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Legislation

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Contents

II *Non-legislative acts*

INTERNATIONAL AGREEMENTS

- ★ **Information relating to the entry into force of the Agreement between the European Union and the Federative Republic of Brazil amending the Agreement between the European Union and the Federative Republic of Brazil on short-stay visa waiver for holders of diplomatic, service or official passports** 1

REGULATIONS

- ★ **Commission Delegated Regulation (EU) 2023/1448 of 10 May 2023 amending Delegated Regulation (EU) 2022/127 as regards the payment of advances under the school scheme and correcting that Regulation** 2
- ★ **Commission Implementing Regulation (EU) 2023/1449 of 12 June 2023 amending Implementing Regulation (EU) 2017/39 as regards payment of the aid, transfers between allocations and administrative checks** 5
- ★ **Commission Implementing Regulation (EU) 2023/1450 of 13 July 2023 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron (other than cast iron) or steel (other than stainless steel), of circular cross-section, of an external diameter exceeding 406,4 mm, originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council** 9
- ★ **Commission Implementing Regulation (EU) 2023/1451 of 13 July 2023 amending Implementing Regulation (EU) 2020/2002 as regards disease notification and the information to be submitted by the Member States for the approval and reporting of compulsory and optional eradication programmes and in applications for disease-free status ⁽¹⁾** 48

⁽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) 2023/1452 of 13 July 2023 imposing a definitive anti-dumping duty on imports of certain continuous filament glass fibre products originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council** 57
- ★ **Commission Implementing Regulation (EU) 2023/1453 of 13 July 2023 repealing Implementing Regulation (EU) 2021/1533 imposing special conditions governing the import of feed and food originating in or dispatched from Japan following the accident at the Fukushima nuclear power station ⁽¹⁾** 90
- ★ **Commission Implementing Regulation (EU) 2023/1454 of 13 July 2023 granting a Union authorisation for the single biocidal product 'WESSOCLEAN GOLD LINE' in accordance with Regulation (EU) No 528/2012 of the European Parliament and of the Council ⁽¹⁾** 93
- ★ **Commission Implementing Regulation (EU) 2023/1455 of 13 July 2023 concerning the urgent provisional authorisation of cobalt(II) acetate tetrahydrate, cobalt(II) carbonate, cobalt(II) carbonate hydroxide (2:3) monohydrate and cobalt(II) sulphate, heptahydrate as feed additives for ruminants with a functional rumen, equidae and lagomorphs ⁽¹⁾** 103

DECISIONS

- ★ **Council Decision (EU) 2023/1456 of 10 July 2023 appointing a member of the Court of Auditors** 113
- ★ **Political and Security Committee Decision (CFSP) 2023/1457 of 13 July 2023 on the appointment of the EU Force Commander for the European Union military operation to contribute to maritime security in the West Indian Ocean and in the Red Sea (EUNAVFOR ATALANTA), and repealing Decision (CFSP) 2023/311 (EUNAVFOR ATALANTA/2/2023)** 114
- ★ **Commission Implementing Decision (EU) 2023/1458 of 11 July 2023 concerning certain interim emergency measures relating to African swine fever in Greece (notified under document C(2023) 4794) ⁽¹⁾** 116

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

- ★ **Decision No 1/2023 of the Joint European Union/Switzerland Air Transport Committee set up under the Agreement between the European Community and the Swiss Confederation on Air Transport of 9 June 2023 replacing the Annex to the Agreement between the European Community and the Swiss Confederation on Air Transport [2023/1459]** 119
- ★ **Decision No 2/2023 of the Specialised Committee on Social Security Coordination established by Article 8(1)(p) of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, of 28 June 2023 as regards the designation of the financial institution to serve as reference to determine the interest rate for late payments and the exchange rate for currency conversions, as well as the date to be taken into consideration for determining the rates of currency conversion [2023/1460]** 147

⁽¹⁾ Text with EEA relevance.

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

Information relating to the entry into force of the Agreement between the European Union and the Federative Republic of Brazil amending the Agreement between the European Union and the Federative Republic of Brazil on short-stay visa waiver for holders of diplomatic, service or official passports

The Agreement between the European Union and the Federative Republic of Brazil amending the Agreement between the European Union and the Federative Republic of Brazil on short-stay visa waiver for holders of diplomatic, service or official passports entered into force on 1 October 2022, the procedure provided for in Article 2 of the Agreement having been completed on 4 April 2022.

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2023/1448

of 10 May 2023

amending Delegated Regulation (EU) 2022/127 as regards the payment of advances under the school scheme and correcting that Regulation

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2021/2116 of the European Parliament and of the Council of 2 December 2021 on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013 ⁽¹⁾, and in particular Article 44(5) and Article 64(3), point (b), thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2022/127 ⁽²⁾ supplements Regulation (EU) 2021/2116 with rules on paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro.
- (2) In accordance with Article 44(3b) of Regulation (EU) 2021/2116, Member States may decide to pay advances under the aid scheme laid down in Part II, Title I, Chapter II, Section 1, of Regulation (EU) No 1308/2013 of the European Parliament and of the Council ⁽³⁾ in respect of aid for school year 2023/2024 and subsequent school years. In order to ensure a coherent and non-discriminatory payment of advances and to guarantee the protection of Union funds, it is appropriate to set out specific conditions for the payment of advances in the form of a maximum percentage of aid to the applicants and the requirement for aid applicants to lodge a security.
- (3) Article 19 of Delegated Regulation (EU) 2022/127 lays down the specific situations in which the competent authority may waive the requirement of a security. Given that the risk of non-compliance with the obligations under the school scheme is low where aid applicants are public authorities, it is appropriate to allow the competent authority to also waive the requirement of a security for those aid applicants.
- (4) In Article 28 of Delegated Regulation (EU) 2022/127, the title should also refer to the forfeiture of the securities and, for reasons of clarity, the reference to Article 56 of Commission Implementing Regulation (EU) 2022/128 ⁽⁴⁾ laying down the procedure for forfeiting the security should be added in paragraph 2.

⁽¹⁾ OJ L 435, 6.12.2021, p. 187.

⁽²⁾ Commission Delegated Regulation (EU) 2022/127 of 7 December 2021 supplementing Regulation (EU) 2021/2116 of the European Parliament and of the Council with rules on paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro (OJ L 20, 31.1.2022, p. 95).

⁽³⁾ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).

⁽⁴⁾ Commission Implementing Regulation (EU) 2022/128 of 21 December 2021 laying down rules for the application of Regulation (EU) 2021/2116 of the European Parliament and of the Council on paying agencies and other bodies, financial management, clearance of accounts, checks, securities and transparency (OJ L 20, 31.1.2022, p. 131).

- (5) Delegated Regulation (EU) 2022/127 should therefore be amended and corrected accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Delegated Regulation (EU) 2022/127

In Chapter IIIa of Delegated Regulation (EU) 2022/127, the following Article is added:

'Article 15b

Specific conditions for the payment of advances referred to in Article 44(3b) of Regulation (EU) 2021/2116

1. The payment of advances referred to in Article 44(3b) of Regulation (EU) 2021/2116 shall not exceed 80 % of the aid which aid applicants are entitled to for the implementation of one or more of the following activities in the course of the school year:

- (a) the supply or distribution of products to children;
- (b) accompanying educational measures;
- (c) monitoring or evaluation actions;
- (d) publicity.

2. The payment of advances referred to in paragraph 1 shall be subject to the lodging of a security at least equivalent to the amount of the advance.

3. By way of derogation from Article 19, the competent authority may also waive the security requirement where the party responsible for meeting the obligation is a public authority.'

Article 2

Correction of Delegated Regulation (EU) 2022/127

Article 28 of Delegated Regulation (EU) 2022/127 is corrected as follows:

- (1) the title is replaced by the following:

'Release and forfeiture of securities';

- (2) paragraph 2 is replaced by the following:

'2. Once the deadline for proving final entitlement to the sum granted has passed without production of evidence of entitlement, the competent authority shall immediately forfeit the security in accordance with the procedure laid down in Article 56 of Commission Implementing Regulation (EU) 2022/128 (*).

However, where specific Union rules so provide, evidence may still be produced after that date against partial repayment of the security.

(*) Commission Implementing Regulation (EU) 2022/128 of 21 December 2021 laying down rules for the application of Regulation (EU) 2021/2116 of the European Parliament and of the Council on paying agencies and other bodies, financial management, clearance of accounts, checks, securities and transparency (OJ L 20, 31.1.2022, p. 131).'

*Article 3***Entry into force**

This Regulation shall enter into force on the seventh 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, 10 May 2023.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2023/1449**of 12 June 2023****amending Implementing Regulation (EU) 2017/39 as regards payment of the aid, transfers between allocations and administrative checks**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 25, first paragraph, points (a), (b) and (e), thereof,

Having regard to Regulation (EU) 2021/2116 of the European Parliament and of the Council of 2 December 2021 on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013 ⁽²⁾, and in particular Article 60(4) thereof,

Whereas:

- (1) Article 44(3b) of Regulation (EU) 2021/2116 introduced the possibility for Member States to pay advances under the aid scheme laid down in Part II, Title I, Chapter II, of Regulation (EU) No 1308/2013 ('the school scheme') in respect of aid for school year 2023/2024 and subsequent school years. Commission Delegated Regulation (EU) 2022/127 ⁽³⁾ supplements Regulation (EU) 2021/2116 by laying down rules, inter alia, on securities, including specific conditions for the payment of advances of aid under the school scheme in the form of a maximum percentage of aid to the applicants and the requirement for aid applicants to lodge a security.
- (2) Commission Implementing Regulation (EU) 2017/39 ⁽⁴⁾ lays down rules for the application of the school scheme, including on the content of the Member States' strategies, and on the application for and payment of the aid after the implementation of the school scheme activities has taken place. Implementing rules under which Member States may pay advances under the school scheme should be laid down.
- (3) The rules on the content, frequency and the evidence to support the applications for advances of aid under the school scheme to be submitted by aid applicants should be laid down.
- (4) Article 4 of Implementing Regulation (EU) 2017/39 lays down the minimum requirements that aid applications must fulfil in order for aid applicants to submit them to the competent authorities, after the activities their aid applications relate to have been implemented, in order to claim the reimbursement of the expenditure incurred. It also specifies the documentary evidence required to support those applications. The obligation to submit an aid application should also apply where the aid applicant has received an advance payment of aid. However, it is appropriate to lay down specific requirements with regard to the aid applications where advances have been paid.

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ OJ L 435, 6.12.2021, p. 187.

⁽³⁾ Commission Delegated Regulation (EU) 2022/127 of 7 December 2021 supplementing Regulation (EU) 2021/2116 of the European Parliament and of the Council with rules on paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro (OJ L 20, 31.1.2022, p. 95).

⁽⁴⁾ Commission Implementing Regulation (EU) 2017/39 of 3 November 2016 on rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to Union aid for the supply of fruit and vegetables, bananas and milk in educational establishments (OJ L 5, 10.1.2017, p. 1).

- (5) Article 5 of Implementing Regulation (EU) 2017/39 lays down the conditions for the payment of the aid by the competent authorities to aid applicants for the reimbursement of the expenses incurred in the implementation of the school scheme activities. It is appropriate to lay down the rules for the payment of advances of aid by the competent authorities to aid applicants and to provide for conditions for the payment of the aid where an advance of aid has been paid. Moreover, the conditions on the documentary evidence laid down in paragraphs 1 and 2 of that Article should be set out in Article 4 as they support the aid applications.
- (6) Article 6 of Implementing Regulation (EU) 2017/39 lays down the deadlines for transfers between the financial allocations for school fruit and vegetables and for school milk, and the submission of those transfer notifications to the Commission in the requests for Union aid referred to in Article 3 of that Regulation. In accordance with Article 23a(4) of Regulation (EU) No 1308/2013, the transfers may be made once per school year, either prior to the fixing of definitive allocations for the following school year, between the Member State's indicative allocations, or after the start of school year, between the Member State's definitive allocations, where such allocations have been set for the Member State in question. Pursuant to Articles 3 and 6 of Implementing Regulation (EU) 2017/39, Member States are to notify to the Commission the amount of any such transfers between definitive allocations by 31 January of the school year in which they are made. In view of providing Member States with more flexibility in the management of their allocations and in order to maximise their absorption, it is appropriate to allow Member States to make transfers between the Member State's definitive allocations after that date and notify them to the Commission by 31 August following the school year concerned.
- (7) Article 9 of Implementing Regulation (EU) 2017/39 sets out specific rules on the checks to be carried out by the Member States to ensure compliance with the school scheme legislation. They include systematic administrative checking of all aid applications and requirements on the checks of the supporting documents submitted with the aid applications. It is appropriate to provide that the same rules apply to the applications for advances of aid. Moreover, based on experience gained with implementation of the school scheme, and in the interest of sound financial management, it is also appropriate to specify that administrative checks should be carried out before payment of the aid.
- (8) Implementing Regulation (EU) 2017/39 should therefore be amended accordingly.
- (9) Given that Member States may only grant advances in respect of aid for school year 2023/2024 and subsequent school years, and to allow them sufficient time to adapt their control system, it is appropriate to provide that the amendments to the provisions on advance payments and checks only apply in respect of aid for school year 2023/2024 and subsequent school years.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of the Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) 2017/39 is amended as follows:

- (1) in Article 2, paragraph 2, the following point is inserted:

‘(ea) where Member States decide to pay advances of aid in accordance with Article 44(3b) of Regulation (EU) 2021/2116 of the European Parliament and of the Council (*), the maximum amount of the advance expressed in a percentage of the aid which the aid applicants are entitled to, and the arrangements for granting the advance;

(*) Regulation (EU) 2021/2116 of the European Parliament and of the Council of 2 December 2021 on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013 (OJ L 435, 6.12.2021, p. 187).;

- (2) the following Article 3a is inserted after Article 3:

Article 3a

Applications for advances of aid submitted by aid applicants

1. Member States that decide to pay advances of aid, in accordance with Article 44(3b) of Regulation (EU) 2021/2116, shall determine the form, content, frequency and deadline of applications for advances of aid submitted by aid applicants.

2. Member States shall specify the documents that shall be submitted in support of applications for advances of aid, including the documents necessary to calculate the amount that the applicants are entitled to.;

- (3) Article 4 is amended as follows:

- (a) the following paragraph is inserted:

‘1a. Aid applicants shall submit an aid application, including where an advance has been paid, to claim the reimbursement of the expenses incurred in the implementation of the school scheme activities. The aid application may only be submitted after full implementation of the activities the aid application relates to.;

- (b) the following paragraph 2a is inserted:

‘2a. Where an advance has been paid, the aid application shall include information on the amount of that advance.;

- (c) paragraph 6 is replaced by the following:

‘6. Member States shall specify the documents to be submitted in support of aid applications. As a minimum requirement, the amounts claimed in the aid applications shall be supported by documentary evidence showing:

- (a) that the quantities have been supplied or distributed and/or the materials or services have been delivered for the purpose of the school scheme; and
- (b) where the Member State uses a cost-based system, the price of the products, materials or services supplied, distributed or delivered, together with a receipt or proof of payment or equivalent.

In the case of aid applications relating to accompanying educational measures, monitoring, evaluation and publicity, the documentary evidence shall also contain the financial breakdown by activity and details of related costs.;

- (4) Article 5 is replaced by the following:

Article 5

Payment of the aid, including advance payments of aid

1. Advances of aid shall only be paid by the competent authority upon presentation of an application in accordance with Article 3a of this Regulation and, where the lodging of the security referred to in Article 15b of Commission Delegated Regulation (EU) 2022/127 (*) is required, of the documentary evidence of the lodging of the security, unless the competent authority already has proof that the security has been lodged.

2. Aid for the reimbursement of the expenses incurred in the implementation of the school scheme shall only be paid by the competent authority upon presentation of an application together with the required supporting evidence in accordance with Article 4. Aid shall be paid within 3 months of the date of submission of the aid application unless administrative inquiries have been initiated.

Where an advance has been paid, the payment of the aid equals the difference between the amount of the aid to be paid and the amount of the advance paid.

(*) Commission Delegated Regulation (EU) 2022/127 of 7 December 2021 supplementing Regulation (EU) 2021/2116 of the European Parliament and of the Council with rules on paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro (OJ L 20, 31.1.2022, p. 95).;

(5) in Article 6, paragraph 2, is replaced by the following:

‘2. Transfers between definitive allocations, according to Article 23a(4), third subparagraph, point (b), of Regulation (EU) No 1308/2013, where no transfers between indicative allocations have been made, shall be notified either in the request for Union aid referred to in Article 3 of this Regulation or in the notification referred to in the second subparagraph of this paragraph.

Where Member States make transfers of definitive allocations after 31 January in accordance with the first subparagraph of this paragraph, they shall notify them to the Commission by 31 August following the school year concerned.’;

(6) Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Member States shall take all necessary measures to comply with this Regulation. Those measures shall include systematic administrative checking of all applications for advances of aid referred to in Article 3a and applications for aid referred to in Article 4, prior to the payment. Member States shall check, for each application, a representative sample of the supporting documents submitted with the application.’;

(b) paragraph 2 is deleted

(c) paragraph 4 is replaced by the following:

‘4. In case of aid applied for relating to the supply and distribution of products and accompanying educational measures, the administrative checks conducted with respect to aid applications referred to in Article 4 shall be supplemented by on-the-spot checks in accordance with Article 10.’.

Article 2

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

Article 1(2) to (4) and (6) shall apply to aid as from school year 2023/2024.

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

Done at Brussels, 12 June 2023.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2023/1450**of 13 July 2023**

imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron (other than cast iron) or steel (other than stainless steel), of circular cross-section, of an external diameter exceeding 406,4 mm, originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council

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) 2017/804 ⁽²⁾, the European Commission imposed anti-dumping duties on imports of certain seamless pipes and tubes of iron (other than cast iron) or steel (other than stainless steel), of circular cross-section, of an external diameter exceeding 406,4 mm, originating in the People's Republic of China ('the original measures'). The investigation that led to the imposition of the original measures will hereinafter be referred to as 'the original investigation'.
- (2) The anti-dumping duties currently in force are at rates ranging between 29,2 % and 41,4 % on imports from the sampled exporting producers, 45,6 % on the non-sampled cooperating companies and a duty rate of 54,9 % on all other companies from the People's Republic of China ('PRC' or 'China').

1.2. Request for an expiry review

- (3) Following the publication of a notice of impending expiry the European Commission ('the Commission') received a request for a review pursuant to Article 11(2) of the basic Regulation.
- (4) The request for review was submitted on 10 February 2022 by the European Steel Tube Association ('the applicant' or 'ESTA') on behalf of the Union industry of certain seamless pipes and tubes of iron (other than cast iron) or steel (other than stainless steel), of circular cross-section, of an external diameter exceeding 406,4 mm in the sense of Article 11(2) 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 continuation or recurrence of dumping and continuation or recurrence of injury to the Union industry.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Commission Implementing Regulation (EU) 2017/804 of 11 May 2017 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron (other than cast iron) or steel (other than stainless steel), of circular cross-section, of an external diameter exceeding 406,4 mm, originating in the People's Republic of China, OJ L 121, 12.5.2017, p. 3.

1.3. Initiation of an expiry review

- (5) 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, on 12 May 2022 the Commission initiated an expiry review with regard to imports into the Union of certain seamless pipes and tubes of iron (other than cast iron) or steel (other than stainless steel), of circular cross-section, of an external diameter exceeding 406,4 mm, originating in the People's Republic of China ('the country concerned') on the basis of Article 11(2) of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ⁽⁹⁾ ('the Notice of Initiation').

1.4. Comments on initiation

- (6) Following the publication of the Notice of Initiation, the Chinese cooperating exporting producers questioned whether the fact that none of the sampled Union producers in the original investigation participated in the request for this review implied a full recovery from the dumped and injurious imports for the companies in question.
- (7) The Commission first observed that the exporting producers did not put into question the fact that the request met the conditions contained in Article 5(4) of the basic Regulation. Indeed, it was launched by the European Steel Tube Association representing more than 25 % of the total Union production and was supported by Union producers representing more than 50 % of the total EU production. Second, the Union producer Huta Batory, was sampled in both investigations, the original one and the expiry review. Third, Valcovni Trub Chomutov AS, the second sampled producer in the original investigation, supported the expiry review request but was not sampled by the Commission. Finally, the other two companies that had been sampled in the original investigation, Arcelor Mittal Tubular Products Roman and Vallourec Deutschland GmbH, have exited or are in the process of exiting the Union market. Consequently, the claim was rejected.
- (8) Moreover, the exporting producers argued that an expiry review shall be initiated when the request contains sufficient evidence that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury and that a positive determination shall be supported by factual evidence. To support their argument they stressed that the Chinese exporting producers will never know what the normal value is because of the different methods used by resorting to prices in a representative country.
- (9) The Commission noted that it examined the accuracy and adequacy of the evidence provided and determined that there was sufficient evidence to justify the initiation of the present investigation, in accordance with Article 11(2) of the basic Regulation. In any case, the exporting producers have not provided an example of insufficient evidence, thus, this claim was not supported by any proper reasoning. Regarding the normal value, the exporting producers had ample opportunity to verify the method(s) used and the normal value calculated in the request. Consequently, their claim was rejected.
- (10) Furthermore, exporting producers stated that the Union producers' business operations of the product concerned are much more dependent on the conditions of overseas markets than on the conditions in the Union and that the deterioration of the applicants' export performance since 2019 cannot be ascribed to imports originating in China. They also claimed that, besides the poor export performance, part of the negative development trends in the Union was also attributed to the outbreak of the COVID-19 pandemic, particularly in 2020. In addition, they argued that the cost of production per tonne that was reported in the request, that is between € 1 245 and € 1 291, was considerably lower than what was reported in the initial investigation.

⁽⁹⁾ OJ C 193, 12.5.2022, p. 5.

- (11) The Commission noted that at the stage of the request, it is sufficient, on the basis of the information reasonably available to the applicant, to provide evidence showing that there is likelihood of either continuation or recurrence of injury should the measures be allowed to lapse. In this respect, even if the claims by the exporting producers were correct that the economic situation of the Union industry deteriorated due to factors other than the imports from China, the arguments presented did not put into question the fact that the imports from China remained significant in absolute terms and in market share. Furthermore, the evidence provided in the request indicated that injury is likely to recur should the measures be allowed to lapse. Consequently, the claim was rejected.
- (12) The exporting producers also claimed that Tenaris' economic performance, before and after the impact of the pandemic, was in a strong and normal condition. In the case of Tubos Reunidos SA, sales value remained at the same level for 3 consecutive years, starting in 2018 and then from 2020 onwards sales values have picked-up. Only export sales to third countries have declined, except for the US market. To support their arguments about the situation of the EU producers, they provided evidence of the two companies' ambitious planning to either invest and expand or upgrade their production facilities in the Union.
- (13) The Commission noted that injury indicators are not analysed at the level of individual producers, but at the level of the entire Union industry. As indicated in recital 11 above, the request contained sufficient evidence with regard to the entire Union industry, about the continuation or recurrence of injury should the measures be allowed to lapse. Consequently, the argument was rejected.
- (14) The exporting producers also argued that the Union market faces rapid increases in imports from Thailand, that have a great influence on the effect of the measures implemented and the market position of the applicants. In addition, the safeguard measures also cover the product concerned and will remain in place until 30 June 2024.
- (15) The Commission noted that, concerning the imports from Thailand, the parties failed to show how their argument would put into question the evidence contained in the request regarding continuation/recurrence of injury. Regarding the safeguard measures, anti-dumping measures address a different situation than safeguard measures. In addition, the steel safeguard measures do not prevent the imposition of anti-dumping measures within the free-of-safeguard duty quotas. The claim was therefore rejected.

1.5. Review investigation period and period considered

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

1.6. Interested parties

- (17) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. In addition, the Commission specifically informed the applicant, the Union producers, trade unions, the known producers in the People's Republic of China and the authorities of the People's Republic of China, known importers, users, traders, as well as associations known to be concerned about the initiation of the expiry review and invited them to participate.
- (18) 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.

(a) Sampling

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

(b) Sampling of Union producers

- (20) 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 representative volumes of production and sales of the like product in the Union that can reasonably be investigated within the time available, in accordance with Article 17 of the basic Regulation; and on the basis of the geographical spread of the sample. This sample consisted of three Union producers. The sampled Union producers accounted for almost 76 % and 67 % of the total production and sales volumes, respectively, of the known Union producers of the like product. In accordance with Article 17(2) of the basic Regulation, the Commission invited interested parties to comment on the provisional sample but no comments were received. Consequently, the sample was confirmed. The sample is representative of the Union industry.

(c) Sampling of importers

- (21) 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.
- (22) Only one unrelated importer provided the requested information and agreed to be included in the sample. In view of the minimal number, the Commission decided that sampling was not necessary.

