

Official Journal of the European Union

L 272



English edition

Legislation

Volume 59

7 October 2016

Contents

II *Non-legislative acts*

INTERNATIONAL AGREEMENTS

- ★ Notice concerning the provisional application of the stepping stone Economic Partnership Agreement between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part 1

REGULATIONS

- ★ Commission Regulation (EU) 2016/1776 of 6 October 2016 amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council as regards the use of sucralose (E 955) as a flavour enhancer in chewing gum with added sugars or polyols⁽¹⁾ 2
- ★ Commission Implementing Regulation (EU) 2016/1777 of 6 October 2016 imposing a provisional anti-dumping duty on imports of certain heavy plate of non-alloy or other alloy steel originating in the People's Republic of China 5
- ★ Commission Implementing Regulation (EU) 2016/1778 of 6 October 2016 imposing a provisional 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 33
- Commission Implementing Regulation (EU) 2016/1779 of 6 October 2016 establishing the standard import values for determining the entry price of certain fruit and vegetables 70

DECISIONS

- ★ Council Decision (EU) 2016/1780 of 29 September 2016 establishing the position to be taken on behalf of the European Union within the Joint Committee set up under the Agreement between the European Union and Georgia on the facilitation of the issuance of visas, with regard to the adoption of common guidelines for the implementation of that Agreement 72

⁽¹⁾ Text with EEA relevance

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

★ Commission Implementing Decision (EU) 2016/1781 of 5 October 2016 amending Annex II to Decision 2007/777/EC as regards inserting an entry for Saint Pierre and Miquelon in the list of third countries or parts thereof from which the introduction into the Union of meat products and treated stomachs, bladders and intestines is authorised (notified under document C(2016) 6287) ⁽¹⁾	88
★ Commission Implementing Decision (EU) 2016/1782 of 5 October 2016 amending Decision 2008/185/EC as regards the inclusion of Lithuania in the list of Member States where an approved national control programme for Aujeszky's disease is in place and updating the list of national institutes in Annex III (notified under document C(2016) 6288) ⁽¹⁾	90

⁽¹⁾ Text with EEA relevance

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

Notice concerning the provisional application of the stepping stone Economic Partnership Agreement between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part

The European Union and the Republic of Côte d'Ivoire have notified the completion of the procedures necessary for the provisional application of the stepping stone Economic Partnership Agreement between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part ⁽¹⁾, in accordance with Article 75 of that Agreement. Consequently, the Agreement applies provisionally as from 3 September 2016 between the European Union and the Republic of Côte d'Ivoire.

Pending application of the new reciprocal common regime provided for in Article 14 paragraph 2 of the Agreement, both Parties have agreed to apply the provisions contained in Annex II of Regulation (EU) 2016/1076 of the European Parliament and of the Council of 8 June 2016 concerning the definition of the concept of 'originating products' and methods of administrative cooperation.

⁽¹⁾ OJ L 59, 3.3.2009, p.1.

REGULATIONS

COMMISSION REGULATION (EU) 2016/1776

of 6 October 2016

amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council as regards the use of sucralose (E 955) as a flavour enhancer in chewing gum with added sugars or polyols

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives ⁽¹⁾, and in particular Article 10(3) thereof,

Whereas:

- (1) Annex II to Regulation (EC) No 1333/2008 lays down a Union list of food additives approved for use in food and their conditions of use.
- (2) That list may be updated in accordance with the common procedure referred to in Article 3(1) of Regulation (EC) No 1331/2008 of the European Parliament and of the Council ⁽²⁾, either on the initiative of the Commission or following an application.
- (3) On 19 January 2015 an application was submitted for authorisation of the use of sucralose (E 955) as a flavour enhancer in chewing gum with added sugars or polyols. The application was subsequently made available to the Member States pursuant to Article 4 of Regulation (EC) No 1331/2008.
- (4) Sucralose was evaluated in 2000 by the European Union Scientific Committee on Food (SCF) which established an acceptable daily intake (ADI) of 15 mg/kg body weight/day ⁽³⁾.
- (5) The use of sucralose (E 955) as a flavour enhancer in chewing gum with added sugars or polyols increases the overall intensity of the flavour of the chewing gum, and maintains that intensity over a longer period of time as the gum is chewed, compared to other food additive(s) formulations. Increasing the intensity and longevity of the flavour thus provides the consumer with a better overall experience whilst chewing the gum.
- (6) Authorising sucralose at 1 200 mg/kg in chewing gum with added sugars or polyols would lead to an increase in the intake of E 955 within the following limits: between 0 up to 0,1 % of the ADI in the case of mean consumption and between 0 up to 4,3 % of the ADI in the case of high level consumption. This is considered to be an additional minor exposure of the consumer and therefore is not of safety concern.
- (7) Pursuant to Article 3(2) of Regulation (EC) No 1331/2008, the Commission is to seek the opinion of the European Food Safety Authority ('the Authority') in order to update the Union list of food additives set out in Annex II to Regulation (EC) No 1333/2008, except where that update is not liable to have an effect on human health. Since the authorisation of use of sucralose (E 955) as a flavour enhancer in chewing gum with added sugars or polyols constitutes an update of that list which is not liable to have an effect on human health, it is not necessary to seek the opinion of the Authority.

⁽¹⁾ OJ L 354, 31.12.2008, p. 16.

⁽²⁾ Regulation (EC) No 1331/2008 of the European Parliament and of the Council of 16 December 2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings (OJ L 354, 31.12.2008, p. 1).

⁽³⁾ Opinion of the Scientific Committee on Food on sucralose (Adopted by the SCF on 7 September 2000) Available online: http://ec.europa.eu/food/fs/sc/scf/out68_en.pdf

- (8) Therefore, it is appropriate to authorise the use of sucralose (E 955) as a flavour enhancer at a maximum level of 1 200 mg/kg in chewing gum with added sugars or polyols (food subcategory 5.3).
- (9) Annex II to Regulation (EC) No 1333/2008 should therefore be amended accordingly.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to Regulation (EC) No 1333/2008 is amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the twentieth 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, 6 October 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Part E of Annex II to Regulation (EC) No 1333/2008 is amended as follows:

(1) Food category 5.3 'Chewing gum' is amended as follows:

(a) the following entry is inserted after the entry for E 951:

	E 955	Sucralose	1 200	(12)	only with added sugars or polyols, as flavour enhancer'
--	-------	-----------	-------	------	---

(b) the footnote (12) is amended as follows:

'(12) If E 950, E 951, E 955, E 957, E 959 and E 961 are used in combination in chewing gum, the maximum level for each is reduced proportionally'.

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1777**of 6 October 2016****imposing a provisional anti-dumping duty on imports of certain heavy plate of non-alloy or other alloy steel originating in the People's Republic of China**

THE EUROPEAN COMMISSION,

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

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

After consulting the Member States,

Whereas:

1. PROCEDURE**1.1. Initiation**

- (1) On 13 February 2016, the European Commission ('the Commission') initiated an anti-dumping investigation into imports into the European Union ('the Union') of flat products of non-alloy or alloy steel (excluding stainless steel, silicon-electrical steel, tool steel and high-speed steel), hot-rolled, not clad, plated or coated, not in coils, of a thickness exceeding 10 mm and of a width of 600 mm or more or of a thickness of 4,75 mm or more but not exceeding 10 mm and of a width of 2 050 mm or more ('heavy plate') originating in the People's Republic of China ('the PRC') on the basis of Article 5 of Council Regulation (EC) No 1225/2009 ⁽²⁾ ('the basic Regulation').
- (2) The Commission published a Notice of Initiation in the *Official Journal of the European Union* ⁽³⁾ ('the Notice of Initiation').
- (3) The Commission initiated the investigation following a complaint lodged on 4 January 2016 by the European Steel Association ('Eurofer' or 'the complainant') on behalf of producers representing more than 25 % of the total Union production of heavy plate.
- (4) The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

1.2. Registration

- (5) Following a request by the complainant supported by the required evidence, the Commission published on 10 August 2016 Implementing Regulation (EU) 2016/1357 ⁽⁴⁾ making imports of heavy plate originating in the PRC subject to registration as of 11 August 2016 ('the registration Regulation').

1.3. Interested parties

- (6) In the Notice of Initiation, the Commission invited interested parties to come forward in order to participate in the investigation. In addition, the Commission specifically informed the complainant, other known Union producers, the known exporting producers, the authorities of the PRC, known importers, suppliers and users, traders and associations known to be concerned about the initiation and invited them to participate.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ As from 20 July 2016, Council Regulation (EC) No 1225/2009 has been replaced by Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 176, 30.6.2016, p. 21.). The latter Regulation is hereinafter referred to as 'the basic Regulation'.

⁽³⁾ OJ C 58, 13.2.2016, p. 20.

⁽⁴⁾ OJ L 215, 10.8.2016, p. 23.

- (7) Interested parties were given the opportunity to make their views known in writing on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.
- (8) The Commission also informed producers in Australia, Brazil, Canada, India, Japan, the Republic of Korea, Malaysia, Mexico, Russia, the Former Yugoslav Republic of Macedonia, Ukraine and the United States of America about the initiation and invited them to participate.
- (9) In the Notice of Initiation, the Commission informed interested parties that it envisaged the use of the United States of America as the third market economy country ('analogue country') within the meaning of Article 2(7)(a) of the basic Regulation.
- (10) Interested parties had an opportunity to comment on the appropriateness of the choice of the analogue country and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.4. Sampling

- (11) In the Notice of Initiation, the Commission stated that it might sample exporting producers, Union producers and unrelated importers in the Union in accordance with Article 17 of the basic Regulation.

1.4.1. Sampling of Union producers

- (12) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission had selected the sample on the basis of the highest representative sales volumes of the like product in the investigation period whilst ensuring a geographical spread.
- (13) This provisional sample consisted of three Union producers located in three different Member States and accounted for over 26 % of the total sales of heavy plate by the Union producers responding to the standing exercise. The Commission invited interested parties to comment on the provisional sample.
- (14) The Complainant and the sampled company itself submitted that it was not appropriate that Metinvest Trametel Spa ('Trametel') be included in the sample as this company is not an integrated mill but rather a re-roller of purchased slab from a related company in Ukraine and therefore allegedly not representative of the Union industry.
- (15) The Union industry consists of both integrated mills and re-rollers, and both types of Union producers are among the complainants. However, the vast majority of the heavy plates produced by the Union industry are produced by integrated mills.
- (16) The Commission established in addition that Trametel obtains slabs, the main input material typically accounting for around 70 % of total costs, from their related company in Ukraine. Therefore, in particular indicators relating to costs and profitability are directly impacted by this relationship as well as the performance and the particular situation of the related Ukrainian company supplying the slabs.
- (17) The Commission notes however that the situation of both types of the Union producers — integrated mills and re-rollers is fully reflected in the macroeconomic indicators described in recitals (105) to (124) below.
- (18) For the reasons listed in recitals (14) to (16) above the Commission however provisionally considers that the particular situation of Trametel is not representative for the Union industry and that the microeconomic indicators described in recitals (125) to (138) below should not be affected by it.
- (19) The Commission found this comment to be warranted and, after having considered the preliminary injury information at hand, it replaced Trametel in the sample by Ilsenburg Grobblech GmbH, the second biggest Union producer when ranked according to Union sales volume in the investigation period as defined in recital (28) below.

- (20) On 7 March 2016 the Commission made available to interested parties a note explaining the reasons for changing the sample and listing the companies included in the revised sample. No interested parties commented on the final sample.

1.4.2. *Sampling of importers*

- (21) The Commission requested unrelated importers to provide the information specified in the Notice of Initiation in order to decide whether sampling was necessary and, if so, to select a sample.
- (22) Six importers provided the requested information and agreed to be included in the sample. Three of them were sampled.

1.4.3. *Sampling of exporting producers in the PRC*

- (23) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in the PRC 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 exporting producers that could be interested in participating in the investigation.
- (24) Fourteen exporting producers in the PRC provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three companies on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available. In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned, and the authorities of the PRC, were consulted on the selection of the sample. No comments were received and the sample was therefore confirmed.

1.5. **Individual examination**

- (25) Seven exporting producers in the PRC indicated that they wished to request individual examination under Article 17(3) of the basic Regulation. However, none of them replied to the questionnaire and, thus, no requests for individual examinations were received.

1.6. **Replies to the questionnaire**

- (26) The Commission sent questionnaires to all parties known to be concerned and to all other companies that made themselves known within the deadlines set out in the Notice of Initiation. Questionnaire replies were received from three Union producers, six unrelated importers, ten users, a group of steel service centres, the three sampled exporting producers in the PRC, and two producers in different analogue countries.

1.7. **Verification visits**

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

— Association:

— Eurofer, Brussels, Belgium;

— Union producers:

— Aktiengesellschaft der Dillinger Hüttenwerke, Dillingen, Germany

— Ilseburger Grobblech GmbH, Ilseburg, Germany

— Tata Steel UK Ltd ⁽¹⁾, Scunthorpe, UK

⁽¹⁾ On 11 April 2016 Tata Steel sold its Long Products Europe business including heavy plates to Greybull Capital. As a result, British Steel was created.

- Exporting producers in the PRC
 - Nanjing Iron and Steel Co., Ltd,
 - Minmetals Yingkou Medium Plate Co., Ltd,
 - Wuyang Iron and Steel Co., Ltd and Wuyang New Heavy & Wide Steel Plate Co., Ltd;
- Producer in the analogue country
 - Bluescope Steel Australia, Port Kembla, Australia.

1.8. Investigation period and period considered

- (28) The investigation of dumping and injury covered the period from 1 January 2015 to 31 December 2015 ('the investigation period' or 'IP').
- (29) The examination of trends relevant for the assessment of injury covered the period from 1 January 2012 to the end of the investigation period ('the period considered').

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (30) The product concerned is flat products of non-alloy or alloy steel (excluding stainless steel, silicon-electrical steel, tool steel and high-speed steel), hot-rolled, not clad, plated or coated, not in coils, of a thickness exceeding 10 mm and of a width of 600 mm or more or of a thickness of 4,75 mm or more but not exceeding 10 mm and of a width of 2 050 mm or more currently falling within CN codes ex 7208 51 20, ex 7208 51 91, ex 7208 51 98, ex 7208 52 91, ex 7208 90 20, ex 7208 90 80, 7225 40 40, ex 7225 40 60 and ex 7225 99 00 ('heavy plate') and originating in the PRC.
- (31) Heavy plate is used in the manufacture of construction, mining and logging equipment; pressure vessels; oil and gas pipelines; shipbuilding and bridges and buildings.

2.2. Like product

- (32) The investigation showed that the following products have the same basic physical characteristics as well as the same basic uses:
 - (a) the product concerned;
 - (b) the product produced and sold on the domestic market of Australia;
 - (c) the product produced and sold in the Union by the Union industry.
- (33) The Commission therefore has provisionally decided that these products are like products within the meaning of Article 1(4) of the basic Regulation.

2.3. Claims regarding product scope

- (34) One interested party argued that the product scope is defined too widely. In particular, it argues that the product scope should be limited to so-called 'commodity heavy plates', while so-called 'special heavy plates' should be excluded from the product definition. In supporting its claim, it mainly relies on two arguments.
- (35) Firstly, it argues that the information provided in the complaint mainly relates to 'commodity heavy plates', which account for the majority of exports from the PRC. Secondly, it argues that the product scope is wider than the definition of the like product in Article 1(4) of the basic Regulation.

- (36) The Commission notes in this respect that at the complaint stage only sufficient evidence concerning dumping, injury and a causal link has to be provided. It is therefore not required to provide information about the complete product range at that stage. Limiting the analysis to the most commonly sold grades exported does not mean that the product definition has to be limited to those product types.
- (37) Secondly, Article 1(4) of the basic Regulation provides that the like product has to be identical or closely resembling to the product under consideration. This, however, does not refer to the definition of the product under consideration as such. The various types of the product under consideration merely have to share the same basic characteristics, which is the case as described in recital (32) above.
- (38) The parameters which allegedly differentiate 'special heavy plates' from commodity heavy plates are the chemical composition, the mechanical/technological composition, the delivery condition, the thickness and the certification and inspection for shipbuilding purposes.
- (39) Except of the thickness, none of these parameters concern the basic properties of the product. The party argues that all products with a thickness > 50,8 mm should be excluded from the product scope. In support of the thickness limit, the only argument brought forward by the party is that the complaint did allegedly merely targets heavy plates with a thickness < 50,8 mm, since the *prima facie* evidence provided in one Annex of the complaint concerning the dumping calculation is limited to such products.
- (40) It is however clear that product definition in the complaint also covers products with a thickness > 50,8 mm, as the product definition does not contain an upper limit for the thickness. As stated above, the mere reason that the *prima facie* evidence on dumping only covers the most commonly exported product types does not mean that the product definition is limited to those types.
- (41) The Commission therefore provisionally concludes to leave the product definition unchanged.

3. DUMPING

3.1. Normal value

3.1.1. Market economy treatment ('MET')

- (42) As set out in Article 2(7)(b) of the basic Regulation, if an exporting producer in the PRC complies with the criteria in Article 2(7)(c) and is therefore granted MET, the Commission then determines normal value for that company in accordance with Articles 2(1) to (6).
- (43) The Commission sent a MET claim form to all the sampled exporting producers in order that they could claim that they should be granted MET. None of them returned the claim form and therefore none of the companies could be granted MET.

3.1.2. Analogue country

- (44) Normal value was therefore determined on the basis of the price or constructed value in a market economy third country as set out in Article 2(7)(a) of the basic Regulation. For this purpose, an analogue country had to be selected.
- (45) In the Notice of Initiation, the Commission indicated that it envisaged the use of the United States of America as analogue country and invited interested parties to comment. No comments were received.
- (46) Questionnaires were sent to all known producers of heavy plate in the countries named in recital (8) above and two replies were received: one from a producer in Australia and one from a producer in the United States of America.
- (47) The reply from the producer in the United States of America showed evidence of production and sales on the US domestic market.
- (48) In its questionnaire reply the US producer informed the Commission that the normal US customs duty on imports of heavy plate is zero. Anti-dumping duties are in force on imports from the PRC, and both anti-dumping and anti-subsidy duties on imports from India, Indonesia and the Republic of Korea.

- (49) There are 7 US producers on the domestic US market, and imports from the Republic of Korea, Germany, France and Canada with a market share of 20 %.
- (50) The reply from the Australian producer contained evidence of production and sales on the Australian domestic market, and that it is the only producer in Australia. However, the imports into Australia have a market share of 35 %. Anti-dumping duties are in force on imports from the PRC, Indonesia, Japan, the Republic of Korea and Taiwan, but these duties are low and for some companies zero.
- (51) The Australian domestic market can be considered more competitive because imports take a larger market share and duties on imports are lower.
- (52) The Commission thus concluded at this stage that Australia was an appropriate analogue country under Article 2(7)(a) of the basic Regulation.

3.1.3. Normal value

- (53) The information received from the cooperating producer in the analogue country was used as a basis for the determination of the normal value for the exporting producers not granted MET, under Article 2(7)(a) of the basic Regulation.
- (54) The Commission first examined whether the total volume of domestic sales of the cooperating producer in the analogue country was representative, in accordance with Article 2(2) of the basic Regulation.
- (55) The domestic sales are representative if the analogue country producer's total domestic sales volume of the like product to independent customers on the domestic market represented at least 5 % of total export sales volume of the product concerned to the Union of each sampled exporting producer in the PRC during the investigation period.
- (56) On this basis, the total sales of the cooperating producer of the like product on the domestic market of the analogue country were representative.
- (57) The Commission subsequently identified the product types sold domestically that were identical or comparable with the product types sold for export to the Union by the sampled exporting producers.
- (58) The Commission then examined whether the domestic sales by the analogue country producer on its domestic market for each product type that was identical or comparable with a product type sold for export to the Union by each sampled exporting producer in the PRC were representative, in accordance with Article 2(2) of the basic Regulation.
- (59) The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the investigation period represents at least 5 % of the total volume of export sales by each sampled exporting producer in the PRC of the identical or comparable product type to the Union.
- (60) The Commission found that some product types were representative on this basis, but others were not, either due to low quantities or because the exported product type was not sold domestically by the analogue country producer.
- (61) The Commission next defined the proportion of profitable sales to independent customers on the domestic market for each product type during the investigation period in order to decide whether to use actual domestic sales for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.
- (62) The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if:
 - (1) the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of this product type; and
 - (2) the weighted average sales price of that product type is equal to or higher than the unit cost of production.

- (63) In this case, the normal value is the weighted average of the prices of all domestic sales of that product type during the investigation period.
- (64) The normal value is the actual domestic price per product type of only the profitable domestic sales of the product types during the investigation period, if:
- (1) the volume of profitable sales of the product type represents 80 % or less of the total sales volume of this type; or
 - (2) the weighted average price of this product type is below the unit cost of production.
- (65) When a product type was not sold in representative quantities or not sold at all or all sales were at a loss on the domestic market by the analogue country producer, the Commission constructed the normal value in accordance with Article 2(3) and (6) of the basic Regulation.
- (66) For every product type not sold in representative quantities on the domestic market, normal value was constructed by adding the average selling, general and administrative ('SG&A') expenses and profit of transactions made in the ordinary course of trade on the domestic market for each of those types to their average cost of production.
- (67) For product types not sold at all or where all sales were at a loss on the domestic market, normal value was constructed by adding the average selling, general and administrative ('SG&A') expenses and profit in the ordinary course of trade of the like product on the domestic market to the average cost of production of each type.
- (68) In case where a product type was not sold at all in the domestic market of the analogue country, the cost of production was established on the basis of the cost of the closest cheaper type.

3.2. Export price

- (69) The export price was checked for each sampled exporting producer during the verification visit. When the export to the Union was made to the first unrelated customer directly or via a related trading company, the export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.
- (70) One of the sampled exporting producers exported heavy plate via a related importer in the Union. The export price for those sales was constructed in line with Article 2(9) of the basic Regulation.

3.3. Comparison

- (71) The Commission compared the normal value from the analogue country producer and the export price of the sampled exporting producers on an ex-works basis.
- (72) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for transport related costs, handling, loading and ancillary charges, indirect taxes, commissions, credit costs and bank charges.
- (73) For those sampled exporting producers which sold to the Union via related trading companies with functions similar to those of an agent working on a commission basis, an adjustment was made under Article 2(10)(i) of the basic Regulation.

3.4. Dumping margins

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

- (75) On this basis, the provisional weighted average dumping margins expressed as a percentage of the CIF (cost insurance and freight) Union frontier price, duty unpaid, are as follows:

Table 1

Dumping margins sample

Company	Provisional dumping margin
Nanjing Iron and Steel Co., Ltd	120,1 %
Minmetals Yingkou Medium Plate Co., Ltd	126,0 %
Wuyang Iron and Steel Co., Ltd and Wuyang New Heavy & Wide Steel Plate Co., Ltd	127,6 %

- (76) For the cooperating exporting producers which were not sampled, the Commission calculated the weighted average dumping margin of the sampled exporting producers, in accordance with Article 9(6) of the basic Regulation.
- (77) On this basis, the provisional dumping margin of the cooperating exporting producers outside the sample is 125,5 %.
- (78) For all other exporting producers in the PRC, the Commission established the dumping margin on the basis of the facts available, in accordance with Article 18 of the basic Regulation.
- (79) The Commission first determined the level of cooperation from exporting producers in the PRC. The level of cooperation is based on the volume of the exports to the Union of the cooperating exporting producers as a percentage of the total export volume — as reported in Eurostat import statistics — from the PRC to the Union.
- (80) The level of cooperation in this case is high because the exports of the cooperating exporting producers constituted around 87 % of the total exports to the Union during the investigation period. On this basis, the Commission decided to base the dumping margin for all other companies at the level of the sampled company with the highest dumping margin.
- (81) The provisional dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Table 2

Dumping margins all

Company	Provisional dumping margin
Nanjing Iron and Steel Co., Ltd	120,1 %
Minmetals Yingkou Medium Plate Co., Ltd	126,0 %
Wuyang Iron and Steel Co., Ltd and Wuyang New Heavy & Wide Steel Plate Co., Ltd	127,6 %
Other cooperating companies not sampled	125,5 %
All other companies	127,6 %

4. INJURY

4.1. Definition of the Union industry and Union production

- (82) The like product was manufactured by 30 producers in the Union during the investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (83) 26 of them cooperated with the sampling exercise. These cooperating Union producers represent around 94 % of the total Union industry production and the total Union industry sales of the like product in the investigation period.
- (84) The total Union production of the like product during the investigation period is around 10,3 million tonnes. The Commission established the figure on the basis of all available information concerning the Union industry such as the complaint, verified questionnaire replies by sampled Union producers and verified submission by Eurofer.
- (85) As indicated in recital (1) above, three Union producers were selected in the sample representing around 28,5 % of the total sales of the Union industry and the total Union production volume of the like product during the investigation period.

4.2. Union consumption

- (86) The Commission established the Union consumption on the basis of Eurostat import statistics and verified sales data from the Union industry.
- (87) Union consumption of the heavy plate developed as follows:

Table 3

Union consumption (MT)

	2012	2013	2014	IP (2015)
Total EU consumption (MT)	8 991 777	8 423 747	8 820 363	9 467 177
<i>Index (2012 = 100)</i>	100	94	98	105

Source: Eurostat, verified Eurofer submission and questionnaire replies

- (88) Union consumption increased by 5 % over the period considered. A year-by-year analysis shows an initial drop of 6 % between 2012 and 2013 and a subsequent recovery in 2014 and the investigation period of 11 percentage points or over 1 million tonnes.
- (89) The captive use by Union producers is insignificant as it accounts for less than 0,5 % of Union consumption over the period considered. The injury indicators are therefore assessed for the whole Union market, including quantities captively used by the Union producers.

4.3. Volume and market shares of the imports

- (90) The Commission established the volume of imports of on the basis of the Eurostat database. The market share of the imports was then established by comparing import volumes with the Union consumption as shown in table 3 of recital (87) above.

