

COMMISSION IMPLEMENTING REGULATION (EU) 2022/58**of 14 January 2022**

imposing a definitive anti-dumping duty on imports of certain grain-oriented flat-rolled products of silicon-electrical steel originating in the People's Republic of China, Japan, the Republic of Korea, the Russian Federation and the United States of America following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

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

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

Whereas:

1. PROCEDURE**1.1. Original investigation and measures in force**

- (1) By Implementing Regulation (EU) 2015/1953 (⁽²⁾), the European Commission ('the Commission') imposed anti-dumping duties on imports of certain grain-oriented flat-rolled products of silicon-electrical steel ('GOES') originating in the People's Republic of China ('PRC' or 'China'), Japan, the Republic of Korea ('Korea'), the Russian Federation ('Russia') and the United States of America ('USA') ('the original measures'). The investigation that led to the imposition of the original measures will hereinafter be referred to as 'the original investigation'.
- (2) On the basis of the specific facts of the original investigation, the Commission decided that variable duties under the form of three minimum import prices (MIPs) for three different product categories of GOES were the most appropriate form of measures for the following reasons:
- First, the three MIPs would allow the Union producers to recover from the effects of injurious dumping. They would be a safety net to enable them to return to a sustainable profitability and incentivise them to make the necessary investments to produce proportionally more of the high permeability product types of the like product.
 - Second, the three MIPs should also prevent any adverse effect of undue price increases after the investigation period which could have a significant negative impact on the users' business.
 - Third, they would also accommodate the concerns of users as they feared a shortage of GOES, in particular of types with a maximum core loss of 0,90 W/kg and below which were at that time highly needed to meet the Tier 1 efficiency targets of the EcoDesign Regulation. More generally, they would prevent serious disturbances in the supply of the Union market.
- (3) The three MIPs currently in force range between 1 536 EUR/tonne up to 2 043 EUR/tonne. They apply to the individually named exporting producers for which individual dumping margins were established from all the countries concerned, i.e. the PRC, Japan, Korea, Russia and the USA:
- If the CIF Union border price is equal to or above the MIP, no duty is payable.

(¹) OJ L 176, 30.6.2016, p. 21.

(²) Commission Implementing Regulation (EU) 2015/1953 of 29 October 2015 imposing a definitive anti-dumping duty on imports of certain grain-oriented flat-rolled products of silicon-electrical steel originating in the People's Republic of China, Japan, the Republic of Korea, the Russian Federation and the United States of America (OJ L 284, 30.10.2015, p. 109).

- When the export price is below the MIP, the applicable duty rate would be the lower of the difference between the applicable MIP and the net, free-at-Union-frontier price, before duty and the ad valorem anti-dumping duty rates. Accordingly, individual duties apply to each exporting producer. In no event should the amount of the anti-dumping duty be higher than the ad valorem anti-dumping duty rates which are specific for each individual exporting producer of each country concerned.

1.2. Request for an expiry review

- (4) Following the publication of a Notice of impending expiry ⁽³⁾, the Commission received a request for a review pursuant to Article 11(2) of the basic Regulation.
- (5) The request for review was lodged on 29 July 2020 by the European Steel Association ('Eurofer' or 'the applicant') acting on behalf of producers representing more than 50 % of the total Union production of GOES. The request for review was based on the grounds that the expiry of the measures would likely result in a continuation or recurrence of dumping and injury to the Union industry.

1.3. Initiation of an expiry review

- (6) Having determined, after consulting the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of an expiry review, the Commission initiated, on 30 October 2020, an expiry review with regard to imports of GOES originating in China, Japan, Korea, Russia and the USA ('the countries concerned') on the basis of Article 11(2) of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ⁽⁴⁾ ('the Notice of Initiation').

1.4. Review investigation period and period considered

- (7) The investigation of a likelihood of continuation or recurrence of dumping covered the period from 1 July 2019 to 30 June 2020 ('the review investigation period' or 'RIP'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2017 to the end of the review investigation period ('the period considered').

1.5. Withdrawal of the United Kingdom from the EU

- (8) This case was initiated on 30 October 2020, that is during the transition period agreed between the United Kingdom ('UK') and the EU in which the UK remained subject to the Union law. That period ended on 31 December 2020. Consequently, as of 1 January 2021, companies and associations from the UK no longer qualified as interested parties in this proceeding.
- (9) By a note to the case file ⁽⁵⁾ on 14 January 2021, the Commission invited UK operators that considered that they nevertheless would still qualify as interested parties to contact it. No comments were received from UK operators.

1.6. Interested parties

- (10) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. In addition, the Commission specifically informed the applicant, the known Union producers, the known exporting producers in the countries concerned, importers, users, traders, as well as associations known to be concerned about the review investigation and invited them to participate.
- (11) Interested parties had an opportunity to comment on the initiation of the expiry review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

⁽³⁾ Notice of the impending expiry of certain anti-dumping measures (OJ C 40, 6.2.2020, p. 34).

⁽⁴⁾ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of grain- oriented flat-rolled products of silicon-electrical steel originating in the People's Republic of China (PRC), Japan, the Republic of Korea, the Russian Federation and the United States of America (USA) (OJ C 366, 30.10.2020, p. 25).

⁽⁵⁾ Note to the file for inspection by interested parties, dated 14 January 2021, reference t21.000455.

- (12) The Commission held hearings with several users, several associations of users and exporting producers during the expiry review.

1.7. Sampling

- (13) In the Notice of Initiation, the Commission stated that it might use sampling in accordance with Article 17 of the basic Regulation.

1.7.1. *Sampling of Union producers*

- (14) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers that would be investigated. However, on the publication day of the Notice of Initiation, on 30 October 2020, the Commission issued a note for the file stating that given the limited number of known producers in the European Union, sampling of EU producers was not deemed necessary and invited interested parties to comment. No comments were received. Therefore, all four known Union producers were requested to submit a detailed questionnaire response as well as agreeing to a verification of the questionnaire replies.

1.7.2. *Sampling of importers*

- (15) In order to decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (16) Only one unrelated importer came forward and provided the requested information. Consequently, the Commission decided that sampling was not necessary.

1.7.3. *Sampling of producers in the countries concerned*

- (17) In view of the apparent large number of producers in the countries concerned by this expiry review, sampling was envisaged in the Notice of Initiation.
- (18) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all producers in the countries concerned to provide the information specified in the Notice of Initiation. In addition, the Commission asked the missions of the countries concerned to identify and/or contact other producers, if any, that could be interested in participating in the investigation.
- (19) Four exporting producers or groups of exporting producers (two companies in Japan, one company in the PRC and one in Russia) provided the requested information and agreed to be included in the sample. None of the US or Korean producers that were contacted came forward and provided the information requested. In view of the low number of cooperating producers, the Commission decided that sampling was not necessary with respect to any of the countries concerned.

1.8. Replies to the questionnaire

- (20) Copies of the questionnaires were made available on DG Trade's website ⁽⁶⁾ when the case was initiated.
- (21) The Commission also sent a questionnaire concerning the existence of significant distortions within the meaning of Article 2(6a)(b) of the basic Regulation in the PRC to the Government of the PRC ('GOC'). The GOC did not provide any reply to the questionnaire and was accordingly informed that the Commission would apply facts available in accordance with Article 18 of the basic Regulation.
- (22) Questionnaire replies were received from all four known Union producers and the cooperating unrelated importer. Seven users came forward, expressing their willingness to participate in the investigation. They were requested to complete the questionnaire intended for the users. However, only four of them fully cooperated in this investigation by submitting completed questionnaire replies in both open and sensitive versions.

⁽⁶⁾ Available at link: http://trade.ec.europa.eu/tdi/case_details.cfm?ref=ong&id=2492&sta=1&en=20&page=1&c_order=date&c_order_dir=Down

- (23) One group of exporting producers in the PRC, China Baowu Steel Group Co. Ltd ('the Baoshan Group') composed of two exporting producers Baoshan Iron & Steel Co., Ltd ('Baosteel') and Wuhan Iron & Steel Co., Ltd ('WISCO') – and one group of exporting producers in Japan, Nippon Steel & Sumitomo Metal Corporation, Tokyo, Japan ('Nippon Steel'), provided questionnaire replies. The Russian producer, Novolipetsk Steel ('NLMK'), that had originally agreed to be included in the sample did not provide a full questionnaire reply but provided, in its submission of 10 December 2020, information limited to its specific capacity and production. Consequently, the Commission informed the company and Russia that it would apply facts available in accordance with Article 18 of the basic Regulation. NMLK responded, but the response was submitted outside the specified deadline, and in any event would not have changed the Commission's assessment.
- (24) Following disclosure, NLMK claimed that the Commission did not specify any deadline for providing comments on the Commission's application of Article 18 of the basic Regulation. Furthermore, NLMK argued that the Commission should not have applied Article 18 in relation to this part of its questionnaire reply.
- (25) The Commission indeed did not specify a deadline for a reply to its letter indicating its intention to apply Article 18. However, NLMK had already indicated in its submission of 10 December 2020 that it had stopped working on the reply to the questionnaire due to special circumstances and would not provide a full questionnaire reply. In sum, NLMK provided only fragmentary information limited to its specific production capacity and production volume.
- (26) Consequently, since NMLK did not provide sufficiently reliable information as regards production capacity and production volumes, as explained in recitals (241) to (245), the Commission used the information available on the file. In any event, as mentioned in recital (242), the Commission used the information provided by NMLK to the extent possible in this regard.
- (27) The other group of exporting producers in Japan, JFE Steel Corporation ('JFE Steel'), that had originally agreed to be included in the sample, provided an incomplete questionnaire reply, which was limited to export sales to the EU and to the rest of the world. Consequently, JFE Steel was informed that the Commission would apply facts available in accordance with Article 18 of the basic Regulation with regards to the missing information.
- (28) There was no cooperation by producers in the USA and Korea. Consequently, the Commission informed the USA and Korea that it will apply facts available in accordance with Article 18 of the basic Regulation.

1.9. Verification

- (29) Without prejudice to the application of Article 18 of the basic Regulation, the Commission sought and checked all the information it deemed necessary for the determination of likelihood of a continuation or recurrence of dumping and injury and of the Union interest.
- (30) Due to the outbreak of Covid-19 and the confinement measures put in place by various Member States as well as by various third countries, the Commission could not carry out verification visits pursuant to Article 16 of the basic Regulation. The Commission instead cross-checked remotely all the information deemed necessary for its determination in line with its Notice on the consequences of the Covid-19 outbreak on anti-dumping and anti-subsidy investigations (⁷). The Commission carried out remote crosschecks ('RCC') of the following interested parties
- Union producers (⁸):
 - ThyssenKrupp Electrical Steel UGO SAS, Isbergues, France
 - ThyssenKrupp Electrical Steel GmbH, Gelsenkirchen, Germany
 - Stalprodukt s.a., Bochnia, Poland

(⁷) Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations (OJ C 86, 16.3.2020, p. 6).

(⁸) For the fourth Union producer, a desk analysis was conducted on the basis of its questionnaire reply and its reply to the deficiency letter.

- Unrelated importer in the Union:
 - Metal One Deutschland GmbH, Düsseldorf, Germany
- Users in the Union:
 - SGB-Smit Group, Regensburg, Germany
 - Končar – Distribution and Special Transformers, Inc., Zagreb, Croatia
- Exporting producers in the countries concerned:
 - Baosteel, Shanghai, PRC
 - WISCO Wuhan, PRC
 - Nippon Steel, Tokyo, Japan
- Related importer/traders:
 - Wisco Europe, Germany
 - Baosteel Germany, Germany
 - Baosteel Italy, Italy

1.10. Disclosure

- (31) On 21 October 2021, the Commission disclosed the essential facts and considerations on the basis of which it intended to maintain the anti-dumping duties in force. All parties were granted a period within which they could make comments on the disclosure. On 22 November 2021, the Commission sent an additional final disclosure to Nippon Steel regarding a correction of the dumping calculations. No comments were received.
- (32) The comments made by interested parties were considered by the Commission and taken into account, where appropriate. The parties who so requested were granted a hearing.

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

- (33) The product under review is the same as in the original investigation, namely GOES, of a thickness of more than 0,16 mm originating in the countries concerned, currently falling under CN codes ex 7225 11 00 (TARIC Codes 7225 11 00 11, 7225 11 00 15 and 7225 11 00 19) and ex 7226 11 00 (TARIC codes 7226 11 00 12, 7226 11 00 14, 7226 11 00 16, 7226 11 00 92, 7226 11 00 94 and 7226 11 00 96) ('the product under review').
- (34) GOES is produced from hot-rolled coils of silicon alloyed steel of different thicknesses of which the grain structure is uniformly directed in order to allow for magnetic conductivity with a high degree of efficiency. Inefficiencies with regard to conductivity are called 'core loss', which is the prime indicator of the quality of the product and which is expressed in W/kg. GOES can be produced as high permeability GOES and as regular or conventional GOES. The high permeability types allow achieving lower core losses for any given thickness of the sheets. Moreover, high permeability types can be produced as domain refined ('DR') with even lower core losses as a result of scribing thin lines onto the surface of the steel.
- (35) Despite the differences in permeability, thickness and width, all types of the product under review share basically the same basic physical characteristics and have essentially the same basic use.
- (36) GOES is mainly used in electrical equipment where the magnetic flux can be constrained to align in the 'oriented' direction, such as when electrical energy is transmitted across large distances. Accordingly, the product under review is used as the core material in power and distribution transformers.

- (37) GOES is also used in shunt reactors, which are used in high voltage energy transmission systems to stabilize the voltage during load variations. The product under review may also be used in equipment having smaller transformers, including appliances and aerospace, aeronautical and electronic equipment. GOES may further be used in large, high-performance generators when the design permits the directional magnetic characteristics to be used efficiently.

2.2. Like product

- (38) As established in the original investigation, this expiry review investigation confirmed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:
- the product under review;
 - the product produced and sold on the domestic market of the countries concerned; and
 - the product produced and sold in the Union by the Union industry.
- (39) These products are therefore considered to be like products within the meaning of Article 1(4) of the Basic Regulation.

2.3. Claims regarding product scope

- (40) NLMK and the Russian Government argued that the lower average import prices from Russia are explained by a significant share of 'second' and 'third choice' exported GOES (with multiple defects, number of stitches and lack of flatness) and that the latter types do not compete with other types of the product under review. The 'second' and 'third choice' exported GOES constitute different products and do not conform to the European technical standards. Therefore, they argued that their 'second' and 'third choice' material should either be excluded from the product scope, or be given a separate (fourth) MIP level reflecting their exceptionally low value in the market.
- (41) The Commission rejected the above requests, as neither the product scope nor the MIP can be changed in the framework of an expiry review.
- (42) Following disclosure, NLMK stated that an unbiased investigating authority should have expeditiously initiated a partial interim review limited to the product scope definition and/or form of the measures. The Commission rejected this claim, since it did not have sufficient evidence to initiate such an investigation.

3. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

- (43) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether the expiry of the measures in force would be likely to lead to continuation or recurrence of dumping from the countries concerned.
- ### 3.1. Preliminary remarks
- (44) None of the producers in Russia, the USA and Korea cooperated in the investigation.
- (45) The Commission informed the authorities of all three countries concerned that, due to the absence of cooperation, the Commission might apply Article 18 of the basic Regulation concerning the findings with regard to Russia, the USA and Korea. The Commission did not receive any comments or requests for an intervention of the Hearing Officer from the authorities of the three countries in this regard.
- (46) Consequently, in accordance with Article 18(1) of the basic Regulation, the findings in relation to the likelihood of continuation or recurrence of dumping with regard to Russia, the USA and Korea were based on facts available, in particular publicly available information such as official company websites, information in the request for the review, and information obtained from cooperating parties in the course of the review investigation. The Commission also used various import statistics, including Eurostat's Comext import statistics and Global Trade Atlas ('GTA').

- (47) In addition, with respect to the Baoshan Group and following the RCC, the Commission applied Article 18(1) of the basic Regulation as far as labour costs were concerned. In fact, as explained in recital (207) below, the company failed to provide verified and trustworthy evidence with regard to the calculation of man hours allocated to the manufacturing of GOES.

3.2. Japan

3.2.1. Preliminary remarks

- (48) Only one Japanese exporting producer (Nippon Steel) cooperated fully in the current investigation. Following initiation, the second known Japanese exporting producer (JFE Steel) came forward and provided an incomplete questionnaire reply limited to the export sales, production and capacity. Consequently, the Commission informed JFE Steel and the Government of Japan of its intention to apply facts available in accordance with Article 18 of the basic Regulation. No comments were received.
- (49) As a result, the findings in this Section were partially based on facts available in accordance with Article 18 of the basic Regulation as far as domestic sales were concerned. For this purpose, the information provided by Nippon Steel, the information provided by JFE on export sales, the request for the expiry review, Eurostat statistics and publicly available information were used.
- (50) The two Japanese exporting producers accounted for 100 % of the exports from Japan to the Union during the RIP.

3.2.2. Dumping during the review investigation period

3.2.2.1. Normal value

- (51) The Commission established the normal value for Nippon Steel on the following basis. The Commission first examined whether the total volume of domestic sales for the fully cooperating exporting producer was representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales are representative if the total domestic sales volume of the like product to independent customers on the domestic market per exporting producer represented at least 5 % of its total export sales volume of the product under review to the Union during the RIP. On this basis, the total sales of the sole cooperating exporting producer of the like product on the domestic market were representative.
- (52) The Commission subsequently identified the product types sold domestically that were identical or comparable with the product types sold for export to the Union for the exporting producer with representative domestic sales.
- (53) The Commission then examined whether the domestic sales by the fully cooperating exporting producer on its domestic market for each product type that is identical or comparable with a product type sold for export to the Union were representative, in accordance with Article 2(2) of the basic Regulation. 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 RIP represents at least 5 % of the total volume of export sales of the identical or comparable product type to the Union. The Commission established that these product types were representative.
- (54) The Commission next defined the proportion of profitable sales to independent customers on the domestic market for each product type during the RIP, for Nippon Steel as a whole, in order to decide whether to use actual domestic sales price for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.
- (55) The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if:
- the domestic 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
 - the weighted average sales price of that product type is equal to or higher than the unit cost of production.

- (56) In this case, the normal value is the weighted average of the prices of all domestic sales of that product type during the RIP.
- (57) The normal value is the actual domestic price per product type of only the profitable domestic sales of the product types during the RIP, if:
- the volume of profitable sales of the product type represents 80 % or less of the total sales volume of this type; or
 - the weighted average price of this product type is below the unit cost of production.
- (58) The analysis of domestic sales showed that over 90 % of all domestic sales were profitable and that the weighted average sales price was higher than the cost of production. Accordingly, depending on the product type, the normal value was calculated as a weighted average of the prices of all domestic sales during the RIP in the situation described in recital (56), or as a weighted average of the profitable sales only in the situation described in recital (57).
- (59) Where there were no or insufficient sales of a product type of the like product in the ordinary course of trade, the Commission constructed the normal value in accordance with Article 2(3) and (6) of the basic Regulation.
- (60) For such product types normal value was constructed by adding to the average cost of production of the like product of the sole cooperating exporting producer during the RIP:
- the weighted average selling, general and administrative ('SG&A') expenses incurred by the sole cooperating exporting producer on domestic sales of the like product, in the ordinary course of trade, during the RIP; and
 - the weighted average profit realised by the sole cooperating exporting producer on domestic sales of the like product, in the ordinary course of trade, during the RIP.
- (61) For the product types not sold at all on the domestic market, the weighted average SG&A expenses and profit of all transactions made in the ordinary course of trade on the domestic market were added.
- (62) As far as JFE Steel was concerned, in the absence of cooperation, the Commission used facts available in accordance with Article 18 of the basic Regulation as far as domestic sales were concerned. Since reliable data concerning prices of JFE Steel on the domestic market was not available, the Commission established a constructed normal value using the methodology and values contained in the expiry review request.