(d) Sampling of exporting producers in the PRC

- (23) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (24) Two exporting producers/group of exporting producers in the PRC provided the requested information and agreed to be included in the sample. In view of the low number, the Commission decided that sampling was not necessary, and to investigate all the exporting producers that came forward.

(e) Questionnaires and verification visits

- (25) The Commission sent a questionnaire concerning the existence of significant distortions in the PRC within the meaning of Article 2(6a) (b) of the basic Regulation to the Government of the People's Republic of China ('GOC').
- (26) The Commission also sent questionnaires to the sampled Union producers, unrelated importers, users, Union producers' association and exporting producers. The same questionnaires had also been made available online ⁽⁴⁾.
- (27) The Commission received questionnaire replies from the three sampled Union producers, one unrelated importer, the Union producers' association and the two exporting producers/group of exporting producers.
- (28) 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

- Dalmine S.p.A. in Bergamo, Italy.
- Tubos Reunidos Group S.L.U. in Trápaga, Vizcaya, Spain
- Alchemia S.A. in Chorzow, Poland

Unions' association

⁽⁴⁾ <https://tron.trade.ec.europa.eu/investigations/case-view?caseId=2603>

(29) The Commission also held a verification visit with the following association:

— European Steel Tube Association, in Paris, France.

Exporting producers in the PRC

(30) Due to the outbreak of the COVID-19 pandemic and the consequent measures taken to deal with the outbreak ('the COVID-19 Notice') ⁽⁷⁾, the Commission was unable to carry out verification visits at the premises of the exporting producers. Instead, the Commission cross-checked remotely all the information deemed necessary for its determinations in line with the COVID-19 Notice. The Commission held videoconferences with the following exporting producers/group of exporting producers:

— CITIC Pacific Group;

— Daye Special Steel Co., Ltd;

— Zhejiang Pacific Seamless Steel Tube Co., Ltd;

— Yangzhou Chengde Steel Pipe Co., Ltd.

1.7. Comments following final disclosure

(31) In their comments following final disclosure the cooperating exporting producers, Daye Special Steel Co. Ltd., Zhejiang Pacific Seamless Steel Tube Co. and Yangzhou Chengde Steel Pipe, Co. Ltd, questioned the alleged absence of the Union producers, which were sampled in the original investigation, from this expiry review investigation and the reasons for them not being included in the sample this time. In addition, they noted that Huta Batory was not listed as one of the sampled Union producers in this expiry review. Furthermore, they indicated that they could not assess if the determination of recurrence of injury was linked to changes in the sample between the two investigations.

(32) The Commission noted that the argument brought by the cooperating exporting producers has been addressed in recital 7. In particular, the Union producer Huta Batory, was sampled in both investigations, the original one and the expiry review investigation. This company is now known as Alchemia S.A..

(33) As far as the other companies are concerned, as explained in recital 20, the Union producers were sampled on the basis of the largest representative volumes of production and sales of the like product in the Union, that can reasonably be investigated within the time available. In the absence of comments on the sample, the sample was confirmed and found to be representative of the Union industry. Furthermore, even though the sample changed between the original investigation and this expiry review, the exporting producers did not submit any evidence that the sample was not representative. In addition, when assessing the situation of the Union industry and the recurrence of injury, the Commission also bases its analysis on macroeconomic indicators relating to all Union producers including those that were sampled in the original investigation. On this basis, this claim was rejected.

2. SUBSEQUENT PROCEDURE

(34) On 21 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.

(35) 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.

⁽⁷⁾ Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations (2020/C 86/06) (OJ C 86, 16.3.2020, p. 6).

3. PRODUCT UNDER REVIEW, PRODUCT CONCERNED AND LIKE PRODUCT

3.1. Product under review

- (36) The product under review is the same as in the original investigation, namely certain seamless pipes and tubes of iron (other than cast iron) or steel (other than stainless steel), of circular cross section, of an external diameter exceeding 406,4 mm, currently falling under CN codes 7304 19 90, ex 7304 29 90, 7304 39 88 and 7304 59 89 (TARIC code 7304 29 90 90) ('the product under review').
- (37) Certain seamless pipes and tubes of iron (other than cast iron) or steel (other than stainless steel), of circular cross section, of an external diameter exceeding 406,4 mm are used in a wide range of applications, for example transportation of oil, gas, liquids and fluids, in the construction business for piling, for mechanical uses, boiler tubes and oil and country tubular goods ('OCTG') for casing in the oil industry.

3.2. Product concerned

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

3.3. Like product

- (39) As established in the original investigation, this expiry review investigation confirmed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:
- the product concerned;
 - 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.
- (40) These products are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

4. DUMPING

4.1. Evolution of the imports after the imposition of the measures

- (41) In the original investigation period ⁽⁶⁾, the Chinese exporting producers exported to the Union more than 42 thousand tonnes of the product concerned, representing a market share of around 26 % of the Union market at the time.
- (42) In the current investigation, for the period considered and the review investigation period, the statistical data on imports of the product concerned reported in Comext and the 14(6) Database showed a considerably lower volume of imports than the volume of exports declared by the cooperating exporting producers. Therefore, the Commission considered that, in this particular case, the statistical information was not reliable and could not be used to determine the volume of imports from the PRC and the market share of the Chinese exporting producers. It thus based its findings related to the volume of imports into the Union of the product concerned and the market share of the Chinese exporting producers on the verified data of the cooperating exporting producers and the information in the review request.
- (43) During the review investigation period, the cooperating exporting producers exported to the Union around 2,9 thousand tonnes of the product concerned, which represented a market share of between [2,5-3,5 %] of the Union market (see Table 3).

⁽⁶⁾ 1 January 2015 to 31 December 2015.

- (44) The cooperating exporting producers' production during the review investigation period accounted only for around 12 % of the total estimated production of the product under review in the PRC ⁽⁷⁾. Therefore, the Commission considered it likely that during the review investigation period, the total import volume into the EU of all the Chinese exporting producers (not sampled and verified within the investigation) exceeded the volume of 2,9 thousand tonnes declared by the cooperating Chinese exporting producers, and the market share of the Chinese exporting producers exceeded in all likelihood the [2,5-3,5 %] indicated in Table 3 below.
- (45) On this basis the Commission concluded that during the review investigation period the Chinese exporting producers continued to export, although in lower quantities, the product under review to the Union.

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

- (46) 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.
- (47) 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.
- (48) 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.
- (49) On 14 July 2022, the Commission informed by a Note to the file ('Note on factors of production and the representative country' or the 'Note') the interested parties on the relevant sources it intended to use for the determination of the normal value. In that Note, the Commission provided a list of all factors of production such as raw materials, labour and energy used in the production of the product under review. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified the possible representative country, namely Mexico. It also informed interested parties that it would establish selling, general and administrative costs ('SG&A') and profits based on available information for the company Tubos de Acero de México S.A. ('Tamsa'), a producer in Mexico.

4.3. Normal value

- (50) 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'*.
- (51) 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').

⁽⁷⁾ According to the applicant, the estimated production volume in the PRC in 2021 of the product under review was 2,3 million tonnes. The verified production volume of the cooperating Chinese exporting producers was almost 260 thousand tonnes.

- (52) 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, the application of Article 2(6a) of the basic Regulation was appropriate.

4.3.1. Existence of significant distortions

- (53) In recent investigations concerning the steel sector in the PRC ⁽⁸⁾, the Commission found that significant distortions in the sense of Article 2(6a) (b) of the basic Regulation were present.
- (54) 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 ⁽⁹⁾. 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 ⁽¹⁰⁾, 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 ⁽¹¹⁾. 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 ⁽¹²⁾. Moreover, the Commission concluded that the Chinese

⁽⁸⁾ 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).

⁽⁹⁾ 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.

⁽¹⁰⁾ 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.

⁽¹¹⁾ 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.

⁽¹²⁾ 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.

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 ⁽¹³⁾. 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 ⁽¹⁴⁾, 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 ⁽¹⁵⁾.

- (55) Like in previous investigations concerning the steel sector in the PRC, the Commission examined in the present investigation whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the request, as well as in the Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence Investigations ⁽¹⁶⁾ ('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.
- (56) 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. ⁽¹⁷⁾
- (57) 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 ('FYP') – the GOC's interventionism takes various forms, namely administrative, financial and regulatory.
- (58) 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 and to the Report the applicant submitted that:

— The overall setup of the Chinese economy not only allows for substantial government interventions into the economy, but such interventions are expressly mandated. The notion of supremacy of public ownership over the private one permeates the entire legal system and is emphasized as a general principle in all central pieces of

⁽¹³⁾ 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.

⁽¹⁴⁾ 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.

⁽¹⁵⁾ 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.

⁽¹⁶⁾ Commission staff working document SWD (2017) 483 final/2, 20.12.2017, available at: [https://ec.europa.eu/transparency/documents-register/detail?ref=SWD\(2017\)483&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=SWD(2017)483&lang=en)

⁽¹⁷⁾ 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).

legislation. The Chinese property law is a prime example; it refers to the primary stage of socialism and entrusts the State with upholding the basic economic system under which the public ownership plays a dominant role. Other forms of ownership are tolerated, with the law permitting them to develop side by side with the State ownership;

- The Chinese State does not only actively formulate and oversee the implementation of general economic policies by individual State-owned enterprises ('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. Higher leverage and labour productivity conduct to a surge in SOE debt, triggered by falling interest costs. This illustrates how easy monetary conditions can lead to a rapid SOE debt accumulation ⁽¹⁸⁾;
- On the level of allocation of financial resources, the financial system in the PRC is dominated by the State-owned commercial banks. Those banks, when setting up and implementing their lending policy need to align themselves with the government's industrial policy objectives rather than primarily assessing the economic merits of a given project. The same applies to the other components of the Chinese financial system, such as the stock markets, bond markets, private equity markets etc. 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;
- The steel industry is regarded as an important, fundamental sector of the Chinese economy, a national cornerstone ⁽¹⁹⁾ by the GOC, and as such is a particularly supported industry ⁽²⁰⁾. Moreover, from the five Chinese steel producers ranked in the top 10 of the world's largest steel producers, four are SOEs. With the high level of government intervention in the steel industry and a high share of SOEs in the sector, even privately-owned steel producers are prevented from operating under market conditions;
- 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 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 ⁽²¹⁾;
- 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.

- (59) 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.

⁽¹⁸⁾ OECD, State-owned Firms behind China's Corporate Debt, Economics Department Working Papers no. 1536, February 2019. https://www.oecd-ilibrary.org/economics/state-owned-firms-behind-china-s-corporate-debt_7c66570e-en

⁽¹⁹⁾ Introduction to the Plan for Adjusting and Upgrading the Steel Industry.

⁽²⁰⁾ 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.

⁽²¹⁾ 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/>

- (60) 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. The investigation confirmed that two main producers of the product under review, namely Daye Special Steel Ltd and Zhejiang Pacific Seamless Tube are state-owned. Daye Special Steel Ltd and Zhejiang Pacific Seamless Tube, are subsidiaries of CITIC Pacific Special Steel. CITIC Pacific Special Steel is one of the largest dedicated manufacturers of special steel in China ⁽²²⁾ and it belongs to CITIC Limited, which is a SOE and one of China's largest conglomerates ⁽²³⁾. In its 2021 Annual report, CITIC states that *'CITIC is committed to carrying out the national strategy, including green and low-carbon transformation, in order to fulfil the 14th Five-Year Plan. We will also strive to become a pioneer among state-owned enterprises in contributing to our dual carbon objectives and to become an ESG role model in the capital market' ⁽²⁴⁾*.
- (61) 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 ⁽²⁵⁾, by the 14th 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'* ⁽²⁶⁾ 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 %.'* ⁽²⁷⁾
- (62) 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.'* ⁽²⁸⁾ Moreover, Hebei's plan in the steel sector states: *'Adhere to structural adjustment and highlight product diversification. Unswervingly promote the structural adjustment and layout optimization of the iron and steel industry, promote the consolidation, reorganization, transformation and upgrading of enterprises, and comprehensively promote the development of the iron and steel industry in the direction of large-scale enterprises, modernization of technical equipment, diversification of production processes, and diversification of downstream products'*.
- (63) 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.'* ⁽²⁹⁾

⁽²²⁾ See: <https://en.citicsteel.com>

⁽²³⁾ See CITIC Limited Annual Report 2021. 20220421630869.pdf (citic.com)

⁽²⁴⁾ See CITIC Annual Report 2021, page 144. 20220421630869.pdf (citic.com)

⁽²⁵⁾ See: https://www.miit.gov.cn/jgsj/ycls/gzdt/art/2020/art_8fc2875eb24744f591bfd946c126561f.html (accessed on 24 February 2023).

⁽²⁶⁾ See Section IV, Subsection 3 of the 14th FYP on Developing the Raw Materials Industry.

⁽²⁷⁾ See Section II, Subsection 1 of the 14th FYP on Developing Scrap Steel Industry.

⁽²⁸⁾ 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 24 February 2023).

⁽²⁹⁾ 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 23 February 2023).

- (64) Further industrial policy objectives can also be seen in the planning documents of other provinces, such as Jiangsu ⁽³⁰⁾, Shandong ⁽³¹⁾, Shanxi ⁽³²⁾, Liaoning Dalian ⁽³³⁾ or Zhejiang ⁽³⁴⁾.
- (65) 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, it was not possible to systematically establish the existence of personal connections between producers of the product under review and the CCP. However, there are some specific examples for the product under review.
- (66) For instance, the chairman of the Board of Directors of CITIC Pacific Special Steel is secretary of the Party Committee ⁽³⁵⁾. Moreover, the Chairman of the supervisory board of CITIC Pacific Special Steel is deputy secretary of the Party Committee. ⁽³⁶⁾
- (67) 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. The investigation identified other documents showing that the industry benefits from governmental guidance and intervention into the steel sector, given that the product under review represents one of its subsectors.
- (68) The steel industry keeps being regarded as a key industry by the GOC ⁽³⁷⁾. 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 FYP, the GOC earmarked the steel industry for transformation and upgrade, as well as optimization and structural adjustment ⁽³⁸⁾. Similarly, the 14th FYP 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. ⁽³⁹⁾
- (69) The important raw material used for the production of the product under review is iron ore. Iron ore is also mentioned in the 14th FYP on Developing the Raw Materials Industry, in which the State plans to *'rationally 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.'* ⁽⁴⁰⁾ In provinces, such as Hebei, the authorities foresee the following for the sector: *'new project investment discount subsidy; explore and guide*

⁽³⁰⁾ 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 23 February 2023).

⁽³¹⁾ 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 23 February 2023).

⁽³²⁾ 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 23 February 2023).

⁽³³⁾ 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 23 February 2023).

⁽³⁴⁾ 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 23 February 2023).

⁽³⁵⁾ Page 38 of the 2021 Annual Report of CITIC Pacific special steel; available at: file:finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESZ_STOCK/2022-3/2022-03-11/7877748.PDF (accessed on 23 February 2023).

⁽³⁶⁾ Ibid, p. 39.

⁽³⁷⁾ Report, Part III, Chapter 14, p. 346 ff.

⁽³⁸⁾ 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 23 February 2023).

⁽³⁹⁾ See in particular Sections I and II of the 14th FYP on Developing the Raw Materials Industry.

⁽⁴⁰⁾ See the 14th FYP on Developing the Raw Materials Industry, p. 22.

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.’ ⁽⁴¹⁾ 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.

- (70) The product under review 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 58. 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) ⁽⁴²⁾.
- (71) 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 58. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.
- (72) Finally, the Commission recalls that, in order to produce the product under review, a number of inputs is needed. When the producers of the product under review 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.
- (73) As a consequence, not only the domestic sales prices of the product under review 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.
- (74) 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.

- (75) No evidence or argument to the contrary has been adduced by the GOC in the present investigation.

⁽⁴¹⁾ 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 23 February 2023).

⁽⁴²⁾ See Implementing Regulation (EU) 2021/635, recitals 134-135 and Implementing Regulation (EU) 2020/508, recitals 143-144.

4.4. Representative country

4.4.1. General remarks

- (76) The choice of the representative country was based on the following criteria pursuant to Article 2(6a) of the basic Regulation:
- A level of economic development similar to the PRC. For this purpose, the Commission used countries with a gross national income per capita similar to the PRC, on the basis of the database of the World Bank ⁽⁴³⁾;
 - Production of the product under review in that country ⁽⁴⁴⁾;
 - 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.
- (77) As explained in recital 49, the Commission issued a Note on the sources for the determination of the normal value. This Note describes the facts and evidence underlying the relevant criteria. The Note also informed interested parties of the Commission's 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.

4.4.2. A level of economic development similar to the PRC and production of the product under review

- (78) In the Note, the Commission identified 55 countries with a similar level of economic development as the PRC according to the World Bank, i.e. they are all classified by the World Bank as 'upper-middle income' countries on a gross national income basis ⁽⁴⁵⁾.
- (79) According to the information available to the Commission, the product under review is produced in seven countries: Canada, Japan, Mexico, Russian Federation, Saudi Arabia, South Korea and USA. Only two out of the seven countries are amongst 55 countries identified by the World Bank as having a gross national income similar to the People's Republic of China – the 'upper middle income' group. These countries are Mexico and the Russian Federation.
- (80) The Commission further assessed the existence of market distortions by export and/or import restrictions on the product under review, as well as on the raw materials, namely those representing the most important items of cost of manufacturing used for producing the product under review. It found that in the Russian Federation, trade restrictions exist on steel scrap, electricity and gas, which are all important production factors used for the production of the product under review. In view of these trade restrictions in the Russian Federation, the Commission considered that the Russian Federation could not be considered an appropriate representative country.
- (81) No such restrictions were found for Mexico. Mexico has the same level of economic development as the People's Republic of China and no restrictions on factors of production nor on the product under review were found.

⁽⁴³⁾ World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>

⁽⁴⁴⁾ 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.

⁽⁴⁵⁾ After disregarding Bulgaria, which is a member of the EU, the following 'upper middle income' countries could be considered for the process of identifying the possible representative country: Albania, American Samoa, Argentina, Armenia, Azerbaijan, Belarus, Belize, Bosnia and Herzegovina, Botswana, Brazil, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, Equatorial Guinea, Fiji, Gabon, Georgia, Grenada, Guatemala, Guyana, Indonesia, Iran, Iraq, Jamaica, Jordan, Kazakhstan, Kosovo, Lebanon, Libya, Malaysia, Maldives, Marshall Islands, Mexico, Montenegro, Namibia, North Macedonia, Paraguay, Peru, Russian Federation, Samoa, Serbia, South Africa, St. Lucia, St. Vincent and the Grenadines, Suriname, Thailand, Tonga, Türkiye, Turkmenistan, Tuvalu and Venezuela.

- (82) After initiation, exporting producers Daye Special Steel Co., Ltd and Zhejiang Pacific Seamless Steel Tube Co., Ltd argued that Mexico may not fully satisfy the criteria for being an appropriate third country because: first, the production process appears to be different than the one Chinese exporting producers have; and second, the range of products produced by the Mexican producers seems much narrower (or less diversified) than the ones produced and exported by the Chinese exporting producers.
- (83) Apart from this general claim, the submission of the exporting producers did not contain any concrete evidence on why the production process and the product scope of producers of the product under review in Mexico was different compared to the PRC and what would be the impact on the factors of production. The Commission thus rejected the claim. No further comments were received.

4.4.3. Availability of relevant public data in the representative country

- (84) The Commission analysed imports of the main factors of production into Mexico. The analysis of import data showed that factors of production used for the production of the product under review are imported into Mexico in sufficient quantities to constitute an appropriate benchmark and that these imports were not affected by imports from the PRC or any of the countries listed in Annex I to Regulation (EU) 2015/755 of the European Parliament and of the Council ⁽⁴⁶⁾.
- (85) The Commission also identified a company – Tamsa – whose recent financial data for the determination of manufacturing overhead, SG&A and profit, are available based on the financial data of the Tenaris Group (see Section 4.7.5).
- (86) 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 Tamsa, 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.
- (87) Interested parties were invited to comment on the appropriateness of Mexico as a representative country and of Tamsa as a producer of the product under review in the representative country.
- (88) Apart from the comments detailed in recital 82, no comments were received.

4.5. Level of social and environmental protection

- (89) Having established that Mexico was the only available 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.

4.6. Conclusion

- (90) 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.

4.7. Sources used to establish undistorted costs

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

⁽⁴⁶⁾ Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33) as amended by Commission Delegated Regulation (EU) 2017/749 of 24 February 2017 (OJ L 113, 29.4.2017, p. 11).

- (92) The Commission also stated that, in order to construct the normal value in accordance with Article 2(6a) (a) of the basic Regulation, it would use the database Global Trade Atlas ('GTA') ⁽⁴⁷⁾ to establish the undistorted cost of most of the factors of production, notably the raw materials.
- (93) Considering all the information based on the request and subsequent information submitted by the applicant/interested parties and collected during the verification visits, 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 and source of information

Raw materials	Commodity codes in Mexico	Value	Units	Source of information
Billets (semi-finished product of iron or non-alloy steel containing by weight 0,25 % of carbon)	720720	4,72	CNY/KG	GTA
Water	22019001 22019090	2,01	CNY/L	GTA
Nitrogen	280430	1,14	CNY/KG	GTA

Labour

Labour	N/A	17,21	CNY/hour	International Labour Organisation (ILO)
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Energy

Electricity	N/A	1,09	CNY/Kwh	GlobalPetrolPrices.com
Gas	[N/A]	0,12	CNY/m ³	CRE ('Comisión Reguladora de Energía')

By product/waste

Steel scrap	720410 720441 720449	3,31	CNY/KG	GTA
Recycling cutters – scrap steel	72041001	3,47	CNY/KG	GTA

4.7.1. Raw materials

- (94) In order to establish the undistorted price of raw materials as delivered at the gate of a representative country producer, the Commission used as a basis the weighted average import price to the representative country, as reported in the GTA, to which import duties 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 that it is not appropriate to

⁽⁴⁷⁾ <https://www.gtis.com/gta/>

use domestic prices and costs in the PRC due to the existence of significant distortions, in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected export prices. After excluding imports from the PRC into the representative country, the volume of imports from other third countries remained representative. The weighted average import price was adjusted for import duties, where appropriate.

- (95) For a number of factors of production, the actual costs incurred by the cooperating exporting producers represented a negligible share of total raw material costs in the review investigation period. As the value used for these had no appreciable impact on the dumping margin calculations, regardless of the source used, the Commission decided to include those costs into consumables.
- (96) In their comments following final disclosure, the cooperating exporting producers questioned the method used by the Commission to calculate undistorted values for consumables. Instead of establishing the total amount of consumables as a percentage of the total direct raw material costs and applying this percentage to the total undistorted raw material costs (the benchmark), it was argued that the Commission should have used an undistorted value for each individual item.
- (97) The Commission noted that it is its standard practice not to calculate an individual benchmark for consumables but to express them as a percentage of the total raw material cost on the basis of the cost data reported by the exporting producers and then to apply this percentage to the recalculated cost of materials when using the established undistorted prices. In addition, as explained in recital 95, these costs represented a negligible value and regardless of the method used, they would have had no appreciable impact on the dumping margin calculations. The Commission considered that its methodology for calculating an undistorted value for consumables was appropriate, in that it preserved the cost structure of the relevant exporting producers. Moreover, no better information was available at time of the investigation and as the exporting producers did not substantiate their comments by quantifying the impact of using their proposed method. Therefore the claim regarding consumables was rejected.
- (98) The Commission expressed the transport cost incurred by the cooperating exporting producers for the supply of raw materials as a percentage of the actual cost of such raw materials and then applied the same percentage to the undistorted cost of the same raw materials, in order to obtain the undistorted transport cost. The Commission considered that, in the context of this investigation, the ratio between the exporting producer's raw material and the reported transport costs could be reasonably used as an indication to estimate the undistorted transport costs of raw materials when delivered to the company's factory.

4.7.2. *Labour*

- (99) International Labour Organization ('ILO') provides information on average monthly earnings of employees and average weekly hours actually worked per employed person in Mexico every year in different sectors.
- (100) The Commission used that information of 2021 to determine the average hourly wage in the manufacturing sector ⁽⁴⁸⁾. To arrive at the total labour cost, the Commission relied on the data published by OECD in Taxing Wages 2021, which covered the period of 2021 ⁽⁴⁹⁾. To the hourly wage in manufacturing, the Commission added social security contributions.

⁽⁴⁸⁾ Available at: https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ilo.org%2Filo-stat-files%2FDocuments%2FExcel%2FIndicator%2FEAR_4MTH_SEX_ECO_CUR_NB_A_EN.xlsx&wdOrigin=BROWSELINK (last viewed on 11 February 2023).