- (91) Imports of heavy plates into the Union developed as follows:

Table 4

Import volume (MT) and market share

	2012	2013	2014	IP (2015)
Volume of imports from the PRC (MT)	410 583	343 545	693 117	1 359 143
<i>Index (2012 = 100)</i>	100	84	169	331
Market share of the PRC	4,6 %	4,1 %	7,9 %	14,4 %
<i>Index (2012 = 100)</i>	100	89	172	314

Source: Eurostat, verified Eurofer submission and questionnaire replies

- (92) The import volume from the PRC to the Union increased by 231 % over the period considered. After a 16 % decrease between 2012 and 2013 the imports from the PRC picked up substantially in 2014 by 85 percentage points and increased even further in the investigation period by another 162 percentage points.
- (93) The initial decrease in exports from the PRC between 2012 and 2013 was driven by the decreasing consumption on the Union market as shown in table 3 of recital (87) above. After 2013 the Union market experienced a dynamic surge, growing by over 1 million tonnes between 2013 and the investigation period. This growth was almost exclusively absorbed by the imports from the PRC, which increased also by over 1 million tonnes during this period.
- (94) In parallel, the share of the Union market held by imports from the PRC more than tripled from 4,6 % in 2012 to 14,4 % in the investigation period.

4.3.1. Prices of the imports from the PRC and price undercutting

- (95) The Commission established the prices of imports on the basis of Eurostat data. The weighted average price of imports of heavy plates into the Union from the PRC developed as follows:

Table 5

Import price (EUR/tonne)

	2012	2013	2014	IP (2015)
Import price from the PRC	647	539	488	460
<i>Index (2012 = 100)</i>	100	83	75	71

Source: Eurostat

- (96) The average import prices from the PRC decreased by 29 % over the period considered. There was a constant decrease from 647 EUR/tonne in 2012 to 460 EUR/tonne in the investigation period.
- (97) The Commission determined the price undercutting during the investigation period by comparing:
- (1) the weighted average sales prices per product type of the three sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and
 - (2) the corresponding weighted average prices at CIF Union frontier level per product type of the imports from three sampled producers in the PRC to the first independent customer on the Union market, established on a CIF basis, with appropriate adjustments for post-importation costs.

- (98) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the three sampled Union producers' turnover during the investigation period.
- (99) On the basis of the above, the dumped imports from the PRC were found to undercut the Union industry prices on average by 29 %.

4.4. Economic situation of the Union industry

4.4.1. General remarks

- (100) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (101) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators.
- (102) The Commission evaluated the macroeconomic indicators (production, production capacity, capacity utilisation, sales volume, market share, employment, labour costs, growth, productivity, and magnitude of the dumping margins and recovery from past dumping) at the level of the whole Union industry. The assessment was based on the information provided by the complainant, Union producers and available official statistics (Eurostat). The macroeconomic data related to all Union producers.
- (103) The Commission evaluated the microeconomic indicators (average unit sale prices, unit cost, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital) on the basis of data contained in the questionnaire replies from the sampled Union producers, duly verified, and available official statistics (Eurostat). The data related to the sampled Union producers.
- (104) The Commission notes that one of the sampled Union producers suspended the production of heavy plates in December 2015. This suspension has no impact on any injury indicator as it took place at the very end of the investigation period and therefore both sets of data were found to be representative of the economic situation of the Union industry.

4.4.2. Macroeconomic indicators

4.4.2.1. Production, production capacity and capacity utilisation

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

Table 6

Production, production capacity and capacity utilisation

	2012	2013	2014	IP (2015)
Production volume (tonnes)	11 795 082	10 352 766	10 911 713	10 345 121
<i>Index (2012 = 100)</i>	100	88	93	88
Production capacity (tonnes)	16 972 100	16 410 487	16 646 634	16 618 427
<i>Index (2012 = 100)</i>	100	97	98	98
Capacity utilisation	69 %	63 %	66 %	62 %
<i>Index (2012 = 100)</i>	100	91	94	90

Source: Verified Eurofer submission and questionnaire replies

- (106) The production volume of the Union industry decreased by 12 % over the period considered. After a 12 % decrease between 2012 and 2013 the production volume increased slightly in 2014 by 5 percentage points to drop again in 2015 by 5 percentage points back to the level of 2013.
- (107) The initial decrease in production volume between 2012 and 2013 was driven by the decreasing consumption on the Union market as reported in Table 3 of recital (87) above. The Union industry was however not able to benefit from the subsequent growth in consumption between 2013 and the investigation period. While the consumption increased by 11 % or over 1 million tonnes, the production by the Union industry only temporarily slightly increased in 2014, falling back to the low level of 2013 in the investigation period.
- (108) The reported production capacity figures of the Union industry refer to technical capacity, which implies that adjustments, considered as standards by the industry, for set-up time, maintenance, bottle necks and other normal stoppages have been taken into consideration.
- (109) On this basis, the production capacity moderately decreased by 2 % over the period considered in a market growing by 6 % during the same period.
- (110) Since the decrease in production quantity exceeds the decrease in production capacity the capacity utilisation of the Union industry decreased by 10 % over the period considered.

4.4.2.2. Sales volume and market share

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

Table 7

Sales volume and market share

	2012	2013	2014	IP (2015)
Sales volume on the Union market (tonnes)	7 518 049	6 972 140	6 873 967	6 954 688
<i>Index (2012 = 100)</i>	100	93	91	93
Market share of the Union industry	83,6 %	82,8 %	77,9 %	73,5 %
<i>Index (2012 = 100)</i>	100	99	93	88

Source: Verified Eurofer submission and questionnaire replies

- (112) The Union industry's sales volume decreased by 7 % during the period considered. After a 7 % decrease between 2012 and 2013 and an even further decrease in 2014 by 2 percentage points the sales volume increased slightly by 2 percentage points in the investigation period.
- (113) Similar to the development of the production quantity, the initial decrease in sales quantity between 2012 and 2013 was driven by the decreasing consumption on the Union market explained in recital (87) above. The Union industry was however not able to benefit from the subsequent growth in consumption between 2013 and the investigation period. While the Union consumption increased by more than 1million tonnes, the sales quantity by the Union industry remained at the low level of 2013.
- (114) Due to the sales quantity decreasing by 7 % in a market growing by 5 %, the Union industry's market share decreased by 12 % over the period considered.

4.4.2.3. Employment and productivity

(115) Employment and productivity of the Union industry developed over the period considered as follows:

Table 8

Employment and productivity

	2012	2013	2014	IP (2015)
Number of employees (full time employment/FTE)	22 622	20 920	19 688	18 722
<i>Index (2012 = 100)</i>	100	92	87	83
Productivity (tonne/FTE)	521	495	554	553
<i>Index (2012 = 100)</i>	100	95	106	106

Source: Verified Eurofer submission and questionnaire replies

(116) The Union industry reduced the level of employment by 17 % over the period considered. This decrease had two main reasons:

- The 12 % reduction in production volumes caused by increasing quantities of dumped imports from the PRC;
- Union industry's efforts to reduce production costs and gain efficiency in view of the increasing competition from dumped imports from the PRC. These efficiency gains increased productivity by 6 %.

(117) The Commission notes that the consumption in the Union market increased by 5 % during the period considered. In the absence of the increasing volumes of dumped imports from the PRC Union industry would therefore have been able to maintain employment since the efficiency gains would have been absorbed by the increased demand.

4.4.2.4. Labour costs

(118) The average labour costs of the Union industry developed over the period considered as follows:

Table 9

Average labour costs per FTE (Full-time equivalent)

	2012	2013	2014	IP (2015)
Average labour costs per FTE (EUR)	49 257	51 594	51 589	55 542
<i>Index (2012 = 100)</i>	100	105	105	113

Source: Verified Eurofer submission and questionnaire replies

(119) Due to substantial reductions in manpower as reported in recital (115) above the average labour cost per employee increased by 13 % over the period considered. In fact, while a certain part of the increased labour cost relates to mandatory wage increases under collective bargaining agreements it is predominantly caused by the costs of reducing workforce and working hours. Such costs include redundancy payments and the higher cost incurred in situations of part-time work due to decreasing production caused by steadily increasing quantities of dumped imports.

4.4.2.5. Growth

- (120) The Union consumption initially decreased from 2012 to 2013 by 6 % or almost 600 000 tonnes. This initial decrease had a negative impact on the situation of the Union industry's sales and production quantities.
- (121) Between 2013 and the investigation period, the situation was different. The Union consumption experienced a dynamic growth of 11 percentage points or more than 1 million tonnes. The Union industry could not however benefit from this dynamic growth. Indeed, the production and sales quantities remained at the very low levels of 2013. The growth of Union market was entirely absorbed by increasing quantities of low-priced dumped imports from the PRC, which equally increased by more than 1 million tonnes between 2013 and the investigation period, as presented in recital (91) above.

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

- (122) The dumping margins of all exporting producers from the PRC exceeded 100 %. The impact of the magnitude of these very high margins of dumping on the Union industry was serious, given the volume and prices of imports from the PRC.
- (123) In 2000, the Council imposed a definitive anti-dumping duty on imports of certain hot-rolled flat products of non-alloy steel originating in the People's Republic of China, India and Romania. These measures covered a very similar product scope to that of the present investigation. These measures expired on 11 August 2005.
- (124) As indicated in recital (221) below the Union industry achieved a profitability exceeding the target profit. The Commission therefore provisionally concludes that the Union industry recovered from the past dumping.

4.4.3. Microeconomic indicators

4.4.3.1. Prices and factors affecting prices

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

Table 10

Sales prices in the Union

	2012	2013	2014	IP (2015)
Sales price (EUR/tonne)	821	691	658	617
<i>Index (2012 = 100)</i>	100	84	80	75
Unit cost of production (EUR/tonne)	836	784	705	680
<i>Index (2012 = 100)</i>	100	94	84	81

Source: Verified questionnaire replies

- (126) The average sales prices of the sampled Union producers have continuously decreased by 25 %, while the average unit cost of production continuously decreased by 19 % over the period considered. Sales prices have been decreasing faster and on average have constantly been lower than the unit cost of production.
- (127) In order to limit the loss in market share the Union producers had to follow the downward price spiral and reduce their sales price significantly. This price decrease significantly exceeds the decrease in their cost of production, which mainly resulted from the decrease in raw material prices over the period considered and the productivity gains achieved through workforce reductions as shown in recital (115) above.

4.4.3.2. Inventories

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

Table 11

Inventories

	2012	2013	2014	IP (2015)
Closing stocks (tonnes)	224 600	228 325	246 532	282 631
<i>Index (2012 = 100)</i>	100	102	110	126
Closing stocks as a percentage of production	9 %	10 %	10 %	12 %
<i>Index (2012 = 100)</i>	100	109	111	135

Source: Verified questionnaire replies

- (129) The level of closing stocks of the three sampled Union producers continuously increased by 26 % over the period considered. At the same time, their level of closing stocks as a percentage of production also continuously increased by 35 %.
- (130) The main reason for the increase in inventories was that although the Union industry tried to prevent the decrease in production volumes, the sales volumes decreased even faster since the Union industry could not benefit at all from the market growth due to the increasing volumes of low-priced dumped imports.

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

- (131) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net loss of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales.
- (132) Profitability, cash flow, investments and return on investments of the sampled Union producers developed over the period considered as follows:

Table 12

Profitability, cash flow, investments and return on investments

	2012	2013	2014	IP (2015)
Profitability of sales in the Union to unrelated customers (% of sales turnover)	1,6 %	– 12,2 %	– 4,4 %	– 10,4 %
<i>Index (2012 = 100)</i>	100	– 773	– 280	– 658
Cash flow ('000 EUR)	52 449	– 109 945	19 964	– 66 035
<i>Index (2012 = 100)</i>	100	– 210	38	– 126
Investments ('000 EUR)	209 128	224 431	170 108	143 420
<i>Index (2012 = 100)</i>	100	107	81	69

	2012	2013	2014	IP (2015)
Return on investment	7,6 %	– 22,4 %	– 2,2 %	– 13,7 %
Index (2012 = 100)	100	– 297	– 29	– 182

Source: Verified questionnaire replies

- (133) Profitability decreased by 758 % over the period considered. After yielding 1,6 % profit in 2012 the sampled Union producers were loss making in all the following years.
- (134) While the heavy loss of 12,2 % in 2013 is influenced by the particularly low demand in that year, the considerable price and volume pressure exerted on the Union industry by the increasing imports from the PRC over 2014 and the investigation period prevented the Union industry from benefiting from the dynamic growth of the Union consumption by 11 percentage points. As indicated in the recital (93) above this growth was almost completely absorbed by the dumped imports from the PRC.
- (135) The net cash flow is the ability of the Union producers to self-finance their activities. The cash flow decreased by 226 % over the period considered. After the 310 % decrease between 2012 and 2013, which was influenced by the particularly low demand in that year, it improved and became slightly positive in 2014. Nevertheless the negative trend continued in the investigation period, where it again became strongly negative.
- (136) The return on investments is the profit in percentage of the net book value of investments. The return on investment decreased by 282 % over the period considered. After the dramatic decrease of 397 % between 2012 and 2013 which was influenced by the particularly low demand in that year, it increased somewhat improved in 2014 and the investigation period while still remaining negative.
- (137) Consequently the Union industry reduced the level of its investments by 31 % over the period considered. After increasing investments between 2012 and 2013 by 7 % the Union industry was forced to reduce them in 2014 by 26 percentage points and in the investigation period by further 12 percentage points. As shown in table 6 of recital (105) above, these investments were not used to increase production capacity.
- (138) The ability to raise capital has been affected by the losses incurred during the period considered and has ultimately resulted in the shut-down of the operations of one of the sampled Union producers.

4.4.4. Conclusion on injury

- (139) The period considered is characterized by two distinct periods: 2012 to 2013 and 2014 till the end of investigation period.
- (140) Initially, between 2012 and 2013 the Union consumption significantly decreased by 6 %. This decreasing consumption had a negative effect on many injury indicators, such as sales volume and prices, production, capacity and capacity utilisation, employment, productivity, profitability, cash flow and return on investments.
- (141) Subsequently, in 2014 and the investigation period the consumption experienced a dynamic growth of 11 percentage points or more than 1 million tonnes. However, the Union industry could not benefit from this growth, which was entirely absorbed by increasing volumes of dumped imports from the PRC.
- (142) Indeed, in this context of increased Union consumption, Union industry did not manage to increase the sales volumes or production volumes, while capacity utilisation even slightly decreased in a growing market.
- (143) The attempts to maintain production levels resulted in an increase of inventories of 24 percentage points. The Union industry also lost 9,3 percentage points market share to imports from the PRC which gained 10,3 percentage points market share at the same time. Unit sales prices dropped by 9 percentage points and cost of production decreased by 13 percentage points.

- (144) This led to a slight improvement of the financial indicators such as profitability, cash flow and return on investment, which however remained largely negative throughout this period. Employment decreased by 9 percentage points, while Union industry managed to increase productivity by 11 percentage points. Furthermore, Union industry had to reduce investments by 38 percentage points in the light of the continuously negative profitability and return on investment.
- (145) Overall, the Union industry as a whole reduced its production and took actual actions to improve efficiency by reducing labour force, production capacity and managed to significantly reduce their costs of manufacturing.
- (146) Despite these actions by the Union industry during the period considered to improve its overall performance, its economic and financial situation deteriorated significantly as losses started to accumulate from 2013 onwards.
- (147) On the basis of the above, the Commission concluded at this stage that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

- (148) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the PRC caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry.
- (149) The Commission ensured that any possible injury caused by factors other than the dumped imports from the PRC was not attributed to the dumped imports. These factors are: fierce competition caused by demand problems on the Union market, low capacity utilisation of the Union industry, imports from other third countries, export sales performance of the Union producers and competition between vertically integrated producers and re-rollers.

5.1. Effects of the dumped imports

- (150) Sales prices of the exporting producers from the PRC decreased by 25 %, from 647 EUR/tonne in 2012 to 460 EUR/tonne in the investigation period. By continuously lowering their unit sales price during the period considered, the producers from the PRC were able to significantly increase their market share from 4,6 % in 2012 to 14,4 % in the investigation period.
- (151) While the drop in demand negatively affected the performance of the Union industry between 2012 and 2013, the subsequent almost continuous increase in imports from the PRC at highly undercutting prices has had a clear negative impact on the performance of the Union industry.
- (152) Indeed, while the Union industry was cutting its costs by reducing employment and benefitting from the decrease in raw material prices, dumped imports kept on increasing and forced the Union industry to decrease its Union sales prices even more to limit its loss of market share, albeit to the detriment of profitability.
- (153) Furthermore, while the Union industry's profitability showed slight improvement by reducing losses in 2014, the volume of imports increased further and prices decreased even more in the investigation period bringing the Union industry prices and profitability further down.
- (154) Moreover, the progressive slowing down of the economy and very significant overcapacity of the steel industry in the PRC has pushed their steel producers to redirect their excess production towards export markets ⁽¹⁾ and the Union market is an attractive export destination.

⁽¹⁾ See for example Communication of the Commission 'Steel: Preserving Sustainable Jobs and Growth in Europe' (COM(2016) 155 final of 16 March 2016)

- (155) Indeed, a large number of other traditionally important export markets imposed or are considering imposing measures against steel products from the PRC, including heavy plates ⁽¹⁾, because prices are artificially driven down by unfair imports leading to unhealthy competition.
- (156) With the growing imposition of trade defence measures across the globe, the Union market has become one of the most attractive destinations for dumped imports from the PRC, to the detriment of the Union industry.
- (157) This conclusion is corroborated by the most recent Eurostat import statistics which show that imports from the PRC have increased even more since the end of the investigation period. Import volumes for the period March to May 2016 increased by approximately 15 % when compared to the import volumes during the investigation period, while average prices of these imports continued to decrease by around 30 %.

5.2. Effects of other factors

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

- (158) One interested party argued that the injury of the Union industry is not caused by imports from the PRC, but by demand problems on the Union market. It argued that while the demand in the Union recovered in 2014 and the investigation period, in 2012 it was 32 % below the peak level in 2007, and in 2014 it was 17 % below the allegedly 'normal' year 2004.
- (159) This weakness in demand has allegedly resulted in fierce competition with regard to the limited quantities needed on the market, which has put a high pressure on the Union sales prices.
- (160) However, this fierce competition caused by the alleged demand problems did not negatively affect the ability of the exporters from the PRC to sell ever increasing quantities of dumped heavy plates on the Union market, increasing their market share from 4,6 % to 14,4 %, causing an almost exactly corresponding loss of market share of the Union industry and exerting a significant price pressure on the Union industry leading to its negative profitability.
- (161) While the demand problems initially had a significant negative impact on the performance of the Union industry in 2013, it is the dumped imports from the PRC which are the main cause for the fierce competition on the Union market, in particular in 2014 and the investigation period.
- (162) Indeed, in 2014 and the investigation period the Union industry could have benefited from the recovery of the market. It was prevented from doing so by a substantial increase in imports from the PRC, which more than tripled during these two years, and captured significant market share to the detriment of the Union industry.
- (163) The Commission therefore concludes that the demand problems on the Union market are not the root cause of the Union industry's injury and do not break the causal link between the dumped imports and the injury of the Union industry.

5.2.2. *Low capacity utilisation of Union producers*

- (164) One interested party argued that the injury of the Union industry is also caused by low capacity utilisation, caused by significant overcapacities of Union producers. They argue that already in 2012, when imports from the PRC were at a relatively low level, the capacity utilisation was already very low, and that the Union industry has not reduced their capacities accordingly.
- (165) However, the demand in the Union significantly increased subsequently, in particular in 2014 and the investigation period where it exceeded the 2012 demand by 6 %. In the absence of strongly increasing quantities of dumped imports from the PRC, this increasing demand would have led to an increasing capacity utilisation of the Union industry, even more so since they decreased their production capacity by 2 % in a growing market.

⁽¹⁾ Third countries with trade defence measures against heavy plates from the PRC include Australia, Brazil, Canada, Indonesia, Malaysia, Mexico, Thailand and the USA.

- (166) The Commission therefore concludes that the low capacity utilisation, in particular in 2014 and the investigation period, are mainly caused by strongly increasing quantities of dumped imports from the PRC.

5.2.3. Imports from other third countries

- (167) The Commission established the volume of imports on the basis of the Eurostat database. Apart from the PRC, the imports came mainly from Ukraine and Russia. The market share of the imports was established by comparing import volumes with the Union consumption as reported in table 3 of recital (87) above.
- (168) The imports into the Union from other third countries developed over the period considered as follows:

Table 13

Imports from third countries (MT) and market shares

		2012	2013	2014	IP (2015)
Ukraine	Volume of imports (MT)	421 553	600 896	713 189	583 132
	<i>Index (2012 = 100)</i>	100	143	169	138
	Market share	4,7 %	7,1 %	8,1 %	6,2 %
	<i>Index (2012 = 100)</i>	100	152	172	131
	Average price	574	477	470	451
	<i>Index (2012 = 100)</i>	100	83	82	79
Russia	Volume of imports (MT)	148 594	158 883	196 207	222 999
	<i>Index (2012 = 100)</i>	100	107	132	150
	Market share	1,7 %	1,9 %	2,2 %	2,4 %
	<i>Index (2012 = 100)</i>	100	114	135	143
	Average price	513	461	446	412
	<i>Index (2012 = 100)</i>	100	90	87	80
Total of all third countries except the PRC	Volume of imports (MT)	1 063 146	1 108 062	1 253 278	1 153 345
	<i>Index (2012 = 100)</i>	100	104	118	108
	Market share	11,8 %	13,2 %	14,2 %	12,2 %
	<i>Index (2012 = 100)</i>	100	111	120	103
	Average price	621	516	505	505
	<i>Index (2012 = 100)</i>	100	83	81	81

Source: Eurostat

- (169) The market share of imports from other third countries remained relatively stable over the period considered while that of imports from the PRC increased by 214 %.

- (170) Furthermore, the market share of Ukraine and Russia increased only slightly over the period considered. For Ukraine the market share rose from 4,7 % to 6,2 % and for Russia from 1,7 % to 2,4 % and this merely to the detriment of other importing countries than the PRC.
- (171) In the context of Union consumption increasing by 5 % and market share of the Union industry decreasing by 10 percentage points over the period considered this means that the imports from the PRC gained market share only from the Union industry.
- (172) In result, the imports from the PRC account for around 54 % of all imports into the Union in the investigation period, whereas imports from Ukraine are at around 23 % and Russia accounts for 9 %.
- (173) The average import price from other third countries decreased much slower than import prices from the PRC. They decreased by 19 % while the import prices from the PRC decreased by 29 %.
- (174) Even though the import prices from Ukraine and Russia are on average still just below the import prices from the PRC they decreased at a much slower rate than the import prices from the PRC over the period considered. Also, these prices are not necessarily directly comparable, since the average price is affected by a different product mix.
- (175) Furthermore the import volumes from Ukraine and Russia in particular or from all other third countries in general have not increased as substantially as those from the PRC. While the volume of imports from the PRC increased by almost 1 million tonnes over the period considered, the import volume from Ukraine increased by around 160 000 tonnes, that from Russia by around 75 000 tonnes and that from all other third countries (including Russia and Ukraine) by around 90 000 tonnes.
- (176) On the basis of above and given the much smaller import volumes from Ukraine and Russia as compared to those from the PRC there is no indication that imports from these two countries were causing injury to the Union industry.
- (177) Imports from all other third countries (including Russia and Ukraine) are — on average — higher priced than imports from the PRC and only had an insignificant market share gain of 1 percentage point.
- (178) The Commission therefore concludes that imports of heavy plates from third countries are not the root cause of the Union industry's injury and do not break the causal link between the dumped imports from the PRC and the injury of the Union industry.

5.2.4. Export sales performance of the Union industry

- (179) The volume and average export prices of exports of the Union industry developed over the period considered as follows:

Table 14

Export performance

	2012	2013	2014	IP (2015)
Export volume to unrelated customers (<i>Union industry</i>)	1 881 932	1 361 279	1 825 628	1 548 156
<i>Index (2012 = 100)</i>	100	72	97	82
Average export price (EUR/t) (<i>Sampled producers</i>)	1 002	831	814	764
<i>Index (2012 = 100)</i>	100	83	81	76

Source: Verified submission of Eurofer and questionnaire replies

- (180) The volume of exports to unrelated customers outside the Union decreased by 18 % over the period considered. After decreasing by 28 % between 2012 and 2013 they increased in 2014 by 25 percentage points, dropping again in the investigation period by 15 percentage points.
- (181) As far as prices are concerned, they dropped significantly by 24 % over the period considered, in line with the price decrease on the Union market (– 25 %).
- (182) Overall, the export performance of the Union industry largely mirrors its performance on the Union market. The Union market, however, is significantly more important for the Union industry than the export markets. Throughout the period considered, sales on the Union market are around 4 times higher than export sales.
- (183) The Commission therefore considers that due to the limited significance of these export sales, the export performance of the Union industry cannot break the causal link between the dumped imports from the PRC and the injury suffered by the Union industry.

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

- (184) One interested party argued that the profit margin of the vertically integrated Union producers is eroded by the lower prices charged by re-rollers in the Union, which allegedly charge prices 6 % - 9 % below the prices charged by vertically integrated producers.
- (185) A re-roller is a company who does not produce their own input material, namely steel slabs. All sampled Union producers produce their own steel slabs and are therefore vertically integrated producers.
- (186) The Commission notes in this respect that the prices of dumped imports from the PRC undercut the Union industry prices on average by 29 % during the investigation period, as stated in recital (99) above. On this basis, prices of dumped imports from the PRC would still be at least 20 % lower than prices of re-rollers in the Union.
- (187) The same party also argued that the quantity produced by re-rollers in the Union is decreasing, since many of them depend on supplies of steel slabs from Ukraine. This supply from Ukraine has however decreased due to supply shortages during the period considered, and that this decrease in supply has not been compensated by production of the other Union producers despite their low capacity utilisation.
- (188) In this respect, the party provided no evidence that the Union producers were not interested or not willing to supply these additional quantities. It is therefore clear that especially these price sensitive customers moved away from products produced by the Union industry to even lower priced dumped imports from the PRC.
- (189) The Commission therefore concludes that the decreasing profitability of vertically integrated Union producers can only be affected to a very limited extent by decreasing quantities of moderately priced heavy plates produced by re-rollers in the Union. It also concludes that their decreasing profitability is overwhelmingly due to very significantly lower-priced dumped imports from the PRC, which also significantly increased in quantity.

