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Contents

II *Non-legislative acts*

INTERNATIONAL AGREEMENTS

- ★ **Council Decision (EU) 2023/1116 of 25 May 2023 on the conclusion, on behalf of the European Union, of the Protocol amending the Marrakesh Agreement establishing the World Trade Organization, as regards the Agreement on fisheries subsidies** 1
- ★ **Protocol amending the Marrakesh Agreement establishing the World Trade Organization Agreement on Fisheries Subsidies** 3

REGULATIONS

- ★ **Commission Delegated Regulation (EU) 2023/1117 of 12 January 2023 supplementing Directive (EU) 2019/2034 of the European Parliament and of the Council with regard to regulatory technical standards specifying requirements for the type and nature of the information to be exchanged by competent authorities of home and host Member States ⁽¹⁾** 10
- ★ **Commission Delegated Regulation (EU) 2023/1118 of 12 January 2023 supplementing Directive (EU) 2019/2034 of the European Parliament and of the Council with regard to regulatory technical standards specifying the conditions under which colleges of supervisors exercise their tasks ⁽¹⁾** 17
- ★ **Commission Implementing Regulation (EU) 2023/1119 of 12 January 2023 laying down implementing technical standards for the application of Directive (EU) 2019/2034 of the European Parliament and of the Council with regard to standard forms, templates and procedures for the information sharing between the competent authorities of home and host Member States ⁽¹⁾** 29
- ★ **Commission Implementing Regulation (EU) 2023/1120 of 7 May 2023 granting a Union authorisation for the single biocidal product “APESIN Handaktiv” in accordance with Regulation (EU) No 528/2012 of the European Parliament and of the Council ⁽¹⁾** 36

⁽¹⁾ Text with EEA relevance.

EN

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

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

★ Commission Implementing Regulation (EU) 2023/1121 of 1 June 2023 entering a name in the register of protected designations of origin and protected geographical indications ('Nordhessische Ahle Wurst / Nordhessische Ahle Worscht' (PGI)).....	44
★ Commission Implementing Regulation (EU) 2023/1122 of 7 June 2023 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council.....	45
★ Commission Implementing Regulation (EU) 2023/1123 of 7 June 2023 imposing a definitive countervailing duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in People's Republic of China following an expiry review pursuant to Article 18 of Regulation (EU) 2016/1037 of the European Parliament and of the Council	84

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

★ Decision No 1/2023 of the Committee on Trade and Sustainable Development under the Agreement between the European Union and Japan for an Economic Partnership of 1 March 2023 concerning the establishment of the list of individuals who are willing and able to serve as experts, and the adoption of rules of procedure for the panel of experts [2023/1124]	121
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II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION (EU) 2023/1116

of 25 May 2023

on the conclusion, on behalf of the European Union, of the Protocol amending the Marrakesh Agreement establishing the World Trade Organization, as regards the Agreement on fisheries subsidies

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(4), first subparagraph, in conjunction with Article 218(6), second subparagraph, point (a)(v) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament ⁽¹⁾,

Whereas:

- (1) The Union is a Member of the World Trade Organization ('WTO') which launched the Doha Round of trade negotiations, known as 'the Doha Development Agenda', in November 2001. The task of the WTO negotiations on fisheries subsidies was to deliver on Target 14.6 of the United Nations Sustainable Development Goals.
- (2) The Commission negotiated with other WTO Members in consultation with the Committee established by Article 207(3) of the Treaty.
- (3) The negotiations were concluded at the 12th WTO Ministerial Conference on 17 June 2022. That Conference adopted the Protocol amending the Marrakesh Agreement establishing the World Trade Organization ('the Protocol') and declared it open for acceptance by the WTO Members.
- (4) The Annex to the Protocol contains the Agreement on fisheries subsidies which will be inserted, upon entry into force of the Protocol, into Annex 1A to the Marrakesh Agreement establishing the World Trade Organization.
- (5) The Protocol should be approved,

HAS ADOPTED THIS DECISION:

Article 1

The Protocol amending the Marrakesh Agreement establishing the World Trade Organization ('the Protocol') is hereby approved on behalf of the Union ⁽²⁾.

⁽¹⁾ Consent of 19 April 2023 (not yet published in the Official Journal).

⁽²⁾ See page 3 of this Official Journal.

Article 2

The President of the Council shall designate the person(s) empowered to deposit, on behalf of the Union, the instrument of acceptance as provided for in paragraph 5 of the Protocol ⁽³⁾.

Article 3

The Protocol shall not be construed as conferring rights or imposing obligations which can be directly invoked in courts of the Union or Member States.

Article 4

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

Done at Brussels, 25 May 2023.

For the Council
The President
J. FORSSELL

⁽³⁾ The date of entry into force of the Protocol will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

PROTOCOL
amending the Marrakesh Agreement establishing the World Trade Organization Agreement on Fisheries Subsidies

MEMBERS OF THE WORLD TRADE ORGANIZATION;

HAVING REGARD to the Decision of the Ministerial Conference in document WT/MIN(22)/33 – WT/L/1144 adopted pursuant to paragraph 1 of Article X of the Marrakesh Agreement Establishing the World Trade Organization ("the WTO Agreement");

HEREBY AGREE AS FOLLOWS:

1. Annex 1A to the WTO Agreement shall, upon entry into force of this Protocol pursuant to paragraph 4, be amended by the insertion of the Agreement on Fisheries Subsidies, as set out in the Annex to this Protocol, to be placed after the Agreement on Subsidies and Countervailing Measures.
2. No reservations may be made in respect of any of the provisions of this Protocol.
3. This Protocol is hereby open for acceptance by Members.
4. This Protocol shall enter into force in accordance with paragraph 3 of Article X of the WTO Agreement. ⁽¹⁾
5. This Protocol shall be deposited with the Director-General of the World Trade Organization who shall promptly furnish to each Member a certified copy thereof and a notification of each acceptance thereof pursuant to paragraph 3.
6. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this seventeenth day of June two thousand and twenty-two, in a single copy in the English, French and Spanish languages, each text being authentic.

⁽¹⁾ For the purposes of calculation of acceptances under Article X:3 of the WTO Agreement, an instrument of acceptance by the European Union for itself and in respect of its Member States shall be counted as acceptance by a number of Members equal to the number of Member States of the European Union which are Members to the WTO.

ANNEX

AGREEMENT ON FISHERIES SUBSIDIES

Article 1

Scope

This Agreement applies to subsidies, within the meaning of Article 1.1 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) that are specific within the meaning of Article 2 of that Agreement, to marine wild capture fishing and fishing related activities at sea. ⁽¹⁾, ⁽²⁾, ⁽³⁾

Article 2

Definitions

For the purpose of this Agreement:

- (a) "fish" means all species of living marine resources, whether processed or not;
- (b) "fishing" means searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish;
- (c) "fishing related activities" means any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea;
- (d) "vessel" means any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for, fishing or fishing related activities;
- (e) "operator" means the owner of a vessel, or any person, who is in charge of or directs or controls the vessel.

Article 3

Subsidies contributing to illegal, unreported and unregulated fishing ⁽⁴⁾

3.1 No Member shall grant or maintain any subsidy to a vessel or operator ⁽⁵⁾ engaged in illegal, unreported and unregulated (IUU) fishing or fishing related activities in support of IUU fishing.

3.2 For purposes of Article 3.1, a vessel or operator shall be considered to be engaged in IUU fishing if an affirmative determination thereof is made by any of the following ⁽⁶⁾ ⁽⁷⁾:

- (a) a coastal Member, for activities in areas under its jurisdiction; or

⁽¹⁾ For greater certainty, aquaculture and inland fisheries are excluded from the scope of this Agreement.

⁽²⁾ For greater certainty, government-to-government payments under fisheries access agreements shall not be deemed to be subsidies within the meaning of this Agreement.

⁽³⁾ For greater certainty, for the purposes of this Agreement, a subsidy shall be attributable to the Member conferring it, regardless of the flag or registry of any vessel involved or the nationality of the recipient.

⁽⁴⁾ "Illegal, unreported and unregulated (IUU) fishing" refers to activities set out in paragraph 3 of the *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* adopted by the UN Food and Agriculture Organization (FAO) in 2001.

⁽⁵⁾ For the purpose of Article 3, the term "operator" means the operator within the meaning of Article 2(e) at the time of the IUU fishing infraction. For greater certainty, the prohibition on granting or maintaining subsidies to operators engaged in IUU fishing applies to subsidies provided to fishing and fishing related activities at sea.

⁽⁶⁾ Nothing in this Article shall be interpreted to obligate Members to initiate IUU fishing investigations or make IUU fishing determinations.

⁽⁷⁾ Nothing in this Article shall be interpreted as affecting the competence of the listed entities under relevant international instruments or granting new rights to the listed entities in making IUU fishing determinations.

- (b) a flag State Member, for activities by vessels flying its flag; or
- (c) a relevant Regional Fisheries Management Organization or Arrangement (RFMO/A), in accordance with the rules and procedures of the RFMO/A and relevant international law, including through the provision of timely notification and relevant information, in areas and for species under its competence.

3.3

- (a) An affirmative determination ⁽⁸⁾ under Article 3.2 refers to the final finding by a Member and/or the final listing by an RFMO/A that a vessel or operator has engaged in IUU fishing.
- (b) For purposes of Article 3.2(a), the prohibition under Article 3.1 shall apply where the determination by the coastal Member is based on relevant factual information and the coastal Member has provided to the flag State Member and, if known, the subsidizing Member, the following:
 - (i) timely notification, through appropriate channels, that a vessel or operator has been temporarily detained pending further investigation for engagement in, or that the coastal Member has initiated an investigation for, IUU fishing including reference to any relevant factual information, applicable laws, regulations, administrative procedures, or other relevant measures;
 - (ii) an opportunity to exchange relevant information ⁽⁹⁾ prior to a determination, so as to allow such information to be considered in the final determination. The coastal Member may specify the manner and time period in which such information exchange should be carried out; and
 - (iii) notification of the final determination, and of any sanctions applied, including, if applicable, their duration. The coastal Member shall notify an affirmative determination to the Committee provided for in Article 9.1 (referred to in this Agreement as "the Committee").

3.4 The subsidizing Member shall take into account the nature, gravity, and repetition of IUU fishing committed by a vessel or operator when setting the duration of application of the prohibition in Article 3.1. The prohibition in Article 3.1 shall apply at least as long as the sanction ⁽¹⁰⁾ resulting from the determination triggering the prohibition remains in force, or at least as long as the vessel or operator is listed by an RFMO/A, whichever is the longer.

3.5 The subsidizing Member shall notify the measures taken pursuant to Article 3.1 to the Committee in accordance with Article 8.3.

3.6 Where a port State Member notifies a subsidizing Member that it has clear grounds to believe that a vessel in one of its ports has engaged in IUU fishing, the subsidizing Member shall give due regard to the information received and take such actions in respect of its subsidies as it deems appropriate.

3.7 Each Member shall have laws, regulations and/or administrative procedures in place to ensure that subsidies referred to in Article 3.1, including such subsidies existing at the entry into force of this Agreement, are not granted or maintained.

3.8 For a period of 2 years from the date of entry into force of this Agreement, subsidies granted or maintained by developing country Members, including least-developed country (LDC) Members, up to and within the exclusive economic zone (EEZ) shall be exempt from actions based on Articles 3.1 and 10 of this Agreement.

⁽⁸⁾ Nothing in this Article shall be interpreted to delay, or affect the validity or enforceability of, an IUU fishing determination.

⁽⁹⁾ For example, this may include an opportunity to dialogue or for written exchange of information if requested by the flag State or subsidizing Member.

⁽¹⁰⁾ Termination of sanctions is as provided for under the laws or procedures of the authority having made the determination referred to in Article 3.2.

*Article 4***Subsidies regarding overfished stocks**

4.1 No Member shall grant or maintain subsidies for fishing or fishing related activities regarding an overfished stock.

4.2 For the purpose of this Article, a fish stock is overfished if it is recognized as overfished by the coastal Member under whose jurisdiction the fishing is taking place or by a relevant RFMO/A in areas and for species under its competence, based on best scientific evidence available to it.

4.3 Notwithstanding Article 4.1, a Member may grant or maintain subsidies referred to in Article 4.1 if such subsidies or other measures are implemented to rebuild the stock to a biologically sustainable level. ⁽¹⁾

4.4 For a period of 2 years from the date of entry into force of this Agreement, subsidies granted or maintained by developing country Members, including LDC Members, up to and within the EEZ shall be exempt from actions based on Articles 4.1 and 10 of this Agreement.

*Article 5***Other subsidies**

5.1 No Member shall grant or maintain subsidies provided to fishing or fishing related activities outside of the jurisdiction of a coastal Member or a coastal non-Member and outside the competence of a relevant RFMO/A.

5.2 A Member shall take special care and exercise due restraint when granting subsidies to vessels not flying that Member's flag.

5.3 A Member shall take special care and exercise due restraint when granting subsidies to fishing or fishing related activities regarding stocks the status of which is unknown.

*Article 6***Specific provisions for LDC Members**

A Member shall exercise due restraint in raising matters involving an LDC Member and solutions explored shall take into consideration the specific situation of the LDC Member involved, if any.

*Article 7***Technical assistance and capacity building**

Targeted technical assistance and capacity building assistance to developing country Members, including LDC Members, shall be provided for the purpose of implementation of the disciplines under this Agreement. In support of this assistance, a voluntary WTO funding mechanism shall be established in cooperation with relevant international organizations such as the Food and Agriculture Organization of the United Nations (FAO) and International Fund for Agricultural Development. The contributions of WTO Members to the mechanism shall be exclusively on a voluntary basis and shall not utilize regular budget resources.

⁽¹⁾ For the purpose of this paragraph, a biologically sustainable level is the level determined by a coastal Member having jurisdiction over the area where the fishing or fishing related activity is taking place, using reference points such as maximum sustainable yield (MSY) or other reference points, commensurate with the data available for the fishery; or by a relevant RFMO/A in areas and for species under its competence.

*Article 8***Notification and transparency**

8.1 Without prejudice to Article 25 of the SCM Agreement and in order to strengthen and enhance notifications of fisheries subsidies, and to enable more effective surveillance of the implementation of fisheries subsidies commitments, each Member shall

- (a) provide the following information as part of its regular notification of fisheries subsidies under Article 25 of the SCM Agreement ⁽¹²⁾ ⁽¹³⁾: type or kind of fishing activity for which the subsidy is provided;
- (b) to the extent possible, provide the following information as part of its regular notification of fisheries subsidies under Article 25 of the SCM Agreement ⁽¹²⁾ ⁽¹³⁾:
 - (i) status of the fish stocks in the fishery for which the subsidy is provided (e.g. overfished, maximally sustainably fished, or underfished) and the reference points used, and whether such stocks are shared ⁽¹⁴⁾ with any other Member or are managed by an RFMO/A;
 - (ii) conservation and management measures in place for the relevant fish stock;
 - (iii) fleet capacity in the fishery for which the subsidy is provided;
 - (iv) name and identification number of the fishing vessel or vessels benefitting from the subsidy; and
 - (v) catch data by species or group of species in the fishery for which the subsidy is provided. ⁽¹⁵⁾

8.2 Each Member shall notify the Committee in writing on an annual basis of a list of vessels and operators that it has affirmatively determined as having been engaged in IUU fishing.

8.3 Each Member shall, within one year of the date of entry into force of this Agreement, inform the Committee of measures in existence or taken to ensure the implementation and administration of this Agreement, including the steps taken to implement prohibitions set out in Articles 3, 4 and 5. Each Member shall also promptly inform the Committee of any changes to such measures thereafter, and new measures taken to implement the prohibitions set out in Article 3.

8.4 Each Member shall, within one year of the date of entry into force of this Agreement, provide to the Committee a description of its fisheries regime with references to its laws, regulations and administrative procedures relevant to this Agreement, and promptly inform the Committee of any modifications thereafter. A Member may meet this obligation by providing to the Committee an up-to-date electronic link to the Member's or other appropriate official web page that sets out this information.

8.5 A Member may request additional information from the notifying Member regarding the notifications and information provided under this Article. The notifying Member shall respond to that request as quickly as possible in writing and in a comprehensive manner. If a Member considers that a notification or information under this Article has not been provided, the Member may bring the matter to the attention of such other Member or to the Committee.

8.6 Members shall notify to the Committee in writing, upon entry into force of this Agreement, any RFMO/A to which they are parties. This notification shall consist of, at least, the text of the legal instrument instituting the RFMO/A, the area and species under its competence, the information on the status of the managed fish stocks, a description of its

⁽¹²⁾ For the purpose of Article 8.1, Members shall provide this information in addition to all the information required under Article 25 of the SCM Agreement and as stipulated in any questionnaire utilized by the SCM Committee, for example G/SCM/6/Rev.1.

⁽¹³⁾ For LDC Members, and developing country Members with an annual share of the global volume of marine capture production not exceeding 0.8 per cent as per the most recent published FAO data as circulated by the WTO Secretariat, the notification of the additional information in this subparagraph may be made every four years.

⁽¹⁴⁾ The term "shared stocks" refers to stocks that occur within the EEZs of two or more coastal Members, or both within the EEZ and in an area beyond and adjacent to it.

⁽¹⁵⁾ For multispecies fisheries, a Member instead may provide other relevant and available catch data.

conservation and management measures, the rules and procedures governing its IUU fishing determinations, and the updated lists of vessels and/or operators that it has determined as having been engaged in IUU fishing. This notification may be presented either individually or by a group of Members. ⁽¹⁶⁾ Any changes to this information shall be notified promptly to the Committee. The Secretariat to the Committee shall maintain a list of RFMO/As notified pursuant to this Article.

8.7 Members recognize that notification of a measure does not prejudice (a) its legal status under GATT 1994, the SCM Agreement, or this Agreement; (b) the effects of the measure under the SCM Agreement; or (c) the nature of the measure itself.

8.8 Nothing in this Article requires the provision of confidential information.

Article 9

Institutional arrangements

9.1 There is hereby established a Committee on Fisheries Subsidies composed of representatives from each of the Members. The Committee shall elect its own Chair and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any Member. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the Members and it shall afford Members the opportunity of consulting on any matter relating to the operation of this Agreement or the furtherance of its objectives. The WTO Secretariat shall act as the secretariat to the Committee.

9.2 The Committee shall examine all information provided pursuant to Articles 3 and 8 and this Article not less than every two years.

9.3 The Committee shall review annually the implementation and operation of this Agreement, taking into account the objectives thereof. The Committee shall inform annually the Council for Trade in Goods of developments during the period covered by such reviews.

9.4 Not later than five years after the date of entry into force of this Agreement and every three years thereafter, the Committee shall review the operation of this Agreement with a view to identifying all necessary modifications to improve the operation of this Agreement, taking into account the objectives thereof. Where appropriate, the Committee may submit to the Council for Trade in Goods proposals to amend the text of this Agreement having regard, inter alia, to the experience gained in its implementation.

9.5 The Committee shall maintain close contact with the FAO and with other relevant international organizations in the field of the fisheries management, including relevant RFMO/As.

Article 10

Dispute settlement

10.1 The provisions of Articles XXII and XXIII of the GATT 1994 as elaborated and applied by the Dispute Settlement Understanding (DSU) shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided herein. ⁽¹⁷⁾

10.2 Without prejudice to paragraph 1, the provisions of Article 4 of the SCM Agreement ⁽¹⁸⁾ shall apply to consultations and the settlement of disputes under Articles 3, 4 and 5 of this Agreement.

⁽¹⁶⁾ This obligation can be met by providing an up-to-date electronic link to the notifying Member's or other appropriate official web page that sets out this information.

⁽¹⁷⁾ Subparagraphs 1(b) and 1(c) of Article XXIII of the GATT 1994 and Article 26 of the DSU shall not apply to the settlement of disputes under this Agreement.

⁽¹⁸⁾ For purposes of this Article, the term "prohibited subsidy" in Article 4 of the SCM Agreement refers to subsidies subject to prohibition in Article 3, Article 4 or Article 5 of this Agreement.

*Article 11***Final provisions**

11.1 Except as provided in Articles 3 and 4, nothing in this Agreement shall prevent a Member from granting a subsidy for disaster ⁽¹⁹⁾ relief, provided that the subsidy is:

- (a) limited to the relief of a particular disaster;
- (b) limited to the affected geographic area;
- (c) time-limited; and
- (d) in the case of reconstruction subsidies, limited to restoring the affected fishery, and/or the affected fleet to its pre-disaster level.

11.2

- (a) This Agreement, including any findings, recommendations, and awards with respect to this Agreement, shall have no legal implications regarding territorial claims or delimitation of maritime boundaries.
- (b) A panel established pursuant to Article 10 of this Agreement shall make no findings with respect to any claim that would require it to base its findings on any asserted territorial claims or delimitation of maritime boundaries. ⁽²⁰⁾

11.3 Nothing in this Agreement shall be construed or applied in a manner which will prejudice the jurisdiction, rights and obligations of Members, arising under international law, including the law of the sea. ⁽²¹⁾

11.4 Except as otherwise provided, nothing in this Agreement shall imply that a Member is bound by measures or decisions of, or recognizes, any RFMO/As of which it is not a party or a cooperating non-party.

11.5 This Agreement does not modify or nullify any rights and obligations as provided by the SCM Agreement.

*Article 12***Termination of Agreement if comprehensive disciplines are not adopted**

If comprehensive disciplines are not adopted within four years of the entry into force of this Agreement, and unless otherwise decided by the General Council, this Agreement shall stand immediately terminated.

⁽¹⁹⁾ For greater certainty, this provision does not apply to economic or financial crises.

⁽²⁰⁾ This limitation shall also apply to an arbitrator established pursuant to Article 25 of the Dispute Settlement Understanding.

⁽²¹⁾ Including rules and procedures of RFMO/As.

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2023/1117

of 12 January 2023

supplementing Directive (EU) 2019/2034 of the European Parliament and of the Council with regard to regulatory technical standards specifying requirements for the type and nature of the information to be exchanged by competent authorities of home and host Member States

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive (EU) 2019/2034 of 27 November 2019 of the European Parliament and of the Council on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU ⁽¹⁾, and in particular to Article 13(7), second subparagraph, thereof,

Whereas:

- (1) In order to ensure efficient cooperation between competent authorities of home and host Member States, it is necessary to specify which information concerning investment firms, and where relevant, concerning the functioning of their branches or the exercise of the freedom to provide services in one or more Member States other than those in which their head offices are situated is to be provided by the competent authorities of the home Member State to the competent authorities of the host Member State and conversely.
- (2) It is essential to see the exchange of information between competent authorities of home and host Member States in the wider context of the supervision of cross-border investment firm groups. Where relevant, it is therefore appropriate that information is provided at the consolidated level. In particular, if an investment firm operating through a branch has an ultimate parent undertaking in the Member State where it has its head office, and the competent authority concerned is also the group supervisor, it is deemed appropriate to provide information at the consolidated level rather than at the level of the investment firm. However, in that case, the competent authority should notify competent authorities of host Member States that the information is provided at the consolidated level of the investment firm group.
- (3) While providing the key elements that should be subject to an exchange of information between competent authorities, it would not be appropriate in the context of an efficient cooperation between competent authorities on a cross-border basis to restrict the scope of such exchange of information. In particular, Article 14 of Directive (EU) 2019/2034 sets out specific provisions for the exchange of information regarding on-the-spot verification of branches that could also be relevant in the context of Article 13 of that Directive.
- (4) Cooperation and information exchange requirements regarding notifications of the exercise of the right of establishment and freedom to provide services are set out in Articles 34 and 35 of Directive 2014/65/EU of the European Parliament and of the Council ⁽²⁾, and requirements for cooperation between competent authorities responsible for supervision of markets and instruments in supervisory activities, for on-site verifications or

⁽¹⁾ OJ L 314, 5.12.2019, p. 64.

⁽²⁾ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

investigations are set out in Article 80 of Directive 2014/65/EU and are further specified in Commission Delegated Regulation (EU) 2017/586 ⁽³⁾. This Regulation does not therefore specify any requirements for exchange of information in those areas.

- (5) While the information which needs to be exchanged for the purposes of ensuring an adequate protection of clients and safeguarding the stability of the financial system in the host Member State should be specified in the context of the provision of cross-border services in a host Member State, duplication of information exchange should equally be avoided. Therefore, competent authorities should consider information already available to them, in particular through the mechanism established in accordance with Article 6(2) of Directive (EU) 2019/2034 for the exchange of information between the competent authorities and the authorities designated under Article 67 of Directive 2014/65/EU in a particular Member State, where those authorities differ, Article 80 of Directive 2014/65/EU and Delegated Regulation (EU) 2017/586.
- (6) In order to ensure a sufficient convergence of regulatory and supervisory practices across the Union and a minimum level of information exchange enabling competent authorities to fulfil their supervisory duties, it is necessary to lay down minimum requirements for the information to be exchanged between competent authorities of home and host Member States. At a minimum, that information should cover all the areas specified in Article 13 of Directive (EU) 2019/2034, namely information about: the management and ownership structure of the investment firm, compliance with own funds requirements by the investment firm, compliance with the concentration risk requirements and liquidity requirements of the investment firm, the administrative and accounting procedures and internal control mechanisms of the investment firm and any other relevant factors that may influence the risk posed by the investment firm. In order to facilitate an adequate supervision of investment firms, the competent authorities of host and home Member States should keep each other informed about identified situations of non-compliance with national or Union law, where such non-compliance may affect the protection of clients or the stability of the financial system in the host Member State, as well as about supervisory measures and sanctions imposed on investment firms. Furthermore, additional information regarding preparation for emergency situations should be included in the scope of information to be exchanged between competent authorities of home and host Member States so that the latter are able to monitor investment firms efficiently.
- (7) To ensure that the relevant information is exchanged within a reasonable timeframe while avoiding situations where the competent authorities of a home Member State are obliged to forward any information about an investment firm, regardless of its nature and importance, to all competent authorities of host Member States, it is appropriate in some specific cases that only information that is relevant to a particular branch should be transmitted exclusively to the competent authorities in charge of supervising this branch. For similar efficiency and proportionality purposes, in a number of specific areas, only information regarding identified situations of non-compliance should be exchanged between competent authorities of home and host Member States, meaning that no information would have to be exchanged where the investment firm is in conformity with national and Union law.
- (8) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority (EBA) and developed in consultation with the European Securities and Markets Authority.
- (9) The EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽⁴⁾,

⁽³⁾ Commission Delegated Regulation (EU) 2017/586 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the exchange of information between competent authorities when cooperating in supervisory activities, on-the-spot verifications and investigations (OJ L 87, 31.3.2017, p. 382).

⁽⁴⁾ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

HAS ADOPTED THIS REGULATION:

Article 1

Information on a consolidated basis

Where the ultimate parent investment firm is established in the same Member State as that in which the investment firm has its head office, and the competent authority of the investment firm's home Member State is also the group supervisor determined in accordance with Article 46 of Directive (EU) 2019/2034, that competent authority shall provide information regarding that investment firm at the consolidated level for the investment firm group and shall inform the competent authorities of host Member States that the information is provided at the consolidated level.

Article 2

Information about management and ownership structure of investment firms operating through a branch

1. The competent authorities of the home Member State shall provide the competent authorities of the host Member State with the organisational structure of an investment firm, its business lines and its relationships to entities within the group.
2. In addition to the type of information referred to in paragraph 1, the competent authorities of the home Member State supervising an investment firm not identified as small and non-interconnected investment firm in accordance with Article 12 of Regulation (EU) 2019/2033 of the European Parliament and of the Council ⁽ⁱ⁾ shall provide the competent authorities of the host Member State with the following information in relation to the investment firm:
 - (a) the structure of the management body and senior management as well as a description of the allocation of responsibilities for the oversight of a branch;
 - (b) the list of shareholders and members with qualifying holdings.

Article 3

Information about compliance with own funds requirements

1. The competent authorities of the home Member State shall inform the competent authorities of the host Member State about whether an investment firm is compliant with the following requirements:
 - (a) the own fund requirements laid down in Article 11 of Regulation (EU) 2019/2033, taking into account the transitional arrangements laid down in Article 57 of that Regulation;
 - (b) where applicable, any additional own funds requirements imposed in accordance with Article 39(2), point (a), of Directive (EU) 2019/2034;
 - (c) where applicable, any guidance on additional own funds imposed in accordance with Article 41 of Directive (EU) 2019/2034.
2. The competent authorities of the home Member State shall provide the competent authorities of the host Member State with the following information regarding own funds requirements applicable to an investment firm:
 - (a) the value of the own funds requirements laid down in Article 11 of Regulation (EU) 2019/2033;
 - (b) whether the value referred to in point (a) was set on the basis of Article 11(1), points (a), (b) or (c) of Regulation (EU) 2019/2033;

⁽ⁱ⁾ Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1).

- (c) where applicable, the value of any additional own funds requirements imposed in accordance with Article 39(2), point (a), of Directive (EU) 2019/2034, and the grounds for its imposition;
- (d) where applicable, the value of any guidance on additional own funds imposed in accordance with Article 41 of Directive (EU) 2019/2034.

3. The competent authorities of the home Member State shall provide the competent authorities of the host Member State with information regarding any situation in respect of which the competent authorities of the home Member State have determined that an investment firm has not complied with applicable own funds requirements referred to in paragraph 1. The information provided shall explain the situation and supervisory measures taken or planned to be taken.

4. Where an investment firm has been exempted from the application of Part Two of Regulation (EU) 2019/2033 in accordance with Article 6(1) of that Regulation, the competent authorities of the home Member State shall provide the information referred to in paragraphs 1 and 2 of this Article at the consolidated level.

5. Where an investment firm has been allowed to apply Article 8 of Regulation (EU) 2019/2033, the competent authorities of the home Member State shall inform the competent authorities of the host Member State about whether the investment firm is compliant with the own funds requirements laid down in Article 8(3) and (4) of that Regulation.

Article 4

Information about compliance with concentration risk requirements and liquidity requirements

1. The competent authorities of the home Member State shall inform the competent authorities of the host Member State about whether an investment firm is compliant with the concentration risk requirements laid down in Part Four of Regulation (EU) 2019/2033.

2. The competent authorities of the home Member State shall provide the competent authorities of the host Member State with information regarding any situation in respect of which the competent authorities of the home Member State have determined that an investment firm has not complied with the applicable concentration risk requirements, as laid down in Part Four of Regulation (EU) 2019/2033. The information provided shall explain the situation and supervisory measures taken or planned to be taken.

3. The competent authorities of the home Member State shall inform the competent authorities of the host Member State about whether an investment firm is compliant with the liquidity requirements laid down in Part Five of Regulation (EU) 2019/2033, taking into account the transitional provisions laid down in Article 57(1) of that Regulation and the application of any exemptions in accordance with Article 43(1), second subparagraph of that Regulation.

4. The competent authorities of the home Member State shall provide the competent authorities of the host Member State with information regarding any situation in respect of which the competent authorities of the home Member State have determined that an investment firm has not complied with applicable liquidity requirements, as laid down in Part Five of Regulation (EU) 2019/2033. The information provided shall explain the situation and supervisory measures taken or planned to be taken.

5. The competent authorities of the home Member State shall provide the competent authorities of the host Member State with their overall assessment of an investment firm's liquidity risk profile and risk management, taking into account the transitional provisions laid down in Article 57(1) of Regulation (EU) 2019/2033 and the application of any exemptions in accordance with Article 43(1), second subparagraph of that Regulation.

6. Where the competent authorities have exempted an investment firm from the application of Part Five of Regulation (EU) 2019/2033 in accordance with Article 6(3) of that Regulation, the competent authorities of the home Member State shall provide the information referred to in paragraph 2 of this Article at the consolidated level.

*Article 5***Information about administrative and accounting procedures**

1. The competent authorities of the home Member State shall provide the competent authorities of the host Member State with information regarding any situation where the competent authorities of the home Member State have determined that an investment firm has not complied with applicable accounting standards and procedures to which the investment firm is subject in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council ⁽⁹⁾. The information to be provided shall explain the situation and supervisory measures taken or planned to be taken.
2. Where the information referred to in paragraph 1 is relevant to a particular branch only, the competent authorities of the home Member State shall only provide the information to the competent authorities of the host Member State in which that branch is established.

*Article 6***Information about internal control mechanisms**

1. The competent authorities of the home Member State shall provide to the competent authorities of the host Member State information regarding any situation in respect of which the competent authorities of the home Member States have determined that an investment firm has not complied with requirements concerning internal control mechanisms, including risk management, risk control and internal audit arrangements pursuant to Regulation (EU) 2019/2033 and Directive (EU) 2019/2034. The information to be provided shall explain the situation and the supervisory measures taken or planned to be taken.
2. Where the information referred to in paragraph 1 is relevant to a particular branch only, the competent authorities of the home Member State shall only provide the information to the competent authorities of the host Member State in which that branch is established.

*Article 7***Information about other factors that may influence the risk posed by the investment firm**

1. In addition to the information and findings provided for in accordance with Article 13(2) of Directive (EU) 2019/2034, the competent authorities of the home Member State shall provide to the competent authorities of the host Member State information regarding any material risks and their supervisory assessment as revealed by the supervisory review and evaluation carried out in accordance with Article 36 of Directive (EU) 2019/2034, or through any other supervisory activity carried out by the competent authorities of the home Member State.
2. Where the information referred to in paragraph 1 is relevant to a particular branch only, the competent authorities of the home Member State shall only provide the information to the competent authorities of the host Member State in which that branch is established.

*Article 8***Information about general non-compliance**

1. Where Articles 3 to 7 of this Regulation or the relevant provisions on information exchange of Directive 2014/65/EU or Delegated Regulation (EU) 2017/586 do not apply, the competent authorities of the home Member State shall provide the competent authorities of the host Member State with information regarding any situation in respect of which they have determined that an investment firm has not complied with any of the following requirements, where such non-compliance might affect the protection of clients or the stability of the financial system in the host Member State:

⁽⁹⁾ Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).

- (a) requirements related to the prudential supervision of investment firms laid down in Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽⁷⁾, Directive 2013/36/EU of the European Parliament and of the Council ⁽⁸⁾, Directive 2014/59/EU of the European Parliament and of the Council ⁽⁹⁾, Regulation (EU) 2019/2033 and Directive (EU) 2019/2034;
 - (b) requirements on the basis of other relevant national law.
2. The information referred to in paragraph 1 shall explain the non-compliance and the supervisory measures taken or planned to be taken.
3. Where the information referred to in paragraph 1 is relevant only to a particular branch, the competent authorities of the home Member State shall only provide the information to the competent authorities of the host Member State in which that branch is established.

Article 9

Communication of supervisory measures and sanctions

1. The competent authorities of the home Member State shall inform the competent authorities of the host Member State of any administrative sanctions or administrative measures, or supervisory measures imposed on an investment firm related to breaches of requirements laid down in Regulation (EU) 2019/2033 or in Directive (EU) 2019/2034 and which affect the operations of its branch.
2. Where the information specified in paragraph 1 is relevant only to a particular branch, the competent authorities of the home Member State shall only provide the information to the competent authorities of the host Member State in which that branch is established.

Article 10

Information about the arrangements for preparing for emergency situations

The competent authorities of the home Member State and the competent authorities of the host Member State shall exchange information regarding the arrangements for preparing for emergency situations. In particular, they shall keep one another informed of the following:

- (a) the emergency contact details of persons within the competent authorities who are responsible for handling emergency situations;
- (b) the communication procedures that shall apply in emergency situations.

Article 11

Information from authorities of the host Member State

The competent authorities of the host Member State shall provide the competent authorities of the home Member State with the following information:

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- ⁽⁷⁾ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).
 - ⁽⁸⁾ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).
 - ⁽⁹⁾ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

- (a) a description of any situation in respect of which the competent authorities of the host Member State have determined that a branch has not complied with any requirements which relate to the prudential supervision of investment firms, including the requirements of Regulation (EU) No 575/2013, Directive 2013/36/EU, Directive 2014/59/EU, Regulation (EU) 2019/2033 and Directive (EU) 2019/2034, together with information on the supervisory measures taken or planned to be taken to address the non-compliance;
- (b) any information and findings about any potential problems and risks posed by the branch or its activities in the host Member State having significant impact on the protection of clients or the stability of the financial system in the host Member State as identified by the competent authorities of the host Member State.

Article 12

Information about cross-border service providers

Upon receiving a request for information from the competent authorities of a host Member State in relation to an investment firm that is carrying on its activities under the freedom to provide services in that host Member State, the competent authorities of the home Member State shall provide to them information specified in Article 3(1) and 3(3), Article 4(1), (2) and (3), Article 5(1), Article 6(1) and Article 8.

Article 13

Entry into force

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

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

Done at Brussels, 12 January 2023.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION DELEGATED REGULATION (EU) 2023/1118**of 12 January 2023****supplementing Directive (EU) 2019/2034 of the European Parliament and of the Council with regard to regulatory technical standards specifying the conditions under which colleges of supervisors exercise their tasks****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive (EU) 2019/2034 of 27 November 2019 of the European Parliament and of the Council on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU ⁽¹⁾, and in particular Article 48(8) thereof,

Whereas:

- (1) In order to establish the colleges of supervisors and to identify college members and potential observers, it is necessary to map investment firm groups. The purpose of such mapping is to identify the group entities or branches in the Union or a third country and to describe for each group entity its nature, location, the authorities involved in its supervision, the applicable prudential exemptions, its importance for the group and its importance for the country in which it is authorised or established.
- (2) To ensure a coherent application of Article 48 of Directive (EU) 2019/2034 across the Union and thus fair conditions of competition, it is important to promote convergence in the practices of group supervisors regarding the establishment of colleges of supervisors for investment firm groups. In particular, since the establishment of colleges of supervisors is left to the discretion of the group supervisor determined in accordance with Article 46 of Directive (EU) 2019/2034, it is essential to set common criteria that group supervisors should take into consideration when determining whether a college of supervisors should be established. Those common criteria should include proportionality criteria, reflect the need to facilitate supervisory tasks, and facilitate coordination between, and cooperation with, relevant third-country supervisory authorities, in particular where such coordination and cooperation is needed to exchange relevant information on the margin model with the supervisory authorities of the clearing members of the qualifying central counterparties (QCCPs) or the supervisory authorities of the QCCPs, and to update such information.
- (3) To increase the efficiency and effectiveness of the functioning of colleges of supervisors, the written arrangements referred to in Article 48(6), third subparagraph, of Directive (EU) 2019/2034 should cover all areas of college work. Those written arrangements should therefore also cover arrangements among college members involved in specific college activities, including activities performed through specific substructures of the college where such substructures are established for efficiency purposes. For the same reason, the written arrangements should also cover the operational aspects of college work, as those aspects are essential for facilitating the functioning of the college of supervisors both in going concern and during emergency situations. Finally, the written arrangements should be comprehensive, consistent and exhaustive and should provide an adequate and appropriate basis for the competent authorities to discharge their duties and tasks within, rather than outside, the college of supervisors.

