeed these specific differences in the specific properties referred to in recital 30 above, this does not show that 'special heavy plate' does not share the same basic characteristics as 'commodity heavy plate'.
- (34) Eurofer requested that the product definition remain unchanged and supported the arguments of the Commission set out in recitals 36 and 41 of the provisional Regulation.
- (35) They further submitted that the dumped imports from the PRC include a wide range of steel grades and dimensions, and cover both alloy and non-alloy steel heavy plate. They finally noted that there is no 'specific requirement for homogeneity or similarity between the products' covered by the scope of the product concerned.
- (36) Indeed, the Commission notes that it is common in anti-dumping investigations that the product scope covers hundreds or even thousands of product types which are not identical or homogeneous, but still share the same basic characteristics, as is the case in this investigation.
- (37) Following final disclosure CISA, Eurofer and one importer returned to this issue in their comments and at the hearing:
- (a) CISA did not raise any new substantial arguments.
- (b) One importer claimed that 'special heavy plate' and 'commodity heavy plate' do not have the same basic physical, chemical and technical characteristics and that the fact that heavy plates can be made to measure cannot invalidate distinction by thickness between 'special heavy plate' and 'commodity heavy plate'.

In this context this importer referred to three previous anti-dumping cases where dimensions were used to define products under investigation, such as maximum cross-sectional dimension (steel ropes and cables originating in the PRC and Ukraine <sup>(1)</sup>), certain thickness range combined with certain width (aluminium foil originating in Armenia, Brazil and the PRC <sup>(2)</sup>) or reference to physical and chemical properties (corrosion resistant steels originating in the PRC <sup>(3)</sup>).

On this basis this importer concluded that the Commission could refer to the thickness of 150 mm to distinguish between 'special heavy plate' and 'commodity heavy plate'.

- (c) Eurofer claimed to the contrary that all heavy plate share similar physical, chemical and technical properties, all heavy plate is made from flat-rolled steel, is flat (i.e. not in coils) and has a similar range of dimensions meeting the definition of the product concerned.

In this context Eurofer referred to three previous anti-dumping cases in the steel industry where the product under investigation was defined as one class of product regardless of thickness or grade of steel (hot-rolled flat products originating in Bulgaria, India, South Africa, Taiwan and Yugoslavia <sup>(4)</sup>), despite the existence of a wide product mix among all the product types (stainless steel wires originating in India <sup>(5)</sup>), or despite the existence of differences in core loss or noise levels (grain-oriented flat rolled products of silicon-electrical steel originating in the PRC, Japan, South Korea, Russia and the USA <sup>(6)</sup>).

Eurofer further referred to cases in other industries such as solar panels originating in the PRC and footwear originating in the PRC and Vietnam, where products with different properties were also found to fall within the definition of the product concerned.

Finally Eurofer also pointed out that the Court of First Instance <sup>(7)</sup> stated that the Commission enjoys a 'wide discretion' in determining the like product.

- (38) In respect to above comments the Commission notes that as is the case in most investigations, the definition of the product concerned covers a wide variety of product types which share the same or similar basic physical, technical and chemical characteristics. The fact that these characteristics can vary from product type to product type may indeed lead to cover a wide range of types.
- (39) The Commission further notes that even though different types of heavy plate have different thickness, steel grades, etc., CISA and one importer failed to demonstrate and to submit any evidence or substantial argument that the thickness of 150 mm would be an appropriate distinction between 'special heavy plate' and 'commodity heavy plate' for reasons of physical, chemical and technical characteristics or end-use and interchangeability (see section 2.1.2 below).
- (40) On the basis of the above, the Commission concludes that 'special heavy plate' and 'commodity heavy plate' have the same basic physical, chemical and technical characteristics.

<sup>(1)</sup> Council Implementing Regulation (EU) No 102/2012 of 27 January 2012 imposing a definitive anti-dumping duty on imports of steel ropes and cables originating in the People's Republic of China and Ukraine as extended to imports of steel ropes and cables consigned from Morocco, Moldova and the Republic of Korea, whether declared as originating in these countries or not, following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 and terminating the expiry review proceeding concerning imports of steel ropes and cables originating in South Africa pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ L 36, 9.2.2012, p. 1).

<sup>(2)</sup> Council Regulation (EC) No 925/2009 of 24 September 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium foil originating in Armenia, Brazil and the People's Republic of China (OJ L 262, 6.10.2009, p. 1).

<sup>(3)</sup> Notice of initiation [2016/C 459/11] (OJ C 459, 9.12.2016, p. 17).

<sup>(4)</sup> Commission Decision No 283/2000/ECSC of 4 February 2000 imposing a definitive anti-dumping duty on imports of certain flat rolled products of iron or non-alloy steel, of a width of 600 mm or more, not clad, plated or coated, in coils, not further worked than hot-rolled, originating in Bulgaria, India, South Africa, Taiwan and the Federal Republic of Yugoslavia and accepting undertakings offered by certain exporting producers and terminating the proceeding concerning imports originating in Iran (OJ L 31, 5.2.2000, p. 15), recitals 9 to 12.

<sup>(5)</sup> Council Implementing Regulation (EU) No 1106/2013 of 5 November 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain stainless steel wires originating in India (OJ L 298, 8.11.2013, p. 1), recital 16.

<sup>(6)</sup> Commission Implementing Regulation (EU) 2015/1953 of 29 October 2015 imposing a definitive anti-dumping duty on imports of certain grain-oriented flat-rolled products of silicon-electrical steel originating in the People's Republic of China, Japan, the Republic of Korea, the Russian Federation and the United States of America (OJ L 284, 30.10.2015, p. 109).

<sup>(7)</sup> Case T-2/95 *Industrie des Poudres Spérikues*.