3.2.2.2. Export price

- (63) Nippon Steel exported to the Union through related traders only. Therefore, the export price was constructed on the basis of Article 2(9) of the basic Regulation, that is on the basis of the price at which the imported products were first resold to an independent buyer. Adjustments to the price were made for all costs incurred between importation and resale, including SG&A expenses, and for profits accruing.
- (64) JFE Steel exported directly to the EU and as a result its export price was the price actually paid or payable for the product under review when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

3.2.2.3. Comparison

- (65) The Commission compared the normal value and the export price as established above on an ex-works basis.
- (66) 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, insurance, handling, loading and ancillary costs, packaging, credit costs and bank charges by the cooperating exporting producer where applicable and justified.

- (67) Nippon Steel did not have domestic sales for some of the product types that it exported to the EU. In view of the high volume of export sales for which a comparison could be made and taking into account that, in the context of an expiry review, it is not necessary to establish the exact amount of dumping but only whether dumping is likely to continue or recur in the future, the Commission considered that the comparison, as established, was accurate.
- (68) Following disclosure, Nippon Steel claimed that the Commission should have calculated the dumping margin applicable to Nippon Steel on the basis of all export sales to the EU and referred to existing case law ⁽⁹⁾.
- (69) The Commission recalled that the dumping margin did not cover all export sales to the EU because, as explained in recital (67) above, there were no corresponding domestic sales for some of the products types that the company exported to the EU. These product types (making up 38 % of the total exported quantity) were initially not included in the dumping calculations as the company had not provided the corresponding costs of production for them. In order to calculate a dumping margin for 100 % of the export sales to the EU and in the absence of more precise data from the company, the Commission decided to group the product types on the basis of their width, which is a parameter that has a lower impact on the cost of production and sales price than core loss and thickness. On that basis it constructed the normal value for all product types. The corrected dumping calculations were disclosed to the company and no comments were received.

3.2.2.4. Dumping margin

- (70) For both Nippon Steel and JFE Steel, the comparison between the normal value and the export price showed that their sales to the EU were made at dumped prices during the review investigation period. The dumping margin found for Nippon Steel was around 31 %, while for JFE Steel it was around 19 %.
- (71) The Commission therefore concluded that dumping continued during the review investigation period.

3.2.3. *Likelihood of continuation of dumping*

- (72) Further to the finding of dumping during the review investigation period, the Commission analysed whether there was a likelihood of continuation of dumping, should the measures on imports of GOES from Japan be allowed to lapse. When doing so, the following elements were analysed: the production capacity and spare capacity in Japan, and the attractiveness of the Union market.

(a) *Spare capacity*

- (73) Based on the questionnaire replies of the two known Japanese exporting producers, the Commission established that the Japanese production capacity amounted to [350 000-410 000] tonnes during the RIP.
- (74) Based on the same dataset, the Commission established that the spare capacity of GOES in Japan was around [50 000-110 000] tonnes.
- (75) Nippon Steel claimed that Japan's spare capacity was overestimated as the Commission did not take account of the fact that Japan focuses on the thinnest gauge type of GOES which yields less volume than the type of GOES produced by the Union industry and other countries concerned.
- (76) The analysis of the models exported to the Union and to the other main export countries, like India and Mexico, showed that the vast majority of the models exported by Nippon Steel had a similar or higher gauge thickness than the products manufactured by the Union industry. Also, the share of thinner gauge type of GOES exported to the EU was significant and there was indeed a demand for this type of product on the Union market. In other words, even if the spare capacity corresponded exclusively, *quod non*, to thinner gauge products, there would be a demand for such products on the Union market.

⁽⁹⁾ Case C-376/15 P, Changshu City Standard Parts Factory and Ningbo Jinding Fastener v Council, ECLI:EU:C:2017:269, para. 65.

- (77) Furthermore, the Commission based its assessment of spare capacity on the information provided by the Japanese exporting producers. Hence, the Commission failed to see how it could have overestimated spare capacity when the data stemmed from the exporting producers themselves. In any case, the Commission considered that the claim related to the yield was neither sufficiently detailed nor substantiated, as it did not provide for a corresponding difference in production capacity or spare capacity linked to the alleged difference in yield. Furthermore, this claim was raised by Nippon Steel only and did not contain any information with regard to the range in gauge thicknesses of the other main Japanese exporting producer. On the basis of the above, the Commission rejected this claim.
- (78) In addition, the Commission considered that Japanese exporting producers also manufacture non-oriented electrical steels ('NOES'). Both GOES and NOES are manufactured using the same equipment. This means that it is technically possible to free up capacity from NOES and switch it to GOES. Such a switch could happen in the future should the Japanese exporting producers have the economic incentive to do so. As a result, the spare capacity found could potentially increase even further.
- (79) Following disclosure, the Japanese Government and Nippon Steel claimed that Japanese producers cannot free up capacity destined for the production of NOES to the benefit of production of GOES for export to the EU as Nippon Steel is bound by contracts with electric vehicle manufacturers to produce NOES. In this context, it argued that the assessment of spare capacity should not be based on that element.
- (80) The Commission took note of the existence of binding contracts with electric vehicle manufacturers to produce NOES which, *per se*, do not allow freeing up capacity for GOES immediately. However, the Commission also considered that, should market conditions on the electric vehicle market develop negatively, Japanese exporting producers could dedicate more capacity to GOES production as the producers use the same equipment for producing both GOES and NOES. In any case, regardless of the development of demand for NOES in the coming years, the Commission considered that its conclusions on the assessment of spare capacity as mentioned in recital (74) remained valid as those were based on the existence of significant spare capacity specific to GOES only, to which no additional freeing up capacity, linked to the production of NOES, was added.

(b) Attractiveness of the Union market

- (81) In terms of size, the Union market (over 265 000-280 000 tonnes consumption in the review investigation period) is among the largest markets of GOES worldwide. Among the countries concerned, only the PRC has a bigger domestic market than the EU, while the USA, Korea, Russia and Japan have much smaller domestic consumption.
- (82) The established spare capacity is equivalent to [28-31 %] of the Union consumption during the RIP, as established in recital (259) below. At the same time it is likely that the spare capacity will be directed to the Union market in large quantities should the measures lapse. Indeed, the Japanese domestic market absorbs roughly one fourth of the Japanese production capacities and it is traditionally almost 100 % satisfied by domestic production.
- (83) In addition, the Japanese GOES industry is export oriented as more than [70-80] % of all production is destined for exports. Finally, China and the USA have trade defence duties which in effect reduce the access of the Japanese exporting producers to those important markets. Japanese exports to the PRC in particular declined sharply right after the imposition of measures by the latter.
- (84) Furthermore, the Japanese exporting producers have an established distribution system within the European Union and can therefore readily increase shipments to the Union market.
- (85) In view of the above considerations, it can be reasonably expected that, should the measures be repealed, a substantial part of the current Japanese exports and spare capacity would be redirected to the Union.
- (86) Following disclosure, the Japanese Government and Nippon Steel claimed that the Union market was no longer as attractive as it was during the original investigation and that Japanese producers intend to actively capture the rising Asian markets and that exports from Japan will not flood the Union market in case the measures were to be terminated.

- (87) Nippon Steel also considered that the Commission's conclusion on the attractiveness of the Union market was unsubstantiated as it was solely based on its size. In this regard, it pointed to other specific elements relating to the attractiveness of the Union market, such as the price level, the presence of a strong domestic industry, the demand for a specific type of product, trade defence measures and/or transportation-associated disincentives.
- (88) The Commission considered that the claim relating to the Asian market was not substantiated with supporting evidence. In any case, Japanese exporting producers continued to export significant quantities and maintained their market share in the Union during the period considered despite all the factors mentioned by Nippon steel, the decrease in consumption and the measures in force.
- (89) In addition, the EU market was the third largest export market for Japanese exporting producers during the RIP⁽¹⁰⁾. Furthermore, an analysis of the evolution of the export sales by the two Japanese exporting producers revealed that their exports to non-EU countries decreased far more over the period considered (-[25-35]%) than exports to the EU (-[5-15]%) over the same period.
- (90) On top of its size and the large quantities that Japanese exporting producers can sell on the EU market, the Commission also noted that the Union market is characterized by high price levels and a significant presence of imports, which show its attractiveness to producers of GOES outside the EU. On this basis, these claims were rejected.

(c) Conclusion on the likelihood of continuation of dumping

- (91) Based on the above, the Commission concluded that dumping would be likely to continue in the future should measures be allowed to lapse. Considering the dumped price levels of GOES to the Union during the RIP, the spare capacity in Japan and the attractiveness of the Union market, the Commission also concluded that significant quantities of GOES from Japan would be likely to enter the Union market at dumped price levels, should measures be allowed to lapse.

3.3. Korea

3.3.1. Dumping during the review investigation period

3.3.1.1. Preliminary remarks

- (92) In the absence of cooperation by any Korean exporting producer, as indicated in recital (28), the Commission based its overall analysis, including the dumping calculation, on facts available pursuant to Article 18 of the basic Regulation.
- (93) Consequently, the likelihood of a continuation or recurrence of dumping was assessed by using the information contained in the expiry review request, combined with Eurostat data and the export statistics contained in GTA.

3.3.1.2. Dumping

(a) Normal value

- (94) In order to establish normal value, the Commission used the same methodology as the one applied by the applicant in the request. Since reliable data concerning prices on the Korean domestic market was not available, the Commission established a constructed normal value using the methodology and values contained in the expiry review request.

(b) Export prices

- (95) Export prices to the Union were established on the basis of Eurostat data.

⁽¹⁰⁾ Source: questionnaire replies of the Japanese exporting producers.

(c) **Comparison**

- (96) The normal value and the export price were compared on an ex-works basis. To this end, delivery and insurance costs were deducted on the basis of the information available in the request (115,82 EUR/tonne). The ex-works normal value thus established was 1 893 EUR/tonne, while the ex-works export price was 1 880 EUR/tonne during the RIP.

(d) **Dumping**

- (97) On the basis of the above, the Commission established that the dumping margin of Korean exports to the Union was at *de minimis* level, i.e. less than 2 %, expressed as a percentage of the export price.

3.3.2. *Likelihood of recurrence of dumping should measures be repealed*

- (98) The Commission analysed whether dumping was likely to recur if the current anti-dumping measures would be allowed to expire. When doing so, it looked into the behaviour of Korean exporters in other markets, production and spare capacity in Korea and the attractiveness of the Union market.

(a) **Exports to third countries**

- (99) The Commission analysed the export prices from Korea to other third markets during the RIP, as reported in the official Korean export statistics from GTA, and compared these price levels with the import prices. This analysis showed that Korean exports to several of its other main export markets were made at prices below the export prices to the EU. The average export price to third markets was established at 1 442 EUR/tonne during the RIP, which is below the lowest MIP applicable in the EU and much lower than the average ex-works price to the EU. Comparing those prices to third markets with the constructed normal value showed a price difference of around 30 %.
- (100) Therefore, it was considered likely that, if the current measures were to be repealed, the Korean exporting producers would start selling to the Union at dumped levels.

(b) **Spare capacity**

- (101) According to the facts available included in the request for review, Korea has an estimated production capacity of 280 000 tonnes and an estimated spare capacity of 24 000 tonnes during the RIP. Korea's spare capacity corresponded therefore to around [7-10] % of the Union consumption of GOES in the RIP.

(c) **Attractiveness of the Union market**

- (102) The Commission established that the Union market is attractive for Korean producers for the following reasons.
- (103) First, as indicated in recital (81) above, the Union market is among the largest markets in the world. Second, the Korean domestic consumption is predominantly satisfied by the domestic production, as only around 19 % of it is made up by imports. As a result, the exporting producers are mostly export oriented.
- (104) Third, following the imposition of anti-dumping measures in the PRC against, *inter alia*, Korea, and the increase in China's own domestic production capacity, Korean exports to China have declined sharply in recent years. This would in turn make the Union market more attractive, thus creating the risk that certain trade diversion to the Union may take place.

(d) **Conclusion on the likelihood of recurrence of dumping**

- (105) Based on the above, the Commission concluded that dumping would be likely to recur in the future should measures be allowed to lapse. Considering the spare capacity in Korea, the low price levels of GOES exports to third countries during the RIP, which were made at dumped prices when compared to the normal value, together with the attractiveness of the Union market, the Commission also concluded that significant quantities of GOES from Korea would likely enter the Union market at dumped price levels, should measures be allowed to lapse.

3.4. USA

3.4.1. Dumping during the review investigation period

3.4.1.1. Preliminary remarks

- (106) In the absence of cooperation by any US exporting producer, as indicated in recital (28), the Commission based its overall analysis, including the dumping calculation, on facts available pursuant to Article 18 of the basic Regulation.
- (107) Consequently, the likelihood of a continuation or recurrence of dumping was assessed by using the information contained in the expiry review request, combined with other sources of information such as Eurostat and GTA.

3.4.1.2. Dumping

(a) **Normal value**

- (108) In order to establish normal value, the Commission used the same methodology as the one applied by the applicant in the request. Since reliable data concerning prices on the US domestic market was not available, the Commission established a constructed normal value using the methodology and values contained in the expiry review request.

(b) **Export prices**

- (109) Export prices to the Union were established on the basis of Eurostat data.

(c) **Comparison**

- (110) The normal value and the export price were compared on an ex-works basis. To this end, delivery and insurance costs were deducted on the basis of the information available in the request (166,66 EUR/tonne). The ex-works normal value was thus established at 2 310 EUR/tonne, while the export price was 1 880 EUR/tonne during the RIP.

(d) **Dumping**

- (111) On the basis of the above, the Commission established a dumping margin of around 21 %. The Commission therefore concluded that dumping continued during the review investigation period.

3.4.2. Likelihood of continuation of dumping should measures be repealed

- (112) The Commission analysed whether dumping would be likely to continue if the current anti-dumping measures would be allowed to expire. When doing so, it looked into production and spare capacity in the USA and the attractiveness of the Union market.

(a) **Spare capacity**

- (113) According to the information provided in the expiry review request, the USA had an estimated production capacity of 265 000 tonnes and an estimated spare capacity of 77 000 tonnes during the RIP. The spare capacity in the USA alone can therefore satisfy [27-30] % of the entire Union consumption of GOES.

(b) **Attractiveness of the Union market**

- (114) The investigation confirmed that the Union market is attractive for US producers for the following reasons:

- (115) First, as indicated in recital (81) above, the Union market is among the largest markets in the world.

- (116) Second, US domestic consumption is already predominantly satisfied by the domestic production, as only around 15 % of it was made up by imports during the RIP. As a result, the exporting producers are export oriented.

(c) ***Conclusion on the likelihood of continuation of dumping***

- (117) Based on the above, the Commission concluded that dumping would be likely to continue in the future should measures be allowed to lapse. Considering the dumped price levels of GOES to the Union during the RIP, the large spare capacity in the USA and the attractiveness of the Union market, the Commission also concluded that significant quantities of GOES from the USA would likely enter the Union market at dumped price levels, should measures be allowed to lapse.

3.5. PRC

3.5.1. Dumping during the review investigation period

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

- (118) According to Article 2(1) of the basic Regulation, 'the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country'.
- (119) However, according to Article 2(6a)(a) of the basic Regulation, 'in case it is determined [...] that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions within the meaning of point (b), the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks', and 'shall include an undistorted and reasonable amount of administrative, selling and general costs and for profits' ('administrative, selling and general costs' is referred hereinafter as 'SG&A').
- (120) In view of the sufficient evidence available at the initiation of the investigation pointing to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation with regard to the PRC, the Commission considered it appropriate to initiate the investigation with regard to the exporting producers from this country having regard to Article 2(6a) of the basic Regulation.
- (121) Consequently, in order to collect the necessary data for the eventual application of Article 2(6a) of the basic Regulation, in the Notice of Initiation the Commission invited producers of the PRC to provide information regarding the inputs used for producing the product under review. One exporting producer provided the requested information.
- (122) In order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions, the Commission also sent a questionnaire to the GOC. In addition, in point 5.3.2 of the Notice of Initiation, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation. No questionnaire reply was received from the GOC and no submission on the application of Article 2(6a) of the basic Regulation was received within the deadline.
- (123) On 30 November 2020, the Commission issued a first note for the file ('the First Note') seeking the views of the interested parties on the relevant sources that the Commission may use for the determination of the normal value, in accordance with Article 2(6a)(e) second indent of the basic Regulation. In that note, the Commission provided a list of all factors of production such as materials, energy and labour used in the production of the product under review by the exporting producers. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified two possible representative countries: Brazil and Russia.
- (124) The Commission invited interested parties to submit comments. Comments were received from Eurofer and the Baoshan Group.
- (125) The comments on the First Note were addressed in a second note ('the Second Note') which the Commission issued on 20 July 2021 and by which it informed interested parties on the relevant sources it intended to use for the determination of the normal value, with Brazil as the representative country. It also informed interested parties that it would establish SG&A costs and profits based on Aperam Inox América so Sul S.A. ('Aperam'), a producer in the representative country. Comments were received from Eurofer and the Baoshan Group.

3.5.1.2. Non-cooperation from the GOC

- (126) Upon initiation of the investigation on the basis of Article 2(6a)(a) of the basic Regulation, the Commission sent a questionnaire concerning the existence of distortions to the GOC. The GOC however did not submit a reply. The Commission informed the GOC by Note Verbale on 24 September 2021 that it intended to make use of Article 18 of the basic Regulation with regard to the possible existence of significant distortions on the Chinese domestic market for GOES within the meaning of Article 2(6a) of the basic Regulation. The Commission invited the GOC to submit its comment on the application of Article 18. No comments were received.

3.5.1.3. Existence of significant distortions

- (127) In recent investigations concerning the steel sector in the PRC (⁽¹¹⁾), the Commission found that significant distortions in the sense of Article 2(6a)(b) of the basic Regulation were present. The Commission concluded in this investigation that, based on the evidence available, the application of Article 2(6a) of the basic Regulation was also appropriate.
- (128) In those investigations, the Commission found that there is substantial government intervention in the PRC resulting in a distortion of the effective allocation of resources in line with market principles (⁽¹²⁾). In particular, the Commission concluded that in the steel sector, to which GOES belongs, not only does a substantial degree of ownership by the GOC persist in the sense of Article 2(6a)(b), first indent of the basic Regulation (⁽¹³⁾), but the GOC is also in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation (⁽¹⁴⁾). The Commission further found that the State's presence and intervention in the financial markets, as well as in the provision of raw materials and inputs have an additional distorting effect on the market. Indeed, overall, the system of planning in the PRC results in resources being concentrated in sectors designated as strategic or otherwise politically important by the GOC, rather than being allocated in line with market forces (⁽¹⁵⁾). Moreover, the Commission concluded that the Chinese bankruptcy and property laws do not work properly in the sense of Article 2(6a)(b), fourth indent of the basic Regulation, thus generating distortions in particular when maintaining insolvent firms afloat and when allocating land use rights in the PRC (⁽¹⁶⁾). In the same

⁽¹¹⁾ Commission Implementing Regulation (EU) 2021/635 of 16 April 2021 imposing a definitive anti-dumping duty on imports of certain welded pipes and tubes of iron or non-alloyed steel originating in Belarus, the People's Republic of China and Russia following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 132, 19.4.2021, p. 145) and Commission Implementing Regulation (EU) 2020/508 of 7 April 2020 imposing a provisional anti-dumping duty on imports of certain hot rolled stainless steel sheets and coils originating in Indonesia, the People's Republic of China and Taiwan (OJ L 110, 8.4.2020, p. 3).

