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⁽¹⁾ Text with EEA relevance.

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2019/686

of 16 January 2019

laying down the detailed arrangements under Council Directive 91/477/EEC for the systematic exchange, by electronic means, of information relating to the transfer of firearms within the Union

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons ⁽¹⁾, and in particular the second subparagraph of Article 13(5) thereof,

Whereas:

- (1) Chapter 3 of Directive 91/477/EEC lays down formalities for the transfer of firearms from one Member State to another and requires Member States to exchange relevant information relating to such transfers.
- (2) Paragraph 5 of Article 13 of Directive 91/477/EEC requires the Commission to provide for a system for the systematic exchange of information mentioned in that Article. The competent authorities of Member States currently exchange this information by email or fax.
- (3) The Internal Market Information System ('IMI') established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council ⁽²⁾ could be an effective tool in implementing the administrative cooperation provisions set out in Article 13 of Directive 91/477/EEC, in particular those provisions relating to the transfer of firearms from one Member State to another. Accordingly, Commission Implementing Decision (EU) 2019/689 ⁽³⁾ has been adopted to make those provisions relating to the transfer of firearms subject to a pilot project under Article 4 of Regulation (EU) No 1024/2012. It is therefore appropriate to identify IMI as the system to be used by the competent authorities of the Member States for the purposes of the exchange of information relating to the transfer of firearms, and to lay down the detailed arrangements for such exchanges.
- (4) In accordance with Article 13(3) of Directive 91/477/EEC, Member States may have more than one national authority responsible for transmitting and receiving information falling within the scope of this Regulation. In order to facilitate the efficient and effective flow of information between Member States, each Member State with more than one such national authority should be required to designate one of its national authorities as a central authority, to act as a single point of contact for receiving and transmitting information exchanged via IMI in accordance with this Regulation. The central authority may also be empowered by the Member State to transmit information from its national authorities to another Member State via IMI.

⁽¹⁾ OJ L 256, 13.9.1991, p. 51.

⁽²⁾ Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') (OJ L 316, 14.11.2012, p. 1).

⁽³⁾ Commission Implementing Decision (EU) 2019/689 of 16 January 2019 on a pilot project to implement certain administrative cooperation provisions set out in Council Directive 91/477/EEC by means of the Internal Market Information System (see page 75 of this Official Journal).

- (5) In accordance with Article 11 of Directive 91/477/EEC, the transfer of firearms from one Member State to another requires an authorisation from the Member State where the firearm is situated ('the Member State of dispatch'). Moreover, each Member State must supply the other Member States with a list of firearms, the transfer of which to its territory may be authorised without its prior consent. This means that, for firearms not included on a Member State's list, the Member State of dispatch is supposed to check to see that prior consent has been given before it proceeds to authorise transfer of the firearm to that Member State. Currently, however, the prior consent document is only presented by the seller to the Member State of dispatch at the time when the seller requests the transfer authorisation or, in a case falling within Article 11(3) of Directive 91/477/EEC, when the dealer communicates particulars of the transfer to the Member State of dispatch. In order to ensure that transfer authorisations are not issued on the basis of fraudulent documentation, the Member State to whose territory a firearm is to be transferred ('the Member State of destination') should be required to transmit information relating to the prior consent to the Member State of dispatch via IMI no later than 7 calendar days after it has issued its prior consent. In addition, in order to guarantee greater traceability and security with respect to the transfer of firearms within the Union, a copy of the prior consent document should also be uploaded onto IMI at the same time as that information is dispatched via IMI.
- (6) The specific information that Member States should be required to transmit individually via IMI, in addition to uploading a copy of the relevant document, should be confined to the information necessary to enable the relevant national authorities to easily identify and retrieve information concerning a particular transfer, including in particular information identifying the seller and the buyer or owner (whether a dealer or another person).
- (7) In the interests of transparency and security, each Member State should upload onto IMI the list of firearms, the transfer of which to its territory may be authorised without its prior consent. If there are no such firearms, in other words if its prior consent is needed for the transfer of all firearms, the Member State will be able to indicate that fact in the relevant repository in IMI.
- (8) The measures provided for in this Regulation were discussed with an expert group on exchange of information, consisting of experts from Member States,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation applies to the exchange of the following information via the system referred to in paragraph 5 of Article 13 of Directive 91/477/EEC:

- (a) information mentioned in paragraph 2 of that Article as regards the transfer of firearms;
- (b) information mentioned in paragraph 4 of that Article, excluding information with regard to refusals to grant authorisations as provided in Articles 6 and 7 of that Directive.

Article 2

The electronic exchange system

For the purposes of exchanging information to which this Regulation applies, the system referred to in Article 13(5) of Directive 91/477/EEC shall be the Internal Market Information System ('IMI') as provided for in Implementing Decision (EU) 2019/689.

Article 3

Designation by Member States of a central authority

1. If a Member State has more than one national authority responsible, as referred to in Article 13(3) of Directive 91/477/EEC, for transmitting and receiving information to which this Regulation applies, the Member State shall designate one of those authorities to act as a central authority responsible for receiving such information from national authorities of other Member States and transmitting it to the relevant national authority within its territory responsible for that information.
2. A Member State may also assign its central authority the task of transmitting information from its national authorities to the national or central authority of another Member State via IMI.

*Article 4***Prior consent**

1. Where a Member State ('the Member State of destination') gives its prior consent to the transfer to its territory of a firearm situated in another Member State ('the Member State of dispatch'), the Member State of destination, for the purposes of notifying the Member State of dispatch of its prior consent, shall transmit the following information to the Member State of dispatch:
 - (a) the name of the Member State of destination and the Member State of dispatch;
 - (b) the date and national reference number of the prior consent document;
 - (c) information identifying the person purchasing or acquiring the firearm or, where appropriate, the owner;
 - (d) information identifying the person selling or disposing of the firearm, if applicable;
 - (e) the expiry date of the prior consent document in accordance with the national rules of the Member State of destination.
2. The Member State of destination shall upload onto IMI a copy of the prior consent document and it shall transmit that copy to the Member State of dispatch together with the information transmitted pursuant to paragraph 1.
3. The information and document referred to in paragraphs 1 and 2 shall be accessible in IMI by the national authorities responsible for that information in the Member State of destination and the Member State of dispatch.
4. The information and document referred to in paragraphs 1 and 2 shall be uploaded and transmitted no later than 7 calendar days after the date of issue of the prior consent document.

*Article 5***List of firearms the transfer of which does not need prior consent**

The list of firearms to be supplied to other Member States pursuant to Article 11(4) of Directive 91/477/EEC shall be uploaded onto IMI and be accessible in IMI by the national authorities of all Member States.

*Article 6***Notification of transfer authorisations or accompanying document**

1. When issuing a transfer authorisation for a firearm pursuant to Article 11(2) of Directive 91/477/EEC or when issuing the document ('accompanying document') required to accompany a firearm pursuant to the first subparagraph of Article 11(3) of that Directive, the competent authority of the Member State where the firearm is situated ('the Member State of dispatch') shall transmit the following information to the Member State to whose territory the firearm is to be transferred ('the Member State of destination') and to any transit Member States:
 - (a) the name of the Member State of dispatch, the Member State of destination, and, if applicable, any transit Member States;
 - (b) the date and national reference number of the transfer authorisation or accompanying document;
 - (c) information identifying the person purchasing or acquiring the firearm, or, where appropriate, the owner;
 - (d) information identifying the person selling or disposing of the firearm, if applicable;
 - (e) the total number of firearms to be transferred;
 - (f) in the case of a transfer authorisation, the date of departure and the estimated date of arrival of the firearm;
 - (g) the expiry date of the transfer authorisation or accompanying document in accordance with the national rules of the Member State of dispatch.

2. The Member State of dispatch shall upload onto IMI a copy of the transfer authorisation or of the accompanying document, and it shall transmit that copy to the Member State of destination and to any transit Member States together with the information transmitted pursuant to paragraph 1.
3. Where information concerning prior consent and a copy of the prior consent document were not transmitted by the Member State of destination to the Member State of dispatch pursuant to Article 4, the Member State of dispatch shall upload onto IMI a copy of the prior consent document it has received through other means.
4. The information and documents referred to in paragraphs 1, 2 and 3 shall be accessible in IMI by the national authorities of only the Member State of dispatch, the Member State of destination, and, if applicable, the Member States of transit.
5. The information and documents referred to in paragraphs 1, 2 and 3, shall be uploaded and transmitted no later than the time of transfer to the first transit Member State or, if there are no transit Member States, to the Member State of destination.

Article 7

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

It shall apply from 3 September 2019.

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

Done at Brussels, 16 January 2019.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2019/687**of 2 May 2019****imposing a definitive anti-dumping duty on imports of certain organic coated steel products originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation'), and in particular Article 11(2) thereof,

Whereas:

1. PROCEDURE**1.1. Measures in force**

- (1) The Council, by Implementing Regulation (EU) No 214/2013 ⁽²⁾, imposed definitive anti-dumping duties on imports of certain organic coated steel products originating in the People's Republic of China ('China', 'the PRC' or 'the country concerned'). The anti-dumping duties currently in force range from 0 % to 26,1 % ('the original measures'). The investigation that led to the imposition of the original measures will hereinafter be referred to as 'the original investigation'.
- (2) The Council, by Implementing Regulation (EU) No 215/2013 ⁽³⁾, also imposed countervailing duties on imports of certain organic coated steel products originating in China. The countervailing duties currently in force range from 13,7 % to 44,7 %.
- (3) The level of the combined duties ranges from 13,7 % to 58,3 %.

1.2. Initiation of an expiry review

- (4) Following the publication of a notice of impending expiry of the definitive anti-dumping measures in force ⁽⁴⁾, on 13 December 2017 the Commission received a request for the initiation of an expiry review of these measures pursuant to Article 11(2) of Regulation (EU) 2016/1036 ('the basic Regulation'). The request was lodged by The European Steel Association ('EUROFER') on behalf of producers representing more than 70 % of the total Union production of certain organic coated steel products ('the applicant'). The request was based on the grounds that the expiry of the definitive anti-dumping measures would be likely to result in recurrence of dumping and injury to the Union industry.
- (5) On 14 March 2018, the Commission announced, by a notice published in the *Official Journal of the European Union* ⁽⁵⁾ ('the Notice of Initiation'), the initiation of an expiry review of the anti-dumping measures applicable pursuant to Article 11(2) of the basic Regulation.
- (6) The Commission, by a notice published in the *Official Journal of the European Union* on 14 March 2018 ⁽⁶⁾, also announced the initiation of an expiry review pursuant to Article 18 of Regulation (EU) 2016/1037 of the European Parliament and of the Council ⁽⁷⁾ of the definitive countervailing measures in force with regard to the product concerned originating in China.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Council Implementing Regulation (EU) No 214/2013 of 11 March 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain organic coated steel products originating in the People's Republic of China (OJ L 73, 15.3.2013, p. 1).

⁽³⁾ Council Implementing Regulation (EU) No 215/2013 of 11 March 2013 imposing a countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China (OJ L 73, 15.3.2013, p. 16).

⁽⁴⁾ Notice of impending expiry of certain anti-dumping measures (OJ C 187, 13.6.2017, p. 60).

⁽⁵⁾ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain organic coated steel products originating in the People's Republic of China, OJ C 96, 14.3.2018, p. 8.

⁽⁶⁾ Notice of initiation of an expiry review of the countervailing measures applicable to imports of certain organic coated steel products originating in the People's Republic of China, OJ C 96, 14.3.2018, p. 21.

⁽⁷⁾ Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 55).

1.3. Investigation

1.3.1. Review investigation period and period considered

- (7) The investigation of a continuation or recurrence of dumping covered the period from 1 January 2017 to 31 December 2017 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of continuation or recurrence of injury covered the period from 1 January 2014 to the end of the review investigation period ('the period considered').

1.3.2. Interested parties

- (8) In the Notice of Initiation, the Commission invited all interested parties to participate in the investigation. In addition, the Commission officially advised the following parties of the initiation of the expiry review: the applicant, the known producers in the Union and their relevant associations, the known exporting producers in China, the known unrelated importers in the Union, unrelated users in the Union known to be concerned and the authorities in the exporting country.
- (9) All interested parties were invited to make their views known, submit information and provide supporting evidence within the time limits set out in the Notice of Initiation. Interested parties were also granted the opportunity to request in writing a hearing by the Commission investigation services and/or the Hearing Officer in trade proceedings.

1.3.3. Sampling

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

1.3.3.1. Sampling of Union producers

- (11) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers, in accordance with Article 17(1) of the basic Regulation. Prior to the initiation, 21 Union producers had provided the information requested for the selection of the sample and expressed their willingness to cooperate with the Commission. On that basis, the Commission had provisionally selected a sample of three producers, which were found to be representative of the Union industry in terms of volume of production and sales of the like product in the Union. The sampled Union producers accounted for 28 % of the estimated total production of the Union industry and for 27 % of the total sales volume of the Union industry to unrelated customers in the Union during the review investigation period. The Commission invited interested parties to comment on the provisional sample. No comments were received and the provisional sample was thus confirmed. The sample was considered representative for the Union industry.

1.3.3.2. Sampling of importers

- (12) The request to initiate the expiry review identified nine unrelated importers which were invited to provide sampling information. None of them came forward.

1.3.3.3. Sampling of exporting producers in China

- (13) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked all known exporting producers in China to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (14) Two exporting producers returned the sampling forms but none of them produced organic coated steel products as defined in the Notice of Initiation. A third exporting producer made itself known six weeks after the deadline for replies to the sampling form. This exporting producer was given interested party status, but was considered non-cooperating since it never replied to the sampling form or attempted to reply to the exporting producer's questionnaire.
- (15) Therefore, there was no cooperation by exporting producers in China.

1.3.4. Questionnaires and verification visits

- (16) The Commission sent questionnaires to the three sampled Union producers, the applicant and the Government of China ('GOC'). Replies to the questionnaires were received from the three sampled Union producers and the applicant.
- (17) The Commission verified all the information it deemed necessary for a determination of the likelihood of a continuation or recurrence of dumping and injury and of the Union interest. Verification visits were carried out at the premises of the following interested parties:
- (a) Union producers:
- ArcelorMittal Belgium, Belgium
 - Marcegaglia Carbon Steel SpA, Italy
 - Tata Steel Maubeuge SA, France
- (b) Association of Union producers:
- EUROFER, Belgium

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

- (18) In view of the sufficient evidence available at the initiation of the investigation tending to show the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission considered it appropriate to initiate the investigation on the basis of Article 2(6a) of the basic Regulation.
- (19) Consequently, in order to collect the necessary data for the eventual application of Article 2(6a) of the basic Regulation, in the Notice of Initiation the Commission invited all exporting producers the country concerned to provide the information requested in Annex III to the Notice of the Initiation regarding the inputs used for producing the product under review. The same two exporting producers that sent sampling replies also submitted the information requested in Annex III. Since they did not produce the product under review, no replies relevant to the product under review were received.
- (20) In order to obtain information it deems necessary for its investigation with regard to the alleged significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission also sent a questionnaire to the GOC. No reply was received from the GOC.
- (21) In the Notice of Initiation, the Commission also invited all interested parties to make their views known, submit information and provide supporting evidence regarding the appropriateness of the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of this Notice in the *Official Journal of the European Union*. No submissions or additional evidence were received in that respect by the GOC or the exporting producers.
- (22) In the Notice of Initiation, the Commission also specified that, in view of the evidence available, it may need to select an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks.
- (23) On 13 April 2018, the Commission published a first note for the file ('the Note of 13 April 2018')⁽⁸⁾ seeking the views of the interested parties on the relevant sources that the Commission may use for the determination of the normal value, in accordance with Article 2(6a)(e) second indent of the basic Regulation. In that note, the Commission provided a list of all factors of production such as materials, energy and labour used in the production of the product under review by the exporting producers. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified six possible representative countries: Argentina, Colombia, Malaysia, Mexico, Thailand and South Africa.
- (24) The Commission gave all interested parties the opportunity to comment. The Commission received comments only from the applicant. Neither the authorities of the country concerned nor any of the exporting producers provided comments.

⁽⁸⁾ No. t18.003071.

- (25) The Commission addressed the comments received by the applicant on the Note of 13 April 2018 in a second note on the sources for the determination of the normal value of 3 July 2018 ('the Note of 3 July 2018')⁽⁹⁾. The Commission also established the list of factors of production and concluded that, at that stage, Mexico was the most appropriate representative country under Article 2(6a)(a), first indent of the basic Regulation. The Commission invited interested parties to comment. The Commission received comments only from the applicant. This Regulation addresses those comments.

1.3.6. *Subsequent procedure*

- (26) On 22 February 2019, the Commission made the disclosure of the essential facts and considerations on the basis of which it intended to impose anti-dumping duties ('final disclosure'). All parties were granted a period within which they could make comments on the disclosure.
- (27) No parties made any comments on the final disclosure.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. **Product concerned**

- (28) The product concerned by this expiry review is the same as the one in the original investigation, that is certain organic coated steel products, i.e. flat-rolled products of non-alloy and alloy steel (not including stainless steel) which are painted, varnished or coated with plastics on at least one side, excluding so-called 'sandwich panels' of a kind used for building applications and consisting of two outer metal sheets with a stabilising core of insulation material sandwiched between them, excluding those products with a final coating of zinc-dust (a zinc-rich paint, containing by weight 70 % or more of zinc), and excluding those products with a substrate with a metallic coating of chromium or tin; currently falling within CN codes ex 7210 70 80, ex 7212 40 80, ex 7225 99 00, ex 7226 99 70 (TARIC codes 7210 70 80 11, 7210 70 80 91, 7212 40 80 01, 7212 40 80 21, 7212 40 80 91, 7225 99 00 11, 7225 99 00 91, 7226 99 70 11 and 7226 99 70 91), and originating in China ('the product under review' or 'OCS').
- (29) The product under review is obtained by applying an organic coating to flat-rolled steel products. The organic coating provides protection, and aesthetic and functional properties to steel products.
- (30) OCS are mainly used in the construction sector and for further processing in products used in construction. Other applications include home appliances.

2.2. **Like product**

- (31) No interested parties commented on the like product. Hence, as established in the original investigation, this expiry review investigation confirmed that product produced and sold on the domestic markets of China and the representative country Mexico, and the product produced and sold in the Union by the Union producers have the same basic physical and technical characteristics and end-uses. They are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

3. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

3.1. **Preliminary remarks**

- (32) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether the expiry of the measures in force would be likely to lead to a continuation or recurrence of dumping from the PRC.
- (33) As mentioned in recital 15, none of the Chinese exporting producers cooperated in the investigation. Thus, the exporting producers failed to submit questionnaire replies, including any data on export prices and costs, domestic prices and costs, capacity, production, investments, etc. Likewise, the GOC and the exporting producers failed to address the evidence on the case file, including the 'Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defense Investigations'⁽¹⁰⁾ ('the Report'), and the additional evidence provided by the applicant, showing that such prices and costs were affected by substantial government interventions. Therefore, the Commission resorted to the use of facts available in accordance with Article 18 of the basic Regulation.

⁽⁹⁾ No. t18.007614.

⁽¹⁰⁾ SWD(2017) 483 final/2.

- (34) The Commission notified the Chinese authorities and the third exporting producer mentioned in recital 14 of the application of Article 18(1) of the basic Regulation and gave them the opportunity to comment. The Commission did not receive any comments.
- (35) On that basis, in accordance with Article 18(1) of the basic Regulation, the findings in relation to the likelihood of continuation or recurrence of dumping set out below were based on facts available, in particular, the information contained in the request for the expiry review, in the submissions by interested parties, and the statistics available in the Article 14(6) database.

3.2. Continuation of dumping of imports during the review investigation period

- (36) For the review investigation period, the statistical data from the Article 14(6) database show that a small volume of OCS was imported into the Union from the PRC amounting to 6 338 tonnes and constituting 0,1 % of the total Union consumption. OCS was, however, imported to 16 Member States and the imports were spread over the whole review investigation period. Consequently, the Commission concluded that the actual imports in the review investigation period were representative and, therefore, examined whether dumping continued during the review investigation period.

3.2.1. Normal value

- (37) According to Article 2(1) of the basic Regulation, 'the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country'.
- (38) However, according to Article 2(6a)(a) of the basic Regulation, '(i)n case it is determined [...] that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions within the meaning of point (b), the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks', and 'shall include an undistorted and reasonable amount of administrative, selling and general costs and for profits'. As further explained below, the Commission concluded in the present investigation that, based on the evidence available, and in view of the lack of cooperation of the GOC and the exporting producers, the application of Article 2(6a) of the basic Regulation was appropriate.

3.2.2. Existence of significant distortions

3.2.2.1. Introduction

- (39) Article 2(6a)(b) of the basic Regulation defines 'significant distortions as those distortions which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces as they are affected by substantial government intervention. In assessing the existence of significant distortions regard shall be had, inter alia, to the potential impact of one or more of the following elements:
- the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country;
 - state presence in firms allowing the state to interfere with respect to prices or costs;
 - public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces;
 - the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws;
 - wage costs being distorted;
 - access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the state'.
- (40) Article 2(6a)(c) of the basic Regulation provides that '[w]here the Commission has well-founded indications of the possible existence of significant distortions as referred to in point (b) in a certain country or a certain sector in that country, and where appropriate for the effective application of this Regulation, the Commission shall produce, make public and regularly update a report describing the market circumstances referred to in point (b) in that country or sector'.

- (41) Interested parties were invited to rebut, comment or supplement the evidence contained in the investigation file at the time of initiation. In that respect, the Commission produced the Report showing the existence of substantial government intervention at many levels of the economy, including specific distortions in many key factors of production (such as land, energy, capital, raw materials and labour) as well as in specific sectors (such as steel and chemicals). The Report was placed in the investigation file at the initiation stage. The request also contained some relevant evidence complementing the Report.
- (42) The applicant referred in paragraph 71 and Annex 18 of the request to a US Department of Commerce ('US DOC') document ⁽¹¹⁾. According to the US DOC, the steel sector is classified under the 'basic and pillar industries' where the State must 'maintain relatively strong controlling power.' The US DOC document contains reference to the 'SASAC Document' ⁽¹²⁾ that divides economic sectors into three categories and related sub-categories, according to the perceived necessity for government control, namely: (1) strategic industries, which 'affect national security and the lifeblood of the economy', in which the state must 'maintain absolute controlling power'; (2) 'basic and pillar industries' in which the state must 'maintain relatively strong controlling power'; or (3) other industries in which the state must 'maintain influence'. Also, the SASAC Document sets a general goal of having, by 2010, a group of important backbone enterprises with fairly strong influence and driving force for the development of an industry, which entails establishing a strong foundation for important backbone enterprises in the petrochemical, telecoms, electricity, shipping, and construction industries to develop and become globally first-rate enterprises, and for important backbone enterprises in the automotive, machinery, and IT industries to become globally first-rate enterprises.
- (43) Regarding the hot-rolled steel ('HRS') and cold-rolled steel ('CRS') costs necessary for re-rolling production, the applicant referred to previous EU Regulations imposing countervailing duties ⁽¹³⁾ where the Commission established that both CRS and HRS flat products are subsidised. According to the applicant, this resulted in an artificially low cost price of the final products. In addition, the applicant quoted a report by ThinkDesk ⁽¹⁴⁾ and argued that this report also provided evidence that many Chinese producers were enabled to offer HRS flat products on the Chinese market at distorted prices.
- (44) Finally, the applicants also argued that current Chinese domestic HRS and CRS prices are still lower than international prices on the basis of data provided by Global Platts ⁽¹⁵⁾.
- (45) Regarding zinc and the domination of the mining industry by State-owned enterprises, in addition to the evidence contained in the Report, the applicants also provided evidence that a 30 % export tax on zinc is currently in place in China (see paragraphs 87–89 and Annex 18 of the request).
- (46) The applicant further claimed that there are significant distortions in chemical components, which in turn lead to significant distortions in paint and other chemical coating products used for organic coated steel production. They based themselves on the evidence contained in the Report (Chapter 16 'Chemical Sector' thereof). In particular, the Report mentioned on the basis of China Chemical Enterprise Management Association that the largest chemical companies (in 2015, based on sales revenue) in China are SOEs, including eight of the first ten largest chemical enterprises ⁽¹⁶⁾. In addition, the applicant referred to the KPMG report provided in Annex 18 of the request, which showed that the top 10 Chinese chemical companies are State-owned.

⁽¹¹⁾ United States Department of Commerce, 'China's Status as a non-market economy', A-570053, 26 October 2017, p. 57.

⁽¹²⁾ Xinhua News Agency, 'SASAC: State-owned Economy Should Maintain Absolute Controlling Power over Seven, Industries', December 18, 2006.

⁽¹³⁾ See Implementing Regulation (EU) No 215/2013 and Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 146, 9.6.2017, p. 17).

⁽¹⁴⁾ ThinkDesk Report, 'Analysis of state-business interaction and subsidization in the hot-rolled flat (HRF) segment of the Chinese steel industry', 28 February 2016, provided in Annex 18 of the request.

⁽¹⁵⁾ Data provided in Annex 20 of the request.

⁽¹⁶⁾ China Chemical Enterprise Management Association (CCEMA). (2016). List of Top 500 Chinese Chemical Companies in 2016. China Petroleum & Chemical Industry Federation (CPCIF). (2016). 29 June 2016. <http://www.cpcia.org.cn/html/13/20166/155709.html>; referred to in the Report, p. 403.

- (47) Regarding electricity, in addition to the Report, the applicant claimed that OCS producers enjoy preferential electricity rates ⁽¹⁷⁾ and Chongqing Wanda Steel Strip is said to have benefited from an electricity rate lower than the rate generally applicable for large industrial enterprise ⁽¹⁸⁾. Finally, the applicant submitted publicly available information, according to which Shougang Group and Inner Mongolia Baotou Steel Union have benefited from electricity price subsidies ⁽¹⁹⁾.
- (48) Regarding preferential loans and other financial support, in addition to the Report, the applicant pointed to a recent press report alleging that the GOC's control over local banks has been further reinforced by legislative developments in 2017 ⁽²⁰⁾. The applicant also quoted the US DOC's findings that the sector 'remains fundamentally distorted from both a risk pricing and a resource allocation standpoint. In addition, (...) an analysis of interest rate dynamics suggest that interest rates are still closely tied to government-published 'reference rates', and are thus not yet market-determined. Soft budget constraints, non-arm's-length pricing, implicit government guarantees and government policy directives directly or indirectly distort the formal banking sector, the interbank market, the bond market, and 'shadow banking'. These distortions can be directly tied to government ownership and control to the state's pervasive and intrusive role in China's financial system' ⁽²¹⁾.
- (49) The applicant recalled that the Commission established in its previous investigations that major OCS producers received subsidies in the form of preferential lending, debt for equity swaps, equity infusions, and relieve to pay dividends to the Chinese government as the main shareholder ⁽²²⁾. In addition, the applicant identified a number of other OCS producers having benefitted from preferential lending on the basis of their annual reports ⁽²³⁾.
- (50) Finally, the applicant quoted a report prepared by ThinkDesk, which identified at least six OCS producers to which benefited from government support measures in the form of Deleveraging and Debt to Equity Swaps in the Chinese Steel Industry in the years 2016-2017. Those measures were identified as subsidies by ThinkDesk ⁽²⁴⁾.
- (51) The request identified a number of alleged additional distortions in the form of fiscal support and low environmental standards in China, already indicated in the Report. In particular, the applicant referred to past findings by the Commission of various direct tax exemptions and reduction programmes that artificially reduced the taxable income of the steel companies, indirect tax (VAT) and import tariff programmes, and various (ad-hoc) grant programmes ⁽²⁵⁾. The applicant further claimed that these programs are still active and available today.
- (52) Regarding environmental standards, the applicant quoted an OECD report provided in Annex 18 of the request ⁽²⁶⁾, which arguably shows that the GOC offers indirect support to steel manufacturers by failing to enforce basic environmental standards, by contrast to Union producers which are subject to much stricter environmental standards, especially given the recent development that the REACH Regulation prohibited ongoing use of chromates in the pre-treatment stage of the OCS production (discussed also in paragraphs 12-16 of the request).
- (53) The Commission will examine whether it is appropriate or not to use domestic prices and costs in China, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission will do so on the basis of the evidence available on the file, including the evidence contained in the Report, which relies on publicly available sources. That analysis will cover the examination of the substantial government interventions in its economy in general, but also the specific market situation in the relevant sector including the product under review. As specified in recitals 16-20, neither the GOC nor the exporting producers

⁽¹⁷⁾ Implementing Regulation (EU) No 215/2013 and Implementing Regulation (EU) 2017/969 referred to above.