5.3. Conclusion on causation

- (190) A causal link was provisionally established between the injury suffered by the Union producers and the dumped imports from the PRC.
- (191) The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports.
- (192) The other identified factors such as the fierce competition caused by demand problems, low capacity utilisation, the imports from third countries, the export sales performance of the Union producers, competition between vertically integrated producers and re-rollers were provisionally not found to break the causal link, even considering their possible combined effect.

- (193) The temporary decrease in consumption in 2013 may have somewhat contributed to the injury in that year, but in the absence of continuously increasing volumes of dumped imports at ever decreasing prices, the Union industry would certainly have been able to benefit from the market growth in the subsequent years. In particular, sales volumes would have recovered, sales prices would not have dropped to such low levels, and better profitability would have been achieved.
- (194) On the basis of the above, the Commission concluded at this stage that the material injury to the Union industry was caused by the dumped imports from the PRC and that the other factors, considered individually or collectively, did not break the causal link.

6. UNION INTEREST

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

6.1. Interest of the Union industry

- (196) The Union industry is located in 14 Member States (Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Italy, Poland, Romania, Slovenia, Spain, Sweden, the UK) and employed directly around 20 000 employees in relation to heavy plates during the period considered.
- (197) 26 Union producers cooperated during the investigation. None of the known producers opposed the initiation of the investigation. As shown above when analysing the injury indicators, the whole Union industry experienced a deterioration of its situation and was negatively affected by the dumped imports.
- (198) The Commission expects that the imposition of provisional anti-dumping duties will restore fair trade conditions on the Union market, putting an end to the price depression and enabling the Union industry to recover. This would result in an improvement of the Union industry's profitability towards levels considered necessary for this capital intensive industry.
- (199) The Union industry has suffered material injury caused by the dumped imports from the PRC. The Commission recalls that most of the injury indicators showed a negative trend during the period considered. In particular, injury indicators related to the financial performance of the sampled Union producers, such as profitability and return on investment, were seriously affected.
- (200) It is therefore important that prices be restored to a non-dumped or at least a non-injurious level in order to allow all producers to operate under conditions of fair trade on the Union market. In the absence of measures, a further deterioration of the Union industry's economic situation appears very likely.
- (201) The Commission therefore provisionally concludes that the imposition of anti-dumping duties would be in the interest of the Union industry. Any imposition of anti-dumping measures would allow the Union industry to recover from the effects of injurious dumping found.

6.2. Interest of unrelated importers

- (202) As indicated in recital (22) above, six importers cooperate in the investigation, and three of them were sampled. One of the sampled importers is in favour of measures while the two other sampled importers oppose the imposition of measures. The remaining three non-sampled importers did not express an opinion.
- (203) The investigation showed that an increase in prices due to the imposition of measures would not have a direct impact on these unrelated importers. Heavy plate accounts for 20 % or less of their business.

- (204) In addition, most importers trade goods from numerous sources, including the Union industry. There is no indication that importers would not be able to continue serving their customers if measures were imposed.
- (205) In view of the above the Commission provisionally concludes that the imposition of measures will not have significant negative effects on the interest of the Union importers.

6.3. Interest of users

- (206) The main end-user industries for heavy plates are construction, mining and logging equipment; pressure vessels; oil and gas pipelines; shipbuilding and bridges and buildings.
- (207) Seven users and three traders/steel service centres submitted a users' questionnaire reply. However, four of the replies were highly deficient, and only two of them were against the imposition of measures. The Commission however cannot treat these submissions as representative for the following reasons:
- they only account for 0,3 % of Union consumption.
 - the two opposing users do not import from the PRC at all, so they would at most be indirectly affected by the measures.
- (208) The Commission further notes that duties should contribute to continuous security of supply on the Union market. Without duties, some of the Union producers might have to close down or reduce their production activities and leave many Union users with more limited sources of supply.
- (209) Indeed, one of the sampled producers suspended production of heavy plates at the end of the investigation period, as indicated in recital (104) above.
- (210) Moreover the level of measures will lead to a level playing field for all producers in the Union and third countries, which may allow this Union producer to resume production of heavy plates.
- (211) In view of the above, the Commission provisionally concludes that the imposition of measures would not have any disproportionate negative impact on users.

6.4. Conclusion on Union interest

- (212) In view of the above, the Commission provisionally concludes that the imposition of measures would contribute to the recovery of the Union industry and allow for increased investments to better equip heavy plates' producers in the Union for the future and boost their competitiveness.
- (213) The Union industry underwent already significant restructuring in the (recent) past. If there are no duties, further Union heavy plates' producers might have to close down or reduce their heavy plates' activities, dismiss hundreds of employees and leave many Union users with limited sources of supply.
- (214) The impact of measures on the few other parties in the Union that came forward cannot be deemed substantial. Nothing on file shows that the potential impact on other stakeholders than those who came forward can outweigh the positive effect of measures on the Union industry. End-users and consumers are expected to benefit from a fair competitive market, including a local source of supply fully able to service their needs and requests. Price will continue to be a major determinant, but on a fair basis.
- (215) On balance, the Commission concludes at this stage of the investigation that there are no compelling reasons that it is not in the Union interest to impose provisional measures on imports of heavy plates originating in the PRC.

7. PROVISIONAL ANTI-DUMPING MEASURES

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

7.1. Injury elimination level

- (217) To determine the level of the measures, the Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry.
- (218) The injury would be eliminated if the Union industry was able to cover its costs of production and to obtain a profit before tax on sales of the like product in the Union market that could be reasonably achieved under normal conditions of competition by an industry of this type in the sector, namely in the absence of dumped imports.
- (219) To establish this profit that could be reasonably achieved under normal conditions of competition, the Commission requested the sampled Union producers to provide profitability data with regard to the like product when sold on the Union market for the years 2006 to the investigation period. This information was provided and duly verified.
- (220) The profitability of the Union industry was negative between 2013 and the investigation period. While the profit in 2012 was slightly positive at 1,6 %, there was already a significant presence of dumped imports from the PRC, and this profit margin was far below the profit margin achieved in the previous years.
- (221) The preceding year 2011 however showed a profit margin of 7,9 %, which is higher than the profit margins in 2009 and 2010, namely years in which the financial crisis was the most fierce, but lower than the profit margins in 2006 to 2008, namely before the financial crisis. In addition, it is the most recent available reasonable data in which imports from the PRC to the Union were not yet made at significant quantities. The Commission therefore considers that this profit margin is one that could be reasonably achieved under normal conditions of competition.
- (222) The Commission then determined the injury elimination level on the basis of a comparison of the weighted average import price of the cooperating sampled exporting producers in the PRC, duly adjusted for importation costs and customs duties, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the sampled Union producers on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.
- (223) The injury elimination level for 'other cooperating companies' and for 'all other companies' is defined in the same manner as the dumping margin for these companies (see recitals (76)-(80) above).

7.2. Provisional measures

- (224) Provisional anti-dumping measures should be imposed on imports of the product concerned originating in the PRC, in accordance with the lesser duty rule provided for in Article 7(2) of the basic Regulation. The Commission compared the injury margins and the dumping margins. The amount of the duties should be set at the level of the lower of the dumping and the injury margins.
- (225) On the basis of the above, the provisional anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Dumping margin	Injury margin	Provisional duty
Nanjing Iron and Steel Co., Ltd	120,1 %	73,1 %	73,1 %
Minmetals Yingkou Medium Plate Co., Ltd	126,0 %	65,1 %	65,1 %

Company	Dumping margin	Injury margin	Provisional duty
Wuyang Iron and Steel Co., Ltd and Wuyang New Heavy & Wide Steel Plate Co., Ltd	127,6 %	73,7 %	73,7 %
Other cooperating companies	125,5 %	70,6 %	70,6 %
All other companies	127,6 %	73,7 %	73,7 %

- (226) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflected the situation found during this investigation with respect to these companies.
- (227) These duty rates are exclusively applicable to imports of the product concerned originating in the PRC and produced by the named legal entities. Imports of product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.
- (228) A company may request the application of these individual anti-dumping duty rates if it changes the name of its entity or sets up a new production or sales entity. The request must be addressed to the Commission ⁽¹⁾. 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 will be published in the *Official Journal of the European Union*.
- (229) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies should apply not only to the non-cooperating exporting producers in this investigation, but to the producers which did not have exports to the Union during the investigation period.

8. REGISTRATION

- (230) As mentioned in recital (5) above, the Commission made imports of the product concerned originating in the PRC subject to registration by Commission Implementing Regulation (EU) 2016/1357.
- (231) This was in view of the possible retroactive application of the anti-dumping measures under Article 10(4) of the basic Regulation. The registration of imports should cease. No decision on a possible retro-active application of anti-dumping measures can be taken at this stage of the proceeding.

9. FINAL PROVISIONS

- (232) In the interests of sound administration, the Commission will invite the interested parties to submit written comments and/or to request a hearing with the Commission and/or the Hearing Officer in trade proceedings within a fixed deadline.
- (233) The findings concerning the imposition of provisional duties are provisional and may be amended at the definitive stage of the investigation,

⁽¹⁾ European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170, 1040 Brussels, Belgium.

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is imposed on imports of flat products of non-alloy or alloy steel (excluding stainless steel, silicon-electrical steel, tool steel and high-speed steel), hot-rolled, not clad, plated or coated, not in coils, of a thickness exceeding 10 mm and of a width of 600 mm or more or of a thickness of 4,75 mm or more but not exceeding 10 mm and of a width of 2 050 mm or more currently falling within CN codes ex 7208 51 20, ex 7208 51 91, ex 7208 51 98, ex 7208 52 91, ex 7208 90 20, ex 7208 90 80, 7225 40 40, ex 7225 40 60 and ex 7225 99 00 (TARIC codes: 7208 51 20 10, 7208 51 91 10, 7208 51 98 10, 7208 52 91 10, 7208 90 20 10, 7208 90 80 20, 7225 40 60 10, 7225 99 00 30) and originating in the People's Republic of China.

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

Company	Provisional duty rate	TARIC Additional Code
Nanjing Iron and Steel Co., Ltd	73,1 %	C143
Minmetals Yingkou Medium Plate Co., Ltd	65,1 %	C144
Wuyang Iron and Steel Co., Ltd and Wuyang New Heavy & Wide Steel Plate Co., Ltd	73,7 %	C145
Other cooperating companies listed in Annex	70,6 %	
All other companies	73,7 %	C999

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

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

Article 2

1. Within 25 calendar days of the date of entry into force of this Regulation, interested parties may:

- (a) request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted;
- (b) submit their written comments to the Commission; and
- (c) request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

2. Within 25 calendar days of the date of entry into force of this Regulation, the parties referred to in Article 21(4) of Regulation (EU) 2016/1036 may comment on the application of the provisional measures.

Article 3

1. Customs authorities are hereby directed to discontinue the registration of imports established in accordance with Article 1 of Commission Implementing Regulation (EU) 2016/1357.

2. Data collected regarding products which were entered not more than 90 days prior to the date of entry into force of this Regulation shall be kept until the entry into force of possible definitive measures, or the termination of this proceeding.

Article 4

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

Article 1 shall apply for a period of six months.

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

Done at Brussels, 6 October 2016.

For the Commission

The President

Jean-Claude JUNKER

ANNEX

Chinese cooperating exporting producers not sampled

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

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1778**of 6 October 2016****imposing a provisional 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**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾, and in particular Article 7 (4) thereof,

After consulting the Member States,

Whereas:

1. PROCEDURE**1.1. Initiation**

- (1) On 4 January 2016, the European Steel Association ('Eurofer' or 'the complainant') lodged a complaint on behalf of producers representing more than 90 % of the total Union production of certain hot-rolled flat products of iron, non-alloy or other alloy steel. The complaint contained evidence of dumping and a resulting threat of material injury that was sufficient to justify the initiation of the investigation.
- (2) Following this complaint, on 13 February 2016, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports into the Union of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China ('the PRC' or 'the country concerned') on the basis of Article 5 of Council Regulation (EU) 2009/1225 ⁽²⁾ ('the basic Regulation'). It published a Notice of Initiation in the Official Journal of the European Union ⁽³⁾ ('the Notice of Initiation').
- (3) Subsequently, the Commission also initiated the following two investigations:
 - (a) On 13 May 2016 ⁽⁴⁾, an anti-subsidy investigation on imports of the same product originating in the People's Republic of China;
 - (b) On 7 July 2016 ⁽⁵⁾, an anti-dumping investigation on imports of the same product originating in Brazil, Iran, Russia, Serbia and Ukraine.

1.2. Registration

- (4) On 5 April 2016, the complainant submitted a request for registration of imports from the PRC of the product concerned. On 2 June 2016, the complainant updated the request by providing more recent financial data, but on 11 August 2016, withdrew it.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ This Regulation was replaced as from 20 July 2016 by Regulation (EU) 2016/1036 of the European Parliament and of the Council (codified version).

⁽³⁾ OJ C 58, 13.2.2016, p. 9.

⁽⁴⁾ OJ C 172, 13.5.2016, p. 29, Notice of initiation of an anti-subsidy proceeding concerning imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China.

⁽⁵⁾ OJ C 246/8, 7.7.2016, p. 7, Notice of initiation of an anti-dumping proceeding concerning imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Brazil, Iran, Russia, Serbia and Ukraine.

1.3. Interested parties

- (5) In the Notice of Initiation, the Commission invited interested parties to come forward in order to participate in the investigation. It specifically informed the complainant, other known Union producers, the known exporting producers, the Chinese authorities, known importers, suppliers and users, traders and associations known to be concerned about the initiation and invited them to participate.
- (6) Interested parties were given the opportunity to make their views known in writing and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. All interested parties who so requested and showed that there were particular reasons why they should be heard were granted a hearing.

1.4. Sampling

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

1.4.1. Sampling of Union producers

- (8) In the Notice of Initiation, the Commission stated that it would select a sample of Union producers in view of their large number. The Commission subsequently selected a sample on the basis of the highest representative production and sales volumes whilst ensuring a geographical spread. It informed these provisionally selected companies and the complainant. The Commission invited interested parties to comment on the provisional sample.
- (9) One provisionally selected Union producer informed the Commission that it would not be able to cooperate. In addition, both the Italian Iron and Steel association (Federacciai) and Eurofer commented that Southern Europe was not represented in the provisional sample. To ensure a better geographical spread, the Commission replaced the Union producer which decided not to cooperate with a Union producer from Southern Europe.
- (10) As a result, the final sample consisted of five Union producers located in five different Member States. It accounts for over 45 % of Union production.

1.4.2. Sampling of unrelated importers

- (11) The Commission asked unrelated importers to provide the information specified in the Notice of Initiation in order to decide whether sampling was necessary and, if so, to select a sample.
- (12) Four importers provided the requested information. Therefore, no sampling was necessary and importer questionnaires were sent to all of them.
- (13) However, even though the Commission contacted them in an effort to gather relevant information, no unrelated importer provided a complete questionnaire reply for the purposes of this investigation.

1.4.3. Sampling of exporting producers in the PRC

- (14) In order to decide whether sampling was necessary and, if so, to select a sample for the PRC, the Commission asked exporting producers in the PRC 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 exporting producers that could be interested in participating in the investigation.
- (15) Thirteen groups of exporting producers in the PRC provided the requested information and agreed to be included in the sample. The Commission proposed a sample of three groups of companies on the basis of the largest representative volume of exports to the Union, which could reasonably be investigated within the time available. It invited all known exporting producers concerned and the authorities of the PRC to comment on the proposed sample.

- (16) One exporting producer, Jiangsu Tiangong Tools Company Limited ("Tiangong Tools"), claimed that it should be included in the sample because, unlike the selected exporting producers, it produces tool steel and high-speed steel. It argued that, if its product is considered as product concerned, the sample should be more representative and include it.
- (17) This request was rejected. Tiangong Tools only exported small quantities of a particular product type into the Union. Therefore, the inclusion of this exporting producer in the sample would not have made the sample more representative. The Commission analysed the issue of representativity further within the context of the production scope.
- (18) Accordingly, the Commission decided to retain the proposed sample of three groups of exporting producers. The sampled exporting producers account for 57 % of total Union imports of the product concerned from the PRC and 58 % of the total Union imports of the product concerned from Chinese cooperating exporting producers.

1.5. Individual examination

- (19) Only one exporting producer, Tiangong Tools, requested an individual examination under Article 17(3) of the basic Regulation and submitted a questionnaire response for that purpose. The Commission accepted preliminary this request and verified the information provided on-spot.
- (20) However, the investigation demonstrated that this company only produces and exports to the Union tool steel and high-speed steel. Given that, as explained in recitals (29) to (35) below, the Commission provisionally decided to exclude tool steel and high-speed steel from the scope of this investigation, no provisional dumping margin has been established for Tiangong Tools. Nevertheless, should the Commission change its decision regarding product scope at the definitive stage, the individual examination request of this exporting producer would be reconsidered.

1.6. Replies to the questionnaire

- (21) The Commission sent questionnaires to all parties known to be concerned and to all other companies that made themselves known within the deadlines set out in the Notice of Initiation. Questionnaire replies were received from Eurofer, five Union producers and their related steel service centres, one user, three groups of exporting producers in the PRC, and one producer in an analogue country.

1.7. Verification visits

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

Association of Union producers:

— Eurofer, Brussels, Belgium

Union producers:

— ThyssenKrupp Steel Europe AG, Duisburg, Germany

— Tata Steel IJmuiden BV, Velsen-Noord, the Netherlands

— Tata Steel UK Limited, Port Talbot, South Wales, United Kingdom

— ArcelorMittal France S.A., France owning the following subsidiaries:

— ArcelorMittal Mediterranée SAS, Fos-sur-Mer, France

— ArcelorMittal Atlantique Et Lorraine, Dunkerque, France

— ArcelorMittal España SA, Gozón, Spain

User:

— Marcegaglia Carbon Steel Spa, Gazoldo degli Ippoliti, Italy

Exporting producers in the PRC and related traders:

— Benxi Iron & Steel Group:

— Bengang Steel Plates Co., Ltd, Benxi, Liaoning Province, PRC

— Benxi Iron & Steel Hong Kong Limited, Hong Kong

— Jiangsu Shagang Group Co., Ltd.:

— Zhangjiagang Hongchang Plate Co., Ltd. Jinfeng Town, Zhangjiagang City, Jiangsu Province, PRC

— Zhangjiagang GTA Plate Co., Ltd., Jinfeng Town, Zhangjiagang City, Jiangsu Province, PRC

— Jiangsu Shagang International Trade Co., Ltd., Jinfeng Town, Zhangjiagang City, Jiangsu Province, PRC

— Shagang South-Asia Trading Co., Hong Kong

— Xinsha International PTE. Ltd., Singapore

— Hebei Iron and Steel Group (HBIS):

— Handan Iron & Steel Group Han-Bao Co., Ltd., Handan City, Hebei Province, PRC

— Hebei Iron & Steel Co., Ltd. Tangshan Branch, Tangshan City, Hebei Province, PRC

— Hebei Iron & Steel Co., Ltd. Chengde Branch, Chengde City, Hebei Province, PRC

— Handan Iron and Steel Group Import and Export Co Ltd, Handan City, Hebei Province, PRC

— Hebei Iron and Steel (Singapore) PTE Ltd, Handan City, Hebei Province, PRC

— Hebei Iron and Steel (Hong Kong) International Trade Co Ltd, Handan City, Hebei Province, PRC

— Hebei Iron and Steel Group (Shanghai) International Trade Co Ltd, Handan City and Chengde City, Hebei Province, PRC

— Tangshan Iron and Steel Group Co Ltd, Tangshan City, Hebei Province, PRC

— Sinobiz Holdings Limited (British Virgin Islands), Tangshan City, Hebei Province, PRC

— Chengde Steel Logistics Co Ltd, Chengde City, Hebei Province, PRC

— Duferco SA, Lugano, Switzerland

— Jiangsu Tiangong Tools Company Limited:

— Tiangong Aihe Company Limited, Danbei County, Danyang City, Jiangsu Province, PRC

Related importers in the Union:

— Benxi Iron and Steel Group Europe GmbH, Dusseldorf, Germany

— Duferco Commerciale, SPA, Genova, Italy

Producer in the analogue country:

— ArcelorMittal USA, Chicago, USA

1.8. Investigation period and period considered

- (23) The investigation of dumping and injury covered the period from 1 January 2015 to 31 December 2015 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2012 to the end of the investigation period ('the period considered').

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (24) The product concerned is certain flat-rolled products of iron, non-alloy steel or other alloy steel, whether or not in coils (including 'cut-to-length' and 'narrow strip' products), not further worked than hot-rolled, not clad, plated or coated.

The product concerned does not include:

- products of stainless steel and grain-oriented silicon electrical steel,
- products of tool steel and high-speed steel ⁽¹⁾,
- products, not in coils, without patterns in relief, of a thickness exceeding 10 mm and of a width of 600 mm or more, and
- products, not in coils, without patterns in relief, of a thickness of 4,75 mm or more but not exceeding 10 mm and of a width of 2 050 mm or more.

The product concerned is currently falling within CN codes 7208 10 00, 7208 25 00, 7208 26 00, 7208 27 00, 7208 36 00, 7208 37 00, 7208 38 00, 7208 39 00, 7208 40 00, 7208 52 10, 7208 52 99, 7208 53 10, 7208 53 90, 7208 54 00, 7211 13 00, 7211 14 00, 7211 19 00, ex 7225 19 10, 7225 30 90, ex 7225 40 60, 7225 40 90, ex 7226 19 10, 7226 91 91 and 7226 91 99 and originating in the PRC.

- (25) Hot-rolled flat steel products are produced through hot rolling; this is a metal forming process in which hot metal is passed through one or more pairs of hot rolls to reduce the thickness and to make the thickness uniform, whereby the temperature of the metal is above its recrystallization temperature. They can be delivered in various forms: in coils (oiled or not oiled, pickled or not pickled), in cut lengths (sheet) or narrow strips.
- (26) There are two main uses of the hot-rolled flat steel products. First, they are the primary material for the production of various value added downstream steel products, starting with cold-rolled ⁽²⁾ flat and coated steel products. Second, they are used as an industrial input purchased by end users for a variety of applications, including in construction (production of steel tubes), shipbuilding, gas containers, cars, pressure vessels and energy pipelines.

2.2. Like product

- (27) The investigation showed that the following products have the same basic physical characteristics as well as the same basic uses:
- (a) the product concerned;
 - (b) the product produced and sold on the domestic market of the PRC and the USA;
 - (c) the product produced and sold in the Union by the Union industry.
- (28) The Commission decided at this stage that these products are like products within the meaning of Article 1(4) of the basic Regulation.

2.3. Claims regarding product scope

- (29) First, one exporting producer (Jiangsu Tiangong Tools Company Limited) and one importer related to another Chinese exporting producer (Duferco S.A.) requested that certain types of hot-rolled flat steel products, known in the industry as tool steel and high-speed steel, should be excluded from the product scope. They claimed that tool steel and high-speed steel have significantly different properties, prices, different specifications and uses.

⁽¹⁾ These products are not included on the basis of a product exclusion request (see from recital (29) onwards).

⁽²⁾ Cold rolling process is defined by passing a sheet or strip — that has previously been hot rolled and pickled — through cold rolls, i.e. below the softening temperature of the metal.

- (30) On 21 April 2016, a hearing with this Chinese exporting producer was held in the presence of the Hearing Officer in trade proceedings. Furthermore, on 22 June 2016, a hearing with the importer was held about its product exclusion request.
- (31) The Complainant was of the opinion that these claims were not well founded and that there is a risk of circumvention in case these claims would be accepted by the Commission.
- (32) The Commission found that there are indeed major physical and chemical differences between other types of the product concerned than tool steel and high-speed steel on the one hand, and tool steel and high-speed steel on the other hand. There are several chemical elements ⁽¹⁾ inherently present in tool steel and high-speed steel, which are not found in the product concerned.
- (33) Furthermore, there are differences in the production process, different uses and significant price differences between tool steel and high-speed steel on the one hand and other types of the product concerned. For instance, tool steel and high-speed steel, unlike other types of the product concerned, are used for working, machining, extruding, cutting, stamping and perforating other materials, which is not the conventional use of the other types of the product concerned. Furthermore, the production of tool steel follows another production process, whereby the specific properties are achieved during all stages of the production process. This difference in production process makes the production process for tool steel and high-speed steel more cost-intensive, which also explains to an extent the difference in sales price with other types of the product concerned.
- (34) Imports of tool steel and high-speed steel account volume-wise for about 1,25 % of total Chinese imports during the year 2015. Tool steel and high-speed steel are also put under different, specific CN codes.
- (35) Therefore, the Commission provisionally excluded tool steel and high-speed steel, while alerting the national customs authorities about possible risks of circumvention.
- (36) Second, on 5 August 2016, one Italian user, Marcegaglia Carbon Steel Spa, claimed that the following types of the product concerned should be excluded from the product scope: Interstitial-Free (IF) steel types, dual-phase steel types, high carbon steel types, and non-grain oriented steel types. The rationale for the product exclusion request for these types was mainly as follows:
- (a) These product types have significantly different properties, uses and prices compared to all the other types of the product concerned;
 - (b) These are not interchangeable products with other types of the product concerned.
- (37) The same user also requested that the product types which are used for cold-rolling should be excluded on the basis of their further use downstream.
- (38) Concerning the product exclusion request for Interstitial-Free (IF) steel types, dual-phase steel types, high carbon steel types, and non-grain oriented steel types of the product concerned, the Commission found that it had not been demonstrated that these products have different properties and uses. Also, the final detailed request for the product exclusion request came in at a very late stage. Therefore, at this stage the Commission rejected this request, but will further investigate this claim.
- (39) Concerning the product types which are used for re-rolling, this is one of the main uses of the product concerned, as mentioned under recital (26) above. A different use alone is not a reason for exclusion. Also, excluding these product types would lead to the exclusion of a majority of all imported types of the product concerned, on top of a complex, if not impossible administrative monitoring to distinguish the product concerned between those which are used for re-rolling and those which are not. Therefore, at this stage the Commission rejected this request as well.