⁽¹²⁾ See Implementing Regulation (EU) 2021/635 recitals 149-150 and Implementing Regulation (EU) 2020/508 recitals 158-159.

⁽¹³⁾ See Implementing Regulation (EU) 2021/635 recitals 115-118 and Implementing Regulation (EU) 2020/508 recitals 122-127.

⁽¹⁴⁾ See Implementing Regulation (EU) 2021/635 recitals 119-122 and Implementing Regulation (EU) 2020/508 recitals 128-132: While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights, CCP cells in enterprises, state owned and private alike, represent another important channel through which the State can interfere with business decisions. According to the PRC's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline. In 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of GOES producers and the suppliers of their inputs.

⁽¹⁵⁾ See Implementing Regulation (EU) 2021/635 recitals 123-129 and Implementing Regulation (EU) 2020/508 recitals 133-138.

⁽¹⁶⁾ See Implementing Regulation (EU) 2021/635 recitals 130-133 and Implementing Regulation (EU) 2020/508 recitals 139-142.

vein, the Commission found distortions of wage costs in the steel sector in the sense of Article 2(6a)(b), fifth indent of the basic Regulation (⁽¹⁷⁾), as well as distortions in the financial markets in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, in particular concerning access to capital for corporate actors in the PRC (⁽¹⁸⁾).

- (129) Like in previous investigations concerning the steel sector in the PRC, the Commission examined in the present investigation whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the request, as well as in the Report, which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in the PRC's economy in general, but also the specific market situation in the relevant sector including the product under review. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in the PRC as also found by its previous investigations in this respect.
- (130) The request contained information on the distortive effects of the 13th Five Year Steel Plan on the steel industry. Furthermore, the request referred to the findings made by the US Government concerning the state control over the relatively strong controlling power over the steel sector in China via SASAC and absolute controlling power over electricity (⁽¹⁹⁾). The request further observed that GOES like organic coated steel products is produced from hot-rolled coils. Therefore, the same distortions noted by the Commission with respect to organic coated steel in Commission Implementing Regulation (EU) 2019/687 (⁽²⁰⁾) products also apply to GOES. The request also observed that the two main Chinese exporting producers in the GOES investigation, Baosteel and WISCO, are also exporting producers of organic coated steel products covered by the definitive measures on that product. At the end of 2016, Baosteel and WISCO merged to become China's biggest steelmaker. The request also referred to the anti-subsidy proceeding regarding hot rolled flat steel products (⁽²¹⁾), in which the Commission found a number of subsidies which point to the existence of distortions in the sector. Finally, the request mentioned financial support received by Baosteel and other producers, as evidenced by a report prepared by the Steel Industry Coalition (⁽²²⁾) and findings made in several U.S. countervailing duty investigations (⁽²³⁾).
- (131) As indicated in recital (126), the GOC did not comment or provide evidence supporting or rebutting the existing evidence on the case file, including the Report and the additional evidence provided by the complainant, on the existence of significant distortions and/or on the appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand.
- (132) Specifically in the steel sector, to which GOES belongs, a substantial degree of ownership by the GOC persists. Many of the largest producers are owned by the State. For instance, Baosteel, the main exporter of GOES, is a major Chinese State-owned enterprise that engages in steel manufacturing and is part of the recently consolidated the Baoshan Group – formerly Baosteel and WISCO (⁽²⁴⁾). While the nominal split between the number of SOEs and privately owned companies is estimated to be almost even, from the five Chinese steel producers ranked in the top

⁽¹⁷⁾ See Implementing Regulation (EU) 2021/635 recitals 134-135 and Implementing Regulation (EU) 2020/508 recitals 143-144.

⁽¹⁸⁾ See Commission Implementing Regulation (EU) 2021/635 recitals 136-145 and Commission Implementing Regulation (EU) 2020/508 recitals 145-154.

⁽¹⁹⁾ U.S. Department of Commerce, 'China's Status as a non-market economy', A-570053, 26 October 2017, p. 57.

⁽²⁰⁾ Commission Implementing Regulation (EU) 2019/687 of 2 May 2019 imposing a definitive anti-dumping duty on imports of certain organic coated steel products originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 116, 3.5.2019, p. 5).

⁽²¹⁾ Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 146, 9.6.2017, p. 17).

⁽²²⁾ Steel Industry Coalition, Report on Market Research into the People's Republic of China Steel Industry (30 June 2016).

⁽²³⁾ Non-Oriented Electrical Steel from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order, 85 Fed. Reg. 11339 (27 February 2020); Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Affirmative Determination, 81 Fed. Reg. 35308 (2 June 2016).

⁽²⁴⁾ Baowu, 'Company profile', <http://www.baowugroup.com/en/contents/5273/102759.html> (last viewed 6 May 2021).

10 of the world's largest steel producers, four are SOEs⁽²⁵⁾. At the same time, while the top ten producers only took up some 36 % of total industry output in 2016, the GOC set the target in the same year to consolidate 60 % to 70 % of steel production to around ten large-scale enterprises by 2025⁽²⁶⁾. This intention has been repeated by the GOC in April 2019, announcing a release of guidelines on steel industry consolidation⁽²⁷⁾. Such consolidation may entail forced mergers of profitable private companies with underperforming SOEs⁽²⁸⁾. The two producers of GOES in China, Baosteel and WISCO (both part of the Baoshan Group) are State owned.

(133) As to the GOC being in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation, the investigation established the existence of personal connections between producers of the product under review and the CCP, such as CCP members among the senior management or members of the board of directors in the Baoshan Group.

(134) Both public and privately owned enterprises in the GOES sector are subject to policy supervision and guidance. The following examples illustrate the above trend of an increasing level of intervention by the GOC in the sector. The two GOES producers explicitly emphasise party building activities on their websites, have party members in the company management and underline their affiliation to the CCP. The investigation revealed party building activities in both Baosteel and WISCO. Baosteel describes the party building activities as follows: 'Undertake the main responsibility of administering the party strictly and comprehensively; Lead the company's ideological and political work, united front work, building of a spiritual civilisation, building of a corporate culture and mass work such as trade unions and the Communist Youth League; Lead the construction of party-style and honest government, support discipline committees to effectively fulfil their supervisory responsibilities'⁽²⁹⁾. WISCO indicates on its website that the first party member congress of the Chinese Communist Party WISCO Group Co., Ltd held on 22 January 2021 'has decided to give full play to the leadership role of the party committee of "directing, managing the overall situation, and ensuring implementation", improve political positions, strengthen accountability, and go all out to promote the implementation of the "1345" development strategy'⁽³⁰⁾.

(135) Further, policies discriminating in favour of domestic producers or otherwise influencing the market in the sense of Article 2(6a)(b), third indent of the basic Regulation are in place in the GOES sector.

(136) Even though GOES is a specialised industry and no specific policy documents guiding particularly the development of the GOES industry as such could be identified during the investigation, the GOES industry benefits from governmental guidance and intervention concerning steel and the main raw materials to manufacture GOES, namely steel and iron ore.

(137) The steel industry is regarded as a key industry by the GOC⁽³¹⁾. This is confirmed in the numerous plans, directives and other documents focused on steel, which are issued at national, regional and municipal level such as the 'Steel Industry Adjustment and Upgrading plan for 2016-2020', valid during the IP period. This Plan stated that the steel industry is 'an important, fundamental sector of the Chinese economy, a national cornerstone'⁽³²⁾. The main tasks

⁽²⁵⁾ Report – Chapter 14, p. 358: 51 % private and 49 % SOEs in terms of production and 44 % SOEs and 56 % private companies in terms of capacity.

⁽²⁶⁾ Available at:

www.gov.cn/zhengce/content/2016-02/04/content_5039353.htm (last viewed 6 May 2021); https://policycn.com/policy_ticker/higher-expectations-for-large-scale-steel-enterprise/?iframe=1&secret=c8uthafuthefra4e (last viewed 6 May 2021), and www.xinhuanet.com/english/2019-04/23/c_138001574.htm (last viewed 6 May 2021).

⁽²⁷⁾ Available at http://www.xinhuanet.com/english/2019-04/23/c_138001574.htm (last viewed 6 May 2021) and http://www.jjckb.cn/2019-04/23/c_137999653.htm (last viewed 6 May 2021).

⁽²⁸⁾ As was the case of the merger between the private company Rizhao and the SOE Shandong Iron and Steel in 2009. See Beijing steel report, p. 58, and the acquired majority stake of China Baowu Steel Group in Magang Steel in June 2019, see <https://www.ft.com/content/a7c93fae-85bc-11e9-a028-86cea8523dc2> (last viewed 6 May 2021).

⁽²⁹⁾ See Articles of Association of Baoshan, Article 133.4: http://static.sse.com.cn//disclosure/listedinfo/announcement/c/2021-01-08/600019_20210108_8.pdf (last viewed 6 May 2021).

⁽³⁰⁾ <http://www.wuganggroup.cn/zzjs/index.jhtml>, consulted on 9 September 2021.

⁽³¹⁾ Report, Chapter 14.

⁽³²⁾ Introduction to The Plan for Adjusting and Upgrading the Steel Industry.

and objectives set out in this Plan cover all aspects of the development of the industry⁽³³⁾. The 13th Five-Year Plan ('FYP') on Economic and Social Development⁽³⁴⁾, applicable during the IP, envisaged support to enterprises producing high-end steel product types. It also focuses on achieving product quality, durability and reliability by supporting companies using technologies related to clean steel production, precision rolling and quality improvement⁽³⁵⁾.

- (138) The 'Catalogue for Guiding Industry Restructuring (2011 Version) (2013 Amendment)'⁽³⁶⁾ ('the Catalogue') lists steel as an encouraged industry. An important raw material used for the production of GOES is iron. Iron ore was covered by the National Mineral Resource Plan 2016-20 during the IP period. The plan envisaged, among others, to 'ensure enterprise concentration and develop large and medium sized mines competitive on the market', 'ensure guidance of local resources so as to concentrate them towards large-sized mining groups', 'reduce the burden on iron ore enterprises, raise the competitiveness of domestic iron ore enterprises', 'adequately control the development of 1 000 meter-deep mines and small-scale low-grade iron ore mines'.
- (139) Iron ore is also mentioned in the 13th FYP on Steel 2016-20, which was in force during the review investigation period. The plan envisages for iron ore: 'keep on supporting exploration works in domestic key mineral areas, [...], support a number of existing and strongly competitive domestic iron ore enterprises, thanks to a wider and intensified development, [...], and to strengthen the role of domestic mineral resources bases as regards security (of supplies)'.
- (140) Iron ore is classified as a Strategic Emerging Industry ('SEI') and therefore covered by the 13th FYP on SEIs. Iron ore, pig iron and ferroalloys are also all listed in the NRDC Guiding Catalogue for Industry Adjustment 2019. Ferroalloys are mentioned in the 2018 MIIT Guiding Catalogue for Industry Development and Transfer.
- (141) As can be seen from the above examples concerning steel and iron, the GOC further guides the development of the GOES sector in accordance with a broad range of policy tools and directives and controls virtually every aspect in the development and functioning of the sector. Thus, the GOES industry benefits from governmental guidance and intervention concerning steel and the main raw material to manufacture GOES, namely iron ore.
- (142) In addition to the above, the GOES producers are also beneficiaries of state subsidies, which clearly indicates the interest of the state in this sector. During the investigation, the Commission established that the two GOES producers, Baosteel⁽³⁷⁾ and WISCO⁽³⁸⁾ benefited from direct state subsidies.
- (143) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives of supporting encouraged industries, including the production of steel and iron, under which GOES falls. Such measures impede market forces from operating freely.
- (144) The present investigation has not revealed any evidence that the discriminatory application or inadequate enforcement of bankruptcy and property laws according to Article 2(6a)(b), fourth indent of the basic Regulation in the GOES sector referred to above in recital (128) would not affect the manufacturers of the product under review.

⁽³³⁾ Report, Chapter 14, p. 347.

⁽³⁴⁾ The 13th Five-Year Plan for Economic and Social Development of the People's Republic of China (2016-20), available at https://en.ndrc.gov.cn/newsrelease_8232/201612/P020191101481868235378.pdf (last viewed 6 May 2021).

⁽³⁵⁾ Report – Chapter 14, p. 352.

⁽³⁶⁾ Catalogue for Guiding Industry Restructuring (2011 Version) (2013 Amendment) issued by Order No 9 of the National Development and Reform Commission on 27 March 2011, and amended in accordance with the Decision of the National Development and Reform Commission on Amending the Relevant Clauses of the Catalogue for Guiding Industry Restructuring (2011 Version) issued by Order No 21 of the National Development and Reform Commission on 16 February 2013.

⁽³⁷⁾ See the 2019 annual report, pages 181 and 187: <http://static.cninfo.com.cn/finalpage/2020-04-29/1207654234.PDF>

⁽³⁸⁾ See Baowu Steel annual report 2019: https://www.shclearing.com/xxpl/cwbg/nb/202005/t20200529_691577.html, p. 210.

- (145) The GOES sector is also affected by the distortions of wage costs in the sense of Article 2(6a)(b), fifth indent of the basic Regulation, as also referred to above in recital (128). Those distortion affect the sector both directly (when producing the product under review or the main inputs), as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in the PRC) ⁽³⁹⁾.
- (146) Moreover, no evidence was submitted in the present investigation demonstrating that the GOES sector is not affected by the government intervention in the financial system in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, as also referred to above in recital (128). Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.
- (147) Finally, the Commission recalls that in order to produce GOES, a number of inputs is needed. When the producers of GOES purchase or/contract for these inputs, the prices they paid (and which are recorded as their costs) are exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions, they may borrow money that is subject to the distortions on the financial sector/capital allocation and they are subject to the planning system that applies across all levels of government and sectors.
- (148) As a consequence, not only the domestic sales prices of GOES are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts A and B of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that in itself was produced in the PRC by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth.
- (149) No evidence or argument to the contrary has been adduced by the GOC. One group of exporting producers, namely the Baoshan Group, submitted a set of comments concerning the existence of significant distortions.
- (150) First, the Baoshan Group underlined that the allegation on 'significant distortions' in China should not become a pre-determined conclusion. The Baoshan Group argued that the Commission should not be collecting the information needed for the calculation of the normal value based on the representative country methodology at the beginning of the investigation, i.e. before the significant distortions are established and confirmed in a given investigation. According to the Baoshan Group, such information should only be collected once the Commission confirmed the facts necessary to apply the provisions of Article 2(6a) of the basic Regulation. It also observed that the request relied heavily on the China Report, which, according to the Baoshan Group, fails to meet the standards of impartial and objective evidence, because it was drafted with the purpose to facilitate filing of complaints for the European industry. Furthermore, the Baoshan Group argued that the accuracy of the information included in the Commission report and the relevance to the current proceeding are very questionable, because the Report was published in 2017, including contents and references in 2016 and the years before and is therefore not applicable to the IP in the current investigation. Also, the Baoshan Group observed that the China Report does not cover GOES, only the steel sector and that the findings made on steel are not necessarily relevant for GOES.
- (151) The Commission considered that the evidence listed in the Notice of Initiation was sufficient to warrant initiation of an investigation on the basis of Article 2(6a) of the basic Regulation. Indeed, while the determination on the actual existence of significant distortions and the consequent use of the methodology prescribed by Article 2(6a)(a) only occurs at the time of the provisional and/or definitive disclosure, Article 2(6a)(e) lays down an obligation to collect the data necessary for the application of this methodology when the investigation has been initiated on this basis. In this case, the Commission deemed the evidence submitted by the applicant on the significant distortions sufficient to initiate the investigation on this basis. The Notice of Initiation clearly specified this at point 3 in accordance with the obligation stated in Article 2(6a)(e) of the basic Regulation. Therefore, the Commission took the steps necessary to enable it to apply the methodology under Article 2(6a) of the basic Regulation in case the existence of significant distortions would be confirmed during the investigation.

⁽³⁹⁾ See Implementing Regulation (EU) 2021/635 recitals 134-135 and Implementing Regulation (EU) 2020/508 recitals 143-144.

- (152) Regarding the claim on the lack of impartiality of the Report, the Commission notes that this report is a comprehensive document based on extensive objective evidence, including legislation, regulations and other official policy documents published by the GOC, third party reports from international organisations, academic studies and articles by scholars, and other reliable independent sources. It was made publicly available since December 2017 so that any interested party would have ample opportunity to rebut, supplement or comment on it and the evidence on which it is based. Regarding the argument that the Report was outdated, the Commission recalls that so far no evidence was provided showing that the report is outdated. On the contrary, the Commission notes in particular that the main policy documents and evidence contained in the report, including the relevant FYPs and legislation applicable to the product under review were still relevant during the RIP, and that neither the Baoshan Group nor other parties have proven that this was no longer the case.
- (153) With regard to the argument that the Commission Report does not include a specific chapter on GOES but only on steel in general, the Commission noted that first, GOES is a specialised type of steel, hence the provisions concerning steel are broadly applicable also to GOES. Secondly, the existence of the significant distortions giving rise to the application of Article 2(6a) of the basic Regulation is not linked to the existence of a specific sectoral chapter covering the product under investigation. The Report describes different types of distortions present in the PRC which are cross-cutting and applicable throughout the Chinese economy and affect the prices and/or the raw materials and costs of production of the product under investigation. Hence, the claims made by the Baoshan Group were dismissed.
- (154) In sum, the evidence available showed that prices or costs of the product under review, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case. Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as discussed in the following section.

3.5.1.4. Representative country

(a) General remarks

- (155) The choice of the representative country was based on the following criteria pursuant to Article 2(6a) of the basic Regulation:
- A level of economic development similar to China. For this purpose, the Commission used countries with a gross national income per capita similar to China on the basis of the database of the World Bank (⁴⁰);
 - Production of the product under review in that country (⁴¹);
 - Availability of relevant public data in the representative country.
 - Where there is more than one possible representative country, preference should be given, where appropriate, to the country with an adequate level of social and environmental protection.
- (156) As explained in recitals (123) and (125), the Commission issued two notes for the file on the sources for the determination of the normal value: the First Note on production factors of 30 November 2020 and the Second Note on the production factors of 20 July 2021. These notes described the facts and evidence underlying the relevant criteria, and addressed the comments received by the parties on these elements and on the relevant sources.

⁽⁴⁰⁾ World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>

⁽⁴¹⁾ If there is no production of the product under review in any country with a similar level of development, production of a product in the same general category and/or sector of the product under review may be considered.

In the Second Note, the Commission informed interested parties of its intention to consider Brazil as an appropriate representative country in the present case, if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation would be confirmed.