### 2.1.2. Different end-use and interchangeability

- (41) CISA and one importer also alleged that imports of 'special heavy plate' have a completely different end use, and that they are not interchangeable with 'commodity heavy plate'. CISA submitted that imports of 'special heavy plate' are essentially for the Union's metal forming industry, which is dependent on such imports.
- (42) At the same time one importer submitted that 'special heavy plate' are used by a wide range of industries, including mining and earth moving machines (yellow goods), crane and lifting equipment, bridge constructions, wind turbine towers, energy sector, etc.
- (43) No users in the Union or the industries mentioned in recitals 41 and 42 above came forward to support the argument set out at recital 40 above. To the contrary, in particular concerning wind turbine towers, evidence provided by this importer and by other interested parties shows that producers of wind turbine towers do buy heavy plate, which does not fall under the definition of 'special heavy plate' as proposed by one importer or CISA but rather under their definition of 'commodity heavy plate'.
- (44) The Commission notes that there is indeed a broad number of different end-uses of 'special heavy plate'. However, interested parties have not provided detailed evidence (for example invoices to users in these industries showing that these industries are actually using these products) that would have enabled the Commission to carry out an assessment whether those end-uses are different for 'special heavy plate' and 'commodity heavy plate', or whether, in reality, most or all end-users are able to substitute one for the other. Hence, no evidence was submitted showing that 'special heavy plate' is not interchangeable with other heavy plate.
- (45) Following final disclosure CISA, one importer and Eurofer returned to this issue in their comments and at the hearing. CISA did not raise any new arguments. One importer submitted that the use of heavy plate depends on calculated structural values and mechanical impacts (related to physical and chemical properties) and on commercial aspects (related to prices and costs of production processes).
- (46) In support of their arguments they referred to:
- (a) the publication of German Association of Steel Producers indicating the correlations between the weight, thickness, strength and steel grade;
  - (b) the pricing policy of Union producers where heavy plate above 120 mm is subject to surcharges for thickness;
  - (c) the comparison between two technologies of production of heavy plate, that is from ingots (more expensive) and from continuous cast slabs (less expensive);
  - (d) the fact that in the PRC the maximum slab thickness is 400 mm, which means that for the production of heavy plate above 200 mm ingots are required as raw material (which implies a more expensive process);
  - (e) the existence of exports by some Union producers of heavy plate in special grades to the PRC.
- (47) The Commission notes that both CISA and one importer failed to submit any evidence to confirm that the objective distinction between 'special heavy plate' and 'commodity heavy plate' is whether the plate has a thickness over, or under 150 mm.
- (48) Moreover no evidence has been submitted that there is no overlapping and competition between adjoining segments of heavy plates, for example between those of thickness of 155 mm and 145 mm. To the contrary, several of the invoices submitted by one importer showed that 'commodity heavy plate' and 'special heavy plate' were sold on the same invoice to the same customer.
- (49) Following the final disclosure one importer submitted further that the Commission could create new separate TARIC code to make a distinction between 'commodity heavy plate' and 'special heavy plate' by referring to the physical and chemical properties as well as to thickness. This party suggested further a formal requirement of an inspection report of an independent survey company in order to certify the above distinction upon customs clearance.

- (50) Since the parameter of thickness of 150 mm as the cut-off point between 'special heavy plate' and 'commodity heavy plate' is not properly justified, the argument concerning the definition of customs codes and formal inspection, as suggested by the importer, does not need to be addressed. The Commission agrees, however, that as a matter of principle, it is possible to exclude certain products from the product scope from a technical point of view. The decisive question is, however, whether based on legal, economic and political considerations, such exclusion is justified (see on that point in the following section).
- (51) One importer submitted further in their comments to final disclosure a number of anonymised invoices describing them as their sales of 'special heavy plate' to users in mining and earth moving machines (yellow goods), crane and lifting equipment, bridge constructions, wind turbine towers, energy sector, etc. This importer also offered to agree with the Commission arrangements for verifying this data.
- (52) The Commission considers that such verification is not necessary in the present case. Given the very late offer, it would also have been practically very difficult, if not impossible to implement.
- (53) However, as indicated in recital 47 above, several of the invoices submitted by this importer showed that 'commodity heavy plate' and 'special heavy plate' was sold on the same invoice to the same customer. This clearly shows that the same customers can and do use both types of heavy plate.
- (54) One importer referred also in their comments to final disclosure to publication of Stahl-Informationen-Zentrum illustrating different uses of heavy plate. The Commission takes due note of this report and is aware of different uses of heavy plate. However as mentioned in recital 44 above no evidence was submitted showing that 'special heavy plate' is not interchangeable with other heavy plate.
- (55) Finally one importer referred in their comments to final disclosure to anti-dumping measures on heavy plate in Australia and the USA, where certain product type exclusions were introduced based on grades and thicknesses.
- (56) The Commission notes however that those exclusions occurred at the stage of initiation of those proceedings, and no reasoning is given as to why that exclusion was decided. In any event, decisions by other WTO members do not prejudge the situation in the Union.
- (57) Eurofer submitted in their comments to final disclosure that the grades designated by one importer and CISA as 'special heavy plate' is based merely upon their own arbitrary classification. To illustrate this Eurofer referred to two examples that confirm the Commission's finding in recital 47 above:
- (a) structural steel grade S500 is classified by those parties as 'special heavy plate' while shipbuilding steel grade AQ51 is classified by those parties as 'commodity heavy plate' even though the two steel grades have similar yield and tensile strengths;
  - (b) alloy pressure vessel steel is classified by those parties as 'commodity heavy plate' while various other alloy steel grades are classified by those parties as 'special heavy plate'.
- (58) On this basis the Commission rejects the argument that 'special heavy plate' has a different end-use and is not interchangeable with the other products subject to the investigation.

#### *2.1.3. Appreciation of the opportunity of excluding certain products from the product scope*

- (59) The Commission notes that the fact that within the product scope of heavy plate various distinctions can be made between types, grades, qualities, etc. of heavy plate and that there might be differences in production methods and costs, does not preclude that they can be regarded as a single product, as long as they have the same basic physical, technical and/or chemical characteristics. In this respect the Commission refers to the case-law quoted in recital 28 above.
- (60) The Commission also recognizes that it could, if it considered such course of action appropriate, exclude certain products from the scope of the investigation, as investigating authorities in other WTO Member States have done.

- (61) However, the Commission considers that on the basis of an assessment of all facts established during the investigation, such exclusion is not warranted.
- (62) CISA submitted a calculation showing that excluding 'special heavy plate' would account for 9,2 % of the total imports from the PRC. On this basis they alleged that excluding 'special heavy plate' from the product scope 'will have very limited impact on the overall determination of the investigation' and that it 'would not jeopardize the general effect of anti-dumping measures on imports of dumped heavy plate', since 'commodity heavy plate' would remain subject to the measures.
- (63) An analysis of the export sales of the sampled exporting producers from the PRC on the basis of the PCN shows that 'special heavy plate' does undercut the sales prices of the Union industry and thereby contribute to the injury suffered by the Union industry.
- (64) Since it cannot be established that 'special heavy plate' has a different end-use than 'commodity heavy plate' and is not interchangeable with it, the currently limited quantities of these sales cannot be used as an indication that their exclusion would not jeopardize the effectiveness of the measures. Indeed, if 'special heavy plate' were excluded from the product scope, users currently buying 'commodity heavy plate' could switch to 'special heavy plate', thereby avoiding the duties and jeopardizing the effectiveness of the measures.
- (65) Furthermore, contrary to the situation in other WTO Member States, all types of heavy plate are produced in significant quantities by the Union producers, and all those products suffer from injurious dumping.
- (66) On this basis, the Commission rejects the argument that the exclusion of 'special heavy plate' would not jeopardize the effectiveness of the anti-dumping measures.