⁽¹⁸⁾ Implementing Regulation (EU) No 215/2013, recitals 140-145.

⁽¹⁹⁾ 'Overview of the subsidies enjoyed by Chinese steel producers', p. 6 provided in Annex 18 of the request.

⁽²⁰⁾ CHEN Y., BRC's New Supervisory Storm is here-implications for foreign banks in China, China Law Insight, 13 April 2017, provided in Annex 18 of the request.

⁽²¹⁾ US Department of Commerce, 'China's Status as a Non-Market Economy', October 26, 2017, provided in Annex 18 of the request.

⁽²²⁾ For details see paragraphs 106-107 of the request.

⁽²³⁾ See 'Overview of the subsidies enjoyed by Chinese steel producers', p. 6-7, provided in Annex 18 of the request.

⁽²⁴⁾ ThinkDesk Report, 'Deleveraging and Debt Equity Swaps in the Chinese Steel Industry', 31 October 2017, provided in Annex 18 of the request.

⁽²⁵⁾ Implementing Regulation (EU) No 215/2013 recitals 314-396; and Implementing Regulation (EU) 2017/969, recitals 312-394.

⁽²⁶⁾ Environmental Enforcement and Compliance in China, an Assessment of Current Practices and Ways Forward (OECD) 2006.

commented or provided evidence supporting or rebutting the existing evidence on the case file, including the Report, and the additional evidence provided by the applicant, on the existence of significant distortions and/or on the appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand.

3.2.2.2. Significant distortions affecting the domestic prices and costs in the PRC: general economic context

- (54) The very foundation of the Chinese economic system, namely the concept of the so-called ‘socialist market economy’, is at odds with the notion of free play of market forces. That concept is enshrined in the Chinese Constitution and determines the economic governance of China. The core principle is the ‘socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people’. The State-owned economy is considered the ‘leading force of the national economy’ and the State has the mandate ‘to ensure its consolidation and growth’⁽²⁷⁾. Consequently, the overall setup of the Chinese economy not only allows for substantial government interventions into the economy, but such interventions are expressly mandated. The notion of supremacy of public ownership over the private one permeates the entire legal system and is emphasized as a general principle in all central pieces of legislation. The Chinese property law is a prime example: it refers to the primary stage of socialism and entrusts the State with upholding the basic economic system under which the public ownership plays a dominant role. Other forms of ownership are tolerated, with the law permitting them to develop side by side with the State ownership⁽²⁸⁾.
- (55) In addition, according to relevant Chinese legislation, the socialist market economy is developed under the leadership of the Chinese Communist Party (CCP). The structures of the Chinese State and of the CCP are intertwined at every level (legal, institutional, personal), forming a superstructure in which the roles of CCP and the State are indistinguishable. Following an amendment of the Chinese Constitution in March 2018, the leading role of the CCP was given an even greater prominence by being reaffirmed in the text of Article 1 of the Constitution. Following the existing first sentence of the provision: ‘[t]he socialist system is the basic system of the People’s Republic of China’ a new second sentence was inserted which reads: ‘[t]he defining feature of socialism with Chinese characteristics is the leadership of the Communist Party of China.’⁽²⁹⁾ This illustrates the unquestioned and ever growing control of the CCP over the economic system of China. This control is inherent to the Chinese system and goes well beyond the situation customary in other countries where the governments exercise broad macroeconomic control within the boundaries of which free market forces are at play.
- (56) The Chinese State engages in an interventionist economic policy in pursuance of goals, which coincide with the political agenda set by the CCP rather than reflecting the prevailing economic conditions in a free market⁽³⁰⁾. The interventionist economic tools deployed by the Chinese authorities are manifold, including the system of industrial planning, the financial system, as well as various facets of the regulatory environment.
- (57) First, on the level of overall administrative control, the direction of the Chinese economy is governed by a complex system of industrial planning which affects all economic activities within the country. The totality of these plans cover a comprehensive and complex matrix of sectors and crosscutting policies and is present on all levels of government. Plans at provincial level tend to be fairly detailed while national plans tend to set somewhat broader targets. Plans also specify the tool box in order to support the relevant industries/sectors as well as the timeframes in which the objectives need to be achieved. Some plans still contain explicit output targets while this was a regular feature in previous planning cycles. Under the plans, individual industrial sectors and/or projects are being singled out as (positive or negative) priorities in line with the government priorities and specific development goals are attributed to them (industrial upgrade, international expansion etc.). The economic operators, private and State-owned alike, must effectively adjust their business activities according to the realities imposed by the planning system. This is not only because of the formally binding nature of the plans. Crucially, the relevant Chinese authorities at all level of government adhere to the system of plans and they use their vested powers accordingly, thereby inducing the economic operators to comply with the priorities set out in the plans (see also section 3.2.2.5 below)⁽³¹⁾.
- (58) Second, on the level of allocation of financial resources, the financial system of China is dominated by the State-owned commercial banks. Those banks, when setting up and implementing their lending policy need to align themselves with the government’s industrial policy objectives rather than primarily assessing the economic merits of a given project (see also section 3.2.2.8 below)⁽³²⁾. The same applies to the other components of the

⁽²⁷⁾ Report — Chapter 2, p. 6-7.

⁽²⁸⁾ Report — Chapter 2, p. 10.

⁽²⁹⁾ <http://en.pkulaw.cn/display.aspx?cgid=311950&lib=law>.

⁽³⁰⁾ Report – Chapter 2, p. 20-21.

⁽³¹⁾ Report – Chapter 3, p. 41, 73-74.

⁽³²⁾ Report – Chapter 6, p. 120-121.

Chinese financial system, such as the stock markets, bond markets, private equity markets etc. Even though of lesser significance than the banking sector, these parts of the financial sector are institutionally and operationally set up in a manner not geared towards maximizing the efficient functioning of the financial markets but towards ensuring control and allowing intervention by the State and the CCP ⁽³³⁾.

- (59) Third, on the level of regulatory environment, the interventions by the State into the economy take a number of forms. For instance, the public procurement rules are regularly used in pursuit of policy goals other than economic efficiency, thereby undermining market based principles in the area. The applicable legislation specifically provides that public procurement shall be conducted in order to facilitate the achievement of goals designed by State policies. However, the nature of these goals remains undefined, thereby leaving broad margin of appreciation to the decision-making bodies ⁽³⁴⁾. Similarly, in the area of investment, the Chinese government maintains significant control and influence over destination and magnitude of both State and private investment. Investment screening as well as various incentives, restrictions, and prohibitions related to investment are used by authorities as an important tool for supporting industrial policy goals, such as maintaining State control over key sectors or bolstering domestic industry ⁽³⁵⁾.
- (60) In sum, the Chinese economic model is based on certain basic axioms which provide for and encourage manifold government interventions. Such substantial government interventions are at odds with free play of market forces, resulting in distorting the effective allocation of resources in line with market principles ⁽³⁶⁾.

3.2.2.3. Significant distortions according to Article 2(6a)(b), first indent of the basic Regulation: the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country

- (61) Against that background of State intervention and dominance of State ownership in the Chinese economic model, State-owned enterprises ('SOEs') represent an essential part of the Chinese economy. The government and the CCP maintain structures that ensure their continued influence over SOEs. The State party not only actively formulates and oversees the implementation of general economic policies by individual SOEs, but it also claims its rights to participate in operational decision making in SOEs. This is typically done through rotation of cadres between government authorities and SOEs, through presence of party members on SOEs executive bodies and of party cells in companies (see also section 3.2.2.4), as well as through shaping the corporate structure of the SOE sector ⁽³⁷⁾. In exchange, SOEs enjoy a particular status within the Chinese economy, which entails a number of economic benefits, in particular shielding from competition and preferential access to relevant inputs, including finances ⁽³⁸⁾.
- (62) Specifically in the steel sector, a substantial degree of ownership by the Chinese government persists. While the nominal split between the number of SOEs and privately owned companies is estimated to be almost even, from the five Chinese steel producers ranked in the top 10 of the world's largest steel producers four are SOEs ⁽³⁹⁾. At the same time, while the top ten producers only took up some 36 % of total industry output in 2016, the Chinese government is aiming to consolidate 60 % to 70 % of iron and steel production to around ten large-scale enterprises by 2025 ⁽⁴⁰⁾. Such consolidation may entail forced mergers of profitable private companies with underperforming SOEs ⁽⁴¹⁾.
- (63) With the high level of government intervention in the steel industry and a high share of SOEs in the sector, even privately owned steel producers are prevented from operating under market conditions. Indeed, both public or privately owned enterprises in the steel sector are also subject to policy supervision and guidance as set out in section 3.2.2.5 below.
- (64) The state control and intervention on OCS is not excluded from the general framework described. Many of the major OCS producers are State-owned. The evidence available thus suggests that OCS producers in the PRC are subject to the same ownership, control or policy supervision or guidance by the Chinese government and thus do not operate in accordance with market principles ⁽⁴²⁾.

⁽³³⁾ Report – Chapter 6, p. 122-135.

⁽³⁴⁾ Report – Chapter 7, p. 167-168.

⁽³⁵⁾ Report – Chapter 8, p. 169-170, 200-201.

⁽³⁶⁾ Report – Chapter 2, p. 15-16, Report – Chapter 4, p. 50, p. 84, Report – Chapter 5, p. 108-9.

⁽³⁷⁾ Report – Chapter 3, p. 22-24 and Chapter 5, p. 97-108.

⁽³⁸⁾ Report – Chapter 5, p. 104-9.

⁽³⁹⁾ Report – Chapter 14, p. 358: 51 % private and 49 % SOEs in terms of production and 44 % SOEs and 56 % private companies in terms of capacity.

⁽⁴⁰⁾ https://policycn.com/policy_ticker/higher-expectations-for-large-scale-steel-enterprise/?iframe=1&secret=c8uthafuthefra4e.

⁽⁴¹⁾ As was the case of the merger between the private company Rizhao and the SOE Shandong Iron and Steel in 2009. See Beijing steel report, p. 58.

⁽⁴²⁾ Report – Chapter 14, pp. 359-360.

3.2.2.4. Significant distortions according to Article 2(6a)(b), second indent of the basic Regulation: State presence in firms allowing the state to interfere with respect to prices or costs

- (65) Apart from exercising control over the economy by means of ownership of SOEs and other tools, the Chinese State is in position to interfere with prices and costs through State presence in firms. While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights⁽⁴³⁾, CCP cells in enterprises, state owned and private alike, represent another channel through which the State can interfere with business decisions. According to China's company law, a CCP organisation is to be established in every company and the company is to provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decision in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline⁽⁴⁴⁾. In 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have final say over the business decision within their respective companies⁽⁴⁵⁾. These rules apply in general in the Chinese economy, including to the producers of OCS and the suppliers of their inputs.
- (66) Specifically in the steel sector (including the product under review and the suppliers of the main inputs), many of the major steel producers (including OCS producers) are owned by the State. Some are specifically referred to in the 'Steel Industry Adjustment and Upgrading plan for 2016-2020'⁽⁴⁶⁾ as examples of the achievements of the 12th five-year planning period (such as Baosteel, Anshan Iron and Steel, Wuhan Iron and Steel, etc.). The public documents of the State-owned OCS producer sometimes stress the connection with the Chinese State. For example, Baoshan Iron & Steel (or Baosteel) stated in the 2016 Semi-Annual Report that '[t]he company committed itself to matching regional 13th Five Year planning and reached wide consensus with local governments in sharing resources, connecting urban industries and building ecological environment'⁽⁴⁷⁾. In the recent anti-subsidy investigation of certain hot-rolled flat products of iron, non-alloy or other alloy steel ('HRF') originating in China⁽⁴⁸⁾, the Commission established that three of the four sampled groups of exporting producers were SOEs. In all three groups, the Chairmen of the Board or the President also acted as the Party Committee Secretary of the group's CCP organisation.
- (67) The State's presence and intervention in the financial markets (see also section 3.2.2.8 below) as well as in the provision of raw materials and inputs further have a distorting effect on the market⁽⁴⁹⁾. Thus, the State presence in firms, including SOEs, in the steel and other sectors (such as the financial and input sectors) allow the GOC to interfere with respect to prices and costs.

3.2.2.5. Significant distortions according to Article 2(6a)(b), third indent of the basic Regulation: public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces

- (68) The direction of the Chinese economy is to a significant degree determined by an elaborate system of planning which sets out priorities and prescribes the goals the central and local governments must focus on. Relevant plans exist on all levels of government and cover virtually all economic sectors, the objectives set by the planning instruments are of binding nature and the authorities at each administrative level monitor the implementation

⁽⁴³⁾ Report – Chapter 5, p. 100-1.

⁽⁴⁴⁾ Report – Chapter 2, p. 31-2.

⁽⁴⁵⁾ See <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU>.

⁽⁴⁶⁾ The full text of the plan is available on the MIIT website:

<http://www.miit.gov.cn/n1146295/n1652858/n1652930/n3757016/c5353943/content.html>.

⁽⁴⁷⁾ Baoshan Iron & Steel Co., Ltd 2016 Semi-annual Report, http://tv.baosteel.com/ir/pdf/report/600019_2016_2e.pdf.

⁽⁴⁸⁾ See Recital 64 of Implementing Regulation (EU) 2017/969.

⁽⁴⁹⁾ Report – Chapters 14.1 to 14.3.

of the plans by the corresponding lower level of government. Overall, the system of planning in China results in resources being driven to sectors designated as strategic or otherwise politically important by the government, rather than being allocated in line with market forces ⁽⁵⁰⁾.

- (69) The steel industry, including the production of OCS as a high-end steel product, is regarded as a key industry by the Chinese government ⁽⁵¹⁾. This is confirmed in the numerous plans, directives and other documents focused on steel, which are issued at national, regional and municipal level such as the 'Steel Industry Adjustment and Upgrading plan for 2016-2020'. This Plan states that the steel industry is 'an important, fundamental sector of the Chinese economy, a national cornerstone' ⁽⁵²⁾. The main tasks and objectives set out in this Plan cover all aspects of the development of the industry ⁽⁵³⁾.
- (70) The 13th Five-Year Plan on Economic and Social Development ⁽⁵⁴⁾ envisages support to enterprises producing high-end steel product types ⁽⁵⁵⁾. It also focuses on achieving product quality, durability and reliability by supporting companies using technologies related to clean steel production, precision rolling and quality improvement ⁽⁵⁶⁾.
- (71) The 'Catalogue for Guiding Industry Restructuring (2011 Version) (2013 Amendment)' ⁽⁵⁷⁾ ('the Catalogue') lists iron and steel as encouraged industries. In particular, the Catalogue encourages the '[d]evelopment and application of technologies for higher-performance, high-quality, and upgrading steel products, including but not limited to high-strength automobile sheets of not less than 600 MPa, high performance pipeline steel for oil and gas transmission, high-strength wide and thick plates for vessels, marine engineering steel, moderate thickness plates of not less than 420 MPa for buildings, bridges and other structures, steel for high-speed and heavy-haul railways, low-iron loss and high-magnetic induction silicon steel, corrosion- and wear-resistance steel, alloy resource-saving stainless steel (modern ferritic stainless steel, duplex stainless steel, and nitrogen stainless steel), special steel bars and wire rods for high-performance basic parts (high-performance gears, bolts at or above Grade 12.9, high-strength spring, and long service life bearings), and high-quality special steel forged materials (tool and mould steel, stainless steel, and steel for machinery, among others)'. The applicability of the Catalogue was confirmed by the recent anti-subsidy investigation of certain hot-rolled flat products of iron, non-alloy or other alloy steel ('HRF') originating in China ⁽⁵⁸⁾.
- (72) The GOC further guides the development of the sector in accordance with a broad range of policy tools and directives related, inter alia: to market composition and restructuring, raw materials ⁽⁵⁹⁾, investment, capacity elimination, product range, relocation, upgrading, etc. Through these and other means, the GOC directs and controls virtually every aspect in the development and functioning of the sector ⁽⁶⁰⁾. The current problem of overcapacity is arguably the clearest illustration of the implications of the GOC's policies and the resulting distortions.
- (73) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives of supporting encouraged industries, including the production of OCS as a high-end steel product and the raw materials used for producing it. Such measures impede market forces from operating normally.

⁽⁵⁰⁾ Report – Chapter 4, p. 41-42, 83.

⁽⁵¹⁾ Report, Part III, Chapter 14, p. 346 ff.

⁽⁵²⁾ Introduction to The Plan for Adjusting and Upgrading the Steel Industry.

⁽⁵³⁾ Report, Chapter 14, p. 347.

⁽⁵⁴⁾ The 13th Five-Year Plan for Economic and Social Development of the People's Republic of China (2016-2020), <http://en.ndrc.gov.cn/newsrelease/201612/P020161207645765233498.pdf>.

⁽⁵⁵⁾ Report – Chapter 14, p. 349.

⁽⁵⁶⁾ Report – Chapter 14, p. 352.

⁽⁵⁷⁾ Catalogue for Guiding Industry Restructuring (2011 Version) (2013 Amendment) issued by Order No 9 of the National Development and Reform Commission on 27 March 2011, and amended in accordance with the Decision of the National Development and Reform Commission on Amending the Relevant Clauses of the Catalogue for Guiding Industry Restructuring (2011 Version) issued by Order No 21 of the National Development and Reform Commission on 16 February 2013.

⁽⁵⁸⁾ See Recital 56 of Implementing Regulation (EU) 2017/969.

⁽⁵⁹⁾ The request contains ample additional evidence (annex 18 thereof) of distortions on the markets of a number of raw materials used for the production of OCS such as: domination of SOEs in the zinc, coal and iron ore mining industry and a 30 % export tax on zinc; domination of SOEs in the Chemical industry producing paint and other chemical coating products; preferential rates for the use of electricity by a number of OCS producers. See also Report – Chapter 16.

⁽⁶⁰⁾ Report – Chapter 14, pp. 375-376.

3.2.2.6. Significant distortions according to Article 2(6a)(b), fourth indent of the basic Regulation: the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws

- (74) The Chinese bankruptcy system appears inadequate to deliver on its own main objectives such as to fairly settle claims and debts and to safeguard the lawful rights and interests of creditors and debtors. This appears to be rooted in the fact that while the Chinese bankruptcy law formally rests on similar principles as corresponding laws in other countries, the Chinese system is characterised by systematic under-enforcement. The number of bankruptcies remains notoriously low in relation to the size of the country's economy, not least because the insolvency proceedings suffer from a number of shortcomings, which effectively function as a disincentive for bankruptcy filings. Moreover, the role of the State in the insolvency proceedings remains strong and active, often having direct influence on the outcome of the proceedings ⁽⁶¹⁾.
- (75) In addition, the shortcomings of the system of property rights are particularly obvious in relation to ownership of land and land-use rights in China ⁽⁶²⁾. All land is owned by the Chinese State (collectively owned rural land and State-owned urban land). Its allocation remains solely dependent on the State. There are legal provisions that aim at allocating land use rights in a transparent manner and at market prices, for instance by introducing bidding procedures. However, these provisions are regularly not respected, with certain buyers obtaining their land for free or below market rates ⁽⁶³⁾. Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land ⁽⁶⁴⁾.
- (76) Therefore, the Chinese bankruptcy and property laws do not appear to properly work, resulting in distortions when maintaining insolvent firms afloat and in relation to the land provision and acquisition in the PRC. Those considerations, on the basis of the evidence available, appear to be fully applicable also in the steel sector and more specifically with respect to OCS. In particular, the Commission has established that OCS ⁽⁶⁵⁾ as well as its raw material hot-rolled steel ⁽⁶⁶⁾ benefited from the provision of land use rights for less than adequate remuneration.

3.2.2.7. Significant distortions according to Article 2(6a)(b), fifth indent of the basic Regulation: wage costs being distorted

- (77) A system of market-based wages cannot fully develop in China as workers and employers are impeded in their rights to collective organisation. China has not ratified a number of essential conventions of the International Labour Organisation (ILO), in particular those on freedom of association and on collective bargaining ⁽⁶⁷⁾. Under national law, only one trade union organisation is active. However, this organisation lacks independence from the State authorities and its engagement in collective bargaining and protection of workers' rights remains rudimentary ⁽⁶⁸⁾. Moreover, the mobility of the Chinese workforce is restricted by the household registration system, which limits access to the full range of social security and other benefits to local residents of a given administrative area. This typically results in workers who are not in possession of the local residence registration finding themselves in a vulnerable employment position and receiving lower income than the holders of the residence registration ⁽⁶⁹⁾. Those findings lead to the distortion of wages costs in China.
- (78) No evidence was submitted to the effect that the steel sector, including OCS, would not be subject to the Chinese labour law system described. The OCS sector is thus affected by the distortions of wage costs both directly (when making the product concerned) as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in China).

⁽⁶¹⁾ Report – Chapter 6, p. 138-149.

⁽⁶²⁾ Report – Chapter 9, p. 216.

⁽⁶³⁾ Report – Chapter 9, p. 213-215.

⁽⁶⁴⁾ Report – Chapter 9, p. 209-211.

⁽⁶⁵⁾ See recitals 107-126 of Implementing Regulation (EU) No 215/2013.

⁽⁶⁶⁾ See recitals 281-311 of Implementing Regulation (EU) 2017/969.

⁽⁶⁷⁾ Report – Chapter 13, p. 332-337.

⁽⁶⁸⁾ Report – Chapter 13, p. 336.

⁽⁶⁹⁾ Report – Chapter 13, p. 337-341.

3.2.2.8. Significant distortions according to Article 2(6a)(b), sixth indent of the basic Regulation: access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the State

- (79) Access to capital for corporate actors in China is subject to various distortions.
- (80) Firstly, the Chinese financial system is characterised by strong position of State-owned banks ⁽⁷⁰⁾, which, when granting access to finance, take into consideration criteria other than economic viability of a project. Similarly to non-financial SOEs, the banks remain connected to the State not only through ownership but also via personal relations (the top executives of the large State-owned financial institutions are ultimately appointed by the CCP) ⁽⁷¹⁾ and, again just like non-financial SOEs, the banks regularly implement public policies designed by the government. In doing so, the banks comply with an explicit legal obligation to conduct their business in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State ⁽⁷²⁾. This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ⁽⁷³⁾.
- (81) While it is acknowledged that various legal provisions refer to the need to respect normal banking behaviour and prudential rules such as the need to examine the creditworthiness of the borrower, the overwhelming evidence, including findings made in trade defence investigations, suggests that these provisions play only a secondary role in the application of the various legal instruments.
- (82) Furthermore, bond and credit ratings are often distorted for a variety of reasons including the fact that the risk assessment is influenced by the firm's strategic importance to the Chinese government and the strength of any implicit guarantee by the government. Estimates strongly suggest that Chinese credit ratings systematically correspond to lower international ratings.
- (83) This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ⁽⁷⁴⁾. This results in a bias for lending to SOEs, large well-connected private firms and firms in key industrial sectors, which implies that the availability and cost of capital is not equal for all players on the market.
- (84) Secondly, borrowing costs have been kept artificially low to stimulate investment growth. This has led to the excessive use of capital investment with ever lower returns on investment. This is illustrated by the recent growth in corporate leverage in the state sector despite a sharp fall in profitability, which suggests that the mechanisms at work in the banking system do not follow normal commercial responses.
- (85) Thirdly, although nominal interest rate liberalization was achieved in October 2015, price signals are still not the result of free market forces, but are influenced by government induced distortions. Indeed, the share of lending at or below the benchmark rate still represents 45 % of all lending and recourse to targeted credit appears to have been stepped up, since this share has increased markedly since 2015 in spite of worsening economic conditions. Artificially low interest rates result in under-pricing, and consequently, the excessive utilization of capital.
- (86) Overall credit growth in China indicates a worsening efficiency of capital allocation without any signs of credit tightening that would be expected in an undistorted market environment. As a result, non-performing loans have increased rapidly in recent years. Faced with a situation of increasing debt-at-risk, the Chinese government has opted to avoid defaults. Consequently, bad debt issues have been handled by rolling over debt, thus creating so called 'zombie' companies, or by transferring the ownership of the debt (e.g. via mergers or debt-to-equity swaps), without necessarily removing the overall debt problem or addressing its root causes.
- (87) In essence, despite the recent steps that have been taken to liberalize the market, the corporate credit system in China is affected by significant systemic issues and distortions resulting from the continuing pervasive role of the state in the capital markets.

⁽⁷⁰⁾ Report – Chapter 6, p. 114-117.

⁽⁷¹⁾ Report – Chapter 6, p. 119.

⁽⁷²⁾ Report – Chapter 6, p. 120.

⁽⁷³⁾ Report – Chapter 6, p. 121-122, 126-128, 133-135.

⁽⁷⁴⁾ Report – Chapter 6, p. 121-122, 126-128, 133-135.

- (88) No evidence was submitted to the effect that the steel sector, including OCS, would be exempted from the above-described government intervention in the financial system. To the contrary, a report by ThinkDesk provided by the applicant indicated that many Chinese producers of OCS had benefited from non-market conform financial operations. The Commission has also established that OCS ⁽⁷⁵⁾ as well as its raw material hot-rolled steel ⁽⁷⁶⁾ benefited from preferential lending constituting subsidies. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

3.2.2.9. Systemic nature of the distortions described

- (89) The Commission noted that the distortions described in the Report are not limited to the steel sector in general or the OCS sector in particular. On the contrary, the evidence available shows that the facts and features of the Chinese system as described above in Sections 3.2.2.1-3.2.2.5 as well as in Part A of the Report apply throughout the country and across the sectors of the economy. The same holds true for the description of the factors of production as set out above in Sections 3.2.2.6-3.2.2.8 above and in Part B of the Report.
- (90) In order to produce OCS, a broad range of inputs is needed. There is no evidence on the file that these inputs are not sourced in China. When the OCS producers purchase/contract these inputs the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system which applies across all levels of government and sectors.
- (91) As a consequence, not only the domestic sales prices of OCS cannot be used but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also tainted because their price formation is affected by substantial government intervention, as described in Parts A and B of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that in itself was produced in China by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth. No evidence or argument has been adduced by the GOC or the exporting producers in the present investigation on the contrary.

3.2.2.10. Conclusion

- (92) The analysis laid out in sections 3.2.2.2. to 3.2.2.9., which includes an examination of all the available evidence relating to China's intervention in its economy in general as well as in the steel sector (including the product concerned) showed that prices or costs, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation. On that basis, and in the absence of any cooperation from the GOC and the exporting producers, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case.
- (93) Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as discussed in the following section. The Commission recalled that no exporting producer cooperated with the investigation and that no claim was presented that some domestic costs would be undistorted under the third indent of Article 2(6a)(a) of the basic Regulation.

3.2.3. Representative country

3.2.3.1. General remarks

- (94) The choice of the representative country was based on the following criteria:
- A level of economic development similar to the PRC. For this purpose, the Commission used countries with a gross national income similar to the PRC on the basis of the database of the World Bank ⁽⁷⁷⁾;

⁽⁷⁵⁾ See recitals 157-215 of Implementing Regulation (EU) No 215/2013.

⁽⁷⁶⁾ See recitals 83-244 of Implementing Regulation (EU) 2017/969.

⁽⁷⁷⁾ World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>.

- Production of the product under review in that country ⁽⁷⁸⁾;
- Availability of relevant public data in that country;
- Where there is more than one possible representative country, preference was given, where appropriate, to the country with an adequate level of social and environmental protection.

(95) As explained in recitals 24 to 25, in the Note of 13 April 2018, the Commission informed interested parties that it had identified six possible representative countries: Argentina, Colombia, Malaysia, Mexico, South Africa, and Thailand and invited interested parties to comment and suggest other countries.

3.2.3.2. A level of economic development similar to the PRC

- (96) Argentina, Colombia, Malaysia, Mexico, South Africa, and Thailand are regarded by the World Bank as countries with a similar level of economic development as the PRC, i.e. they are all classified as 'upper-middle income' countries on a gross national income (hereinafter 'GNI') basis.
- (97) The applicant claimed that Mexico's membership of NAFTA integrates it into a North American Free Trade Zone with a level of economic development that is much higher than that of the PRC, possibly having an influence on costs in Mexico. The Commission made an analysis of the appropriateness of the possible representative countries on the basis of the World Bank database on GNI. The latter qualifies Mexico as part of the upper middle-income countries, thus with a level of development comparable to that of the PRC. That category of countries includes countries with GNI per capita between USD 3,896 and USD 12,055 in 2017, the year with the latest trade data available. The rankings apply to each single country and not to groups of countries belonging to free trade areas, customs unions, etc. The Commission considered that all six possible representative countries identified were equally comparable in terms of economic development with the PRC. Consequently, this claim was rejected.