(b) A level of economic development similar to the PRC

- (157) In the First Note, the Commission identified Brazil and Russia as countries with a similar level of economic development as China according to the World Bank, i.e. they are both classified by the World Bank as 'upper-middle income' countries on a gross national income basis where production of the product under review was known to take place. The Union industry had also proposed South Korea as an allegedly appropriate representative country. However, in view of South Korea's level of economic development, as classified by the World Bank, such country could not be considered.
- (158) Further to the First Note, the Union industry claimed that Article 2(6a) of the basic Regulation gave the Commission broad discretion in determining which representative country may be appropriate and did not limit the concept of a similar level of economic development to countries classified in the same group of gross national income by the World Bank. In particular, it claimed that while the World Bank gross national income groupings may make sense in many cases, they do not make sense with respect to the GOES industry subject to this review. The reason is that GOES is a unique high-tech steel product and the Chinese exporting producer has GOES mills made to the highest international standards and exports mainly the high permeability (premium) grades ('HGO') of GOES to the European Union. The Union industry also argued that the producer in Brazil was not able to achieve similar levels of quality whereas the Chinese exporting producer was at the same level of economic development and technology as the Korean mill POSCO and Korea was thus the most suitable representative country in its view.
- (159) With regard to the use of the World Bank's classification, when constructing the normal value in case of countries with significant distortions, Article 2(6a)(a) of the basic Regulation establishes that the Commission may use a representative country with a similar level of economic development as the exporting country. In order to define which countries are at similar level of economic development as the exporting country in each case, the Commission uses countries classified in the same income category by the World Bank. The Commission does so by exercising its discretion in the interpretation and application of the basic Regulation as repeatedly confirmed by the Court of Justice in circumstances where it is left to the Commission to do so. The Commission considered that this database allows having a sufficient number of potentially suitable countries with a similar level of development to choose an appropriate representative country according to Article 2(6a)(a) of the basic Regulation.
- (160) In this case, the relevant World Bank category where the PRC is classified was that of the upper-middle income countries. Therefore, Korea did not have a similar level of economic development as the PRC and was considered not to meet the criterion laid down in Article 2(6a)(a) first indent of the basic Regulation.
- (161) Further to the Second Note, Eurofer claimed that the Commission's assessment based on the countrywide level of economic development and reference to the World Bank classification did not make sense and should integrate the economic development of the Chinese GOES industry. In this context, Eurofer argued that the Korean and Japanese GOES industries had a similar level of economic development as the Chinese one. In the absence of cooperation by Korean exporting producers, Eurofer claimed that the Commission could use Japan as representative country for China and the information provided by Nippon Steel to determine normal value.
- (162) The Commission considered that the wording of Article 2(6a)(a), first indent of the basic Regulation does not allow such a narrow reading as it does not refer to a sector specific approach. Furthermore, Eurofer did not provide any independent source on which the Commission could rely in order to establish that the Korean and Japanese GOES industries had a similar level of economic development. On this basis, this claim was rejected.

(c) Availability of relevant public data in the representative country

- (163) In the First Note, the Commission indicated that, for the countries identified as countries where the product under review was being produced, i.e. Brazil and Russia, the availability of public data was limited to one producer of the product under review located in Brazil; i.e. Aperam for the calendar year 2019. In this regard, the Commission invited interested parties to comment, and, if deemed appropriate, propose other producers of the product under investigation in a representative country of their choice fulfilling the criteria of Article 2(6a)(a) first indent of the basic Regulation, where financial statements containing the relevant data are readily available.
- (164) Further to the First Note, no interested parties filed comments regarding Aperam or submitted relevant public financial data of a producer of GOES in a potential representative country.
- (165) Further to the Second Note, Eurofer agreed that Brazil was more suitable than Russia. Nevertheless, it claimed that Aperam was technically not able to produce the high quality grade products exported by the Baoshan Group to the EU as a result of its lack of investment in the technology, processes and know how required for these grades. In particular, Eurofer referred to the level of depreciation, which was allegedly too low and should be adjusted in line with the level of Union or Korean producers.
- (166) As explained in recital (180), the Commission did not rely on the level of depreciation of Aperam to construct normal value. Indeed, the Aperam data used to construct normal value related only to SG&A and profit percentages. As far as depreciation and other overhead costs are concerned, the Commission relied on the Baoshan Group's overhead costs expressed as percentage of cost of other manufacturing costs and applied this percentage to the 'recalculated' cost of manufacturing. On this basis, this claim was rejected.
- (167) Following the Second Note, Eurofer also claimed that the Commission should integrate Aperam's financial data for calendar year 2020 in its calculation of SG&A and profit for the review investigation period.
- (168) The Commission accepted this claim but eventually only relied on 2020 data because, as mentioned in recital (203), the 2019 financial statements did not show a profit when excluding non operating expenses.
- (169) In the First Note, the Commission provided a list of all factors of production such as raw materials, labour and energy used in the production of GOES. In the same Note, the Commission considered that there were trade restrictions on certain factors of production based on the OECD Inventory on export restrictions on Industrial Raw Materials⁽⁴²⁾ and in particular the list of export restrictions on industrial raw materials for Brazil (HS 7225 11 and 7226 11) and Russia (HS 7204 10 till 7204 50). Furthermore, with regard to Russia, the Commission Staff Working Document on significant distortions in the economy of Russia for the purposes of trade defence investigations (SWD(2020) 242) had also identified significant distortions in natural gas⁽⁴³⁾ and electricity⁽⁴⁴⁾, high levels of state intervention and high levels of concentration and vertical integration in key raw material sectors, steel industry and transport⁽⁴⁵⁾, and the existence of import duties on GOES (HS 7225 11 and 7226 11). In view of these trade restrictions and significant distortions, at this stage, the Commission had considered that Brazil would be the appropriate representative country and invited parties to comment on the appropriateness of the possible representative countries.
- (170) Further to the First Note, the Union industry provided additional arguments to the ones set out in the First Note as to why Russia was a less suitable representative country than Brazil.

⁽⁴²⁾ http://qdd.oecd.org/subject.aspx?Subject=ExportRestrictions_IndustrialRawMaterials

⁽⁴³⁾ Commission Staff Working document on significant distortions in the economy of the Russian Federation for the purposes of trade defence investigations SWD(2020) 242 final, Chapter 10, in particular pages 267, 269 and 293.

⁽⁴⁴⁾ Idem, p. 225, 291-293.

⁽⁴⁵⁾ Idem, in particular Chapters 11, 12 and 14.

- (171) Furthermore, the Commission noted that no party contested its findings in Section 2 of the First Note regarding the shortcomings identified for Russia as a representative country. Consequently, the Commission concluded that Brazil was an appropriate country as it fulfilled all the criteria, i.e. it is at a comparable level of development to China, it has a producer of GOES and the data of this producer is readily available for the review investigation period.

(d) *Level of social and environmental protection*

- (172) Having established that Brazil was the appropriate representative country, based on all of the above elements, there was no need to carry out an assessment of the level of social and environmental protection in accordance with the last sentence of Article 2(6a)(a) first indent of the basic Regulation.

(e) *Conclusion*

- (173) In view of the above analysis, the Commission decided to consider Brazil as the appropriate representative country for the purpose of Article 2(6a)(a) of the basic Regulation.

3.5.1.5. Undistorted costs and benchmarks

(a) *Sources used to establish undistorted costs*

- (174) In the First Note, the Commission listed the factors of production such as materials, energy and labour used in the production of the product under review by the exporting producer and invited the interested parties to comment and propose publicly available information on undistorted values for each of the factors of production mentioned in that note.

- (175) In accordance with Article 2(6a)(a) of the basic Regulation, the Commission also identified sources to be used for establishing undistorted prices and benchmarks. The main source that the Commission proposed to use was the GTA. Finally, in the same note, the Commission identified the Harmonised System (HS) codes, or the commodity codes used in, inter alia, the EU, Canada or Brazil, of factors of production which, on the basis of information provided by the interested parties, were initially considered to be used for the GTA analysis.

- (176) The Commission invited the interested parties to comment and propose publicly available information on undistorted values for each of the factors of production mentioned in that Note.

- (177) Based on the proposal to use Brazil as the representative country, the Commission informed the interested parties in the Second Note that it would use GTA to establish the undistorted costs of most of the raw materials.

(b) *Data used for the construction of normal value*

- (178) The Commission established a list of factors of production and sources intended to be used for all factors of production such as materials, energy and labour used in the production of the product under review by the exporting producers. The Commission did not receive any comments concerning the list of factors of production.

- (179) Considering all the information submitted by the interested parties and collected during the RCC, the following factors of production and their sources have been identified in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

Table 1

Factors of production of GOES

Factor of Production	Commodity Code	Undistorted value	Unit of measurement
Raw materials			
Iron ore	2601 11	729,85	Tonne
Sintered Iron ore	2601 12 10, 2601 12 90	945,20	Tonne
Iron slags	2619	712,97	Tonne
Coking coal	2701 12	1 076,38	Tonne
Steel scraps	7204 10	865,57	Tonne
Ferro-silicon	7202 21	12 766,44	Tonne
Ferro-niobium	7202 93	155 625,46	Tonne
Aluminum	7601 10	14 547,25	Tonne
Ferro-chromium	7202 41	9 107,45	Tonne
Copper	7402	42 514,89	Tonne
Limestone	2521	98,65	Tonne
Quicklime	2522 10	1 091,01	Tonne
Tin	8001 10	586 967,35	Tonne
Ferrophosphorus	7202 99 10	33 143,39	Tonne
Manganese	8111 00 10, 8111 00 20, 8111 00 90	16 138,58	Tonne
Magnesium oxide (MGO)	2519 90 10, 2519 90 90 (France)	44 837,45	Tonne
Consumables			
Labour			
Labour		84,59	per man hour
Energy			
Electricity	2716	8 251,91	kWh
Natural gas	2711 11	3,42-3,72	m ³
Oil	2710 19 11, 2710 19 19, 2710 19 21, 2710 19 22, 2710 19 29, 2710 19 31, 2710 19 32, 2710 19 91, 2710 19 92, 2710 19 93, 2710 19 94, 2710 19 99	2,29	1 000 m ³
Coke	2704 00 11, 2704 00 12, 2704 00 90	1 878,96	Tonne
Coal	2701 11	768,01	Tonne
Coal gas	2705	0,59	1 000 m ³
Hydrogen	2804 10 (Canada)	2,74	m ³

- (180) Furthermore, the Commission included a value for manufacturing overhead costs in order to cover costs not included in the factors of production referred to above, such as depreciations and other fixed expenses that cannot be quantified. Given the absence of relevant data in the publicly available financial data of Aperam to establish the amount relating to overhead costs, the company specific data of the exporting producer was used instead and applied on the 'recalculated' cost of manufacturing. The methodology is duly explained in section 3.5.1.6.
- (181) Following the Second Note to the file, Eurofer requested the Commission to calculate normal value directly in EUR to avoid distortions caused by CNY exchange rates. As far as the currency used for the dumping calculation, Eurofer did not provide any evidence of distortion. On this basis, the Commission performed the dumping calculation in line with its standard practice, i.e. using the currency of the exporting country.

(c) **Raw materials**

- (182) In order to establish the undistorted price of raw materials as delivered at the gate of a representative country producer, the Commission used as a basis the weighted average import price to the representative country as reported in the GTA to which import duties and transport costs were added. An import price in the representative country was determined as a weighted average of unit prices of imports from all third countries excluding the PRC and countries which are not members of the WTO, listed in Annex 1 of Regulation (EU) 2015/755 of the European Parliament and the Council⁽⁴⁶⁾. The Commission decided to exclude imports from the PRC into the representative country as it concluded in recital (154) that it is not appropriate to use domestic prices and costs in the PRC due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected export prices. After excluding imports from the PRC into the representative country, the volume of imports from other third countries remained representative (on average above 90 %).
- (183) For a number of factors of production the actual costs incurred by the cooperating exporting producers represented a negligible share of total raw material costs in the review investigation period. As the value used for these had no appreciable impact on the dumping margin calculations, regardless of the source used, the Commission decided to include those costs into consumables as explained in recital (209).
- (184) The Commission expressed the transport cost incurred by the cooperating exporting producer for the supply of raw materials as a percentage of the actual cost of such raw materials and then applied the same percentage to the undistorted cost of the same raw materials in order to obtain the undistorted transport cost. The Commission considered that, in the context of this investigation, the ratio between the exporting producer's raw material and the reported transport costs could be reasonably used as an indication to estimate the undistorted transport costs of raw materials when delivered to the company's factory.
- (185) Following the First Note, the Baoshan Group claimed that for certain raw materials (hydrogen, nitrogen, oxygen and tin) the prices in Brazil were much higher than in Russia, mainly due to very low level of imports into Brazil. In this context it invited the Commission to use alternative sources based on Article 2(6a)(a) of the Basic Regulation such as international prices or domestic costs in China.
- (186) The Commission considered that oxygen, nitrogen and tin were imported in representative quantities in Brazil. Consequently, the claim relating to these raw materials was first rejected. However, as far as hydrogen is concerned, the Commission observed that the levels of imports and price differences were indeed significant. Therefore the Commission considered that the use of the data of the largest exporter of hydrogen worldwide; i.e. Canada, was most appropriate. In the absence of significant differences in levels of imports and prices for tin, the Commission relied on the imports into Brazil as a whole.

⁽⁴⁶⁾ Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33). Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value and, in any event, such import data was negligible.

- (187) Following the Second Note, the Baoshan Group claimed that the calculated import prices for nitrogen and oxygen into Brazil were deficient as there were significant differences in unit price depending on the country of origin. It stated that, the import price for nitrogen and oxygen originating in Paraguay was respectively 11 and 8 times lower than the average import price, thus pointing to significant differences in import prices depending on the country of origin. Furthermore, it argued that Paraguay accounted for respectively over 98 % and 70 % of the import volume for nitrogen and oxygen. Moreover, the Baoshan Group argued that the unit cost for these raw materials was very significantly lower than the average import price. On this basis and considering the share of these two raw materials, the Baoshan Group suggested to treat nitrogen and oxygen as consumables or to rely on the import price for nitrogen and oxygen originating in Paraguay only.
- (188) In view of the share of the cost of nitrogen and oxygen in the cost of manufacturing and the price differences observed, the Commission considered that it was appropriate to consider these raw materials as consumables.
- (189) Following the First Note, the Union industry claimed that a particularly high grade of iron ore and magnesium oxide ('MGO') was required in the manufacturing of GOES and that the import statistics, based on HS or the representative country's codes, which usually encompass all the grades, did not capture this.
- (190) The Commission considered that this claim was warranted as GOES is indeed a very sophisticated product, much more expensive than regular types of steel and it requires special recipes and very high quality/high-grade raw materials even at the upstream iron-making level. As the data provided by the exporting producer did not allow the Commission to single out the grades of iron ore used specifically in the manufacturing of GOES, the Commission considered that the price of Iron ore 66 % Fe concentrate as reported by Fastmarkets⁽⁴⁷⁾ was the most appropriate benchmark.
- (191) The Commission considered that the MGO used in the manufacturing of GOES is of a much higher quality than the one imported into Brazil. The representative country customs codes for MGO encompass more grades of MGO than the very specific one used in the manufacturing of GOES. In addition, such MGO is made by very few producers, located in very few countries, one of them being France. Indeed, the type of MGO used for GOES reported by the Chinese exporting producer and by the Union industry is many times more expensive than the MGO imported into Brazil. Hence, the MGO imported into Brazil is not an adequate benchmark for MGO for the manufacturing of GOES. As a result, the Commission considered that exports, as declared in Comext, from France as a major MGO producer for GOES to the countries where GOES is produced⁽⁴⁸⁾, excluding those going to the PRC and those staying in the Union was an appropriate benchmark reflecting international prices outside the Union and China.
- (192) The Commission considered that import prices into Brazil as reported by GTA were not representative for Coking Coal and Compressed Air. Furthermore, such prices posed serious conversion issues.
- (193) In the absence of specific information concerning the grades of the coking coal used by the Chinese exporting producer, the Commission considered that the price of the premium hard coking coal – which has the highest quality – as reported by Fastmarkets was appropriate. Indeed, the investigation revealed that the benchmark price of the highest grade of coking coal was still lower than the price reported by the exporting producer for its coking coal purchases. This is another indication that the exporting producer used very high quality coking coal in its production process.
- (194) As for compressed air the exporting producer reported its consumption in cubic meters, while the imports into Brazil are only reported in Kg and the Commission was unable to find an appropriate conversion factor. In any case, compressed air accounted for a negligible part of the total manufacturing cost of the exporting producer. On this basis, the Commission treated this factor of production as a consumable.

⁽⁴⁷⁾ www.fastmarkets.com

⁽⁴⁸⁾ Russia, USA, Korea, Japan and India, thereby excluding China and EU Member States.

- (195) There were no imports of Ferro-niobium ('Fe-Nb') reported into Brazil in the investigation period. Therefore, for Fe-Nb, the Commission also used the data of the largest exporter in the world, that is Brazil, following the same approach as mentioned in recital (186) for hydrogen.
- (196) As for the coal gas, the exporting producer reported its consumption in cubic meters, while the imports into Brazil are only reported in Kg and the Commission was unable to find a conversion factor for coal gas. In addition, the imports into Brazil of coal gas were only 58 kg. Therefore, the Commission calculated the benchmark price of coal gas based on the price of natural gas in the representative country, while controlling for the heat value of both gases.
- (197) Following the Second Note, Eurofer submitted comments relating to certain raw materials and consumables used in the manufacturing of GOES. It also requested the Commission to take domestic transport to the Chinese exporting producer into account.
- (198) In this regard, the Commission considered that the information provided by the Baoshan Group reflected all relevant factors of production even if the manufacturing process was different. Furthermore, the Commission's calculation take account of domestic transport as explained in recital (184).

(d) Labour

- (199) In the Second Note, the Commission proposed to use the labour cost of the GOES producer in the representative country, APERAM, to establish the undistorted value for labour cost. No interested party filed comments in this regard. As 2020 financial data became available, the Commission recalculated the labour cost as an average of 2019 and 2020 data to mirror the review investigation period.

(e) Electricity

- (200) In the Second Note, the Commission proposed to use the electricity price tariff reported by CEMIG – the electricity provider in the Brazilian state of Minas Gerais, where the only Brazilian GOES manufacturer is located⁽⁴⁹⁾, to establish the undistorted value for electricity cost. No interested party filed comments in this regard.

(f) Natural gas

- (201) In the Second Note, the Commission proposed to use the price of natural gas for industrial users reported by GASMEG – provider in the Brazilian state of Minas Gerais where the GOES manufacturer is located⁽⁵⁰⁾. More specifically, the Commission used the data of the industrial gas prices in the corresponding consumption bands. The Commission calculated the benchmark price based on the GASMEG tariffs applicable in the investigation period. The benchmark price includes taxes (Tarifa com impostos). No interested party filed comments in this regard.

(g) Manufacturing overhead costs, SG&A, profits and depreciation

- (202) According to Article 2(6a)(a) of the basic Regulation, 'the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits'. In addition, a value for manufacturing overhead costs needs to be established to cover costs not included in the factors of production referred to above.
- (203) In its First and Second Notes, the Commission indicated that it would use Aperam's financial data and made Aperam's 2019 financial data available in this regard. However, after further analysis and exclusion of non-operating expenses and revenues, it appeared that Aperam was loss making in 2019. Hence, its data for 2019 could not be used.

⁽⁴⁹⁾ <https://novoportal.cemig.com.br/atendimento/valores-de-tarifas-e-servicos/> last consulted on 21 September 2021.

⁽⁵⁰⁾ <http://www.gasmig.com.br/Institucional/Paginas/Hist%C3%B3rico%20de%20tarifas.aspx> last consulted on 21 September 2021.

- (204) Aperam's financial data for calendar year 2020 became available to the Commission in the course of the proceeding. After exclusion of non-operating expenses and revenues, Aperam reported a profit. In line with Eurofer's request to use the 2020 financial statements, the Commission calculated the SG&A and profit percentages on the basis of the Aperam's financial statements for that year. Furthermore, the Commission considered that in the case at hand it was more appropriate to use Aperam's consolidated data than relying on financial statements for the related entities that it controlled. Indeed, the consolidated approach provides a more accurate picture of Aperam's operations and deducts intercompany profits, which are not identifiable in the individual accounts, from its financial results. Also, both Aperam's consolidated and individual accounts do not relate exclusively to the production of GOES. Therefore, the use of the consolidated data does not render the data less accurate. Consequently, the undistorted SG&A and profit were based on Aperam's 2020 financial statements.
- (205) The manufacturing overheads incurred by the cooperating exporting producers were expressed as a share of the costs of manufacturing actually incurred by the exporting producers. This percentage was applied to the undistorted costs of manufacturing.

