

COMMISSION IMPLEMENTING REGULATION (EU) 2017/649**of 5 April 2017****imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China**

THE EUROPEAN COMMISSION,

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

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

Whereas:

1. PROCEDURE**1.1. Provisional Measures**

- (1) On 7 October 2016 the European Commission ('the Commission') imposed a provisional anti-dumping duty on imports into the Union of certain hot-rolled flat products of iron, non-alloy or other alloy steel whether or not in coils (including 'cut-to-length' and 'narrow strip' products), not further worked than hot-rolled, not clad, plated or coated ('the product concerned') originating in the People's Republic of China ('PRC') by Commission Implementing Regulation (EU) 2016/1778 ⁽²⁾ ('the provisional Regulation').
- (2) The investigation had been initiated on 13 February 2016 ⁽³⁾ following a complaint lodged on 4 January 2016 by the European Steel Association ('Eurofer' or 'the complainant') on behalf of producers representing more than 90 % of the total Union production of certain hot-rolled flat products of iron, non-alloy or other alloy steel.
- (3) As stated in recital (23) of the provisional Regulation the investigation of dumping and injury covered the period from 1 January 2015 to 31 December 2015 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2012 to the end of the investigation period ('the period considered').
- (4) As mentioned in recital (3) of the provisional Regulation, the Commission also initiated the following two investigations:
 - (a) on 13 May 2016 ⁽⁴⁾, an anti-subsidy investigation on imports of the same product originating in the People's Republic of China;
 - (b) on 7 July 2016 ⁽⁵⁾, an anti-dumping investigation on imports of the same product originating in Brazil, Iran, Russia, Serbia and Ukraine.

1.2. Registration

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

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Commission Implementing Regulation (EU) 2016/1778 of 6 October 2016 imposing a provisional anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 272, 7.10.2016, p. 33).

⁽³⁾ OJ C 58, 13.2.2016, p. 9.

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

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

1.3. Subsequent procedure

- (6) Subsequent to the disclosure of the essential facts and considerations on the basis of which the provisional anti-dumping duty was imposed (the provisional disclosure), several interested parties made written submissions. The parties who so requested were granted an opportunity to be heard.
- (7) As set out in detail from recital (135) and following below, one interested party was invited by the Commission services to request the intervention by the Hearing Officer in certain trade proceedings ('the Hearing Officer') on the accuracy of the provisional calculations and on his right to access confidential information. This hearing took place on 7 February 2017.
- (8) The Commission continued seeking and verifying all information it deemed necessary for its definitive findings. In order to have at its disposal more comprehensive data on the Union's cost of production (per product type per quarter of the investigation period), the sampled Union producers were requested to provide additional data. All sampled Union producers submitted the requested information.
- (9) The Commission informed all parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of the product concerned into the Union. All parties were granted a period within which they could make comments on the definitive disclosure.
- (10) The comments submitted by the interested parties were considered and taken into account where appropriate.

1.4. Product concerned and like product

- (11) Recital (24) of the provisional Regulation set out the provisional definition of the product concerned.
- (12) Recitals (29) to (35) of the provisional Regulation set out the claim from a Chinese exporting producer and an importer to exclude tool steel and high-speed steel from the product scope, and the reasons why the Commission provisionally excluded tool steel and high-speed steel from the product scope.
- (13) Following definitive disclosure, the complainant reiterated its comment that this claim was not well founded and that there is a risk of circumvention in case these claims would be accepted by the Commission. The Commission observed that it already considered the risk of circumvention at provisional stage. As laid out in recital (34) of the provisional Regulation, it found that imports of tool steel and high-speed steel account volume-wise for about 1,25 % of total Chinese imports in 2015, and that they fall under different, specific CN codes. Furthermore, the Commission did not receive any evidence which would indicate a change in pattern of trade after the imposition of provisional measures, suggesting potential circumvention.
- (14) For the reasons set out in recitals (32) to (34) of the provisional Regulation and absent any new facts or evidence, the Commission maintained its decision to exclude tool steel and high-speed steel from the product scope.
- (15) Recitals (36) to (37) of the provisional Regulation set out the claim of an Italian user to exclude certain other product types from the product scope. As stated in recitals (38) and (39) of the provisional Regulation, the Commission provisionally rejected these requests but stated that it would further investigate this product exclusion request. Following the provisional disclosure, this Italian user reiterated its request.
- (16) During an on spot verification visit in the premises of the company, the Commission sought to clarify the points raised by this user.
- (17) However, the user did not bring forward any new element during these discussions. Accordingly, the Commission rejected these claims and confirmed its conclusions reached in recitals (38) and (39) of the provisional Regulation.
- (18) Following final disclosure, the Italian user reiterated its request to exclude Interstitial-Free (IF) steel types, dual-phase steel types, high carbon steel types, and non-grain oriented steel types of the product concerned. This user

referred to a discussion with Commission investigators, during which the user claims that the Commission officials would have accepted that there is a difference in terms of chemical characteristics and end-uses between 'ordinary' and other high-quality types of the product concerned. Moreover, this user referred to two other investigations where the Commission would have decided to exclude certain product types. The first case was an anti-circumvention investigation concerning certain aluminium foil from the People's Republic of China based on an alleged slight modification of the product. In that case, a particular type of aluminium foil used for further processing was allegedly excluded from the extension to the slightly modified product ⁽¹⁾. The second case concerned an investigation on certain corrosion resistant steels (CRS) originating in the People's Republic of China ⁽²⁾, where the product scope was so defined to exclude the automotive grades from the scope of the measures.

- (19) The Commission rejected this request. First, the meeting at the premises of the company was an exchange of information to clarify some points which were raised by the user. The user cannot draw any legitimate expectations from such kind of informal meeting. Moreover, contrary to what is claimed by the user, the Commission investigators never agreed that there was a difference between certain types of the product concerned in terms of chemical characteristics and end-uses. Second, it is true that the current description and the CN codes of the product concerned do include a wide variety of types from a quality perspective. However, the production of high-quality types of the product concerned by both the Union and exporting producers is inherent to the production process of the product concerned, and higher quality types are made from the same basic material and on the same production equipment. Therefore, such argument is not sufficient to lead to the exclusion requested by the user. Third, the two cases to which the user refers are both ongoing and no final conclusions have been made. In addition, one of these cases (the case concerning the particular type of aluminium foil) concerns an anti-circumvention case, and is therefore not relevant. Fourth, for the different types of the product concerned, including the so-called high-quality types, it is not possible to identify the difference between the numerous types of the product concerned based on visual inspection, and therefore an exclusion would be unmanageable by customs authorities. Fifth, in many cases, the products cannot even be differentiated by chemical analysis or microstructural tests, since such specific characteristics only arise later during the further cold rolling process. In conclusion, these types of a relatively higher quality also fully meet the definition of the product concerned, and no convincing argument has been brought forward to exclude them from the scope of the product concerned.
- (20) In the absence of any other comments regarding the product scope and the like product, the conclusions reached in recitals (24) to (28) of the provisional Regulation were confirmed.
- (21) The product concerned is thus defined as certain flat-rolled products of iron, non-alloy steel or other alloy steel, whether or not in coils (including 'cut-to-length' and 'narrow strip' products), not further worked than hot-rolled, not clad, plated or coated, originating in the PRC.

The product concerned does not include:

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

⁽¹⁾ Commission Implementing Regulation (EU) 2016/865 of 31 May 2016 initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Implementing Regulation (EU) 2015/2384 on imports of certain aluminium foil originating in the People's Republic of China by imports of slightly modified certain aluminium foil from the People's Republic of China, and making such imports subject to registration (OJ L 144, 1.6.2016, p. 35).

⁽²⁾ Procedures Relating To The Implementation Of The Common Commercial Policy, European Commission, Notice of initiation of an anti-dumping proceeding concerning imports of certain corrosion resistant steels originating in the People's Republic of China (OJ C 459, 9.12.2016, p. 17).

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

2. DUMPING

2.1. Normal value

- (22) After the imposition of provisional measures, and following definitive disclosure, the Chinese Iron and Steel Association (CISA) claimed that the difference between the injury and dumping margins raised doubts as to the accuracy of the Commission's methodology. CISA estimated that the normal value in the analogue country was 61 % higher than the target price for the Union industry. According to CISA, normal values provided by a producer which is related to the complainant, as it is the case for the present investigation, are sometimes abnormally high.
- (23) Furthermore, CISA claimed that, if the data is factually correct, in view of such difference, the Commission should invalidate the choice of the USA as a valid analogue country, make adjustments to the data or use EU data instead.
- (24) Under Union law, the Commission is entitled to use prices of companies related to EU producers when the analogue country is appropriate. This was the case for investigations on high fatigue performance steel concrete reinforcement bars (South Africa) ⁽¹⁾ and on cold-rolled flat steel products (Canada) ⁽²⁾, as mentioned by CISA itself. The existence of a relationship between the analogue country producer and a Union producer does not invalidate or affect the determination of the normal value which is based on duly verified data.
- (25) The calculations regarding the normal value were performed and validated according to the applicable legal rules. They are factually correct.
- (26) The USA is a competitive market with ten domestic producers and substantial imports from several countries. It has anti-dumping and countervailing measures in force, which allows its companies to operate under normal conditions of competition. Therefore, the Commission sees no reason for not using USA prices. In addition, no supporting evidence was provided that would justify making an adjustment.
- (27) After definitive disclosure, one interested part questioned again the choice of the USA as a valid analogue country in the present case, questioning the reliability of the normal value in that country which it found much too high as compared to the price on the Union market. Given that the data of the analogue country producer have been verified and have been found to be correct, that argument was rejected.
- (28) As regards the suggestion for prices actually paid or payable in the Union, Article 2(7) of the basic Regulation only allows for the use of these prices when the use of prices in or exports of a market economy third country is not possible. Given that it is possible to use the US prices (analogue country method) in the present case, this suggestion was dismissed.
- (29) The Commission hence confirmed its findings with regard to the normal value.

