COMMISSION IMPLEMENTING REGULATION (EU) 2022/1395

of 11 August 2022

imposing a definitive anti-dumping duty on imports of certain corrosion resistant steels originating in Russia and Turkey

THE EUROPEAN COMMISSION,

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

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

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 24 June 2021, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of certain corrosion resistant steels originating in Russia and Turkey ('the countries concerned') on the basis of Article 5 of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* [2] ('the Notice of Initiation').

(2) The Commission initiated the investigation following a complaint lodged on 12 May 2021 by the European Steel Association ('Eurofer' or 'the complainant'). The complaint was made on behalf of the Union industry of certain corrosion resistant steels in the sense of Article 5(4) of the basic Regulation. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

1.2. Interested parties

(3) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainant, other known Union producers, the known exporting producers and the authorities of Russia and Turkey, known importers and users, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.

(4) Interested parties had the opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. The Commission held a hearing with a Turkish exporting producer on 17 September 2021.

1.3. Sampling

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

[1] OJ L 176, 30.6.2016, p. 21.
[2] OJ C 245, 24.6.2021, p. 21.

1.3.1. *Sampling of Union producers*

(6) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of production and Union sales volumes reported by the Union producers in the context of the pre-initiation standing assessment analysis, taking also into account their geographical location. This provisional sample consisted of three Union producers, located in three different Member States. The sample accounted for more than 23 % of production and sales in the Union of like product. The Commission invited interested parties to comment on the provisional sample ([3]). No parties made any comments within the given deadline.

(7) During the verification visit at the premises of one of the sampled Union producers, it was found that the company had wrongly included in its reply to the standing questionnaire as well as in its reply to the anti-dumping questionnaire a significant share of data concerning products falling outside the scope of the investigation. To ensure that such situation did not affect the representativeness of the sample, the Commission decided to maintain the company concerned in the sample and to include an additional company to the sample. The final sample thus established consisted of four Union producers, located in three different Member States, which accounted for ca. 25 % of the estimated total volume of production and sales of the like product in the Union. The Commission invited interested parties to comment on the final sample ([4]). No parties made any comments within the given deadline.

1.3.2. *Sampling of importers*

(8) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.

(9) None of the companies that submitted an Annex to the Notice of Initiation within the deadline reported imports of the product concerned. The Commission decided to abandon sampling. No comments were received to this decision.

1.3.3. *Sampling of exporting producers in Russia*

(10) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in Russia to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Permanent Mission of the Russian Federation to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

(11) Three exporting producers/groups of exporting producers in Russia, accounting for around 98 % of the total Russian export volume of the product concerned to the Union, provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of two companies on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available. In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned and the Russian authorities were consulted on the selection of the sample.

(12) The Commission received comments on the sample from PJSC Novolipetsk Steel. The company pointed out that there were sound legal reasons to conduct the investigation on three, rather than two, exporting producers, especially if one of the originally sampled companies would withdraw its cooperation. Such withdrawal would complicate the determination of the dumping margin for non-sampled cooperating exporting producers.

(13) In addition, the company emphasized that the Commission sampled the exporting producer PJSC Magnitogorsk Iron and Steel Works in Russia and its subsidiary MMK Metalurji Sanayi Ticaret ve Liman İşletmeciliği A.Ş. in Turkey. The company asserted that the two related exporting producers shared part of their sales channels. That would reduce the workload of the Commission, thus allowing for investigation of NLMK.

([3]) Note to the file t21.005164 of 6 July 2021.
([4]) Note to the file t21.007177 of 21 October 2021.

(14) After analysing the comments of NLMK, the Commission found in particular the claims described in recital (12) justified and decided to abandon sampling with regard to the exporting producers in Russia. The Commission informed the company in question as well as Russian authorities of this decision.

1.3.4. *Sampling of exporting producers Turkey*

(15) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in Turkey to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of Turkey to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

(16) Eight exporting producers/groups of exporting producers in Turkey, accounting for around 100 % of the total Turkish export volume of the product concerned to the Union, provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three companies on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available. In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned and the authorities of the country concerned were consulted on the selection of the sample. No comments were received to the sampling proposal. The final sample thus established accounted for 62,6 % of the total Turkish export volume of the product concerned to the Union.

1.4. **Individual examination**

(17) One exporting producer in Turkey requested individual examination under Article 17(3) of the basic Regulation. The Commission decided that the examination of this request would have been unduly burdensome and would have prevented the completion of the investigation in good time. This is due to the complex corporate structure of the company in question. Therefore, the individual examination request was rejected.

1.5. **Questionnaire replies**

(18) The Commission sent a questionnaire to the complainant and requested the four sampled Union producers ([5]), the three exporting producers in Russia and the three sampled exporting producers in Turkey to fill in the relevant questionnaires made available online ([6]) on the day of initiation.

(19) Questionnaire replies were received from the four sampled Union producers, the complainant, the three exporting producers from Russia, the three sampled exporting producers from Turkey and the exporting producer from Turkey that requested individual examination.

1.6. **Verification visits**

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

Union producers:

— Acciaieria Arvedi S.p.A, Cremona, Italia

— ArcelorMittal Poland, Dabrowa Górnicza, Poland

— Marcegaglia Carbon Steel S.p.A, Gazoldo degli Ippoliti, Italia

— U.S. Steel Košice, s.r.o., Košice, Slovakia

([5]) The three initially sampled Union producers were instructed to complete the questionnaire upon confirmation of the provisional sample on 6 July 2021, whereas the Union producer which was added to the sample (see recital (7)) was instructed to do so on 21 October 2021.

([6]) Questionnaires for Union producers, exporting producers, importers and users were available at https://trade.ec.europa.eu/tdi/case_details.cfm?id=2531

Traders and importers related to the Russian exporting producers:

— MMK Steel Trade AG, Lugano, Switzerland

— NLMK Trading SA, Lugano, Switzerland

— Severstal Export GmbH ('SSE'), Manno, Switzerland

— SIA Severstal Distribution (Severstal Distribution Europe, 'SDE'), Riga, Latvia

(21) The Commission carried out remote cross-checks of the following parties:

Union producers' association:

— Eurofer, Brussels, Belgium

Exporting producers in Russia:

— PJSC Magnitogorsk Iron and Steel Works ('MMK'), Magnitogorsk, Russia

— Novolipetsk Steel ('NLMK'), Lipetsk, Russia

— PAO Severstal ('PAOS'), Cherepovets, Russia

Domestic traders related to the Russian exporting producers:

— LLC Torgovy dom MMK ('TD MMK'), Magnitogorsk, Russia

— Novolipetsk Steel Service Center LLC ('NSSC'), Lipetsk, Russia

— Torgovy dom NLMK LLC ('NLMK Shop'), Moscow, Russia

— JSC Severstal Distribution (Severstal Distribution Russia, 'SDR'), Cherepovets, Russia

Exporting producers in Turkey:

— MMK Metalurji Sanayi Ticaret ve Liman İşletmeciliği A.Ş. ('MMK Turkey'), Dortyol, Turkey

— TatMetal Çelik Sanayi ve Ticaret A.Ş.('Tatmetal'), Istanbul, Turkey

— Tezcan Galvanizli Yapi Elemanlari Sanayi ve Ticaret A.Ş. ('Tezcan'), Kartepe-Kocaeli, Turkey

1.7. **Investigation period and period considered**

(22) The investigation of dumping and injury covered the period from 1 January 2020 to 31 December 2020 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2017 to the end of the investigation period ('the period considered').

(23) The Turkish association CIB and several exporting producers found the chosen investigation period and period considered biased. They deemed them inappropriate, as 2017 was a relatively good year for the steel business while 2020 was negatively affected by the COVID-19 pandemic. They alleged that the comparison of both endpoints would not be representative of the performance and situation of the Union industry. Some requested quarterly analysis for a better comparison.

(24) The Commission dismissed the claims as both the period considered and the investigation period were appropriate bearing in mind the date of the lodging of the complaint and the applicable rules. In any event, the Commission's analysis is not made on a comparison of the base year with the investigation period but on trends throughout the period concerned and includes factors possibly affecting the corrosion resistant steel ('CRS') market in the Union and factored them in in the investigation, as shown, inter alia, in Section 5 below.

(25) After final disclosure CIB and several exporting producers disagreed with the Commission's position. They argued that the Commission should have considered developments subsequent to the investigation period, as during the first 8 months of 2021 prices of hot dipped galvanized products, which include CRS, as well as the average margin of hot dipped galvanized steel products over hot rolled coils would have increased strongly in the Union. At the same time, in 2021 the production levels of the Union industry would have been restored to the 2019 levels. With reference to the judgement of the General Court in *Rusal Armenal ZAO v Council* ([7]), they therefore claimed that these developments constitute new facts which make the proposed anti-dumping duty manifestly inappropriate and these facts have to be considered by the Commission including by expanding the period of investigation to capture 2021 and the first quarter of 2022.

(26) The Commission analysed the claim. It found that the rise in sales prices in 2021 as such is not indicative for an improvement, of whatever magnitude, of the Union industry's profitability. Indeed, the Commission noted that a rise in prices can only have a positive effect on the situation of the industry as compared to the previous year if it is significantly higher than the rise in costs over the same period. For this, no evidence was submitted. As concerns production, the Commission acknowledged that in 2021 certain producers experienced difficulties to satisfy the strong market demand of CRS at certain moments in time, in particular in the beginning of that year. However, it underlined that this was a temporary phenomenon and did not have any information at its disposal indicating that this would relate to the industry as a whole. The Commission therefore found that none of the claims invoked by the parties concerned demonstrated that the new developments after the investigation period would make the proposed anti-dumping duty manifestly inappropriate. The Commission thus rejected the claim.

1.8. **Non-imposition of provisional measures**

(27) Pursuant to Article 7(1) of the basic Regulation, the deadline for the imposition of provisional measures was 23 February 2022. On 26 January 2022, in accordance with Article 19a(2) of the basic Regulation, the Commission informed the interested parties of its intention not to impose provisional measures and gave the interested parties the opportunity to submit additional information and/or to be heard. No party submitted comments or asked to be heard.

(28) After final disclosure, Government of Russia ('GOR') submitted that the fact that no provisional measures had been imposed meant that the Union industry was stable and did not need intervention from the Commission to prevent injury. The Commission rejected this claim. According to Article 7(1) of the basic Regulation, provisional measures may be imposed. There is no obligation upon the Commission to impose provisional measures if the Union industry is suffering injury. Therefore, no conclusions can be drawn as regards the state of the Union industry if the Commission decides not to impose provisional measures but to continue the investigation instead, as it had done in this case.

(29) Since no provisional anti-dumping measures were imposed, no registration of imports was performed.

1.9. **Subsequent procedure**

(30) The Commission continued to seek and verify all the information it deemed necessary for its final findings.

(31) Following the analysis of the collected and verified data, the Commission informed MMK and PAOS of its intention to apply facts available to certain parts of their questionnaire replies in accordance with Article 18 of the basic Regulation. The Commission gave the companies the opportunity to comment. The reasons for the application of facts available and the comments submitted by the companies are addressed in Section 3.1.2 of this Regulation.

(32) When reaching its definitive findings, the Commission considered the comments submitted by interested parties.

([7]) Judgement of the General Court of 25 January 2017 in Case T-512/09 RENV, *Rusal Armenal ZAO v Council*, ECLI:EU:T:2017:26, para. 130.

(33) The Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports CRS originating in Russia and Turkey ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure.

(34) Following the final disclosure, comments were received from the complainant, the GOR, all three Russian cooperating exporting producers, the Government of Turkey ('GOT'), all three Turkish cooperating exporting producers and the Turkish Steel Exporters Association. Hearings were requested by and held with MMK, NLMK, the GOT, Tezcan and the Turkish Steel Exporters Association. The comments submitted by the parties and/or presented during the hearings are addressed in the respective parts of this Regulation.

(35) Furthermore, following the individual additional definitive disclosures, Tezcan and MMK requested the intervention of the Hearing Officer.

(36) Following final disclosure, CIB argued that the anti-dumping measures should be suspended pursuant to Article 14(4) of the basic Regulation due to market changes occurring after the end of the investigation period. In particular, CIB referred to sharp CRS price increases since the end of the investigation period, strongly improved profitability of certain Union producers since then, and the sanctions against Russia which would guarantee that injury would be unlikely to resume as a result of suspension.

(37) Article 14(4) states that measures may only be suspended where injury to the Union industry would be unlikely to resume as a result of the suspension. The Commission has no information on file supporting that the Union industry improved after the end of the investigation period so that injury would be unlikely to resume. The fact that CRS prices might have increased after the investigation period alone cannot be the basis for a conclusion that the Union industry is no longer injured even if CIB claim that the profitability of 'certain Union producers' would have increased was accepted. Indeed, the opening of the investigation may itself have had such effects and those effects would thus quickly dissipate if definitive measures are suspended. The Commission can only suspend measures after a careful analysis of the situation of the Union industry after the investigation period, and of the alleged changes in market conditions, which requires the collection of detailed information. This assessment is normally done outside the investigation proceedings, in particular when such claims are submitted at a late stage and without the necessary supporting evidence, as was the case in this instance.

(38) Following final disclosure, GOR argued that the application of Article 18 of the basic Regulation with regard to two Russian exporting producers was not justified as the companies showed cooperative behaviour, provided extensive responses to the questionnaire and the request for additional information including intermediate calculations and made the requested corrections. In addition, GOR pointed out that the letters on the application of Article 18 were sent more than a month after the verifications and remote cross-checks were concluded.

(39) The Commission noted that the reasons for the application of Article 18 of the basic Regulation were duly communicated and explained to the respective companies after all information collected from the questionnaire and deficiency replies and during the verifications and remote cross-checks was properly analysed. With regard to PAOS, the issue is addressed in recitals (93) to (109) in detail. With regard to MMK, the reasons are explained in recitals (75) to (90) in general and, for confidentiality reasons, in the company specific disclosure in detail. Therefore, the Commission rejected GOR's claims concerning the application of Article 18 of the basic Regulation.

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. **Product concerned**

(40) The product concerned is flat-rolled products of iron or alloy steel or non-alloy steel; plated or coated by hot dip galvanisation with zinc and/or aluminium and/or magnesium, whether or not alloyed with silicon; chemically passivated; with or without any additional surface treatment such as oiling or sealing; containing by weight: not more than 0,5 % of carbon, not more than 1,1 % of aluminium, not more than 0,12 % of niobium, not more than 0,17 % of titanium and not more than 0,15 % of vanadium; presented in coils, cut-to-length sheets and narrow strips originating in Russia and Turkey, currently falling under CN codes ex 7210 41 00, ex 7210 49 00, ex 7210 61 00, ex 7210 69 00, ex 7210 90 80, ex 7212 30 00, ex 7212 50 61, ex 7212 50 69, ex 7212 50 90, ex 7225 92 00, ex 7225 99 00, ex 7226 99 30, ex 7226 99 70 (TARIC codes: 7210 41 00 20, 7210 41 00 30,

7210 49 00 20, 7210 49 00 30, 7210 61 00 20, 7210 61 00 30, 7210 69 00 20, 7210 69 00 30, 7210 90 80 92, 7212 30 00 20, 7212 30 00 30, 7212 50 61 20, 7212 50 61 30, 7212 50 69 20, 7212 50 69 30, 7212 50 90 14, 7212 50 90 92, 7225 92 00 20, 7225 92 00 30, 7225 99 00 22, 7225 99 00 23, 7225 99 00 41, 7225 99 00 92, 7225 99 00 93, 7226 99 30 10, 7226 99 30 30, 7226 99 70 13, 7226 99 70 93, 7226 99 70 94) ('the product concerned').

The following products are excluded:

— of stainless steel, of silicon-electrical steel, and of high-speed steel,

— not further worked than hot-rolled or cold-rolled (cold-reduced).

(41) CRS is produced by coating flat rolled steel coils, sheets and strips by immersion in a bath of molten metal or metal alloy of zinc. The coating metal combines with the steel substrate in a metallurgical reaction to form a multiple layered structure of alloys, resulting in a coating which is metallurgically bonded to the steel. The surface of the product is further treated with chemical passivation to protect the surface against humidity and to reduce the risk of formation of corrosion products during storage and transportation.

(42) CRS is mainly used in the construction sector for various cladding building materials but also for manufacturing domestic appliances, deep-drawing and stamping processes and small welded pipes.

2.2. **Like product**

(43) The investigation showed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:

— the product concerned,

— the product produced and sold on the domestic market of Russia and Turkey, and

— the product produced and sold in the Union by the Union industry.

(44) The Commission decided that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

2.3. **Claims regarding product scope**

(45) An importer requested CRS with a thickness below 0,40 mm ('thin sizes') to be excluded from the scope of the investigation. The party argued that thin sizes, more labour-intensive and expensive, form a distinct segment which is produced in insufficient quantities by the Union industry. The party added that the exclusion of thin sizes would not diminish the corrective effect of the measures sought by the complainants, whereas the imposition of anti-dumping measures on thin sizes would hurt users (as they will have no access to such products at competitive prices).

(46) The Commission found the grounds for the request unfounded because, overall, the Union industry has production capacity for all required sizes of CRS ([8]). The Commission also found that all types of CRS, no matter their size or point of importation, are produced in hot dipped galvanising lines and share the same features in terms of their basic physical and technical characteristics, their end-uses and interchangeability. The Commission therefore rejected the exclusion request.

(47) Tezcan, a Turkish producer of, inter alia, CRS coated AluZinc ('AluZinc CRS') requested the exclusion of AluZinc CRS from the scope of the measures. According to the party, AluZinc CRS products are a distinct segment of CRS, which does not compete with products produced by the Union industry. The party stated that AluZinc CRS products were not produced in the Union 'in commercially viable quantities' and that the Union producer manufacturing such product was unable to provide the amount of AluZinc CRS necessary to satisfy demand in the Union.

([8]) In the non-confidential file t21.005520, the complainant provided a list of 9 Union producers and web catalogue pages showing that those producers can produce CRS with a thickness below 0,40 mm.