3.5.1.6. Calculation

- (206) On the basis of the above, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (207) First, the Commission established the undistorted manufacturing costs. The Commission applied the undistorted unit costs to the actual consumption of the individual factors of production of the cooperating exporting producer. These consumption ratios provided by the Baoshan Group were verified during the RCC. As indicated in recital (47) above, further to the RCC, the Commission sent a letter ('the Article 18 letter') to the Baoshan Group indicating its intention to revert to facts available and apply Article 18(1) of the basic Regulation with regard to the calculation of man hours allocated to the manufacturing of GOES. On substance, the Commission considered that the Baoshan Group's labour allocation was not supported by verified and trustworthy evidence. In its comments to the Article 18 letter, the Baoshan Group provided the same supporting evidence as provided during the RCC. Since those documents did not demonstrate how many hours each employee had worked each day, the Commission confirmed its intention and applied facts available with regard to the allocation of man hours to the manufacturing of GOES. In doing so, the Commission recalculated the number of man hours allocated to the manufacturing of GOES by dividing the total labour cost of Baosteel and Wisco by the respective calculated hourly cost per worker for the Silicon steel department of both companies. The calculated man hours reported by Baosteel and WISCO were consequently replaced with the respective values recalculated by the Commission.
- (208) The Commission multiplied the consumption ratios by the undistorted costs per unit observed in the representative country Brazil, as described in Section 3.5.1.5.
- (209) Second, to arrive at a total undistorted costs of manufacturing, the Commission added manufacturing overheads. Manufacturing overheads incurred by the cooperating exporting producers were increased by the costs of raw materials and consumables referred to in recital (187) and subsequently expressed as a share of the costs of manufacturing actually incurred by each of the exporting producers. This percentage was applied to the undistorted costs of manufacturing
- (210) To the costs of production established as described in the previous recital, the Commission applied SG&A and profit of Aperam. SG&A expressed as a percentage of the Costs of Goods Sold ('COGS') and applied to the undistorted costs of production, amounted to 13,5 %. The profit expressed as a percentage of the COGS and applied to the undistorted costs of production, amounted to 7,6 %.
- (211) On that basis, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (212) Following the Second Note, Eurofer suggested that normal value be calculated on the basis of Chinese export prices to the USA pursuant to Article 2(3) of the basic Regulation.
- (213) As mentioned in recital (154), the Commission concluded that it was not appropriate to use domestic prices and costs to establish normal value in this case. Consequently, the Commission had to construct normal value in accordance with Article 2(6a)(a) of the basic Regulation, which does not foresee the use of export prices to third countries.

3.5.1.7. Export price

- (214) As the Baoshan Group exported the product under review to the Union through several 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, including SG&A expenses, and for profits accruing.

3.5.1.8. Comparison

- (215) The Commission compared the normal value and the export price of the Baoshan Group on an ex-works basis.

- (216) 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 sea freight, insurance and credit cost.

3.5.1.9. Dumping margins

- (217) For the Baoshan Group, the sole cooperating exporting producer, 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 under review, in accordance with Article 2(11) and (12) of the basic Regulation.

- (218) The comparison as described above showed no dumping.

3.5.2. *Likelihood of recurrence of dumping*

- (219) The Commission investigated in accordance with Article 11(2) of the basic Regulation the likelihood of recurrence of dumping should the measures be repealed. The following elements were analysed: exports to third countries, the production capacity and spare capacity in China, and the attractiveness of the Union market.

(a) *Exports to third countries*

- (220) The Commission found that during the RIP, the Baoshan Group exported very significant quantities of their total export sales to third markets other than the EU, where minimum import prices do not apply.

- (221) When comparing the constructed normal value established in accordance with Article 2(6a)(a) of the basic Regulation with the export prices for the largest export sales markets for the group – India and Mexico – accounting for around [35-70 %] of all export sales, the Commission established that the the export prices were 20 % lower than the normal value established for the Baoshan Group.

- (222) In the absence of cooperation by other Chinese exporting producers, the Commission had to rely on facts available. In this regard, it used the Chinese export statistics as reported in GTA to assess export prices to third countries. On this basis, the Chinese export statistics reported an average export price from China which was below the lowest MIP applicable in the EU in the review investigation period and thus below the export price of the Baoshan Group.

- (223) Therefore, it was considered likely that, if the current measures were to be repealed, the Chinese exporting producers would start selling to the Union at dumped levels.

(b) *Production capacity and spare capacity in China*

- (224) In addition to the Baoshan Group, being the only exporter to the EU, there are at least eight other exporting producers of GOES in China. According to Chinese export statistics as reported in GTA, the other Chinese exporting producers also exported to the rest of the world ⁽⁵¹⁾.

⁽⁵¹⁾ Chinese export statistics report export sales of 244 097 tonnes, while the Baoshan Group reported export sales of 203 450 tonnes in the IP.

- (225) The Eurofer's estimates provided in the expiry review request regarding the Baoshan's Group production capacity were very close to the Baoshan Group's actual data. In the absence of cooperation by other exporting producers in China, the Commission had to base its findings on facts available to assess the capacity of the other exporting producers, and relied on the information contained in the expiry review request.
- (226) The information contained in the expiry review request estimated the total Chinese capacity at 1 810 000 tonnes, while production was estimated at 1 220 000 tonnes. The Chinese consumption was estimated at 1 020 000 tonnes. On this basis, the spare capacity in China was estimated at 600 000 tonnes, which significantly exceeds the total EU consumption (265 000-280 000) in the RIP. In addition, some main markets such as the USA are protected by high tariffs of 25 %, which reduces access of the Chinese exporting producers.
- (227) On this basis, it is likely that Chinese producers will direct their spare capacities to the Union market in large quantities should the measures lapse and start selling at dumped prices.

(c) **Attractiveness of the Union market**

- (228) As already found in recital (82) above, the Union market is among the largest markets of GOES worldwide.
- (229) Price levels in the Union are generally significantly higher than the export prices of the Chinese producers to third countries.
- (230) The size of the Union market and the price differentials showed the attractiveness of the Union market.

(d) **Conclusion**

- (231) On the basis of the above considerations, it was concluded that there was a likelihood of recurrence of dumping should the measures be allowed to lapse.

3.6. Russia

3.6.1. Dumping during the review investigation period

3.6.1.1. Preliminary remarks

- (232) In the absence of cooperation by any Russian exporting producer, as indicated in recital (23), the Commission based its analysis, including the dumping calculation, on facts available pursuant to Article 18 of the basic Regulation.
- (233) Consequently, the likelihood of a continuation or recurrence of dumping was assessed by using the information contained in the expiry review request, combined with other sources of information such as Eurostat and GTA.

3.6.1.2. Dumping

(a) **Normal value**

- (234) Since reliable data concerning prices on the Russian domestic market was not available, the Commission established a constructed normal value using the methodology and values contained in the expiry review request.

(b) **Export price**

- (235) The export price to the Union was established on the basis of Eurostat data during the RIP.

(c) **Comparison**

- (236) The normal value and the export price were compared on an ex-works basis. To this end, delivery and insurance costs were deducted on the basis of information available in the request (202,67 EUR/tonne). The ex-works normal value thus established was 1 642 EUR/tonne, while the ex-works export price was 797,5 EUR/tonne during the RIP.

(d) **Dumping**

- (237) On the basis of the above, the Commission established a price difference of around 80 % and concluded that dumping continued during the review investigation period.
- (238) Following disclosure, the Russian Government claimed that the level of the dumping margin found was questionable in view of its high level and that the Commission should have checked the information concerning normal value supplied in the expiry review request with special circumspection. It also added that, when using secondary information, the Commission should have checked such information against other independent sources in line with paragraph 7 of Annex II 'Best information available in terms of paragraph 8 of Article 6' to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ('ADA').
- (239) The Commission considered that the information provided in the expiry review request concerning normal value for Russian exporting producers was sufficiently accurate and adequate. In addition, no interested party provided comments concerning the information provided in the expiry review request. Finally, no Russian exporting producer provided any relevant data related to the establishment of the normal value. Also, no other independent sources have been provided either by the Russian Government or any interested party. In these circumstances, and in the absence of any other data source, the Commission considered that it had relied on the best information available to it regarding normal value. Finally, paragraph 7 of Annex II to the ADA also foresees that if an interested party does not cooperate and thus relevant information is being withheld from the authorities, such situation could lead to a result which is less favourable than if the party had cooperated fully. On this basis, this claim was rejected.

3.6.2. Likelihood of continuation of dumping should measures be repealed

- (240) The Commission analysed whether dumping was likely to continue if the current anti-dumping measures would be allowed to expire. When doing so, it looked into production and spare capacity in Russia and the attractiveness of the Union market. In the absence of cooperation by Russian producers, the Commission had to rely on facts available.

(a) **Spare capacity**

- (241) According to the facts available included in the request for review, Russia has an estimated production capacity of around 332 000 tonnes. The Commission estimated Russian production at 274 000 tonnes. Therefore, the spare production capacity was established at around 58 000 tonnes, representing more than [16-22] % of the Union consumption of GOES.
- (242) Even if the Commission used the information submitted by NLMK in its submission of 11 December 2020, the spare production capacity would still amount to [20 000-50 000] tonnes and represent around [7-19] % of the Union consumption. In this regard, NLMK did not provide supporting evidence regarding its production capacity. In addition, for some past years, the production was higher than the capacity which casts doubts on the actual production capacity reported by NLMK in its submission.
- (243) Following disclosure, NLMK submitted that the Commission should have verified and relied on the information that it had submitted in due course regarding Russian capacity, production and capacity utilisation and that such verification would have allowed the Commission to clarify the doubts raised in recital (242).
- (244) As mentioned in recital (23), NLMK indicated itself, in its submission of 10 December 2020, that it was forced to stop working on the reply to the questionnaire and did not provide a full questionnaire reply by the extended deadline, but only fragmentary information limited to its specific capacity and production.

- (245) In the case at hand, the Commission considered that the information provided by NLMK was too fragmentary to draw meaningful conclusions. In any case, as mentioned in recital (242), the Commission took account of the information provided by NLMK in this regard and came to a similar conclusion as far as the existence of spare capacity is concerned. On this basis, this claim was rejected.

(b) Attractiveness of the Union market

(246) The investigation confirmed that the Union market is attractive for Russian producers for the following reasons:

(247) First, the Union market is among the largest ones in the world.

(248) Second, in terms of prices, as shown in recital (271) below, the average price level of Russian imports on the Union market is below that of the Union producers, and therefore exports are likely to continue to increase should measures be repealed.

(249) Third, a large part of the production in Russia is directed for exports (more than 86 % of the production is destined for exports), while domestic consumption is almost fully satisfied by the producers in Russia.

(250) In its submission of 11 December 2020, NLMK claimed that the EU is not a priority market as imports have decreased significantly since the original investigation. The Commission noted that, even if NLMK's exports to the EU have decreased since the original investigation, they still account for a significant share of the EU consumption and have increased over the period considered as can be observed in Table 3 below. Therefore, contrary to the claim made by NLMK, the Union market remains an important destination market for exports from Russia.

(251) Following disclosure, NLMK alleged that the Commission's assumption that a certain market is attractive merely for its large size is flawed and misplaced. In this respect, NLMK referred also to the fact that the Union market did not attract substantial extra imports from non-targeted third countries, even though those countries had advantageous market access compared to the exporters from the countries concerned. It also alleged that the argument regarding the low price level of Russian imports is flawed because average prices of Russian and Union producers are not comparable due to the fact that the product types sold by the respective parties are not in direct competition with each other. In addition, following disclosure, the Russian Government stated that it disagreed with the Commission that the Union market is an attractive market for the Russian exporting producers for the following reasons: Russian exporting producers are focusing on their domestic market, and their exports have been mainly reoriented to Asian countries. In addition, they claimed that the existence of anti-dumping measures distorted the assessment of the import prices to the Union.

(252) The Commission disagreed with these claims. The size of a market is a tangible aspect when assessing its attractiveness as large volumes can be sold and economies of scale can be made in terms of production, marketing and sales related expenses. Furthermore, imports originating in Russia increased both in volumes and market share during the review investigation period, irrespective of whether the focus of the Russian exporting producers is reoriented to the Russian domestic and/or Asian markets. This showed that the Union market continued to be very attractive to Russian exporting producers. Furthermore, as mentioned in recital (277), the decrease in imports from other third countries was mainly due to the fact that the sole GOES producer in the UK permanently shut down its operations in November 2019.

(253) In addition, the allegation of NLMK that the Commission's argument of the low price levels is flawed was not accepted for the reasons described in the previous recital. Moreover, as explained in recital (272) below, the imports from Russia were on average made at prices which were about 30 % lower than the applicable MIP (1 536 EUR/tonne) and about 23 % lower than the prices of the Union industry in the RIP for comparable product types. In this respect, even taking into account the existence of the anti-dumping measures, the Russian import prices give a good indication of the export price behaviour of the Russian exporting producers to the Union and of their likely price level in the absence of measures.

(c) Conclusion on the likelihood of continuation of dumping

- (254) Based on the above, the Commission concluded that dumping would be likely to continue in the future should measures be allowed to lapse. Considering the large spare capacity in Russia, the dumped price levels of GOES to the Union during the RIP, together with the attractiveness of the Union market, the Commission concluded that significant quantities of GOES from Russia would likely continue entering the Union market at dumped price levels, should measures be allowed to lapse.

4. INJURY

4.1. Definition of the Union industry and Union production

- (255) Within the Union, four companies produce the product under review. Based on the available information from the request, there are no other Union producers of the product under review in the Union. Therefore, they constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (256) The total Union production during the review investigation period was established at around 249 000 tonnes. The Commission established the figure on the basis of information concerning the Union industry from all known producers in the Union.

4.2. The four known Union producers represent 100 % of the total Union production of the like product. Union consumption

- (257) The Commission established the Union consumption on the basis of the sales on the Union market of all known producers in the Union and the imports from all third countries as reported by Eurostat (Comext database).
- (258) With respect to Japan, a portion of the imports of the product under review into the Netherlands were kept confidential during the period considered⁽⁵²⁾. For this reason, ranges are provided in the table below concerning Union consumption and in the other relevant tables which are related to import volumes and values.
- (259) Union consumption developed as follows:

Table 2

Union consumption (tonnes)

	2017	2018	2019	Review Investigation period
Total Union consumption	300 000-315 000	277 000-292 000	298 000-313 000	265 000-280 000
Index	100	93	99	89

Source: Verified questionnaire replies, information contained in the request, Eurostat and from Eurofer.

- (260) The Union consumption fluctuated during the period considered, and ranged between 265 000-280 000 tonnes during the review investigation period and 300 000-315 000 tonnes in 2017. Overall, the Union consumption decreased by 11 % between 2017 and the review investigation period although there was a temporary peak in 2019. The drop in consumption is due to a combination of factors such as less imports and less sales by the Union producers during the review investigation period due to a lower demand of GOES.

⁽⁵²⁾ This was the result of a special request by a Dutch company to keep its data confidential.

- (261) Following disclosure, the applicant made reference to the extensive use of inward processing schemes by Union importers and the increase of imports of steel laminations and cores through Turkey, both tending to underestimate the actual foreign-produced GOES being consumed in the Union. The Commission confirmed that, on the one hand, all GOES that was imported through inward processing schemes was taken into account for the calculation of the consumption data. On the other hand, the Commission noted that steel laminations and cores fall outside the scope of the anti-dumping measures and were therefore not investigated.

4.3. Imports from the countries concerned

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

- (262) The Commission established the volume of imports on the basis of Eurostat (Comext database). The market share of the imports was established based on the Union consumption, as set out in recital (257) above.
- (263) Imports from the countries concerned and their market share developed as follows:

Table 3

Import volume (tonnes) and market share

	2017	2018	2019	Review Investigation period
Volume of imports from the countries concerned	86 000-101 000	64 000-79 000	76 000-91 000	70 000-85 000
Index	100	80	90	83
Market share of imports from the countries concerned (%)	27,5-34,2	22,7-29,7	24,1-31,3	26,5-34,0
Index	100	87	93	97

Source: Eurostat

- (264) Measures were imposed in 2015. Imports of the product under review from the countries concerned decreased by 17 % during the period considered. However, their market share only decreased slightly (from 27,5 %-34,2 % in 2017 to 26,5 %-34,0 % in the review investigation period) given the parallel decrease in consumption on the Union market.
- (265) Of the countries concerned, only imports from Korea and Russia increased between 2017 and the review investigation period and gained one and two percentage point(s) of market share respectively.

4.3.2. Prices of the imports from the countries concerned

4.3.2.1. Prices

- (266) The Commission established the average prices of imports on the basis of Eurostat statistics.
- (267) The weighted average price of imports from the countries concerned developed as follows:

Table 4

Import prices (EUR/tonne)

	2017	2018	2019	Review Investigation period
PRC	2 081	1 994	2 036	1 985
Index	100	96	98	95
Japan	2 167	2 184	2 168	2 140
Index	100	100	100	99
Korea	2 032	2 051	2 022	1 996
Index	100	101	100	98
Russia	1 119	1 205	1 074	1 000
Index	100	108	96	89
USA	2 080	2 057	2 047	2 047
Index	100	99	98	98
Average price of imports (per tonne)	1 865	1 871	1 742	1 718
Index	100	100	93	92

Source: Eurostat and cooperating exporting producers

- (268) A decrease of the average price was observed between 2017 and the review investigation period for the imports from the countries concerned for all types of GOES, whether conventional or high permeability products. The imports from Russia concerned conventional types of GOES, whereas the imports from the four other countries are imports of high permeability GOES products.
- (269) The average prices of the imports decreased from 1 865 EUR/tonne in 2017 to 1 718 EUR/tonne during the review investigation period. During the period considered, the decrease of the average price of the imports was around 7,6 %.

4.3.2.2. Price undercutting

- (270) There was no cooperation from any producer in Korea, Russia and the USA, whereas there was cooperation from one Chinese and one Japanese exporting producer.
- (271) For all imports from the countries concerned apart from Russia, the import prices to the Union were significantly affected by the set-up of the measures in the form of the three MIPs for the reasons explained in recital (2). As mentioned in recital (3), no duty is payable, if the CIF Union border price is equal to or above the MIP. Import prices from the countries concerned, apart from Russia, were in almost all cases equal or just above the MIP throughout the period considered and much higher than the prices of the Union Industry in the RIP. No undercutting was found in respect to the countries concerned apart from Russia.
- (272) For Russia, due to the absence of cooperation from any Russian exporting producer, the Commission compared the average import CIF prices from Russia, based on Eurostat, adjusted for post importation costs (65 EUR/tonne) to the average sales prices of the Union industry for comparable product types. The imports from Russia were on average made at prices which were about 30 % lower than the applicable MIP (1 536 EUR/tonne) and about 23 % lower than the applicable prices of the Union industry in the RIP.

- (273) Following disclosure, Nippon Steel claimed that the Commission should recalculate the undercutting and underselling margin for the following reasons: First, these margins, which included an adjustment under Article 2(9) of the basic Regulation, were made in the original investigation in violation of Articles 3(1), 3(2), 3(3) and 3(6) of the basic Regulation. Second, these margins were not calculated in compliance with the EU Court's case law.
- (274) The Commission rejected this claim. The Commission found no undercutting in respect of Japan during the review investigation period (see recital (271)). Hence, Nippon Steel's request to recalculate the undercutting margin as established in the original investigation was without object. Furthermore, as an expiry review does not change the level of the duties, a revision of the originally established injury margin was also without object. Moreover, for the analysis of price effects should the measures be allowed to lapse as laid down in recital (336), the Commission determined the likely future price levels of imports to the Union based on the Japanese export prices to third countries for which no adjustment under Article 2(9) of the basic Regulation were, or could have been, made.

