

COMMISSION IMPLEMENTING REGULATION (EU) 2022/802**of 20 May 2022****imposing a provisional anti-dumping duty on imports of electrolytic chromium coated steel products
originating in the People's Republic of China and Brazil**

THE EUROPEAN COMMISSION,

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

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

After consulting the Member States,

Whereas:

1. PROCEDURE**1.1. Initiation**

- (1) On 24 September 2021, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of electrolytic chromium coated steel ('ECCS') originating in the People's Republic of China ('the PRC' or 'China') and Brazil (together 'the countries concerned') on the basis of Article 5 of Regulation (EU) 2016/1036 of the European Parliament and of the Council ('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 13 August 2021 by the European Steel Association ('EUROFER') ('the complainant'). The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.
- (3) The complaint was made on behalf of the following Union producers: ArcelorMittal Atlantique et Lorraine (France), ArcelorMittal Etxebarri S.A. (Spain) and ThyssenKrupp Rasselstein GmbH (Germany), allegedly representing 100 % of the Union industry. In the course of the investigation, it came to the Commission's attention the existence of an additional Union producer of ECCS, namely Acciaierie d'Italia. Since the complainants nonetheless represented [85-95] % of the production and sales of the Union industry, the complaint was considered to have been made by the Union industry in accordance with Article 5(4) of the basic Regulation.

1.2. Interested parties

- (4) 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, known Union producers, the known exporting producers and the authorities of the PRC and Brazil, known importers, suppliers and users, traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.

1.3. Comments on initiation

- (5) Interested parties had an 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.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Notice of initiation of an anti-dumping proceeding concerning imports of electrolytic chromium coated steel (ECCS) products originating in the People's Republic of China and Brazil (OJ C 387, 24.9.2021, p. 2).

- (6) China Iron and Steel Association ('CISA') submitted comments following initiation on 5 November 2021. In addition, CISA together with Baoshan Iron & Steel Co., Ltd., China and GDH Zhongyue (Zhongshan) Tinplate Industry Co., Ltd. requested a hearing with the Commission services. They made such requests within the stipulated deadlines and the hearing took place on 24 January 2022.
- (7) In their submission and during the hearing, they claimed, amongst others, that the complaint relied too much on confidential information, especially with respect to costs relied on, and that the non-confidential version was therefore insufficient to allow a proper understanding of the evidence underlying the complaint.
- (8) The Commission considered that the non-confidential version of the complaint available in the file for inspection by interested parties contained all the essential evidence and non-confidential summaries of the confidential data allowing interested parties to properly exercise their rights of defence. Therefore, this claim was rejected.

1.4. Sampling

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

1.4.1. Sampling of Union producers

- (10) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. However, given the small number of producers in the Union, the Commission decided to send questionnaires to all Union producers known at that time.
- (11) The following Union producers were requested to complete the questionnaire for Union producers and participated in the investigation:
 - ArcelorMittal Atlantique et Lorraine, France
 - ArcelorMittal Etxebarri S.A., Spain
 - ThyssenKrupp Rasselstein GmbH, Germany.
- (12) As explained in recital (3) above, in the course of the investigation, the existence of a third Union producer was brought to the Commission's attention. As the cooperating Union producers accounted for [85-95] % of total production and sales of the product under investigation in the investigation period, on 16 March 2022, the Commission issued a note to the file informing interested parties that it had decided to limit the investigation to these producers in accordance with Article 17(1) of the basic Regulation and invited parties to comment. No comments were received.

1.4.2. Sampling of importers

- (13) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (14) Only one unrelated importer provided such information. Therefore, no sampling of unrelated importers was necessary. However, this unrelated importer decided not to provide a questionnaire reply. Accordingly, no unrelated importer cooperated in this investigation.

1.4.3. Sampling of exporting producers in the PRC and Brazil

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

- (16) With regard to the PRC, four exporting producers provided the requested information and agreed to be sampled. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of two exporting producers 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 on the sample were received.
- (17) With regard to Brazil, only one exporting producer, accounting virtually for all imports from Brazil, provided the requested information and agreed to be included in the sample. The Commission therefore decided that sampling was not necessary.

1.5. Individual examination

- (18) An exporting producer in China (GDH Zhongyue (Zhongshan) Tinplate Industry Co., Ltd.) requested individual examination under Article 17(3) of the basic Regulation and provided a questionnaire within the deadline. The Commission considered that an examination of this request during the provisional stage of the investigation would have been unduly burdensome, especially as there were remote crosschecks ('RCCs') to be organised for two countries and one of the sampled exporting producers had several subsidiaries located in the European Union. The Commission will decide whether to grant individual examination or not at the definitive stage of the investigation.

1.6. Questionnaire replies and verification visits

- (19) The Commission sent a questionnaire concerning the existence of significant distortions in the PRC within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of the People's Republic of China ('GOC').
- (20) Furthermore, the complainant provided in the complaint sufficient evidence of raw material distortions in China regarding the product under investigation. Therefore, as announced in the Notice of Initiation, the investigation covered those raw material distortions to determine whether to apply the provisions of Article 7(2a) and 7(2b) of the basic Regulation with regard to China. For this reason, the Commission sent an additional questionnaire in this regard to the GOC.
- (21) The Commission sent questionnaires to three Union producers, the complainant, one unrelated importer and known users, and three exporting producers in the countries concerned. The same questionnaires were made available online ⁽³⁾ on the day of initiation.
- (22) In view of the outbreak of COVID-19 and the confinement measures put in place by various Member States as well as by various third countries, the Commission could not carry out verification visits pursuant to Article 16 of the basic Regulation. The Commission instead cross-checked remotely all the information deemed necessary for its provisional determinations in line with its Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations. ⁽⁴⁾
- (23) The Commission carried out RCCs of the following companies / parties:
- (a) Union producers
 - ArcelorMittal Atlantique et Lorraine, France
 - ArcelorMittal Etxebarri S.A., Spain
 - ThyssenKrupp Rasselstein GmbH, Germany
 - (b) Exporting producers
 - In the PRC:
 - Baoshan Iron & Steel Co., Ltd., China ('Baosteel')
 - Handan Jintai Packing Material Co., Ltd, China ('Jintai')
 - In Brazil:
 - Companhia Siderúrgica Nacional, Brazil ('CSN').

⁽³⁾ Available at https://trade.ec.europa.eu/tdi/case_details.cfm?id=2549

⁽⁴⁾ OJ C 86, 16.3.2020, p. 6.

1.7. Investigation period and period considered

- (24) The investigation of dumping and injury covered the period from 1 July 2020 to 30 June 2021 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2018 to the end of the investigation period ('the period considered').

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (25) The product concerned is flat-rolled products of iron or non-alloy steel, plated or coated with chromium oxides or with chromium and chromium oxides originating in the PRC and Brazil, currently falling under CN codes 7210 50 00 and 7212 50 20 ('the product concerned').
- (26) ECCS is used in a wide range of applications, typically for consumer and industrial packaging. It is most frequently used for food packaging, for example in can tops and bottoms, screw and lug caps, tabs, etcetera. Other types of uses include external parts for home appliances, photographic film cases, protective material for optical fibre protection or other electrical and electronic parts.

2.2. Like product

- (27) 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 the PRC and Brazil; and
 - the product produced and sold in the Union by the Union industry.
- (28) The Commission decided at this stage that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

2.3. Registration

- (29) Pursuant to Article 14(5a) of the basic Regulation, the Commission should register imports subject to an anti-dumping investigation during the period of pre-disclosure unless it has sufficient evidence within the meaning of Article 5 that the requirements either under point (c) or (d) of Article 10(4) are not met.
- (30) One of these requirements, as indicated in Article 10(4)(d) of the basic Regulation, is that there is a further substantial rise in imports in addition to the level of imports which caused injury during the investigation period. As can be seen in Table 1, the imports of ECCS originating in the countries concerned showed a decrease by 8 % in the four months following initiation as compared to the investigation period ('IP'), which was the period 1 July 2020 to 30 June 2021.
- (31) All figures are presented in an indexed form or given as ranges to protect the confidential data provided by the three sampled Union producers, out of which two belong to the same group.

Table 1

	Investigation period	Investigation period monthly average	October 2021-January 2022	October 2021-January 2022 monthly average
Imports from Brazil into the EU	[13 000-16 000]	[1 200-1 300]	[8 000-9 000]	[2 000-3 000]
Imports from China into the EU	[64 000-75 000]	[5 500-6 500]	[15 000-18 000]	[4 000-5 000]

Imports from countries concerned into the EU	[77 000-91 000]	[6 500-7 500]	[23 000-27 000]	[6 000-7 000]
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Source: Eurostat and Surveillance database

- (32) As there were no indications on the file that imports of ECCS products as defined in recital (25) above are subject to seasonal fluctuations, the Commission did not consider it necessary to also compare the level of imports during the period October 2021 to January 2022 with the level of imports during the same months in the preceding year. The import data following initiation was compared to the monthly average imports from the countries concerned for four months in the investigation period.
- (33) For the reasons set out in recital (140) below, the Commission decided to cumulate the imports from the countries concerned for the purpose of the analysis described in the recitals above. As the above table shows, the cumulated imports from the countries concerned did not show a further substantial rise after the IP.
- (34) Consequently, the Commission concluded that the requirements for registration under Article 14(5a) of the basic Regulation were not met.

3. DUMPING

3.1. The People's Republic of China

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

- (35) In view of the evidence available at the initiation of the investigation pointing to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation with regard to the PRC, the Commission considered it appropriate to initiate the investigation having regard to Article 2(6a) of the basic Regulation.
- (36) Consequently, in order to collect the necessary data for the eventual application of Article 2(6a) of the basic Regulation, the Commission invited in the Notice of Initiation all exporting producers in the PRC to provide information regarding the inputs used for producing ECCS. Two exporting producers submitted the relevant information.
- (37) In addition, the Commission sent a questionnaire to the GOC. Moreover, in point 5.3.2 of the Notice of Initiation, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the *Official Journal of the European Union*. No questionnaire reply was received from the GOC and no submission on the application of Article 2(6a) of the basic Regulation was received within the deadline.
- (38) In the Notice of Initiation, the Commission also specified that, in view of the evidence available, it might need to select an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks.
- (39) On 12 November 2021, the Commission informed interested parties by a note to the file (hereinafter 'the First Note') on the relevant sources it intended to use for the determination of the normal value. In that note, the Commission provided a list of all factors of production such as raw materials, labour and energy used in the production of ECCS. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified Brazil, Colombia, Mexico, Thailand and Turkey as possible appropriate representative countries. The Commission received comments on the First Note from CISA and Baosteel. These comments confirmed Brazil or Turkey as possible appropriate representative countries.

- (40) On 6 January 2022, the Commission informed interested parties by a second note to the file (hereinafter ‘the Second Note’) on the relevant sources it intended to use for the determination of the normal value, with Brazil as the representative country. It also informed interested parties that it would establish selling, general and administrative costs (‘SG&A’) and profits based on readily available information for the company CSN, the only known producer of ECCS in Brazil.
- (41) The Commission received comments on the Second Note from CISA and Baosteel. Both disagreed that the Brazilian domestic prices of hot rolled steel and cold rolled steel could be selected as representative prices as they were abnormally high. This claim is addressed in recitals (91) and (92).

3.1.2. Normal value

- (42) According to Article 2(1) of the basic Regulation, “*the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country*”.
- (43) However, according to Article 2(6a)(a) of the basic Regulation, “*in case it is determined [...] that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions within the meaning of point (b), the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks*”, and “*shall include an undistorted and reasonable amount of administrative, selling and general costs and for profits*” (“*administrative, selling and general costs*” is referred hereinafter as ‘SG&A’).
- (44) As further explained below, the Commission concluded in the present investigation that, based on the evidence available, the application of Article 2(6a) of the basic Regulation was appropriate.

3.1.3. Existence of significant distortions

- (45) In recent investigations concerning the steel sector in the PRC ⁽⁵⁾ – steel being the main factor of production for ECCS – the Commission found that significant distortions in the sense of Article 2(6a)(b) of the basic Regulation were present. The Commission concluded in this investigation that, based on the evidence available, the application of Article 2(6a) of the basic Regulation was also appropriate.
- (46) In those investigations, the Commission found that there is substantial government intervention in the PRC resulting in a distortion of the effective allocation of resources in line with market principles ⁽⁶⁾. In particular, the Commission concluded that in the steel sector, which is the main raw material to produce the product under investigation not only does a substantial degree of ownership by the GOC persist in the sense of Article 2(6a)(b), first indent of the basic Regulation ⁽⁷⁾, but the GOC is also in a position to interfere with prices and costs through State presence in

⁽⁵⁾ Commission Implementing Regulation (EU) 2022/191 of 16 February 2022 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China; Commission Implementing Regulation (EU) 2021/2239 of 15 December 2021 imposing a definitive anti-dumping duty on imports of certain utility scale steel wind towers originating in the People's Republic of China; Commission Implementing Regulation (EU) 2021/635 of 16 April 2021 imposing a definitive anti-dumping duty on imports of certain welded pipes and tubes of iron or non-alloyed steel originating in Belarus, the People's Republic of China and Russia following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council and Commission Implementing Regulation (EU) 2020/508 of 7 April 2020 imposing a provisional anti-dumping duty on imports of certain hot rolled stainless steel sheets and coils originating in Indonesia, the People's Republic of China and Taiwan.