(48) The Commission found the grounds for the request unfounded because, even if temporarily there was limited Union production of AluZinc CRS, overall, the Union industry has production capacity for AluZinc CRS. The Commission also found that all types of CRS, no matter their coating, are produced in hot dipped galvanising lines. In addition, AluZinc CRS and CRS with other coatings share the same features in terms of their basic physical and technical characteristics, their end-uses and interchangeability ([9]). The Commission therefore rejected the exclusion request.

(49) After final disclosure, Tezcan reiterated its request. It stated that that there was no Union production as a result of financial mismanagement on the part of the sole Union producer of AluZinc CRS. Tezcan insisted that AluZinc and Zinc CRS were entirely different products – physically, chemically and technically – namely on the grounds of AluZinc CRS's production process and some AluZinc properties.

(50) The Commission found Tezcan's grounds for the request unfounded because the producer mentioned by Tezcan had a viable business plan and remained a viable part of the Union industry. Also, the Commission had found that all types of CRS, no matter their coating, are produced in hot dipped galvanising lines, which was acknowledged by Tezcan when noting that the sole Union producer of AluZinc CRS has one hot dipped galvanising line but two pots, which they can switch, depending on whether the producer wanted to produce AluZinc CRS or other products. In addition, the claim that not all CRS coatings have exactly the same properties does not undermine the fact that AluZinc CRS and CRS with other coatings share the same features in terms of their basic physical and technical characteristics, their end-uses and interchangeability ([10]). The Commission therefore rejected the exclusion request.

3. **DUMPING**

3.1. **Russia**

3.1.1. *Normal value*

(51) The Commission first examined whether the total volume of domestic sales for each 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 concerned to the Union during the investigation period. On this basis, the total sales by each 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.

(53) The Commission then examined whether the domestic sales by each 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 investigation period represents at least 5 % of the total volume of export sales of the identical or comparable product type to the Union.

(54) The Commission established that MMK did not sell one product type in representative quantities on the domestic market. In addition, all three Russian cooperating exporting producers did not sell certain product types on the domestic market at all.

([9]) In the non-confidential file t21.005520, the complainant provided examples, supported by the applicable EU standards, that AluZinc CRS and CRS with other coatings can be used alternatively in construction.

([10]) In the non-confidential file t22.003396, the complainant provided examples, supported by the applicable EU standards, that AluZinc CRS and CRS with other coatings can be used interchangeably in certain metal framing, roofing and cladding products.

(55) The Commission next defined the proportion of profitable sales to independent customers on the domestic market for each product type during the investigation period in order to decide whether to use actual domestic sales for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.

(56) The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if:

(a) the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of this product type; and

(b) the weighted average sales price of that product type is equal to or higher than the unit cost of production.

(57) In such situation, the normal value is the weighted average of the prices of all domestic sales of that product type during the investigation period.

(58) The normal value is the actual domestic price per product type of only the profitable domestic sales of the product types during the investigation period, if:

(a) the volume of profitable sales of the product type represents 80 % or less of the total sales volume of this type; or

(b) the weighted average price of this product type is below the unit cost of production.

(59) The analysis of domestic sales showed that, depending on the product type, 47 to 100 % of all domestic sales of MMK, 43 to 100 % of all domestic sales of NLMK and 24 to 100 % of all domestic sales of PAOS were profitable and their weighted average sales price was higher than the cost of production. Accordingly, the normal value was calculated as a weighted average of the prices of all domestic sales during the investigation period or a weighted average of the profitable sales only.

(60) For the product types where the weighted average sales price was lower than the cost of production, the normal value was calculated as a weighted average of the profitable sales of that product type.

(61) Where there were no sales of a product type of the like product in the ordinary course of trade or where a product type was not sold in representative quantities on the domestic market, the Commission constructed the normal value in accordance with Article 2(3) and (6) of the basic Regulation.

(62) Normal value was constructed by adding the following to the average cost of production of the like product of the cooperating exporting producers during the investigation period:

(a) the weighted average selling, general and administrative ('SG&A') expenses incurred by the cooperating exporting producers on domestic sales of the like product, in the ordinary course of trade, during the investigation period; and

(b) the weighted average profit realised by the cooperating exporting producers on domestic sales of the like product, in the ordinary course of trade, during the investigation period.

(63) For the product types not sold in representative quantities on the domestic market, the average SG&A expenses and profit of transactions made in the ordinary course of trade on the domestic market for those types were added. 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.

(64) The cost of production was adjusted where justified pursuant to Article 2(5) of the basic Regulation. All three cooperating exporting producers procured certain raw materials from related suppliers. The Commission examined whether those raw materials were purchased at an arms-length price and, where necessary, adjusted the cost of production to reasonably reflect the costs associated with the production and sale of the product concerned.

(65) Following final disclosure, NLMK claimed that such adjustments were unwarranted, in particular, since that the Commission did not take into account the effect of freight cost included in the price of the examined raw materials sold to NLMK and to unrelated customers at various delivery terms although this information was available. The Commission accepted the claim with regard to certain raw materials and revised the normal value accordingly. The revised calculation was disclosed to the company.

(66) Following final disclosure, PAOS submitted that the adjustment of raw material cost under Article 2(5) of the basic Regulation was unlawful. In particular, the company argued that Article 2(5) of the basic Regulation allowed the Commission to depart from the company's records in two situations: (a) where the records were not in accordance with the generally accepted accounting principles of the country concerned; and (b) where the records did not reasonably reflect the costs associated with the production and sale of the product under investigation. With regard to the second situation, the company referred to paragraph 6.97 of the WTO Appellate Body report in Ukraine – Ammonium Nitrate (Russia) ([11]), according to which 'the second condition in the first sentence of Article 2.2.1.1 [of the WTO Anti-dumping Agreement] relates to whether the records kept by the exporter or producer under investigation suitably and sufficiently correspond to or reproduce those costs incurred by the investigated exporter or producer that have a genuine relationship with the production and sale of the specific product under consideration'.

(67) The Commission noted that paragraph 6.97 of the Appellate Body report in Ukraine – Ammonium Nitrate (Russia) should be considered in the context provided by the paragraphs preceding it. Already in EU – Biodiesel (Argentina) ([12]), the Appellate Body approved that the raw materials prices between related parties could be considered as not at arm's length and as a consequence could be rejected. Paragraph 6.97 of the Appellate Body report in Ukraine – Ammonium Nitrate (Russia) further clarified that the situations mentioned in the Panel report in EU – Biodiesel (Argentina) should not be understood as open-ended exceptions but should be examined on a case-by-case basis. In the present case, the Commission rejected the prices of certain raw materials purchased by PAOS from related suppliers following a proper analysis and thus in full consistency with the WTO rules. The Commission compared the prices charged by the related supplier to PAOS with those charged by the related supplier to unrelated customers. Based on this the Commission found prices charged by the related supplier to PAOS to be not at arm's length. Consequently, the claim was rejected.

(68) Furthermore, PAOS claimed that the Commission did not employ the correct methodology when analysing whether the price of certain raw materials paid between PAOS and its related suppliers was at arm's length. The company argued that the Commission should have compared the prices paid by PAOS when purchasing a raw material from its related suppliers with the prices charged by independent suppliers.

(69) In this respect, the Commission noted that it was an established practice to use the prices charged by the related supplier for the arm's length price analysis. In the present case, the sales prices of the related supplier to PAOS and to unrelated customers were available and verified. Therefore, the Commission found it appropriate to use the verified information for its analysis. In addition, the company did not provide any explanation for the price difference other than the relation between the supplier and PAOS. Consequently, the Commission rejected the claim.

(70) Finally, PAOS commented on a number of technical details concerning the analysis of the arm's length prices. First, the company objected to the rejection of financial income in the calculation of loss generated by the supplier of coal. Second, the company argued that the Commission did not reflect correctly, in the price comparison, the differences in certain coal grades purchased by PAOS. Third, the company pointed out a clerical error in the calculation of total consumption of coal. Fourth, the company claimed that the Commission incorrectly compared the sales price of iron ore pellets to unrelated customers with the resales price charged by PAOS for iron ore pellets, which were purchased from the related supplier for the sole purpose of their resale. Fifth, the company claimed that

([11]) Appellate Body report, DS493 – Ukraine – Anti-Dumping Measures on Ammonium Nitrate (Russia), para 6.97.
([12]) Panel report, DS473 –EU – Biodiesel (Argentina), para. 7.232.

the Commission did not take into account the differences in delivery terms and thus in freight cost included in the sales price of iron ore pellets when supplied to PAOS and to unrelated customers. And sixth, where the Commission conducted the price analysis for a broad category of iron ore pellets (fluxed and non-fluxed), the company claimed that certain pellets, for which the information was not specified in the purchase listing, should be considered either as fluxed or as non-fluxed.

(71) The Commission examined the claims and concluded that points two, three and four described in recital (70), warranted a correction in the calculation of the cost adjustment. In this respect, the Commission compared the price of the coal grade in question with the most similar coal grade, corrected the clerical error in the calculation of the total consumption of coal, and used the sales price of iron ore pellets for PAOS' consumption for the arm's length price analysis. The corrected figures were re-disclosed to the company.

(72) The Commission, however, rejected the claims described under points one, five and six in recital (70) for the following reasons:

— Financial income was rejected as it was generated from interest received from granted loans. Therefore, the Commission considered that such income was not linked to the production and sales of the raw material.

— The Commission could not take into account the differences in freight cost included in the sales price of transactions under various delivery terms since neither the related supplier nor PAOS reported the incurred freight cost.

— The information provided by PAOS with regard to certain types of iron ore pellets being fluxed or non-fluxed could not be verified at this point of the investigation. Nor did the company provide any evidence supporting its claim.

3.1.2. *Export price*

(73) The Russian cooperating exporting producers exported to the Union through related companies acting as an importer pursuant to Article 2(9) of the basic Regulation or through related traders located in a third country.

(74) MMK reported sales of CRS to the Union via MMK Steel Trade, a related trader located in Switzerland, and via another company located in Switzerland that MMK described as unrelated (hereinafter 'the Swiss trader').

(75) With regard to the Swiss trader, the Commission enquired about the nature of its relationship to MMK. In particular, the Commission analysed publicly available documents issued by MMK, such as the consolidated financial statements of the MMK Group ([13]), disclosures of transactions with interested parties ([14]), annual reports and their annexes ([15]), and readily available information available in market intelligence databases, such as Dun & Bradstreet.

(76) The information provided by the company and collected by the Commission from other sources led the Commission to conclude that MMK provided misleading information concerning its relationship with the Swiss trader, thereby impeding the investigation. For confidentiality reasons, the analysis leading to the Commission's conclusion has been disclosed only to MMK.

([13]) PJSC MMK and Subsidiaries. Consolidated Financial Statements For the Year Ended 31 December 2012, 2013 and 2014. Available at https://mmk.ru/en/investor/results-and-reports/financial-results/ (last viewed 25 October 2021).

([14]) The disclosure of 'Making of an interested-party transaction by the Issuer'. Available at https://mmk.ru/en/about/corporate-governance/disclosure-of-information/essential-facts/). As at 4 April 2022, this location on the company's website was not available. The documents continue to be publicly available at the online portal of the Corporate Information Disclosure Centre of LLC Interfax, https://e-disclosure.ru/portal/company.aspx?id=9&attempt=1 (last viewed 4 April 2022).

([15]) Annexes to MMK's annual report 2017. Available at https://mmk.ru/en/investor/results-and-reports/annual-reports/ (last viewed 4 April 2022).

(77) As a result, the Commission had no information on the resale prices of transactions to the first independent customer in the Union for sales made via the Swiss trader, nor on its concrete functions, and therefore it was not able to establish the export price for one channel of the company's sales on the Union market. Therefore, the Commission informed the company of its intention to apply Article 18 of the basic Regulation in relation to the information that it failed to provide.

(78) The explanations provided by MMK, following the Article 18 letter, did not change the Commission's conclusion that MMK provided misleading information concerning its relationship with the Swiss trader, thereby impeding the investigation. For confidentiality reasons, the analysis of MMK's comments on the intended application of Article 18 of the basic Regulation was disclosed only to MMK.

(79) As a result, the Commission confirmed the application of Article 18 of the basic Regulation to the sales on the Union market carried out via the Swiss trader. In this respect, the Commission based the determination of the dumping margin for this sales channel on the dumping margins calculated for sales carried out via MMK Steel Trade.

(80) In its comments on final disclosure, MMK submitted that the Commission made an error by applying Article 18 of the basic Regulation to MMK in relation to the Swiss trader. In this respect, the company claimed that the Commission failed to take into account certain documents provided by MMK and reiterated its explanation of the contradictions found by the Commission. Furthermore, MMK submitted that the Commission breached the legal standard set by Article 18 of the basic Regulation in selecting the facts available by selecting those facts with a specific aim of penalizing MMK by applying adverse facts available which is completely incompatible with the object and purpose of Article 18 of the basic Regulation.

(81) MMK provided no new evidence regarding the relationship with the Swiss trader. The Commission had already carefully analysed all information including the documents referred to by the company. In addition, the Commission found that the company did not provide any evidence supporting the explanation of the contradicting information on the relationship between MMK and the Swiss trader. Therefore, the Commission confirmed the application of Article 18 of the basic Regulation.

(82) Regarding the claim that the Commission breached the legal standard of Article 18 of the basic Regulation, the Commission disagrees. As explained above, the Commission was not able to establish the export price for one whole sales channel of the company's sales on the Union market, and therefore it based the dumping margin for this sales channel on the dumping margins calculated for sales carried out via a related trader, MMK Steel Trade, for which it could establish the export price.

(83) This approach is fully in line with the relevant WTO rules and the EU law. According to WTO Panel report on United States – Anti-dumping and countervailing duties on certain products and the use of facts available ([16]), when applying facts available investigating authorities are required to select, in an unbiased and objective manner, those facts available that constitute reasonable replacements for the missing 'necessary' information in the specific facts and circumstances of a given case. In doing so, investigating authorities must take into account all facts that are properly available to them. In selecting the replacement facts, Article 6.8 of the WTO Anti-dumping Agreement does not require investigating authorities to select those facts that are most 'favourable' to the non-cooperating party. Investigating authorities may take into account the procedural circumstances in which information is missing, but Article 6.8 does not condone the selection of replacement facts for the purpose of punishing interested party.

(84) The approach of the Commission fully followed this prescription. In an unbiased manner, it took the actual and verified pricing behaviour of MMK observed in a sales channel for which the Commission was able to verify the relevant data and used it as a model of pricing behaviours for the channel where the data was not provided. It used an average dumping amount for a product type representative of the company's known dumping potential during the investigation period. In the circumstances where the company chose not to provide the Commission with a large proportion of its export sales, using an actual and verified pricing behaviour practiced by the company during

([16]) Panel Report, *US – Anti-Dumping and Countervailing Duties (Korea)*, WT/DS539/R, para. 7.36. See also Appellate Body Report, *US – Carbon Steel (India)*, WT/DS436/AB/R, para. 4.421.

the investigation period as a model cannot be said to be subjective or punitive. It leads to as accurate dumping and injury margins as possible in the context of the company's significant lack of cooperation, and thus complies with the WTO jurisprudence quoted by MMK. Consequently, the Commission rejected the claim.

(85) As mentioned in recital (35), MMK requested a hearing with the Hearing Officer. At the hearing, MMK pointed out that, in its Article 18 letter, the Commission stated it would apply Article 18(3) of the basic Regulation. The company requested a clarification of the legal basis as the general disclosure document only mentioned Article 18 of the basic Regulation. In this respect, the company asserted that the Commission should have applied the provisions of Article 18(3) of the basic Regulation as the MMK responded to all the Commission's requests for necessary information, did not provide misleading information, and did not impede the investigation. Moreover, the company submitted that the Commission had never requested the information on the export prices of the Swiss trader. Finally, MMK reiterated that the Commission breached the legal standard of Article 18 of the basic Regulation when applying facts available.

(86) Indeed, the reference to Article 18(3) in the Article 18 letter was an obvious clerical error since the letter also said that the Commission services concluded MMK provided misleading information, thereby impeding the investigation, as provided for in Article 18(1) of the basic Regulation. It is clear from the language of the Article 18 letter and the facts of the case that the conditions for the acceptance of deficient data under Article 18(3) of the basic Regulation were not met since the data – export prices to the first independent customer – was not provided and hence not verifiable. Furthermore, it is clear that the party did not act to the best of its ability. The Commission also noted that MMK's reply to the Article 18 letter unequivocally showed that MMK understood that the circumstances called for Article 18(1) of the basic Regulation and that the Commission would turn to facts available. This is why in that response MMK argued which sets of information should be used in place of the disregarded data.

(87) Moreover, that the reference to Article 18(3) of the basic Regulation was a clerical error was confirmed by the fact that there was no reference to Article 18(3) of the basic Regulation in the general disclosure document.

(88) With regard to the claims listed in recital (85) concerning the cooperation of the company, the Commission noted that the company misled the Commission with regard to the relationship established between MMK and the Swiss trader as it continued claiming that the companies were not related. In addition, the company failed to provide the export prices of the Swiss trader, i.e. information necessary for the determination of the dumping margin. The Commission considered that the company wrongly claimed that the Commission never requested the export prices of the Swiss trader. In the questionnaire for exporting producers published on DG Trade's website on the date of the initiation of the investigation, related companies involved in sales of the product under investigation to the Union are clearly required to fill in Annex I to the questionnaire ([17]). Consequently, the continued denial of the relationship between MMK and the Swiss trader and the failure to provide export prices of the Swiss trader impeded the investigation.

(89) Therefore, the Commission confirmed that it considered the facts to fit under Article 18(1) of the basic Regulation. Yet, as explained in recitals (82) to (84), the Commission sought to establish what facts available, on the basis of the actual information provided by the company at issue, would constitute a reasonable replacement for the missing necessary information in this case.