4.4. Imports from other third countries

- (275) During the review investigation period, imports from other third countries amounted to [19 000-25 000] or [7 %-10,5 %] of the Union consumption. The main imports of GOES, from other countries than the countries concerned, came from Brazil and the UK.
- (276) The volume of imports as well as the market share and price trends for imports of GOES from other third countries developed as follows:

Table 5

Imports from third countries (tonnes)

Total of all third countries except the countries concerned		2017	2018	2019	Review Investigation period
	Volume (tonnes)	30 000-36 000	30 000-36 000	34 000-40 000	19 000-25 000
	Index	100	101	117	62
	Market share (%)	10,2-13,5	10,5-13,8	12,7-16,0	7,0-10,5
	Average price (EUR/tonne)	1 409	1 217	1 260	1 294
	Index	100	86	89	92

Source: Eurostat

- (277) Imports of the product under review from the UK halved between 2017 and the review investigation period, going from about 25 000-35 000 tonnes to 10 000-20 000 tonnes. This decrease was due to the fact that the sole GOES producer in the UK permanently shut down its operations in November 2019.
- (278) On the other hand, imports of the product under review from Brazil increased substantially during the period considered. However, the Brazilian market share remained low, i.e. below 2 %, during the review investigation period.
- (279) The total imports from third countries, except the countries concerned, decreased by 38 % between 2017 and the review investigation period to reach 7,0 %-10,5 % market share in the review investigation period compared to 10,2 %-13,5 % in 2017.

- (280) As far as price levels are concerned, the situation is different from one country to another, depending whether conventional or high permeability products are sold on the Union market.
- (281) Nevertheless, the average sales prices of imports from third countries decreased during the period considered. This trend is consistent with the trend observed for imports from the countries concerned in Table 5 above and the price trend observed for sales of Union industry on the Union market in Table 9 below.

4.5. Economic situation of the Union industry

4.5.1. General remarks

- (282) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the 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.
- (283) For the injury determination, the Commission did not make a distinction between macroeconomic and microeconomic injury indicators since all four known Union producers constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation. The Commission evaluated the injury indicators on the basis of data contained in the questionnaire replies from the cooperating Union producers.
- (284) The four cooperating Union producers belong to two corporate Groups. For this reason, the Commission considered whether there was a need to provide the submitted information in ranges with the aim not to reveal confidential business information, but concluded that the aggregated data were not such as to reveal confidential information. Therefore, no ranges are provided with respect to the injury indicators.

4.5.2. Production, production capacity and capacity utilisation

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

Table 6

Production, production capacity and capacity utilisation

	2017	2018	2019	Review Investigation period
Production volume (tonnes)	294 301	280 685	279 625	248 865
Index	100	95	95	85
Production capacity (tonnes)	351 000	351 000	331 000	331 000
Index	100	100	94	94
Capacity utilisation (%)	84	80	84	75
Index	100	95	101	90

Source: Verified questionnaire replies

- (286) During the period considered, the Union industry's production volume decreased by 15 %. Apart from the lower demand during the period considered, as explained in recital (260), the significant decrease of the production volume during the review investigation period was also the result of:
- A production stoppage at the production site of a Union producer between December 2019 and February 2020, and;

— The effect of Covid-19, which resulted in less production, in particular during the second quarter of 2020.

- (287) 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 were taken into consideration. The capacity slightly decreased during the period considered. Two out of the four Union producers invested during the period considered to modernise their existing production equipment with a view to producing proportionally more high permeability types than conventional types. As a result of these investments, the Union producers were able, mainly from 2019 onwards, to produce proportionally more high permeability types of GOES which are characterised by a lower thickness, resulting in a lower production capacity in tonnage over the period considered.
- (288) The decrease in capacity utilisation rate during the review investigation period despite a decrease in the production capacity was due to the strong fall in the production volume during the review investigation period, as explained in recital (286) above. The decrease was almost 10 percentage points during the period considered.

4.5.3. Sales volume and market share

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

Table 7

Sales volume and market share

	2017	2018	2019	Review Investigation period
Total sales volume on the Union market to unrelated customers (tonnes)	175 000-190 000	174 000-191 000	176 000-191 000	170 000-185 000
Index	100	98	101	96
Market share (%)	55,9-62,6	60,0-66,5	56,9-63,5	61,0-66,8
Index	100	106	102	108

Source: Verified questionnaire replies and Eurostat.

- (290) Sales volumes of the Union industry to unrelated customers in the Union remained stable during the period 2017-19, but decreased slightly in the review investigation period. The decrease of the sales volumes followed the decreasing trend of the production volume during the review investigation period for the same reasons as explained in recital (286). The production volume decreased though more significantly – 15 percentage points between 2017 and the review investigation period – than the decrease in sales volumes of the Union producers.
- (291) Nevertheless, during the period considered, the Union industry's market share slightly increased from 55,9 %-62,6 % to 61,0 %-66,8 % as a result of the fact that the decrease of consumption exceeded the decrease of Union industry's sales volume.
- (292) Another reason for this increase of market share of the Union industry is the measures in place, combined with disrupted international trade and supply chains in the first half of 2020 as a result of the impact of the Covid-19 pandemic.

4.5.4. Growth

- (293) During the period considered, the Union consumption decreased by 11 %, whereas the volume of sales to unrelated customers in the Union decreased by 4 %. Consequently, despite the increase in market share, there was no growth for the Union industry during the period considered.

4.5.5. Employment and productivity

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

Table 8

Employment and productivity

	2017	2018	2019	Review Investigation period
Number of employees	2 273	2 309	2 302	2 256
Index	100	102	101	99
Productivity (tonnes/employee)	129,48	121,56	121,47	110,31
Index	100	94	94	85

Source: Verified questionnaire replies

- (295) The number of employees of the Union industry engaged in the production of the product under review remained stable during the period 2017-19, but decreased slightly during the review investigation period.

- (296) The productivity of the Union industry's workforce, measured as output (tonnes) per employee, decreased significantly during the review investigation period. This can be explained as the combined effect of:

- A production stoppage at the production site of one main Union producer, leading to the lower production from December 2019 to February 2020, and;
- Less production by the four Union producers during the second quarter of 2020, as a result of the Covid-19 pandemic.

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

- (297) As explained in recital (44), there was no cooperation from exporting producers from Russia, Korea, and the USA. Only one Chinese and one Japanese exporting producer cooperated fully during this proceeding.

- (298) Nevertheless, despite the fact that the import prices to the Union were significantly affected by the current set-up of the measures in the form of the three MIPs, dumping was found concerning imports from Japan (see recital (70)), the USA (see recital (111)) and Russia (see recital (237)) during the review investigation period. No dumping was found for imports from China and Korea.

- (299) The injury indicators show that, notwithstanding the anti-dumping measures in force since 2015, which resulted in some relief and improved performance initially, the economic situation of the Union industry remained fragile and injurious. Thus, no recovery from the past dumping could be established.

4.5.7. Prices and factors affecting prices

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

Table 9

Sales prices in the Union

	2017	2018	2019	Review Investigation period
Average unit sales price in the Union on the total market (EUR/tonnes)	1 452	1 492	1 501	1 427
<i>Index</i>	100	103	103	98
Unit cost of production (EUR/tonnes)	1 468	1 617	1 647	1 714
<i>Index</i>	100	110	112	117

Source: Verified questionnaire replies

- (301) The table above shows that the Union unit sales prices decreased slightly during the review investigation period, compared to the previous years. This was mainly the combined effect of:

- The price pressure on the Union market, as also demonstrated by the decrease in import prices of the product under review, which also dropped during the review investigation period, in particular with respect to the GOES imported from Russia, which are characterised by relatively high core losses;
- Substantial production trials by one main Union producer during the review investigation period in order to improve its production process, whereby a large portion of GOES types were produced, which had to be sold at lower average unit prices.

- (302) The table above also shows the evolution of the cost of production. The production stoppage at one main Union producer and less production (see recital (296)) led to an increased fixed cost for each produced tonne of the product under review during the review investigation period. The combination of the increase of the cost of production and the slight decrease of the Union industry sales prices led to significant losses for the Union producers.

4.5.8. Labour costs

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

Table 10

Average labour costs per employee

	2017	2018	2019	Review Investigation period
Average labour costs per employee (EUR)	42 375	43 384	47 219	46 362
<i>Index</i>	100	102	111	109

Source: Verified questionnaire replies

- (304) Between 2016 and the review investigation period the average labour cost per employee increased by 8,5 %. The impact of this variation is rather minor, given that labour cost represent only about 15 % of the total cost of manufacturing during the review investigation period.

4.5.9. Inventories

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

Table 11

Inventories

	2017	2018	2019	Review Investigation period
Closing stocks (tonnes)	21 803	19 308	24 768	16 370
Index	100	89	114	75
Closing stocks as a percentage of production	7,5	6,9	9	6,6
Index	100	88	125	88

Source: Verified questionnaire replies

(306) During the period considered, the level of closing stocks oscillated but overall decreased as a percentage of production. Most types of the like product are produced by the Union industry based on specific orders of the users. Therefore, stocks cannot be considered to be an important injury indicator for the industry.

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

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

Table 12

Profitability, cash flow, investments and return on investments

	2017	2018	2019	Review Investigation period
Profitability (Loss) of sales in the Union to unrelated customers (% of sales turnover)	- 2,1	- 8,4	- 11,7	- 18,6
Index	- 100	- 395	- 548	- 874
Cash flow (EUR)	26 938 994	- 9 640 666	22 630 604	27 476 286
Index	100	- 36	84	102
Investments (EUR)	21 144 151	24 000 854	38 265 803	27 991 903
Index	100	114	181	132

Return on investments (%)	- 1,7	- 3,1	- 10,2	- 14,4
Index	- 100	- 183	- 607	- 860

Source: Verified questionnaire replies

- (308) The Commission established the profitability of the 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.
- (309) The imposition of the measures in 2015 had a positive effect on the profitability of the Union industry, in particular in the year 2017 when the Union industry started to recover. The losses incurred in 2017 by the Union producers were still relatively modest, i.e. 2,1 %. The losses incurred during respectively 2013 and the the investigation period of the initial investigation, covering the period from 1 July 2013 to 30 June 2014, the two periods just before the imposition of the initial measures in 2015, amounted to -26,6 % and -22,3 %. These were much higher than the loss incurred in 2017 (-2,1 %). However, the economic situation started further deteriorating thereafter ⁽⁵³⁾, to the extent that the losses reached -18,6 % in the review investigation period.
- (310) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow did not follow a similar downward trend as the profitability and was positive. This positive cash flow can be mainly explained by the existence of two important contracts which were in place at one Union producer, which was incurring losses:
- A profit/loss transfer agreement concluded with its parent company, meaning that its incurred losses were absorbed by its parent company, and;
 - A factoring agreement concluded with an external service provider, leading to cashing in more quickly its outstanding receivables in return of a yearly payable factoring fee.
- (311) Despite the losses incurred during the period considered, investments remained above EUR 21 million in all years of the period considered. These investments were mostly related to upgrade the machinery to produce high permeability types of the product under review.
- (312) The return on investments is in principle the profit in percentage of the net book value of investments. Due to the incurred losses, the return on investments was negative during the period considered. In fact, it followed the same downward trend as the profitability.
- (313) The ability to raise capital is the ability to raise money to invest, expand, or reform. Taking into account the incurred losses during the review investigation period, debt or equity financing are essential for the Union producers to be able to continue to invest. For instance, as laid down in recital (310), a Union producer concluded a profit/loss transfer agreement with its parent company, meaning that its incurred losses were absorbed by its parent company, and enabled the company to further do the necessary investments, mainly in machinery to produce high permeability types of the product under review.

4.6. Conclusion on injury

- (314) As laid down in recital (309), the imposition of the measures in 2015 initially had a positive effect on the economic situation of the Union industry, in particular in 2017 when the Union industry started to recover.
- (315) Nevertheless, the economic situation started constantly deteriorating again thereafter, to the extent that losses reached -18,6 % in the review investigation period.

⁽⁵³⁾ The losses incurred in 2018 and 2019 (respectively -8,4 % and -11,7 %) were again about 4x and 5x higher than the loss in 2017 (-2,1 %).

(316) Sales volumes on the Union market decreased by 4 %, combined with a slight decrease in sales unit prices by 2 %. The production decreased by 15 %, and the production capacity utilisation went down by 10 %. Against a background of an increasing cost of production, losses reached a level which is not sustainable.

(317) Due to the losses incurred during the period considered as a result of the factors described above, the other indicators such as return on investment followed the same downward trend as the profitability indicator.

(318) Following disclosure, NLMK alleged that the injurious situation of the Union industry was due to structural problems and had nothing to do with imports from the countries concerned. NLMK referred to the correlation between the level of losses and the increased production costs, and to the deteriorating performance of the Union producers, including the stoppage at one main Union producer leading to an increased fixed cost per unit of product. In addition, following disclosure, the Russian Government alleged that the decrease in consumption was the main problem for the Union industry, which, according to the Russian Government, was in a stable situation, as indicated by its number of employees and the increase in investments.

(319) Following disclosure, Nippon Steel commented that each injury indicator can be explained by reasons other than imports of GOES from the countries concerned. For instance, it alleged that the losses of -18,6 % can be explained by the 32 % increase in investment expenditure, whereas the 4 % decline in sales volume can be the result of the 11 % contraction of Union consumption and also the reduction in Union production.

(320) The Commission rejected these comments of NLMK and Nippon Steel for the following reasons. First, the Commission did not argue that the injurious situation in the review investigation period was caused, or was only caused, by imports from the countries concerned. As set out in recitals (330) and (331), the Commission also considered other factors potentially causing injury as identified by interested parties, but concluded that these other factors were of a temporary nature. Second, as outlined in general in section 5 below and in particular in recital (361), given the past and current injurious situation of the Union industry, the absence of measures would in all likelihood result in a significant increase of dumped imports from the countries concerned at injurious prices, leading to even higher losses for the Union producers. Third, in the analysis of the situation of the Union industry all injury indicators were considered, on the basis of which the Commission came to the conclusion that the Union industry suffered material injury, as laid down in recital (321). Fourth, these comments were not sufficiently substantiated. Finally, the Commission made not only a comprehensive analysis of the injury suffered by the Union industry (section 4), but also a comprehensive analysis of other causes of injury and of what would happen in the absence of any measures (section 5). As explained in recital (361), the Commission concluded that in view of the past and current injurious situation of the Union industry, the absence of measures would in all likelihood result in a significant increase of dumped imports from the countries concerned at injurious prices, leading to even higher losses for the Union producers.

(321) On the basis of the above, the Commission concluded that the Union industry suffered material injury, as shown by all main injury indicators within the meaning of Article 3(5) of the basic Regulation.

5. LIKELIHOOD OF CONTINUATION AND/OR RECURRENCE OF INJURY IF THE MEASURES WERE REPEALED

(322) As mentioned in recital (271) the import prices to the Union were significantly affected by the set-up of the measures in the form of the three MIPs. Overall, GOES from China, Japan, Korea, and the USA were imported at prices equal to or above the MIPs and considerably above the sales price and cost of production of the Union industry and hence at a non-injurious prices. On the other hand, imports from Russia were on average made at prices significantly below the sales price and cost of production of the Union industry and thus at an injurious price level. Indeed, the average Russian import price was found to be more than 20 % below the average Union industry prices for comparable products during the review investigation period.

- (323) Following disclosure, NLMK argued that the GOES types originating in Russia were not in direct competition with the product types mainly produced in the EU and that the low prices of Russian imports reflected their lower quality and their limited applications. It argued that the maintained import volumes of the GOES types originating in Russia merely respond to a still existing but fading demand for lower quality types of GOES.
- (324) The allegation that the Russian imported GOES types were not in direct competition with the product types mainly produced in the EU were, however not supported by the facts of the investigation. First, in the IP there was still competition between imports from Russia and the types produced by Union producers, in particular by two out of the four Union producers, which also produced lower quality types of GOES. Second, the Commission recalls that it has set the three MIPs for three different product categories, based on maximum core loss, which is an objective non-discriminatory criterion covering all different product types of GOES, including the ones imported from Russia. Third, the Russian imported GOES types are part of the product scope, were sold and can still be used on the Union market, even though it is likely that the entry into force of Tier 2 will lead to an increase of demand of the high permeability types of the product under review (see recital (401)) and to a decrease of demand of the types produced by Russian exporting producers.
- (325) Concerning these other factors, the Covid-19 pandemic led to a delay in orders and caused a contraction of demand in the Union during the period considered, followed by declining sales prices. Therefore, the Covid-19 pandemic also impacted negatively the economic situation of the Union industry.
- (326) In addition, the global downturn in the steel industry caused a contraction of the steel demand and steel consumption in the Union during the period considered, followed by declining sales prices.
- (327) Also, export sales (in volume) of the Union producers to unrelated customers decreased by 35 %-38 % over the period considered, from 100 000-115 000 tonnes in 2017 to 60 000-75 000 tonnes during the review investigation period. The Union producers became more selective and could increase slightly their export price over the period considered, though.
- (328) Interested parties alleged that the Union producers were not sufficiently efficient due to increased costs and investments. One interested party also argued that the Union producers were prevented from completing certain restructuring plans, in particular because the Commission prohibited the merger between Tata Steel and ThyssenKrupp. These allegations were however not substantiated. Moreover, if the Union industry would not have been able to make these investments, the Union industry would not have been able to continue competing with the exporting producers of the countries concerned, which are mainly importing high permeability types of GOES to the Union. This would have led to an unsustainable situation, which would put into question the survival of the four Union producers. Accordingly, the increased investment costs were necessary for the Union industry to remain competitive, and viable.
- (329) Interested parties also alleged that the volume of imports from other third countries was also contributing to the material injury suffered by the Union industry. In this respect, the Commission referred to recitals (275) to (281) of this Regulation and recalled that the total imports from third countries other than the countries concerned decreased by 38 % between 2017 and the review investigation period to reach 7 %-10,5 % market share in the review investigation period compared to 10,2 %-13,5 % in 2017. Therefore, there are no indications suggesting that other imports caused injury to the Union industry.
- (330) The other factors, as set out above, are considered to be of a temporary nature and the situation of the Union industry was already looking more promising again at the end of the review investigation period, in view of the expected higher demand for GOES in the near future as well as the ability of the Union industry to increasingly produce high permeability product types of the product under review.
- (331) Against this background, the Commission assessed, in accordance with Article 11(2) of the basic Regulation, whether there would be a likelihood of continuation of injury caused by the continued dumped imports from Russia and a likelihood of recurrence of injury caused by imports from the other countries concerned if the measures were allowed to lapse absent those temporary and exceptional circumstances. The Commission

considered the following elements: (1) spare capacity in the countries concerned and the attractiveness of the Union market; and (2) the impact of potential imports and price levels of such imports from these countries on the Union industry's situation should the measures be allowed to lapse.

5.1. The spare capacity in the countries concerned and the attractiveness of the Union market

- (332) As already described in recitals (82), (101), (113), (226) and (241), the quantities that could be exported by exporting producers from the countries concerned are significant compared to the size of the Union market. Indeed, the spare capacities represent more than three times the total Union consumption (⁽⁵⁴⁾) during the review investigation period. In addition, exporting producers in China, Russia and Japan have a domestic market share of 97 % to 100 %, whereas US and Korean exporting producers have a domestic market share of 83 % to 86 %. As a result, any available spare capacity of the exporting producers cannot be further absorbed on their respective domestic markets since these markets are already to a very large extent satisfied by the domestic production of the exporting producers. Moreover, the Chinese and US markets are protected by trade measures.
- (333) In view of the above, it is likely that the exporting producers from all the countries concerned will again start selling high volumes on the Union market if the measures were to lapse.