2.2. Export prices

- (30) At provisional stage, the Commission made adjustments to transactions where the exporting producers export the product concerned to the Union through related companies acting as an importer.

⁽¹⁾ OJ L 23, 29.1.2016, p. 16.

⁽²⁾ OJ L 210, 4.8.2016, p. 1.

- (31) These adjustments were made with reference to the actual profit of the related importers.
- (32) Because of the relationship between these exporting producers and the related traders/importers, the actual profits of related importers must however be considered unreliable. For this reason, in line with Article 2(9) of the basic Regulation, an adequate profit margin should be established by the investigation authority on a reasonable basis. The Commission considered that the profits made by an unrelated importer constitute a reasonable basis in this situation.
- (33) However, considering that the Commission did not obtain cooperation from any unrelated importer during this investigation, it resorted to the profit of an unrelated importer of a closely resembling product. Therefore, the Commission used the profit of an importer of cold-rolled flat steel products, which is similar in many respects to the product concerned, as explained in recital (221) of the provisional regulation. This profit was determined in the investigation on cold-rolled flat steel products mentioned in recital (24) above. The calculation of the export prices was adjusted accordingly.

2.3. Comparison

- (34) The exporting producer Jiangsu Shagang Group claimed that the Commission did not disclose all adjustments carried out on Shagang's export price and referred to one specific adjustment. The Commission clarified that the legal ground for this adjustment was Article 2(10)(i) of the basic Regulation as it refers to a mark-up received by a related company which performs functions similar to those of an agent working on a commission basis. In response, Shagang claimed that it should be considered a single economic entity together with its related companies and, therefore, this adjustment should not be made. On 16 November 2016, following a request from Shagang, a hearing took place between Shagang and the Commission services to further discuss this issue. In addition, following definitive disclosure, on 12 January 2017, a second hearing took place to discuss, *inter alia*, this adjustment.
- (35) Shagang reiterated that its related companies (two traders located in Hong Kong and Singapore, respectively) only deal with Shagang products, as far as steel products are concerned and that the fact that the related traders are also involved in the trading of products (other than steel) not produced by Shagang is irrelevant in establishing the existence of a single economic entity.
- (36) Under established case-law, the Union institutions are required to consider all factors necessary to determine whether the related trader carries out the functions of an integrated sales department within that producer and that those factors cannot be limited to the product concerned. In particular, the Union institutions are entitled to take into account factors such as sales by a related trader of products other than the product concerned as well as sales by such a trader of products supplied by producers other than the producer to which it is related. Accordingly, the Commission analysed several factors and established, *inter alia*, that: (i) there was a consistent mark-up charged by a related company in China to its related traders abroad; (ii) the main activity of these traders, amounting to around 90 % of their turnover, consisted of trading products other than the product concerned including trading activities with unrelated parties; (iii) in some cases, fees and expenses were found to have been paid in export sales to the Union; (iv) the business licence of one of these related traders described its main activities as 'wholesale on a fee or contract basis, e.g. commission agents'; (v) based on verified the Profit & Loss sheet it was established that the related traders own profit covered all relevant office expenditures, instead of these expenditures being covered by financial contributions from the parent company. Therefore, the Commission found that the related traders and Shagang do not form a single economic entity. The claim was therefore rejected and the adjustment under Article 2(10)(i) of the basic Regulation was maintained.

2.4. Dumping margin

- (37) Due to the correction made on construction of the export price mentioned in recital (33) above, the dumping margins of two groups of companies were recalculated, which led to their slight increase. This increase also had an impact on the dumping margin of all other cooperating and non-cooperating companies since this margin is based on the margins of cooperating companies.

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

Table 1

Dumping margins, the PRC

Chinese exporting producers	Definitive dumping margin
Bengang Steel Plates Co., Ltd	97,3 %
Hesteel Group Co., Ltd	95,5 %
Jiangsu Shagang Group	106,9 %
Other cooperating companies	100,5 %
All other companies	106,9 %

3. INJURY**3.1. Definition of the Union industry and Union production**

- (39) In the absence of any comments with respect to the definition of the Union industry and Union production the conclusions set out in recitals (62) to (66) of the provisional Regulation were confirmed.

3.2. Union consumption

- (40) One interested party submitted that the overall Union consumption has been underestimated as sales by Union producers to related companies, made at conditions comparable to those granted on the free market, have been excluded from the calculation of the Union consumption.
- (41) This claim was rejected: First, as set out in recital (69) of the provisional Regulation, the distinction between captive and free market is relevant for the injury analysis because products destined for captive use are not exposed to direct competition from imports, and transfer prices are set within the groups according to various price policies. By contrast, production destined for the free market is in direct competition with imports of the product concerned, and prices are free market prices. Second, the total free market includes sales of Union producers to unrelated customers and non-captive sales to related companies. It has been investigated and confirmed that these non-captive sales are indeed sales at market prices and that the related buyer had a free choice of supplier, irrespective of whether this supplier was related or not. Consequently, the Union consumption (free market) has not been underestimated.
- (42) In this regard, in Tables 2 and 3 of the provisional Regulation, the development of the Union consumption on the captive market and the free market was reported and explained. By merging these two tables, the overall consumption (thus including captive and free market) evolved as follows during the period considered:

Table 2

Overall consumption (captive and free market) (tonnes)

	2012	2013	2014	IP
Overall consumption	72 181 046	74 710 254	76 026 649	77 427 389
<i>Index (2012 = 100)</i>	100	104	105	107

Source: Eurofer questionnaire reply and Eurostat

- (43) The above table shows that overall consumption has increased to a level that was higher in the investigation period than at the beginning of the period considered. The trend is explained by the increase in captive consumption which was much stronger than the increase in free market consumption in absolute terms.
- (44) Thus, the Commission confirmed its conclusions set out in recitals (67) to (74) of the provisional Regulation on Union consumption.

3.3. Imports from the country concerned

- (45) In the absence of any comments with respect to the volume, market share and price of the imports from the country concerned, the Commission also confirmed its conclusions set out in recitals (75) to (82) of the provisional Regulation on these topics.

3.4. Economic situation of the Union industry

3.4.1. General remarks

- (46) No comments concerning this part of the provisional regulation were received.

3.4.2. Macroeconomic indicators

- (47) Following provisional measures, one interested party claimed that most macroeconomic indicators of the Union industry show a positive trend and disagreed with the Commission's finding that the Union industry has incurred material injury.
- (48) This claim was rejected. First, the Commission did not state in the provisional Regulation that the Union industry has incurred material injury. On the contrary, it has stated in recital (119) of the provisional Regulation that the Union industry was in a weak situation at the end of the investigation period, but not to the extent that the Union industry has suffered material injury during the period considered within the meaning of Article 3(5) of the basic Regulation. Second, in this regard, as described in recital (117) of the provisional Regulation, the Commission referred to the fact that some macroeconomic indicators (such as the production volumes, the capacity utilisation rates due to the increase in the captive and free consumption) were still following a positive trend.
- (49) The Commission hence confirmed its conclusions set out in recitals (87) to (103) of the provisional Regulation with respect to the macroeconomic indicators.

3.4.3. Microeconomic indicators

- (50) The same interested party noted that during the period considered, no matter the volume of imports from China (low or high), the unit costs of the sampled Union producers was always higher than their sales prices, with the year 2014 as the only exception. It also indicated that the sampled Union producers remained largely unprofitable during the period considered. Therefore, this interested party requested the Commission to further investigate why:
 - (a) the sampled Union steel producers incurred during the period 2012-2013 their largest loss when the Chinese import volumes were at a low level and the prices of the Chinese imports were equal to or even higher than the ones of the Union industry;
 - (b) during the same period their sales prices were lower than their unit cost of production.
- (51) In this regard, the Commission referred first to recital (106) of the provisional Regulation. There, the Commission stated that the performance of the Union industry had been negatively affected in 2012 and 2013 by the

aftermath of the Eurozone debt crisis, as well as the decline in steel demand in 2012. In 2014, the Union industry started a recovery process which continued also in the first half of 2015. This temporary improvement of the EU industry situation was due to their increased efforts to remain competitive, in particular by increasing the productivity of the Union industry's workforce. Second, as mentioned in recital (107) of the provisional Regulation, the cost of production remained generally higher than the decreasing sales prices, and in order to limit the loss in market share, the Union producers followed the downward price spiral and reduced their sales price significantly, in particular during 2015. As a result, the Commission considered that it had sufficiently investigated and clarified these elements.

- (52) The same interested party argued also that, when calculating back the sales quantity on the basis of Tables 7 and 14 of the provisional Regulation, it found that the sampled Union producers represent only 31 % of the total Union industry sales volume whereas recital (64) of the provisional Regulation states that they represent 45 % of the total Union production. This interested party argued that such a big difference casts doubts on the representativity of the sample, and that any change in sample could have led to completely different injury findings.
- (53) As mentioned in recital (64) of the provisional Regulation, the total Union production was established at around 74,7 million. This includes both the free and the captive market. By contrast, Tables 7 and 14 in the provisional Regulation clearly refer to the free market only. Thus, they include only sales in the free market. The difference found is explained by the fact that the total production used for the comparison made by this interested party included captive sales, when it should only have included sales in the free market. Consequently, there is no reason to doubt on the representativity of the chosen sample.
- (54) In the absence of other comments, the conclusions set out in recitals (104) to (116) of the provisional Regulation were confirmed.

3.4.4. Conclusion on injury

- (55) On the basis of the analysis of the comments, as summarised in recitals (39) to (54) above, the Commission confirmed its conclusions set out in recitals (117) to (119) of the provisional Regulation. The Commission concluded that the Union industry was in a weak situation at the end of the investigation period but not to the extent that the Union industry has suffered material injury during the period considered within the meaning of Article 3(5) of the basic Regulation.