(90) Following the recommendations of the Hearing Officer, the Commission carefully considered the issues raised by the company at the hearing and informed the Hearing Officer of its conclusions.

(91) In addition to the clarifications provided in recitals (81) to (84) and (86) to (89), the Commission disclosed a more detailed analysis of MMK's comments on final disclosure and presented at the hearing only to the company for confidentiality reasons.

([17]) Introduction, point (5) of the questionnaire for the exporting producers in Russia (p. 7). Available at https://tron.trade.ec.europa.eu/investigations/case-history?caseId=2531 (last viewed 10 June 2022).

(92) PAOS exported to the Union via Severstal Export GmbH, a related trader located in Switzerland, and SIA Severstal Distribution, a related importer located in Latvia. SDE is a service centre, which sold CRS to unrelated customers in the Union both without processing and also after further processing.

(93) SDE did not submit information on purchases and stocks of CRS in its questionnaire and deficiency replies. The company was reminded to provide this data by e-mails sent on 15 November 2021 and 25 January 2022. Despite the request in the deficiency letter and the aforementioned reminders, the company did not provide the missing information until the first day of the on-spot verification visit. The Commission was therefore unable to analyse the purchase data before the verification visit, in particular to check it for consistency with other parts of the questionnaire and deficiency replies. Purchase data of a related trader is generally used to connect sales of an exporting producer to its trader or importer with subsequent resales and is crucial for determining the export price.

(94) Already during the verification visit at the premises of SDE, the Commission noticed and brought to the company's attention issues with the product types assigned to resales transactions by SDE. The Commission selected a sample of resales transactions and checked the available documents supporting the information submitted by the company, including the technical specifications of the products sold. The Commission collected supporting documents related to a sample of twelve sales invoices. In four cases, the Commission observed that the product type was assigned incorrectly. The company agreed to make corrections. It, however, claimed that it would be too burdensome to cross-check all potentially affected resales transactions with the technical specifications agreed in the sales orders. Therefore, the company suggested to use a methodology based on the product types sold by PAOS to SDE. This issue was properly recorded in the verification report, which was shared with the company. The company had the opportunity to comment on potential factual errors. Nevertheless, SDE did not object to any part of the verification report.

(95) Following the on-spot verification, the Commission cross-checked the purchase data that was provided by SDE only during the verification visit with the corresponding sales data of PAOS. The Commission noted that the two datasets were still inconsistent as far as product types were concerned.

(96) In this respect, product types reported by SDE as purchased in the investigation period from PAOS but not reported by PAOS as sold to SDE represented approximately 30 % of the total purchased volume reported by SDE.

(97) Instead of dismissing the whole dataset outright, the Commission used the resales transactions, to which the product types were attributed correctly, to determine the dumping margin of resales transactions with incorrectly attributed product types.

(98) The Commission concluded that PAOS did not provide within the time limits set the necessary information, thereby impeding the investigation. The Commission informed the company that it intended to apply Article 18 of the basic Regulation to the extent of the information that the company failed to provide.

(99) In its comments on the Article 18 letter, the company stated that it provided all data including intermediate files where requested. It further recalled that the creation of product types was explained to and verified by the Commission. Where the Commission identified errors in reported product types, the company provided corrections. PAOS argued that the information on purchases was not used in the dumping calculation. It further pointed out that the Commission never raised these issues during the remote cross-checks and on-spot verifications. With regard to the Commission's conclusion on the impossibility to identify the product types sold by SDE on the Union market, the company recalled its explanations provided in the deficiency reply. According to the company, SDE was not able to provide a transaction-by-transaction link between purchased and sold goods due to storage, and a mismatch between the mix of supplies and mix of sales.

(100) The Commission does not contest that eventually, PAOS and SDE provided the information requested in the questionnaire. Nevertheless, the late provision of certain information seriously impeded the Commission's ability to properly analyse the data.

(101) Although the information on purchases is not directly used in the dumping margin calculation, it is a tool for cross-checking and verifying the internal consistency of information submitted by the producer and its related importer that is used in the calculation. In this case, the comparison of PAOS' sales data with SDE's purchase data during the same period, the investigation period, revealed an incorrect reporting of product types by either PAOS or SDE.

(102) Furthermore, the Commission could not be aware of the extent of this issue during the remote cross-checks and the on-spot verification since SDE only provided its purchase data on the first day of the verification, thus not leaving the Commission any time to analyse the information beforehand. Nevertheless, already during the verification visit the Commission did point out that in the sample of sales transactions that were verified in detail some product types were reported incorrectly.

(103) Finally, the fact that there was no direct link between PAOS' sales data and SDE's resales data was not the issue at hand. The Commission observed that indeed, the goods resold by SDE during the investigation period were to a certain extent purchased before the investigation period. However, the main issue was that the product types reported as purchased by SDE from PAOS during the investigation period in many cases did not match the product types reported as sold by PAOS to SDE during the investigation period. As a result, the Commission was not able to determine or verify which product types, that were produced by PAOS, were actually resold by SDE in the Union market during the investigation period.

(104) In view of the above, the Commission confirmed the application of Article 18 of the basic Regulation to the sales on the Union market of certain product types via SDE.

(105) Consequently, for PAOS' sales to the Union via SDE acting as an importer, for transactions where the product type was identified correctly, 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, processing cost, and for profits accruing. The Commission used facts available to determine the export price and subsequently the dumping margin of the incorrectly assigned product types sold to the Union via SDE.

(106) Following final disclosure, PAOS claimed that the application of Article 18 of the basic Regulation was not warranted. In particular, the company argued that the information it submitted was merely 'not ideal in all aspects' and that it was provided in time since the Commission received the previously missing information well before the final disclosure. Furthermore, the company claimed that the Commission should have contacted the company when it discovered the inconsistencies in the reported product types. PAOS argued that the inconsistencies resulted from the producer using the actual zinc coating mass (measured in the production) while SDE using the nominal zinc coating mass (included in the company's product codes).

(107) In addition to the Commission's decision to apply Article 18 of the basic Regulation, PAOS also contested the choice of facts available. Instead of assigning to the affected product types the highest dumping margin, which was calculated for a product type representing only 0,01 – 0,03 % of the company's exports in the IP, the Commission should have used the dumping margin of the most representative product type in terms of sales quantity. Alternatively, the company suggested the Commission use the average dumping margin of correctly reported product types.

(108) First, the Commission disagrees with the company's assessment of timely provision of data that was merely 'not ideal in all aspects'. The information on purchases by SDE was provided at a time which made it impossible for the Commission to verify any potential corrections that would have been provided after the verifications and/or remote cross-checks. Therefore, the Commission contacting the company after the inconsistencies had been discovered would remain without effect. Moreover, an incorrect assignment of product types is not a mere inconvenience. At the beginning of the investigation, the Commission defined product types based on certain characteristics that influenced the costs and prices of CRS to enable proper comparison. Without correct product types, it is not possible to compare the domestic sales price with the cost of production to determine the normal value per product type, nor is it possible to compare the normal value with the export price to establish the dumping margin per

product type. Second, the fact that the inconsistencies allegedly stemmed only from different approaches by PAOS and SDE to the reporting of zinc coating mass did not change the fact that the product types were assigned incorrectly. It was the company's responsibility to ensure accuracy and consistency in the reporting. Moreover, it follows from the remote cross-check that PAOS actually used three different approaches to determine the zinc coating mass. Thus, the clarification provided after final disclosure could not be accepted. Consequently, the Commission rejected the claim that the application of Article 18 of the basic Regulation was not warranted.

(109) With regard to the choice of facts available, the Commission noted that none of the product types was substantially more representative of total PAOS' sales in the Union market. The product type suggested by the company represented only 1 – 3 % of the company's export sales. In addition, using the average dumping margin of all the correctly reported product types would have the same effect on the overall dumping margin as completely disregarding the sales with unknown product types. In the present case, those sales transactions represented a vast majority of all PAOS' sales in the Union. Therefore, the Commission considered that using the highest average dumping amount established for a product type appropriately reflected the company's potential for dumping behaviour. Consequently, the Commission rejected PAOS' claim concerning the choice of facts available.

3.1.3. *Comparison*

(110) The Commission compared the normal value and the export price of the exporting producers on an ex-works basis.

(111) 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 and loading, packing, credit cost and commissions.

(112) Two companies claimed an adjustment for discounts according to Article 2(10)(c) of the basic Regulation. Since the companies were not able to reconcile the value of the adjustment claimed with their accounting records, the Commission rejected those claims.

(113) Following final disclosure, NLMK contested the Commission's calculation of certain adjustments to the export price. The company claimed that the Commission should have adjusted the export price of goods sold during the IP but purchased by the related trader before the IP for the freight cost actually incurred by the trader before the IP (instead of using the freight cost incurred during the IP at the same delivery term and for the same country of destination). In particular, the company claimed that the deduction would have been lower if the Commission used the freight cost incurred before the IP.

(114) The Commission examined this claim and found it unwarranted. In particular, the difference pointed to by the company was not caused by the use of freight cost incurred during the IP but by the fact that the relevant adjustment to the export price did not only cover the freight cost but also an allowance for packing. Consequently, the claim was rejected. For confidentiality reasons, the detailed analysis of this claim was sent only to NLMK.

(115) Following final disclosure, PAOS submitted that the Commission should not have rejected the allowance for freight cost incurred between the company and its related domestic trader or between the warehouses of the related trader since the cost is included in the sales price. In addition, the company claimed that the Commission should not have rejected the allowance for discounts since the company was able to reconcile with its accounting records the discount granted to its customer with the highest value of discount during the IP.

(116) With regard to the freight cost, the Commission noted that it was not disputed whether the company and/or its related trader actually incurred the freight cost. In the present case, in accordance with Article 2(1) of the Basic Regulation, the point at which the sale to the first unrelated customer occurred – which was either the producer's premises in case of direct domestic sales to unrelated customers, or otherwise the related domestic trader's premises – was considered the appropriate point to establish the ex-works price of domestic sales.

(117) With regard to the allowance for discounts, the Commission reiterated that during the remote cross-check, the company was not able to reconcile the claimed allowance for discounts with its accounting records with the exception of one customer. Following the comments of the company on final disclosure, the Commission examined to what extent it was possible to reconcile the value of discounts granted to the customer in question. The Commission clarified that the requested allowance matched the value in an intermediary preparation worksheet of the company, yet not the accounting records. With regard to other customers randomly selected for cross-check, the requested allowance did not even match the preparation worksheet. Subsequently, the Commission confirmed its rejection.

(118) All three Russian cooperating exporting producers exported to the Union via related traders located in a third country.

(119) MMK Steel Trade performed functions equivalent to that of an agent working on a commission basis within the meaning of Article 2(10)(i) of the basic Regulation. Therefore, the Commission adjusted the export price to ensure fair comparison. The Commission deducted from the export price charged to the first independent customer the SG&A of MMK Steel Trade and a reasonable profit, based on the profit of an unrelated importer

(120) No unrelated importer came forward in the present investigation. Therefore, the Commission used the profit of an unrelated importer in the Union established on the basis of the findings of a previous investigation on imports of products similar to the product under investigation ([18]). The profit was 2 %.

(121) NLMK exported to the Union via NLMK Trading SA, a related trader located in Switzerland. After analysing its functions, NLMK Trading was considered to perform functions equivalent to that of an agent working on a commission basis within the meaning of Article 2(10)(i) of the basic Regulation. For confidentiality reasons, the Commission's analysis has been disclosed only to NLMK.

(122) Consequently, the Commission adjusted the export price to ensure fair comparison. The Commission deducted from the export price charged to the first independent customer the SG&A of NLMK Trading and a reasonable profit, based on the profit of an unrelated importer.

(123) Following final disclosure, NLMK claimed that there was no legal basis for the Commission to carry out that deduction under Article 2(9) of the basic Regulation. The deduction was, however, carried out under Article 2(10)(i) of the basic Regulation as stated in recitals (121) and (122), and therefore the Commission dismissed the claim.

(124) In addition, NLMK claimed that the conclusions the Commission reached regarding its related company for the export market were equally valid on the domestic market, i.e. the related companies performed similar functions for domestic and export sales. Subsequently, the company requested the Commission to adjust the normal value under Article 2(10)(i) of the basic Regulation with regard to domestic sales via NSSC and NLMK Shop.

(125) The Commission noted that Article 2(1) of the basic Regulation, which determines the normal value, and Articles 2(8) and 2(9) of the basic Regulation, which determine the export price, are worded differently. Pursuant to Article 2(1) of the basic Regulation, it is on the domestic sales' price to the first independent customer that the normal value needs to be established. An adjustment pursuant to Article 2(10)(i) of the basic Regulation would assume that the relevant sale for the establishment of the normal value would rather be the sale between NLMK and NLMK Shop/NSSC. However, these sales were not sales to independent customers. In those circumstances, a deduction of the mark-up charged by NLMK Shop/NSSC would not be consistent with Article 2(1) of the basic Regulation.

([18]) Commission Implementing Regulation (EU) 2017/1795 of 5 October 2017 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Brazil, Iran, Russia and Ukraine and terminating the investigation on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Serbia (OJ L 258, 6.10.2017, p. 24), recital (569).

(126) The wording of Article 2(1) of the basic Regulation contrast with the approach and the wording of Articles 2(8) and 2(9) of the basic Regulation. Indeed, the second sentence of Article 2(10)(i) of the basic Regulation, pertaining to a mark-up, was specifically introduced in order to ensure that the mark-up charged by a trader situated outside the Union could be deducted when calculating the export price. Otherwise, the use of a related trader could obscure specifically some of the export-related differences that the comparison between the normal value and the export price at ex-factory level seeks to eliminate. By contrast, on the domestic market, goods will often circulate between related companies or warehouses before being sold, and insofar as the sales expenses and functions of related parties on the domestic market overlap, it is justified to treat related companies as a single economic entity.

(127) In addition, and without prejudice to the above, the Commission noted that NSSC is a service centre further processing corrosion resistant steel produced by NLMK and thus, is an extension of NLMK's production ([19]). The company is located in Lipetsk, in the immediate neighbourhood of NLMK's factory. In light of the company's integration into the production chain of NLMK, NSSC can therefore not be considered to be carrying on functions similar to those of an agent acting on a commission basis within the meaning of Article 2(10)(i) of the basic Regulation..

(128) Furthermore, with respect to NLMK Shop, the Commission recalled that, during the investigation period, NLMK Shop was involved in a negligible fraction of sales of the like product on the domestic market (less than 2 %). Any adjustment based on Article 2(10)(i) of the basic Regulation, if warranted, would therefore have a negligible impact on the normal value and resulting dumping margin (less than 0,1 % change in margin). Moreover, given that NLMK's final anti-dumping duty was based on the injury margin, an adjustment to the domestic sales of NLMK via NLMK Shop would not have affected the outcome of the investigation.

(129) Consequently, the Commission rejected the claim.

(130) As mentioned in recital (92), in addition to SDE, PAOS exported to the Union also via Severstal Export GmbH, a related trader located in Switzerland. Severstal Export GmbH performed functions equivalent to that of an agent working on a commission basis within the meaning of Article 2(10)(i) of the basic Regulation. Therefore, the Commission adjusted the export price to ensure fair comparison. The Commission deducted from the export price charged to the first independent customer the SG&A of Severstal Export GmbH and a reasonable profit, based on the profit of an unrelated importer.

(131) Following final disclosure, NLMK claimed that its dumping margin should be calculated on a quarterly basis due to the increasing trends of its cost of manufacturing, normal value and export price throughout the IP in conjunction with an uneven distribution of its sales to the Union.

(132) The Commission noted that a quarterly calculation would only be warranted in very specific circumstances, for example if the cost of production increased considerably throughout the IP combined with the export sales being concentrated in one part of the IP, and the domestic sales in another. In the present case, the production and the domestic sales were evenly distributed over the whole investigation period. In addition, the unit price on the domestic market (+ 6 – 10 % in the second quarter, +10 – 13 % in the third quarter, +25 – 26 % in the fourth quarter) and the unit cost of production (+ 1 – 4 % in the second quarter, +10 – 13 % in the third quarter, +25 – 26 % in the fourth quarter) followed a similar trend over the IP. The company's pricing decisions on the Union market followed, however, a completely different trend. The export price increased between the first and second quarter by 28 – 32 %, decreased slightly in the third quarter but continued growing and in the fourth quarter reached +43 – 47 % of its value in the first quarter. This increase was not paralleled by the costs of production that only slightly increased between the first and the second quarter then a bit more sharply in the third quarter and significantly in the fourth quarter. It was the company's decision to price its exports to the Union at a considerably lower level during a quarter, in which the exported quantities were most concentrated. Therefore, the Commission considered that the request for a quarterly calculation was not justified in the present case and subsequently dismissed the claim.

([19]) Although the company did not provide information as to whether each respective resales transaction was a pure resale or a resale after a processing operation, by simple comparison of PCNs and quantities sold by NLMK to NSSC and resold by NSSC to unrelated customers, it can be observed that only approximately 1/3 of the quantity resold by NSSC represented unprocessed goods purchased from NLMK in the IP. The other 2/3 were sold either from stock or after a processing operation, which changed the product type.

(133) Following the additional final disclosure mentioned in recital (65), NLMK claimed that in accordance with Article 2(10)(j) of the basic Regulation, the Commission should recognise the date of contract as the date when materials terms of trade were established in the present case as far as it concerns the export sales transactions to be used in the dumping calculation. In this respect, the company also referred to a previous investigation ([20]), in which the contract/purchase order date were used to establish the material terms of trade instead of the invoice date.

(134) The Commission noted that Article 2(10)(j) of the basic Regulation concerned currency conversions and the date of exchange rate used where currency conversions were necessary for the purpose of comparison. The Commission noted that those provisions were not applicable to determine which transactions should be included in the dumping margin calculation. In addition, the Commission noted that in the previous investigation, the date of contract/purchase order was decisive only for the purposes of determining the date of the exchange rate to be used. This is the extent to which a potential adjustment under Article 2(10)(j) of the basic Regulation can be made. This provision cannot be used to exclude transactions from the dumping calculation.