⁽⁴⁹⁾ https://www.oecd-ilibrary.org/sites/83a87978-en/1/3/2/24/index.html?itemId=/content/publication/83a87978-en&csp_ =3445743d6909dcc02824b5f0a2e07895&itemIGO=oecd&itemContentType=book (last viewed on 14 February 2023).

4.7.3. Electricity

- (101) The average electricity prices for businesses per kWh in Mexico in 2021 is published by GlobalPetrolPrices.com, i.e., the source identified in the review request. Based on this price, the Commission determined the average electricity price in the review investigation period (2021) ⁽⁵⁰⁾.

4.7.4. Natural gas

- (102) The price of natural gas for companies (industrial users) in Mexico is published by the energy regulator 'Comisión Reguladora de Energía' (CRE) on a monthly basis. The Commission used an average price for businesses reported by the CRE in the review investigation period ⁽⁵¹⁾.

4.7.5. Manufacturing overhead costs, SG&A, profits

- (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) To establish an undistorted and reasonable amount for SG&A and profits, the Commission used financial data relating to the activities of Tamsa, available within the consolidated financial accounts of the mother company, Tenaris S.A. ⁽⁵²⁾
- (105) The manufacturing overheads incurred by the cooperating exporting producers were expressed as a share of the costs of manufacturing actually incurred by the exporting producers. This percentage was applied to the undistorted costs of manufacturing.
- (106) In their comments following final disclosure, the cooperating exporting producers questioned the method used by the Commission to calculate overheads for the same reasons as they questioned the method used to calculate consumables, see recital 96, arguing that the Commission instead of having used a ratio for overheads and applying this to the undistorted direct cost, should have established all the factors separately and have replaced theses with surrogate values.
- (107) With regard to this claim, the Commission noted that the overheads data separately for each factor was not readily available in the financial statements of the producer in the representative country. Therefore, the Commission considered that its methodology for calculating an undistorted value for overheads was appropriate, in that it preserved the cost structure of the relevant exporting producers. Moreover, no better information was available as the exporting producers did not suggest an alternative undistorted benchmark for overheads. Therefore, the claim regarding overheads was rejected.

4.7.6. Calculation of the normal value

- (108) On the basis of the above, the Commission constructed the normal value per product type on an ex-works basis, in accordance with Article 2(6a) (a) of the basic Regulation.
- (109) First, the Commission established the undistorted manufacturing costs. The Commission applied the undistorted unit costs to the actual consumption of the individual factors of production of the cooperating exporting producers. The Commission reduced the costs of manufacturing by the undistorted costs of by-products re-used in the production process. These consumption ratios were verified during the verification. The Commission multiplied the consumption ratios by the undistorted costs per unit observed in the representative country (Mexico), as described in Table 1.

⁽⁵⁰⁾ <https://www.globalpetrolprices.com/Mexico/>, (last viewed on 14 February 2023).

⁽⁵¹⁾ <https://www.cre.gob.mx/IPGN/index.html>, (last viewed on 14 February 2023).

⁽⁵²⁾ <https://ir.tenaris.com/static-files/ddffd7cb-994e-493a-b85a-2586f03046c6>, (last viewed on 14 February 2023).

- (110) Once the undistorted manufacturing cost were established, the Commission added the manufacturing overheads, SG&A and profit as noted in Section 4.7.5. Manufacturing overheads were determined based on the data of the exporting producers. SG&A and profit were determined based on the financial statements of 2021 of Tenaris Group ⁽⁵³⁾, incorporating the Mexican subsidiary Tamsa. The Commission added the following items to the undistorted costs of manufacturing:
- Manufacturing overheads, which accounted in total for 7,8 % of the direct costs of manufacturing,
 - SG&A, which accounted for 26,16 % of the Costs of Goods Sold ('COGS') of the Tenaris Group incorporating the Mexican subsidiary Tamsa and,
 - Profits, which amounted to 15,34 % of the COGS as achieved by the Tenaris Group.
- (111) 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.
- (112) The exporting producers questioned the way SG&A and profits were determined by the Commission by asking why SG&A and profit were expressed as a percentage of COGS instead of turnover, whether direct selling expenses were included in SG&A and why the Commission had used the SG&A and profit of the Tenaris Group instead of the product concerned of the Mexican subsidiary Tamsa.
- (113) The Commission noted that it is its standard practice to express SG&A and profit as a percentage of COGS to construct the normal value and to include direct selling expenses in the SG&A. Article 2(6a)(a) of the basic Regulation requires that the normal value is constructed on the basis of costs of production and that it includes an undistorted and reasonable amount for SG&A costs and for profits. It follows that to construct the normal value based on costs, the SG&A and profit which are to be added to these costs need to be expressed in function of these costs. The Commission used the SG&A and profit of the Tenaris group as the SG&A and profit of Tamsa was not available, and because the data of the Tenaris group was the best readily available alternative. Therefore, the Commission considered that its methodology for calculating SG&A and profit was appropriate, not least as no better information was available and rejected the claim.

4.7.7. *Export price*

- (114) The cooperating exporting producers exported to the Union either directly to independent customers or through a related trader located in the PRC.
- (115) The Commission determined the export price as the price actually paid or payable for the product under review when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

4.7.8. *Comparison*

- (116) The Commission compared, per product type, the constructed normal value established in accordance with Article 2(6a) (a) of the basic Regulation and the export price of the cooperating exporting producers on an ex-works basis as established above.
- (117) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for bank charges, commissions, credit costs, freight, handling, other discounts, packing and insurance.

4.7.9. *Dumping margins*

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

⁽⁵³⁾ <https://ir.tenaris.com/static-files/ddffd7cb-994e-493a-b85a-2586f03046c6>, (last viewed on 14 February 2023).

- (119) On this basis, the weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, was in the range of 10 % to 44 % for the cooperating exporting producers. It was therefore concluded that dumping continued during the review investigation period.

5. LIKELIHOOD OF CONTINUATION OF DUMPING

- (120) Further to the finding of the existence of dumping during the review investigation period, the Commission investigated, in accordance with Article 11(2) of the basic Regulation, the likelihood of continuation of dumping, 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.

5.1. Production capacity and spare capacity in the PRC

- (121) According to the applicants, the PRC is the biggest producer of the product under review in the world with 23 producers, with a total of 33 production lines.
- (122) In the review investigation period, according to the applicants' estimates, the total production in the PRC of the product under review represented around 2,3 million tonnes. According to the same source, the total estimated production capacity was 5 million tonnes. Hence the spare capacity to produce the product under review in the PRC during the review investigation period represented around 2,7 million tonnes. Since the Union consumption in the review investigation period was estimated at around 100 thousand tonnes (see Table 2), the spare capacity of the Chinese exporting producers exceeded the consumption of the product under review in the Union market around 27 times. In comparison, the applicants estimated that during the same period, the production capacities of the 12 existing companies in the rest of the world were around 2,9 million tonnes ⁽⁵⁴⁾. Due to the non-cooperation by the Government of China and the low cooperation of Chinese exporting producers, the Commission did not receive further information in respect of the production in the PRC and imports into the Union.
- (123) However, in light of the (high) production levels and spare capacity in the PRC in comparison to the Union, the Commission considered it likely that Chinese exporting producers would redirect their spare capacities increasingly towards the Union market in large quantities at dumped prices should the measures lapse.

5.2. Attractiveness of the Union market and the prices on the Union market.

- (124) During the review investigation period, the Chinese exporting producers continued to export the product under review to the Union. The exports of the cooperating Chinese exporting producers amounted in the review investigation period to 2,9 thousand tonnes which represented between [2,5-3,5 %] of the market share in the Union market. As detailed in recital 43, since the imports into the EU only relate to the cooperating exporting producers' data, while overall production in the PRC in the review investigation period was considerably higher, the total Chinese exporting producers' market share of the product under review in the Union was likely higher. Therefore, the Union market remains an attractive export market for the Chinese exporting producers, despite the measures in force.
- (125) In the applicants' view, the attractiveness of the Union market lies as well in the relatively high average price level, customers' solvability and sound logistical infrastructure with well-equipped harbours, storage and distribution facilities, and a high level of industrial consumption. Furthermore, the Union is at present the largest steel market in the world in terms of volumes.
- (126) Furthermore, in the review investigation period, based on the comparison between the prices of the sampled Union producers and the cooperating Chinese exporting producers, the Chinese export prices undercut the Union prices, when the anti-dumping duty is excluded (see recital 152), demonstrating that the Union market is attractive in terms of prices.

⁽⁵⁴⁾ Excluding the Union market.

- (127) The implementation of the US section 232 measures and in particular their import duties on the product concerned from the Chinese exporting producers further limit the possibilities for exporting producers to export the product concerned to other important destinations than the Union.
- (128) Therefore, in terms of the size and the prices, the Union market remained an attractive market for the Chinese exporting producers.

5.3. Conclusion on likelihood of continuation of dumping

- (129) The investigation showed that the Chinese exports continued to enter the Union market at dumped prices during the review investigation period.
- (130) The spare capacity in the PRC was significant in comparison with the Union consumption during the review investigation period. Moreover, the attractiveness of the Union market in terms of size and prices supported the likelihood that Chinese exports and spare capacity would be directed towards the Union market, should the measures lapse.
- (131) Consequently, the Commission concluded that there is a likelihood that the expiry of the anti-dumping measures would result in a significant increase of dumped imports of the product under review from China to the Union.
- (132) In light of the above, the Commission concluded that the expiry of the anti-dumping measures would likely lead to a continuation of dumping.

6. INJURY

6.1. Definition of the Union industry and Union production

- (133) The like product was manufactured by six producers that are located in different Member States, during the period considered. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (134) The total Union production during the review investigation period was established at around 196 050 tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry, such as European Steel Tube Association for the non-sampled EU producers and the questionnaire responses submitted by the sampled Union producers. As indicated in recital 20, three Union producers were selected in the sample, representing almost 76 % and 67 % of the total production and sales volumes, respectively, of the known Union producers of the like product.

6.2. Union consumption

- (135) The Commission established the Union consumption on the basis of Eurostat import statistics and sales volumes of the Union industry in the Union, as submitted by the applicant for the non-sampled EU producers and the questionnaire responses submitted by the sampled Union producers. The Commission used data ranges for free and captive market, as well as for market shares, in order to ensure that sensitive data is not revealed for one Union producer.
- (136) Union consumption developed as follows:

Table 2

Union consumption tonnes

	2018	2019	2020	Review Investigation period
Total Union consumption	111 875	108 571	95 285	102 189
Index	100	97	85	91

Captive market	[4 500–5 500]	[9 000–10 000]	[5 500–6 500]	[6 000–7 000]
<i>Index</i>	100	188	119	126
Free market	[100 000– 110 000]	[90 000 – 100 000]	[80 000 –90 000]	[86 000–96 000]
<i>Index</i>	100	93	84	90

Source: Comext, cooperating exporting producers, ESTA and the sampled Union producers.

- (137) The Union consumption decreased by 3 % in the period between 2018 and 2019, decreased by more than 12 % in the period between 2019 and 2020 and then improved by more than 5 % in the period between 2020 and the review investigation period. Overall, it decreased 9 % from 2018 to the review investigation period.
- (138) The Union industry reported captive use of the product under review which represented less than 5 % of the total Union consumption in 2018. During the period considered, it increased by 26 %.
- (139) Free market consumption decreased by 10 % during the period considered. It decreased by 7 % between 2018 and 2019, by 9,6 % between 2019 and 2020 and then improved by 7 % in the period 2020 and the review investigation period.

6.3. Imports into the Union from the country concerned

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

- (140) Based on the cooperating exporting producers data, the volume of imports and market share of imports of the product under review, developed as set out below. As the data came from only two exporting producers, it was provided in ranges for reasons of confidentiality.
- (141) Imports into the Union from the country concerned developed as follows:

Table 3

Import volume (tonnes) and market share

	2018	2019	2020	Review Investigation period
Volume of imports from the country concerned (tonnes)	[1 300 – 1 400]	[1 500 – 1 600]	[1 250 – 1 350]	[2 800 – 2 900]
<i>Index</i>	100	111	95	204
Market share	[1 – 3] %	[1,2 – 3,2] %	[1,1 – 3,1] %	[2,5 – 3,5] %
<i>Index</i>	100	120	113	227

Source: cooperating exporting producers.

- (142) In the original investigation, the market share of imports from China in the Union was 26,8 %. By contrast, the market share was [2,5 – 3,5] % during the review investigation period. Consequently, the market share of imports from China was drastically reduced as a result of the anti-dumping measures in force. However, in a context of decreasing consumption, Chinese imports increased over the period considered to the detriment of the Union industry. The volume of total imports from the PRC increased by 104 % for the period considered and amounted to [2 800 – 2 900] tonnes during the review investigation period. Although the market share of Chinese imports increased, it remained relatively limited by [2,5 – 3,5] % in the same period.

- (143) In particular, the market share of imports from the PRC has increased by 20 % in the period between 2018 and 2019, increased by 13 % in the period between 2018 and 2020 in spite of the decrease in Union consumption of free market by 16 % and increased by 127 % over the period considered. The increase in market share of the imports from the PRC in the period considered took place despite the existing anti-dumping measures and the COVID crisis.
- (144) As it is mentioned in recital 42, the volume of imports from the PRC into the Union of the product under review and the market share of the Chinese exporting producers, are based upon the verified data of the cooperating exporting producers and the information in the review request, for the period considered and the review investigation period.
- (145) Following final disclosure the cooperating exporting producers, Daye Special Steel Co. Ltd., Zhejiang Pacific Seamless Steel Tube Co. and Yangzhou Chengde Steel Pipe, Co. Ltd, argued that it is unclear why the import volumes used in the investigation were based on the data reported by the cooperating exporting producers rather than Comext database.
- (146) As mentioned in recital 42, the Commission considered that, in this case, the statistical information was not reliable and could not be used to determine the actual volume of imports from the PRC and therefore preferred to base its findings on the verified data of the cooperating exporting producers. Moreover, no evidence was submitted in the present investigation demonstrating that it is inappropriate to use the volume of exports declared by the cooperating exporting producers. On this basis, this claim was rejected.

6.3.2. *Prices of the imports from the country concerned and price undercutting*

- (147) The Commission established the prices and the undercutting of the imports from the PRC into the Union on the basis of the data of the cooperating exporting producers.
- (148) As the data came from only two exporting producers, the average import price was provided in ranges for reasons of confidentiality.
- (149) The average price of imports into the Union from the country concerned developed as follows:

Table 4

Import prices (EUR/tonne)

	2018	2019	2020	Review Investigation period
Average import price (EUR/tonne)	[1 300 – 1 400]	[1 300 – 1 400]	[1 300 – 1 400]	[1 500 – 1 600]
Index	100	99	96	113

Source: cooperating exporting producers.

- (150) The average import price decreased by 1 % between 2018 and 2019, decreased by 4 % between 2018 and 2020 and increased by 13 % between 2018 and the review investigation period.
- (151) The Commission determined the price undercutting during the review investigation period by comparing:
1. the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and

2. the corresponding weighted average prices per product type of the imports from the cooperating exporting producers to the first independent customer on the Union market, established on a cost, insurance, freight (CIF) basis, without the anti-dumping duty, with appropriate adjustments for customs duties and post-importation costs.

(152) The price comparison was made on a type-by-type basis for transactions and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the sampled Union producers' turnover during the review investigation period. It showed a weighted average undercutting margin of between 21,6 % and 27 %, without anti-dumping duties, by the imports from the country concerned on the Union market. However, when the same comparison was carried out including the anti-dumping duties no undercutting was observed.

6.3.3. Imports from third countries other than the PRC

- (153) The imports of the product under review from third countries other than the PRC were mainly from Thailand, Ukraine and the United Kingdom.
- (154) The aggregated volume of imports into the Union, as well as the market share and price trends for the product under review from other third countries, developed as follows:

Table 5

Imports from third countries

Country		2018	2019	2020	Review Investigation period
Thailand	Volume (tonne)	1 657	4 406	4 925	3 579
	Index	100	266	297	216
	Market share	[1,1 – 2,1] %	[4 – 5] %	[5 – 6] %	[3,2 – 4,2] %
	Average price (EUR/tonne)	1 059	1 105	962	1 071
	Index	100	104	91	101
Ukraine	Volume (tonne)	1 275	779	1 323	772
	Index	100	61	104	61
	Market share	[0,7 – 1,7] %	[0,5 – 1,5] %	[1 – 2] %	[0,5 – 1,5] %
	Average price (EUR/tonne)	990	800	672	667
	Index	100	81	68	67
United Kingdom	Volume (tonne)	332	542	525	658
	Index	100	163	158	198
	Market share	[0,1 – 0,5] %	[0,3 – 0,7] %	[0,4 – 0,8] %	[0,5 – 0,9] %

	Average price (EUR/tonne)	3 100	2 850	2 050	2 169
	Index	100	92	66	70
Other third countries	Volume (tonne)	4 979	4 390	2 795	1 502
	Index	100	88	56	30
	Market share	[4,2 – 5,2] %	[4 – 5] %	[2,5 – 3,5] %	[1 – 2] %
	Average price (EUR/tonne)	3 469	1 668	1 832	3 628
	Index	100	48	53	105
Total of all third countries except the country concerned	Volume (tonne)	8 243	10 117	9 568	6 511
	Index	100	123	116	79
	Market share	[7 – 8] %	[9,5 – 10,5] %	[10,5 – 11,5] %	[6,5 – 7,5] %
	Average price (EUR/tonne)	2 586	1 419	1 236	1 724
	Index	100	55	48	67

Source: Comext.

- (155) During the period considered, the import volume from Thailand increased by 116 %. The market share reached up to [5 – 6] % in 2020 and decreased during the review investigation period to [3,2 – 4,2] %. The average import price remained rather stable over the period considered. For the same reasons explained in recital 140 the market share of all other countries were provided in ranges.
- (156) During the period considered, the import volume from Ukraine decreased by 39 %. The market share reached up to [1 – 2] % in 2020 and decreased during the review investigation period to [0,5 – 1,5] %. The average import price decreased by 33 % over the period considered.
- (157) During the period considered, the import volume from United Kingdom increased by 98 %. The market share increased during the review investigation period to [0,5 – 0,9] %. The average import price decreased by 30 % over the period considered.
- (158) During the period considered, the import volume from other third countries decreased by 70 %. The market share reached up to [4 – 5] % in 2019 and decreased during the review investigation period to [1 – 2] %. Overall, the average import price increased by 5 % over the period considered.
- (159) The import volume from all third countries other than the country concerned fell by 21 % over the period considered. Also, the market share of the imports from all third countries other than the country concerned decreased to [6,5–7,5] %, during the review investigation period.

6.4. Economic situation of the Union industry

6.4.1. General remarks

- (160) 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.
- (161) As mentioned in recital 20, sampling was used for the assessment of the economic situation of the Union industry. For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data contained in the information provided by the applicant, cross-checked with the verified questionnaire replies of the sampled Union producers and available official statistics. The data related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers and available official statistics. Both sets of data were found to be representative of the economic situation of the Union industry.
- (162) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.
- (163) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

6.4.2. Macroeconomic indicators

6.4.2.1. Production, production capacity and capacity utilisation

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

Table 6

Production, production capacity and capacity utilisation

	2018	2019	2020	Review Investigation period
Production volume (tonne)	354 212	294 365	237 208	196 050
<i>Index</i>	100	83	67	55
Production capacity (tonne)	462 885	393 154	378 657	365 740
<i>Index</i>	100	85	82	79
Capacity utilisation	76,5 %	74,9 %	62,6 %	53,6 %
<i>Index</i>	100	98	82	70

Source: ESTA, verified questionnaire replies of the sampled Union producers.

- (165) The production volume reached record lows over the review investigation period. It decreased by 45 % during the period considered. More specifically, it decreased by 17 % between 2018 and 2019, then decreased by more than 19 % between 2019 and 2020 and by more than 17 % between 2020 and the review investigation period. This decrease was the result of the decrease in Union consumption as explained in section 6.2 above.

- (166) The production capacity followed similar trends, as it decreased overall by 21 % over the period considered.
- (167) The Commission noted that the decrease in production capacity was partly due to two companies amongst the non-applicants which have stopped the production of the like product in 2020, AMTP Roman in Romania, and Vallourec Deutschland in Germany. The latest closed down its production mill in Reisholz, Germany, in June 2020 and its production mill in Rath in the end of 2021.
- (168) The parallel decrease of the production volume and the production capacity during the period considered resulted in a decrease in the capacity utilisation by 30 % for the period considered.
- (169) Although capacity utilisation is not the main driver in profitability, it has a direct impact on the results, by enhancing the weight of fixed costs. Capacity utilisation performed at very low level, generating a situation of high fragility for the industry.

6.4.2.2. Sales volume and market share

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

Table 7

Sales volume and market share (tonnes)

	2018	2019	2020	Review Investigation period
Total Sales volume on the Union market (free market and captive market)	102 246	96 910	84 406	92 851
<i>Index</i>	100	95	83	91
Market share on total consumption	91,4 %	89,3 %	88,6 %	90,9 %
<i>Index</i>	100	98	97	99
Captive market sales	[4 500–5 500]	[9 000–10 000]	[5 500–6 500]	[6 000–7 000]
<i>Index</i>	100	188	119	126
Market share of captive market sales	[3,6 %–5,6 %]	[7,9 %–9,9 %]	[6,0 %–7,0 %]	[6,0 %–7,0 %]
<i>Index</i>	100	193	140	138
Free market sales	[95 000 – 99 000]	[85 000 – 89 000]	[75 000 – 79 000]	[85 000 – 89 000]
<i>Index</i>	100	90	81	89
Market share of free market sales on total consumption	[83 % – 88 %]	[77 % – 82 %]	[79 % – 84 %]	[82 % – 87 %]
<i>Index</i>	100	93	95	97

Source: ESTA, verified questionnaire replies of the sampled Union producers.

- (171) Total sales of the Union industry on the Union market (free market and captive market) decreased considerably, by 9 %, over the period considered. In particular, sales decreased by 5 % from 2018 through 2019 and then declined by more than 12 % between 2019 to 2020 and it increased by more than 9 % from 2020 to the review investigation period. During the review investigation period the market share on total consumption of the Union industry reached up to 90,9 % and decreased 1 % over the period considered.

6.4.2.3. Growth

- (172) While the consumption fell by 9 %, Union industry's production volumes decreased by 45 % and sales volume on the Union market (free market and captive market) fell by 9 % during the period considered.

6.4.2.4. Employment and productivity

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

Table 8

Employment and productivity

	2018	2019	2020	Review Investigation period
Number of employees	2 114	1 729	1 568	1 270
<i>Index</i>	100	82	74	60
Productivity (tonne/employee)	168	170	151	154
<i>Index</i>	100	102	90	92

Source: ESTA, verified questionnaire replies of the sampled Union producers.

- (174) The level of the Union industry employment decreased over the period considered, by 40 %, followed the same trend as of the Union production volumes.
- (175) The productivity of Union producers' workforce, measured as output (tonnes) per person employed per year decreased by 8 % over the period concerned due to the drop in the demand market and the subsequent drop in production.

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

- (176) All dumping margins established during the review investigation period were significantly above the de minimis level. At the same time, the level of imports from the PRC into the Union during the review investigation period was relatively limited, representing only [2,5 – 3,5] % of Union consumption. Therefore, the impact of the magnitude of the actual margins of dumping on the Union industry was rather limited.

6.4.3. Microeconomic indicators

6.4.3.1. Prices and factors affecting prices

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

Table 9

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

	2018	2019	2020	Review Investigation period
Average unit sales price in the Union on the total market	1 328	1 331	1 249	1 312
<i>Index</i>	100	100	94	98
Average unit sales price on the captive market ⁽⁵⁵⁾	[900-1 100]	[1 100-1 300]	[1 100-1 300]	[1 100-1 300]
<i>Index</i>	100	115	106	116
Average unit sales price on the free market	1 353	1 354	1 265	1 321
<i>Index</i>	100	100	94	98
Unit cost of production	1 227	1 221	1 217	1 416
<i>Index</i>	100	100	99	115

Source: Verified questionnaire replies of the sampled Union producers.

- (178) Over the period considered, the Union industry price on the free market fell by more than 2 % and the unit cost of production increased by 15 %. After the imposition of anti-dumping measures against Chinese imports in November 2016, the Union producers could maintain their sales prices in the Union from 2018 to 2019. However, the unit sales price decreased by more than 6 % between 2019 and 2020. Subsequently, it improved by more than 4 % between 2020 and 2021.
- (179) The unit cost of production remained stable between 2018 and 2019, slightly decreased by 1 % between 2018 and 2020 and increased by 15 % over the period considered. It increased by more than 16 % between 2020 and 2021, reflecting the high increase in costs of energy and raw materials, in the same period.

6.4.3.2. Labour costs

- (180) 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)	62 122	64 071	66 134	65 599
<i>Index</i>	100	103	106	106

Source: Verified questionnaire replies of the sampled Union producers.