4. THREAT OF INJURY

- (56) Under the case-law, the Union institutions are entitled, in certain circumstances, to take post-investigation period data into consideration when conducting anti-dumping investigations initiated on the basis of allegations of threat of injury. Indeed, the case-law considers that the determination of whether there is a threat of injury, by its very nature, requires a prospective analysis. In addition, Article 3(9) of the basic regulation requires that the finding of a threat of material injury is to be based on facts and not merely allegation, conjecture or remote possibility and that the change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.
- (57) As authorised by the case-law, and as indicated in recital (122) of the provisional Regulation, the Commission continued its prospective analysis after the imposition of the provisional measures, by collecting mainly data from the second half of 2016 for all factors which it had provisionally investigated, and analysing whether these additional data could be used to confirm or invalidate the findings based on the data from the investigation period.
- (58) The Commission further recalls that under Article 6(1) of the Basic Regulation, which equally applies to investigations initiated on the basis of allegations of threat of injury, representative findings have to be based on a period ending before the initiation of proceedings. The purpose of this principle is to ensure that the results of the investigation are representative and reliable, by ensuring that the factors on which the determination of dumping and injury is based are not influenced by the conduct of the producers concerned following the initiation of the antidumping proceeding, and therefore that the definitive duty imposed as a result of the proceeding is appropriate to remedying effectively the injury caused by the dumping.

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

4.1.1. Update of post-IP data

- (59) As set out in recital (124) of the provisional Regulation, imports from the country concerned significantly increased from 246 720 to 1 519 304 tonnes between 2012 and the investigation period. The same recital also mentioned that the volume of Chinese imports further increased (by 8,5 %) in the first half of 2016 (773 275 tonnes), compared to the first half of 2015 (712 390 tonnes).
- (60) The available data for the additional period July-September 2016 shows that the Chinese dumped imports have started to decrease as compared to the IP (2015) and to the post-IP period January-June 2016, when expressed on the basis of monthly averages.

Table 3

Evolution of Chinese import volume (tonnes)

	2014	IP (2015)	January-June 2016	July-September 2016
Volume of imports from China	592 104	1 519 304	773 275	296 267
Average monthly Chinese imports	49 342	126 608	128 879	98 756

Source: Eurostat

- (61) The Commission thus found that the trend of increasing volumes has stopped. However, when assessing the significance and the reliability of these figures for confirming or invalidating the threat of injury analysis, the Commission also observed that:
- (a) the average monthly Chinese import volumes in the period July-September 2016 are still twice as high as the average monthly imports in 2014;
 - (b) the decrease in the average monthly Chinese import volumes from July-September 2016 (compared to 2015) can be explained by:
 - the chilling effect of the request for registration by the complainant on 5 April 2016 and its update in June 2016 (which, though, was withdrawn only in mid-August 2016),
 - the adoption by the Commission of Implementing Regulation (EU) 2016/1329 ⁽¹⁾, under which anti-dumping duties were collected retroactively for the first time, and
 - the knowledge of the intention of the Commission to decide on provisional measures within 8 months of initiation (instead of 9 months).

4.1.2. Comments from interested parties following the provisional Regulation

- (62) One interested party argued that the Commission mainly based its analysis on a data set, i.e. from the end of 2015, which is more than nine months old at the time of the investigation and which cannot give the most reliable indication as to the likelihood of substantially increased imports. Furthermore, it also argued that an analysis of the import trends for a representative period of time would have shown that import volumes are decreasing. As a result, this interested party qualified the analysis of the threat of injury by the Commission as flawed.

⁽¹⁾ Commission of Implementing Regulation (EU) 2016/1329 of 29 July 2016 levying the definitive anti-dumping duty on the registered imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation (OJ L 210, 4.8.2016, p. 27).

- (63) First, the Commission noted that it had provided all data, available at that time, in recital (124) of the provisional Regulation, both for the period considered and the post-investigation period. Second, the Commission has again updated in recital (60) all information concerning the Chinese import volumes. In that update the Commission indeed noted that there is a decrease in the average monthly Chinese import volumes from July 2016 onwards. However, this decrease can mainly be explained for the reasons as mentioned in recital (61).

4.1.3. *Comments from interested parties following definitive disclosure*

- (64) Following definitive disclosure, the China Iron and Steel Association (CISA) on the one hand welcomed the Commission's use of additional post-investigation period data, but on the other hand argued that the Commission's assessment of the evolution of the Chinese imports since July 2016 onwards was wrong. This interested party stated, from a factual point of view, that the Chinese import volumes started steadily decreasing since the beginning of 2016. Moreover, it argued that the Commission was violating the general principle of Article 3(9) of the basic Regulation by stating that the most recent decline of Chinese exports was likely to be a temporary phenomenon since a determination of a threat of material must 'be based on facts and not based on an allegation, conjecture or remote possibility'. It therefore requested the Commission to consider the most recent post-IP data on the basis of facts alone, and to refrain from interpreting the most recent post-IP data in the light of remote possibilities or unsupported assertions. Similar comments were received from two other Chinese exporting producers and from the Italian user.
- (65) The Commission agreed that the trend of increasing volumes stopped, but mainly from July 2016 onwards. However, it also observed that the absolute level was still high. While the Chinese imports for the period January-June 2016 (773 275 tonnes for 6 months) were lower than the period July-December 2015 (806 914 tonnes for 6 months), the average import volumes for the period January-June 2016 were still higher than for the period January-June 2015 (712 390 tonnes for 6 months) and for all other 6 months' periods before. Second, the Commission has not analysed the trend of import volumes as an isolated factor, but has taken a comprehensive approach. It weighted and assessed not only all the factors which are listed in Article 3(9), second subparagraph, of the basic Regulation but in addition some additional factors such as order intakes and profitability (see Sections 4.2-4.5 below), so as to have a strong factual basis for its overall assessment.
- (66) Concerning the rationale why the Chinese exports decreased mainly from the second half of 2016 onwards, the explanations by the Commission are based on three facts, i.e. the public announcements made in the Steel Communication, the registration request by the complainant in this case, and the decision on the retroactive collection of duties on certain cold-rolled steel products:

— On the basis of the Steel Communication from the Commission of 16 March 2016 ('Steel: Preserving sustainable jobs and growths in Europe') ⁽¹⁾ the Chinese exporting producers had been made aware of the intention of the Commission to 'immediately use the available margins to further accelerate the adoption of provisional measures by reducing investigation procedures by one month (from nine to eight months).' As a result, due to the initiation of this case on 13 February 2016, they had been aware that provisional measures could be imposed early October 2016.

— On 5 April 2016, the Complainant submitted a request for registration of imports from the PRC of the product concerned. On 2 June 2016, the complainant updated the request by providing more recent information. As a result, well-informed exporting producers and exporters knew that there was a risk that — if they shipped the product concerned from the second half of 2016 onwards — their exported like products could become subject to retro-active duties 90 days prior to the potential imposition of provisional duties in October 2016, i.e. by July 2016.

— On 29 July 2016, the Commission adopted an Implementing Regulation (EU) 2016/1329, under which anti-dumping duties were collected retroactively for the first time on certain cold-rolled steel products, also a steel product. As a result, the risk that measures would apply as of early July 2016 in this proceeding became even more certain because of the retroactive collection in this case involving a steel product.

⁽¹⁾ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, Brussels, 16.3.2016, COM(2016) 155 final, Steel: Preserving sustainable jobs and growth in Europe.

- (67) CISA also argues that the Commission's explanations on why the Chinese imports decreased from the second half of 2016 onwards are 'remote possibilities or unsupported assertions'. As shown above, the Commission's explanations are based on facts. The Commission notes that CISA itself did not provide a plausible alternative explanation as to why the Chinese exports went down.
- (68) In the absence of any other comments, the Commission hence confirmed its conclusion that the most recent decline of Chinese exports is likely to be a temporary phenomenon due to the specific circumstances identified in recital (61) that is not capable of invalidating the findings of the Commission concerning the existence of a threat of injury. If no measures are taken at the definitive stage, Chinese import volumes will most likely increase again, especially in light of the present overcapacities in the PRC and the insufficient absorption capacity of third states or the PRC itself, as explained from recital (70) onwards.

4.1.4. Conclusion

- (69) The decrease of Chinese import volumes after July 2016 can be explained by the chilling effect of the registration request and the knowledge of intention of the Commission to decide on provisional measures within 8 months of initiation. In addition, the absolute level of Chinese imports volumes after July 2016 onwards remains very high when compared to 2014. For these reasons, it is likely that this decrease in import volumes would be only temporarily, and such trend would revert if no measures are imposed. Therefore it did not change the Commission's assessment that there was a clear and imminent threat of injury at the end of the investigation period.

4.2. Sufficiently freely disposable capacity

4.2.1. Update of the post-IP data

- (70) As noted in recital (133) and the table in recital (185) of the provisional Regulation, the actual production in 2014 of the product concerned in the PRC (317,4 million tonnes) is about 5 times the total production of Russia, Ukraine, Iran and Brazil combined (57,4 million tonnes). This fact was an indication of the enormous production capacity of the product concerned in the PRC. Furthermore, as laid down in recitals (140) and (139) of the provisional Regulation, the Commission found the absorption capacity of the PRC market to be insufficient, and that it was very unlikely that third countries would be able to absorb on their own the huge amount of freely disposable capacity.
- (71) After the imposition of provisional measures, the Commission updated the table of recital (185) of the provisional Regulation on the basis of the most recent available data as follows:

Table 4

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

Country	Crude steel capacity estimated for the year 2015 ⁽¹⁾	Crude steel production in 2014	Crude steel production in 2015 ⁽²⁾	Theoretical excess capacity in 2015 ⁽²⁾	HRF actual production in 2014	HRF actual production in 2015
Russia	90 000	71 461	70 898	19 102	26 898	27 509
PRC	1 153 098	822 750	803 825	349 273	317 387	322 259

Country	Crude steel capacity estimated for the year 2015 ⁽¹⁾	Crude steel production in 2014	Crude steel production in 2015 ⁽²⁾	Theoretical excess capacity in 2015 ⁽²⁾	HRF actual production in 2014	HRF actual production in 2015
Ukraine	42 500	27 170	22 968	19 532	7 867	6 314
Iran	28 850	16 331	16 146	12 704	8 276	7 872
Brazil	49 220	33 897	33 256	15 964	14 229	13 388

⁽¹⁾ Source for capacity data: OECD (OECD, DSTI/SU/SC(2016)6/Final, 5 September 2016, Directorate for Science, Technology and Innovation, Updated steelmaking capacity figures and a proposed framework for enhancing capacity monitoring activity, Annex, p. 7 and following).