3.2.3.3. Production of the product under review in the representative country and availability of the relevant public data in the representative country

- (98) In the Note of 13 April 2018 the Commission indicated that production of the product under review was known to take place in Argentina, Colombia, Malaysia, Mexico, South Africa and Thailand.
- (99) The Commission identified that for three of the countries, namely Argentina, Colombia and Thailand, the availability of public data needed to be further verified in particular as far as public financial data from a producer of the product under review was concerned.
- (100) For Colombia and Thailand no publicly available financial data from a producer of the product under review were found. Regarding Argentina, the publicly available financial data identified concerned the Ternium group, which was producing the product under review in that country. However, it was not clear from the financial data available for the group which part of the data related to the group's activities in Argentina, since the group reported its data relating to Argentina together with other countries such as Bolivia, Chile, Paraguay and Uruguay. Therefore, the data was not sufficiently precise in order to be used as appropriate benchmarks.
- (101) In its comments to the Note of 13 April 2018, the applicant repeated the request indicating that South Africa would be the most appropriate representative country. There were two producers of the product under review. For one producer, namely Safal Steel (Pty) Ltd, the financial data was not publicly available. Although the financial data was available for the other one, namely ArcelorMittal South Africa, the company was loss-making during the investigation period but also during the whole period considered. This rendered it unsuitable to be selected since the financial data of a loss making company would lack the profit element, which is to be replaced. Having found no other producers of the product under review with publicly available financial data in South Africa, the Commission did consider this country inappropriate as representative country.
- (102) In its comments to the Note of 3 July 2018, the applicant claimed that the Commission incorrectly rejected South Africa as a representative country, because the fact that the producer of the product under review was loss-making during one year could not be a decisive factor in selecting a representative country.

⁽⁷⁸⁾ If there is no production of the product under review in any country with a similar level of development, production of a product in the same general category and/or sector of the product under review may be considered.

- (103) Since the Commission had ample choice for selecting a representative country, it decided to select a country where a reasonable amount for administrative, selling and general ('SG&A') costs and for profits could be sourced from the publicly available data of a company in that country in accordance with the last paragraph of Article 2(6a)(a) of the basic Regulation.
- (104) Therefore, the fact that ArcelorMittal South Africa was loss-making was a decisive factor in the Commission's assessment on selecting the representative country and the applicant's claim was rejected.
- (105) Regarding Malaysia, financial data were publicly available for CSC Steel Holdings Berhad, a subsidiary of the Taiwanese company China Steel Corporation. CSC Steel Holdings Berhad produced the product under review and was profit making during the review investigation period.
- (106) The applicant claimed that relying on publicly available data from foreign owned companies may lead to unreliable data. The Commission considered that the analysis of the reliability of publicly available data has to be done on a case-by-case basis. In the case at hand, no evidence was at the Commission's disposal or was submitted by the applicant which would justify disregarding the financial data of CSC Steel Holdings Berhad. Consequently, that claim was rejected.
- (107) For Mexico, the Commission found publicly available data for Ternium group, in particular its Annual Report for 2017. That group is a producer of the product under review in Mexico, and Mexico represents more than 55 % in terms of its consolidated sales, which are reported separately from other geographical regions. In addition, Ternium group was profit making during the review investigation period.
- (108) Consequently, the Commission considered that the final choice of representative country was between Malaysia and Mexico.
- (109) In its comments, the applicant referred to the United States practice of using a basket of companies 'active in the metal sector', such as aluminium producers. However, the Commission gave its preference whenever possible to publicly available data of companies actually producing the product under review. Only if there is no such production or other factors render unsuitable the use of companies producing the product under review in any country with a similar level of economic development, the Commission will consider other suitable alternatives. In the case at hand, this was not necessary since there are actual producers of OCS with publicly available data. Consequently, that claim was rejected.

3.2.3.4. Level of social and environmental protection

- (110) Having established that there were two possible countries suitable to be chosen as representative, Mexico and Malaysia, the Commission assessed their level of social and environmental protection to choose the preferable one in accordance with last sentence of Article 2(6a)(a) first indent of the basic Regulation.
- (111) The Commission established that Malaysia lags behind in complying with relevant international labour standards and ratification of the ILO conventions referred to in Annex Ia of the basic Regulation. In particular, Malaysia did not ratify three out of the eight ILO core conventions (on freedom of association, on abolition of forced labour, and on non-discrimination). Furthermore, Malaysia has signed but not ratified one of the major environmental agreements ⁽⁷⁹⁾.
- (112) By contrast, Mexico has a higher level of compliance with ILO labour standards as it ratified all core conventions except for the Convention on Right to Organize and to Bargain Collectively. In addition, it has signed and ratified all major environmental conventions.

3.2.3.5. Conclusion

- (113) In view of the above analysis, Mexico met all the criteria laid down in Article 2(6a)(a), first indent of the basic Regulation in order to be considered as an appropriate representative country. In particular, Mexico has a substantial production of the product under review and a complete set of data available for all factors of production, manufacturing overheads, SG&A and profit. In addition, Mexico has a higher level of social and environmental protection.

⁽⁷⁹⁾ It has signed but not ratified the Stockholm convention on Persistent Organic Pollutants, signed on 22 May 2001.

3.2.4. *Manufacturing overhead costs, SG&A and profits*

- (114) In the Note of 3 July 2018, the Commission informed interested parties that for the construction of the normal value it would include SG&A costs and profits from the company Ternium S.A. Mexico, in accordance with Article 2(6a)(a), fourth paragraph of the basic Regulation. In addition, the Commission will include from the same company a value for manufacturing overhead costs in order to cover costs not included in the factors of production referred to above.
- (115) In its comments to the Note of 3 July 2018, the applicant claimed that it is preferable to use the non-consolidated data of ArcelorMittal South Africa (a local company) rather than the consolidated data of the Ternium group (a global group) of which the production in Mexico represents more than 55 % of the consolidated sales. The argument was based on the observation that unconsolidated data represented the results of the local company and not the global group, and as such allegedly better reflect the fixed manufacturing overhead, SG&A and profit of the representative country. However, since the data from ArcelorMittal South Africa could not be used, as this company is loss-making, that claim became without object and was therefore rejected.
- (116) In its comments to the Note of 3 July 2018, the applicant also claimed that, although Mexico is an appropriate representative country, Ternium S.A. Mexico is part of an international company, Ternium group, whose financial data reflect operations in countries with a different level of economic development.
- (117) Regardless of the fact that Ternium group is an international company, the Commission concluded that the publicly available data of Ternium S.A. Mexico was specific enough to the production of the product under review in Mexico and therefore rejected that claim. In view of the analysis in section 3.2.3, the Commission decided to use the financial data from Ternium S.A. Mexico, which are available for 2017, thus covering the review investigation period.

3.2.5. *Sources used to establish undistorted costs*

- (118) In the Note of 3 July 2018, the Commission stated that, in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it would use Global Trade Atlas ('GTA') to establish the undistorted cost of most of the factors of production. The Commission used Doing Business 2018 for electricity costs, national statistics on natural gas, Fiscal Code of the Federal District for water costs and the financial data from Ternium S.A. Mexico to establish SG&A costs, profits and overhead costs.

3.2.6. *Factors of production*

- (119) As already stated in recital 23, in the Note of 13 April 2018, the Commission sought to establish an initial list of factors of production and sources intended to be used for all factors of production such as materials, energy and labour used in the production of the product under review by the cooperating exporting producer.
- (120) In the absence of cooperation by Chinese exporting producers, the Commission relied on the applicant in order to specify the factors of production used in the production of OCS. Indeed, based on the information publicly available on the website of Chinese OCS producers, their production process and materials used appear to be identical to the one provided by the applicant.
- (121) The departure point in the process of production was chosen to be the substrate or base coil, as the applicant's production process started from that basis. In addition, based on the information obtained in the initial investigation as best evidence available, the Commission established that the exporting producers also commenced production of OCS based on the substrate. Indeed, in the original case, no integrated producers cooperated.
- (122) In the absence of cooperation, the Commission did not have more detailed tariff codes than the 6-digit HS codes provided by the applicant. The HS codes matched fully with the Mexican tariff codes.

- (123) Considering all the information submitted by the applicant, the following factors of production and HS codes, where applicable, have been identified:

Table 1

Factor of Production	HS Code	Unit import value
Raw Materials		
Substrate – Hot Dip Galvanized Steel Coil:		
— plated or coated with zinc	7210 49	0,84 EUR/kg
— plated or coated with zinc alloys	7210 49	0,84 EUR/kg
Metallic Coating – Zinc ingot (for zinc coating):		
— < 99,99 % zinc	7901 12	Not applicable
— zinc alloys	7901 20	Not applicable
Organic Coating		
— polyester paint	3208 10	4,33 EUR/kg
— polyurethane paint	3208 90	4,91 EUR/kg
— polyvinylidene fluoride paint	3209 90	3,36 EUR/kg
Labour		
Labour wages in manufacturing sector	[N/A]	1,37 EUR/hour
Energy		
Electricity	[N/A]	0,06 EUR/kWh
Natural Gas	[N/A]	0,0034 EUR/MJ
Compressed air	2853 90	Not applicable
Water	[N/A]	3,81 EUR/m ³
By product/waste		
Scrap galvanized steel	7204 29	0,18 EUR/kg

3.2.6.1. Materials

- (124) The applicant confirmed that hot dip galvanized steel coil is predominantly used as the substrate for the most representative type of the product under review. Therefore, in the absence of cooperation from exporting producers and comments from interested parties, the Commission did not collect data on other possible substrates, such as hot-rolled steel coil or cold-rolled steel coil.
- (125) In respect of metallic coating, the applicant confirmed that the use of zinc coating prevails. Therefore, in the absence of cooperation from exporting producers and comments from interested parties, the Commission did not find it necessary to collect data on metallic coating by means of aluminium.
- (126) It is to be noted that the substrate hot dip galvanized steel coil already includes the metallic coating by either zinc or zinc alloys. The data on the use of metallic coating was only collected to allow for adjustments in the calculation of the normal value based on different volumes of zinc or zinc alloys used for metallic coating of the various product types.

- (127) The records of the applicant did not allow for determining the consumption of auxiliaries per unit of the product under review. The applicant treated the auxiliaries as manufacturing overheads. Therefore, in the absence of this information, the Commission could not establish usage ratios and undistorted values for the auxiliaries used. However, the Commission established that all auxiliaries taken together amounted to an insignificant proportion of costs of manufacturing per ton of a finished product. In order to properly take into account these costs in the calculation of the constructed normal value, the Commission increased the undistorted costs of manufacturing (covering materials, labour, energy and water) from Mexico by a percentage equal to the share of auxiliaries on the costs of manufacturing provided by the applicant. The Commission considered that this method adequately reflected the share of auxiliaries in the total costs of manufacturing in the constructed normal value.
- (128) The applicant did not report any usage of LPG, hydrogen or nitrogen. Therefore, these originally identified factors of production were not used for constructing the normal value.
- (129) The applicant further reported that scrap produced in the production process of OCS should be taken into account. In order to do so, the nature of scrap and the corresponding HS code needed to be identified. In this case scrap of galvanized steel was identified (see the table in recital 123).
- (130) For all materials and scrap, absent any information on the Mexican market, the Commission relied on import prices. An import price in the representative country was determined as a weighted average of unit prices of imports from all third countries excluding the PRC. The Commission decided to exclude the imports from PRC into the representative country as it concluded in recital 92 that in the present case it is not appropriate to use domestic prices and costs in the PRC due to the existence of significant distortions in accordance with Article 2(6a)(b). On the basis of the evidence available, and absent any rebuttal by interested parties, the Commission considered that the same distortions affected export prices. After excluding PRC, the imports from other third countries remained representative ranging from 94 % to 100 % of total volumes imported to Mexico.
- (131) In order to establish undistorted price of materials as delivered at the gate of the exporting producer's factory as provided by Article 2(6a)(a), first indent, the Commission applied import duty of the representative country, Mexico, to the import price and added domestic transport costs. In the absence of cooperation by the exporting producers, the Commission relied on the information on domestic transport costs provided by the applicant.

3.2.6.2. Labour

- (132) The ILO statistics provided information on monthly wages in the manufacturing sector and weekly hours worked in Mexico for the review investigation period. The applicant claimed that the data available for South Africa could be adjusted for inflation using the Consumer Price Index or the indices for labour costs in the manufacturing sector published by the South African Reserve Bank. However, since the Commission decided to use Mexico as the appropriate representative country for which these data are available, this claim became moot.

3.2.6.3. Electricity

- (133) The price of electricity was readily available in the Doing business 2018 report. This report used a standardised methodology to identify the price of kWh in Mexico.
- (134) Alternatively, the Commission considered using the electricity tariffs published by the electricity producers and distributors in Mexico. In Mexico, CFE (Comisión Federal de Electricidad), a state owned company, is the dominant supplier of electricity.
- (135) The applicant claimed that the electricity costs quoted in Doing Business 2018 seem artificially low compared to most countries and therefore proposed to use the rates in the area where the product under review was produced, taking into account possible adjustments for the supply channel, specific charges, and VAT.
- (136) The applicant failed to provide sufficient evidence showing that such adjustments for VAT, specific charges and supply channels are indeed necessary and applicable to the Chinese exporting producers. Consequently, the Commission rejected this claim and decided to use the most comprehensive and unambiguous data from the Doing business 2018 report.

3.2.6.4. Natural gas

- (137) The price of natural gas in Mexico is available in the statistical database maintained by the Commission for Energy Regulation (Comisión Reguladora de Energía). The data provided covers the months of July to December 2017.
- (138) The applicant claimed that for South Africa, import price per ton of liquefied natural gas (HS code 2711 11) retrieved from the GTA database could be used and subsequently converted to price per gigajoule. Since the Commission decided to use Mexico as the representative country for which these data are available, it rejected that claim.

3.2.6.5. Compressed air

- (139) In addition to the factors of production identified in the Note of 13 April 2018, the applicant informed the Commission that compressed air is being used in the production of the product under review. The compressed air is being purchased in the form of liquid air.
- (140) The Commission determined that the appropriate HS code for liquid air is 2853 90. That HS code, however, covers a number of other chemicals. The national tariff schedule of Mexico suggests that there is no further detailed classification. Data obtained from GTA database would, therefore, contain imports of other inorganic compounds (including distilled or conductivity water and water of similar purity) and amalgams, other than amalgams of precious metals.
- (141) For the reasons described in the previous recital, the Commission deemed the use of the GTA database inappropriate. It should be noted that the compressed air amounted to an insignificant proportion of costs of manufacturing per ton of finished product. In order to take into account those costs in the calculation of the undistorted normal value, the Commission increased the undistorted costs of manufacturing (covering materials, labour, energy and water) by a percentage equal to the share of the compressed air on the costs of manufacturing provided by the applicant. The Commission considered that this method adequately reflected the share of the compressed air in the total costs of manufacturing in the constructed normal value.

3.2.6.6. Water

- (142) In Mexico, water tariffs are decided at the municipal level. In addition, CONAGUA (Comisión Nacional del Agua), the governmental authority for water regulation in Mexico, publishes statistics on water in Mexico, which also provide an overview of the price of water for industrial use in selected municipalities. The most recent edition is, however, from 2016 and covers year 2015.
- (143) Consequently, in order to use the prices applicable during the review investigation period, the Commission used the water tariffs of Mexico City. They were readily available in the Fiscal Code of the Federal District as amended in December 2016 and were applicable as of 1 January 2017.

3.2.6.7. Calculations

- (144) In order to establish the constructed normal value, the Commission followed the following two steps.
- (145) First, the Commission established the undistorted manufacturing costs. In the absence of cooperation by the exporting producers, the Commission then multiplied the usage factors as observed at the level of the applicant's production process for materials, labour, energy and water by the undistorted costs per unit observed in the representative country Mexico. In addition, for those factors of production for which no precise usage factors were provided by the applicant (in particular, auxiliaries and compressed air), the Commission applied a percentage equal to the share of those factors of production on the costs of manufacturing reported by the applicant to the undistorted direct manufacturing costs.
- (146) Second, to the manufacturing costs identified above the Commission applied the Ternium S.A. Mexico's manufacturing overhead costs, SG&A and profit. They were identified on the basis of Ternium S.A. Mexico's annual report of 2017 and were expressed as the following percentages:

- (147) Manufacturing overheads ⁽⁸⁰⁾ of 14,12 % applied to the costs of manufacturing (covering the consumption of materials, labour, energy and water);
- (148) SG&A ⁽⁸¹⁾ of 12,56 % applied to the sum of costs of manufacturing and manufacturing overheads;
- (149) A profit ⁽⁸²⁾ of 15,09 % applied to the sum of costs of manufacturing, manufacturing overheads, and SG&A.
- (150) On that basis, the Commission constructed the normal value per product type on an ex-work basis in accordance with Article 2(6a)(a) of the basic Regulation. Due to the fact no exporting producers cooperated, the normal value was established on a countrywide basis and not for each exporter and producer separately.

3.2.7. *Export price*

- (151) In the absence of cooperation of Chinese exporting producers, the export price was determined based on CIF Eurostat data corrected to ex-works level.

3.2.8. *Comparison and dumping margins*

- (152) The Commission compared the constructed normal value in accordance with Article 2(6a)(a) of the basic Regulation with the export price on an ex-works basis.

3.2.9. *Conclusion*

- (153) On that basis, the weighted average dumping margin, expressed as a percentage of the CIF Union frontier price, duty unpaid, was 134 %.
- (154) The Commission therefore concluded that dumping continued during the review investigation period.

3.3. **Likelihood of recurrence of dumping from the PRC**

- (155) As established above, imports of OCS from the PRC were found to be dumped during the review investigation period, but the level of imports was relatively limited. For the sake of completeness, the Commission also investigated the likelihood of recurrence of dumping should the measures be repealed. The following additional elements were analysed: the production capacity and spare capacity in the PRC, pricing behaviour of exporting producers in the PRC in other markets, the availability of other markets, and the attractiveness of the Union market.

3.3.1. *Exports to third countries*

- (156) During the review investigation period, the volume of imports of OCS from the PRC to the Union, although considered representative as concluded in recital 36, was quite small (around 0,1 % of the total Union consumption). Therefore, the Commission decided to also analyse the data concerning sales of OCS from the PRC to third countries to confirm its finding of continuation of dumping. Dumping calculations were made using the prices for sales to third countries, based on Chinese export statistics.

3.3.1.1. Normal value

- (157) The normal value to assess dumping from the PRC to third countries followed recitals 37 to 150.

⁽⁸⁰⁾ Including Repairs and maintenance, Security services, Insurance, and Office expenses as referred to in Note 6 – Cost of sales, p. 79 of the Annual report 2017.

⁽⁸¹⁾ Referred to in Note 7 – Selling, general and administrative expenses, p. 80, and including Other operating income (expenses) as referred to in Note 9, p. 81 and Other financial income (expenses) as referred to in Note 10, p. 81 of the Annual report 2017.

⁽⁸²⁾ Referred to in the Consolidated income statements, p. 45 of the Annual report 2017.

3.3.1.2. Export price

- (158) As there was no cooperation from the Chinese producers, the export price to third countries was based on the data from the China export database as provided by the applicant. From this data presented at FOB level in the database, the Commission deducted the costs of port handling and domestic transport costs in China as estimated by the applicant to calculate the export price at ex-works level.

3.3.1.3. Comparison

- (159) The Commission compared the constructed normal value and the export price to countries other than the Union on an ex-works basis.

3.3.1.4. Dumping margin

- (160) The above comparison showed a countrywide dumping margin for exports to all third countries (excluding the Union) of 118 %, with the countrywide dumping margin for export to five most important exporting markets (India, Philippines, Russian Federation, South Korea, and Vietnam) ranged from 112 % to 160 %. This further confirmed that the dumping margin determined for exports to the Union was reasonable in spite of the very low volumes of sales.

3.3.2. *Production capacity and spare capacity in the PRC*

- (161) Given the non-cooperation, production capacity and spare capacity in the PRC were established on the basis of facts available and in particular the information provided by the applicant, in accordance with Article 18 of the basic Regulation.
- (162) The production capacity in the PRC substantially exceeded the current production volumes. According to China Iron and Steel Association (CISA), the production capacity of colour-coated steel amounted to 40 million tonnes in 2013. With production volumes at the level of 7,5 million tonnes, the capacity utilisation reached only approximately 20 %. Would the measures be repealed, the Chinese producers have sufficient spare capacity estimated at 32,5 million tonnes to flood the Union market, where consumption is 4,5 million tonnes, with dumped OCS.
- (163) Based on the above, the Commission concluded that the Chinese exporting producers have significant spare capacity, which they could use to produce OCS to export to the Union market if measures were repealed.

3.3.3. *Availability of other markets*

- (164) Trade defence measures against Chinese OCS exports are in place in India, Malaysia, Pakistan, Turkey and Vietnam, illustrating the same type of pricing behaviour as observed for Chinese exports to the Union.
- (165) Therefore, the Commission concluded that, should the current measures be repealed, it is likely that the Chinese exporting producers would redirect exports towards the Union at dumped prices.

3.3.4. *Attractiveness of the Union market*

- (166) During the review investigation period, the Union sales price was by 194-338 EUR per tonne of OCS (or by 28-59 %) higher than the Chinese export price at CIF level to the five main export markets as described in recital 160. It was also by 211-226 EUR per tonne of OCS (or 31-33 %) higher than the average Chinese export price at CIF level to all third countries (excluding the Union). The Chinese exports to the five most important export markets amounted to 48 % of the Union consumption in the review investigation period.
- (167) Consequently, would the measures be repealed, the Chinese exporting producers could potentially redirect the exports of substantial volumes of OCS from third countries to the Union market.

3.3.5. Conclusion on the likelihood of recurrence of dumping

- (168) In view of the above, the Commission also concluded that, regardless of whether there was dumping during the review investigation period, there is a strong likelihood that dumping will recur should the measures lapse.

3.4. Overall conclusions on the likelihood of continuation or recurrence of dumping

- (169) The investigation showed that Chinese imports continued to enter the Union market at dumped prices during the review investigation period. Despite the low import volumes, the dumping margins found correspond to those observed when examining China's exports to third countries. In view of the elements examined in sections 3.3.2 to 3.3.4, the Commission concluded that it is highly likely that Chinese producers would export significant quantities of OCS to the Union at dumped prices, should the measures lapse. Thus, there is evidence of likelihood of continuation of dumping.
- (170) In any event, in the alternative, the Commission also found that there was evidence that dumping will likely recur should the measures lapse. The spare capacity in the PRC was very significant in comparison with the Union consumption during the review investigation period. In addition, other markets had in place anti-dumping measures applicable to imports of the product under review from the PRC. This pricing behaviour of the Chinese exporting producers in third markets supports the likelihood of continuation of dumping to the Union, should the measures be allowed to lapse. Finally, the attractiveness of the Union market in terms of size and prices, and the fact that other markets remain closed due to anti-dumping measures, indicated that it is likely that Chinese exports and spare capacity would be directed towards the Union market, should the measures be allowed to lapse. Consequently, the Commission concluded that there was a strong likelihood that the repeal of the anti-dumping measures would result in increased exports of OCS from the PRC to the Union at dumped prices.
- (171) In the light of the above, the Commission concluded that the expiry of the anti-dumping measures would be likely to lead to a continuation and, in any case, recurrence of dumping.

4. INJURY

4.1. Union production and Union industry

- (172) During the review investigation period OCS was manufactured by more than 20 known producers in the Union, some of them related to one another. Several of those producers belong to steelmaking groups.
- (173) The total Union production was estimated at 4 752 003 tonnes during the review investigation period on the basis of the questionnaire responses submitted by the sampled Union producers and data submitted the applicant. The Union producers accounting for the total Union production constitute the Union industry within the meaning of Article 4(1) of the basic Regulation.

4.2. Consumption in the Union

- (174) The investigation found that a share of the Union industry uses its production for captive use, that is it is often simply transferred (without invoice) and/or delivered at transfer prices within the same company or group of companies for further downstream processing. In order to provide as complete a picture as possible of the situation of the Union industry, data was obtained and analysed for the entire OCS activity.
- (175) As in the original investigation (recitals 68-69 thereof), it was considered that economic indicators such as production, capacity, capacity utilisation, investments, stocks, employment, productivity, wages and ability to raise capital depend upon the whole activity, regardless of whether the production is for captive use or sold on the free market. However, sales volume and sales prices on the Union market, market share, growth, export volume and prices focus on the situation prevailing on the free market (and thus, excluding captive activities). Thus, the injury indicators were corrected for the known captive use and sales in the Union industry, and captive use and sales were analysed separately.

(176) The Union consumption was established on the basis of (i) import statistics at TARIC level using information collected on the basis of Article 14(6) of the basic Regulation and (ii) sales volumes of the Union industry (including captive transactions) in the Union as submitted by the applicant. Those sales volumes were cross-checked and updated when necessary as regards sampled Union producers as a result of the verification visits to their premises.

(177) During the period considered the Union consumption developed as follows:

Table 2

	2014	2015	2016	RIP
Union consumption (tonnes)	3 840 088	3 965 150	4 375 791	4 525 677
<i>Index (2014 = 100)</i>	100	103	114	118

Source: Verified questionnaire replies and Article 14(6) database.

(178) During the period considered, the Union consumption increased by 18 %.

4.3. Imports into the Union from China

(179) The Commission established the volume of imports and prices on the basis of import statistics at TARIC level using information collected on the grounds of Article 14(6) of the basic Regulation.

4.3.1. Volume and market share

(180) Over the period considered imports from China into the Union developed as follows:

Table 3

Imports from China	2014	2015	2016	RIP
Volume of imports (tonnes)	5 619	4 217	2 958	6 338
<i>Index (2014 = 100)</i>	100	75	53	113
Market share (%)	0,1	0,1	0,1	0,1

Source: Article 14(6) database.

(181) During the period considered the volume of imports from the PRC was low. The Chinese market share fluctuated slightly during the period considered and was 0,1 % in the review investigation period.

(182) The imports have remained at a low level since the imposition of the provisional anti-dumping measures in September 2012. It is assumed that their low level is the result of the anti-dumping measures in force.

4.3.2. Price and price undercutting

(183) Over the period considered the price of imports from China into the Union developed as follows:

Table 4

Imports from China	2014	2015	2016	RIP
Average import price (EUR/tonne)	341	747	697	637
<i>Index (2014 = 100)</i>	100	219	204	187

Source: Article 14(6) database.

- (184) Over the period considered the prices of Chinese imports increased by 87 %. It can be reasonably assumed that this trend is at least partly due to increasing raw material prices.
- (185) The average sales prices of the cooperating Union producers to unrelated customers on the Union market were compared to the average prices of imports from China. In the absence of cooperation from Chinese exporting producers, no reliable product type per product type comparisons could be made and imports statistics for the product under review as a whole were used for establishing the average Chinese import price. Due to lack of cooperation from unrelated importers in this expiry review, the estimates contained in the request on the level of the adjustment for post-importation costs were used.
- (186) On the basis of that methodology, the comparison showed that during the review investigation period the imports of the product under review undercut the Union industry's prices by 27,8 % (that is, very similar to the undercutting found during the original investigation).
- (187) In addition, the analysis of Chinese export prices to other third markets showed that China was selling in some of its main export markets at prices similar to or sometimes even lower than those to the Union, thus reinforcing the conclusion that the current level of Chinese prices would undercut the sales prices of the Union industry in the Union market.

4.4. Imports into the Union from third countries

- (188) Table 5 shows the development of imports to the Union from third countries during the period considered in terms of volume and market share, as well as the average price of these imports.

Table 5

	2014	2015	2016	RIP
Volume of imports from India (tonnes)	191 015	136 208	152 511	247 237
<i>Index (2014 = 100)</i>	100	71	80	129
Market share (%)	5,0	3,4	3,5	5,5
Average price (EUR/tonnes)	755	770	680	818
Volume of imports from The Republic of Korea (tonnes)	155 634	131 959	184 637	222 448
<i>Index (2014 = 100)</i>	100	85	119	143
Market share (%)	4,0	3,3	4,2	4,9
Average price (EUR/tonnes)	899	934	785	925
Volume of imports from other third countries	117 938	113 679	134 352	201 981
<i>Index (2014 = 100)</i>	100	96	114	171
Market share (%)	3,1	2,9	3,1	4,5
Average price (EUR/tonnes)	793	798	714	838

Source: Article 14(6) database.