⁽⁶⁾ See Commission Implementing Regulation (EU) 2022/191 recitals 206-208, Commission Implementing Regulation (EU) 2021/2239 recital 135, and Commission Implementing Regulation (EU) 2021/635 recitals 149-150, Commission Implementing Regulation (EU) 2020/508 recitals 158-159.

⁽⁷⁾ See Commission Implementing Regulation (EU) 2022/191 recital 192, Commission Implementing Regulation (EU) 2021/2239 recitals 58-61, Commission Implementing Regulation (EU) 2021/635 recitals 115-118 and Commission Implementing Regulation (EU) 2020/508 recitals 122-127.

firms in the sense of Article 2(6a)(b), second indent of the basic Regulation ⁽⁸⁾. The Commission further found that the State's presence and intervention in the financial markets, as well as in the provision of raw materials and inputs, have an additional distorting effect on the market. Indeed, overall, the system of planning in the PRC results in resources being concentrated in sectors designated as strategic or otherwise politically important by the GOC, rather than being allocated in line with market forces ⁽⁹⁾. Moreover, the Commission concluded that the Chinese bankruptcy and property laws do not work properly in the sense of Article 2(6a)(b), fourth indent of the basic Regulation, thus generating distortions in particular when maintaining insolvent firms afloat and when allocating land use rights in the PRC ⁽¹⁰⁾. In the same vein, the Commission found distortions of wage costs in the steel sector in the sense of Article 2(6a)(b), fifth indent of the basic Regulation ⁽¹¹⁾, as well as distortions in the financial markets in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, in particular concerning access to capital for corporate actors in the PRC ⁽¹²⁾.

- (47) The complaint in this case referred to the Report, in particular to the findings regarding the steel sector in general; to the large number of SOEs in the steel sector; guidance of the industry development by the state (for example the decision of China to consolidate the steel industry by 2025); presence of CCP cells in enterprises producing steel; and various planning and guidance documents concerning the steel sector. Moreover, the complaint listed specific distortions in the raw materials used to produce ECCS: flat hot rolled steel ('HRFS'), chromium, iron ore and coke. Those references included, with regard to HRFS, the findings in a recent anti-subsidy investigation into the sector ⁽¹³⁾, and the findings in the G20 Ministerial Report by the Global Forum on Steel Excess Capacity. On chromium, the complaint specified that the 13th Five-Year-Plan ('FYP') (2016-2020) for Mineral Resources regulates chromium, which is listed as a 'strategic' element. Furthermore, the complaint explains that the Catalogue of Goods under Export Licences by the Ministry of Commerce of the People's Republic of China ('MOFCOM') include ferrochrome, unwrought chromium, powder chromium, chromium scrap and other chromium and its products in the list for products subject to export licences. Furthermore, the complaint included information on export duties on chromium, iron ore and coke which have a distorting effect on prices.

⁽⁸⁾ See Commission Implementing Regulation (EU) 2022/191 recitals 193-194, Commission Implementing Regulation (EU) 2021/2239 recitals 62-66, Commission Implementing Regulation (EU) 2021/635 recitals 119-122 and Commission Implementing Regulation (EU) 2020/508 recitals 128-132: While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights, CCP cells in enterprises, state-owned and private alike, represent another important channel through which the State can interfere with business decisions. According to the PRC's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline. In 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of wire rod producers and the suppliers of their inputs.

⁽⁹⁾ See Commission Implementing Regulation (EU) 2022/191 recital 195-201, Commission Implementing Regulation (EU) 2021/2239 recitals 67-74, Commission Implementing Regulation (EU) 2021/635 recitals 123-129 and Commission Implementing Regulation (EU) 2020/508 recitals 133-138.

⁽¹⁰⁾ See Commission Implementing Regulation (EU) 2022/191 recital 202, Commission Implementing Regulation (EU) 2021/2239 recital 75, Commission Implementing Regulation (EU) 2021/635 recitals 130-133 and Commission Implementing Regulation (EU) 2020/508 recitals 139-142.

⁽¹¹⁾ See Commission Implementing Regulation (EU) 2022/191 recital 203, Commission Implementing Regulation (EU) 2021/2239 recital 76, Commission Implementing Regulation (EU) 2021/635 recitals 134-135 and Commission Implementing Regulation (EU) 2020/508 recitals 143-144.

⁽¹²⁾ See Commission Implementing Regulation (EU) 2022/191 recital 203, Commission Implementing Regulation (EU) 2021/2239 recital 76, Commission Implementing Regulation (EU) 2021/635 recitals 136-145 and Commission Implementing Regulation (EU) 2020/508 recitals 145-154.

⁽¹³⁾ Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 146, 9.6.2017, p. 17).

- (48) In the present investigation, the Commission examined whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the Report, which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in the PRC's economy in general, but also the specific market situation in the relevant sector including the product under investigation. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in the PRC.
- (49) Specifically in the steel sector, which is the main raw material to produce the product under investigation, a substantial degree of ownership by the GOC persists. Many of the largest steel producers are owned by the State. For instance, the sampled exporting producer Baosteel is a major Chinese State-owned enterprise that engages in steel manufacturing and is part of the recently consolidated China Baowu Steel Group Co. Ltd. (formerly Baosteel Group and Wuhan Iron & Steel), ultimately 100 % owned by the central SASAC ⁽¹⁴⁾. Baowu currently also holds 62,7 % of the shares in the other large steel SOEs Shanxi Taiyuan Iron & Steel Co. Ltd. ('Tisco'), resulting in the Central SASAC being its controlling shareholder, as a result of the gratuitous transfer of 51 % shareholding in TISCO by the Shanxi Province SASAC to Baowu in August 2020 ⁽¹⁵⁾. While the nominal split between the number of SOEs and privately owned companies is estimated to be almost even, from the five Chinese steel producers ranked in the top 10 of the world's largest steel producers, four are SOEs ⁽¹⁶⁾. At the same time, while the top ten producers only took up some 36 % of total industry output in 2016, the GOC set the target in the same year to consolidate 60 % to 70 % of steel production to around ten large-scale enterprises by 2025 ⁽¹⁷⁾. This intention has been repeated by the GOC in April 2019, announcing a release of guidelines on steel industry consolidation ⁽¹⁸⁾. Such consolidation may entail forced mergers of profitable private companies with underperforming SOEs ⁽¹⁹⁾.
- (50) In addition, in the steel sector, many of the largest producers are specifically referred to in the 'Steel Industry Adjustment and Upgrading plan for 2016-2020'. For instance, Tisco mentions on its website that it is "a super iron and steel giant", which "developed into an extraordinary large-scale iron and steel complex, which is integrated with business of iron mining, iron and steel production, processing, delivery and trading" ⁽²⁰⁾.
- (51) As to the GOC being in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation, the investigation revealed the existence of personal connections between producers of the product concerned and the CCP, such as CCP members among the senior management or members of the board of directors in the main ECCS manufacturers, namely Baosteel and Jintai. Existence of personal connections to CCP among management could be also established for CISA (Executive Chairman is at the same time Party Secretary). To provide a specific example, Baowu's Chairman of the Board of Directors serves at the same time as the Party Committee Secretary with the General Manager being the Deputy Secretary of the Party Committee ⁽²¹⁾. Similarly, the Chairman of Baosteel's Board of Directors occupies the position of the Party Committee's secretary while the Executive Manager is the Deputy Secretary of the Party Committee. ⁽²²⁾ This trend is also applicable for private enterprises. In Jintai, the Chairman of the board serves at the same time as a

⁽¹⁴⁾ Baowu, 'Company profile', <http://www.baowugroup.com/en/contents/5273/102759.html> (last viewed 6 May 2021).

⁽¹⁵⁾ See 202041312652.pdf (sohu.com), last viewed accessed 7 April 2022.

⁽¹⁶⁾ Report – Chapter 14, p. 358: 51 % private and 49 % SOEs in terms of production and 44 % SOEs and 56 % private companies in terms of capacity.

⁽¹⁷⁾ Available at: www.gov.cn/zhengce/content/2016-02/04/content_5039353.htm (last viewed 6 May 2021); https://polycn.com/policy_ticker/higher-expectations-for-large-scale-steel-enterprise/?iframe=1&secret=c8uthafuthefra4e (last viewed 6 May 2021), and www.xinhuanet.com/english/2019-04/23/c_138001574.htm (last viewed 6 May 2021).

⁽¹⁸⁾ Available at http://www.xinhuanet.com/english/2019-04/23/c_138001574.htm (last viewed 6 May 2021) and http://www.jjckb.cn/2019-04/23/c_137999653.htm (last viewed 6 May 2021).

⁽¹⁹⁾ As was the case of the merger between the private company Rizhao and the SOE Shandong Iron and Steel in 2009. See Beijing steel report, p. 58, and the acquired majority stake of China Baowu Steel Group in Magang Steel in June 2019, see <https://www.ft.com/content/a7c93fae-85bc-11e9-a028-86cea8523dc2> (last viewed 6 May 2021).

⁽²⁰⁾ TISCO, 'Company profile', <http://en.tisco.com.cn/CompanyProfile/20151027095855836705.html> (last viewed 2 March 2020).

⁽²¹⁾ See the group's web, available at: http://www.baowugroup.com/about/board_of_directors (accessed on 28 March 2022).

⁽²²⁾ See the company's web, available at: <https://www.baosteel.com/about/manager> (accessed on 28 March 2022).

Member of the Hebei's province People's Congress. More generally, in view of the general applicability of the legislation on CCP presence in companies, it can be safely concluded that the ability of the GOC to interfere with prices and costs through State presence in firms is significant in the steel sector in general, as well as specifically for the exporting producers covered in this investigation.

- (52) Both public and privately owned enterprises in the ECCS sector are subject to policy supervision and guidance. The following examples illustrate the above trend of an increasing level of intervention by the GOC in the ECCS sector. The producers of the product under investigation explicitly emphasise party building activities on their websites, have party members in the company management and underline their affiliation to the CCP. The investigation revealed party building activities in Baosteel. The official website mentions that there are 301 CCP committees and 85 437 CCP members in China Baowu Group ⁽²³⁾ (the holding company of Baosteel). Moreover, the group indicates the following concerning the CCP building in the enterprise: *"Strengthen the integration of the Party's leadership with the improvement of corporate governance, improve the modern enterprise system. China Baowu fully implements the requirements of the 'Opinions on Strengthening the Party's Leadership in the Improvement of Corporate Governance of Central Enterprises', [...] The revised and improved decision-making system for major matters further improved the decision-making authority of the Party committee, the board of directors, managers and other governance bodies, the decision-making matters and forms authorized by the board of directors [...]. [...] Baowu adheres to and implements the simultaneous planning of Party building and enterprise reform, the simultaneous establishment of Party organizations and operational entities, the simultaneous allocation of persons in charge Party organizations and Party affairs staff".* ⁽²⁴⁾ The Baosteel company describes the CCP building activities as follows: *"Undertake the main responsibility of administering the party strictly and comprehensively; Lead the company's ideological and political work, united front work, building of a spiritual civilisation, building of a corporate culture and mass work such as trade unions and the Communist Youth League; Lead the construction of party-style and honest government, support discipline committees to effectively fulfil their supervisory responsibilities"* ⁽²⁵⁾.
- (53) Further, policies discriminating in favour of domestic producers or otherwise influencing the market in the sense of Article 2(6a)(b), third indent of the basic Regulation are in place in the ECCS sector.
- (54) The steel industry, which is the main component for the production of ECCS, is regarded as a key industry by the GOC ⁽²⁶⁾. This is confirmed in the numerous plans, directives and other documents focused on steel, which are issued at national, regional and municipal level such as the 'Steel Industry Adjustment and Upgrading plan for 2016-2020'. This Plan states that the steel industry is *"an important, fundamental sector of the Chinese economy, a national cornerstone"* ⁽²⁷⁾. The main tasks and objectives set out in this Plan cover all aspects of the development of the industry ⁽²⁸⁾.
- (55) The 13th Five-Year Plan on Economic and Social Development ⁽²⁹⁾ envisages support to enterprises producing high-end steel product types ⁽³⁰⁾. It also focuses on achieving product quality, durability and reliability by supporting companies using technologies related to clean steel production, precision rolling and quality improvement ⁽³¹⁾.
- (56) The 'Guiding Catalogue for Industry Restructuring (2019 Version)' ⁽³²⁾ approved by Decree of the National Development and Reform Commission of the People's Republic of China No 29 of 27 August 2019, which entered into force on 1 January 2020 ('the Catalogue') lists steel as encouraged industry.

⁽²³⁾ http://www.baowugroup.com/party_building/overview

⁽²⁴⁾ *Ibidem*.

⁽²⁵⁾ See Articles of Association of Baosteel, Article 133.4: http://static.sse.com.cn/disclosure/listedinfo/announcement/c/2021-01-08/600019_20210108_8.pdf (last viewed 6 May 2021).