⁽²⁾ Source for production data: World Steel Association, Steel Statistical Yearbook 2015 (World Steel Association, Steel Statistical Yearbook 2016 Table 1 on pages 1 and 2 and Table 13 on page 35, <http://www.worldsteel.org/statistics/statistics-archive/yearbook-archive.html>).

The above updated 2015 production figures for the like product show that the country concerned outnumbers by far all other large exporting countries; the above updated 2015 capacity figures for crude steel also indicate that only the PRC has such a massive excess capacity (amounting to almost 350 million tonnes in 2015, compared to 317 million tonnes in 2014, as shown in the table of recital (185) of the provisional Regulation).

Accordingly, the Commission reiterated that the overcapacity in steel production in the PRC constitutes an important indicator for the existence of a threat of an imminent injury to the Union industry.

- (72) In addition, the information and projections concerning the Chinese capacity of crude steel and the product concerned that became available after July 2016 still showed the same inconsistencies:
- (a) On the one hand, the Commission received anecdotal information that the PRC apparently started to reduce its overcapacity: In this respect, the EU Delegation in Beijing reported that a Deputy Director of the China Iron and Steel Association (CISA) declared that the PRC is likely to cut off 70 millions of tonnes of steel overcapacity during 2016 (announcement on 28 October 2016). Furthermore, Baosteel Group and Wuhan Steel Group also announced that they completed their targeted capacity cuts for 2016 already in October 2016 (announcement on 24 October 2016).
 - (b) On the other hand, recent OECD projections ⁽¹⁾ estimate that the Chinese capacity will even further increase in 2016, 2017 and 2018. The Chinese side continued to avoid engaging in a bilateral platform between the Union and the PRC to monitor steel excess capacity. In addition, the 13th 5-year plan in relation to 'Steel industry adjustment and upgrading plan' (2016-2020) assumes crude steel production volume forecast at 750-800 million tonnes in 2020 and crude steel production capacity reduction by 100-150 million till 2020. It also encourages steel enterprises being in a good position to go overseas and set up steel production bases as well as processing and distribution centres.

In summary, the issue of overcapacity in the steel sector in the PRC is acknowledged by the Chinese authorities, and despite some announcements made after 30 June 2016, is not likely to be resolved in the near future. The Chinese overcapacity is so massive that realistically it cannot disappear in the short or medium-term period.

- (73) The data concerning the absorption capacity of the PRC that became available after July 2016 is limited. Nevertheless, the Commission found that the domestic Chinese steel demand forecast is one of 'low to no growth' in the coming 4-5 years (2015-2020) as investments (such as in construction business) are slow, what will impact dramatically the domestic Chinese finished steel consumption. ⁽²⁾

⁽¹⁾ Report of the OECD Steel Committee, 8-9 September 2016, Updated steelmaking capacity figures and a proposed framework for enhancing capacity monitoring activity.

⁽²⁾ Richard Lu, 15 July 2016, the downside Chinese steel demand scenario: gory details, http://www.crugroup.com/about-cru/cruinsight/The_downside_Chinese_steel_demand_scenario_gory_details

(74) The data concerning the absorption capacity of third countries that became available after July 2016 onwards indicated that:

- (a) On the one hand, Malaysia terminated in January 2016 a safeguard investigation with regard to hot-rolled coils against China and some other countries in January 2016, whereas Turkey terminated in April 2016 an anti-dumping investigation concerning imports of hot-rolled coils from China, France, Japan, Romania, Russia, Slovakia and Ukraine.
- (b) On the other hand, India recently imposed final duty rates in a safeguard investigation of hot-rolled flat sheet and plates of alloy and non-alloy steel. Furthermore, Brazil initiated an anti-subsidy investigation against imports of hot-rolled flat carbon steel. Finally, Turkish producers have filed new anti-dumping and counter-vailing duty petitions against imports of hot-rolled coils, originating, inter alia, in China. In this respect, following final disclosure, one interested party informed the Commission that the Turkish authorities had opened in the meantime a new dumping investigation on 21 December 2016, covering heavy plate and certain types of HRF.

As a result, on the basis of this updated information, third countries are unlikely to be able to absorbing increasing Chinese exports as a result of the huge amount of free disposable Chinese capacity. Even if the status quo in Chinese exports to other third countries was maintained, if no measures were imposed, the Union market would likely continue to be among the primary targets of Chinese dumped exports.

4.2.2. *Comments from interested parties following the provisional Regulation and following definitive disclosure*

- (75) Following the provisional Regulation, the complainant referred to the fact that the PRC has announced since 2008 several plans to tackle the steel overcapacity, but that none of them has succeeded. Following definitive disclosure, the complainant reiterated that previous Chinese attempts to limit the domestic steel overcapacity have also failed. As a consequence, according to this interested party, the Chinese government is likely to be unable to cure the huge overcapacity that has affected the steel sector for many years and which it has tried and failed to resolve a number of previous times.
- (76) On the other hand, following definitive disclosure, another interested party mentioned that the Chinese government has recently announced that it had met its targets for the reduction of capacity in the steel sector in 2016 and that it was strongly committed to further reduce capacity in the steel sector.
- (77) Concerning the argument that the Chinese government has consistently failed to reduce the massive steel overcapacity, the Commission is required to perform a prospective analysis in a threat of injury-case. Therefore, it considered the statements of the complainant to be irrelevant as they are related to the past and cannot be used to extrapolate the future behaviour of the Chinese government.
- (78) Concerning the opposite argument on the reduction of the Chinese capacity made by other interested parties, the Commission reiterated that the information and projections that are available concerning the Chinese capacity of crude steel and the product concerned show inconsistencies. However, while not disputing the Chinese serious commitments to reduce its capacity, the fact remains that the existing Chinese overcapacity, as shown in Table 20 of the Provisional Regulation, is so massive that it cannot realistically disappear in the short or medium-term period.
- (79) Concerning the absorption capacity of third countries, one interested party referred to the fact that Malaysia and Turkey terminated two investigations on hot-rolled coils against the PRC. Therefore, this interested party concluded that the alleged likelihood of a trade diversion to the Union has lessened.
- (80) These statements were rejected: As mentioned in recital (74), other countries are likely to adopt measures, which makes it unlikely that third countries would start absorbing on their own the huge Chinese capacity.
- (81) Concerning the absorption capacity of the PRC, no comments were received from any interested party.

4.2.3. Conclusion

- (82) In conclusion, post-IP data confirm the Commission's analysis at provisional stage: Given the limited progress on cutting the massive excess capacity in 2016, it is likely that significant volumes of the existing massive excess capacity on steel, including the like product, would continue to be directed to the Union market, if no measures are taken. The present overcapacities and the insufficient absorption capacity of third states or the PRC itself indicate the likelihood of substantially increased Chinese exports to the Union would no measures be taken at definitive stage.

4.3. Price level of imports

4.3.1. Update of post-IP data

- (83) Concerning the price level of imports, recital (142) of the provisional Regulation mentioned that the average import prices from the country concerned decreased by 33 %, from 600 EUR/tonne in 2012 to 404 EUR/tonne in 2015. Furthermore, the table in recital (145) of the provisional Regulation showed a further continuing decrease of Chinese unit prices during the post-investigation period January-June 2016 when entering the Union market.
- (84) The available data concerning the price levels of imports for the period July-September 2016 shows that the average Chinese import prices increased:

Table 5

Average Chinese import prices during the post-IP

	January 2016	June 2016	July 2016	August 2016	September 2016
Average import prices of Chinese imports (EUR/tonne)	326	308	371	367	370

Source: Eurostat

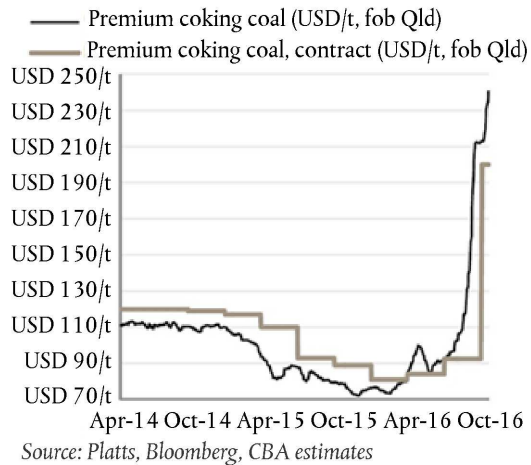
- (85) The recent rise in the Chinese import prices must be put in the following context:
- (a) The Chinese import prices were not the only ones to increase after 30 June 2016. Import prices of other main exporting countries to the Union also increased after 30 June 2016.
 - (b) The level reached in the last three months (July-September 2016) was still below the average costs of production of the EU industry (around 431 EUR/tonne at the end of the investigation period, as shown in Table 11 of recital (104) of the provisional Regulation). Hence, despite the increased in price levels, the enormous price depression remains, which puts the EU industry into an unsustainable position.
 - (c) One important reason for these global price increases of the product concerned is the increase in the raw material prices. In particular, prices of coking coal nearly doubled (to about 200 EUR/tonne) in October 2016, compared to prices in the first half of 2016. This was caused by the combined effect of mandatory working hours' reductions for Chinese coal mines and a number of disruptions at Australian mines. In this context, it should be noted that the PRC and Australia are among the top producing countries of coking coal in the world. The dramatic price increase of coking coals is shown in the chart below ⁽¹⁾.