⁽⁵⁵⁾ The average price on the captive market was presented in ranges for reasons of confidentiality.

- (181) The average labour costs per employee increased by 3 % between 2018 and 2019. It also increased by 6 % between 2018 and 2020. Overall, it increased 6 % over the period considered.

6.4.3.3. Inventories

- (182) 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)	22 334	19 256	14 497	13 692
<i>Index</i>	100	86	65	61
Closing stocks as a percentage of production	8,8	8,7	8,1	8,9
<i>Index</i>	100	99	93	102

Source: Verified questionnaire replies of the sampled Union producers.

- (183) The level of the closing stocks of the sampled Union producers remained stable in relation to the production. During the period considered, the level of closing stocks decreased by 39 %. The Union producers usually only keep a low level of stock themselves. Therefore, stocks are not considered to be an important injury indicator for this industry. This is also confirmed by analysing the evolution of the closing stocks as a percentage of production. In the investigation period, some producers produced less and reduced stocks, in an effort to cope with their difficult financial situation in 2020 and 2021 (see Table 6).

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

- (184) 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 to unrelated customers (% of sales turnover)	9,3	9,9	3,8	- 7,2
<i>Index</i>	100	106	41	- 77
Cash flow (EUR)	54 041 814	65 623 240	56 907 181	6 140 456
<i>Index</i>	100	121	105	11
Investments (EUR)	26 907 236	9 977 233	3 253 779	4 952 232
<i>Index</i>	100	37	12	18

Return on investments	10,6 %	22,3 %	18,1 %	0,3 %
<i>Index</i>	100	211	171	3

Source: Verified questionnaire replies of the sampled Union producers.

- (185) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. Overall, profitability fell from 9,3 % in 2018 to [-7,2] % during the review investigation period. It remained almost at the same levels between 2019 and 2018, while it fell by 59 % between 2018 and 2020. The profitability of the sampled Union producers dropped by [-77] %, over the period considered.
- (186) Following disclosure, the cooperating exporting producers claimed that the Commission did not explain how the deterioration of profitability related to the increase in import prices from the country concerned.
- (187) As explained in recital 200, the Commission concluded that the material injury suffered by the Union industry was not caused by the imports from the PRC. On this basis, this claim was rejected.
- (188) The net cash flow is the ability of the Union producers to self-finance their activities. The net cash flow increased by 21 % in the period between 2018 and 2019 and remained stable between 2018 and 2020. However, the net cash flow had an overall drop of 89 % during the period considered, following the profitability in sales trend.
- (189) The return on investments is the profit in percentage of the net book value of investments which reflects the level of depreciation of assets. Overall, it dropped 97 % during the period considered. In particular, it increased by 111 % between 2018 and 2019, mainly due to the level of profit reached in 2019, increased by 71 % between 2018 and 2020 and decreased by 97 % between 2018 and 2021, as already mentioned, due to low level of profits in 2021.
- (190) The Commission noted that despite low profit margins since 2020, the Union industry has maintained a fair level of productivity and never stopped optimizing its production process, logistics, sales and marketing, by continuing to invest.
- (191) The high level of investments that are to be carried out by the Union Industry shows its strong will to adapt, improve and stay on the market despite difficulties and economic hardship.
- (192) The poor financial performance of the Union industry over the period considered limited its ability to raise capital. The Union industry is capital intensive and requires substantial investments. The net cash flow during the period considered was too low to cover for such substantial investments.

6.5. Conclusion on injury

- (193) The evolution of the micro and macro indicators during the period considered showed that the financial situation of the Union industry deteriorated. Overall, the trends of the main economic indicators worsened over the period considered.
- (194) The investigation indicated that all injury indicators showed a negative pattern during the period considered. In a context of demand decrease by 9 %, both sales volume on the free market and production fell by 9 % and 45 %, respectively. This led to a decrease in capacity of 21 % and employment of 40 %. Since the decrease in production was faster (45 % over the period considered) than the decrease in capacity and employment, the capacity utilisation and the productivity also fell, by 30 % and 8 %, respectively.

- (195) During the same period, the average unit price on the free market also decreased by more than 2 %, while the unit cost of production increased by 15 %. As a consequence, profitability fell by [-77] % over the period considered and the profit dropped from 9,3 % in 2018 to [-7,2] % during the review investigation period.
- (196) Accordingly, the injury indicators show that the Union industry was suffering material injury in the review investigation period, as it decreased its sales prices in spite of rising production costs, resulting in a collapse of its profitability, which negatively affected investments, return on investments and cash flow.
- (197) Consequently, the Commission concluded that the Union industry suffered from material injury within the meaning of Article 3(5) of the basic Regulation.
- (198) In accordance with Article 3(6) of the basic Regulation, the Commission further examined whether the dumped imports from the country concerned caused material injury to the Union industry.
- (199) The investigation revealed that the volumes of imports from China increased by 104 %, from [1 300 – 1 400] tonnes to [2 800 – 2 900] tonnes, during the period considered. Their market share also more than doubled, from [1 – 3] % to [2,5 – 3,5] % but remained significantly below their market share of 26,8 % observed during the investigation period of the original investigation. More importantly, the average sales price of the imports from the PRC [1 500 – 1 600] EUR/tonne was above the average Union industry's sales price (1 321 EUR/tonne) and its average cost of production (1 416 EUR/tonne) during the review investigation period. In addition, at product-by-product type comparison, the Commission did not establish undercutting when the duties were included in the prices of the exporting producers. Consequently, despite the increase in volumes and market share, the imports from the PRC did not cause injury to the Union industry during the review investigation period.
- (200) On the basis of the above, the Commission concluded that the material injury suffered by the Union industry could not have been caused by the imports from China.

7. LIKELIHOOD OF RECURRENCE OF INJURY

- (201) The Commission concluded in recital 200 that the Union industry suffered material injury during the review investigation period. 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.
- (202) In this respect, the following elements were analysed by the Commission: the production capacity and spare capacity in PRC, the relationship between prices in the Union and the Chinese prices, the relationship between export prices to third countries and the price level in the Union, the attractiveness of the Union market and the impact of potential imports from the PRC on the Union industry's situation should the measures lapse.

7.1. The production capacity, spare capacity in the PRC

- (203) The production capacity in the PRC for the product concerned is estimated at 5 million tonnes yearly. The spare capacity available in China represented around 2,7 million tonnes yearly, which exceeds almost 27 times the consumption of the product concerned on the Union market, that amounted in the review investigation period to 102 189 tonnes. Thus, there is an important excess of the supply over demand in the Chinese market. Consequently, this would represent further incentive for the Chinese producers to focus increasingly on export markets if new opportunities arise.

7.2. Attractiveness of the Union market

- (204) As established in Section 4.2 above, the Union market is attractive in terms of its size and prices. The Union is at present the largest market of the product under review in the world in terms of volumes. It also has a sound logistical infrastructure with well-equipped harbours, storage and distribution facilities and high level of industrial consumption.
- (205) Furthermore, as indicated in recital 152, the Commission established, that absent the measures, imports from the PRC would significantly undercut the prices of the Union industry. In addition, the average import price of the Chinese exporting producers into the main third countries destinations (South Korea, India, Thailand etc.) of 1 135 EUR/tonne ⁽⁵⁶⁾ was lower than the average Union industry sales price of 1 321 EUR/tonne on the free market, in the review investigation period. Consequently, should the measures be allowed to lapse, the exporting producers have strong incentives to increase their sales to the Union at lower prices than the ones charged by the Union industry during the review investigation period.
- (206) The Union market is hence considered very attractive for Chinese producers, and it can be concluded that available spare capacities in the PRC would, at least partially, be used to significantly increase exports to the Union market at dumped and injurious prices should the measures expire. The attractiveness of the Union market, as described above, would lead to a significant increase of dumped imports from the PRC. As the product concerned is a rather homogenous product in terms of quality, the price level is the most important factor when deciding whether to buy from the Union producers or from Chinese exporting producers. The sudden decrease in Chinese exports in response to the anti-dumping measures indicates that customers can easily switch to the supplier with the most competitive price (i.e. from the Chinese exporting producers to the Union producers or vice-versa in case the measure lapse).

7.3. Impact of potential imports from China on the Union industry's situation should the measures lapse.

- (207) The sampled Union producers performed at negative profit margins of [-7,2 %], during the review investigation period, thus, they cannot afford to further decrease their sales' price, or to lose market share (if they don't lower the price) as a consequence of new imports, because that would further increase their losses.
- (208) Given the likelihood that the exporting producers would come at lower prices and higher volumes, the Union industry will be forced to either reduce its sales prices at the expense of their profitability or to keep the sales prices level and most likely lose sales volume and market share to the Chinese exporters. A combination of these scenarios seems even more realistic. Ultimately, this would lead to downward price pressure, greater losses and the imports from the PRC likely regaining their pre-measures market share of 26 %. It is worth noting that two existing Union producers have totally stopped the production of the like product in 2020: AMTP Roman in Romania, and Vallourec Deutschland in Germany.
- (209) In view of the above, the Commission concluded that the expiry of the measures would, in all likelihood, result in a significant increase of dumped imports from the PRC at prices undercutting the Union industry prices, and therefore further aggravating the injury suffered by the Union industry as the material injury originally caused by the dumped imports from the PRC would be likely to recur. Consequently, the viability of the Union industry would be at serious risk.

⁽⁵⁶⁾ Based on GTA. The statistics concerned imports from China into the third countries concerned. Also the HS codes containing products with a diameter inferior or equal to 406 mm were removed in order to reflect the definition of the product under review.

7.4. Comments following final disclosure

- (210) Following disclosure, the cooperating exporting producers claimed that the Commission did not assess the impact of imports originating in Thailand in its recurrence of injury analysis in the light of the fact that Chinese imports did not cause injury to the Union industry during the 'review period'. It further claimed that the low prices and volume of imports originating in Thailand may worsen the fragile situation of the Union industry.
- (211) Considering that this investigation is limited to imports of the product concerned originating in the PRC, the Commission limited its recurrence of injury analysis to the elements mentioned in recital 202 that could affect the Union industry if measures on imports originating in the PRC were allowed to lapse. Imports from Thailand were not a factor in that assessment. On this basis, this claim was rejected.
- (212) The same exporting producers also claimed that the Commission failed to explain why the Union industry reported losses in the review investigation period.
- (213) As referred to in recital 195, the average unit price decreased by 2 % over the period considered whereas the unit cost of production increased by 15 %. Consequently, as the Union industry could not transfer the increase in costs due to long term agreements, it reported losses in the review investigation period. Furthermore, as referred to in recital 200, the Commission concluded that the imports from the PRC did not cause injury to the Union industry during the review investigation period. Consequently, the Commission focussed its analysis on the recurrence of injury based on the elements mentioned in recital 202. On this basis and as mentioned in recital 209, it concluded that material injury originally caused by the dumped imports from the PRC would be likely to recur should measures be allowed to lapse. On this basis, this claim was rejected.
- (214) The cooperating exporting producers also referred to two Appellate Body reports ⁽⁵⁷⁾ and claimed that 'a reasoned conclusion must be made by carefully considering evidence on record, and any projections into future or inferences drawn must also be processed on positive evidence'. In particular, they claimed that spare capacity was overestimated and that Chinese exporting producers were focusing on the domestic market and did not export their spare capacity to the Union. In addition, they claimed that the attractiveness of the Union market and the 'Prices from China to other countries' should not be considered in a likelihood analysis and that the analysis should be based on a 'counter-factual analysis of what would happen in future, primarily based on projected dumped imports, prices, and impact on the Union industry'.
- (215) As far as capacity and spare capacity are concerned, the cooperating exporting producers did not provide any new evidence to support their claim. In the absence of new elements, the claim was rejected.
- (216) As far as the elements to be taken into account for a likelihood analysis are concerned, the Commission considered that by analysing elements such as the attractiveness of the Union market and prices to third countries, it performed such 'counter-factual analysis' in line with its standard practice using all available elements that allowed a forward-looking exercise into the likelihood of recurrence of injury. In the absence of elements that would overturn the Commission's conclusions in this regard, this claim was rejected.

8. UNION INTEREST

- (217) 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 a whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, unrelated importers and users.

⁽⁵⁷⁾ Appellate Body Report, *US – Corrosion Resistant Steel Sunset Review*, para. 111 and Appellate Body Report, *US – Oil Country Tubular Goods Sunset Reviews*, para. 7.166.

8.1. Interest of the Union industry

- (218) The Union industry is composed of 6 producers that are located in different Member States. Among them, Dalmine S.p.A, Tubos Reunidos Group SA and Valcovni Trub Chomutov AS are the applicants, whereas the others cooperated, Huta Batory Sp. Z o.o., Vallourec Deutschland GmbH, in Germany and France (non-applicants) and AMTP Roman.
- (219) The investigation showed that should the measures expire, this would likely have a significant negative effect on the Union industry. The Union industry's situation would quickly deteriorate in terms of lower sales volumes and sales prices resulting in a strong decrease in profitability. On the other hand, the continuation of measures would allow the Union industry to further recover from past injury caused by dumped imports, and to exploit its potential on a Union market that is not affected by unfair trading practices from the PRC.
- (220) Based on the above it was concluded that maintaining the anti-dumping measures in force is in the interest of the Union industry.

8.2. Interest of unrelated importers, traders and users

- (221) The Commission contacted all known unrelated importers, traders and users. None of the traders and users replied to the Commission's questionnaire.
- (222) Similar to the initial investigation, no users came forward in this review. In addition, there are 79 known unrelated importers, of which only Siderpighi spa Con Socio Unico, known as unrelated importer, came forward. It replied that it is not in favour of the imposition of anti-dumping measures. It claimed that the Union needs Chinese imports because demand is beyond offer. The Commission observed that the turnover of the product under review represents less than 1 % of the unrelated importer's turnover. Thus, the continuation of the measures will not change the company's overall performance outlook, in any case.
- (223) Furthermore, regarding the interests of both users and importers, in the initial investigation the Commission concluded that there were sufficient alternative sources of supply of the product under review. This conclusion remains valid given that around 10 % of the market is still served by imports from all origins. In addition, the Union industry had a spare capacity of more than 46 % during the review investigation period, which is far beyond the current Union consumption.
- (224) Consequently, the Commission concluded that the extension of the measures would not negatively impact the existing supply on the market or the economic situation of the importer in question or any of the users on the market.
- (225) Consequently, the Commission concluded that the continuation of the measures would not be against the interests of users and importers.

8.3. Conclusion on Union interest

- (226) On the basis of the above, the Commission concluded that there were no compelling reasons of Union interest against the maintenance of the existing measures on imports of the product under review originating in the PRC.

9. ANTI-DUMPING MEASURES

- (227) On the basis of the conclusions reached by the Commission on continuation of dumping, recurrence of injury and Union interest, the anti-dumping measures on certain seamless pipes and tubes of iron (other than cast iron) or steel (other than stainless steel), of circular cross-section, of an external diameter exceeding 406,4 mm from the PRC should be maintained.

- (228) To minimize the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.
- (229) 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.
- (230) 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.
- (231) 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.
- (232) 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 ⁽⁵⁸⁾. 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*.
- (233) 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 exporting producers 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.
- (234) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽⁵⁹⁾ 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.

⁽⁵⁸⁾ European Commission, Directorate-General for Trade, Directorate G, Rue de la Loi 170, 1040 Brussels, Belgium.

⁽⁵⁹⁾ 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).

(235) 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 seamless pipes and tubes of iron (other than cast iron) or steel (other than stainless steel), of circular cross section, of an external diameter exceeding 406,4 mm, currently falling under CN codes 7304 19 90, ex 7304 29 90 (TARIC code 7304 29 90 90), 7304 39 88 and 7304 59 89 and originating in the People's Republic of China.

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:

Company	Definitive anti-dumping duty rate (%)	TARIC additional code
Yangzhou Chengde Steel Pipe Co., Ltd	29,2	C171
CITIC Pacific Group: — Daye Special Steel Co., Ltd — Zhejiang Pacific Seamless Steel Tube Co., Ltd	51,8	899H
Yangzhou Lontrin Steel Tube Co., Ltd	39,9	C173
Hengyang Valin MPM Co., Ltd	48,2	C174
Other cooperating companies listed in the Annex	45,6	C998
All other companies	54,9	C999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: '*I, the undersigned, certify that the (volume) of (product under review) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in the PRC. 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. Article 1(2) may be amended to add new exporting producers from the PRC to the list in the Annex and make them subject to the appropriate weighted average anti-dumping duty rate for cooperating companies not included in the sample. A new exporting producer shall provide evidence that:

- (a) it did not export the goods described in Article 1(1) originating in the PRC during the period between 1 January 2015 to 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 PRC or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the original investigation period.

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, 13 July 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

The People's Republic of China cooperating exporting producers not sampled:

Company	TARIC additional code
Tianjin Pipe Manufacturing Co., Ltd	C998
Shandong Luxing Steel Pipe Co., Ltd	C998
Inner Mongolia Baotou Steel Union Co., Ltd	C998
Wuxi SP. Steel Tube Manufacturing Co., Ltd	C998
Zhangjiagang Tubes China Co., Ltd	C998
TianJin TianGang Special Petroleum Pipe Manufacture Co., Ltd	C998
Shandong Zhongzheng Steel Pipe Manufacturing Co., Ltd	C998

COMMISSION IMPLEMENTING REGULATION (EU) 2023/1451**of 13 July 2023****amending Implementing Regulation (EU) 2020/2002 as regards disease notification and the information to be submitted by the Member States for the approval and reporting of compulsory and optional eradication programmes and in applications for disease-free status****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law') ⁽¹⁾, and in particular Articles 23, 35 and 40 thereof,

Whereas:

- (1) Regulation (EU) 2016/429 lays down rules for animal diseases that are transmissible to animals or humans, including provisions for disease notification and reporting, Union surveillance programmes, eradication programmes and disease-free status.
- (2) Commission Delegated Regulation (EU) 2020/689 ⁽²⁾ supplements Regulation (EU) 2016/429 and lays down rules on surveillance, eradication programmes and disease-free status for certain listed and emerging animal diseases.
- (3) To ensure the uniform application in the Union of the provisions for disease notification and reporting, Union surveillance programmes, eradication programmes and disease-free status laid down in Regulation (EU) 2016/429 and in Delegated Regulation (EU) 2020/689, implementing rules on the information, formats and procedural requirements for the surveillance programmes, eradication programmes and for disease-free status are laid down in Commission Implementing Regulation (EU) 2020/2002 ⁽³⁾.
- (4) Experience gained with the submission of information concerning the outcome of the approved eradication programmes, and applications for disease-free status in the period since the date of application of Implementing Regulation (EU) 2020/2002, and especially in light of data already available in the computerised Animal Disease Information System (ADIS) provided for in Article 22 of Regulation (EU) 2016/429, shows that certain elements of the information currently required by that Implementing Regulation are not essential for the Commission to assess the applications for disease-free status. Those elements should not be required, in order to reduce the administrative burden on Member States. Therefore, Implementing Regulation (EU) 2020/2002 should be amended accordingly.

⁽¹⁾ OJ L 84, 31.3.2016, p. 1.

⁽²⁾ Commission Delegated Regulation (EU) 2020/689 of 17 December 2019 supplementing Regulation (EU) 2016/429 of the European Parliament and of the Council as regards rules for surveillance, eradication programmes, and disease-free status for certain listed and emerging diseases (OJ L 174, 3.6.2020, p. 211).

⁽³⁾ Commission Implementing Regulation (EU) 2020/2002 of 7 December 2020 laying down rules for the application of Regulation (EU) 2016/429 of the European Parliament and of the Council with regard to Union notification and Union reporting of listed diseases, to formats and procedures for submission and reporting of Union surveillance programmes and of eradication programmes and for application for recognition of disease-free status, and to the computerised information system (OJ L 412, 8.12.2020, p. 1).

- (5) The information to be provided on the results of the implementation of eradication programmes is available in the ADIS. The draft eradication programmes submitted to the Commission for approval should also be submitted electronically via the ADIS, in order to ensure coherence.
- (6) Furthermore, experience gained in the application of Implementing Regulation (EU) 2020/2002, has indicated that it is necessary to clarify certain provisions of Annexes V, VI and VII thereto, to ensure that it is clear that the territorial scope of an approved eradication programme concerning aquatic animals, and the approval of disease-free status for those animals, may apply at the level of Member State, zone or compartment. Annexes V, VI and VII to Implementing Regulation (EU) 2020/2002 should therefore be amended accordingly.
- (7) Delegated Regulation (EU) 2020/689 provides for several derogations which are relevant for the submission of an eradication programme for a category B or category C disease of aquatic animals in accordance with Section 4 of Annex VII to Implementing Regulation (EU) 2020/2002. Currently, only one such derogation is referred to in that Annex. Implementing Regulation (EU) 2020/2002 should, therefore, be amended to ensure that all the relevant derogations are referred to in Section 4 of Annex VII thereto.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) 2020/2002 is amended as follows:

- (1) Article 7 is replaced by the following:

'Article 7

Union reporting on the annual results of the implementation of approved eradication programmes

- 1. Member States shall submit to the Commission by 30 April of every year reports on the results of the implementation of their ongoing approved eradication programmes.
 - 2. The reports referred to in paragraph 1 shall contain for every year, covering the previous calendar year, the information specified in:
 - (a) Section 1 of Annex V for eradication programmes for category B and C diseases of terrestrial animals based on granting disease-free status at the level of establishments;
 - (b) Section 2 of Annex V for eradication programmes for infection with rabies virus (RABV);
 - (c) Section 3 of Annex V for eradication programmes for infection with bluetongue virus (serotypes 1-24) (infection with BTV);
 - (d) Section 4 of Annex V for eradication programmes for category B and C diseases of aquatic animals.
 - 3. The reports referred to in paragraph 1 shall be submitted electronically via the ADIS.;
- (2) in Article 8, paragraph (2) is deleted;
 - (3) Article 10 is amended as follows:
 - (a) the introductory phrase in paragraph 1 is replaced by the following:

'Member States shall submit to the Commission for approval.;

(b) the following paragraph 3 is added:

‘3. The eradication programmes referred to in paragraph 1 shall be submitted electronically via the ADIS’;

(4) in Article 11, the introductory phrase in paragraph 1 is replaced by the following:

‘Member States shall, when applying to the Commission for recognition of disease-free status in accordance with Sections 1 and 2 of Chapter 4 of Part II of Delegated Regulation (EU) 2020/689, with the exception of the information previously provided in reports referred to in Article 7 of this Regulation, include in their applications the relevant information specified in:’;

(5) Annexes V, VI and VII to Implementing Regulation (EU) 2020/2002 are amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the third 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, 13 July 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Annexes V, VI and VII to Implementing Regulation (EU) 2020/2002 are amended as follows:

(1) in Annex V:

(a) Section 1, point 6 is replaced by the following:

‘6. Information on the establishments and animals concerned located in the territory in accordance with point 5, by zone, if more than one zone is included in the territorial scope of the programme:

- (a) number of establishments keeping animals of the targeted animal population excluding establishments falling under the derogation in accordance with Article 19 of Commission Delegated Regulation (EU) 2020/689 (*) at 31 December;
- (b) number of animals of the targeted animal population kept in the establishments referred to in point (a) at 31 December;
- (c) number of establishments with disease-free status including establishments with suspended disease-free status, with vaccination or without vaccination, where relevant, out of the number of establishments referred to in point (a) at 31 December;
- (d) number of animals kept in the establishments referred to in point (c);
- (e) number of establishments confirmed infected during the reporting period.