⁽¹⁾ OJ L 314, 5.12.2019, p. 64.

- (4) Colleges of supervisors are a key tool for exchanging information, for preparing for and dealing with emergency situations, and for enabling the group supervisor to conduct effective supervision on a consolidated basis. To ensure consistency and to enable the European Banking Authority (EBA) to perform its tasks in accordance with Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽²⁾, the EBA should participate in all colleges of supervisors. Furthermore, given the coordinating role of the colleges of supervisors for all supervisory activities regarding the investment firm groups that stem from other Union legislation, the European Securities and Markets Authority (ESMA) should always be invited to participate in the meetings and activities of the college of supervisors, in accordance with the written arrangements.
- (5) To be able to perform all college activities, the group supervisor and the members of the college of supervisors should have an overview of the activities carried out by all entities of the investment firm group concerned, including the activities of those entities that carry out financial activities without being qualified as investment firms, and the activities of those entities that operate in third countries. For the same reason, interaction should be promoted between the group supervisor, the college members, public authorities or bodies in a Member State that are responsible for or involved in the supervision of any entity of the investment firm group, including competent authorities of host Member States where branches assessed as important are established, authorities or bodies that are responsible for the supervision of markets in financial instruments and for the prevention of the use of the financial system for money laundering and terrorism financing, authorities or bodies that are responsible for consumer protection, and resolution authorities. It is therefore important that those public authorities or bodies are allowed to participate in the work of the college of supervisors as observers, where appropriate.
- (6) In the interest of transparency and to ensure the smooth functioning of the college of supervisors, college members should discuss and agree on the scope and level of involvement of other authorities, if any, who should participate in the college of supervisors as observers. The conditions for participation of such authorities as observers in the college of supervisors should be clearly set out in the written arrangements and should be communicated to all authorities participating as observers in the college of supervisors.
- (7) In order to better perform their duties and to avoid duplication of tasks, including duplication of information requests addressed to the supervised entities of the group, members of the college of supervisors should closely work together and coordinate their supervisory actions to the maximum extent possible. For the same reason, members of the college of supervisors should regularly review any agreements on delegation of tasks and responsibilities, and in particular when college members determine the allocation of resources and develop the plan for on-site and off-site supervisory tasks at the level of the college of supervisors.
- (8) The group supervisor should be able to have a global overview of the group situation and act as a facilitator, ensuring a smooth information flow among college members. Therefore, the group supervisor should have access to all information needed to perform its tasks and responsibilities and should act as the coordinator for the collection and dissemination of information received from any member of the college of supervisors, any other observer or any entity of the group, or any input received from any other supervisory bodies or authorities established in relation to the investment firm group. The same applies for the members of the college as they need to access relevant information to perform their tasks and duties in relation to the entities they are responsible for and the need to share relevant information with the other members of the college of supervisors. In particular, where the group supervisor determines that particular information is relevant for another member of the college of supervisors, it should not unjustifiably exclude members of the college from receiving that information.
- (9) Colleges of supervisors facilitate cooperation and coordination between competent authorities. That is in particular the case for any decisions regarding the use of internal models for the calculation of own fund requirements that require prior permission from competent authorities. It is therefore important to specify conditions under which the group supervisor and the competent authorities concerned exchange information on the performance of internal models and discuss and reach agreement on measures to address identified inefficiencies.

⁽²⁾ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

- (10) To allocate supervisory resources and to develop or coordinate of on-site and off-site supervisory tasks at the level of the college of supervisors, the members of the college of supervisors should take into account the outcomes of the supervisory review and evaluation process referred to in Article 36(1) of Directive (EU) 2019/2034 that is performed for the investment firm group and each of its entities. In order to better identify the priorities of the common supervisory work and ensure adequate resource allocation, the establishment of the college supervisory examination programme should therefore start once those supervisory review and evaluation processes have been finalised, and should be concluded once competent authorities have considered the tasks they have committed to perform at national level, the resources allocated to those tasks and the respective timelines for performing those tasks.
- (11) Members of the college of supervisors should coordinate their activities in preparation for and during emergency situations, including adverse developments which may seriously jeopardise the orderly function and the integrity of the financial markets or the stability of whole or part of the financial system of the Union, or other situations that affect or might explicitly affect the financial and economic situation of an investment firm group or any of its entities.
- (12) It is necessary to ensure that an emergency situation is properly assessed and addressed. Therefore, when dealing with an emergency situation, members of the college of supervisors should, under the coordination of the group supervisor, aim to develop a coordinated supervisory assessment of the situation, agree on a coordinated supervisory response and monitor the implementation of their response. Members of the college of supervisors should also ensure that any external communication is coordinated and that such communication covers elements that are agreed *ex-ante* among themselves.
- (13) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the EBA.
- (14) The EBA has consulted ESMA, conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010,

HAS ADOPTED THIS REGULATION:

SECTION 1

ESTABLISHMENT OF COLLEGES

Article 1

Mapping of investment firm groups

1. The group supervisor shall map an investment firm group to identify the following group entities:
- (a) investment firms authorised in a Member State and branches established in a Member State, other than investment firms to which Article 1(2) of Regulation (EU) 2019/2033 of the European Parliament and of the Council ⁽¹⁾ applies;
 - (b) financial institutions, ancillary services undertakings, tied agents and branches thereof authorised or established in a Member State;
 - (c) investment firms, financial institutions, ancillary services undertakings, tied agents and branches thereof authorised or established in a third country.

⁽¹⁾ Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1).

2. For the purposes of paragraph 1, point (a), the following information shall be reflected in the mapping:
 - (a) the Member State where the investment firm is authorised or the branch is established;
 - (b) the competent authority responsible for the supervision of the investment firm or the competent authority of the host Member State where the branch is established, and other relevant financial sector authorities of that Member State, including competent authorities responsible for the supervision of markets in financial instruments, for the prevention of the use of the financial system for the purposes of money laundering or terrorism financing, for consumer protection and for resolution;
 - (c) for an investment firm, authorised in a Member State, whether it meets the criteria to be deemed to be a small and non-interconnected investment firm as referred to in Article 12(1) of Regulation (EU) 2019/2033.
3. For the purposes of paragraph 1, points (b) and (c), the following information shall be reflected in the mapping:
 - (a) the Member State or the third country where the group entity or branch has been authorised or established;
 - (b) the authority responsible for or involved in the supervision of that group entity or branch;
 - (c) information on the importance of the group entity or branch for the Member State referred to in point (a) and for the investment firm group, and the relevant criteria used by the competent authorities to determine that importance.

Article 2

Determination of whether the establishment of a college of supervisors is appropriate

1. When determining whether the establishment of a college of supervisors is appropriate, the group supervisor shall take into account the mapping of the group referred to in Article 1 and verify whether any of the following conditions is met:
 - (a) the investment firm group consists of at least two investment firms authorised and operating in two different Member States;
 - (b) the exercise of the tasks referred to in Article 48 of Directive (EU) 2019/2034 would be facilitated by the establishment of a college of supervisors;
 - (c) the coordination and cooperation with relevant third-country supervisory authorities would be performed more effectively under a college of supervisors;
 - (d) coordination and cooperation are needed to exchange with the supervisory authorities of the clearing members of the qualifying central counterparties ('QCCPs') or the supervisory authorities of QCCPs for the purposes of Article 23(1), first subparagraph, point (c), and Article 23(2) of Regulation (EU) 2019/2033, and to update that information.
2. Where any of the conditions set out in paragraph 1, points (a), (b), (c) or (d) have been met, the establishment of a college shall be deemed appropriate, except where the group supervisor considers that such establishment would not be appropriate having regard in particular to the mapping of the group referred to in Article 1 and in particular where investment firms are deemed to be small and non-interconnected investment firms as referred to in Article 12(1) of Regulation (EU) 2019/2033.

Article 3

Communication about the establishment of a college of supervisors

1. Where a college of supervisors has been established, the group supervisor shall, without undue delay:
 - (a) notify the competent and supervisory authorities referred to in Article 48(5) of Directive (EU) 2019/2034 of their membership in the college of supervisors;

- (b) inform the EBA and the Union parent investment firm, Union parent investment holding company or Union parent mixed financial holding company (any of these entities being also designated as 'Union parent undertaking') concerned about the establishment of the college of supervisors, about the identity of its members and observers, as well as about any changes in the composition of that college.

2. Where a college of supervisors has not been established although the conditions set out in Article 2(1), point (a), have been met, the group supervisor shall, without undue delay, notify the EBA of its decision not to establish a college of supervisors and substantiate its decision.

SECTION 2

FUNCTIONING OF COLLEGES

Article 4

Establishment of the written arrangements

1. The written arrangements referred to in Article 48(6), third subparagraph, of Directive (EU) 2019/2034 shall contain all of the following:

- (a) information on the overall structure of the group concerned, covering all group entities, including the Union parent undertaking;
- (b) the identification of the members of the college of supervisors, including those members that are third-country supervisory authorities, and of the observers referred to in Article 5(1) of this Regulation;
- (c) a description of the terms covering the participation for the third-country supervisory authorities referred to in Article 48(5), point (b), of Directive (EU) 2019/2034 in the college of supervisors, in particular regarding their involvement in the various dialogues and processes of the college of supervisors and their rights and obligations with regard to exchanging information within the college of supervisors;
- (d) whether the group supervisor may invite observers as referred to in Article 5(1) of this Regulation and the terms of their participation in the activities of the college of supervisors;
- (e) the arrangements for exchanging information, including the scope of the information, the frequency and channels of communication, including the exchange of information with third-country supervisory authorities and the resolution authorities referred to in Article 4(2), point (v), of Regulation (EU) No 1093/2010 that have been invited to participate in the college as observers;
- (f) the arrangements for dealing with confidential information;
- (g) the procedures for the collection of information from the entities of the investment firm group, and the procedures for the verification of that information;
- (h) the process for coordinating information requests from the supervisory authorities of the clearing members of the QCCPs or the supervisory authorities of the QCCPs;
- (i) the arrangements for delegating tasks and responsibilities, where relevant;
- (j) a description of any substructures of the college, where relevant;
- (k) the arrangements for the planning and coordination of supervisory activities in going concern situations;
- (l) the arrangements for the planning and coordination of supervisory activities in preparation for and during emergency situations, including contingency planning, communication tools and procedures;
- (m) the procedures for informing the group supervisor and the members of the college of supervisors before and after significant sanctions are imposed on entities of the investment firm groups;
- (n) the communication policy of the group supervisor and of the members of the college of supervisors with the Union parent undertaking and with the group entities;

- (o) agreed procedures and time frames for circulating the documents for meetings of the college of supervisors;
- (p) any other agreement between the members of the college of supervisors, including agreed indicators for identifying early warning signs, potential risks and vulnerabilities;
- (q) arrangements for the situation in which a member or an observer terminates its participation in the college, and, in particular, on duties to store and provide access to the data that has been exchanged before such a termination.

2. The written arrangements referred to in Article 48(6), third subparagraph of Directive (EU) 2019/2034 may provide for other elements agreed between the consolidating supervisor and the members of the college.

Article 5

Identification of observers

1. The group supervisor shall, where appropriate and in addition to the members of the college of supervisors and the EBA, invite the following authorities to participate in the meetings and activities of the college of supervisors as observers:

- (a) the competent authorities of those host Member States where branches that have been determined as important in accordance with Article 1(3), point (c), are established;
- (b) the ESMA;
- (c) the national central bank of a Member State in which a group entity, including the Union parent undertaking, is authorised or established, or the European Central Bank;
- (d) the public authorities or bodies in a Member State that are responsible for or involved in the supervision of any entity of the investment firm group, including competent authorities responsible for the supervision of markets in financial instruments, the prevention of the use of the financial system for the purpose of money laundering or terrorism financing, and consumer protection and competent authorities of a clearing member's home Member State or competent authorities of the QCCP referred in Article 48 of Directive (EU) 2019/2034;
- (e) the resolution authorities referred to in Article 4(2), point (v), of Regulation (EU) No 1093/2010.

2. The group supervisor, in consultation with the members of the college of supervisors, shall in the written coordination and cooperation arrangements referred to in Article 4 specify the arrangements covering the participation in the college of supervisors of the authorities referred to in paragraph 1, points (a) to (e), of this Article. The group supervisor shall inform all members and observers of the college of supervisors about those arrangements.

Article 6

Participation in meetings of college of supervisors

1. When organising a college meeting as referred to in Article 48(6) of Directive (EU) 2019/2034, the group supervisor shall take into account all of the following:

- (a) the topics to be discussed, the activities to be considered and the objectives of the meeting, in particular with regard to their relevance for all the entities of the investment firm group as per the mapping performed in accordance with Article 1 of this Regulation;
- (b) the importance of any entity of the investment firm group, as per the mapping performed in accordance with Article 1 of this Regulation, both for the investment firm group and for the Member State where that entity has been authorised or established.

2. The group supervisor, the members and the observers in the college of supervisors shall, based on the topics discussed and objectives pursued, ensure that the most appropriate representatives participate in the meetings or activities of the college of supervisors. Those representatives shall have the power to commit their authorities as members or observers in the college, to the maximum extent possible, for the discussions and decisions planned during those meetings.

3. The group supervisor may, based on the topics and objectives of the meeting of the supervisory college, invite representatives of entities of the investment firm group to participate in those meetings.

Article 7

Delegation of tasks and responsibilities

1. When establishing and updating the college supervisory examination programme referred to in Article 14, the group supervisor and the members of the college of supervisors shall consider the possibility of agreements on the voluntary delegation of tasks and responsibilities referred to in Article 48(2), point (e), of Directive (EU) 2019/2034, in particular where such delegation is expected to lead to more efficient and effective supervision, in particular by removing unnecessary duplications of supervisory requirements, including in relation to information requests.
2. The conclusion of an agreement on delegation of tasks and responsibilities shall be notified by the group supervisor to the Union parent undertaking, and by the competent authority that delegates its powers to the investment firm concerned.

Article 8

Exchange of information between the members of the college of supervisors and an investment firm group

1. The group supervisor and the members of the college of supervisors shall coordinate the communication of information to, and the request for information from, any entity of the investment firm group as follows:
 - (a) the group supervisor shall communicate information to, and request information from, the Union parent undertaking;
 - (b) the members of the college of supervisors shall communicate information to, and request information from, the entities of the investment firm group which are under their supervisory remit as per the mapping performed in accordance with Article 1.
2. A member of the college of supervisors that exceptionally intends to communicate information to, or request information from, the Union parent undertaking, shall inform the group supervisor thereof in advance.
3. Where, exceptionally, the group supervisor intends to communicate information to, or request information from, an entity of the investment firm group which is outside its direct supervisory remit as per the mapping performed in accordance with Article 1, it shall inform the member concerned of the college responsible for supervising that entity thereof in advance.

SECTION 3

PLANNING AND COORDINATION OF SUPERVISORY ACTIVITIES IN GOING CONCERN SITUATIONS

Article 9

General conditions for the exchange of information within the college of supervisors

1. The group supervisor, the members and the observers of the college of supervisors shall exchange all information necessary to facilitate the exercise of their functions and duties, including tasks referred to in Articles 48 and 49 of Directive (EU) 2019/2034.
2. The information referred to in paragraph 1 shall include all relevant information, whether received from a group entity or a branch, a competent or supervisory authority, or any other source and shall be exchanged in an adequate, accurate, and timely manner.

*Article 10***Exchange of information to increase the efficiency of supervision of investment firm groups**

1. The group supervisor and the members of the college of supervisors shall regularly exchange the following information:
 - (a) the information referred to in Article 13(1) and (2) of Directive (EU) 2019/2034, as further specified in Commission Delegated Regulation (EU) 2023/1117 ⁽⁴⁾;
 - (b) information necessary for meeting the cooperation requirements laid down in Article 49 of Directive (EU) 2019/2034;
 - (c) where relevant, information on the macroeconomic environment in which the investment firm group and its entities operate.
2. Based on the information exchanged in accordance with paragraph 1, the group supervisor and the members of the college of supervisors shall identify and exchange quantitative information to identify early warning signs, potential risks and vulnerabilities and to inform the supervisory review and evaluation process.

*Article 11***Exchange of information for the purposes of supervisory review and evaluation process**

1. The group supervisor and the members of the college of supervisors shall exchange information on the outcomes of the supervisory review and evaluation process carried out in accordance with Article 36 of Directive (EU) 2019/2034.
2. The information referred to in paragraph 1 shall contain at least the following:
 - (a) the elements referred to in Article 36(1), points (a) to (g), of Directive (EU) 2019/2034 that have been subject to a supervisory review and evaluation;
 - (b) the results of the assessment that one of the situations referred to in Article 40(1) of Directive (EU) 2019/2034 have been identified, including, where applicable, information about any additional own funds requirements that have been imposed in accordance with Articles 39 and 40 of Directive (EU) 2019/2034 and any information about the conclusions of the review performed in accordance with Article 41 of that Directive and, where applicable, any related requests for additional own funds;
 - (c) the results of the liquidity adequacy assessment performed in accordance with Article 42(1) of Directive (EU) 2019/2034, and, where applicable, information about any specific liquidity requirements imposed in accordance with Article 39(2), point (k), and Article 42(1) of Directive (EU) 2019/2034;
 - (d) information about other supervisory measures or early intervention measures taken or planned to be taken to address the inefficiencies identified as a result of the supervisory review and evaluation process;
 - (e) information about findings from on-site inspections and off-site monitoring that are relevant for the assessment of the risk profile of the investment firm group or any of its entities.

⁽⁴⁾ Commission Delegated Regulation (EU) 2023/1117 of 12 January 2023 supplementing Directive (EU) 2019/2034 of the European Parliament and of the Council with regard to regulatory technical standards specifying requirements for the type and nature of the information to be exchanged by competent authorities of home and host Member States (see page 10 of this Official Journal).

*Article 12***Exchange of information with regard to the ongoing review of the permission to use internal models**

1. The group supervisor and the members of the college of supervisors shall exchange all relevant information about the outcome of the ongoing review of the permission to use the internal models referred to in Article 37 of Directive (EU) 2019/2034.
2. Where the group supervisor or any member of the college of supervisors has identified that an entity of the investment firm group, including the Union parent undertaking, no longer meets the requirements for applying internal models or has identified deficiencies in accordance with Article 37 of Directive (EU) 2019/2034, that group supervisor or member of the college of supervisors shall immediately exchange the following information, as applicable:
 - (a) an assessment of the effect of the deficiencies identified and any issues of non-compliance with the requirements for using internal models and the materiality of those deficiencies and issues;
 - (b) an assessment of the plan presented by the relevant entity of the investment firm group to restore compliance and to address the deficiencies identified, including information on the timeline for the implementation of that plan;
 - (c) information about the intention of the group supervisor or any relevant member of the college of supervisors to revoke the permission to use the internal model or to restrict the use of that model to compliant areas or to those areas where compliance can be achieved within an appropriate timeline or to those areas that are not affected by the deficiencies identified;
 - (d) information about any proposed additional own funds requirements imposed pursuant to Article 39(2), point (a), in conjunction with Article 40(1), point (d), of Directive (EU) 2019/2034, as a supervisory measure to address the issues of non-compliance or deficiencies identified.
3. The group supervisor and the members of the college of supervisors shall also exchange information about extensions of the permission to use the internal model or information about changes to those internal models.

*Article 13***Cooperation with regard to non-compliance and sanctions**

1. The members and observers in the college of supervisors shall communicate to the group supervisor information about any situations in respect of which they have determined that an entity of an investment firm group which is under their supervisory remit:
 - (a) has not complied with requirements in relation to the prudential supervision or market conduct supervision, laid down in:
 - (i) Regulation (EU) 2019/2033, and, where relevant, Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽⁵⁾;
 - (ii) Directive (EU) 2019/2034;
 - (iii) Regulation (EU) No 600/2014 of the European Parliament and of the Council ⁽⁶⁾;
 - (iv) Directive 2014/65/EU of the European Parliament and of the Council ⁽⁷⁾;
 - (v) Directive 2014/59/EU of the European Parliament and of the Council ⁽⁸⁾;

⁽⁵⁾ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

⁽⁶⁾ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

⁽⁷⁾ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

⁽⁸⁾ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

(b) is subject to any of the administrative penalties or other administrative measures that have been imposed in accordance with Article 54 of Directive (EU) 2019/2034.

2. Based on the information exchanged in accordance with paragraph 1, the members and observers in the college of supervisors shall discuss with the group supervisor the possible impact of the issues of non-compliance or sanctions for the group entities concerned or for the investment firm group as a whole.

Article 14

Implementation of the supervisory review and evaluation process

1. For the purpose of performing the supervisory review and evaluation process carried out in accordance with Article 36 of Directive (EU) 2019/2034, the group supervisor, in consultation with the members of the college of supervisors, shall establish and maintain an updated college supervisory examination programme.

2. Where the supervisory examination programme is established, the group supervisor, in consultation with the members of the college of supervisors, shall identify the supervisory activities to be undertaken in relation to the group entities or the investment firm group as a whole. That college supervisory examination programme shall contain all of the following:

- (a) the areas of joint work identified as a result of the supervisory review and evaluation carried out in accordance with Article 36 of Directive (EU) 2019/2034 or as a result of any other activities undertaken by the college of supervisors, including efforts to contribute to efficient supervision and to remove unnecessary duplication of supervisory requirements as referred to in Article 48(2), point (f), of that Directive;
- (b) the respective supervisory examination programmes of the group supervisor and of the members of the college of supervisors for the Union parent undertaking and the entities or branches of the investment firm group;
- (c) the areas of focus of the work of the college of supervisors and its planned supervisory activities, including planned on-the-spot checks and inspections as referred to in Article 14 of Directive (EU) 2019/2034;
- (d) the members of the college of supervisors responsible for undertaking the planned supervisory activities;
- (e) the expected timelines, both in terms of timing and duration, for each of the planned supervisory activities.

SECTION 4

PLANNING AND COORDINATION OF SUPERVISORY ACTIVITIES IN PREPARATION FOR AND DURING EMERGENCY SITUATIONS

Article 15

College framework in anticipation of possible emergency situations

1. The group supervisor, in consultation with the members of the college of supervisors, shall establish a college framework in anticipation of possible emergency situations, taking into account the specific features and structure of the investment firm group.

2. The college framework referred to in paragraph 1 shall be formalised in the written arrangements concluded in accordance with Article 4 and shall contain all of the following:

- (a) the college-specific procedures that shall apply where an emergency situation as referred to in Article 47 of Directive (EU) 2019/2034 arises;
- (b) information that shall be exchanged when an emergency situation as referred to in Article 47 of Directive (EU) 2019/2034 arises.

3. The information referred to in paragraph 2, point (b), shall contain all of the following:
 - (a) an outline of the emergency situation which has occurred, including the underlying cause of the emergency situation, and the expected impact of the emergency situation on the entities of the investment firm group or on the group as a whole, its clients, the markets and the stability of the financial system of the European Union;
 - (b) an explanation of the measures and actions that have been taken or are planned to be taken by the group supervisor or any of the members of the college of supervisors or the entities of the investment firm group in response to the emergency situation;
 - (c) the latest available quantitative information regarding liquidity and capital position of the investment firms of the investment firm group.

Article 16

The exchange of information during emergency situations

1. The group supervisor and the members of the college of supervisors shall exchange all information necessary to facilitate the exercise of the tasks referred to in Article 47 of Directive (EU) 2019/2034.
2. When alerted of an emergency situation by any member or observer in the college of supervisors, or after having identified an emergency situation, the group supervisor shall communicate to the members of the college of supervisors who supervise the investment firm or its branches that are affected or likely to be affected by the emergency situation, the EBA and the European Systemic Risk Board the information referred to in Article 15(2), point (b), following the procedures established in accordance with point (a) of that paragraph.
3. Depending on the nature, severity, potential systemic impact or other impact, and on the likelihood of contagion of the emergency situation, the members of the college of supervisors who supervise the group entities or branches that are affected or likely to be affected by the emergency situation and the group supervisor may decide to exchange additional information.
4. The information referred to in paragraphs 2 and 3, where applicable, shall be updated immediately when new information is available.
5. Where the communication referred to in this Article is made orally, the competent authorities concerned shall confirm the content of that communication in writing in a timely manner.

Article 17

Coordination of the supervisory assessment and response to an emergency situation

1. Where an emergency situation occurs, the group supervisor shall coordinate the assessment of the emergency situation in cooperation with the members of the college of supervisors and shall consult the observers in the college as appropriate. This assessment shall cover in particular the following:
 - (a) the nature and severity of the emergency situation;
 - (b) the impact or potential impact of the emergency situation on the entities or branches of the investment firm group and on the group as a whole, as well as on its clients and on markets;
 - (c) the risk of cross-border contagion, in particular considering the potential systemic consequences in any of the Member States where the entities of the investment firm group are authorised or established.
2. The group supervisor shall, on the basis of the assessment referred to in paragraph 1, coordinate the development of a supervisory response to the emergency situation in cooperation with the members of the college of supervisors and shall consult with the observers in the college of supervisors as appropriate.

3. The coordinated supervisory response shall specify the supervisory actions needed, their scope, and the timetable for their implementation.
4. The group supervisor and the members of the college of supervisors responsible for the supervision of the entities or branches of the investment firm group that are affected or likely to be affected by the emergency situation shall monitor and exchange information on how the coordinated supervisory response is to be implemented.

Article 18

Coordination of the external communication in an emergency situation

The group supervisor and the members of the college of supervisors responsible for the supervision of the entities or branches of the investment firm group who are affected or likely to be affected by an emergency situation shall coordinate their external communications as much as possible, taking into account legal obligations and constraints under Union and national law.

Article 19

Entry into force

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

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels, 12 January 2023.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2023/1119**of 12 January 2023****laying down implementing technical standards for the application of Directive (EU) 2019/2034 of the European Parliament and of the Council with regard to standard forms, templates and procedures for the information sharing between the competent authorities of home and host Member States****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU ⁽¹⁾, and in particular Article 13(8), second subparagraph, thereof,

Whereas:

- (1) An efficient and timely cooperation between competent authorities of home and host Member States requires, within the respective supervisory competences of those authorities, an adequate two-way information exchange. To support this objective, standard forms, templates and operating procedures, including timelines, should be established for the exchange of information. As the information exchanged should be timely and up-to-date, competent authorities should strive to exchange information as early as practicable, without undue delay, ahead of the expiry of any maximum remittance deadline.
- (2) To ensure an efficient transmission of information to the relevant contact persons within the competent authorities as well as the confidentiality of the information, the competent authorities should establish, share and regularly update lists of contact persons.
- (3) In order to ensure the effectiveness of the supervision of investment firms on a cross-border basis, an adequate protection of clients and markets as well as prompt corrective actions, competent authorities of home and host Member States should inform each other without undue delay about any potential situation affecting the financial stability or the functioning of a branch and provide all essential and relevant information regarding that situation.
- (4) Requirements on the type and nature of the information to be exchanged by competent authorities of home and host Member States are set out in Commission Delegated Regulation (EU) 2023/1117 ⁽²⁾. The establishment of standard forms, templates and procedures for such information sharing requirements should therefore follow the scope and approach set out by that Delegated Regulation and take account of the standard forms, templates and procedures that are already implemented through other mechanisms such as those set out in accordance with Articles 34 and 35 of Directive 2014/65/EU of the European Parliament and of the Council ⁽³⁾, thereby avoiding duplication.
- (5) The framework set out in the Delegated Regulation (EU) 2023/1117 specifies requirements for the type and nature of the information to be exchanged by competent authorities. While the latter provides the key elements that should be subject to an exchange of information between competent authorities, it does not aim to restrict the scope of such exchange of information in the context of promoting a broad cooperation between competent authorities on a cross-border basis.

⁽¹⁾ OJ L 314, 5.12.2019, p. 64.

⁽²⁾ Commission Delegated Regulation (EU) 2023/1117 of 12 January 2023 supplementing Directive (EU) 2019/2034 of the European Parliament and of the Council with regard to regulatory technical standards specifying requirements for the type and nature of the information to be exchanged by competent authorities of home and host Member States (see page 10 of this Official Journal).

⁽³⁾ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

- (6) This Regulation is based on the draft implementing technical standards submitted to the Commission by the European Banking Authority (EBA) in consultation with the European Securities Markets Authority (ESMA).
- (7) The EBA has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽⁴⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Frequency of information exchange

1. The information referred to in Article 2 of Delegated Regulation (EU) 2023/1117 shall be made available and updated at least on an annual basis. The updated information shall be provided by the competent authorities of the home Member State to the competent authorities of the host Member State no later than 30 April of each year or, without undue delay, following a material change.
2. The information regarding any situation of non-compliance with requirements, as specified in Articles 3 to 6 and Article 8 of Delegated Regulation (EU) 2023/1117 and the application of supervisory measures or other administrative sanctions or administrative measures referred to in Article 9 of Delegated Regulation (EU) 2023/1117 shall be provided without undue delay and no later than 14 calendar days after the determination by the competent authorities of the non-compliance situation, or the application of the supervisory or other administrative measure, or the application of an administrative sanction.
3. The information referred to in Articles 3 to 7 of Delegated Regulation (EU) 2023/1117 shall be made available and updated at least on an annual basis. The updated information shall be provided by the competent authorities of the home Member State to the competent authorities of the host Member State no later than 30 April of each year, based on the accounting close as of 31 December or, without undue delay, following a material change.
4. By way of derogation from paragraph 3, in a calendar year, where the competent authorities of the home Member State complete the supervisory review and evaluation for investment firms performed in accordance with Article 36 of Directive (EU) 2019/2034, information specified in paragraph 3 shall be provided no later than 1 month following the completion of the report.

Article 2

Operational procedures for the transmission of information

1. The competent authorities of the home Member State shall maintain and share with the competent authorities of the host Member State an up-to-date contact list regarding each investment firm containing the relevant contact persons and contact information, including emergency contacts, for the exchange of information between the competent authorities of the home and host Member States.
2. The competent authorities of host Member States shall inform the competent authorities of the home Member State of their contact persons and contact information and of any changes without undue delay. The competent authorities of the home Member State and host Member States shall review and update the contact list at least annually.
3. The competent authorities of the home Member State and the competent authorities of the host Member States shall exchange information in written or electronic form and shall address the information to the relevant contact persons identified in the contact list referred to in paragraph 1 unless specified otherwise by a competent authority requesting information.

⁽⁴⁾ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

4. Where information is exchanged in electronic form, secure channels of communication shall be used unless, and without prejudice of the application of Article 15 of Directive (EU) 2019/2034 and of rules on processing of personal data, the competent authorities providing and receiving information agree, where appropriate, to use unsecured channels of communication.

5. Depending on the urgency of a specific situation, where competent authorities have identified findings about any potential problems and risks posed by an investment firm to the protection of clients or the stability of the financial system in the host Member State or cases of non-compliance, the following information may be first provided orally before being confirmed in written or electronic form:

- (a) information regarding non-compliance with requirements referred to in Article 8 of Delegated Regulation (EU) 2023/1117;
- (b) information regarding the application of supervisory or other administrative measures;
- (c) information regarding the imposition of administrative sanctions.

6. Upon receiving information, competent authorities shall confirm receipt of it. Where information has been provided in electronic form using a secure channel of communication, the confirmation of receipt shall be provided using the same channel. Confirmation of receipt shall not be required for information which has been provided orally or using a secure channel of communication which enables the sender to receive confirmation that the receiver has received the information.

7. Where a college of supervisors has been established in accordance with Article 48(1) of Directive (EU) 2019/2034 and the competent authorities of the home Member State and competent authorities of the host Member States take part in the college as members or other participants in accordance with Commission Delegated Regulation (EU) 2023/1118 ⁽ⁱ⁾, paragraphs 1 to 6 of this Article shall not apply. In such cases, the information shall be exchanged in accordance with Article 48(6) of Directive (EU) 2019/2034.

Article 3

Standard forms to be used for information exchange regarding investment firms operating through a branch

1. Information referred to in Articles 2 to 4 and Article 7 of Delegated Regulation (EU) 2023/1117 shall be exchanged using the template and form set out in the Annex.
2. Information and findings about any potential problems and risks posed by the branch or its activities in the host Member State having significant impact on the protection of clients or the stability of the financial system in the host Member State shall be provided by the competent authorities of the host Member State in the form deemed appropriate by those authorities.
3. Information referred to in Article 8 of Delegated Regulation (EU) 2023/1117 and information regarding the application of supervisory or other administrative measures or administrative sanctions as referred to in Article 1(2) of this Regulation shall be provided in the form deemed appropriate by the competent authority that provides the information.

Article 4

Information requests regarding cross-border service providers

1. The competent authorities of a host Member State, in which an investment firm carries out its activities under the freedom to provide services, which request the competent authorities of the home Member State to provide the information regarding those services as laid down in Delegated Regulation (EU) 2023/1117 shall:
 - (a) provide the request for information in written or electronic form to the relevant contact person identified in the contact list referred to in Article 2(1);

⁽ⁱ⁾ Commission Delegated Regulation (EU) 2023/1118 of 12 January 2023 supplementing Directive (EU) 2019/2034 of the European Parliament and of the Council with regard to regulatory technical standards specifying the conditions under which colleges of supervisors exercise their tasks (see page 17 of this Official Journal).

(b) indicate a reasonable time by which the response is expected to be available.

2. The competent authorities of the home Member State receiving a request referred to in paragraph 1 shall provide the information without undue delay and shall make every effort to respond by the time indicated in the request. If those competent authorities are unable to reply by the time indicated in the request, they shall inform the requesting competent authorities without undue delay of the time by which they will provide the information.

Article 5

Ad-hoc requests for information

1. Any other ad hoc request for information that is not specified under Delegated Regulation (EU) 2023/1117 shall be transmitted in written or electronic form to the relevant contact persons identified in the contact list referred to in Article 2(1) of this Regulation.

2. Competent authorities making a request referred to in paragraph 1 shall explain how the information is likely to facilitate the supervision or monitoring of an investment firm or the protection of the stability of the financial system.

3. The competent authorities requesting the information shall indicate a reasonable time by which the response is expected to be available, taking into account the nature and urgency of the request and the information requested.

4. Competent authorities receiving a request referred to in paragraph 1 shall provide the information without undue delay and shall make every effort to respond by the time indicated in the request. If those competent authorities are unable to reply by the time indicated in the request, they shall inform the requesting competent authorities without undue delay of the time by which they will provide the information.

5. If the requested information is not available, the competent authorities receiving a request referred to in paragraph 1 shall inform the competent authorities making the request accordingly.

Article 6

Entry into force

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

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

Done at Brussels, 12 January 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Template for the exchange of information regarding investment firms to be provided by the competent authorities of the home Member State to competent authorities of a host Member State supervising a branch:

Competent Authority:	Free text
Investment firm name:	Free text
Reference date (DD/MM/YYYY)	Reference date for the information.
Submission date (DD/MM/YYYY):	Date when the information is being provided to the competent authorities of host Member State.
Information provided on consolidated basis (Yes/No)	Please indicate 'Yes' if information in this template is provided on a consolidated basis and not at the level of the investment firm group.
Contact person at the competent authorities of the home Member State	Name and contact details of a person providing information for any possible follow-up questions
Statement on the compliance of the investment firm with the own funds requirements laid down in Article 11 of Regulation (EU) 2019/2033, taking into account the transitional arrangements laid down in Article 57 of that Regulation	Legal reference: Article 3(1) of Delegated Regulation (EU) 2023/1117. Free text answering the question on the reporting date. Should there be no changes compared to the previous reporting period, competent authorities may refer to already provided information or update accordingly.
Statement on the compliance of the investment firm with any additional own funds requirements imposed in accordance with Article 39(2), point (a), of Directive (EU) 2019/2034	Please note that issues of non-compliance with minimum regulatory requirements and any supervisory measures taken by the competent authorities to address them shall be reported outside this template in regular exchange of information and in accordance with Article 1(2).
Statement on the compliance of the investment firm with any guidance on additional own funds imposed in accordance with Article 41 of Directive (EU) 2019/2034	
The value of the own funds requirements laid down in Article 11 of Regulation (EU) 2019/2033	Legal reference: Article 3(2) of Delegated Regulation (EU) 2023/1117. Value from supervisory reporting. Should there be no changes compared to the previous reporting period, competent authorities may refer to already provided information or update accordingly.
Statement whether the value provided in the previous line was set on the basis of Article 11(1), point (a), (b) or (c) of Regulation (EU) 2019/2033	Legal reference: Article 3(2) of Delegated Regulation (EU) 2023/1117 Free text providing the basis for the calculation of own funds requirements. Should there be no changes compared to the previous reporting period, competent authorities may refer to already provided information or update accordingly.
The value of any additional own funds requirements imposed in accordance with Article 39(2), point (a), of Directive (EU) 2019/2034, and the grounds for imposition	Legal reference: Article 3(2) of Delegated Regulation (EU) 2023/1117. Value from supervisory reporting. Free text providing the grounds for the imposition of additional own funds requirements. Should there be no changes compared to the previous reporting period, competent authorities may refer to already provided information or update accordingly.