- (189) Over the period considered the volume of imports from third countries increased to reach a market share of 14,8 %. Most of these imports were from India and Korea, followed by Turkey and Taiwan.
- (190) In general the average price of imports from third countries was higher than the average prices at which Chinese imports entered the Union. Depending on the years the average price of imports from third countries was either higher or lower than the average selling prices of Union producers in the Union.

4.5. Economic situation of the Union industry

- (191) Pursuant to Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic factors and indices having a bearing on the state of the Union industry during the period considered.
- (192) The macroeconomic indicators (production, production capacity, capacity utilisation, sales volume, market share, employment, productivity, growth, magnitude of dumping margins and recovery from the effects of past dumping) were assessed at the level of the whole Union industry. The assessment was based on the information provided by the applicant, cross-checked with the verified questionnaire replies of the sampled Union producers.
- (193) The analysis of microeconomic indicators (stocks, sale prices, profitability, cash flow, investments, return on investments, ability to raise capital, and wages) was carried out at the level of the sampled Union producers. The assessment was based on their information which was duly verified during an on-spot verification visit.
- (194) Given that one of the three sampled companies is not represented by the applicant, pursuant to Article 19 of the basic Regulation the data in Tables 9 to 14 are provided in ranges so as to preserve confidentiality of business-sensitive information.

4.5.1. Macroeconomic indicators

4.5.1.1. Production, production capacity and capacity utilisation

- (195) Over the period considered production, production capacity and capacity utilisation of the Union industry developed as follows:

Table 6

	2014	2015	2016	RIP
Production (tonnes)	4 402 079	4 404 178	4 769 698	4 752 003
<i>Index (2014 = 100)</i>	100	100	108	108
Production capacity (tonnes)	5 076 892	5 113 417	5 361 693	5 339 200
<i>Index (2014 = 100)</i>	100	101	106	105
Capacity utilisation (%)	87	86	89	89

Source: Verified questionnaire replies.

- (196) Over the period considered there was a modest increase in production volume (+ 8 %) and capacity (+ 5 %), while the capacity utilisation increased by 2 %, to reach 89 %.

4.5.1.2. Sales volume and market share in the Union

- (197) Over the period considered sales in the Union by the Union industry (captive transactions included) developed as follows:

Table 7

	2014	2015	2016	RIP
Sales volume (tonnes)	3 369 883	3 579 087	3 901 334	3 847 673
<i>Index (2014 = 100)</i>	100	106	116	114
Market share (of Union consumption) (%)	87,6	90,2	89,1	84,9

Source: Verified questionnaire replies.

(198) The sales by the Union industry on the Union market increased by 14 % during the period considered.

(199) The market share of the Union industry decreased during the period considered to 84,9 %.

4.5.1.3. Employment and productivity

(200) Over the period considered employment level and productivity within the Union industry developed as follows:

Table 8

	2014	2015	2016	RIP
Number of employees (full time equivalent)	5 667	5 685	5 938	6 021
<i>Index (2014 = 100)</i>	100	100	105	106
Productivity (tonnes per employee)	777	775	803	789
<i>Index (2014 = 100)</i>	100	100	103	102

Source: Verified questionnaire replies.

(201) Both employment and productivity of the Union producers' workforce, measured as output (tonnes) per person employed per year, increased during the period considered. Those increases reflect the overall increase in production and sales volume.

4.5.1.4. Growth

(202) The Union industry managed to benefit from growth on the Union market even if facilities that had been more affected by the lower capacity utilisation observed during the original investigation are still in a recovery phase. The Union industry kept significant market shares during the whole period considered.

4.5.1.5. Magnitude of dumping and recovery from past dumping

(203) Dumping continued during the review investigation period at a significant level, as explained under section 3 above. It is noted that Chinese producers undercut Union industry's sales prices to a significant extent and that the Union industry is still in a fragile situation.

(204) Since the volumes of the dumped imports from China were much lower than during the original investigation period, the Commission concluded that the impact of the magnitude of the dumping margin on the Union industry was significantly less pronounced than in the original investigation.

4.5.2. Microeconomic indicators

4.5.2.1. Stocks

(205) Over the period considered stocks levels of the sampled Union producers developed as follows:

Table 9

	2014	2015	2016	RIP
Stocks (tonnes)	68 500 – 71 500	52 000 – 55 000	72 000 – 75 000	83 000 – 86 000
<i>Index (2014 = 100)</i>	100	77	106	120

Source: Verified questionnaire replies of the sampled Union producers.

- (206) The Union producers increased their stock in the period considered. This indicator, however, is not considered to be very relevant to assess the economic situation of the Union producers. OCS is mostly produced on the basis of orders. In any event, the stocks merely represented around 2 % of the total sales during the RIP.

4.5.2.2. Average unit sales prices in the Union and cost of production

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

Table 10

	2014	2015	2016	RIP
Average unit sales price to unrelated parties (EUR/tonne)	805 - 820	760 - 775	740 - 755	895 - 910
<i>Index (2014 = 100)</i>	100	94	92	111
Unit cost of production (EUR/tonne)	800 - 850	750 - 800	650 - 730	850 - 900
<i>Index (2014 = 100)</i>	100	94	87	106

Source: Verified questionnaire replies of the sampled Union producers.

- (208) Over the period considered, the Union industry managed to increase its sales prices by 11 %. Following price decreases between 2014 and 2015 and then between 2015 and 2016, prices went up again between 2016 and 2017. Both the decreases and the increase are closely connected to the changes in raw material prices.

4.5.2.3. Profitability and cash flow

Table 11

	2014	2015	2016	RIP
Profitability (%)	- 1,5 - 0	- 0,5 - 1	2,5 - 4	3,5 - 5
<i>Index (2014 = 100)</i>	- 100	101	413	506

Source: Verified questionnaire replies of the sampled Union producers.

- (209) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. The net cash flow is the ability of the Union producers to self-finance their activities.

- (210) During the period considered the Union industry stopped making losses. The improvement of the profitability was clearly related to the fact that the Union industry managed to increase its sales and production volume as well as sales prices in the years following the imposition of the original measures. However, profitability remained below the target profit that was considered healthy and sustainable in the original investigation (i.e. 6,7 %).

Table 12

	2014	2015	2016	RIP
Cash flow (EUR)	- 18 000 000 - (- 15 000 000)	28 000 000 - 31 000 000	30 000 000 - 34 000 000	34 000 000 - 37 000 000
<i>Index (2014 = 100)</i>	- 100	273	295	311

Source: Verified questionnaire replies of the sampled Union producers.

- (211) During the period considered the evolution of the cash flow reflects mainly the development of the overall profitability of the Union industry.

4.5.2.4. Investment, return on investments and ability to raise capital

Table 13

	2014	2015	2016	RIP
Investments (EUR)	12 000 000 – 17 000 000	20 000 000 – 25 000 000	27 000 000 – 32 000 000	25 000 000 – 30 000 000
Index (2014 = 100)	100	159	200	180
Return on investments (net assets) (%)	- 2,2	0,0	7,0	11,0

Source: Verified questionnaire replies of the sampled Union producers.

- (212) During the period considered the Union industry, highly capital-intensive, made regular investments for the optimisation and upgrading of the existing production machinery. In addition, significant investments were made in order to comply with legal requirements for environment protection and increased safety. Depending on the company, there were investments aimed at costs reduction, energy optimisation and/or also at revamping facilities that had been negatively affected by the lower capacity utilisation observed during the original investigation period.
- (213) Return on investments is the profit in percentage of the net book value of investments. The return on investments during the period considered followed closely the profitability trend.
- (214) Since the imposition of measures the ability to raise capital has improved.

4.5.2.5. Wages

Table 14

	2014	2015	2016	RIP
Labour costs per employee (EUR)	63 000 – 72 000	63 000 – 72 000	64 000 – 73 000	64 000 – 73 000
Index (2014 = 100)	100	101	102	102

Source: Verified questionnaire replies of the sampled Union producers.

- (215) The average wage levels increased slightly over the period considered, but less than the unit cost of production.

4.6. Conclusion

- (216) The injury analysis shows that the situation of the Union industry improved significantly in the period considered. The imposition of the definitive anti-dumping measures in March 2013 allowed the Union industry to slowly but steadily recover from the injurious effects of the dumping. The fact that the Union industry has significantly benefited from the measures is illustrated, inter alia, by increase in production and Union sales volumes, positive cash flow and return on investments, selling prices in general higher than the unit cost of production, minimum increase in labour costs and significantly improved profitability.
- (217) However, even if the Union industry has largely recovered from the past injury and seems to be on the right track to further improve its condition in the long-run, it is still in a fragile situation due to its limited profitability, which is still below the target profit.

5. LIKELIHOOD OF RECURRENCE OF INJURY

- (218) As shown in section 4.6 above the Union industry has largely recovered from the past injury caused by the Chinese dumped imports. Nonetheless, this section will examine whether the precarious situation of the Union industry will further deteriorate leading to recurrence of material injury should the measure are allowed to lapse.

5.1. Impact of the projected volume of imports and price effects in case of repeal of measures

- (219) Should the measures be repealed, the volume of imports from China is expected to increase dramatically. It is recalled that imports during the original investigation period amounted to more than 702 000 tonnes, while they amounted to 6 338 tonnes during the review investigation period.
- (220) China's overcapacity in steel production is well established ⁽⁸³⁾. The applicant submitted data from Plantfacts indicating that China's OCS capacity amounts to 7 million tonnes (i.e. more than 4 times China's OCS apparent consumption). This appears to be a conservative estimate. The applicant also provided detailed information dating from 2013 according to which the China Iron and Steel Association published that China colour coated steel production capacity was almost 40 million tonnes in that year.
- (221) Although the Chinese export volumes to the Union shrank after the imposition of the original measures, Chinese producers manufacture significant volumes of product under review and export more than 80 % of it. According to the data published by the World Steel Association, China produced more than 8 million tons of OCS per year in the years 2013-2014. One of the companies supporting the complaint provided figures from the China Metallurgical Newsletter of the China Metallurgical Information and Standardization Research Institute & the Metallurgical Council of the China Council for the Promotion of International Trade suggesting that China produced some 8 million tons of OCS per year in the years 2015-2017. According to the same submission of that applicant, it is estimated that in the period 2015-2017 Chinese OCS apparent consumption ranged 1-1,8 million tons per year.
- (222) However, as important as export markets are for Chinese industry, China faces more and more difficulties accessing them. Between 2016 and 2018 countries such as India, Malaysia, Vietnam, Pakistan or Turkey imposed trade defence measures that affect OCS originating in China. As to the USA, since January 2018 steel (OCS included) from many countries of origin, including China, is subject to a 25 % tariff ⁽⁸⁴⁾.
- (223) The Union is the largest OCS market after the Asian and the North/Central America ones.
- (224) The Chinese database shows that in the recent past China exported significant volumes to countries outside the Union at low prices. In 2017 Chinese FOB prices to the Union were 10,5 % higher than for instance to Korea, China's main export market for this product. During the review investigation period, the volumes exported to countries outside the Union were bigger than the total Union industry production and the apparent consumption in the Union. Because of the attractiveness of the Union market in terms of pricing, openness (there are no customs duties for this product) and increased apparent consumption, it is considered that if the measures are terminated, Chinese exporters are likely to re-direct significant volumes of OCS to the more lucrative Union market. The fact that the Union recently adopted safeguards on certain steel products, including OCS, does not alter this conclusion. The import volumes under the tariff rate quotas are set at levels which may allow China to export significant amounts of OCS.
- (225) Furthermore, as described in section 4.3.2, Chinese imports on the Union market significantly undercut the Union producers' prices during the RIP, in particular when discounting the effect of the anti-dumping duties.
- (226) The market for OCS products is very price competitive as the competition mainly takes place on the basis of prices. The potential pressure on the Union industry's prices is further exacerbated by the fact that, according to the request, Chinese sales usually take place for relatively big quantities. If cheap and dumped imports are sold in significant quantities on the Union market, the Union producers will lose large sales volumes. The ability to raise capital and to invest could be hindered if the profitability of Union producers drops further or becomes negative.

5.2. Conclusion

- (227) Therefore, the Commission concluded that the repeal of measures on the imports from China would likely result in a recurrence of injury to the Union industry.

⁽⁸³⁾ See e.g. Global forum on steel excess capacity, *Ministerial report 20 September 2018*, https://www.g20.org/sites/default/files/gfsec_ministerial_report_2018.pdf, in which Chinese overcapacity in the sector as a whole is confirmed, by all parties including China. With a steel capacity of 1018,3 million MT in 2017, China accounts for the largest share of global capacity (45 %, according to page 42). Table 1 of the report illustrates that China reduced capacity by 10 % in the period 2014-2017. Page 51 reads that China 'set clear goals for reducing excess capacity, that is, to reduce 100-150 million MT of crude steel capacity from 2016 to 2020'.

⁽⁸⁴⁾ Section 232 Tariffs on Aluminum and Steel, <https://www.cbp.gov/trade/programs-administration/entry-summary/232-tariffs-aluminum-and-steel>.

6. UNION INTEREST

6.1. Introduction

- (228) In accordance with Article 21 of the basic Regulation, it was examined whether the maintenance of the existing anti-dumping measures would not be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of the various interests involved, that is those of the Union industry on the one hand, and those of importers and users on the other hand.
- (229) It should be recalled that, in the original investigation, the adoption of measures was considered not to be against the interest of the Union. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place, allows for the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.
- (230) On this basis it was examined whether, despite the conclusions on the likelihood of continuation of dumping and recurrence of injury, it could be concluded that it would not be in the Union interest to maintain measures in this particular case.

6.2. Interest of the Union industry

- (231) The investigation showed that should the measures expire, this would likely have a significant negative effect on the Union industry. The Union industry's situation would quickly deteriorate in terms of lower sales volumes and sales prices resulting in a strong decrease in profitability. The continuation of measures would allow the Union industry to further exploiting its potential on a Union market that is a level-playing field.
- (232) Therefore, maintaining the anti-dumping measures in force is in the interest of the Union industry.

6.3. Interest of importers

- (233) As mentioned in recital (12) above, nine known importers were contacted in this investigation and invited to cooperate. None came forward or cooperated in any way in the investigation.
- (234) It is recalled that in the original investigation it was found that, given the importers' profits and sources of supply, any negative impact of the imposition of measures on importers, if any, would not be disproportionate.
- (235) In the current investigation there is no evidence on file suggesting the opposite, and it can thus accordingly be confirmed that the measures currently in force had no substantial negative effect on the financial situation of importers and that the continuation of the measures would not unduly affect them.

6.4. Interest of users

- (236) Some sixty known users were contacted in this investigation and invited to cooperate. No user came forward or cooperated in any way in the investigation.
- (237) It is recalled that in the original investigation ten users submitted questionnaire replies. At that time it was found that, given the users' profits and sources of supply, the impact of the imposition of measures on users, if any, would not be disproportionate.
- (238) In the current investigation there is no evidence on file suggesting that the measures in force affected them in any negative way. In fact the applicant submitted evidence that key users experienced improvements in profitability during the period under review. According to the request, the measures in place do not have a sizeable impact on users and consumers as OCS represents a negligible part of the cost of downstream products (for example 0,42 EUR of the cost of producing a washing machine or 0,4 % of the investment of an empty factory building).
- (239) On that basis it is confirmed that the measures currently in force had no substantial negative effect on the financial situation of users and that the continuation of the measures would not unduly affect them.

6.5. Conclusion

- (240) Therefore, the Commission concluded that there are no compelling reasons of Union interest against the maintenance of the definitive anti-dumping measures on imports of OCS originating in the PRC.

7. ANTI-DUMPING MEASURES

- (241) Consequently, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of certain organic coated steel products originating in China should be maintained.
- (242) A company may request the application of individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ⁽⁸⁵⁾. 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 notice informing about the change of name should be published in the *Official Journal of the European Union*.
- (243) In view of Article 109 of Regulation (EU, Euratom) No 2018/1046 of the European Parliament and of the Council ⁽⁸⁶⁾, 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.
- (244) 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 certain organic coated steel products, i.e. flat-rolled products of non-alloy and alloy steel (not including stainless steel) which are painted, varnished or coated with plastics on at least one side, excluding so-called 'sandwich panels' of a kind used for building applications and consisting of two outer metal sheets with a stabilising core of insulation material sandwiched between them, excluding those products with a final coating of zinc-dust (a zinc-rich paint, containing by weight 70 % or more of zinc), and excluding those products with a substrate with a metallic coating of chromium or tin, currently falling within CN codes ex 7210 70 80, ex 7212 40 80, ex 7225 99 00, ex 7226 99 70 (TARIC codes 7210 70 80 11, 7210 70 80 91, 7212 40 80 01, 7212 40 80 21, 7212 40 80 91, 7225 99 00 11, 7225 99 00 91, 7226 99 70 11 and 7226 99 70 91), and originating in the People's Republic of China.

2. The rate 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 manufactured by the companies listed below shall be as follows:

Company	Duty (%)	TARIC Additional Code
Union Steel China	0	B311
Zhangjiagang Panhua Steel Strip Co., Ltd, Chongqing Wanda Steel Strip Co., Ltd, and Zhangjiagang Free Trade Zone Jiaxinda International Trade Co., Ltd	26,1	B312
Zhejiang Huadong Light Steel Building Material Co. Ltd and Hangzhou P.R.P.T. Metal Material Company, Ltd	5,9	B313
Angang Steel Company Limited	16,2	B314
Anyang Iron Steel Co., Ltd	0	B315
Baoshan Iron & Steel Co., Ltd	0	B316
Baoutou City Jialong Metal Works Co.,Ltd	16,2	B317
Changshu Everbright Material Technology Co.,Ltd	16,2	B318

⁽⁸⁵⁾ European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170, 1040 Brussels, Belgium.

⁽⁸⁶⁾ 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).

Company	Duty (%)	TARIC Additional Code
Changzhou Changsong Metal Composite Material Co.,Ltd	16,2	B319
Cibao Modern Steel Sheet Jiangsu Co., Ltd	0	B320
Inner Mongolia Baotou Steel Union Co.,Ltd	16,2	B321
Jiangyin Ninesky Technology Co.,Ltd	0	B322
Jiangyin Zhongjiang Prepainted Steel Mfg Co.,Ltd	0	B323
Jigang Group Co., Ltd	16,2	B324
Maanshan Iron&Steel Company Limited	16,2	B325
Qingdao Hangang Color Coated Sheet Co., Ltd	16,2	B326
Shandong Guanzhou Co., Ltd	16,2	B327
Shenzen Sino Master Steel Sheet Co.,Ltd	16,2	B328
Tangshan Iron And Steel Group Co.,Ltd	16,2	B329
Tianjin Xinyu Color Plate Co.,Ltd	16,2	B330
Wuhan Iron And Steel Company Limited	16,2	B331
Wuxi Zhongcai New Materials Co.,Ltd	0	B332
Xinyu Iron And Steel Co.,Ltd	0	B333
Zhejiang Tiannu Color Steel Co., Ltd	16,2	B334
All other companies	13,6	B999

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

4. The Commission may amend paragraph 2 in order to include a new exporting producer and to attribute to that producer the appropriate weighted average anti-dumping duty rate applicable to the cooperating companies not included in the sample of the original investigation, where a new exporting producer in the People's Republic of China provides sufficient evidence to the Commission that:

- (a) it did not export to the Union the product described in paragraph 1 in the period between 1 October 2010 and 30 September 2011 (original investigation period),
- (b) it is not related to any exporter or producer in the People's Republic of China which is subject to the anti-dumping measures imposed by this Regulation, and
- (c) it has either actually exported to the Union the product under review or it has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the original investigation period.

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

Article 2

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, 2 May 2019.

For the Commission

The President

Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2019/688**of 2 May 2019****imposing a definitive countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China following an expiry review pursuant to Article 18 of the Regulation (EU) 2016/1037 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation'), and in particular Article 18 thereof,

Whereas:

1. PROCEDURE**1.1. Measures in force**

- (1) The Council, by Council Implementing Regulation (EU) No 215/2013 ⁽²⁾, imposed a countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China ('China', 'the PRC', or 'the country concerned'). The countervailing duties currently in force range from 13,7 % to 44,7 % ('the original measures'). The investigation that led to the imposition of the original measures will hereinafter be referred to as 'the original investigation'.
- (2) The Council, by Council Implementing Regulation (EU) No 214/2013 ⁽³⁾, imposed a definitive anti-dumping duty on imports of certain organic coated steel products originating in China. The anti-dumping duties currently in force range from 0 % to 26,1 %.
- (3) The level of the combined duties ranges from 13,7 % to 58,3 %.

1.2. Request for an expiry review

- (4) Following the publication of a notice of impending expiry of the countervailing measures in force ⁽⁴⁾, on 13 December 2017 the Commission received a request for the initiation of an expiry review of the countervailing measures pursuant to Article 18 of Regulation (EU) 2016/1037 of the European Parliament and of the Council ('the basic Regulation').
- (5) The request was lodged by The European Steel Association ('EUROFER') on behalf of producers representing more than 70 % of the total Union production of certain organic coated steel products ('the applicant').
- (6) The applicant claimed that the expiry of the countervailing measures would likely result in the continuation or recurrence of subsidisation and injury to the Union industry.

1.3. Initiation of an expiry review

- (7) Having determined that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 14 March 2018, by a notice published in the *Official Journal of the European Union* ⁽⁵⁾ ('the Notice of Initiation'), the initiation of an expiry review of the countervailing measures applicable pursuant to Article 18 of the basic Regulation.

⁽¹⁾ OJ L 176, 30.6.2016, p. 55.

⁽²⁾ Council Implementing Regulation (EU) No 215/2013 of 11 March 2013 imposing a countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China (OJ L 73, 15.3.2013, p. 16).

⁽³⁾ Council Implementing Regulation (EU) No 214/2013 of 11 March 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain organic coated steel products originating in the People's Republic of China (OJ L 73, 15.3.2013, p. 1).

⁽⁴⁾ Notice of the impending expiry of certain anti-subsidy measures (OJ C 188, 14.6.2017, p. 20).

⁽⁵⁾ Notice of initiation of an expiry review of the countervailing measures applicable to imports of certain organic coated steel products originating in the People's Republic of China (OJ C 96, 14.3.2018, p. 21).

- (8) Prior to the initiation of the expiry review, and in accordance with Article 10(7) of the basic Regulation, the Commission notified the Government of China ('GOC') that it had received a properly documented review request and invited the GOC for consultations in accordance with Article 10(7) of the basic Regulation. Consultations were held on 9 March 2018, but no mutually agreed solution could be reached.

1.4. Parallel investigation

- (9) By a notice published in the *Official Journal of the European Union* on 14 March 2018 ⁽⁶⁾, the Commission also announced the initiation of an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council ⁽⁷⁾ of the definitive anti-dumping measures in force with regard to imports into the Union of certain organic coated steel products originating in the PRC.

1.5. Investigation

1.5.1. Review investigation period and period considered

- (10) The investigation of the likelihood of continuation or recurrence of subsidisation covered the period from 1 January 2017 to 31 December 2017 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of continuation or recurrence of injury covered the period from 1 January 2014 to the end of the review investigation period ('the period considered').

1.5.2. Interested parties

- (11) In the Notice of Initiation, the Commission made a call to all interested parties to contact it in order to participate in the investigation. In addition, the Commission individually informed the applicant, the known producers in the Union and their relevant associations, the known exporting producers in China, the known unrelated importers in the Union, unrelated users in the Union known to be concerned, and the representatives of the exporting country, of the initiation of the expiry review and invited them to participate.
- (12) All interested parties were invited to make their views known, submit information and provide supporting evidence within the time limits set out in the Notice of Initiation. Interested parties were also granted the opportunity to request in writing a hearing with the Commission investigation services and/or the Hearing Officer in trade proceedings.

1.5.3. Sampling

- (13) In its Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 27 of the basic Regulation.

1.5.3.1. Sampling of exporting producers in the PRC

- (14) To decide whether sampling was necessary with regard to the exporting producers and, if so, to select a sample, the Commission asked all known exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the PRC to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (15) Two exporting producers provided the information requested in Annex I to the Notice of Initiation for the purpose of sampling but neither of them produced organic coated steel products as defined in the Notice of Initiation. A third exporting producer made itself known six weeks after the deadline for replies to the sampling form. This exporting producer was given interested party status, but was considered non-cooperating since it never replied to the sampling form or attempted to reply to the exporting producer's questionnaire.
- (16) Consequently, the Commission informed the authorities of the PRC by Note Verbale of 18 July 2018, that it might resort to the use of facts available under Article 28(1) of the basic Regulation when examining the continuation or recurrence of subsidisation. The authorities of the PRC did not react to the Note.

⁽⁶⁾ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain organic coated steel products originating in the People's Republic of China (OJ C 96, 14.3.2018, p. 8).

⁽⁷⁾ 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 (OJ L 176, 30.6.2016, p. 21).

1.5.3.2. Sampling of Union producers

- (17) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers, in accordance with Article 27 of the basic Regulation. Prior to the initiation, 21 Union producers had provided the information requested for the selection of the sample and expressed their willingness to cooperate with the Commission. On that basis, the Commission provisionally selected a sample of three producers, which were found to be representative of the Union industry in terms of volume of production and sales of the like product in the Union. The sampled Union producers accounted for 28 % of the estimated total production of the Union industry and for 27 % of the total sales volume of the Union industry to unrelated customers in the Union during the review investigation period. The Commission invited interested parties to comment on the provisional sample. No comments were received and the provisional sample was thus confirmed. The sample was considered representative for the Union industry.

1.5.3.3. Sampling of importers

- (18) In order to decide whether sampling was necessary and, if so, to select a sample, the Commission asked the nine unrelated importers identified in the request to provide the information specified in the Notice of Initiation. None of them came forward.

1.5.4. Questionnaires and verification visits

- (19) The Commission sent questionnaires to the three sampled Union producers, the applicant and the GOC. Replies to the questionnaires were received from the three sampled Union producers and the applicant.
- (20) The Commission verified all the information it deemed necessary for a determination of the likelihood of a continuation or recurrence of subsidisation and injury, and of the Union interest test. Verification visits were carried out at the premises of the following interested parties:

(a) Union producers:

- ArcelorMittal Belgium, Belgium
- Marcegaglia Carbon Steel SpA, Italy
- Tata Steel Maubeuge SA, France

(b) Association of Union producers:

- EUROFER, Belgium

1.5.5. Subsequent procedure

- (21) On 22 February 2019, the Commission disclosed the essential facts and considerations on which basis it intended to impose countervailing duties. All parties were granted a period within which they could make comments on that disclosure.
- (22) The comments were received only from the applicant. They are addressed in Section 3.3 below.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (23) The product concerned by this expiry review is the same as the one in the original investigation, that is certain organic coated steel products, i.e. flat-rolled products of non-alloy and alloy steel (not including stainless steel) which are painted, varnished or coated with plastics on at least one side, excluding so-called 'sandwich panels' of a kind used for building applications and consisting of two outer metal sheets with a stabilising core of insulation material sandwiched between them, excluding those products with a final coating of zinc-dust (a zinc-rich paint, containing by weight 70 % or more of zinc), and excluding those products with a substrate with a metallic coating of chromium or tin; currently falling within CN codes ex 7210 70 80, ex 7212 40 80, ex 7225 99 00, ex 7226 99 70 (TARIC codes 7210 70 80 11, 7210 70 80 91, 7212 40 80 01, 7212 40 80 21, 7212 40 80 91, 7225 99 00 11, 7225 99 00 91, 7226 99 70 11 and 7226 99 70 91), and originating in China ('the product under review' or 'OCS').

- (24) The product under review is obtained by applying an organic coating to flat-rolled steel products. The organic coating provides protection and aesthetic and functional properties to steel products.
- (25) The product under review is mainly used in the construction sector and for further processing in products used in construction. Other applications include home appliances.

2.2. Like product

- (26) No interested parties commented on the like product. Hence, as established in the original investigation, this expiry review investigation confirmed that product produced and sold on the domestic markets of China, and the product produced and sold in the Union by the Union producers have the same basic physical and technical characteristics and end uses. They are therefore considered to be like products within the meaning of Article 2(c) of the basic Regulation.