⁽¹⁾ <http://www.businessinsider.com.au/is-it-a-bird-a-plane-no-its-the-coking-coal-price-2016-10>
<https://www.bloomberg.com/news/articles/2016-09-23/goldman-says-higher-coking-coal-prices-are-here-to-stay>

Chart

Evolution of coking coal prices

Chart of the Day: Premium coking coal prices



Therefore, it can be assumed that prices for the product concerned will start to decrease again, once the impact of these exceptional circumstances concerning coking coal have faded out.

4.3.2. Comments from interested parties following the provisional Regulation

- (86) One interested party mentioned that the analysis of the Commission is limited to June 2016, whereas prices of imports of the product concerned have been continuously increasing after June 2016. It requested the Commission to take into consideration these most recent data. Another interested party also mentioned that the prices of imports recently started increasing.
- (87) The Commission confirmed, as laid out in the table under recital (84), that Chinese import prices increased in the period July-September 2016. However, these interested parties failed to mention that prices increased globally, due to a rise in raw material prices, in particular of coking coal, as laid out in recital (85) above.

4.3.3. Comments from interested parties following definitive disclosure

- (88) Following definitive disclosure, the China Iron and Steel Association (CISA) argued again that the Commission was violating the general principle of Article 3(9) of the basic Regulation since a determination of a threat of material must 'be based on facts and not based on an allegation, conjecture or remote possibility'. It referred in this context to 'a particular context, which is made up out of mere possibilities'. Second, it alleged that the statement of the Commission that the average import price during the most recent period July-September 2016 was below the cost of production of the Union industry at the end of the IP is misleading since such a comparison is based on two different periods, and therefore, it is not an 'apple to apple' comparison. Similar comments were received from an Italian user and from the other Chinese exporting producers. One of these Chinese exporting producers mentioned that the prices of imports have decreased by 13,5 % between January 2016 and September 2016.
- (89) Another Chinese exporting producer also commented that a trend of rising import prices is an indication that there is no threat of injury and referred in this respect to the case-law.
- (90) First, concerning the allegation that the Commission violated the general principle of Article 3(9) of the basic Regulation, the Commission reiterates that it has based its determination on facts, and not on allegations, conjectures or remote possibilities. The Commission took into consideration facts such as the data in Table 5, and interpreted these data, whereby a decrease in prices had been noted till June 2016, and thereafter an increase,

mainly due to an increase in raw material prices as laid out in recital (85) above. Second, CISA itself does not provide an alternative plausible explanation for the evolution of Chinese import prices. Third, the Commission has not analysed the trend of Chinese prices as an isolated factor, but has taken a comprehensive approach. It weighted and assessed not only all the factors which are listed in Article 3(9), second subparagraph, of the basic Regulation but also additional factors such as order intakes and profitability (see Section 4.5) so as to have a strong factual basis for its overall assessment.

- (91) Concerning the allegation that the Commission misled the interested parties intentionally by comparing the average import price during the period July-September 2016 with the cost of production of the Union industry at the end of the IP, the Commission clearly distinguished both periods. Furthermore, in this context, it is important to highlight that the cost of production-data of the Union industry at the end of the IP were the most recent available data in this proceeding since post-IP data on the costs of production of the Union industry are not collected. In any case, even if — hypothetically — the cost of production of the Union industry in the most recent period had decreased, this would not invalidate the fact that the level of Chinese prices in September 2016 had been still exerting an enormous prices pressure on the Union steel industry.
- (92) Concerning the allegation that the Commission did not follow the case-law, the Commission noted that this argument is inoperative, as the Commission in the present case did analyse the development of prices of raw materials in the post-investigation period, as shown in recital (85). Hence, this argument is rejected.

4.3.4. Conclusion

- (93) Even with the rising prices of Chinese import prices from July 2016 onwards, and absent any other comments, the post-IP data on prices do as a whole not invalidate the finding that the Chinese price decreases had led to a threat of injury. This threat of injury was not removed by the recent rising Chinese import prices from July 2016 onwards. As set out in recital (85), even this increased price level does not stop the enormous price depression which puts the EU industry into an unsustainable position when comparing the increased Chinese prices with the cost of production of the Union producers at the end of the investigation period. Finally, the Commission concluded that increasing import prices might only be a temporary trend, which is likely to stop once the reasons for the raw material price increases have faded out. The Chinese exporting producers had an aggressive price setting in the Union market, in particular in the second half of 2015 and the first half of 2016. If no measures are taken, and taking into account the massive existing Chinese excess capacity in steel, including the product concerned, Chinese exporting producers could maintain an aggressive price strategy, lowering their sales prices to minimal levels.

4.4. Level of inventories

4.4.1. Update of post-IP data

- (94) Concerning the level of inventories, recital (147) of the provisional Regulation mentioned that the Commission did not consider this factor of any particular significance, mainly because Union producers produce on order, a feature which enables them to keep their inventory at low levels.
- (95) With regards to stocks in the PRC, the Commission was again unable to find comprehensive post-investigation data on stocks despite requests to Chinese cooperating producers and its own researches.
- (96) Nevertheless, the Commission found that steel inventories in the warehouses of 40 major Chinese cities reportedly decreased to 8,89 million tonnes late October 2016 from 9,41 million tonnes late September 2016. Furthermore, the steel inventories of 80 major Chinese mills amounted to 13,46 million tonnes late September 2016 ⁽¹⁾ compared to 16,07 million tonnes late September 2015.

4.4.2. Comments from interested parties following the provisional Regulation and following definitive disclosure

- (97) No comments were received from interested parties concerning the level of inventories.

⁽¹⁾ Extract from Worldsteel monthly update on the Chinese steel industry, October 2016.

4.4.3. Conclusion

- (98) In conclusion, steel inventories in the PRC remained at about the same levels after 30 June 2016 as the one laid out in recital (150) of the provisional Regulation. The Commission therefore confirmed its finding in recital (151) of the provisional Regulation.

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

4.5.1. Updating the post-IP data

- (99) As set out in recital (155) of the provisional Regulation, order intakes developed negatively. In addition, the investigation established a further deterioration of the profitability of the complainants which represent about 90 % of the total production of the Union industry.

The available data for the period July 2015 up to June 2016 show a further deterioration in profitability, despite a more positive trend (compared to 2015) for its order intakes as follows:

Table 6

Evolution of profitability and order intakes of the Complainants

Description	2013	2014	2015	April 2015-March 2016	July 2015-June 2016
Profitability	– 4,86 %	– 1,28 %	– 3 % to – 5 %	– 5 % to – 7 %	– 7 % to – 9 %
Order intakes	16 631 630	16 677 099	15 529 155	15 636 444	15 944 183

Source: Eurofer, all verified except last column

4.5.2. Comments from interested parties following definitive disclosure

- (100) Following definitive disclosure, the China Iron and Steel Association (CISA) argued that, because the order intakes in the post-IP have increased, the Union producers have received more orders and therefore that the Union industry has a positive future.
- (101) The Commission agreed that the order intakes had increased slightly, but referred at the same time to the record losses incurred by the complainants which also figured in this same table. As a consequence, even if there would be a possible recovery for the Union producers during the most recent post-IP period, such a recovery would not compensate for the dramatically increasing losses incurred during the same period.

4.5.3. Conclusion

- (102) In conclusion, and absent any other comments, the Commission found a further deterioration of the profitability of the complainants in the most recent period. Accordingly, the assessment that a threat of imminent injury existed at the end of 2015 has not been invalidated. Rather the further deterioration in profitability in the entire first half of 2016 confirmed the accuracy of the Commission's assessment of this indicator.

4.6. Foreseeability and imminence of the change in circumstances

- (103) Article 3(9) of the basic Regulation provides that '... the change in circumstances which would create a situation in which the dumping would cause injury must have been clearly foreseen and must be imminent'.
- (104) As set out in recital (157) of the provisional Regulation, all the abovementioned factors have been analysed and verified with respect to the investigation period. In particular, the profitability of the sampled Union producers reached the unsustainable level of – 10 % in the fourth quarter of 2015 when Chinese price pressure was felt most.

- (105) Furthermore, the post-investigation period data revealed that the negative trend in the Union profitability, which started in the second half of 2015, continued during the first half of 2016.
- (106) The available data for the period July-September 2016 presented a mixed picture. While the Chinese import volumes decreased, the overcapacity remained threatening. Concerning the increase in Chinese prices during the same recent period, even if — hypothetically — the cost of production of the Union industry in the most recent period had decreased, the fact remains that the level of Chinese prices in September 2016 had been still exerting an enormous prices pressure on the Union steel industry. It follows that the threat of injury was imminent and foreseeable after the end of the investigation period.
- (107) The Commission thus confirmed that there was a clearly foreseeable and imminent change in circumstances at the end of the investigation period, which would have created a situation in which the dumping would have caused injury.

4.7. Conclusions on threat of injury

- (108) As mentioned in recital (158) of the provisional Regulation, while the Union industry was recovering during 2014 and the first two quarters of 2015, almost all injury indicators started to fall dramatically during the second half of 2015. The investigation revealed that this negative trend, which started in the second half of 2015, was not invalidated during the first half of 2016. As a result, all factors assessed in the framework of Article 3(9) of the basic Regulation, in particular the significant rate of increase of dumped imports in 2015 at further decreasing prices, the huge excess capacity in the PRC, and the negative developments in profitability of the Union industry point to the same direction.
- (109) The available data for the period July-September 2016 present a mixed picture. While the Chinese import volumes decreased, the overcapacity remained threatening and the prices remained below the Union industry's cost of production despite their more recent increase.
- (110) In the view of this analysis, the Commission concluded that there was a threat of a clearly foreseeable and imminent injury to the Union industry at the end of the investigation period. This assessment was not invalidated by the post-IP developments analysed above.
- (111) Furthermore, the Commission rejected the claims of CISA — following definitive disclosure — that the Commission's assessment was not in line with the case-law, by noting the following two main differences between its approach in the present case and the one that led to the adoption of Council Regulation (EC) No 926/2009 ⁽¹⁾:
- first, as mentioned in recital (119) of the provisional Regulation, the Union industry was found to be in the present case in a weak situation at the end of the investigation period, but not to the extent that it suffered material injury during the period considered within the meaning of Article 3(5) of the basic Regulation,
 - second, the Commission analysed and assessed thoroughly post-IP data to the extent possible in the present case in order to confirm or invalidate its findings, as authorised by the case-law.