#### 2.1.4. Conclusion

- (67) On the basis of the above, the Commission concludes that none of the arguments raised by CISA and one importer shows that 'special heavy plate' should be excluded from the product scope of the investigation.
- (68) In the absence of further comments as regards the product scope the Commission confirms the definition of the product concerned as set out in recitals 30 and 31 of the provisional Regulation.

### 3. DUMPING

#### 3.1. Normal value

##### 3.1.1. MET

- (69) As set out in recital 43 of the provisional Regulation, none of the sampled exporting producers claimed MET and no requests for individual examination including claims for MET were accepted.

##### 3.1.2. Analogue country

- (70) In the provisional Regulation, the Commission selected Australia as the analogue country in accordance with Article 2(7) of the basic Regulation.
- (71) After publication of the provisional Regulation, CISA noted that in a submission made at the start of the investigation they had commented on the potential use of the United States of America, expressing great concern at this choice as it would result in the Commission using data from companies related to the Union industry. CISA noted that the Commission should use data from other countries and only use the USA as a last resort in the absence of cooperation from other countries.
- (72) Following the publication of the provisional Regulation, Eurofer, one exporting producer in the PRC and CISA made comments on the choice of Australia and requested that the Commission use the United States of America instead.
- (73) Eurofer and the exporting producer from the PRC suggested that the Commission use data from the United States of America as there were more competing domestic producers, and therefore there would be data for more product types than what was available from the sole Australian producer.



- (74) Given that only one US producer cooperated with the investigation, data from other producers would not have been available if the USA had been chosen as analogue country.
- (75) CISA requested that the Commission calculate dumping margins using the data from the sole cooperating US producer, and if the result was 'completely different' from that found at provisional stage using Australia, that the Commission should find that Australia is not a 'valid analogue country' and use the USA instead.
- (76) This request was rejected. As set out in recitals 44 to 52 of the provisional Regulation Australia has been chosen as analogue country, and their new arguments did not show that Australia is not appropriate.
- (77) Following final disclosure CISA submitted further comments regarding the suitability of Australia as analogue country.
- (78) Firstly, they noted that the dumping margins calculated for the exporting producers from the PRC were higher than the injury margins, and therefore the Australian normal value was higher than the non-injurious price of the Union industry, if taken as an average. On this basis CISA concluded that Australia 'cannot possibly be considered a valid analogue country'.
- (79) This argument is rejected. The level of the normal value, based on the prices or costs in the market economy country concerned, is information verified after the choice of analogue country is made. The normal value is the domestic price of the like product on the domestic market of a market economy country and not a reason to discard Australia as an analogue country.
- (80) Secondly, CISA made reference to a recent case against the PRC (HFP rebar) <sup>(1)</sup> where they claimed that the Commission had removed certain product types from the normal value in the analogue country after 'interested parties challenged the very high domestic prices and costs of production'.
- (81) The example quoted by CISA has no relevance to the current investigation. In the HFP rebar case the Commission identified certain product types made to an analogue country's standards and not in competition with product types exported from the PRC. These particular product types were not taken into account when comparing the normal value to the export price of the exporting producers from the PRC.
- (82) As CISA has made no claim that the producer in Australia manufactures product types that do not compete with the product types exported from the PRC to the Union, the example has no relevance.
- (83) In the absence of any further comments regarding analogue country, the Commission's provisional conclusion to use Australia as analogue country, as set out in recital 52 of the provisional Regulation is therefore confirmed.

### 3.1.3. Normal value

- (84) Eurofer commented on the Commission's provisional methodology set out in recital 68 of the provisional Regulation regarding product types not sold by the analogue producer. They requested that the Commission should 'include an adjustment to account for the higher costs' of products not sold on the domestic market of the analogue country.
- (85) The Commission rejects this request as the only data available regarding the cost or price of heavy plate in Australia is the verified data of the analogue country producer. Where the producer did not manufacture a particular product type exported by an exporting producer from the PRC, no data is therefore available to make such an adjustment.
- (86) In the absence of any further comments regarding normal value, the conclusions set out in recitals 53 to 68 of the provisional Regulation are confirmed.

<sup>(1)</sup> Commission Implementing Regulation (EU) 2016/1246 of 28 July 2016 imposing a definitive anti-dumping duty on imports of high fatigue performance steel concrete reinforcement bars originating in the People's Republic of China (OJ L 204, 29.7.2016, p. 70).

### 3.2. Export price

- (87) In the absence of comments regarding export price, the conclusions set out in recitals 69 and 70 of the provisional Regulation are confirmed.

### 3.3. Comparison

- (88) In the absence of comments regarding comparison, the conclusions set out in recitals 71 to 73 of the provisional Regulation are confirmed.

### 3.4. Dumping margins

- (89) In the absence of comments regarding the dumping margins, the provisional dumping margins set out in Table 2 of the provisional Regulation are confirmed.

## 4. INJURY

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

- (90) In the absence of any comments with respect to the definition of the Union industry and Union production the conclusions set out in recitals 82 to 85 of the provisional Regulation are confirmed.

### 4.2. Union consumption

- (91) In the absence of comments with respect to Union consumption the conclusions set out in recitals 86 to 89 of the provisional Regulation are confirmed.

### 4.3. Volume and market shares of the imports

- (92) In the absence of comments with respect to the volume and market share of imports from the PRC, the conclusions set out in recitals 90 to 94 of the provisional Regulation are confirmed.

### 4.4. Prices of the imports from the PRC and price undercutting

- (93) Eurofer submitted that 'the Commission should be careful not to underestimate the margin of undercutting by making unrealistically high adjustments for post-importation costs.'
- (94) The Commission notes however that the amounts for post-importation costs were confirmed during the on-spot verifications and therefore cannot be considered unrealistically high.
- (95) Eurofer further claimed that 'the Union industry prices should also not be reduced for related-party commissions paid within a corporate group.'
- (96) The Commission notes that a deduction for commissions is warranted when the company intervening in a transaction performs the functions of an agent, irrespective of whether the company is related or not. Moreover neither Eurofer nor any individual Union producer provided any argument that this is not the case. The Commission therefore maintains the position that the deduction is warranted.
- (97) Eurofer submitted also that 'Chinese exporting producers often add certain amounts of boron or chromium to normal structural steels in order to qualify for Chinese tax rebates but then sell the steel as normal non-alloy structural steel in the Union market (e.g. grades S235, S275 and S355)'. They requested that the Commission ensures that 'these products are properly matched with Union industry sales of grades S235, S275 and S355 in its undercutting analysis'.

- (98) The undercutting analysis compares import prices from the PRC with Union prices on the basis of the PCN which is common to all parts of the investigation. The steel grade forms part of the PCN and was verified during the verification visits at the sampled exporting producers from the PRC and Union producers. Therefore the same steel grades were matched for the undercutting analysis.
- (99) In the absence of any further comments with respect to the price of the imports from the PRC and price undercutting the conclusions set out in recitals 95 to 99 of the provisional Regulation are confirmed.