The value of any guidance on additional own funds imposed in accordance with Article 41 of Directive (EU) 2019/2034.	<i>Legal reference: Article 3(2) of Delegated Regulation (EU) 2023/1117.</i> <i>Value from supervisory reporting.</i> <i>Free text providing the grounds for the imposition of additional own funds guidance.</i> <i>Should there be no changes compared to the previous reporting period, competent authorities may refer to already provided information or update accordingly.</i>
Statement on the compliance of the investment firm with the concentration risk requirements laid down in Part Four of Regulation (EU) 2019/2033	<i>Legal reference: Article 4(1) of Delegated Regulation (EU) 2023/1117.</i> <i>Free text answering the question on the reporting date.</i> <i>Should there be no changes compared to the previous reporting period, competent authorities may refer to already provided information or update accordingly.</i> <i>Please note that issues of non-compliance with minimum regulatory requirements and any supervisory measures taken by the competent authorities to address them shall be reported outside this template in regular exchange of information and in accordance with Article 1(3) of this Regulation.</i>
Statement on the compliance of the investment firm with the liquidity requirements laid down in Part Five of Regulation (EU) 2019/2033, taking into account the transitional arrangements laid down in Article 57(1) of that Regulation	<i>Legal reference: Article 4(3) of Delegated Regulation (EU) 2023/1117.</i> <i>Free text answering the question on the reporting date.</i> <i>Should there be no changes compared to the previous reporting period, competent authorities may refer to already provided information or update accordingly.</i> <i>Please note that issues of non-compliance with minimum regulatory requirements and any supervisory measures taken by the competent authorities to address them shall be reported outside this template in regular exchange of information and in accordance with Article 1(3) of this Regulation.</i>
Summary of the overall assessment of the competent authorities of the home Member State of an investment firm's liquidity risk profile and risk management	<i>Legal reference: Article 4(5) of Delegated Regulation (EU) 2023/1117.</i> <i>Free text answering the question on the reporting date.</i> <i>Should there be no changes compared to the previous reporting period, competent authorities may refer to already provided information or update accordingly.</i>
Summary assessment of any material risks as revealed by the supervisory review and evaluation carried out in accordance with Article 36 of Directive (EU) 2019/2034 or through any other supervisory activity carried out by the competent authorities of the home Member State	<i>Legal reference: Article 7(1) of Delegated Regulation (EU) 2023/1117.</i> <i>Free text answering the question on the reporting date.</i> <i>Should there be no changes compared to the previous reporting period, competent authorities may refer to already provided information or update accordingly.</i>

Additional information to be exchanged concerning the management and ownership of the investment firm and preparations for emergency situations

Legal reference: Article 2(1) and Article 10 of Delegated Regulation (EU) 2023/1117.

1. Current organisational structure (organigram) of the investment firm including its business lines and its relationship to entities within the group

2. Emergency contact details of persons within the competent authorities who are responsible for handling emergency situations and communication procedures that shall apply in emergency situations

Should there be no changes compared to the previous reporting period, competent authorities may refer to already provided information or update accordingly.

Additional information to be provided by the competent authorities of the home Member State supervising investment firms that are not identified as small and non-interconnected investment firms in accordance with Article 12 of Regulation (EU) 2019/2033

Legal reference: Article 2(2) of Delegated Regulation (EU) 2023/1117.

1. Structure of the management body and senior management, including the allocation of responsibility for the oversight of a branch
2. List of shareholders and members with qualifying holdings

Should there be no changes compared to the previous reporting period, competent authorities may refer to already provided information or update according

COMMISSION IMPLEMENTING REGULATION (EU) 2023/1120**of 7 May 2023****granting a Union authorisation for the single biocidal product “APESIN Handaktiv” in accordance with Regulation (EU) No 528/2012 of the European Parliament and of the Council****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products ⁽¹⁾, and in particular Article 44(5), first subparagraph, thereof,

Whereas:

- (1) On 23 April 2019, Tana-Chemie GmbH submitted to the European Chemicals Agency (‘the Agency’) an application in accordance with Article 43(1) of Regulation (EU) No 528/2012 and Article 4 of Commission Implementing Regulation (EU) No 414/2013 ⁽²⁾ for Union authorisation of the same single biocidal product, as referred to in Article 1 of Implementing Regulation (EU) No 414/2013, named ‘APESIN Handaktiv’, of product-type 1, as described in Annex V to Regulation (EU) No 528/2012. The application was recorded under case number BC-CF051114-66 in the Register for Biocidal Products (‘the Register’). The application also indicated the application number of the related reference biocidal product family ‘Knieler & Team Propanol Family’, recorded in the Register under case number BC-AQ050985-22.
- (2) The same single biocidal product ‘APESIN Handaktiv’ contains propan-1-ol and propan-2-ol as the active substances, which are included in the Union list of approved active substances referred to in Article 9(2) of Regulation (EU) No 528/2012 for product-type 1.
- (3) On 8 December 2021, the Agency submitted to the Commission an opinion ⁽³⁾ and the draft summary of the biocidal product characteristics (‘SPC’) of ‘APESIN Handaktiv’ in accordance with Article 6 of Implementing Regulation (EU) No 414/2013.
- (4) The opinion concludes that the proposed differences between the same single biocidal product and the related reference biocidal product are limited to information which can be the subject of an administrative change in accordance with Commission Implementing Regulation (EU) No 354/2013 ⁽⁴⁾, and that based on the assessment of the related reference biocidal product family ‘Knieler & Team Propanol Family’ and subject to compliance with the draft SPC, the same single biocidal product meets the conditions laid down in Article 19(1) of Regulation (EU) No 528/2012.
- (5) On 20 October 2022, the Agency transmitted to the Commission the draft SPC in all the official languages of the Union in accordance with Article 44(4) of Regulation (EU) No 528/2012.
- (6) The Commission concurs with the opinion of the Agency and considers it therefore appropriate to grant a Union authorisation for the same single biocidal product ‘APESIN Handaktiv’.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Biocidal Products,

⁽¹⁾ OJ L 167, 27.6.2012, p. 1.

⁽²⁾ Commission Implementing Regulation (EU) No 414/2013 of 6 May 2013 specifying a procedure for the authorisation of same biocidal products in accordance with Regulation (EU) No 528/2012 of the European Parliament and of the Council (OJ L 125, 7.5.2013, p. 4).

⁽³⁾ ECHA opinion for ‘APESIN Handaktiv’ of 8 December 2021, <https://echa.europa.eu/opinions-on-union-authorisation>.

⁽⁴⁾ Commission Implementing Regulation (EU) No 354/2013 of 18 April 2013 on changes of biocidal products authorised in accordance with Regulation (EU) No 528/2012 of the European Parliament and of the Council (OJ L 109, 19.4.2013, p. 4).

HAS ADOPTED THIS REGULATION:

Article 1

A Union authorisation with authorisation number EU-0027673-0000 is granted to Tana-Chemie GmbH for the making available on the market and use of the same single biocidal product 'APESIN Handaktiv' in accordance with the summary of the biocidal product characteristics set out in the Annex.

The Union authorisation is valid from 28 June 2023 until 31 July 2032.

Article 2

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

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

Done at Brussels, 7 May 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Summary of product characteristics for a biocidal product

APESIN Handaktiv

Product type 1 – Human hygiene (Disinfectants)

Authorisation number: EU-0027673-0000

R4BP asset number: EU-0027673-0000

1. ADMINISTRATIVE INFORMATION**1.1. Trade name(s) of the product**

Trade name(s)	APESIN Handaktiv APESIN handactive F APESIN Handaktiv F
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1.2. Authorisation holder

Name and address of the authorisation holder	Name	tana-Chemie GmbH
	Address	Rheinallee 96, 55120 Mainz Germany
Authorisation number	EU-0027673-0000	
R4BP asset number	EU-0027673-0000	
Date of the authorisation	28.6.2023	
Expiry date of the authorisation	31.7.2032	

1.3. Manufacturer(s) of the product

Name of manufacturer	tana-Chemie GmbH
Address of manufacturer	Rheinallee 96, 55120 Mainz Germany
Location of manufacturing sites	Werner & Mertz GmbH & Co KG, Neualmerstr. 13, 5400 Hallein Austria Werner & Mertz GmbH, Rheinallee 96, 55120 Mainz Germany

1.4. Manufacturer(s) of the active substance(s)

Active substance	Propan-1-ol
Name of manufacturer	OQ Chemicals GmbH (formerly Oxea GmbH)
Address of manufacturer	Rheinpromenade 4a, 40789 Monheim am Rhein Germany
Location of manufacturing sites	OQ Chemicals Corporation (formerly Oxea Corporation), 2001 FM 3057 TX, 77414 Bay City United States

Active substance	Propan-1-ol
Name of manufacturer	BASF SE
Address of manufacturer	Carl-Bosch-Str. 38, 67056 Ludwigshafen Germany
Location of manufacturing sites	BASF SE, Carl-Bosch-Str. 38, 67056 Ludwigshafen Germany

Active substance	Propan-1-ol
Name of manufacturer	SASOL Chemie GmbH & Co. KG
Address of manufacturer	Secunda Chemical Operations, Sasol Place, 50 Katherine Street, 2090 Sandton South Africa
Location of manufacturing sites	Secunda Chemical Operations, PDP Kruger Street, 2302 Secunda South Africa

Active substance	Propan-2-ol
Name of manufacturer	INEOS Solvent Germany GmbH
Address of manufacturer	Römerstrasse 733, 47443 Moers Germany
Location of manufacturing sites	INEOS Solvent Germany GmbH, Römerstrasse 733, 47443 Moers Germany INEOS Solvent Germany GmbH, Shamrockstrasse 88, 44623 Herne Germany

2. PRODUCT COMPOSITION AND FORMULATION

2.1. Qualitative and quantitative information on the composition of the product

Common name	IUPAC name	Function	CAS number	EC number	Content (%)
Propan-1-ol		Active Substance	71-23-8	200-746-9	30,0
Propan-2-ol		Active Substance	67-63-0	200-661-7	45,0

2.2. Type of formulation

AL – Any other liquid

3. HAZARD AND PRECAUTIONARY STATEMENTS

Hazard statements	Flammable liquid and vapour. Causes serious eye damage. May cause drowsiness or dizziness. Repeated exposure may cause skin dryness or cracking.
Precautionary statements	Keep away from heat, hot surfaces, sparks, open flames and other ignition sources. – No smoking. Keep container tightly closed. Avoid breathing vapours.

	Use only outdoors or in a well-ventilated area. IF INHALED: Remove person to fresh air and keep comfortable for breathing. IF IN EYES: Rinse cautiously with water for several minutes. Remove contact lenses, if present and easy to do. Continue rinsing. Immediately call a POISON CENTER/doctor. Store in a well-ventilated place. Keep cool. Store locked up. Dispose of container to an authorised waste collection point.
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4. AUTHORISED USE(S)

4.1. Use description

Table 1

Use # 1 – hygienic handrub, liquid

Product type	PT01 – Human hygiene (Disinfectants)
Where relevant, an exact description of the authorised use	Not relevant
Target organism(s) (including development stage)	Scientific name: no data Common name: Bacteria Development stage: no data Scientific name: no data Common name: Mycobacteria Development stage: no data Scientific name: no data Common name: Yeasts Development stage: no data Scientific name: no data Common name: Enveloped viruses Development stage: no data
Field(s) of use	Indoor — hospitals and other health care institutions, ambulances, surgeries, nursing homes (including home-care of patients) — hospital canteens, large kitchens, pharmaceutical industries, production sites, laboratories: hygienic handrub onto visibly clean and dry hands — for professional use only
Application method(s)	Method: Manual application Detailed description: Rubbing
Application rate(s) and frequency	Application Rate: Dosage: At least 3 ml (use dispensers: for example set to 1,5 ml per stroke, 2 strokes per 3 ml) Contact time: 30 s Dilution (%): Ready-to-use product Number and timing of application: There is no restriction in the number and timing of applications. No safety intervals need to be considered between the application phases. The product may be used at any time and as often as required.

Category(ies) of users	Industrial Professional
Pack sizes and packaging material	100, 125, 500, 1 000 ml in transparent/white high-density polyethylene (HDPE) bottles with polypropylene (PP) flip top caps; 5 000 ml transparent/white HDPE canister with HDPE screwed cap. 500 and 1 000 ml in transparent HDPE lightweight bottle with integrated PP pump.

4.1.1. *Use-specific instructions for use*

The products can be applied directly or the products can be used in a dispenser or with a pump.

For hygienic handrub use 3 ml of product and keep hands wet for 30 seconds.

Do not refill.

4.1.2. *Use-specific risk mitigation measures*

See general directions for use

4.1.3. *Where specific to the use, the particulars of likely direct or indirect effects, first aid instructions and emergency measures to protect the environment*

See general directions for use

4.1.4. *Where specific to the use, the instructions for safe disposal of the product and its packaging*

See general directions for use

4.1.5. *Where specific to the use, the conditions of storage and shelf-life of the product under normal conditions of storage*

See general directions for use

4.2. **Use description**

Table 2

Use # 2 – surgical handrub, liquid

Product type	PT01 – Human hygiene (Disinfectants)
Where relevant, an exact description of the authorised use	Not relevant
Target organism(s) (including development stage)	Scientific name: no data Common name: Bacteria Development stage: no data Scientific name: no data Common name: Mycobacteria Development stage: no data Scientific name: no data Common name: Yeasts Development stage: no data Scientific name: no data Common name: enveloped viruses Development stage: no data

Field(s) of use	Indoor — Hospitals and other health care institutions: surgical handrub onto visibly clean and dry hands and forearms. — For professional use only.
Application method(s)	Method: Manual application Detailed description: Rubbing
Application rate(s) and frequency	Application Rate: Dosage: Rub sufficient amount in portions of 3 ml (use dispensers: for example set to 1,5 ml per stroke, 2 strokes per 3 ml). Contact time: 90 s Dilution (%): Ready-to-use product Number and timing of application: There is no restriction in the number and timing of applications. No safety intervals need to be considered between the application phases. The product may be used at any time and as often as required.
Category(ies) of users	Professional
Pack sizes and packaging material	100, 125, 500, 1 000 ml in transparent/white high-density polyethylene (HDPE) bottles with polypropylene (PP) flip top caps; 5 000 ml transparent/white HDPE canister with HDPE screwed cap. 500 and 1 000 ml in transparent HDPE lightweight bottle with integrated PP pump.

4.2.1. *Use-specific instructions for use*

The products can be applied directly or the products can be used in a dispenser or with a pump.

For surgical handrub use as many portions of 3 ml as necessary to keep hands wet for 90 seconds.

Do not refill.

4.2.2. *Use-specific risk mitigation measures*

See general directions for use

4.2.3. *Where specific to the use, the particulars of likely direct or indirect effects, first aid instructions and emergency measures to protect the environment*

See general directions for use

4.2.4. *Where specific to the use, the instructions for safe disposal of the product and its packaging*

See general directions for use

4.2.5. *Where specific to the use, the conditions of storage and shelf-life of the product under normal conditions of storage*

See general directions for use

5. **GENERAL DIRECTIONS FOR USE ⁽¹⁾**

5.1. **Instructions for use**

For professional use only.

⁽¹⁾ Instructions for use, risk mitigation measures and other directions for use under this section are valid for any authorised uses.

5.2. Risk mitigation measures

Avoid contact with eyes.

Keep out of reach of children.

5.3. Particulars of likely direct or indirect effects, first aid instructions and emergency measures to protect the environment

First-aid measures general: Move the affected person away from the contaminated area. Get medical advice/attention if you feel unwell. If possible, show this sheet.

IF INHALED: Move to fresh air and keep at rest in a position comfortable for breathing. Call a POISON CENTRE or a doctor.

IF ON SKIN: Immediately wash skin with plenty of water. Thereafter take off all contaminated clothing and wash it before reuse. Continue to wash the skin with water for 15 minutes. Call a POISON CENTRE or a doctor.

IF IN EYES: Immediately rinse with water for several minutes. Remove contact lenses, if present and easy to do. Continue rinsing for at least 15 minutes. Call 112/ambulance for medical assistance.

Information to Healthcare personnel/doctor:

The eyes should also be rinsed repeatedly on the way to the doctor if eye exposure to alkaline chemicals ($\text{pH} > 11$), amines and acids like acetic acid, formic acid or propionic acid.

IF SWALLOWED: Immediately rinse mouth. Give something to drink, if exposed person is able to swallow. Do NOT induce vomiting. Call 112/ambulance for medical assistance.

Accidental release measures:

Stop leak if safe to do so. Remove ignition sources. Use special care to avoid static electric charges. No open flames. No smoking.

Prevent entry to sewers and public waters.

Wipe up with absorbent material (for example cloth). Soak up spills with inert solids, such as clay or diatomaceous earth as soon as possible. Take up mechanically (sweeping, shovelling). Dispose of in accordance with relevant local regulations.

5.4. Instructions for safe disposal of the product and its packaging

Disposal must be done according to official regulations. Do not empty into drains. Do not dispose of with domestic waste. Dispose of contents/container to an authorised waste collection point. Empty the packaging completely prior to disposal. When totally empty, containers are recyclable like any other packing.

5.5. Conditions of storage and shelf-life of the product under normal conditions of storage

Shelf-life: 24 months

Store in dry, cool, well-ventilated area. Keep container tightly closed. Keep out of direct sunlight.

Recommended storage temperature: 0– 30 °C

Do not store at temperatures below 0 °C

Do not store near food, drink and animal feedingstuff. Keep away from combustible material.

6. OTHER INFORMATION

COMMISSION IMPLEMENTING REGULATION (EU) 2023/1121**of 1 June 2023****entering a name in the register of protected designations of origin and protected geographical indications ('Nordhessische Ahle Wurst / Nordhessische Ahle Worscht' (PGI))**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ⁽¹⁾, and in particular Article 52(2) thereof,

Whereas:

- (1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, Germany's application to register the name 'Nordhessische Ahle Wurst / Nordhessische Ahle Worscht' was published in the *Official Journal of the European Union* ⁽²⁾.
- (2) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the name 'Nordhessische Ahle Wurst / Nordhessische Ahle Worscht' should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name 'Nordhessische Ahle Wurst/Nordhessische Ahle Worscht' (PGI) is hereby entered in the register.

The name specified in the first paragraph denotes a product in Class 1.2. – Meat products (cooked, salted, smoked, etc.), as listed in Annex XI to Commission Implementing Regulation (EU) No 668/2014 ⁽³⁾.*Article 2*This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 1 June 2023.

For the Commission,
On behalf of the President,
Janusz WOJCIECHOWSKI
Member of the Commission

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ OJ C 56, 15.2.2023, p. 19.

⁽³⁾ Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (OJ L 179, 19.6.2014, p. 36).

COMMISSION IMPLEMENTING REGULATION (EU) 2023/1122**of 7 June 2023****imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

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

Whereas:

1. PROCEDURE**1.1. Previous investigations and measures in force**

- (1) By Commission Implementing Regulation (EU) 2017/649 ⁽²⁾, the European Commission ('the Commission') imposed definitive anti-dumping duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel, originating in People's Republic of China ('the PRC' or 'the country concerned' or 'China') ('the original measures'). The investigation that led to the imposition of the original measures will hereinafter be referred to as 'the original investigation'. The anti-dumping duties currently in force are ranging between 0 % and 31,3 % ⁽³⁾. The duty rates were established based on the injury margin in accordance with the lesser duty rule, as provided for in Article 9(4) of the basic Regulation.

1.2. Request for an expiry review

- (2) Following the publication of a notice of impending expiry ⁽⁴⁾ the Commission received a request for a review pursuant to Article 11(2) of the basic Regulation.
- (3) The request for review ('the request') was submitted on 4 January 2022 by EUROFER, the European Steel Association ('the applicant'), on behalf of the Union industry of certain hot-rolled flat products of iron, non-alloy or other alloy steel in the sense of Article 5(4) of the basic Regulation. The request for review was based on the grounds that the expiry of the measures would be likely to result in recurrence of dumping and recurrence of injury to the Union industry.
- (4) China Iron and Steel Association ('CISA') claimed that EUROFER exercised excessive confidentiality in the review request, to the extent that interested parties were not able to comment on it meaningfully and that the request therefore should have been rejected. According to CISA, the deliberate use of excessive confidentiality prevented them from gaining any reasonable understanding of the situation during the period of investigation. In particular with reference to the cost template of Union producers, CISA argued that the WTO Anti-dumping Agreement ('ADA'), in particular Article 6.5.1 thereof, as well as the basic Regulation, in particular Article 19 thereof, contain a similar wording with regard to interested parties' obligation to disclose non-confidential information.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ 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 (OJ L 92, 6.4.2017, p. 68).

⁽³⁾ Regulation (EU) 2017/649, as amended by Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 146, 9.6.2017, p. 17).

⁽⁴⁾ OJ C 277, 12.7.2021, p. 3.

- (5) Article 19 of the basic Regulation allows for the safeguarding of confidential information in circumstances where disclosure would be of significant competitive advantage to a competitor or would have a significant adverse effect upon the person providing the information or upon a person from whom that person has acquired the information. The information provided in the limited annexes to the request falls under these categories. In particular, with regard to the Union producers' specific consumption ratios of the factors of production ('FOPs') needed to produce the product under review provided in the expiry review request, the Commission observed that this data contains business secret information and is not liable to summary. The consumption ratios of the FOPs were used by the applicant to construct the normal value. At the same time, the non-confidential version of the expiry review request contained sufficient evidence regarding the FOPs actually used for the construction of the normal value. Similarly, in the course of the investigation, cooperating exporting producers are not required to disclose or summarise certain confidential information such as the actual recipe for their product types containing the consumption ratios of the FOPs. The Commission thus considered that the version open for inspection by interested parties of the request contained all the essential evidence, and that the information provided in the non-confidential version of the complaint was sufficient for interested parties to exercise their rights of defence. Therefore, the claim was rejected.

1.3. Initiation of an expiry review

- (6) Having determined, after consulting the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of an expiry review, the Commission initiated, on 5 April 2022, an expiry review with regard to imports into the Union of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the PRC on the basis of Article 11(2) of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ⁽ⁱ⁾ ('the Notice of Initiation').
- (7) CISA claimed that the Union industry profitability levels as reported in the request should have prompted the Commission to reject the request, and that the request did not demonstrate that the expiry of measures could reasonably lead to the continuation of injury. According to CISA, the state of the Union industry is not as fragile as EUROFER claimed. It argued that not a single injury indicator during the entire period considered has declined to a level below the consumption decline index and that the Union industry, to some extent, had been able to recover during the time it enjoyed the protection of the measures in place. Finally, CISA also noted that imposing measures would be against the Union interest because of the impact of EU sanctions, as well as inter-related supply chain disruptions and the post COVID-19 recovery.
- (8) The Commission recalled that the request was based on the grounds of a likelihood of recurrence of injury and not a continuation of injury. Thus, the profitability figures indicated in the review request did not preclude the initiation of a review investigation, which is forward looking. In any event, profitability is only one of many indicators used to analyse the economic situation of the Union industry. Contrary to CISA's view, the Commission's analysis of the request showed that the applicant had provided sufficient evidence at initiation stage pointing to a likelihood of recurrence of injury should the anti-dumping measures applicable to imports from the PRC be allowed to lapse. In this regard the Commission recalled that there is no legal obligation to consider the Union interest when assessing the merits of an expiry review request. Hence, the initiation of the review investigation was warranted.

1.4. Review investigation period and period considered

- (9) The investigation of continuation or recurrence of dumping covered the period from 1 January 2021 to 31 December 2021 ('review investigation period'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2018 to the end of the review investigation period ('the period considered').

1.5. Interested parties

- (10) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. The Commission specifically informed the applicant, all known Union producers, the known producers in the People's Republic of China and the authorities of the People's Republic of China as well as known importers, users and traders about the initiation of the expiry review and invited them to participate.

⁽ⁱ⁾ OJ C 150, 5.4.2022, p. 3.

- (11) Interested parties had an opportunity to comment on the initiation of the expiry review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.6. Sampling

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

1.6.1. Sampling of Union producers

- (13) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of the largest volume of production of the like product in the Union during the review investigation period that could reasonably be investigated within the time available. This sample consisted of three Union producers. The sampled Union producers accounted for around 29 % of the estimated total production in the Union during the review investigation period. In accordance with Article 17(2) of the basic Regulation, the Commission invited interested parties to comment on the provisional sample. No comments were received, and the Commission confirmed the provisionally selected sample. The sample is representative of the Union industry.
- (14) Although no comments were provided during the sample selection procedure, CISA argued in a later submission that the level of representativeness was low, especially compared to the sample selected in the original investigation, which accounted for 45 % of Union production. CISA invited the Commission to consider in detail whether the low figure does not affect the level of representativeness of the domestic industry.
- (15) The Commission recalled first that differences in the sample between the original investigation and the expiry review investigation do not invalidate the representativity of the sample. Second, the Commission noted that CISA did not put forward any substantive elements, other than a comparison with the sample in the original investigation, showing that the sample was unrepresentative. Given that the sample was selected pursuant to Article 17 of the basic Regulation, on the basis of production volumes of the like product in the Union during the review investigation period, as well as geographical representativity, and was limited to a number of Union producers which can reasonably be investigated within the time available, the Commission re-affirmed that the sample was considered representative.

1.6.2. Sampling of importers

- (16) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (17) No unrelated importer, however, came forward and provided the requested information.

1.6.3. Sampling of exporting producers in the People's Republic of China

- (18) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known producers in the People's Republic of China to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Chinese authorities to identify and/or contact other producers, if any, that could be interested in participating in the investigation.
- (19) At initiation, the Commission made available a copy of the questionnaires in the file for inspection by interested parties and on DG TRADE's website ⁽⁶⁾.
- (20) No Chinese producers provided the requested information and/or agreed to be included in the sample. The Commission informed the Mission of the People's Republic of China to the European Union about its intention to apply facts available in accordance with Article 18 of the basic Regulation. No comments were received.

⁽⁶⁾ https://trade.ec.europa.eu/tdi/case_details.cfm?id=2594

- (21) Therefore, since there was no cooperation from the exporting producers from the PRC, the findings with regard to the imports from the PRC were made on the basis of the facts available pursuant to Article 18 of the basic Regulation, in particular using trade statistics on imports and exports (Eurostat, the Global Trade Atlas ('GTA') ⁽⁷⁾ and the expiry review request).
- (22) The Commission sent a questionnaire concerning the existence of significant distortions in the People's Republic of China within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of the People's Republic of China ('GOC') ⁽⁸⁾. No reply was received. Consequently, the Commission informed the Mission of the PRC to the European Union about its intention to apply facts available in accordance with Article 18 of the basic Regulation. No comments were received.

1.7. Replies and verification

- (23) Questionnaire replies were received from the sampled Union producers.
- (24) The Commission sought and verified all the information deemed necessary for the determination of likelihood of continuation or recurrence of dumping and injury and of the Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:
- Union producers
 - Arcelor Mittal Poland (Dąbrowa Górnicza, Poland)
 - Tata Steel IJmuiden (IJmuiden, The Netherlands)
 - ThyssenKrupp Steel Europe AG (Duisburg, Germany) and its related company ThyssenKrupp Material Processing (Krefeld, Germany).

1.8. Disclosure

- (25) On 4 April 2023, the Commission disclosed the essential facts and considerations on the basis of which it intended to maintain the anti-dumping duties in force. All parties were granted a period within which they could make comments on the disclosure.
- (26) The comments made by interested parties were considered by the Commission and taken into account, where appropriate. The parties who so requested were granted a hearing. CISA requested and was granted a hearing with the Commission services on 12 April 2023.

2. PRODUCT UNDER REVIEW, PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product under review

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

The following products are not covered by this review:

- (i) products of stainless steel and grain-oriented silicon electrical steel,
- (ii) products of tool steel and high-speed steel,
- (iii) products, not in coils, without patterns in relief, of a thickness exceeding 10 mm and of a width of 600 mm or more, and

⁽⁷⁾ <https://www.gtis.com/gta>

⁽⁸⁾ The term 'GOC' is used in this Regulation in a broad sense, including the State Council, as well as all Ministries, Departments, Agencies and Administrations at central, regional or local level.

- (iv) 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 under review is currently falling under 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 codes 7226 19 10 91, 7226 19 10 95), 7226 91 91 and 7226 91 99. The CN and TARIC codes are given for information only, without prejudice to a subsequent change in the tariff classification.

- (28) Hot-rolled flat steel products are produced through hot rolling. This is a metal forming process in which hot metal is passed through one or more pairs of hot rolls to reduce the thickness and to make the thickness uniform, whereby the temperature of the metal is above its recrystallization temperature. They can be delivered in various forms; in coils (oiled or not oiled, pickled or not pickled), in cut lengths (sheet) or in narrow strips.

There are two main uses of the hot-rolled flat steel products. First, they are the primary material for the production of various value-added downstream steel products, starting with cold-rolled flat and coated steel products. Second, they are used as an industrial input purchased by end users for a variety of applications, including in construction (production of steel tubes), shipbuilding, gas containers, cars, pressure vessels and energy pipelines.

2.2. Product concerned

- (29) Product concerned by this investigation is the product under review originating in the People's Republic of China.

2.3. Like product

- (30) As established in the original investigation, this expiry review investigation confirmed that the following products have the same basic physical characteristics as well as the same basic uses:

- the product concerned, exported to the Union;
- the product under review produced and sold on the domestic market of the People's Republic of China; and
- the product under review produced and sold in the Union by the Union industry.

- (31) These products are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. Preliminary remarks

- (32) During the review investigation period, imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel from the PRC continued albeit at lower levels than in the investigation period of the original investigation (i.e. from 1 January 2015 and 31 December 2015). According to Eurostat data, imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel from the PRC accounted for less than 0,1 % of the Union market in the review investigation period compared to 4,32 % ⁽⁹⁾ market share during the investigation period of the original investigation. In absolute terms, China exported about 28 743 tonnes to the Union during the review investigation period, which is a significant decrease compared to about 1 519 304 tonnes ⁽¹⁰⁾ that it exported to the Union during the investigation period of the original investigation.

⁽⁹⁾ Recital 76, Commission Implementing Regulation (EU) 2016/1778 of 6 October 2016 imposing a provisional anti-dumping duty on imports of certain hot-rolled flat steel products originating in the People's Republic of China (OJ L 272, 7.10.2016, p. 33).

⁽¹⁰⁾ See previous footnote.

- (33) As mentioned in recital (20), none of the exporters/producers from the PRC cooperated in the investigation. Therefore, the Commission informed the authorities of the PRC that due to the absence of cooperation, the Commission might apply Article 18 of the basic Regulation concerning the findings with regard to the PRC. The Commission did not receive any comments or requests for an intervention of the Hearing Officer in this regard.
- (34) Consequently, in accordance with Article 18 of the basic Regulation, the findings in relation to the likelihood of continuation or recurrence of dumping with regard to the PRC were based on facts available, in particular the information contained in the request for the expiry review and in the submissions by the interested parties, combined with other sources of information, such as trade statistics on imports and exports (Eurostat, the GTA ⁽¹⁾).

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

- (35) Given the sufficient evidence available at the initiation of the investigation tending to show, with regard to the PRC, the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission initiated the investigation on the basis of Article 2(6a) of the basic Regulation.
- (36) In order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions, the Commission sent a questionnaire to the GOC. In addition, in point 5.3.2 of the Notice of Initiation, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the *Official Journal of the European Union*. No questionnaire reply was received from the GOC and no submission on the application of Article 2(6a) of the basic Regulation was received within the deadline. Subsequently, the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in the PRC.
- (37) In point 5.3.2 of the Notice of Initiation, the Commission also specified that, in view of the evidence available, it had provisionally selected Mexico as an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks. The Commission further stated that it would examine other possibly appropriate countries in accordance with the criteria set out in first indent of Article 2(6a) of the basic Regulation.
- (38) On 29 August 2022, the Commission informed the interested parties, by means of a Factors of Production (FOP) Note of the relevant sources it intended to use for the determination of the normal value, with Mexico as the representative country. In the FOP Note the Commission provided a list of all factors of production such as raw materials, labour and energy used in the production of certain hot-rolled flat products of iron, non-alloy or other alloy steel. It also informed the interested parties that it would establish selling, general and administrative costs ('SG&A') and profits based on available information for the company Ternium S.A., a producer in the representative country.
- (39) CISA came forward with their comments on 16 September 2022. CISA argued that the GTA import data do not reflect domestic prices but the import ones, which are usually affected by many factors such as the quantity of imports of a particular product, the availability of such product and the distance between the exporting and importing countries. The Commission acknowledged that GTA import data indeed reflects import prices. However, nothing on the file suggested that those prices did not reflect domestic prices in the representative country, or that the quality or quantity of the import data used would render it unfit for constructing the normal value in accordance with Article 2(6a)(a) of the basic Regulation. Consequently, the claim was rejected.

⁽¹⁾ <https://www.gtis.com/gta/>

- (40) In addition to that, CISA questioned whether the use of weighted average unit price would be able to reflect a meaningful unit cost of raw materials such as ferroalloys, as there were significant differences in unit price depending on the grade of raw materials and/or country of origin. As the producers in the PRC chose not to cooperate with the investigation, the Commission was unable to single out the grade of ferroalloys used by them specifically in the manufacturing of HRF. Therefore, an import price in the representative country was determined as a weighted average import unit price of all grades from all third countries, excluding the PRC and countries which are not members of the WTO, listed in Annex I of Regulation (EU) 2015/755 of the European Parliament and the Council ⁽¹²⁾.
- (41) Furthermore, CISA raised an issue of the accuracy of the CIF duty paid unit price of each factor since the GTA import data reported by Mexico is at FOB level rather than at CIF level. In the context of an expiry review the Commission is not obliged to calculate a precise dumping margin but rather to establish whether there is likelihood of either continuation or recurrence of dumping. Given that, as explained in recital (118) below, the findings that the price difference between the normal value and the export price to the rest of the world was above 100 %, even if using another conversion coefficient based on the actual origin of the goods imported, would not have changed the conclusions reached by the Commission. Therefore, the claim was rejected.

3.3. Normal value

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

3.4. Existence of significant distortions

- (45) In recent investigations concerning the steel sector in the PRC ⁽¹³⁾, the Commission found that significant distortions in the sense of Article 2(6a)(b) of the basic Regulation were present.

⁽¹²⁾ Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33). Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value and, in any event, such import data was negligible.

⁽¹³⁾ Commission Implementing Regulation (EU) 2022/2068 of 26 October 2022 imposing a definitive anti-dumping duty on imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 277, 27.10.2022, p. 149); Commission Implementing Regulation (EU) 2022/191 of 16 February 2022 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China (OJ L 36, 17.2.2022, p. 1); Commission Implementing Regulation (EU) 2022/95 of 24 January 2022 imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel, originating in the People's Republic of China, as extended to imports of certain tube and pipe fittings, of iron or steel consigned from Taiwan, Indonesia, Sri Lanka and the Philippines, whether declared as originating in these countries or not, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 16, 25.1.2022, p. 36); Commission Implementing Regulation (EU) 2021/2239 of 15 December 2021 imposing a definitive anti-dumping duty on imports of certain utility scale steel wind towers originating in the People's Republic of China (OJ L 450, 16.12.2021, p. 59); Commission Implementing Regulation (EU) 2021/635 of 16 April 2021 imposing a definitive anti-dumping duty on imports of certain welded pipes and tubes of iron or non-alloyed steel originating in Belarus, the People's Republic of China and Russia following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 132, 19.4.2021, p. 145).

(46) In those investigations, the Commission found that there is substantial government intervention in the PRC resulting in a distortion of the effective allocation of resources in line with market principles⁽¹⁴⁾. In particular, the Commission concluded that in the steel sector, which is the main raw material to produce the product under review, not only does a substantial degree of ownership by the GOC persist in the sense of Article 2(6a)(b), first indent of the basic Regulation⁽¹⁵⁾, but the GOC is also in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation⁽¹⁶⁾. The Commission further found that the State's presence and intervention in the financial markets, as well as in the provision of raw materials and inputs have an additional distorting effect on the market. Indeed, overall, the system of planning in the PRC results in resources being concentrated in sectors designated as strategic or otherwise politically important by the GOC, rather than being allocated in line with market forces⁽¹⁷⁾. Moreover, the Commission concluded that the Chinese bankruptcy and property laws do not work properly in the sense of Article 2(6a)(b), fourth indent of the basic Regulation, thus generating distortions in particular when maintaining insolvent firms afloat and when allocating land use rights in the PRC⁽¹⁸⁾. In the same vein, the Commission found distortions of wage costs in the steel sector in the sense of Article 2(6a)(b), fifth indent of the basic Regulation⁽¹⁹⁾, as well as distortions in the financial markets in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, in particular concerning access to capital for corporate actors in the PRC⁽²⁰⁾.

(47) Like in previous investigations concerning the steel sector in the PRC, the Commission examined in the present investigation whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the request, as well as the Commission Staff Working Document on Significant Distortions in the Economy of the PRC for the Purposes of Trade Defence Investigations⁽²¹⁾ ('Report'), which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in the PRC's economy in general, but also the specific market situation in the relevant sector including the product under review. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in the PRC, as also found by its previous investigations in this respect.

⁽¹⁴⁾ See Implementing Regulation (EU) 2022/2068 recital 80; Implementing Regulation (EU) 2022/191 recital 208, Implementing Regulation (EU) 2022/95 recital 59, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 149-150.