3. LIKELIHOOD OF CONTINUATION OF SUBSIDISATION

- (27) In accordance with Article 18 of the basic Regulation, and as stated in the Notice of Initiation, the Commission examined first whether the expiry of the existing measures would be likely to lead to a continuation of subsidisation.

3.1. Non-cooperation and the use of facts available in accordance with Article 28(1) of the basic Regulation

- (28) On 4 June 2018 the Commission sent a questionnaire to the GOC including specific questionnaires for the Export Import Bank of China ('EXIM') and China Export & Credit Insurance Corporation ('Sinosure') based on the fact that they, acting under the GOC's control, had provided loans and financial services to the organic coated steel industry according to the information in the request and/or in the original investigation.
- (29) In addition, the GOC was asked to forward a questionnaire for banks and other financial institutions known by the GOC to have provided loans to the industry concerned as well as to the producers and distributors of the hot-rolled and cold-rolled steel providing inputs for the production of the product under review.
- (30) The Commission received no reply to those above questionnaires either from the GOC nor EXIM, Sinosure or upstream companies.
- (31) By Note Verbale of 18 July 2018, the Commission informed the Chinese authorities that following non-cooperation from the GOC and the Chinese exporting producers of the product under review, as explained in recital (16), the Commission intended to make its findings on the basis of the facts available, in accordance with Article 28(1) of the basic Regulation. They were also informed that a finding based on facts available may be less favourable than if the GOC and exporting producers cooperated.
- (32) No comments in this regard were received. The Commission, in accordance with Article 28 of the basic Regulation, considered the use of facts available necessary in order to establish the continuation of subsidy practices of China in the organic coated steel industry.
- (33) On the use of facts available, the Appellate Body has recalled that Article 12.7 of the WTO Agreement on Subsidies and Countervailing Measures permits the use of facts on record solely for the purpose of replacing information that may be missing, in order to arrive at an accurate subsidisation or injury determination. In particular, the Appellate Body has explained that *'there has to be a connection between the "necessary information" that is missing and the particular "facts available" on which a determination under Article 12.7 is based'*. Therefore, *'an investigating authority must use those "facts available" that "reasonably replace the information that an interested party failed to provide", with a view to arriving at an accurate determination'*. The Appellate Body has further explained that *'the facts available' refers to those facts that are in the possession of the investigating authority and on its written record. As determinations made under Article 12.7 are to be made on the basis of 'the facts available', 'they cannot be made on the basis of non-factual assumptions or speculation'*. Furthermore, in reasoning and evaluating which facts

available can reasonably replace the missing information, ‘*all substantiated facts on the record must be taken into account*’ by an investigating authority. The Appellate Body has explained that ascertaining the ‘*reasonable replacements for the missing “necessary information” involves a process of reasoning and evaluation*’ on the part of the investigating authority. Where there are several facts available to an investigating authority that it needs to choose from, ‘*it would seem to follow naturally that the process of reasoning and evaluation would involve a degree of comparison*’ in order to arrive at an accurate determination. The evaluation of the ‘*facts available*’ that is required, and the form it may take, depend on the particular circumstances of a given case, including the nature, quality, and amount of evidence on the record and the particular determinations to be made. The nature and extent of the explanation and analysis required will necessarily vary from determination to determination ⁽⁸⁾.

(34) Accordingly, the Commission used for its analysis all facts available to it, in particular:

- a) the request for an expiry review under Article 18 of the basic Regulation concerning anti-subsidy duties on imports of OCS originating in China, of 13 December 2017 (‘the request’);
- b) findings of the previous anti-subsidy investigations carried out by the Commission against the same product or upstream industries in China, such as OCS ⁽⁹⁾ (‘the original investigation’) and hot-rolled flat products ⁽¹⁰⁾ (‘the HRFP investigation’ or ‘the HRFP regulation’);
- c) findings of the most recent anti-subsidy investigations carried out by the Commission concerning encouraged industries in China, such as pneumatic tyres ⁽¹¹⁾ (‘the tyres investigation’) and electric bicycles ⁽¹²⁾ (‘the e-bike investigation’) where similar subsidisation was examined;
- d) Commission Staff Working Document on significant distortions in the economy of the PRC for the purpose of trade defence investigation (‘the Report on China’) ⁽¹³⁾;
- e) the submission of the Union industry of 21 December 2018 on facts available and the use of new subsidies (‘the submission of 21 December’) ⁽¹⁴⁾.

3.2. General remarks on the steel sector in China

(35) Before analysing the alleged subsidisation in the form of specific subsidies or subsidy programmes (sections 3.4 and following below) the Commission assessed government plans, projects and other documents, which were relevant for more than one of the subsidies or subsidy programmes. It found that all subsidies or subsidy programmes under assessment form part of the implementation of the GOC’s central planning for the following reasons.

3.2.1. The 13th Five-Year plan for the steel sector

(36) The Commission in the current investigation established that the main document of relevance during the review investigation period was the 13th Five-Year plan for the steel sector, the Steel Industry Adjustment and Upgrade Plan, covering the period from 2016 to 2020. Steel in general remained a favoured sector under that 13th Five-Year plan. In the plan, it is emphasised that the steel sector is ‘fundamental to the national economy and a cornerstone of China’. The plan set out the overall objectives for years 2016-2020, which is to ‘build China into a manufacturing power’.

⁽⁸⁾ WT/DS437/AB/R, United States — Countervailing Duty Measures on Certain Products from China, Appellate Body Report of 18 December 2014, paragraphs 4.178-4.179. This Appellate Body Report quoted WT/DS295/AB/R, Mexico — Definitive Anti-Dumping Measures on Beef and Rice, Appellate Body Report of 29 November 2005, paragraph 293; and WT/DS436/AB/R, United States — Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India, Appellate Body Report of 8 December 2014, paragraphs 4.416-4.421.

⁽⁹⁾ Council Implementing Regulation (EU) No 215/2013 of 11 March 2013 imposing a countervailing duty on imports of certain organic coated steel products originating in the People’s Republic of China (OJ L 73, 15.3.2013, p. 16).

⁽¹⁰⁾ Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing a countervailing duty on imports of certain hot-rolled flat products or iron, non-alloy or other alloy steel originating in the People’s Republic of China (OJ L 146, 9.6.2017, p. 17).

⁽¹¹⁾ Commission Implementing Regulation (EU) 2018/1690 of 9 November 2018 imposing a definitive countervailing duty on imports of certain pneumatic tyres, new or retreated, of rubber, of a kind used for busses or lorries and with a load index exceeding 121 originating in the People’s Republic of China (OJ L 283, 12.11.2018, p. 1).

⁽¹²⁾ Commission Implementing Regulation (EU) 2019/72 of 17 January 2019 imposing a definitive countervailing duty on imports of electric bicycles originating in the People’s Republic of China (OJ L 16, 18.1.2019, p. 5).

⁽¹³⁾ http://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156474.pdf

⁽¹⁴⁾ Registration number of this document in the open files of the case is t18.011780.

- (37) The 13th Five-Year Plan further emphasises the role of technological innovation in the economic development of the PRC, as well as the continued importance of 'green' development principles. According to its chapter 5, one of the main development lines is to promote the upgrading of the traditional industrial structure, as was already the case in the 12th Five Year Plan. This idea is further elaborated in chapter 22, which explains the strategy to modernise the traditional industry in the PRC by promoting its technological conversion. In this respect, the 13th Five-Year Plan states that companies will be supported to '*comprehensively improve in areas such as product technology, industrial equipment, environmental protection and energy efficiency*'. Environmental protection is further elaborated in chapter 44. According to that chapter, a clean production 'renovation' will be implemented in key industries, and box 16 specifically refers to the steel industry in this respect.
- (38) The 'Steel Industry Adjustment and Upgrading plan for 2016-2020' (the 13th Five-Year Steel Plan) was released in November 2016. It is based on the 13th Five-Year Plan. It states that the steel industry is '*an important, fundamental sector of the Chinese economy, a national cornerstone*'. That plan further elaborates on the principles of technological innovation, structural adjustment and green development mentioned in the 13th Five-Year Plan, links them to more specific priorities within the steel industry (see chapter IV of the Plan — Main tasks), and makes the link with various fiscal and financial support measures (see chapter V of the Plan — Safeguard measures).
- (39) The consolidation of the steel sector and the reliance on dominant/major producers, essentially state-owned enterprises ('SOEs'), is a key feature of the plan. Steel producers in China are also requested to continue production and expand their production abroad. The 13th Five-Year Plan specified the quantity of steel to be used in the whole country and indicated that steel export must be managed pursuant to the principle that domestic demand should take precedence and that Chinese companies should actively participate in international competition, an environment should be created and maintained for steel export.
- (40) Chapter 17, Section 1 of the 13th Five-Year Plan states: '*The national development strategy and plan will come into play with a leading and constraining role.*' Finally, the 13th Five-Year Steel Plan states that '*all local authorities in charge of the steel industry shall ... implement the tasks and policy measures set out in the present plan*'. At the level of individual companies, '*relevant enterprises shall ensure convergence with the present plan's main objectives and priority tasks*'⁽¹⁵⁾. Consequently, rather than making only general statements of encouragement, the 13th Five-Year plan provides a binding framework for the domestic steel industry. That framework has been replicated at local/provincial level by the adoption of additional plans, which provide for further implementing details.

3.2.2. Order No 35

- (41) Order No 35 of the National Development and Reform Commission — Policies for the development of Iron and Steel Industry (2005) ('Order No 35') is another policy document that governs the Chinese steel sector. Adopted by the State Council, it covers various aspects of GOC's control over the industry, including:
- The prohibition of majority foreign ownership of steelmakers in China (Article 1)
 - The setting up of goals in terms of output for the biggest steel producers (Article 3)
 - The provision of rules for the changes in the corporate structure of steel companies (Article 20)
 - The setting up of GOC's approval procedures for investment in steel producers (Article 22)
 - The provision of loans and land-use rights only to steel producers that comply with the national development policies for the sector (Articles 24 and 25)
 - State intervention aimed at supporting large backbone enterprise groups to establish overseas production and supplying bases of raw materials (Article 30).

3.2.3. Decision No 40

- (42) Decision No 40 is a State Council Order that classifies for investment purpose the industrial sectors into different categories, namely 'encouraged, restrictive and eliminated projects'. This Decision states that the 'Guidance Catalogue for the Industrial Structure Adjustment', which is an implementing measure of Decision No 40 is an important basis for guiding investment directions. It also guides the GOC to administer investment projects,

⁽¹⁵⁾ Chapter 17, section 1 of the 13th Five Year Plan.

and to formulate and enforce policies on public finance, taxation, credit, land, import and export ⁽¹⁶⁾. The steel industry is indicated as an encouraged industry in Chapter VIII of this Guidance Catalogue. As to its legal nature, the Commission noted that Decision No 40 is an Order from the State Council, which is the highest administrative body in the PRC. In that regard, the decision is legally binding for other public bodies and the economic operators ⁽¹⁷⁾.

3.2.4. *The Revitalization Plan*

- (43) The Blueprint for the Adjustment and Revitalisation of the Steel Industry (2009) is an action plan for the steel industry. The plan aims to deal with the international financial crisis and addresses the overall policy requirements of the GOC to maintain growth. It also seeks to 'guarantee the stable operation of the industry' as it is 'regarded as an important pillar industry of the national economy'. The document provides the following:
- an increase in the financial support for 'key backbone' steel producers;
 - an acceleration of the structural adjustments and the promotion of industrial upgrading;
 - the support of the key companies that go abroad in their development, technical cooperation and Merger and Acquisitions;
 - the increase in the scale of the export credit for metallurgical equipment.

3.2.5. *National Outline for the Medium and Long-term Science and Technology Development*

- (44) According to its chapters III.5 and VIII, the National Outline for the Medium and Long-term Science and Technology Development (2006-2020) supports the development of key fields and priority themes, and encourages financial and fiscal support to these key fields and priorities.

3.2.6. *Overall conclusions on the GOC's intervention in the steel sector*

- (45) Taking into account the above-listed documents and their provisions, the Commission reiterated its conclusion from the original investigation that the Chinese steel industry continued to be a key/strategic industry during the review investigation period, the development of which is actively pursued and directed by the GOC as a policy strategic objective.

3.3. **Subsidies and subsidy programmes examined in the current investigation**

- (46) In view of the lack of cooperation by the GOC and the Chinese exporting producers specified in recitals (16) and (31), the Commission decided to examine whether there was continuation of subsidisation as follows. First, the Commission examined whether the subsidies countervailed in the original investigation continued to confer benefit to the organic coated steel industry. Subsequently, the Commission analysed whether that industry benefitted from subsidies which were not countervailed in the original investigation ('additional subsidies') as alleged in the request.
- (47) The Commission has decided that, in view of the findings confirming the existence of continued subsidisation with respect to most of the subsidies countervailed in the original investigation as well as some of the additional subsidies, there is no need to investigate all the other subsidies alleged to exist by the applicant. In this respect, it is recalled that, pursuant to Article 18 of the basic Regulation, the Commission should examine whether there is evidence of continued subsidisation, regardless of its amount.
- (48) In response to the final disclosure the applicant made three main comments. First, it argued that the GOC policy not to allow steel producers to fail and to ensure that finance is available no matter what the health of the specific company is constitutes a 'de facto guarantee'. This should have been treated as a separate subsidy programme and countervailed accordingly by the Commission. Second, it asserted that the new subsidies identified by the Commission, coupled with the alledged 'de facto guarantee' not analysed by the Commission, do not capture the full amount of benefit the Chinese exporting producers enjoyed during the review investigation period and in fact that the level of subsidisation has increased in comparison with the original investigation. Third, it commented that, by not notifying the subsidies to the OCS producers, the PRC failed to comply with the subsidy notification requirement contained in the Agreement on Subsidies and Countervailing Measures (ASCM).

⁽¹⁶⁾ Chapter III, Article 12 of Decision No 40.

⁽¹⁷⁾ See recital 182 of the original investigation.

- (49) In response to the first comment, the Commission recognised that the Chinese government policy contained in the documents referred to in Section 1.2 above and the economic benefit of it may indeed go as far as constituting an implicit de-facto guarantee for some State-owned large enterprises in financial difficulties. However, as the Commission found in HRF, ⁽¹⁸⁾ since the Commission already focused its analysis on the preferential lending, and considering that the amount of subsidisation found in this programme and in the other subsidy programmes analysed was already substantial, it decided not to examine this issue further.
- (50) Regarding the second comment, the Commission acknowledged that, as specified in Section 3.5.4 below, it had established the existence of other subsidy programmes that were not countervailed in the original investigation. However, there is no evidence that the level of subsidisation provided by the subsidy programmes that existed during the original investigation has decreased. This may indeed amount to higher level of subsidisation during the review investigation period. However, the Commission did not consider it necessary to calculate such amounts in view of its findings of continued subsidisation; findings which are sufficient in the context of an expiry review investigation. The Commission reminded the applicant that the review at stake does not concern the actual level of duties and does not prejudice the applicant's right to request a review under Article 19 of the basic Regulation. Consequently, that comment was rejected.
- (51) As far as the third comment is concerned, the PRC has indeed failed to comply with its subsidy notification obligation under Article 25 of the ASCM as far as the subsidies at issue are concerned. The Commission regrets the PRC's failure to comply with that obligation, which seriously impedes its possibility to assess the content and the impact of the subsidies implemented by the GOC to the benefit of the OCS producers. However, there are no legal consequences provided for in the basic Regulation that can be invoked in the context of the ongoing review. The Commission is taking the appropriate steps in the competent WTO fora pursuant to relevant rules in the ASCM. Therefore, that comment claim was also rejected.

3.4. Provisions of goods and services for less than adequate remuneration ⁽¹⁹⁾

3.4.1. *The provision of hot-rolled and cold rolled steel for less than adequate remuneration*

3.4.1.1. Findings of the original investigation

- (52) In the original investigation ⁽²⁰⁾, the Commission established that 'SOEs providing OCS producers with hot-rolled and cold-rolled steel ('HRS' and 'CRS') were public bodies under the test set out by the WTO Appellate Body ⁽²¹⁾, as they perform governmental functions and, in doing so, they exercise government authority.
- (53) The Commission also established that private producers of HRS and CRS in China are entrusted and directed by the GOC to provide goods in line with Articles 3(1)(a)(iii) and 3(1)(a)(iv) of the basic Regulation and act in the same way as steel SOEs ⁽²²⁾.
- (54) In the subsequent analysis ⁽²³⁾, the Commission positively concluded on the existence of a benefit within the meaning Article 3(2) of the basic Regulation for the exporting producers of OCS. This benefit resulted from the provision of raw materials for less than adequate remuneration by the HRS and CRS producers, whether SOE's acting as public bodies or private companies entrusted and directed by the GOC within the meaning of Article 3(1)(a)(iv) of the basic Regulation.

⁽¹⁸⁾ Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China, section 3.5.

⁽¹⁹⁾ Article 3(1)(a)(iii) of the basic Regulation.

⁽²⁰⁾ See recitals 49 to 73.

⁽²¹⁾ WT/DS379/AB/R (US — Anti-Dumping and Countervailing Duties on Certain Products from China), Appellate Body Report of 11 March 2011, DS 379, paragraph 318. See also WT/DS436/AB/R (US — Carbon Steel (India)), Appellate Body Report of 8 December 2014, paragraphs 4.9-4.10, 4.17-4.20 and WT/DS437/AB/R (United States — Countervailing Duty Measures on Certain Products from China) Appellate Body Report of 18 December 2014, paragraph 4.92.

⁽²²⁾ See recitals 87 to 98.

⁽²³⁾ See recitals 74 to 83 and 99-100.

- (55) In order to calculate this benefit the Commission compared the prices of HRS and CRS paid by the OCS exporting producers concerned to the relevant benchmark. The Appellate Body confirmed that in a case where the market of the country of provision is distorted by the role of the government, the use of external benchmarks is permitted.
- (56) On the basis of the information on file in the original investigation, it was established that the prices of HRS and CRS sold by SOEs in China were distorted. This was a result of the strong predominance of SOEs in the HRS and CRS market in China and because the prices of HRS and CRS of private suppliers were aligned with the prices of SOEs.
- (57) Therefore, the Commission concluded that there were no reliable market prices in China for the HRS and CRS and constructed the benchmark on the basis of the world market prices of HRS and CRS, which are regularly published in various specialised steel journals like Steel Business Briefing, MEPS and CRU.
- (58) A comparison of the prices from HRS and CRS producers to the out-of-country benchmark showed that the prices in China were well below the benchmark prices and consequently resulted in benefit for the Chinese exporting producers of OCS within the meaning of Article 3(2) of the basic Regulation.
- (59) Furthermore, that subsidy programme was found to be specific within the meaning of Article 4(2)(c) of the basic Regulation given that HRS and CRS is only used by a limited number of industries and enterprises in China in their production process.
- (60) The subsidy rate established in the original investigation for the sampled OCS exporting producers varied from 23,02 % to 27,63 %, with the rate for non-cooperating companies being at 32,44 %.

3.4.1.2. Findings of the current investigation

- (61) In its request and corresponding annexes, the applicant provided evidence that Chinese OCS producers continued to benefit from the provision of HRS and CRS for less than adequate remuneration for the production of OCS, which covers both the purchases from SOEs and from non-SOEs.
- (62) The provision of HRS and OCS for less than adequate remuneration concerned OCS producers that are not vertically integrated steel producers. It benefited those that have either only (i) a cold-rolling line and must buy HRS as a substrate for cold-rolling or (ii) coating lines and must purchase CRS as input. Many OCS producers in China are still re-rollers today rather than vertically integrated and they need consequently flat steel inputs to produce OCS ⁽²⁴⁾.
- (63) As a first step, the applicant provided evidence that suppliers of HRS and CRS continue to be public bodies under the test set up by the WTO Appellate Body (see recital (48)). The applicant indicated that the GOC controls and manages SOEs in the various ways.
- (64) First, the institutional framework allowed the GOC to have a tight control over SOEs through various bodies.
- (65) The State-owned Assets Supervision and Administration Commission of the State Council ('SASAC') is the ultimate owner of all SOEs in China. SASAC directors and managers are all appointed by the Communist Party of China. SASAC has a leading role in the management of SOEs, including disciplinary surveillance, and ensures that SOEs follow the objectives set by the GOC. It is also involved in investment decisions, and stocks and share transactions. Therefore, the SASAC can be considered as the State regulator of SOEs.

⁽²⁴⁾ See Annexes 3 and 45 of the request.

- (66) The National Development and Reform Commission ('NDRC') is another regulatory authority that controls SOEs. The NDRC is in charge of elaborating the macroeconomic and industrial development strategies and ensuring that the local players properly implement the GOC policy. The NDRC adopts guidelines and directives and approves large investment projects. All investment by steel producers in China must be approved by the NDRC.
- (67) Second, the GOC exercises a strict control over the steel industry by law. The steel sector is classified under the 'basic and pillar industries' where the State must 'maintain relatively strong controlling power' ⁽²⁵⁾. It is also part of the 'encouraged' industries and, thanks to this status, it benefits from various advantages in relation to, for example, loans, land-use rights, and tax preferential policies. That control is further reinforced by the fact that majority foreign ownership, which could lessen GOC control, is prohibited in the steel sector.
- (68) Third, the GOC controls SOEs through the appointment and surveillance of top management. The Organisation Department, which is a body subject to the Communist Party Secretariat, appoints and monitors individuals at top positions in the Party, the GOC, the military organisation and SOEs. That power is shared with the SASAC, which appoints individuals for, inter alia, vice-CEO positions ⁽²⁶⁾.
- (69) SOEs act as public bodies by pursuing governmental objectives and exercising governmental functions in the steel sector. They follow the GOC policy, implement mergers and acquisitions, focus their production on certain products, try to reach national targets and favour specific downstream industries.
- (70) It should be underlined that all the above evidence on the GOC's actual direction, management and control of the SOEs is based on the analysis of the same main documents, laws and regulations as in the original investigation that are still in force during the review investigation period ⁽²⁷⁾. The only major amendment since the original investigation has been the replacement of the 12th Five-year plan for the steel sector with the 13th Five-Year plan. However, such a replacement did not modify the GOC's predominant role in the steel sector.
- (71) As a second step, the applicant provided evidence of the significant presence and continued domination of SOEs in the steel sector in general and in OCS and HRS sectors in particular. In points 65 to 68, the request listed the major State-owned companies in the sectors concerned and summarised recent findings of the investigations conducted by the Australian ⁽²⁸⁾ and US ⁽²⁹⁾ authorities.
- (72) As a third step, the applicant provided evidence that private companies in the CRS and HRS sector continued to be entrusted and directed by the GOC to provide goods in line with Articles 3(1)(a)(iii) and 3(1)(a)(iv) of the basic Regulation and that their pricing is similar to that of SOEs. Hence, the Commission findings in the original investigation remain valid during the review investigation period.
- (73) To support its request, the applicant indicated that non-SOE producers were still induced to follow national and local five-year plans and they are subject to strong interference from the GOC on the market and also on their corporate structures. To prove continued strong interactions between the public authorities, the Communist Party and the non-SOE producers, the applicant invoked findings of the recent US anti-subsidy investigation ⁽³⁰⁾ and two studies of the European Chamber of Commerce in China ⁽³¹⁾.

⁽²⁵⁾ *China's status as a non-market economy*, US Department of Commerce A-570-056, 26 October 2017, p. 57.

⁽²⁶⁾ *China's status as a non market economy*, US Department of Commerce A-570-056, 26 October 2017, p. 82-85.

⁽²⁷⁾ Articles 7 and 15 of the Constitution of the People's Republic of China, Order No 35 of the NDRC — Policies for the development of Iron and Steel Industry (2005), Decision No 40 of the State Council (2011).

⁽²⁸⁾ Inquiry concerning the continuation of anti-dumping and countervailing measures applying to hollow structural sections exported from the People's Republic of China, Republic of Korea, Malaysia and Taiwan, Anti-Dumping Commission, Australian Government, Final Report No 379, May 2017, pp. 89-90.

⁽²⁹⁾ Countervailing Duty Investigation on Food Domestic Dry Containers from the People's Republic of China: Decision Memorandum for a Preliminary Determination, C-570-015, 22 September 2014, p. 14.

⁽³⁰⁾ Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China, C-570-027, Christian Marsch, 24 May 2016, p. 16.

⁽³¹⁾ China Manufacturing 2025 and the European Business in China Position Paper 2016/2017.

- (74) The above evidence shows continued behaviour of the SOEs in the CRS and HRS sectors as public bodies and the entrustment and direction of the non-SOE producers. In the absence of cooperation from the GOC, no arguments were presented that would challenge the evidence presented by the applicant in this regard. Therefore, the Commission concluded that the OCS producers continue to benefit from the supply of raw materials from the CRS and HRS producers at less than adequate remuneration as established in the original investigation.
- (75) Furthermore, the Report on China with regard to the steel sector in general ⁽³²⁾ and the findings of the HRFP investigation with regard to hot-rolled steel sector in particular ⁽³³⁾ confirmed the critical issues in the establishment of this subsidisation programme and its continuation, such as: the behaviour of SOEs as public bodies, their dominance in the sector concerned, the entrustment and direction of the non-SOE producers, and price distortions.

3.4.1.3. Benefit

- (76) In points 76 to 78 and Annex 20 of the request, the applicant provided a calculation of the benefit under this subsidy measure in the review investigation period, using the same methodology as in the original investigation and an international benchmark composed of roughly the same countries as in the original investigation. For both CRS and HRS, the price differential between the average Chinese domestic prices and the benchmark price exceeded 25 %.
- (77) In the absence of cooperation from the Chinese exporting producers, the Commission had no company-specific information on which it could calculate the amount of subsidy conferred during the review investigation period. However, for the finding of continued subsidisation reached in the current expiry review, the Commission does not consider it necessary to calculate such amounts. That being said, the information contained in the requests indicates that the subsidy amounts continue being similar to the levels found in the original investigation.

3.4.1.4. Specificity

- (78) The subsidy measure in question is still specific within the meaning of Article 4(2)(c) of the basic Regulation taking into account limited number of industries China using CRS and HRS in their production.

3.4.1.5. Conclusion

- (79) Accordingly, the Commission concluded that there is sufficient evidence showing that the provision of hot-HRS and CRS for less than adequate remuneration as a countervailable subsidy continued during the review investigation period.

3.4.2. *The provision of land-use rights for less than adequate remuneration*

3.4.2.1. Findings of the original investigation

- (80) In the original investigation ⁽³⁴⁾, the Commission established that the provision of land-use rights by the GOC should be considered a subsidy measure within the meaning of Article 3(1)(a)(iii) and Article 3(2) of the basic Regulation. As there is no market for land functioning in China, the GOC provides land-use rights for less than adequate remuneration, thereby conferring a benefit upon the recipient companies. The use of an external benchmark demonstrated that the amount paid for land-use rights by the producers of OCS is well below the normal market rate.
- (81) The Commission also established that the subsidy is specific under Article 4(2)(a) and 4(2)(c) of the basic Regulation, because the access to industrial land is by law limited only to companies respecting the industrial policies set by the State. Furthermore, only certain transactions were subject to a bidding process, prices were often being set by the authorities, and government practices in this area are unclear and non-transparent.

⁽³²⁾ See chapter 14 of the Report.

⁽³³⁾ See recitals 48 to 60 of Commission Implementing Regulation (EU) 2017/969.

⁽³⁴⁾ See recital 107 to 118.

- (82) Using the benchmark of prices of land in Taiwan, the subsidy rate with regard to this measure was established in the original investigation for the sampled OCS exporting producers in the range of 0,34 % to 1,12 % with the rate for non-cooperating companies at the level of 1,36 %.

3.4.2.2. Continuation of the subsidy programme

- (83) In the request and corresponding annexes ⁽³⁵⁾, the applicant provided evidence that Chinese OCS producers continued to benefit from land-use rights for less than adequate remuneration.
- (84) The applicant indicated that the law governing this matter has not changed since the original investigation. Private ownership of land is prohibited in China. The Land Administration Law, and Article 2 in particular, still provides that all land in China is ultimately owned by the GOC as it belongs collectively to China. The Property Law (Articles 45-48) specifies that land in China is either 'collectively owned' or 'state owned'. No land can be sold but land-use rights can be assigned through public bidding, quotation or auction.
- (85) Neither the GOC nor the exporting producers provided evidence suggesting the OCS industry stopped benefiting from the provision of land-use rights for less than adequate remuneration.
- (86) On the basis of available information, including the conclusions of the Report on China ⁽³⁶⁾ in this regard and findings of the most recent tyres and e-bikes investigations ⁽³⁷⁾, the Commission concluded that the rates paid for land use continued to be subsidised because the system imposed by the GOC does not adhere to market principles.