5.2. Price levels of imports from the countries concerned should the measures lapse

- (334) As mentioned in recitals (271) and (322), the imports from China, Japan, Korea and the USA were made at a price level equal to, or above, the relevant MIP, and above the sales price and cost of production of the Union industry. Imports from Russia which were made at prices significantly below the relevant MIP (1 536 EUR/tonne) and thus appeared largely unaffected by it, and also at prices below the sales price and cost of production of the Union industry. The Commission therefore considered that the MIP had a significant impact on the pricing behavior of exporting producers from the former four countries and that their actual import prices could not be used as a reliable proxy for the likely future prices should measures be allowed to lapse.
- (335) Under these circumstances, for the GOES from these four countries (China, Japan, Korea, and the USA) (⁽⁵⁵⁾), the Commission examined also the current pricing behaviour of their exporting producers on their third country export markets to assess the likely price levels of imports to the Union, should the measures lapse.
- (336) For this purpose, for the cooperating producers in China and Japan, the Commission determined the likely price levels of imports to the Union by comparing, for the product types with a maximum core loss not higher than 0,9 W/kg:
 - The MIP (2 043 EUR/tonne); and
 - The corresponding weighted average sales prices for the same product category produced by these cooperating producers in China and Japan, and sold to the rest of the world established on a CIF basis, with appropriate adjustments for any difference in transport cost for export sales from Japan to the Union on the one hand, and from Japan to the third countries. The Commission used the tables covering the export sales to unrelated customers in third countries which were submitted by the two Japanese exporting producers and its two related traders, and by the sole cooperating exporting Chinese producer to calculate the weighted average sales prices to their unrelated customers sold in the rest of the world. To take into account any possible difference in transport

⁽⁵⁴⁾ The spare capacity (capacity – actual production) in the PRC is more than twice the total Union consumption during the review investigation period, while the sole cooperating Russian exporting producer has a nominal production capacity that is similar to the total Union consumption.

⁽⁵⁵⁾ As described in recitals (99) and (222), the Commission recalled that it examined the current pricing behaviour of the exporting producers from Korea and China by comparing their prices in the domestic market with their sales prices to third countries. For instance, during the review investigation period, the Commission noted that their average ex-works export prices to third countries were lower than the lowest MIP applicable in the EU in the same period (Korea and China).

cost when exporting to third countries compared to exporting to the Union, the Commission added 65 EUR/tonne to the corresponding weighted average sales prices for the same product category produced by these cooperating producers in China and Japan. This addition of 65 EUR/tonne is considered to be conservative, since the main third markets of Japanese and Chinese exporting producers (such as India, Thailand and Taiwan) are overall located closer to Japan than to the Union.

- (337) On this basis, it was established that the Japanese and Chinese exporting producers exported to their main third country export markets at prices which were around 10 % lower as compared to the corresponding MIP.
- (338) Moreover, the Commission compared the weighted average Union sales prices for the highest quality types of GOES (GOES types with a maximum core loss not higher than 0,9 W/kg, which represent the majority of imports – compared to the other two different product categories of GOES, as explained in recital (2) – from the cooperating Chinese and Japanese exporting producers on the Union market) to the corresponding weighted average sales prices for the same product category produced by these cooperating producers in China and Japan, and sold to the rest of the world established on a CIF basis, with appropriate adjustments for customs duties and post-importation costs.
- (339) It was established that the Chinese and Japanese exporting producers exported to their main third country export markets at prices which were about 3 % higher as compared to the corresponding selling prices by the Union producers.
- (340) In this context, it should nevertheless be recalled that the Union producers already sold below their cost of production during the whole period considered (see Table 9, recital (300)), which led to significant losses and an already injurious situation during the review investigation period. Similar prices by Japanese and Chinese exporting producers on the Union market as they apply to their third markets for their highest quality types of GOES would further aggravate the injurious situation of the Union industry, should the measures lapse.
- (341) Following disclosure, Nippon Steel alleged that the Commission's analysis of likely price levels for imports of GOES from Japan in the absence of measures was unsubstantiated. First, the import price from Japan has been consistently and significantly above the highest MIP and therefore, the Commission should have substantiated the reasons why Japan's actual import prices cannot be used to determine the likely prices Japan would charge, should the measures lapse. It also asked the Commission to substantiate its comparison of Japan's export prices to third country markets with their respective MIPs and the export prices of the Union prices. Finally, Nippon Steel alleged that its sales prices to India were higher than in the Union, when comparing its sales of matching product types to India and the Union respectively.
- (342) The Commission acknowledged that the import prices to the Union from Japan were consistently higher than the highest MIP during the review investigation period, as shown in Table 4, recital (267).
- (343) Nevertheless, the Commission rejected Nippon Steel's claim that it should have used Japan's actual import prices to the Union to determine the likely prices Japan would charge, should the measures lapse. As explained in recital (334), the MIP had a significant impact on the pricing behavior of exporting producers from four countries concerned, including Japan, that were mainly exporting high quality types of GOES and therefore their import prices to the Union could not be used as a reliable proxy for the likely future prices should measures be allowed to lapse. In the case of Japan, this was shown by the fact that, on average, their export prices to third countries were significantly lower than those to the Union.
- (344) Concerning the substantiation of its comparison of Japan's export prices to third country markets with their respective MIPs and their export prices to the Union, the Commission explained its approach and the reasons for it in recital (336) above. In addition, the claim that Nippon Steel's sales prices were higher in India than those to the Union was flawed since the sales data were based on transactions between Nippon Steel and its related Indian and European traders, which was not considered a reliable basis for any comparison to draw conclusions on the final price levels to their first independent customers. Furthermore, for the two Japanese exporting producers, it should be noted that the comparison of the MIP and the Japanese average sales prices to third countries, as described in recital (336), was based on information provided by both Japanese exporting producers and covered all their unrelated export sales to all their third countries.

- (345) As there was no cooperation from Korean and US producers, the likely price level to the Union was estimated by comparing the current Korean and US export prices to third countries, based on the relevant country specific GTA import statistics and the average MIP.
- (346) It was established that, for the non-cooperating Korean and US producers, their export prices to third countries were respectively 20 % and 15 % lower compared to the average MIP. In case these export prices of the USA and Korea would be compared to the highest MIP level, which is possibly more accurate as the majority of exports of those countries consist of high permeability GOES products, these percentages would even be significantly higher.
- (347) Moreover, the Commission compared the weighted average Union sales prices for the GOES types with a maximum core loss not higher than 0,9 W/kg to the corresponding Korean and US export prices to third countries, based on the relevant country specific GTA import statistics and on the assumption that the majority of imports of Korea and the USA consist of high permeability GOES products.
- (348) It was established that the Korean and US export prices to third countries were respectively 22 % and 14 % lower as compared to the selling prices by the Union producers. As mentioned already in recital (340), as the Union producers already sold below their cost of production, similar prices by the Korean and US exporting producers would further aggravate the injurious situation of the Union industry, should the measures lapse.
- (349) Therefore, taking into account these price levels of exports from the four countries concerned to third countries and the actual injurious situation of the Union industry, the Commission considered it likely that the exporting producers of the four countries concerned would in the absence of anti-dumping measures start exporting to the Union at similar price levels that they apply to their third markets and at least at prices below the applicable MIP levels, i.e. at injurious price levels.
- (350) In view of the above, the Commission concluded that imports to the Union from all the countries concerned, should the measures lapse, would be made at injurious price levels. These imports would continue to cause injury in the case of Russia, and result in a recurrence of injury in the case of the other countries concerned.

5.3. Impact of potential imports from the countries concerned on the Union industry's situation should the measures lapse

- (351) The Commission assessed the possible impact of the imports from the countries concerned on the financial situation of the Union industry by modelling two possible scenarios should the measures be allowed to lapse, namely
- the countries concerned would export to the Union the same quantities as before the imposition of the measures (i.e. exports ranging between 139 000 tonnes and 154 000 tonnes⁽⁵⁶⁾ during the initial investigation period from 1 July 2013 to 30 June 2014), and that the Union consumption would remain the same as during the review investigation period (i.e. 265 000-280 000 tonnes) (first scenario);
 - a drop of prices on the Union market due to the increased competition, all other things being equal, by respectively 5 % and 10 % (second scenario).
- (352) In the first scenario, the Commission also assumed that 100 % of the total imports from the countries concerned would affect the Union industry and not affect imports from other third countries since the market share of the latter countries is insignificant. Furthermore, the Commission assumed that the Union industry would keep the same sales prices as during the review investigation period since it is already loss making.

⁽⁵⁶⁾ During the period considered of the initial investigation, a large portion of the imports of the Japanese product concerned into the Netherlands were reported under a confidential CN Code. For this reason, ranges were provided concerning the imports from the countries concerned in the initial Regulation.

- (353) The result of this simulation under the first scenario shows that the increase of imports from the countries concerned would be at the expense of the Union industry. The latter would lose sales volume and market share on the Union market, leading to a further drop in its production and a higher fixed cost for each produced tonne of the product under review. This would have an impact on the industry's overall profitability. As a result, the losses incurred by the Union industry would further increase from -18,6 % to an even more unsustainable level of -22,6 %.
- (354) In the second scenario, the effect of a price decrease by 5 % was found to be potentially even more damaging. In case of a decrease of Union prices by 5 % (1 356 EUR/tonne) due to the increased price pressure of the imports from the countries concerned, the losses would even further drop to -29 %. In case of a decrease of Union prices by 10 %, that is from 1 427 EUR/tonne to 1 285 EUR/tonne, the losses would attain -37 %.
- (355) In reality, if measures were allowed to lapse, it is very likely that a combination of the first and the second scenario would occur on the market. This would result in even higher unsustainable losses for the Union industry.
- (356) Following disclosure, the Japanese Government also argued that Japan should be excluded from the scope of the anti-dumping measures as Japanese products do not cause any injury or pose a threat to the Union industry for the following reasons. First, they produce particular types of an exceptional quality, which is used by and becoming increasingly important for particular users in the Union. Second, the fact that the Japanese export prices to the Union are significantly higher than the MIP, illustrates that allowing the existing anti-dumping measures to lapse with respect to Japan would not lead to reduced import prices.
- (357) Following disclosure, and similar to the claim of the Japanese Government, Nippon Steel again argued that the anti-dumping measures should not be maintained with regard to Japan because it is China which poses a significant threat to the Union industry, not Japan in light of its relatively low spare capacity compared to China. The prices that Japanese exporting producers charge on the Union market are the highest in the world, and higher than the highest MIP. Third, Japanese export prices compete with other producers, including the Union industry, at fair prices.
- (358) The Commission acknowledged that the Japanese exporting producers produce product types of high quality, as mentioned in recital (381). On the other hand, as mentioned in recital (337), it was established that the Japanese exporting producers exported to their main third country export markets at prices which were around 10 % lower as compared to the corresponding MIP for these particular types of high quality. On this basis, the Commission maintained that it is likely that there would be a significant increase of dumped imports from all countries concerned, including Japan, at lower injurious prices in the absence of measures. Therefore, the Commission considered that there was no basis to exclude Japan from the scope of the investigation.
- (359) Moreover, as explained in the respective sections above, the Commission established – notwithstanding the spare capacity determined for China – that:
- Japanese exporting producers exported GOES to the EU at dumped prices (recital (71) above);
 - there is significant spare capacity for GOES in Japan (recital (74) above); and
 - the EU market is attractive to Japanese exporting producers (recitals (81)-(90) above).
- (360) In view of the above considerations, the Commission rejected also this claim of Nippon Steel.

5.4. Conclusion on likelihood of a continuation and/or recurrence of injury

- (361) On this basis, and noting the past and current injurious situation of the Union industry, the absence of measures would in all likelihood result in a significant increase of dumped imports from the countries concerned at injurious prices, leading to even higher losses for the Union producers. Therefore, the Commission concluded that, whether or not there was sufficient causation as regards Russian imports during the review investigation period, injury as originally established would recur with respect to the countries concerned.

6. UNION INTEREST

- (362) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures would be against the interest of the Union as whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, users and the public policy interests with respect to the product under review as embodied in the Directive 2009/125/EC of the European Parliament and of the Council⁽⁵⁷⁾ ('EcoDesign Directive') and its product-specific Regulations. In line with the third sentence of Article 21(1) of the basic Regulation, special consideration was given to the need to protect the industry from the negative effects of injurious dumping.
- (363) All interested parties were given the opportunity to make their view known pursuant to Article 21(2) of the basic Regulation.

6.1. Interest of the Union industry

- (364) The Union industry is located in four Member States (France, Germany, Czech Republic and Poland), and employs directly over 2 200 employees in relation to the product under review.
- (365) Some interested parties claimed that the measures should be allowed to lapse as the Union producers are no longer facing any injurious situation. For instance, they alleged that the Union producers increased their sales of the product under review on the Union market, and were able to expand their market share by 3 % since 2017 on the Union market. It was also claimed that the Union industry maintained stable production, production capacity, capacity utilization, and employment levels since 2017. The Union industry was also able to invest significant amounts, what is allegedly rather an indication of an industry that is confident about the future of its market.
- (366) As set out in recitals (315) and following, the Union producers were incurring losses amounting to -18,6 % during the review investigation period. In addition, sales volumes on the Union market decreased by 4 %, over the period considered, combined with a slight decrease in sales unit prices by 2 %. Moreover, the production decreased by 15 %, and the production capacity utilisation went down by 10 %. Therefore, the Commission concluded in recital (321) that the Union industry suffered material injury.
- (367) In addition, the Commission established that there is a strong likelihood of a continuation of injury originally caused by imports from these countries should the measures expire. The influx of substantial volumes of dumped imports from the countries concerned would lead to increased unfair competition for the Union industry and would cause further injury to the Union industry. This would worsen the already injurious and very fragile economic situation of Union industry and threaten its viability.
- (368) The Commission thus concluded that the continuation of the measures would be in the interest of the Union industry.

6.2. Interest of unrelated importers

- (369) The Commission contacted all known unrelated importers. Only one unrelated importer came forward and cooperated in this investigation by submitting a questionnaire reply.

⁽⁵⁷⁾ Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of Ecodesign requirements for energy-related products, OJ L 285, 31.10.2009, p. 10. The EcoDesign Directive is implemented through product-specific Regulations directly applicable in all EU countries. The EcoDesign Regulation covers the new EcoDesign requirements with regard to small, medium and large power transformers. Tier 1 of the EcoDesign Regulation entered into force on 1 July 2015, and Tier 2 on 1 July 2021. The Tier 2 requirements are more stringent than those for Tier 1. Although the full effects cannot yet be assessed on such a short period of time since the entry into force of Tier 2, it is generally believed that these Tier 2 requirements will require the highest quality types of GOES to design and manufacture transformers in a cost-efficient manner and within the required space limitations.

- (370) Therefore, the Commission has insufficient information at its disposal to conclude that the continuation of the measures would be detrimental to the interest of the importers. Rather the contrary, as imports from the countries concerned never ceased as a result of the measures but continued in significant volumes.

6.3. Interest of users

6.3.1. Introduction

- (371) Seven users came forward, expressing their willingness to participate in the investigation. Nevertheless, only four of them fully cooperated in this investigation by submitting completed questionnaire replies in both open and sensitive versions.
- (372) The four users that fully cooperated included one of the largest users on the Union market, whereas the three other users were relatively small in terms of employment and turnover.
- (373) The following three users associations also came forward and provided the Commission with information on the Union interest:
- The European Association of the Electricity Transmission and Distribution Equipment and Services Industry ('T&D Europe'). It represents the interest of the European electricity transmission and distribution equipment and services manufacturers;
 - Zvei, the German Electrical and Electronic Manufacturers' Association, also member of T&D Europe, and representing the interests of its German members, mainly manufacturers of transformers;
 - WindEurope, the industry association for wind energy in Europe, representing more than 400 member organisations. In addition to wind turbine manufacturers, its membership encompasses component suppliers, research institutes, national wind and renewables associations, developers, contractors, electricity providers, finance and insurance companies, and consultants.
- (374) The Commission acknowledged that the transformer industry is an important industry in the Union market. T&D Europe stated that the turnover of the Union market for transformers is approximately EUR 3,7 billion, about 10 % of which is made up of imports. The EU transformer production is worth approximately EUR 4,7 billion, making the EU a net exporter of transformers. T&D Europe also stated that the EU transformer industry is made up of hundreds of undertakings and employs more than 30 000 people within the EU, not including sub-contractors and other industries benefitting from the EU transformer industry. Concerning the downstream industry, WindEurope stated that the European wind industry provided over 160 000 direct jobs and supported an additional 140 000 indirect jobs in 2019. The Russian producer (NLMK) provided, in its submission of 11 December 2020, similar comments, claiming that, due to the importance of the transformer industry, the interest of users should prevail.
- (375) The product under review is mainly used as a core material in the manufacturing of power and distribution transformers. The transformer manufacturers in Europe constitute a long-established industry, which traditionally supplies large energy providers. The transformer industry, in general, belongs to large industrial groups which have a worldwide presence. Some smaller independent companies, however, also operate on the market and some of them are operating in some specific niche markets such as core cutting.
- (376) The product under review is considered a significant cost item for the users. Zvei alleged that the cost of the transformer core (GOES) accounts for between 20 % and 40 % of the total production cost of a transformer. However, based on the collected data from the users questionnaires, the product under review as an input material accounts on average for around 7 %-17 % of the total cost of production of transformers. This can be higher in some exceptional cases, in particular for a limited number of intermediary companies that are positioned between the producers of the product under review and the transformer manufacturers. The activities of these intermediary companies are limited to longitudinal slitting to width and cutting laminations based on transformers manufacturers' specifications of the coils and/or assembling cores for the transformers.

- (377) The users claimed that the products from the exporting producers are qualitatively better in terms of core loss. They claimed also that, after the imposition of measures during five consecutive years, the Union industry still does not have sufficient capacity to supply the user industry in particular with high permeability types. T&D Europe alleged that the transformer industry is particularly dependent on imports of high permeability DR types of GOES and that the EU producers are not able to manufacture high permeability DR types of GOES in the quantity and quality that is needed on the Union market. It also alleged that the Union producers are for the foreseeable future only able to supply a minor share of the EU demand. Consequently, they alleged that there is still and will be a shortage on the Union market, in particular for the high permeability types.
- (378) The users associations argued that the maintenance of the existing measures would reduce the competitiveness of the European transformer manufacturers vis-à-vis transformer manufacturers located outside the Union. Should measures be continued in the form of the three MIPs, it would result in a distorted, too high market price and have a material impact on the cost of transformers and electricity across Europe. T&D Europe and Zvei also claimed that in GOES markets without artificial import measures (such as India) the price of GOES has declined to historically low price levels in the first quarter of 2020. They finally alleged that the MIPs increase costs for the EU transformer manufacturers and mostly benefits non-EU mills that sell GOES into EU at higher prices. Zvei added that this could lead to a relocation of the European transformer manufacturers outside of the Union market.
- (379) To summarize the above, the two main arguments against the continuation of the existing measures were the following:

- It would lead to shortages in supply⁽⁵⁸⁾ and differences in quality should measures be continued;
- The competitiveness of the Union users of the product under review would be undermined vis-à-vis users located outside the Union due to the higher price they have to pay on the Union market.

In order to assess these two main arguments the Commission took into account the following market structure. The number of producers of the product under review worldwide is limited to less than 20 significant producers. The Union is, after the Chinese market, the market with the highest number of producers. It appeared that not all producers are able to supply certain high permeability types of the product under review. The producers of the high permeability types of the product under review are located in the Union, the USA, Japan, Korea and China.