(135) Consequently the Commission rejected the claim.

3.1.4. *Dumping margins*

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

(137) As explained in recitals (12) to (14), sampling of the Russian exporting producers was abandoned and the investigation was conducted on all cooperating companies.

(138) For all other exporting producers in Russia, the Commission established the dumping margin on the basis of the facts available, in accordance with Article 18 of the basic Regulation. To this end, the Commission determined the level of cooperation of the exporting producers. The level of cooperation is the volume of exports of the cooperating exporting producers to the Union expressed as proportion of the total imports from the country concerned to the Union in the investigation period, that were established on the basis of the Surveillance 2 database as explained in recital (201).

(139) The level of cooperation in this case is high because the exports of the cooperating exporting producers constituted around 98 % of the total imports during the investigation period. On this basis, the Commission found it appropriate to establish the dumping margin for non-cooperating exporting producers at the level of the cooperating company with the highest dumping margin.

(140) The definitive dumping margins, taking into consideration the changes following final disclosure, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Dumping margin
PJSC Magnitogorsk Iron and Steel Works	36,6 %
Novolipetsk Steel	12,7 %
PAO Severstal	39,8 %
All other companies	39,8 %

([20]) Recital 71 of the Commission Implementing Regulation (EU) 2016/1328 of 29 July 2016 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain cold rolled flat steel products originating in the People's Republic of China and the Russian Federation (OJ L 210, 4.8.2016, p. 1).

3.2. **Turkey**

3.2.1. *Normal value*

(141) The Commission first examined whether the total volume of domestic sales for each sampled 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 concerned to the Union during the investigation period. On this basis, the total sales by each sampled exporting producer of the like product on the domestic market were representative.

(142) 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 producers with representative domestic sales.

(143) The Commission then examined whether the domestic sales by each sampled 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 investigation period represents at least 5 % of the total volume of export sales of the identical or comparable product type to the Union.

(144) For each of the three exporters, for some product types that were exported to the Union during the investigation period there were either no domestic sales at all, or the domestic sales of that product type were below 5 % in volume and thus not representative.

(145) The Commission next defined the proportion of profitable sales to independent customers on the domestic market for each product type during the investigation period in order to decide whether to use actual domestic sales for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.

(146) The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if:

(a) the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of this product type; and

(b) the weighted average sales price of that product type is equal to or higher than the unit cost of production.

(147) In such situation, the normal value is the weighted average of the prices of all domestic sales of that product type during the investigation period.

(148) The normal value is the actual domestic price per product type of only the profitable domestic sales of the product types during the investigation period, if:

(a) the volume of profitable sales of the product type represents 80 % or less of the total sales volume of this type; or

(b) the weighted average price of this product type is below the unit cost of production.

(149) The analysis of domestic sales showed that, depending on the product type, 14 to 100 % of all domestic sales of MMK Turkey, 28 to 100 % of all domestic sales of Tatmetal and 19 to 100 % of all domestic sales of Tezcan were profitable and that the weighted average sales price was higher than the cost of production. Accordingly, the normal value was calculated as a weighted average of the prices of all domestic sales during the investigation period or a weighted average of the profitable sales only.

(150) For the product types where the weighted average sales price was lower than the cost of production, the normal value was calculated as a weighted average of the profitable sales of that product type.

(151) Where there were no sales of a product type of the like product in the ordinary course of trade or where a product type was not sold in representative quantities on the domestic market, the Commission constructed the normal value in accordance with Article 2(3) and (6) of the basic Regulation.

(152) Normal value was constructed by adding the following to the average cost of production of the like product of the sampled exporting producers during the investigation period:

(a) the weighted average selling, general and administrative ('SG&A') expenses incurred by the sampled exporting producers on domestic sales of the like product, in the ordinary course of trade, during the investigation period; and

(b) the weighted average profit realised by the sampled exporting producers on domestic sales of the like product, in the ordinary course of trade, during the investigation period.

(153) For the product types not sold in representative quantities on the domestic market, the average SG&A expenses and profit of transactions made in the ordinary course of trade on the domestic market for those types were added. 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.

(154) Following final disclosure, MMK Turkey claimed that the Commission made an error when it excluded part of the company's financial costs from SG&A expenses while constructing normal value.

(155) The excluded financial costs were foreign exchange incomes/losses which were not actual expenses but resulted from the difference in exchange rates between the invoice currency and the accounting currency on the date of transaction and date of payment, and therefore do not reflect the actual SG&A expenses pertaining to the production or sales of the product under investigation. Furthermore, the Commission noted that it took the same approach with respect to all the sampled companies regardless of whether they made losses or gains from foreign exchange. The reason for that approach is that, in extreme cases, not doing so would lead to overall negative SG&A costs which would not reflect actual SG&A expenses. Therefore, this claim was rejected.

(156) Following final disclosure Tezcan indicated that there was an error in the calculation of the costs of one of the raw materials due to double counting of its opening stocks. The Commission corrected this error and re-disclosed a revised dumping calculation to Tezcan. The impact of this correction did not change the dumping margin of the company because the final dumping margins are expressed at the level of the first digit after coma.

(157) The same company claimed that, in the amendments done to its cost of production, the Commission did not take into account differences in the cost of coils used for the production of exported and domestically sold CRS which allegedly resulted from a duty exemption scheme used by the company.

(158) The investigation revealed that the imported and domestically purchased coils cannot be linked directly to the manufacturing of either exported or domestically sold products and that, for the duty exemption system, an exporting producer can use 'equivalent goods' instead of the imported goods stated in the authorisation certificate. Therefore, the Commission could not establish any difference in the actual cost of manufacturing of CRS for export and domestic market resulting from the use of the duty exemption scheme. Therefore, this claim was rejected.

(159) Finally, in its comments on disclosure and at a hearing with the Commission services, Tezcan claimed that the Commission wrongly used its cost of production for the domestic market ('DMCOP') instead of the cost of production for exports to the EU ('EUCOP') in the construction of normal value for those product types which were not sold domestically in the IP. The company claimed that this is inconsistent with the Commission's description of the methodology provided in the specific disclosure, the Commission's 'long-standing practice' and EU jurisprudence. The company further claimed that actually EUCOP should have been used also in the construction of the normal value for those product types which had 'extremely limited' domestic sales in the IP.

(160) The Commission's practice is to construct normal value on the basis of DMCOP and the SG&A expenses and profit of transactions made in the ordinary course of trade on the domestic market. EUCOP is used only if there is no DMCOP for specific types of products in the IP. This practice is consistent with the Court case quoted by Tezcan, that states that 'the purpose of constructing the normal value is to determine the selling price of a product as it would be if that product were sold in its country of origin or in the exporting country ([21])'. In this investigation, the product types at issue were manufactured in the IP for the domestic market but were not sold, i.e. they remained in stock at the end of the IP. The company rightly reported a DMCOP for these product types. The DMCOP was verified by the Commission. The wording of the methodology provided in the specific disclosure referring to product types 'not sold domestically', for which EUCOP is to be used in the construction of normal value, is intended to mean product types 'where DMCOP did not exist'. The wording is a general description of what the Commission does when constructing normal value and is not tailored for unusual cases where there are specific domestic costs of productions but no sales. However, this wording certainly does not reflect the practice of the Commission which follows the case-law recalled by the exporting producer and which was referred to above, as normal value should first be based on the costs and prices in the domestic market. Therefore, the claim was rejected.

(161) As mentioned in recital (35), Tezcan requested the intervention of the Hearing Officer on this issue. Tezcan reiterated the claim described in recital (159) and added that at the hearing with the Commission services, the Commission had orally agreed to accept this claim. The Commission wishes to clarify the situation. Indeed, during the hearing the Commission told the company that the claim and its bases were understood and that they could move on to following points. Still the Commission advised the company to leave the claim in writing in the submission. However, after a closer analysis of the claim after the hearing, the Commission concluded that the claim was not justified for the reasons explained in recital (160). The Commission informed the Hearing Officer of its further reflections and the conclusions.

3.2.2. *Export price*

(162) All the sampled exporting producers exported to the Union directly to independent customers. Therefore, their export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

3.2.3. *Comparison*

(163) The Commission compared the normal value and the export price of the sampled exporting producers on an ex-works basis.

(164) 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, credit costs, commissions and packing expenses.

(165) Following final disclosure, MMK Turkey claimed that the Commission wrongly treated some domestic transport costs between the two production sites of the company as internal transport costs and provided evidence that these costs were not internal. The Commission found the claim justified in view of the evidence and re-disclosed a revised dumping calculation to MMK. As a result MMK Turkey's dumping margin decreased from 10,6 % to 10,5 %.

(166) Two sampled exporting producers made a claim under Article 2(10)(b) of the basic Regulation for a duty drawback adjustment, arguing that the existence of a duty drawback scheme for certain input materials in the country concerned implies that all their domestic sales would incorporate an indirect tax compared to the export sales.

([21]) Judgment of 5 October 1988, *Silver Seiko Limited and others* v *Council of the European Communities*, C-273/85 and C-107/86, ECLI:EU:C:1988:466, para. 16.

(167) In Turkey, an import duty applies to hot rolled coils, which are an input in the manufacture of the CRS. Under the inward processing regime (IPR), domestic producers are exempted from the payment of such duty if the imported raw material is used to produce finished products that are finally exported. The two sampled exporters claimed that the amount of duties they would have paid if the finished CRS were sold domestically instead of exported should be taken into account for the purpose of fair comparison of the normal value and the export price.

(168) However, the investigation showed that none of the two sampled exporters paid any import duty during the investigation period, neither for domestic sales, nor for export sales as they fulfilled the export commitment linked to each IPR permit. As such, there could be no issue of price comparability between exports of CRS, incorporating hot rolled coils for which a duty was not paid, and domestic sales of CRS, incorporating hot rolled coils for which an import duty was paid (as the latter situation never arose during the investigation period). Neither exporting producer was able to substantiate with any evidence that absent the actual payment of import duties, domestically sold CRS incorporated the cost of the import duty on hot rolled coils in instances were no such import duty was actually paid. This cannot simply be presumed to be the case. For these reasons, the claim was considered unfounded and therefore rejected.

(169) Following final disclosure, Tatmetal reiterated its claims with regard to the duty drawback adjustment, but it provided no new evidence that could change the Commission's conclusion as explained in recital (129). Therefore, this claim is rejected.

(170) One sampled producer requested the Commission to use the quarterly method to establish its individual dumping margin due to high inflation in Turkey and the decreasing values of the Turkish lira.

(171) The Commission analysed this claim and determined that the average inflation rate and devaluation of the Turkish lira in the investigation period were not of such magnitude as to justify deviating from the Commission's consistent practice to calculate the dumping margin on an annual basis. Furthermore, the company has almost all domestic sales and all raw-material purchases in USD, so the impact of the exchange rate should be similar on normal value and on export price. Moreover, there was no concentration of domestic or export sales in any particular quarter, but sales were evenly distributed over the investigation period, except for a decline, for all three sampled companies, in export sales in quarter three which was clearly affected by the COVID restrictions. Therefore, the request for a quarterly calculation of dumping margins was rejected.

(172) Following final disclosure, Tezcan reiterated its claim that the dumping margin should be calculated quarterly. The company provided no new evidence, but argued that in the previous investigations, several against Turkey, the Commission resorted to this method and that the 12 % inflation rate in Turkey and 37 % devaluation of the Turkish lira against the euro in the IP would justify this approach.

(173) The company further argued that in a situation where the costs are weight-averaged for 12 months whereas the profitability of domestic sales is analysed on a transaction by transaction basis, some transactions were treated as loss making while in reality they were profitable, resulting in a distorted dumping margin, and quarterly calculations would result in a more adequate dumping margin.

(174) The Commission maintained that in this case neither the level of the inflation nor the Turkish lira devaluation rates justified such an approach. The Commission noted that in the previous investigations against Turkey quoted by Tezcan the inflation rates were significantly higher.

(175) Similarly, the Commission maintained its conclusion that in this investigation there was no concentration of domestic or export sales in any particular quarter that would justify quarterly calculations. Quarterly variations of domestic and exports sales are bound to occur, but it is only in exceptional situations that the Commission may set aside its standard methodology, for example in a situation described in the first sentence of recital (132). The Commission did not consider that the variation in the present case was so significant as to justify a quarterly calculation. Indeed, the Commission reiterated that it cannot be under an obligation to deviate from the standard methodology as set out in the basic Regulation whenever an exporting producer requests a different methodology that would improve its dumping margin.

(176) Consequently, the Commission upheld its rejection of this claim.

3.2.4. *Dumping margins*

(177) Following final disclosure, Tezcan claimed that, should the Commission not exclude AluZinc CRS from the product scope, it should recalculate its dumping margin without AluZinc because it stopped producing it as of September 2021. This way Tezcan's dumping margin would appropriately and adequately reflect present day reality. Tezcan added that the stop in production is manifest, undisputed and lasting. Tezcan also raised this claim at the hearing with the Hearing Officer, although the initial request for a hearing was limited to the claim regarding the use of EUCOP instead of DMCOP and Tezcan only asked to add this part, and submitted its presentation on the issue, one day before the hearing took place.

(178) The Commission disagreed with the claim. As provided in Article 6(1) of the basic Regulation, information relating to a period subsequent to the investigation period shall, normally, not be taken into account. Indeed, as per Commission's practice, events relating to a period subsequent to the IP can only be taken into account if they are manifest, undisputed and lasting. More importantly, as clarified by the General Court in Case T-462/04 ([22]), such events would need to make the anti-dumping duty manifestly inappropriate. That is not the case in this investigation as, based on the facts it verified, the Commission cannot establish with sufficient certainty that Tezcan will not produce AluZinc in the future. Even if this would have been the case, the exporting producer did not present any evidence showing, nor indeed argue, that the proposed duty was manifestly inappropriate. Therefore, the Commission rejected the claim.

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

(180) For the cooperating exporting producers outside the sample, the Commission calculated the weighted average dumping margin, in accordance with Article 9(6) of the basic Regulation. Therefore, that margin was established on the basis of the margins of the three sampled exporting producers.

(181) On this basis, the definitive dumping margin of the cooperating exporting producers outside the sample is 8 %. This margin was not affected by the slight changes in individual dumping margins of MMK Turkey and Tezcan described in recitals (156) and (165).

(182) For all other exporting producers in Turkey, the Commission established the dumping margin on the basis of the facts available, in accordance with Article 18 of the basic Regulation. To this end, the Commission determined the level of cooperation of the exporting producers. The level of cooperation is the volume of exports of the cooperating exporting producers to the Union expressed as proportion of the total imports from the country concerned to the Union in the investigation period, that were established on the basis of the Surveillance 2 database as explained in recital (201).

(183) The level of cooperation in this case is high because the exports of the cooperating exporting producers constituted 100 % of the total imports during the investigation period. On this basis, the Commission found it appropriate to establish the dumping margin for non-cooperating exporting producers at the level of the sampled company with the highest dumping margin.

(184) On this basis, the definitive weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

([22]) Judgement of the Court of First Instance of 17 December 2008, *HEG Ltd, Graphite India Ltd* v *Council of the European Union*, Case T-462/04, EU:T:2008:586, para 64.

Company	Dumping margin
MMK Turkey	10,5 %
Tatmetal	2,4 %
Tezcan	11,0 %
Cooperating not sampled companies	8,0 %
All other companies	11,0 %

4. **INJURY**

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

(185) The like product was manufactured by 20 producers in the Union during the investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

(186) Russian exporting producers claimed that Steel Service Centres ('SSCs') related to the complainants imported the product under investigation from Russia and Turkey and that such Union producers should be disqualified as complainants.

(187) Russian exporting producers submitted no evidence of imports from Russia and Turkey by Union producers nor evidence of such imports in significant volumes by SSCs related to them. The verification visits confirmed that the Russian producers' claim was groundless as far as sampled Union producers were concerned. The Commission dismissed the claim.

(188) Russian producers pointed to links between one of the producers supporting the complaint and Turkish exporters and called on the Commission to exclude the company concerned from the definition of Union industry.

(189) At initial stage, the company concerned itself acknowledged to have business interests in Turkey ([23]). However, the Commission found those interests insufficient to disqualify it as a Union producer in this investigation because they concern rather future plans. Thus, there was no objective reason to exclude this producer.

(190) The total Union production during the investigation period was established at 9 797 517 tonnes, including production for the captive market. The Commission established the figure on the basis of the questionnaire replies received from Eurofer and the sampled Union producers.

(191) As indicated in recital (7), the four sampled Union producers represented 25 % of the total Union production of the like product.

4.2. **Determination of the relevant Union market**

4.2.1. *Captive and free market*

(192) To establish whether the Union industry suffered injury and to determine consumption and the various economic indicators related to the situation of the Union industry, the Commission examined whether and to what extent the subsequent use of the Union industry's production of the like product (i.e., captive use or non-captive use) had to be taken into account in the analysis.

(193) The Commission found that a substantial part of the Union producers' production, ca. 22 %, was destined for the captive market in the Union. CRS is captively used as an intermediate material for the production of organic coated steel.

([23]) t21.005086.

(194) The distinction between captive and free market is relevant for the injury analysis in this case. Products destined for captive use are not exposed to direct competition from imports, but simply transferred to the next stage in production and/or delivered at transfer prices within the same company or groups of companies for further downstream processing according to the various price policies. By contrast, production destined for free market sale is in direct competition with imports of the product concerned and is sold at free market prices.

(195) To provide a picture of the Union industry that is as complete as possible, the Commission obtained data for the entire CRS activity and determined whether the production was destined for captive use or for the free market.

(196) The Commission examined certain economic indicators relating to the Union industry on the basis of data for the free market. These indicators are: sales volume and sales prices on the Union market; market share; growth; export volume and prices; profitability; return on investment; and cash flow. Where possible and justified, the findings of the examination were compared with the data for the captive market in order to provide a complete picture of the situation of the Union industry.