⁽¹⁾ These chemical elements are inter alia: Tungsten/wolfram, molybdenum, chromium and vanadium.

3. DUMPING

3.1. Normal value

- (40) Pursuant to Article 2(7)(b) of the basic Regulation the Commission determines normal value in accordance with Article 2(1) to (6) of the basic Regulation for exporting producers in the PRC which comply with the criteria in Article 2(7)(c) of the basic Regulation and can be granted market economy treatment. However, none of the cooperating exporting producers applied for such treatment.
- (41) Therefore, under Article 2(7)(a) of the basic Regulation normal value had to be determined on the basis of the prices or constructed normal value in an appropriate third market economy — country (the ‘analogue country’).
- (42) In the Notice of Initiation, the Commission proposed using a third market economy country (‘analogue country’) within the meaning of Article 2(7)(a) of the basic Regulation. The Commission sent questionnaires to all known producers in the 11 market economy countries mentioned in the Notice of Initiation ⁽¹⁾ and to eight other countries where there were indications of production and sales of the like product, namely Argentina, Australia, Egypt, Iran, Japan, South Africa, the Republic of Korea and Taiwan. In total, 62 producers in 19 potential analogue countries were contacted. However, only one company in the USA (ArcelorMittal USA) expressed its willingness to cooperate — and submitted a questionnaire reply.
- (43) The USA is considered a suitable analogue market, as it is an open market, with ten domestic producers of the like product and imports from other countries account for up to over 10 % of total consumption. Therefore, and given that only one producer from USA expressed its willingness to cooperate, USA was provisionally selected as an appropriate analogue country.
- (44) Interested parties were invited to comment on this selection. As no comments were received, the USA was selected as analogue country.
- (45) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the sales of the like product in the USA to independent customers were representative. The sales of the cooperating producer of the like product were found to be sold in representative quantities on the domestic market compared to the product concerned exported to the Union by the Chinese exporting producers included in the sample.
- (46) The Commission subsequently examined whether those sales could be considered as made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of profitable sales to independent customers. The sales transactions were considered profitable where the unit price was equal or above the cost of production. The cost of production of the American producer during the investigation period was therefore determined.
- (47) For those product types where more than 80 % by volume of sales on the domestic market of the type in question were above cost and the weighted average sales price of that type was equal to or above the unit cost of production, normal value, by product type, was calculated as the weighted average of the actual domestic prices of the actual domestic prices of all sales of the type in question, irrespectively of whether those sales were profitable or not.
- (48) Where the volume of profitable sales of a product type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the unit cost of production, normal value was based on the actual domestic price, which was calculated as a weighted average price of only the profitable domestic sales of that type made during the investigation period.
- (49) As regards the product types — that were not profitable, normal value was constructed pursuant to Article 2(3) of the basic Regulation using the cost of manufacturing of the American producer plus SG&A and profit for product types of the American producer that are profitable.

⁽¹⁾ Canada, South Africa, Thailand, India, Malaysia, Mexico, Vietnam, Turkey, Russia, Ukraine and Brazil.

- (50) Some product types produced in the analogue country could not be matched with the product types exported from the PRC to the Union because they are not sold by the American producer. Therefore, the normal value for the non-matching product types had to be constructed pursuant to Article 2(3) of the basic Regulation on the basis of the analogue country's producer's manufacturing costs. The Commission took those costs of the closest resembling product, and adjusted them for the cost of the modification work (slitting or cutting) needed in order to ensure a fair comparison. The Commission then added a reasonable amount for SG&A (7 %-13 %) based on actual data pertaining to production and sales, as provided for in Article 2(6) of the basic Regulation. It finally added a reasonable amount of profit (10 %-15 %) by using the average profit margin of sales of the profitable products.

3.2. Export prices

- (51) The sampled exporting producers exported to the Union both directly to independent customers and through related companies.
- (52) For direct sales, the export prices were based on the prices actually paid or payable for the product concerned, in accordance with Article 2(8) of the basic Regulation.
- (53) For the transactions where the exporting producers export the product concerned to the Union through related companies acting as an importer, the export price was established on the basis of the price at which the imported product was first resold to independent customers in the Union in accordance with Article 2(9) of the basic Regulation. In this case, adjustments to the price were made for all costs incurred between importation and resale.

3.3. Comparison

- (54) The normal value and export price were compared on an ex-works basis. The dumping margins were established by comparing the individual ex-works prices of the sampled exporting producers to the domestic sales prices of the analogue country producer or to the constructed normal value as appropriate.
- (55) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation.
- (56) On this basis, adjustments, where appropriate, were made for transport, insurance, handling, loading and ancillary costs (4 %), bank charges (0,02 %), credit costs (0,05 %), commissions (0,6 %) and indirect taxation (4 %).

3.4. Dumping margin

- (57) For the sampled exporting producers, the weighted average normal value of each type of the like product in the USA was compared with the weighted average export price of the corresponding product type, as provided for in Article 2(11) and (12) of the basic Regulation.
- (58) The dumping margin for the cooperating exporting producers not included in the sample was established in accordance with the provisions of Article 9(6) of the basic Regulation. This margin was calculated as a weighted average on the basis of the margins established for the sampled exporting producers.
- (59) With regard to all other exporting producers in the PRC, the Commission determined the level of cooperation in the PRC. It was measured by assessing the proportion of the volume of exports of the cooperating producers to the Union out of the total export volume from the country concerned to the Union.
- (60) The level of cooperation is high. On this basis, the residual dumping margin applicable to all other exporting producers in the PRC was provisionally set at a level corresponding to the highest dumping margin found for the cooperating exporting producers in the sample.

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

Table 1

Dumping margins, the PRC

Company	Provisional dumping margin
Bengang Steel Plates Co., Ltd.	96,5 %
Hebei Iron & Steel Group	95,0 %
Jiangsu Shagang Group	106,9 %
Other cooperating companies	100,1 %
All other companies	106,9 %

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

- (62) Within the Union, 17 companies provided production and sales data in the standing exercise and indicated that they produced the like product during the investigation period. Based on the available information from the complaint, these 17 companies are representing around 90 % of the production of the like product in the Union.
- (63) Apart from these 17 companies, there were five other companies producing the like product during the investigation period.
- (64) The total Union production during the investigation period was established at around 74,7 million tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry, such as information from the complainant and from all known producers in the Union. As indicated in recital (10), five Union producers were selected in the sample representing 45 % of the total Union production of the like product. This is a representative sample.
- (65) The Union producers accounting for the total Union production constitute the Union industry within the meaning of Article 4(1) of the basic Regulation and are referred to as the 'Union industry'.
- (66) The business model of the Union producers and their degree of vertical integration varies. Nevertheless, the Union industry can overall be characterised as an industry with a high degree of vertical integration, as further explained in recital (68) below.

4.2. Union consumption

- (67) As mentioned in recital (24) above, the product concerned falls within a number of CN codes including certain ex codes. In order not to underestimate Union consumption, and in view of the apparent marginal impact of such codes on total consumption, import volumes of CN ex codes have been fully accounted for the purpose of calculating Union consumption.
- (68) As the Union industry is mostly vertically integrated and the product concerned is regarded as a primary material for the production of various value added downstream products, starting with cold-rolled products, captive and free market consumptions were analysed separately.

- (69) The distinction between captive and free market is relevant for the injury analysis because products destined for captive use are not exposed to direct competition from imports, and transfer prices are set within the groups according to various price policies. By contrast, production destined for the free market is in direct competition with imports of the product concerned, and prices are free market prices.
- (70) To provide a picture of the Union industry that is as complete as possible, the Commission obtained data for the entire activity of the like product and determined whether the production was destined for captive use or for the free market. The Commission found that around 60 % of the total Union producers' production was destined for captive use.

4.2.1. Captive consumption on the Union market

- (71) The Commission established the Union captive consumption on the basis of the captive use and captive sales on the Union market of all known producers in the Union. On this basis, the Union captive consumption developed as follows:

Table 2

Captive consumption on the Union market (tonnes)

	2012	2013	2014	IP
Captive consumption	40 775 889	42 418 062	42 887 175	42 271 071
Index (2012 = 100)	100	104	105	104

Source: Eurofer questionnaire reply

- (72) During the period considered the Union captive consumption on the Union market increased by around 4 %. This increase is mainly due to a growth of the captive markets, including manufacturing parts such as for the automotive industry.

4.2.2. Free market consumption on the Union market

- (73) The Commission established the Union free market consumption on the basis of (a) the sales on the Union market of all known producers in the Union and (b) the imports into the Union from all third countries as reported by Eurostat, thereby also considering the data submitted by the cooperating exporting producers in the country concerned. On this basis, the Union free market consumption developed as follows:

Table 3

Free market consumption (tonnes)

	2012	2013	2014	IP
Free market consumption	31 405 157	32 292 192	33 139 474	35 156 318
Index (2012 = 100)	100	103	106	112

Source: Eurofer questionnaire reply

- (74) During the period considered, the Union free market consumption increased by around 12 %. The increase is mainly due to the economic recovery of the downstream industry.

4.3. Imports from the country concerned

4.3.1. Volume and market share of the imports from the country concerned

- (75) The Commission established the volume of imports on the basis of the Eurostat database. The market share of the imports was established by comparing import volumes with the Union free market consumption as reported in table (73) above.
- (76) Imports into the Union from the PRC developed as follows:

Table 4

Import volume (tonnes) and market share

	2012	2013	2014	IP
Volume of imports from the PRC	246 720	336 028	592 104	1 519 304
<i>Index (2012 = 100)</i>	100	136	240	616
Market share PRC	0,79 %	1,04 %	1,79 %	4,32 %
<i>Index (2012 = 100)</i>	100	132	227	550

Source: Eurostat

- (77) The above table shows that in absolute figures the imports from the country concerned increased significantly during the period considered. In parallel, the total market share of the Chinese imports into the Union increased more than five times during the period considered.

4.3.2. Prices of the imports from the country concerned and price undercutting

- (78) The Commission established the prices of imports on the basis of Eurostat data. The weighted average price of imports into the Union from the country concerned developed as follows:

Table 5

Import prices (EUR/tonne)

	2012	2013	2014	IP
Average price of dumped imports	600	505	463	404
<i>Index (2012 = 100)</i>	100	84	77	67

Source: Eurostat

- (79) The average prices of the imports decreased from 600 EUR/tonne in 2012 to 404 EUR/tonne during the investigation period. During the period considered, the decrease of the average unit price of the dumped imports was around 33 %.
- (80) The Commission assessed the price undercutting during the investigation period by comparing:
- the weighted average sales prices per product type of the five Union producers charged to unrelated customers on the free Union market, adjusted to an ex-works level; and
 - the corresponding weighted average prices at CIF Union frontier level per product type of the imports from the cooperating producers of the country concerned to the first independent customer on the Union market, with appropriate adjustments for post-importation costs.

- (81) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the Union producers' turnover during the investigation period. The main adjustments related to delivery costs (varying between 2,7 % and 6,3 % per sampled Union producer) and discounts (varying between 0,1 % and 19,5 %). As no unrelated importer came forward in this case, a post-importation of 7 euro per tonne was added, which was the adjustment taken in the investigation regarding certain cold-rolled flat steel products ⁽¹⁾. This was assessed to be the most appropriate way due to the fact that the product concerned of the current investigation is similar in many respects to certain cold-rolled flat steel products, as explained in recital (221).
- (82) On the basis of the above, the dumped Chinese imports were found to undercut the Union industry prices in a range between 2,7 % and 5,6 %.

4.4. Economic situation of the Union industry

4.4.1. General remarks

- (83) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (84) The macroeconomic indicators (production, production capacity, capacity utilisation, sales volume, stock, growth, market share, employment, productivity and magnitude of dumping margins) were assessed at the level of the whole Union industry. The assessment was based on the information provided by the complainant, cross-checked with data provided by Union producers and available official statistics (Eurostat).
- (85) The analysis of microeconomic indicators (sale prices, profitability, cash flow, investments, return on investments, ability to raise capital, wages and cost of production) was carried out at the level of the sampled Union producers. The assessment was based on their information, duly verified.
- (86) To provide a picture of the Union industry that is as complete as possible, the Commission obtained data for the entire production of the product concerned and determined whether the production was destined for captive use or for the free market. For some injury indicators relating to the Union industry, the Commission analysed separately data related to the free and the captive market and made a comparative analysis. These factors are: sales, market share, unit prices, unit cost, profitability, and cash flow. However, other economic indicators could meaningfully be examined only by referring to the whole activity, including the captive use of the Union industry because they depend on the whole activity, whether the production is captive or sold on the free market. These factors are: production, capacity, capacity utilisation, investments, return on investments, employment, productivity, stocks and labour costs. For these factors, analysis of the whole Union industry is warranted in order to establish a complete injury picture of the Union industry, as the data in question cannot be separated out between captive sales and free sales.

4.4.2. Macroeconomic indicators

4.4.2.1. Production, production capacity and capacity utilisation

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

Table 6

Production, production capacity and capacity utilisation

	2012	2013	2014	IP
Production volume (tonnes)	73 050 974	74 588 182	75 509 517	74 718 189
Index (2012 = 100)	100	102	103	102

⁽¹⁾ Commission Implementing Regulation EU 2016/1328 (OJ L 210, 4.8.2016, p. 20).

	2012	2013	2014	IP
Production capacity (tonnes)	102 247 218	100 667 836	100 040 917	98 093 841
<i>Index (2012 = 100)</i>	100	99	98	96
Capacity utilisation	71,4 %	74,1 %	75,5 %	76,2 %

Source: Eurofer questionnaire reply

- (88) During the period considered, the Union industry's production volume increased by 2 %, despite the fact that one Italian Union producer reduced considerably its production during the same period (– 3 million tonnes).
- (89) The reported capacity figures refer to technical capacity, which implies that adjustments, considered as standards by the industry, for set-up time, maintenance, bottle necks and other normal stoppages have been taken into consideration. The production capacity decreased during the period considered due to the stoppage of production in Belgium and Italy.
- (90) The increase in capacity utilisation rate resulted from a slight increase in the production volume mainly driven by the increase in captive consumption (+ 4 %) and free consumption (+ 12 %) and this despite the significant reduction of production volume by mainly one Italian Union producer.

4.4.2.2. Sales volume and market share

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

Table 7

Sales volume and market share (free market)

	2012	2013	2014	IP
Sales volume (tonnes)	27 273 319	27 468 243	27 910 748	27 327 906
<i>Index (2012 = 100)</i>	100	101	102	100
Market share	86,8 %	85,1 %	84,2 %	77,7 %
<i>Index (2012 = 100)</i>	100	98	97	90

Source: Eurofer questionnaire reply and Eurostat

- (92) The Union industry sales volume on the Union market remained relatively stable during the period considered, i.e. between 27 and 28 million tonnes.
- (93) During the period considered, the Union industry's market share in terms of Union consumption went down with more than 9 percentage points, i.e. from 86,8 % to 77,7 %. The decrease of Union industry's market share exceeded significantly the slight increase in its sale on the Union free market.

- (94) As far as the captive market on the Union market is concerned, the captive volume and market share developed over the period considered as follows:

Table 8

Captive volume on the Union market and market share

	2012	2013	2014	IP
Captive volume on the Union market (tonnes)	40 775 889	42 418 062	42 887 175	42 271 071
<i>Index (2012 = 100)</i>	100	104	105	104
Total production of Union industry (tonnes)	73 050 974	74 588 182	75 509 517	74 718 189
% of captive volume compared to total production	55,7 %	56,7 %	56,6 %	56,4 %

Source: Eurofer questionnaire reply and Eurostat

- (95) The Union industry captive volume (composed of captive use and captive sales on the Union market) on the Union market increased by 4 % during the period considered, from about 40,7 million tonnes in 2011 to 42,2 million tonnes during the investigation period.
- (96) The Union industry's captive market share (expressed as a percentage of total production) remained stable over the period considered, ranging between 55,7 % and 56,7 %.

4.4.2.3. Employment and productivity

- (97) The employment was calculated by taking only the employees directly working for the like product in the different steel mills of the Union producers. This method provided accurate data which are relatively easy to determine.
- (98) Employment and productivity developed over the period considered as follows:

Table 9

Employment and productivity

	2012	2013	2014	IP
Number of employees (Full time employment/ employee)	18 729	18 632	17 739	17 829
<i>Index (2012 = 100)</i>	100	99	95	95
Productivity (tonne/employee)	3 900	4 003	4 257	4 191
<i>Index (2012 = 100)</i>	100	103	109	107

Source: Eurofer questionnaire reply

- (99) The level of the Union industry employment decreased during the period considered in order to reduce production costs and gain efficiency in view of the increasing competition from Chinese and other imports on the market. This resulted in a reduction of workforce by 5 % during the period considered, without taking into consideration any indirect employment. As a consequence and in view of the slightly increasing production volume (+ 2 %) over the period considered, the productivity of the Union industry's workforce, measured as output per person employed per year, increased much more (+ 7 %) than the increase in actual production. This shows that the Union industry was willing to adapt to the changing market conditions in order to remain competitive.

4.4.2.4. Inventories

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

Table 10

Inventories

	2012	2013	2014	IP
Closing stocks (tonnes)	2 908 745	2 646 989	2 653 224	2 798 420
<i>Index (2012 = 100)</i>	100	91	91	96
Closing stocks as a percentage of production	4,0 %	3,5 %	3,5 %	3,7 %
<i>Index (2012 = 100)</i>	100	89	88	94

Source: Eurofer questionnaire reply

(101) During the period considered the level of closing stocks decreased slightly. Most types of the like product are produced by the Union industry based on specific orders of the users. Therefore, stocks are not considered to be an important injury indicator for this industry. This is also confirmed by analysing the evolution of the closing stocks as a percentage of production. As can be seen above, this indicator remained relatively stable at ca. 3,5 % to 4 % of the production volume.

4.4.2.5. Magnitude of the dumping margin

(102) All dumping margins were significantly above the de minimis level. The impact of the magnitude of the actual high margins of dumping on the Union industry was not negligible, given the volume and prices of imports from the country concerned.

4.4.2.6. Growth

(103) The Union consumption (free market) increased by around 12 % during the period considered, while the sales volume of the Union industry on the Union market remained stable. The Union industry thus lost market share, contrary to the market share of the imports from the country concerned which increased significantly during the period considered.

4.4.3. Microeconomic indicators

4.4.3.1. Prices and factors affecting prices

(104) The weighted average unit sales prices of the Union producers on the free market in the Union developed over the period considered as follows:

Table 11

Sales prices on the free market in the Union

	2012	2013	2014	IP
Sales price (EUR/tonne)	553	498	471	427
<i>Index (2012 = 100)</i>	100	90	85	77
Unit cost of production (EUR/tonne)	572	511	469	431
<i>Index (2012 = 100)</i>	100	89	82	75

Source: Questionnaire reply of sampled Union producers

- (105) The table above shows the evolution of the unit sales price on the Union free market as compared to the corresponding cost of production. Sales prices have on average been lower than the unit cost of production, with the exception of 2014 where the market started picking up and where the market share of Chinese imports was lower than in the investigation period.
- (106) In 2012 and 2013, the aftermath of the Eurozone debt crisis, on top of a declining steel demand in 2012, affected negatively the performance of the Union industry. In 2014, and also in the first half of 2015, the Union industry started recovering, due to increased efforts to remain competitive, in particular by increasing the productivity of the Union industry's workforce, as set out in recital (99), which resulted in productivity gains and in improved capacity utilisation.
- (107) Despite these efforts, the cost of production remained generally higher than the decreasing sales prices, and in order to limit the loss in market share, the Union producers followed the downward price spiral and reduced their sales price significantly, in particular during 2015. As the product concerned is a commodity, Union producers had to follow the decreasing price spiral.
- (108) Among the sampled producers, certain hot-rolled flat products of iron, non-alloy or other alloy steel for captive consumption were transferred or delivered at transfer prices for further downstream processing using different pricing policies (cost, cost plus, market price). Therefore, no meaningful conclusion can be drawn from captive use price evolution.

4.4.3.2. Labour costs

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

Table 12

Average labour costs per employee

	2012	2013	2014	IP
Average labour costs per employee (EUR)	63 722	63 374	66 039	66 023
Index (2011 = 100)	100	99	104	104

Source: Questionnaire reply of sampled Union producers

- (110) During the period considered, the average wage per employee went up by 4 %.

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

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

Table 13

Profitability, cash flow, investments and return on investment

	2012	2013	2014	IP
Profitability of sales in the Union on the free market (% of sales turnover)	- 3,3 %	- 2,7 %	0,4 %	- 0,8 %
Cash flow ('000 EUR)	150 190	139 285	221 982	122 723
Index (2012 = 100)	100	93	148	82

	2012	2013	2014	IP
Investments ('000 EUR)	334 789	256 013	289 581	291 771
Index (2012 = 100)	100	76	86	87
Return on investment	– 4,5 %	– 3,5 %	0,5 %	– 1,0 %

Source: Questionnaire reply of sampled Union producers

- (112) The Commission established the profitability of the Union producers by expressing the pre-tax net loss of the sales of the like product on the free market in the Union as a percentage of the turnover of those sales.
- (113) Profitability developed negatively over the period considered: losses were incurred during all the three years, with the exception of 2014. While the losses in the years 2012 and 2013 are partly linked to the aftermath of the Eurozone debt crisis (on top of a declining steel demand in 2012), the Union producers could partly recover during 2014 and the first half of 2015.
- (114) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow varies a lot during the period considered, but remained overall largely positive, mainly due to non-cash expenses such as depreciation.
- (115) As return on investment remained negative overall during all years, with exception of 2014, the Union industry reduced the level of its investments by 13 % between 2012 and 2015. The ability to raise capital has been affected by the losses incurred during the period considered as can be seen from the decrease in investments.
- (116) Finally, the table below contains a breakdown of 2015 per quarter as the Complainant alleged in its complaint that there was a significant deterioration in the second half of 2015. The data in the table indeed confirm a significant deterioration, in the second half of 2015, of the profitability and of the net sales value due to further depressing sales prices on the free Union market.

Table 14

Profitability per quarter of the sampled Union producers

Quarter of 2015	Profitability (Loss) per quarter of the companies (in millions of euro)	Net sales price per tonne	Net sales on the free market (in millions of euro)	Profitability percentage
First	37,98	444,71	1 073,34	3,5 %
Second	22,78	436,19	1 001,60	2,3 %
Third	– 22,92	426,36	857,49	– 2,7 %
Fourth	– 69,80	392,92	699,47	– 10,0 %
Total	– 31,9	427,2	3 631,9	– 0,8 %

Source: Questionnaire reply of sampled Union producers

4.4.4. Conclusion on material injury

- (117) On the one hand, the Union industry as a whole could slightly increase its production volumes (despite the significant reduction of production by mainly one major Italian producer) and improve its capacity utilisation rate due to the increase in captive and free consumption. It also took concrete actions to improve efficiency by keeping a tight grip on costs of manufacturing (mainly raw materials) and by increasing the production per employee. As a result, the cost of production decreased by 25 %. Furthermore, its cash flow remained positive over the whole period considered. The sampled Union producers could still make investments of around 250 — 330 million euro a year during the period considered.

- (118) On the other hand, despite the Union industry's efforts during the period considered to improve its overall performance, other injury indicators show a deterioration of the situation on the free market: With exception of 2014 and the beginning of 2015, where the Union industry started to slightly recover, losses were incurred throughout the whole period considered, which reached unsustainable levels in the second half of 2015. Indeed, despite the fact that the sales volumes remained relatively stable on the Union free market, the Union industry lost market share and had to reduce investments in the light of the negative return on investment.
- (119) In the light of the foregoing, it is concluded at this stage that the above data show that the Union industry was in a weak situation at the end of the investigation period but not to the extent that the Union industry has suffered material injury during the period considered within the meaning of Article 3(5) of the basic Regulation.

5. THREAT OF INJURY

5.1. Introduction

- (120) In the analysis of a threat of material injury to the Union industry, in accordance with Article 3(9), second subparagraph, of the basic Regulation, consideration is given below to such factors as:
- (i) a significant rate of increase of dumped imports into the Union market indicating the likelihood of substantially increased imports;
 - (ii) sufficient freely disposable capacity of the exporting producer on the part of the exporter or an imminent and substantial increase in such capacity indicating the likelihood of substantially increased dumped exports to the Union, account being taken of the availability of other export markets to absorb any additional exports;
 - (iii) whether imports are entering at prices that would, to a significant degree, depress prices or prevent price increases which otherwise would have occurred, and would probably increase demand for further imports, and;
 - (iv) the level of inventories.
- (121) As the wording 'such as' in Article 3(9), second subparagraph, indicates, next to these four factors other factors may be analysed as well for the determination of a threat of injury. In particular, the Commission further analysed factors like profitability and order intakes, for which it had investigation period and post-investigation period data available.
- (122) With respect to the period considered, the Commission reviewed again the data collected for 2012-2015, as an understanding of the present situation of the Union industry is necessary in order to be able to determine whether there is a threat of injury to the Union industry ⁽¹⁾. It then conducted a prospective analysis for all factors. In addition, it was able to collect data on dumped imports, Chinese capacity and import prices for the period January — June 2016 in order to confirm or invalidate the forecasts, as required by the Court ⁽²⁾. For profitability and order intakes though, comprehensive data were not available for the period January- June 2016 and only partial data up to the end of March 2016. For the level of inventories, no comprehensive data could be found up to the end of June 2016, in particular for the Union industry. Nevertheless, these data will be updated after the publication of this Regulation and where possible, also other factors will be analysed. At this stage, the data for profitability, order intakes and the level of inventories were the best available data.
- (123) Finally, Article 3(9) first subparagraph, second sentence, of the basic Regulation requires that the change in circumstances must have been clearly foreseen and must be imminent.