#### 4.5. Economic situation of the Union industry

##### 4.5.1. General remarks

- (100) In recital 104 of the provisional Regulation the Commission notes that one of the sampled Union producers suspended the production of heavy plate in December 2015.
- (101) One exporting producer from the PRC claimed that the Commission should exclude this sampled Union producer from the injury analysis because 'the potential for distortion remains, such that either a revised analysis without the defunct company's information should be conducted, or data from another EU producer should be collected'.
- (102) This suspension of production has no impact on any injury indicator as it took place at the last days of the investigation period and therefore both sets of data that is macroeconomic data relating to all Union producers and the microeconomic indicators relating to the sampled Union producers were found to be representative of the economic situation of the Union industry.
- (103) In the absence of any comments with respect to the general remarks on the economic situation of the Union industry the conclusions set out in recitals 100 to 104 of the provisional Regulation are confirmed.

##### 4.5.2. Macroeconomic indicators

###### 4.5.2.1. Production, production capacity and capacity utilisation

- (104) In the absence of any comments with respect to production, production capacity and capacity utilisation of the Union industry the conclusions set out in recitals 105 to (110) of the provisional Regulation are confirmed.

###### 4.5.2.2. Sales volume and market share

- (105) CISA submitted that it disagrees with the methodology of a "beginning-point" (2012) to "end-point" (2015, i.e. IP) comparison of the sales volume injury indicator and the resulting conclusion that the Union industry's sales volume has decreased by 7 %. In CISA's view more recent data are more relevant to the determination on injury. CISA further claims that the Commission should have 'added more weight on the recent trend of sales volume of the Union industry, which does not show any decrease throughout the recent 3 years', i.e. between 2013 and 2015.
- (106) The Commission rejects this argument for the following reasons:
- (107) Firstly, the Commission recalls recital 3 above providing that the examination of trends relevant for the assessment of injury covered the period considered.
- (108) The Commission examined all injury indicators by presenting their trends over the whole period considered as well as year to year analysis, where relevant.
- (109) Secondly, recital 112 of the provisional Regulation states that 'after a 7 % decrease between 2012 and 2013 and an even further decrease in 2014 by 2 percentage points the sales volume increased slightly by 2 percentage points in the IP'. It is therefore clear that the Commission did not carry out a simple "beginning-point" (2012) to "end-point" (2015, i.e. IP) comparison as alleged, but a comprehensive comparison of all years in the period considered.

(110) Thirdly, the stable sales volume between 2013 and 2015 has to be seen in the context of a strongly increasing consumption of 11 percentage points, as stated in Table 3 of the provisional Regulation. Therefore, the stable sales volume did not prevent a significant loss of market share of 9,3 percentage points at the same time, as stated in Table 7 of the provisional Regulation. It is therefore considered that the stable sales volume between 2013 and 2015 is a sign of injury, since the sales volume needs to be analysed in the context of a growing consumption and a decreasing market share.

(111) In the absence of any further comments with respect to the sales volume and market share of the Union industry, the conclusions set out in recitals 111 to 114 of the provisional Regulation are confirmed.

#### 4.5.2.3. Employment and productivity

(112) In the absence of any comments with respect to employment and productivity of the Union industry, the conclusions set out in recitals 115 to 117 of the provisional Regulation are confirmed.

#### 4.5.2.4. Labour costs

(113) In the absence of any comments with respect to labour costs of the Union industry, the conclusions set out in recitals 118 and 119 of the provisional Regulation are confirmed.

#### 4.5.2.5. Growth

(114) In the absence of any comments with respect to growth, the conclusions set out in recitals 120 and 121 of the provisional Regulation are confirmed.

#### 4.5.2.6. Magnitude of the dumping margin and recovery from past dumping

(115) In the absence of any comments with respect to magnitude of the dumping margin and recovery from past dumping, the conclusions set out in recitals 122 and 124 of the provisional Regulation are confirmed.

### 4.5.3. Microeconomic indicators

#### 4.5.3.1. Prices and factors affecting prices

(116) In the absence of any comments with respect to prices and factors affecting the prices of the sampled Union producers, the conclusions set out in recitals 125 to 127 of the provisional Regulation are confirmed.

#### 4.5.3.2. Inventories

(117) In the absence of any comments with respect to inventories of the sampled Union producers, the conclusions set out in recitals 128 to 130 of the provisional Regulation are confirmed.

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

(118) CISA submitted that during the period considered, regardless of the volume of imports from the PRC, unit costs of production of the sampled Union producers have always been higher than their sales prices.

(119) Table 10 of the provisional Regulation presents the trends of both the unit sales prices and the unit cost of production of the sampled Union producers over the period considered. As provided in recital 126 of the provisional Regulation 'sales prices have been decreasing faster and on average have constantly been lower than the unit cost of production'.

(120) CISA further submitted that they fail to understand why when in 2012 the unit cost of production was higher than the average unit sales price, the sampled Union producers were profitable.

- (121) The average cost of production in Table 10 of the provisional Regulation is indeed higher than the average sales price for 2012. This would normally indicate a loss for this year. However, the profit set out in Table 12 of the provisional Regulation for 2012 is due to an income of one of the sampled Union producers which is related to the production of heavy plate, but not reflected in the cost accounting system of the company and therefore not in Table 10 of the provisional Regulation.
- (122) Following final disclosure CISA enquired why an income of one of the sampled Union producers which is related to the production of heavy plate was not reflected in the internal cost accounting system (product costing system) of the company.
- (123) As this sampled Union producer submitted and the Commission verified, this is because this profit amount entirely consists of year-end adjustment according to International Accounting Standards ('IAS') concerning the ordinary business activity of the company. As such it is not contained in cost records of the products produced during the year, but is contained in several of the line items in the profit and loss statement (as defined in IAS 1). If one would not take account of this profit, the Union industry would be loss making also in 2012 (loss of less than 1 %).
- (124) Moreover, the average cost of production in Table 10 of the provisional Regulation is for the total production volume of the sampled Union producers, while the average sales price is only for the sales of the sampled Union producers to the first unrelated customer in the Union. These two averages are not directly comparable for the following reasons:
- (a) Firstly the production volume significantly exceeds the sales volume to the first unrelated customer in the Union, mainly due to exports. In this respect, one also needs to take into account the captive use by sampled Union producers; however as referred to in recital 89 of the provisional Regulation, captive use is insignificant.
  - (b) Secondly the product under investigation is composed of a large number of product types sold at different prices, and the product mix is different on the Union market and on export markets.
- (125) Following final disclosure CISA enquired if the sales volume and market share in Table 7 of the provisional Regulation refer to sales to unrelated customers, or to both related and unrelated customers. The Commission recalls recital 102 of the provisional Regulation providing that macroeconomic indicators such as production or sales volume are assessed at the level of the whole Union industry. As such the data in Table 7 refer to sales to the first unrelated customer, as reported by Eurofer. To include sales to related parties would entail the risk of double-counting.
- (126) CISA further alleged in their comments to final disclosure that the difference between the production volume of the Union industry and the sales volume to the first unrelated customer in the Union is due to significant sales to related customers. On this basis CISA further inferred that the Commission failed to collect and present information on the sales volume to the related customers and thus disclosed only part of the picture on the Union market.
- (127) Above allegations are based on a wrong assumption. The Commission recalls that the difference between the production volume and the sales volume to unrelated customers in the Union comes not only from the sales to related customers but also from the sales to customers outside the Union. Also, for the non-sampled Union producers there may be a difference caused by the sales to the first unrelated customers which may not have been reported by Eurofer, as verified by the Commission, due to the reporting method described in recital 125 above to avoid the risk of double-counting. Table 7 of the provisional Regulation refers to sales volume and market share on the Union market only.
- (128) CISA further referred to two cases where the Commission made a separate analysis into related and unrelated customers, namely the investigation concerning high-performance rebar originating in the PRC <sup>(1)</sup> and the investigation concerning cold-rolled flat steel products originating in the PRC and Russia <sup>(2)</sup>.