(197) However, other economic indicators could meaningfully be examined only by referring to the whole CRS activity, including the captive use of the Union industry. These are: production; capacity, capacity utilisation; investments; stocks; employment; productivity; wages; and ability to raise capital. They depend on the whole activity, whether the production is captive or sold on the free market.

4.2.2. *Statistical data*

(198) Following the request of several exporting producers, the Commission asked the complainant to supplement the information presented in the open version of the complaint as regards import volumes and values. The files supplementing Annex I-1 to the complaint were made available in the case file ([24]).

(199) Pursuant to Article 14(6) of the basic Regulation, in the course of the investigation, the Commission provided information on aggregated import volumes and values per exporting country for the calendar year 2020 for the product under investigation ([25]).

(200) The additional information described in the two recitals above was without prejudice to the final determination of import volumes in the current investigation.

(201) During the investigation, the Commission cross-checked the data in the Comext database with those in Surveillance 2 database ('Surveillance 2') and noticed some discrepancies at TARIC level. The Commission inquired the issue with Eurostat and it found that some Member States had not reported some of the imports concerned in Comext. The Commission therefore decided to rely on Surveillance 2 data to determine the Union market, import prices and market shares.

(202) Some product types covered by the investigation were only attributed a 10-digit TARIC code upon initiation of the anti-circumvention investigation in November 2019 ([26]). As a result, data for those types was not available in Surveillance 2 for the period 2017–2019. Therefore, the Commission established those volumes on the basis of Table 1 of Commission Implementing Regulation (EU) 2020/1156 ([27]).

([24]) The files supplementing Annex I-1 to the complaint are attached to the Note to the file t21.006245 dated 8 September 2021 (for inspection by interested parties).

([25]) Note to the file t22.001059 dated 4 February 2022 (for inspection by interested parties).

([26]) Commission Implementing Regulation (EU) 2019/1948 of 25 November 2019 initiating an investigation concerning possible circumvention of anti-dumping measures imposed by Commission Implementing Regulation (EU) 2018/186 on imports of certain corrosion resistant steels originating in the People's Republic of China, and making such imports subject to registration (OJ L 304, 26.11.2019, p. 10).

([27]) Commission Implementing Regulation (EU) 2020/1156 of 4 August 2020 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) 2018/186 on imports of certain corrosion resistant steels originating in the People's Republic of China to imports of slightly modified certain corrosion resistant steels (OJ L 255, 5.8.2020, p. 36). The methodology to establish the figures in Table 1 of Implementing Regulation (EU) 2020/1156 is described in detail under that table. It draws from Commission Implementing Regulation (EU) 2018/186, Eurostat, and industry estimations.

4.3. **Union consumption**

(203) The Commission established the Union consumption on the basis of: (a) Eurofer data concerning Union industry's sales and captive use (including captive sales) of the like product, cross-checked with the sales and captive use volumes reported by sampled Union producers; and (b) imports of the product under investigation into the Union from all third countries as reported in Surveillance 2.

(204) Union consumption over the period considered developed as follows:

Table 1

Union consumption (tonnes)

	2017	2018	2019	IP
Total Union consumption	11 494 857	11 062 815	11 306 869	10 691 239
Index (2017 = 100)	*100*	*96*	*98*	*93*
Captive market	2 504 391	2 667 375	2 358 802	2 167 741
Index (2017 = 100)	*100*	*107*	*94*	*87*
Free market	8 990 466	8 395 440	8 948 067	8 523 498
Index (2017 = 100)	*100*	*93*	*100*	*95*

Source: Eurofer, sampled Union producers and Surveillance 2 (adjusted)

(205) During the period considered, the Union consumption decreased by 7 %. In the same period, demand on the free market dropped by 5 % while demand in the captive market dropped by 13 %.

4.4. **Imports from the countries concerned**

4.4.1. *Cumulative assessment of the effects of imports from the countries concerned*

(206) The Commission examined whether imports of CRS originating in the countries concerned should be assessed cumulatively, in accordance with Article 3(4) of the basic Regulation.

(207) That provision stipulates that the imports from more than one country should be cumulatively assessed only if it is determined that:

(a) the margin of dumping established in relation to the imports from each country is more than *de minimis* as defined in Article 9(3), and the volume of imports from each country is not negligible; and

(b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between imported products and the like Union product.

(208) The margins of dumping established in relation to the imports from each of the two countries concerned are summarised under recitals (140) and (184). They are all above the *de minimis* threshold laid down in Article 9(3) of the basic Regulation.

(209) The volume of imports from each of the countries concerned was not negligible within the meaning of Article 5(7) of the basic Regulation. Market shares in the investigation period were 9,3 % for imports from Turkey and 3,5 % for imports from Russia. After final disclosure, GOR submitted that the Russian market share of 3,5 % was insignificant, a claim which however was unsubstantiated.

(210) The conditions of competition between the dumped imports from Turkey and Russia and between the dumped imports from the countries concerned and the like product were similar during the period concerned. More specifically, the imported products competed with each other and with CRS produced in the Union in a similar manner, they are sold through the same sales channels and to similar categories of customers. The product concerned is a commodity and competition took place largely based on prices alone.

(211) Therefore, all the criteria set out in Article 3(4) of the basic Regulation were met and imports from Turkey and Russia were examined cumulatively for the purposes of the injury determination.

4.4.2. *Volume and market share of the imports from the countries concerned*

(212) The Commission established the volume of imports on the basis of Surveillance 2, as explained in Section 4.2.2. The market share of the imports from the countries concerned was established by comparing those imports with the Union consumption with the adjustment with regard to imports from China as explained in recital (202) which had a bearing on Chinese and, thus, total import volumes and therefore also on consumption volumes and market shares.

(213) Imports into the Union from the countries concerned over the period considered developed as follows:

Table 2

Import volume (tonnes) and market share on free market

	2017	2018	2019	IP
Turkey (tonnes)	84 581	166 295	529 087	796 524
Index (2017 = 100)	*100*	*197*	*626*	*942*
Market share (%)	0,9	2,0	5,9	9,3
Index (2017 = 100)	*100*	*211*	*629*	*997*
Russia (tonnes)	112 062	175 772	240 240	300 729
Index (2017 = 100)	*100*	*157*	*214*	*268*
Market share (%)	1,2	2,1	2,7	3,5
Index (2017 = 100)	*100*	*168*	*215*	*284*
Total countries concerned	196 643	342 067	769 327	1 097 253
Index (2017 = 100)	*100*	*174*	*391*	*558*
Market share (%)	2,2	4,1	8,6	12,9
Index (2017 = 100)	*100*	*186*	*393*	*589*

Source: Surveillance 2 (tonnes) and Eurofer

(214) Imports from the countries concerned as well as their market share increased by more than five-fold over the period considered. The Union market share of imports from the countries concerned was 12,9 % during the investigation period. Such increase took place despite a safeguard measure being in place during most part of the period considered, due to the fact that, under the safeguard measure, both countries exported the product concerned under the residual quota, which was large enough to allow these increased volumes free-of-safeguard duty into the Union market.

4.4.3. *Prices of the imports from the countries concerned and price undercutting/price depression*

(215) The Commission established the prices of imports on the basis of Surveillance 2, as explained in Section 4.2.2.

(216) The weighted average price of imports into the Union from the countries concerned developed as follows over the period considered:

Table 3

Import prices (EUR/tonne)

	2017	2018	2019	IP
Turkey	659	657	616	564
Index (2017 = 100)	*100*	*100*	*93*	*85*
Russia	639	643	598	548
Index (2017 = 100)	*100*	*101*	*94*	*86*
Total countries concerned	648	650	611	559
Index (2017 = 100)	*100*	*100*	*94*	*86*

Source: Surveillance 2

(217) The average import prices from the two countries concerned remained stable between 2017 and 2018 but then fell by 14 % in two years' time. Throughout the whole period considered, the average import prices from both countries concerned (together or separately) were constantly lower than the prices of Union producers (see Table 7), and the difference between average EU sales prices of the Union industry and average import prices from the countries concerned almost doubled over the period considered.

(218) The Commission also established the price undercutting during the investigation period by comparing:

(1) the weighted average prices per product type of the imports from the sampled Turkish and the cooperating Russian producers to the first independent customer on the Union market, established on a cost, insurance, freight (CIF) basis, with appropriate adjustments for post-importation costs; and

(2) the corresponding weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level ([28]).

(219) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the sampled Union producers' theoretical turnover during the investigation period.

(220) After final disclosure, Severstal claimed that there is no legal basis nor a rationale for the application of Article 2(9) of the basic Regulation by analogy to establish the export price for the purpose of calculating undercutting (and underselling). In Severstal view, this would be in breach with Article 3(1) of the basic Regulation. It also noted that the Commission had already been condemned by the General Court in *Hansol Paper* ([29]) for this practice. In particular, Severstal submitted that the General Court, in that case, had ruled that the Commission had committed an error by deciding to apply by analogy Article 2(9) of the basic Regulation in the context of the determination of

([28]) The sampled Union producers mostly sold the like product directly to independent costumers in the EU. Around 5 % of those EU sales were made through related selling entities and those sales were made at prices similar to those of direct sales to independent customers.

([29]) Judgement of the General Court of 2 April 2020, *Hansol Paper Co. Ltd.* v *Commission*, Case T-383/17, EU:T:2020:139, paras. 200-203.

injury, in particular 'by deciding to deduct SG&A costs and a profit margin, for the resales of the product concerned' to independent customers, as it is the prices of the product concerned charged to independent customers that are in 'competition with the like product of the Union industry and which inflicts injury on that industry' and not hypothetically constructed CIF prices. According to Severstal, that principle had been confirmed by the General Court in Giant ([30]) and CRIA ([31]) and, most recently, by the Court of Justice in Hansol ([32]). Severstal held that the prices charged by its related traders to their unrelated customers were by definition reliable, that such prices compete with those of the Union industry and that they should therefore be used for the purpose of calculating undercutting (and underselling).

(221) The Commission rejected the claim that using Article 2(9) by analogy to establish the export price for the purpose of calculating undercutting and underselling is in breach of Article 3(1) of the basic Regulation. In fact, contrary to Severstal claim, in its judgement in Hansol ([33]) the Court of Justice confirmed the legality of the Commission's methodology, stating that '*it was open to the Commission, in order to ensure an objective comparison of the prices at the level of the first release for free circulation in the Union of the product concerned, to construct that CIF EU border value by deducting SG&A costs and a profit margin from the price of resale of the product concerned by Schades to independent customers. That application, by analogy, of Article 2(9) of the basic regulation was within the broad discretion which the Commission enjoys when implementing Article 3(2) of that regulation and could not therefore be regarded, in itself, as vitiated by a manifest error of assessment*' ([34]). Moreover, since in this case the Union industry predominantly sells directly to independent customers, the methodology followed by the Commission did not lead to a manifestly incorrect result ([35]).

(222) The above showed a weighted average undercutting margin of between 4,2 % and 7,1 % by the imports from Turkey and between 5 % and 20,4 % by the imports from Russia ([36]). The bulk of CRS is a price sensitive commodity, thus the undercutting margins are significant.

(223) The Turkish association CIB and some exporting producers asked the Commission to ensure that comparable products were considered. The methodology used during the investigation, when comparing types of the product concerned exported into the Union and the like product manufactured within the Union, as explained in recitals (218) and (219) is sufficiently refined as to ensure a proper price comparison for the undercutting calculations.

(224) The Commission further considered other price effects, in particular the existence of significant price depression. During the period considered, the Union industry decreased its prices by 12 %, thus at a higher level than the drop of the cost of production (- 7 % over the same period) (see Table 7). But for the dumped imports, the Union industry would have been able to raise its prices at least at the level to sell without losses. For instance, in 2019, coinciding with the highest increase in dumped imports, the Union industry had to sell at a price close to the price of the dumped imports, but with significant losses. During the investigation period, the Union industry's sales prices decreased in parallel with the decrease in the costs of production, but to the level of hardly making any profits.

(225) After final disclosure, CIB and several exporting producers submitted that the decrease in sales price from 2019 to the investigation period was less than the decrease in cost of production and that the Union industry even managed to make a profit in the investigation period. That would make the finding of price depression caused by the imports concerned doubtful.

([30]) Judgement of the General Court of 27 April 2022, *Giant Electric Vehicle Kunshan Co. Ltd.* v *Commission*, Case T-242/19, EU:T:2022:259.
([31]) Judgement of the General Court of 4 May 2022, *China Rubber Industry Association (CRIA) and China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (CCCMC)* v *Commission*, Cases T-30/19 and T-72/19, EU:T:2022:266, paras. 128-131.
([32]) Judgement of the Court of 12 May 2022, *Commission v Hansol Paper*, Case C-260/20 P, EU:C:2022:370, para. 101.
([33]) Judgement of the Court of 12 May 2022, *Commission v Hansol Paper*, Case C-260/20 P, EU:C:2022:370.
([34]) Judgement of the Court of 12 May 2022, *Commission v Hansol Paper*, Case C-260/20 P, EU:C:2022:370, para. 105.
([35]) Judgement of the Court of 12 May 2022, *Commission v Hansol Paper*, Case C-260/20 P, EU:C:2022:370, para. 99.
([36]) Since the Union producers sell predominantly to independent customers in the EU directly, the Commission considered the resulting undercutting margins sufficiently representative.

(226) The Commission rejected this claim. The fact that the Union industry was able to achieve a 0,4 % profit in the investigation period cannot undermine the Commission's conclusion of significant price depression caused by the dumped imports. A profitability level just above break-even cannot be considered a healthy profit, which would be achievable in the absence of price pressure from dumped imports. It is clear that such profit levels were the result of the strongly increasing import volumes of CRS from the countries concerned. As explained before, CRS is a commodity sensitive to price competition. Thus, the dumped imports were capable of exercising significant price depression on Union industry sales.

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

4.5.1. *General remarks*

(227) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

(228) As mentioned in recital (6), sampling was used for the determination of possible injury suffered by the Union industry from the imports of certain corrosion resistant steels from Turkey and Russia.

(229) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data contained in the questionnaire reply of Eurofer relating to all Union producers, cross-checked where necessary with the questionnaire replies from the sampled Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the four sampled Union producers. Both sets of data were duly verified ([37]) and found to be representative of the economic situation of the Union industry.

(230) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.

(231) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

4.5.2. *Macroeconomic indicators*

4.5.2.1. Production, production capacity and capacity utilisation

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

Table 4

Production, production capacity and capacity utilisation

	2017	2018	2019	IP
Production volume (tonnes)	10 915 729	10 870 843	10 757 441	9 797 517
Index (2017 = 100)	*100*	*100*	*99*	*90*
Production capacity (tonnes)	12 110 762	12 107 279	13 240 172	13 340 130

([37]) The questionnaire reply provided by Eurofer was remotely cross-checked.

Index (2017 = 100)	*100*	*100*	*109*	*110*
Capacity utilisation (%)	90	90	81	73
Index (2017 = 100)	*100*	*100*	*90*	*81*

Source: Eurofer and sampled Union producers

(233) The Union industry's production volume was rather stable between 2017 and 2019 but it dropped by 10 % at the end of the period considered, partly due to the pressure exerted by Turkish and Russian imports which increased by almost 330 000 tonnes in the investigation period as compared to 2019 (table 2).

(234) After final disclosure, GOR recalculated the Union industry's production volume on the basis of the data reported in Tables 5a, 5b, 9 and 12 and, by combining the figures in those tables, it concluded that the Commission had miscalculated the Union industry's production volumes. However, the source of these tables is not the same; in particular, the volumes reported in Table 9 are from the Union industry's sample whereas the volumes in the three other tables are from the Union industry as a whole. The claim was therefore rejected.

(235) Over the period considered, the production capacity of the Union industry increased by 10 %. However, this increase is theoretical. Union producers use their hot dipped galvanising lines to produce CRS but also other products that are not subject to this investigation. Over the period considered, the share of these production lines that was allocated to CRS production changed for certain producers. The drop in production combined with an increase of production capacity led to a plunge of the capacity utilization rate.

(236) After final disclosure, CIB and several exporting producers submitted that the increase in production capacity, and the impact thereof on the capacity utilisation rate, in particular in 2019 was the consequence of erroneous investment decisions. However, as explained in recital (235), that increase was only theoretical. This fact was taken into account by the Commission in its analysis, by giving a limited relevance of this negative factor in the injurious situation of the Union industry.

4.5.2.2. Sales volume and market share

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

Table 5 a

Free market sales volume and market share

	2017	2018	2019	IP
Free market sales	6 656 755	6 573 138	6 780 245	6 586 657
Index (2017 = 100)	*100*	*99*	*102*	*99*
Market share of free market sales (%)	74,0	78,3	75,8	77,3
Index (2017 = 100)	*100*	*106*	*102*	*104*

Source: Eurofer, sampled Union producers

(238) The Union industry's sales volume in the free market was rather stable over the period considered. In terms of sales volumes, at the end of the period considered the Union industry managed to compensate for the impact of the sharp increase of imports from the countries concerned by the extension of the measures against China to circumvented imports ([38]), which enabled the Union industry to regain some of the sales volumes previously lost due to the Chinese circumvention practices. Coupled with the decrease in consumption, this even resulted in an increase in market share over the period considered.

(239) After disclosure, CIB and several exporting producers submitted that the above figures demonstrate that the Union industry did not suffer from a material injury on the account of lost sales or market share.

(240) Although indeed the Union industry sales volumes as such only declined slightly and its market share increased in view of a drop in consumption, the Commission disagreed as the strong increase of low-priced imports from Russia and Turkey exerted price pressure, depressing prices and preventing the Union industry from taking full advantage of the anti-dumping measures on imports of CRS from China.