⁽²⁶⁾ Report, Part III, Chapter 14, p. 346 ff.

⁽²⁷⁾ Introduction to The Plan for Adjusting and Upgrading the Steel Industry.

⁽²⁸⁾ Report, Chapter 14, p. 347.

⁽²⁹⁾ The 13th Five-Year Plan for Economic and Social Development of the People's Republic of China (2016-2020), available at https://en.ndrc.gov.cn/newsrelease_8232/201612/P020191101481868235378.pdf (last viewed 2 March 2020).

⁽³⁰⁾ Report – Chapter 14, p. 349.

⁽³¹⁾ Report – Chapter 14, p. 352.

⁽³²⁾ 'Guiding Catalogue for Industry Restructuring (2019 Version)' approved by Decree of the National Development and Reform Commission of the People's Republic of China No. 29 of 27 August 2019 <http://www.gov.cn/xinwen/2019-11/06/5449193/files/26c9d25f713f4ed5b8dc51ae40ef37af.pdf>, last accessed on 11 April 2022.

- (57) The GOC further guides the development of the sector in accordance with a broad range of policy tools and directives related to, *inter alia* market composition and restructuring, raw materials, investment, capacity elimination, product range, relocation, upgrading, etc. Through these and other means, the GOC directs and controls virtually every aspect in the development and functioning of the sector⁽³³⁾. The current problem of overcapacity is arguably the clearest illustration of the implications of the GOC's policies and the resulting distortions.
- (58) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives of supporting encouraged industries, including the production of steel as the main raw material used in the manufacturing of the ECCSs. Such measures impede market forces from operating freely.
- (59) The present investigation has not revealed any evidence that the discriminatory application or inadequate enforcement of bankruptcy and property laws according to Article 2(6a)(b), fourth indent of the basic Regulation in the ECCS sector referred to above in recital (46), would not affect the manufacturers of the product under investigation.
- (60) The ECCS sector is also affected by the distortions of wage costs in the sense of Article 2(6a)(b), fifth indent of the basic Regulation, as also referred to above in recital (46). Those distortions affect the sector both directly (when producing the product under investigation or the main inputs), as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in the PRC)⁽³⁴⁾.
- (61) Moreover, no evidence was submitted in the present investigation demonstrating that the ECCS sector is not affected by the government intervention in the financial system in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, as also referred to above in recital (46). Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels. In addition, the investigation revealed that both sampled exporting producers had significant amounts of outstanding loans from Chinese lenders during the investigation period.
- (62) In fact, it was revealed during the investigation that the ECCS producers benefit from additional support by the government. For example, one of the sampled companies, Jintai, is on the list of the Hebei Province 2020 High Tech Enterprises (second batch). Specifically, this company is number 4 on the list⁽³⁵⁾, meaning it is granted special treatment and support by the government. In addition, Hebei province's 13th FYP 2016-2020 had a number of provisions supporting the steel sector: "*Foster development and innovation pillars: [Hebei shall] create a series of innovative flagship enterprises in the field of industry, [Hebei shall] focus on a hundred of leading enterprises and make the most of their innovative driving force in competitive industries, support their efforts to increase R&D input, [...]. [Hebei shall] support leading enterprises in industries such as steel, equipment, construction materials, pharmaceuticals, chemicals, food products*". The 14th FYP 2021-2025 (Jintai Packaging is located in Hebei) provides the following: "*Strengthen the leading position of competitive industries: steel industry: [...] promote the transformation and upgrading of steel plants in the main urban area. [...] strengthen international production capacity cooperation, focus on the construction of Tangshan, Handan high-quality steel industry clusters*". Additionally, the Hebei 14th FYP on strategic and emerging industries 2021-2025 also includes provisions supporting steel: "*Vigorously develop advanced steel materials for high quality products such as steel for basic parts, steel for tools and molds, high-performance marine steel, steel for bearings, advanced pipeline steel, metal powder for additive manufacturing*".
- (63) Finally, the Commission recalled that in order to produce the product under investigation, a number of inputs in addition to steel are needed. When the producers of the product under investigation purchase or contract for these inputs, including steel, the prices paid (and which are recorded as the producers' costs) are exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the aforementioned distortions; they may borrow money that is subject to the distortions on the financial sector/capital allocation; and they are subject to the planning system that applies across all levels of government and sectors.

⁽³³⁾ Report – Chapter 14, pp. 375 – 376.

⁽³⁴⁾ See Commission Implementing Regulation (EU) 2021/635, recitals 134-135 and Commission Implementing Regulation (EU) 2020/508, recitals 143-144.

⁽³⁵⁾ The full list available under the following link:

<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fkj.hebei.gov.cn%2Fwww%2Fwxzx15%2Ftgg35%2Fsttz15%2F227382%2F2020102009523655218.doc&wdOrigin=BROWSELINK>

- (64) As a consequence, not only are the domestic sales prices of the product under investigation not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but the price formation of all the input costs (including raw materials, energy, land, financing, labour, etc.) is likewise affected by substantial government intervention, as described in Parts A and B of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that in itself was produced in the PRC by combining a range of factors of production is exposed to significant distortions. The same applies for the input of the input and so forth.
- (65) In its comments on the First Note, CISA submitted a number of comments, which were also supported and endorsed by a submission by Baosteel. First, CISA submitted that the WTO Anti-Dumping Agreement ('ADA') does not recognise the concept of significant distortions in Article 2.2 of ADA, which only allows the construction of the normal value if there are no sales in the ordinary course of trade. CISA observed that this Article does not mention significant distortions allowing for the construction of normal value. Second, CISA claimed that any constructed value would need to be calculated in accordance with Article 2.2.1.1 of ADA and with the WTO Appellate Body's interpretation given in the *EU – Biodiesel* case, as well as by the WTO panel in the *EU – Cost Adjustment Methodologies II (Russia)* (DS494) case, which do not mention the concept of significant distortions nor the possibility to disregard the exporting company's data.
- (66) The Commission considered that the provisions of Article 2(6a) are fully consistent with the European Union's WTO obligations and the jurisprudence cited by CISA. First, there is no need for WTO Members to use the exact terms of the WTO Agreements in their implementing legislation. Therefore, the fact that the concept of 'significant distortions' as such is not present in the WTO ADA does not restrict the Union's use of that term. Furthermore, it is the Commission's view that, in accordance with the decision of the WTO Panel and the Appellate Body in *EU – Biodiesel* (DS473), the provisions of the basic Regulation that apply generally with respect to all WTO Members, such as Article 2(5), second sub-paragraph, permit the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. The existence of significant distortions renders costs and prices in the exporting country inappropriate for the construction of normal value. In these circumstances, Article 2(6a) envisages the construction of costs of production and sale on the basis of undistorted prices or benchmarks, including those in an appropriate representative country with a similar level of development as the exporting country. Therefore, the Commission rejected this claim.
- (67) In relation to the case *EU – Cost Adjustment Methodologies II (Russia)* (DS 494), the Commission recalled that both the EU and the Russian Federation appealed the findings of the Panel, which are not final and therefore, according to standing WTO case-law, have no legal status in the WTO system, since they have not been endorsed by the Dispute Settlement Body through a decision by the WTO Members. In any event, the Panel Report in this dispute specifically considered the provisions in Article 2(6a) of the basic Regulation to be outside the scope of the dispute. The claim was therefore rejected.
- (68) Second, CISA claimed that there is a lack of evidence with regard to the alleged "significant distortions" in relation to the Chinese ECCS industry. According to CISA, the China report relied on by the Commission failed to meet the standards of impartial and objective evidence and evidence of sufficient probative value. Furthermore, CISA claimed that since the China report was published in 2017, it could not be applicable for the investigation period covering July 2020 – June 2021. Last, CISA observed that the China report does not address the Chinese ECCS industry per se, but only the Chinese steel industry in general.
- (69) The Commission noted that the China Report is a comprehensive document based on extensive objective evidence, including legislation, regulations and other official policy documents published by the GOC, third party reports from international organisations, academic studies and articles by scholars, and other reliable independent sources. It was made publicly available since December 2017 so that any interested party would have had ample opportunity to rebut, supplement or comment on it and the evidence on which it is based, and neither the GOC nor other parties have submitted arguments or evidence rebutting the sources included in the China Report. Likewise, regarding the argument that the Report was outdated, the Commission noted in particular that the main policy documents and evidence contained in the Report, including the relevant five-year plans and legislation applicable to

the product under investigation were mostly still relevant during the IP, and that neither China Chamber of Commerce of Metals, Minerals and Chemical (CCCC) nor other parties have proven that this was no longer the case. China only started publishing new five-year plans throughout year 2021 and a lot of those plans were only made public in the second half of the year, hence after the investigation period. This was further confirmed through the case-specific research undertaken by the Commission, as summarised above.

- (70) With regard to the argument that the China Report does not include a specific chapter on ECCS, the Commission noted that the existence of the significant distortions giving rise to the application of Article 2(6a) of the basic Regulation is not linked to the existence of a specific sectoral chapter covering the product concerned. The Report describes different types of distortions present in the PRC which are cross-cutting and applicable throughout the Chinese economy and affect the prices and/or the raw materials and costs of production of the product concerned. Furthermore, the Report is not the only source of evidence used by the Commission for its determination, as the current section of this Regulation discusses additional recent evidence of distortions concerning the steel sector, including the production of ECCS, the raw materials used to produce ECCS, as well as the ECCS exporting producers covered in this investigation. Therefore, these claims were rejected.
- (71) Third, CISA commented that according to Article 2(6a)(a) of the basic Regulation, the assessment concerning the existence of significant distortions should be done for each exporting producer separately. Therefore, the Commission had the obligation to analyse the situation of each sampled Chinese producer and decide whether any of the factors of costs of production and sales are distorted for each of them. CISA claimed that “country-wide” or “industry-wide” findings should not be allowed and since there was sampling in this case, it was at least necessary to establish distortions for every sampled producer and each factor of production used by them separately.
- (72) The Commission noted that the existence of significant distortions giving rise to the application of Article 2(6a) of the basic Regulation were established on a country-wide level. Nevertheless, as evidenced in this section the Commission also analysed the specific situation of the exporting producers, and found that each of the sampled producers were indeed affected by these significant distortions. Moreover, Article 2(6a) of the basic Regulation provides that domestic costs of each producer can be used if they are established not to be affected by significant distortions, but this was not the case in the present investigation. Therefore this claim was dismissed.
- (73) In reply to the Second Note on factors of production, CISA reiterated the comments it had in reaction to the publication of the first Note on factors of production. Furthermore, it added that the concept of significant distortions should not be predetermined in an investigation. CISA submitted that the Commission should not start the procedure based on Article 2(6a) of the basic Regulation before actually positively determining the existence of significant distortions. Therefore, according to CISA, the Commission should not undertake steps such as sending Article 2(6a) questionnaires, and start looking for normal value data from alternative sources until the existence of significant distortions is positively established. CISA's claims were also supported in the submission by Baosteel in reply to the Second Note on factors of production.
- (74) The Commission clarified that while the determination on the actual existence of significant distortions and the consequent use of the methodology prescribed by Article 2(6a)(a) only occurs at the time of the provisional and/or definitive disclosure and subsequent adoption of the relevant legal act, Article 2(6a)(e) lays down an obligation to collect the data necessary for the application of this methodology when the investigation has been initiated on this basis. In this case the Commission deemed the evidence submitted by the complainant on the significant distortions amply sufficient to initiate the investigation on this basis. The Notice of Initiation clearly specified this at Point 3 in accordance with this obligation in Article 2(6a)(e) of the basic Regulation. Therefore, the Commission took the steps necessary to enable it to apply the methodology under Article 2(6a) of the basic Regulation in case the existence of significant distortions would be confirmed during the investigation. This procedure includes sending out questionnaires to exporting producers as well as the GOC, as well as searching for possible appropriate representative countries. Furthermore, the second subparagraph of Article 2(6a)(e) imposes a further obligation on the Commission to inform parties promptly after the initiation about the relevant sources it intends to use in this respect. This constitutes the legal basis for the information requested in the questionnaires on the notes on factors of production as detailed above. On the basis of all these elements the Commission dismissed this claim.

- (75) In sum, the evidence available showed that prices or costs of the product concerned, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case. Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation.

3.1.4. *Representative country*

3.1.4.1. General remarks

- (76) The choice of the representative country was based on the following criteria pursuant to Article 2(6a) of the basic Regulation:
- A level of economic development similar to the PRC. For this purpose, the Commission analysed countries with a gross national income per capita similar to the PRC on the basis of the database of the World Bank ⁽³⁶⁾;
 - Production of the product under investigation in that country;
 - Availability of relevant readily available data in the representative country.
 - Where there is more than one possible representative country, preference was given, where appropriate, to the country with an adequate level of social and environmental protection.
- (77) As explained in recitals (39)-(40), the Commission issued two notes for the file on the sources for the determination of the normal value. These notes described the facts and evidence underlying the relevant criteria, and also addressed the comments received by the parties on these elements and on the relevant sources. In the second note on production factors, the Commission informed interested parties of its intention to consider Brazil as an appropriate representative country in the present case if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation were confirmed.