<sup>(1)</sup> Commission Implementing Regulation (EU) 2016/113 of 28 January 2016 imposing a provisional anti-dumping duty on imports of high fatigue performance steel concrete reinforcement bars originating in the People's Republic of China (OJ L 23, 29.1.2016, p. 16).

<sup>(2)</sup> Commission Implementing Regulation (EU) 2016/181 of 10 February 2016 imposing a provisional anti-dumping duty on imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation (OJ L 37, 12.2.2016, p. 1).

- (129) The Commission recalls that in these cases the analysis concerned the captive use (in case of cold-rolled flat steel products) or sales to related users (in case of high-performance rebars), not the sales to the related customers such as related sales companies. As referred to in recital 89 of the provisional Regulation the captive use by Union producers is insignificant.
- (130) The Commission finally recalls that as far as prices and profitability on the Union market are concerned, these are only relevant if prices are sold between unrelated parties.
- (131) In the absence of further comments with respect to profitability, cash flow, investments, return on investments and ability to raise capital by the sampled Union producers, the conclusions set out in recitals 131 to 138 of the provisional Regulation are confirmed.

#### 4.5.4. *Conclusion on injury*

- (132) In the absence of any further comments, the conclusions on injury set out in recitals 139 to 147 of the provisional Regulation are confirmed.

## 5. CAUSATION

### 5.1. **Effects of the dumped imports**

- (133) Eurofer submitted that dumped imports from the PRC represent the 'single most important factor impacting the Union industry during the period considered'. They further noted that the 'volume of imports from the PRC doubled between 2013 and 2014 and then doubled again between 2014 and 2015' and that in 2015, the volume of imports from the PRC 'exceeded the volume of imports from all other third countries combined'.
- (134) Eurofer observed also similar trends for market shares of dumped imports from the PRC noting that they 'went from 4,1 % in 2013 to 14,4 % in 2015 while at the same time, the market share of imports from all other third countries declined from 13,2 % in 2013 to 12,2 % in 2015'.
- (135) Eurofer finally concluded that 'almost the entire gain in the market share of dumped Chinese imports came at the expense of the Union industry's market share'. They added that the price of dumped Chinese imports fell by almost 30 % during the period considered, and these imports were found to undercut the Union industry prices on average by 29 %.
- (136) This confirms the findings of recital 151 of the provisional Regulation that the almost continuous increase in imports from the PRC at highly undercutting prices has had a clear negative impact on the performance of the Union industry after 2013.
- (137) In the absence of any further comments on the effects of dumped imports, the conclusions on effects of dumped imports set out in recitals 150 to 157 of the provisional Regulation are confirmed.

### 5.2. **Effects of other factors**

#### 5.2.1. *Fierce competition caused by demand problems on the Union market*

- (138) In the absence of any comments on the effects of fierce competition caused by demand problems on the Union market, the conclusions set out in recitals 158 to 163 of the provisional Regulation are confirmed.

#### 5.2.2. *Low capacity utilisation of Union producers*

- (139) In the absence of any comments on the effects of low capacity utilisation of Union producers, the conclusions set out in recitals 164 to 166 of the provisional Regulation are confirmed.

#### 5.2.3. *Imports from other third countries*

- (140) CISA submitted that 'the Commission analysed separately the imports from Russia and Ukraine and therefore found no indication that imports from these two countries were causing injury to the Union Industry'.

- (141) CISA further submitted that the Commission should have conducted ‘a cumulative assessment on imports from Ukraine and Russia’ and even further that ‘a cumulative assessment on imports from all three countries (China, Russia and Ukraine)’ arguing that ‘during the IP the volume of imports from Ukraine or Russia is not negligible if compared to the Union market’ and that ‘the average prices of imports from both countries were even lower than the ones of China’.
- (142) On the basis of above CISA submitted the conclusion that ‘if imports from China were found to undercut the Union industry prices, those from Ukraine and Russia therefore have undercut the EU industry to an even larger extent. If the Commission were to follow the same methodology as it applied to China, i.e. a “beginning-point” to “end-point” comparison, the Commission would have found that the sales volume and market share of imports from these two countries have increased by 41 % and 2,2 percentage points respectively’.
- (143) The Commission refers to Article 3(4) of the basic Regulation providing that only imports subject to anti-dumping investigations can be cumulatively assessed. Imports from Ukraine and Russia are not subject to anti-dumping investigations and can therefore not be cumulated with imports from the PRC.
- (144) The average prices from Ukraine, Russia and the PRC are also not necessarily directly comparable, since the average price is affected by the product mix. More relevant are price trends over the period considered. Table 13 of the provisional Regulation clearly shows that average import prices from Ukraine and Russia decreased at a much slower rate than the import prices from the PRC over the period considered.
- (145) The market share of imports from other third countries remained relatively stable over the period considered while that of imports from the PRC more than tripled. In the context of Union consumption increasing by 5 % and the market share of the Union industry decreasing by 10 percentage points over the period considered this means that the imports from the PRC gained market share only from the Union industry.
- (146) Finally, while the volume of imports from the PRC increased by almost 1 million tonnes over the period considered, the import volume from Ukraine increased by around 160 000 tonnes, that from Russia by around 75 000 tonnes.
- (147) On the basis of the above and given the much smaller import volumes from Ukraine and Russia as compared to those from the PRC there is no indication that imports from these two countries could break the causal link between the dumped imports for the PRC and the injury to the Union industry.
- (148) In the absence of any other comments on the effects of imports from other third countries, the conclusions set out in recitals 167 to 178 of the provisional Regulation are confirmed.