5. CAUSATION

- (112) An interested party reiterated that during the investigation period Russia had the largest volume of imports into the Union and that the market share of the Chinese imports, although increasing throughout the period considered, still remained at a very low level, that is, around 4 %. Following definitive disclosure, another interested party commented also that a mere 4 % market share of the Chinese imports precluded a finding of causation.
- (113) These allegations were already dealt with in recitals (177) to (188) of the provisional Regulation. Furthermore, concerning the market share, recital (77) of the provisional Regulation stated that the total market share of the Chinese imports into the Union increased more than five times during the period considered.

⁽¹⁾ Council Regulation (EC) No 926/2009 of 24 September 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China (OJ L 262, 6.10.2009, p. 19).

- (114) According to the complainant it would be appropriate to cumulate the effects of the dumped imports from China with the dumped imports of five other countries covered by an investigation, which is currently ongoing. Following definitive disclosure, the complainant reiterated this point.
- (115) The Commission did not find it possible in this case to cumulate the dumped imports by merging the two investigations. The concept of imports being ‘simultaneously subject to anti-dumping investigations,’ under Article 3(4) of the basic Regulation requires either imports that are under the same investigation or imports that are under two different investigations running simultaneously and that have the same or largely overlapping investigation periods. In the present case, both investigations have different investigation periods, with a six-month overlap of the IP only.
- (116) In view of the above, the Commission confirmed its conclusions set out in recitals (197) to (198) of the provisional Regulation.

6. UNION INTEREST

6.1. Interest of the Union industry

- (117) In the absence of any comments regarding the interest of the Union industry, the conclusion reached in recital (203) of the provisional Regulation was confirmed.

6.2. Interest of importers

- (118) In the absence of any comments regarding the interest of importers, the Commission confirmed its conclusion reached in recital (204) of the provisional Regulation as well.

6.3. Interest of users

- (119) Following provisional disclosure, some users claimed that it would not be in the Union interest to impose anti-dumping measures against the country concerned. They alleged that anti-dumping measures would be against the interests of users because they would:
- (a) have an anti-competitive effect; and
 - (b) lead to greater volumes of imports of downstream products manufactured in third countries.
- (120) The allegation that anti-dumping measures would have an anti-competitive effect was already dealt with in recitals (205) to (212) of the provisional Regulation. The allegation that anti-dumping measures on the product concerned would lead to greater volumes of imports of downstream products manufactured in third countries was not supported with substantive additional information. Thus, the Commission rejected this argument.
- (121) The Italian user who cooperated during the investigation argued that recital (210) of the provisional Regulation should be complemented by indicating also the impact of anti-dumping measures on its profit margin. In this respect, the Italian user mentioned that — under the assumption of an anti-dumping duty of 22,6 % — his pre-tax profit would decrease by 2,3 percentage points. As a result, it concluded that the imposition of anti-dumping measures would have a significant impact on its profitability and, a fortiori, on the other smaller unrelated users which are active in processing the product concerned. The Commission acknowledged that anti-dumping duties will have a negative effect on the profitability of the Italian user. Nevertheless, the Commission also noted that the user is not exclusively dependent on Chinese imports, but also purchased the product concerned during the investigation period from Union producers as well as from other producers in third countries. In addition, its profitability would remain positive, albeit at a lower level.
- (122) Following definitive disclosure, the complainant argued that the results of this Italian user in terms of growth and profits are in stark contrast to those of the Union producers, which are suffering heavy losses. The Commission considered that this argument did not change the analysis on the impact on users. Rather, the Union producer's interests were already taken into account as set out in Section 6.1.
- (123) Lastly, the Commission could not assess the impact of the imposition of measures on other users, since they did not cooperate during this investigation.

- (124) In view of the above and absent any other comments, the Commission confirmed its conclusion reached in recital (213) of the provisional Regulation.

6.4. Conclusion on Union interest

- (125) In the absence of any other comments concerning the Union interest, the conclusions reached in recitals (214) to (217) of the provisional Regulation were confirmed.

7. DEFINITIVE ANTI-DUMPING MEASURES

7.1. Injury elimination level

- (126) The Commission chose to provisionally establish the target profit at 7 % based on an OECD study, which simulated how the recovery of the Union industry from the recession caused by the economic and financial crisis in 2009 would have developed. After the imposition of provisional measures and as mentioned in recital (224) of the provisional Regulation, the Commission further looked into this issue not only in view of the comments received following disclosure, but also by requesting and analysing more information in this respect.
- (127) Following provisional and definitive disclosure, several parties made comments on the 7 % target profit. One interested party claimed that it was far too low, whereas another interested party submitted that it was excessive.
- (128) Eurofer considered that the 7 % target profit was far too low. Firstly, it maintained that the most appropriate method to determine the profit margin was either relying on the data from the previous investigation on hot-rolled flat products (in 2000), or relying on the profitability achieved by the steel industry during the year 2008. Basing the target profit on the profits achieved in the year 2000 would lead to a target profit of 12,9 %, whereas basing it on the achieved profits during the year 2008 would lead to a target profit of 14,4 %. Eurofer alleged that in the context of no technological and financial changes in the Union since 2000, using the profits achieved in that 2000 would be appropriate. Using the profits achieved in 2008 would be another option, since the Commission verified profitability data for a period of 10 years, including the year 2008, which was the year before the onset of the financial crisis. Eurofer added that the target profit should not derive from years affected either by the economic crisis or by dumped imports from the country concerned. Secondly, if the Commission rejected both approaches, Eurofer claimed that the target profit supported by the OECD's 2013 study should be adjusted in light of the actual results achieved during the IP by the European HRF industry. This would then lead to a reasonable profit margin of 10 %.
- (129) As explained in recital (220) of the provisional Regulation, the investigation established that basing the target profit on the profits achieved in the year 2000 is not a reasonable option. Even under the unlikely assumption that — as Eurofer alleges — there were no technological and financial changes in the Union since the year 2000, there have been at least some changes in the size of the Union market since 2000 as a result of the growing number of Member States during the period 2000-2016. Second, for the reasons as explained in recital (222) of the provisional Regulation, to base the target profit on the profits achieved in the year 2008 is also not an appropriate option, mainly because a threat of injury case requires rather a prospective analysis. Finally, Eurofer's request to increase the target profit from 7 % to 10 % — in case the target profit would not be based on either the year 2000 or the year 2008 — was not sufficiently substantiated.
- (130) The Chinese exporting producer Hebei Iron & Steel Group ⁽¹⁾ and its related importer Duferco S.A. submitted that using a 7 % target profit was excessive, inappropriate and inaccurate for the following reasons: First, it reflects an estimate of earnings which is fraught with uncertainty and of which the underlying parameters have changed in the meantime. Second, it reflects a profitability needed for the survival of the global Union steel industry, not specifically of the Union steel producers of the product concerned. Third, since the Commission had provisionally determined that imports were dumped in 2015, there was *a contrario* no dumping in the years 2012-2014, whereby profits were achieved during the latter period ranging between – 3,3 % (loss) and 0,4 % (profit). In the alternative, assuming that there was dumping during the years 2012-2014, the most recent year in which there is no evidence of dumped imports of the product concerned is the year 2011 in which profits were

⁽¹⁾ As explained in recital (168) below, 'Hebei Iron & Steel Group' changed its name to 'Hesteel Group Co., Ltd' during the investigation. Its related companies have also changed their names. The Commission duly acknowledged these name changes and adapted Article 1 paragraph 2 accordingly.

achieved amounting to 3,11 % on average. Moreover, following definitive disclosure, the same Chinese exporting producer alleged that this approach was manifestly in violation of Court's case law, since it accounted for other factors than dumping and rather is meant to ensure the survival of the Union steel industry.

- (131) First, in the Commission's view, the interested party did not substantiate its allegations that the underlying parameters which are at the basis of the study used to determine the 7 % target profit had changed in the meantime.
- (132) Second, the interested party also argued that the study reflects on a profitability needed for the survival of the global Union steel industry, not specifically of the Union steel producers of the product concerned. In this respect, as already set out in recital (223) of the provisional Regulation, absent any other reliable data, the Commission equated these figures made for the steel industry as a whole to the product concerned, as HRF makes up a big proportion of the crude steel production.
- (133) Third, concerning the remark to either use profitability data from the period 2012-2014 or from the year 2011, this does not seem appropriate. The target profit is the price which the Union industry could reasonably count on under normal conditions of competition, in the absence of the dumped imports. As mentioned in recital (106) of the provisional Regulation, the years 2012, 2013 and 2014 cannot be considered to be years under normal conditions of competition, given the aftermath of the Eurozone debt crisis, and the decline of steel demand in 2012. Furthermore, as found in the cold-rolled case ⁽¹⁾, data of 2011 cannot be relied upon due to the impact of the 2009 financial crisis which still impacted the profitability data two years later.
- (134) On the basis of the above the Commission confirmed that the 7 % target profit was the most appropriate basis in this threat of injury-case. This understanding is in line with the judgment of the Court ⁽²⁾ that the analysis of whether there is a threat of injury requires, by its very nature, a prospective analysis.