3.1.4.2. A level of economic development similar to the PRC

- (78) In the First Note on production factors, the Commission identified Brazil, Colombia, Mexico, Thailand and Turkey as countries with a similar level of economic development as China according to the World Bank, i.e. they are all classified by the World Bank as 'upper-middle income' countries on a gross national income basis where production of the product under investigation was known to take place.
- (79) The comments received on the First Note confirmed Brazil or Turkey as possible appropriate representative countries.

3.1.4.3. Availability of relevant readily available data in the representative country

- (80) In the First note, for the countries identified as countries where product under investigation was being produced, i.e. Brazil, Colombia, Mexico, Thailand and Turkey, the Commission verified the availability of the data needed, in particular with regard to financial data of producers of the like product.
- (81) The Commission identified two companies that appeared to be producers of the product under investigation and that were profitable in 2020 (a period partially overlapping with the IP): Companhia Siderúrgica Nacional (CSN) from Brazil and Ereğli Demir ve Çelik Fabrikaları (Erdemir) from Turkey. The Commission found that for these two companies there were readily available consolidated financial data at group level for the year 2020.

⁽³⁶⁾ World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>

- (82) In their comments on the First note, interested parties pointed out that, for Companhia Siderúrgica Nacional (CSN), financial data were available not only at group level but also specifically for the “steel making” sector. On the contrary, for the Turkish ECCS producer Ereğli Demir ve Çelik Fabrikaları (Erdemir), financial data at sectorial level could not be found. Accordingly, the Commission considered that the readily available financial data from Brazil constituted the most relevant data concerning SG&A and profit.
- (83) In light of the above considerations, the Commission informed the interested parties with the Second note that it intended to use Brazil as an appropriate representative country and the company CSN, in accordance with Article 2(6a)(a), first indent of the basic Regulation in order to source undistorted prices or benchmarks for the calculation of normal value.
- (84) Interested parties were invited to comment on the appropriateness of Brazil as a representative country and of CSN as a producer in the representative country.
- (85) No comment were received from interested parties refuting the appropriateness of Brazil as a representative country and of CSN as a producer in the representative country

3.1.4.4. Level of social and environmental protection

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

3.1.4.5. Conclusion

- (87) In view of the above analysis, Brazil met the criteria laid down in Article 2(6a)(a), first indent of the basic Regulation in order to be considered as an appropriate representative country.

3.1.5. Sources used to establish undistorted costs

- (88) In the First Note, the Commission listed the factors of production such as materials, energy and labour used in the production of the product under investigation by the exporting producers and invited the interested parties to comment and propose readily available information on undistorted values for each of the factors of production mentioned in that note.
- (89) Subsequently, in the Second Note, the Commission informed interested parties that it would use the Global Trade Atlas (‘GTA’) to establish the undistorted cost for most of the factors of production. However, for hot rolled steel and cold rolled steel, China was at the origin of more than 90 % of imports of these products into Brazil. The Commission looked into the matter and noted that the quantities of these products imported from other third countries into Brazil were small and would not be sufficiently representative. Therefore the Commission looked at another possible benchmark for the price of these raw materials in Brazil and provisionally used the Metal Bulletin’s Brazilian domestic steel price assessments (Fastmarkets’ prices).
- (90) In addition, the Commission stated that it would use the International Labour Organization (‘ILO’) statistics for establishing undistorted costs of labour ⁽³⁷⁾, the prices of the company EDP Brasil, one of the largest electricity suppliers in Brazil, for establishing undistorted costs of electricity ⁽³⁸⁾, the prices of natural gas as charged by the biggest gas distributor in Brazil, the company Comgas, for establishing undistorted costs of gas ⁽³⁹⁾, the prices of the company Sabesp, responsible for water supply, sewage collection and treatment in the State of Sao Paulo, for establishing undistorted costs of water ⁽⁴⁰⁾.

⁽³⁷⁾ <https://ilostat.ilo.org/>

⁽³⁸⁾ <http://www.edp.com.br/distribuicao-es/saiba-mais/informativos/tarifas-aplicadas-a-clientes-atendidos-em-alta-e-media-tensao-grupo-a>

⁽³⁹⁾ <https://www.comgas.com.br/tarifas/historico-de-tarifas/>

⁽⁴⁰⁾ <http://site.sabesp.com.br/site/interna/Default.aspx?secaoId=183>

- (91) Following the Second note, CISA claimed that the Brazil domestic prices of flat steel products should not be used as a benchmark price as they were significantly higher than prices in other markets such as Europe, India or Turkey. Instead, the Commission should use either the GTA import prices or an international benchmark as reported in SSB / S&P Platts.
- (92) The Commission reiterated that – as mentioned in the Second note on production factors (see recital (89)) - GTA import prices could not be used. The Commission also noted that the Metal Bulletin's prices used were similar to the SBB / S&P Platts data (variation of less than 5 %). In view of this, the Commission decided to reject the claim of CISA and to confirm the use of the Brazilian domestic steel prices as reported in Metal Bulletin.

3.1.6. Undistorted costs and benchmarks

3.1.6.1. Factors of production

- (93) Considering all the information available to the Commission the following factors of production and their sources were been identified in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

Table 2

Factors of production of ECCS

Factor of Production (FOP)	Common Mercosur Nomenclature (NCM)	Undistorted value in Chinese yuan ('CNY')	Unit of measurement	Source of information
Iron Ore Powder For Sintering	260111	1,112	kg	GTA
Chromium Oxide	281910	18,319	kg	GTA
Hot-Rolled Steel	720827	5,774	kg	Metal Bulletin
Iron ore pellets	26011210	1,209	kg	GTA
Gas Coal	270112	1,230	kg	Metal Bulletin
Steel Scrap/By-Co-products	720449	2,392	kg	GTA
Pulverized Coal	270111	0,706	kg	GTA
Ferro-molybdenum	720270	113,684	kg	GTA
Manganese	81110010, 81110020, 81110090	13,210	kg	GTA
Coke	27040011, 27040012	2,027	kg	GTA
Coking Coal	270112	1,230	kg	Metal bulletin
Iron Ore Powder	260111	1,112	kg	GTA
Gas-Fat Coal	270112	1,230	kg	Metal bulletin
Fat Coal	270112	1,230	kg	Metal Bulletin
Steam Coal	270111	0,706	kg	GTA
Mixed Steel Scrap	720449	2,392	kg	GTA

Heavy Steel Scrap	720449	2,392	kg	GTA
Quicklime	252210	0,850	kg	GTA
Continuous Casting Slab	720719	3,126	kg	GTA
Cold-Rolled Continuous Annealed Coils	720918	6,597	kg	Metal Bulletin
Hot Pressed Iron Block	732690, 73269010, 73269090	94,693	kg	GTA
Minus Sieve	27040011, 27040012, 27040090	2,030	kg	GTA
Iron ore pellets	26011210	1,209	kg	GTA
Lump Ore	260111	1,112	kg	GTA
Iron Ore Powder	260111	1,112	kg	GTA
High Purity Slag Iron	261900	0,747	kg	GTA
Silicon Steel Scrap	720449	2,392	kg	GTA
Corner Scrap Packing Block	720449	2,392	kg	GTA
Leftovers	720449	2,392	kg	GTA
Aluminium Extrusion	760429	51,287	kg	GTA
Recycled Iron Powder	260111	0,961	kg	GTA
Recycled Mill Scale	261900	0,750	kg	GTA
Recycled Water Granulated Slag	261800	0,785	kg	GTA
Recycled High-Purity Iron Slag	261900	0,750	kg	GTA
Recycled Heavy Steel Scrap	720449	2,392	kg	GTA
Recycled Mixed Steel Scrap	720449	2,392	kg	GTA
Gas		2,257	m ³	Boletim Mensal de Acompanhamento da Industria de Gas Natural (Brazil)
Electricity		5,034	kWh	EDP Brasil
Labour		51 600 27,112	year hour	ILO statistics

3.1.6.2. Raw materials

- (94) In order to establish the undistorted price of raw materials as delivered at the gate of a representative country producer, the Commission used as a basis the weighted average import price to the representative country as reported in the GTA to which import duties and transport costs were added. An import price in the representative country was determined as a weighted average of unit prices of imports from all third countries excluding the PRC and countries which are not members of the WTO, listed in Annex I of Regulation (EU) 2015/755 of the European Parliament and the Council.⁽⁴¹⁾ The Commission decided to exclude imports from the PRC into the representative country as it concluded that it is not appropriate to use domestic prices and costs in the PRC due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected export prices. After excluding the imports into the representative country from China and non-market economy countries, the Commission found that imports of the main raw materials from other third countries remained representative.
- (95) The Commission deviated from the above described methodology for a limited number of raw materials.
- (96) For iron ore, the Commission relied on the GTA export prices from Brazil. The Commission noted that GTA import prices of iron ore were significantly below prices generally observed for iron ore used for steelmaking. For this reason, the Commission analysed these prices against export prices also found in GTA for Brazil (which is one of the largest producers of iron ore in the world). This analysis confirmed that import prices were not in line with the ones observed for exports, suggesting they were abnormally low to be representative of prices in Brazil. The Commission also compared those import prices to prices paid by the sampled exporting producers as well as to the prices reported in Metal Bulletin, which led to the same conclusion. Therefore, the Commission found that import prices into Brazil of iron ore could not be considered as a representative benchmark.
- (97) For several coal products reported by the exporting producer in China (gas coal, coking coal, gas fat coal, fat coal) the Commission considered that, similarly to its findings in Commission Implementing Regulation (EU) 2022/58⁽⁴²⁾, import prices into Brazil as reported by GTA were not representative. Indeed, these import prices were out of the range of the prices observed for such products in commodity price reports such as the ones of Bloomberg or Metal Bulletin and the prices paid by the exporting producer in China. The Commission considered that the price of the premium hard coking coal as reported by Metal Bulletin was an appropriate benchmark price. It correspond to the type of metallurgical coal, which is used for iron and steel production. This benchmark was used in previous investigations related to steel products, such as the one mentioned above.
- (98) For a large number of factors of production the actual costs incurred by the cooperating exporting producers represented individually a negligible share of the cost of manufacturing of the product under investigation in the investigation period. The Commission therefore decided at provisional stage to consider those factors, which aggregated accounted for less than 4 % of the cost of manufacturing, as consumables.
- (99) Self-produced factors of production that only had a negligible weight in the total cost of production of the exporting producers as well as on a product type level, were grouped under consumables. The Commission calculated the percentage of the consumables on the total cost of raw materials and applied this percentage to the recalculated cost of raw materials when using the established undistorted prices.

⁽⁴¹⁾ Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33). Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value and, in any event, such import data was negligible.

⁽⁴²⁾ Commission implementing Regulation (EU) 2022/58 of 14 January 2022 imposing a definitive anti-dumping duty on imports of certain grain-oriented flat-rolled products of silicon-electrical steel originating in the People's Republic of China, Japan, the Republic of Korea, the Russian Federation and the United States of America following an expiry review (OJ L 10, 17.1.2022, p. 17).

3.1.6.3. Labour

- (100) The ILO publishes detailed information on wages in different economic sectors in Brazil ⁽⁴³⁾. The Commission used the ILO statistics on monthly wages of employees in the manufacturing sector and average weekly hours worked in Brazil for 2020. Additional labour related costs ⁽⁴⁴⁾ (social security and unemployment contributions born by the employer) were added. On this basis, an hourly rate was calculated.

3.1.6.4. Electricity

- (101) The price of electricity for companies (industrial users) in Brazil is published by EDP Brasil for 2020 and 2021. The Commission used the data on the industrial electricity prices in the corresponding consumption band in CNY/kWh as published on July 2020 until June 2021.

3.1.6.5. Natural gas

- (102) To establish the benchmark for gas costs the Commission used the statistics from the Brazilian Ministry of energy. The prices used are the average gas unit price for industrial users, provided by the monthly bulletin from the Ministry of energy. Those bulletins indicated the historical data from 2018 until April 2021. The Commission used the average for the period July 2020 to April 2021.

3.1.6.6. Manufacturing overhead costs, SG&A, profits and depreciation

- (103) A value for manufacturing overhead costs needs to be established to cover costs not included in the factors of production referred to above. The manufacturing overheads incurred by the cooperating exporting producers were expressed as a share of the costs of manufacturing actually incurred by the exporting producers. This percentage was applied to the undistorted costs of manufacturing.
- (104) According to Article 2(6a)(a) of the basic Regulation, *“the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits”*. For establishing an undistorted and reasonable amount for SG&A and profit, the Commission relied on the financial data for 2020 for CSN contained in the CSN 2020 Integrated Report ⁽⁴⁵⁾.

3.1.6.7. Calculation

- (105) On the basis of the above, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (106) First, the Commission established the undistorted manufacturing costs. The Commission applied the undistorted unit costs to the actual consumption of the individual factors of production of the cooperating exporting producer. These consumption rates were verified through desk work and remote cross-checkings. The Commission multiplied the usage factors by the undistorted costs per unit observed in the representative country (Table 2 above).
- (107) Then the Commission added manufacturing overheads, as explained in recital (103) which accounted in total for less than 10 % of the costs of manufacturing to the undistorted cost of manufacturing in order to arrive at the undistorted costs of production.
- (108) To the costs of production established as described in the previous recital, the Commission applied SG&A and profit of CSN as noted in recital (104). SG&A expressed as a percentage of the Costs of Goods Sold ('COGS') and applied to the undistorted costs of production, amounted to 6,51 %. The profit expressed as a percentage of the COGS and applied to the undistorted costs of production, amounted to 10,65 %.