Table 5 b

Captive volume and market share

	2017	2018	2019	IP
Captive market	2 504 391	2 667 375	2 358 802	2 167 741
Index (2017 = 100)	*100*	*107*	*94*	*87*
The share of captive market over the total Union production (%)	22,9	24,5	21,9	22,1
Index (2017 = 100)	*100*	*107*	*96*	*96*

Source: Eurofer, sampled Union producers

(241) The captive market of the Union industry (composed of CRS kept by the Union industry for downstream use, in particular for organic coated steel production) in the Union decreased by 13 % in the period considered. The fall is attributable to the decrease in demand of organic coated steel downstream products in the second part of the period considered, despite the rebound of the home appliances sector during the last quarter of 2020 ([39]).The market share of the captive market over the total Union production decreased by 0,8 % percentage points overall during the period considered.

4.5.2.3. Growth

(242) The above figures in respect of production and, less pronounced, sales in the free market show a decreasing trend as from 2017. As already referred to in recital (238), the Union industry's increase in market share was due to the registration of certain Chinese imports upon initiation of the anti-circumvention investigation concerning such imports ([40]), which ended the significant imports from China and allowed the Union industry to compensate for part of sales lost to Russian and Turkish imports.

4.5.2.4. Employment and productivity

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

([38]) Implementing Regulation (EU) 2020/1156.

([39]) See the analysis of EU-steel using sectors in Eurofer's 'Economic and steel market outlook 2021-2022, second quarter 2021 report' from May 2021 available at https://www.eurofer.eu/publications/economic-market-outlook/economic-and-steel-market-outlook-2021-2022-second-quarter/

([40]) Implementing Regulation (EU) 2019/1948.

Table 6

Employment and productivity

	2017	2018	2019	IP
Number of employees	8 389	8 731	9 751	9 238
Index (2017 = 100)	*100*	*104*	*116*	*110*
Productivity (tonnes/ employee)	1 301	1 245	1 103	1 061
Index (2017 = 100)	*100*	*96*	*85*	*82*

Source: Eurofer and sampled Union producers

(244) Over the period considered, the level of Union industry employment related to the production of CRS fluctuated and increased by 10 %. However, some fluctuations are theoretical as they are the result of the methodologies used to allocate the resources starting from a product family broader than CRS (namely all hot dipped galvanised products).

(245) The productivity of Union industry decreased by 18 % over the period concerned. This fall is explained by the drop in production volumes and the methodology used to establish the number of employees involved in CRS activities.

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

(246) All dumping margins were above the *de minimis* level and most of them significantly higher. The impact of the magnitude of the actual margins of dumping on the Union industry was substantial, given the volume and prices of imports from the countries concerned.

(247) Corrosion resistant steels have already been subject to anti-dumping investigations. The Commission found that, during the period 1 October 2015 to 30 September 2016, the situation of the Union industry was significantly affected by dumped imports of CRS originating in the People's Republic of China ('PRC'). Provisional anti-dumping measures on imports from PRC were imposed in August 2017 ([41]) and definitive measures were confirmed in February 2018 ([42]).

(248) In August 2020, an anti-circumvention investigation of the anti-dumping measures of imports originating in the PRC extended the measures to slightly modified certain corrosion resistant steels ([43]).

(249) The recovery of the Union industry from past dumping practices was thus ongoing when the present investigation started.

4.5.3. *Microeconomic indicators*

4.5.3.1. Prices and factors affecting prices

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

([41]) Commission Implementing Regulation (EU) 2017/1444 of 9 August 2017 imposing a provisional anti-dumping duty on imports of certain corrosion resistant steels originating in the People's Republic of China (C/2017/5512) (OJ L 207, 10.8.2017, p. 1).

([42]) Commission Implementing Regulation (EU) 2018/186 of 7 February 2018 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain corrosion resistant steels originating in the People's Republic of China (OJ L 34, 8.2.2018, p. 16).

([43]) Implementing Regulation (EU) 2020/1156.

Table 7

Sales prices and cost of production in the Union

	2017	2018	2019	IP
Average unit sales price on the free market (EUR/tonne)	662	674	616	584
Index (2017 = 100)	*100*	*102*	*93*	*88*
Unit cost of production (EUR/tonne)	622	664	638	578
Index (2017 = 100)	*100*	*107*	*103*	*93*

Source: Sampled Union producers

(251) After the imposition of anti-dumping measures against Chinese imports in 2017, the Union producers could increase their sales prices in the Union by 2 % from 2017 to 2018. However, subsequently, the unit sales price on the free market decreased by 14 % between 2018 and the investigation period, resulting in a decrease of overall 12 % over the period considered.

(252) The unit cost of production increased by 7 % between 2017 and 2018, but decreased after 2018, resulting in an overall decrease of 7 % over the period considered. The prices of some main raw materials decreased significantly in the second half of the period considered.

(253) In its comments to the final disclosure, CIB and several exporting producers pointed at the fact that, from 2019 to the investigation period, the drop in cost of production was more pronounced than the continuing fall in the Union industry's sales prices. However, the Commission observed that during the period considered, the Union industry decreased its prices by 12 % which is more than the drop of the cost of production (-7 % over the same period). Indeed, the Union industry's low prices including during the investigation period severely influenced the Union industry's financial results, as Table 10 below shows.

4.5.3.2. Labour costs

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

Table 8

Average labour costs per employee

	2017	2018	2019	IP
Average labour costs per employee (EUR)	32 916	33 372	33 007	31 075
Index (2017 = 100)	*100*	*101*	*100*	*94*

Source: Sampled Union producers

(255) The average labour costs per employee of the sampled Union producers fell by 6 % at the end of period considered.

4.5.3.3. Inventories

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

Table 9

Inventories

	2017	2018	2019	IP
Closing stocks (tonnes)	170 054	166 651	173 225	107 317
Index (2017 = 100)	*100*	*98*	*102*	*63*
Closing stocks as a percentage of production	5,9	5,3	6,0	3,9
Index (2017 = 100)	*100*	*90*	*101*	*65*

Source: Sampled Union producers

(257) During the period considered the level of closing stocks decreased by 37 %. The Union producers usually only keep a low level of stock themselves. Therefore, stocks are not considered to be an important injury indicator for this industry. This is also confirmed by analysing the evolution of the closing stocks as a percentage of production. As can be seen above, this indicator remained relatively stable between 2017 and 2019, although it then fell. In the investigation period, temporarily some producers produced less and reduced stocks in an effort to cope with their difficult financial situation in 2019 and 2020 (see Table 9).

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

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

Table 10

Profitability, cash flow, investments and return on investments

	2017	2018	2019	IP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	6,2	2,1	- 2,6	0,4
Index (2017 = 100)	*100*	*34*	*- 42*	*6*
Cash flow (EUR)	120 781 208	101 695 104	16 255 709	104 970 075
Index (2017 = 100)	*100*	*84*	*13*	*87*
Investments (EUR)	16 168 844	22 074 194	27 064 986	39 876 721
Index (2017 = 100)	*100*	*137*	*167*	*247*
Return on investments (%)	4,1	2,0	- 1,1	0,6
Index (2017 = 100)	*100*	*49*	*- 27*	*16*

Source: Sampled Union producers

(259) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. Overall profitability fell from 6,2 % in 2017 to 0,4 % in the investigation period. This drop coincides with the massive increase of import volumes from the countries concerned (see Table 2) at prices lower than the Union industry's prices (see Tables 3 and 7).

(260) After final disclosure, CIB and several exporting producers pointed at the positive development of the Union industry's profitability between 2019 and the investigation period (2020) and the upward trend in 2020 ([44]). Moreover, these parties underlined that the profitability in the investigation period could not be considered as representative due to the impact of the COVID-19 measures on production volumes at the beginning of 2020 and the drop in the market of automotive CRS, which is outside the product scope in this investigation but produced on the same equipment, in 2020.

(261) The Commission noted that, as mentioned in recital (24) above, the choice of the period considered was appropriate bearing in view of the date the complaint was lodged and the applicable rules and that the Commission's analysis is not made on a comparison of the base year with the investigation period but on trends throughout the period concerned. Fluctuations within a 12 months' period are not unusual. Moreover, the impact of the COVID-19 pandemic and of the evolution of demand in the automotive sector were fully considered in the causation analysis in Sections 5.2.7 and 5.2.4 of this Regulation.

(262) The net cash flow is the ability of the Union producers to self-finance their activities. The net cash flow evolved to a large extent in line with profitability and return on investment. The net cash flow remained rather stable in 2017 and 2018, shrank in 2019 following the losses made by Union producers that year, and then recovered to a level close to the one at the beginning of the period considered.

(263) Investments are the net book value of assets. The net investments showed a continuous increase over the period considered and more than doubled over the period considered. In general, the investments aimed at retaining the existing capacities, at improving quality and at making due replacements of necessary production assets. Some related to health, safety and environmental matters. Significant investments in the second half of the period considered concern one sampled Union producer and the upstream phase of its CRS production.

(264) CIB and several exporting producers claimed after final disclosure that the increase in investments demonstrates that the Union industry is not injured. The claim was rejected. The investments, even if increasing over the period considered, were overall at low levels and, as mentioned, they were generally limited to necessary expenses to keep operations ongoing. The Commission therefore did not consider that its positive development detracts from the injury found in other areas.

(265) The return on investments is the profit in percentage of the net book value of investments which reflects the level of depreciation of assets. It decreased continuously and became negative in 2019, when the sampled Union producers made losses globally. It became slightly positive during the investigation period but was far lower than at the beginning of the period considered.

(266) The poor financial performance of the Union industry over the period considered limited its ability to raise capital. The Union industry is capital intensive and requires substantial investments. The return on investment during the period considered was too low to cover for such substantial investments.

4.5.4. *Conclusion on injury*

(267) The evolution of the micro and macro indicators during the period considered showed that the financial situation for the Union industry deteriorated.

([44]) On the basis of data in the complaint, CIB calculated quarterly costs and prices of the EU industry and resulting profits on a quarterly basis as from Q3 2019 until the last quarter of the investigation period (t21.007886 and t22.003104).

(268) The increase of production capacity (+ 10 %) is theoretical and derives from the Union industry allocating more capacity to CRS production as a result of a lower demand of other products manufactured in the same lines as CRS. The same occurred to employment (+ 10 %). As to investments (+ 147 %), the bulk results from allocations of investments made in the upstream phase of CRS production. The increase of the Union industry's market share (+ 3,2 %) over the period considered is attributable to the initiation and outcome of the anti-circumvention investigation against China referred to in recital (202).

(269) The Union industry endeavoured to keep its CRS sales volumes to unrelated customers in the Union (-1 %) in a context of a decreasing consumption in the free market (-6 %). However, the Union industry could only do this and respond to the price pressure exerted by the increasing dumped imports from the countries concerned by lowering its sales prices. During the period considered, the Union industry decreased it prices more than the drop of the cost of production.

(270) Such low prices severely influenced the Union industry's results, which fell from of profit of 6,2 % in 2017 to losses in 2019 and basically no profit at the end of the period considered. Other financial indicators, such as cash flow and return on investment, followed a similar trend.

(271) On the basis of the above, the Commission concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. **CAUSATION**

(272) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the countries concerned caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the dumped imports from the countries concerned was not attributed to the dumped imports. These factors are: imports from other third countries, the export performance of the Union industry, the evolution of demand, captive use, self-inflicted injury, COVID-19 pandemic and hot-rolled coils prices.

5.1. **Effects of the dumped imports**

(273) Imports from the countries concerned increased by more than five-fold during the period considered, increasing from 196 643 tonnes in 2017 to over 1 million tonnes in the investigation period. Their market share grew from 2,2 % in 2017 to 13,1 % in the investigation period. These increasing imports were made at prices lower than those of the Union industry throughout the period considered, with the gap increasing over time. In particular, in 2019 and the investigation period, the years with the highest increases in the imports from the countries concerned, the Union industry's prices were depressed by the dumped imports. The price pressure exerted by imports from the countries concerned entailed that, in order to keep the loss in sales volumes limited, the Union industry had to decrease its sales prices more than to account for the drop in cost of production. As a result, profitability shrank from 6,2 % to 0,4 % and the financial indicators deteriorated.

(274) The Turkish association CIB contested any negative impact of imports from the countries concerned on the grounds that such imports did not set prices on the Union market and followed global market trends driven by fluctuating hot-rolled coils prices. The Commission rejected the claim. With an exponential increase in volumes, by roughly 1 million tons in such short period and accounting for a market share of 12,9 % in the investigation period, the very low prices of imports from the countries concerned did negatively affect prices that the Union industry could obtain on the free market.

(275) After final disclosure, CIB and several exporting producers reiterated this comment, pointing at market intelligence it had provided to the Commission, which would show that the price trends over the period considered were the same on the main global markets and for the Union industry in the Union.

(276) The Commission rejected this claim. First, Union sales prices of the Union industry decreased by 12 % over the period considered, whereas prices from the countries concerned decreased by 14 %. With prices of imports already well below Union industry prices in 2017, in as mentioned recital (274), the high volume of imports at very low prices from the countries concerned negatively affected the prices that the Union industry could obtain on the free market. Second, the Commission noted that some of the price trends in the provided data might be partly comparable, but that the eventual price level was not and that prices on each of these main markets are thus established on the basis of the specific dynamics and circumstances applicable to that market. The fact that the Commission had established that the product concerned is a commodity, as the parties concerned mentioned, does not undermine such conclusion.

(277) Several parties claimed that there was no correlation between imports from Russia and Turkey and the injury suffered by the Union industry. The Commission rejected the claim. The Commission acknowledged that in the first part of the period considered the Union industry was able to take advantage of relatively good market circumstances and the anti-dumping measures in place against Chinese imports. However between 2018 and 2019, when the year-on-year increase of imports from Russia and Turkey was the highest, the Union industry became lossmaking. The poor financial situation continued in the investigation period, after a further increase of imports from the countries concerned in absolute and relative terms. There was thus a clear correlation between the dumped imports and the injury suffered by the Union industry.

(278) After final disclosure CIB and several exporting producers submitted that between 2018 and 2019, when the year-on-year increase of imports from Russia and Turkey was the highest, the Union industry managed to increase its Union sales volumes by a bit over 200 000 tonnes.

(279) The Commission observed, however, that this increase was in absolute terms less than half of the increase of imports from the countries concerned and, in view of the prices prevailing in a market flooded by dumped imports, the financial situation of the Union industry deteriorated strongly as from 2018 and it became lossmaking in 2019.

(280) Several parties stated that Turkish and Russian imports never reached volumes that could be injurious since, inter alia, they were below the level of the residual quota of the steel safeguard quotas in the Union. The Commission rejected the claim. Anti-dumping measures address a different situation than safeguard measures. The steel safeguard measures do not prevent the imposition of anti-dumping measures within the free-of-safeguard duty quotas, which indeed, as mentioned in recital (214), are large enough to allow significant volumes of imports before the safeguard duty applies. In addition, the volume of imports from each of the countries concerned was not negligible within the meaning of Article 5(7) of the basic Regulation, as noted in recitals (213) to (214) above. Therefore, dumped imports from the countries concerned were significant enough to materially cause injury to the Union producers.

(281) Some parties called for the Commission to analyse data for 2021 and stated that the strong recovery of Union producers in that year evidenced that imports from the countries concerned were not the source of any material injury suffered by the Union industry. The Commission dismissed the claim in accordance with Article 6(1) of the basic Regulation, which establishes that information relating to periods subsequent to the investigation period should normally not be taken into account.

5.2. **Effects of other factors**

5.2.1. *Imports from third countries*

(282) The volume of imports from other third countries developed over the period considered as follows:

Table 11

Imports from third countries

Country		2017	2018	2019	IP
South Korea	Volume (tonnes)	143 873	180 993	209 248	248 890
	Index (2017 = 100)	*100*	*126*	*145*	*173*
	Market share (%)	1,6	2,2	2,3	2,9
	Index (2017 = 100)	*100*	*135*	*146*	*182*
	Average price (EUR/tonne)	703	729	685	626
	Index (2017 = 100)	*100*	*104*	*97*	*89*
Taiwan	Volume (tonnes)	69 919	87 803	140 334	184 158
	Index (2017 = 100)	*100*	*126*	*201*	*263*
	Market share (%)	0,8	1,0	1,6	2,2
	Index (2017 = 100)	*100*	*134*	*202*	*278*
	Average price (EUR/tonne)	624	675	656	624
	Index (2017 = 100)	*100*	*108*	*105*	*100*
India	Volume (tonnes)	232 677	126 651	194 355	169 040
	Index (2017 = 100)	*100*	*54*	*84*	*73*
	Market share (%)	2,6	1,5	2,2	2,0
	Index (2017 = 100)	*100*	*58*	*84*	*77*
	Average price (EUR/tonne)	683	689	639	573
	Index (2017 = 100)	*100*	*101*	*94*	*84*
Tunisia	Volume (tonnes)	0	29 901	82 426	85 436
	Index (2017 = 100)		*100*	*276*	*2 286*
	Market share (%)	0	0,4	0,9	1,0
	Index (2017 = 100)		*100*	*225*	*250*
	Average price (EUR/tonne)		648	600	570
	Index (2017 = 100)		*100*	*93*	*88*
Ukraine	Volume (tonnes)	19 501	30 165	25 434	19 140
	Index (2017 = 100)	*100*	*155*	*130*	*98*
	Market share (%)	0,2	0,4	0,3	0,2
	Index (2017 = 100)	*100*	*166*	*131*	*104*
	Average price (EUR/tonne)	635	645	593	538
	Index (2017 = 100)	100	102	93	85

China	Volume (tonnes) ([45])	1 557 192	903 775	668 707	245
	Index (2017 = 100)	*100*	*58*	*43*	*0*
	Market share (%)	17,3	10,8	7,5	0,0
	Index (2017 = 100)	*100*	*62*	*43*	*0*
	Average price (EUR/tonne)	597	478	860	896
	Index (2017 = 100)	*100*	*80*	*144*	*150*
Other third countries	Volume (tonnes)	113 906	120 947	77 991	132 678
	Index (2017 = 100)	*100*	*106*	*68*	*116*
	Market share (%)	1,3	1,4	0,9	1,6
	Index (2017 = 100)	*100*	*114*	*69*	*123*
	Average price (EUR/tonne)	658	691	687	599
	Index (2017 = 100)	*100*	*105*	*99*	*87*
Total of all third countries except the countries concerned	Volume (tonnes)	2 137 068	1 480 235	1 398 494	839 588
	Index (2017 = 100)	*100*	*69*	*65*	*39*
	Market share (%)	23,8	17,6	15,6	9,9
	Index (2017 = 100)	*100*	*74*	*66*	*41*
	Average price (EUR/tonne)	636	695	655	603
	Index (2017 = 100)	*100*	*109*	*103*	*95*

Source: Surveillance 2 (adjusted)

(283) During the period considered, the market share of imports from all other countries fluctuated. Overall, there was a decrease from 23,8 % in 2017 to 9,9 % in the investigation period, a trend which was partly influenced by the imposition of trade defence measures against Chinese CRS.