#### *5.2.4. Export sales performance of the Union industry*

- (149) In the absence of any comments on the effects of the export sales performance of the Union industry, the conclusions set out in recitals 179 to 183 of the provisional Regulation are confirmed.

#### *5.2.5. Competition between vertically integrated Union producers and re-rollers in the Union*

- (150) In the absence of any comments on the effects of competition between vertically integrated Union producers and re-rollers in the Union, the conclusions set out in recitals 184 to 189 of the provisional Regulation are confirmed.

#### *5.2.6. Lack of profit of Union producers irrespective of the volume of dumped imports from the PRC*

- (151) CISA further submitted that between 2013 and the investigation period the sampled Union producers remained largely unprofitable and that they incurred the biggest loss in 2013, which is exactly the year when imports of heavy plate from the PRC reached the lowest level.

- (152) This argument is addressed in recital 134 of the provisional Regulation, where it is explained that ‘while the heavy loss of 12,2 % in 2013 is influenced by the particularly low demand in that year, the considerable price and volume pressure exerted on the Union industry by the increasing imports from the PRC over 2014 and the investigation period prevented the Union industry from benefiting from the dynamic growth of the Union consumption by 11 percentage points.’ As indicated in recital 93 of the provisional Regulation, this growth was almost exclusively absorbed by the dumped imports from the PRC.
- (153) The Commission therefore concludes that the high loss in 2013 was not due to the low quantity of imports from the PRC, but due to the particularly low demand on the Union market. The losses incurred by the Union industry in 2014 and 2015 are however caused by the continuously increasing volume of dumped imports from the PRC.
- (154) In addition, the Commission notes that the Union industry was profitable in the years 2011 and 2012. In 2011, the Union industry showed a profit margin of 7,9 %, at a time when imports from the PRC were not yet made at significant quantities, as indicated in recital 221 of the provisional Regulation. In 2012, the profit margin was already significantly lower at only 1,6 %, due to the significant presence of dumped imports from the PRC. It is noted that no interested party commented on the profitability of the Union industry in 2011 and 2012.

#### 5.2.7. *Effect of ‘other important factors’*

- (155) CISA submits that there are ‘other important factors’ than dumped imports from the PRC ‘that are causing the alleged injury of the Union industry’ and that ‘this may break the causal link between the alleged dumped imports’ from the PRC and the injury. CISA requested the Commission to revise its causation analysis and take all other factors into account.
- (156) In this respect, it is noted that the six other factors listed above were addressed either in the provisional Regulation or in this Regulation. It is therefore clear that the Commission has thoroughly analysed all factors identified by interested parties. CISA did not even identify which ‘other important factors’, in addition to the six factors already analysed in detail, should be examined. CISA merely mentioned that they are ‘obvious’ without providing any further information. The Commission therefore rejects this submission.

#### 5.3. **Conclusion on causation**

- (157) On the basis of the above and in the absence of any other comments, the conclusions set out in recitals 190 to 194 of the provisional Regulation are confirmed.

### 6. UNION INTEREST

- (158) CISA submitted that over the period considered the Union producers held over 70 % of the Union market. They alleged that they dominate the Union market while the only serious sources of competition are imports from the PRC.
- (159) The Commission notes that CISA fails to recognise the fact that Union producers compete with each other and with imports from the PRC and other third countries holding a market share of 12,2 %, as indicated in Table 13 of the provisional Regulation. Furthermore, there is no indication that there is a lack of competition between Union producers.
- (160) Following provisional measures also one importer submitted that the imposition of anti-dumping measures will artificially reduce the competition on the Union market and will lead to an oligopolistic market in the segment of ‘special heavy plate’ as this segment is already dominated by just one player.
- (161) The Commission notes however that this party failed to submit any evidence to support this allegation. To the contrary, the information submitted by Eurofer in their comments to the final disclosure list numerous Union producers offering different types of ‘special heavy plate’.



- (162) The Commission recognises that the imposition of duties may reduce the number of competitors in certain segments of 'special heavy plate' on the Union market. However, an anti-dumping investigation does not define product and geographical markets, and does not assess market power and its likely evolution. Therefore, no findings could and had to be made in this investigation as to whether there is a risk of creating or reinforcing a dominant position in one of the markets in the sense of competition law.
- (163) The Commission is required, in its Union interest analysis, to take into consideration other Union policies, such as competition policy. However, it is only where there is concrete evidence of a dominant position and possible abuse thereof that those considerations require further investigation. That threshold has not been met by the submissions of the interested parties.
- (164) In any event, the Commission recalls that the anti-dumping duties are imposed to eliminate the effect of injurious dumping that was found for all segments of heavy plate, and that dominance on a market does not imply that it is abused. Should interested parties observe any future behaviour that may violate competition rules, they can use their right to complain to the competent competition authority.
- (165) Following provisional measures one importer submitted that the imposition of anti-dumping measures should not lead to increased prices on the Union market.
- (166) The Commission recalls that the purpose of anti-dumping measures is to eliminate the trade distorting effects of injurious dumping. The effects of those measures on prices depend on pricing decisions of various market operators, and as such are impossible to predict. Increased prices may occur where market forces consider that on an undistorted market such higher prices should prevail.
- (167) CISA submitted also that Union users need competitive and steady sources of supply and that the imposition of anti-dumping measures 'is likely to result in a major loss and/or shift of jobs away from the European Union in the downstream industry'.
- (168) There were however 30 producers in the Union during the investigation period and imports from a number of countries, including Russia and Ukraine, ensuring steady supply of heavy plate to users in the Union. Also, no users in the downstream industries provided evidence that they would not be able to source heavy plate due to the imposition of anti-dumping measures. As regards the risk of a major loss and/or shift of jobs away from the Union, only one downstream industry made a similar claim, namely the producer of wind turbine towers. This claim is addressed below.
- (169) The *ad-hoc* association of users in a downstream industry (wind turbine towers) submitted that the imposition of measures on heavy plate will result in the risk of relocation of the wind turbine towers production to the PRC and problems of security of supplies of complete or semi-complete manufactured wind turbine towers in the future. This argument was also raised by one importer in their comments to the final disclosure as regards wind turbine towers as well as other parts of wind energy systems.
- (170) The Commission rejects these submissions as these interested parties failed to substantiate their claim with any evidence or analysis, for example by these wind turbine tower producers making themselves known within the timelines defined in the Notice of Initiation and completing a questionnaire reply, specifying the types of heavy plate used by this industry to build wind turbine towers, and providing an analysis whether these types of heavy plate are interchangeable with the types of heavy plate used in other industries.
- (171) The Commission notes that information on file shows that wind turbine tower producers could not benefit from excluding 'special heavy plate' from the product scope, as described in recital 42 above. Therefore, only an exclusion of heavy plate for wind turbine towers for reasons of Union interest could address their concern. However, at this stage, the producers of wind turbine towers have not provided any concrete and detailed analysis, including an explanation of the imposition of duties on their cost of production and their ability to pass those costs on to their customers that could justify such exclusion.
- (172) The Commission notes further that wind turbine tower producers can request, if duly substantiated, an interim review on Union interest on the measures on heavy plate. Moreover the investigation revealed no indications that the Union industry would jeopardise the operations of the users. Such behaviour is not to be expected under the normal play of market forces.