⁽⁴³⁾ <https://ilostat.ilo.org/>

⁽⁴⁴⁾ Available at <https://establishbrazil.com/articles/whats-real-cost-employee> (last viewed 8 April 2022).

⁽⁴⁵⁾ <https://www.csn.com.br/wp-content/uploads/sites/452/2021/07/Relato-Integrado-2020-EN.pdf>

- (109) On that basis, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.

3.1.6.8. Export price

- (110) One sampled cooperating exporting producer, Jintai, exported the product under investigation directly to independent customers in the Union. For these sales, the export price was the price actually paid or payable for the product under investigation when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.
- (111) The other sampled cooperating exporting producer, Baosteel, exported the product under investigation via related companies in the Union acting as importers and sales subsidiaries. For these sales, the export price was constructed based on 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. The adjustments made related to all costs incurred between importation and resale, including SG&A expenses, and for profits accruing.

3.1.6.9. Comparison

- (112) The Commission compared the normal value and the export price of the cooperating exporting producer on an ex-works basis.
- (113) 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, credits costs, and other allowances (export credit insurance).

3.1.6.10. Dumping margins

- (114) 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 under investigation, in accordance with Article 2(11) and (12) of the basic Regulation.
- (115) On this basis, the provisional weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional dumping margin
Baoshan Iron & Steel Co., Ltd.	43,3 %
Handan Jintai Packing Material Co., Ltd	53,9 %

- (116) For the cooperating companies outside the sample, the Commission calculated the weighted average of the dumping margins of the two sampled exporting producers. For all other exporting producers in China, 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 IP, that were established on the basis of Comext trade data and the verified questionnaire replies of the cooperating exporting producers.
- (117) The level of cooperation in this case is low because the imports of the cooperating exporting producers constituted only around half of the total exports to the Union during the IP. On this basis, the Commission decided that it was appropriate to establish the residual dumping margin at the level of the highest dumping margin found for product types sold in representative quantities by the sampled cooperating exporting producer with the highest dumping margin.

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

Company	Provisional dumping margin
Baoshan Iron & Steel Co., Ltd.	43,3 %
Handan Jintai Packing Material Co., Ltd	53,9 %
Other cooperating companies	45,1 %
All other companies	77,9 %

3.2. Brazil

3.2.1. Normal Value

- (119) The Commission first examined whether CSN's total volume of domestic sales 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 in the domestic market represented at least 5 % of its total export sales volume of the product under investigation during the investigation period. On this basis, CSN's total sales in the domestic market were representative.
- (120) The Commission subsequently identified the product types sold domestically that were identical or comparable with the product types sold for export to the Union with representative domestic sales.
- (121) The Commission then examined whether CSN's domestic sales in 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. The Commission established that for a small number of 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.
- (122) 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.
- (123) 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.
- (124) In this case, the normal value is the weighted average of the prices of all domestic sales of that product type during the investigation period.
- (125) 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.

- (126) The analysis of domestic sales showed that 91 % of all domestic sales were profitable and that the weighted average sales price was higher than the cost of production.
- (127) 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 to the cost of manufacturing. 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 to the cost of manufacturing.

3.2.2. *Export price*

- (128) The cooperating exporting producer exported the product under investigation to the Union directly to independent customers. The export price was thus the price actually paid or payable for the product under investigation when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

3.2.3. *Comparison*

- (129) The Commission compared the normal value and the export price of the cooperating exporting producer on an ex-works basis.
- (130) 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 expenses, credits costs and bank charges, rebates and other allowances.

3.2.4. *Dumping margin*

- (131) For the cooperating exporting producer, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product under investigation, in accordance with Article 2(11) and (12) of the basic Regulation.
- (132) The level of cooperation in this case is high because the exports of the cooperating exporting producer constituted almost 100 % of the total imports during the investigation period. On this basis, the Commission considered it appropriate to establish the dumping margin for non-cooperating exporting producers at the level of the cooperating company.
- (133) The provisional dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional dumping margin
Companhia Siderúrgica Nacional	66,8 %
All other companies	66,8 %

4. INJURY

4.1. Definition of the Union industry and Union production

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

- (135) As explained in recital (31) above, as data relating to the injury assessment was primarily derived from the three sampled Union producers, two of which belong to the same group, all figures are given in an indexed form or as ranges to protect the confidentiality of the data provided.
- (136) The total Union production during the investigation period was established at [439 000-513 000] tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry, such as the reply to the macro-economic questionnaire. As indicated in recital (12), the three cooperating Union producers represented [85-95] % of the total Union production of the like product.

4.2. Union consumption

- (137) The Commission established the Union consumption on the basis of the volume of the total Union industry's sales in the Union, plus imports from third countries to the Union. The Commission established the total Union industry's sales on the basis of the data collected from the sampled Union producers and the information provided by Eurofer for the non-sampled producer. Import volumes were extracted from Eurostat data.
- (138) Union consumption developed as follows:

Table 3

Union consumption (in tonnes)

	2018	2019	2020	Investigation period
Total Union consumption	[522 000-611 000]	[508 000-595 000]	[506 000-593 000]	[505 000-591 000]
Index	100	97	97	97

Source: Eurostat, Eurofer and verified questionnaire replies

- (139) The Union consumption decreased by 3 % between 2018 and 2019 and thereafter remained stable until the end of the IP. The demand in the Union market fluctuated marginally during the period considered and could be considered as overall stable.

4.3. Imports from the countries concerned

4.3.1. Cumulative assessment of the effects of imports from the countries concerned

- (140) The Commission examined whether imports of ECCS originating in the countries concerned should be assessed cumulatively in accordance with Article 3(4) of the basic Regulation.
- (141) The margin of dumping established in relation to the imports from the PRC and Brazil was above the *de minimis* threshold laid down in Article 9(3) of the basic Regulation. 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 [12-13] % and [2-3] %, respectively.
- (142) The conditions of competition between the dumped imports from the PRC and Brazil and between the dumped imports from the countries concerned and the like product were similar. More specifically, the imported products competed with each other and with ECCS produced in the Union because they were sold through the same sales channels and to similar categories of customers.

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

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

- (144) The Commission established the volume of imports on the basis of Eurostat data. The market share of the imports was established on the basis of share these imports represented of the total Union consumption.
- (145) Imports from the countries concerned developed as follows:

Table 4

Import volume (in tonnes) and market share (in %)

	2018	2019	2020	Investigation period
Volume of imports from the PRC	[56 000-66 000]	[66 000-77 000]	[80 000-94 000]	[64 000-75 000]
<i>Index</i>	100	118	143	114
Volume of imports from Brazil	[12 000-14 000]	[3 000-4 600]	[8 000-10 000]	[14 000-16 000]
<i>Index</i>	100	32	70	113
Volume of imports from countries concerned	[68 000-80 000]	[69 000-82 000]	[88 000-104 000]	[78 000-91 000]
<i>Index</i>	100	102	129	113
Market share the PRC (%)	[10-11]	[12,5-13,5]	[15-16]	[12-13]
<i>Index</i>	100	121	147	117
Market share Brazil (%)	[2-3]	[0,5-1,5]	[1-2]	[2-3]
<i>Index</i>	100	33	72	117
Market share countries concerned (%)	[12-14]	[13-15]	[16-18]	[14-16]
<i>Index</i>	100	105	133	117

Source: Eurostat

- (146) The volume of imports from the countries concerned increased between 2018 and the IP by 13 % and their market share increased by 17 % in the same period. The volume of imports was constantly increasing until 2020 and then it decreased in the IP mainly due to the transport and logistic issues related to imports from China in the second half of the IP. In any event, the volume of imports from the countries concerned in the IP was higher compared to both 2018 and 2019.

4.3.3. *Prices of the imports from the countries concerned and price undercutting*

- (147) The Commission established the prices of imports on the basis of Eurostat data. Price undercutting of the imports was established on the basis of data from the cooperating exporting producers and the cooperating Union producers.

(148) The weighted average price of imports from the countries concerned developed as follows:

Table 5

Import prices (EUR/tonne)

	2018	2019	2020	Investigation period
Import price the PRC	771	761	701	721
<i>Index</i>	100	99	91	93
Import price Brazil	701	654	619	690
<i>Index</i>	100	93	88	98
Import price countries concerned	759	755	693	715
<i>Index</i>	100	99	91	94

Source: Eurostat

(149) The average import price of the imports from the countries concerned decreased by 6 % during the period considered although the price of the main raw materials (iron ore and hot-rolled strips) increased in the same period. Import prices were lower than the Union industry's prices as reflected in Table 9.

(150) The Commission determined the price undercutting during the investigation period by comparing:

- (1) the 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; and
- (2) the corresponding weighted average prices per product type of the imports from the sampled cooperating PRC producers and the cooperating Brazilian producer to the first independent customer in the Union market, established on a cost, insurance, freight (CIF) basis, with appropriate adjustments for customs duties and post-importation costs.

(151) 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. It showed a weighted average undercutting margin of between 1,9 % and 13,7 % for China and 21,8 % for Brazil.

(152) The user Eviosys claimed that prices of the product concerned from the PRC were not directly comparable with the ones of the Union industry due to quality issues. However, this claim was not supported with evidence. Therefore, this claim was provisionally rejected.

4.4. Economic situation of the Union industry

4.4.1. General remarks

(153) 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.

(154) As mentioned in recital (12), sampling was used for the determination of possible injury suffered by the Union industry.

- (155) 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 reply to the macroeconomic questionnaire. The data related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. The data related to the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.
- (156) 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.
- (157) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

4.4.2. Macroeconomic indicators

4.4.2.1. Production, production capacity and capacity utilisation

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

Table 6

Production, production capacity and capacity utilisation

	2018	2019	2020	Investigation period
Production volume (tonnes)	[480 000-562 000]	[464 000-544 000]	[428 000-501 000]	[439 000-513 000]
<i>Index</i>	100	97	89	91
Production capacity (tonnes)	[581 000-680 000]	[581 000-680 000]	[581 000-680 000]	[581 000-680 000]
<i>Index</i>	100	100	100	100
Capacity utilisation (%)	[82-89]	[80-86]	[73-79]	[75-81]
<i>Index</i>	100	97	89	91

Source: Eurofer and sampled Union producers

- (159) The production volume of Union industry decreased during the period considered.
- (160) While the production capacity of Union industry remained stable during the period considered, the capacity utilisation followed the same negative trend as production and decreased by 9 % between 2018 and the IP.

4.4.2.2. Sales volume and market share

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

Table 7

Sales volume and market share

	2018	2019	2020	Investigation period
Sales volume on the Union market (tonnes)	[336 000-394 000]	[336 000-394 000]	[317 000-371 000]	[337 000-394 000]
<i>Index</i>	100	100	94	100
Market share (%)	[61-66]	[63-68]	[60-64]	[64-68]
<i>Index</i>	100	103	97	104

Source: Eurofer and sampled Union producers

- (162) The sales volume of the Union industry on the Union market remained overall stable during the period considered, with a decline by 6 % observed in 2020. The market share of Union industry slightly increased during that period by 4 %.

4.4.2.3. Employment and productivity

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

Table 8

Employment and productivity

	2018	2019	2020	Investigation period
Number of employees	[680-790]	[820-960]	[840-980]	[770-900]
<i>Index</i>	100	122	124	113
Productivity (tonnes/employee)	[658-770]	[523-612]	[473-553]	[530-621]
<i>Index</i>	100	79	72	81

Source: Eurofer and sampled Union producers

- (164) While the number of employees increased by 13 % between 2018 and the IP, productivity decreased by 19 %. The decline in productivity is mainly due to the decrease of the production volume over the period considered. A declining productivity points to an increased labour cost per tonne of ECCS produced.

4.4.2.4. Growth

- (165) As explained in Sections 4.4.2.1 to 4.4.2.3 above, the production volume and the capacity utilisation of the Union industry decreased by 9 % during the period considered, which resulted in higher fixed costs per unit of production and in lower productivity. This decrease exceeded the decrease of the Union consumption, as mentioned in recital (139).
- (166) Even though the sales volume on the Union market remained stable and the market share increased by 4 % between 2018 and the IP, the Union industry experienced a deterioration of its financial performance. As explained in Section 4.4.3 below, it faced higher cost of production while being unable to adjust its sales prices accordingly.

(167) Therefore, the growth perspectives of the Union industry have been jeopardised.

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

(168) All dumping margins were significantly above the *de minimis* level. 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.

(169) This is the first anti-dumping investigation regarding the product under investigation. Therefore, no data were available to assess the effects of possible past dumping.