7.2. Definitive measures

7.2.1. Access to confidential data

- (135) The legal representative of a Chinese exporting producer claimed that the information disclosed in the provisional disclosure does not allow him commenting on the correctness and relevance of the Commission's findings concerning dumping margin, price effects and injury margin calculations, including whether the undercutting and underselling calculations took into account all of the sampled Union producers' sales, or only those for which there were sales of matching product types by the Chinese exporting producers. In this context, on 8 November 2016 the Chinese exporting producer requested clarifications. Moreover, on 8 November 2016 and following definitive disclosure, the Chinese exporting producer also requested access to certain confidential information. It suggested that this confidential information would only be accessed by the legal representatives, or in the alternative, to involve the Hearing Officer.
- (136) The Commission services replied on 8 December 2016 that the undercutting and underselling calculations took only into account the matching product types to compare the sales data of the Chinese exporting producer with the sales data from EU producers. In any case, the volume of comparable products sold by the Union industry represented 62 % of its total export volume. In this regard, products exported to the Union by this specific exporting producer could be matched with a comparable Union product. Furthermore, they informed the legal representative of that party that his request to access confidential information could not be accepted since the Commission is bound to protect the confidentiality of the data of the other interested parties. Since under current law there are no other means to protect the confidentiality and, at the same time, to provide parties with the requested information, the Commission services invited him to contact the Hearing Officer to have the latter to verify the confidential information.
- (137) In this context, following definitive disclosure, the complainant commented in this respect that the Commission is legally obliged to protect the confidential data submitted by all interested parties. It therefore refused to waive the protection granted to its confidential data by Article 19 of the Basic Regulation.

⁽¹⁾ OJ L 210, 4.8.2016, p. 1.

⁽²⁾ Judgment of The Court of Justice, 7 April 2016, case number C-186/14, recital 72, confirming the General Court's judgment of 29 January 2014, on case T-528/09, Hubei Xinyegang Steel Co. Ltd versus Council of the European Union, recital 71.

- (138) Under current Union law, as interpreted by the case-law, it is not legally possible to grant access to the confidential data provided by an interested party to any other party, unless with the consent of the provider of the data, or in case of litigation before the Union Courts. The only alternative is the control mechanism provided by Article 15 of the Decision of the President of the Commission of 29 February 2012 on the function and terms of reference of the Hearing Officer ⁽¹⁾. A hearing in the presence of the Hearing Officer took place on 7 February 2017, discussing the legal framework concerning access to confidential data.

7.2.2. Request for further clarifications following definitive disclosure

- (139) Following definitive disclosure, the legal representative of the same Chinese exporting producer was first heard on 12 January 2017 to discuss in detail its requested clarifications. After this meeting, he reiterated in its written submission of the same day his request to be provided with information about the injury calculations ‘to understand the nature and extent of the price effects that allegedly exist’.
- (140) On 18 January 2017, the Commission services provided in a separate letter all clarifications to the extent possible — i.e. without violating the legal obligation of the basic regulation to protect confidential data — which the legal representative of this Chinese exporting producer had requested. Furthermore, the Commission noted that there is 100 % matching between the 10 product types of the product concerned sold by this Chinese exporting producer and those sold by the Union producers. Moreover, only one out of the 10 product types represents about 75 % of his total sales volumes in the Union during the IP.

7.2.3. Including a so-called ‘importers margin’ in the calculation of underselling and undercutting margins

- (141) Following provisional and definitive disclosure, one Chinese exporting producer challenged the way the Commission had calculated the injury margin. This interested party alleged that the Chinese sales prices must be adjusted by a so-called ‘importers margin’, i.e. including customs clearance, handling, financing, SG&A, and profit (in an amount of 5 %). As such, the importer ex-warehouse price would include similar cost elements to those of the Union industry’s corresponding ex-works selling price. Furthermore, the interested party alleged that the Commission took a mere landed price (that is, without any adjustment for SG&A and profit) which is not sufficient to carry out an appropriate comparison between the respective prices of Chinese exporting producers and Union producers for undercutting and underselling calculations. To support its point, the interested party referred to two provisional Regulations, both dating from over 20 years ago. This Chinese exporting producer also alleged that the Commission had disregarded the fact that the export price at the Union frontier level would be affected by the relationship between the exporter and the importer. By doing so, the Commission would end up using, in fine, the transfer price between the related companies as a basis for the comparison with the ex-factory prices of the Union industry.
- (142) The Commission rejected this claim, for the following reason: the purpose of calculating an injury margin is to determine whether imposing a lower (than the one based on the dumping margin) duty rate to the export price of the dumped imports would be sufficient to remove the injury caused by the dumped imports. This assessment should be based on the export price at the Union frontier level which is considered to be a level comparable to the Union industry ex-works price. The methodology followed by the Commission to compare data of the Chinese exporting producers and Union producers for undercutting and underselling calculations ensures that both exporting and Union producers receive on the contrary equal treatment: The Commission considered that the determination of the relevant import price for undercutting and underselling calculations should not be influenced by whether the exports are made to related or independent operations in the Union. To that end, the relevant price to be taken into account is the price at which the product concerned is sold to the Union, and not the price at which the imported materials are then resold by importing producers in the Union. Moreover, the Commission refers to recital (144) of this Regulation. Therefore, the Commission considered that its approach was accurate.

7.2.4. Reliance by analogy on Article 2(9) of the basic Regulation

- (143) The complainant commented that the Commission should apply Article 2(9) of the basic Regulation when determining export prices for sales made via related importers in the context of the injury margin calculation. This interested party also commented that, unlike the cold rolled case, the provisional disclosure did not explicitly confirm that this methodology was used.

⁽¹⁾ OJ L 107, 19.4.2012, p. 5.

- (144) The Commission confirmed that the purpose of calculating an injury margin is to determine whether imposing a lower duty rate (than the one based on the dumping margin) to the export price of the dumped imports would be sufficient to remove the injury caused by the dumped imports. This assessment should be based on the export price at the Union frontier level which is considered to be a level comparable to the Union industry ex-works price. In the case of export sales via related importers, the export price is constructed on the basis of the resale price to the first independent customer duly adjusted pursuant to Article 2(9) of the basic Regulation. As the export price is an indispensable element in the injury margin calculation and as this provision of the basic Regulation is the only provision which gives guidance on the construction of the export price, the application of this provision by analogy is justified.
- (145) Following definitive disclosure, CISA argued that it was surprised that the Commission applied by analogy Article 2(9) of the basic Regulation. It alleged that such application was in breach of Article 2(9) of the basic Regulation itself, and vitiated by a manifest error of assessment. It also alleged that at least one sampled Chinese exporting producer was exporting via related importers and that consequently its definitive duty rate would be overstated.
- (146) First, the Commission reiterated that Article 2(9) of the basic Regulation is the only provision of the basic Regulation which gives guidance on the construction of the export price. Therefore its application is justified in the framework of calculating an injury margin. Second, contrary to what is alleged, it is Commission's practise in recent cases to consistently ⁽¹⁾ apply Article 2(9) of the basic Regulation by analogy in the framework of calculating an injury margin. Third, the purpose of the injury margin calculations is not to measure to what extent the sales of the related importers are causing injury to the Union producers, but rather whether the exports from the Chinese exporting producer have such detrimental effect through undercutting and underselling the prices of Union producers. To that end, the relevant price to be taken into account is the price at which the product concerned is sold to the Union, and not the price at which the imported materials are then resold by importing producers in the Union. In conclusion, the Commission confirmed that it has used this methodology when determining export prices for sales made via related importers.

7.2.5. *The period to be used for the injury margin calculation in a threat of injury-case*

- (147) The complainant criticised the fact that the Commission had provisionally applied a standard material injury approach by taking the average injury margin over the whole IP (i.e. 2015). It alleged that this is not a correct approach, since the threat of injury margin needs to reflect the threat, and when the threat materialises later on during the IP, the injury margin must reflect the concrete impact of the threat. In order to effectively remove the impact of the threat of injury the Commission should look at those parts of the IP where the threat of injury started to materialise. In this context, the complainant referred to the fact that the threat of injury started to impact the Union steel industry from the second half of 2015 onwards. Therefore, only the second half of 2015 should be used for calculating underselling and undercutting margins. The complainant also mentioned that threat of injury cases are aimed at allowing the Commission to act effectively and preventively before the threat of injury has caused injury. If the Commission would not be inclined to change its method of calculating the (threat of) injury margin, industries would have to wait longer, until they suffer material injury for a full year, to request protection from dumped imports in order to obtain a realistic injury margin. Such behaviour would be at the detriment of jobs and industrial activities on the Union market, and it would also undermine the objectives of the threat-of-injury complaints.
- (148) After a detailed analysis of the arguments of the complainant, the Commission recalled that it had provisionally concluded that there was a clearly foreseeable and imminent change in circumstances at the end of the investigation period, which would create a situation in which the dumping will cause injury. In this respect, the Commission referred, inter alia, to recitals (157), (159) and (198) of the provisional Regulation stating that 'while the Union industry was recovering during 2014 and the first two quarters of 2015, almost all injury indicators started to fall dramatically during the second half of 2015. The investigation revealed that this negative trend, which started in the second half of 2015, was not invalidated during the first half of 2016.' It further provided in recital (163) of the provisional Regulation that 'In view of the coincidence in time between, on the one hand,

⁽¹⁾ For instance, one can refer to the following cases:

- Council Implementing Regulation (EU) No 217/2013 of 11 March 2013, imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium foils in rolls originating in the People's Republic of China (OJ L 69, 13.3.2013, p. 11),
- Commission Implementing Regulation (EU) 2015/1953 of 29 October 2015 imposing a definitive anti-dumping duty on imports of certain grain-oriented flat-rolled products of silicon-electrical steel originating in the People's Republic of China, Japan, the Republic of Korea, the Russian Federation and the United States of America (OJ L 284, 30.10.2015, p. 109).

the ever-increasing level of dumped imports at continuously decreasing prices and, on the other hand, the Union industry's loss of market share and price depression resulting in further losses, in particular from the second half of 2015 onwards, the Commission concluded that the dumped imports had a negative impact on the situation of the Union industry.'