- (173) One importer submitted that the exclusion of 'special heavy plate' from the product scope is in the interest of the Union as allegedly 'several key industries' such as 'machine building and energy sector' in the Union are reliant on the import of 'special heavy plate' from the PRC. However, none of the users in these industries came forward confirming this claim.
- (174) This importer further claimed that the 'special heavy plate' in thickness of above 150 mm is produced only by three Union producers. For high yield strength plate, quenched and tempered plate and abrasion resistant heavy plate the production is allegedly controlled by only four Union producers. On this basis they allege that the Union downstream industry 'already today suffers from a shortage in supply and from dramatically increased sales prices' and that this can be outbalanced only by imports of 'special heavy plate' from the PRC.
- (175) CISA submitted further that users of 'special heavy plate' in the metal forming industry — due to the very limited number of European producers of 'special heavy plate' — could equally suffer from a shortage of supply. However, none of the users in this downstream industry raised the issue of a shortage in supply.
- (176) The Commission rejects the submissions referred to in recitals 173 to 175 above as the interested parties failed to substantiate their claims with any evidence or analysis. To the contrary, the investigation established a significant drop of heavy plate prices in the Union during the period considered. Also, the investigation has shown that the Union industry has a significant spare capacity due to a continuously decreasing capacity utilisation. Also, according to CISA the volume of 'special heavy plate' exported by the PRC is minor.
- (177) Following final disclosure, one importer returned to this issue in their comments to the final disclosure. However, no new essential arguments were raised.
- (178) In the absence of any factual evidence on an alleged shortage of supply due to the imposition of anti-dumping measures, the Commission cannot conclude that the imposition of such measures will lead to a shortage of supply of 'special heavy plate'.

#### **6.1. Conclusion on the Union interest**

- (179) In summary, none of the arguments put forward by interested parties demonstrate that there are compelling reasons against the imposition of measures on imports of the product concerned from the PRC.
- (180) Any negative effects on the unrelated users are mitigated by the availability of alternative sources of supply. The positive effects of the anti-dumping measures on the Union market, in particular on the Union industry, outweigh the potential negative effect on the other interest groups.
- (181) In the absence of any other comments concerning the Union interest, the conclusions reached in recitals 195 to 215 of the provisional Regulation are confirmed.

### **7. RETROACTIVE IMPOSITION OF ANTI-DUMPING DUTIES**

- (182) As mentioned in recital 4 above, following the request of Eurofer, the Commission made imports of heavy plate originating in the PRC subject to registration. Imports that have been made between 11 August 2016 and the imposition of provisional measures, namely 7 October 2016, were registered.
- (183) Under Article 10(4)(d) of the basic Regulation, duties may be levied retroactively if there is 'in addition to the level of imports which caused injury during the investigation period, a further substantial rise in imports which, in the light of its timing and volume and other circumstances, is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied'.

### 7.1. Comments on the possible retroactive imposition of anti-dumping duties

- (184) CISA submitted that any possible retroactive measures would have a negative impact on importers as they would 'unnecessarily face additional costs' since they pay anti-dumping duties. According to CISA the importers 'have no intention of stockpiling the product concerned' from the PRC and that the imports which have been registered were the remaining part of old contracts which were concluded before the initiation of the proceeding. CISA argued finally that 'an unexpected duty is going to create losses' on the side of the importers and users in the Union.
- (185) CISA finally argued that 'registering imports and threatening to impose measures retroactively is nothing else than creating yet another trade defence hurdle so that EU importers stop importing from China even before it has been proven that such imports are injuring the EU industry'.

### 7.2. Import statistics

- (186) Eurostat import statistics presented in Table 1 below indicate that imports of heavy plate from the PRC decreased significantly after the investigation period.

Table 1

#### Development of average monthly volume of imports

	IP Monthly Average	Monthly average March-September 2016	Monthly average March-October 2016
Import volume from the PRC (tonnes)	113 262	84 669	76 562
Trend versus IP (%)	N/A	- 25,2	- 32,4

Source: Eurostat.

### 7.3. Conclusion on retroactivity

- (187) The Commission concludes that as there was no further substantial rise in imports the legal condition for retroactive collection of duties under Article 10(4)(d) of the basic Regulation is not met. Therefore duties should not be levied retroactively on the registered imports.

## 8. DEFINITIVE ANTI-DUMPING MEASURES

### 8.1. Injury elimination level

- (188) As shown in recital 222 of the provisional Regulation, the Commission determined the injury elimination level on the basis of a comparison of the weighted average import price during the investigation period of the sampled exporting producers in the PRC, duly adjusted for post-importation costs and customs duties, with the weighted average non-injurious price of the like product sold by the sampled Union producers on the Union market during the investigation period.
- (189) CISA submitted a number of comments about the methodology to calculate the non-injurious price of the like product sold by the sampled Union producers on the Union market during the investigation period in the present case.
- (190) Firstly CISA requested why the Commission used the methodology of adding to the Union industry's sales prices the loss incurred during the investigation period and then adding the target profit margin of 7,9 % instead of adding the target profit to the cost of production.