3.4.2.3. Benefit

- (87) Given the lack of the market for land in China, an external benchmark has to be used to determine an appropriate market price and calculate the amount of subsidy granted during the review investigation period in line with Article 6(d)(ii) of the basic Regulation. The above-mentioned Taiwanese prices of land, normally used as benchmark in such calculations, were updated and adjusted upwards following the findings of the most recent countervailing investigations.
- (88) In the absence of cooperation from the GOC and the Chinese exporting producers, the Commission had no company-specific information on the basis of which to calculate the amount of subsidy conferred during the review investigation period. However, for the finding of continued subsidisation reached in the current expiry review, the Commission does not consider it necessary to calculate such amounts. That being said, since the benchmark prices in Taiwan were higher than the ones used in the original investigation, it is likely that at the very least subsidisation continued at the same levels.

3.4.2.4. Specificity

- (89) The subsidy is specific within the meaning of Articles 4(2)(a) and 4(2)(c) of the basic Regulation. Land-use rights are only granted to a limited group of companies. Furthermore, the steel sector, which is part of the encouraged category within the framework of Decision No 40 of the State Council, falls within the sectors that benefit from land-use rights. In addition, the provision of land-use rights in China continues being non-transparent.

3.4.2.5. Conclusion

- (90) Accordingly, the Commission concluded that there is sufficient evidence showing that the provision of land-use rights for less than adequate remuneration as a countervailable subsidy continued during the — review investigation period.

⁽³⁵⁾ See points (101) to (104) and Annexes 4 and 8 of the request.

⁽³⁶⁾ See chapter 9 of the Report.

⁽³⁷⁾ See recitals (474) to (493) and (503) to (512) respectively

3.4.3. *The provision of electricity for less than adequate remuneration*

3.4.3.1. Findings of the original investigation

- (91) In the original investigation ⁽³⁸⁾, the Commission established that the NDRC set the prices of electricity applicable in the various provinces. It was found that the local price bureaus merely act as an executive arm of the decision taken at central level by the NDRC. This was also confirmed by the fact that the NDRC issued notices in which it sets the actual prices set for each province. These notices are then formally transposed into local notices adopted by the local price bureaus and implemented at local level.
- (92) Additionally, the original investigation established that differential electricity rates applicable for certain sectors and/or at provincial and local level are set in accordance with certain factors, including the pursuit of the industrial policy goals set by the central and local governments in their 5-year plans as well as in the sectoral plans.
- (93) Furthermore, the Commission established that one of the cooperating sampled exporting producers benefited from an electricity rate lower than the rate generally applicable for large industrial users. It was found that in the specific area where this exporter was located a sub-category of certain industrial users, including those producing the product under review, were entitled to this lower rate. The company thus received a financial contribution in the sense of Article 3(1)(a)(iii) of the basic Regulation, in that the government provided electricity through the local public electricity supply company. This constituted a government contribution in the form of provision of goods other than general infrastructure within the meaning of the basic Regulation.
- (94) The subsidy was found to be specific within the meaning of Article 4(2)(a) and 4(3) of the basic Regulation. The lower electricity rate was set out in the relevant NDRC Notice and incorporated in the Notice issued by the local Price Bureau. Thus, it was mandated by a central authority and administered at local level. This lower rate was limited to certain enterprises in certain specified sectors. The subsidy was also limited to a certain region in that it only applies in a limited designated geographical area where the exporting producer was located.

3.4.3.2. Continuation of the subsidy programme

- (95) In the request, the applicant indicated that the law governing this matter has not changed since the original investigation. Furthermore, the applicant provided evidence that producers of OCS have benefited from this scheme in the review investigation period ⁽³⁹⁾.
- (96) Neither the GOC nor the Chinese exporting producers provided evidence suggesting the OCS industry stopped benefiting from the provision of electricity for less than adequate remuneration.
- (97) On the basis of available information, including the conclusions of the Report on China ⁽⁴⁰⁾ and findings of the recent tyres investigation ⁽⁴¹⁾, the Commission concluded that the electricity rates paid are preferential depending on the individual enterprises, sector of industry, or their geographical location.

3.4.3.3. Benefit

- (98) In the absence of cooperation from the GOC and the Chinese exporting producers, the Commission had no company-specific information on which to calculate the amount of subsidy conferred during the review investigation period. However, for the finding of continued subsidisation reached in the current expiry review investigation, the Commission does not consider it necessary to calculate such amounts. That being said, the level of subsidisation does not appear to have decreased when compared to the original investigation.

3.4.3.4. Specificity

- (99) As explained in recital (90), the scheme was specific within the meaning of Article 4(2)(a) and 4(3) of the basic Regulation.

⁽³⁸⁾ See recital 144.

⁽³⁹⁾ See Annex 32, p. 6 of the request.

⁽⁴⁰⁾ See chapter 10 of the Report.

⁽⁴¹⁾ See recitals (460) to (470).

3.4.3.5. Conclusion

- (100) Accordingly, the Commission concluded that there is sufficient evidence showing that the provision of electricity for less than adequate remuneration as a countervailable subsidy continued during the review investigation period.

3.5. Direct transfer of funds ⁽⁴²⁾

3.5.1. Preferential lending and interest rates

3.5.1.1. Findings of the original investigation

- (101) In the original investigation ⁽⁴³⁾, the Commission established that State-owned banks ('SOBs') were public bodies as they performed governmental functions and, in doing so, they exercised government authority. Furthermore, it was concluded that in the original investigation period the five largest State-owned commercial banks represented more than half of the Chinese banking sector.
- (102) With respect to the banks that provided loans to the cooperating exporting OCS producers, the great majority was State-owned. The available information showed that at least 14 out of the 17 reported banks were State-owned banks, including the major commercial banks in China, like the Bank of China, the China Construction Bank and the Industrial and Commercial Bank of China. Furthermore, it was also found that these State-owned commercial banks held a predominant place in the market and in their capacity as public bodies were engaged in offering lending at below-market interest rates. Accordingly, it was concluded that the GOC had a policy to provide preferential lending to the OCS sector.
- (103) The Commission also established, on the basis of, inter alia, Articles 34 and 38 of the Commercial Banking Law and Articles 24 and 25 of Order No 35 — Policies for the development of Iron and Steel Industry, that privately owned commercial banks in China were entrusted and directed by the GOC to provide preferential loans to the OCS producers in line with Article 3(1)(a)(iv) of the basic Regulation.
- (104) Therefore, the Commission concluded that: there was a financial contribution to the OCS producers in the form of a direct transfer of funds from the government within the meaning of Article 3(1)(a)(i) of the basic Regulation; and privately owned banks were also entrusted or directed by the government to provide financial contributions to the same producers within the meaning of Article 3(1)(a)(iv) of the basic Regulation.
- (105) A benefit within the meaning of Articles 3(2) and 6(b) of the basic Regulation was found to exist to the extent that the government loans were granted on terms more favourable than the recipient could actually obtain on the market. Since it was established that non-government loans in China do not provide an appropriate market benchmark (privately owned banks being entrusted and directed by the GOC), such a benchmark was constructed on the basis of standard lending rate of the People's Bank of China. This rate was adjusted to reflect normal market risk by adding the appropriate premium expected on bonds issued by firms with rating of 'non-investment grade' bonds (at BB rate).
- (106) In the original investigation ⁽⁴⁴⁾, this subsidy programme was found to be specific within the meaning of Article 4(2)(a) of the basic Regulation, as the steel industry belonged to the encouraged category according to the Decision No 40 and the provisions of loans were limited only to steel enterprises which fully complied with the development policies for the iron and steel industry (Order No 35).
- (107) Furthermore, the programme was found to be specific under the Article 4(2)(b) of the basic Regulation, as certain government plans and documents were encouraging and instructing to provide financial support to steel industry also in specific geographical regions of China.
- (108) The subsidy rate established in the original investigation for the sampled OCS exporting producers varied from 0,25 % to 0,89 % with the rate for non-cooperating companies being at a level of 0,97 %.

⁽⁴²⁾ Article 3(1)(a)(i) of the basic Regulation.

⁽⁴³⁾ See recitals 165 to 180.

⁽⁴⁴⁾ See recitals 182 to 185.

3.5.1.2. Continuation of the subsidy programme

- (109) In the request and corresponding annexes ⁽⁴⁵⁾, the applicant provided evidence that Chinese OCS producers continued to benefit from preferential lending and below-market interest rates from domestic banks in China.
- (110) The applicant provided evidence that SOBs continue to be public bodies under the test set up by the AB report (see recital (52)) as:
- (i) The banking sector continued to be controlled by the GOC, for which the applicant relied on recent statements from the People's Bank of China ⁽⁴⁶⁾ and recent new rules and guidelines from the China Banking Regulatory Commission, which further increased such control ⁽⁴⁷⁾. The request also indicated that the October 2017 review of the Market Economy Status of China by the US Department of Commerce concluded on the existence of distortions affecting the Chinese banking system ⁽⁴⁸⁾.
 - (ii) The banking sector followed GOC macro objectives, for which the applicant provided evidence that in accordance with the Chinese law on the Commercial Banks ⁽⁴⁹⁾, it is a legal requirement for the banking industry to comply with national strategic objectives laid down in the various binding guidelines and recommendations. The request indicated that such findings were made in the original investigation and remained valid, as confirmed by the 13th Five-Year plan for the steel sector, recent statements from the People's Bank of China (China Monetary Policy Reports), and recent Union anti-subsidy investigations.
- (111) The applicant provided evidence of the significant presence and continued market dominance of State Owned Banks ('SOBs') in the Chinese banking sector. In point (93), the request listed the major SOBs and Policy Banks, which constitute an instrument of the state in the intervention of the economy.
- (112) Finally, taking into account recital (110) point (ii), the applicant indicated that private banks continued to be entrusted and directed by the GOC to provide subsidised loans in line with Article 3.1(a)(iv) of the basic Regulation. Hence, the Commission findings in the original investigation are still valid in this regard. Moreover, in the HRFP investigation the Commission established that the notice 'Several Opinions on Resolving Overcapacity' which is applicable to the steel sector is addressed to all policy banks, large banks, joint-stock banks, postal savings banks, foreign-invested banks, financial asset management companies, and other financial institutions under the management of the China Banking Regulatory Commission (CBRC) ⁽⁵⁰⁾.
- (113) In the absence of cooperation from the GOC, no arguments were presented which would challenge the evidence presented by the applicant with regard to the current situation of the Chinese banking system.
- (114) Furthermore, the critical issues in the establishment of this subsidisation programme and its continuation, namely acting of SOBs as a public bodies, their dominance in the banking sector, entrustment and direction of the private banks, were confirmed by the Report on China ⁽⁵¹⁾ and findings of the most recent tyres and e-bikes investigations ⁽⁵²⁾.

3.5.1.3. Benefit

- (115) In Annex 32 to the request and in the submission of 21 December, the applicant listed the Chinese OCS producers benefitting or having benefitted from that programme on the basis of their annual reports.
- (116) In the absence of cooperation from the Chinese exporting producers, the Commission had no company-specific information on which the amount of subsidy conferred during the review investigation period could be calculated. However, for the finding of continued subsidisation reached in the current expiry review, the Commission does not consider it necessary to calculate such amounts. Nothing on the record indicates, however, that the level of subsidisation has decreased when compared to the original investigation.

⁽⁴⁵⁾ See recitals 80-100 and Annexes 8, 12, 21 to 31 and 60 of the request.

⁽⁴⁶⁾ China Monetary Policy Report of Q1 2015, Q2 2016 and Q2 2017.

⁽⁴⁷⁾ Quoted respectively in CHEN Y., BRC's New Supervisory Storm is here-implications for foreign banks in China, China Law Insight, 13 April 2017 and China steps up supervision of policy lenders, Caixin, 30 August 2017.

⁽⁴⁸⁾ See pp. 179-180 of the China's status as a non-market economy report issued by the United States Department of Commerce.

⁽⁴⁹⁾ Article 34 of the Law on Commercial Banks (see Annex 28 of the request)

⁽⁵⁰⁾ Recital (143) of the HRFP Regulation.

⁽⁵¹⁾ See chapter 6.3 of the Report.

⁽⁵²⁾ See recitals (167) to (230) of the tyres Regulation and (347) to (361) of the e-bikes Regulation.

3.5.1.4. Specificity

- (117) The subsidy programme in question was still specific within the meaning of Articles 4(2)(a) and 4(2)(b) of the basic Regulation, given that the legal situation described in recital (106) had not changed and in the light of the new 13th Five-Year plan for the steel sector, confirming the steel industry as an encouraged industry.

3.5.1.5. Conclusion

- (118) Accordingly, the Commission concluded that there is sufficient evidence showing that the preferential lending as a countervailable subsidy continued during the review investigation period.

3.5.2. Debt for equity swaps

3.5.2.1. Findings of the original investigation

- (119) In the original investigation ⁽⁵³⁾, the Commission concluded that several steel producers, including producers of OCS, were involved in debt for equity swaps for a combined total of 62,5 billion RMB of debts. The request in the original investigation alleged that outstanding debt due by State-owned steelmakers to SOBs was cancelled in exchange for equity through the involvement of four Chinese Asset Management Companies ('AMCs') at other than market conditions. The request further asserted that AMCs were specifically created to dispose of massive non-performing loans in key industries, including the steel sector, and to restructure the debts of SOEs through, inter alia, debt to equity swaps.
- (120) Given that the GOC failed to provide any information on this programme, the original investigation based its findings on this programme on the information contained in the request.
- (121) Debt for equity swaps were found to constitute a financial contribution in the form of equity infusion and/or loan within the meaning of Article 3(1)(a)(i) of the basic Regulation or in the form of revenue forgone resulting from debt cancelled or not repaid within the meaning of Article 3(1)(a)(ii). The government provided this financial contribution through public bodies involved in these transactions, i.e. the four AMCs and various SOBs. In the absence of any cooperation from the GOC during the original investigation, the Commission concluded that the evidence on the record sufficiently demonstrated that AMCs were public bodies, as they were specifically created by the GOC to dispose of massive non-performing loans in key industries, including the steel sector, and to restructure the debts of SOEs. Consequently, it was considered that their behaviour corresponded to the exercise of government authority.
- (122) Furthermore, evidence was provided that the large amount of debt cancellations was not subject to normal commercial considerations, as the GOC did not carry out an assessment whether a normal private investor would have carried out these debts to equity swaps in the expectation that a reasonable rate of return would be generated over time. Instead, the request contended that the GOC exchanged massive amounts of debt in exchange for equity with the objective to reduce the liabilities-to-assets ratio of steel producers to increase their competitiveness aside from commercial considerations that a private investor would make. The Commission, after careful analysis of the information provided in the request and in the absence of any other information on the file, concluded that the measures were therefore conferring a benefit within the meaning of Article 6(a) of the basic Regulation.
- (123) This subsidy was found specific in the sense of Article 4(2) of the basic Regulation, as the award of this financing was restricted only to selected entities, was discretionary and no objective criteria existed.

3.5.2.2. Continuation of the subsidy programme

- (124) In the expiry review request under points 115-125 and Annexes 25, 33 and 58, the applicant provided evidence that this programme was still in force, but its use evolved as it is now mainly used to reduce corporate debt of heavily indebted companies.

⁽⁵³⁾ See recitals 198 to 200 thereof.

- (125) The applicant provided two documents issued by the GOC in 2016 governing this matter, namely ‘the Opinions on Actively and Steadily Reducing Corporate Leverage’ and ‘the Guiding Opinions on the Market-based Conversion of Bank’⁽⁵⁴⁾.
- (126) According to these documents, heavily indebted companies must find a domestic commercial bank that agrees to be involved in the programme. Banks with foreign capital are not qualified to partake in the programme. The participating bank sets up a separate swap fund, made up of the company debt. That debt is then converted into equity and other investors are invited to participate and acquire the equity. SOBs, including China Construction Bank, are the most active in the programme.
- (127) Such transactions are not based on market conditions. These large debts are acquired without discount, something that would be irrational for a market-based investor to do. According to China Iron and Steel Association (‘CISA’) the vast majority of recent debt for equity swaps took the form of Minggu Shizhai, namely, stock in name, debt in reality⁽⁵⁵⁾. This means that swap funds may actually have acquired existing loans owed to banks and replaced them with new loans with longer maturities.
- (128) Banks seemed to not act rationally by taking into account the financial situation of a company and carrying out a risk assessment like a private investor would do under normal market conditions. China Construction Bank admitted that domestic banks own commercial interests are secondary to the national economic strategy when performing debt to equity swaps⁽⁵⁶⁾.
- (129) The request provided evidence that at least two OCS producers signed debt to equity agreements with China Construction Bank at the end of 2016 for the amounts exceeding RMB 20 billion each and at least four other OCS producers benefitted from this scheme, although in their cases the exact values of the agreements were not known. According to the ThinkDesk report at least three of the companies benefitting from this debt to equity swap were in dire financial situation at the time the swap took place.
- (130) In the absence of cooperation, the Commission concluded on the basis of the available evidence that the debt to equity swaps to the OCS producers were not based on market conditions.
- (131) Consequently, the Commission found that the debt for equity swaps are a financial contribution in the form of equity infusion and/or loan pursuant to Article 3(1)(a)(i) of the basic Regulation or in the form of government revenue forgone leading to debt cancelled or not repaid within the meaning of Article 3(1)(a)(ii). The programme conferred a benefit to the recipient companies.

3.5.2.3. Benefit

- (132) In the absence of cooperation from the GOC and the Chinese exporting producers, the Commission had no company-specific information on the basis of which to calculate the amount of subsidy conferred during the review investigation period. However, for the finding of continued subsidisation reached in the current expiry review investigation, the Commission did not consider it necessary to calculate such amounts.

3.5.2.4. Specificity

- (133) The subsidy was specific in accordance with Articles 4(2)(b) of the basic Regulation, as there were no objective criteria for the provision of the subsidies and it has been unclear under which conditions OCS producers may or may not be involved into this programme. The swaps were also specific in line with Article 4(2)(c) of the basic Regulation, given major discretion of the public authorities to grant the subsidy and only certain sectors have benefitted from the subsidy such as those suffering overcapacity.

3.5.2.5. Conclusion

- (134) Accordingly, the Commission concluded that there is sufficient evidence showing that the debt for equity swaps as a countervailable subsidy continued during the review investigation period in the form of financial assistance to reduce corporate debt of heavily indebted companies.

⁽⁵⁴⁾ See Annex 58 of the request.

⁽⁵⁵⁾ See recital 118 and Annex 25 of the Request.

⁽⁵⁶⁾ Deleveraging and Debt Equity Swaps in the Chinese Steel Industry. THINK!DESK China Research & Consulting (Annex 25 of the request).

3.5.3. Grants and ad-hoc subsidies

3.5.3.1. Findings of the original investigation

- (135) In the original investigation ⁽⁵⁷⁾, the Commission concluded that several steel producers, including producers of OCS, received grants under four schemes: China World Top Brand programme, Famous Brands programme, the State Key Technology Project fund, and programmes to rebate anti-dumping legal fees. Furthermore, several grants were found to be awarded to OCS producers under the regional programmes (among others in Liaoning, Jiangsu, and Hebei provinces).
- (136) Given that the GOC failed to provide any information on this programme, the original investigation based its findings on these programmes on the information contained in the request, findings of the US authorities in other anti-subsidy investigations ⁽⁵⁸⁾, and the Commission's own findings in the coated fine paper investigation. ⁽⁵⁹⁾
- (137) The original investigation also positively concluded on the existence of a number of ad hoc subsidies granted to certain OCS producers that were listed in the request, based on the analysis of the audited accounts of the companies in question. These subsidies were either grants or other tax exemptions or reductions in order to finance particular projects or assets. According to the request, they were granted in the context of the general strategic policy to upgrade the steel industry.
- (138) These grants and other ad hoc subsidies were found to constitute a subsidy in the meaning of Article 3(1)(a)(i) of the basic Regulation in the form of a direct transfer of funds with regard to the grants and similar transfers of resources. Furthermore, they constituted a subsidy in the meaning of Article 3(1)(a)(ii) of the basic Regulation in the form of revenue forgone for the various exemptions or reductions of taxes and/or fees at central, provincial, or municipal level otherwise due.
- (139) They were also found to be specific either under Article 4(2)(a) of the basic Regulation, due to limits in access for only specific enterprises, or under Article 4(2)(b), given the apparent absence of objective criteria and conditions for the application of these programmes by the granting authority.
- (140) Some of these subsidies were found to be specific pursuant to Article 4(3) of the basic Regulation, since their access was limited to certain enterprises located in designated geographical regions in a certain province, or pursuant to Article 4(4)(a), as the benefit was found to be contingent upon export performance (for example in the case of 'famous brand' products).

3.5.3.2. Continuation of the subsidy programmes

- (141) In the expiry review request under points 191-198 and Annex 32, the applicant provided evidence that many Chinese steel producers, including at least nine major OCS producers, continue to benefit from grant programmes although the main schemes used are different than those found in the original investigation.
- (142) The evidence provided in the request focus mainly on energy saving and conservation schemes and technological upgrading or transformation schemes and it is based on the findings of the HRFP investigation ⁽⁶⁰⁾.
- (143) Under points 207-217 and Annexes 32 and 35 of the expiry review request, the applicant also provided evidence of the existence of a number of ad hoc subsidies granted to certain OCS producers in the review investigation period (or before the review investigation period, but due to the nature of the grant the benefit under the subsidy could be allocated to the review investigation period). The evidence in this regard is based on the Annual Reports of the respective OCS producers.

⁽⁵⁷⁾ See recitals 316 to 344.

⁽⁵⁸⁾ See recitals (322), (329), (337) of the original Regulation.

⁽⁵⁹⁾ Council Implementing Regulation (EU) No 452/2011 of 6 May 2011 imposing a definitive anti-subsidy duty on imports of coated fine paper originating in the People's Republic of China, (OJ L 128, 14.5.2011, p. 18).

⁽⁶⁰⁾ See recitals (365) to (371) and (372) to (379) of the Regulation.

- (144) In the submission of 21 December 2018, the applicant provided a more detailed list of ad hoc subsidies per the OCS producer, including references to the specific lines of the audited annual reports of the companies in question.
- (145) The subsidies in question were essentially grants pertinent to assets or pertinent to incomes.
- (146) Subsidies pertinent to assets are credited to a deferred income account. They are released to the current income statement/the current profit and losses (P&L) as non-operating income over the expected useful life of the relevant asset by equal annual instalments, or deducted from the carrying amount of the asset and released to the income statement by way of reduced depreciation charges.
- (147) Subsidies pertinent to income and use for compensating the related future expenses or losses are recognised as deferred income and include in the current P&L, while those used for compensating the related expenses or losses incurred are directly included in the current P&L of the relevant accounting period.
- (148) Subsidies given to compensate past expenses or losses are recognised in the income statement in the period during which the subsidy is received. The positive balance between the compensation payments and the compensation amount transferred to deferred income should be considered as capital reserve.
- (149) Most of the grants were provided in order to finance particular projects or assets, reward energy conservation or environmental protection, and modernise steel mills.
- (150) Under points 166-175 and Annexes 25, 34, 35 and 44 of the expiry review request the applicant provided evidence that, in order to address overcapacity in the steel sector, the GOC and other local authorities have made subsidies available to compensate the companies for the production capacity decrease or incentivise that decrease. The request relied on several recent documents issued by the Chinese authorities concerning this matter and on international studies ⁽⁶¹⁾. These subsidies were not countervailed in the original investigation.
- (151) The applicant indicated several specific documents issued in 2016 which form the basis for State intervention with the aim to reduce capacity of the steel sector:
- In February 2016, the GOC published the ‘Opinions on Resolving Overcapacity in the Steel Industry, Escape from Distress and Realize Development’. This document contained a plan, seeking to increase the financial support for steel companies that decrease production capacity.
 - In April 2016, the People’s Bank of China and regulatory commissions in charge of the monitoring of banking, securities and insurance sectors jointly released ‘Opinions on supporting the steel and coal industries to resolve overcapacity and achieve turnaround in development’. This document was directed to all financial institutions and gave instructions as to how to implement the ‘Opinions on Resolving Overcapacity in the Steel Industry, Escape from Distress and Realize Development’. This document indicated that banks are required to give ‘credit support to high-performance key companies’. They are prohibited from charging ‘unreasonable conditions when issuing loans’. Banks must further facilitate the transfer of excess capacity overseas. They must ‘give financing support to steel and coal enterprises in their transferring capacity to overseas and exploiting international market’. ⁽⁶²⁾
 - In May 2016, the GOC issued the ‘Measures for the Management of Special Bonuses and Subsidies for the Structural Adjustment of Industrial Enterprises’ which included details on the allocation of RMB 100 billion of bonuses and subsidies.

⁽⁶¹⁾ See Research Report on Overcapacity Reduction in China’s steel industry, Greenpeace East Asia Report, March 2017, pp. 39, 58, 59-60; the GOC’s Opinions on Resolving Overcapacity in the Steel Industry, Escape from Distress and Realize Development (February 2016) and the PBOC’s Opinions on supporting the steel and coal industries to resolve overcapacity and achieve turnaround in development (April 2016), as quoted in *Deleveraging and Debt Equity Swaps in the Chinese Steel Industry*, THINK!Desk, 31 October 2017, pp. 10-11, the GOC’s Measures for the Management of Special Bonuses and Subsidies for the Structural Adjustment of Industrial Enterprise (May 2016) as quoted in the afore mentioned Greenpeace study.

⁽⁶²⁾ See Request Annex 25, p. 10-11.

- (152) The applicant relied on ‘the Report on Overcapacity Reduction in China’s steel industry’ ⁽⁶³⁾, to show that the GOC promised measures to address the issue of massive overcapacity in steel production in China. In order to compensate for the production capacity decrease/or incentivise that decrease, the GOC and other local authorities have made subsidies available to compensate the companies concerned. These subsidies took various forms (grants and taxation reductions) but most of them were given in the form of grants. An international study in question indicated that the subsidies granted to the steel industry for that purpose in 2016 amounted to RMB 38,4 billion (around EUR 5,2 billion).
- (153) The applicant also provided evidence, based on analysis of annual accounts of specific companies, that at least six OCS producers received financial support to compensate or incentivise a decrease in overcapacity between 2014 and 2016, whose benefits may still linger during the review investigation period and beyond.
- (154) The evidence presented by the applicant corresponds to the conclusion of the Report on China ⁽⁶⁴⁾, which refers to the 13th five-year plan for steel that clearly indicates that specific subsidy funds and other incentives should be used to encourage regions with large production to actively reduce capacity. In order to effectively deal with the consequences of a reduction in capacity, the plan sets out ways to lessen its effects on the sector, most notably the relocation of redundant workforce, the used of subsidies for programmes focused on structural adjustment of industry and enterprises, and provision of subsidies on the local level. Moreover, this was confirmed in the HRFP investigation ⁽⁶⁵⁾.
- (155) All grants and other ad hoc subsidies analysed above constituted a subsidy in the meaning of Article 3(1)(a)(i) of the basic Regulation in the form of a direct transfer of funds with regard to the grants and similar transfers of resources.
- (156) In the absence of cooperation from the GOC, no arguments were presented which would challenge the evidence presented by the applicant with regard to the continued benefits of the OCS producers from grants, whether given to reduce overcapacity or under specific programmes, or awarded ad hoc.

3.5.3.3. Benefit

- (157) In the absence of cooperation from the GOC and the Chinese exporting producers, the Commission had no company-specific information on the basis of which to calculate the amount of subsidy conferred during the review investigation period. However, for the finding of continued subsidisation reached in the current expiry review investigation, the Commission does not consider it necessary to calculate such amounts. That being said, on the basis of the Annual Reports of the OCS producers, such amounts are not negligible.

3.5.3.4. Specificity

- (158) These subsidies were considered to be specific in law or in fact, within the terms of Article 4(2) of the basic Regulation. In the absence of cooperation from the GOC, they are deemed to be granted to a limited number of steel companies in the encouraged steel sector, and/or because of the manner in which discretion of the granting authorities has been exercised for their granting.

3.5.3.5. Conclusion

- (159) Accordingly, the Commission concluded that there is sufficient evidence showing that the exporting producers continued receiving grants as countervailable subsidies during the review investigation period.

3.5.4. *Export subsidies*

- (160) The applicant provided evidence on the existence of certain export subsidy programmes under points 199-206 and Annex 35 of the expiry review request. In what follows the Commission will focus its analysis on export credit insurance from Sinosure. This scheme was not countervailed in the original investigation.