4.4.3. Microeconomic indicators

4.4.3.1. Prices and factors affecting prices

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

Table 9

Sales prices in the Union (EUR/tonne)

	2018	2019	2020	Investigation period
Average unit sales price in the Union on the total market	[780-910]	[800-930]	[760-890]	[780-910]
<i>Index</i>	100	102	97	100
Unit cost of production	[770-900]	[810-950]	[810-940]	[840-980]
<i>Index</i>	100	106	105	109

Source: sampled Union producers

(171) The average Union industry's sales prices remained overall stable during the period considered although the average cost of production increased by 9 % between 2018 and the IP. Union industry was not able to increase sales prices to cover the increased cost of production.

(172) The sales of the Union industry of the like product in the Union market were based on yearly contracts with customers that fixed the quantities and prices for the following year. While the Union industry has a minimal margin to increase sales prices in the context of increasing raw material prices during the application of the yearly contract, in principle it should be able to increase its sales prices when it negotiates the contracts for the following year. However, the Union industry did not manage to do so during the period considered because of price pressure by imports. This led to a decrease of the profitability of Union industry, as explained in Section 4.4.3.4 below.

4.4.3.2. Labour costs

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

Table 10

Average labour costs per employee (EUR)

	2018	2019	2020	Investigation period
Average labour costs per employee	[71 000-83 000]	[72 000-85 000]	[68 000-80 000]	[71 000-83 000]
<i>Index</i>	100	102	96	100

Source: sampled Union producers

- (174) The average labour cost per employee of the Union industry remained overall stable during the period considered with a small increase in 2019 and a decrease of 4 % in 2020, mainly because of production shutdowns due to the COVID-19 pandemic. In the IP, the average labour cost went back to its level of 2018.

4.4.3.3. Inventories

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

Table 11

Inventories

	2018	2019	2020	Investigation period
Closing stocks (tonnes)	[37 900-44 400]	[41 800-48 900]	[22 700-26 600]	[33 700-39 500]
<i>Index</i>	100	110	60	89
Closing stocks as a percentage of production (%)	[7-9]	[9-11]	[5-7]	[7-9]
<i>Index</i>	100	115	68	98

Source: sampled Union producers

- (176) The inventories first increased by 10 % in 2019 before drastically falling down in 2020. Overall, they decreased by 11 % between 2018 and the IP. As explained in recital (172), the ECCS industry in the Union is characterised by yearly framework contracts between producers and customers that fix the quantities and prices. These framework contracts are implemented through purchasing orders according to customer's needs. As a result, the Union industry can plan its production and inventories. Therefore, inventories are not a main indicator for the assessment of the Union industry's performance.

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

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

Table 12

Profitability, cash flow, investments and return on investments

	2018	2019	2020	Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	[1-3]	[(- 1)-(- 3)]	[(- 7)-(- 9)]	[(- 8)-(- 10)]
<i>Index</i>	100	- 137	- 414	- 505
Cash flow (EUR)	[10 000 000-11 700 000]	[1 000 000-2 000 000]	[(- 5 400 000) - (- 6 300 000)]	[(- 9 500 000) - (- 11 150 000)]
<i>Index</i>	100	9	- 54	- 95
Investments (EUR)	[16 820 000-19 690 000]	[22 750 000-26 630 000]	[28 400 000-33 250 000]	[30 000 000-35 130 000]
<i>Index</i>	100	135	169	178
Return on investments (%)	[1-2]	[(- 1)-(- 2)]	[(- 3)-(- 4)]	[(- 4)-(- 5)]
<i>Index</i>	100	- 137	- 373	- 461

Source: sampled Union producers

- (178) 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.
- (179) The profitability of the Union industry decreased and turned to losses as from 2019, which further increased in the IP. Indeed, although the Union industry maintained its production volumes in order to cover the high fixed costs, it was not able to increase sales prices to cover the increased cost of production and therefore became loss making.
- (180) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow developed downwards with a decrease of approx. 200 % over the period considered and was negative in the IP. Therefore, the Union industry experienced difficulties to self-finance its activities, which is a further indication of its deteriorated financial situation.
- (181) The return on investments is the profit in percentage of the net book value of investments. It followed a similar negative trend as profitability and net cash flow. The return on investment decreased significantly between 2018 and the IP and turned negative in the IP. Therefore, the Union industry was not able to generate enough profits in order to cover its investments. Indeed, the Union industry progressively increased its investments during the period considered, mostly due to the necessity to comply with legal requirements and it was not able to have a return on these investments. The negative development of the return on investment during the period considered further indicated that the overall financial situation of the Union industry worsened to a significant extent.
- (182) The sampled Union producers' ability to raise capital was affected by their deteriorated financial situation. The considerable decrease of the profitability and the net cash flow pointed to serious concerns as regards the liquidity situation of Union industry and its ability to raise capital to finance its operating activity and needed investments.

4.4.4. Conclusion on injury

- (183) Economic indicators at both macro and micro level deteriorated during the period considered.

- (184) While the Union industry's production capacity remained stable, the capacity utilisation decreased by 9 % between 2018 and the IP, which resulted in higher fixed cost per tonne of ECCS. Although the Union industry sales volume remained overall stable and it gained some market share in the period considered, mainly due to the decrease of imports from other third countries (by 21 % in terms of market share), its production volume decreased by 9 % in the same period.
- (185) Despite the fact that the Union industry maintained overall its market position during the period considered, its financial situation deteriorated mainly due to the increased cost of production, which could not be covered by a corresponding increase of its sales prices.
- (186) The average Union industry's sales prices remained stable during the period considered although the average cost of production increased by 9 % in the same period. The significant price suppression exercised by the dumped imports led to losses as from 2019, which further increased in the IP. The profitability of the Union industry turned negative from [1-3] % in 2018 to [(-8)-(-10)] % in the IP, which means that it decreased by a factor of six. While net investments increased by 78 %, the return on investment became negative during the period considered, from [1-2] % in 2018 to [(-4)-(-5)] % in the IP, which means that it decreased five times. The cash flow also became negative, which affected the ability of the Union industry to self-finance its operations. The number of employees increased during the same period by 13 %; however the productivity decreased by 19 %, resulting in a higher labour cost per tonne of ECCS.
- (187) As set out above, economic indicators such as profitability, cash flow and return on investment deteriorated significantly during the period considered. This negatively affected the ability of the Union industry to self-finance operations, to make necessary investments and to raise capital, thus impeding its growth and even threatening its survival.
- (188) On the basis of the above, the Commission provisionally concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

- (189) 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 COVID-19 pandemic, the evolution of the cost of production, the export performance of the Union industry and effect of yearly contracts.

5.1. Effects of the dumped imports

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

- (190) The Commission examined the evolution of the volume of imports from the countries concerned and their impact on the Union industry as required by Article 3(2) of the basic Regulation.
- (191) The import quantity from the countries concerned continued to increase during the period considered although a decrease in the investigation period was observed, mainly due to the disruption of international transport and therefore, supply of ECCS in 2021. The cumulated import volumes from the countries concerned increased from [68 000-80 000] tonnes in 2018 to [78 000-91 000] tonnes in the investigation period, which represented an increase of 13,5 %.
- (192) The market share of imports from the countries concerned increased from 13,1 % in 2018 to 15,4 % in the IP, i.e. an increase of 17,5 %. Consequently, there has been a significant increase in dumped imports within the meaning of Article 3(3) of the basic Regulation.

5.1.2. Price of the dumped imports from the countries concerned and price effects

- (193) The average import price of the imports from the countries concerned decreased by 6 % during the period considered although the price of the main raw material (iron ore or hot-rolled strips) increased in the same period. The average import prices were significantly below the average sales prices of the Union industry in the Union market (EUR/tonne 715 v EUR/tonne 780-910 in the IP). As explained in recital (151) above, the imports from the countries concerned undercut the Union industry's prices by 1,9 % – 13,7 % for China and 21,8 % for Brazil. Regardless of the price undercutting, the significant import volumes at low prices depressed the Union industry's prices, which could not cover the costs of production, thereby incurring losses.

5.1.3. Causal link between the dumped imports from the countries concerned and the material injury of the Union industry

- (194) The increased quantity of imports from the countries concerned combined with their low average sales prices had a negative impact on the Union industry's financial situation. The Union industry was not able to increase their sales prices in order to pass on to customers the increasing cost of raw materials because it faced unfair competition from imports of the product concerned. The Union industry's strategy was to maintain production volumes and market share to cover the high fixed costs to the detriment of its profitability. Therefore, the low priced imports from the countries concerned prevented price increases by the Union industry within the meaning of Article 3(3) of the basic Regulation and thus caused price suppression.
- (195) The user Eviosys claimed that imports exert very limited, if any, competitive pressure on the Union industry by referring to a merger Commission decision ⁽⁴⁶⁾. Based on the same decision, the user and CISA argued that imports, in particular from China, were used mostly for low-end applications because of their lower quality, and that Union customers preferred to source their products locally because imports had longer lead times, higher transport cost, as well as lower quality levels and longer lead times.
- (196) The Commission's decisions in merger cases have different objectives and are based on a different types of assessments. In any event, the decision referred to by the user had a much wider product scope than ECCS and encompassed a number of other steel products, some of them already subject to anti-dumping duties. In addition, in the parts of the merger decision referred to by the user, the Commission made a joint market analysis of tinsplate and ECCS. Furthermore, the analysis of imports made in this decision concerned a period prior to the period considered. Finally, the claim regarding longer lead times, lower quality levels and higher transport cost was not supported by evidence. Consequently, the Commission provisionally rejected the claim.
- (197) In view of the above considerations, the Commission provisionally established the material injury suffered by the Union industry was caused by the dumped imports from the countries concerned within the meaning of Article 3(6) of the basic Regulation.

5.2. Effects of other factors

5.2.1. Imports from third countries

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

Table 13

Imports from third countries

Country		2018	2019	2020	Investigation period
United Kingdom	Volume (in tonnes)	[67 000-78 000]	[68 000-78 000]	[73 000-80 000]	[60 000-85 000]
	Index	100	102	109	91
	Market share (%)	[11-14]	[12-15]	[13-16]	[11-14]

⁽⁴⁶⁾ Commission Decision in Case M.8713 – Tata steel/ThyssenKrupp/JV, 11 June 2019, recitals 384, 388 and 390.

	<i>Index</i>	100	105	112	94
	Average price (EUR/tonne)	850	854	837	839
	<i>Index</i>	100	100	98	98
Japan	Volume (in tonnes)	[8 900-10 500]	[11 800-13 900]	[14 400-17 000]	[13 400-15 800]
	<i>Index</i>	100	132	161	150
	Market share (%)	[1-2]	[2-3]	[2,5-3,5]	[2-3]
	<i>Index</i>	100	135	166	155
	Average price (EUR/tonne)	850	848	777	776
	<i>Index</i>	100	100	91	91
South Korea	Volume (in tonnes)	[11 600-13 600]	[4 300-5 100]	[3 900-4 500]	[4 700-5 500]
	<i>Index</i>	100	36	33	40
	Market share (%)	[2-3]	[0,5-1,5]	[0,5-1,5]	[0,5-1,5]
	<i>Index</i>	100	38	34	42
	Average price (EUR/tonne)	802	855	771	763
	<i>Index</i>	100	107	96	95
Other third countries	Volume (in tonnes)	[29 000-34 000]	[17 000-20 000]	[8 000-9 000]	[11 000-13 000]
	<i>Index</i>	100	59	29	37
	Market share (%)	[5-7]	[3-5]	[1-3]	[2-4]
	<i>Index</i>	100	60	29	38
	Average price (EUR/tonne)	869	805	732	812
	<i>Index</i>	100	93	84	93
Total of all third countries except the countries concerned	Volume (in tonnes)	[117 000-137 000]	[101 000-119 000]	[100 000-117 000]	[90 000- 105 000]
	<i>Index</i>	100	87	85	77

	Market share (%)	[21-24]	[18-21]	[18-21]	[16-19]
	<i>Index</i>	100	89	88	79
	Average price (EUR/tonne)	850	845	817	822
	<i>Index</i>	100	99	96	97

Source: Eurostat

- (199) Import volumes from other third countries held a market share of 22,4 % in 2018 and 17,8 % in the IP. The volume of these imports decreased during the period considered by 23 % and their market share followed the same trend with a decrease of 21 %. The average import price of these imports slightly decreased during the period considered by 3 %. However, its price levels remained close to the average sales price of the Union industry (EUR/tonne 822 v EUR/tonne 780-910 in the IP) and were significantly higher than the average import price of imports from the countries concerned (EUR/tonne 822 v EUR/tonne 715 in the IP). The sole country that increased its imports into the Union in the period considered was Japan. However, its imports decreased in the IP compared to 2020 and its price levels remained significantly higher than the prices of imports of the countries concerned.
- (200) CISA claimed that imports from the United Kingdom ('UK') break the causal link between the imports from the PRC and the injury found given the quantities imported from that country. However, imports from the UK were at much higher prices than the ones from the PRC or from Brazil and decreased by 6 % during the period considered. Therefore, the Commission provisionally rejected the claim.
- (201) Therefore, the Commission provisionally concluded imports from other third countries have not contributed to the injury suffered by the Union industry.