⁽¹⁾ World Trade Organization, WT/DS132/R, 28 January 2000, Mexico- Anti-dumping investigation of high fructose corn syrup (HFCS) from the United States — Report of the Panel, recital 7.140, page 214. The WTO Panel stated the following: 'in order to conclude that there is a threat of material injury to a domestic industry that is apparently not currently injured, despite the effects of dumped imports during the period of investigation, it is necessary to have an understanding of the current condition of the industry as a background. Merely that dumped imports will increase, and will have adverse price effects, does not, *ipso facto*, lead to the conclusion that the domestic industry will be injured — if the industry is in very good condition, or if there are other factors at play, dumped imports may not threaten injury'

⁽²⁾ Judgment of The Court of Justice, 7 April 2016, case number C-186/14, recital 72, confirming the General Court's judgment of 29 January 2014, on case T-528/09, Hubei Xinyegang Steel Co. Ltd versus Council of the European Union,

5.2. Threat of injury

5.2.1. Significant rate of increase of dumped imports into the Union market indicating the likelihood of substantially increased imports

- (124) Imports from the country concerned significantly increased from 246 720 to 1 519 304 tonnes between 2012 and the investigation period, as shown in the table at recital (76) above. These imports have consistently taken place at continuously lowering prices. The substantial increase of the market share held by these Chinese dumped imports (+ 550 %) confirms that the development of these imports was not only the consequence of an increase in demand (+ 12 %). The Chinese exporting producers have been penetrating a new market and gaining market shares with low-priced imports at the expense of other economic actors, including the Union producers. The volume of Chinese imports further increased (by 8,5 %) in the first half of 2016 (773 275 tonnes) (source: Eurostat), compared to the first half of 2015 (712 390 tonnes). The available data show that not only the Chinese dumped imports have shown a substantial increase during the period considered, but also that this trend was not stopped or reversed during the post-investigation period.

5.2.2. Sufficient freely disposable capacity

5.2.2.1. Capacity in the PRC (crude steel and the like product)

- (125) Concerning Chinese crude steel capacity, the available information indicates that the Chinese steel capacity has been increasing rapidly for a long time. Whereas the PRC accounted for 25,6 % of the total world crude steel production in 2004 ⁽¹⁾, it almost doubled its actual production and accounted for 50,3 % in 2015. In this respect, the Steel Communication from the Commission states the following: ‘...the spare production capacity in certain third countries, notably in China, has increased dramatically. The overcapacity in China alone has been estimated at around 350 million tonnes, almost the double of the Union’s annual production. ⁽²⁾’
- (126) In this respect, the OECD estimated the total Chinese steelmaking capacity to be 1 140 million tonnes ⁽³⁾ in 2014, whereas the actual Chinese production was calculated to be 822,8 million tonnes ⁽⁴⁾. As a result, the available Chinese excess capacity is certainly more than 300 million tonnes.
- (127) Such steel overcapacity is also not in line with the demand for the like product in the PRC or in other countries. In fact there is a slowing demand growth in global markets and the capacity/demand gap has been widening, according to a recent OECD study ⁽⁵⁾.
- (128) The fact that the country concerned has a massive steel overcapacity is not challenged by the Chinese authorities: First, the Chinese State Council issued on 1 February 2016 an ‘Opinion for the steel industry to resolve excess capacity’ which lays down the overall Chinese approach for tackling more resolutely the overcapacity in the Chinese steel industry. Measures would inter alia be a reduction of the crude steel capacity by 100-150 million tonnes over five years and the strict prohibition of new production capacity. Second, the China Iron & Steel Association (CISA) also mentioned in its submission that ‘in the last few years the Chinese government and the Chinese steel association have taken effective measures...Since 2011 China has actively eliminated obsolete capacities and reinforced energy saving measures. ⁽⁶⁾’

⁽¹⁾ World Steel in figures 2015, World Steel Association, p. 14, <http://www.worldsteel.org/publications/bookshop/product-details.~World-Steel-in-Figures-2015~PRODUCT~World-Steel-in-Figures-2015~.html>

⁽²⁾ COM(2016) 155 final, Brussels, 16.03.2016, Communication from the Commission to the European Parliament, The European Council, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, Steel: Preserving sustainable jobs and growth in Europe, p. 2.

⁽³⁾ OECD, DSTI/SU/SC(2015)8/Final, Directorate for Science, Technology and Innovation, Capacity developments in the world steel industry, Table 1, p. 10, [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/SU/SC\(2015\)8/FINAL&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/SU/SC(2015)8/FINAL&docLanguage=En)

⁽⁴⁾ World Steel Association, World Steel in Figures 2016, table ‘major steel-producing countries 2014 and 2015’, p. 9, <http://www.worldsteel.org/media-centre/press-releases/2016/World-Steel-in-Figures-2016-is-available-online.html>

⁽⁵⁾ OECD Directorate for Science, Technology and Innovation (2015): ‘Excess capacity in the global steel industry: the current situation and ways forward’, Technology and Industry Policy Papers, No. 18, OECD Publishing, pages 5 and 6. <http://dx.doi.org/10.1787/5js65x46nxhj-en>

⁽⁶⁾ Submission by Dentons on behalf of China Iron and Steel Association (CISA) and its members, Comments in the anti-dumping proceeding concerning imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating the People’s Republic of China, 21 March 2016, paragraph (24), page 7.

- (129) However, inconsistencies are recently reported between the above-mentioned Chinese announcement of capacity cuts in the post-investigation period and the actual situation, as follows:
- There are reports that the country concerned suffers from a phenomenon of ‘zombie’ steel mills ⁽¹⁾: these are mills that are forever said to be dying but never actually die.
 - Another source also reported that 41 blast furnaces have been reopened, and more recent reports even indicate that over 50 million tonnes of steel capacity has been restarted in the PRC since the start of 2016 ⁽²⁾.
 - The World Steel Association states the following on the world crude steel production for the first 6 months of 2016: ‘World crude steel production in the first six months of 2016 was 794,8 Mt, a decrease of – 1,9 % compared to the same period of 2015... Crude steel production ... decreased by – 6,1 % in the EU 28... China’s crude steel production for June 2016 was 69,5 Mt, an increase of 1,7 % compared to June 2015... ⁽³⁾’
- (130) Finally, the Commission analysed the pledges and commitments of the Chinese authorities as mentioned in recital (128). Despite these announcements early 2016, they did not yet materialise.
- (131) As a result, it is considered that the issue of overcapacity in the steel sector in the PRC is widely-known and it is also acknowledged by the Chinese authorities.
- (132) The like product is assessed to be a large portion of the total crude steel production for the following reason: whereas the total Chinese crude steel production was 822 000 million tonnes and 822 698 million tonnes, the total Chinese production of hot-rolled flat products was 311 564 million tonnes (or about 37,9 % of overall crude steel production) and 317 387 million tonnes (or about 38,6 % of overall crude steel production) in respectively the years 2013 and 2014 ⁽⁴⁾. Therefore, the above data on crude steel provide a good indication as well on the overcapacity of the like product in the PRC.
- (133) Second, reference is made to the table in recital (185) where the actual production of the like product of the PRC is compared to the actual production of other countries for the years 2014 and 2013. This table shows for instance that the 2014 actual production of the like product in the PRC (317,4 million tonnes) is about 5 times the total aggregate production of Russia, Ukraine, Iran and Brazil combined (57,4 million tonnes). This is an indication of the enormous production capacity of the like product in the PRC.
- (134) Third, the investigation confirmed that during the investigation period, the sampled Chinese exporting producers run on average, at a capacity utilisation rate of 65 %. This amounts to more than 14 million metric tonnes of freely disposable capacity of the product concerned amongst only three companies. This is another indicator of the spare capacity of the like product. Assuming similar ratios from other Chinese hot-rolled flat steel products (HRF) producers, a high total HRF spare capacity in China can be deducted.
- (135) Furthermore, the Union market is an open market with a lot of imports from several countries, as shown in the table in recital (177). As shown in table 4 under recital (76), the Chinese exporting producers have been exporting to the Union market from mainly 2012 onwards and gaining rapidly market shares with low-priced imports at the expense of other economic actors, including the Union producers. This proves that penetration has proven relatively easy and very successful during the period considered for the Chinese exporting producers and is as such an indication of the attractiveness of the Union market for Chinese and other exporting producers.

5.2.2.2. Absorption capacity of third countries

- (136) In line with Article 3(9), 2nd subparagraph, lit (b) of the basic Regulation, the Commission analysed the availability of other export markets for the Chinese exporting producers to absorb any additional exports.

⁽¹⁾ Reuters, press article, China’s zombie steel mills fire up furnaces, worsen global glut, <http://in.reuters.com/article/china-steel-overcapacity-idINKCN0XI070>

⁽²⁾ Reuters press article, BHP says over 50 million tonnes of steel capacity restarted in China, <http://www.reuters.com/article/us-bhp-china-idUSKCN0YA09E>

⁽³⁾ June 2016 crude steel production, World Steel Association, media centre, <https://www.worldsteel.org/media-centre/press-releases/2016/June-2016-crude-steel-production0.html>

⁽⁴⁾ World Steel Association, Steel Statistical Yearbook 2015, table 1 on page 2 and table 13 on page 35, <http://www.worldsteel.org/statistics/statistics-archive/yearbook-archive.html>

- (137) Some (major) exporting markets are increasingly difficult to access for the Chinese exporting producers because of trade defence measures (countries such as the USA, Malaysia, India, and Mexico) and/or investigations (countries such as Thailand) or increased customs duties (South Africa).
- (138) Statistical export data — for 2015 and for the first six months of 2016 — for a sample ⁽¹⁾ of CN codes concerning the like product — show though a status quo in Chinese export volumes to the rest of the world.
- (139) First, the country concerned exported about the same volumes during the first 6 months of 2016, if these figures were annualised and compared to 2015. Nevertheless, the average unit sales price was lower during the first 6 months of 2016 compared to 2015. Second, the loss of market share in some countries (such as Indonesia and Vietnam) during the first 6 months of 2016 compared to 2015 is compensated by a gain of market share in other countries (such as Bangladesh and the Democratic People's Republic of Korea). The Commission hence concluded that it is unlikely that third countries would absorb on their own the huge amount of freely disposable Chinese capacity. Even if there is currently a status quo in Chinese exports to other third countries, the attractive Union market, as mentioned under recital (135) is likely to continue to be among the primary targets of Chinese dumped exports.

5.2.2.3. Absorption capacity of the PRC

- (140) There is no sufficient absorption capacity in the PRC either. The domestic demand in the PRC for steel is slowing down: According to the World Steel Association, China's steel demand was first expected to decrease by – 3,5 % in 2015 and – 2,0 % in 2016, following its demand peak in 2013. ⁽²⁾ However, these figures were afterwards adjusted by the same organisation as follows: 'the decline in steel demand in China is expected to be – 4,0 % in 2016 followed by – 3,0 % in 2017. This suggests a demand of 626,1 Mt steel (15 % down from 2013) for 2017, a contraction to 41,9 % of world steel use from 47,9 % in 2009 and 44,8 % in 2015' ⁽³⁾.

5.2.2.4. Conclusion on capacity

- (141) In conclusion, it is likely that significant volumes of the existing massive excess capacity on steel, including the like product, will continue to be directed to the Union market. The present overcapacities and the insufficient absorption capacity of third states or the PRC itself indicate the likelihood of substantially increased Chinese exports to the Union where penetration has proven relatively easy and very successful during the period considered.

5.2.3. Price level of imports

- (142) During the period considered, as set out in recital (78), average import prices from the country concerned decreased by 33 %, from 600 euro/tonne in 2012 to 404 euro/tonne in 2015.
- (143) The table below compares the average unit Chinese import prices with the unit sales prices of the five sampled Union producers:

Table 15

Sales prices on the free market in the Union compared to Chinese import prices during the period considered

	See recital	2012	2013	2014	IP
Sales price of the 5 sampled Union producers (EUR/tonne)	(104)	553	498	471	427

⁽¹⁾ The sample consisted of 679,4 million tonnes of Chinese exports of the like product for the year 2015 and of 343,8 million tonnes of Chinese exports of the like product for the first 6 months of 2016.

⁽²⁾ Worldsteel Short Range Outlook 2014 — 2015, World Steel Association, <https://www.worldsteel.org/media-centre/press-releases/2015/worldsteel-Short-Range-Outlook-2015-2016.html>

⁽³⁾ See also recital (103) for the slight decrease in inventories at the sampled Union producers as a percentage of production.

	See recital	2012	2013	2014	IP
Average price of Chinese imports according to Eurostat (EUR/tonne)	(78)	600	505	463	404
Difference (EUR/tonne)		– 47	– 7	+ 8	+ 23

Source: Questionnaire reply of sampled Union producers and exporting producers, and Eurostat

- (144) The average Chinese prices were substantially higher than the prices of Union producers in 2012. However, in 2015, the prices of the Chinese imports became substantially lower (404 euro/tonne) than the prices of the Union industry (427 euro/tonne). This is confirmed by the undercutting analysis in recital (82) above.
- (145) The following table shows a further continuing decrease of Chinese unit prices during the post-investigation period January — June 2016 when entering the Union market.

Table 16

Chinese import prices during the post-IP period

Average import prices of Chinese imports (euro/tonne)	January 2016	February 2016	March 2016	April 2016	May 2016	June 2016
	326	318	313	303	299	308

Source: Eurostat

- (146) The negative effect of the low prices of the Chinese imports is found to be twofold:
- (i) on the one hand, the significant price differential is likely to cause (further) a shift towards these dumped imports, because users will be more likely to buy increasing quantities of goods that are sold at low prices;
 - (ii) on the other hand, the existence of such low prices in the market is likely to be used by buyers as a negotiating tool to depress the prices offered by the Union producers and other sources, thereby causing further a depressive effect in terms of both diminishing volumes and lower prices. While these effects can be questioned in situations where the price differentials are not substantial, in the case at stake, and considering the price undercutting found, the resulting damage to the Union industry is expected to be serious.

5.2.4. Level of inventories

- (147) The Commission considered that this factor is not of any particular significance for the analysis because normally stocks are kept by traders (stockists) and not so much by producers. Furthermore, Union producers are mainly producing on order, enabling them to keep their inventory levels as low as possible. Nevertheless, it analysed this factor which is expressly mentioned in Article 3(9), second subparagraph, of the basic Regulation (see recital (120) above).
- (148) Falling levels of stock were noted both in the PRC and on the Union market ⁽¹⁾ at the end of the investigation period. This might be explained in the framework of the price decreases in 2015 and in 2016, as follows: if a producer or trader expects that prices would rise, it should be building up stocks rapidly expecting to make proportionally more profits when prices rise.

⁽¹⁾ See also recital (100) for the slight decrease in inventories at the sampled Union producers as a percentage of production.

- (149) The Commission was unable to find comprehensive post-investigation period data on stocks despite requests and own researches. It found it nevertheless likely that inventory levels of the product concerned remains rather low in the Union during early 2016: For instance, in Germany, 'according to the German Association of Steel Distribution (BDS), at the end of last year flat steel inventories dropped to the lowest level since December 2003. The latest data showed some improvement, but with flat steel stocks at 1,4 million tonnes in February, they remained 7 % lower year-on-year ⁽¹⁾'.
- (150) In the PRC, steel inventories in the warehouses of 40 major Chinese cities reportedly decreased to 8,86 tonnes late June 2016 from 9,47 tonnes late May 2016, which compares to 12,86 tonnes late June 2015. During the month of May 2016, the steel inventories of 80 major Chinese mills amounted to 14,17 tonnes, comparing to 16,71 tonnes late May 2015 ⁽²⁾.
- (151) In conclusion, steel inventories are decreasing both during the end of the investigation period and in the post-investigation period. Although this factor is not decisive in the analysis, it might indicate a potential further decrease in prices reinforcing the threat of injury.

5.2.5. Other elements: Profitability and order intakes in the Union by the Union industry

- (152) The Union industry needs sustainable profits. Therefore, this injury indicator is very important. Order intakes are confirmed commitments from customers and show the evolution of the Union industry's sales in the coming months. The Commission was able to collect and analyse data on profit and order intakes for the investigation and post investigation period.
- (153) As set out in recital (113), the Union producers slightly started to recover during 2014 and the first two quarters of 2015 in terms of profitability. As set out in recital (116), during the second half of 2015, the Union profitability became loss making and losses reached the unsustainable level of – 10 % in the 4th quarter of the investigation period.
- (154) For the post investigation period, profitability figures for the whole Union industry were not yet available. Profitability figures were collected for the complainants though, which represent about 90 % of the total production of the Union industry, as mentioned under recital (62). These data will be updated after the publication of this Regulation and where possible, also other factors will be analysed. At this stage of the investigation, the data for profitability and order intakes were the best available data.
- (155) As was shown in the table in recital (145), Chinese export prices further decreased during the first half of 2016 and were below the cost of production of the Union producers. This shows an aggressive Chinese price setting on the Union market, which cannot be sustained in the future by the Union producers. This is confirmed by the table below which provides information on the profitability of the complainants. The investigation established a further deterioration of the profitability for the complainants.

Table 17

Evolution of profitability and order intakes of the Complainants

Description	2012	2013	2014	2015	April 2015-March 2016
Profitability	– 1,31 %	– 4,86 %	– 1,28 %	– 3 to – 5 %	– 5 % to – 7 %
Order intakes	16 763 734	16 631 630	16 677 099	15 529 155	15 636 444

Source: Eurofer

⁽¹⁾ European steel producers on the offensive, but will price increases stick? Article, <http://blogs.platts.com/2016/04/05/european-steel-producers-on-offensive/>

⁽²⁾ WorldSteel Association, The Chinese steel industry, A monthly update for world steel members, Issue 115, June 2016.

5.2.6. *Foreseeability and imminence of the change in circumstances*

- (156) Article 3(9) of the basic Regulation provides that ‘... the change in circumstances which would create a situation in which the dumping would cause injury must have been clearly foreseen and must be imminent.’
- (157) All the above-mentioned factors have been analysed and verified with respect to the investigation period. In particular, the profitability of the sampled Union producers reached the unsustainable level of — 10 % in the 4th quarter of 2015 when Chinese price pressure was felt most. Furthermore, the post-investigation period data revealed that this negative trend, which started in the second half of 2015, was not invalidated during the first half of 2016. If this trend continues, the fragile situation of the Union industry will be turned into a material injury shortly. Based on the data for the investigation period, the Commission thus concluded that there was a clearly foreseeable and imminent change in circumstances at the end of the investigation period, which will create a situation in which the dumping will cause injury.

5.3. **Conclusion on threat of injury**

- (158) While the Union industry was recovering during 2014 and the first two quarters of 2015, almost all injury indicators started to fall dramatically during the second half of 2015. The investigation revealed that this negative trend, which started in the second half of 2015, was not invalidated during the first half of 2016. The Union industry’s forecast concerning future profitability and future sales is negative and could be confirmed (see table 17 under recital (155)). Decreasing sales and lower/negative margins are most likely to lead to heavy losses, lost orders and reduced jobs. As a result, all factors assessed in the framework of Article 3(9) of the basic Regulation, in particular the significant rate of increase of dumped imports in 2015 (continued in 2016) at further decreasing prices, the huge excess capacity in the PRC, and the negative developments in profitability of the Union industry point to the same direction.
- (159) In the view of this analysis, at this stage the Commission concluded that there was a threat of a clearly foreseeable and imminent injury to the Union industry at the end of the investigation period.

6. CAUSATION

- (160) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the threat of material injury to the Union industry was caused by the existing dumped imports from the country concerned. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could at the same time have threatened to injure the Union industry. The Commission ensured that any possible threat of injury caused by factors other than the dumped imports from the PRC was not attributed to the dumped imports. These factors are: the economic crisis and decrease in steel demand, the cost of raw materials causing the decrease of the sales prices, imports from other third countries, the export sales performance of the Union producers, and the allegation that one Union producer on its own is injuring the Union industry.

6.1. **Effects of the dumped imports**

- (161) Sales prices of the Chinese exporting producers decreased on average from 600 EUR/tonne in 2012 to 404 EUR/tonne during the investigation period (– 33 %). By continuously lowering their unit sales price during the period considered, and as set out in recital (76), the Chinese exporting producers were able to significantly increase their market share from 2012 (0,79 %) to the investigation period (4,32 %). In particular, during the investigation period, compared to the previous years, there was a substantial increase of Chinese imports.
- (162) While the drop in steel demand and the aftermath of the Eurozone debt crisis affected negatively the performance of the Union industry in 2012 and 2013, the Union industry was able to recover slightly in 2014. However, in particular from the second half of 2015 onwards, the continuous increase in imports from the country concerned at undercutting prices had a clear negative impact on the performance of the Union industry. Indeed, while the Union industry was cutting in 2015 its costs by productivity gains, including some labour reductions and benefitting from the decrease in raw material prices, dumped imports kept on increasing and forced the Union industry to decrease its Union sales prices even more to limit its loss of market share. As a result, while the Union industry’s profitability showed slight improvement by reducing losses in 2014 and the first half of 2015, the trend reversed completely from the second half of 2015 onwards: the volume of Chinese imports increased further and the Chinese prices decreased even more while the Union industry prices and profitability went further down.

- (163) In view of the coincidence in time between, on the one hand, the ever-increasing level of dumped imports at continuously decreasing prices and, on the other hand, the Union industry's loss of market share and price depression resulting in further losses, in particular from the second half of 2015 onwards, the Commission concluded that the dumped imports had a negative impact on the situation of the Union industry.
- (164) Moreover, the progressive slowing down of the Chinese economy and the very significant overcapacity of the Chinese steel industry has pushed Chinese steel producers to direct their excess production towards export markets and the Union market is an attractive export destination. Indeed, some other traditionally important export markets imposed measures against Chinese steel products, including hot-rolled flat steel products.
- (165) With the growing imposition of trade defence measures across the globe, it is likely that the Union market has become one of the most attractive destinations for Chinese dumped imports of the product concerned, to the detriment of Union industry. This conclusion is corroborated by:
- the Eurostat import statistics which show that the level of Chinese imports continues to be significant after the end of the investigation period;
 - the weakened Chinese internal steel demand.

6.2. Effects of other factors

6.2.1. *The economic crisis*

- (166) The drop in steel demand in mainly 2012 and the aftermath of the Eurozone debt crisis affected negatively the performance of the Union steel industry in 2012 and 2013. As mentioned in recital (106), the Commission recognises the negative effect. It is also observed however that the Union industry started recovering during 2014 and 2015.
- (167) Therefore, on the one hand, even if the Union industry was impacted by the Eurozone debt crisis, namely during the years 2012-2013, the market was recovering slightly from their effects with a relatively stable, even increasing Union market demand from 2013 onwards. As a result, whereas between 2014 and 2015 the Union industry could have benefited more from the recovery of the market, it was prevented from doing so by a steep increase in imports from the PRC. Low-priced Chinese imports gradually increased and captured market shares to the detriment of the Union industry. The continuous pressure of imports started to be fully felt from the second half of 2015.
- (168) The Commission thus concluded at this stage that the Eurozone debt crisis had had a negative impact during mainly the years 2012 and 2013 of the period considered and before the investigation period. However, it did not contribute to the threat of injury found at the end of 2015.

6.2.2. *Decrease in cost of the main raw materials (iron ore, coking coal and scrap) of the product concerned/like product*

- (169) An interested party argued that the prices of the product concerned and the like product would follow a sole worldwide price trend and basically reflect the decreasing prices of iron ore. Accordingly, it was not the Chinese exports, but a worldwide trend, which exerted the price pressure and caused the ensuing threat of injury.
- (170) The Commission analysed the developments in raw material prices for HRF for the period considered.
- (171) First, in established steel markets, such as the Union market, domestic producers compete with many import sources as shown in table 18 under recital (177) below, leading to a growing price pressure and, consequently, to price erosions.
- (172) Second, even if the PRC is the most steel consuming country in the world, it has a significant excess capacity. Chinese producers are thus incentivised to export their surplus of production at low prices to their most attractive markets, including the Union market. Hence, the trend of raw materials prices is not the only factor which has an impact on world-wide prices.

- (173) Third, it is acknowledged though that prices for the main raw materials (iron ore, coking coal and scrap) to produce HRF fell significantly between 2012 and 2015 as follows:
- the price for iron ore decreased from about 141 USD per MT to 56 USD per MT, or a decrease of 60 %;
 - the price for demolition scrap fell from about 327 EUR per MT to 159 EUR per MT, or a decrease of 51 %;
 - the price for coking coal lowered from about 252 USD per MT to 121 USD per MT (– 52 %).
- (174) However, when analysing the cost of production of the biggest sampled Union producer, it turns out that the impact of these falling raw materials prices is much lower than the mentioned price evolution. The evolution is about averages and does not reflect the costs for the Union producers which also depend on quality, quantity and contracted relationships. For example, the input from the three above mentioned raw materials accounted for about 60 % of the total cost of production of one big producer in 2012, but was still at 50 % of its total cost of production in 2015. This shows that there is no direct correlation between the fall in raw material prices and a decrease of cost of production for HRF.
- (175) Furthermore, the cost of production within the Union industry decreased altogether by 25 % over the period considered (see recital (104)), which was the result of not only a lower cost for the raw materials but also due to efficiency gains achieved by Union producers. In addition, the average import prices decreased by a higher percentage, i.e. by 33 % over the same period (see recitals (78) and (79)).
- (176) Under fair market conditions, the Union industry could have maintained its sales price levels so as to reap the benefits of a reduction in costs and reach profitability again. However, Union producers had to follow the trend of prices on the Union market and prices fell down. During the investigation period Union producers were even forced to sell at prices below costs, even though they had already managed to reduce significantly their costs of production.