(*) Commission Delegated Regulation (EU) 2020/689 of 17 December 2019 supplementing Regulation (EU) 2016/429 of the European Parliament and of the Council as regards rules for surveillance, eradication programmes, and disease-free status for certain listed and emerging diseases (OJ L 174, 3.6.2020, p. 211).’;

(b) Section 4, point 6 is replaced by the following:

‘6. Information on the aquaculture establishments and animals concerned located in the territory referred to in point 5 by Member State, zone or compartment:

- (a) number of approved aquaculture establishments and number of registered aquaculture establishments keeping animals of the targeted animal population and, where relevant, sampling points in wild populations, which are included in the eradication programme at 31 December;
- (b) number of aquaculture establishments and, where relevant, sampling points in wild populations, out of the number of establishments or sampling points referred to in point (a), which are not infected at 31 December;
- (c) number of infected aquaculture establishments and, where relevant, sampling points in wild populations with confirmed case(s) out of the number of establishments and sampling points referred to in point (a) at 31 December;
- (d) number of new infected aquaculture establishments and, where relevant, sampling points in wild populations, with confirmed case(s) out of the number of establishments and sampling points referred to in point (a) at 31 December.’;

(2) Annex VI is amended as follows:

(a) the title is replaced by the following:

‘Information to be included in applications for the recognition of disease-free status of Member States or zones as regards diseases of terrestrial and aquatic animals and in applications for the recognition of disease-free status of compartments as regards diseases of aquatic animals in accordance with Article 11’;

(b) Section 6 is amended as follows:

(i) points 1 to 7 are replaced by the following:

- ‘1. in the case of eradication programmes for infection with *Brucella abortus*, *B. melitensis* and *B. suis* as regards kept bovine animals by zone, if more than one zone is included in the territorial scope of the programme:

- (a) number of establishments keeping bovine animals, excluding establishments falling under the derogation in accordance with Article 19 of Delegated Regulation (EU) 2020/689 at 31 December of each year for the last three years;
 - (b) number of bovine animals kept in the establishments referred to in point (a) at 31 December of each year for the last three years;
 - (c) number of establishments keeping bovine animals with the status free from infection with *Brucella abortus*, *B. melitensis* and *B. suis* without vaccination including establishments with suspended disease-free status at 31 December of each year for the last three years;
 - (d) number of bovine animals kept in the establishments referred to in point (c) at 31 December of each year for the last three years;
 - (e) number of establishments keeping bovine animals tested with a serological test for infection with *Brucella abortus*, *B. melitensis* and *B. suis* each year for the last three years;
 - (f) number of establishments with suspicion following the testing referred to in point (e) each year for the last three years;
 - (g) number of abortion cases from kept bovine animals that may have been caused by infection with *Brucella abortus*, *B. melitensis* and *B. suis* investigated each year for the last three years;
 - (h) date of last confirmed case of infection with *Brucella abortus*, *B. melitensis* and *B. suis* in kept bovine animals;
 - (i) date of last vaccination against infection with *Brucella abortus*, *B. melitensis* and *B. suis* of kept bovine animals;
2. in the case of eradication programmes for infection with *Brucella abortus*, *B. melitensis* and *B. suis* as regards kept ovine and caprine animals, by zone, if more than one zone is included in the territorial scope of the programme:
- (a) number of establishments keeping ovine or caprine animals, excluding establishments falling under the derogation in accordance with Article 19 of Delegated Regulation (EU) 2020/689 at 31 December of each year for the last three years;
 - (b) number of ovine and caprine animals kept in the establishments referred to in point (a) at 31 December of each year for the last three years;
 - (c) number of establishments keeping ovine or caprine animals with the status free from infection with *Brucella abortus*, *B. melitensis* and *B. suis* without vaccination including establishments with suspended disease-free status at 31 December of each year for the last three years;
 - (d) number of ovine and caprine animals kept in the establishments referred to in point (c) at 31 December of each year for the last three years;
 - (e) number of establishments keeping ovine or caprine animals tested for infection with *Brucella abortus*, *B. melitensis* and *B. suis* each year for the last three years;
 - (f) number of establishments with suspicion following the testing referred to in point (e) each year for the last three years;
 - (g) number of abortion cases from ovine or caprine animals that may have been caused by infection with *Brucella abortus*, *B. melitensis* and *B. suis* investigated each year for the last three years;
 - (h) date of last confirmed case of infection with *Brucella abortus*, *B. melitensis* and *B. suis* in kept ovine or caprine animals;
 - (i) date of last vaccination against infection with *Brucella abortus*, *B. melitensis* and *B. suis* of kept ovine or caprine animals;

3. in the case of eradication programmes for infection with MTBC, by zone, if more than one zone is included in the territorial scope of the programme:
 - (a) number of establishments keeping bovine animals, excluding establishments falling under the derogation in accordance with Article 19 of Delegated Regulation (EU) 2020/689 at 31 December of each year for the last three years;
 - (b) number of bovine animals kept in the establishments referred to in point (a) at 31 December of each year for the last three years;
 - (c) number of establishments keeping bovine animals with the status free from infection with MTBC including establishments with suspended disease-free status at 31 December of each year for the last three years;
 - (d) number of bovine animals kept in the establishments referred to in point (c) at 31 December of each year for the last three years;
 - (e) number of establishments keeping bovine animals tested for MTBC each year for the last three years;
 - (f) number of establishments with suspicion following the testing referred to in point (e) each year for the last three years;
 - (g) number of bovine animals slaughtered, presenting suspected lesions of infection with MTBC that have been investigated each year the last three years;
 - (h) number of establishments confirmed infected with MTBC each year the last three years;
4. in the case of eradication programmes for EBL, by zone, if more than one zone is included in the territorial scope of the programme:
 - (a) number of establishments keeping bovine animals, excluding establishments falling under the derogation in accordance with Article 19 of Delegated Regulation (EU) 2020/689 at 31 December of each year for the last three years;
 - (b) number of bovine animals kept in the establishments referred to in point (a) at 31 December of each year for the last three years;
 - (c) number of establishments keeping bovine animals with the status free from EBL including establishments with suspended disease-free status at 31 December of each year for the last three years;
 - (d) number of bovine animals kept in the establishments referred to in point (c) at 31 December of each year for the last three years;
 - (e) number of establishments keeping bovine animals tested for EBL each year for the last three years;
 - (f) number of establishments with suspicion following the testing referred to in point (e) each year for the last three years;
 - (g) number of samples from slaughtered bovine animals over 24 months of age with tumors that could be caused by EBL being subjected to laboratory examination to confirm or rule out the presence of EBL each year for the last three years;
 - (h) number of establishments confirmed infected with EBL each year for the last three years;
5. in the case of eradication programmes for IBR/IPV, by zone, if more than one zone is included in the territorial scope of the programme:
 - (a) number of establishments keeping bovine animals, excluding establishments falling under the derogation in accordance with Article 19 of Delegated Regulation (EU) 2020/689 at 31 December of each year for the last three years;
 - (b) number of bovine animals kept in the establishments referred to in point (a) at 31 December of each year for the last three years;

- (c) number of establishments with the status free from IBR/IPV including establishments with suspended disease-free status at 31 December of each year for the last three years;
 - (d) number of bovine animals kept in the establishments referred to in point (c) at 31 December of each year for the last three years;
 - (e) number of establishments tested for IBR/IPV each year for the last three years;
 - (f) number of establishments with suspicion following the testing referred to in point (e) each year for the last three years;
 - (g) number of establishments confirmed infected with IBR/IPV each year for the last three years;
 - (h) date of prohibition of vaccination against IBR/IPV of kept bovine animals;
6. in the case of eradication programmes for infection with ADV, by zone, if more than one zone is included in the territorial scope of the programme:
- (a) number of establishments keeping porcine animals, excluding establishments falling under the derogation in accordance with Article 19 of Delegated Regulation (EU) 2020/689 at 31 December of each year for the last three years;
 - (b) number of porcine animals kept in the establishments referred to in point (a) at 31 December of each year for the last three years;
 - (c) number of establishments with the status free from infection with ADV including establishments with suspended disease-free status at 31 December of each year for the last three years;
 - (d) number of porcine animals kept in the establishments referred to in point (c) at 31 December of each year for the last three years;
 - (e) number of establishments where surveillance has been carried out to discover any clinical, virological or serological evidence of infection with ADV each year for the last three years;
 - (f) number of porcine animals tested in the establishments referred to in point (e) each year for the last three years;
 - (g) number of establishments confirmed infected with ADV each year for the last three years;
 - (h) date of prohibition of vaccination against ADV of kept porcine animals;
7. in the case of eradication programmes for BVD, by zone, if more than one zone is included in the territorial scope of the programme:
- (a) number of establishments keeping bovine animals, excluding establishments falling under the derogation in accordance with Article 19 of Delegated Regulation (EU) 2020/689 at 31 December of each year for the last three years;
 - (b) number of bovine animals kept in the establishments referred to in point (a) at 31 December of each year for the last three years;
 - (c) number of establishments with the status free from BVD including establishments with suspended disease-free status at 31 December of each year for the last three years;
 - (d) number of bovine animals kept in the establishments referred to in point (c) at 31 December of each year for the last three years;
 - (e) number of establishments tested for BVD each year for the last three years;
 - (f) number of establishments with suspicion following the testing referred to in point (e) each year for the last three years;

- (g) number of establishments confirmed infected with BVD each year for the last three years;
 - (h) date of prohibition of vaccination against BVD of kept bovine animals;;
- (ii) point 10 is replaced by the following:
- ‘10. in the case of eradication programmes for category B and C diseases of aquatic animals, supply the following information for each year of the programme, by Member State, zone or compartment, as relevant to the territorial scope:
- (a) number of approved aquaculture establishments, and where relevant, the number of registered aquaculture establishments keeping animals of the targeted animal population and sampling points in wild populations, which are included in the eradication programme, as well as maps showing the location of establishments and sampling points in wild populations;
 - (b) number of aquaculture establishments and, where relevant, sampling points in wild populations, out of the number of establishments and sampling points referred to in point (a), which are not infected;
 - (c) number of animal health visits per approved and where relevant, registered aquaculture establishments;
 - (d) number of samplings per approved and where relevant, registered aquaculture establishments and sampling points in wild populations, as well as details of species, results of sampling (positive or negative) and water temperatures at the time of sampling;
 - (e) number of infected aquaculture establishments and, where relevant, sampling points in wild populations with confirmed cases(s) out of the number of establishments referred to in point (a);
 - (f) number of new infected aquaculture establishments and, where relevant, sampling points in wild populations with confirmed case(s) out of the number of establishments referred to in point (a).’;
- (3) Annex VII is amended as follows:
- (a) in Section 1, point 9 is replaced by the following:
- ‘9. The intermediate targets of the eradication programme related to the disease-specific criteria for obtaining disease-free status, including at least:
- (a) the expected annual decrease of the number of infected establishments;
 - (b) the expected annual increase of the number of disease-free establishments.’;
- (b) in Section 4, points 5 and 6 are replaced by the following:
- ‘5. A description of the epidemiological situation in the Member State, zone or compartment, as relevant to the territorial scope of the programme, including:
- (a) the number of approved aquaculture establishments and the number of registered aquaculture establishments keeping animals of the targeted animal population, by type of production and by health status;
 - (b) listed species kept in the aquaculture establishments referred to in point (a) by health status;
 - (c) maps indicating:
 - (i) the geographical location of the aquaculture establishments referred to in point (a) and the relevant water catchment areas; and
 - (ii) the geographical distribution of cases of infection with the relevant category B or C disease for a period covering at least the past 5 years;
 - (d) information as regards the epidemiological situation in wild aquatic animals, where relevant.

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6. A description of the disease control strategy of the eradication programme in accordance with Article 46 of Delegated Regulation (EU) 2020/689 including at least:
- (a) the sampling schemes and diagnostic methods to be used in accordance with Annex VI to Delegated Regulation (EU) 2020/689 for:
 - (i) health visits and sampling in aquaculture establishments;
 - (ii) targeted surveillance in wild populations, where relevant;
 - (b) the disease control measures to be applied in the event of a confirmed case;
 - (c) the biosecurity and risk mitigating measures to be implemented;
 - (d) vaccination schemes, where relevant;
 - (e) the measures to be implemented as regards wild aquatic animals and the number and geographical location of sampling points where relevant;
 - (f) the derogations to be applied in accordance with Article 47(4), Article 51(2) or Article 53 of Delegated Regulation (EU) 2020/689, where relevant;
 - (g) coordinated measures with other Member States or third countries, where relevant.
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COMMISSION IMPLEMENTING REGULATION (EU) 2023/1452**of 13 July 2023****imposing a definitive anti-dumping duty on imports of certain continuous filament glass fibre products originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

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

Whereas:

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

- (1) By Council Implementing Regulation (EU) No 248/2011 ⁽²⁾ ('the original investigation'), the Council imposed a definitive anti-dumping duty on imports of certain continuous filament glass fibre products ('GFR' or 'the product concerned' or 'the product under review') originating in the People's Republic of China ('the PRC' or 'China', or 'the country concerned'). The duty, based on the injury elimination level, ranged from 7,3 % to 13,8 %.
- (2) By Commission Implementing Regulation (EU) No 1379/2014 ⁽³⁾, following an anti-subsidy investigation and a partial interim review of the anti-dumping measures, the Commission amended the original anti-dumping duty to values ranging from 0 % to 19,9 % and imposed an additional countervailing duty ranging from 4,9 % to 10,3 %. The resulting combined countervailing and anti-dumping measures ranged from 4,9 % to 30,2 %.
- (3) By Commission Implementing Regulation (EU) No 2017/724 ⁽⁴⁾, following an expiry review of the anti-dumping measures, the Commission decided to maintain these measures as established in Implementing Regulation (EU) No 1379/2014.
- (4) By Commission Implementing Regulation (EU) 2021/328 ⁽⁵⁾, following an expiry review of the countervailing measures, the Commission decided to maintain these measures as established in Implementing Regulation (EU) No 1379/2014.
- (5) The resulting combined countervailing and anti-dumping measures therefore range from 4,9 % to 30,2 %

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Council Implementing Regulation (EU) No 248/2011 of 9 March 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain continuous filament glass fibre products originating in the People's Republic of China (OJ L 67, 15.3.2011, p. 2).

⁽³⁾ Commission Implementing Regulation (EU) No 1379/2014 of 16 December 2014 imposing a definitive countervailing duty on imports of certain filament glass fibre products originating in the People's Republic of China and amending Council Implementing Regulation (EU) No 248/2011 imposing a definitive anti-dumping duty on imports of certain continuous filament glass fibre products originating in the People's Republic of China (OJ L 367, 23.12.2014, p. 22).

⁽⁴⁾ Commission Implementing Regulation (EU) 2017/724 of 24 April 2017 imposing a definitive anti-dumping duty on imports of certain continuous filament glass fibre products originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 107, 25.4.2017, p. 4).

⁽⁵⁾ Commission Implementing Regulation (EU) 2021/328 of 24 February 2021 imposing a definitive countervailing duty on imports of continuous filament glass fibre 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 65, 25.2.2021, p. 1).

- (6) Measures are also in force on imports of GFR originating in Egypt. By Commission Implementing Regulation (EU) 2020/870 ⁽⁶⁾ following an anti-subsidy investigation, the Commission imposed a definitive countervailing duty on imports of certain continuous filament glass fibre products originating in Egypt. The duty, based on the level of subsidisation, was 13,1 %.

1.2. Initiation of an expiry review

- (7) On 19 January 2022, the Commission received a request for an expiry review of the anti-dumping duties in force lodged by the European Glass Fibre Producers Association ('the applicant') on behalf of the Union industry of continuous glass fibre products in the sense of Article 5(4) of Regulation (EU) 2016/1036 ('the basic Regulation').
- (8) On 21 April 2022, the Commission initiated an expiry review of the anti-dumping measures applicable to imports into the Union of GFR originating in the People's Republic of China pursuant to Article 11(2) of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* (the 'Notice of Initiation') ⁽⁷⁾.
- (9) The request for review was based on the grounds that the expiry of the measures would be likely to result in continuation of dumping and continuation of injury to the Union industry.

1.3. Review investigation period and period considered

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

1.4. Interested parties

- (11) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. In addition, the Commission specifically informed the applicant, other known Union producers, the known exporting producers in the PRC, the authorities of the country concerned, known importers and users about the initiation of the expiry and invited them to participate.
- (12) 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.

1.5. Sampling

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

1.5.1. Sampling of Union producers

- (14) 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 representative production and sales volume of GFR in RIP, which can reasonably be investigated within the time available. This sample consisted of three Union producers. The sampled Union producers accounted for 76 % of the production of the Union industry in the RIP. 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. The sample is representative of the Union industry.

⁽⁶⁾ Commission Implementing Regulation (EU) 2020/870 of 24 June 2020 imposing a definitive countervailing duty and definitively collecting the provisional countervailing duty imposed on imports of continuous filament glass fibre products originating in Egypt, and levying the definitive countervailing duty on the registered imports of continuous filament glass fibre products originating in Egypt (OJ L 201, 25.6.2020, p. 10).

⁽⁷⁾ OJ C 167, 21.4.2022, p. 20.

1.5.2. *Sampling of importers*

- (15) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (16) One unrelated importer provided the requested information and agreed to be included in the sample. In view of the low number, the Commission decided that sampling was not necessary.

1.5.3. *Sampling of exporting producers in the PRC*

- (17) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (18) One exporting producer in the country concerned provided the information requested within the time limit defined in the Notice of Initiation and agreed to be included in the sample. In view of the low number of replies, the Commission decided that sampling was not necessary. It informed the sole responding exporting producer and the Mission of the People's Republic of China to the European Union accordingly. No comments were made.

1.6. **Replies to the questionnaire**

- (19) The Commission sent a questionnaire concerning the existence of significant distortions in the PRC within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of the People's Republic of China ('GOC').
- (20) The Commission sent questionnaires to the cooperating exporting producers, the Union producers, users and importers. The same questionnaires had also been made available online ⁽⁸⁾ on the day of initiation.
- (21) Questionnaire replies were received from three Union producers.
- (22) The Commission did not receive any replies from the cooperating exporting producer, the GOC, the unrelated importer or the users.

1.7. **Verification**

- (23) Due to the lack of cooperation from the cooperating exporting producer and in accordance with Article 18 of the basic Regulation, the Commission based its analysis of the likelihood of continuation or recurrence of dumping on facts available. It used the information contained in the request for expiry review and the statistics available in Comext and the Global Trade Atlas ('GTA') databases as well as other publicly available sources. All interested parties and the GOC were informed accordingly and did not raise any objections.
- (24) The Commission sought and verified all the information deemed necessary for the determination of likelihood of continuation or recurrence of 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

- 3B-Fibreglass S.P.R.L., Brussels, Belgium
- European Owens Corning Fiberglas S.P.R.L., Brussels, Belgium
- Johns Manville Slovakia, a.s., Trnava, Slovakia

⁽⁸⁾ <https://tron.trade.ec.europa.eu/investigations/case-view?caseId=2595>

1.8. Subsequent procedure

- (25) On 28 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.

2. PRODUCT UNDER REVIEW, PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product under review

- (27) The product under review is the same as in the original investigation and previous expiry review, namely, chopped glass fibre strands, of a length of not more than 50 mm; glass fibre rovings, excluding glass fibre rovings which are impregnated and coated and have a loss on ignition of more than 3 % (as determined by the ISO Standard 1887); and mats made of glass fibre filaments excluding mats of glass wool, currently falling under CN codes 7019 11 00, ex 7019 12 00 (TARIC codes 7019 12 00 22, 7019 12 00 25, 7019 12 00 26, 7019 12 00 39), 7019 14 00 and 7019 15 00 ⁽⁹⁾. The CN and TARIC codes are given for information only, without prejudice to a subsequent change in the tariff classification.
- (28) The product concerned is the raw material most often used to reinforce thermoplastic and thermoset resins in the composites industry. The resulting composite materials (filament glass fibre reinforced materials) find its use in a large number of industries: transportation (automotive, marine, aerospace, military), electric/electronics, wind energy, building and construction, tanks/pipes, consumer goods, etc.

2.2. Product concerned

- (29) The product concerned by this investigation is the product under review originating in the PRC.

2.3. Like product

- (30) As established in the original investigation as well as in the previous expiry review, this expiry review investigation confirmed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:
- the product concerned;
 - the product produced and sold on the domestic market of the PRC; and
 - the product 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

- (32) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether the expiry of the measure in force would be likely to lead to a continuation or recurrence of dumping from the PRC.

⁽⁹⁾ Since 1 January 2022, the classification of mats has changed from CN code 7019 31 00 to CN codes 7019 14 00 and 7019 15 00. Until 31 December 2021, the applicable TARIC codes were 7019 31 00 10 and 7019 31 00 90. Since 1 January 2022, they are replaced by TARIC codes 7019 14 00 10, 7019 14 00 90, 7019 15 00 10 and 7019 15 00 90.

3.1. Preliminary remarks

- (33) As mentioned in recital (22), no exporting 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. No reply was received, and therefore the Commission decided to apply Article 18.
- (34) Consequently, in accordance with Article 18 of the basic Regulation, the findings in relation to the likelihood of continuation or recurrence of dumping were based on facts available, in particular on information provided in the request for review, and information obtained from cooperating parties in the course of the review investigation, namely the applicant and the sampled Union producers.

3.2. Procedure for the determination of the normal value under Article 2(6a) of the basic Regulation for the imports of GFR originating in the PRC

- (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. No comments were raised by the GOC in this regard.
- (37) In point 5.3.2 of the Notice of Initiation, the Commission also specified that, in view of the evidence available, it may need to select an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks. According to the information available to the Commission at that point in time, Brazil and Türkiye were identified as the possible representative countries for the PRC. The Commission further stated that it would examine also other possibly appropriate countries in accordance with the criteria set out in first indent of Article 2(6a) of the Basic regulation.
- (38) On 5 August 2022, the Commission informed interested parties by a Note on the relevant sources it intended to use for the determination of the normal value, with Türkiye as the representative country. It also informed interested parties that it would establish selling, general and administrative costs ('SG&A') and profits based on available information for the company Türkiye Şişe Ve Cam Fabrikaları A.Ş., a producer in the representative country. No comments were received.

3.3. Normal value

- (39) 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'.
- (40) 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').

- (41) 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 exporting producers, the application of Article 2(6a) of the basic Regulation was appropriate.

3.4. Existence of significant distortions

- (42) In its recent investigation concerning the glass fibre sector in the PRC ⁽¹⁰⁾, the Commission found that significant distortions in the sense of Article 2(6a)(b) of the basic Regulation were present.
- (43) In that investigation, 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 ⁽¹¹⁾. In particular, the Commission concluded that in the glass fibre sector, including GFR not only does a substantial degree of ownership by the GOC persists in the sense of Article 2(6a)(b), first indent of the basic Regulation ⁽¹²⁾ 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 ⁽¹³⁾. 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 ⁽¹⁴⁾. 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 ⁽¹⁵⁾. In the same vein, the Commission found distortions of wage costs in the glass fibre sector, including GFR, in the sense of Article 2(6a)(b), fifth indent of the basic Regulation, ⁽¹⁶⁾ 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 ⁽¹⁷⁾.
- (44) Like in its previous investigation concerning the glass fibre sector in the PRC, the Commission examined in the present investigation whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the request, as well as in the Report ⁽¹⁸⁾, 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

⁽¹⁰⁾ Commission Implementing Regulation (EU) 2020/492 of 1 April 2020 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 108, 6.4.2020, p. 1.

⁽¹¹⁾ Ibid., recitals (161)–(162), (167).

⁽¹²⁾ Ibid., recitals (116)–(119).

⁽¹³⁾ Ibid., recitals (120)–(122). While the right to appoint and to remove key management personnel in state-owned enterprises ('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 the producers of aluminium foils and the suppliers of their inputs.

⁽¹⁴⁾ Commission Implementing Regulation (EU) 2020/492, recitals (123)–(138).

⁽¹⁵⁾ Ibid., recitals (139)–(142).

⁽¹⁶⁾ Ibid., recitals (143)–(145).

⁽¹⁷⁾ Ibid., recitals (146)–(155).

⁽¹⁸⁾ 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

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 investigation in this respect.

- (45) The applicant submitted in the request that the Chinese GFR sector is characterised by significant distortions due to state intervention in the economy in general, as well as specifically in the sector of the product under review. The request alleged that all factors of production – land, energy, capital, raw materials and labour – are equally distorted, as they are subject to interventions by the GOC that have ultimately resulted in insignificant distortions in the Chinese GFR sector.
- (46) To support its position, the request referred to a number of publicly available information sources, such as the Report, the Commission's recent investigation of the GFF sector and the resulting Regulation (EU) 2020/492, the 13th Five-Year Plan ('FYP') for the Building Materials Industry Development, the 13th FYP for National Economic and Social Development of the PRC, the 14th FYP National Economic and Social Development and Long-Range Objectives for 2035, as well as the Made in China 2025 industrial strategy.
- (47) On this basis, the request emphasized that the GOC owns the large majority of the major Chinese GFR producers, as well as upstream suppliers and downstream users. The two largest Chinese GFR producers, CPIC and Jushi, are major State-owned conglomerates. The relevant industry association, China Building Materials Federation, operates under the guidance and supervision of the State-owned Assets Supervision and Administration Commission. The Chairman of the Board of Directors of Jushi and the vice president of CNBM, which is the parent company of Jushi, both hold the position of vice chairman in the China Building Materials Federation.
- (48) The high level of government intervention in the GFR industry and the high degree of state ownership in the sector prevents even privately-owned producers from operating under market conditions.
- (49) The direction of the Chinese economy is to a significant degree determined by an elaborate system of planning which sets out priorities and prescribes the goals on which the central and local governments must focus. The plans, such as 13th FYP for the Building Materials Industry Development, the Intelligent Manufacturing Development Plan (2016-2020), the 13th FYP for National Economic and Social Development of the PRC, the 14th FYP National Economic and Social Development and Long-Range Objectives for 2035 ('14th FYP'), as well as the Made in China 2025 strategy, encourage government authorities at all levels and State-owned financial institutions to foster advancement of the GFR industry in the PRC. Under the 14th FYP, the GOC plans to focus on new materials in the context of building a new pillar of the industrial system and it foresees to give full play to the industrial investment funds, and to increase financing guarantees and risk compensation. The system of planning in China therefore prevents free market forces from prevailing in the GFR sector.
- (50) Enterprises in the 'new materials' sectors – which include GFR – benefit from numerous support mechanisms, including financial support policies, fiscal and taxation preferential policies, R & D support etc.
- (51) The costs of raw materials, such as kaolin and dolomite, are not the result of free market forces as the production of these raw materials is subject to State support in the PRC; significant systemic distortions exist also with respect to access to capital, land and labour. The Commission's recent anti-subsidy investigation into GFR imports from China showed that the Chinese GFR producers benefitted from preferential access to land, as well as from preferential loans, both from State-owned banks and from private banks ⁽¹⁹⁾.
- (52) The GOC did not comment or provide evidence supporting or rebutting the existing evidence on the case file and 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.