⁽⁶³⁾ Greenpeace East Asia Report, March 2017.

⁽⁶⁴⁾ See chapter 14.1.1.2. of the Report — Production Capacity Reduction.

⁽⁶⁵⁾ See recitals (143), (256)-(259) of the HRFP Regulation.

3.5.4.1. Legal basis

(161) The legal bases for the Sinosure export credit insurance programme are the following:

- the Notice on the Implementation of the Strategy of Promoting Trade through Science and Technology by Utilising Export Credit Insurance (Shang Ji Fa[2004] No 368), issued jointly by MOFCOM and Sinosure;
- the Export Directory of Chinese High and New Technology Products of 2006;
- the so-called '840 plan' included in the Notice by the State Council of 27 May 2009;
- the so-called '421 plan' included in the Notice on the issues to implement special arrangements for financing of insurance on the export of large complete sets of equipment, issued jointly by the Ministry of Commerce and the Ministry of Finance on 22 June 2009.

3.5.4.2. Financial contribution and benefit

- (162) On the basis of the information available to the Commission, and in the light of the GOC's and Sinosure's non-cooperation, the Commission concluded that Sinosure is a public body within the meaning of Article 2(b) of the basic Regulation. In particular, the conclusion that Sinosure is vested with authority to exercise governmental functions is based on facts available relating to State-ownership, formal indicia of government control, as well as evidence showing that the GOC continues exercising meaningful control over the conduct of Sinosure.
- (163) As confirmed by several investigations (the findings in this regard were most recently confirmed in the tyres and the e-bikes investigations) ⁽⁶⁶⁾, the government exercises full ownership and financial control over the company.
- (164) Sinosure is a 100 % State-owned policy insurance company established and supported by the State to support the PRC's foreign economic and trade development and cooperation. The Government has the power to appoint and dismiss the company's senior managers and supervisors.
- (165) The registered capital of the company comes from the venture fund of export credit insurance in line with the state finance budget. Furthermore, as established in the coated fine paper investigation ⁽⁶⁷⁾, the state injected to the company RMB 20 billion in 2011.
- (166) On this basis, the Commission concluded that the GOC has created a normative framework that had to be adhered to by the managers and supervisors appointed by the GOC and accountable to the GOC. Therefore, the GOC relied on the normative framework in order to exercise control in a meaningful way over the conduct of Sinosure.
- (167) Due to lack of cooperation of the GOC and Sinosure, the Commission could also not establish any specific behaviour of Sinosure with regard to the insurance provided to the sampled exporting producers that would have enabled the Commission to determine whether Sinosure was acting based on market principles.
- (168) In this respect, the Commission was also unable to assess whether the premiums Sinosure charged were sufficient to cover the cost of the claims and the overhead expenses of Sinosure. However, it should be noted that in the recent tyres investigation ⁽⁶⁸⁾, where partial cooperation of Sinosure was obtained, it was concluded that premiums paid by the sampled companies were much lower than the minimum fee needed to cover operational costs of the company. In the above mentioned investigation as well as in the following e-bike investigation, the benefit for this subsidy scheme was calculated on the basis of the external benchmark i.e. the premium rates applied by the Export-Import Bank of the United States of America to non-financial institutions for exports to OECD countries.
- (169) Therefore, the Commission concluded that the legal framework set out above is implemented by Sinosure in the exercise of governmental functions, thereby acting as a public body in the sense of Article 2(b) of the basic Regulation read in conjunction with Article 3(1)(a)(i). Furthermore, it could not be demonstrated that Sinosure acted under normal market conditions and that it did not provide benefits to the OCS exporting producers, notably that the insurance was provided at rates that were not below the minimum fee needed for Sinosure to cover its operational costs.
- (170) In addition, the applicant indicated in the request and the submission of 21 December 2018 that some of the OCS producers benefited from export credit insurance of Sinosure.

⁽⁶⁶⁾ See recitals 426 to 437 and 352 to 360 respectively.

⁽⁶⁷⁾ See recital 131.

⁽⁶⁸⁾ See recital 435.

- (171) In the absence of cooperation from the GOC, no arguments were presented which would challenge the evidence presented by the applicant with regard of the OCS producers benefiting from export subsidies under this scheme.
- (172) Because of non-cooperation, the Commission had no company-specific information either on the basis of which to calculate the amount of subsidy conferred during the review investigation period. However, for the finding of continued subsidisation reached in the current expiry review, the Commission does not consider it necessary to calculate such amounts.

3.5.4.3. Specificity

- (173) The export credit insurance of Sinosure is specific under Article 4(4)(a) of the basic Regulation as it is contingent upon export performance.

3.5.4.4. Conclusion

- (174) Accordingly, the Commission concluded that this subsidy is countervailable.

3.6. Government revenue forgone or not collected that is otherwise due

3.6.1. *Income and other direct tax programmes and policies*

3.6.1.1. Findings of the original investigation

- (175) In the original investigation, the Commission established that OCS producers were receiving countervailable subsidies related with preferential treatment under income and other direct tax programmes and policies.
- (176) With regard to two specific programmes: Tax Policies for the Deduction of Research and Development Expenses, and Tax Concessions for Central and Western Regions, the Commission, having sufficient cooperation of the GOC and the Chinese exporting producers, based its findings as to the legal basis, eligibility, nature of the subsidy and its specificity on the verified questionnaire replies and was able to calculate individual subsidy rates for the sampled companies.
- (177) With regard to other eight programmes and policies, due to the lack of the cooperation of the GOC, the Commission based its findings on the evidence provided in the request and results of the anti-subsidy investigations of the US authorities on circular welded carbon quality steel line pipe ⁽⁶⁹⁾, certain steel wheels ⁽⁷⁰⁾, wire decking ⁽⁷¹⁾, certain tow behind lawn groomers, ⁽⁷²⁾ and the Commission's own investigation on coated fine paper. It should be mentioned that two out of these eight programmes were found not to be countervailable.
- (178) The income and other direct tax programmes were found to be subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation in the form of government revenue foregone which confers a benefit upon the recipient companies.
- (179) The subsidy schemes were also found to be specific within the meaning of Article 4(2)(a) of the basic Regulation given that the legislations pursuant to which the granting authority operated, limited the access to the schemes only to certain enterprises and industries classified as encouraged, such as those belonging to OCS industry. In addition, that the lack of cooperation from the GOC did not permit the Commission to reach the conclusion to whether objective criteria of eligibility to certain schemes existed which made them also specific under the Article 4(2)(b) of the basic Regulation.

3.6.1.2. Continuation of the subsidy programme

- (180) In the expiry review request under points 126-136 and Annexes 34 and 35, the applicant provided evidence that many Chinese steel producers, including at least three OCS producers, continue to benefit from at least two of the direct tax subsidy programmes countervailed in the original investigation, namely Preferential Tax Policies for the Companies that are Encouraged as High and New Technology Enterprises, and Tax Policies for the Deduction of Research and Development Expenses.

⁽⁶⁹⁾ Federal Register Vol. 73, No 227, page 70961 of 24 November 2008.

⁽⁷⁰⁾ Preliminary Affirmative Countervailing Duty Determination of 6 September 2011. Federal Register 2011-22720.

⁽⁷¹⁾ Federal Register Vol. 75, No 111, page 32902 of 10 June 2010.

⁽⁷²⁾ Federal Register Vol. 74, No 117, page 29180 of 19 June 2009.

- (181) The applicant indicated that both schemes were found countervailable in the HFRP investigation and coated fine paper expiry review ⁽⁷³⁾. The findings of these two investigations confirmed that the schemes are still being used and are still based on the same legal basis and thus there are no changes in the conclusions as to the eligibility, practical application of the schemes, the benefits conferred upon their use and their specificity.
- (182) Furthermore, the most recent anti-subsidy investigations (the tyres investigation and the e-bikes investigation), having the investigation period 6-month or 9-month overlapping with current investigation, confirmed that the schemes were still in use and their nature had not changed ⁽⁷⁴⁾.
- (183) Under points 176-186 and Annex 35 of the expiry review request, the applicant provided evidence that some OCS producers were benefiting from three additional preferential income tax policies, not countervailed in the original investigation, namely Enterprise Income Tax Privileges for Resource Products from Synergic Utilization (at least one OCS producer is using this scheme), Land Use Tax Exemption (at least two OCS producers are using this scheme) and Tax Reduction on Iron Ore (at least one OCS producer is using this scheme). The evidence in this regard is based on the findings of the HFRP investigation and the audited accounts of the companies in question.
- (184) In the absence of cooperation from the GOC, no arguments were presented which would challenge the evidence presented by the applicant with regard to the continued benefits of the OCS producers from income and other direct tax programmes and policies.
- (185) The schemes in question are considered to be subsidies within the meaning of Articles 3(1)(a)(ii) and 3(2) of the basic Regulation in the form of foregone government revenue which confers a benefit upon the recipient companies.

3.6.1.3. Benefit

- (186) In the absence of cooperation from the GOC and the Chinese exporting producers, the Commission had no company-specific information on the basis of which to calculate the amount of subsidy conferred during the review investigation period. However, for the finding of continued subsidisation reached in the current expiry review, the Commission does not consider it necessary to calculate such amounts.

3.6.1.4. Specificity

- (187) The schemes are specific within the meaning of Article 4(2)(a) of the basic Regulation given that the legislations pursuant to which the granting authority operated, limited the access to the schemes only to certain enterprises and industries.

3.6.1.5. Conclusion

- (188) Accordingly, the Commission concludes that there is sufficient evidence showing that some of the tax programmes continued being as countervailable subsidies during the review investigation period.

3.6.2. *Indirect tax and import tariff programs and policies*

3.6.2.1. Findings of the original investigation

- (189) In the original investigation, the Commission established that OCS producers were receiving countervailable subsidies related with preferential treatment under two indirect tax and import tariff programs:
- (a) Import tariff and VAT exemptions foreign-invested enterprises ('FIE') and certain domestic enterprises using imported equipment in encouraged enterprises, and
 - (b) VAT refunds to FIE purchasing domestically produced equipment.

⁽⁷³⁾ See recitals 312 to 344 and 68 to 76 respectively.

⁽⁷⁴⁾ See recitals 510 to 546 and 534 to 558 respectively.

- (190) Additionally, one more regional scheme and several other ad-hoc tax privileges related with indirect taxes were countervailed.
- (191) Due to insufficient cooperation of the GOC and the fact that sampled companies were not benefiting from these schemes in the original investigation, the Commission based its findings as to the legal basis, eligibility, nature of the subsidy and its specificity on the evidence provided in the request and results of the anti-subsidy investigation of the US authorities on coated free sheet ⁽⁷⁵⁾ and the Commission own investigation in coated fine paper ⁽⁷⁶⁾.
- (192) The indirect tax and import tariff programmes were found to be subsidies within the meaning of Articles 3(1)(a)(ii) and 3(2) of the basic Regulation in the form of foregone government revenue which confers a benefit upon the recipient companies.
- (193) The subsidy schemes were also found to be specific within the meaning of Article 4(2)(a) of the basic Regulation given that the legislations pursuant to which the granting authority operated, limited the access to the schemes only to certain enterprises and industries. In addition, the lack of cooperation from the GOC did not permit the Commission to reach the conclusion to whether objective criteria of eligibility to certain schemes existed which made them also specific under the Article 4(2)(b) of the basic Regulation.
- (194) The second scheme referred to in recital (189) was additionally found specific with the terms of Article 4(4)(b) of the basic Regulation as contingent upon use of domestic over imported goods, while regional scheme and ad-hoc privileges were additionally found specific under the terms of Article 4(3) of that Regulation as their eligibility was limited to certain designated areas and municipalities within the jurisdiction of the authority of granting the subsidy.

3.6.2.2. Continuation of the subsidy programme

- (195) In the expiry review request under points 137-141, the applicant indicates that findings of the HFRP investigation confirmed continuation of the benefits and countervailability of the first scheme listed in recital (189). It was also confirmed that legal basis of the scheme did not change and thus there are no changes in the conclusions as to the eligibility, practical application of the scheme, benefits conferred upon its use and its specificity ⁽⁷⁷⁾.
- (196) Furthermore, the HFRP investigation concluded that at least one OCS producer was benefiting from this scheme in the investigation period of the HFRP investigation (2015) ⁽⁷⁸⁾. Since the program in question is linked with purchase of fixed assets, the benefit upon it should be (as it was in the HFRP investigation) amortised over the life span of the equipment. Thus, the Commission concluded that the company in question is still benefiting from this subsidy in the current review investigation period.
- (197) Under points 187-190 of the request, the applicant indicates also that as a result of the HFRP investigation it was found that the same OCS producer was granted *ex post* refund of all the VAT and income taxes paid between 2006-2009, due to the relocation of its production. In the HFRP investigation the subsidy in question was treated as financial contribution related to a large-scale investment project and thus the benefit upon it was amortised over the average life span of the company's fixed assets. Thus, it can be concluded that the company in question was still benefiting from this subsidy in the review investigation period.
- (198) In the absence of cooperation from the GOC, no arguments were presented which would challenge the evidence presented by the applicant with regard to the continued benefits of the OCS producers from indirect tax and import tariff programs and policies.
- (199) The schemes in question are considered to be subsidies within the meaning of Articles 3(1)(a)(ii) and 3(2) of the basic Regulation in the form of foregone government revenue which confers a benefit upon the recipient companies.

⁽⁷⁵⁾ Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of 17 October 2007; Federal Register C-570-907.

⁽⁷⁶⁾ See recitals 95 to 113.

⁽⁷⁷⁾ See recital (346) of the HFRP Regulation.

⁽⁷⁸⁾ See recital (349) of the HFRP Regulation.

3.6.2.3. Benefit

- (200) In the absence of cooperation from the GOC and the Chinese exporting producers, the Commission had no company-specific information on the basis of which to calculate the amount of subsidy conferred during the review investigation period. However, for the finding of continued subsidisation reached in the current expiry review, the Commission does not consider it necessary to calculate such amounts.

3.6.2.4. Specificity

- (201) The schemes are specific within the meaning of Article 4(2)(a) of the basic Regulation as the access to the schemes is limited only to certain enterprises and industries.

3.6.2.5. Conclusion

- (202) Accordingly, the Commission concludes that there is sufficient evidence showing that some of the indirect tax and import tariff programmes continued being as countervailable subsidies during the review investigation period.

3.7. Overall conclusion regarding the continuation of the subsidisation

- (203) Therefore, the Commission concluded that the OCS producers in China continued to benefit from countervailable subsidies during the review investigation period.

3.8. Development of imports should the measures be repealed

- (204) Further to the finding of the existence of subsidisation during the review investigation period, the Commission investigated the likelihood of continuation of subsidised imports from the country concerned, should the measures be repealed. The following additional elements were analysed: the production capacity and spare capacity in China, the availability of other markets, and the attractiveness of the Union market.

3.8.1. Production capacity and spare capacity in the PRC

- (205) Given the non-cooperation, production capacity and spare capacity in the PRC were established on the basis of facts available and in particular the information provided by the applicant, in accordance with Article 28 of the basic Regulation.
- (206) The production capacity in the PRC substantially exceeded the current production volumes. According to (CISA), the production capacity of colour-coated steel amounted to 40 million tonnes in 2013⁽⁷⁹⁾. With production volumes at the level of 7,5 million tonnes, the capacity utilisation reached only approximately 20 %. Would the measures be repealed, the Chinese producers have sufficient spare capacity estimated at 32,5 million tonnes to flood the Union market, where consumption is 4,5 million tonnes, with subsidised OCS.
- (207) Based on the above, the Commission concluded that the Chinese exporting producers have significant spare capacity, which they could use to produce OCS to export to the Union market if measures were repealed.

3.8.2. Availability of other markets

- (208) Trade defence measures against Chinese OCS exports are in place in India, Malaysia, Pakistan, Turkey and Vietnam. Therefore, the Commission concluded that, should the current measures be repealed, it is likely that the Chinese exporting producers would redirect exports towards the Union.

3.8.3. Attractiveness of the Union market

- (209) During the review investigation period, the Union industry's sales price was by 194-338 EUR per tonne of OCS (or by 28-59 %) higher than the Chinese export price at CIF level to the five main export markets. It was also by 211-226 EUR per tonne of OCS (or 31-33 %) higher than the average Chinese export price at CIF level to all third countries (excluding the Union). The Chinese exports to the five most important export markets amounted to 48 % of the Union consumption in the review investigation period.

⁽⁷⁹⁾ See recital 277 and Annex 51 of the Request.

- (210) Consequently, would the measures be repealed, it is likely that the Chinese exporting producers redirect the exports of substantial volumes of OCS from third countries to the Union market.

3.9. Conclusion on the likelihood of continuation of subsidisation

- (211) The Commission, on the basis of facts available, conclude that there is sufficient evidence that subsidisation of the OCS industry in the PRC continued during the review investigation period and is likely to continue in the future.
- (212) The subsidisation of the OCS industry allows the Chinese producers to maintain their production capacities at a level by far exceeding domestic demand, in spite of shrinking markets, in China and worldwide.
- (213) Therefore, the Commission found that the repeal of the countervailing measures is likely to result in a redirection of significant volumes of subsidised imports of the product under review to the Union market. Various subsidy programmes continue to be offered by the GOC to the OCS industry and the Commission determined that the OCS industry benefited from a number of them during the review investigation period.

4. INJURY

4.1. Union production and Union industry

- (214) During the review investigation period OCS was manufactured by more than 20 known producers in the Union, some of them related to one another. Several of those producers belong to steelmaking groups.
- (215) The total Union production was estimated at 4 752 003 tonnes during the review investigation period on the basis of the questionnaire responses submitted by the sampled Union producers and data submitted the applicant. The Union producers accounting for the total Union production constitute the Union industry within the meaning of Article 4(1) of the basic Regulation.

4.2. Consumption in the Union

- (216) The investigation found that a share of the Union industry uses its production for captive use, that is it is often simply transferred (without invoice) and/or delivered at transfer prices within the same company or group of companies for further downstream processing. In order to provide as complete a picture as possible of the situation of the Union industry, data was obtained and analysed for the entire OCS activity.
- (217) As in the original investigation (recitals (462)-(463) thereof), it was considered that economic indicators such as production, capacity, capacity utilisation, investments, stocks, employment, productivity, wages and ability to raise capital depend upon the whole activity, regardless of whether the production is for captive use or sold on the free market. However, sales volume and sales prices on the Union market, market share, growth, export volume and prices focus on the situation prevailing on the free market (and thus, excluding captive activities). Thus, the injury indicators were corrected for the known captive use and sales in the Union industry, and captive use and sales were analysed separately.
- (218) The Union consumption was established on the basis of (i) import statistics at TARIC level using information collected on the basis of Article 14(6) of the basic Regulation and (ii) sales volumes of the Union industry (including captive transactions) in the Union as submitted by the applicant. Those sales volumes were cross-checked and updated when necessary as regards sampled Union producers as a result of the verification visits to their premises.
- (219) During the period considered the Union consumption developed as follows:

Table 1

	2014	2015	2016	RIP
Union consumption (tonnes)	3 840 088	3 965 150	4 375 791	4 525 677
Index (2014 = 100)	100	103	114	118

Source: Verified questionnaire replies and Article 14(6) database

(220) During the period considered, the Union consumption increased by 18 %.

4.3. Imports into the Union from China

(221) The Commission established the volume of imports and prices on the basis of import statistics at TARIC level using information collected in accordance with Article 14(6) of the basic Regulation.

4.3.1. Volume and market share

(222) Over the period considered imports from China into the Union developed as follows:

Table 2

Imports from China	2014	2015	2016	RIP
Volume of imports (tonnes)	5 619	4 217	2 958	6 338
<i>Index (2014 = 100)</i>	100	75	53	113
Market share (%)	0,1	0,1	0,1	0,1

Source: Article 14(6) database

(223) During the period considered the volume of imports from the PRC was low. The Chinese market share fluctuated slightly during the period considered and was 0,1 % in the review investigation period.

(224) The imports have remained at a low level since the imposition of the provisional anti-dumping measures in September 2012. It is assumed that their low level is the result of the measures in force.

4.3.2. Price and price undercutting

(225) Over the period considered the price of imports from China into the Union developed as follows:

Table 3

Imports from China	2014	2015	2016	RIP
Average import price (EUR/tonne)	341	747	697	637
<i>Index (2014 = 100)</i>	100	219	204	187

Source: Article 14(6) database

(226) Over the period considered the prices of Chinese imports increased by 87 %. It can be reasonably assumed that this trend is at least partly due to increasing raw material prices.

(227) The average sales prices of the cooperating Union producers to unrelated customers on the Union market were compared to the average prices of imports from China. In the absence of cooperation from Chinese exporting producers, no reliable product type per product type comparisons could be made and imports statistics for the product under review as a whole were used for establishing the average Chinese import price. Due to lack of cooperation from unrelated importers in this expiry review, the estimates contained in the request on the level of the adjustment for post-importation costs were used.

(228) On the basis of that methodology, the comparison showed that during the review investigation period the imports of the product under review undercut the Union industry's prices by 27,8 % (that is, very similar to the undercutting found during the original investigation).

(229) In addition, the analysis of Chinese export prices to other third markets showed that China was selling in some of its main export markets at prices similar to or sometimes even lower than those to the Union, thus reinforcing the conclusion that the current level of Chinese prices would undercut the sales prices of the Union industry in the Union market.

4.4. Imports into the Union from third countries

- (230) Table 4 shows the development of imports to the Union from third countries during the period considered in terms of volume and market share, as well as the average price of these imports.

Table 4

	2014	2015	2016	RIP
Volume of imports from India (tonnes)	191 015	136 208	152 511	247 237
<i>Index (2014 = 100)</i>	100	71	80	129
Market share (%)	5,0	3,4	3,5	5,5
Average price (EUR/tonnes)	755	770	680	818
Volume of imports from The Republic of Korea (tonnes)	155 634	131 959	184 637	222 448
<i>Index (2014 = 100)</i>	100	85	119	143
Market share (%)	4,0	3,3	4,2	4,9
Average price (EUR/tonnes)	899	934	785	925
Volume of imports from other third countries	117 938	113 679	134 352	201 981
<i>Index (2014 = 100)</i>	100	96	114	171
Market share (%)	3,1	2,9	3,1	4,5
Average price (EUR/tonnes)	793	798	714	838

Source: Article 14(6) database

- (231) Over the period considered the volume of imports from third countries increased to reach a market share of 14,8 %. Most of these imports were from India and Korea, followed by Turkey and Taiwan.
- (232) In general the average price of imports from third countries was higher than the average prices at which Chinese imports entered the Union. Depending on the years the average price of imports from third countries was either higher or lower than the average selling prices of Union producers in the Union.

4.5. Economic situation of the Union industry

- (233) Pursuant to Article 3(5) of the basic Regulation, the examination of the impact of the subsidised imports on the Union industry included an evaluation of all economic factors and indices having a bearing on the state of the Union industry during the period considered.
- (234) The macroeconomic indicators (production, production capacity, capacity utilisation, sales volume, market share, employment, productivity, growth, magnitude of countervailing margins and recovery from the effects of past subsidisation) were assessed at the level of the whole Union industry. The assessment was based on the information provided by the applicant, cross-checked with the verified questionnaire replies of the sampled Union producers.
- (235) The analysis of microeconomic indicators (stocks, sale prices, profitability, cash flow, investments, return on investments, ability to raise capital, and wages) was carried out at the level of the sampled Union producers. The assessment was based on their information which was duly verified during an on-spot verification visit.
- (236) Given that one of the three sampled companies is not represented by the applicant, pursuant to Article 29 of the basic Regulation the data in Tables 8 to 13 are provided in ranges so as to preserve confidentiality of business-sensitive information.

4.5.1. Macroeconomic indicators

4.5.1.1. Production, production capacity and capacity utilisation

- (237) Over the period considered production, production capacity and capacity utilisation of the Union industry developed as follows:

Table 5

	2014	2015	2016	RIP
Production (tonnes)	4 402 079	4 404 178	4 769 698	4 752 003
<i>Index (2014 = 100)</i>	100	100	108	108
Production capacity (tonnes)	5 076 892	5 113 417	5 361 693	5 339 200
<i>Index (2014 = 100)</i>	100	101	106	105
Capacity utilisation (%)	87	86	89	89

Source: Verified questionnaire replies

- (238) Over the period considered there was a modest increase in production volume (+ 8 %) and capacity (+ 5 %), while the capacity utilisation increased by 2 %, to reach 89 %.

4.5.1.2. Sales volume and market share in the Union

- (239) Over the period considered sales in the Union by the Union industry (captive transactions included) developed as follows:

Table 6

	2014	2015	2016	RIP
Sales volume (tonnes)	3 369 883	3 579 087	3 901 334	3 847 673
<i>Index (2014 = 100)</i>	100	106	116	114
Market share (of Union consumption) (%)	87,6	90,2	89,1	84,9

Source: Verified questionnaire replies

- (240) The sales by the Union industry on the Union market increased by 14 % during the period considered.
- (241) The market share of the Union industry decreased during the period considered to 84,9 %.

4.5.1.3. Employment and productivity

- (242) Over the period considered employment level and productivity within the Union industry developed as follows:

Table 7

	2014	2015	2016	RIP
Number of employees (full time equivalent)	5 667	5 685	5 938	6 021
<i>Index (2014 = 100)</i>	100	100	105	106
Productivity (tonnes per employee)	777	775	803	789
<i>Index (2014 = 100)</i>	100	100	103	102

Source: Verified questionnaire replies

- (243) Both employment and productivity of the Union producers' workforce, measured as output (tonnes) per person employed per year, increased during the period considered. Those increases reflect the overall increase in production and sales volume.

4.5.1.4. Growth

- (244) The Union industry managed to benefit from growth on the Union market even if facilities that had been more affected by the lower capacity utilisation observed during the original investigation are still in a recovery phase. The Union industry kept significant market shares during the whole period considered.

4.5.1.5. Magnitude of subsidisation and recovery from past subsidisation

- (245) Subsidisation continued during the review investigation period at a significant level, as explained under section 3 above. It is noted that Chinese producers undercut Union industry's sales prices to a significant extent and that the Union industry is still in a fragile situation.
- (246) Since the volumes of the subsidised imports from China were much lower than during the original investigation period, the Commission concluded that the impact of the magnitude of the countervailing margin on the Union industry was significantly less pronounced than in the original investigation.

4.5.2. Microeconomic indicators

4.5.2.1. Stocks

- (247) Over the period considered stocks levels of the sampled Union producers developed as follows:

Table 8

	2014	2015	2016	RIP
Stocks (tonnes)	68 500-71 500	52 000-55 000	72 000-75 000	83 000-86 000
<i>Index (2014 = 100)</i>	100	77	106	120

Source: Verified questionnaire replies of the sampled Union producers

- (248) The Union producers increased their stock in the period considered. This indicator, however, is not considered to be very relevant to assess the economic situation of the Union producers. OCS is mostly produced on the basis of orders. In any event, the stocks merely represented around 2 % of the total sales during the review investigation period.

4.5.2.2. Average unit sales prices in the Union and cost of production

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

Table 9

	2014	2015	2016	RIP
Average unit sales price to unrelated parties (EUR/tonne)	805-820	760-775	740-755	895-910
<i>Index (2014 = 100)</i>	100	94	92	111
Unit cost of production (EUR/tonne)	800-850	750-800	650-730	850-900
<i>Index (2014 = 100)</i>	100	94	87	106

Source: Verified questionnaire replies of the sampled Union producers

- (250) Over the period considered, the Union industry managed to increase its sales prices by 11 %. Following price decreases between 2014 and 2015 and then between 2015 and 2016, prices went up again between 2016 and 2017. Both the decreases and the increase are closely connected to the changes in raw material prices.

4.5.2.3. Profitability and cash flow

Table 10

	2014	2015	2016	RIP
Profitability (%)	- 1,5-0	- 0,5-1	2,5-4	3,5-5
Index (2014 = 100)	- 100	101	413	506

Source: Verified questionnaire replies of the sampled Union producers

- (251) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. The net cash flow is the ability of the Union producers to self-finance their activities.
- (252) During the period considered the Union industry stopped making losses. The improvement of the profitability was clearly related to the fact that the Union industry managed to increase its sales and production volume as well as sales prices in the years following the imposition of the original measures. However, profitability remained below the target profit that was considered healthy and sustainable in the original investigation (i.e. 6,7 %).