⁽¹⁵⁾ See Implementing Regulation (EU) 2022/2068 recital 64; Implementing Regulation (EU) 2022/191 recital 192, Implementing Regulation (EU) 2022/95 recital 46, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 115-118.

⁽¹⁶⁾ See Implementing Regulation (EU) 2022/2068 recital 66; Implementing Regulation (EU) 2022/191 recitals 193-4, Implementing Regulation (EU) 2022/95 recital 47, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 119-122. While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights, CCP cells in enterprises, state owned and private alike, represent another important channel through which the State can interfere with business decisions. According to the PRC's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline. In 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of the product under review and the suppliers of their inputs.

⁽¹⁷⁾ See Implementing Regulation (EU) 2022/2068 recital 68; Implementing Regulation (EU) 2022/191 recitals 195-201, Implementing Regulation (EU) 2022/95 recitals 48-52, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 123-129.

⁽¹⁸⁾ See Implementing Regulation (EU) 2022/2068 recital 74; Implementing Regulation (EU) 2022/191 recital 202, Implementing Regulation (EU) 2022/95 recital 53, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 130-133.

⁽¹⁹⁾ See Implementing Regulation (EU) 2022/2068 recital 75; Implementing Regulation (EU) 2022/191 recital 203, Implementing Regulation (EU) 2022/95 recital 54, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 134-135.

⁽²⁰⁾ See Implementing Regulation (EU) 2022/2068 recital 76; Implementing Regulation (EU) 2022/191 recital 204, Implementing Regulation (EU) 2022/95 recital 55, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 136-145.

⁽²¹⁾ Commission staff working document SWD(2017) 483 final/2, 20. 12. 2017, available at: https://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156474.pdf

- (48) The request alleged that the Chinese economy as a whole is widely influenced and affected by various all-encompassing interventions by the GOC or other public authorities on various levels of government, in view of which domestic prices and costs of the Chinese steel industry cannot be used in the present investigation. To support its position, the request referred to the Commission's recent investigations of the Chinese steel sector ⁽²²⁾ or the conclusions of the G20 Global Forum on Steel Excess Capacity ⁽²³⁾.
- (49) More specifically, the request pointed out that against the background of the 'socialist market economy' doctrine enshrined in the PRC Constitution, the omnipresence of the Chinese Communist Party ('CCP') and its influence over the economy by means of strategic planning initiatives – such as the 13th and 14th Five-Years Plans ⁽²⁴⁾ – the GOC's interventionism takes various forms, namely administrative, financial and regulatory.
- (50) The request provided examples of elements pointing to existence of distortions, as listed in the first to sixth dash of Article 2(6a)(b) of the basic Regulation. In particular, referring to previous Commission investigations in the steel sector, to the Report, as well as to additional sources, the applicant submitted that:
- The Chinese State engages in an interventionist economic policy in pursuance of goals that coincide with the political agenda set by the CCP rather than reflect the prevailing economic conditions in free market. With the high level of government intervention in the steel industry and a high share of State-owned enterprises ('SOEs') in the sector, even privately owned steel producers are prevented from operating under market conditions. As such the steel market is to a significant extent served by enterprises which operate under the ownership, control and policy supervision of the Chinese authorities;
 - The Chinese State does not only actively formulate and oversee the implementation of general economic policies by individual SOEs, but it also claims its rights to participate in operational decision-making in SOEs. This is typically done through the rotation of cadres between government authorities and SOEs, through presence of party members in SOEs' executive bodies and of party cells in companies, as well as by shaping the corporate structure of the SOE sector. In exchange, SOEs enjoy a particular status within the Chinese economy. This status entails a number of economic benefits, in particular the shielding from competition and the preferential access to relevant inputs, including financing;
 - The steel industry is regarded as a fundamental sector of the Chinese economy, a national cornerstone ⁽²⁵⁾ by the Chinese government, and as such is a particularly supported industry ⁽²⁶⁾. The current problem of overcapacity ⁽²⁷⁾ is arguably the clearest illustration of the implications of the Chinese Government's policies for the industry and the resulting distortions;

⁽²²⁾ 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 (OJ L 92, 6.4.2017, p. 68); Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 146, 9.6.2017, p. 17); Commission Implementing Regulation (EU) 2019/688 of 2 May 2019 imposing a definitive countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China following an expiry review pursuant to Article 18 of the Regulation (EU) 2016/1037 of the European Parliament and of the Council (OJ L 116, 3.5.2019, p. 39).

⁽²³⁾ Global Forum on steel excess capacity, Ministerial Report, 20 September 2018.

⁽²⁴⁾ National People's Congress, 14th Five-Year Plan, translation into English by Center for Security and Emerging Technology, 12 March 2021, https://cset.georgetown.edu/wp-content/uploads/t0284_14th_Five_Year_Plan_EN.pdf

⁽²⁵⁾ Introduction to the Plan for Adjusting and Upgrading the Steel Industry.

⁽²⁶⁾ Catalogue for Guiding Industry Restructuring (2011 Version) (2013 Amendment) issued by Order No 9 of the National Development and Reform Commission on 27 March 2011, and amended in accordance with the Decision of the National Development and Reform Commission on Amending the Relevant Clauses of the Catalogue for Guiding Industry Restructuring (2011 Version) issued by Order No 21 of the National Development and Reform Commission on 16 February 2013.

⁽²⁷⁾ OECD, 'Latest developments in steelmaking capacity', February 2021, page 11.

- The Chinese bankruptcy system appears to be inadequate to deliver on its own main objectives such as to settle claims and debts fairly and to safeguard the lawful rights and interests of creditors and debtors;
 - The Chinese government is controlling raw materials' prices as export volumes are restricted through export quotas and exporters need to apply for an export license. In a previous investigation ⁽²⁸⁾ the Commission has found that 'coke (together with iron ore, the major raw material to produce steel) is subject to quantitative restrictions on exports and to an export duty';
 - The shortcomings of the system of property rights are particularly obvious in relation to ownership of land and land-use rights in China. All land is owned by the Chinese State (collectively owned rural land and State-owned urban land). Its allocation remains solely dependent on the State ⁽²⁹⁾;
 - Workers and employers are impeded in their rights to collective organisation and mobility is restricted by the household registration system, which limits access to the full range of social security and other benefits. This leads to wage costs being distorted since they do not result from normal market forces or negotiation between companies and the work force;
 - The Chinese financial system is characterised by the strong position of State-owned banks, which, when granting access to finance, take into consideration criteria other than economic viability of a project. Prudential rules such as the need to examine the creditworthiness of the borrower may exist formally, however, the overwhelming evidence, including findings made during trade defence investigations, suggests that these provisions play only a secondary role in the application of the various legal instruments;
 - The banks comply with an explicit legal obligation to conduct their business in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State. Furthermore, borrowing costs have been kept artificially low to stimulate investment growth, which has led to the excessive use of capital investment with ever-lower returns on investment.
- (51) The GOC did not comment or provide evidence supporting or rebutting the existing evidence on the case file, including the Report and the additional evidence provided by the applicant, on the existence of significant distortions and/or appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand.
- (52) Specifically in the sector of the product under review, i.e. the steel sector, a substantial degree of ownership by the GOC persists in the sense of Article 2(6a)(b), first indent of the basic Regulation. Since there was no cooperation from Chinese exporters of the product under review, the exact ratio of the private and state-owned producers could not be determined. However, the investigation confirmed that the two largest producers in the steel sector, namely Angang Steel Group ('Ansteel') and China Baowu Steel Group ('Baowu') are either fully State-owned or the State holds a controlling stake. In any event, even when specific information may not be available for the product under review, the sector represents a sub-sector of the steel industry and the findings concerning the steel sector are therefore deemed indicative also for the product under review.
- (53) Both public and privately owned enterprises in the steel sector are subject to policy supervision and guidance. The latest Chinese policy documents concerning the steel sector confirm the continued importance which GOC attributes to the sector, including the intention to intervene in the sector in order to shape it in line with the government policies. This is exemplified by the Ministry of Industry and Information Technology's draft Guiding Opinion on Fostering a High Quality Development of Steel Industry, which calls for further consolidation of the industrial foundation and significant improvement in the modernization level of the industrial chain ⁽³⁰⁾, by the 14th

⁽²⁸⁾ Council Implementing Regulation (EU) No 214/2013 of 11 March 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain organic coated steel products originating in the People's Republic of China (OJ L 73, 15.3.2013, p. 1).

⁽²⁹⁾ Marketplace, 'Industrial Policy: If China does it, why can't we?', 1 March 2021.
<https://www.marketplace.org/2021/03/01/industrial-policy-if-china-does-it-why-cant-we/>

⁽³⁰⁾ See: https://www.miit.gov.cn/jgsj/ycls/gzdt/art/2020/art_8fc2875eb24744f591bfd946c126561f.html (accessed on 6 February 2023).

FYP on Developing the Raw Material Industry according to which the sector will ‘adhere to the combination of market leadership and government promotion’ and will ‘cultivate a group of leading companies with ecological leadership and core competitiveness’ ⁽³¹⁾, or also by the 14th FYP on Developing Scrap Steel Industry whose key objectives is to ‘continuously increase the application ratio of scrap steel, and by the end of the 14th FYP, the comprehensive scrap ratio of national steel making will reach 30 %.’ ⁽³²⁾

- (54) Similar examples of the intention by the Chinese authorities to supervise and guide the developments of the sector can be seen at the provincial level, such as in Hebei which plans to ‘steadily implement the group development of organizations, accelerate the reform of mixed ownership of state-owned enterprises, focus on promoting the cross-regional merger and reorganization of private iron and steel enterprises, and strive to establish 1-2 world-class large groups, 3-5 large groups with domestic influence as the support’ and to ‘further expand the recycling and circulation channels of scrap steel, strengthen the screening and classification of scrap steel.’ ⁽³³⁾ Moreover, Hebei’s plan in the steel sector specifically includes several references to hot-rolled steel products: ‘Encourage plate production enterprises to speed up the implementation the transformation of low-level hot-rolling mills (...) and strive to ensure that by 2022 hot-rolled primary plates account for more than 30 % of deep processing operations’ ⁽³⁴⁾. Furthermore: ‘Consolidate the advantages of the wire and bar market. Encourage wire and bar manufacturers to carry out R & D and production of hot-rolled ribbed steel bars over 500 MPa, and lead product upgrades. Support special steel enterprises to combine technology and equipment transformation and upgrade and develop bearing steel, gear steel and other special steel products’.
- (55) Similarly, the Henan Implementation Plan for the Transformation and Upgrade of the Steel Industry during the 14th FYP foresees the ‘construction of characteristic steel production bases [...], build 6 characteristic steel production bases in Anyang, Jiyuan, Pingdingshan, Xinyang, Shangqiu, Zhouou, etc., and improve the scale, intensification and specialization of the industry. Among them, by 2025, the production capacity of pig iron in Anyang will be controlled within 14 million tons, and the production capacity of crude steel will be controlled within 15 million tons.’ ⁽³⁵⁾ The Henan Implementation Plan also includes specific references to hot-rolled products: ‘Support independent hot-rolling enterprises to participate in the merger and reorganization of iron and steel enterprises, and improve the resilience and concentration of the industrial chain.’ ⁽³⁶⁾ Further industrial policy objectives can also be seen in the planning documents of other provinces, such as Jiangsu ⁽³⁷⁾, Shandong ⁽³⁸⁾, Shanxi ⁽³⁹⁾, or Zhejiang ⁽⁴⁰⁾ or municipalities, such as Liaoning Dalian ⁽⁴¹⁾.

⁽³¹⁾ See Section IV, Subsection 3 of the 14th FYP on Developing the Raw Materials Industry.

⁽³²⁾ See Section II, Subsection 1 of the 14th FYP on Developing Scrap Steel Industry.

⁽³³⁾ See the Hebei Province’s Three Year Action Plan on Cluster Development in the Steel Industry Chain, Chapter I, Section 3; available at: <https://huanbao.bjx.com.cn/news/20200717/1089773.shtml> (accessed on 6 February 2023).

⁽³⁴⁾ See the Hebei Province’s Three Year Action Plan on Cluster Development in the Steel Industry Chain, Section II, Chapter 4, Para 12; available at: <https://huanbao.bjx.com.cn/news/20200717/1089773.shtml>

⁽³⁵⁾ See the Henan Implementation Plan for the Transformation and Upgrade of the Steel Industry during the 14th FYP, Chapter II, Section 3; available at: <https://huanbao.bjx.com.cn/news/20211210/1192881.shtml> (accessed on 6 February 2023)

⁽³⁶⁾ See the Henan Implementation Plan for the Transformation and Upgrade of the Steel Industry during the 14th FYP, Chapter II, Section 3; available at: <https://huanbao.bjx.com.cn/news/20211210/1192881.shtml>

⁽³⁷⁾ Jiangsu Province’s Work Plan Steel Sector Transformation and Upgrade and Layout Optimisation 2019-2025; available at: http://www.jiangsu.gov.cn/art/2019/5/5/art_46144_8322422.html (accessed on 6 February 2023).

⁽³⁸⁾ Shandong Province’s 14 FYP on the Steel Industry Development; available at: http://gxt.shandong.gov.cn/art/2021/11/18/art_15681_10296246.html (accessed on 6 February 2023).

⁽³⁹⁾ Shanxi Province’s 2020 Steel Industry Transformation and Upgrade Action Plan; available at: http://gxt.shanxi.gov.cn/zfxgk/zfxgkml/cl/202110/t20211018_2708031.shtml (accessed on 6 February 2023).

⁽⁴⁰⁾ Zhejiang Province’s Action Plan to Foster a High Quality Development of the Steel Industry: ‘Foster enterprise mergers and reorganisation, accelerate the concentration process, reduce the number of steel smelting enterprises to approximately 10 enterprises’; available at: https://www.dl.gov.cn/art/2021/12/20/art_854_1995411.html (accessed on 6 February 2023).

⁽⁴¹⁾ Liaoning Dalian Municipality’s 14 FYP on Developing Manufacturing Industry: ‘By 2025, the industrial output value of new materials will reach 15 million yuan, and the level of equipment and key materials guarantee ability is obviously improved.’; available at: https://www.dl.gov.cn/art/2021/12/20/art_854_1995411.html (accessed on 6 February 2023).

- (56) As to the GOC being in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation, due to the lack of cooperation from the side of the exporting producers, it was impossible to systematically establish the existence of personal connections between producers of the product under review and the CCP. However, given that the product under review represents a subsector of the steel sector, information available with respect to steel producers is relevant also to the product under review.
- (57) For instance, Ansteel's Chairman serves at the same time as the Secretary of the Party Committee. Similarly, the Director and General Manager of Ansteel occupies the position of the Party Committee's Deputy Secretary ⁽⁴²⁾. In the case of Baowu, the Chairman of Baosteel, which is a subsidiary held at 100 % by Baowu, holds at the same time the position of Secretary of the Party Committee, whereas the Managing Director serves also as the Deputy Secretary of the Party Committee and the Deputy General Manager serves as a Member of the Standing Committee of the Party Committee ⁽⁴³⁾.
- (58) Further, policies discriminating in favour of domestic producers or otherwise influencing the market in the sense of Article 2(6a)(b), third indent of the basic Regulation are in place in the sector of the product under review. As described above in recital (54) concerning the Hebei's action plan and in recital (55) concerning Henan's action plan, the investigation could identify some documents guiding specifically the development of the hot rolled flat steel subsector. Moreover, the investigation identified other documents showing that the industry benefits from governmental guidance and intervention in the steel sector, given that the product under review represents one of its subsectors.
- (59) The steel industry keeps being regarded as a key industry by the GOC ⁽⁴⁴⁾. This is confirmed in the numerous plans, directives and other documents focused on steel, which are issued at national, regional and municipal level. Under the 14th Five Years Plan adopted in March 2021, the GOC earmarked the steel industry for transformation and upgrade, as well as optimization and structural adjustment ⁽⁴⁵⁾. Similarly, the 14th Five Years Plan on Developing the Raw Materials Industry, applicable also to the steel industry, lists the sector as the '*bedrock of the real economy*' and '*a key field that shapes China's international competitive edge*' and sets a number of objectives and working methods which would drive the development of the steel sector in the time period 2021-2025, such a technological upgrade, improving the structure of the sector (not least by means of further corporate concentrations) or digital transformation ⁽⁴⁶⁾.
- (60) The important raw material used for the production of hot rolled flat steel is iron ore. Iron ore is also mentioned in the 14th FYP on Developing the Raw Materials Industry, in which the State plans to '*rationality develop domestic mineral resources. Strengthen the exploration of iron ore [...], implement preferential tax policies, encourage the adoption of advanced technology and equipment to reduce the generation of mining solid waste.*' ⁽⁴⁷⁾ In provinces, such as Hebei, the authorities foresee the following for the sector: '*new project investment discount subsidy; explore and guide financial institutions to provide low-interest loans for iron and steel enterprises to switch to new industries, and at the same time, the government will provide discount subsidies.*' ⁽⁴⁸⁾ In sum, the GOC has measures in place to induce operators to comply with the public policy objectives of supporting encouraged industries, including the production of the main raw materials used in the manufacturing of the product under review. Such measures impede market forces from operating freely.

⁽⁴²⁾ See the group's web, available at: <http://www.ansteel.cn/about/jituangaoguan/> (accessed on 6 February 2023).

⁽⁴³⁾ See the company's web, available at: <https://www.baosteel.com/about/manager> (accessed on 6 February 2023).

⁽⁴⁴⁾ Report, Part III, Chapter 14, p. 346 ff.

⁽⁴⁵⁾ See People's Republic of China 14th Five-Year Plan for National Economic and Social Development and Long-Range Objectives for 2035, Part III, Article VIII, available at: <https://cset.georgetown.edu/publication/china-14th-five-year-plan/> (accessed on 6 February 2023).

⁽⁴⁶⁾ See in particular Sections I and II of the 14th FYP on Developing the Raw Materials Industry.

⁽⁴⁷⁾ See the 14th FYP on Developing the Raw Materials Industry, p. 22.

⁽⁴⁸⁾ See the Hebei Tangshan Municipality Iron and Steel 1 + 3 Action Plan 2022, Chapter 4, Section 2; available at: <http://www.chinaisa.org.cn/gxportal/xfgl/portal/content.html?articleId=e2bb5519aa49b566863081d57aea9dfdd59e1a4f482bb7acd243e3ae7657c70b&columnId=3683d857cc4577e4cb75f76522b7b82cda039ef70be46ee37f9385ed3198f68a> (accessed at 6 February 2023).

- (61) The present investigation revealed some evidence of the discriminatory application or inadequate enforcement of bankruptcy and property laws according to Article 2(6a)(b), fourth indent of the basic Regulation in the hot rolled flat steel sector. In particular, concerning the factory of Chaoyang Iron & Steel, which was incurring losses for 5 consecutive years (from 2010 to 2015) and was on the verge of bankruptcy. It was also identified as a 'zombie enterprise' by the State-owned Assets Supervision ⁽⁴⁹⁾.
- (62) The hot rolled flat steel sector is also affected by the distortions of wage costs in the sense of Article 2(6a)(b), fifth indent of the basic Regulation, as also referred to above in recital (46). Those distortions affect the sector both directly (when producing the product under review or the main inputs), as well as indirectly (when having access to inputs from companies subject to the same labour system in the PRC) ⁽⁵⁰⁾.
- (63) Moreover, no evidence was submitted in the present investigation demonstrating that the sector of the product under review is not affected by the government intervention in the financial system in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, as also referred to above in recital (46). Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.
- (64) Finally, the Commission recalls that in order to produce the product under review, a number of inputs is needed. When the producers of hot rolled flat steel purchase/contract these inputs, the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system that applies across all levels of government and sectors.
- (65) As a consequence, not only the domestic sales prices of hot rolled flat steel are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts I and II of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that, in itself was produced in the PRC by combining a range of factors of production, is exposed to significant distortions. The same applies for the input to the input and so forth.
- (66) On 19 May 2022 ⁽⁵¹⁾ and on 16 September 2022 ⁽⁵²⁾, CISA submitted a number of arguments concerning the allegations on significant distortions. First, CISA claimed that the Report relied on by the Commission failed to meet the standards of impartial and objective evidence and evidence of sufficient probative value, given in particular that it was prepared by the Commission with the specific purpose of facilitating Union industries to lodge a complaint in the area of trade measures. Furthermore, CISA claimed that since the Report was published in 2017, it could not reflect the alleged distortions for the investigation period covering the 2021 calendar year.
- (67) The Commission disagreed. The Commission noted that the Report is a comprehensive document based on extensive objective evidence, including legislation, regulations and other official policy documents published by the GOC, third party reports from international organisations, academic studies and articles by scholars, and other reliable independent sources. It was made publicly available since December 2017, so that any interested party would have had ample opportunity to rebut, supplement or comment on it and the evidence on which it is based, and neither the GOC nor other parties have submitted arguments or evidence rebutting the sources included in the Report. Likewise, regarding the argument that the Report was outdated, the Commission noted in particular that

⁽⁴⁹⁾ See Article on Ansteel website: 鞍钢集团网站 (ansteel.cn) (Source: Angang Daily 2021-11-24)

⁽⁵⁰⁾ See Commission Implementing Regulation (EU) 2021/635, recitals 134-135 and Commission Implementing Regulation (EU) 2020/508 of 7 April 2020 (OJ. L 110, 8.4.2020, p. 3), recitals 143-144.

⁽⁵¹⁾ CISA's 'Comments in the EU expiry review of the e anti-dumping measures applicable to imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the people's republic of China', submitted on 19 May 2022.

⁽⁵²⁾ CISA's 'Comments on the note on the sources for the determination of the normal value in the EU expiry review on anti-dumping measures concerning imports of certain hot rolled flat products or iron, non-alloy or other alloy steel (HRF) originating in China', submitted on 16 September 2022.

the main policy documents and evidence contained in the Report, including the relevant five-year plans and legislation applicable to the product under review were mostly still relevant during the review investigation period, and that no parties have proven that this was no longer the case. China only started publishing new five-year plans throughout year 2021 and a lot of those plans were only made public in the second half of the year. This was further confirmed through the case-specific research undertaken by the Commission, as summarised above.

- (68) Second, CISA submitted that the WTO Anti-Dumping Agreement ('ADA') does not recognize the concept of significant distortions in Article 2.2 of ADA. Instead, the provision allows the construction of the normal value in a limited number of specific conditions, with significant distortions not featuring among such conditions. Moreover, CISA submitted that Article 2.2 of ADA only permits using the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and profits whereas, Article 2(6a) of the basic Regulation allows the use of data from an appropriate representative country, thereby being WTO inconsistent. Furthermore, CISA claimed that any constructed value would need to be calculated in accordance with Article 2.2.1.1 of ADA and in line with the interpretation by WTO Appellate Body given in the EU – Biodiesel (DS 473) case, as well as by the WTO Panel in the EU – Cost Adjustment Methodologies II (Russia) (DS494) case, which do not mention the concept of significant distortions nor the possibility to disregard the exporting company's data.
- (69) The Commission considered that the provisions of Article 2(6a) of the basic Regulation are fully consistent with the European Union's WTO obligations and the jurisprudence cited by CISA. Furthermore, it is the Commission's view that, in accordance with the decision of the WTO Panel and the Appellate Body in DS473, the provisions of the basic Regulation that apply generally with respect to all WTO Members, such as Article 2(5), second subparagraph, permit the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. The existence of significant distortions renders costs and prices in the exporting country inappropriate for the construction of normal value. In these circumstances, Article 2(6a) of the basic Regulation envisages the construction of costs of production and sale on the basis of undistorted prices or benchmarks, including those in an appropriate representative country with a similar level of development as the exporting country. In relation to the DS 494, the Commission recalled that both the EU and the Russian Federation appealed the findings of the Panel, which are not final and therefore, according to standing WTO case-law, have no legal status in the WTO system, since they have not been endorsed by the Dispute Settlement Body through a decision by the WTO Members. In any event, the Panel Report in this dispute specifically considered the provisions in Article 2(6a) of the basic Regulation to be outside of the scope of that dispute. Therefore, the Commission rejected this claim.
- (70) Third, CISA argued that the practice of referring to past investigations as 'evidence' of certain allegations, as done by the applicant in the request in the present investigation, would likely not withstand the Appellate Body's approach on the burden of proof, as set out in the WTO Appellate Body's ruling in the US – Definitive Antidumping and Countervailing Duties on Certain Products (China) (DS 379) case. In particular, CISA referred to the findings made by the Commission in its anti-subsidy investigation as regards HRF ⁽⁵³⁾.
- (71) The Commission disputes that argument. On the one hand, the request did not only rely on the HRF CVD but also added additional sources to substantiate the claim regarding the distortions in the HRFS market ⁽⁵⁴⁾. On the other hand, the Commission is not making its conclusions about applicability of 2(6a) on the basis of the request but on the basis of all evidence available, as collected during the investigation and presented in its entirety in this section.
- (72) Fourth, CISA raised the issue of the 14th FYP, pointing out that, on the one hand, the 14th FYP indeed references the steel sector but only in a general context, noting the importance of generally transforming and upgrading traditional industries and that on the other hand, the plan should not be considered binding law but rather a guiding document expressing policy views for the future. Furthermore, CISA considered that such plans exist also in the EU with the publication of the European Commission's 'White Papers', 'Green Papers' etc.

⁽⁵³⁾ OJ L 146, 9.6.2017, p. 17.

⁽⁵⁴⁾ For instance, reference to Implementing Regulation (EU) No 214/2013 (paragraph 80 of the request) (OJ L 73, 15.3.2013, p. 1).

- (73) This argument could not be accepted. First of all, the FYPs published by the GOC are not merely general guidance documents, but are of a legally binding nature. In this respect, the Commission referred to the detailed analysis of the plans in Chapter 4 of the Report, with a section specifically dedicated to the binding nature of plans in Section 4.3.1. The 14th FYP explicitly reminds all authorities to diligently implement the plans: *'We will strengthen planning management systems such as catalogues and lists, compilation and archival, and alignment and coordination, develop lists and catalogues such as the "14th Five-Year" National-Level Special Plans, promote plan archival relying on the national planning integrated management information platform, and bring various plans under unified management. We will establish and improve planning alignment and coordination mechanisms, align plans approved by the CCP Central Committee and the State Council and provincial development plans with this plan before submission for approval, ensure that national-level spatial planning, special planning, regional planning, and other levels of planning are coordinated with this plan in terms of main goals, development directions, overall layout, major policies, major projects, and risk prevention and control.'* ⁽⁵⁵⁾ Furthermore, the 14th FYP on Developing the Raw Materials Industry stipulates that *'all localities need to better themselves with this Plan, and include the main contents and major projects herein in their primary local tasks', while 'steel and other key sectors shall formulate specific implementation opinions based on the objectives and tasks of this Plan.'* ⁽⁵⁶⁾
- (74) No evidence or argument to the contrary has been adduced by the GOC in the present investigation.
- (75) After disclosure, CISA further emphasised that the Report fails to meet the standards of impartial and objective evidence and evidence of sufficient probative value. In relation to the above, CISA further referred to the various 'Five-Year Plans' which, according to CISA, should be seen as a general policy document setting various priorities in terms of public investments and not as binding law.
- (76) As explained in recitals (67) and (73) these claims were rejected and since no additional evidence or argument was submitted upon disclosure the Commission decision remained unchanged.
- (77) In sum, the evidence available showed that prices or costs of the product under review, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation, as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case. Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as described in the following section.

3.4.1. Representative country

3.4.1.1. General remarks

- (78) The choice of the representative country was based on the following criteria pursuant to Article 2(6a) of the basic Regulation:
- A level of economic development similar to the PRC. For this purpose, the Commission used countries with a gross national income per capita similar to the PRC on the basis of the database of the World Bank ⁽⁵⁷⁾;
 - Production of the product under review in that country ⁽⁵⁸⁾;
 - Availability of relevant public data in the representative country.
 - Where there is more than one possible representative country, preference should be given, where appropriate, to the country with an adequate level of social and environmental protection.

⁽⁵⁵⁾ See Article LXIV, Section 2 of the 14th FYP.

⁽⁵⁶⁾ See Section VIII of the 14th FYP on Developing the Raw Materials Industry.

⁽⁵⁷⁾ World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>.

⁽⁵⁸⁾ If there is no production of the product under review in any country with a similar level of development, production of a product in the same general category and/or sector of the product under review may be considered.

- (79) As indicated in recital (38), on 29 August 2022, the Commission issued a note for the file on the sources for the determination of the normal value (the 'FOP Note'). The note described the facts and evidence underlying the relevant criteria and informed interested parties of the intention to consider Mexico as an appropriate representative country in the present case if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation would be confirmed.
- (80) In line with the criteria listed under Article 2(6a) of the basic Regulation, the Commission identified Mexico as a country with a similar level of economic development as the PRC. Mexico is classified by the World Bank as 'upper-middle income' country on a gross national income basis. Furthermore, Mexico was identified as a country where the product under review is being produced and where relevant data was readily available.
- (81) Finally, given the absence of cooperation and having established that Mexico was an appropriate representative country, based on all of the above elements, there was no need to carry out an assessment of the level of social and environmental protection in accordance with the last sentence of Article 2(6a)(a) first indent of the basic Regulation.

3.4.1.2. Conclusion

- (82) In the absence of cooperation, as proposed in the expiry review request and given that Mexico met the criteria laid down in Article 2(6a)(a), first indent of the basic Regulation, the Commission selected Mexico as appropriate representative country.

3.4.2. Sources used to establish undistorted costs

- (83) In the note on relevant sources to use for the determination of the normal value, the Commission explained that, due to the absence of cooperation, it would need to rely on facts available according to Article 18 of the basic Regulation. The choice of representative country was based on the information contained in the expiry review request, combined with other sources of information deemed appropriate according to the relevant criteria laid down in Article 2(6a) of the basic Regulation, in accordance with Article 18(5) of the basic Regulation, including Global Trade Atlas ('GTA') to establish the undistorted cost of most of the factors of production, notably the raw materials. In addition, the Commission stated that it would use the following sources for establishing undistorted costs of energy: for the electricity, the latest available data on electricity industrial prices applicable in Mexico, as published by Globalpetrolprices.com ⁽⁵⁹⁾ and for the gas the price published by Indices de Referencia de Precios de Gas Natural (IPGN) ⁽⁶⁰⁾. Moreover, the Commission stated that for establishing undistorted costs of labour it would use the last publicly available data from International Labour Organisation Department of Statistics (ILOSTAT) ⁽⁶¹⁾ to determine the wages in Mexico.
- (84) The Commission included a value for manufacturing overhead costs in order to cover costs not included in the factors of production referred to above. The Commission established the ratio of manufacturing overheads to the direct costs of manufacturing, based on data of Union producers provided by the applicant, which provided specific information for that purpose.
- (85) In the FOP Note the Commission indicated that for the country identified as country where product under review is being produced, i.e. Mexico, the Commission identified the company Ternium S.A. as a producer of the product under review, with recent public financial data showing profits and reasonable amount for SG&A for establishing the undistorted normal value.

⁽⁵⁹⁾ https://www.globalpetrolprices.com/Mexico/electricity_prices/

⁽⁶⁰⁾ <https://www.cre.gob.mx/IPGN/index.html>

⁽⁶¹⁾ <https://ilostat.ilo.org/data/country-profiles/>

- (86) The analysis of import data showed that Mexico could be used as an appropriate representative country as their imports of the main factors of production were not materially affected by imports from PRC or any of the countries listed in Annex I to Regulation (EU) 2015/755 ⁽⁶²⁾.
- (87) In light of the above considerations, the Commission informed the interested parties that it intended to use Mexico as an appropriate representative country and the company Ternium S.A, in accordance with Article 2(6a)(a), first indent of the basic Regulation, in order to source undistorted prices or benchmarks for the calculation of normal value.
- (88) Interested parties were invited to comment on the appropriateness of Mexico as a representative country and of Ternium S.A as producers in the representative country.
- (89) In their comments, CISA argued that among the several representative countries which the Commission has recently chosen, Mexico is the only one that is unable to report import prices on a CIF level and challenged the Commission's approach to add 5 % to the FOB price in order to convert the FOB price into a CIF one. The Commission observed that even if that conversion ratio was not applied, the price difference between the normal value and the export price to the rest of the world established in recital (118) below would have been significant. Consequently, it rejected the claim.
- (90) CISA also argued that the benchmark for ferroalloys was not reliable because the HS codes used consisted of several different alloys with very different unit prices. The Commission observed that CISA failed to indicate which type(s) of alloys should be removed from the aggregated data for that benchmark price. Furthermore, the Commission considered that this claim was without object because even if no benchmark price was established for this input, as explained in recital (118) below, the price difference between the normal value and the export price to the rest of the world established would remain significant. Consequently, it rejected the claim.
- (91) CISA also challenged the appropriateness of the financial results of Ternium S.A. since they are reported at a consolidated level covering several countries and other products.
- (92) The Commission considered that in the case at hand the use of Ternium S.A.'s consolidated data was appropriate in the absence of more detailed data limited to Ternium Mexico and to the product under review. In addition, the company produces predominantly steel products. Therefore, its data was considered representative for the steel sector and the product under review. Moreover, Article 2(6a)(a) of the basic Regulation requires that the amount for SG&A costs and for profits included in the constructed normal value should be undistorted and reasonable. CISA neither argued nor substantiated the argument that the amount used was either distorted or unreasonable. This claim was therefore rejected.
- (93) CISA alleged that the use of Ternium S.A.'s financial data from 2020 was incompatible with the review investigation period that is 2021. The Commission considered the figures of Ternium S.A. as reasonable since the company was profit-making during the review investigation period, its financial statements were readily available and Mexico represents 52 % of its consolidated sales. Furthermore, the Commission considered that, in the context of this investigation, use of 2020 as reference year is justified as it is the most recent year when Ternium S.A. was profitable and showed a reasonable level of SG&A and profit. As explained in the FOP note, in financial year 2021 the profit was exceptionally high, i.e. 58,25 %, likely reflecting the post COVID-19 recovery. Consequently, the Commission considered that using the data for 2020 was more appropriate and rejected the claim.
- (94) After disclosure, CISA claimed that the Commission did not provide the disclosure of 'Benchmarks used for the purpose of determining the normal value' which, according to CISA, may lead to an imminent breach of the basic principle of anti-dumping law and procedure, in particular Article 20 of the basic Regulation, and the rights of defence of CISA with respect to fundamental aspects of the expiry review investigation. Furthermore, CISA stated that providing detailed benchmark prices (and the calculations) for the purpose of determining the normal value is a consistent practice of the Commission, both in original investigations and in expiry reviews, and therefore requests the Commission to align its practice in similar proceedings.

⁽⁶²⁾ Regulation (EU) 2015/755 of the European Parliament and of the Council (OJ L 123, 19.5.2015, p. 33) as amended by Commission Delegated Regulation (EU) 2017/749 of 24 February 2017 amending Regulation (EU) 2015/755 of the European Parliament and of the Council as regards the removal of Kazakhstan from the list of countries in Annex I thereto (OJ L 113, 29.4.2017, p. 11).

- (95) The Commission noted that it provided benchmark prices i.e. unit values of the main factors of production in the FOP Note from 29 August 2022 as well as their sources. CISA, as an interested party, was notified when the FOP Note was placed on the file and had access to it. None of the benchmarks quoted in that Note had been subsequently modified. Furthermore, the Commission used the same methodology to calculate the normal value as in the request which was made available to all interested parties. Finally, the Commission recalled that no company-specific disclosure took place given the lack of cooperation by any of the producers in the PRC. Consequently, the claim was rejected.

3.4.2.1. Conclusion

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

3.4.3. Undistorted costs and benchmarks

3.4.3.1. Factors of production

- (97) Considering all the information based on the request and after analysing the comments from interested parties, the following factors of production and their sources have been identified in order to determine the normal value, in accordance with Article 2(6a)(a) of the basic Regulation:

Table 1

Factors of production of certain hot rolled flat products of iron, non-alloy or other alloy steel

Factor of Production	Commodity Code	Undistorted value in CNY	Unit of measurement
Raw materials			
Steel scrap	72041001; 72042101; 72042999; 72044101; 72044999	3 135,04	Tonne
Iron ore	26011101; 260112	3 364,05	Tonne
Coal	270119; 27011201	757,98	Tonne
Coke	27040003; 27131101	1 249,21	Tonne
Ferroalloys	72022102; 72022199; 72022999; 72023001; 72024101; 72024999; 72027001; 72029104; 72029202; 72029301; 72029999	18 560,08	Tonne
Slabs	720712; 72072002; 72241006; 722490	4 980,54	Tonne
By-product:			
Credits & By-products valued as scrap	72041001; 72042101; 72042999; 72044101; 72044999	3 135,04	Tonne
Labour			
Labour		13,00	per man hour
Energy			
Electricity		1 058,69	MWH

Natural gas		34,42	GJ
Oxygen	280440	514,52	Km3

3.4.3.2. *Raw materials*

- (98) In order to establish the undistorted price of raw materials as delivered at the gate of a representative country producer, the Commission used as a basis the weighted average import price to the representative country as reported in the GTA, to which import duties were added. An import price in the representative country was determined as a weighted average of unit prices of imports from all third countries, excluding the PRC and countries which are not members of the WTO, listed in Annex I of Regulation (EU) 2015/755. The Commission decided to exclude imports from the PRC into the representative country as it concluded in recital (77) that it is not appropriate to use domestic prices and costs in the PRC due to the existence of significant distortions, in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected export prices. After excluding imports from the PRC and countries which are not members of the WTO into the representative country, the volume of imports from other third countries remained representative.
- (99) Normally, domestic transport prices should also be added to these import prices. However, considering the finding in section 3.4 as well as the nature of this expiry review investigation, which is focused on finding whether dumping continued during the review investigation period or could reoccur, rather than finding its exact magnitude, the Commission decided that adjustments for domestic transport were unnecessary. Such adjustments would only result in increasing the normal value and hence the dumping margin.