⁽¹⁹⁾ Implementing Regulation (EU) 2021/328.

- (53) In the GFR sector, a substantial degree of ownership and control 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 three largest producers in the GFR sector, namely Jushi, Taishan Glassfiber and CPIC, are either fully state-owned or the State holds a controlling stake. These three producers represent around 75 % of Chinese GFR producers.
- (54) Both public and privately owned enterprises in the GFR sector are subject to policy supervision and guidance. The latest Chinese policy documents concerning the GFR sector confirm continued importance which GOC attributes to the sector, including the intention to intervene in the sector in order to shape it in line the government policies. This is exemplified by the 14th FYP on Developing the Raw Material Industry which list the sector, in particular special-purposes glass fibres, among materials for which technological innovation will be supported by policies under the Plan. ⁽²⁰⁾ Glass fibres are also listed among the encouraged sectors under the 2019 edition of the Guiding catalogue for industry structural adjustment ⁽²¹⁾, as well as in the 2021 Guiding Catalogue of key new materials eligible to first use/demonstration schemes ⁽²²⁾.
- (55) 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 Shandong which, with respect to specifically the glass fibre and composite material industry plans to ‘actively foster leading and backbone enterprises with strong brand influence and marketing appeal, strong integration capabilities and driving effects on industry chains and clusters, and support cross-sector, cross-regional, and cross-ownership mergers and reorganization of enterprises’ and to ‘develop high-performance glass fibers and products [and to] encourage the development of ultra-fine, high-strength, high-modulus, alkali-resistant, low-dielectric, low-expansion, high-silica, degradable, special-shaped cross-section and other high-performance glass fiber and glass fiber products. Focusing on the needs of electronic information, aerospace, new energy, large-scale breeding farms, agricultural greenhouses and other fields, research and develop and promote glass fiber reinforced thermoplastic and thermoset composite products, and glass fiber composite gratings for infrastructure projects.’ ⁽²³⁾ Similarly, the Chongqing 14th FYP on developing strategic and emerging industries foresees ‘extending the high-performance fiber and composite materials industry chains’ as well as ‘accelerating the construction of projects such as the [...] high-performance glass fiber production line with an annual output of 150 000 tons, and of the production base of ultra-fine glass fiber and composite materials, so as to increase the high-performance glass fiber and composite materials production capacities’. ⁽²⁴⁾ Emphasis on glass fibres can be seen in planning documents also in other provinces, such as Guanxi ⁽²⁵⁾, Hubei ⁽²⁶⁾ or Zhejiang ⁽²⁷⁾.
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- ⁽²⁰⁾ See Section IV, Subsection 3 of the 14th Five Years Plan on Developing the Raw Material Industry.
- ⁽²¹⁾ Available at: www.gov.cn/xinwen/2019-11/06/content_5449193.htm (accessed on 26 October 2022).
- ⁽²²⁾ Available at: https://www.miit.gov.cn/zwgk/zcwj/wjfb/tg/art/2021/art_ba8afb04dc694ad8a5830f15bd5ffda7.html (accessed on 26 October 2022).
- ⁽²³⁾ See the Shandong Province 14th FYP on construction materials, Chapter IV, Section 4; available at: <https://huanbao.bjx.com.cn/news/20211129/1190544.shtml> (accessed on 26 October 2022).
- ⁽²⁴⁾ See the Chongqing 14th FYP on developing strategic and emerging industries, available at: http://www.cq.gov.cn/zwgk/zfxxgkzl/fdzdgnr/ghxx/zxgh/202203/t20220318_10526318.html (accessed on 26 October 2022).
- ⁽²⁵⁾ Guangxi 3 year action plan on strategic and emerging industries: ‘Vigorously develop the new material industry. Focusing on breaking through cutting-edge technologies and cultivating high-end products, it focuses on the development of high-performance steel materials, high-end non-ferrous metal materials, high-quality calcium carbonate materials, new energy battery materials, high-performance glass fiber composite materials, graphene, etc. By 2023, the output value of the new material industry will reach 133 billion yuan, and the added value will reach 44 billion yuan.’
- ⁽²⁶⁾ Hubei 14FYP on high quality development of new materials: ‘Focus on promoting the intelligent production technology of glass fiber large-scale kilns, glass fiber products and technologies for 5G, etc., and support joint scientific research with enterprises as the main body.’
- ⁽²⁷⁾ Zhejiang 14 FYP on developing new materials industry: ‘Mainly relying on Tongxiang Economic Development Zone [where Jushi is located (added by the Commission for explanation)], focus on high-performance fiber and composite materials, high-performance power battery materials, cutting-edge new materials and other sub-fields, to create high-performance glass fiber and composite materials industry chain and high-performance power battery materials and downstream products industry chain, to achieve value chain improvement.’

- (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, many producers of the product under review explicitly emphasise party building activities on their websites or have party members in the company management and underline their affiliation to the CCP.
- (57) For instance, Jushi group's Chairman of the Board serves at the same time as the Deputy Secretary of the Party Committee at the CNMB ⁽²⁸⁾. Similarly, the Chairman of Sinoma Science and Technology, which is the holding company of Taishan Fiberglass, occupies the position of the Party Committee's Secretary while the President of Sinoma Science and Technology is the Deputy Secretary of the Party Committee ⁽²⁹⁾. In the case of CPIC, the Deputy Chairman of the Board and the Executive Manager holds at the same time the position of the Deputy Secretary of the Party Committee, whereas the Group Chairman of CPIC's parent company serves also as the Secretary of the Party Committee and the Group Vice-Chairman serves as the Deputy Secretary of the Party Committee ⁽³⁰⁾.
- (58) Moreover, Jushi's Articles of Association explicitly provide for direct Party oversight over essential corporate affairs in their Article 195, according to which 'the party committee of the enterprise shall discuss and decide the major matters of the enterprise in accordance with the regulations', with the Party committee's main responsibilities entailing the tasks to 'study and discuss major business management issues of the company, and support the shareholders' meeting, the board of directors, the board of supervisors as well as the management to exercise their powers according to law', as well as to 'strengthen the leadership and control over the enterprise's staff selection and assignment, and do a good job in building the enterprise's leadership team, cadre team and talent team' ⁽³¹⁾.
- (59) Furthermore, Taishan Fiberglass held the celebration of the 99th anniversary of the CCP founding and the secretary of the company's Party committee delivered a speech: 'It is precisely because Taishan Fiberglass has always adhered to the leadership of the Party, has kept adhering to the "two consistents", and has always adhered to the Group's Party building work on "one account", "four integrations" and "four modernizations and integrations" and other Party building concepts.' ⁽³²⁾
- (60) Furthermore, 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 GFR sector. While industrial policies typically relate to numerous sectors rather than exclusively to, the GFR sector is subject to numerous plans, guidelines, directives and other policy documents issued at national, regional and municipal level (see also recitals 47 and 48 above). Those policies are at times squarely at odds with market forces, such as, for example, the Guangxi three-year action plan on strategic and emerging industries which administratively sets future target output volumes and growth rates: 'by 2023, the output value of the new material industry will reach RMB 133 billion, and the added value will reach RMB 44 billion.' ⁽³³⁾
- (61) 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 inputs used in the manufacturing of the product under review. Such measures impede market forces from operating freely.
- (62) The present investigation has not revealed any evidence that the discriminatory application or inadequate enforcement of bankruptcy and property laws according to Article 2(6a)(b), fourth indent of the basic Regulation in the GFR sector referred to above in recital (43) would not affect the manufacturers of the product under review.

⁽²⁸⁾ See at f10.eastmoney.com/f10_v2/CompanyManagement.aspx?code=sh600176 (accessed on 26 October 2022).

⁽²⁹⁾ See at <https://www.ctgf.com/contents/12/8897.html> (accessed on 26 October 2022).

⁽³⁰⁾ See at <https://www.cpicfiber.com/index/list/s/107/id/2937.html> (accessed on 26 October 2022) and [f.dfcfw.com/pdf/H2_AN202202221548514546_1.pdf](https://pdf.dfcfw.com/pdf/H2_AN202202221548514546_1.pdf) (accessed on 26 October 2022).

⁽³¹⁾ See the company's Articles of Association, available at: https://pdf.dfcfw.com/pdf/H2_AN202203181553440430_1.pdf?1647632338000.pdf (accessed on 26 October 2022).

⁽³²⁾ Taishan website article, available at: <https://www.ctgf.com/contents/16/6469.html> (accessed on 26 October 2022).

⁽³³⁾ See the Guangxi three-year action plan on strategic and emerging industries.

- (63) The GFR 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 (43). Those distortion affect the sector both directly (when producing the product under review or the main inputs), as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in the PRC).
- (64) Moreover, no evidence was submitted in the present investigation demonstrating that the GFR sector is not affected by the government intervention in the financial system in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, as also referred to above in recital (43). Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.
- (65) Finally, the Commission recalls that in order to produce the product under review, a number of inputs is needed. When the producers of the product under review purchase or contract for these inputs, the prices paid (and which are recorded as their costs) are exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions; they may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system that applies across all levels of government and sectors.
- (66) As a consequence, not only the domestic sales prices of the product under review 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.
- (67) No evidence or argument to the contrary has been adduced by the GOC or the exporting producers in the present investigation.
- (68) In sum, the evidence available showed that prices or costs of the product under review, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case. Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as discussed in the following section.

3.5. Representative country

3.5.1. General remarks

- (69) 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 PRC. For this purpose, the Commission used countries with a gross national income per capita similar to PRC on the basis of the database of the World Bank ⁽³⁴⁾;
 - Production of the product under review in that country ⁽³⁵⁾;

⁽³⁴⁾ World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>.

⁽³⁵⁾ 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.

- 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.

- (70) As explained in recital (38), the Commission issued a Note for the file on the sources for the determination of the normal value on 5 August 2022. This note described the facts and evidence underlying the relevant criteria, as well as informed interested parties of the Commission's intention to consider Türkiye 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.
- (71) In line with the criteria listed under Article 2(6a) of the basic Regulation, the Commission identified Türkiye as a country with a similar level of economic development as the PRC. Türkiye is classified by the World Bank as 'upper-middle income' country on a gross national income basis. Furthermore, Türkiye was identified as a country where the product under review is being produced with relevant data was readily available.
- (72) Finally, given the absence of cooperation and having established that Türkiye 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.

3.5.2. Conclusion

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

3.6. Sources used to establish undistorted costs

- (74) In the Note on relevant sources to use for the determination of the normal value, the Commission listed the factors of production such as materials, energy and labour used in the production of the product under review by the exporting producers. The Commission also stated that, in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it would use Global Trade Atlas 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 Turkish Statistical Institute (TurkStat) for establishing undistorted costs of labour ⁽³⁶⁾ and energy ⁽³⁷⁾.
- (75) The Commission also informed the interested parties that, due to the non-cooperation of the Chinese exporters, it included a value for manufacturing overhead costs and consumables in order to cover costs not included in the factors of production referred to above. The Commission established the ratio of manufacturing overheads and consumables to the direct costs of manufacturing for each category of GFR products, based on data that the applicants provided in the request for review.
- (76) Finally, the Commission stated that to establish SG&A costs and profit, it would use the financial data from one Turkish producer of the product under review, as set out in recital (38) above.

3.7. Undistorted costs and benchmarks

3.7.1. Factors of production

- (77) Considering all the information based on the request and subsequent information submitted by the applicant, 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:

⁽³⁶⁾ TÜİK, Ekonomik faaliyete göre haftalık fiili çalışma süresi ve aylık ortalama işgücü maliyeti, 2020, <https://data.tuik.gov.tr/Bulten/Index?p=Isgucu-Maliyeti-Istatistikleri-2020-37495>

⁽³⁷⁾ TÜİK, Elektrik ve Doğal Gaz Fiyatları, II. Dönem: Temmuz-Aralık, 2021, <https://data.tuik.gov.tr/Bulten/Index?p=Electricity-and-Natural-Gas-Prices-Period-II:July-December,-2021-45566>

Table 1

Factors of production of certain continuous filament glass fibre products

Factor of Production	Commodity Code	Sources	Undistorted value ('CNY')	Unit of measurement
Raw materials				
Kaolin	25070020	Global Trade Atlas (GTA) ⁽¹⁾	1,04	kg
Dolomite	251810, 251820	GTA	2,03	kg
Limestone	2521	GTA	5,8	kg
Silica	250510	GTA	0,31	kg
Platinum	711011	GTA	224,24	gr
Rhodium	711031	GTA	2 721,49	gr
Binder, oxygen, spare parts, packaging			% of direct cost	%
Labour				
Direct labour	N/A	Turkstat ⁽²⁾	28,16	hour
Energy				
Electricity	N/A	Turkstat ⁽³⁾	0,52	KWh
Natural gas	N/A	Turkstat ⁽³⁾	165,95	m ³

⁽¹⁾ <http://www.gtis.com/gta/secure/default.cfm>

⁽²⁾ TÜİK, Ekonomik faaliyete göre haftalık fiili çalışma süresi ve aylık ortalama işgücü maliyeti, 2020, <https://data.tuik.gov.tr/Bulten/Index?p=Isgucu-Maliyeti-Istatistikleri-2020-37495>

⁽³⁾ TÜİK, Elektrik ve Doğal Gaz Fiyatları, II. Dönem: Temmuz-Aralık, 2021, <https://data.tuik.gov.tr/Bulten/Index?p=Electricity-and-Natural-Gas-Prices-Period-II-July-December-2021-45566>

3.7.2. Raw materials

- (78) 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 1 of Regulation (EU) 2015/755 of the European Parliament and the Council. ⁽³⁸⁾
- (79) The Commission decided to exclude imports from the PRC into the representative country as it concluded in section 3.4 that it is not appropriate to use domestic prices and costs in the PRC due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected export prices. After excluding imports from the PRC into the representative country, the volume of imports from other third countries remained representative.

⁽³⁸⁾ 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).

- (80) The Commission calculated the share of consumables on the direct manufacturing costs in the review investigation period. Consumables included the cost of binders, oxygen, spare parts and packaging. To establish an undistorted value of such cost components and given the absence of cooperation from the exporting producers, the Commission used facts available in accordance with Article 18 of the basic Regulation. These percentages, which were specific for each category of GFR products, were then applied to the undistorted value of the cost of manufacturing to determine the undistorted value of consumables.
- (81) Normally, domestic transport prices should also be added to the raw materials import prices. However, considering the non-cooperation 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 of the dumping margin.

3.7.3. Labour

- (82) To establish the benchmark for labour costs in the representative country, the Commission used available data published by the Turkish Statistical Institute (TurkStat). Turkstat publishes detailed information on wages in different economic sectors in Türkiye. The Commission used the available statistics for 2020 for average labour cost in the Manufacture of glass fibres industries (Category 23 according to the NACE 2.0) ⁽³⁹⁾. The resulting hourly cost for 2020 was then indexed for the average producer price index in the review investigation period.

3.7.4. Electricity

- (83) The price of electricity for companies in Türkiye is published by Turkstat on a semester basis. The Commission used the last available data on electricity prices applicable to industrial end-users in Türkiye ⁽⁴⁰⁾ in the period from 1 January 2021 to 31 December 2021 (the review investigation period). Because the information reported on the end-user average prices included all taxes, the Commission calculated the end-user average price excluding VAT.

3.7.5. Natural gas

- (84) The price of natural gas for companies (industrial users) in Türkiye is published by Turkstat on a semester basis. The Commission used the last available data on natural gas prices applicable to industrial end-users in Türkiye ⁽⁴¹⁾ for the review investigation period. Because the information reported on the end-user average prices included all taxes, the Commission calculated the end-user average price excluding VAT.

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

- (85) 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, as explained in recital (80), a value for manufacturing overhead costs was established to cover costs not included in the factors of production referred to above.

⁽³⁹⁾ TÜİK, Ekonomik faaliyete göre haftalık fiili çalışma süresi ve aylık ortalama işgücü maliyeti, 2020, <https://data.tuik.gov.tr/Bulten/Index?p=Isgucu-Maliyeti-Istatistikleri-2020-37495>

⁽⁴⁰⁾ TÜİK, Elektrik ve Doğal Gaz Fiyatları, II. Dönem: Temmuz-Aralık, 2021, <https://data.tuik.gov.tr/Bulten/Index?p=Electricity-and-Natural-Gas-Prices-Period-II-July-December,-2021-45566>

⁽⁴¹⁾ TÜİK, Elektrik ve Doğal Gaz Fiyatları, II. Dönem: Temmuz-Aralık, 2021, <https://data.tuik.gov.tr/Bulten/Index?p=Electricity-and-Natural-Gas-Prices-Period-II-July-December,-2021-45566>

- (86) To establish an undistorted value of the manufacturing overheads and given the absence of cooperation from the producers in the PRC, the Commission used facts available in accordance with Article 18 of the basic Regulation. Therefore, based on the data provided by the applicant, the Commission established the ratio of manufacturing overheads to the total direct manufacturing costs. Manufacturing overheads included the cost of waste, indirect labour, maintenance and depreciation of property, plant and equipment. These percentages, which were specific for each category of GFR products, were then applied to the undistorted value of the cost of manufacturing to obtain the undistorted value of manufacturing overheads, depending on the category of GFR produced.
- (87) For establishing an undistorted and reasonable amount for SG&A and profit, the Commission relied on the most recent available financial data for a producer in Türkiye that had been identified in the Note to the file on the relevant sources as active and profitable producer of GFR during the review investigation period. Financial data for the following company as publicly available data published on their website was used:
- Türkiye Şişe Ve Cam Fabrikaları A.Ş. (Financial year 2021) ⁽⁴²⁾.

3.8. Calculation of the normal value

- (88) On the basis of the above, the Commission constructed the normal value per category of GFR products type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (89) 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 consumption ratios of each factor (materials, energy and labour) for the production of the product under review.
- (90) Once the undistorted manufacturing cost was established, the Commission added the manufacturing overheads and consumables, SG&A and profit as noted in recitals (80) and (85) to (87). The Commission added the following items to the undistorted costs of manufacturing:
- Consumables and manufacturing overheads as established in recitals (80) and (86);
- SG&A and other costs, which accounted for 16,8 % of the Costs of Goods Sold ('COGS') of the company Türkiye Şişe Ve Cam Fabrikaları A.Ş.; and
- Profits, which amounted to 36,74 % of the COGS as achieved by the company Türkiye Şişe Ve Cam Fabrikaları A.Ş. in financial year 2021.
- (91) Although no comments were received in this regard following the publication of the Note to the file on the relevant sources, the Commission noted that the company Türkiye Şişe Ve Cam Fabrikaları A.Ş. recorded relatively high revenues and profits in 2021 as compared to 2020. However, even using the profit the same company recorded for 2020, which amounted to 10,4 %, for the purpose of establishing the normal value would not change the finding that Chinese exports of GFR were exported to the Union during the review investigation period at prices below the normal value.

3.9. Export price

- (92) In the absence of cooperation by the exporting producers from the PRC, the export price was determined based on CIF prices in Eurostat data corrected to ex works level. Thus, the CIF price was reduced by the sea transport freight, domestic transport costs and EU customs handling. Such costs were based on data provided by the applicants in the request for review.

3.10. Comparison

- (93) The Commission compared, per category of GFR, the constructed normal value established in accordance with Article 2(6a)(a) of the basic Regulation and the export price on an ex-work basis as established above.

⁽⁴²⁾ Türkiye Şişe Ve Cam Fabrikaları A.Ş., Annual report 2021: <https://www.sisecam.com.tr/en/investor-relations/presentations-and-bulletins/annual-reports>

3.11. Dumping margins

- (94) On this basis, the weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, was in the range of 50 % to 54 %. It was therefore concluded that dumping continued during the review investigation period.

4. LIKELIHOOD OF CONTINUATION OF DUMPING

- (95) Further to the finding of the existence of dumping during the review investigation period, the Commission investigated, in accordance with Article 11(2) of the basic Regulation, the likelihood of continuation of dumping, should the measures be repealed. The following additional elements were analysed: (i) the development of the production capacity and spare capacity in the PRC, (ii) the relation between Chinese export prices to other third countries and the Chinese export prices to the Union and (iii) the attractiveness of the Union market.

4.1. Production capacity and spare capacity in the PRC

- (96) To analyse production capacity and spare capacity in the PRC and given the non-cooperation of the GOC and the Chinese exporting producers, the Commission relied on the information provided by the applicant in its request for review as specified the recitals below.
- (97) The investigation has shown that there is a general overcapacity in the production of certain GFR in China. The production capacity between 2020 and 2021 in China was estimated to be approximately between 3,8 to 4,4 million tonnes. According to the applicant's market intelligence, Chinese domestic GFR demand was in the range of 2,4 to 2,9 million tonnes, leaving overcapacities of at least 1,1 million tonnes that represent over 100 % of the European Union's consumption during the RIP.
- (98) In addition, despite the structural overcapacity in the Chinese domestic market, producers in the PRC continue to expand existing capacities, as well as build new production facilities both in China and abroad.
- (99) In 2020, Jushi added 30 000 tonnes of production capacity to its original production capacity in one of its production sites, bringing Jushi's total GFR annual output to 250 000 tonnes. Similar trends have also been observed for other Chinese exporting producers of GFR, such as CPIP with an additional 88 000 tonnes, Hebei Jinniu Energy Resources Co. Ltd. with an additional 100 000 tonnes and Weibo with an additional 15 000 tonnes. Moreover, new GFR capacity increases are in preparation for the years to come in China for an expected GFR output of 780 000 tonnes. Therefore, the Chinese spare capacity as estimated could be diverted to the Union market if the current measures would cease to apply ⁽⁴³⁾.
- (100) Given the lower levels of production in the Union compared to the Union consumption levels as showed by the injury analysis and given the attractiveness of the Union market as set out below, the Commission concluded that Chinese overcapacities could easily be diverted towards the European market to supply the demand should the existing measures be repealed.

4.2. Relation between Chinese export prices to other third countries and the Chinese export prices to the Union

- (101) In order to establish possible development of imports into the Union in case measures are repealed, the Commission analysed the import prices of Chinese exports to the Union market. The Commission analysed export data of certain GFR at the CN code level ⁽⁴⁴⁾ from China during the review investigation period.

⁽⁴³⁾ Annex 10 of the Request for review.

⁽⁴⁴⁾ Information extracted at 8-digit level for the three categories of GFR (i.e. chopped strands, rovings and mats) from Global Trade Atlas. Information on prices based at CN level.

- (102) It showed that the Union market is the second largest destination for imports for certain GFR from China (CN codes 7019 11 00, 7019 12 00, 7019 14 00, 7019 15 00) during the RIP, only after the United States. As shown in Table 2 below, GFR prices in the Union remain particularly profitable for the Chinese exporting producers compared to other major destinations such as the United States, South Korea, India, Russia, Japan, or Türkiye.

Table 2

Chinese GFR exports to major trade partners

Destination country	Quantities (kg)	Average unit price (EUR/kg)
United States	141 337 277	0,98
European Union	112 219 001	1,33
South Korea	107 628 028	1,00
India	68 040 603	0,95
Russia	58 719 928	1,05
Japan	52 798 901	1,09
Türkiye	42 275 522	1,16

Source: GTA. Average unit price for all categories of GFR.