6.3.2. Shortages in supply and differences in quality

- (380) The Commission considered, to start with, that the objective of anti-dumping duties is not to close off the Union market from any imports. Indeed, imports from the countries concerned decreased but did not come to an end between 2015 and the review investigation period, but continued in significant volumes. Imports are thus not expected to come to an end should the measures be maintained but rather to continue.
- (381) As regards the quality of the product under review, it is recognised in the market that imports from particularly the PRC, Korea, the USA and Japan generally concern high permeability types of the product under review. However, two Union producers are able to produce certain quality types with low core losses of the product under review as well. The largest cooperating user stated that two out of the four Union GOES producers have stepped up considerably their efforts to produce high permeability quality types of GOES between 2015 and 2020 and improved their product portfolio considerably in terms of core loss during the same period.

⁽⁵⁸⁾ The Japanese exporting producer JFE also commented that the continuation of the measures would disproportionately hurt the users, limiting their import channels, whereas the Union industry cannot meet the demand of the users (see initial comments in the submission of JFE Steel, dated 10 December 2020).

- (382) The production data which were collected from the Union industry, divided per MIP category of product types, indeed confirmed that the Union GOES producers have stepped up considerably their efforts to produce products with a maximum core loss not higher than 0,9 W/kg. Whereas the total production decreased significantly in the period considered, the Union producers were able to produce proportionally more products with a maximum core loss not higher than 0,9 W/kg over the same period, resulting in an increase by 36 %, i.e. more than 20 000 tonnes.
- (383) In the absence of measures, it would become uncertain whether the Union industry would be able to further develop its high permeability types of GOES, taking into consideration their difficult economic situation.
- (384) Considering the available production capacity of the Union producers and their ongoing strategy to produce proportionally more high permeability types in the near future, the Union industry can increasingly supply the user industry, including the high permeability types. The Union producers estimated that they would be able to increase further the production levels of high permeability types, starting from the year 2021.
- (385) Even with a further increase in the production levels of high permeability types, the largest cooperating user estimated that the Union GOES production will still fall short to supply the demand on the Union market concerning high permeability types of the product under review.
- (386) The Union interest test does, however, not require that Union demand would have to be fully met by Union production. The imports from the countries concerned are expected to continue supplying the Union market. In view of the above, the Commission concluded that it is unlikely that the continuation of the existing measures would lead to a shortage in supply of high permeability types of GOES on the Union market.

6.3.3. Competitiveness of the Union users of the product under review

- (387) On the basis of the collected data, the Commission considered that the continuation of the measures will only have a limited impact on the prices of transformers and the employment in the user's industry. The likely effect would be that the cost of the input material, accounting for around 7 %-17 %, would remain unchanged at the same levels since the imposition of the measures in the form of the three MIPs in 2015.
- (388) The Commission also considered that, even assuming a price difference between the higher Union and lower international prices of some 20 %, any impact on the user industry would be minor as follows: If measures were to lapse on the Union market and if Union prices would drop by 20 %, the GOES costs for users would be on average reduced by less than 2,5 % (⁵⁹).
- (389) In addition, as regards the economic situation of the cooperating users, two were profitable and two were loss making. One of the loss making users was nationalised in the meantime. The other user, i.e. the largest user in terms of turnover and employees, stated that its losses incurred during 2019 and during the review investigation period were not attributable to its operational activities, but rather the result of two exceptional events. If these exceptional events would not have occurred, this company would have been also profitable. Accordingly, overall, the Commission concluded that the cooperating users were economically in a better position than the GOES producers.
- (390) Finally, the users sourced a significant quantity of GOES, including the high permeability types, from the Union industry. If the existing measures would lapse, it cannot be excluded that users would become exclusively dependent on imports, in particular for the high permeability types, which would certainly also be detrimental in the sense that it would affect their diversity of supply. In view of the above, the Commission concluded a continuation of the measures would not have any disproportionate negative effects on the competitiveness of the user industry.

⁽⁵⁹⁾ Calculated as 20 % less costs on GOES input material for the users multiplied by 12 %, being the average of 7 % and 17 %.

- (391) Following disclosure, the applicant argued that the Commission correctly concluded that if the existing measures would lapse, it cannot be excluded that users could become exclusively dependent on imports, which would certainly also be detrimental to them in the sense that it would affect their diversity of supply. The applicant added that it is not just a question of diversity of supply but also a question of security of supply. It argued that, as a necessary component for the production of transformer cores, GOES is for instance crucial for the maintenance and expansion of the Union's electrical grid, which cannot be contingent on the supply from foreign companies in Asia, Russia or the US.
- (392) The Commission reiterated that the objective of anti-dumping duties is not to close off the Union market from all imports (see recital (380)). By extending the measures in the form of MIPs but not closing off the Union market, a secure and diverse supply from different sources, including from exporting and Union producers can be achieved.
- (393) Following disclosure, NLMK argued that the continuation of the measures, as far as Russia is concerned, is not in the Union interest, and that such continuation does not address the structural problems of the Union industry while it hurts the users.
- (394) Concerning these allegations of NLMK, the Commission referred to recital (388) in which it was explained that the continuation of measures would only have a minor impact on the costs of the users. Second, concerning the allegation that the Union industry has structural problems, the Commission refers to its considerations in recital (320).

6.3.4. Conclusion on interest of users

- (395) In view of the above, it is concluded that, on balance, the continuation of measures would be against the interest of users. However, the Commission was unable to accept the claim that the continuation of the measures would lead to a shortage in supply of high permeability GOES. It also concluded that the competitiveness of the user industry would possibly be negatively affected by the continuation of the measures, albeit with a lesser impact on costs than alleged.

6.4. Other factors

- (396) The EcoDesign Directive establishes a framework for ecodesign requirements for energy-related products by setting out minimum mandatory requirements for energy efficiency of these products. It aims at reducing the energy consumption in the Union by enhancing the efficiency of electrical appliances.
- (397) The EcoDesign Directive is implemented through product-specific Regulations directly applicable in all EU countries. The EcoDesign Regulation⁽⁶⁰⁾ covers the new EcoDesign requirements with regard to small, medium and large power transformers. Article 1 of the EcoDesign Regulation defines its scope (applicable for placing on the market or putting into service power transformers with a minimum power rating of 1 kVA used in 50 Hz electricity transmission and distribution networks or for industrial applications). The EcoDesign Regulation is only applicable to transformers purchased after its entry into force.
- (398) Tier 1 of the EcoDesign Regulation entered into force on 1 July 2015, and Tier 2⁽⁶¹⁾ on 1 July 2021. The Tier 2 requirements are more stringent than those for Tier 1.
- (399) A number of interested parties pointed to the entry into force of Tier 2 of the Ecodesign Regulation. T&D Europe claimed that the highest quality types of GOES, which are produced in limited quantities only by the Union industry, are needed to design and manufacture Tier 2 transformers in a cost-efficient manner and within the required space limitations. Zvei claimed that, due to the EU Commission's Green Deal, the increasing electrification of all parts of

⁽⁶⁰⁾ Commission Regulation (EU) No 548/2014 of 21 May 2014 on implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to small, medium and large power transformers (OJ L 152, 22.5.2014, p. 1).

⁽⁶¹⁾ In October 2019, Commission Regulation (EU) 2019/1783 of 1 October 2019 amending Regulation (EU) No 548/2014 on implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to small, medium and large power transformers (OJ L 272, 25.10.2019, p. 107) adjusted the subject matter and scope of the EcoDesign Regulation in light of upcoming implementation of the Tier 2 requirements in relation to power transformers as of 1 July 2021.

the economy and the digital transformation of the total EU industry will lead to an increased demand for (highly efficient) transformers. WindEurope stated that the demand for transformers incorporating high permeability types of GOES will further increase due to a growing awareness of life-cycle energy losses of transformers, as well as a result of EU measures to decrease energy costs and improve the environmental performance of transformers, especially in view of the implementation of Tier 2 of the EU's EcoDesign Directive on transformers.

(400) The largest cooperating user stated that the stricter requirements of Tier 2 can be met in two ways:

- Either by using the same GOES types as before. This would, however, lead to an increase in dimensions and weight, and a higher cost in terms of input material, or;
- By using GOES types with a lower core loss. This would lead to a relatively smaller transformer in terms of dimensions and weight. This solution will in most cases be preferred by the end users to not exceed existing space requirements.

As a result, this user also believed that a further shift to the highest quality types of GOES will take place as a result of the entry into force of the Tier 2 Eco-design Regulation.

(401) The Commission considered that, based on the above arguments, it is very likely indeed that the entry into force of Tier 2 will lead to an increase of demand of the high permeability types of the product under review. However, the demand of, and production of, transformers using conventional types of the product under review will continue to exist as well.

(402) In addition, the Commission aims to boost offshore wind capacity through the EU Strategy on Offshore Renewable Energy⁽⁶²⁾ in order to meet the EU's goal of climate neutrality by 2050⁽⁶³⁾. The EU Strategy on Offshore Renewable Energy projected an increase in Europe's offshore wind capacity from its current level of 12 GW to at least 60 GW by 2030 and to 300 GW by 2050. This strategy will also contribute to a rise in demand for high permeability types of the product under review. WindEurope stated that the European wind industry uses transformers in several applications: within the nacelle, in offshore substations, and in onshore grid connection points. In particular, WindEurope stated that high permeability types of the product under review are particularly essential for transformers within the nacelle, since space is at a premium and mass must be minimised.

(403) Therefore, different legally binding product standards set out the objective to ensure sufficient supply, irrespective of its origin, of high-quality GOES for producing and marketing transformers in Europe. While there is certainty that demand for high permeability types will increase, the future size of this demand is, however, currently unclear as interested parties have not delivered any relevant projections supported by evidence on the question. However, as set out above, the Commission concluded that there is no evidence on file showing that the continuation of the measures would lead to a shortage of supply of high permeability types of GOES such as to undermine reaching the objectives as laid out in Tier 2 of the EU's EcoDesign Regulation. In view of the limited number of producers of GOES worldwide, the continuation of the measures would rather contribute to a diversity of supply, also of high permeability types of GOES, which becomes increasingly important in view of these objectives.

6.5. Conclusion on Union interest

(404) In view of the above, the Commission considered that the continuation of the existing measures would enable the Union industry to return gradually to profitability and make further investments necessary to manufacture and develop the quality grades needed to meet the increased demand of high permeability GOES products.

(405) If the measures were to lapse, it is unlikely that the Union industry would be able to further develop its high permeability types of GOES and be able to survive, taking into consideration their difficult economic situation. Thus, a continuation of the measures is clearly in the interest of the Union industry.

⁽⁶²⁾ https://ec.europa.eu/energy/topics/renewable-energy/eu-strategy-offshore-renewable-energy_en

⁽⁶³⁾ https://ec.europa.eu/clima/eu-action/climate-strategies-targets/2050-long-term-strategy_en

- (406) As regards the interest of users, the maintenance of existing measures has only a limited impact on the prices of transformers and the employment in the user's industry.
- (407) With respect to the objective set out in the EcoDesign Regulation to ensure sufficient supply of high permeability types of GOES in the Union market for reasons of energy efficiency, it has not been established that this objective would be undermined by the continuation of the measures.
- (408) In view of the above, on balance and taking into account that the measures in the form of the MIPs were designed to accommodate the concerns of the users industry as regards the continued need of imports of high-permeability GOES products, the Commission concluded that there were no compelling Union interest reasons against the continuation of the existing measures on imports of GOES originating in the countries concerned. If the existing measures were lapse, it could lead to a price reduction across all types of GOES, whereby the Union industry would need to further lower its selling prices in order to remain attractive. In such circumstances, the economic situation of the Union industry would further worsen and endanger its viability and survival.
- (409) Following disclosure, Nippon Steel argued that the maintenance of the measures would not be in the Union interest as they have been ineffective whilst unnecessarily impacting the users negatively. Moreover, Nippon Steel argued that the Commission did not take into account the fact that certain users in the wind energy sector are already enduring the negative consequences of recent trade defence measures on inputs, such as duties on glass fibre fabrics and glass fibre rovings.
- (410) The Commission rejected these claims for the following reasons. First, as set out in recital (309), the imposition of the measures in 2015 had a positive effect on the economic situation of the Union industry, in particular in the year 2017 when the Union industry started to recover. Second, the Commission referred to recital (388) explaining that the continuation of measures would only have a minor impact on the costs of the users. Third, the main objective of the imposition of trade defence measures is to restore a level playing field among the different producers. Finally, the Commission noted that WindEurope, the industry association for wind energy in Europe, representing more than 400 member organisations, did not claim that its members were already enduring the negative consequences of recent trade defence measures on inputs. Therefore, this claim of Nippon Steel is unsubstantiated.

7. ANTI-DUMPING MEASURES

- (411) On the basis of the conclusions reached on the likelihood of continuation and recurrence of dumping and injury caused by imports from the countries concerned, and in view of the Union interest, the Commission concluded that the anti-dumping measures on imports of the product under review originating in the countries concerned should be maintained.
- (412) One interested party requested that, should the Commission decide it is essential to keep some protection of the Union industry despite its obvious failure of the anti-dumping measure to address its structural problems of Union producers, the measures be maintained for a limited period of 1 or 2 years.
- (413) The Commission rejected this request based upon the injury suffered by the Union industry, which does not warrant the imposition of measures for a period shorter than five years.
- (414) The individual company anti-dumping duty rates specified in this Regulation are exclusively applicable to imports of the product under review originating in the countries concerned and produced by the named legal entities. Imports of the product under review produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.
- (415) In order to minimise the risks of circumvention, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping measures. These special measures include the following: the presentation to the customs authorities of the Member States of a valid commercial invoice and a valid mill certificate which shall conform to the requirements set out in the Articles of this Regulation. Imports not accompanied by such an invoice and a mill certificate shall be made subject to the applicable ad valorem duty rate for all other companies without reference to the minimum import prices.

- (416) A company may request the application of these individual anti-dumping duty rates if it subsequently changes the name of its entity. The request must be addressed to the Commission⁽⁶⁴⁾. The request must contain all the relevant information enabling to demonstrate that the change of name does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a Regulation about the change of name will be published in the *Official Journal of the European Union*.
- (417) In view of Article 109 of Regulation (EU, Euratom) 2018/1046⁽⁶⁵⁾, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.
- (418) The Committee established by Article 15(1) of the basic Regulation did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of grain-oriented flat-rolled products of silicon-electrical steel, of a thickness of more than 0,16 mm, currently falling under CN codes ex 7225 11 00 (TARIC Codes 7225 11 00 11, 7225 11 00 15 and 7225 11 00 19) and ex 7226 11 00 (TARIC codes 7226 11 00 12, 7226 11 00 14, 7226 11 00 16, 7226 11 00 92, 7226 11 00 94 and 7226 11 00 96) and originating in the People's Republic of China, Japan, the Republic of Korea, the Russian Federation and the United States of America.

2. The amount of the definitive anti-dumping duty applicable to the product described in paragraph 1 and produced by the individually named companies as set out in paragraph 4 shall be the difference between the minimum import prices fixed in paragraph 3 and the net free-at-Union-frontier price, before duty, if the latter is lower than the former. No duty shall be collected where the net free-at-Union-frontier price is equal to or higher than the corresponding minimum import price fixed in paragraph 3. In no event shall the amount of the duty be higher than the *ad valorem* duty rates set in paragraph 4.

3. For the purpose of paragraph 2, the minimum import price set out in the table below shall apply. Where it is found, following post-importation verification, that the net free-at-Union-frontier price actually paid by the first independent customer in the Union (post-importation price) is below the net free-at-Union-frontier price, before duty, as resulting from the customs declaration, and the post-importation price is lower than the minimum import price, an amount of duty equivalent to the difference between the minimum import price set out in the table below and the post-importation price shall apply, unless the application of the *ad valorem* duty set out in paragraph 4 plus the post-importation price lead to an amount (price actually paid plus *ad valorem* duty) which remains below the minimum import price set out in the table below.

Countries concerned	Product range	Minimum Import Price (EUR/tonne net product weight)
People's Republic of China, Japan, United States of America, Russian Federation, Republic of Korea	Products with a maximum core loss not higher than 0,9 W/kg	2 043

⁽⁶⁴⁾ European Commission, Directorate-General for Trade, Directorate G, Rue de la Loi 170, 1040 Brussels, Belgium.

⁽⁶⁵⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

	Products with a maximum core loss higher than 0,9 W/kg but not higher than 1,05 W/kg	1 873
	Products with a maximum core loss higher than 1,05 W/kg	1 536

4. For the purpose of paragraph 2, the ad valorem duty rates set out in the table below shall apply.

Company	Ad Valorem Duty	TARIC additional code
Baoshan Iron Steel Co., Ltd, Shanghai; PRC	21,5 %	C039
Wuhan Iron Steel Co., Ltd, Wuhan, PRC	36,6 %	C056
JFE Steel Corporation, Tokyo, Japan	39,0 %	C040
Nippon Steel Sumitomo Metal Corporation, Tokyo, Japan	35,9 %	C041
POSCO, Seoul, Republic of Korea	22,5 %	C042
OJSC Novolipetsk Steel, Lipetsk; VIZ Steel, Ekaterinburg, Russian Federation	21,6 %	C043
AK Steel Corporation, Ohio, United States of America	22,0 %	C044

5. The rate of the definitive anti-dumping duty applicable to the product described in paragraph 1 and produced by any other company not specifically mentioned in paragraph 4 shall be the ad valorem duty as set out in the table below.

Company	Ad Valorem Duty	TARIC additional code
All other Chinese companies	36,6 %	C999
All other Japanese companies	39,0 %	C999
All other Korean companies	22,5 %	C999
All other Russian companies	21,6 %	C999
All other American companies	22,0 %	C999

6. The application of the measures for the companies mentioned in paragraph 4 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice and a mill certificate, which shall to conform to the requirements as set out in respectively Annexes I and II. If neither the mill certificate nor the invoice is presented, the duty applicable to all other companies shall apply. This mill certificate shall list the actual maximum core loss for each coil in Watts per kilogram at a frequency of 50 Hz and a magnetic induction of 1,7 Tesla.

7. For the individually named producers and in cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 131(2) of Commission Implementing Regulation (EU) 2015/2447 (⁶⁶), the minimum import price set out above shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable. The duty payable will then be equal to the difference between the reduced minimum import price and the reduced net, free-at-Union-frontier price, before customs clearance.

(⁶⁶) Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

8. For all other companies and in cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 131(2) of Implementing Regulation (EU) 2015/2447, the amount of the anti-dumping duty, calculated on the basis of paragraph 2 above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

Article 2

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

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

Done at Brussels, 14 January 2022.

For the Commission

The President

Ursula VON DER LEYEN

ANNEX I

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(6):

- the name and function of the official of the entity issuing the commercial invoice,
- the following declaration:

I, the undersigned, certify that the (volume) and (core loss) of the grain oriented electrical steel 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.'

Date and signature.

ANNEX II

A declaration signed by an official of the entity issuing the mill certificate, in the following format, must appear on the valid mill certificate referred to in Article 1(6):

- the name and function of the official of the entity issuing the mill certificate,
- the following declaration:

I, the undersigned, certify that the grain oriented electrical steel sold for export to the European Union covered by the mill certificate, showing the measurement of the maximum core loss in Watts per kilogram at a frequency of 50 Hz and a magnetic induction of 1,7 Tesla, and the size in mm was manufactured by (company name and address) (TARIC additional code) in (country concerned). I declare that the information provided in this mill certificate is complete and correct.'

Date and signature.