3.4.3.3. *Labour*

- (100) ILOSTAT publishes detailed information on wages in different economic sectors in Mexico. The Commission used the latest available statistics for 2021, for average labour cost and average weekly hours worked in Mexico.

3.4.3.4. *Electricity*

- (101) The price of electricity for companies (industrial users) in Mexico is published by Globalpetrolprices.com. The Commission used the data on the industrial electricity prices for September 2021.

3.4.3.5. *Natural gas*

- (102) The Commission used the price of gas in Mexico for the review investigation period as published by Indices de Referencia de Precios de Gas Natural (IPGN) ⁽⁶³⁾, that enables to determine the price of natural gas supplied to industrial users.

3.4.3.6. *Manufacturing overhead costs, SG&A, profits and depreciation*

- (103) According to Article 2(6a)(a) of the basic Regulation, '*the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits*'. In addition, a value for manufacturing overhead costs needs to be established to cover costs not included in the factors of production referred to above.
- (104) The Commission used the financial data of Ternium S.A, producer in the representative country, as referred to in recital (85).
- (105) In order to establish an undistorted value for the manufacturing overheads and given the absence of cooperation from the exporting producers, the Commission used facts available in accordance with Article 18 of the basic Regulation. Therefore, based on the data provided by the Union producers in the request, the Commission established the ratio of manufacturing overheads to the total manufacturing and labour costs. This percentage was then applied to the undistorted value of the cost of manufacturing to obtain the undistorted value of manufacturing overheads, depending on the model produced.

⁽⁶³⁾ <https://www.cre.gob.mx/IPGN/index.html>

3.4.4. *Calculation of the normal value*

- (106) On the basis of the above, the Commission constructed the normal value on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (107) First, the Commission established the undistorted manufacturing costs. In the absence of cooperation by the exporting producers, the Commission relied on the information provided by the applicant in the review request on the usage of each factor (materials and labour) for the production of certain hot rolled flat products of iron, non-alloy or other alloy steel.
- (108) Once the undistorted manufacturing cost established, the Commission added the manufacturing overheads, SG&A and profit. Manufacturing overheads were determined based on data provided by the applicant. SG&A and profit were determined based on the financial statements of Ternium S.A for the year 2020 as reported in the company's audited accounts ⁽⁶⁴⁾. The Commission added the following items to the undistorted costs of manufacturing:
- Manufacturing overheads, which accounted in total for 11,30 % of the direct costs of manufacturing,
 - SG&A and other costs, which accounted for 10,74 % of the Costs of Goods Sold ('COGS') of Ternium S.A, and
 - Profits, which amounted to 16,33 % of the COGS as achieved by Ternium S.A, were applied to the total undistorted costs of manufacturing.
- (109) On that basis, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation. The normal value established on this basis is at 1 381,50 EUR/tonnes.
- (110) After disclosure, CISA agreed with the Commission's use of the financial data of 2020 instead of 2021, although it also argued that Ternium S.A's 16,33 % profit in 2020 was still not low for iron & steel industry.
- (111) After disclosure, CISA contested the normal value established by the Commission. As stated in recital (94), CISA argued that it was unable to verify the accuracy of the normal value established by the Commission and, according to CISA, the normal value established during the investigation was potentially incorrect. This was due to the fact that, whilst the periods used in the request and in the expiry review mostly overlapped, the Commission found a normal value in the expiry review which is more than 80 percent higher than in the request, even though the same calculation methodology was applied and same country was used as the representative country.
- (112) In the FOP Note of 29 August 2022 the Commission disclosed the unit values of the main 'factors of production'. From those values, it was evident that the benchmark price for iron ore which is one of the most significant input used for the production of the product under review increased significantly, that is by 186 % during the review investigation period. Moreover, no comments were received upon placing of the FOP Note on the case file regarding differences between prices of the factors of production between the FOP Note and the request. Therefore, the claim was rejected.

3.4.5. *Continuation of dumping*

- (113) In the absence of cooperation from Chinese exporting producers, the export price was determined on the basis of facts available in accordance with Article 18 of the basic Regulation. The Commission tried to use available statistical information from Eurostat to determine export prices.
- (114) However, only 28 743 tonnes of certain hot-rolled flat products of iron, non-alloy or other alloy steel were imported from the PRC during the review investigation period according to Eurostat, corresponding to 0,1 % of the free market consumption. For this reason, the Commission concluded that these low volumes do not provide a sufficient basis for a continuation of a dumping analysis. The Commission therefore focused its investigation on the likelihood of recurrence of dumping should the measures be allowed to lapse.

⁽⁶⁴⁾ https://s2.q4cdn.com/156255844/files/doc_financials/quarterly/2021/4Q2021/FS-Ternium-Dec31-2021.pdf

3.4.6. *Likelihood of recurrence of dumping*

- (115) In light of the considerations set out in recitals (113) and (114) above, the Commission further analysed whether there was a likelihood of recurrence of dumping should the measures lapse. In doing so, the following elements were analysed: the export price of certain Chinese hot-rolled flat products of iron, non-alloy or other alloy steel to the rest of the world, the Chinese production capacity and spare capacity and the attractiveness of the Union market.

3.4.6.1. *Comparison between export prices to third countries and the normal value*

- (116) The Commission analysed the price pattern of Chinese exports to third countries during the review investigation period. Therefore, it consulted publicly available information such as the Chinese exporting statistics as reported in Global Trade Atlas ('GTA') and extracted the quantities and values of the export of certain hot-rolled flat steel products for the review investigation period.
- (117) The Chinese export statistics in GTA reported an average FOB export price from China to other countries amounting to 660 EUR/tonne, which was adjusted to an ex-works price (after adjustments for sea and domestic freight, and unloading charges) amounting to 626 EUR/tonne.
- (118) The average export price found during the review investigation period was above 100 % below the normal value established in Section 3.4.4 above. Therefore, it was considered likely that, if the current measures were to be repealed, the Chinese exporting producers would start selling to the Union at levels below the normal value found.

3.4.6.2. *Production capacity and spare capacity in the PRC*

- (119) In the absence of cooperation by the exporting producers in the PRC, the Commission based its findings with regard to the capacity of the other exporting producers on facts available and relied on the information contained in the expiry review request, as well as other available sources.
- (120) In 2020, China accounted for 56,5 % of the world's crude steel output, against 53,3 % in 2019 ⁽⁶⁵⁾. In September 2020, a statement by the 88th Session of the OECD Steel Committee noted that '*despite the global negative demand shock, production and inventories have significantly increased from year-ago levels in China*'. Moreover, the Steel Committee noted '*with concern the divergence from [the] global trend in China, where steel production reached record volumes in the first semester of 2020, and where inventories have reached historically high levels. These developments pose a risk of oversupply in China exacerbating global imbalances resulting from the COVID-19 demand shocks*'. The trend of ever-expanding steel production capacity in China has been further supported by a '*huge loosening of credit conditions*', combined with increasing investment by large steel producers, while smaller players are still outside of the capacity control system. Also, a recent OECD Report of February 2021 noted an increasing steel making overcapacity worldwide and particularly driven by Asian countries including China ⁽⁶⁶⁾.
- (121) The Chinese government has ambitious plans for its steel industry ⁽⁶⁷⁾ as it aims to remove obsolete plants and uncompetitive companies with excessive costs while focusing on boosting and promoting steel producers which are in line with government policies and priorities. The idea is to clean-up the industry, strengthening leading players and clearing underperformers and those who do not comply (or align) with government priorities. The goal is to nurture '*a new generation of industry leaders*'. This is achieved through policies such as capacity swap system, debt-equity swaps, which allow for a very substantial state discretion over the operations of individual firms. The underlying purpose is to increase capacities of 'selected' players, which are high-performer producers that comply with government's current objectives to the steel industry.

⁽⁶⁵⁾ Worldsteel, 26.01.2021, in ThinkDesk China Research & Consulting, 'China's State-Business Nexus Revisited – Government Interventions and Market Distortions in the Chinese Steel Industry', 17 October 2021, p. 92.

⁽⁶⁶⁾ OECD, 'Latest developments in steelmaking capacity', February 2021, page 11.

⁽⁶⁷⁾ ThinkDesk China Research & Consulting, 'China's State-Business Nexus Revisited – Government Interventions and Market Distortions in the Chinese Steel Industry', 17 October 2021.

- (122) The information contained in the expiry review request estimated the total Chinese capacity of certain hot-rolled flat products of iron, non-alloy or other alloy steel at more than 345 million tonnes, while production and Chinese consumption were both estimated at 314 million tonnes in 2020. On this basis, the spare capacity in China was estimated at 31 million tonnes in 2020, which is indicative for the spare capacity in the review investigation period and is almost equal to the total Union consumption on the free market (about 35 million tonnes) in the review investigation period.
- (123) The deceleration in Chinese steel demand in the beginning in 2021 is and will be a key driver of increasing exports. The resulting imbalance between capacity and demand is likely to increase pressure on producers to export. Chinese capacities are too big compared to the actual needs of the Chinese economy.
- (124) In addition, one of main markets, that is the USA, is protected by anti-dumping measures on the product under review, which reduces access of the Chinese exporting producers.
- (125) On this basis, it is likely that Chinese producers will direct their spare capacities to the Union market in large quantities at dumped prices should the measures lapse.

3.4.6.3. *Attractiveness of the Union market*

- (126) The Union market is among the largest markets of certain hot-rolled flat steel products worldwide. The Chinese market cannot absorb the excess steel capacity and major third countries markets are closed for Chinese exports as they have anti-dumping, safeguards or other protective measures in place against the PRC ⁽⁶⁸⁾. In addition, price levels in the Union (the average price charged by the Union industry was EUR/tonne 734 during the review investigation period) are above the average price charged by Chinese exporting producers to the rest of the world (EUR/tonne 714 at CIF level). Since, as explained in recital (200) below, HRF is a highly price sensitive commodity product, the Chinese exporters would have a strong incentive to direct their exports to the Union should the measures lapse.
- (127) The applicant claimed in its request that the Union steel safeguard measures alone, which apply to the product under review, would not be sufficient to protect the Union market against imports in significant quantities at dumped prices. As China did not receive any country-specific quota for the product under review, Chinese exporting producers have access to a large amount of residual quota volumes under which they could direct their exports to the Union market if the anti-dumping measures were to lapse. As a result, if anti-dumping measures were to be repealed, Chinese export volumes are likely to increase significantly within the residual quota and thus flood the Union market before any out-of-quota duty under the safeguard measure would become applicable.
- (128) In light of the above, the Commission concluded that the Union market represents an attractive target for the existing spare capacity in the PRC if anti-dumping measures were to be repealed.
- (129) After disclosure, CISA claimed that even if it is based on facts available pursuant to Article 18 of the basic Regulation, it is unreasonable to have the normal value of the Chinese exporters that is almost twice the cost of production of the Union industry.
- (130) As stated in the recitals (95) and (112) the Commission provided the unit values of the factors of production and elaborated on the methodology used to calculate the normal value. Since there was no cooperation from the exporting producers from the PRC, the findings with regard to the imports from the PRC were made on the basis of the facts available pursuant to Article 18 of the basic Regulation including Global Trade Atlas ('GTA') to establish the undistorted cost of most of the factors of production, notably the raw materials. Consequently, the claim was rejected.

⁽⁶⁸⁾ Currently there anti-dumping measures in the following countries: Canada, USA, Türkiye, Mexico and UK. GCC (Gulf countries) has safeguard measures and USA has also Section 232 measures.

3.4.6.4. *Conclusion on the likelihood of recurrence of dumping*

- (131) In view of the findings of spare capacities, attractiveness of the Union market in terms of size and prices and the fact that the prices charged by the exporting producers from the PRC to third countries are significantly below the established normal value, the Commission concluded that there is a likelihood of recurrence of dumping should the measures be allowed to lapse.

4. INJURY

4.1. Definition of the Union industry and Union production

- (132) According to the applicant the like product was manufactured by 21 producers in the Union during the period considered. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (133) The total Union production of the product under review during the review investigation period was established at around 70 million tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry, such as the request for the expiry review, the verified questionnaire replies and the macro questionnaire reply submitted by EUROFER. As indicated in recital (13), the Union producers selected in the sample represented 29 % of the total Union production of the like product during the review investigation period.

4.2. Union consumption

- (134) The product under review is regarded as a primary material for the production of various value-added downstream products, starting with cold-rolled products. Given that the Union industry is mostly vertically integrated and produces both the product under review and downstream products, both the captive and free market were analysed separately, where appropriate.
- (135) The distinction between captive and free market is relevant for the injury analysis because products destined for the captive market are not exposed to direct competition from imports, and transfer prices, if any, 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 set according to market conditions. In addition, the total free market includes sales of Union producers to unrelated customers and non-captive sales to related companies.
- (136) To provide a picture of the Union industry that is as complete as possible, the Commission obtained data for the entire activity of the like product and determined whether the production was destined for the captive or the free market. The Commission found that around 60 % of the total Union production of the like product was destined for the captive market during the review investigation period.
- (137) The Commission established the Union free market consumption on the basis of (a) the sales on the Union market of all known producers in the Union, as reported in the macro questionnaire reply from EUROFER and (b) the imports to the Union from all third countries as reported by Eurostat. The Union captive market consumption was established on the basis of the captive use and captive sales on the Union market of all known producers in the Union, as reported in the macro questionnaire reply from EUROFER.

(138) Union consumption developed as follows:

Table 2

Union consumption (000 tonne)

	2018	2019	2020	Review investigation period
Free market consumption	34 533	32 411	27 899	34 869
<i>Index</i>	100	94	81	101
Captive consumption	45 289	42 011	36 989	40 424
<i>Index</i>	100	93	82	89
Total Union consumption	79 822	74 422	64 888	75 293
<i>Index</i>	100	93	81	94

Source: Eurostat, Macro questionnaire reply from EUROFER.

- (139) Total Union consumption declined by 7 % in 2019 and sharply dropped further by another 12 % in 2020 due to a slump in demand caused by the COVID-19 pandemic. This decrease was however followed by a good recovery driven by the rebound in steel demand during the review investigation period but was still 6 % below the level of 2018.
- (140) Free market consumption followed a similar trend to that of total Union consumption. It decreased sharply by 19 % up to 2020 and recovered strongly during the review investigation period, reaching even a level 1 % above that of 2018.
- (141) The captive market consumption trend was nearly identical to the total Union consumption trend, declining sharply until 2020 by 18 %, followed by a recovery reaching however only 89 % of the 2018 level.
- (142) Overall, total Union consumption decreased 6 % during the period considered.

4.3. Imports from the country concerned

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

- (143) The Commission established the volume of imports on the basis of Eurostat data. The market share of the imports was established on the basis of a comparison between import volumes and the Union free market consumption, as reported in Table 2 above.
- (144) Imports into the Union from the country concerned developed as follows:

Table 3

Import volume (000 tonnes), market share and prices (EUR/tonne)

	2018	2019	2020	Review investigation period
Volume of imports from the PRC	1,7	0,5	0,3	28,7
Market share (%)	0,0	0,0	0,0	0,1
PRC import prices	1 674	3 177	2 482	664
<i>Index</i>	100	190	148	40

Source: Eurostat, Macro Questionnaire reply from EUROFER.

- (145) After the imposition of measures in 2017, imports from China dropped to an insignificant level, with a negligible market share of 0,002 % in 2018. From 2018 to 2020, imports declined even further. During the review investigation period, imports from the PRC however, spiked in April 2021 in comparison to the low levels in the preceding three years. Market share, however, remained very low at 0,1 %.
- (146) Chinese import prices as reported in Eurostat were exceptionally high during 2018, 2019 and 2020, though they plummeted during the review investigation period. The exceptionally high import prices from 2018 to 2020 are likely connected with the fact that China exported a negligible volume to the Union, which cannot be considered reliable.
- (147) The Commission considered that Chinese import prices reported in Eurostat during the period considered are not representative of HRF average prices due to the very low volume of imports from the PRC during that period and that they could not be used to draw meaningful or relevant conclusions.
- (148) The imports of the product under review from other third countries developed as follows:

Table 4

Imports from third countries

Country		2018	2019	2020	Review investigation period
Total of all third countries except the PRC	Volume (1 000 tonnes)	7 997	7 225	5 879	9 635
	<i>Index</i>	100	90	74	120
	Market share (%)	23	22	21	28
	Average price (EUR/tonne)	532	482	428	765
	<i>Index</i>	100	90	80	144

Source: Eurostat.

- (149) Total imports of the product under review from third countries other than the country concerned decreased from 2018 to 2020 by 26 % and sharply increased in 2021 to reach a market share of 28 %, which is 20 % above the 2018 level. Overall, the Union imports HRF from more than 40 countries worldwide. The five biggest exporters of HRF to the EU during the review investigation period were Russia, India, Türkiye, Egypt and Taiwan, representing 18 % of the Union free market and 65 % of all imports of HRF. Individually, Russia was the largest exporter with a market share of 5,8 % whilst the other four countries held a market share between 2 % and 4 %, respectively. No other country holds a market share above 2 %. Among the biggest exporters, imports from Russia ⁽⁶⁹⁾ and Türkiye ⁽⁷⁰⁾ are currently covered by anti-dumping measures.

4.4. Economic situation of the Union industry**4.4.1. General remarks**

- (150) The assessment of the economic situation of the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

⁽⁶⁹⁾ OJ L 258, 6.10.2017, p. 24.⁽⁷⁰⁾ OJ L 238, 6.7.2021, p. 32.

- (151) As mentioned in recital (13), sampling was used for the assessment of the economic situation of the Union industry.
- (152) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data provided by the applicant that related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.
- (153) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, employment, productivity, magnitude of the dumping margin and recovery from past dumping.
- (154) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.
- (155) As explained in recitals (136) – (137), to provide a picture of the Union industry that is as complete as possible, the Commission obtained data for the entire production of the product concerned and determined whether the production was destined for the captive or the free market. Where relevant and possible the Commission analysed separately injury indicators related to the free and the captive market.

4.4.2. *Macroeconomic indicators*

4.4.2.1. *Production, production capacity and capacity utilisation*

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

Table 5

Production, production capacity and capacity utilisation

	2018	2019	2020	Review investigation period
Production volume (1 000 tonnes)	75 626	70 920	61 096	69 531
<i>Index</i>	100	94	81	92
Production capacity (1 000 tonnes)	90 923	92 584	91 965	93 249
<i>Index</i>	100	102	101	103
Capacity utilisation (%)	83	77	66	75
<i>Index</i>	100	92	80	90

Source: Macro questionnaire reply from EUROFER.

- (157) The production volume of the Union industry followed a similar trend as total Union consumption and decreased overall by around 8 % during the period considered, with a significant drop in 2020 followed by a recovery due to the rebound in steel demand during the review investigation period.
- (158) While the production capacity of the Union industry slightly increased during the period considered by 3 %, the capacity utilisation followed the same negative trend as production volume and consumption and decreased by 10 % between 2018 and the review investigation period.

4.4.2.2. Sales volume and market share

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

Table 6

Sales volume and market share in the free market (000 tonnes)

	2018	2019	2020	Review investigation period
Sales on the free market	26 534	25 185	22 020	25 205
<i>Index</i>	100	95	83	95
Market share (%)	77	78	79	72
<i>Index</i>	100	101	104	99

Source: Macro questionnaire reply from EUROFER.

- (160) The Union industry sales volume on the Union market followed the trend of consumption during the period considered. It decreased between 2018 and 2020 for the reasons explained in recital (139), followed by a rebound in the review investigation period. Yet, the rebound in the review investigation period was still below 2018 levels.
- (161) During the period considered, the Union industry's market share in terms of Union consumption increased slightly from 2018 to 2020 from 77 to 79 % to drop by seven percentage points between 2020 and the review investigation period to 72 %. As shown in table 4, this decline is explained by the fact that the market share of imports from third countries increased by 7 % between 2020 and the review investigation period, which explains the loss of the Union industry on the free market share.

Table 7

Captive volume on the Union market and market share (000 tonnes)

	2018	2019	2020	Review investigation period
Captive volume on the Union market	45 289	42 011	36 989	40 424
<i>Index</i>	100	93	82	89
Total production of Union Industry	75 626	70 920	61 096	69 531
% of captive volume compared to total production	59,9	59,2	60,5	58,1

Source: Macro questionnaire reply from EUROFER.

- (162) The Union industry captive volume (composed of captive use and captive sales on the Union market) decreased by 18 % from 2018 to 2020 and recovered by 7 percentage points in 2021, resulting in an overall decrease of 11 % during the period considered, from about 45 million tonnes to 40 million tonnes from the start to the end of the review investigation period. Overall, the captive and free market followed the same trend. Therefore, the Commission concluded that development of the captive market did not have any significant impact on the Union industry performance on the free market.
- (163) The Union industry's captive market share (expressed a percentage of total production) remained relatively stable during the period considered, ranging between 58,1 % and 60,5 %.

4.4.2.3. Growth

- (164) In a context of decreasing consumption and production, the Union industry lost sales volume and market share on the free market. Overall, there was no growth for the Union industry over the period considered.

4.4.2.4. Employment and productivity

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

Table 8

Employment and productivity

	2018	2019	2020	Review investigation period
Number of employees	41 161	38 980	36 207	38 470
<i>Index</i>	100	95	88	93
Productivity (unit/employee)	1 824	1 819	1 687	1 807
<i>Index</i>	100	100	93	99

Source: Macro questionnaire reply from EUROFER.

- (166) Between 2018 and the review investigation period, the number of employees engaged in the production of the product under review followed the trend of the volume of Union production, it decreased sharply between 2018 and 2020 to recover slightly during the review investigation period. Overall resulting in a decrease by 7 % over the period considered.
- (167) The productivity of the Union industry's workforce, measured as output (tonnes) per employee, remained overall stable during the period considered.

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

- (168) As explained in recital (114), it was not possible to establish an affirmative determination of dumping during the review investigation period. Therefore, no dumping margin could be established. The investigation therefore focused on the likelihood of a recurrence of dumping should the anti-dumping measures be repealed.
- (169) The anti-dumping measures imposed following the original investigation allowed the Union industry to recover from past dumping, as is shown by the data for 2018. This was also confirmed by the Commission findings in the anti-dumping investigation against hot-rolled flat products from Türkiye ⁽⁷¹⁾.

4.4.3. Microeconomic indicators

4.4.3.1. Prices and factors affecting prices

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

⁽⁷¹⁾ Recital 139, Commission Implementing Regulation (EU) 2021/9 of 6 January 2021 imposing a provisional anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Turkey (OJ L 3, 7.1.2021, p. 4).

Table 9

Sales prices and cost of production in the Union (EUR/tonne)

	2018	2019	2020	Review investigation period
Average unit sales price on the free market	549	509	450	734
<i>Index</i>	100	93	82	134
Unit cost of production	518	557	534	669
<i>Index</i>	100	108	103	129

Source: Sampled Union producers questionnaire reply.

- (171) The Union industry's average sales prices decreased by 18 % between 2018 and 2020 and increased drastically by 34 % in 2021 compared to 2018. The trend of unit sales prices during the period considered was influenced by the severe disruptions caused by the COVID-19 pandemic and the post-pandemic resumption in demand. In 2021, high steel demand, tight supply, and increased cost of production were the factors that influenced the sudden and significant rise in the unit sales price.
- (172) The unit cost of production increased over the period concerned by 29 %. However, in 2019 the cost of production increased whilst the unit sales prices dropped. The inability for the Union industry to reflect the increased cost of production in their sales price was due to large volumes of dumped imports from Türkiye, pushing the prices downwards. In 2020, both cost of production and sales prices dropped, but the former to a smaller extent. This was due to the slump in the market during the COVID-19 pandemic, depressing prices significantly whilst the cost of production was less affected. The unit cost of production surged in 2021 due to a jump in energy and commodity prices. However, due to the post-COVID recovery, demand surged as well and consequently, prices also increased significantly (more than 50 % between 2020 and the review investigation period), even more than the increase in production costs in the same period.

4.4.3.2. Labour costs

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

Table 10

Average labour costs per employee

	2018	2019	2020	Review investigation period
Average labour costs per employee (EUR/FTE)	64 164	69 352	69 748	78 444
<i>Index</i>	100	108	109	122

Source: Sampled Union producers questionnaire reply.

- (174) During the period considered average labour costs increased by 22 %. While the number of employees in the review investigation period went down, compared to 2018, the average labour cost per employee increased.

4.4.3.3. *Inventories*

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

Table 11

Inventories

	2018	2019	2020	Review investigation period
Closing stocks (tonnes)	631 608	533 200	390 880	522 405
<i>Index</i>	100	84	62	83
Closing stocks as a percentage of production	5,0	4,5	3,8	4,6
<i>Index</i>	100	90	76	92

Source: Sampled Union producers questionnaire reply.

(176) During the period considered, the Union industry stock of HRF decreased continuously, with a drastic fall in 2020, which is explained by the effects of the Covid-19 pandemic, and a rebound in 2021. The HRF industry in the Union is characterised by framework contracts (monthly, quarterly, yearly) between producers and customers that fix the quantities and prices. These framework contracts are implemented through purchasing orders according to customers' needs. As a result, the Union industry can plan its production and inventories. Accordingly, and as also established in the original investigation, stocks are not considered an important injury indicator for this industry, since most types of the like product are produced by the Union industry based on specific orders of the users.

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

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

Table 12

Profitability, cash flow, investments and return on investments

	2018	2019	2020	Review investigation period
Profitability of sales in the Union free market (% of sales turnover)	8,4	- 7,2	- 18,0	14,1
<i>Index</i>	100	- 86	- 214	168
Cash flow (EUR)	496 319 788	- 6 211 922	- 130 468 840	645 183 908
<i>Index</i>	100	- 1,3	- 26	130
Investments (EUR)	216 927 207	433 154 031	181 406 902	394 535 083
<i>Index</i>	100	200	84	182
Return on investments (%)	9,1	- 6,0	- 13,3	17,4
<i>Index</i>	100	- 66	- 146	191

Source: Sampled Union producers questionnaire reply.

- (178) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the free market sales of the like product in the Union as a percentage of the turnover of those sales.
- (179) Profitability fluctuated during the period considered and overall profitability increased by 5,7 percentage points during the period considered. After the imposition of measures in 2017, the industry recovered and recorded a profit in 2018. Losses were, however, incurred in 2019 and profitability reached its lowest level, namely -18 %, in 2020 at the core of the pandemic, while in 2021 profit strongly rebounded to 14,1 %. Following the imposition of measures against the PRC in 2017, dumped imports at low prices from Türkiye rapidly increased, which explains the drop in profitability in 2019. This decrease in profitability was then exacerbated by the shocks caused by the global pandemic in 2020, such as supply chain disruptions and the decline in steel consumption. Spike in steel demand, coupled with increased sales prices, led to exceptionally high profits in 2021, which marked an exceptional year for the Union industry.
- (180) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow developed in a similar manner to profitability: a drastic fall in 2019-2020, followed by strong rebound in the review investigation period.
- (181) Between 2018 and the review investigation period, investments increased by 82 %. Overall, during the period considered, the investment flows followed a bimodal distribution: investment increased significantly in 2019, followed by a drop in 2020 and a second peak in 2021. In general, the investments were aimed at improving quality and greening of production.
- (182) The return on investments (ROI) is the profit in percentage of the net book value of investments. The return on investment significantly improved during the review investigation period as compared to 2018. In fact, during the period considered, the ROI increased by 8,3 percentage points. It developed in a similar way as the profitability: a drastic fall in 2019 and 2020, followed by strong rebound in the review investigation period.
- (183) The sampled Union producers' ability to raise capital was not affected during the review investigation period, which saw a speedy recovery from the pandemic.

4.5. Conclusion on injury

- (184) Following the imposition of anti-dumping measures against imports of HRF from China in 2017, imports from China decreased and remained below the de minimis level during the period considered allowing the Union industry to start recovering from the injurious effects of the dumped imports from China and, as confirmed by the Commission in Commission Regulation (EU) 2021/1100 concerning imports of HRF originating in Türkiye ⁽⁷²⁾, had recovered by the end of 2018. However, the recovery of the Union industry's economic situation came to an abrupt halt and was reversed in 2019, when the Union industry had to compete with significant volumes of low priced dumped imports from Türkiye, forcing it to set its prices below costs to keep its market share and thus causing a material injury to the Union industry ⁽⁷³⁾. In July 2021, the Commission imposed definitive measures against Türkiye and thanks to various factors at play, as explained in recital (179) the situation of the Union industry improved and recovered by the end of 2021 to an economic situation similar to that of 2018. Hence, during the review investigation period, the Union industry was no longer considered injured.
- (185) More particularly, almost all injury indicators, notably production, capacity utilisation, sales volumes and sales prices, employment and productivity, profit, cash flow and ROI followed a similar trend during the period considered. This trend was characterised by a decrease in 2019, a sharper decrease in 2020 and a rebound in the review investigation period to levels similar to those at the beginning of the period considered in 2018. The reason behind this irregular trend lies largely in the coincidence of a considerable influx of low-priced dumped imports of HRF from Türkiye and the unique dynamics created by the COVID-19 pandemic. Lockdowns and interruptions of industrial activity led to extremely low consumption levels and low demand for steel in 2020, whilst steel demand and prices soared in 2021 during the post-COVID recovery leading, amongst others, to exceptionally high profits for the steel industry during the review investigation period.

⁽⁷²⁾ Recital 210, Commission Implementing Regulation (EU) 2021/1100 of 5 July 2021 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Turkey (OJ L 238, 6.7.2021, p. 32).

⁽⁷³⁾ *Ibid.*

- (186) On the basis of the above, the Commission concluded that the Union industry did not suffer material injury within the meaning of Article 3(5) of the basic Regulation during the review investigation period.
- (187) However, the indicators cannot be analysed without considering the exceptionally favourable steel market conditions of 2021. In 2020, however, the pandemic-induced slowdown of industrial activity and its consequent decrease of steel demand, led to a severe downturn of the performance of the steel industry, and global economy in general. In 2021, driven by a rebound in demand, steel consumption strongly bounced back, as did steel prices.

5. LIKELIHOOD OF RECURRENCE OF INJURY

- (188) As explained in recital (186), the Commission concluded that the Union industry did not suffer material injury during the review investigation period. On the other hand, as explained in recital (131), the Commission concluded that dumping would likely recur in the absence of anti-dumping measures. Therefore, the Commission assessed, in accordance with Article 11(2) of the basic Regulation, whether there would be a likelihood of recurrence of injury caused by the dumped imports from the PRC if the measures were allowed to lapse.
- (189) In this regard, the Commission examined the production capacity and spare capacity in China, the attractiveness of the Union market, and likely price levels of imports from China in the absence of anti-dumping measures and their impact on the Union industry.

5.1. Production capacity and spare capacity in the PRC

- (190) As described in recital (122), the producers in China have significant spare capacity. Indeed, Chinese estimated spare capacity corresponds to 89 % of the size of the EU free market consumption. This spare capacity could be used to produce the product under review for export to the Union if measures were allowed to lapse. Moreover, as stated in recital (123), shrinking Chinese steel demand is, and will be, a key driver of increasing exports. The resulting imbalance between capacity and demand in China is likely to increase pressure on Chinese producers to export.
- (191) In addition, one of main markets, the USA, is protected by anti-dumping measures on the product under review, which reduces access of the Chinese producers.

5.2. Attractiveness of the Union market

- (192) As described in recital (126), the Union market is among the largest markets of certain hot-rolled flat steel products worldwide. Moreover, the Chinese market cannot absorb the excess steel capacity and major third countries markets are closed for Chinese exports as they have anti-dumping, safeguards or other protective measures in place against the PRC. Also, the price levels in the Union are higher than the average price charged by the Chinese exporters to the rest of the world. Therefore, the Union market represents an attractive target for the existing spare capacity in the PRC if anti-dumping measures were to be repealed.
- (193) After disclosure, CISA contested the conclusions with regards to the attractiveness of the Union market, arguing that the Chinese steel industry relies on its domestic market, and that Chinese domestic consumption is ten times larger than the EU free market segment. It further highlighted that as of 1 August 2021, certain steel products, including hot-rolled flat steel, are no longer eligible for VAT export rebates, thus having a discouraging effect on exports and redirecting Chinese steel production to the Chinese domestic industry.
- (194) The Commission acknowledged that Chinese domestic HRF consumption is significantly larger the EU free market but as explained in recital (190), the producers in China have significant spare capacity which they are not able to deploy in their domestic market. There is thus nothing that prevent the Chinese producers to use this spare capacity to produce the product under review for export to the Union if the measures were allowed to lapse. Besides, as stated in recital (123), shrinking Chinese steel demand is, and will be, a key driver of increasing exports. The resulting imbalance between production capacity and demand in China is likely to increase pressure on Chinese producers to export. With regard to the alleged change in the VAT system, the Commission noted that CISA had not provided any

evidence supporting the argument that the change of VAT rebates would have led, or will lead, to any significant changes in the export behaviour of Chinese producers. The Commission therefore rejected this claim as unsubstantiated.

5.3. Likely Chinese import prices and impact on the Union industry

- (195) Taking into account the low volumes of imports from the PRC from 2018 until 2021, the Commission considered that the import prices reported in Eurostat could not be relied on to establish the likely prices of imports of HRF from China in the absence of anti-dumping measures. Instead, the Commission considered as a representative proxy export prices from the PRC to all third countries other than the Union ('rest of the world' or 'ROW').
- (196) As described above in recital (117), the Commission established that during the review investigation period Chinese exports prices (FOB) to the rest of the world was on average 660 EUR/tonne. Based on that price and to determine a likely price at which Chinese exports would arrive at the Union border, the Commission added cost for insurance and freight. In the absence of cooperation from Chinese exporting producers the Commission resorted to the costs used in the original investigation, i.e. 52 EUR/tonnes, or 7,9 % of the price/tonne, as the best facts available. Accordingly, the Commission concluded that the likely import CIF price of Chinese exports of HRF to the Union would, absent measures, be not more than 712 EUR/tonne.
- (197) Given that statistical data, in the absence of cooperation of Chinese exporting producers, was used, only an average price per tonne for a large variety of product types could be established. Hence, in the absence of information at product type level the Commission could not carry out a precise undercutting calculation but had to limit itself to a price comparison between average prices per tonne.
- (198) The Chinese exports price thus determined was compared with the weighted average sales prices during the review investigation of the sampled Union producers charged to customers on the Union market, adjusted to an ex-works level.
- (199) The price comparison was made at the same level of trade and, in analogy with a precise undercutting calculation methodology, the result of the comparison was expressed as a percentage of the sampled Union producers' theoretical turnover during the review investigation period. It showed that on average the Chinese exports to the Union would undercut Union industry's average prices by around 8 %.
- (200) HRF is a highly price sensitive commodity product and as observed in the original investigation concerning imports of HRF from China and also in the investigation on the identical product from Türkiye, rather modest levels of price undercutting combined with large volumes are susceptible to have significant and immediate impact on the Union industry's performance ⁽⁷⁴⁾. In both those investigations, undercutting margins below 5 % forced the Union industry to lower sales prices (or lose market share) to such an extent that it incurred material injury in the short term.
- (201) Given that the Union industry during the review investigation period had just rebounded from a turbulent and economically difficult period, including the Covid-19 pandemic, with accumulated losses, it is still in a fragile situation. It is therefore highly likely that the recurrence of low-priced dumped imports from China in significant volumes that undercut Union prices would have a significant adverse effect on the Union industry's performance, notably with regard to production, sales volumes and prices, profitability and investment needs, resulting in material injury recurring.
- (202) After disclosure, CISA challenged the selection of the period considered for the injury analysis. It argued that the dumped imports of HRF at increased volumes from Türkiye in 2019, the COVID-induced economic slowdown, and the post-pandemic recovery boom distorted the evidence serving as a basis for the dumping and injury analysis. It claimed that the Commission should have analysed a different period and suggested to examine an extended period, covering one or two years prior to the period considered (2016 – 2018) as well as post-RIP (2022).

⁽⁷⁴⁾ Recital 98, OJ L 3, 7.1.2021, p. 4.

- (203) The Commission rejected this claim. It recalled that the various elements listed by CISA as being capable of distorting the evidence during the period considered had been acknowledged and carefully considered in the Commission's injury analysis. The Commission further observed that even if an extended period prior to the review investigation period would have been considered, as suggested by CISA, the same elements would still have been present. With regard to the review investigation period the Commission recalled that based on Article 6(1) of the basic Regulation, *'an investigation period shall be selected which in the case of dumping shall, normally, cover a period of no less than six months immediately prior to the initiation of proceedings. Information relating to a period subsequent to the investigation period shall, normally, not be taken into account'*. It is established case-law that the Commission cannot be required to incorporate in its calculations factors relating to a period subsequent to the investigation period, unless such factors disclose new developments which make the proposed anti-dumping duty manifestly inappropriate ⁽⁷⁵⁾. The same reasoning, by analogy, should apply to review investigations initiated under Article 11(2) of the basic Regulation. CISA did not provide any evidence tending to show that the developments that followed the review investigation period made the re-imposition of the duty manifestly inappropriate.

5.4. Conclusion

- (204) On the basis of the above, it is concluded that the absence of measures would in all likelihood result in a significant increase of dumped imports from the PRC at injurious prices and thus material injury would be likely to recur.

6. UNION INTEREST

- (205) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures would be against the interest of the Union as whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, and users.

6.1. Interest of the Union industry

- (206) The Union industry is located in 15 Member States (Austria, Belgium, Czech Republic, Finland, France, Germany, Hungary, Italy, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Spain). It employs over 38 000 employees in relation to the product under review.
- (207) In the absence of measures, the Union industry will no longer be protected against the likely increase of dumped imports from China, which will cause material injury. The effect of anti-dumping measures will be positive for the Union producers, as measures will help the Union industry to continue its recovery from past dumping. It is therefore clearly in the interest of the Union industry to maintain the measures.