- (149) Second, as to the substance of the matter, the Commission established that, as laid out in recital (157) of the provisional Regulation, the negative trend started in the second half of 2015 and led to a clearly foreseeable and imminent change in circumstances at the end of the investigation period, which would create a situation in which the dumping would cause injury, if no measures were taken. This is in line with what was stated by the Commission in recital (113) of the provisional Regulation that 'the Union producers could partly recover during 2014 and the first half of 2015'. As a result, the second half of 2015 better reflects the actual impact of the threat of injury to the Union industry that should be removed.
- (150) Third, the Court held that the analysis of post-investigation period data is particularly appropriate in an investigation to determine whether there is a threat-of-injury which, by its very nature, requires a prospective analysis. For the Commission, the second half of 2015 seems to better respond to this requirement, as it is closer to future developments than the full IP.
- (151) Fourth, a calculation on the basis of a full investigation period, irrespective whether there were signs of negative trends, would undermine the objective of a threat of injury-case to act effectively and preventively before the threat of injury has caused injury.
- (152) For all the reasons above, the Commission accepted the view that the period for calculating the injury margins in this particular case should be based on the second half of 2015 and not on the entire investigation period.
- (153) As a result, the Commission requested additional data to cooperating producers. It received additional quarterly IP data on the cost of production per product type from the sampled Union producers and verified these data afterwards. The verifications concerned solely the additional data provided which were not requested before and ensured that the data on which the Commission eventually based its findings were reliable.
- (154) As the level of cooperation was considered high, the definitive injury margin for the PRC, applicable to non-sampled cooperating exporting producers, was calculated as the average of the three sampled exporting producers/groups of companies. The definitive injury margin for the PRC, applicable to non-cooperating exporting producers, was established at the level of the highest margin of the three cooperating companies/groups of companies.
- (155) Following definitive disclosure, CISA commented that the full IP was used as a basis to calculate the Union industry target's unit price, whereas only 6 months of the IP was used to calculate the Union free circulation unit sales price of the Chinese exporting producers, belonging to the Shagang group. As a result, CISA requested the Commission to recalculate both elements using the available data for the same period.
- (156) After analysis, this comment was found to be accurate. The Commission therefore recalculated the Union industry's target unit price for the Chinese exporting producers, belonging to the Shagang group, using as such the cost of production-data for the same period (second half of 2015) as the period used for the calculation of the Union free circulation unit sales price of all Chinese exporting producers.
- (157) The revised calculation led to the finding that the injury margins for the companies belonging to the Shagang Group went down from 36,6 % to 35,9 %
- (158) Furthermore, the Commission reviewed the initial calculations of the injury margins for the two other Chinese exporting producers. Whereas the initial calculation for the Hebei-group was assessed to be correct, the review of the initial calculation for Bengang Steel Plates Co., Ltd showed that it contained the following clerical errors:

— One product type was found to be wrongly excluded from the initial calculation. As a result, the revised calculation included this product type since this product type was both sold by the Union producers and by Bengang Steel Plates Co., Ltd.

— A few values in the data of the Union industry had been wrongly linked in the calculation sheet.

As a result of the abovementioned effects, the injury margin for this Chinese exporting producer increased to 28,1 % (instead of 25,5 %).

- (159) The revised calculation of the Union industry's target unit price was communicated to both the Shagang group and Bengang Steel Plates Co., Ltd on 16 January 2017. Since the only element which changed compared to the Commission's definitive disclosure dated 22 December 2016 was the Union industry's target price, both interested parties were asked to comment concerning these limited additional disclosures by 18 January 2017. No comments, though, came in by that date.
- (160) Following definitive disclosure, one Chinese exporting producer also commented that it was not persuaded by the reasons given that using only data covering the second half of 2015 would reflect more properly the situation of the impact of the threat. It also alleged that any selective use of the period for the purpose of the injury margin calculation would make the comparison of the dumping and injury margins for the purpose of the 'lesser-duty rule' illogic and distortive, and leading to higher margins than in case the full year of 2015 would have been used. Consequently, it requested the Commission to use a period of 12 months to calculate the injury margin, similar to the period used to calculate the dumping margins. Similar comments were received from the Italian user, who added that the selective use of information relating to part of the IP does not allow for an objective assessment of the injury elimination level in the present case.
- (161) A similar comment was received by CISA and by two Chinese exporting producers, both alleging that the choice of a six months' period is a breach of legal certainty and legitimate expectations. In this respect, whereas the other Chinese exporting producer alleged mainly that limiting the data set to a mere six months period cannot qualify as positive evidence within the meaning of Article 3(2) of the basic Regulation, CISA referred to point 5.1 of the Notice of Initiation stating that 'the investigation of dumping and injury will cover the period from 1 January 2015 to 31 December 2015 and the case-law'.
- (162) Moreover, one Chinese exporting producer also mentioned that it is the Commission's established practice to refrain from using data referring to only part of the investigation period and that the methodology applied in this case is not in line with the WTO Anti-Dumping Committee's recommendation that 'the period of data collection...should include the entirety of the period of data collection for the dumping investigation.'
- (163) The Commission rejected all these arguments as follows. First, the determination of dumping and injury is made on the basis of an investigation period and a period considered defined in line with the relevant provisions of the basic Regulation and announced in the Notice of Initiation. On the other hand, the basic Regulation does not provide any specific method for the calculation of the injury margin used for the application of the lesser-duty rule. Second, the basic regulation also does not provide specific criteria for the definition of the period during which the parameters for the calculation of the injury margin are assessed. In the present case, the Commission considered that the period chosen reflects the specificity of the case and is appropriate in the context of a prospective analysis. Moreover, the Commission used for the injury margin calculation the same 6-months period for comparing the export price and the target price to ensure an objective assessment.
- (164) Taking into account the issues mentioned above in recitals (135) to (163) above, and absent any other comments, the definitive injury margins were recalculated using the data for the second half of 2015. These definitive margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows. Also shown here are definitive duty rates.

Table 7

Definitive Margins and Duty Rates

Chinese exporting producers	Definitive dumping margin	Definitive injury margin	Definitive duty rate
Bengang Steel Plates Co., Ltd	97,3 %	28,1 %	28,1 %
Hesteel Group Co., Ltd	95,5 %	18,1 %	18,1 %

Chinese exporting producers	Definitive dumping margin	Definitive injury margin	Definitive duty rate
Jiangsu Shagang Group	106,9 %	35,9 %	35,9 %
Other cooperating companies	100,5 %	27,3 %	27,3 %
All other companies	106,9 %	35,9 %	35,9 %

- (165) The abovementioned injury margins were rounded down, where appropriate, to the nearest tenth of a digit following comments from an exporting producer after the definitive disclosure.
- (166) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during this investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of product concerned originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported product concerned produced by any other company whose name is not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should not benefit from these rates and should be subject to the duty rate applicable to 'all other companies'.
- (167) Any claim requesting the application of these individual company anti-dumping duty rates (for example following a change in the name of the entity or following the setting-up of new production or sales entities) should be addressed to the Commission (*) with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the present Regulation will be amended accordingly by updating the list of companies benefiting from individual duty rates.
- (168) 'Hebei Iron & Steel Group Co., Ltd' changed its name to 'Hesteel Group Co., Ltd' during the investigation. Some of its related companies have also changed their names. The Commission duly acknowledged these name changes and adapted Article 1 paragraph 2 accordingly.
- (169) In order to minimise the risks of circumvention, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping measures. These special measures include the following: the presentation to the customs authorities of the Member States of a valid commercial invoice which shall conform to the requirements set out in Article 1(3) of this Regulation. Imports not accompanied by such an invoice shall be made subject to the duty rate applicable to all other companies.

7.3. Release of the provisional duties

- (170) Following definitive disclosure, one interested party claimed that the Commission cannot definitively collect the provisional duties pursuant to Article 10(2) of the basic Regulation unless it is demonstrated that in the absence of provisional measures, the situation would have developed into material injury before the adoption of definitive measures.
- (171) In light of the findings in the present case, the Commission considers that, pursuant to Article 10(2) of the basic Regulation, the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, should be released.
- (172) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) Regulation (EU) 2016/1036,

(*) European Commission, Directorate-General for Trade, Directorate H, 1049 Brussels, Belgium.

HAS ADOPTED THIS REGULATION:

Article 1

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

The product concerned does not include:

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

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

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

Country	Company	Definitive duty rate	TARIC Additional Code
PRC	Bengang Steel Plates Co., Ltd	28,1 %	C157
	Handan Iron & Steel Group Han-Bao Co., Ltd	18,1 %	C158
	Hesteel Co., Ltd Tangshan Branch ⁽¹⁾	18,1 %	C159
	Hesteel Co., Ltd Chengde Branch ⁽²⁾	18,1 %	C160
	Zhangjiagang Hongchang Plate Co., Ltd	35,9 %	C161
	Zhangjiagang GTA Plate Co., Ltd	35,9 %	C162
	Other cooperating companies listed in Annex I	27,3 %	See the Annex
	All other companies	35,9 %	C999

⁽¹⁾ Formerly 'Hebei Iron & Steel Co., Ltd. Tangshan Branch'.

⁽²⁾ Formerly 'Hebei Iron & Steel Co., Ltd. Chengde Branch'.

3. The application of the individual anti-dumping duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States 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 hot-rolled flat steel products sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in the (country concerned). I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty rate applicable to 'all other companies' shall apply.

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

5. Where any new exporting producer in the People's Republic of China provides sufficient evidence to the Commission that:

- (1) it did not export to the Union the product described in paragraph 1 in the period between 1 January 2015 and 31 December 2015 (investigation period);
 - (2) it is not related to any exporter or producer in the People's Republic of China which is subject to the anti-dumping measures imposed by this Regulation;
 - (3) it has actually exported to the Union the product concerned after the investigation period on which the measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Union,
- paragraph 2 may be amended by adding the new exporting producer to the cooperating companies not included in the sample and thus subject to an individual duty not exceeding the weighted average duty of 27,3 %.

Article 2

The amounts secured by way of the provisional anti-dumping duties pursuant to Commission Implementing Regulation (EU) 2016/181 ⁽¹⁾ shall be definitively released.

Article 3

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

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

Done at Brussels, 5 April 2017.

For the Commission

The President

Jean-Claude JUNCKER

⁽¹⁾ Commission Implementing Regulation (EU) 2016/181 of 10 February 2016 imposing a provisional anti-dumping duty on imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation (OJ L 37, 12.2.2016, p. 1).

ANNEX

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