6.2.3. Imports from third countries

- (177) The volume of imports and market share (in volume of total imports) from third countries developed over the period considered as follows:

Table 18

Volumes, unit prices and market shares from third countries

	2012	2013	2014	IP
BRAZIL				
Volume of imports from Brazil	69 457	41 895	108 973	580 525
<i>Index (2012 = 100)</i>	100	60	157	836
Unit import prices from Brazil	515	461	433	386
<i>Index (2012 = 100)</i>	100	89	84	75
Market share	0,22 %	0,13 %	0,33 %	1,65 %
Share in total Union import volume	1,68 %	0,87 %	2,08 %	7,42 %

	2012	2013	2014	IP
IRAN				
Volume of imports from Iran	96 505	125 202	527 161	1 015 088
<i>Index (2012 = 100)</i>	100	130	546	1 052
Unit import prices from Iran	499	454	415	369
<i>Index (2012 = 100)</i>	100	91	83	74
Market share	0,31 %	0,39 %	1,59 %	2,89 %
Share in total Union import volume	2,34 %	2,60 %	10,08 %	12,97 %
RUSSIA				
Volume of imports from Russia	1 341 666	1 334 322	1 376 412	1 714 880
<i>Index (2012 = 100)</i>	100	99	103	128
Unit import prices from Russia	500	448	431	387
<i>Index (2012 = 100)</i>	100	90	86	77
Market share	4,27 %	4,13 %	4,15 %	4,88 %
Share in total Union import volume	32,47 %	27,66 %	26,32 %	21,90 %
SERBIA				
Volume of imports from Serbia	156 894	155 055	211 835	427 558
<i>Index (2012 = 100)</i>	100	99	135	273
Unit import prices from Serbia	523	468	442	400
<i>Index (2012 = 100)</i>	100	89	84	77
Market share	0,50 %	0,48 %	0,64 %	1,22 %
Share in total Union import volume	3,8 %	3,21 %	4,05 %	5,46 %
UKRAINE				
Volume of imports from Ukraine	906 872	905 397	939 545	1 084 477
<i>Index (2012 = 100)</i>	100	100	104	120
Unit import prices from Ukraine	478	429	415	370
<i>Index (2012 = 100)</i>	100	90	87	78
Market share	2,89 %	2,81 %	2,84 %	3,08 %
Share in total Union import volume	21,95 %	18,77 %	17,97 %	13,85 %
Source: Eurostat				

- (178) As set out in the table in recital (76), imports from the PRC grew with 516 % during the period considered. Although the growth rate during the period considered was even higher for Brazil (+ 736 %) and Iran (+ 952 %), their levels of imports (580 525 tonnes from Brazil, and 1 015 088 tonnes from Iran respectively) were much lower than the imports from the PRC in absolute figures (1 519 304 tonnes from the PRC) during the investigation period.
- (179) Furthermore, comparing absolute export figures, it is observed that the country concerned was the second largest exporter to the Union market during the investigation period, after Russia. Russian imports ⁽¹⁾ may have contributed to the threat of injury, but did not break the causal link because of the following considerations.
- (180) First, the growth rate of the PRC during the period considered (+ 516 %) is much higher than the one of Russia (+ 28 %).
- (181) Second, the PRC closed the gap with Russia that exported only slightly more, i.e. 773 686 tonnes (source: Eurostat) during the first half of 2016 compared to a volume of 773 275 tonnes (source: Eurostat) from the PRC in the same period.
- (182) Third, the excess capacity of Russia is not as significant as the excess capacity existing in PRC as shown in the table below:-

Table 19

Actual production of the like product by third countries (in thousands of tonnes)

Country	Crude steel capacity estimated for the year 2014	Crude steel production in 2013	Crude steel production in 2014	HRF actual production in 2013	HRF actual production in 2014
Russia	89 000	69 008	71 461	26 140	26 996
PRC	1 140 000	822 000	822 698	311 564	317 387

Source for capacity data: OECD(*)

Source for production data: World Steel Association, Steel Statistical Yearbook 2015(**)

(*) OECD, DSTI/SU/SC(2015)8/Final, Directorate for Science, Technology and Innovation, Capacity developments in the world steel industry, Table 1, p. 10, [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/SU/SC\(2015\)8/FINAL&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/SU/SC(2015)8/FINAL&docLanguage=En)

(**) World Steel Association, Steel Statistical Yearbook 2015, table 1 on pages 1 and 2 and table 13 on page 35, <http://www.worldsteel.org/statistics/statistics-archive/yearbook-archive.html>

- (183) Even if the figures above on capacity are exclusively on crude steel, and even under the very unlikely assumption that all crude steel in Russia would be used for producing the like product, the excess capacity of Russia is even in that unlikely scenario far below the excess capacity of China.
- (184) Furthermore, the Commission then assessed the prices and market shares of the third country imports. It noted that imports of the like product from some other countries such as Iran, Russia and Ukraine, were made at prices even lower than that of imports from the country concerned. However, when analysing the trends and import volumes, it is clear that the level of imports from Iran were much lower than the level of imports from the PRC in the investigation period, and that imports from Russia and Ukraine indeed increased in volumes during the period considered, but at a much slower pace than the imports from the PRC. Also, contrary to the PRC, imports from Russia and Ukraine lost a significant share in the total Union import volumes during the period considered.
- (185) Finally, the Commission compared the actual production by third countries with the production of the country concerned showing that China outnumbers all other countries both in production of the like product and in capacity of crude steel.

⁽¹⁾ As mentioned under recital (3), on 7 July 2016, the Commission initiated an investigation on imports of the same product originating inter alia in Russia. However, the initiation does not prejudice the outcome of the investigation.

Table 20

Actual production of the like product by third countries (in thousands of tonnes)

Country	Crude steel capacity estimated for the year 2014 (1)	Crude steel production in 2013	Crude steel production in 2014 (2)	Theoretical excess capacity in 2014 (1)	HRF actual production in 2013	HRF actual production in 2014
Russia	89 000	69 008	71 461	17 539	26 140	26 996
PRC	1 140 000	822 000	822 698	317 302	311 564	317 387
Ukraine	42 500	32 771	27 170	15 330	8 929	7 867
Iran	27 000	15 422	16 331	10 669	8 250	8 276
Brazil	48 000	34 163	33 897	14 103	15 014	14 229

Source for capacity data: OECD (*)

Source for production data: World Steel Association, Steel Statistical Yearbook 2015 (**)

(*) OECD, DSTI/SU/SC(2015)8/Final, Directorate for Science, Technology and Innovation, Capacity developments in the world steel industry, Table 1, p. 10, [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/SU/SC\(2015\)8/FINAL&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/SU/SC(2015)8/FINAL&docLanguage=En)

(**) World Steel Association, Steel Statistical Yearbook 2015, table 1 on pages 1 and 2 and table 13 on page 35, <http://www.worldsteel.org/statistics/statistics-archive/yearbook-archive.html>

- (186) The above production figures for the like product show that the country concerned outnumbers by far all other large exporting countries. Furthermore, the above capacity figures for crude steel also indicate that only the PRC has such a massive excess capacity.
- (187) Accordingly, the Commission found that the PRC posed a threat of an imminent injury to the Union industry. As mentioned before, this threat of injury has even become more realistic, due to the combined effect that the Chinese demand for steel is slowing down and that some other Chinese export markets are gradually becoming more difficult to access. As a result, a part of the Chinese volumes is likely to be continued to be directed in the near future to the Union.
- (188) However, it is also likely that imports from Brazil, Iran, Russia, Serbia and Ukraine have contributed to the threat of material injury. Nevertheless, the underlying production, the import trends and the precise import volumes in absolute figures are not of such a scale that they would break the causal link between ever increasing and ever more heavily dumped imports from the PRC and the threat of injury to the Union industry.

6.2.4. Export sales performance of the Union industry

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

Table 21

Export volumes to unrelated customers by the sampled Union producers

	2012	2013	2014	IP
Export volume to unrelated customers	2 344 463	2 379 035	2 777 446	2 409 721
Index (2012 = 100)	100	101	118	103
Average price (EUR/tonne)	516	463	459	391
Index (2011 = 100)	100	90	89	76

Source: Questionnaire reply of sampled Union producers

- (190) The volume of exports to unrelated customers increased by 3 % during the investigation period. As far as prices are concerned, they dropped significantly by – 24 % over the period considered.
- (191) Export sales accounted for not more than 4 % of the total Union production and for 22 % of total sales to unrelated customers during the investigation period. Also, the decrease in export prices followed percentage-wise the same trend as the sales prices of the Union producers on the Union market. Therefore, at this stage the Commission concluded that the export sales performance of the Union producers contributed to the weak situation of the industry. However, this factor did not break the causal link between the dumped imports and the threat of material injury to the Union industry either.

6.2.5. *Specific situation of one Italian Union producer*

- (192) One interested party claimed that one Italian producer was potentially causing injury to the Union industry. It alleged that this Italian producer is benefiting from illegal State aid to the detriment of the other Union producers on the Union market, possibly 'to an extent to break the causal link...' It also claimed that the actual production of the Italian producer decreased significantly during the period considered.
- (193) First, the definition and analysis of the Union industry is based on the entire Union industry, including the Italian producer. Despite the fact that this Italian producer effectively reduced significantly its production level during the period considered, the overall production levels of the Union industry (see recital (87)) increased by 2 %. As a consequence, on balance, all other Union producers increased their production during the period considered.
- (194) Second, the allegation that the Italian producer is benefiting from illegal State aid is still under investigation by the Commission until 2017. The opening of an investigation does not prejudice the outcome of the proceedings. As a result, no conclusions can be drawn yet concerning this allegation. Nevertheless, the Commission noted that the sales prices from this Italian producer were found to be lower than the Union average sales price during the investigation period. If the Italian producer had a meaningful impact on sales prices in the Union, one would have expected that average Union prices would have gone up after the reduction of its production. However, this was not the case.
- (195) Third, the fact that certain Union producers perform better on the Union market than others may be the result of a variety of factors but does not affect the provisional conclusion that the Union industry as a whole is suffering from dumped imports.
- (196) The Commission therefore concluded at this stage that the specific situation of one Italian producer did not contribute to the weak situation of the Union industry.

6.3. **Conclusion on causation**

- (197) A causal link was provisionally established between the Chinese dumped imports and the threat of material injury of the Union industry. There is a clear coincidence in time between the sharp increase of, in particular, the level of the dumped imports at continuous decreasing sales prices from the PRC, and the drop of the Union's performance, in particular from the second half of 2015 onwards. The Union industry had no other choice but to follow the price level set by the dumped imports in order to avoid a further shrinking of its market share. This resulted in a loss-making situation which is likely to further deteriorate.
- (198) The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports, causing the threat of material injury for the Union industry as a whole at the end of the investigation period. The situation of the Italian producer did not contribute to the weak situation of the Union industry. The other identified factors such as the economic crisis, the cost of the raw materials, imports from third countries, and the export sales performance of the Union producers were not found to break the causal link between the threat of material injury and the Chinese dumped imports. On the basis of the above, the Commission concluded at this stage that the dumped imports from the PRC in the investigation period were causing a threat of material injury to the Union industry within the meaning of Article 3(6) of the basic Regulation. Known other factors other than the dumped imports from the PRC which at the same time had an impact on the situation of the Union industry were not found to break the causal link.

7. UNION INTEREST

- (199) In accordance with Article 21 of the basic Regulation, the Commission examined whether it could clearly conclude that it was not in the Union interest to adopt measures in this case. It gave special consideration to the need to eliminate the trade-distorting effects of injurious dumping and to restore effective competition. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, and users.

7.1. Interest of the Union industry

- (200) The Union industry is located in several Member States (UK, France, Germany, Czech Republic, Slovak Republic, Italy, Luxembourg, Belgium, Poland, the Netherlands, Austria, Finland, Sweden, Portugal, Hungary and Spain), and employs directly ca. 18 000 employees in relation to hot-rolled flat steel products.
- (201) Seventeen producers cooperated during the investigation. None of the known producers opposed the initiation of the investigation. As shown above when analysing the injury indicators, the whole Union industry showed some signs of injury during the period considered. In particular, injury indicators related to the financial performance of the sampled Union producers, such as profitability, were seriously affected. They experienced a deterioration of its situation, in particular from the second half of 2015 onwards, and were negatively affected by the dumped imports, causing the threat of injury which became imminent at the end of the investigation period.
- (202) It is expected that the imposition of provisional anti-dumping duties will restore fair trade conditions on the Union market, putting an end to the price depression and enabling the Union industry to recover. This would result in an improvement of the Union industry's profitability towards levels considered necessary for this capital intensive industry. It is therefore important that prices be restored to a non-dumped or a non-injurious level in order to allow all various producers to operate on the Union market under fair trade circumstances. In the absence of measures, it is very likely that the threat of injury will materialise and that there will be a further deterioration of the Union industry's economic situation. A negative performance on the hot-rolled flat steel products segment would impact the downstream and upstream segments of many Union producers as capacity utilization on these segments is closely linked to the production of the product investigated.
- (203) The Commission therefore concluded at this stage that the imposition of anti-dumping duties would be in the interest of the Union industry.

7.2. Interest of importers

- (204) As mentioned in recitals (11) to (13), no unrelated importer completed a questionnaire reply or provided the Commission with elements showing to what extent importers would be harmed by the imposition of measures. Therefore and also taking into account that, in addition to the PRC, many other countries export to the Union, the Commission provisionally concluded that it is likely that the imposition of measures may not be in the interest of importers.

7.3. Interest of users

- (205) The hot-rolled flat steel products are used as an industrial input purchased by end users for a variety of applications, including in construction (production of steel tubes), shipbuilding, gas containers, pressure vessels and energy pipelines.
- (206) Only one user from Italy (Marcegaglia Carbon Spa) with imports from the country concerned and producing inter alia tubes, pipes and downstream steel products provided a questionnaire reply. The product concerned/like product is a cost item for this user.

- (207) This Italian user alleged that the imposition of measures on imports from the country concerned would lead to a situation whereby it would no longer have access to reliable supplies of the product concerned on the Union market, in particular of high quality coils used for re-rolling. It alleged that 88 % of the total Union production is accounted for by only 16 companies belonging to eight large groups, whereby the largest part of the production (about 70 %) is used in the captive market. As a consequence, allegedly, the Union producers as a result of their still relatively high market share can exercise a strong pressure both on the market of the product concerned as on the downstream market.
- (208) First, the Commission noted that the objective of anti-dumping duties is not to close off the Union market from any imports, but to restore fair trade by removing the effect of injurious dumping. Imports from the PRC are therefore not expected to come to an end, but to continue, albeit at non-dumped prices.
- (209) Second, the Commission found that the user is not exclusively dependent on Chinese imports, but also purchased the product concerned during the investigation period from Union producers as well as from other producers in third countries other than the country concerned.
- (210) Third, even if the prices of the Chinese product concerned were to increase by around 30 %, this would only have a 3 % impact of the cost of production of this Italian user. Such an impact is considered minor.
- (211) Fourth, because imports from the country concerned and from other countries are expected to continue after the imposition of anti-dumping duties, and since as such alternative sources of supply still exist, the claim that the imposition of anti-dumping duties would result in the Union industry being able to exercise strong price pressure is unfounded. The Union industry consists of 23 producers which provide users with a wide range of supply already within the Union, in addition to the option of imports from the other third countries which produce and export the like product. Therefore, at this stage the Commission rejected the claim that the imposition of measures would lead to a shortage of supply of the product concerned/like product.
- (212) With regard to any potential negative effects on the competition on the Union market, it is true that the EU competition rules impose more stringent standards of behaviour on a company that has a significant market share. However, it is ultimately up to the competent competition authorities to determine whether there is a dominant position and whether it is abused.
- (213) In view of the above, it is concluded at this stage that the imposition of measures would be against the interest of users but would not have any disproportionate negative effect on them. In particular the wide range of supply which is available on the market, and that the investigation revealed that the impact of the measures on the cost of the user that came forward was less significant than alleged were taken into consideration.

7.4. Conclusion on Union interest

- (214) The Commission concluded at this stage that the imposition of measures would contribute to the recovery of the Union industry in terms of profitability. The imposition of measures would allow the Union producers to make the necessary investments and R&D to better equip their hot-rolled flat steel production equipment and boost their competitiveness.
- (215) The Union industry underwent already significant restructuring in the (recent) past. If no measures were imposed, the threat of imminent injury at the end of the investigation period is likely to materialise. Some Union hot-rolled flat steel producers might have to close down/reduce their hot-rolled flat steel products activities, dismiss employees and leave many Union users with limited sources of supply.
- (216) As regards the interest of unrelated importers and users, the Commission concluded at this stage that the imposition of measures at the proposed level would have only a limited impact. More specifically, the prices, their profitability and the employment in the user's industry would not be disproportionately affected. Hence, the imposition of measures at the proposed level only has a limited impact on the prices of the supply chain and the performance of users. The level of measures will lead to a level playing field but still allow for imports from the country concerned, at fair prices.

- (217) Weighing and balancing the strong interests of an important Union industry to be protected against unfair practices, on the one hand, and the limited likely effects of measures on unrelated importers and users, which continue to benefit from a wide array of supply in the Union, the Commission concluded at this stage that there were no compelling reasons that it was not in the Union interest to impose measures on imports of the product concerned originating in the country concerned.

8. PROVISIONAL ANTI-DUMPING MEASURES

- (218) On the basis of the conclusions reached by the Commission on dumping, threat of injury, causation and Union interest, provisional measures should be imposed to prevent that the imminent threat of material injury which is caused to the Union industry by the dumped imports would materialise.

8.1. Injury elimination level (Injury margin)

- (219) To determine the level of the measures, the Commission first established the amount of duty necessary to eliminate the threat of material injury. According to the case-law, the target price is the price which the Union industry could reasonably count on under normal conditions of competition, in the absence of the dumped imports. In the Commission decision practice, the target price is normally calculated by establishing the costs of production of the like product and adding the profit margin which the Union industry could reasonably count on under normal conditions of competition, in the absence of the dumped imports.
- (220) As regards the determination of a target profit, the Commission first analysed the proposal of the complainant, which pointed to 12,9 %, taken from a previous Commission decision on the same product ⁽¹⁾. However, this finding dates back to the year 2000, and the data from over 15 years ago cannot be regarded as representative anymore given the technological and financial changes the Union industry faced since then.
- (221) The Commission then turned to the profitability data of the year 2008, which it had regarded as the most representative year for a downstream product, namely cold-rolled steel products ⁽²⁾. The product concerned of the current investigation is similar in many respects to certain cold-rolled flat steel products (cold-rolled products) for the following reasons:
- (a) For both products (iron ore and coking coal) certain alloys are major parts of their cost of production and they go through similar processes (furnace, hot strip mill).
 - (b) As set out in recital (26), the product concerned is the primary material for the production of various value-added downstream steel products, starting with cold-rolled products.

On this basis, the Commission found a profit margin of 14,4 %.

- (222) However, various elements in that case relating to injurious dumping from China and Russia are not present in the current case, where the Commission found a threat of injury from Chinese exports, which involves a prospective analysis. In particular, in that case, imports at low prices from the countries under investigation had taken place throughout the four-year period prior to the investigation period.
- (223) The Commission then tried to establish a target profit by simulating how the recovery of the Union industry from the recession caused by the economic and financial crisis in 2009 might have developed if it had not been interrupted by the high volumes of price-depressing Chinese imports. For this exercise, it relied on more recent data and a prospective analysis presented to the OECD's Steel Committee in December 2013. In a study entitled 'Laying the foundations for a financially sound industry' an expert opinion looked at the profitability of the global steel industry in recent years and fixed a long-term sustainability profit threshold. In particular, this study

⁽¹⁾ See Commission Decision No 284/2000/ECSC of 4 February 2000 imposing a definitive countervailing duty on imports of certain flat rolled products of iron or non-alloy steel, of a width of 600 mm or more, not clad, plated or coated, in coils, not further worked than hot-rolled, originating in India and Taiwan and accepting undertakings offered by certain exporting producers and terminating the proceeding concerning imports originating in South Africa, OJ L 31, 2000, p. 44, para. 338.

⁽²⁾ See Commission Implementing Regulation (EU) 2016/1328 of 29 July 2016 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation, OJ L 210, 2016, p. 1, Recital 156.

argued in favour of 17 % global average EBITDA margin (earnings before interest, taxes, depreciation and amortisation) ⁽¹⁾. The report also points to an average of 7 % investment costs and an average debt cost of 3 %. The Commission deducted these two posts, and arrived at level of 7 % for earnings before taxes (EBT). Absent any other reliable data, it equated these figures made for the steel industry as a whole to the product concerned, as HRF makes up a big proportion of the crude steel production.

- (224) In conclusion, the Commission established provisionally at this stage that a target profit of 7 % can be used to calculate the threat of injury margin for the Union HRF industry, but will further investigate whether more precise data are available for the product concerned.

8.2. Provisional measures

- (225) Provisional anti-dumping measures should be imposed on imports of the product concerned originating in the country concerned, in accordance with the lesser duty rule provided for in Article 7(2) of the basic Regulation. The Commission compared the injury margins and the dumping margins. The amount of the duties should be set at the level of the lower of the dumping and the injury margins.
- (226) On the basis of the above, the provisional anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Dumping margin	Injury margin	Provisional anti-dumping duty
Bengang Steel Plates Co., Ltd.	96,5 %	17,1 %	17,1 %
Hebei Iron & Steel Group	95,0 %	13,2 %	13,2 %
Jiangsu Shagang Group	106,9 %	22,6 %	22,6 %
Other cooperating companies	100,1 %	18,0 %	18,0 %
All other companies	106,9 %	22,6 %	22,6 %

- (227) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflected the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imports of product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.
- (228) A company may request the application of these individual anti-dumping duty rates if it changes the name of its entity or sets up a new production or sales entity. The request must be addressed to the Commission ⁽²⁾. The request must contain all the relevant information, including: modification in the company's activities linked to production; domestic and export sales associated with, for example, the name change or the change in the production and sales entities. The Commission will update the list of companies with individual anti-dumping duties, if justified.
- (229) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies should apply not only to the non-cooperating exporting producers in this investigation, but to the producers which did not have exports to the Union during the investigation period.

⁽¹⁾ McKinsey & Company, Laying the foundations for a financially sound industry, OECD Steel Committee meeting of 5th December 2013, p. 7

⁽²⁾ European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170, 1040 Brussels, Belgium.

9. FINAL PROVISIONS

- (230) In the interests of sound administration, the Commission will invite the interested parties to submit written comments and/or to request a hearing with the Commission and/or the Hearing Officer in trade proceedings within a fixed deadline.
- (231) The findings concerning the imposition of provisional duties are provisional and may be amended at the definitive stage of the investigation.

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is imposed on imports of certain flat-rolled products of iron, non-alloy steel or other alloy steel, whether or not in coils (including 'cut-to-length' and 'narrow strip' products), not further worked than hot-rolled, not clad, plated or coated.

The product concerned does not include:

- products of stainless steel and grain-oriented silicon electrical steel,
- products of tool steel and high-speed steel,
- products, not in coils, without patterns in relief, of a thickness exceeding 10 mm and of a width of 600 mm or more, and
- products, not in coils, without patterns in relief, of a thickness of 4,75 mm or more but not exceeding 10 mm and of a width of 2 050 mm or more.

The product concerned is currently falling within CN codes 7208 10 00, 7208 25 00, 7208 26 00, 7208 27 00, 7208 36 00, 7208 37 00, 7208 38 00, 7208 39 00, 7208 40 00, 7208 52 10, 7208 52 99, 7208 53 10, 7208 53 90, 7208 54 00, 7211 13 00, 7211 14 00, 7211 19 00, ex 7225 19 10 (TARIC code 7225 19 10 90), 7225 30 90, ex 7225 40 60 (TARIC code 7225 40 60 90), 7225 40 90, ex 7226 19 10 (TARIC code 7226 19 10 90), 7226 91 91 and 7226 91 99 and originating in the People's Republic of China.

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

Country	Company	Provisional duty rate	TARIC Additional Code
PRC	Bengang Steel Plates Co., Ltd.	17,1 %	C157
	Handan Iron & Steel Group Han-Bao Co., Ltd.	13,2 %	C158
	Hebei Iron & Steel Co., Ltd. Tangshan Branch	13,2 %	C159
	Hebei Iron & Steel Co., Ltd. Chengde Branch	13,2 %	C160
	Zhangjiagang Hongchang Plate Co., Ltd.	22,6 %	C161
	Zhangjiagang GTA Plate Co., Ltd.	22,6 %	C162
	Other cooperating companies listed in Annex I	18,0 %	See annex
	All other companies	22,6 %	C999

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

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

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

Article 2

1. Within 25 calendar days of the date of entry into force of this Regulation, interested parties may:

- (a) Request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted;
- (b) Submit their written comments to the Commission; and
- (c) Request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

2. Within 25 calendar days of the date of entry into force of this Regulation, the parties referred to in Article 21(4) of Regulation (EU) 2016/1036 of the European Parliament and of the Council may comment on the application of the provisional measures.

Article 3

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

Article 1 shall apply for a period of six months.

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

Done at Brussels, 6 October 2016.

For the Commission

The President

Jean-Claude JUNKER

ANNEX

Country	Name	TARIC additional code
PRC	Angang Steel Company Limited	C150
PRC	Inner Mongolia Baotou Steel Union Co., Ltd.	C151
PRC	Jiangyin Xingcheng Special Steel Works Co., Ltd.	C147
PRC	Shanxi Taigang Stainless Steel Co., Ltd.	C163
PRC	Shougang Jingtang United Iron & Steel Co., Ltd	C164
PRC	Maanshan Iron & Steel Co., Ltd	C165
PRC	Rizhao Steel Wire Co., Ltd.	C166
PRC	Rizhao Baohua New Material Co., Ltd.	C167
PRC	Tangshan Yanshan Iron and Steel Co., Ltd.	C168
PRC	Wuhan Iron & Steel Co., Ltd.	C156

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1779**of 6 October 2016****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾,

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ⁽²⁾, and in particular Article 136(1) thereof,

Whereas:

- (1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.
- (2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day 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, 6 October 2016.