6.1.1. Interest of users and unrelated importers

- (208) The Commission contacted all known users and unrelated importers. No users or unrelated importers came forward and cooperated in this investigation by submitting a questionnaire reply. Given the lack of cooperation of users and unrelated importers and in the absence of any indications to the contrary, the continuation of the measures is not considered against the interest of users and importers.
- (209) Moreover, the Commission analysed whether measures against China would have a negative effect on the security of supply, as there are also measures in place on HRF against Türkiye, Brazil, Iran and Russia. The Union industry level of capacity utilisation was 75 % during the review investigation period, and the total production capacity exceeded the total Union consumption by 18 million tonnes, according to EUROFER's macro questionnaire data. In addition, despite measures against some of the major exporters of HRF, almost 40 countries exported the product under review to the Union during the review investigation period, thus showing that the imposition of measures would not impinge upon diversification of supply. For these reasons and in the absence of cooperation by users and importers, the Commission concluded that there were no potential risks at the level of supply for downstream users.

⁽⁷⁵⁾ Judgment of 17 December 2008 in T-462/04, *HEG and Graphite India v Council*, ECLI:EU:T:2008:586, para. 67.

- (210) After disclosure, CISA referred to the EU safeguard on imports of, inter alia, HRF from China, which significantly limits the possibility for Chinese producers to export HRF to the EU market and restrict the free trade flows to the detriment of downstream producers and end users.
- (211) The Commission recalled that the safeguard in question cannot be considered of a lasting nature, and that the measure currently in place ⁽⁷⁶⁾ has no impact on the assessment of the likelihood of increased imports in the absence of anti-dumping duties. Considering the temporary nature of the steel safeguards, the Commission hence found that they cannot have a bearing on its conclusions in this investigation. On the security of supply, as stated in recital (209), the Union industry's total production capacity exceeded the total Union consumption, and several other third countries exported HRF to the Union during the review investigation period. Moreover, the safeguard measure is regularly review and adjusted if needed in order to ensure sufficient supply of steel in the Union market. Therefore, safeguards measures would not constitute a risk to the security of supply for downstream users.
- (212) In addition, CISA also claimed that the introduction of the Carbon Border Adjustment Mechanism (CBAM) would deteriorate the access to the EU market given the burdensome reporting obligations and surcharges linked to the CBAM.
- (213) The Commission recalled that the CBAM will only enter into force in October 2023 and that during a transitional period, until 2026, importers will only have to report emissions embedded in their goods without incurring any financial charges. The stated reason for this transitional period is to allow parties time to adjust before the final system is put into place and to reduce the risk of trade disruptions. Accordingly, the Commission considered that it is premature to make any assessment of the potential impact of CBAM on future trade flows of HRF and rejected the claim.

6.1.2. **Conclusion on Union interest**

- (214) On the basis of the above, the Commission concluded that there were no compelling reasons of Union interest against the continuation of the existing measures on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the PRC.

7. CLAIMS THAT THE MEASURES SHOULD BE SUSPENDED

- (215) CISA claimed that the current anti-dumping measures should be suspended in accordance with article 14(4) of the basic Regulation arguing that both conditions set out in the aforementioned Article 14(4) of the basic Regulation are fulfilled. It claimed that market conditions have temporarily changed to such an extent that injury would be unlikely to continue or occur as a result of the suspension. In that view, CISA referred to the growth expectations of the Union downstream industry and the expected economic recovery in the post-COVID period, the price increases of the product concerned, the expected decrease of the volume of imports from Russia and Ukraine and the Implementing Decision to suspend the definitive antidumping duties imposed on aluminium flat-rolled products from the PRC ⁽⁷⁷⁾.
- (216) The Commission rejected CISA's claim, as it was generic and unsubstantiated. On the other hand, the review investigation has established that injury would be likely to recur in the absence of measures and, *mutatis mutandis*, also in case of a suspension. Following disclosure, CISA repeated this claim, but did not put forward any new argument.

⁽⁷⁶⁾ By Commission Implementing Regulation (EU) 2019/159, the Commission imposed a safeguard measure with respect to certain steel products for a period of three years. By Commission Implementing Regulation (EU) 2021/1029, the safeguard measure was prolonged until 30 June 2024.

⁽⁷⁷⁾ Commission Implementing Decision (EU) 2021/1788 of 8 October 2021 suspending the definitive anti-dumping duties imposed by Implementing Regulation (EU) 2021/1784 on imports of aluminium flat-rolled products originating in the People's Republic of China (OJ L 359, 11.10.2021, p. 105).

8. ANTI-DUMPING MEASURES

- (217) On the basis of the conclusions reached by the Commission on recurrence of dumping, recurrence of injury and Union interest, the anti-dumping measures on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the PRC should be maintained.
- (218) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this Regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.
- (219) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this Regulation, the customs authorities of Member States must carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the lower rate of duty is justified, in compliance with customs law.
- (220) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met, an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.
- (221) The individual company anti-dumping duty rates specified in this Regulation are exclusively applicable to imports of the product under review originating in the PRC and produced by the named legal entities. Imports of the product under review produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.
- (222) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ⁽⁷⁸⁾. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a regulation about the change of name will be published in the *Official Journal of the European Union*.
- (223) An exporter or producer that did not export the product concerned to the Union during the period that was used to set the level of the duty currently applicable to its exports may request the Commission to be made subject to the anti-dumping duty rate for cooperating companies not included in the sample. The Commission should grant such request, provided that three conditions are met. The new exporting producer would have to demonstrate that: (i) it did not export the product concerned to the Union during the period that was used to set the level of the duty applicable to its exports; (ii) it is not related to a company that did so and thus is subject to the anti-dumping duties; and (iii) has exported the product concerned thereafter or has entered into an irrevocable contractual obligation to do so in substantial quantities.

⁽⁷⁸⁾ European Commission, Directorate-General for Trade, Directorate G, Rue de la Loi 170, 1040 Brussels, Belgium.

- (224) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽⁷⁹⁾ when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.
- (225) 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,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of certain flat-rolled products of iron, non-alloy steel or other alloy steel, whether or not in coils (including 'cut-to-length' and 'narrow strip' products), not further worked than hot-rolled, not clad, plated or coated, currently falling under 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 codes 7226 19 10 91, 7226 19 10 95), 7226 91 91 and 7226 91 99 and originating in the People's Republic of China.

The following products are not covered by this review:

- (i) products of stainless steel and grain-oriented silicon electrical steel,
- (ii) products of tool steel and high-speed steel,
- (iii) products, not in coils, without patterns in relief, of a thickness exceeding 10 mm and of a width of 600 mm or more, and
- (iv) 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.

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

Country	Company	Anti-dumping duty	TARIC additional code
People's Republic of China	Bengang Steel Plates Co., Ltd.	0 %	C157
	Handan Iron & Steel Group Han-Bao Co., Ltd.	10,3 %	C158
	Hesteel Co., Ltd. Tangshan Branch ⁽¹⁾	10,3 %	C159
	Hesteel Co., Ltd. Chengde Branch ⁽²⁾	10,3 %	C160
	Zhangjiagang Hongchang Plate Co., Ltd.	31,3 %	C161
	Zhangjiagang GTA Plate Co., Ltd.	31,3 %	C162
	Shougang Jingtang United Iron and Steel Co. Ltd.	0 %	C164
	Beijing Shougang Co. Ltd., Qian'an Iron & Steel branch	0 %	C208
	Angang Steel Company Limited	10,8 %	C150

⁽⁷⁹⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

	Inner Mongolia Baotou Steel Union Co., Lt	0 %	C151
	Jiangyin Xingcheng Special Steel Works Co., Ltd.	0 %	C147
	Shanxi Taigang Stainless Steel Co., Ltd.	0 %	C163
	Maanshan Iron & Steel Co., Ltd	10,8 %	C165
	Rizhao Steel Wire Co., Ltd.	10,8 %	C166
	Rizhao Baohua New Material Co., Ltd.	10,8 %	C167
	Tangshan Yanshan Iron and Steel Co., Ltd.	0 %	C168
	Wuhan Iron & Steel Co., Ltd.	10,8 %	C156
	All other companies	0 %	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 duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of (product under review) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in [country concerned]. I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty applicable to all other companies shall apply.

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

- (a) it did not export the goods described in Article 1(1) originating in the People's Republic of China during the period between 1 January 2015 and 31 December 2015 (original investigation period);
- (b) it is not related to an exporter or producer subject to the measures imposed by this Regulation; and
- (c) it has either actually exported the product under review originating in the People's Republic of China or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the original investigation period after the end of the period of investigation

Article 1(2) may be amended by adding the new exporting producer to the list of companies identified in the table and subject to an individual duty not exceeding the duty rate applicable to those companies that cooperated in the anti-dumping investigation but not in the anti-subsidy investigation, i.e. 0 %.

5. Should the definitive countervailing duties imposed by Article 1 of Commission Implementing Regulation (EU) 2017/969 be modified or removed, the duties specified in paragraph 2 will be increased by the same proportion limited to the actual dumping margin found or the injury margin found as appropriate per company and from the entry into force of this Regulation.

In cases where the countervailing duty has been subtracted from the anti-dumping duty for certain exporting producers, refund requests under Article 21 of Regulation (EU) 2016/1037 shall also trigger the assessment of the dumping margin for that exporting producer prevailing during the refund investigation period. The amount to be reimbursed to the applicant for refund cannot exceed the difference between the duty collected and the combined countervailing and anti-dumping duty established in the refund investigation.

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

Article 2

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

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

Done at Brussels, 7 June 2023.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2023/1123**of 7 June 2023****imposing a definitive countervailing duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in People's Republic of China following an expiry review pursuant to Article 18 of Regulation (EU) 2016/1037 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation'), and in particular Article 18 thereof,

Whereas:

1. PROCEDURE**1.1. Previous investigations and measures in force**

- (1) By Commission Implementing Regulation (EU) 2017/969 ⁽²⁾, the European Commission ('the Commission'), imposed a countervailing duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel, originating in People's Republic of China (PRC or 'the country concerned' or 'China') ('the original regulation'). The countervailing duties currently in force range from 4,6 % to 35,9 % ('the original measures'). The investigation that led to the imposition of the original measures will hereinafter be referred to as 'the original investigation'.
- (2) By Commission Implementing Regulation (EU) 2017/649 ⁽³⁾, the Commission, imposed definitive anti-dumping measures on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel, originating in People's Republic of China (PRC). The anti-dumping duties currently in force range from 0 % to 31,3 %.

1.2. Request for an expiry review

- (3) Following the publication of a notice of impending expiry ⁽⁴⁾, the Commission received a request for the initiation of an expiry review of the countervailing measures pursuant to Article 18 of the basic Regulation.
- (4) The request for review ('the request') was submitted on 9 March 2022 by EUROFER, the European Steel Association, ('the applicant') on behalf of the Union industry of certain hot-rolled flat products of iron, non-alloy or other alloy steel in the sense of Article 10(6) of the basic Regulation.
- (5) The applicant claimed that the expiry of the countervailing measures would likely result in continuation or recurrence of subsidisation and recurrence of injury to the Union industry.

⁽¹⁾ OJ L 176, 30.6.2016, p. 55.

⁽²⁾ Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 146, 9.6.2017, p. 17).

⁽³⁾ 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 (OJ L 92, 6.4.2017, p. 68).

⁽⁴⁾ OJ C 372, 16.9.2021, p. 10.

1.3. Initiation of an expiry review

- (6) Having determined that sufficient evidence existed for the initiation of an expiry review, the Commission initiated, on 8 June 2022, an expiry review with regard to imports to the Union of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the PRC on the basis of Article 18(2) of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ⁽⁵⁾ ('the Notice of Initiation').
- (7) Prior to the initiation of the review, the Commission notified the Government of China ('GOC') ⁽⁶⁾ on 12 May 2022 that it had received a properly documented request, and invited the GOC for consultations in accordance with Article 10(7) of the basic Regulation. The same day GOC also submitted comments in writing arguing that in general the request does not contain sufficient evidence to initiate an expiry review, especially with regard to the specificity of the alleged subsidies to the HRF producers. The Commission took note of the comments raised by the GOC and have paid particular attention to these elements during the expiry review investigation.

1.4. Separate investigation relating to the same product concerned

- (8) By a notice published in the *Official Journal of the European Union* on 5 April 2022 ⁽⁷⁾, the Commission also announced the initiation of an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council ⁽⁸⁾ of the definitive anti-dumping measures in force with regard to imports into the Union of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the PRC.

1.5. Review investigation period and period considered

- (9) The investigation of continuation or recurrence of subsidisation covered the period from 1 January 2021 to 31 December 2021 ('review investigation period'). The examination of the trends relevant for the assessment of the likelihood of continuation or recurrence of injury covered the period from 1 January 2018 to the end of the review investigation period ('the period considered').

1.6. Interested parties

- (10) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. The Commission specifically informed the applicant, all known Union producers, the known producers in the PRC and the authorities of the People's Republic of China as well as known importers, users and traders of the initiation of the expiry review and invited them to participate.
- (11) Interested parties had an opportunity to comment on the initiation of the expiry review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.7. Sampling

- (12) In its Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 27 of the basic Regulation.

⁽⁵⁾ Notice of initiation of an expiry review of the anti-subsidy measures applicable to 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 223, 8.6.2022, p. 37).

⁽⁶⁾ The term 'GOC' is used in this Regulation in a broad sense, including the State Council, as well as all Ministries, Departments, Agencies and Administrations at central, regional or local level.

⁽⁷⁾ Notice of initiation of an expiry review of the anti-dumping measures applicable to 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 150, 5.4.2022, p. 3).

⁽⁸⁾ 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 (OJ L 176, 30.6.2016, p. 21).

1.7.1. *Sampling of Union producers*

- (13) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. In accordance with Article 27 of the basic Regulation, the Commission selected the sample on the basis of the largest volume of production of the like product in the Union during the review investigation period that could reasonably be investigated within the time available. This sample consisted of three Union producers. The sampled Union producers accounted for around 29 % of estimated total production in the Union. The Commission invited interested parties to comment on the provisional sample. No comments were received and the Commission confirmed the provisionally selected sample. The sample is representative of the Union industry.

1.7.2. *Sampling of importers*

- (14) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked known unrelated importers to provide the information specified in the Notice of Initiation. No unrelated importer came forward and provided the requested information.

1.7.3. *Sampling of exporting producers in the PRC*

- (15) To decide whether sampling was necessary with regard to the exporting producers and, if so, to select a sample, the Commission asked all known producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the PRC to the European Union to identify and/or contact other producers, if any, that could be interested in participating in the investigation. None of the producers in the PRC provided the requested information.
- (16) Consequently, the Commission informed the authorities of the PRC by Note Verbale of 2 September 2022, that it might resort to the use of facts available under Article 28(1) of the basic Regulation when examining the continuation or recurrence of subsidisation. The authorities of the PRC did not react to the Note.

1.8. **Questionnaire and verification**

- (17) The Commission sent questionnaires to the three sampled Union producers, the applicant and the GOC. Replies to the questionnaires were received from the three sampled Union producers and the applicant.
- (18) The Commission verified all the information it deemed necessary for a determination of the likelihood of a continuation or recurrence of subsidisation and injury, and of the Union interest test. Verification visits were carried out at the premises of the following interested parties:

Union producers:

- Arcelor Mittal Poland (Dąbrowa Górnicza, Poland)
- Tata Steel IJmuiden (IJmuiden, The Netherlands)
- ThyssenKrupp Steel Europe AG (Duisburg, Germany) and its related company ThyssenKrupp Material Processing (Krefeld, Germany).

1.9. **Disclosure**

- (19) On 4 April 2023, the Commission disclosed the essential facts and considerations on which basis it intended to impose countervailing duties. All parties were granted a period within which they could make comments on that disclosure.
- (20) The comments made by interested parties were considered by the Commission and taken into account, where appropriate. The parties who so requested were granted a hearing. CISA requested and was granted a hearing with the Commission services on 12 April 2023.

2. PRODUCT UNDER REVIEW, PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product under review

- (21) The product subject to this review is the same as the one in the original investigation, i.e. 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 ('HRF' or 'product under review').

The following products are not covered by this review:

- (a) products of stainless steel and grain-oriented silicon electrical steel,
- (b) products of tool steel and high-speed steel,
- (c) products, not in coils, without patterns in relief, of a thickness exceeding 10 mm and of a width of 600 mm or more, and
- (d) 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 under 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 codes 7226 19 10 91, 7226 19 10 95), 7226 91 91 and 7226 91 99. The CN and TARIC codes are given for information only, without prejudice to a subsequent change in the tariff classification.

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

2.2. Product concerned

- (24) The product concerned by this investigation is the product under review originating in the People's Republic of China.

2.3. Like product

- (25) As established in the original investigation, this expiry review investigation confirmed that the following products have the same basic physical characteristics as well as the same basic uses:
- the product concerned, exported to the Union;
 - the product under review produced and sold on the domestic market of the PRC; and
 - the product under review produced and sold in the Union by the Union industry.
- (26) These products are therefore considered to be like products within the meaning of Article 2(c) of the basic Regulation.

3. LIKELIHOOD OF CONTINUATION OF SUBSIDISATION

- (27) In accordance with Article 18 of the basic Regulation, and as stated in the Notice of Initiation, the Commission examined first whether the expiry of the existing measures would be likely to lead to a continuation of subsidisation.

3.1. Non-cooperation and the use of facts available in accordance with Article 28(1) of the basic Regulation

- (28) On 12 July 2022 the Commission sent a questionnaire to the GOC. The GOC was asked to forward a questionnaire for banks and other financial institutions known by the GOC to have provided loans to the industry concerned as well as to the producers and distributors of the hot-rolled and cold-rolled steel providing inputs for the production of the product under review.
- (29) The Commission received no reply.
- (30) By Note Verbale of 2 September 2022, the Commission informed the Chinese authorities that following non-cooperation from the GOC and the producers of the product under review the Commission intended to make its findings on the basis of the facts available, in accordance with Article 28(1) of the basic Regulation. They were also informed that a finding based on facts available may be less favourable than if the GOC and producers cooperated.
- (31) No comments in this regard were received. The Commission, in accordance with Article 28 of the basic Regulation, considered the use of facts available necessary in order to establish the continuation of subsidy practices of China in the hot-rolled flat steel industry.
- (32) Accordingly, the Commission used for its analysis all facts available to it, in particular:
- (a) the request;
 - (b) findings of the original investigation carried out by the Commission against the same product in China, such as hot-rolled flat products ⁽⁹⁾;
 - (c) findings of the most recent anti-subsidy investigations carried out by the Commission concerning encouraged industries in China, such as, pneumatic tyres ⁽¹⁰⁾ ('the tyres investigation'), electric bicycles ⁽¹¹⁾ ('the e-bike investigation'), organic coated steel products ⁽¹²⁾ ('the OCS investigation'), optical fibre cables ⁽¹³⁾ ('fibre glass investigation') and aluminium converter foil ⁽¹⁴⁾ ('aluminium foil investigation') where similar subsidies were examined;
 - (d) Commission Staff Working Document on significant distortions in the economy of the PRC for the purpose of trade defence investigation ('the Report on China') ⁽¹⁵⁾.

⁽⁹⁾ Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing a countervailing duty on imports of certain hot-rolled flat products or iron, non-alloy or other alloy steel originating in the People's Republic of China, (OJ L 146, 9.6.2017, p. 17).

⁽¹⁰⁾ Commission Implementing Regulation (EU) 2018/1690 of 9 November 2018 imposing a definitive countervailing duty on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for busses or lorries and with a load index exceeding 121 originating in the People's Republic of China (OJ L 283, 12.11.2018, p. 1).

⁽¹¹⁾ Commission Implementing Regulation (EU) 2019/72 of 17 January 2019 imposing a definitive countervailing duty on imports of electric bicycles originating in the People's Republic of China (OJ L 16, 18.1.2019, p. 5).

⁽¹²⁾ Commission Implementing Regulation (EU) 2019/688 of 2 May 2019 imposing a definitive countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China following an expiry review pursuant to Article 18 of the Regulation (EU) 2016/1037 of the European Parliament and of the Council (OJ L 116, 3.5.2019, p. 39).

⁽¹³⁾ Commission Implementing Regulation (EU) 2022/72 of 18 January 2022 imposing definitive countervailing duties on imports of optical fibre cables originating in the People's Republic of China and amending Implementing Regulation (EU) 2021/2011 imposing a definitive anti-dumping duty on imports of optical fibre cables originating in the People's Republic of China (OJ L 12, 19.1.2022, p. 34).

⁽¹⁴⁾ Commission Implementing Regulation (EU) 2021/2287 of 17 December 2021 imposing definitive countervailing duties on imports of aluminium converter foil originating in the People's Republic of China and amending Implementing Regulation (EU) 2021/2170 imposing definitive anti-dumping duties on imports of aluminium converter foil originating in the People's Republic of China (OJ L 458, 22.12.2021, p. 344).

⁽¹⁵⁾ Available at http://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156474.pdf

3.2. General remarks on the steel sector in China

- (33) Before analysing the alleged subsidisation in the form of specific subsidies or subsidy programmes (sections 3.3 and following below) the Commission assessed government plans, projects and other documents, which were relevant for more than one of the subsidies or subsidy programmes. It found that all subsidies or subsidy programmes under assessment form part of the implementation of the GOC's central planning for the following reasons.

3.2.1. 14th Five-Year-Plan

- (34) The Commission in the current investigation established that the main document of relevance during the review investigation period was the 14th Five-Year-Plan on developing the raw materials industry, such as the steel one. Steel industry being an important part of the raw materials industry, it represents a key field that shapes China's international competitive edges, and the 'main battlefield' for the restructuring of the industrial foundation and green industrial development. The Plan carries an emphasis on cultivating a group of leading enterprises in the industrial chain with ecological leadership and core competitiveness.
- (35) Hebei Province's Three year action plan on cluster development in the steel industry chain (2020 – 2022) elaborates the reform of mixed ownership of state-owned enterprises, focuses on promoting the cross-regional merger and reorganization of private steel enterprises.
- (36) Shangdong Province's 14th Five-Year-Plan on the steel industry development emphasizes competitiveness of the steel industry as the goal, as strict control of production capacity is brought forward. Furthermore, it carries objectives of optimizing industrial layout, strengthening innovation drive, promoting green development and building an advanced steel manufacturing industrial base with domestic first-class competitiveness and international influence.
- (37) After disclosure, CISA claimed that the Commission relied heavily on the '14th Five-Year Plan' in order to prove the strategic importance of the relevant industry and in doing so it evidences the existence of subsidies in relation to this specific sector. CISA emphasised that 'five-year plans' are merely guiding documents expressing policy views for the future and as such do not have binding force because there is no violation or penalty clause in such plans. In addition to that, CISA referred in this regard to equivalent documents and reports on the side of the EU Commission such as the Commission's own publication titled 'A New Industrial Strategy' in which the Commission itself identifies various priorities in terms of public investments in a clear attempt to steer future development of the EU's key industries.
- (38) This argument could not be accepted. First of all, the FYPs published by the GOC are not merely general guidance documents, but are of a legally binding nature. The 14th FYP explicitly reminds all authorities to diligently implement the plans: *'We will strengthen planning management systems such as catalogues and lists, compilation and archival, and alignment and coordination, develop lists and catalogues such as the "14th Five-Year" National-Level Special Plans, promote plan archival relying on the national planning integrated management information platform, and bring various plans under unified management. We will establish and improve planning alignment and coordination mechanisms, align plans approved by the CCP Central Committee and the State Council and provincial development plans with this plan before submission for approval, ensure that national-level spatial planning, special planning, regional planning, and other levels of planning are coordinated with this plan in terms of main goals, development directions, overall layout, major policies, major projects, and risk prevention and control.'*⁽¹⁶⁾ Furthermore, the 14th FYP on Developing the Raw Materials Industry stipulates that *'all localities need to better themselves with this Plan, and include the main contents and major projects herein in their primary local tasks'*, while *'steel and other key sectors shall formulate specific implementation opinions based on the objectives and tasks of this Plan.'* Therefore, the claim was rejected.
- (39) No evidence or argument to the contrary has been adduced by the GOC in the present investigation.

⁽¹⁶⁾ See Article LXIV, Section 2 of the 14th FYP.

3.2.2. **Order No 35**

- (40) Order No 35 of the National Development and Reform Commission – Policies for the development of Iron and Steel Industry (2005) ('Order No 35') is another policy document that governs the Chinese steel sector. Adopted by the State Council, it covers various aspects of GOC's control over the industry, including:
- The prohibition of majority foreign ownership of steelmakers in China (Article 1);
 - The setting up of goals in terms of output for the biggest steel producers (Article 3);
 - The provision of rules for the changes in the corporate structure of steel companies (Article 20);
 - The setting up of GOC's approval procedures for investment in steel producers (Article 22);
 - The provision of loans and land-use rights only to steel producers that comply with the national development policies for the sector (Articles 24 and 25); and
 - State intervention aimed at supporting large backbone enterprise groups to establish overseas production and supplying bases of raw materials (Article 30).

3.2.3. **Decision No 40**

- (41) Decision No 40 is a State Council Order that classifies, for investment purposes, the industrial sectors into different categories, namely 'encouraged, restrictive and eliminated projects'. This Decision states that the 'Guidance Catalogue for the Industrial Structure Adjustment', which is an implementing measure of Decision No 40, is an important basis for guiding investment directions. It also guides the GOC to administer investment projects, and to formulate and enforce policies on public finance, taxation, credit, land, import and export ⁽¹⁷⁾. The steel industry is indicated as an encouraged industry in Chapter VIII of this Guidance Catalogue. As to its legal nature, the Commission noted that Decision No 40 is an Order from the State Council, which is the highest administrative body in the PRC. In that regard, the decision is legally binding for other public bodies and the economic operators ⁽¹⁸⁾.

3.2.4. **The Revitalization Plan**

- (42) The Blueprint for the Adjustment and Revitalisation of the Steel Industry (2009) is an action plan for the steel industry. The plan aims to deal with the international financial crisis and addresses the overall policy requirements of the GOC to maintain growth. It also seeks to 'guarantee the stable operation of the industry' as it is 'regarded as an important pillar industry of the national economy'. The document provides the following:
- an increase in the financial support for 'key backbone' steel producers;
 - an acceleration of the structural adjustments and the promotion of industrial upgrading;
 - the support of the key companies that go abroad in their development, technical cooperation and Merger and Acquisitions;
 - the increase in the scale of the export credit for metallurgical equipment.

3.2.5. **Guiding Catalogue of industrial structure adjustment**

- (43) According to its chapter VIII, the Guiding Catalogue of industrial structure adjustment (2019), the steel sector is an encouraged sector.

⁽¹⁷⁾ Chapter III, Article 12 of Decision No 40.

⁽¹⁸⁾ See recital (182) of the original Regulation.

3.2.6. *Overall conclusions on the GOC's intervention in the steel sector*

- (44) Taking into account the above-listed documents and their provisions, on which there is no evidence that they are no longer in place, the Commission reiterated its conclusion from the original investigation that the Chinese steel industry continued to be a key/strategic industry during the review investigation period, the development of which continues to be actively pursued and directed by the GOC as a policy strategic objective.

3.3. *Subsidies and subsidy programmes examined in the current expiry review*

- (45) In view of the lack of cooperation by the GOC and the Chinese producers specified in recitals (27) and (30), the Commission decided to examine whether there was continuation of subsidisation as follows. First, the Commission examined whether the subsidies countervailed in the original investigation continued to confer benefit to the hot rolled flat steel industry. Subsequently, the Commission analysed whether that industry benefitted from subsidies which were not countervailed in the original investigation ('additional subsidies' or 'new subsidies') as alleged in the request.
- (46) The Commission has decided that, in view of the findings confirming the existence of continued subsidisation with respect to most of the subsidies countervailed in the original investigation, as well as some of the additional subsidies, there is no need to investigate all the other subsidies alleged to exist by the applicant.
- (47) After disclosure, CISA claimed that findings reached in past anti-subsidy investigations cannot merely be transposed on to the Commission's current investigation as such reversals of the burden of proof deviates from the accepted rights of defence by any defendant in such investigations. According to CISA, the Commission used past findings in other separate and unrelated investigations to paint economic practices in China as examples of subsidisation. However, this approach does not prove the existence of subsidisation in relation to the product under review.
- (48) The Commission considered that the applicant provided sufficient evidence of the existence, amount, nature, benefit and specificity as was reasonably available to it. Furthermore, the Commission also considered that in the absence of cooperation, the recent EU anti-subsidy investigations related to the same subsidy programmes alleged in the request had also examined benefit, specificity and the amounts of subsidisation of the same programmes. These previous findings of subsidisation, coupled with the wealth of information contained in the request and confirmed by the Commission in the course of this investigation, constituted facts available with regards to continuation of subsidisation in accordance with Article 28 of the basic Regulation. Consequently, the claim was rejected.

3.4. *Subsidies countervailed in the original investigation*

3.4.1. *Preferential lending*

3.4.1.1. *Findings of the original investigation*

- (49) In the original investigation ⁽¹⁹⁾, the Commission established that State-owned banks ('SOBs') were public bodies as they performed governmental functions and, in doing so, they exercised government authority.
- (50) With respect to the banks that provided loans to the producers who cooperated in the original investigation, the great majority was State-owned. The available information in the original investigation showed that at least 35 out of the 45 reported banks were State-owned banks, including the major commercial banks in China, like the Bank of China, the China Construction Bank and the Industrial and Commercial Bank of China. Furthermore, it was also found that these State-owned commercial banks held a predominant place in the market and in their capacity as public bodies were engaged in offering lending at below-market interest rates. Accordingly, it was concluded that the GOC had a policy to provide preferential lending to the HRF sector.

⁽¹⁹⁾ See recitals (83) to (244) of the original regulation.

- (51) The Commission also established, on the basis of, inter alia, Articles 34 and 38 of the Commercial Banking Law and Articles 17 and 18 of Order No 40, that privately owned commercial banks in China were entrusted and directed by the GOC to provide preferential loans to the producers in line with Article 3(1)(a)(iv) of the basic Regulation.
- (52) Therefore, the Commission concluded that: there was a financial contribution to the HRF producers in the form of a direct transfer of funds from the government within the meaning of Article 3(1)(a)(i) of the basic Regulation; and privately owned banks were also entrusted or directed by the government to provide financial contributions to the same producers within the meaning of Article 3(1)(a)(iv) of the basic Regulation.
- (53) A benefit within the meaning of Articles 3(2) and 6(b) of the basic Regulation was found to exist to the extent that the government loans were granted on terms more favourable than the recipient could actually obtain on the market. Since it was established that non-government loans in China do not provide an appropriate market benchmark (privately owned banks being entrusted and directed by the GOC), such a benchmark was constructed on the basis of standard lending rate of the People's Bank of China. This rate was adjusted to reflect normal market risk by adding the appropriate premium expected on bonds issued by firms with rating of 'non-investment grade' bonds (at BB rate).
- (54) This subsidy programme was found to be specific within the meaning of Article 4(2)(a) of the basic Regulation, as the steel industry belonged to the encouraged category according to the Decision No 40 and the provisions of loans were limited only to steel enterprises which fully complied with the development policies for the iron and steel industry (Order No 35).
- (55) Furthermore, the programme was found to be specific under Article 4(2)(b) of the basic Regulation, as certain government plans and documents were encouraging and instructing to provide financial support to steel industry, also in specific geographical regions of China.
- (56) The subsidy rate established in the original investigation for the sampled exporting producers varied from 1,99 % to 27,91 %.

3.4.1.2. Continuation of the subsidy programme

- (57) In the request and corresponding annexes ⁽²⁰⁾, the applicant provided evidence that Chinese HRF producers continued to benefit from preferential lending and below-market interest rates from domestic banks in China.
- (58) The applicant provided evidence of the significant presence and continued market dominance of SOBs in the Chinese banking sector. In point (67), the request listed the major SOBs which have provided lending on preferential terms to the HRF producers in China.
- (59) Finally, the applicant indicated that private banks continued to be entrusted and directed by the GOC to provide subsidized loans, in line with Article 3.1(a)(iv) of the basic Regulation. Hence, the Commission findings in the original investigation are still valid in this regard.
- (60) In the absence of cooperation from the GOC, no arguments were presented which would challenge the evidence presented by the applicant with regard to the current situation of the Chinese banking system.

⁽²⁰⁾ See recitals 70-82 and annexes S-1, S-2 and S-3 of the request.

- (61) Furthermore, the critical facts relevant for the establishment of this subsidisation programme and its continuation, namely acting of SOBs as public bodies, their dominance in the banking sector, entrustment and direction of private banks, were confirmed by the Report on China ⁽²¹⁾ and the findings of the most recent tyres ⁽²²⁾, e-bikes ⁽²³⁾, OCS ⁽²⁴⁾, fibre glass ⁽²⁵⁾ and aluminium foil ⁽²⁶⁾ investigations.

3.4.1.3. *Benefit*

- (62) In the absence of cooperation from the Chinese producers, the Commission had no company-specific information on which the amount of subsidy conferred during the review investigation period could be calculated. While the amount of subsidisation during the review investigation period could not be precisely established due to the lack of cooperation, based on the request, the findings in previous investigations referred in recital (61), and absent any indication to the contrary, it could be concluded that Chinese HRF producers continued to be subsidized.

3.4.1.4. *Specificity*

- (63) The subsidy programme in question was still specific within the meaning of Articles 4(2)(a) and 4(2)(b) of the basic Regulation, given that the legal situation described in recital (54) had not changed and in the light of the new 14th Five-Year plan for the steel sector, confirming the steel industry as an encouraged industry.

3.4.1.5. *Conclusion*

- (64) Accordingly, the Commission concluded that there is sufficient evidence showing that the preferential lending as a countervailable subsidy continued during the review investigation period.

3.4.2. *The provision of land-use rights for less than adequate remuneration*

3.4.2.1. *Findings of the original investigation*

- (65) In the original investigation ⁽²⁷⁾, the Commission established that the provision of land-use rights by the GOC should be considered a subsidy measure within the meaning of Article 3(1)(a)(iii) and Article 3(2) of the basic Regulation. As there was no functioning market for land in China, the GOC provides land-use rights for less than adequate remuneration, thereby conferring a benefit upon the recipient companies. The use of an external benchmark demonstrated that the amount paid for land-use rights by the HRF producers is well below the normal market rate.

⁽²¹⁾ See chapter 6.3 of the Report.

⁽²²⁾ See recitals (167) to (236) of Commission Implementing Regulation (EU) 2018/1690 of 9 November 2018 imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2018/1579 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163 (OJ L 283, 12.11.2018, p. 1).

⁽²³⁾ See recitals (175) to (237) of Commission Implementing Regulation (EU) 2019/72 of 17 January 2019 imposing a definitive countervailing duty on imports of electric bicycles originating in the People's Republic of China (OJ L 16, 18.1.2019, p. 5).

⁽²⁴⁾ See recitals (101) to (118) of Commission Implementing Regulation (EU) 2019/688 of 2 May 2019 imposing a definitive countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China following an expiry review pursuant to Article 18 of the Regulation (EU) 2016/1037 of the European Parliament and of the Council (OJ L 116, 3.5.2019, p. 39).

⁽²⁵⁾ See recitals (222) to (285) of Commission Implementing Regulation (EU) 2020/776 of 12 June 2020 imposing definitive countervailing duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt and amending Commission Implementing Regulation (EU) 2020/492 imposing definitive anti-dumping duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt (OJ L 189, 15.6.2020, p. 1).

⁽²⁶⁾ See recitals (146) to (223) of Commission Implementing Regulation (EU) 2021/2287 of 17 December 2021 imposing definitive countervailing duties on imports of aluminium converter foil originating in the People's Republic of China and amending Implementing Regulation (EU) 2021/2170 imposing definitive anti-dumping duties on imports of aluminium converter foil originating in the People's Republic of China (OJ L 458, 22.12.2021, p. 344).

⁽²⁷⁾ See recitals (215),(281) to (311) of the original regulation.

- (66) The Commission also established that the subsidy is specific under Article 4(2)(a) and 4(2)(c) of the basic Regulation, because the access to industrial land is by law limited only to companies respecting the industrial policies set by the State. Furthermore, only certain transactions were subject to a bidding process, prices were often being set by the authorities, and government practices in this area are unclear and non-transparent.
- (67) Using the benchmark of prices of land in Taiwan, the subsidy rate with regard to this measure was established in the original investigation for the sampled producers in the range of 1,20 % to 7,63 %.

3.4.2.2. *Continuation of the subsidy programme*

- (68) In the request and corresponding annexes ⁽²⁸⁾, the applicant provided evidence that Chinese HRF producers continued to benefit from land-use rights for less than adequate remuneration.
- (69) The applicant indicated that the law governing this matter has not changed since the original investigation. Private ownership of land is prohibited in China. The Land Administration Law, and Article 2 in particular, still provides that all land in China is ultimately owned by the GOC as it belongs collectively to China. The Property Law (Articles 45-48) specifies that land in China is either 'collectively owned' or 'state owned'. No land can be sold but land-use rights can be assigned through public bidding, quotation or auction.
- (70) Neither the GOC nor the producers provided evidence suggesting the HRF industry stopped benefiting from the provision of land-use rights for less than adequate remuneration.
- (71) On the basis of available information, including the evidence contained in the Report on China ⁽²⁹⁾ in this regard and the findings of the most recent countervailing duty investigations concerning the PRC on tyres ⁽³⁰⁾, e-bikes ⁽³¹⁾ and optical fibre cables ⁽³²⁾, the Commission concluded that the rates paid for land use continued to be subsidised because the system imposed by the GOC does not adhere to market principles.