(284) In the investigation period, imports from other third countries amounted to 839 588 tonnes (72 % of which from South Korea, Taiwan and India). The bulk of these imports arrived in the Union at prices higher than import prices from the countries concerned.

(285) As noted in recitals (247) and (248) above, the Union industry was still affected by Chinese dumped imports during a share of the period considered. Some parties stated that there was no evidence that circumventing Chinese imports did not continue to enter the Union market in 2020, for which they requested the disclosure of TARIC data ([46]). Given the timing of the anti-circumvention proceeding against China and the registration that applied as from the initiation of that investigation, the Commission considered that Chinese imports did not cause the material injury suffered by the Union industry during the investigation period of the present proceeding. Most importantly, imports of CRS from the PRC were virtually inexistent during the investigation period, when the Commission found the Union industry continued to be materially injured.

([45]) Based on volumes from Surveillance 2 database only for 2020.

([46]) On 4 February 2022, the Commission provided information on aggregated import volumes and values per exporting country basis for the calendar year 2020 for the product under investigation via the note to the file t22.001509.

(286) After final disclosure, CIB and several exporting producers submitted that the Union industry's decrease in profitability in 2018 and 2019 was because the profitability that was achieved in 2017 was mainly due to the imposition of anti-dumping duties on Chinese imports of CRS and that the drop in profitability from that 2017 level in 2018 and 2019 was caused by the imports of circumvented Chinese CRS, a claim which was also made by GOT.

(287) First, with regard to the Union industry's profitability in 2017, the Commission noted that in 2017 the profitability was above the minimum target profit of 6 % which suggested that (i) after a period of unfair competition from China resulting in material injury to the Union industry, the Union industry's profitability was not, in that year, materially affected by the Chinese dumping in the Union market, most likely as a consequence of the initiation of an anti-dumping investigation against Chinese CRS in December 2016; and (ii) the volume of imports from the countries concerned was not yet as such that it materially affected the profitability level of the Union industry. The absence of unfair trade distortions does however in no way mean that the profitability was inflated, as the parties concerned seemed to suggest, even more as the level was at a modest 6,2 %. With regard to the impact of the circumvented imports from China in 2018 and 2019, the Commission did not 'simply disregard' it, as CIB and several exporting producers claimed, but it had acknowledged that the Union industry was still affected by it. However, contrary to the trend of imports from the countries concerned, due to the anti-circumvention investigation, those imports decreased strongly in volume in 2018 and 2019, when they were already at a level below that of imports from the countries concerned. There were virtually no more imports of CRS from China in the investigation period.

(288) The Commission therefore concluded that the impact of imports from other third countries did not attenuate the causal link between dumped imports from Russia and Turkey and the material injury suffered by the Union industry.

5.2.2. *Export performance of the Union industry*

(289) The volume and prices of exports of the Union industry developed over the period considered as follows:

Table 12

Export performance of the sampled Union producers

	2017	2018	2019	IP
Export volume (tonnes)	708 037	657 417	812 594	748 774
Index (2017 = 100)	*100*	*93*	*115*	*106*
Average price (EUR/tonne)	608	672	600	589
Index (2017 = 100)	*100*	*110*	*99*	*97*

Source: Eurofer (volumes), Sampled Union producers (unit price)

(290) The Union industry increased its export volume by 6 % over the period considered. The additional export sales (of around 40 000 tonnes in the investigation period as compared to the beginning of the period considered) are limited compared to the loss of over 93 000 tonnes of sales in the Union market during the same period. Except for the higher prices in 2018, Union producers enjoyed rather stable export prices over the same period. The products which are exported by the Union industry are generally cheaper CRS and they therefore have significantly lower average prices than the products sold in the Union. The export sales of the Union industry could for a very small part compensate the negative developments both in terms of volumes and prices on the Union market by diluting fixed costs and other costs.

(291) Some exporting producers attributed any loss of market share of Union producers in the CRS Union market to the increased focus of the Union industry on export markets, which, for some parties, were non-profitable. The Commission dismissed the claim. The volumes exported by Union producers were limited as compared to total Union sales volumes, representing around 12 % of their total sales volume. As noted in recital (290), in absolute terms the additional export sales were limited, while prices were rather stable and in line with the product mix.

(292) The Commission concluded that the impact of the export performance of the Union industry on the injury suffered by Union producers was, if any, marginal.

5.2.3. *Evolution of demand in general*

(293) As shown in Section 4.3, free market consumption decreased during the period considered. On that basis, the Commission concluded that the evolution of free market consumption could have contributed to the injury suffered by the Union industry.

(294) After final disclosure, GOR claimed that the decrease of consumption was the main reason for the decrease in the Union industry's production. However, the Commission reiterated that decrease of consumption was not found to attenuate the causal link between dumped imports from Russia and Turkey and the injurious situation of the Union industry in the investigation period, in view of the increase in volumes and market shares of imports from the countries concerned and their effect on the Union industry's prices. Moreover, whereas consumption decreased by 467 000 tonnes over the period considered, imports from the countries concerned increased by almost the double.

5.2.4. *Evolution of demand in the automotive sector*

(295) Some parties claimed that the Union industry was performing badly due to problems and lower demand in the automotive sector. The claim was not confirmed by the current investigation. To the contrary, the investigation showed that Union producers were supplying CRS to various industry sectors that are not in the automotive sector. Given that hot dipped galvanised products typically used in the automotive sector fall outside the scope of the investigation if a part of the Union industry was negatively affected by a downturn in the automotive industry, this derived from products that are not a like product and hence not accounted for in the current analysis. The claim was rejected.

(296) After final disclosure, CIB and several exporting producers submitted that the lower demand in that sector, which is produced on the same production lines, would have increased the fixed cost and thus have negatively affected the profitability of the Union industry.

(297) The Commission acknowledged that certain Union producers manufacture, on the CRS product lines, also products used in the automotive sector. However, it clarified that the analysis in the current investigation, including the cost analysis, is made only on the product group covered by it. The micro-indicators have been collected at the level of the sampled producers only. The verified production costs of these parties, and in particular their fixed costs, have not been subject to such reallocation. Indeed, this reallocation of production capacity only applied to a small number of non-sampled producers. Therefore, none of the micro-indicators and as mentioned in the disclosure document and also in this regulation, only 2 macro-indicators, namely production capacity (Table 4) and employment (Table 6), were affected by the development in product groups other than CRS.

(298) The claim was therefore rejected.

5.2.5. *Captive use*

(299) Union producers use the product under investigation for the production of organic coated steel.

(300) As shown in Table 1 above, captive consumption fell by 13 % over the period considered. The drop took place mainly in the second part of the period considered as a consequence of the negative growth in some steel-using sectors. Nevertheless, captive use remained rather stable in relative terms, i.e., as a percentage of Union production.

(301) The Commission concluded that the evolution of captive consumption on the injury suffered by the Union industry, if any, was marginal.

5.2.6. *Self-inflicted injury*

(302) Some parties pointed at ill-timed investments for the production of hot dipped galvanised products for the automotive sector as a source of the injury suffered by Union producers. As discussed in recital (295), the claim concerns investments on a product that is not covered by this investigation. The Commission thus dismissed the claim.

(303) Some parties pointed at ill-timed investments leading to a production capacity much higher than consumption in the Union as a source of the injury suffered by Union producers. The Commission dismissed the claim. As noted in recital (263), Union producers did not invest in order to increase CRS production capacities as such. Also, recital (235) notes that the production capacity increases for CRS were theoretical and therefore were not considered an indication of material injury in this particular case. This claim was reiterated after final disclosure, however without any new evidence or reasoning and therefore was rejected.

(304) Some parties pointed at self-inflicted injury within the Union industry because SSCs related to Union producers import of the product under investigation. The claim was unsubstantiated and, thus, rejected. It is noted that many Union producers do not have related steel service centres with importing functions. The bulk of Union producers in the sample do not have related steel service centres of the kind. Imports by steel service centres related to Union producers, if any, were not found to attenuate the causal link between dumped imports from Russia and Turkey and the injurious situation of the Union industry in the investigation period, in view of the increase in volumes of imports from the countries concerned, their effect on the Union Industry's prices and the impact of other factors analysed in this section.

5.2.7. *COVID-19 pandemic*

(305) Some parties attributed injury to COVID-mandated shutdowns in the Union which would have increased fixed costs of the Union steelmakers in view of lower production volumes. The claim, which was reiterated after final disclosure, was dismissed. COVID-mandated shutdowns in the 14 Member States where Union producers are located varied in terms of periods and scope. Indeed, there were Union steel producers barely affected by shutdowns, which served essential businesses during the pandemic and which overall output in 2020 did not vary significantly as compared to 2019 ([47]).

(306) Those parties considered that the reason why the Union industry lost market shares was the lower volumes available for sale as a result of lower capacity utilisation rates and reduced production due to COVID-19 pandemic plant shutdowns or idled capacities. The Commission disagreed. In a context of falling consumption (see Table 1), dumped imports gained more market shares than the Union industry, which, overall, was in a position to serve the market further.

(307) Several parties stated that Turkish and Russian imports filled in a gap in the Union market resulting from COVID-19 mandated production shutdowns in the Union, causing shortages. The Commission rejected the claim. The Commission noted that most of the increase of imports from the countries concerned, in terms of volumes as well as market shares, took place in 2018 and 2019, i.e. before the COVID-19 pandemic. Furthermore, the impact of COVID-19 mandated production shutdowns was overall limited as explained in recital (305) and varied amongst Union producers. In any case, COVID-19 related shutdowns could never justify dumping practices by the countries concerned. These comments were reiterated after final disclosure, however without any new evidence or reasoning and therefore were rejected.

(308) CIB and several exporting producers also submitted that the quarterly analysis it had made of prices and costs in the complaint (see recital (260)) would demonstrate that, in particular in the first quarter of 2020, the Union industry was severely lossmaking. This would corroborate the claim that mandatory plant shutdowns in the Union were the cause of the poor profitability in the investigation period (rather than the dumped imports).

([47]) For an example, see the non-confidential files in t21.005684 (Marcegaglia Carbon Steel Spa).

(309) The Commission noted that the findings of these parties' own analysis of these specific complaint data already showed a dramatic deterioration of profit between the third and fourth quarter of 2019 (from 1,22 % to -1,96 %), i. e. before the COVID-19 pandemic, and also a very pronounced improvement of the Union industry's profitability in the second quarter of 2020 to a level (-0,45 %) comparable to that supposedly achieved in the third quarter of 2020 – whereas the parties highlighted that the shutdowns started from March 2020 ([48]). It considered that both the strong decrease of profitability in the last quarter of 2019, i.e. prior to any mandatory plant shutdown due to the COVID-19 pandemic, and the strong profitability improvement in the second quarter of 2020 are at odds with the claim that this analysis would corroborate the claim on the impact of the mandatory shutdowns. The claim was therefore not found to be convincingly substantiated.

(310) GOR stated that certain COVID-related findings summarised in a study were the cause of the deterioration of the Union industry in the investigation period ([49]). Those findings relate to the slow recovery of the euro area as compared to China, the impact of short-term supply shortages on manufacturing industries and the differences amongst sector as regards rebounding after COVID-19. The claim is dismissed on the grounds explained in recital (306) and the nature of the study, which focuses on sectors unrelated to CRS.

5.2.8. *Hot-rolled coils prices*

(311) Some parties stated that Union producers suffered from a 'cost-price squeeze' due to the price fluctuations of hot-rolled coils, which became more expensive in the second part of 2020 according to market intelligence. Most Union producers are vertically integrated and the price of hot-rolled coils in the free market had no impact on their cost of production of CRS. The Commission dismissed the claim.

5.2.9. *Competitive state of the Union industry*

(312) After final disclosure, GOR claimed that the increase in market shares achieved by the Republic of Korea and Taiwan showed that the Union industry was not sufficiently competitive.

(313) The Commission noted that an increased presence of imports is not indicative of the competitive state of a domestic industry. It also noted that the absolute volume of imports from these two countries and, even more so, their increase over the period considered was limited in comparison with that of the countries concerned. The claim was therefore rejected.

5.3. **Conclusion on causation**

(314) In light of the above considerations, the Commission established a causal link between the injury suffered by the Union industry and the dumped imports from Russia and Turkey. The increase of dumped imports from the countries concerned coincided with a deterioration of the Union industry's situation. Low priced imports from Turkey and Russia increased exponentially and prevented the Union industry from increasing sales prices and volumes following the anti-circumvention investigation concerning Chinese imports. In terms of prices, the dumped imports from the countries concerned continuously undercut those of the Union industry sales prices in the Union market, and in any event created substantial price pressure preventing the Union industry from setting prices at sustainable levels necessary to achieve reasonable profit margins.

(315) The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports. It found that factors such as the development of captive use and certain investments did not contribute to the injury suffered. The effect of factors such as imports from other third countries, exports by Union producers, the evolution of demand, COVID-19 pandemic and hot-rolled coils prices was limited overall.

([48]) CIB submission t21.006224, table under point 34.

([49]) The findings can be found in the study 'Impacts of the COVID-19 pandemic on EU industries', requested by the European Parliament's committee on Industry, Research and Energy (ITRE) and available at https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662903/IPOL_STU(2021)662903_EN.pdf

(316) On the basis of the above, the Commission concluded that the dumped imports from the countries concerned caused material injury to the Union industry and that the other factors, considered individually or collectively, did not attenuate the causal link between the dumped imports and the material injury.

6. **LEVEL OF MEASURES**

(317) To determine the level of the measures, the Commission examined whether a duty lower than the margin of dumping would be sufficient to remove the injury caused by dumped imports to the Union industry.

6.1. **Injury margin**

(318) The injury would be removed if the Union industry were able to obtain a target profit by selling at a target price in the sense of Articles 7(2c) and 7(2d) of the basic regulation.

(319) In accordance with Article 7(2c) of the basic Regulation, for establishing the target profit, the Commission took into account the following factors: the level of profitability before the increase of imports from the country under investigation, the level of profitability needed to cover full costs and investments, research and development (R & D) and innovation, and the level of profitability to be expected under normal conditions of competition. Such profit margin should not be lower than 6 %.

(320) The complainant stated that the target profit should be at least the same as in the previous (China) CRS case (7,4 %). A Union producer proposed 15 %. Some parties claimed that the level of profit put forth by the complainant was too high.

(321) The Commission found that in 2017 the Union industry was able to achieve a 6,2 % profit on average. Although anti-dumping measures had not been imposed on imports of CRS from the PRC yet, the volume of Chinese dumped imports had already decreased in 2017 as a result of the initiation of the anti-dumping investigation in December 2016. In addition, in that year the level of imports from Russia and Turkey was still relatively low (see Table 2).

(322) The Commission also assessed the years prior to the period considered but those were not found appropriate because of the influx of dumped imports from China affecting the Union industry. The Commission took note of the target profit used in the previous (China) CRS case, which however dates from 2008.

(323) Therefore, the Commission decided to use the average weighted profit of 6,2 % achieved in 2017 was the most appropriate basis for the target profit calculation in the present case.

(324) In accordance with Article 7(2c) of the basic Regulation, two Union producers provided evidence that their level of investments, research and development (R & D) and innovation during the period considered would have been higher under normal conditions of competition. Based on the companies' documentary evidence, which could be reconciled with the companies' reporting tools and accounting systems, the Commission accepted the claims. To reflect this in the target profit, the Commission calculated the difference between investments, R & D and innovation ('IRI') expenses under normal conditions of competition as provided by the Union Industry and verified by the Commission with actual IRI expenses over the period considered. Such differences, expressed as a percentage of turnover, were 0,02 % and 0,35 %. Such percentages were added to the basic profit of 6,2 %, leading to a final target profit ranging between 6,20 % and 6,55 %.

(325) In accordance with Article 7(2d) of the basic Regulation, as a final step, the Commission assessed the future costs resulting from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia that the Union industry will incur during the period of the application of the measure pursuant to Article 11(2). Based on the evidence available (based on the companies' accounting systems, their reporting tools and forecasts), the Commission established an additional cost in a range between 3,05 and 38,78 euros per tonne.

(326) These costs comprised the additional future costs to ensure compliance with the EU Emissions Trading System (EU ETS). The EU ETS is a cornerstone of the EU's policy to comply with Multilateral Environmental Agreements. Such additional costs were calculated on the basis of the estimated EU Allowances (EUAs) which will have to be purchased during the period of the application of the measures (2022 to 2026). The additional costs also took account of indirect CO_2 costs stemming from an increase in electricity prices over the period 2022 to 2026 linked to the EU ETS and the forecasted prices of EUAs.

(327) On this basis, the Commission calculated a non-injurious price for the like product of the Union industry by applying the target profit margin (see recital (324)) to the cost of production of the sampled Union producers during the investigation period and then adding the adjustments under Article 7(2d) on a type-by-type basis.