- (191) The choice between the two methodologies used by the Commission to determine the injury elimination level is made on a case by case basis. In the absence of comparable sales by the Union industry, the non-injurious price is often established by adding the target profit to the total cost. In the present case however the comparable sales were available.
- (192) This is because the like product sold by the Union industry consisted of hundreds of product types and the sampled Union producers had an extensive network of related companies, including steel service centres, which incur costs, and which are not recorded in the books of the sampled Union producers in a manner that could easily be allocated to the different PCN numbers. For these reasons it was impossible to collect the cost information for each PCN not only from the production companies, but also from all the related sales companies (in particular steel service centres) in the Union to arrive at a total cost per PCN.
- (193) Hence, instead, the Commission established the total cost of every PCN by adding to the weighted average sales price the weighted average loss incurred by the sampled Union producers. Then, the target profit margin of 7,9 %, on which no comments were received after provisional measures, was added to the total cost so established.
- (194) Finally CISA further submitted that the methodology used was 'wrong' and that the two methodologies 'lead to completely different results'. They provided an example using a hypothetical cost of production and a hypothetical sales price, which allegedly shows that calculating the target price on the basis of the sales price is wrong.
- (195) The Commission notes that since most information used in the example is hypothetical and does not refer to actual data, the result of such example cannot demonstrate that the methodology used in this particular case is wrong. Therefore the Commission cannot consider this argument as evidence. If the same level of detailed information was available, both methodologies would lead to similar results.
- (196) CISA finally submitted that 'if the majority of the PCNs exported by the Chinese exporting producers are sold by less than three sampled Union producers, one should question the representativeness of the sales data received from the sampled Union producers and therefore conclude that calculating an undercutting margin on the basis thereof is rather debatable. Not to mention the fact that injury can hardly be proven if the Union industry does not even produce/sell the types exported by the Chinese exporting producers.'
- (197) The Commission notes that though three Union producers were sampled the fact 'that the majority of the PCNs exported by the Chinese exporting producers are sold by less than three sampled Union producers' does not mean that the Union industry or even the sampled Union producers do not sell them at all. This only means that not all three sampled Union producers sell all PCNs exported by the sampled exporting producers from the PRC.
- (198) The Commission notes also that not all sampled exporting producers from the PRC exported to the Union the same PCNs. Indeed, the vast majority of PCNs exported by the sampled exporting producers to the Union (accounting for more than 90 % of these exports by volume) is produced by one or more sampled Union producers.
- (199) Following final disclosure CISA returned to this issue in their comments and at the hearing.
- (200) CISA inferred that the Union industry may not have reported correct figures and had benefitted from favourable treatment in breach of the rights of other parties to an objective, impartial and non-discriminatory investigation. This alleged favourable treatment to the Union industry would also be illustrated by the Commission's leniency towards them when failing to provide certain important information (CISA referred to level of information on the cost of production).
- (201) As concerns the allegation of favourable treatment, the claim is rejected. The issue at stake concerns the wording in recitals 191 to 193 above. In these recitals the Commission stated the reason for the choice between the two methodologies used by the Commission to determine the injury elimination level.
- (202) In the absence of any other comments on the injury elimination level, the conclusions set out in recitals 217 to 223 of the provisional Regulation are confirmed.

## 8.2. Undertaking offer

- (203) Following final disclosure one exporting producer from the PRC submitted a price undertaking offer to the Commission. This offer set minimum import prices ('MIPs') for the types of heavy plate sold to the Union by the exporting producer from the PRC, and also offered a method of indexation of these MIPs based on the prices of the main raw materials.
- (204) The Commission rejected the price undertaking offer because of the high risk of price cross-compensation since the difference in the MIPs between different not easily distinguishable types was too wide and the indexation method was too complex. In addition, the structure of the export sales channels of the exporting producer and the parallel export sales of other products could not allow a proper monitoring and, thus, the possibility of cross-compensation via other products sold by related companies of the exporting producer was too high.
- (205) The exporting producer was informed of the reasons for rejection of their undertaking offer and was given the possibility to comment.

## 8.3. Definitive measures

- (206) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed on the imports of the product concerned at the level of the injury elimination level, in accordance with the lesser duty rule.
- (207) On the basis of the above, the rates at which the definitive anti-dumping duty will be imposed are set as in Table 2 below:

Table 2

### Dumping margin, Injury elimination level and duty rate

Company	Dumping margin (%)	Injury elimination level (%)	Duty (%)
Nanjing Iron and Steel Co., Ltd	120,1	73,1	73,1
Minmetals Yingkou Medium Plate Co., Ltd	126,0	65,1	65,1
Wuyang Iron and Steel Co., Ltd and Wuyang New Heavy & Wide Steel Plate Co., Ltd	127,6	73,7	73,7
Other cooperating companies	125,5	70,6	70,6
All other companies	127,6	73,7	73,7

Source: Investigation.

- (208) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of the product concerned originating in the PRC and produced by the companies and thus by the specific legal entities mentioned. Imported product concerned produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

- (209) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission <sup>(1)</sup> with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will accordingly be amended by updating the list of companies benefiting from individual duty rates.
- (210) In order to ensure a proper enforcement of the anti-dumping duty, the 'all other companies' duty rate should not only apply to the non-cooperating exporting producers but also to those producers which did not have any exports to the Union during the investigation period.

#### 8.4. Definitive collection of the provisional duties

- (211) 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 the provisional anti-dumping duty, imposed by the provisional Regulation, should be definitively collected.
- (212) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A definitive anti-dumping duty is imposed on imports of flat products of non-alloy or alloy steel (excluding stainless steel, silicon-electrical steel, tool steel and high-speed steel), hot-rolled, not clad, plated or coated, not in coils, of a thickness exceeding 10 mm and of a width of 600 mm or more or of a thickness of 4,75 mm or more but not exceeding 10 mm and of a width of 2 050 mm or more currently falling within CN codes ex 7208 51 20, ex 7208 51 91, ex 7208 51 98, ex 7208 52 91, ex 7208 90 20, ex 7208 90 80, 7225 40 40, ex 7225 40 60 and ex 7225 99 00 (TARIC codes: 7208 51 20 10, 7208 51 91 10, 7208 51 98 10, 7208 52 91 10, 7208 90 20 10, 7208 90 80 20, 7225 40 60 10, 7225 99 00 35, 7225 99 00 40) and originating in the People's Republic of China.

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

Company	Duty (%)	TARIC additional code
Nanjing Iron and Steel Co., Ltd	73,1	C143
Minmetals Yingkou Medium Plate Co., Ltd	65,1	C144
Wuyang Iron and Steel Co., Ltd and Wuyang New Heavy & Wide Steel Plate Co., Ltd	73,7	C145
Other cooperating companies listed in Annex	70,6	
All other companies	73,7	C999

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

#### Article 2

The amounts secured by way of the provisional anti-dumping duty under Implementing Regulation (EU) 2016/1777 shall be definitively collected.

<sup>(1)</sup> European Commission, Directorate-General for Trade, Directorate H, 1049 Brussels, Belgium.

*Article 3*

Where any new exporting producer in the People's Republic of China provides sufficient evidence to the Commission that:

- it did not export to the Union the product described in Article 1(1) during the investigation period (1 January 2015 to 31 December 2015),
- it is not related to any of the exporters or producers in the People's Republic of China which are subject to the measures imposed by this Regulation,
- it has actually exported to the Union the product concerned after the investigation period on which the measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Union,

Article 1(2) shall be amended, after giving all interested parties the possibility to comment, by adding the new exporting producer to the cooperating companies not included in the sample and thus subject to the weighted average duty rate.

*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, 27 February 2017.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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## ANNEX

Chinese cooperating exporting producers not sampled:

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