3.4.2.3. *Benefit*

- (72) In the absence of cooperation from the GOC and the Chinese producers, the Commission had no company-specific information on the basis of which to calculate the amount of subsidy conferred during the review investigation period. While the amount of subsidisation could not be precisely established due to the lack of cooperation, based on the request, the findings in the previous investigations referred in recital (71), and absent any indication to the contrary, it could be concluded that Chinese HRF producers continued to be subsidised.

3.4.2.4. *Specificity*

- (73) The subsidy is specific within the meaning of Articles 4(2)(a) and 4(2)(c) of the basic Regulation. Land-use rights are only granted to a limited group of companies. Furthermore, the steel sector, which is part of the encouraged category within the framework of Decision No 40 of the State Council, falls within the sectors that benefit from land-use rights.

⁽²⁸⁾ See recitals 209-215.

⁽²⁹⁾ See chapter 9 of the Report.

⁽³⁰⁾ See recitals (474) to (493).

⁽³¹⁾ See recitals (503) to (512).

⁽³²⁾ See recitals (533) to (557) Commission Implementing Regulation (EU) 2022/72 of 18 January 2022 imposing definitive countervailing duties on imports of optical fibre cables originating in the People's Republic of China and amending Implementing Regulation (EU) 2021/2011 imposing a definitive anti-dumping duty on imports of optical fibre cables originating in the People's Republic of China (OJ L 12, 19.1.2022, p. 34).

3.4.2.5. Conclusion

- (74) Accordingly, the Commission concluded that there is sufficient evidence showing that the provision of land-use rights for less than adequate remuneration as a countervailable subsidy continued during the review investigation period.

3.4.3. **Direct tax exemption and reduction programmes**

3.4.3.1. Findings of the original investigation

- (75) In the original investigation ⁽³³⁾, the Commission established that HRF producers were receiving countervailable subsidies related with preferential treatment under income and other direct tax programmes and policies.
- (76) With regard to three specific programmes: Enterprise Income Tax (EIT) privileges for Resource Products from Synergistic Utilisation, EIT offset for research and development expenses and Land use tax exemption, the Commission based its findings as to the legal basis, eligibility, nature of the subsidy and its specificity on the verified questionnaire replies and was able to calculate individual subsidy rates for the sampled companies.
- (77) The income and other direct tax programmes were found to be subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation in the form of government revenue foregone which confers a benefit upon the recipient companies.
- (78) The subsidy schemes were also found to be specific within the meaning of Article 4(2)(a) of the basic Regulation, given that the legislations pursuant to which the granting authority operated, limited the access to the schemes only to certain enterprises and industries classified as encouraged, such as those belonging to HRF industry.
- (79) The subsidy rate established in the original investigation for the sampled exporting producers varied from 0,00 % to 0,66 %.

3.4.3.2. Continuation of the subsidy programme

- (80) In the expiry review request ⁽³⁴⁾, the applicant provided evidence that many Chinese HRF producers continue to benefit from several Enterprise Income Tax (EIT) privileges' programmes countervailed in the original investigation. The legal basis of the EIT privileges' programme is Article 28 of the EIT Law and Article 93 of the Implementation Rules for the Enterprise Income Tax Law of the PRC. Furthermore, the applicant provided evidence on the EIT offset for research and development subsidy with legal basis in Article 30(1) of the EIT law, along with the Implementation Rules for the Enterprise Income Tax Law of the PRC.
- (81) Optical fiber cables ⁽³⁵⁾ and aluminium foil ⁽³⁶⁾ investigations confirmed that the schemes were still in use and their nature had not changed.
- (82) In the absence of cooperation from the GOC, no arguments were presented which would challenge the evidence presented by the applicant with regard to the continued benefits of the HRF producers from income and other direct tax programmes and policies.
- (83) The schemes in question are considered to be subsidies within the meaning of Articles 3(1)(a)(ii) and 3(2) of the basic Regulation, in the form of foregone government revenue which confers a benefit upon the recipient companies.

⁽³³⁾ Recitals (312) to (344) of the original Regulation.

⁽³⁴⁾ See recitals 198 to 204 and Annex S-4.

⁽³⁵⁾ See recitals (463) to (488).

⁽³⁶⁾ See recitals (474) to (505).

3.4.3.3. *Benefit*

- (84) In the absence of cooperation from the GOC and the Chinese producers, the Commission had no company-specific information on the basis of which to calculate the amount of subsidy conferred during the review investigation period. While the amount of subsidisation could not be precisely established due to the lack of cooperation, based on the request, the findings in previous investigations referred in recital (81), and absent any indication to the contrary, it could be concluded that Chinese HRF producers continued to be subsidized.

3.4.3.4. *Specificity*

- (85) The schemes are specific within the meaning of Article 4(2)(a) of the basic Regulation given that the legislations pursuant to which the granting authority operated, limited the access to the schemes only to certain enterprises and industries.

3.4.3.5. *Conclusion*

- (86) Accordingly, the Commission concluded that there is sufficient evidence showing that some of the tax programmes continued being countervailable subsidies during the review investigation period.

3.4.4. ***Indirect tax and import tariff programmes and policies***

3.4.4.1. *Findings of the original investigation*

- (87) In the original investigation ⁽³⁷⁾, the Commission established that HRF producers were receiving countervailable subsidies related with preferential treatment under two indirect tax and import tariff programmes:
- (a) VAT exemptions and import tariff rebates for the use of imported equipment and technology
 - (b) Tax exemption for policy-based relocation
- (88) The indirect tax and import tariff programmes were found to be subsidies within the meaning of Articles 3(1)(a)(ii) and 3(2) of the basic Regulation in the form of foregone government revenue which confers a benefit upon the recipient companies.
- (89) The subsidy schemes were also found to be specific within the meaning of Article 4(2)(a) of the basic Regulation, given that the legislations pursuant to which the granting authority operated, limited the access to the schemes only to certain enterprises and industries. In addition, the lack of cooperation from the GOC did not permit the Commission to reach the conclusion to whether objective criteria of eligibility to certain schemes existed which made them also specific under Article 4(2)(b) of the basic Regulation.
- (90) The subsidy rate established in the original investigation for the sampled exporting producers was 1,01 %.

3.4.4.2. *Continuation of the subsidy programme*

- (91) The request as well as the findings of the most recent anti-subsidy investigations carried out by the Commission concerning encouraged industries in China such as tyres ⁽³⁸⁾, OCS ⁽³⁹⁾ and aluminium foil ⁽⁴⁰⁾ investigations confirmed that the schemes were still in use and their nature had not changed.
- (92) In the absence of cooperation from the GOC and the Chinese HRF producers, no arguments were presented which would challenge the evidence presented by the applicant with regard to the continued benefits of the HRF producers from indirect tax and import tariff programmes and policies.

⁽³⁷⁾ See recitals (345) to (364).

⁽³⁸⁾ See recitals (549) to (552).

⁽³⁹⁾ See recitals (189) to (202).

⁽⁴⁰⁾ See recitals (516) to (531).

- (93) The schemes in question are considered to be subsidies within the meaning of Articles 3(1)(a)(ii) and 3(2) of the basic Regulation, in the form of foregone government revenue which confers a benefit upon the recipient companies.

3.4.4.3. *Benefit*

- (94) In the absence of cooperation from the GOC and the Chinese HRF producers, the Commission had no company-specific information on the basis of which to calculate the amount of subsidy conferred during the review investigation period. While the amount of subsidisation could not be precisely established due to the lack of cooperation, based on the request, the findings in previous investigations referred in recital (91), and absent any indication to the contrary, it could be concluded that HRF producers continued to be subsidized.

3.4.4.4. *Specificity*

- (95) The schemes are specific within the meaning of Article 4(2)(a) of the basic Regulation, as the access to the schemes is limited only to certain enterprises and industries.

3.4.4.5. *Conclusion*

- (96) Accordingly, the Commission concludes that there is sufficient evidence showing that the indirect tax and import tariff programmes continued being countervailable subsidies during the review investigation period.

3.4.5. **Grant programmes**

3.4.5.1. *Findings of the original investigation*

- (97) In the original investigation ⁽⁴¹⁾, the Commission concluded that all the sampled companies benefited from a variety of grants related to environmental protection and reduction of emissions and from grants related to R & D, technological upgrading and innovation.
- (98) The original investigation also positively concluded on the existence of a number of *ad hoc* subsidies granted to certain HRF producers from different levels of government authorities, i.e. local, regional and national. Examples of such grants were patent funds, science and technology funds and awards, business development funds, grants for basic infrastructure, support funds provided at district or provincial level, funds for the import of iron ore, funds for the company's relocation, overseas advanced technology introduction special fund, interest discounts on loans for imported equipment.
- (99) These grants and other *ad hoc* subsidies were found to constitute a subsidy in the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation i.e. a transfer of funds from the GOC in the form of grants to the producers of the product concerned.
- (100) They were also found to be specific either under Article 4(2)(a) of the basic Regulation, given that they appear to be limited to certain companies or specific projects in specific regions and/or the steel industry, or under Article 4(2)(b), given that the eligibility conditions and the actual selection criteria for enterprises to be eligible are not transparent, not objective and do not apply automatically.
- (101) The subsidy rate established in the original investigation for the sampled exporting producers varied from 0,09 % to 1,45 %.

3.4.5.2. *Continuation of the subsidy programmes*

- (102) In the expiry review request ⁽⁴²⁾, the applicant provided evidence that many HRF producers continue to benefit from grant programmes.

⁽⁴¹⁾ See recitals (365) to (393) of the original Regulation.

⁽⁴²⁾ See recitals 183-197 and Annex S-4 of the request.

- (103) Findings of the most recent anti-subsidy investigations carried out by the Commission concerning encouraged industries in China such as OCS ⁽⁴³⁾ and aluminium foil ⁽⁴⁴⁾ investigations confirmed that the schemes were still in use and their nature had not changed.
- (104) Most of the grants were provided in order to finance particular projects or assets, reward energy conservation or environmental protection, and modernise steel mills.
- (105) The applicant also provided evidence, based on analysis of annual accounts of specific companies, that at least 12 HRF producers received subsidies between 2018 and 2021.
- (106) All grants and other *ad hoc* subsidies analysed during expiry review investigation constituted a subsidy in the meaning of Article 3(1)(a)(i) of the basic Regulation, in the form of a direct transfer of funds with regard to the grants and similar transfers of resources.
- (107) In the absence of cooperation from the GOC and HRF producers, no arguments were presented which would challenge the evidence presented by the applicant with regard to the continued benefits of the HRF producers from grants or awarded *ad hoc*.

3.4.5.3. Benefit

- (108) In the absence of cooperation from the GOC and the Chinese producers, the Commission had no company-specific information on the basis of which to calculate the amount of subsidy conferred during the review investigation period. While the amount of subsidisation could not be precisely established due to the lack of cooperation, based on the request, the findings in the previous investigations referred in recital (103), and absent of the any indication to the contrary, it could be concluded that HRF producers continued to be subsidized.

3.4.5.4. Specificity

- (109) These subsidies were considered to be specific in law or in fact, within the terms of Article 4(2) of the basic Regulation. In the absence of cooperation from the GOC and Chinese producers of HRF, they are deemed to be granted to a limited number of HRF producers, and/or because of the manner in which discretion of the granting authorities has been exercised for their granting.

3.4.5.5. Conclusion

- (110) Accordingly, the Commission concluded that there is sufficient evidence showing that the producers continued receiving grants as countervailable subsidies during the review investigation period.

3.5. Additional subsidies

3.5.1. Debt for equity swaps

3.5.1.1. Introduction

- (111) The expiry review request ⁽⁴⁵⁾ contained extensive evidence that several Chinese HRF producers were involved in the second generation of the debt for equity instruments carried out from 2016 to 2019, for a combined total of 237 billion RMB of debts. It is alleged that outstanding debt due by State-owned steelmakers to State-owned commercial banks ('SOCBs') was cancelled in exchange for equity through the involvement of various types of Implementation Agencies (IAs) which are non-bank financial institutions under the jurisdiction of the China Banking and Insurance Regulatory Commission. The most common form of debt for equity swaps (DES) IAs are financial asset investment

⁽⁴³⁾ See recitals 141-156

⁽⁴⁴⁾ See recitals 447-451

⁽⁴⁵⁾ See recitals 90 to 182.

companies (FAIC) which are spun off from banks or insurance companies. The request further asserted that IAs were specifically created to dispose of massive non-performing loans in key industries, including the steel sector and to restructure the debts of SOEs through, inter alia, debt to equity swaps.

- (112) Given that the GOC failed to provide any information on this programme, the Commission made its findings on this programme based on the information contained in the request and on the information from the anti-subsidy investigation carried out by the Commission concerning the steel sector in China, that is OCS ⁽⁴⁶⁾.
- (113) As examined recital (91) above, the Commission established that HRF is an encouraged industry and in section 3.4.1 it found that the HRF producers avail themselves of preferential financing thanks to the fact that the GOC had a policy to provide preferential lending to the HRF sector via State-owned banks and also privately owned banks were entrusted and directed by the GOC to provide such preferential loans to the HRF producers. Furthermore, the Commission established that the GOC has built an entire regulatory ecosystem around the DES concept which covers a growing number and variety of creditors, target companies, implementation agencies, investors, service platforms and supervisory institutions. And while GOC documents consistently highlight the market-orientation of this system, they also remind participants that they are expected serve the greater good and further national economic policy goals.
- (114) According to the 'Guiding Opinions on Regulating the Asset Management Business of Financial Institutions', document referenced in the request, financial institutions are encouraged to raise funds through the issuance of asset management products to invest in areas that meet the requirements of national strategies and industrial policies and meet the requirements of national supply-side structural reform policies under the premise of compliance with laws and regulations and business sustainability. Furthermore, the financial institutions are also encouraged to raise funds through the issuance of asset management products to support the transformation of the economic structure, support market oriented, legalised debt-to-equity swaps, and reduce corporate leverage.
- (115) The request also referred to 'Opinions on Resolving Excess Capacity in the Steel Industry and Realizing a Recovery' which emphasised the need to increase financing support for steel enterprises and the need to attract investment capital from sources other than the state budget and financial institutions, like wealth management products, pension funds etc. Furthermore, this document urges to develop market-based approaches in processing corporate debt and support banks in disposing of distressed debt by transferring troubled loan positions to asset management corporations.
- (116) 'Opinions on Supporting the Steel and Coal Industries in Resolving Excess Capacity and Realizing a Recovery', published in 2016 by the People's Bank of China and the regulatory commissions overseeing the banking, insurance and securities sectors, gives instructions on how to help steel and coal industries resolve overcapacity and insolvency problems. This is achieved through the 'guiding role of financial services' enterprises which would enable the coal and steel industries improve their financial, technological and environmental performance. Furthermore, enterprises that comply with national industrial policies and can meet several vaguely defined conditions pertaining to restructuring, solvency and environmental protection may benefit from the readjustment of credit periods.
- (117) In the expiry review request, there is an information on establishment of the joint conference system under the leadership of State Council which reviewed and approved regulatory and support policies, including implementation of a new round of debt-equity-swaps. At the same time, it worked out joint punishment mechanisms to sanction rule violations. Furthermore, the joint conference has called for DES transactions to benefit enterprises and industries with great significance for economic transformation and as well as for national security.

⁽⁴⁶⁾ See recitals 119-134, and Commission Implementing Regulation (EU) 2019/688 of 2 May 2019 imposing a definitive countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China following an expiry review pursuant to Article 18 of the Regulation (EU) 2016/1037 of the European Parliament and of the Council (OJ L 116, 3.5.2019, p. 39), Section 3.5.2.

- (118) At the 2017 Financial Work Conference of the Communist Party of China Central Committee (CPCCC), General Secretary Xi Jinping confirmed long-held positions that financial institutions must understand their role first and foremost as serving the real economy and must do their utmost to strengthen its weak points. In his statement he elaborated on the duty of financial sector to serve the real economy by guarding it from financial risks. By doing so financial sector should improve service efficiency and quality and channel more resources into major and weak areas of economic and social development. In addition to that, the government is engaged in deleveraging of the economy by firmly taking a prudent monetary policy and prioritizing leverage reduction in state-owned enterprises.
- (119) The meeting of the China State Council's (SC) Standing Committee in 2017 placed the deleveraging of SOE at the very centre of the general corporate deleveraging task. The Standing Committee proposed the development of relevant fiscal support measures for over-leveraged state-owned assets in the steel and coal industries. It also discussed establishing a state-owned capital complementary mechanism and making available the capital needed for transformation and upgrading.
- (120) In view of the considerations above, the Commission concluded that the debt for equity swaps constitute a financial contribution in the form of equity infusion and/or loan within the meaning of Article 3(1)(a)(i) of the basic Regulation or in the form of revenue forgone resulting from debt cancelled or not repaid within the meaning of Article 3(1)(a)(ii). The government provided this financial contribution through public bodies involved in these transactions, i.e. the four IAs and various SOCBs. In the absence of any cooperation from the GOC during the expiry review investigation, the Commission concluded that the evidence on the record sufficiently demonstrated that IAs were public bodies, as they were specifically created by the GOC to dispose of massive non-performing loans in key industries, including the steel sector, and to restructure the debts of SOEs. Consequently, it was considered that their behaviour corresponded to the exercise of government authority.
- (121) Furthermore, the request contained evidence that the large amount of debt cancellations was not subject to normal commercial considerations, as the GOC did not carry out an assessment whether a normal private investor would have carried out these debts to equity swaps in the expectation that a reasonable rate of return would be generated over time. The request contained information that the GOC exchanged massive amounts of debt for equity with the objective to reduce the liabilities-to-assets ratio of HRF producers to increase their competitiveness aside from commercial considerations that a private investor would make. The Commission, after careful analysis of the information provided in the request and in the absence of any other information on the file, concluded that the measures conferred a benefit within the meaning of Article 6(a) of the basic Regulation.

3.5.1.2. *Benefit*

- (122) Debt for equity swaps constitute a financial contribution in the form of equity infusion and/or loan within the meaning of Article 3(1)(a)(i) of the basic Regulation or in the form of revenue forgone resulting from debt cancelled or not repaid within the meaning of Article 3(1)(a)(ii) of the basic Regulation.
- (123) In the absence of any cooperation from the GOC and Chinese producers of HRF during this review, the Commission, after careful analysis of the information provided in the request and in the absence of any other information on the file, concluded that the measures therefore conferred a benefit within the meaning of Article 6(a) of the basic Regulation.

3.5.1.3. *Specificity*

- (124) The subsidy was specific in accordance with Articles 4(2)(b) of the basic Regulation, as there were no objective criteria for the provision of the subsidies and it has been unclear under which conditions HRF producers may or may not be involved into this programme. The swaps were also specific in line with Article 4(2)(c) of the basic Regulation, given major discretion of the public authorities to grant the subsidy and only certain sectors have benefitted from the subsidy such as those suffering overcapacity.

3.5.1.4. Conclusion

- (125) Accordingly, the Commission concluded that there is sufficient evidence showing that HRF producers in the PRC benefited from the debt for equity swaps as a countervailable subsidy during the review investigation period in the form of financial assistance to reduce corporate debt of heavily indebted companies.

3.6. Overall conclusion regarding the continuation of the subsidisation

- (126) In the light of the above, the Commission concluded that the HRF producers in China continued to benefit from countervailable subsidies during the review investigation period.

4. DEVELOPMENT OF IMPORTS SHOULD THE MEASURES BE REPEALED

- (127) Further to the finding of the existence of subsidisation during the review investigation period, the Commission investigated the likelihood of continuation of subsidised imports from the country concerned, should the measures be repealed. The following additional elements were analysed: the production capacity and spare capacity in the PRC and the attractiveness of the Union market.

4.1. Production capacity and spare capacity in the PRC

- (128) In the absence of cooperation by the producers in the PRC, the Commission based its findings with regard to the capacity of the other producers on facts available and relied on the information contained in the expiry review request, as well as other available sources.
- (129) In 2020, China accounted for 56,5 % of the world's crude steel output, against 53,3 % in 2019 ⁽⁴⁷⁾. In September 2020, a statement by the 88th Session of the OECD Steel Committee noted that *'despite the global negative demand shock, production and inventories have significantly increased from year-ago levels in China'*. Moreover, the Steel Committee noted *'with concern the divergence from [the] global trend in China, where steel production reached record volumes in the first semester of 2020, and where inventories have reached historically high levels. These developments pose a risk of oversupply in China exacerbating global imbalances resulting from the COVID-19 demand shocks.'* The trend of ever-expanding steel production capacity in China has been further supported by a *'huge loosening of credit conditions'*, combined with increasing investment by large steel producers, while smaller players are still outside of the capacity control system. Also, an OECD Report of February 2021 noted an increasing steel making overcapacity worldwide and particularly driven by Asian countries including China ⁽⁴⁸⁾.
- (130) The Chinese government has ambitious plans for its steel industry ⁽⁴⁹⁾ as it aims to remove obsolete plants and uncompetitive companies with excessive costs while focusing on boosting and promoting steel producers which are in line with government policies and priorities. The idea is to clean-up the industry, strengthening leading players and clearing underperformers and those who do not comply (or align) with government priorities. The goal is to nurture *'a new generation of industry leaders'*. This is achieved through policies such as capacity swap system, debt-equity swaps, which allow for a very substantial state discretion over the operations of individual firms. The underlying purpose is to increase capacities of *'selected'* players, which are high-performer producers that comply with the government's current objectives to the steel industry.

⁽⁴⁷⁾ Worldsteel, 26.1.2021, in ThinkDesk China Research & Consulting, 'China's State-Business Nexus Revisited – Government Interventions and Market Distortions in the Chinese Steel Industry', 17 October 2021, p. 92.

⁽⁴⁸⁾ OECD, 'Latest developments in steelmaking capacity', February 2021, page 11.

⁽⁴⁹⁾ ThinkDesk China Research & Consulting, 'China's State-Business Nexus Revisited – Government Interventions and Market Distortions in the Chinese Steel Industry', 17 October 2021.

- (131) The information contained in the expiry review request estimated the total Chinese capacity of certain hot-rolled flat products of iron, non-alloy or other alloy steel at more than 345 million tonnes, while production and Chinese consumption were both estimated at 314 million tonnes in 2020. On this basis, the spare capacity in China was estimated at 31 million tonnes in 2020, which is indicative for the spare capacity in the review investigation period and is almost equal to the total Union consumption on the free market (about 35 million tonnes) in the review investigation period.
- (132) The deceleration in Chinese steel demand in the beginning in 2021 is and will be a key driver of increasing exports. The resulting imbalance between capacity and demand is likely to increase pressure on producers to export. Chinese capacities are too big compared to the actual needs of the Chinese economy.
- (133) On this basis, it is likely that Chinese producers will direct their spare capacities to the Union market in large quantities at subsidised prices should the measures lapse.

4.2. Attractiveness of the Union market

- (134) The Union market is among the largest markets of certain hot-rolled flat steel products worldwide. The Chinese market cannot absorb the excess steel capacity and major third countries markets are closed for Chinese exports as they have anti-dumping, safeguards or other protective measures in place against the PRC ⁽⁵⁰⁾. In addition, price levels in the Union (the average price charged by the Union industry was EUR/tonne 734 during the review investigation period) are above the average price charged by Chinese exporting producers to the rest of the world (EUR/tonne 714 at CIF level). Since, as explained in recital (206) below, HRF is a highly price sensitive commodity product, the Chinese exporters would have a strong incentive to direct their exports to the Union should the measures lapse.
- (135) The applicant claimed in its request that the Union steel safeguard measures alone, which apply to the product under review, would not be sufficient to protect the Union market against imports in significant quantities at subsidised prices. As China did not receive any country-specific quota for the product under review, Chinese producers have access to a large amount of residual quota volumes under which they could direct their exports to the Union market if the countervailing measures were to lapse. As a result, if the countervailing measures were to be repealed, Chinese export volumes are likely to increase significantly within the residual quota and thus flood the Union market before any out-of-quota duty under the safeguard measure would become applicable.

4.3. Conclusion on the likelihood of continuation of subsidisation

- (136) The Commission, on the basis of facts available, concluded that there is sufficient evidence that subsidisation of the HRF industry in the PRC continued during the review investigation period and is likely to continue in the future. No evidence showed that the subsidies and subsidy programmes at issue will be terminated in the near future.
- (137) The subsidisation of the HRF industry allows the Chinese producers to maintain their production capacities at a level by far exceeding domestic demand and could possibly cover the entire Union consumption.
- (138) Therefore, the Commission found that the repeal of the countervailing measures is likely to result in a redirection of significant volumes of subsidised imports of the product under review to the Union market. Various subsidy programmes continue to be offered by the GOC to the HRF industry and the Commission determined that the HRF industry benefited from a number of them during the review investigation period.

⁽⁵⁰⁾ Currently there anti-dumping measures in the following countries: Canada, USA, Türkiye, Mexico and UK. GCC (Gulf countries) has safeguard measures and USA has also Section 232 measures.

5. INJURY

5.1. Definition of the Union industry and Union production

- (139) The like product was manufactured by 21 producers in the Union during the period considered. They constitute the 'Union industry' within the meaning of Article 9(1) of the basic Regulation.
- (140) The total Union production of the product under review during the review investigation period was established at around 70 million tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry, such as the request for the expiry review, the verified questionnaire replies and the macro questionnaire reply submitted by EUROFER. As indicated in recital (13), the Union producers selected in the sample represented 29 % of the total Union production of the like product during the review investigation period.

5.2. Union consumption

- (141) The product under review is regarded as a primary material for the production of various value-added downstream products, starting with cold-rolled products. Given that the Union industry is mostly vertically integrated and produces both the product under review and downstream products, both the captive and free market were analysed separately, where appropriate.
- (142) The distinction between captive and free market is relevant for the injury analysis because products destined for the captive market are not exposed to direct competition from imports, and transfer prices, if any, 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 set according to market conditions.
- (143) To provide a picture of the Union industry that is as complete as possible, the Commission obtained data for the entire activity of the like product and determined whether the production was destined for the captive or the free market. The Commission found that around 60 % of the total Union production of the like product was destined for the captive market during the review investigation period.
- (144) The Commission established the Union free market consumption on the basis of (a) the sales on the Union market of all known producers in the Union, as reported in the macro questionnaire reply from EUROFER and (b) the imports to the Union from all third countries as reported by Eurostat. The Union captive market consumption was established on the basis of the captive use and captive sales on the Union market of all known producers in the Union, as reported in the macro questionnaire reply from EUROFER.
- (145) Union consumption developed as follows:

Table 1

Union consumption (000 tonnes)

	2018	2019	2020	Review investigation period
Free market consumption	34 533	32 411	27 899	34 869
<i>Index</i>	100	94	81	101
Captive consumption	45 289	42 011	36 989	40 424
<i>Index</i>	100	93	82	89

Total Union consumption	79 822	74 422	64 888	75 293
<i>Index</i>	100	93	81	94

Source: Eurostat, Macro questionnaire reply from EUROFER.

- (146) Total Union consumption declined by 7 % in 2019 and sharply dropped further by another 12 % in 2020 due to a slump in demand caused by the COVID-19 pandemic. This decrease was however followed by a good recovery driven by the rebound in steel demand during the review investigation period but was still 6 % below the level of 2018.
- (147) Free market consumption followed a similar trend to that of total Union consumption. It decreased sharply by 19 % up to 2020 and recovered strongly during the review investigation period, reaching even a level 1 % above that of 2018.
- (148) The captive market consumption trend was nearly identical to the total Union consumption trend, declining sharply until 2020 by 18 % followed by a recovery reaching however only 89 % of the 2018 level.
- (149) Overall, total Union consumption decreased 6 % during the period considered.

5.3. Imports from the country concerned

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

- (150) The Commission established the volume of imports on the basis of Eurostat data. The market share of the imports was established on the basis of a comparison between import volumes and the Union free market consumption, as reported in Table 2 above.
- (151) Imports into the Union from the country concerned developed as follows:

Table 2

Import volume (000 tonnes), market share and prices (EUR/tonne)

	2018	2019	2020	Review investigation period
Volume of imports from the PRC	1,7	0,5	0,3	28,7
Market share (%)	0,0	0,0	0,0	0,1
PRC import prices	1 674	3 177	2 482	664
<i>Index</i>	100	190	148	40

Source: Eurostat, Macro Questionnaire reply from EUROFER.

- (152) After the imposition of measures in 2017, imports from China dropped to an insignificant level, with a negligible market share of 0,002 % in 2018. From 2018 to 2020, imports declined even further. During the review investigation period, imports from the PRC, however, spiked in April 2021 in comparison to the low levels in the preceding three years. Market share, however, remained very low at 0,1 %.
- (153) Chinese import prices as reported in Eurostat were exceptionally high during 2018, 2019 and 2020, though they plummeted during the review investigation period. The exceptionally high import prices from 2018 to 2020 are likely connected with the fact that China exported a negligible volume to the Union which cannot be considered reliable.

(154) The Commission considered that Chinese import prices reported in Eurostat during the period considered are not representative of HRF average prices due to the very low volume of imports from the PRC during that period and that they could not be used to draw meaningful or relevant conclusions.

(155) The imports of the product under review from other third countries developed as follows:

Table 3

Imports from third countries

Country		2018	2019	2020	Review investigation period
Total of all third countries except the PRC	Volume (000 tonnes)	7 997	7 225	5 879	9 635
	<i>Index</i>	100	90	74	120
	Market share (%)	23	22	21	28
	Average price (EUR/tonne)	532	482	428	765
	<i>Index</i>	100	90	80	144

Source: Eurostat.

(156) Total imports of the product under review from third countries other than the country concerned decreased from 2018 to 2020 by 26 % and sharply increased in 2021 to reach a market share of 28 %, which is 20 % above the 2018 level. Overall, the Union imports HRF from more than 40 countries worldwide. The five biggest exporters of HRF to the EU during the review investigation period were Russia, India, Türkiye, Egypt and Taiwan, representing 18 % of the Union free market and 65 % of all imports of HRF. Individually, Russia was the largest exporter with a market share of 5,8 % whilst the other four countries held a market share between 2 % and 4 %, respectively. No other country holds a market share above 2 %. Among the biggest exporters, imports from Russia ⁽⁵¹⁾ and Türkiye ⁽⁵²⁾ are currently covered by anti-dumping measures.

5.4. Economic situation of the Union industry

5.4.1. General remarks

(157) In accordance with Article 8(4) of the basic Regulation, the examination of the impact of the subsidised imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

(158) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data provided by the applicant that related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.

⁽⁵¹⁾ OJ L 258, 5.10.2017, p. 24.

⁽⁵²⁾ OJ L 238, 6.7.2021, p. 32.

- (159) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, employment, productivity, magnitude of the amount of countervailable subsidies and recovery from past subsidisation.
- (160) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.
- (161) As explained in recitals (143) – (144), to provide a picture of the Union industry that is as complete as possible, the Commission obtained data for the entire production of the product concerned and determined whether the production was destined for the captive or the free market. Where relevant and possible the Commission analysed separately injury indicators related to the free and the captive market.

5.4.2. **Macroeconomic indicators**

5.4.2.1. *Production, production capacity and capacity utilisation*

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

Table 4

Production, production capacity and capacity utilisation

	2018	2019	2020	Review investigation period
Production volume (000 tonnes)	75 626	70 920	61 096	69 531
<i>Index</i>	100	94	81	92
Production capacity (000 tonnes)	90 923	92 584	91 965	93 249
<i>Index</i>	100	102	101	103
Capacity utilisation (%)	83	77	66	75
<i>Index</i>	100	92	80	90

Source: Macro questionnaire reply from EUROFER.

- (163) The production volume of the Union industry followed a similar trend as total Union consumption and decreased overall by around 8 % during the period considered, with a significant drop in 2020 followed by a recovery due to the reasons explained in recital (146).
- (164) While the production capacity of the Union industry slightly increased during the period considered by 3 %, the capacity utilisation followed the same negative trend as production volume and consumption and decreased by 10 % between 2018 and the review investigation period.

5.4.2.2. *Sales volume and market share*

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

Table 5

Sales volume and market share in the free market (000 tonnes)

	2018	2019	2020	Review investigation period
Sales on the free market	26 534	25 185	22 020	25 205
<i>Index</i>	100	95	83	95
Market share (%)	77	78	79	72
<i>Index</i>	100	101	104	99

Source: Macro questionnaire reply from EUROFER.

- (166) The Union industry sales volume on the Union market followed the trend of consumption during the period considered. It decreased between 2018 and 2020 for the reasons explained in recital (146), followed by a rebound in the review investigation period. Yet, the rebound in the review investigation period was still below 2018 levels.
- (167) During the period considered, the Union industry's market share in terms of Union consumption increased slightly from 2018 to 2020 from 77 to 79 % to drop by seven percentage points between 2020 and the review investigation period to 72 %. As shown in table 4, this decline is explained by the fact that the market share of imports from third countries increased by 7 % between 2020 and the review investigation period, which explains the loss of the Union industry on the free market share.

Table 6

Captive volume on the Union market and market share (000 tonnes)

	2018	2019	2020	Review investigation period
Captive volume on the Union market	45 289	42 011	36 989	40 424
<i>Index</i>	100	93	82	89
Total production of Union Industry	75 626	70 920	61 096	69 531
% of captive volume compared to total production	59,9	59,2	60,5	58,1

Source: Macro questionnaire reply from EUROFER.

- (168) The Union industry captive volume (composed of captive use and captive sales on the Union market) decreased by 18 % from 2018 to 2020 and recovered by 7 percentage points in 2021, resulting in an overall decrease of 11 % during the period considered, from about 45 million tonnes to 40 million tonnes from the start to the end of the review investigation period. Overall, the captive and free market followed the same trend. Therefore, the Commission concluded that development of the captive market did not have any significant impact on the Union industry performance on the free market.
- (169) The Union industry's captive market share (expressed as a percentage of total production) remained relatively stable during the period considered, ranging between 58,1 % and 60,5 %.

5.4.2.3. Growth

- (170) In a context of decreasing consumption and production, the Union industry lost sales volume and market share on the free market. Overall, there was no growth for the Union industry over the period considered.

5.4.2.4. Employment and productivity

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

Table 7

Employment and productivity

	2018	2019	2020	Review investigation period
Number of employees	41 161	38 980	36 207	38 470
<i>Index</i>	100	95	88	93
Productivity (unit/employee)	1 824	1 819	1 687	1 807
<i>Index</i>	100	100	93	99

Source: Macro questionnaire reply from EUROFER.

- (172) Between 2018 and the review investigation period, the number of employees engaged in the production of the product under review followed the trend of the volume of Union production, it decreased sharply between 2018 and 2020 to recover slightly during the review investigation period. Overall resulting in a decrease by 7 % over the period considered.
- (173) The productivity of the Union industry's workforce, measured as output (tonnes) per employee, remained overall stable during the period considered.

5.4.2.5. Magnitude of the amount of countervailing subsidies and recovery from past subsidisation

- (174) The Commission concluded that there is sufficient evidence showing that the producers continued receiving countervailable subsidies during the review investigation period. The amount of countervailing subsidies for China, specified above in the subsidy section, is significant.
- (175) The anti-subsidy measures imposed following the original investigation allowed the Union industry to recover from past subsidisation, as is shown by the data for 2018. This was also confirmed by the Commission findings in the anti-dumping investigation against hot-rolled flat products from Türkiye ⁽⁵³⁾.

5.4.3. Microeconomic indicators

5.4.3.1. Prices and factors affecting prices

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

⁽⁵³⁾ Recital 139, Commission Implementing Regulation (EU) 2021/9 of 6 January 2021 imposing a provisional anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Turkey (OJ L 3, 7.1.2021, p. 4).

Table 8

Sales prices and cost of production in the Union (EUR/tonne)

	2018	2019	2020	Review investigation period
Average unit sales price on the free market	549	509	450	734
<i>Index</i>	100	93	82	134
Unit cost of production	518	557	534	669
<i>Index</i>	100	108	103	129

Source: Sampled Union producers questionnaire reply.

- (177) The Union industry's average sales prices decreased by 17 % between 2018 and 2020 and increased drastically by 34 % in 2021. The trend of unit sales prices during the period considered was influenced by the severe disruptions caused by the COVID-19 pandemic and the post-pandemic resumption in demand. In 2021, high steel demand, tight supply, and increased cost of production were the factors that influenced the sudden and significant rise in the unit sales price.
- (178) The unit cost of production increased over the period concerned by 29 %. However, in 2019 the cost of production increased whilst the unit sales prices dropped. The inability for the Union industry to reflect the increased cost of production in their sales price was due to large volumes of dumped imports from Türkiye, pushing the prices downwards. In 2020, both cost of production and sales prices dropped, but the former to a smaller extent. This was due to the slump in the market during the COVID-19 pandemic, depressing prices significantly whilst the cost of production was less affected. The unit cost of production surged in 2021 due to a jump in energy and commodity prices. However, due to the post-COVID recovery demand surged as well and consequently, prices also increased significantly (more than 50 % between 2020 and the review investigation period), even more than the increase in production costs in the same period.

5.4.3.2. Labour costs

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

Table 9

Average labour costs per employee

	2018	2019	2020	Review investigation period
Average labour costs per employee (EUR/FTE)	64 164	69 352	69 748	78 444
<i>Index</i>	100	108	109	122

Source: Sampled Union producers questionnaire reply.

- (180) During the period considered average labour costs increased by 22 %. While the number of employees in the review investigation period went down, compared to 2018, the average labour cost per employee increased.

5.4.3.3. *Inventories*

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

Table 10

Inventories

	2018	2019	2020	Review investigation period
Closing stocks (tonnes)	631 608	533 200	390 880	522 405
<i>Index</i>	100	84	62	83
Closing stocks as a percentage of production	5,0	4,5	3,8	4,6
<i>Index</i>	100	90	76	92

Source: Sampled Union producers questionnaire reply.