5.2.2. The COVID-19 pandemic

- (202) The user Eviosys and CISA claimed that the crisis caused by the COVID-19 pandemic, which resulted in a natural increase in costs combined with a contraction of the demand, has been the cause of the mismatch between the evolution of costs and prices during that period. CISA also claimed that the COVID-19 pandemic should be considered as a "*causality-breaking*" factor.
- (203) In this respect, indeed, the COVID-19 pandemic had a negative impact on Union industry, especially in 2020 when production sites of the Union industry had to close temporarily. Therefore, it is possible that the COVID-19 pandemic might have contributed to the injury suffered by the Union industry.
- (204) However, the deterioration of the situation of the Union industry had already started before the pandemic and continued after the production of the Union industry resumed in the IP. In fact, the financial situation of the Union industry further deteriorated in the IP. The profitability was [(-7)-(-9)] % in 2020 while in the IP it decreased to [(-8)-(-10)] %. Cash flow and return on investments followed the same trend.
- (205) Therefore, the Commission provisionally concluded that the COVID-19 pandemic was not sufficient to attenuate the causal link between the dumped imports from the countries concerned and the material injury suffered by the Union industry.

5.2.3. The evolution of the cost of production

- (206) As explained in Section 4.4.3.1 above, while the average cost of production of the Union industry increased by 9 % between 2018 and the IP the average sales price of the Union industry on the Union market remained stable.

- (207) Eviosys and CISA claimed that the increase of raw material cost, as well as of the transport expenses, contributed to the deterioration of the Union industry performance. Eviosys pointed to negative “*price-cost effects*” that are characteristic for the steel industry due to the time lag between the increase of raw material costs and the increase of sales prices.
- (208) In this respect, as explained in recitals (172) and (194) above, the Union industry was unable to adjust its sales prices during the entire period considered. This pattern was observed during a long period of time and therefore, it could not be explained only by the increase of raw materials cost. This impossibility to adjust sales prices coincides in time with the increase of the imports of the dumped imports from the countries concerned, at significant levels of undercutting, suppressed the Union industry’s sales price and brought the profitability downwards.
- (209) Therefore, the Commission provisionally concluded that the costs evolution by itself could not be a cause of the injury suffered by the Union industry.

5.2.4. Export performance of the Union industry

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

Table 14

Export performance of the sampled Union producers

	2018	2019	2020	Investigation period
Export volume (tonnes)	[105 000-123 000]	[110 000-128 000]	[109 000-127 000]	[98 000-115 000]
<i>Index</i>	100	104	103	93
Average price (EUR/tonne)	[750-880]	[760-890]	[710-840]	[720-840]
<i>Index</i>	100	101	95	94

Source: Eurofer for export volumes and average price from sampled Union producers

- (211) Export sales to unrelated customers represented 22,5 % of the total Union industry production the IP. During the period considered, the export volumes fluctuated – they first increased between 2018 and 2019 by 4 % and then decreased in 2020 and again in the IP. Overall, export sales decreased in the period considered by 7 %.
- (212) According to the Union industry, export sales represent the volumes that could not have been sold on the Union market. Indeed, as mentioned above in recital (194), the Union industry needs to keep production volumes and capacity utilisation high and stable to cover the high fixed costs.
- (213) In the IP, the Union industry sold more than 75 % of its production in the Union market. Therefore, although the decline in export performance could have contributed to the injury suffered by the Union industry, the Commission provisionally concluded that, considering the high share of Union sales compared to export sales, it is not enough to attenuate the causal link between the dumped imports from the countries concerned and the injury suffered by the Union industry.

5.2.5. *Effect of yearly contracts*

- (214) Sales of the Union industry of the like product in the Union market were based on yearly contracts with customers that fix the quantities and prices for the following year. The Union industry has a minimal margin to increase sales prices in the context of increasing raw material prices during the application of the yearly contract. In principle, the Union industry should be able to increase its sales prices when it negotiates the contracts for the following year. However, as explained in recital (208), the Union industry was unable to increase its sales prices during the entire period considered. This pattern was observed during a long period of time and, therefore, it could not be explained only by the increase of raw materials cost.
- (215) Therefore, the time lag between the increase of raw materials cost and the increase of the sales prices due to the yearly contracts did not appear to prevent the Union industry from adapting its sales prices to the increasing cost of production over the period considered. As a result, the Commission provisionally concluded that fixing the sales prices in yearly contracts did not attenuate the causal link between the dumped imports and the injury found.

5.2.6. *Consumption*

- (216) Eviosys and CISA claimed that the contraction of the Union ECCS market caused injury to the Union industry.
- (217) As mentioned in recital (139), the Union consumption decreased by [17 000 – 20 000] tonnes, i.e. 3 %, in the period considered. Nevertheless, Union sales figures remained constant. It was thus the price suppression exerted by the low-priced dumped imports rather than a loss of volumes due to falling consumption that was the cause of injury to the Union industry.
- (218) Therefore, the Commission provisionally concluded that the contraction of the market demand by 3 % could not be considered as a cause of injury attenuating the causal link between the dumped imports and the injury found. Consequently, the claims were provisionally rejected.

5.2.7. *Conclusion on causation*

- (219) The deterioration of the Union industry's financial situation coincided in time with increasing volumes of imports of ECCS from the countries concerned, which were made at dumped prices that even decreased during the period considered, as mentioned in Section 5.1 above.
- (220) 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. The effect of imports from other third countries, the COVID-19 pandemic, the evolution of the cost of production, the export performance of the Union industry and effect of long-term contracts on the Union industry's negative developments in terms of production volumes, sales prices and profitability was only limited.
- (221) On the basis of the above, the Commission provisionally concluded that the dumped imports from the countries concerned caused material injury to the Union industry and that the other factors, either individually or collectively, were not sufficient to attenuate the causal link between the dumped imports and the material injury.

6. LEVEL OF MEASURES

- (222) 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.
- (223) The complainant claimed the existence of raw material distortions within the meaning of Article 7(2a) of the basic Regulation. Thus, in order to carry out an assessment regarding the appropriate level of measures, the Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry in the absence of distortions under Article 7(2a) of the basic Regulation. Then it examined whether the dumping margin of the sampled exporting producer, whose main raw material was found to be subject to the distortion, would be higher than its underselling margin (see Section 6.2 below).

6.1. Underselling margin calculation

- (224) The Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry in the absence of distortions under Article 7(2a) of the basic Regulation. In this case, the injury would be eliminated if the Union industry was able to cover its costs of production, including those costs resulting from multilateral environmental agreements, and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia, and was able to obtain a reasonable profit ('target profit').
- (225) 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 countries under investigation and the level of profitability needed to cover full costs and investments, research and development (R&D) and innovation. Such profit margin should not be lower than 6 %.
- (226) As a first step, the Commission established a basic profit covering full costs under normal conditions of competition. In this respect, the Commission took into account the profit that the Union industry had before the increase of imports from the countries concerned, which was [1-3] %. As this profit was below 6 %, the Commission provisionally used the profit of 6 % in accordance with Article 7(2c) of the basic Regulation.
- (227) On this basis, the non-injurious price is EUR/tonne [850-990], resulting from applying the above-mentioned profit margin of 6 % to the cost of production of the sampled Union producers during the IP.
- (228) As a second step, in accordance with Article 7(2d) of the basic Regulation, 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 to the basic Regulation that the Union industry will incur during the period of the application of the measures pursuant to Article 11(2). Based on the evidence available, the Commission provisionally established an additional future cost of EUR/tonne [10-20]. This additional cost was added to the non-injurious price mentioned in recital (227).
- (229) These costs comprised the following elements:
- (a) the additional future costs to ensure compliance with the Union Emissions Trading System ('ETS') both in terms of cost of purchase of the emission permits and indirect future costs linked to the ETS related to the purchase of the electricity
- (230) ETS policy is a cornerstone of the Union policy to meet the environmental obligations of the Paris Agreement ⁽⁴⁷⁾ and a key tool for reducing greenhouse gas emissions. The additional costs related to the purchase of permits were calculated on the basis of the average estimated additional EU Allowances (EUA) which will have to be purchased during the life of the measures. The EUAs used in the calculation were net of free allowances receivable and, like all costs of production, were verified to ensure they were correctly allocated to the product under investigation. The costs of the EUAs were extrapolated to account for the expected price variation during the lifespan of the measures. Commission established projected ETS allowance prices using an extraction from Bloomberg New Energy Finance dated 10 February 2022. The average projected price for EUAs for this period is EUR/tonne 71,3 of CO₂ produced.
- (231) For the future costs related to the purchase of electricity, the Commission took into account the future evolution of the CO₂ emissions cost related to the consumption of electricity. When calculating the future cost the Commission duly considered any compensation received by the Union producers. To determine the future CO₂ cost, the Commission used the projected prices in the extraction from Bloomberg New Energy Finance mentioned in recital (231).
- (b) future cost resulting from investments to reduce CO₂ emissions
- (232) The Union policy to reduce CO₂ emissions is also in line with the Union commitments under the Paris Agreement. In order to calculate the future costs, the Commission took into account additional future cost in terms of depreciation of such investments.

⁽⁴⁷⁾ The Paris Agreement is an agreement within the United Nations Framework Convention on Climate Change.

- (233) On this basis, the Commission calculated a non-injurious price of the like product for the Union industry by applying the above-mentioned target profit margin 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. The Commission is still analysing information on file in relation to investments that might be relevant under Articles 7(2c) and/or 7(2d) of the basic Regulation.
- (234) The Commission then determined the underselling margin on the basis of a comparison of the weighted average import price of the sampled cooperating exporting producers in the countries concerned, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the sampled Union producers in 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. For other cooperating companies outside the sampled as regards the PRC, the Commission used the weighted average margins of the two sampled exporting producers.

Country	Company	Provisional dumping margin	Provisional underselling margin
The People's Republic of China	Baoshan Iron & Steel Co., Ltd	43,3 %	33,2 %
	Handan Jintai Packing Material Co., Ltd.	53,9 %	23,7 %
	Other cooperating companies	45,1 %	31,6%
Brazil	Companhia Siderúrgica Nacional	66,8 %	52,0 %

6.2. Examination of the margin adequate to remove the injury to the Union industry in relation to the PRC

- (235) On the basis of the above, the Commission concluded that it was necessary to assess whether there are distortions with regard to the product under investigation within the meaning of Article 7(2a) of the basic Regulation, which would render a duty lower than the margin of dumping insufficient to remove the injury caused by dumped imports of the product under investigation.
- (236) As explained in the Notice of Initiation, the complainant provided sufficient evidence that there may be raw material distortions in the PRC regarding the product under investigation. Therefore, in accordance with Article 7(2a) of the basic Regulation, the Commission examined the alleged distortions to assess whether a duty lower than the margin of dumping would be sufficient to remove injury.
- (237) According to the evidence in the complaint, hot-rolled flat steel, accounting for a significant part of the cost of production of the product under investigation, was subject to VAT refund withdrawal in China.
- (238) Therefore, as announced in the Notice of Initiation, in accordance with Article 7(2a) of the basic Regulation, the Commission examined the impact of the raw material distortions on the production of ECCS in China.
- (239) The Commission noted that one of the sampled Chinese producers, Jintai, purchased hot-rolled coils ('HRC'), while the other, Baosteel, did not have any such purchases. The Commission assessment at the provisional stage focused on HRC in accordance with the raw material distortions put forward in the complaint, but will continue the investigation, also with regard to other possible raw material distortions under Article 7(2a) of the basic Regulation.
- (240) The Commission confirmed that HRC represented more than 17 % of the cost of production for Jintai. For the purposes of this calculation, at the provisional stage, an undistorted price of the raw material as established in Brazil was used.

- (241) The Commission then examined whether the price of HRC was distorted by one of the measures listed in Article 7(2a) of the basic Regulation. For this purpose the Commission used the databases on export VAT and refund rates of the People's Republic of China and the related announcement of the Chinese Ministry of Finance and the State Administration of Taxation. The Commission established that HRC has been subject to a VAT refund withdrawal since at least 2019.
- (242) Subsequently, the Commission compared the prices of HRC in China to prices in representative international markets. At provisional stage, the Commission compared the prices paid by the company Jintai with the Metal Bulletin prices for HRC for different markets, including ex-works in Brazil, as these were provisionally considered to be in line with prices in representative international markets. On that basis, the Commission found that prices in representative international markets were [10-30] – [30-50] % higher than in the country concerned, which was considered significant.
- (243) Therefore, the Commission provisionally concluded that HRC was subject to a significant distortion within the meaning of Article 7(2a) of the basic Regulation.

7. UNION INTEREST

7.1. Union interest under Article 7(2b) of the basic Regulation

- (244) In accordance with Article 7(2b) of the basic Regulation, the Commission examined whether it could clearly conclude that it was in the Union interest to determine the amount of provisional duties in accordance with Article 7(2a) of the basic Regulation with regard to Jintai only. The determination of the Union interest was based on an appreciation of all pertinent information to this investigation, including the spare capacities in the exporting country, competition for raw materials and the effect on supply chains for Union companies.