Table 11

	2014	2015	2016	RIP
Cash flow (EUR)	- 18 000 000- (- 15 000 000)	28 000 000- 31 000 000	30 000 000- 34 000 000	34 000 000- 37 000 000
Index (2014 = 100)	- 100	273	295	311

Source: Verified questionnaire replies of the sampled Union producers

- (253) During the period considered the evolution of the cash flow reflects mainly the development of the overall profitability of the Union industry.

4.5.2.4. Investment, return on investments and ability to raise capital

Table 12

	2014	2015	2016	RIP
Investments (EUR)	12 000 000- 17 000 000	20 000 000- 25 000 000	27 000 000- 32 000 000	25 000 000- 30 000 000
Index (2014 = 100)	100	159	200	180
Return on investments (net assets) (%)	- 2,2	0,0	7,0	11,0

Source: Verified questionnaire replies of the sampled Union producers

- (254) During the period considered the Union industry, highly capital-intensive, made regular investments for the optimisation and upgrading of the existing production machinery. In addition, significant investments were made in order to comply with legal requirements for environment protection and increased safety. Depending on the company, there were investments aimed at costs reduction, energy optimisation and/or also at revamping facilities that had been negatively affected by the lower capacity utilisation observed during the original investigation period.

- (255) Return on investments is the profit in percentage of the net book value of investments. The return on investments during the period considered followed closely the profitability trend.
- (256) Since the imposition of measures the ability to raise capital has improved.

4.5.2.5. Wages

Table 13

	2014	2015	2016	RIP
Labour costs per employee (EUR)	63 000-72 000	63 000-72 000	64 000-73 000	64 000-73 000
Index (2014 = 100)	100	101	102	102

Source: Verified questionnaire replies of the sampled Union producers

- (257) The average wage levels increased slightly over the period considered, but less than the unit cost of production.

4.6. Conclusion

- (258) The injury analysis shows that the situation of the Union industry improved significantly in the period considered. The imposition of the definitive countervailing measures in March 2013 allowed the Union industry to slowly but steadily recover from the injurious effects of the subsidisation. The fact that the Union industry has significantly benefited from the measures is illustrated, inter alia, by increase in production and Union sales volumes, positive cash flow and return on investments, selling prices in general higher than the unit cost of production, minimum increase in labour costs and significantly improved profitability.
- (259) However, even if the Union industry has largely recovered from the past injury and seems to be on the right track to further improve its condition in the long-run, it is still in a fragile situation due to its limited profitability, which is still below the target profit.

5. LIKELIHOOD OF RECURRENCE OF INJURY

- (260) As shown in section 4.6 above the Union industry has largely recovered from the past injury caused by the Chinese subsidised imports. Nonetheless, this section will examine whether the precarious situation of the Union industry will further deteriorate leading to recurrence of material injury should the measure are allowed to lapse.

5.1. Impact of the projected volume of imports and price effects in case of repeal of measures

- (261) Should the measures be repealed, the volume of imports from China is expected to increase dramatically. It is recalled that imports during the original investigation period amounted to more than 702 000 tonnes, while they amounted to 6 338 tonnes during the review investigation period.
- (262) China's overcapacity in steel production is well established⁽⁸⁰⁾. The applicant submitted data from Plantfacts indicating that China's OCS capacity amounts to 7 million tonnes (i.e. more than 4 times China's OCS apparent consumption). This appears to be a conservative estimate. The applicant also provided detailed information dating from 2013 according to which the China Iron and Steel Association published that China colour coated steel production capacity was almost 40 million tonnes in that year.
- (263) Although the Chinese export volumes to the Union shrank after the imposition of the original measures, Chinese producers manufacture significant volumes of product under review and export more than 80 % of it. According

⁽⁸⁰⁾ See e.g. Global forum on steel excess capacity, *Ministerial report 20 September 2018*, https://www.g20.org/sites/default/files/gfsec_ministerial_report_2018.pdf, in which Chinese overcapacity in the sector as a whole is confirmed, by all parties including China. With a steel capacity of 1018,3 million MT in 2017, China accounts for the largest share of global capacity (45 %, according to page 42). Table 1 of the report illustrates that China reduced capacity by 10 % in the period 2014-2017. Page 51 reads that China 'set clear goals for reducing excess capacity, that is, to reduce 100-150 million MT of crude steel capacity from 2016 to 2020'.

to the data published by the World Steel Association, China produced more than 8 million tons of OCS per year in the years 2013-2014. One of the companies supporting the complaint provided figures from the China Metallurgical Newsletter of the China Metallurgical Information and Standardization Research Institute & the Metallurgical Council of the China Council for the Promotion of International Trade suggesting that China produced some 8 million tons of OCS per year in the years 2015-2017. According to the same submission of that applicant, it is estimated that in the period 2015-2017 Chinese OCS apparent consumption ranged 1-1,8 million tons per year.

- (264) However, as important as export markets are for Chinese industry, China faces more and more difficulties accessing them. Between 2016 and 2018 countries such as India, Malaysia, Vietnam, Pakistan or Turkey imposed trade defence measures that affect OCS originating in China. As to the USA, since January 2018 steel (OCS included) from many countries of origin, including China, is subject to a 25 % tariff ⁽⁸¹⁾.
- (265) The Union is the largest OCS market after the Asian and the North/Central America ones.
- (266) The Chinese database shows that in the recent past China exported significant volumes to countries outside the Union at low prices. In 2017 Chinese FOB prices to the Union were 10,5 % higher than for instance to Korea, China's main export market for this product. During the review investigation period, the volumes exported to countries outside the Union were bigger than the total Union industry production and the apparent consumption in the Union. Because of the attractiveness of the Union market in terms of pricing, openness (there are no customs duties for this product) and increased apparent consumption, it is considered that if the measures are terminated, Chinese exporters are likely to re-direct significant volumes of OCS to the more lucrative Union market. The fact that the Union recently adopted safeguards on certain steel products, including OCS, does not alter this conclusion. The import volumes under the tariff rate quotas are set at levels which may allow China to export significant amounts of OCS.
- (267) Furthermore, as described in section 4.3.2, Chinese imports on the Union market significantly undercut the Union producers' prices during the review investigation period, in particular when discounting the effect of the countervailing duties.
- (268) The market for OCS products is very price competitive as the competition mainly takes place on the basis of prices. The potential pressure on the Union industry's prices is further exacerbated by the fact that, according to the request, Chinese sales usually take place for relatively big quantities. If cheap and subsidised imports are sold in significant quantities on the Union market, the Union producers will lose large sales volumes. The ability to raise capital and to invest could be hindered if the profitability of Union producers drops further or becomes negative.

5.2. Conclusion

- (269) Therefore, the Commission concluded that the repeal of measures on the imports from China would likely result in a recurrence of injury to the Union industry.

6. UNION INTEREST

6.1. Introduction

- (270) In accordance with Article 31 of the basic Regulation, it was examined whether the maintenance of the existing subsidisation measures would not be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of the various interests involved, that is those of the Union industry on the one hand, and those of importers and users on the other hand.
- (271) It should be recalled that, in the original investigation, the adoption of measures was considered not to be against the interest of the Union. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which subsidisation measures have already been in place, allows for the assessment of any undue negative impact on the parties concerned by the current subsidisation measures.
- (272) On this basis it was examined whether, despite the conclusions on the likelihood of continuation of subsidisation and recurrence of injury, it could be concluded that it would not be in the Union interest to maintain measures in this particular case.

⁽⁸¹⁾ Section 232 Tariffs on Aluminum and Steel, <https://www.cbp.gov/trade/programs-administration/entry-summary/232-tariffs-aluminum-and-steel>.

6.2. Interest of the Union industry

- (273) The investigation showed that should the measures expire, this would likely have a significant negative effect on the Union industry. The Union industry's situation would quickly deteriorate in terms of lower sales volumes and sales prices resulting in a strong decrease in profitability. The continuation of measures would allow the Union industry to further exploiting its potential on a Union market that is a level-playing field.
- (274) Therefore, maintaining the countervailing measures in force is in the interest of the Union industry.

6.3. Interest of importers

- (275) As mentioned in recital (18) above, nine known importers were contacted in this investigation and invited to cooperate. None came forward or cooperated in any way in the investigation.
- (276) It is recalled that in the original investigation it was found that, given the importers' profits and sources of supply, any negative impact of the imposition of measures on importers, if any, would not be disproportionate.
- (277) In the current investigation there is no evidence on file suggesting the opposite, and it can thus accordingly be confirmed that the measures currently in force had no substantial negative effect on the financial situation of importers and that the continuation of the measures would not unduly affect them.

6.4. Interest of users

- (278) Some sixty known users were contacted in this investigation and invited to cooperate. No user came forward or cooperated in any way in the investigation.
- (279) It is recalled that in the original investigation ten users submitted questionnaire replies. At that time it was found that, given the users' profits and sources of supply, the impact of the imposition of measures on users, if any, would not be disproportionate.
- (280) In the current investigation there is no evidence on file suggesting that the measures in force affected them in any negative way. In fact the applicant submitted evidence that key users experienced improvements in profitability during the period under review. According to the request, the measures in place do not have a sizeable impact on users and consumers as OCS represents a negligible part of the cost of downstream products (for example 0,42 EUR of the cost of producing a washing machine or 0,4 % of the investment of an empty factory building).
- (281) On that basis it is confirmed that the measures currently in force had no substantial negative effect on the financial situation of users and that the continuation of the measures would not unduly affect them.

6.5. Conclusion

- (282) Therefore, the Commission concluded that there are no compelling reasons of Union interest against the maintenance of the definitive countervailing measures on imports of OCS originating in the PRC.

7. COUNTERVAILING MEASURES

- (283) It follows from the above that, as provided for by Article 18 of the basic Regulation, the countervailing measures applicable to imports of certain organic coated steel products originating in China should be maintained.
- (284) A company may request the application of individual countervailing duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ⁽⁸²⁾. 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 notice informing about the change of name should be published in the *Official Journal of the European Union*.

⁽⁸²⁾ European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170, 1040 Brussels, Belgium.

- (285) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 ⁽⁸³⁾, 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.
- (286) 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 countervailing duty is imposed on imports of certain organic coated steel products, i.e. flat-rolled products of non-alloy and alloy steel (not including stainless steel) which are painted, varnished or coated with plastics on at least one side, excluding so-called 'sandwich panels' of a kind used for building applications and consisting of two outer metal sheets with a stabilising core of insulation material sandwiched between them, excluding those products with a final coating of zinc-dust (a zinc-rich paint, containing by weight 70 % or more of zinc), and excluding those products with a substrate with a metallic coating of chromium or tin, currently falling within CN codes ex 7210 70 80, ex 7212 40 80, ex 7225 99 00, ex 7226 99 70 (TARIC codes 7210 70 80 11, 7210 70 80 91, 7212 40 80 01, 7212 40 80 21, 7212 40 80 91, 7225 99 00 11, 7225 99 00 91, 7226 99 70 11 and 7226 99 70 91), and originating in the People's Republic of China.

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

Company	Duty (%)	TARIC Additional Code
Union Steel China	13,7	B311
Zhangjiagang Panhua Steel Strip Co., Ltd, Chongqing Wanda Steel Strip Co., Ltd, and Zhangjiagang Free Trade Zone Jiaxinda International Trade Co., Ltd	29,7	B312
Zhejiang Huadong Light Steel Building Material Co. Ltd and Hangzhou P.R. P.T. Metal Material Company, Ltd	23,8	B313
Angang Steel Company Limited	26,8	B314
Anyang Iron Steel Co., Ltd	26,8	B315
Baoshan Iron & Steel Co., Ltd	26,8	B316
Baoutou City Jialong Metal Works Co., Ltd	26,8	B317
Changshu Everbright Material Technology Co., Ltd	26,8	B318
Changzhou Changsong Metal Composite Material Co., Ltd	26,8	B319
Cibao Modern Steel Sheet Jiangsu Co., Ltd	26,8	B320
Inner Mongolia Baotou Steel Union Co., Ltd	26,8	B321
Jiangyin Ninesky Technology Co., Ltd	26,8	B322
Jiangyin Zhongjiang Prepainted Steel Mfg Co., Ltd	26,8	B323
Jigang Group Co., Ltd	26,8	B324
Maanshan Iron&Steel Company Limited	26,8	B325

⁽⁸³⁾ 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.

Company	Duty (%)	TARIC Additional Code
Qingdao Hangang Color Coated Sheet Co., Ltd	26,8	B326
Shandong Guanzhou Co., Ltd	26,8	B327
Shenzen Sino Master Steel Sheet Co., Ltd	26,8	B328
Tangshan Iron And Steel Group Co., Ltd	26,8	B329
Tianjin Xinyu Color Plate Co., Ltd	26,8	B330
Wuhan Iron And Steel Company Limited	26,8	B331
Wuxi Zhongcai New Materials Co., Ltd	26,8	B332
Xinyu Iron And Steel Co., Ltd	26,8	B333
Zhejiang Tiannu Color Steel Co., Ltd	26,8	B334
All other companies	44,7	B999

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

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

Article 2

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, 2 May 2019.

For the Commission
The President
Jean-Claude JUNCKER

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2019/689

of 16 January 2019

on a pilot project to implement certain administrative cooperation provisions set out in Council Directive 91/477/EEC by means of the Internal Market Information System

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation')⁽¹⁾, and in particular Article 4(1) thereof,

Whereas:

- (1) The Internal Market Information System ('IMI') established by Regulation (EU) No 1024/2012 is a software application that is accessible via the internet and was developed by the Commission, in cooperation with the Member States, to help Member States comply with information exchange requirements in Union acts by providing a centralised communication mechanism to facilitate the cross-border exchange of information and mutual assistance.
- (2) Article 4(1) of Regulation (EU) No 1024/2012 allows the Commission to carry out pilot projects to assess the effectiveness of IMI in the implementation of administrative cooperation provisions in Union acts not listed in the Annex to that Regulation.
- (3) Council Directive 91/477/EEC⁽²⁾ provides for administrative cooperation between Member States in relation to controls on the acquisition and possession of firearms. Article 13 of the Directive requires the Commission to lay down detailed arrangements for the systematic exchange of certain information by electronic means. The Commission has adopted Delegated Regulation (EU) 2019/686⁽³⁾ laying down detailed arrangements for the systematic exchange of information relating to the transfer of firearms within the Union. IMI could be an effective tool in the implementation of the administrative cooperation provisions falling within the scope of that Delegated Regulation. Those provisions should therefore be the subject of a pilot project under Article 4 of Regulation (EU) No 1024/2012.
- (4) IMI should provide the technical functionality allowing the national authorities referred to in Article 13(3) of Directive 91/477/EEC to meet all their obligations set out in Articles 4, 5 and 6 of Delegated Regulation (EU) 2019/686.
- (5) In relation to information and documents containing personal data transmitted or uploaded as part of the pilot project, the date to be considered as formal closure of the administrative cooperation procedure should be clearly established to ensure that the personal data is blocked and removed as soon as it is no longer necessary for the purposes for which it was collected. The date to be considered as formal closure should be the expiry date of the relevant prior consent document, transfer authorisation or accompanying document, as transmitted by the competent authority.
- (6) Pursuant to Article 4(2) of Regulation (EU) No 1024/2012, the Commission is to submit an evaluation of the outcome of the pilot project to the European Parliament and the Council. It is appropriate to specify the date by which it is to do so.

⁽¹⁾ OJ L 316, 14.11.2012, p. 1.

⁽²⁾ Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons (OJ L 256, 13.9.1991, p. 51).

⁽³⁾ Commission Delegated Regulation (EU) 2019/686 of 16 January 2019 laying down the detailed arrangements under Council Directive 91/477/EEC for the systematic exchange, by electronic means, of information relating to the transfer of firearms within the Union (see page 1 of this Official Journal).

- (7) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 24 of Regulation (EU) No 1024/2012,

HAS ADOPTED THIS DECISION:

Article 1

The pilot project

Paragraphs 2 and 4 of Article 13 of Directive 91/477/EEC, insofar as the exchange of information mentioned in those paragraphs falls within the scope of Delegated Regulation (EU) 2019/686, shall be subject to a pilot project to implement the administrative cooperation provisions set out in those paragraphs, as further detailed in that Delegated Regulation, by means of the Internal Market Information System ('IMI').

Article 2

Competent authorities

For the purposes of the pilot project, the national authorities referred to in Article 13(3) of Directive 91/477/EEC shall be considered as competent authorities.

Article 3

Administrative cooperation between competent authorities

1. For the purposes of the administrative cooperation detailed in Article 4 of Delegated Regulation (EU) 2019/686, IMI shall provide a notification functionality for uploading the documents and transmitting the information referred to in that Article.
2. For the purposes of the administrative cooperation detailed in Article 5 of Delegated Regulation (EU) 2019/686, IMI shall provide a repository for storing and sharing the lists of firearms referred to in that Article.
3. For the purposes of the administrative cooperation detailed in Article 6 of Delegated Regulation (EU) 2019/686, IMI shall provide a notification functionality for uploading the documents and transmitting the information referred to in that Article.

Article 4

Formal closure of administrative cooperation procedures

For the purposes of blocking and deleting personal data pursuant to Article 14 of Regulation (EU) No 1024/2012, the expiry date transmitted pursuant to Article 4(1)(e) or, as applicable, Article 6(1)(g) of Delegated Regulation (EU) 2019/686 shall be considered as the date of formal closure of the administrative cooperation procedure in question.

Article 5

Monitoring and reporting

The Commission shall provide Member States with statistics and information on the usage of IMI and the functioning of the pilot project. Such reporting shall not include statistics on the numbers and categories of firearms transferred between Member States.

Article 6

Evaluation

The evaluation of the outcome of the pilot project required by Article 4(2) of Regulation (EU) No 1024/2012 shall be submitted to the European Parliament and the Council by 31 December 2022.

*Article 7***Entry into force**

This Decision shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 16 January 2019.

For the Commission

The President

Jean-Claude JUNCKER

COMMISSION IMPLEMENTING DECISION (EU) 2019/690**of 30 April 2019****on a measure taken by Sweden pursuant to Directive 2006/42/EC of the European Parliament and of the Council prohibiting the placing on the market of wind turbine models SWT-2.3-101 and SWT-3.0-113 and withdrawing the machines already placed on the market***(notified under document C(2019) 3118)***(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC ⁽¹⁾, and in particular the second subparagraph of Article 11(3) thereof,

Whereas:

- (1) Sweden took a measure prohibiting the placing on the market and withdrawing from the market the wind turbine model SWT-2.3-101, which was not in conformity with the essential health and safety requirement set out in section 1.3.8.1 and 1.4.2.1 of Annex I to Directive 2006/42/EC. Section 1.3.8.1 on moving transmission parts requires that guards designed to protect persons against hazards generated by moving transmission parts must be fixed as referred to in section 1.4.2.1. Pursuant to section 1.4.2.1, fixed guards must be fixed by systems that can be opened or removed only with tools. In that regard, Sweden indicated that the fixed guard protecting against moving parts on the rotor of model SWT-2.3-101 can be opened without a separate tool, which constitutes a non-conformity with requirements set out in sections 1.3.8.1 and 1.4.2.1 of Annex I to Directive 2006/42/EC.
- (2) With regard to wind turbine model SWT-3.0-113, Sweden took the measure considering that the machine was not in conformity to the essential health and safety requirement set out in section 1.5.14. of Annex I to Directive 2006/42/EC. The essential health and safety requirement 1.5.14. on the risk of being trapped in a machine requires that machinery must be designed, constructed or fitted with a means of preventing a person from being enclosed within it or, if that is impossible, with a means of summoning help. In that regard, Sweden indicated that the smoke detector of wind turbine SWT-3.0-113 does not have a warning signal to warn any person who may be inside the turbine in the event of a fire.
- (3) After receiving the notification of the safeguard measure from Sweden, the Commission entered into consultation with the parties concerned in order to hear their views. The Commission sent a letter to the manufacturer on 12 November 2018. In its reply of 30 November 2018, the manufacturer informed the Commission that it has taken measures to rectify the non-conformities of wind turbine models SWT-2.3-101 and SWT-3.0-113 in order to ensure compliance with the Directive 2006/42/EC and that those measures were finalised before the set deadline of 31 December 2017.
- (4) The explanation provided by Sweden with respect to the safeguard measure and the documentation available to the Commission, demonstrate that the wind turbine model SWT-2.3-101 failed to satisfy the essential health and safety requirements set out in section 1.3.8.1. and 1.4.2.1. of Annex I to the Directive 2006/42/EC. In addition, wind turbine model SWT-3.0-113 failed to satisfy the essential health and safety requirement set out in section 1.5.14. of Annex I to Directive 2006/42/EC. The deficiencies are liable to compromise the health and safety of persons.
- (5) Therefore, the safeguard measure taken by Sweden should be considered justified,

HAS ADOPTED THIS DECISION:

Article 1

The measures taken by Sweden to prohibit the placing on the market of and to withdraw from the market the wind turbine model SWT-2.3-101 and the wind turbine model SWT-3.0-113 manufactured by Siemens Gamesa Renewable Energy AB are justified.

⁽¹⁾ OJ L 157, 9.6.2006, p. 24.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 30 April 2019.

For the Commission
Elżbieta BIENKOWSKA
Member of the Commission

COMMISSION DECISION (EU) 2019/691**of 2 May 2019****authorising, in accordance with Article 4(5) of Commission Implementing Regulation (EU) 2018/574, economic operators to use the services of another ID issuer****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC ⁽¹⁾, and in particular Article 15 thereof,

Whereas:

- (1) Directive 2014/40/EU and Commission Implementing Regulation (EU) 2018/574 ⁽²⁾ set out the legal framework for the establishment of a Union-wide traceability system for tobacco products. At Union level, those acts also implement Article 8 of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control ⁽³⁾, which has been ratified by the European Union ⁽⁴⁾ and provides for an establishment of a global tracking and tracing regime for tobacco products.
- (2) In order to enable all tobacco products to be tracked and traced throughout the Union, Article 15(1) of Directive 2014/40/EU requires Member States to ensure that all unit packets of those products are marked with a unique identifier. Pursuant to Article 15(13) that requirement will apply to cigarettes and roll-your-own tobacco from 20 May 2019.
- (3) Article 3(1) of Implementing Regulation (EU) 2018/574 obliges each Member State to appoint an entity (the 'ID issuer') responsible for generating and issuing the unique identifiers. Article 3(6) requires Member States to notify the Commission of the appointment of the ID issuer and of its identification code within one month of its appointment.
- (4) Article 4 of Implementing Regulation (EU) 2018/574 lays down rules on the competent ID issuers for generating and issuing unique identifiers depending on where the products are manufactured, imported or aggregated. Furthermore, pursuant to the second subparagraph of Article 4(1), a Member State may require that its appointed ID issuer is competent for generating and issuing unique identifiers for all tobacco products placed on its market.
- (5) Article 4(5) of Implementing Regulation (EU) 2018/574 provides that, in the event of the temporary absence of the competent ID issuer, the Commission may authorise economic operators to use the services of another ID issuer already appointed in accordance with Article 3 of that Regulation.
- (6) Articles 9(2) and 13(2) of Implementing Regulation (EU) 2018/574 require economic operators, introducing requests for unit and aggregated level unique identifiers, to supply the information listed in Points 2.1 and 2.2 of Section 2 of Chapter II of Annex II to that Regulation. That information is necessary for the generation of the unique identifiers and includes identifier codes, which allow for the registration of economic operators, facilities, and machines in the traceability system. Therefore, identifier codes are essential in enabling economic operators

⁽¹⁾ OJ L 127, 29.4.2014, p. 1.

⁽²⁾ Commission Implementing Regulation (EU) 2018/574 of 15 December 2017 on technical standards for the establishment and operation of a traceability system for tobacco products (OJ L 96, 16.4.2018, p. 7).

⁽³⁾ Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control (OJ L 268, 1.10.2016, p. 10).

⁽⁴⁾ Council Decision (EU) 2016/1749 of 17 June 2016 on the conclusion, on behalf of the European Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control, with the exception of its provisions falling within the scope of Title V of Part Three of the Treaty on the Functioning of the European Union (OJ L 268, 1.10.2016, p. 1). Council Decision (EU) 2016/1750 of 17 June 2016 on the conclusion, on behalf of the European Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control, as regards its provisions on obligations related to judicial cooperation in criminal matters and the definition of criminal offences (OJ L 268, 1.10.2016, p. 6).

to request unique identifiers from the competent ID issuer. Furthermore, the unique identifiers and the identifier codes are jointly necessary for recording and transmission of information on product movements and transactional events. The rules on requesting identifier codes for economic operators, facilities, and machines are set out in Articles 14, 16 and 18 of Implementing Regulation (EU) 2018/574. The competence of the ID issuers for issuing identifier codes is based on the operational location of economic operators.

- (7) At the time of the adoption of this Decision, several Member States have not notified to the Commission the appointment of their respective ID issuers in accordance with Article 3(6) of Implementing Regulation (EU) 2018/574. In the absence of a competent ID issuer, economic operators will not be able to request the identifier codes and the unique identifiers. Consequently, those economic operators will be prevented from placing their products on the market. This could affect the smooth functioning of the internal market, in particular the intra-community trade of tobacco products, and this might compromise the very purpose of the traceability system and the elimination of illicit trade in tobacco products.
- (8) In order to limit to a certain extent the potential distortion of the smooth functioning of the internal market and to help in ensuring that the traceability system starts functioning on time, the Commission should for a limited period of time authorise, in accordance with Article 4(5) of Implementing Regulation (EU) 2018/574, the economic operators to use the services of an already appointed ID issuer.
- (9) It is for the ID issuers already appointed in accordance with Article 3(1) of Implementing Regulation (EU) 2018/574 to decide whether to accept requests from economic operators for generating and issuing unique identifiers. In the temporary absence of the competent ID issuer, other appointed ID issuers may also provide economic operators with the identifier codes necessary for generating and issuing the unique identifiers and in order to fulfil the obligations set out in Article 15(5) of Directive 2014/40/EU and Chapter VI of Implementing Regulation (EU) 2018/574. The provision of additional services should in no circumstances put at risk the other operations of the ID issuer.
- (10) The identifier codes generated by ID issuers in the temporary absence of the competent ID issuer should be transferred to the competent ID issuer once it is appointed along with other relevant information referred to in Articles 14(2), 16(2) and 18(2) of Implementing Regulation (EU) 2018/574. The transfer should be done electronically without undue delay on the basis of a request from the competent ID issuer addressed to the ID issuers who decided to generate the identifier codes in the temporary absence of the competent ID issuer.
- (11) The authorisation to use the services of another ID issuer under Article 4(5) of Implementing Regulation (EU) 2018/574 should only apply in the temporary absence of the competent ID issuer.
- (12) This Decision should not affect the competence rules set out in the Implementing Regulation (EU) 2018/574 with respect to issuing and registration of economic operator and facility codes for operators of first retail outlets.
- (13) Taking into account that the traceability system as set out in Article 15 of Directive 2014/40/EU applies to cigarettes and roll-your-own tobacco from 20 May 2019, this Decision should enter into force on the day of its publication in the *Official Journal of the European Union*.
- (14) Given the temporary nature of the authorisation under Article 4(5) of Implementing Regulation (EU) 2018/574, the Commission considers it necessary to limit this Decision in time,

HAS ADOPTED THIS DECISION:

Article 1

The Commission authorises, in accordance with Article 4(5) of Implementing Regulation (EU) 2018/574, economic operators as defined in Point 2 of Article 2 of that Regulation to use the services of another ID issuer that has been appointed in accordance with Article 3 of Implementing Regulation (EU) 2018/574.

The authorisation referred to in the first subparagraph shall be valid only during the temporary absence of the competent ID issuer and in any event no later than until 31 December 2019.

This Decision shall not affect competence rules set out in the Implementing Regulation (EU) 2018/574 with respect to issuing and registration of economic operator and facility codes for operators of first retail outlets.

Article 2

Economic operator, facility and machine identifier codes generated by the ID issuers in the temporary absence of the competent ID issuer shall be transferred to the competent ID issuer once it is appointed, upon its request and without undue delay. Those identifier codes shall be transferred along with other relevant information referred to in Articles 14(2), 16(2) and 18(2) of Implementing Regulation (EU) 2018/574.

The transfer shall be done electronically.

Economic operators shall be informed of the transfer by the competent ID issuer.

Article 3

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

It shall apply until 31 December 2019 included.

Done at Brussels, 2 May 2019.

For the Commission
The President
Jean-Claude JUNCKER

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