- (103) At CN level, for the exports of chopped strands during the review investigation period, the Union market was the second most important in terms of exported quantities from the PRC. Prices in the Union (1,61 EUR/kg) were significantly higher compared with those of the main export markets, in order of importance South Korea (0,85 EUR/kg), Japan (0,82 EUR/kg), United States (1,05 EUR/kg) and India (0,82 EUR/kg).
- (104) For rovings as well, the Union market was the second most important destination for Chinese exports in terms of quantities after the United States, in the RIP. Prices, although similar worldwide, were the highest in the Union and were at the level of 1,11 EUR/kg. For comparison, they were as low as 0,77 EUR/kg in the United States and at the level of 0,88 EUR/kg and 0,80 EUR/kg in South Korea and Russia respectively. Prices to the Union were the highest among the 18 most important export markets.
- (105) For mats of glass fibres, the Union market was the third destination in terms of quantities for the Chinese exports during the RIP, after India and the United States respectively. Once again, the Union prices were among the highest and in 2021 they were at the level of 1,48 EUR/kg, compared to the lower levels of India (1,25 EUR/kg), United States (1,11 EUR/kg), Mexico (1,34 EUR/kg) and Türkiye (1,41 EUR/kg). Prices to the Union of mats were the highest among the 10 most important export markets in terms of quantities sold.
- (106) The Commission based the above analysis on data at the 8-digit CN code level for the three categories of GFR, i.e. chopped strands (CN 7019 11 00), rovings (CN 7019 12 00) and mats (7019 14 00, 7019 15 00). Due to the lack of cooperation of the GOC and the Chinese exporting producers, the Commission did not possess data at the product control number level because those were not available for analysis. Data on prices at the product control number level would have been more precise and would not have been exposed to possible inaccuracies resulting from large variations of prices within the same category of GFR product (e.g., chopped strands of various diameters).
- (107) In spite of this limitation, the facts available show that the prices in the major destinations of Chinese GFR exports were lower than prices to the Union market during the review investigation period. Considering the attractiveness of the Union market in terms of market size and historical trade flows, it is therefore likely that significant quantities currently sold to other markets would be redirected to the Union market and that the existing spare capacities from China could be shipped to the Union market, should the anti-dumping measures be repealed.

4.3. Attractiveness of the Union market

- (108) To establish possible development of imports in case measures are repealed, the Commission further analysed the attractiveness of the Union market. The Commission analysed export data of certain GFR at the CN code level ⁽⁴⁵⁾ into the Union during the review investigation period.
- (109) The data analysed showed that China is the third biggest exporter of GFR into the Union and the exports originating from the PRC represent around 13 % of the total imports into the Union, only after Malaysia and Egypt in order of importance.
- (110) The Commission noticed that imports of GFR increased between 2018 and the RIP, as it is also confirmed by the injury analysis outlined in Section 5.
- (111) The attractiveness of the Union market is also confirmed by Chinese exporters' investments in third countries, in particular in Egypt which represent the second largest exporter of GFR in Europe. As established in the anti-subsidy investigation the products from these production facilities are directed to Union market and have also gained a substantial market share ⁽⁴⁶⁾. More specifically, Chinese producers in the PRC continue to expand their capacities in production facilities abroad. In March 2021, Jushi announced a capacity increase of 40 000 tonnes for one of Jushi Egypt's existing furnaces and, in August 2021 the addition of a new 120 000 tonnes furnace, bringing the overall capacity there to 360 000 tonnes by 2023 ⁽⁴⁷⁾. In parallel, in 2021, CPIC Bahrain announced that it re-started one of its furnaces with an increased capacity of 100 000 tonnes. As established in the recent anti-subsidy investigation mentioned above, the Chinese producers were found investing in facilities in Egypt specifically to access the Union market, which affirms the attractiveness of the Union market.
- (112) As explained in the recital (102) above, the Union market is the second largest destination for imports for GFR from China which totalled 112 thousand tonnes during the review investigation period while, as shown in the Table 3 below, the total Union consumption was 941 thousand tonnes during the same period. The importance of the exports into the Union, the size of the Union market and the potential for further increase of Chinese exports into the Union are all factors making the Union market attractive to the Chinese exporters.

4.4. Conclusion

- (113) In view of its findings on the continuation of dumping during the RIP and on the likely development of exports should the measures lapse, the Commission concluded that there is a strong likelihood that significant quantities of GFR will be exported to the Union. Given the significant dumping margins established during the RIP, there is no reason to believe that dumping will cease should measures be allowed to lapse. Therefore, there is a high likelihood that the expiry of the anti-dumping measures on imports from China would result in the continuation of dumping.

5. INJURY

5.1. Definition of the Union industry and Union production

- (114) The like product was manufactured by nine producers in the Union at the beginning of the period considered, while one of them closed in 2019. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (115) The total Union production during the review investigation period was established at around 594 500 tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry, such as the data provided by the applicant and verified questionnaire replies of the sampled Union producers. As indicated in recital (14), three Union producers were selected in the sample representing 76 % of the total Union production of the like product.

⁽⁴⁵⁾ Information extracted from Eurostat.

⁽⁴⁶⁾ Section 4.3 of Commission Implementing Regulation (EU) 2020/379 of 5 March 2020 imposing a provisional countervailing duty on imports of continuous filament glass fibre products originating in Egypt (OJ L 69, 6.3.2020, p. 14).

⁽⁴⁷⁾ Annex 10 of request for review.

5.2. Union consumption

(116) The Commission established the Union consumption on the basis of Eurostat, the data provided by the applicant and verified questionnaire replies of the sampled Union producers.

(117) Union consumption developed as follows:

Table 3

Union consumption (tonnes)

	2018	2019	2020	RIP
Total Union consumption	934 988	857 298	782 515	941 231
<i>Index</i>	100	92	84	101

Source: Eurostat, the data provided by the applicant and verified questionnaire replies of the sampled Union producers.

(118) The Union consumption decreased by –8 % from 2018 to 2019, then it sharply dropped (–16 %) in 2020. The decrease in 2020 was temporary and predominantly a result of the global COVID-related government lockdown measures. Several major GFR users in the Union, including marine and construction, had to temporarily curtail or close their production. The automotive industry, which accounts up to 45 % of EU demand, was the most affected GFR user industry. It came almost entirely to a standstill. Nonetheless, the recovery and increase in demand was already apparent in RIP (+20 % in comparison with 2020 and +1 % compared to 2018).

5.3. Imports from the country concerned

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

(119) The Commission established the volume of imports on the basis of Eurostat and crosschecked with the data collected by Member States pursuant to Article 14(6) of the basic Regulation ('14(6) database'). The market share of the imports was established on the basis of Eurostat, the data provided by the applicant and verified questionnaire replies of the sampled Union producers.

(120) Imports into the Union from the country concerned developed as follows:

Table 4

Import volume (tonnes) and market share

	2018	2019	2020	RIP
Volume of imports from the PRC (tonnes)	49 596	49 997	46 455	61 005
<i>Index</i>	100	101	94	123
Market share	5,3 %	5,8 %	5,9 %	6,5 %
<i>Index</i>	100	110	112	122

Source: Eurostat, the data provided by the applicant and verified questionnaire replies of the sampled Union producers.

(121) The imports of the product concerned from the PRC contracted (–6 %) in 2020 as a result of the COVID related measures. However, in the RIP imports increased faster than the demand (+31 % compared to 2020 and +23 % compared to 2018). This resulted to an increase of the market share of the PRC imports to 6,5 % in RIP (while it was at 5,3 % in 2018).

5.3.2. Prices of the imports from the country concerned and price undercutting

(122) The Commission established the prices of imports on the basis of Eurostat. Price undercutting of the imports was established on the basis of Eurostat and verified questionnaire replies of the sampled Union producers.

(123) The average price of imports into the Union from the country concerned developed as follows:

Table 5

Import prices (EUR/tonne)

	2018	2019	2020	RIP
The PRC	1 058	1 046	931	1 363
<i>Index</i>	100	99	88	129

Source: Eurostat.

(124) The average price of imports from the PRC without duties showed a decreasing trend and remained consistently below the average price of the Union producers in the period before the RIP. However, they jumped by +46 % on an annual basis in the RIP and arrived at EUR 1 363 per tonne. This price was above the average price of the Union producers (1 092 per tonne) and above the cost of production of the Union industry (EUR 1 181 per tonne) in the RIP. Adding to these prices the post-importation costs and the combined measures in place, at the levels of duties actually paid per exporting producer, according to the data from the 14(6) database, Chinese imports even entered the Union at prices 53 % higher than Union industry's. There was therefore no undercutting and no price suppression caused by the Chinese imports in the RIP.

5.4. Imports from third countries other than the PRC

(125) The imports of GFR from third countries other than the PRC were mainly from Egypt and Malaysia.

(126) The aggregated volume of imports into the Union as well as the market share and price trends for imports of GFR from third countries developed as follows:

Table 6

Imports from third countries

Country		2018	2019	2020	RIP
Malaysia	Volume (tonnes)	120 557	77 708	86 829	135 919
	<i>Index</i>	100	64	72	113
	Market share	12,9 %	9,1 %	11,1 %	14,4 %
	Average price (EUR/tonne)	981	950	873	1 056
	<i>Index</i>	100	97	89	108
Egypt	Volume (tonnes)	118 575	114 872	91 327	119 150
	<i>Index</i>	100	97	77	100
	Market share	12,7 %	13,4 %	11,7 %	12,7 %

	Average price (EUR/tonne)	888	882	765	849
	<i>Index</i>	100	99	86	96
United Kingdom	Volume (tonnes)	42 950	38 520	34 829	40 147
	<i>Index</i>	100	90	81	93
	Market share	4,6 %	4,5 %	4,5 %	4,3 %
	Average price (EUR/tonne)	1 185	1 145	1 102	1 083
	<i>Index</i>	100	97	93	91
Other third countries	Volume (tonnes)	133 064	127 133	119 291	158 978
	<i>Index</i>	100	96	90	119
	Market share	14,2 %	14,8 %	15,2 %	16,9 %
	Average price (EUR/tonne)	1 150	1 190	1 024	1 149
	<i>Index</i>	100	103	89	100
Total of all third countries except the PRC	Volume (tonnes)	415 146	358 233	332 277	454 194
	<i>Index</i>	100	86	80	109
	Market share	44,4 %	41,8 %	42,5 %	48,3 %
	Average price (EUR/tonne)	1 030	1 034	921	1 037
	<i>Index</i>	100	100	89	101

Source: Eurostat.

- (127) Imports from other third countries excluding the PRC totalled 454 thousand tonnes in the RIP, or 48 % of the market share. A quarter, or 26 % of the imports from third countries were coming from expanded Chinese production capacity in Egypt, with countervailing measures in force since June 2020. Imports from Egypt represented 12,7 % of the Union market share in the RIP. Egyptian import prices were significantly lower than the Union industry's prices.
- (128) Another 30 % of the imports from third countries excluding the PRC came from Malaysia. They represented 14,4 % of the Union market share in RIP. Malaysian average import prices were found to be lower than the average Union industry prices. However, when compared on a type of product basis, Malaysian prices (1 056 EUR/tonne) were higher than the Union industry prices, since the imports consisted of only one type of the product (chopped strands), for which the Union industry's price was at 1 015 EUR/tonne in the RIP.
- (129) Imports from the UK, representing around 4,5 % of the Union market share throughout the period considered, were sold at prices below the Union industry prices only in RIP.
- (130) Imports from other third countries dropped (–10 %) in 2020 as a result of the COVID related measures and increased in 2021 (+33 % from 2020 and +19 % from 2018). The other third country imports prices were found to be higher than the Union industry prices during the whole period considered.

5.5. Economic situation of the Union industry

5.5.1. General remarks

- (131) 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.
- (132) As mentioned in recital (14), sampling was used for the assessment of the economic situation of the Union industry.
- (133) 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. The data related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. The data related to the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.
- (134) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.
- (135) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

5.5.2. Macroeconomic indicators

5.5.2.1. General remark

- (136) The economic situation of the Union industry was in decline over the entire period considered. As of 2020, the Union industry's situation sharply deteriorated and could not fully recover in 2021 (the RIP), due to COVID-related lockdowns and the resulting stoppage of user activities.

5.5.2.2. Production, production capacity and capacity utilisation

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

Table 7

Production, production capacity and capacity utilisation

	2018	2019	2020	RIP
Production volume (tonnes)	650 509	621 145	503 135	594 464
<i>Index</i>	100	95	77	91
Production capacity (tonnes)	702 599	720 257	718 735	684 618
<i>Index</i>	100	103	102	97
Capacity utilisation	93 %	86 %	70 %	87 %
<i>Index</i>	100	93	76	94

Source: Data provided by the applicant.

- (138) The Union production decreased by 23 % between 2018 and 2020, then picked-up again by 18 % between 2020 and the review investigation period resulting in 9 % decrease over the entire period considered.

- (139) The Union industry increased capacities in 2019 in the framework of rebuilds (GFR industry requires significant and long-term investments to be able to rebuild furnaces at regular intervals of time and continue its operation). However, one Union producer had to permanently close its plant in the summer of 2019. Overall, the capacities decreased by 3 % over the period considered.
- (140) The capacity utilisation developed in line with the changes in production and capacities, i.e. it decreased to 70 % in 2020, due to COVID-related restrictions. Once these restrictions were lifted, capacity utilisation increased to 87 % in the review investigation period. Nonetheless, due to the technical restrictions when restarting idled capacities after COVID related restrictions, the Union producers were unable to sufficiently increase their production to meet the growing post-COVID demand in a timely manner.

5.5.2.3. Sales volume, market share and growth

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

Table 8

Sales volume and market share (tonnes)

	2018	2019	2020	RIP
Sales volume on the Union market	470 246	449 068	403 784	426 032
<i>Index</i>	100	95	86	91
Market share	50,3 %	52,4 %	51,6 %	45,3 %
<i>Index</i>	100	104	103	90

Source: Data provided by the applicant.

- (142) The Union industry's sales decreased by 14 % between 2018 and 2020, then picked-up by 6 % between 2020 and the review investigation period resulting in 9 % decrease over the period considered.
- (143) The trend indicates that the Union industry could not benefit fully from the improved demand in the review investigation period, due to the technical restrictions when restarting idled capacities after COVID related restrictions, as explained in recital (140). As a result, the Union industry's market share decreased to 45,3 % at the end of the period considered, i.e. losing 5 percentage points from the beginning of the period. Out of this 5,0 percentage points of the market share, 1,2 percentage points were taken over by imports from China and 3,8 percentage points by the other third countries.

5.5.2.4. Employment and productivity

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

Table 9

Employment and productivity

	2018	2019	2020	RIP
Number of employees	3 426	3 387	3 130	3 101
<i>Index</i>	100	99	91	91
Productivity (tonnes/employee)	190	183	161	192

<i>Index</i>	100	97	85	101
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Source: Data provided by the applicant.

- (145) Employment decreased by 9 % over the period considered. Productivity developed in line with the changes in production and employment, i.e. it decreased by 15 % from 2018 to 2020, then picked-up by 19 % between 2020 and the review investigation period.

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

- (146) This investigation established a dumping margin ranging between 50 % and 54 %, depending on the category of GFR considered. The impact of the magnitude of the actual margins of dumping on the Union industry might have been mitigated by the combined anti-dumping and countervailing measures in place, however the Union industry was still not able to maintain its market share and its prices remained low, even if this might have been affected by other factors, as described in recitals (168)– (173). It can therefore be concluded that the Union industry was not yet able to recover from past dumping.

5.5.3. Microeconomic indicators

5.5.3.1. Prices and factors affecting prices

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

Table 10

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

	2018	2019	2020	RIP
Average unit sales price in the Union on the total market	1 090	1 057	1 009	1 092
<i>Index</i>	100	97	93	100
Unit cost of production	1 045	1 063	1 217	1 181
<i>Index</i>	100	102	116	113

Source: Verified questionnaire replies of the sampled Union producers.

- (148) The weighted average unit sales price of the sampled Union producers to unrelated customers remained at a similar level over the period considered and stayed below the level of the cost of production in 2019-2021. As established in the previous investigation on the same product ⁽⁴⁸⁾, the inability of the Union producers to increase their prices throughout the period considered, which is equivalent to a situation of price suppression, was the result of the Chinese exporters' market behaviour and price pressure in the years preceding the review investigation period, combined with imports of GFR exported by Chinese producers located outside of China, like Egypt, whose import prices were significantly lower than the sales price of the Union producers throughout the whole period considered.
- (149) In the review investigation period itself, despite Chinese exports entering the Union market at significantly higher prices than the Union industry's prices, the Chinese still gained market share due to a sudden surge in demand after the removal of most COVID related measures in the Union, resulting in higher production at different levels of the GFR downstream users. Materials were needed for production and to refill depleted stocks on all levels. At the same time, the Union industry could not fully benefit from such an improved market situation due to their annual/biannual contracts with the users, while Chinese GFR producers supply on spot terms. This prevented the Union producers

⁽⁴⁸⁾ Recital (283) of Implementing Regulation (EU) 2021/328.

from increasing their prices in line with the increasing GFR price levels on the market. The Union producers were able to increase their sales prices only in the fourth quarter of the review investigation period by relying on adjustment clauses in their contracts with the users.

- (150) The average unit cost of production increased by +13 % over the period considered. The peak increase of +16 % was due to the temporary idling of capacities in response to COVID-related lockdowns of user industries in 2020 (high proportion of fixed costs in this industry makes it very sensitive to fluctuations of production volumes). In the review investigation period, even if production plants began returning to optimal capacity utilisation again, the average costs were higher than in 2018 and 2019 due to the sharp increase in energy and certain raw material pricing (namely bushings made from rhodium and platinum ⁽⁴⁹⁾).

5.5.3.2. Labour costs

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

Table 11

Average labour costs per employee

	2018	2019	2020	RIP
Average labour costs per employee (EUR)	57 703	58 366	58 311	62 186
Index	100	101	101	108

Source: Verified questionnaire replies of the sampled Union producers.

- (152) Average labour cost increased by 8 % over the period considered.

5.5.3.3. Inventories

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

Table 12

Inventories

	2018	2019	2020	RIP
Closing inventories (tonnes)	86 975	86 773	42 269	46 957
Index	100	100	49	54
Closing inventories as a percentage of production	19 %	19 %	11 %	10 %
Index	100	101	61	55

Source: Verified questionnaire replies of the sampled Union producers.

⁽⁴⁹⁾ Bushings made from rhodium and platinum are used in glass fibre production to help control the temperature of the hot filament as it passes through the fibre.

- (154) The inventories were at normal levels in 2018 and 2019, while they decreased by half in 2020 and remained that low in the review investigation period. The Union industry had to sell significant quantities from stock due to government lockdown measures, while production was still prevented due to COVID related restrictions in 2020. Picking-up demand in 2021, global shortages and delivery chain interruptions, in turn, prevented the companies from replenishing the stocks to normal levels in review investigation period. Thus, the stocks could not come back to the normal level and represented only 10 % of the production, which is nearly half less than at the start of the period considered.
- (155) One sampled Union producer noted a clerical error in the level of its inventories in the final disclosure received. The inventories were corrected. The overall trend of the inventories had not changed.

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

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

Table 13

Profitability, cash flow, investments and return on investments

	2018	2019	2020	RIP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	6,2 %	2,1 %	– 17,6 %	– 3,6 %
<i>Index</i>	100	34	– 285	– 59
Cash flow (EUR)	52 145 718	48 763 953	7 446 265	21 969 516
<i>Index</i>	100	94	14	42
Investments (EUR)	52 191 829	29 187 167	34 071 488	30 676 390
<i>Index</i>	100	56	65	59
Return on investments	10,0 %	6,2 %	– 16,3 %	– 3,1 %
<i>Index</i>	100	62	– 163	– 31

Source: Verified questionnaire replies of the sampled Union producers.

- (157) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales.
- (158) The increasing average costs and inability to increase the average price translated into losses for the Union industry during the last two years of the period considered. Between 2018 and 2019 the profitability of the sampled Union producers decreased from 6,2 % to 2,1 % followed by a significant drop to –17,6 % in 2020. During the review investigation period the Union industry was still lossmaking (–3,6 %), yet to a lesser extent than in the year before.
- (159) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow followed similar trend as profitability. From 52 million EUR in 2018 the cash flow decreased to 29 million EUR in 2019 and then dropped to 0,5 million EUR in 2020, picking-up to around 31 million EUR in the RIP. Overall, the cash flow decreased by more than half over the period considered.

- (160) One sampled Union producer noted a clerical error in the level of its cash flow in the final disclosure received. The cash flow was corrected. Thus from 52 million EUR in 2018 the cash flow decreased to 48,7 million EUR in 2019 and then dropped to 7,4 million EUR in 2020, picking-up to around 21 million EUR in the RIP. The overall, the cash flow decreased by more than half over the period considered. trend has remained the same
- (161) The Union industry requires significant and long-term investments to be able to rebuild furnaces at regular interval of time and continue its operation. However, due to the poor net cash flow situation, investments decreased from 52 million EUR in 2018 to 29 million EUR in 2019, then increased above 30 million EUR in the following years. Overall, the investments decreased by 41 % over the period considered.
- (162) The return on investments ('ROI') is the profit in percentage of the net book value of investments. ROI decreased from 10 % in 2018 to 6,2 % in 2019, dropping down further to -16,3 % in 2020. Overall, it deteriorated over the period considered and was at -3,1 % in the review investigation period.

5.6. Conclusion on injury

- (163) The Union industry profits over the period considered were hit strongly, falling from a 6,2 % profit in 2018 to a -3,6 % loss in the review investigation period. The negative profitability shows the Union industry's particularly precarious situation during the review investigation period.
- (164) The decreasing sales quantities together with decreasing prices caused the deterioration of all performance indicators. At the same time, Union industry lost part of its market share, with adverse impact on profitability. In addition to the losses incurred, the employment and capacity utilisation also decreased. Closing stocks could not recover to their normal levels. The cash flow in the review investigation period decreased by 62 % compared to 2018. The return on investments diminished to -3,1 % from 10 % in 2018.
- (165) The decreasing production had a significant impact on the industry reflected in the lossmaking situation in 2020–2021, due to the high fixed costs and the impossibility to flexibly scale back production as furnaces must be fully utilised in this specific production process.
- (166) Even in such adverse circumstances, continuous investments were necessary, mainly to replace furnaces with strictly limited lifetime. This put additional financial pressure on the producers.
- (167) Considering all the facts above the Commission concluded that the Union industry continued to suffer material injury within the meaning of Article 3 of the basic Regulation during the review investigation period.

6. CAUSATION

- (168) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from China caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could, at the same time, have injured the Union industry.
- (169) In the years preceding the review investigation period, the continued presence of Chinese imports exercising price pressure on the EU market clearly contributed to the injurious situation of the Union industry. However, considering the non-injurious Chinese import prices during the review investigation period, which were far above the Union industry's sales prices and cost of production, and thus did not exert any pressure on the Union industry, the Commission analysed whether injury was caused by factors other than the dumped imports from China. These factors were: imports from Egypt, resulting from expanded Chinese production capacity; increase in cost of production in the Union; contractual conditions with the users.

- (170) The Chinese producers of GFR located outside China, namely in Egypt, still accounted for 12,7 % market share during the review investigation period and their import prices were well below the price observed for the other countries as well as the Union industry's. Thus, the price pressure from Chinese producers of GFR located outside China was present throughout the whole period considered. This conclusion is in line with the previous investigation on the same product ⁽⁵⁰⁾.
- (171) In addition, as explained in recital (149) above, during the second half of the period considered (2020 – RIP), the global shortage caused by governmental measures in relation to the COVID pandemic allowed the Union industry to start to recover on the sales side, but at the same time it had to cope with the increased production costs, such as increased fixed costs due to the temporary idling of capacities in response to COVID-related lockdowns of user industries, and increased energy and certain raw material costs. At the same time, the Union industry was not able to immediately increase its production volumes substantially, due to the time needed to restart idle capacities. As a result, users in the EU were temporarily forced to buy imported goods from China at much higher prices, which led to an increased Chinese market share of 6,5 % in the RIP.
- (172) Furthermore, as explained in recital (150) above, the Union industry had long-term contracts with the users, it could not immediately increase its sales prices to take advantage of the improved market situation and the absence of injurious Chinese prices. On the other hand, Chinese GFR producers had the flexibility to supply on spot terms and thus increased their prices in line with market levels. As a result, all the financial performance indicators of the Union industry were negative in the review investigation period.
- (173) On the basis of the above, the Commission concluded that the injury suffered by the Union industry during the RIP could not be attributed to the dumped imports from China, and that other factors, considered individually or collectively, affected the injurious situation of the Union industry during the review investigation period, attenuating the causal link between the Chinese imports and the injury suffered by the Union industry in the RIP.
- (174) The Commission further 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 China if the anti-dumping measures were allowed to lapse.

7. LIKELIHOOD OF RECURRENCE OF INJURY CAUSED BY DUMPED IMPORTS FROM CHINA

- (175) For the assessment of the likelihood of recurrence of injury caused by dumped imports from China, the Commission examined the following factors: (a) likely price levels of imports from China in the absence of anti-dumping measures, (b) attractiveness of the Union market, (c) production capacity and spare capacity in China.