(182) During the period considered, the Union industry stock of HRF decreased continuously, with a drastic fall in 2020, which is explained by the effects of the Covid-19 pandemic, and a rebound in 2021. The HRF industry in the Union is characterised by framework contracts (monthly, quarterly, yearly) between producers and customers that fix the quantities and prices. These framework contracts are implemented through purchasing orders according to customers' needs. As a result, the Union industry can plan its production and inventories. Accordingly, and as also established in the original investigation, stocks are not considered an important injury indicator for this industry, since most types of the like product are produced by the Union industry based on specific orders of the users.

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

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

Table 11

Profitability, cash flow, investments and return on investments

	2018	2019	2020	Review investigation period
Profitability of sales in the Union free market (% of sales turnover)	8,4	- 7,2	- 18,0	14,1
<i>Index</i>	100	- 86	- 214	168
Cash flow (EUR)	496 319 788	- 6 211 922	- 130 468 840	645 183 908
<i>Index</i>	100	- 1,3	- 26	130
Investments (EUR)	216 927 207	433 154 031	181 406 902	394 535 083
<i>Index</i>	100	200	84	182

Return on investments (%)	9,1	- 6,0	- 13,3	17,4
Index	100	- 66	- 146	191

Source: Sampled Union producers questionnaire reply.

- (184) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the free market sales of the like product in the Union as a percentage of the turnover of those sales.
- (185) Profitability fluctuated during the period considered although overall profitability increased by 5,7 percentage points during the period considered. After the imposition of measures in 2017, the industry recovered and recorded a profit in 2018. Losses were, however, incurred in 2019 and profitability reached its lowest level, namely -18 %, in 2020 at the core of the pandemic, while in 2021 profit strongly rebounded to 14,1 %. At the same time, following the imposition of measures against the PRC, dumped imports at low prices from Türkiye rapidly increased, which explains the drop in profitability in 2019. This decrease in profitability was then exacerbated by the shocks caused by the global pandemic in 2020, such as supply chain disruptions and the decline in steel consumption. Spike in steel demand, coupled with increased sales prices, led to unusually high profits in 2021, which marked an exceptional year for the Union industry.
- (186) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow developed in a similar manner to profitability: a drastic fall in 2019-2020, followed by strong rebound in the review investigation period.
- (187) Between 2018 and the review investigation period, investments increased by 82 %. Overall, during the period considered, the investment flows followed a bimodal distribution: investment increased significantly in 2019, followed by a drop in 2020 and a second peak in 2021. In general, the investments were aimed at improving quality and greening of production.
- (188) The return on investments (ROI) is the profit in percentage of the net book value of investments. The return on investment significantly improved during the review investigation period as compared to 2018. In fact, during the period considered, the ROI increased by 8,3 percentage points. It developed in a similar way as the profitability: a drastic fall in 2019 and 2020, followed by strong rebound in the review investigation period.
- (189) The sampled Union producers' ability to raise capital was not affected during the review investigation period, which saw a speedy recovery from the pandemic.

5.5. Conclusion on injury

- (190) Following the imposition of countervailing measures against imports of HRF from China in 2017, imports from China decreased and remained below the de minimis level during the period considered, allowing the Union industry to start recovering from the injurious effects of the subsidised imports from China and, as confirmed by in Commission Implementing Regulation (EU) 2021/1100 ⁽⁵⁴⁾ concerning imports of HRF originating in Türkiye, had recovered by the end of 2018. However, the recovery of the Union industry's economic situation came to an abrupt halt and was reversed in 2019, when the Union industry had to compete with significant volumes of low-priced dumped imports from Türkiye, forcing it to set its prices below costs to keep its market share and thus causing a material injury to the Union industry ⁽⁵⁵⁾. In July 2021, the Commission imposed definitive measures against Türkiye and thanks to various factors at play, as explained in recital (185), the situation of the Union industry improved and recovered by the end of 2021 to an economic situation similar to that of 2018. Hence, during the review investigation period, the Union industry was no longer considered injured.

⁽⁵⁴⁾ Recital 210, Commission Implementing Regulation (EU) 2021/1100 of 5 July 2021 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Turkey (OJ L 238, 6.7.2021, p. 32).

⁽⁵⁵⁾ *Ibid.*

- (191) More particularly, almost all injury indicators, notably production, capacity utilisation, sales volumes and sales prices, employment and productivity, profit, cash flow and ROI followed a similar trend during the period considered. This trend was characterised by a decrease in 2019, a sharper decrease in 2020 and a rebound in the review investigation period to levels similar to those at the beginning of the period considered in 2018. The reason behind this irregular trend lies largely in the coincidence of a considerable influx of low-priced dumped imports of HRF from Türkiye and the unique dynamics created by the COVID-19 pandemic. Lockdowns and interruptions of industrial activity led to extremely low consumption levels and low demand for steel in 2020, whilst steel demand and prices soared in 2021 during the post-COVID recovery leading, amongst others, to exceptionally high profits for the steel industry during the review investigation period.
- (192) On the basis of the above, the Commission concluded that the Union industry did not suffer material injury within the meaning of Article 8 of the basic Regulation during the review investigation period.
- (193) However, the indicators cannot be analysed without considering the exceptionally favourable steel market conditions of 2021. In 2020, however, the pandemic-induced slowdown of industrial activity and its consequent decrease of steel demand, led to a severe downturn of the performance of the steel industry and global economy in general. In 2021, driven by a rebound in demand, steel consumption strongly bounced back, as did steel prices.

6. LIKELIHOOD OF RECURRENCE OF INJURY

- (194) As explained in recital (192), the Commission concluded that the Union industry did not suffer material injury during the review investigation period. On the other hand, as explained in recital (138), the Commission concluded that the repeal of the countervailing measures is likely to result in a redirection of significant volumes of subsidised imports of the product under review to the Union market. Therefore, the Commission assessed, in accordance with Article 18(2) of the basic Regulation, whether there would be a likelihood of recurrence of injury caused by the subsidised imports from the PRC if the measures were allowed to lapse.
- (195) In this regard, the Commission examined the production capacity and spare capacity in China, the attractiveness of the Union market and likely Chinese import prices and impact on the Union industry.

6.1. Production capacity and spare capacity in the PRC

- (196) As described in recital (131), the producers in China have significant spare capacity. Indeed, Chinese estimated spare capacity corresponds to 89 % of the size of the EU free market consumption. This spare capacity could be used to produce the product under review for export to the Union if measures were allowed to lapse. Moreover, as stated in recital (132), shrinking Chinese steel demand is, and will be, a key driver of increasing exports. The resulting imbalance between capacity and demand in China is likely to increase pressure on Chinese producers to export.
- (197) In addition, one of main markets, the USA, is protected by anti-dumping measures on the product under review, which reduces access of the Chinese producers.

6.2. Attractiveness of the Union market

- (198) As described in recital (134), the Union market is among the largest markets of certain hot-rolled flat steel products worldwide. Moreover, the Chinese market cannot absorb the excess steel capacity and major third countries markets are closed for Chinese exports as they have anti-dumping, safeguards or other protective measures in place against the PRC. Also, the price levels in the Union are higher than the average price charged by the Chinese exporters to the rest of the world. Therefore, the Union market represents an attractive target for the existing spare capacity in the PRC if anti-subsidy measures were to be repealed.

- (199) After disclosure, CISA contested the conclusions with regard to the attractiveness of the Union market, arguing that the Chinese steel industry relies on its domestic market, and that Chinese domestic consumption is ten times larger than the EU free market segment. It further highlighted that as of 1 August 2021, certain steel products, including hot-rolled flat steel, are no longer eligible for VAT export rebates, thus having a discouraging effect on exports and redirecting Chinese steel production to the Chinese domestic industry.
- (200) The Commission acknowledged that Chinese domestic HRF consumption is significantly larger the EU free market but as explained in recital (196), the producers in China have significant spare capacity which they are not able to deploy in their domestic market. There is thus nothing that prevent the Chinese producers to use this spare capacity to produce the product under review for export to the Union if measures were allowed to lapse. Besides, as stated in recital (132), shrinking Chinese steel demand is, and will be, a key driver of increasing exports. The resulting imbalance between capacity and demand in China is likely to increase pressure on Chinese producers to export. With regard to the alleged change in the VAT system, the Commission noted that CISA had not provided any evidence supporting the argument that the change of VAT rebates would have led, or will lead, to any significant changes in the export behaviour of Chinese producers. The Commission therefore rejected this claim as unsubstantiated.

6.3. Likely Chinese import prices and impact on the Union industry

- (201) Taking into account the low volumes of imports from the PRC from 2018 until 2021, the Commission considered that the import prices reported in Eurostat could not be relied on to establish the likely prices of imports of HRF from China in the absence of anti-dumping measures. Instead, the Commission considered as a representative proxy export prices from the PRC to all third countries other than the Union ('rest of the world' or 'ROW').
- (202) The Commission established that during the review investigation period Chinese exports prices (FOB) to the rest of the world was on average 660 EUR/tonne. Based on that price and to determine a likely price at which Chinese exports would arrive at the Union border, the Commission added cost for insurance and freight. In the absence of cooperation from Chinese exporting producers the Commission resorted to the costs used in the original investigation, i.e. 52 EUR/tonnes, or 7,9 % of the price/tonne, as the best facts available. Accordingly, the Commission concluded that the likely import CIF price of Chinese exports of HRF to the Union would, absent measures, be not more than 712 EUR/tonne.
- (203) Given that statistical data, in the absence of cooperation of Chinese exporting producers, was used, only an average price per tonne for a large variety of product types could be established. Hence, in the absence of information at product type level the Commission could not carry out a precise undercutting calculation but had to limit itself to a price comparison between average prices per tonne.
- (204) The Chinese exports price thus determined was compared with the weighted average sales prices during the review investigation of the sampled Union producers charged to customers on the Union market, adjusted to an ex-works level.
- (205) The price comparison was made at the same level of trade and, in analogy with a precise undercutting calculation methodology, the result of the comparison was expressed as a percentage of the sampled Union producers' theoretical turnover during the review investigation period. It showed that on average the Chinese exports to the Union would undercut Union industry's average prices by around 8 %.
- (206) HRF is a highly price sensitive commodity product and as observed in the original investigation concerning imports of HRF from China and also in the investigation on the identical product from Türkiye, rather modest levels of price undercutting combined with large volumes are susceptible to have significant and immediate impact on the Union industry's performance ⁽⁵⁶⁾. In both those investigations, undercutting margins below 5 % forced the Union industry to lower sales prices (or lose market share) to such an extent that it incurred material injury in the short term.

⁽⁵⁶⁾ Recital 98, OJ L 3, 7.1.2021, p. 4.

- (207) Given that the Union industry during the review investigation period had just rebounded from a turbulent and economically difficult period, including the Covid-19 pandemic, with accumulated losses, it is still in a fragile situation. In addition, the Commission established that various subsidy programmes continue to be offered by the GOC to the HRF industry and the Commission determined that the HRF industry benefited from a number of them during the review investigation period. It is therefore highly likely that the recurrence of low-priced subsidised imports from China in significant volumes that undercut Union prices would have a significant adverse effect on the Union industry's performance, notably with regard to production, sales volumes and prices, profitability and investment needs, resulting in material injury recurring.
- (208) After disclosure, CISA challenged the selection of the period considered for the injury analysis. It argued that the dumped imports of HRF at increased volumes from Türkiye in 2019, the COVID-induced economic slowdown, and the post-pandemic recovery boom distorted the evidence serving as a basis for the dumping and injury analysis. It claimed that the Commission should have analysed a different period and suggested to examine an extended period, covering one or two years prior to the period considered (2016 – 2018) as well as post-RIP (2022).
- (209) The Commission rejected this claim. It recalled that the various elements listed by CISA as being capable of distorting the evidence during the period considered had been acknowledged and carefully considered in the Commission's injury analysis. The Commission further observed that even if an extended period prior to the review investigation period would have been considered, as suggested by CISA, the same elements would still have been present. With regard to the review investigation period the Commission recalled that based on Article 6(1) of the basic Regulation, *'an investigation period shall be selected which in the case of dumping shall, normally, cover a period of no less than six months immediately prior to the initiation of proceedings. Information relating to a period subsequent to the investigation period shall, normally, not be taken into account'*. It is established case-law that the Commission cannot be required to incorporate in its calculations factors relating to a period subsequent to the investigation period, unless such factors disclose new developments which make the proposed anti-dumping duty manifestly inappropriate ⁽⁵⁷⁾. The same reasoning, by analogy, should apply to review investigations initiated under Article 11(2) of the basic Regulation. CISA did not provide any evidence tending to show that the developments that followed the review investigation period made the re-imposition of the duty manifestly inappropriate.

6.4. Conclusion

- (210) On the basis of the above, it is concluded that the absence of measures would, in all likelihood, result in a significant increase of subsidised imports from the PRC at injurious prices and thus material injury would be likely to recur.

7. UNION INTEREST

- (211) In accordance with Article 31 of the basic Regulation, the Commission examined whether maintaining the existing anti-subsidy measures would be against the interest of the Union as whole. The determination of the Union interest was based on an appreciation of all the various interests involved.

7.1. Interest of the Union industry

- (212) The Union industry is located in 15 Member States (Austria, Belgium, Czech Republic, Finland, France, Germany, Hungary, Italy, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Spain). It employs over 38 000 employees in relation to the product under review.

⁽⁵⁷⁾ Judgment of 17 December 2008 in T-462/04, *HEG and Graphite India v Council*, ECLI:EU:T:2008:586, para. 67.

- (213) In the absence of measures, the Union industry will no longer be protected against the likely increase of subsidised imports from China, which will cause material injury. The effect of anti-subsidy measures will be positive for the Union producers, as measures will help the Union industry to continue its recovery from subsidised imports and effects from the COVID-19 pandemic. It is therefore clearly in the interest of the Union industry to maintain the measures.

7.2. Interest of users and unrelated importers

- (214) The Commission contacted all known users and unrelated importers. No users or unrelated importers came forward and cooperated in this investigation by submitting a questionnaire reply. Given the lack of cooperation of users and unrelated importers and in the absence of any indications to the contrary, the continuation of the measures is not considered against the interest of users and importers.
- (215) Moreover, the Commission analysed whether measures against China would have a negative effect on the security of supply, as there are also measures in place on HRF against Türkiye, Brazil, Iran and Russia. The Union industry level of capacity utilisation was 75 % during the review investigation period, and the total production capacity exceeded the total Union consumption by 18 million tonnes, according to EUROFER's macro questionnaire data. In addition, despite measures against some of the major exporters of HRF, almost 40 countries exported the product under review to the Union during the review investigation period, thus showing that the imposition of measures would not impinge upon diversification of supply. For these reasons and in the absence of cooperation by users and importers, the Commission concluded that there were no potential risks at the level of supply for downstream users.
- (216) After disclosure, CISA referred to the EU safeguard on imports of, inter alia, HRF from China, which significantly limits the possibility for Chinese producers to export HRF to the EU market and restrict the free trade flows to the detriment of downstream producers and end users.
- (217) The Commission recalled that the safeguard in question cannot be considered of a lasting nature, and that the measure currently in place ⁽⁵⁸⁾ has no impact on the assessment of the likelihood of increased imports in the absence of countervailing duties. Considering the temporary nature of the steel safeguard, the Commission hence found that they cannot have a bearing on its conclusions in this investigation. On the security of supply, as stated in recital (215), the Union industry's total production capacity exceeded the total Union consumption, and several other third countries exported HRF to the Union during the review investigation period. Moreover, the safeguard measure is regularly review and adjusted if needed in order to ensure sufficient supply of steel in the Union market. Therefore, safeguards measures would not constitute a risk to the security of supply for downstream users.
- (218) In addition, CISA also claimed that the introduction of the Carbon Border Adjustment Mechanism (CBAM) would deteriorate the access to the EU market given the burdensome reporting obligations and surcharges linked to the CBAM.
- (219) The Commission recalled that the CBAM will only enter into force in October 2023 and that during a transitional period, until 2026, importers will only have to report emissions embedded in their goods without incurring any financial charges. The stated reason for this transnational period is to allow parties time to adjust before the final system is put into place and to reduce the risk of trade disruptions. Accordingly, the Commission considered that it is premature to make any assessment of the potential impact of CBAM on future trade flows of HRF and rejected the claim.

7.3. Conclusion on Union interest

- (220) On the basis of the above, the Commission concluded that there were no compelling reasons of the Union interest against the continuation of the existing measures on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the PRC.

⁽⁵⁸⁾ By Commission Implementing Regulation (EU) 2019/159, the Commission imposed a safeguard measure with respect to certain steel products for a period of three years. By Commission Implementing Regulation (EU) 2021/1029, the safeguard measure was prolonged until 30 June 2024.

8. CLAIMS THAT THE MEASURES SHOULD BE SUSPENDED

- (221) Following disclosure, CISA claimed that the current anti-subsidy measures should be suspended in accordance with article 24(4) of the basic Regulation arguing that both conditions set out in the aforementioned Article 24(4) of the basic Regulation are fulfilled. It claimed that market conditions have temporarily changed to such an extent that injury would be unlikely to continue or occur as a result of the suspension. In that view, CISA referred to the expected decrease of the volume of imports from Russia and Ukraine, the supply shortages following incidents at HRF facilities in the European Union, and price increases of the product concerned.
- (222) The Commission rejected CISA's claim, as it was generic and unsubstantiated. On the other hand, the review investigation has established that injury would be likely to recur in the absence of measures and, *mutatis mutandis*, also in case of a suspension.

9. ANTI-SUBSIDY MEASURES

- (223) On the basis of the conclusions reached by the Commission on continuation of subsidisation, recurrence of injury and Union interest, the anti-subsidy measures on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the PRC should be maintained.
- (224) To minimise the risks of circumvention due to the high difference in duty rates, special measures are needed to ensure the application of the individual countervailing duties. The companies with individual countervailing duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this Regulation. Imports not accompanied by that invoice should be subject to the countervailing duty applicable to 'all other companies'.
- (225) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of countervailing duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this Regulation, the customs authorities of Member States must carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the lower rate of duty is justified, in compliance with customs law.
- (226) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting, in itself, a change in the pattern of trade due to the imposition of measures within the meaning of Article 23(1) of the basic Regulation. In such circumstances and provided the conditions are met, an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.
- (227) The individual company countervailing duty rates specified in this Regulation are exclusively applicable to imports of the product under review originating in the PRC and produced by the named legal entities. Imports of the product under review produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual countervailing duty rates.

- (228) A company may request the application of these individual countervailing duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ⁽⁵⁹⁾. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a regulation about the change of name will be published in the *Official Journal of the European Union*.
- (229) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to make representations subsequent to this disclosure.
- (230) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽⁶⁰⁾ when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.
- (231) 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,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is imposed on imports of certain flat-rolled products of iron, non-alloy steel or other alloy steel, whether or not in coils (including 'cut-to-length' and 'narrow strip' products), not further worked than hot-rolled, not clad, plated or coated, currently falling under 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 codes 7226 19 10 91, 7226 19 10 95), 7226 91 91 and 7226 91 99 and originating in the People's Republic of China.

The following products are not covered by this review:

- (i) products of stainless steel and grain-oriented silicon electrical steel,
- (ii) products of tool steel and high-speed steel,
- (iii) products, not in coils, without patterns in relief, of a thickness exceeding 10 mm and of a width of 600 mm or more, and
- (iv) 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.

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

⁽⁵⁹⁾ European Commission, Directorate-General for Trade, Directorate G, Rue de la Loi 170, 1040 Brussels, Belgium.

⁽⁶⁰⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

Country	Company	Countervailing duty	TARIC additional code
People's Republic of China	Bengang Steel Plates Co., Ltd.	28,1 %	C157
	Handan Iron & Steel Group Han-Bao Co., Ltd.	7,8 %	C158
	Hesteel Co., Ltd. Tangshan Branch ⁽¹⁾	7,8 %	C159
	Hesteel Co., Ltd. Chengde Branch ⁽²⁾	7,8 %	C160
	Zhangjiagang Hongchang Plate Co., Ltd.	4,6 %	C161
	Zhangjiagang GTA Plate Co., Ltd.	4,6 %	C162
	Shougang Jingtang United Iron and Steel Co. Ltd.	31,5 %	C164
	Beijing Shougang Co. Ltd., Qian'an Iron & Steel branch	31,5 %	C208
	Other cooperating companies listed in the Annex	17,1 %	See 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 duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of (product under review) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in [country concerned]. I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty applicable to all other companies shall apply.

4. Should the definitive countervailing duties imposed by Article 1(2) be modified or removed, the duties specified in paragraph 2 will be increased by the same proportion limited to the actual dumping margin found or the injury margin found as appropriate per company and from the entry into force of this Regulation.

In cases where the countervailing duty has been subtracted from the anti-dumping duty for certain exporting producers, refund requests under Article 21 of Regulation (EU) 2016/1037 shall also trigger the assessment of the dumping margin for that exporting producer prevailing during the refund investigation period. The amount to be reimbursed to the applicant for refund cannot exceed the difference between the duty collected and the combined countervailing and anti-dumping duty established in the refund investigation.

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

Article 2

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

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

Done at Brussels, 7 June 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Country	Name	TARIC additional code
PRC	Angang Steel Company Limited	C150
PRC	Maanshan Iron & Steel Co., Ltd	C165
PRC	Rizhao Steel Wire Co., Ltd.	C166
PRC	Rizhao Baohua New Material Co., Ltd.	C167
PRC	Wuhan Iron & Steel Co., Ltd.	C156

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

DECISION No 1/2023 OF THE COMMITTEE ON TRADE AND SUSTAINABLE DEVELOPMENT UNDER THE AGREEMENT BETWEEN THE EUROPEAN UNION AND JAPAN FOR AN ECONOMIC PARTNERSHIP

of 1 March 2023

**concerning the establishment of the list of individuals who are willing and able to serve as experts,
and the adoption of rules of procedure for the panel of experts [2023/1124]**

THE COMMITTEE ON TRADE AND SUSTAINABLE DEVELOPMENT,

Having regard to the Agreement between the European Union and Japan for an Economic Partnership (the 'EU-Japan EPA') and in particular paragraph 2 and subparagraph 4(d) of Article 16.18 thereof,

Whereas:

- (1) Subparagraph 4(d) of Article 16.18 of the EU-Japan EPA provides that the Committee on Trade and Sustainable Development (the 'Committee') is to establish a list of at least 10 individuals who are willing and able to serve as experts pursuant to that Article,
- (2) Paragraph 2 of Article 16.18 of the EU-Japan EPA provides that the Committee is to adopt the rules of procedure for the panel of experts,

HAS ADOPTED THIS DECISION:

Article 1

The list of individuals who are willing and able to serve as experts is established as set out in Annex 1 to this Decision.

Article 2

The rules of procedure for the panel of experts are adopted as set out in Annex 2 to this Decision.

Article 3

The list of individuals and the rules of procedure for the panel of experts set out in Annex 1 and Annex 2 to this Decision in accordance with paragraph 2 and subparagraph 4(d) of Article 16.18 of the EU-Japan EPA shall be valid from the date of adoption of this Decision.

Done at Brussels, 1 March 2023.

For the Committee on Trade and Sustainable Development

The Co-Chairs

Ulrich WEIGL
For the European Union

Takeshi KOYAMA
For Japan

ANNEX 1

**LIST OF EXPERTS REFERRED TO IN SUBPARAGRAPH 4(d) OF ARTICLE 16.18 OF THE EU-JAPAN
EPA**

Sub-list for the European Union

1. Jorge CARDONA
2. Karin LUKAS
3. Laurence BOISSON DE CHAZOURNES
4. Geert VAN CALSTER

Sub-list for Japan

1. AGO Shin-ichi
2. TAKAMURA Yukari
3. TAMADA Dai
4. YAGI Nobuyuki

Sub-list of individuals who are not nationals of either Party and who shall act as the chairperson of the panel

1. Armand DE MESTRAL (Canada)
 2. Jennifer A. HILLMAN (United States)
 3. Arthur Edmond APPLETON (United States)
 4. Nathalie BERNASCONI (Switzerland)
-

ANNEX 2

RULES OF PROCEDURE OF THE PANEL OF EXPERTS

In procedures of panel of experts under Chapter 16 (Trade and Sustainable Development) of the Agreement between the European Union and Japan for an Economic Partnership, the following rules apply:

I. Definitions**1. In these Rules of Procedure:**

- (a) 'administrative staff', in respect of an expert, means persons under the direction and control of the expert, other than assistants;
- (b) 'adviser' means a person retained by a Party to advise or assist that Party for the purposes of the panel procedure, other than representatives of that Party;
- (c) 'Agreement' means the Agreement between the European Union and Japan for an Economic Partnership;
- (d) 'assistant' means a person who, under the terms of appointment of an expert, conducts research or provides assistance to that expert;
- (e) 'Code of Conduct' means the Code of Conduct for Arbitrators referred to in Article 21.30 of the Agreement and adopted by Decision No 1/2019 of 10 April 2019 of the Joint Committee of the Agreement;
- (f) 'Committee' means the Committee on Trade and Sustainable Development established pursuant to Article 22.3 of the Agreement;
- (g) 'days' means calendar days;
- (h) 'expert' means a member of a panel;
- (i) 'panel' means a panel of experts convened pursuant to paragraph 1 of Article 16.18 of the Agreement;
- (j) 'proceedings' means the proceedings of the panel;
- (k) 'representative' with respect to a Party means an official or any other person of a government department or agency or any other public entity of a Party and other personnel, that the Party nominates as its representative for the purpose of the panel proceedings;
- (l) 'requesting Party' means the Party that requests the convening of a panel pursuant to paragraph 1 of Article 16.18 of the Agreement; and
- (m) 'responding Party' means the Party that receives a request from the requesting Party that a panel of experts be convened pursuant to paragraph 1 of Article 16.18 of the Agreement.

II. Appointment of experts

- 2. The co-chair of the requesting Party of the Committee shall be responsible for the organisation of the lot referred to in subparagraph 4(c) of Article 16.18 of the Agreement, and shall inform the co-chair from the responding Party, with due anticipation, about the date, time and venue of the lot. The co-chair from the responding Party may be present or be represented by another person when the lots are drawn. Representatives of both Parties may also be present. In any event, the lot shall be carried out with the Party or Parties that are present.
- 3. The Parties shall inform in writing each individual who has been appointed to serve as an expert pursuant to Article 16.18 of the Agreement of his or her appointment. Each individual shall confirm his or her availability to both Parties within five days of the date on which he or she was informed of his or her appointment.

III. Code of Conduct

4. The Code of Conduct shall apply, *mutatis mutandis*, to the experts serving in the Panel of Experts.

IV. Organisational meeting

5. Unless the Parties agree otherwise, the Parties shall meet with the panel within seven days of the date of the establishment of the panel in order to determine those matters that the Parties or the panel deem appropriate, including:
 - (a) the remuneration and expenses to be paid to the experts which shall be in accordance with WTO standards and criteria;
 - (b) the expenses for any assistants or administrative staff that an expert may decide to hire, with the total amount of remuneration for each expert's assistant or administrative staff not to exceed 50 % of the remuneration of that expert, unless the Parties agree otherwise; and
 - (c) the timetable for the proceedings, which shall be established based on the time zone of the responding Party.

Only the experts and the representatives of the Parties who are officials or other persons of a government department or agency or any other public entity may take part in this meeting in person or via telephone or video conference.

V. Notifications

6. Any request, notice, written submission or other document transmitted by:
 - (a) the panel shall be sent to both Parties at the same time;
 - (b) a Party to the panel shall be copied to the other Party at the same time; and
 - (c) a Party to the other Party shall be copied to the panel at the same time, as appropriate.
7. Any notification referred to under paragraph 6 shall be made by email or, where appropriate, any other means of telecommunication that provides a record of the sending thereof. Unless proven otherwise, such notification shall be deemed to be received on the date of its sending.
8. Minor errors of a clerical nature in a request, notice, written submission or other document related to the panel proceedings may be corrected by delivery of a new document clearly indicating the changes.
9. If the last day for delivery of a document falls on a legal holiday of Japan or of the European Union or on any other day on which the offices of the Government of a Party are officially or by force majeure closed, the document shall be deemed received on the next working day. At the organisational meeting referred to in paragraph 5, each Party shall submit a list of its legal holidays and any other days on which its offices are officially closed. Each Party shall keep its list updated during the panel procedure.

VI. Written submissions

10. The requesting Party shall deliver its written submission no later than 20 days after the date of establishment of the panel. The responding Party shall deliver its written counter-submission no later than 20 days after the date of receipt of the written submission of the requesting Party.

VII. Requests for information and advice

11. In accordance with paragraph 3 of Article 16.18 of the Agreement, the panel should seek information and advice from the relevant international organisations or bodies for matters related to International Labour Organization instruments or multilateral environmental agreements, as it deems appropriate.
12. Before seeking information and advice from the entities referred to in paragraph 11, the panel shall allow the Parties the opportunity to comment on the list of entities and the requests to be addressed to them.
13. The panel shall submit any information obtained pursuant to paragraph 11 to the Parties, which shall have an opportunity to comment on such information.

VIII. Operation of the panel

14. The chairperson of the panel shall preside at all of its meetings. A panel may delegate to the chairperson the authority to make administrative and procedural decisions.
15. Unless otherwise provided for in Article 16.18 of the Agreement or in these Rules of Procedure, the panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.
16. Where a procedural question arises that is not covered by Article 16.18 of the Agreement or these Rules of Procedure or the Code of Conduct, the panel, after consulting the Parties, may adopt an appropriate procedure that is compatible with those provisions.
17. The panel may modify any time period other than the time periods set out in Article 16.18 of the Agreement and make any other procedural or administrative adjustment in the proceedings after consulting with the Parties. When the panel consults with the Parties, it shall inform the Parties in writing of the proposed modification or adjustment and the reason therefor.

IX. Hearings

18. Based upon the timetable determined pursuant to paragraph 5, after consulting with the Parties and the other experts, the chairperson of the panel shall determine the date and time of the hearing.
19. Unless the Parties agree otherwise, the venue shall alternate between the Parties with the first hearing to be held in the responding Party. Unless the Parties agree otherwise, the Party in which the hearing takes place shall:
 - (a) determine the venue of the hearing and inform the chairperson of the panel thereof; and
 - (b) be in charge of the logistical administration of the hearing.
20. Unless the Parties agree otherwise, and without prejudice to paragraph 49, the Parties shall share the expenses derived from the logistical administration of the hearing.
21. The chairperson of the panel shall notify in due course the Parties, in writing, of the date, time and venue of the hearing. This information shall be made publicly available by the Party in which the hearing takes place, unless the hearing is closed to the public.
22. As a general rule there should be only one hearing. If the dispute involves issues of exceptional complexity, the panel may convene additional hearings on its own initiative or, upon request of either Party, after consulting the Parties. For each of the additional hearings, paragraphs 18 to 21 apply *mutatis mutandis*.

23. Any hearing of the panel shall be open to the public unless the Parties agree otherwise or the submissions and arguments of a Party contain confidential information. There should be no audio or visual recording of the hearing by the public. Hearings held in closed session shall be confidential in accordance with paragraph 39.
24. All experts shall be present during the entirety of the hearing.
25. Unless the Parties agree otherwise, the following persons may attend the hearing, irrespective of whether the hearing is open to the public:
 - (a) representatives of the Parties;
 - (b) advisers;
 - (c) assistants and administrative staff;
 - (d) interpreters, translators and court reporters of the panel; and
 - (e) representatives of the relevant international organisations or bodies, as decided by the panel pursuant to paragraph 3 of Article 16.18 of the Agreement.
26. No later than five days before the date of a hearing, each Party shall deliver to the panel a list of the names of persons who will make oral arguments or presentations at the hearing on behalf of that Party and of other representatives and advisers who will be attending the hearing.
27. The panel shall conduct the hearing in the following manner, ensuring that the requesting Party and the responding Party are afforded equal time in both argument and rebuttal argument:

Argument

 - (a) argument of the requesting Party; and
 - (b) argument of the responding Party.

Rebuttal Argument

 - (a) reply of the requesting Party; and
 - (b) counter-reply of the responding Party.
28. The panel may direct questions to either Party at any time during the hearing.
29. The panel shall arrange for a transcript of the hearing to be prepared and delivered to the Parties as soon as possible after the hearing. The Parties may comment on the transcript and the panel may consider those comments.
30. Each Party may deliver a supplementary written submission concerning any matter that arose during the hearing within 10 days of the date of the hearing.

X. Deliberations

31. Only the experts may take part in the deliberations of the panel.

XI. Questions in writing

32. The panel may at any time during the proceedings submit questions in writing to one or both Parties. Any questions submitted to one Party shall be copied to the other Party.
33. Each Party shall provide the other Party with a copy of its response to the questions submitted by the panel. A Party shall be given an opportunity to provide comments in writing on the other Party's response within five days of the receipt of such copy.

XII. Replacement of experts

34. If any of the experts of the original panel withdraws, is unable to participate, or otherwise needs to be replaced in panel proceedings pursuant to Article 16.18 of the Agreement, paragraph 4 of Article 16.18 of the Agreement applies *mutatis mutandis*.
35. Where a Party considers that an expert does not comply with the requirements of the Code of Conduct and for this reason should be replaced, that Party shall notify the other Party within 15 days from the time at which it obtained sufficient evidence of the expert's failure to comply with the requirements of the Code of Conduct.
36. Where a Party considers that an expert other than the chairperson does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if they so agree, select a new expert in accordance with paragraph 34.
- If the Parties fail to agree on the need to replace the expert, either Party may request that this matter be referred to the chairperson of the panel, whose decision shall be final.
- If, pursuant to this request, the chairperson finds that the expert does not comply with the requirements of the Code of Conduct, a new expert shall be selected in accordance with paragraph 34.
37. Where a Party considers that the chairperson of the panel does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if they so agree, select a new chairperson in accordance with paragraph 34.
- If the Parties fail to agree on the need to replace the chairperson, either Party may request that the matter be referred to the two remaining experts. The experts shall decide, no later than 10 days after the date of delivery of the request, whether there is a need to replace the chairperson of the panel. The decision by the experts on the need to replace the chairperson shall be final.
- If the experts decide that the chairperson does not comply with the requirements of the Code of Conduct, a new chairperson shall be selected in accordance with paragraph 34.
38. The proceedings shall be suspended for the period taken to carry out the procedures provided for in paragraphs 34 to 37.

XIII. Confidentiality

39. The panel and the Parties shall treat as confidential any information submitted by a Party to the panel which that Party has designated as confidential. Where a Party submits a confidential version of its written submissions to the panel, it shall also, upon request of the other Party, provide within 20 days of the date of the request, a non-confidential version of the submissions that could be disclosed to the public. Nothing in these Rules of Procedure precludes a Party from disclosing its own submissions to the public to the extent that it does not disclose any information designated by the other Party as confidential. The panel shall meet in closed session if the submissions and arguments of a Party contain confidential information. The panel and the Parties shall maintain the confidentiality of the hearing of the panel where the hearing is held in closed session.

XIV. Ex parte contacts

40. The panel shall not meet or communicate with a Party in the absence of the other Party.
41. An expert shall not discuss any aspect of the subject matter of the proceedings with one Party or both Parties in the absence of the other experts.

XV. *Amicus curiae* submissions

42. Unless the Parties agree otherwise within three days of the date of the establishment of the panel, the panel may receive unsolicited written submissions from any natural persons of a Party or legal persons established in a Party, who are independent from the Governments of the Parties, provided that the submissions are received within 10 days of the date of the establishment of the panel.
43. The submissions shall be concise and in no case longer than 15 pages at double space, and shall be directly relevant to a factual or a legal issue under consideration by the panel. The submissions shall contain a description of the person providing the submissions including:
- (a) for a natural person, his or her nationality; and
 - (b) for a legal person, its place of establishment, the nature of its activities, its legal status, its general objectives and the source of its financing.
- Any person shall specify in its submissions the interest that it has in the proceedings. The submissions shall be drafted in the languages chosen by the Parties in accordance with paragraphs 45 and 46 of these Rules of Procedure.
44. The panel shall list in its report all the submissions it has received pursuant to paragraphs 42 and 43. The panel is not obliged to address in its report the arguments made in such submissions. Those submissions shall be provided to the Parties for their comments. The comments of the Parties which have been submitted to the panel within 30 days shall be taken into consideration by the panel.

XVI. Language and translation

45. During the consultations referred to in Article 16.17 of the Agreement, and no later than the time of the organisational meeting referred to in paragraph 5, the Parties shall endeavour to agree on a common working language for the proceedings before the panel. Each Party shall notify the other Party, no later than 90 days after the adoption of these Rules of Procedure by the Committee in accordance with paragraph 2 of Article 16.18 of the Agreement, a list of languages for which it has a preference. The list shall include at least one working language of the WTO.
46. If the Parties are unable to agree on a common working language, each Party shall make its written submissions in its chosen language, providing at the same time a translation into one of the working languages of the WTO notified by the other Party in accordance with paragraph 45, where appropriate. The Party responsible for organising the oral hearing shall arrange for the interpretation of oral submissions into the same working language of the WTO, where appropriate.
47. The interim and final report of the panel shall be issued in the common working language. If the Parties have not agreed on a common working language, the interim and final report of the panel shall be issued in the working languages of the WTO referred to in paragraph 46.
48. A Party may provide comments on the accuracy of the translation of any translated version of a document drawn up in accordance with these Rules of Procedure.
49. In case a translation or interpretation of written and oral submissions of a Party in the relevant working language of the WTO is necessary, that Party shall bear the costs thereof.

XVII Panel Report

50. The panel shall present an interim and a final report to the Parties in accordance with paragraph 5 of Article 16.18 of the Agreement. The final report shall be made publicly available. The panel should not disclose its report before publication by the Parties.

XVIII Revision

51. These Rules of Procedure may be revised by agreement between the Parties.
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