7.1.1. Spare capacities in the exporting country

- (245) The complainants estimated the Chinese domestic capacity for ECCS at around 990 000 tonnes and the output of ECCS around 650 000 tonnes in 2018 ⁽⁴⁸⁾. This means an estimated capacity utilisation of 66 %. Besides, for the two sampled exporting producers, the capacity utilisation was on average [70-90] %. That is higher than the estimation of the complainants for the whole country. Even if the average spare capacity of the two sampled companies (that is [10-30] %) would be extrapolated to the country concerned, the spare capacity in China would amount to around [100 000-300 000] tonnes, which represent a significant share of the Union consumption during the IP.
- (246) The Commission therefore concluded that a significant spare capacity exist in China and that, if used, this spare capacity had the potentiality to increase the global supply of the product under investigation, depress prices and consequently undermine the effectiveness of the measure if not set at the level of dumping.

7.1.2. Competition for raw materials

- (247) Generally, the global steel sector is a sector with significant excess capacity, largely due to the industrial policy of China. Steel products are widely available on the market both in the EU and in China.
- (248) The Commission established that the price of HRC in China was significantly lower than the price of HRC in representative international markets (see recital (242)). This creates a comparative disadvantage for the Union industry compared to the exporting producers in China. The Commission therefore concluded that, while HRC is available to the Union industry, it is available at a higher price than for its competitors in China. The Union industry is therefore at a disadvantageous position vis-à-vis Chinese exporting producers.

⁽⁴⁸⁾ Anti-dumping Complaint of 12 August 2021, par. 32.

7.1.3. *Effect on supply chains for Union companies*

- (249) As explained in recitals (262) and (263) below, the Union industry has enough capacity to cover total Union demand of the product under investigation.
- (250) Finally, Union users could source the product under investigation from other third countries. The total volume of imports from other third countries decreased by 23 % over the period considered while their market share decreased by 21 %. In particular, sales from South Korea decreased from [11 600-13 600] tonnes in 2018 to [4 700-5 500] tonnes in the IP, i.e. by 60 %. In the absence of dumped imports from the countries concerned, imports from other third countries would increase, as the sales prices on the Union market would be more attractive.
- (251) Therefore, users would have sufficient access to ECCS even in case the imports from China decrease due to the higher duty. Consequently, disruptions of the value chains of Union users are not expected.

7.1.4. *Conclusion on Union interest under Article 7(2b) of the basic Regulation*

- (252) Having assessed all pertinent information to this investigation, the Commission concluded that it is in the Union interest to determine the amount of provisional duties in relation to Handan Jintai Packing Material Co., Ltd in accordance with Article 7(2a) of the basic Regulation.
- (253) In view of the analysis set out above, the Commission concluded that, in accordance with Article 7(2a) of the basic Regulation, it is in the interest of the Union to set the level of the provisional duties on the basis of the level of dumping, subject to the further considerations in the context of Article 21 set out in Section 7.2 below.

7.2. **Union interest under Article 21 of the basic Regulation**

- (254) Having assessed the Union interest pursuant to Article 7(2b) of the basic Regulation, the Commission then 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.

7.2.1. *Interest of the Union industry*

- (255) The effect of anti-dumping measures will be positive for the Union producers, as measures will allow the Union industry to adapt its sales prices to cover the increased cost of production. Therefore, the Union industry would return to a sustainable situation, allowing it to make future investments, in particular to comply with environmental and social requirements.
- (256) In the absence of measures, the Union industry will continue suffering from material injury and its financial situation, in particular in terms of profitability, return on investments and cash flow, is expected to worsen further, thus threatening its viability.

7.2.2. *Interest of users and unrelated importers and traders*

- (257) ECCS is mainly used in the production of food packaging such as food cans.
- (258) Only one user, namely Eviosys, provided a questionnaire reply. It is the largest producer of food packaging in the Union and therefore, the most important user of the product under investigation.

- (259) In addition, a Consortium of six traders and users as well as two other users did not provide questionnaire replies but made submissions on injury and Union interest, and opposed the adoption of anti-dumping measures.
- (260) The users and traders invoked the following arguments.
- (261) First, they claimed that the Union producers have difficulties to ensure sufficient quantities of ECCS, especially after Brexit that excluded Tata Steel from the Union industry. They further claimed that the Union industry tends to export most of its production (around 50 %) to third countries, alleging that export sales are more profitable than Union sales. Therefore, the imposition of measures against imports from the countries concerned, which account for half of the total imports, would disturb Union users' supply chain and that new sources of supply may not be reliable.
- (262) In the IP, the total Union consumption of ECCS was [505 000-591 000] tonnes. The total Union industry capacity was [581 000-680 000] tonnes. The total Union industry production was [439 000-513 000] tonnes and the export sales of the Union industry in the IP were [98 000-115 000] tonnes while the imports volume from the countries concerned was [78 000-91 000] tonnes. These figures show that the Union industry has sufficient production capacity to cover the total Union demand of ECCS.
- (263) Consequently, the claims of Union users as to the shortages of ECCS on the Union market due to insufficient capacity of Union industry, or that half of the Union production was exported, did not appear to be well founded.
- (264) Second, some users argued that the imposition of duties would significantly increase their production cost, and that they could not pass on to their customers such price increases. They argued that price is a predominant factor on the downstream market, and that measures would thus have a serious impact on their competitive position. Competition from users located in third countries that could source cheaper ECCS not subject to anti-dumping duties would further affect Union users. In addition, according to Eviosys, the increase of prices of food packaging would have the effect of further increasing food prices, in particular affecting lower income households who rely more on canned food.
- (265) Union users and traders already source approximately 70 % of their ECCS needs from Union industry. Imports from the countries concerned had [14-16] % market share on the Union market in the IP and imports from other third countries have a very similar price to the sales price of the Union industry. Based on the data of Eviosys, the sole user which provided a questionnaire reply, it appeared that it would be able to absorb a possible cost increase considering its current profitability from sales of products using ECCS and the share of imports from the countries concerned in its sourcing portfolio. Therefore, the claim was provisionally rejected.
- (266) Concerning possible effect on food prices, Eviosys did not substantiate its claim to demonstrate that the increase of ECCS's prices would result in an increase of food packaging prices and ultimately in an increase of foodstuff prices, or that such potential increase would be in the same proportion as the increase of ECCS prices. Furthermore, ECCS is only used for food cans' endings, while tinplate, which is more expensive, is used for the cans' body. Finally, as explained in recital (265) above, the user will be able to absorb the possible cost increase due to the measures. Therefore, any potential increase of ECCS prices alone is not likely to affect, and if so only to a very minor extent, food packaging prices. Consequently, the Commission provisionally rejected this argument.
- (267) Third, Eviosys and CISA claimed that the Union ECCS market was characterised by a duopoly where the product choice and bargaining power of downstream users would be threatened by the imposition of anti-dumping measures and referred to the merger Commission decision mentioned in recital (195).
- (268) In this respect, as explained in recital (196), the Commission's assessment in merger cases pursues different objectives. In any event, the decision cited had a much wider product scope than ECCS and encompassed a number of other steel products, such as tinplate, and the analysis of imports made in this decision concerned a period prior to the period considered. Therefore, the claim was rejected.

- (269) Finally, two other users and CISA pointed to the existing safeguard measures on imports of steel products, including ECCS, already sufficiently protect the Union industry and that the quotas for imports from China have not been used to the maximum. They further claimed that in 2020 and 2021 prices of Chinese imports were very similar to the prices of Union producers after an increase due to the higher transport cost and the abolition of the 13 % VAT rebate of ECCS exports in China.
- (270) In this respect, safeguard measures do not have as a purpose and cannot protect against dumped imports. Although import prices from China increased by 2,8 % in the IP compared to 2020, they were still lower by [7,5-20,7] % compared to the Union sales prices on the Union market in the IP. Therefore, the increase of transport cost and the abolition of the 13 % VAT rebate of ECCS exports in China claimed by users did not appear to have removed dumping. Therefore, the claims were provisionally rejected.
- (271) CISA also requested the Commission to look into post-IP developments. In this respect, CISA submitted on 31 March 2022 comments on post-IP developments and on the consequence of possible measures for the EU downstream industries.
- (272) The comments were received after the deadline for comments set out in the notice of initiation and will be dealt with at definitive stage.

7.2.3. Conclusion on Union interest

- (273) The effects of the measures on the Union producers would be positive. The risks of a potential negative impact on users and unrelated importers/traders, in particular with respect to supply, would be mitigated by the free available capacity of the Union industry as well as the imports from other countries. The restoration of fair competition and of a level playing field, in the absence of dumped imports, would benefit the healthy development of the overall market and will allow the Union industry to comply with the costs arising from Union and Member State obligations under international agreements.
- (274) On the basis of the above, the Commission provisionally concluded that there were no compelling reasons that it was not in the Union interest to impose measures on imports of ECCS originating in the countries concerned at this stage of the investigation.

8. PROVISIONAL ANTI-DUMPING MEASURES

- (275) On the basis of the conclusions reached by the Commission on dumping, injury, causation, level of measures and Union interest, provisional measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.
- (276) As per the assessment above, provisional anti-dumping duties are set at the level of the injury margin for Baoshan Iron & Steel Co., Ltd. and Companhia Siderúrgica Nacional, in accordance with Article 7(2) of the basic Regulation,
- (277) Regarding Handan Jintai Packing Material Co., Ltd, the Commission examined whether a duty lower than the margin of dumping would be sufficient to remove injury. Having found distortions on raw materials with regard to the product concerned in the sense of Article 7(2a) of the basic Regulation, namely in the form of VAT refund withdrawals for HRC, the Commission concluded that it would be in the Union interest, as provided for in Article 7(2b) of the basic Regulation, to set the amount of the duty at the level of the dumping margin, as a duty lower than the margin of dumping would not be sufficient to address the injury suffered by the Union industry.
- (278) The provisional duty for the other cooperating non-sampled companies in the PRC is based on the weighted average injury margin as established above for the two sampled companies in the PRC, which is lower than the weighted average dumping margins for the two sampled companies in the PRC.

- (279) Given the low level of cooperation from producers in the PRC and the fact that the duty level for Jintai was based on the dumping margin found in accordance with Article 7(2a) of the basic Regulation, the level of the countrywide duty level was based on the highest dumping margins found per product types sold in representative quantities by Jintai. The Commission did not need to calculate the underselling or the injury margins as regards non-cooperating companies because of the findings of significant distortions under Article 7(2a).
- (280) Cooperation in Brazil was high and as a result, the residual duty is set at the same level as the one applicable to Companhia Siderúrgica Nacional.
- (281) Details are provided in the table below. On the basis of the above, the provisional anti-dumping duty rates (listed in the last column), expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Country	Company	Provisional dumping margin	Provisional injury margin	Provisional anti-dumping duty
The People's Republic of China	Baoshan Iron & Steel Co., Ltd	43,3 %	33,2 %	33,2 %
	Handan Jintai Packing Material Co., Ltd.	53,9 %	53,9 %	53,9 %
	Other cooperating companies	45,1 %	36,7 %	36,7 %
	All other companies	77,9 %	77,9 %	77,9 %
Brazil	Companhia Siderúrgica Nacional	66,8 %	52,0 %	52,0 %
	All other companies	66,8 %	52,0 %	52,0 %

- (282) 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 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.
- (283) 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.
- (284) To minimize 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'.

- (285) 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.
- (286) 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. INFORMATION AT PROVISIONAL STAGE

- (287) In accordance with Article 19a of the basic Regulation, on 25 April 2022, the Commission informed interested parties about the planned imposition of provisional duties. This information was also made available to the general public via DG TRADE's website. Interested parties were given three working days to provide comments on the accuracy of the calculations specifically disclosed to them. Following comments received, the Commission made corrections to the calculations where warranted.

10. FINAL PROVISIONS

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is imposed on imports of flat-rolled products of iron or non-alloy steel, plated or coated with chromium oxides or with chromium and chromium oxides, also designated as electrolytic chromium coated steel products, currently falling under CN codes 7210 50 00 and 7212 50 20 and originating in the People's Republic of China and Brazil.

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

Country	Company	Provisional anti-dumping duty	TARIC additional code
People's Republic of China	Baoshan Iron & Steel Co., Ltd	33,2 %	C039
	Handan Jintai Packing Material Co., Ltd.	53,9 %	C862
	Other cooperating companies: GDH Zhongyue (Zhongshan) Tinplate Industry Co.,Ltd. Shougang Jingtang United Iron & Steel Co., Ltd.	36,7 %	C137

	All other companies	77,9 %	C999
Brazil	Companhia Siderúrgica Nacional	52,0 %	C212
	All other companies	52,0 %	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. The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security deposit equivalent to the amount of the provisional duty.

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

Article 2

1. Interested parties shall submit their written comments on this regulation to the Commission within 15 calendar days of the date of entry into force of this Regulation.

2. Interested parties wishing to request a hearing with the Commission shall do so within 5 calendar days of the date of entry into force of this Regulation.

3. Interested parties wishing to request a hearing with the Hearing Officer in trade proceedings are invited to do so within 5 calendar days of the date of entry into force of this Regulation. The Hearing Officer may examine requests submitted outside this time limit and may decide whether to accept such requests if appropriate.

Article 3

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

Article 1 shall apply for a period of six months.

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

Done at Brussels, 20 May 2022.

For the Commission
The President
Ursula VON DER LEYEN