(328) After final disclosure, CIB and several exporting producers claimed that the production costs used as a basis to calculate a non-injurious price would be inflated due to reallocation of production lines for certain producers as referred to in recital (235). This claim was unsubstantiated. In any event, as mentioned in recital (295), the cost data used in this investigation, including for calculating a non-injurious Union industry price, only concern the costs associated with the production of the like product and the micro-indicators have been collected and used at the level of the sampled producers only. The Commission confirmed that the reallocation referred to in recitals (235) and (244) concerns a small number of non-sampled producers and it therefore only affects the macro-indicators in question as duly explained. The claim is therefore rejected.

(329) The Commission then determined the injury margin level on the basis of a comparison of the weighted average import price of the Russian exporting producers and the sampled cooperating exporting producers in Turkey, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the sampled Union producers on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.

(330) After final disclosure, Severstal contested the adjustments for SG&A and profit made to the sales prices of its related traders in the Union by analogy to Article 2(9), for the same reasons as mentioned in recital (220).

(331) As noted in recital (221), the Court of Justice has confirmed the legality of using Article 2(9) by analogy to establish the export price for the purpose of calculating undercutting and underselling ([50]). Therefore, this claim was dismissed.

(332) The injury elimination level for 'other cooperating companies' and for 'all other companies' is defined in the same manner as the dumping margin for these companies (see recitals (138) and (182)).

6.2. **Conclusion on the level of measures**

(333) Following the above assessment, definitive anti-dumping duties should be set as below in accordance with Article 9(4) of the basic Regulation:

Country	Company	Dumping margin (%)	Injury margin (%)	Definitive anti-dumping duty
Russia	PJSC Magnitogorsk Iron and Steel Works	36,6 %	37,4 %	36,6 %
	Novolipetsk Steel	12,7 %	10,3 %	10,3 %

([50]) See also judgment of 22 September 2021, T-753/16, *PAO Severstal*, EU:T:2021:612, para. 272.

	PAO Severstal	39,8 %	31,3 %	31,3 %
	All other companies	39,8 %	37,4 %	37,4 %
Turkey	MMK Turkey	10,5 %	13,8 %	10,5 %
	Tatmetal	2,4 %	10,1 %	2,4 %
	Tezcan	11,0 %	13,7 %	11,0 %
	Other cooperating companies	8,0 %	12,5 %	8,0 %
	All other companies	11,0 %	13,8 %	11,0 %

7. **UNION INTEREST**

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

7.1. **Interest of the Union industry**

(335) The Union industry is composed of 20 producers in 14 Member States and employs 9 237 people. The majority of Union producers supported the complaint. No producer opposed the initiation of the investigation.

(336) As concluded in Sections 4.5.4 and 5.3, the situation of the whole Union industry deteriorated as a result of dumped imports from Russia and Turkey.

(337) Anti-dumping measures against imports from Russia and Turkey are expected to restore fair trade conditions on the Union market and enable the Union industry to reach sustainable profit levels for such a capital-intensive industry. As a result, Union producers are expected to recover from the injurious situation, further invest and fulfil their commitments, including social and environmental ones.

(338) The non-imposition of measures would entail heavy losses within the Union industry, endanger its viability and possibly trigger the closure of production facilities and dismissals. The absence of measures might lead to dependency on supplies from third countries.

(339) The exporting producer Tezcan stated that steel imports are already controlled via steel safeguard measures and will also be controlled by the CBAM ([51]) monitoring starting in 2023. Other parties, including GOT, echoed the protective measures Union producers benefit from already. All these claims are dismissed: the current anti-dumping investigation addresses a distinct issue not yet covered by any existing measure.

(340) The Commission therefore concluded that the imposition of measures was in the interest of the Union industry.

7.2. **Interest of unrelated importers**

(341) No importers cooperated with the investigation.

([51]) A Carbon Border Adjustment Mechanism ('CBAM') seeks to impose new obligations on foreign producers exporting certain products (including steel) to the EU as of 2023.

(342) The Turkish association CIB pointed at shortages of supply that could negatively affect importers in the Union. The Commission found the claim unjustified because, apart from the abundant Union production, importers and supply chains can avail themselves from imports from numerous countries. In addition, the imposition of anti-dumping measures does not mean that imports from the countries concerned are banned. The level of the measures should not prevent Turkish and Russian steelmakers from selling their CRS in the Union and to the Union importers at fair prices. The claim was dismissed.

(343) CIB also submitted that measures would negatively affect importers in the Union because importers were still struggling to recover from the COVID-19 pandemic. It did not present any evidence to support the claim and therefore it was dismissed. The lack of cooperation of importers did not allow the Commission to analyse whether importers were performing badly or unable to pass on price increases, if any.

7.3. **Interest of users**

(344) No users cooperated with the investigation.

(345) The European Association of Automobile Manufacturers made a submission requesting car manufacturers in the Union to be exempted from any measures that would negatively affect their competitiveness. The Commission found that the product covered by this investigation is virtually not used by the car industry and therefore any impact that measures would have in that sector could only be immaterial.

(346) Parties representing the interests of exporting producers pointed at shortages of supply that could negatively affect users in the Union. The parties alleged that Union producers were struggling with the restart of their operations and unable to supply a growing demand from customers, particularly as regards thin materials, narrow materials, galvalume materials and coils lighter than 10 tonnes, which Union producers would traditionally be unwilling to supply. The claim was unsubstantiated and dismissed on the grounds explained in recital (342) above.

(347) The Turkish association CIB called for no measures on the grounds that in the 2007 investigation on synthetic staple fibres of polyesters ([52]) the Commission found measures not to be in the Union interest, inter alia, because of the low profits of users and their difficulties to pass on price increases and supply problems. The claim was dismissed. The part of the claim relating to supply problems is dismissed on the grounds explained in recital (342) above.

(348) After final disclosure, CIB and several exporting producers submitted that using alternative sources of supply, which as mentioned in that recital are widely available, would entail increased CRS purchase prices for users. The Commission recalled that the objective of anti-dumping measures is to eliminate unfairly priced imports from the Union market in order to re-establish a level playing field for all market participants. The same parties also questioned the availability of the alternative sources mentioned in recital (342) on the account of US importers being the highest bidders at a global level. The Commission noted that in the investigation period imports from countries other than the countries concerned had a market share of 9,9 %, in spite of the unfair competition in the Union market from the countries concerned which had a market share of 12,9 %. On that basis, the claim was rejected.

(349) As mentioned, users did not reply to the users' questionnaire and therefore, no information regarding profitability of users could be collected from them. In Annex U-1 to the complaint, the complainants provided a calculation demonstrating that, for a construction application, CRS represented a negligible part of the cost of the final product. According to Eurofer, the same would be true for other downstream segments ([53]).

([52]) Commission Decision 2007/430/EC of 19 June 2007 terminating the anti-dumping proceeding concerning imports of synthetic staple fibres of polyesters (PSF) originating in Malaysia and Taiwan and releasing the amounts secured by way of the provisional duties imposed (OJ L 160, 21.6.2007, p. 30).

([53]) See Eurofer's submission in t21.007474, inter alia.

(350) After final disclosure, CIB and several exporting producers submitted that this information was inadequate but they failed to provide a meaningful alternative cost impact assessment for users. It also submitted, as did GOR, that after the investigation period prices of CRS would have surged and that these most recent increase in prices would 'necessarily' heavily impact users.

(351) The Commission recalled that in the Union interest analysis, the relevant impact assessment for the users should be the assessment of the impact, if any, of the anti-dumping duty on them – not the impact of price hikes, if any, for other reasons. Users did not cooperate with the investigation and therefore the Commission was not in a position to analyse the impact of developments after the investigation period on the situation of users. On that basis, the claim was rejected.

7.4. **Other factors**

(352) Some parties stated that Union steelmakers were consistently trying to keep their oligopoly in the Union market and remove international competition. They noted that Union producers served already a significant share of the free market, while such a percentage did not include captive volumes, and feared a monopoly.

(353) The Commission found the oligopoly claim unjustified, since, as stated in recital (335), there are 20 known producers belonging to more than 10 different groups and significant imports from third countries. In the absence of evidence of uncompetitive practices, the market share the Union industry currently holds is irrelevant to support these claims of oligopoly, let alone a monopoly. The Commission refers to its recent Staff Working Document ([54]), where it noted that '[i]n the recent consolidation wave, merger control enforcement contributed to keeping vibrant competition in the European steel markets to the benefit of the many downstream industries that use steel, rely on affordable materials to compete globally and employ millions of Europeans. By prohibiting anti-competitive mergers (e.g. Tata Steel/ThyssenKrupp) or approving mergers subject to conditions, such as structural divestitures (e. g. ArcelorMittal/Ilva), merger enforcement ensured that European steel customers are not left with less choice, higher prices, or less innovation.'. Therefore, the claim was rejected.

7.5. **Conclusion on Union interest**

(354) On the basis of the above, the Commission concluded that there were no compelling reasons that it was not in the Union interest to impose measures on imports of CRS originating in Russia and Turkey.

8. **DEFINITIVE ANTI-DUMPING MEASURES**

(355) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports of the product concerned. Anti-dumping duties should be set in accordance with the lesser duty rule.

(356) The Commission noted that after the initiation of the investigation, due to the military aggression by the Russian Federation against Ukraine, the EU imposed successive packages of sanctions against Russia which also affected steel products and/or the steel companies producing and exporting the product under investigation after the investigation period. The latest package of sanctions covering the product under investigation and/or the exporting producers contains an import ban of CRS. This ban entered into force on 16 March 2022 ([55]). Given that these sanctions are linked to the military aggression and the underlying geopolitical situation, their scope, modulation, and/or duration

([54]) Commission's Staff Working Document 'Towards Competitive and Clean European Steel', SWD(2021) 353 final, 5.5.2021, p. 4-5.

([55]) Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1) as amended by Regulation (EU) 2022/428 (OJ L 87 I , 15.3.2022, p. 13). Please refer to https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R0833-20220413 for the consolidated version of Regulation (EU) No 833/2014, containing all amendments relating to the package of sanctions.

are unpredictable. Furthermore, anti-dumping measures have a lifetime of five years. Considering the abovementioned uncertainties and the fact that the Council may further amend the precise scope and duration of sanctions at any moment, the Commission found that they cannot have a bearing in its conclusions in this proceeding.

(357) On the basis of the above, the definitive anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Country	Company	Definitive anti-dumping duty
Russia	PJSC Magnitogorsk Iron and Steel Works	36,6 %
	Novolipetsk Steel	10,3 %
	PAO Severstal	31,3 %
	All other companies	37,4 %
Turkey	MMK Metalurji Sanayi Ticaret ve Liman İşletmeciliği A.Ş.	10,5 %
	TatMetal Çelik Sanayi ve Ticaret A.Ş	2,4 %
	Tezcan Galvanizli Yapi Elemanlari Sanayi ve Ticaret A.Ş.	11,0 %
	Other cooperating companies	8,0 %
	All other companies	11,0 %

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

(359) A company, among these specifically mentioned in this Regulation, may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ([56]). The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a regulation about the change of name will be published in the *Official Journal of the European Union*.

(360) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies should apply not only to the non-cooperating exporting producers in this investigation, but to the producers which did not have exports to the Union during the investigation period.

(361) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.

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

(362) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this regulation, the customs authorities of Member States must carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the lower rate of duty is justified, in compliance with customs law.

(363) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.

9. **FINAL PROVISIONS**

(364) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([57]), 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.

(365) By Commission Implementing Regulation (EU) 2019/159 ([58]), the Commission imposed a safeguard measure with respect to certain steel products for a period of three years. By Commission Implementing Regulation (EU) 2021/1029 ([59]), the safeguard measure was prolonged until 30 June 2024. The product concerned is one of the product categories covered by the safeguard measure. Consequently, once the tariff quotas established under the safeguard measure are exceeded, both the above-quota tariff duty and the anti-dumping duty would become payable on the same imports. As such cumulation of anti-dumping measures with safeguard measures may lead to an effect on trade greater than desirable, the Commission decided to prevent the concurrent application of the anti-dumping duty with the above-quota tariff duty for the product concerned for the duration of the imposition of the safeguard duty.

(366) This means that where the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 becomes applicable to the product concerned and exceeds the level of the anti-dumping duties pursuant to this Regulation, only the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 shall be collected. During the period of concurrent application of the safeguard and anti-dumping duties, the collection of the duties imposed pursuant to this Regulation shall be suspended. Where the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 becomes applicable to the product concerned and is set at a level lower than the level of the anti-dumping duties in this Regulation, the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 shall be collected in addition to the difference between that duty and the higher anti-dumping duties imposed pursuant to this Regulation. The part of the amount of anti-dumping duties not collected shall be suspended.

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

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([57]) 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).

([58]) Commission Implementing Regulation (EU) 2019/159 of 31 January 2019 imposing definitive safeguard measures against imports of certain steel products (OJ L 31, 1.2.2019, p. 27).

([59]) Commission Implementing Regulation (EU) 2021/1029 of 24 June 2021 amending Commission Implementing Regulation (EU) 2019/159 to prolong the safeguard measure on imports of certain steel products (OJ L 225 I, 25.6.2021, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of flat-rolled products of iron or alloy steel or non-alloy steel; plated or coated by hot dip galvanisation with zinc and/or aluminium and/or magnesium, whether or not alloyed with silicon; chemically passivated; with or without any additional surface treatment such as oiling or sealing; containing by weight: not more than 0,5 % of carbon, not more than 1,1 % of aluminium, not more than 0,12 % of niobium, not more than 0,17 % of titanium and not more than 0,15 % of vanadium; presented in coils, cut-to-length sheets and narrow strips originating in Russia and Turkey, currently falling under CN codes ex 7210 41 00, ex 7210 49 00, ex 7210 61 00, ex 7210 69 00, ex 7210 90 80, ex 7212 30 00, ex 7212 50 61, ex 7212 50 69, ex 7212 50 90, ex 7225 92 00, ex 7225 99 00, ex 7226 99 30, ex 7226 99 70 (TARIC codes: 7210 41 00 20, 7210 41 00 30, 7210 49 00 20, 7210 49 00 30, 7210 61 00 20, 7210 61 00 30, 7210 69 00 20, 7210 69 00 30, 7210 90 80 92, 7212 30 00 20, 7212 30 00 30, 7212 50 61 20, 7212 50 61 30, 7212 50 69 20, 7212 50 69 30, 7212 50 90 14, 7212 50 90 92, 7225 92 00 20, 7225 92 00 30, 7225 99 00 22, 7225 99 00 23, 7225 99 00 41, 7225 99 00 92, 7225 99 00 93, 7226 99 30 10, 7226 99 30 30, 7226 99 70 13, 7226 99 70 93, 7226 99 70 94).

The following products are excluded:

(i) of stainless steel, of silicon-electrical steel, and of high-speed steel;

(ii) not further worked than hot-rolled or cold-rolled (cold-reduced).

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

Country	Company	Definitive anti-dumping duty	TARIC additional code
Russia	PJSC Magnitogorsk Iron and Steel Works	36,6 %	C217
	Novolipetsk Steel	10,3 %	C216
	PAO Severstal	31,3 %	C218
	All other companies	37,4 %	C999
Turkey	MMK Metalurji Sanayi Ticaret ve Liman İşletmeciliği A.Ş.	10,5 %	C865
	TatMetal Çelik Sanayi ve Ticaret A.Ş	2,4 %	C866
	Tezcan Galvanizli Yapi Elemanlari Sanayi ve Ticaret A.Ş.	11,0 %	C867
	Other cooperating companies listed in Annex	8,0 %	
	All other companies	11,0 %	C999

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

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

Article 2

1. Where the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 becomes applicable to flat-rolled products of iron or alloy steel or non-alloy steel; plated or coated by hot dip galvanisation with zinc and/or aluminium and/or magnesium, whether or not alloyed with silicon; chemically passivated; with or without any additional surface treatment such as oiling or sealing; containing by weight: not more than 0,5 % of carbon, not more than 1,1 % of aluminium, not more than 0,12 % of niobium, not more than 0,17 % of titanium and not more than 0,15 % of vanadium; presented in coils, cut-to-length sheets and narrow strips, referred to in Article 1(1), and exceeds the equivalent ad valorem level of the anti-dumping duty set out in Article 1(2), only the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 shall be collected.

2. During the period of application of paragraph 1, the collection of the duties imposed pursuant to this Regulation shall be suspended.

3. Where the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 becomes applicable to flat-rolled products of iron or alloy steel or non-alloy steel; plated or coated by hot dip galvanisation with zinc and/or aluminium and/or magnesium, whether or not alloyed with silicon; chemically passivated; with or without any additional surface treatment such as oiling or sealing; containing by weight: not more than 0,5 % of carbon, not more than 1,1 % of aluminium, not more than 0,12 % of niobium, not more than 0,17 % of titanium and not more than 0,15 % of vanadium; presented in coils, cut-to-length sheets and narrow strips, referred to in Article 1(1), and is set at a level lower than the anti-dumping duty set out in Article 1(2), the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 shall be collected in addition to the difference between that duty and the higher anti-dumping duty set out in Article 1(2).

4. The part of the amount of anti-dumping duty not collected pursuant to paragraph 3 shall be suspended.

5. The suspensions referred to in paragraphs 2 and 4 shall be limited in time to the period of application of the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159.

Article 3

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

(a) it did not export the goods described in Article 1(1) originating in Turkey during the period of investigation (1 January 2020 to 31 December 2020);

(b) it is not related to an exporter or producer subject to the measures imposed by this Regulation; and

(c) it has either actually exported the product concerned or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the period of investigation.

Article 4

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

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

Done at Brussels, 11 August 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Turkish cooperating exporting producers not sampled

Country	Name	TARIC additional code
Turkey	Atakaş Çelik Sanayi Ve Ticaret A.Ş.	C868
Turkey	Borçelik Çelik Sanayii Ticaret A.Ş.	C606
Turkey	Ereğli Demir ve Çelik Fabrikaları T.A.Ş.	C869
Turkey	Erdemir Çelik Servis Merkezi San. ve T. A.Ş.	C870
Turkey	Tosyalı Toyo Çelik A.Ş.	C871
Turkey	Yildizdemir Çelik San.A.Ş.	C872