*For the Commission,
On behalf of the President,*

Jerzy PLEWA
Director-General for Agriculture and Rural Development

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	MA	183,5
	ZZ	183,5
0707 00 05	TR	128,9
	ZZ	128,9
0709 93 10	TR	135,5
	ZZ	135,5
0805 50 10	AR	94,6
	CL	126,6
	TR	94,5
	UY	55,5
	ZA	130,7
	ZZ	100,4
0806 10 10	TR	136,3
	US	210,1
	ZZ	173,2
0808 10 80	AR	110,6
	BR	100,2
	CL	154,8
	NZ	132,8
	ZA	113,9
	ZZ	122,5
0808 30 90	CN	74,4
	TR	130,3
	ZZ	102,4

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EU) No 1106/2012 of 27 November 2012 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards the update of the nomenclature of countries and territories (OJ L 328, 28.11.2012, p. 7). Code 'ZZ' stands for 'of other origin'.

DECISIONS

COUNCIL DECISION (EU) 2016/1780

of 29 September 2016

establishing the position to be taken on behalf of the European Union within the Joint Committee set up under the Agreement between the European Union and Georgia on the facilitation of the issuance of visas, with regard to the adoption of common guidelines for the implementation of that Agreement

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular point (a) of Article 77(2), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Article 12 of the Agreement between the European Union and Georgia on the facilitation of the issuance of visas ⁽¹⁾ (the 'Agreement') sets up a Joint Committee (the 'Joint Committee'). It provides that the Joint Committee is, in particular, to monitor the implementation of the Agreement.
- (2) Regulation (EC) No 810/2009 of the European Parliament and of the Council ⁽²⁾ provides for the procedures and conditions for issuing visas for transit through, or intended stays on, the territory of the Member States not exceeding 90 days in any 180-day period.
- (3) Common guidelines are required to ensure a fully harmonised implementation of the Agreement by the diplomatic missions and consular services of the Member States and to clarify the relationship between the provisions of the Agreement and the provisions of the legislation of the Parties to the Agreement that continue to apply to visa issues not covered by the Agreement.
- (4) It is appropriate to establish the position to be taken on the Union's behalf within the Joint Committee with regard to the adoption of common guidelines for the implementation of the Agreement.
- (5) This Decision constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC ⁽³⁾; the United Kingdom is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (6) This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC ⁽⁴⁾; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.

⁽¹⁾ OJ L 52, 25.2.2011, p. 34.

⁽²⁾ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1).

⁽³⁾ Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* (OJ L 131, 1.6.2000, p. 43).

⁽⁴⁾ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

- (7) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the European Union within the Joint Committee set up under Article 12 of the Agreement between the European Union and Georgia on the facilitation of the issuance of visas, with regard to the adoption of common guidelines for the implementation of that Agreement, shall be based on the draft Decision of the Joint Committee attached to this Decision.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 29 September 2016.

For the Council
The President
P. ŽIGA

DRAFT

**DECISION No .../... OF THE JOINT COMMITTEE SET UP UNDER THE AGREEMENT BETWEEN
THE EUROPEAN UNION AND GEORGIA ON THE FACILITATION OF THE ISSUANCE OF VISAS**

of

with regard to the adoption of common guidelines for the implementation of that Agreement

THE JOINT COMMITTEE,

Having regard to the Agreement between the European Union and Georgia on the facilitation of the issuance of visas ⁽¹⁾
(the 'Agreement'), and in particular Article 12 thereof,

Whereas the Agreement entered into force on 1 March 2011,

HAS ADOPTED THIS DECISION:

Article 1

The common guidelines for the implementation of the Agreement between the European Union and Georgia on the facilitation of the issuance of visas are set out in the Annex to this Decision.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at ...

For the European Union

For Georgia

⁽¹⁾ OJ L 52, 25.2.2011, p. 34.

ANNEX

COMMON GUIDELINES FOR THE IMPLEMENTATION OF THE AGREEMENT BETWEEN THE EUROPEAN UNION AND GEORGIA ON THE FACILITATION OF THE ISSUANCE OF VISAS

The purpose of the Agreement between the European Union and Georgia on the facilitation of the issuance of visas (the 'Agreement'), which entered into force on 1 March 2011, is to facilitate, on the basis of reciprocity, the procedures for issuing visas for an intended stay of no more than 90 days per period of 180 days to the citizens of Georgia.

The Agreement establishes, on the basis of reciprocity, legally binding rights and obligations for the purpose of simplifying the procedures for the issuing of visas to the citizens of Georgia.

These Guidelines, adopted by the Joint Committee set up under Article 12 of the Agreement (the 'Joint Committee'), aim at ensuring a harmonised implementation of the Agreement by the diplomatic missions and consular services of the Member States of the Union ('Member States'). These Guidelines are not part of the Agreement and are therefore not legally binding. However, it is highly recommended that diplomatic and consular staff consistently follow them when implementing the Agreement.

These Guidelines are intended to be updated in the light of experience gained in the implementation of the Agreement under the responsibility of the Joint Committee.

In order to ensure the continued and harmonised implementation of the Agreement and in conformity with the rules of procedure of the Joint Visa Facilitation Committee, the Parties agreed to undertake informal contacts between formal meetings of the Joint Committee, in order to deal with urgent issues. Detailed reports about these issues and the informal contacts will be submitted at the subsequent Joint Visa Facilitation Committee meeting.

I. GENERAL ISSUES

1.1. Purpose and scope of application

Article 1(1) of the Agreement provides that:

'1. The purpose of this Agreement is to facilitate the issuance of visas for an intended stay of no more than 90 days per period of 180 days to the citizens of Georgia.'

The Agreement applies to all citizens of Georgia who apply for a short-stay visa, whichever country they reside in.

The Agreement does not apply to stateless persons holding a residence permit issued by Georgia. The rules of the Union *visa acquis* apply to that category of persons.

Article 1(2) of the Agreement provides that:

'2. If Georgia reintroduces the visa requirement for the citizens of all Member States or certain categories of citizens of all Member States, the same facilitations granted under this Agreement to the citizens of Georgia would automatically, on the basis of reciprocity, apply to the citizens of the Union concerned.'

As from 1 June 2006, all citizens of the Union and stateless persons holding a residence permit issued by a Member State are exempted from the visa requirement when travelling to Georgia for a period of time not exceeding 90 days per period of 180 days or when transiting through the territory of Georgia.

In order to avoid discriminatory treatment by Georgia of the citizens of one or more Member States or certain categories of such citizens, in a Declaration annexed to the Agreement, the Union announced its intention to suspend the application of the Agreement, in case Georgia reintroduces the visa requirement for the citizens of one or more Member States or for certain categories of such citizens.

1.2. Scope of the Agreement

Article 2 of the Agreement provides that:

‘1. The visa facilitations provided in this Agreement shall apply to citizens of Georgia only in so far as they are not exempted from the visa requirement by the laws and regulations of the Union or the Member States, this Agreement or other international agreements.

2. The national law of Georgia or of the Member States or Union law shall apply to issues not covered by this Agreement, such as the refusal to issue a visa, recognition of travel documents, proof of sufficient means of subsistence and the refusal of entry and expulsion measures.’.

The Agreement, without prejudice to Article 10, does not affect the existing rules on visa obligations and visa exemptions. For instance, Article 4 of Council Regulation (EC) No 539/2001 ⁽¹⁾ allows Member States to exempt from the visa requirement, among other categories of persons, civilian air and sea crews. Since the taking of effect of the association of Switzerland and Liechtenstein to the Schengen area on 13 December 2008 and on 7 March 2011 respectively, residence permits issued by Switzerland and Liechtenstein are recognised as equivalent to Schengen visas for both transit and short stay.

Regulation (EC) No 810/2009 of the European Parliament and of the Council ⁽²⁾ (‘Visa Code’) applies to all issues not covered by the Agreement, such as the determination of the Schengen Member State responsible for processing a visa application, the motivation of a refusal to issue a visa, the right to appeal against a negative decision and the general rule of a personal interview with the visa applicant. In addition, Schengen rules and, where appropriate, national law continue also to apply to issues which are not covered by the Agreement, such as the recognition of travel documents, proof of sufficient means of subsistence, the refusal of entry into the territory of the Member States and expulsion measures. In that respect, providing accurate information on these issues is necessary ⁽³⁾.

Even if the conditions provided for in the Agreement are met, for example, proof of documentary evidence regarding the purpose of the journey for the categories provided for in Article 4 is provided by the visa applicant, the issuance of the visa can still be refused if the conditions laid down in Article 6 of Regulation (EU) 2016/399 of the European Parliament and of the Council ⁽⁴⁾ (‘Schengen Borders Code’) are not fulfilled, i.e. the person is not in possession of a valid travel document, an alert in the Schengen Information System (SIS) has been issued, the person is considered a threat to public policy, internal security, etc.

Other flexibilities in the issuing of visas provided for by the Visa Code continue to apply. For instance, multiple-entry visas for a long period of validity — up to five years — can be issued to categories of persons other than those mentioned in Article 5 of the Agreement, if the conditions provided for in Article 24 of the Visa Code are met. In the same way, the provisions contained in Article 16(5) and (6) of the Visa Code allowing waiver or reduction of the visa fee will continue to apply.

1.3. Types of visas falling within the scope of the Agreement

Point (d) of Article 3 of the Agreement defines ‘visa’ as ‘an authorisation issued by a Member State with a view to transiting through or an intended stay in the territory of Member States of a duration of no more than 90 days in any 180-day period from the date of first entry into the territory of the Member States’.

The facilitations provided by the Agreement apply both to uniform visas and to visas with limited territorial validity issued for the purpose of transit or short-stay.

⁽¹⁾ Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 81, 21.3.2001, p. 1).

⁽²⁾ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1).

⁽³⁾ See also point 1.7.

⁽⁴⁾ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).

- 1.4. Calculation of the length of stay authorised by a visa and in particular the question on how to determine the six-month period

Regulation (EU) No 610/2013 of the European Parliament and of the Council ⁽¹⁾ has re-defined the notion of short stay. The current definition of short-stay reads as follows: 'no more than 90 days in any 180-day period, which entails considering the 180-day period preceding each day of stay'. That definition entered into force on 18 October 2013 and is contained in the Schengen Borders Code.

The day of entry will be calculated as the first day of stay in the territory of the Member States and the day of exit will be calculated as the last day of stay in the territory of the Member States. The notion of 'any' implies the application of a 'moving' 180-day reference period, on each day of the stay looking back to the last 180-day period, in order to verify if the 90/180-day requirement continues to be fulfilled. That means that an absence for an uninterrupted period of 90 days allows for a new stay of up to 90 days.

Example of calculation of stay on the basis of the current definition:

A person holding a multiple-entry visa for 1 year (18.4.2010 - 18.4.2011) enters for the first time on 19.4.2010 and stays for three days. Then that person enters again on 18.6.2010 and stays for 86 days. What is the situation on specific dates? When will this person be allowed to enter again?

On 11.9.2010: over the last 180 days (16.3.2010 - 11.9.2010) the person had stayed for three days (19.4.2010 - 21.4.2010) plus 86 days (18.6.2010 - 11.9.2010) = 89 days = no overstay. The person may still stay for up to one day.

As of 16.10.2010: the person might enter for a stay of three additional days (on 16.10.2010 the stay on 19.4.2010 becomes irrelevant (outside the 180-day period); on 17.10.2010 the stay on 20.4.2010 becomes irrelevant (outside the 180-day period; etc.)).

As of 15.12.2010: the person might enter for 86 additional days (on 15.12.2010 the stay on 18.6.2010 becomes irrelevant (outside the 180-day period); on 16.12.2010 the stay on 19.6.2010 becomes irrelevant, etc.).

- 1.5. Situation regarding the Member States that joined the Union in 2004 and 2007 without yet being fully integrated into the Schengen area, Member States that do not participate in the Union common visa policy and associated countries

Only Bulgaria, Croatia, Cyprus and Romania do not yet fully implement the Schengen *acquis*. They will continue issuing national visas with a validity limited to their own national territory. Once those Member States fully implement the Schengen *acquis*, they will continue to apply the Agreement.

National law continues to apply to all issues not covered by the Agreement until the date of full implementation of the Schengen *acquis* by those Member States. As from that date, Schengen rules and/or national law shall apply to issues not covered by the Agreement.

Bulgaria, Croatia, Cyprus and Romania are authorised to recognise residence permits, D visas and short stay visas issued by Schengen Member States and associated countries for short stays on their territory ^(?).

⁽¹⁾ Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013 amending Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), the Convention implementing the Schengen Agreement, Council Regulations (EC) No 1683/95 and (EC) No 539/2001 and Regulations (EC) No 767/2008 and (EC) No 810/2009 of the European Parliament and of the Council (OJ L 182, 29.6.2013, p. 1).

^(?) Decision No 565/2014/EU of the European Parliament and of the Council of 15 May 2014 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, Croatia, Cyprus and Romania of certain documents as equivalent to their national visas for transit through or intended stays on their territories not exceeding 90 days in any 180-day period and repealing Decisions No 895/2006/EC and No 582/2008/EC (OJ L 157, 27.5.2014, p. 23).

In accordance with Article 21 of the Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders ⁽¹⁾, all Schengen Member States must recognise long-stay visas and residence permits issued by each other as valid for short stays on each other's territories. Schengen Member States accept residence permits, D visas and short stay visas of associated countries for entry and short stay and vice versa.

The Agreement does not apply to Denmark, Ireland and the United Kingdom but comprises joint declarations about the desirability of those Member States to conclude bilateral agreements on visa facilitation with Georgia.

Although associated to Schengen, Iceland, Liechtenstein, Norway and Switzerland are not covered by the Agreement.

1.6. The Agreement and bilateral agreements

Article 13 of the Agreement provides that:

'As from its entry into force, this Agreement shall take precedence over provisions of any bilateral or multilateral agreements or arrangements concluded between individual Member States and Georgia, in so far as the provisions of the latter agreements or arrangements cover issues dealt with by this Agreement.'

As from the date of entry into force of the Agreement, provisions of the bilateral Agreements in force between Member States and Georgia on issues covered by the Agreement ceased to apply. In accordance with Union law, Member States have to take the necessary measures to eliminate the incompatibilities between their bilateral agreements and the Agreement.

Should a Member State have concluded a bilateral agreement or arrangement with Georgia on issues not covered by the Agreement, for instance, providing for the exemption from the visa obligation for holders of service passports, that exemption would continue to apply after the entry into force of the Agreement.

The following Member States have bilateral agreements with Georgia providing for the exemption from the visa obligation for holders of service passports: Bulgaria, Cyprus, Latvia, Hungary, Romania and Slovakia.

The visa exemption for service passport holders granted by a Member State only applies for travelling on the territory of that Member State and not for travelling to the other Schengen Member States.

1.7. Joint Declaration on the harmonisation of information on procedures for issuing short-stay visas and documents to be submitted when applying for short-stay visas

A Joint Declaration has been annexed to the Agreement referring to the commitment of the Parties to provide coherent and uniform information to the citizens of Georgia on access to diplomatic missions and consular services of the Member States and on the procedures and conditions for applying for visas and on the validity of visas issued. That information is available on the website of the Delegation of the European Union to Georgia: http://www.eeas.europa.eu/delegations/georgia/travel_eu/visa/index_en.htm.

Article 47 of the Visa Code establishes the obligation of Member States' central authorities and consulates to provide the general public with all relevant information in relation to the application for a visa.

Diplomatic missions and consular services of the Member States are requested to disseminate widely that information (on the information board of consulates, in leaflets, on websites, etc.) and to also disseminate precise information on the conditions for issuing visas, representation of Member States in Georgia and their list of required supporting documentation.

⁽¹⁾ OJ L 239, 22.9.2000, p. 19.

1.8. Information provided by the Georgian authorities on the Agreement

In order to correctly inform the citizens of Georgia about the advantages of the Agreement and the diplomatic missions and consular services of the Member States where visa applications can be submitted, the Ministry of Foreign Affairs of Georgia has created a special link where that information is available. The address of the web page:

http://mfa.gov.ge/index.php?lang_id=GEO&sec_id=95&info_id=13448

II. SPECIFIC PROVISIONS

2.1. Rules that apply to all visa applicants

It is recalled that the facilitations mentioned below regarding the visa fee, the length of procedures for processing visa applications and the extension of visa in exceptional circumstances apply to all visa applicants, including tourists.

2.1.1. Visa fee

The first subparagraph of Article 6(1) of the Agreement provides that:

‘1. The fee for processing visa applications of citizens of Georgia shall amount to EUR 35.’.

In accordance with Article 6(1) of the Agreement, the fee for processing a visa application is 35 EUR. That fee applies to all Georgian visa applicants (including tourists) and concerns short-stay visas, irrespective of the number of entries.

Article 6(2) of the Agreement provides that:

‘2. When Member States cooperate with an external service provider, an additional service may be charged. The service fee shall be proportionate to the costs incurred by the external service provider while performing his tasks and shall not exceed EUR 30. The Member State(s) concerned shall maintain the possibility for all applicants to lodge their applications directly at its/their consulates.’.

Regarding the modalities of the cooperation with external services providers, Article 43 of the Visa Code provides detailed information concerning their tasks.

Article 6(3) of the Agreement provides that:

‘3. The fees for processing the visa application are waived for the following categories of citizens:

- (a) pensioners;’ (N.B. In order to benefit from the fee waiver for this category, visa applicants must present evidence proving their pensioner status. The fee waiver is not justified in cases where the purpose of the journey is a paid activity.);
- ‘(b) children below the age of 12;’ (N.B. In order to benefit from the fee waiver for this category, visa applicants must present evidence proving their age.);
- ‘(c) members of national and regional governments and of Constitutional and Supreme courts, in case they are not exempted from the visa requirement by this Agreement;’ (N.B. In order to benefit from the fee waiver for this category, visa applicants must present evidence from the Georgian authorities proving their position.);
- ‘(d) disabled persons and the persons accompanying them, if necessary;’ (N.B. In order to benefit from the fee waiver for this category, evidence should be provided that both visa applicants fall under this category.).

In order to benefit from the fee waiver for this category, visa applicants must present a 'Georgian Disabled certificate' (first or second degree) issued by the Georgian Ministry of Health, Labour and Social Affairs or a certificate issued by public or private hospitals or clinics. In cases where the disability of the visa applicants is obvious (blind persons, one leg missing) the visual recognition at the consular service is acceptable. In principle, no additional documents are required from accompanying persons.

In justified cases the visa application may be submitted by a representative or the guardian of the disabled person.

- '(e) close relatives — spouse, children (including adopted), parents (including custodians), grandparents or grandchildren — who are visiting citizens of Georgia legally residing in the territory of the Member States';

Point (e) of Article 6(3) of the Agreement regulates the situation of Georgian close relatives travelling to the Member States to visit citizens of Georgia legally residing in the territory of the Member States.

- '(f) members of official delegations who, following an official invitation addressed to Georgia, are to participate in meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of the Member States by intergovernmental organisations;
- (g) pupils, students, post-graduate students and accompanying teachers who undertake trips for the purposes of study or educational training, including exchange programmes as well as other school-related activities;
- (h) journalists and accredited persons accompanying them in a professional capacity;' (N.B. In order to benefit from the fee waiver for this category, visa applicants must present evidence proving that they are members of professional journalistic or media organisations.);
- '(i) participants in international sport events and persons accompanying them in a professional capacity;' (N.B. Supporters will not be considered as accompanying persons.);
- '(j) representatives of civil society organisations when undertaking trips for the purposes of educational training, seminars, conferences, including in the framework of exchange programmes;
- (k) persons participating in scientific, cultural or artistic activities including university and other exchange programmes;
- (l) persons who have presented documents proving the necessity of their travel on humanitarian grounds, including to receive urgent medical treatment and the person accompanying such person, or to attend a funeral of a close relative or to visit a seriously ill close relative.'.

The fee is waived for the above-mentioned categories of persons. In addition, the fee is also waived in accordance with Article 16(4) of the Visa Code.

As stated in Article 16(6) of the Visa Code 'in individual cases, the amount of the visa fee to be charged may be waived or reduced when to do so serves to promote cultural or sporting interests as well as interests in the field of foreign policy, development policy and other areas of vital public interest or for humanitarian reasons.'.

Article 16(7) of the Visa Code provides that the visa fee is to be charged in euro, in the national currency of the third country or in the currency usually used in the third country where the application is lodged, and is not refundable except in the case of an inadmissible application or if the consulate is not competent.

When the fee is charged in a currency other than in euro, the amount of the visa fee charged in that currency will be determined and regularly reviewed in application of the euro foreign exchange reference rate set by the European Central Bank. The amount charged may be rounded up and consulates will ensure under local Schengen cooperation that they charge similar fees.

In order to avoid discrepancies which could lead to visa shopping, diplomatic missions and consular services of the Member States in Georgia should ensure similar visa fees for all Georgian visa applicants when charged in foreign currencies.

Georgian visa applicants will be given a receipt for the visa fee paid in accordance with Article 16(8) of the Visa Code.

2.1.2. Length of procedures for processing visa applications

Article 7 of the Agreement provides that:

‘1. Diplomatic missions and consular services of the Member States shall take a decision upon the request to issue a visa within 10 calendar days starting from the date of the receipt of the application and documents required for issuing visas.

2. The period of time for taking a decision on a visa application may be extended up to 30 calendar days in individual cases, notably when further review of the application is needed.

3. The period of time for taking a decision on a visa application may be reduced to 2 working days or less in urgent cases.’

A decision on the visa application will be taken, in principle, within 10 calendar days of the date of the lodging of a visa application which is admissible.

That period may be extended up to 30 calendar days when further scrutiny is needed, for example, for consultation of central authorities.

All those deadlines start running only when the visa application file is complete, i.e. as from the date of reception of the visa application and the supporting documents.

For diplomatic missions and consular services of the Member States that have an appointment system, the period of time to get an appointment is not counted as part of the processing time. The general rules set out in Article 9 of the Visa Code are applicable to this issue as well as to other practical modalities for lodging a visa application. In particular, when an appointment is required for the lodging of a visa application, it will, as a rule, take place within a period of two weeks from the date when the appointment was requested.

When setting the appointment, the possible urgency claimed by the visa applicant should be taken into account. The decision about the reduced time for taking a decision on a visa application as defined in Article 7(3) of the Agreement is taken by the consular officer.

In line with the Handbook for the processing of visa applications and the modification of issued visas (Part 2, point 3.2.2), the capacity of Member States’ consulates in Georgia to handle visa applications should be adapted so as to respect the two-week deadline for an appointment provided for in the Visa Code, including during peak seasons.

In justified cases of urgency (where the visa could not have been applied earlier for reasons that could not have been foreseen by the visa applicant), an appointment (in accordance with Article 9(3) of the Visa Code) should be given immediately or direct access for submitting the application should be allowed.

In addition, a consulate may decide to establish a ‘fast track’ procedure for the submission of visa applications in order to receive certain categories of visa applicants.

2.1.3. Extension of visa in exceptional circumstances

Article 9 of the Agreement provides that:

‘The period of validity and/or duration of stay of an issued visa of a citizen of Georgia shall be extended when the competent authority of a Member State considers that the visa holder has provided proof of *force majeure* or humanitarian reasons preventing him from leaving the territory of the Member States before expiry of the period of validity of or the duration of stay authorised by the visa. Such an extension shall be granted free of charge.’

With regard to the possibility of extending the validity of the visa in cases of justified personal reasons, where the holder of the visa does not have the possibility to leave the territory of the Member State by the date indicated on the visa sticker, the provisions of Article 33 of the Visa Code shall apply as long as they are compatible with the Agreement. However, under the Agreement the extension of the visa is carried out free of charge in case of *force majeure* or humanitarian reasons.

2.2. Rules that apply to certain categories of visa applicants

2.2.1. Documentary evidence regarding the purpose of the journey

For the categories of persons listed in Article 4(1) of the Agreement, only the indicated documentary evidence proving the purpose of the journey will be required. As stated in Article 4(3) of the Agreement, no other justification, invitation or validation concerning the purpose of the journey will be required. However, this does not mean a waiver of the general requirement of personal appearance for the submission of the visa application and supporting documents with regard to the means of subsistence, which remains unaffected.

If in individual cases doubts remain regarding the authenticity of the document proving the purpose of the journey, the visa applicant may be called for an additional in depth interview to the embassy/consulate where that applicant can be questioned regarding the actual purpose of the visit or the applicant's intention to return (in accordance with Article 21(8) of the Visa Code). In such individual cases, additional documents can be provided by the visa applicant or exceptionally requested by the consular officer. The Joint Committee will closely monitor that issue.

For the categories of persons not mentioned in Article 4(1) of the Agreement (for example tourists), the general rules regarding documentation proving the purpose of the journey continue to apply. The same applies to documents regarding parents' consent for travel of children under 18 years of age.

Schengen rules and national law shall apply to issues not covered by the Agreement, such as recognition of travel documents and guarantees regarding return and sufficient means of subsistence.

In principle, the original of the request, certificate, document or letter required by Article 4(1) of the Agreement will be submitted with the visa application. However, the consulate can start processing the visa application with facsimile or copies of the request, certificate, document or letter. Nevertheless, the consulate may ask for the original document in case of the first visa application and will ask for it in individual cases where there are doubts.

Article 4(1) of the Agreement provides that:

'1. For the following categories of citizens of Georgia, the following documents are sufficient for justifying the purpose of the journey to the other Party:

- (a) for close relatives — spouse, children (including adopted), parents (including custodians), grandparents, grandchildren — who are visiting citizens of Georgia legally residing in the territory of the Member States:

— a written request from the host person;'

Point (a) of Article 4(1) of the Agreement regulates the situation of Georgian close relatives travelling to the Member States to visit the citizens of Georgia legally residing in the territory of the Member States. This facilitation does not apply to citizens of the Union living in the Union who invite Georgian relatives.

The authenticity of the signature of the inviting person must be proven by the competent authority according to the national legislation of the country of residence.

It is also necessary to prove the legal residence of the inviting person and the family tie; for example providing, together with the written request from the host person, copies of documents explaining that person's status, such as a photocopy of the residence permit and a document confirming the family ties.

That provision also applies to relatives of staff working in diplomatic missions and consulates travelling for a family visit of up to 90 days to the territory of the Member States except for the need to prove legal residence and family ties.

- '(b) for members of official delegations who, following an official invitation to Georgia, shall participate in meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of the Member States by intergovernmental organisations:

— a letter issued by a Georgian authority confirming that the applicant is a member of a delegation travelling to the territory of the Member States to participate in the aforementioned events, accompanied by a copy of the official invitation;'

The name of the visa applicant must be indicated in the letter issued by the competent authority confirming that the person is part of the delegation travelling to the territory of the other Party to participate in the official meeting. The name of the visa applicant need not necessarily be indicated in the official invitation to participate in the meeting, although this might be necessary when the official invitation is addressed to a specific person.

That provision applies to members of official delegations irrespective of the type of passport (service or ordinary passport) they hold.

- ‘(c) for pupils, students, post-graduate persons and accompanying teachers who undertake trips for the purposes of study or educational training, including in the framework of exchange programmes as well as other school-related activities:

— a written request or a certificate of enrolment from the host university, college or school or student cards or certificates of the courses to be attended;’.

A student card is only accepted as justification of the purpose of the journey if it has been issued by the host university, college or school where the studies or educational training are going to take place.

- ‘(d) for persons travelling for medical reasons and necessary accompanying persons:

— an official document of the medical institution confirming necessity of medical care in this institution, the necessity of being accompanied and proof of sufficient financial means to pay for the medical treatment;’.

The document from the medical institution confirming the three elements (the necessity of medical care in that institution, the necessity of being accompanied and the proof of sufficient financial means to pay for the medical treatment) must be submitted.

- ‘(e) for journalists and accredited persons accompanying them in a professional capacity:

— a certificate or other document issued by a professional organisation proving that the person concerned is a qualified journalist or accompanying person in a professional capacity and a document issued by his/her employer stating that the purpose of the journey is to carry out journalistic work or assist in such work;’.

This category does not cover freelance journalists and their assistants.

The certificate or document proving that the visa applicant is a professional journalist or an accredited accompanying person in a professional capacity and the original document issued by that person's employer stating that the purpose of the journey is to carry out journalistic work or assist in such work must be presented.

Currently, no professional media associations, centres, institutions, unions or other similar organisations exist in Georgia which would represent the interest of a group of journalists or accredited accompanying persons in a professional capacity and could issue certificates proving that the person is a professional journalist or an accredited accompanying person in a professional capacity in a specific area. Until such organisations are established, the consulates may accept a certificate from the employer and press accreditation to one of the Member States' organisations.

- ‘(f) for participants in international sport events and persons accompanying them in a professional capacity:

— a written request from the host organisation, competent authorities, national sport federations or national Olympic committees of the Member States;’.

The list of accompanying persons in the case of international sports events will be limited to those accompanying the sportsperson in a professional capacity: coaches, masseurs, managers, medical staff and head of the sports club. Supporters will thus not be considered as accompanying persons.

- ‘(g) for business people and representatives of business organisations:

— a written request from the host legal person or company, organisation or an office or a branch of such legal person or company, state or local authorities of the Member States or organising committees or trade and industrial exhibitions, conferences and symposia held in the territories of the Member States, endorsed by the State Chamber of Registration of Georgia;’.

The National Agency of Public Registry will issue a document confirming the existence of the business organisations.

‘(h) for members of the professions participating in international exhibitions, conferences, symposia, seminars or other similar events held on the territory of the Member States:

— a written request from the host organisation confirming that the person concerned is participating in the event;

(i) for representatives of civil society organisations when undertaking trips for the purposes of educational training, seminars, conferences, including in the framework of exchange programmes:

— a written request issued by the host organisation, a confirmation that the person is representing the civil society organisation and the certificate on establishment of such organisation from the relevant register issued by a state authority in accordance with the national legislation;’.

A document from the civil society organisation confirming that the visa applicant is representing that organisation must be presented.

The competent Georgian state authority issuing the certificate on establishment of a civil society organisation is the National Agency of Public Registry.

The Register in which the certificates on establishment of civil society organisations are registered is the National Agency of Public Registry. The Ministry of Justice and the National Agency of Public Registry are working with local authorities on developing an electronic database of NGOs which, upon completion, would be available via the website of the Ministry of Justice: <https://enreg.reestri.gov.ge/main.php>.

Members as such of the civil society organisations are not covered by the Agreement.

‘(j) for persons participating in scientific, cultural or artistic activities, including university and other exchange programmes:

— a written request from the host organisation to participate in the activities;

(k) for drivers conducting international cargos and passenger transportation services to the territories of the Member States in vehicles registered in Georgia:

— a written request from the national company or association of carriers of Georgia providing for international road transportation, stating the purpose, duration and frequency of the trips;’.

Currently, two national associations of carriers of Georgia competent for providing the written request to professional drivers exist in Georgia: the Georgian International Road Carriers Association (GIRCA) and the Georgian Association of Carriers of Passengers by Road (GACPR). Carriers which are not members of those associations may present a request issued by the Land Transport Agency, Ministry of Economy and Sustainable Development of Georgia. In the case of well-known carriers, consulates may accept a written request from the Georgian carrier/transport company employing the driver. The request must state the purpose, duration and frequency of the trips.

‘(l) for participants of the official exchange programmes organised by twin cities:

— a written request of the Head of Administration/Mayor of these cities or municipal authorities;’.

The Head of Administration/Mayor of the city or other locality competent to issue the written request is the Head of Administration/Mayor of the host city or other locality where the twinning activity is going to take place. This category only covers official twinning.

‘(m) for visiting military and civil burial grounds:

— an official document confirming the existence and preservation of the grave as well as family or other relationship between the applicant and the buried.’.

The Agreement does not specify whether the above-mentioned official document should be issued by the authorities of the country where the burial ground is located or those of the country in which the person who wants to visit the burial ground resides. It should be accepted that the competent authorities of both countries may issue such an official document.

The above-mentioned official document confirming the existence and preservation of the grave as well as of the family or other relationship between the visa applicant and the buried must be presented.

The Agreement does not create any new liability rules for the natural or legal persons issuing the written requests. The respective Union and/or national law applies in case of false issuance of such requests.

2.2.2. Issuance of multiple-entry visas

In cases where the visa applicant needs to travel frequently to the territory of the Member States, short-stay visas may be issued for several visits, provided that the total length of those visits does not exceed 90 days per period of 180 days.

Article 5 of the Agreement provides that:

‘1. Diplomatic missions and consular services of the Member States shall issue multiple-entry visas with the term of validity of up to 5 years to the following categories of citizens:

- (a) spouses, children (including adopted) who are under the age of 21 or are dependent, or parents visiting citizens of Georgia legally residing in the territory of the Member States with the term of validity limited to the duration of the validity of their authorisation for legal residence;
- (b) members of national and regional governments and of Constitutional and Supreme courts if they are not exempted from the visa requirement by this Agreement, in the exercise of their duties, with a term of validity limited to their term of office if this is less than 5 years;
- (c) permanent members of official delegations who, following an official invitation addressed to Georgia, are to participate regularly in meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of the Member States by intergovernmental organisations;’

Taking into account the professional status of those categories of persons, or their family relationship with a citizen of Georgia who is legally residing in the territory of the Member States, it is justified to grant them a multiple-entry visa with a term of validity of up to five years, or limited to the term of office or to their legal residence if they are less than five years.

Persons falling under point (a) of Article 5(1) of the Agreement, must present proof regarding the legal residence of the inviting person.

As regards persons falling under point (b) of Article 5(1) of the Agreement, confirmation should be given regarding their professional status and the duration of their term of office.

That provision does not apply to persons falling under point (b) of Article 5(1) of the Agreement if they are exempted from the visa requirement by the Agreement, i.e. if they are holders of a diplomatic passport.

Persons falling under point (c) of Article 5(1) of the Agreement must present proof regarding their permanent status as a member of the official delegation and the need to participate regularly in meetings, consultations, negotiations or exchange programmes.

‘2. Diplomatic missions and consular services of the Member States shall issue multiple-entry visas with the term of validity of up to 1 year to the following categories of persons, provided that during the previous year they have obtained at least one visa, have made use of it in accordance with the laws on entry and stay of the visited Member State and that there are reasons for requesting a multiple-entry visa:

- (a) members of official delegations who, following an official invitation, are to participate regularly in meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of the Member States by intergovernmental organisations;

- (b) representatives of civil society organisations travelling regularly to Member States for the purposes of educational training, seminars, conferences, including in the framework of exchange programmes;
- (c) members of the professions participating in international exhibitions, conferences, symposia, seminars or other similar events who regularly travel to the Member States;
- (d) persons participating in scientific, cultural or artistic activities, including university and other exchange programmes, who regularly travel to Member States;
- (e) students and post-graduate persons who regularly travel for the purposes of study or educational training, including in the framework of exchange programmes;
- (f) participants in official exchange programmes organised by twin cities or municipal authorities;
- (g) persons needing to visit regularly for medical reasons and necessary accompanying persons;
- (h) journalists and accredited persons accompanying them in a professional capacity;
- (i) business people and representatives of business organisations who regularly travel to Member States;
- (j) participants in international sports events and persons accompanying them in a professional capacity;
- (k) drivers conducting international cargo and passenger transportation services to the territories of the Member States in vehicles registered in Georgia.

3. Diplomatic missions and consular services of the Member States shall issue multiple-entry visas with the term of validity of a minimum of 2 years and a maximum of 5 years to the categories of persons referred to in paragraph 2 of this Article, provided that during the previous 2 years they made use of the 1-year multiple-entry visas in accordance with the laws on entry and stay of the host Member State and that the reasons for requesting a multiple-entry visa are still valid.

4. The total period of stay of persons referred to in paragraphs 1 to 3 of this Article shall not exceed 90 days per period of 180 days in the territory of the Member States.’.

In principle, multiple-entry visas valid for one year will be issued to the above-mentioned categories of visa applicants if during the previous year (12 months) the visa applicant has obtained at least one visa and has made use of it in accordance with the laws on entry and stay in the territory(ies) of the visited Member State(s) (for instance, the person has not overstayed) and if there are reasons for requesting a multiple-entry visa. In cases where it is not justified to issue a visa valid for one year, for instance if the duration of the exchange programme is of less than one year or the person does not need to travel for a full year, the validity of the visa will be of less than one year, provided that the other requirements for issuing the visa are met.

Multiple-entry visas with a validity of two to five years will be issued to the categories of visa applicants referred to in Article 5(2) of the Agreement, provided that during the previous two years (24 months) they have made use of the two one year multiple-entry visas in accordance with the laws on entry and stay in the territory(ies) of the visited Member State(s) and that the reasons for requesting a multiple-entry visa are still valid. It has to be noted that a visa with a validity of two to five years will only be issued if the visa applicant has been issued two visas valid for at least one year during the previous two years, and if that person has used those visas in accordance with the laws of entry and stay in the territory(ies) of the visited Member State(s). Diplomatic missions and consular services of the Member States will decide, on the basis of the assessment of each visa application, the period of validity of those visas, i.e. from two to five years.

Regarding the definition of the criteria in Article 5(2) of the Agreement: ‘provided that ... there are reasons for requesting a multiple-entry visa’, and Article 5(3) of the Agreement: ‘provided that ... the reasons for requesting a multiple-entry visa are still valid’, the criteria set out by the Visa Code for issuing multiple-entry visas shall apply. Consequently, the person must prove the need to travel frequently to one or several Member States, for example for business purposes.

There is no obligation to issue a multiple-entry visa if the visa applicant has not made use of a previously issued visa.

2.2.3. Holders of diplomatic passports

Article 10 of the Agreement provides that:

‘1. Citizens of Georgia who are holders of valid diplomatic passports may enter, leave and transit through the territories of the Member States without visas.

2. Persons mentioned in paragraph 1 of this Article may stay in the territories of Member States for a period not exceeding 90 days per period of 180 days.’.

The procedures regarding posting of diplomats in the Member States are not covered by the Agreement. The usual accreditation procedure applies.

III. COOPERATION ON DOCUMENT SECURITY

In a Joint Declaration annexed to the Agreement, the Parties agreed that the Joint Committee should evaluate the impact of the level of security of the respective travel documents on the functioning of the Agreement. To that end, the Parties agreed to regularly inform each other about the measures taken for avoiding the proliferation of travel documents, developing the technical aspects of travel document security as well as regarding the personalisation process of the issuance of travel documents.

IV. STATISTICS

In order to allow the Joint Committee to monitor effectively the implementation of the Agreement, diplomatic missions and consular services of the Member States shall submit statistics to the Commission every six months specifying by month, in particular and where possible:

- the number of multiple-entry visas issued;
- the number of visas issued without fees.

V. EUROPEAN UNION DECLARATION ON FACILITATIONS FOR FAMILY MEMBERS

Although the Agreement does not include legally binding rights and obligations for facilitating the movement of a wider number of citizens of Georgia who are family members of the citizens of Georgia legally residing in the territories of Member States, the Union takes note of the suggestion of Georgia to give a wider definition to the notion of family members that should benefit from visa facilitation as well as of the importance that Georgia attaches to the simplification of movement of that category of persons.

Therefore, in order to ease the mobility of an extended number of persons who have family links (in particular sisters and brothers and their children) with the citizens of Georgia legally residing in the territories of Member States, in a Declaration annexed to the Agreement, the Member States' consular offices are invited to make full use of the existing possibilities in the *acquis* for facilitating the issuance of visas to that category of persons, including, in particular, the simplification of documentary evidence requested for the applicants, exemptions from handling fees and, where appropriate, the issuing of multiple entry visas.

COMMISSION IMPLEMENTING DECISION (EU) 2016/1781**of 5 October 2016****amending Annex II to Decision 2007/777/EC as regards inserting an entry for Saint Pierre and Miquelon in the list of third countries or parts thereof from which the introduction into the Union of meat products and treated stomachs, bladders and intestines is authorised***(notified under document C(2016) 6287)***(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption ⁽¹⁾, and in particular the introductory phrase of Article 8, the first subparagraph of point 1 of Article 8, point (4) of Article 8 and Article 9(4)(c) thereof,

Whereas:

- (1) Commission Decision 2007/777/EC ⁽²⁾ lays down, inter alia, the conditions for the introduction into the Union of consignments of certain meat products and of treated stomachs, bladders and intestines which have undergone one of the treatments laid down in Part 4 of Annex II thereto ('the commodities'), including a list of third countries or parts thereof from which the introduction into the Union of the commodities is authorised.
- (2) Part 2 of Annex II to Decision 2007/777/EC sets out the list of third countries or parts thereof which are authorised for the introduction into the Union of the commodities, provided that they have undergone a relevant treatment referred to in that Part of Annex II. Those treatments are aimed at eliminating certain animal health risks linked to the specific commodities. Part 4 of that Annex sets out a non-specific treatment 'A' and specific treatments 'B' to 'F' listed in descending order of severity of the animal health risk linked to the specific commodity.
- (3) Saint Pierre and Miquelon has requested to be listed in Part 2 of Annex II to Decision 2007/777/EC as authorised for the introduction of poultry meat products into the Union. During the manufacturing process of poultry meat in Saint Pierre and Miquelon, the poultry meat product concerned undergoes heat treatment according to the specific treatment 'D' referred to in Part 4 of Annex II to Decision 2007/777/EC.
- (4) Saint Pierre and Miquelon has submitted comprehensive and satisfactorily documentation on the poultry health situation and the disease prevention and control systems in place.
- (5) It is therefore appropriate to include Saint Pierre and Miquelon in the list of third countries or parts thereof set out in Part 2 of Annex II to Decision 2007/777/EC indicating treatment 'D' in the column for poultry and farmed feathered game (except ratites).
- (6) Part 2 of Annex II to Decision 2007/777/EC should therefore be amended accordingly.
- (7) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

Article 1

Annex II to Decision 2007/777/EC is amended in accordance with the Annex to this Decision.

⁽¹⁾ OJ L 18, 23.1.2003, p. 11.

⁽²⁾ Commission Decision 2007/777/EC of 29 November 2007 laying down the animal and public health conditions and model certificates for imports of certain meat products and treated stomachs, bladders and intestines for human consumption from third countries and repealing Decision 2005/432/EC (OJ L 312, 30.11.2007, p. 49).

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 5 October 2016.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

ANNEX

In Part 2 of Annex II to Decision 2007/777/EC, the following entry for Saint Pierre and Miquelon is inserted between the entry for New Zealand and the entry for Paraguay:

'PM	Saint Pierre and Miquelon	XXX	XXX	XXX	XXX	D	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX'
-----	------------------------------	-----	-----	-----	-----	---	-----	-----	-----	-----	-----	-----	-----	------

COMMISSION IMPLEMENTING DECISION (EU) 2016/1782**of 5 October 2016****amending Decision 2008/185/EC as regards the inclusion of Lithuania in the list of Member States where an approved national control programme for Aujeszky's disease is in place and updating the list of national institutes in Annex III***(notified under document C(2016) 6288)***(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 64/432/EEC of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine ⁽¹⁾, and in particular Article 9(2) thereof,

Whereas:

- (1) Directive 64/432/EEC lays down rules applicable to trade in the Union in bovine animals and swine. In accordance with Article 5(1) of that Directive, swine are to be accompanied during transportation by a health certificate conforming to model 2 set out in Annex F to that Directive ('model 2'). Article 9(1) of that Directive provides that a Member State which has a compulsory national control programme for the eradication of Aujeszky's disease may submit its programme to the Commission for approval. Article 9(2) lays down criteria for that approval.
- (2) Commission Decision 2008/185/EC ⁽²⁾ lays down the additional guarantees for movements of swine between Member States. Those guarantees are linked to the classification of the Member States according to their disease status for Aujeszky's disease. Annex II to that Decision lists Member States or regions thereof where approved national control programmes for the eradication of Aujeszky's disease are in place. Article 7 of Decision 2008/185/EC also specifies the information which is to be inserted in model 2, as regards the references to that Decision.
- (3) Commission Implementing Decision 2014/798/EU ⁽³⁾ amended Directive 64/432/EEC, including model 2. As a consequence, it is necessary to amend Article 7 of Decision 2008/185/EC.
- (4) Lithuania has submitted to the Commission supporting documentation concerning its compulsory national control programme for the eradication of Aujeszky's disease in its entire territory and applied for listing in Annex II to Decision 2008/185/EC.
- (5) Following the evaluation of the supporting documentation submitted by Lithuania, that Member State should be listed in Annex II to Decision 2008/185/EC as a Member State or region thereof where approved national control programmes for the eradication of Aujeszky's disease are in place.
- (6) Annex III to Decision 2008/185/EC lists the institutes responsible for evaluating ELISA (Enzyme-linked immunosorbent assays) tests and kits, checking the quality of the ELISA method for detecting antibodies to Aujeszky's disease virus in each Member State, and in particular for producing and standardising national reference sera according to the Community reference sera. Certain Member States informed the Commission about relevant changes of the names and addresses of those listed national institutes. Annex III to Decision 2008/185/EC should therefore be amended accordingly.

⁽¹⁾ OJ L 21, 29.7.1964, p. 1977/64.

⁽²⁾ Commission Decision 2008/185/EC of 21 February 2008 on additional guarantees in intra-Community trade of pigs relating to Aujeszky's disease and criteria to provide information on this disease (OJ L 59, 4.3.2008, p. 19).

⁽³⁾ Commission Implementing Decision 2014/798/EU of 13 November 2014 amending Annex F to Council Directive 64/432/EEC as regards the format of the model health certificates for intra-Union trade in bovine animals and swine and the additional health requirements relating to *Trichinella* for intra-Union trade in domestic swine (OJ L 330, 15.11.2014, p. 50).

- (7) Decision 2008/185/EC should therefore be amended accordingly.
- (8) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2008/185/EC is amended as follows:

- (1) in Article 7, paragraph 2 is replaced by the following:

‘2. For animals of the porcine species destined for Member States or regions listed in Annex I or II, under point II.3.3.1 of Section C of the health certificate set out in model 2 of Annex F to Directive 64/432/EEC accompanying those animals the appropriate article number of this Decision shall be inserted in the empty space to be filled in under that point.’;

- (2) Annexes II and III are amended in accordance with the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 5 October 2016.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

ANNEX

Annexes II and III to Decision 2008/185/EC are amended as follows:

(1) Annex II is replaced by the following:

‘ANNEX II

Member States or regions thereof where approved national control programmes for the eradication of Aujeszky's disease are in place

ISO code	Member State	Regions
ES	Spain	All regions
LT	Lithuania	All regions
PL	Poland	All regions'

(2) in Annex III, point 2(d) is replaced by the following:

‘(d) The institutes listed below will, in addition, be responsible for checking the quality of the ELISA method in each Member State, and in particular for producing and standardising national reference sera according to the Community reference sera.

AT	AGES: Österreichische Agentur für Gesundheit und Ernährungssicherheit GmbH — Institut für veterinärmedizinische Untersuchungen Mödling (Austrian Agency for Health and Consumer Protection — Institute for veterinary investigations Mödling) Robert Koch-Gasse 17 A-2340 Mödling Tel. +43 (0) 505 55-38112 Fax +43 (0) 505 55-38108 Email: vetmed.moedling@ages.at
BE	CODA — CERVA — VAR Veterinary and Agrochemical Research Centre Groeselenberg 99 B-1180 Brussels
CY	State Veterinary Laboratory Veterinary Services 1417 Athalassa Nicosia
CZ	Státní veterinární ústav Olomouc Jakoubka ze Stříbra 1 779 00 Olomouc Telefon: 585 557 111 Fax 585 222 394 email: svuolomouc@svuol.cz

DE	Friedrich-Loeffler-Institut Bundesforschungsinstitut für Tiergesundheit Südufer 10 D-17493 Greifswald — Insel Riems Tel. + 49 38351 7-0 Fax + 49 38351 7-1219, 7-1151, 7-1226
DK	National Veterinary Institute Technical University of Denmark Lindholm Island DK-4774 Kalvehave Denmark Switchboard: +45 88 60 00 Fax +45 88 79 01 Email: vet@vet.dtu.dk
EE	Veterinaar- ja Toidulaboratoorium Kreutzwaldi 30, 51006 Tartu, Estonia Tel. + 372 7 386 100 Faks: + 372 7 386 102 Email: info@vetlab.ee
ES	Laboratorio Central de Sanidad Animal de Algete Carretera de Algete, km 8 Algete 28110 (Madrid) Tel. +34 916 290 300 Fax +34 916 290 598 Email: lcv@mapya.es
FI	Finnish Food Safety Authority Animal Diseases and Food Safety Research Mustialankatu 3 FI-00790 Helsinki, Finland Email: info@evira.fi Tel. +358 20 772 003 (exchange) Fax +358 20 772 4350
FR	Laboratoire d'études et de recherches avicoles, porcines et piscicoles AFSSA site de Ploufragan/Brest — LERAPP BP 53 22440 Ploufragan
UK	Veterinary Laboratories Agency New Haw, Addlestone, Weybridge Surrey KT15 3NB, UK Tel. (44-1932) 341111 Fax (44-1932) 347046

GR	Centre of Athens Veterinary Institutes 25 Neapoleos Street, GR-153 10 Agia Paraskevi Attiki Tel. +30 2106010903
HU	Nemzeti Élelmiszerlánc-biztonsági Hivatal, Állat-egészségügyi Diagnosztikai Igazgatóság Central Agricultural Office, Veterinary Diagnostic Directorate Address: 1149 Budapest, Tábornok u. 2. Mailing Address: 1581 Budapest, 146. Pf. 2. Tel. +36 1 460-6300 Fax +36 1 252-5177 Email: ugyfelszolgalat@neh.gov.hu
IE	Virology Division Central Veterinary Research Laboratory Department of Agriculture and Food Laboratories Backweston Campus Stacumny Lane Celbridge Co. Kildare
IT	Centro di referenza nazionale per la malattia di Aujeszky — Pseudorabbia c/o Istituto zooprofilattico sperimentale della Lombardia e dell'Emilia Romagna, Via Bianchi, 9; 25124 Brescia
LT	National Veterinary Laboratory (Nacionalinė veterinarijos laboratorija) J. Kairiūkščio 10 LT-08409 Vilnius
LU	CODA — CERVA — VAR Veterinary and Agrochemical Research Centre Groeselenberg 99 B-1180 Brussels
LV	Pārtikas drošības, dzīvnieku veselības un vides zinātniskais institūts 'BIOR' (Institute of Food Safety, Animal Health and Environment BIOR) Leļupes iela 3, Rīga, LV-1076 Tel. +371 76205 13 Fax +371 7620434 Email: bior@bior.lv
MT	National Veterinary Laboratory Veterinary and Phytosanitary Regulation Department Ministry for Sustainable Development, the Environment and Climate Change, Abattior Square, Albert Town, Triq Prince Albert, Marsa, Malta Tel. +356 22925389

NL	Centraal Instituut voor Dierziekte Controle CIDC-Lelystad Hoofdvestiging: Houtribweg 39 Nevenvestiging: Edelhertweg 15 Postbus 2004 8203 AA Lelystad
PL	Laboratory Department of Swine Diseases Państwowy Instytut Weterynaryjny — Państwowy Instytut Badawczy al. Partyzantów 57, 24-100 Puławy Tel. +48 81 889 30 00 Fax +48 81 886 25 95 Email: sekretariat@piwet.pulawy.pl
PT	Laboratório Nacional de Investigação Veterinária (LNIV) Estrada de Benfica, 701 P-1549-011 Lisboa
RO	Laboratorul Național de Referință pentru Herpesviroze Institutul de Diagnostic și Sănătate Animală Str. Dr Staicovici, nr. 6, cod 050557, sector 5, București telefon: 0374.322.015 fax 0214.113.394 email: office@idah.ro
SE	Statens veterinärmedicinska anstalt Department of Virology S-751 89 Uppsala Tel. (46-18) 67 40 00 Fax (46-18) 67 44 67
SI	Univerza v Ljubljani Veterinarska fakulteta Nacionalni veterinarski inštitut Gerbičeva 60, SI-1000 Ljubljana
SK	Štátny veterinárny ústav Pod dráhami 918 960 86 Zvolen Slovenska republika'