7.1.1. Likely price levels of imports from China in the absence of anti-dumping measures

- (176) The investigation has shown that the prices of the Chinese dumped imports, reported at CIF level, increased significantly (by +46 %) in the last year of the period considered that is between 2020 and the review investigation period. However, this increase was mainly due to the exceptional increase of freight cost during the review investigation period. Indeed, the estimated Chinese price at ex-works level increased by 5 % only from 2020 to 2021 and was around EUR 907 per tonne, thus, well below the average ex works price of the Union producers (1 092 EUR/tonne). If the freight cost had remained unchanged from 2020 to 2021, Chinese imports without duties would have undercut the Union's industry's prices by 21,1 %, and would have remained below the cost of production of the Union industry, similar to the situation observed in the years preceding the review investigation period.

⁽⁵⁰⁾ Recitals (279)–(281) of Implementing Regulation (EU) 2021/328.

- (177) Furthermore, the increase of freight cost was exceptional and temporary, as it moved up sevenfold from 2020 to 2021, while it dropped back to the initial levels of 2020 as of November 2022 ⁽⁵¹⁾. As a result, the Chinese imports price also dropped as of November 2022 and at the beginning of 2023 the Chinese import price at CIF level was back at the level of the Union industry's price in the review investigation period, namely 1 093 EUR/tonne. In fact, at the beginning of 2023, Chinese import prices were again undercutting the Union industry's post-review investigation period prices by 14,9 %, and they were well below the cost of production of the Union industry in review investigation period (average of 1 181 EUR/tonne in 2022) and post-review investigation period (average of 1 445 EUR/tonne in 2022) ⁽⁵²⁾.
- (178) Based on the above analysis the Commission concluded that the Chinese import prices at CIF level increased temporarily due to the increased freight cost, but once this cost returned to its initial levels in November 2022, the import prices began to return to their pre-review investigation period levels, significantly undercutting and suppressing the Union industry's price. Considering the exceptional and temporary increase of the Chinese import prices in the review investigation period and their post-review investigation period developments, it is likely that in the absence of anti-dumping measures the prices levels of dumped imports from China would undercut and suppress the Union industry's price.

7.1.2. *Attractiveness of the Union market*

- (179) The Union market is attractive in terms of its size and prices, given the level of Union consumption and the higher level of prices in the Union compared to other major Chinese exports destinations. Export statistics from the Global Trade Atlas database ⁽⁵³⁾ showed that Chinese export prices to the Union were on average 26 % higher than the Chinese export prices to the top three export markets (the United States, South Korea and India, excluding the Union) in the review investigation period. This makes the Union market a more lucrative destination than other third country markets. The Union market was already the second largest destination for exports of GFR from China during the review investigation period. Moreover, China is the third biggest exporter of GFR into the Union, only after Malaysia and Egypt.
- (180) Moreover the examination of post-review investigation period data revealed that imports from China have increased dramatically, from around 61 000 tonnes in the review investigation period to more than 91 000 tonnes in 2022 (a 50 % increase), putting the attractiveness of the Union market for Chinese GFR producers on a full display.
- (181) The attractiveness of the Union market for GFR producers in China is also confirmed by the fact that CPIC and CNBM Group (major GFR producers in China) invested substantially to start major GFR exports from plants in Bahrain and Egypt, to serve the European market shortly after the imposition of the anti-subsidy and anti-dumping measures against China in December 2014. As confirmed in a previous investigation on the same product ⁽⁵⁴⁾, the plant in Egypt was opened by CNBM Group for the express purpose of selling GFR to the Union market to avoid the duties in force against imports from China.
- (182) Considering the attractiveness of the Union market in terms of market size, historical trade flows and the post-review investigation period developments of these trade flows, it is likely that significant quantities currently sold to other markets would be redirected to the Union market should the anti-dumping measures be allowed to lapse.

⁽⁵¹⁾ Based on world container index from Shanghai to Genoa and Rotterdam.

⁽⁵²⁾ Based on the monthly post-RIP data submitted by the Union producers.

⁽⁵³⁾ Statistics was available at six-digit HS code level, therefore including much wider scope of the product than the product under review.

⁽⁵⁴⁾ Recital (296) of Implementing Regulation (EU) 2021/328.

7.1.3. *Production capacity and spare capacity in China*

- (183) Based on the information provided by the applicant, overcapacities in China were at least 1,1 million tonnes, representing over 100 % of the Union consumption during the review investigation period. Despite structural overcapacities in China's domestic market, producers continued to expand existing capacities or announce new ones after the review investigation period. If the announced capacity increases take place, Chinese overcapacities would amount to 2,6 million tonnes, standing at more than double of total Union consumption during the review investigation period.
- (184) Considering the attractiveness of the Union market described above, it is likely that the existing spare capacities from China could be shipped to the Union market, should the anti-dumping measures be repealed.

7.2. **Conclusion of the likelihood of recurrence of injury caused by dumped imports from China**

- (185) Should the measures be allowed to lapse, it can be reasonably expected that, as a consequence of the attractiveness of the Union market and the available immense spare capacity in China, there would be a substantial increase of imports of GFR from China to the Union made at dumped prices, undercutting and suppressing the Union industry's prices. Chinese exports to the Union would rapidly gain even larger market share to the detriment of the Union industry, which would face an immediate drop in its sales volumes and an increase in its fixed costs per unit. The increase in fixed costs combined with a decrease in selling prices would immediately negatively affect the profitability of the Union industry, which remained negative in the review investigation period. Consequently, the Union industry would become even more loss-making and its viability would be threatened.
- (186) On this basis, it is concluded that the absence of measures would in all likelihood result in a significant increase of dumped imports from China at injurious prices, which would undercut and suppress the Union industry's prices thus causing material injury and further aggravating the already injurious situation of the Union industry observed during the review investigation period.

8. **UNION INTEREST**

- (187) 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.

8.1. **Interest of the Union industry**

- (188) The investigation has shown that the Union industry was in an injurious situation and that the removal of the measures would likely lead to a significant increase of dumped Chinese imports of GFR, largely undercutting and suppressing the Union industry's prices, thus further aggravating material injury to the Union industry observed during the review investigation period.

- (189) The Commission concluded therefore that that it was in the interest of the Union industry to maintain the measures in force.

8.2. **Interest of unrelated importers**

- (190) The Commission invited all unrelated importers to participate in the investigation. Only one importer registered as interested party but did not reply to the questionnaire.
- (191) The Commission considered that GFR is to a high extent standardised and its supply sources can be changed efficiently.

- (192) On this basis, given also the alternative sources of available supply not subject to measures, the Commission concluded that the measures currently in force had no significant negative effects on the situation of importers and that the continuation of the measures would not unduly affect them.

8.3. Interest of users

- (193) Only three individual users and one users' association ⁽⁵⁵⁾ registered as interested parties, however no one replied to the Commission's questionnaire.
- (194) The users' association took position in favour of the measures, noting that the Union producers of GFR are the R & D and innovation drivers ⁽⁵⁶⁾. Without them the downstream fabrics industries and the innovation in this sector would stop. Also, if the Union industry goes out of business, the fabric industries in the EU would be almost entirely dependent on the supply of rovings by State-owned companies in China, which would put them in a highly vulnerable position. This risk already materialised during the COVID pandemic, when several fabrics producers in the Union received refusals from the suppliers of rovings in China, noting that they would not supply foreign customers until the domestic shortage had been alleviated. Thus, the survival of the downstream fabrics industry in the Union is also dependent on the viability of the Union industry of GFR.
- (195) Since no individual users came forward, the best available data the Commission possess in this regard are the conclusions from past investigations: the expiry review of the anti-dumping measures as detailed in the Implementing Regulation (EU) 2017/724, where it was concluded that the extension of the measures would have a limited impact on the situation of users and the anti-subsidy investigation as detailed in the Implementing Regulation (EU) 2020/379 where it was concluded that given the alternative sources of available supply not subject to measures and since there is no evidence clearly showing that the additional costs from measures imposed on imports could not be absorbed by the users, the negative effects on users did not clearly show that it is not in the Union's interest to apply the measures.

8.4. Conclusion on Union interest

- (196) On the basis of the above, the Commission concluded that there were no compelling reasons of the Union interest against the maintenance of the existing measures on imports of GFR originating in China.

9. ANTI-DUMPING MEASURES

- (197) On the basis of the conclusions reached by the Commission on continuation of dumping, recurrence of injury caused by dumped imports from China and Union interest, the anti-dumping measures on GFR from China should be maintained.
- (198) 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'.
- (199) 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.

⁽⁵⁵⁾ Tech-Fab Europe – an association of EU producers of technical fabrics.

⁽⁵⁶⁾ From a technical perspective, the creation of new and better products and applications depend on the interplay of the rovings with resins and other materials and the strength the weaving process can give to a fabric.

- (200) 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.
- (201) The individual company anti-dumping duty rates specified in this Regulation are exclusively applicable to imports of the product under review originating in the People's Republic of China 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.
- (202) 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 ⁽⁵⁷⁾. 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*.
- (203) 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. Minor corrections in the data of the Union industry were addressed in this Regulation, no other comments were received.
- (204) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽⁵⁸⁾ 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.
- (205) 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 chopped glass fibre strands, of a length of not more than 50 mm; glass fibre rovings, excluding glass fibre rovings which are impregnated and coated and have a loss on ignition of more than 3 % (as determined by the ISO Standard 1887); and mats made of glass fibre filaments excluding mats of glass wool, currently falling under CN codes 7019 11 00, ex 7019 12 00 (TARIC codes 7019 12 00 22, 7019 12 00 25, 7019 12 00 26, 7019 12 00 39), 7019 14 00 and 7019 15 00 ⁽⁵⁹⁾ and originating in the People's Republic of China.

⁽⁵⁷⁾ European Commission, Directorate-General for Trade, Directorate G, Rue de la Loi 170, 1040 Brussels, Belgium.

⁽⁵⁸⁾ 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).

⁽⁵⁹⁾ Since 1 January 2022, the classification of mats has changed from CN code 7019 31 00 to CN codes 7019 14 00 and 7019 15 00. Until 31 December 2021, the applicable TARIC codes were 7019 31 00 10 and 7019 31 00 90. Since 1 January 2022, they are replaced by TARIC codes 7019 14 00 10, 7019 14 00 90, 7019 15 00 10 and 7019 15 00 90.

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:

Company	Anti-dumping duty	TARIC additional code
Jushi Group Co., Ltd; Jushi Group Chengdu Co., Ltd; Jushi Group Jiujiang Co., Ltd	14,5	B990
Changzhou New Changhai Fiberglass Co., Ltd; Jiangsu Changhai Composite Materials Holding Co., Ltd; Changzhou Tianma Group Co., Ltd	0	A983
Chongqing Polycomp International Corporation	19,9	B991
Other cooperating companies listed in Annex I of Implementing Regulation (EU) 2017/724	15,9	
All other companies	19,9	A999

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. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 131(2) of Commission Implementing Regulation (EU) 2015/2447 ⁽⁶⁰⁾ the amount of anti-dumping duty, calculated on the basis of the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

5. Should the definitive countervailing duties imposed by Article 1 of Implementing Regulation (EU) 2021/328, 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.

6. 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 duties established in the refund investigation.

7. 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*.

⁽⁶⁰⁾ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

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

Done at Brussels, 13 July 2023.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2023/1453**of 13 July 2023****repealing Implementing Regulation (EU) 2021/1533 imposing special conditions governing the import of feed and food originating in or dispatched from Japan following the accident at the Fukushima nuclear power station****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety ⁽¹⁾, and in particular Article 53(1)(b)(ii) thereof,

Having regard to Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation) ⁽²⁾, and in particular Article 54(4), first subparagraph, point (b), and Article 90, first paragraph, points (a), (c) and (f), thereof,

Whereas:

- (1) Following the accident at the Fukushima nuclear power station on 11 March 2011, the Commission was informed that radionuclide levels in certain food products originating in Japan exceeded the action levels in food applicable in Japan. As such contamination may constitute a threat to public and animal health in the Union, the Commission Implementing Regulation (EU) No 297/2011 ⁽³⁾ imposed special conditions governing the import of food and feed originating in or consigned from Japan. That Implementing Regulation was repealed and replaced successively by Commission Implementing Regulations (EU) No 961/2011 ⁽⁴⁾, (EU) No 284/2012 ⁽⁵⁾, (EU) No 996/2012 ⁽⁶⁾, (EU)

⁽¹⁾ OJ L 31, 1.2.2002, p. 1.

⁽²⁾ OJ L 95, 7.4.2017, p. 1.

⁽³⁾ Commission Implementing Regulation (EU) No 297/2011 of 25 March 2011 imposing special conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station (OJ L 80, 26.3.2011, p. 5).

⁽⁴⁾ Commission Implementing Regulation (EU) No 961/2011 of 27 September 2011 imposing special conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station and repealing Regulation (EU) No 297/2011 (OJ L 252, 28.9.2011, p. 10).

⁽⁵⁾ Commission Implementing Regulation (EU) No 284/2012 of 29 March 2012 imposing special conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station and repealing Implementing Regulation (EU) No 961/2011 (OJ L 92, 30.3.2012, p. 16).

⁽⁶⁾ Commission Implementing Regulation (EU) No 996/2012 of 26 October 2012 imposing special conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station and repealing Implementing Regulation (EU) No 284/2012 (OJ L 299, 27.10.2012, p. 31).

No 322/2014 ⁽⁷⁾, (EU) 2016/6 ⁽⁸⁾ and (EU) 2021/1533 ⁽⁹⁾.

- (2) The special conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station have been progressively alleviated by these successive reviews. The special conditions laid down in Implementing Regulation (EU) 2021/1533 set out strict maximum radionuclide levels of the listed commodities from affected prefectures and require those commodities to be tested on radioactivity before exporting to the Union and the authorities to certify compliance with the strict maximum radionuclide levels.
- (3) No non-compliances at the entry into the Union with those maximum radionuclide levels have been observed at import in the Union since June 2011, providing evidence that the control system put in place and the controls performed by the Japanese authorities are effective. Furthermore, the products originating from specific prefectures for which Implementing Regulation (EU) 2021/1533 lays down the special conditions for import are only traded in minor quantities to the Union and their contribution to the exposure of Union population to radionuclides is negligible.
- (4) The Japanese competent authorities have committed to maintain an appropriate and extensive control system for detecting the presence of radionuclides in feed and food and to make the monitoring results publicly available by publishing all the monitoring results on a regular basis on the website of the Ministry of Health, Labour and Welfare of Japan.
- (5) Therefore, even if the Commission will continue to follow up the levels of radionuclides in food and feed originating from Japan to ensure high protection of consumer safety, there is no longer a need to maintain the measures provided by Implementing Regulation (EU) 2021/1533 to ensure a high level of animal and public health protection.
- (6) It is therefore appropriate to repeal Implementing Regulation (EU) 2021/1533.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Repeal

Implementing Regulation (EU) 2021/1533 is hereby repealed.

Article 2

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*.

⁽⁷⁾ Commission Implementing Regulation (EU) No 322/2014 of 28 March 2014 imposing special conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station (OJ L 95, 29.3.2014, p. 1).

⁽⁸⁾ Commission Implementing Regulation (EU) 2016/6 of 5 January 2016 imposing special conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station and repealing Implementing Regulation (EU) No 322/2014 (OJ L 3, 6.1.2016, p. 5).

⁽⁹⁾ Commission Implementing Regulation (EU) 2021/1533 of 17 September 2021 imposing special conditions governing the import of feed and food originating in or dispatched from Japan following the accident at the Fukushima nuclear power station and repealing Implementing Regulation (EU) 2016/6 (OJ L 330, 20.9.2021, p. 72).

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

Done at Brussels, 13 July 2023.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2023/1454**of 13 July 2023****granting a Union authorisation for the single biocidal product ‘WESSOCLEAN GOLD LINE’ 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 28 September 2017, WESSO AG submitted to the European Chemicals Agency (‘the Agency’) an application in accordance with Article 43(1) of Regulation (EU) No 528/2012 for Union authorisation of a single biocidal product named ‘WESSOCLEAN GOLD LINE’ of product-types 3 and 4, as described in Annex V to that Regulation, providing written confirmation that the competent authority of Germany had agreed to evaluate the application. The application was recorded under case number BC-QN034236-29 in the Register for Biocidal Products.
- (2) ‘WESSOCLEAN GOLD LINE’ contains peracetic acid as the active substance included in the Union list of approved active substances referred to in Article 9(2) of Regulation (EU) No 528/2012 for product-types 3 and 4.
- (3) On 9 March 2022, the evaluating competent authority submitted, in accordance with Article 44(1) of Regulation (EU) No 528/2012, an assessment report and the conclusions of its evaluation to the Agency.
- (4) On 14 October 2022, the Agency submitted to the Commission its opinion ⁽²⁾, the draft summary of the biocidal product characteristics (‘SPC’) of ‘WESSOCLEAN GOLD LINE’ and the final assessment report on the single biocidal product, in accordance with Article 44(3) of Regulation (EU) No 528/2012.
- (5) The opinion concludes that ‘WESSOCLEAN GOLD LINE’ is a single biocidal product within the meaning of Article 3(1), point (r), of Regulation (EU) No 528/2012, that it is eligible for Union authorisation in accordance with Article 42(1) of that Regulation and that, subject to compliance with the draft SPC, it meets the conditions laid down in Article 19(1) of that Regulation.
- (6) On 28 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.

⁽¹⁾ OJ L 167, 27.6.2012, p. 1.

⁽²⁾ ECHA opinion of 28 September 2022 on the Union authorisation of the single biocidal product ‘WESSOCLEAN GOLD LINE’ (ECHA/BPC/359/2022), <https://echa.europa.eu/opinions-on-union-authorisation>.

- (7) The Commission concurs with the opinion of the Agency and considers it therefore appropriate to grant a Union authorisation for 'WESSOCLEAN GOLD LINE'.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS REGULATION:

Article 1

A Union authorisation with authorisation number EU-0029720-0000 is granted to WESSO AG for the making available on the market and use of the single biocidal product 'WESSOCLEAN GOLD LINE' in accordance with the summary of the biocidal product characteristics set out in the Annex.

The Union authorisation is valid from 3 August 2023 to 31 July 2033.

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, 13 July 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Summary of product characteristics for a biocidal product**WESSOCLEAN GOLD LINE****Product type 3 - Veterinary hygiene (Disinfectants)****Product type 4 - Food and feed area (Disinfectants)****Authorisation number: EU-0029720-0000****R4BP asset number: EU-0029720-0000****1. ADMINISTRATIVE INFORMATION****1.1. Trade name(s) of the product**

Trade name(s)	WESSOCLEAN GOLD LINE WESSOCLEAN AGRO PROTECT
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1.2. Authorisation holder

Name and address of the authorisation holder	Name	WESSO AG
	Address	Wacholderweg 6, 90518 Altdorf b. Nürnberg Germany
Authorisation number	EU-0029720-0000	
R4BP asset number	EU-0029720-0000	
Date of the authorisation	3 August 2023	
Expiry date of the authorisation	31 July 2033	

1.3. Manufacturer(s) of the product

Name of manufacturer	WESSO AG
Address of manufacturer	Wacholderweg 6, 90518 Altdorf b. Nürnberg Germany
Location of manufacturing sites	Wacholderweg 6, 90518 Altdorf b. Nürnberg Germany

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

Active substance	Peracetic acid
Name of manufacturer	Evonik Resource Efficiency GmbH
Address of manufacturer	Postfach 1345, 63403 Hanau Germany
Location of manufacturing sites	Evonik Peroxid GmbH, Industriestraße 11, 9721 Weissenstein Austria

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 (%)
Peracetic acid		Active Substance	79-21-0	201-186-8	0,03
ethanol		Non-active substance	64-17-5	200-578-6	1,61
propan-2-ol		Non-active substance	67-63-0	200-661-7	2,52
hydrogen peroxide		Non-active substance	7722-84-1	231-765-0	3,15
acetic acid		Non-active substance	64-19-7	200-580-7	0,06
sulphuric acid		Non-active substance	7664-93-9	231-639-5	0,01

2.2. Type of formulation

AL - Any other liquid

3. HAZARD AND PRECAUTIONARY STATEMENTS

Hazard statements	May be corrosive to metals. Causes serious eye irritation. Harmful to aquatic life with long lasting effects.
Precautionary statements	Keep only in original packaging. Wash hands thoroughly after handling. Avoid release to the environment. Wear eye protection. IF IN EYES: Rinse cautiously with water for several minutes. Remove contact lenses, if present and easy to do. Continue rinsing. If eye irritation persists: Get medical advice. Absorb spillage to prevent material damage. Dispose of contents to an approved waste disposal plant in accordance with national regulations. Dispose of container to an approved waste disposal plant in accordance with national regulations.

4. AUTHORISED USE(S)

4.1. Use description

Table 1

Use # 1 – Use 1 – Disinfection of hatching eggs at room temperature in the sluice

Product type	PT03 - Veterinary hygiene (Disinfectants)
Where relevant, an exact description of the authorised use	-
Target organism(s) (including development stage)	Scientific name: bacteria Common name: Bacteria Development stage: - Scientific name: yeast Common name: Yeasts Development stage: - Scientific name: fungi Common name: Fungi Development stage: -
Field(s) of use	Indoor Hatcheries (sluice), disinfection of hatching eggs
Application method(s)	Method: Closed system: cold fogging Detailed description: -
Application rate(s) and frequency	Application Rate: Application rate: 1 litre undiluted product per 15 m ³ (= 0,067 litre/m ³) room air; median droplet size ≤ 15 µm Dilution (%): undiluted Number and timing of application: Disinfecting after each refilling of the disinfection chamber with eggs.
Category(ies) of users	Professional
Pack sizes and packaging material	— 1 litre bottle (Polyethylene - PE) — 20 litre can (High density polyethylene - HDPE) — 220 litre drum (HDPE) — 1 000 litre Intermediate Bulk Container (IBC) (PE)

4.1.1. Use-specific instructions for use

- 1) 1 litre product per 15 m³ (= 0,067 litre/m³) must be distributed for a period of at least 30 minutes. The contact time starts when the required total volume of product (see application rate) is nebulized.

For bactericidal, yeasticidal and fungicidal efficacy, let the product take effect at 20 °C for 60 minutes contact time. Afterwards, the air in the chamber should be replaced by means of an exhaust system.

- 2) The product is a ready-to-use solution.
- 3) Disinfection after each refilling of the disinfection chamber with eggs.
- 4) Only for use in dry enclosures of 4 -150 m³.

- 5) Biological validation shall be performed by the user of the biocidal products for each room setup (including for example, hatching eggs, equipment) to be disinfected by fogging (or in a suitable 'standard' room in a facility, if applicable) with the devices to be used for the disinfection process, after which a protocol for disinfection processes in these rooms can be made and used thereafter.

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 – Use 2 – Disinfection of hatching eggs at 36 °C in the hatcher

Product type	PT03 - Veterinary hygiene (Disinfectants)
Where relevant, an exact description of the authorised use	-
Target organism(s) (including development stage)	Scientific name: bacteria Common name: Bacteria Development stage: - Scientific name: yeast Common name: Yeasts Development stage: - Scientific name: fungi Common name: Fungi Development stage: -
Field(s) of use	Indoor Hatcheries (hatcher), disinfection of hatching eggs
Application method(s)	Method: Closed system: cold fogging Detailed description: -
Application rate(s) and frequency	Application Rate: Application rate: 1 litre undiluted product per 15 m ³ (= 0,067 litre/m ³) room air; median droplet size ≤ 15 µm Dilution (%): undiluted Number and timing of application: Disinfecting after each refilling of the disinfection chamber with eggs.

Category(ies) of users	Professional
Pack sizes and packaging material	— 1 l bottle (PE) — 20 litre can (HDPE) — 220 litre drum (HDPE) — 1 000 litre IBC container (PE)

4.2.1. Use-specific instructions for use

- 1) 1 litre product per 15 m³ (= 0,067 litre/m³) must be distributed for a period of at least 30 minutes. The contact time starts when the required total volume of product (see application rate) is nebulized.
For bactericidal, yeasticidal and fungicidal efficacy, let the product take effect at 36 °C for 60 minutes contact time. Afterwards, the air in the chamber should be replaced by means of an exhaust system.
- 2) The product is a ready-to-use solution.
- 3) Disinfection after each refilling of the disinfection chamber with eggs.
- 4) Only for use in dry enclosures of 4 -150 m³.
- 5) Biological validation shall be performed by the user of the biocidal products for each room setup (including for example, hatching eggs, equipment) to be disinfected by fogging (or in a suitable 'standard' room in a facility, if applicable) with the devices to be used for the disinfection process, after which a protocol for disinfection processes in these rooms can be made and used thereafter.

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

4.3. Use description

Table 3

Use # 3 – Use 3 – Disinfection of surfaces in the vegetable, fruit and plants packaging industry by airborne diffusion

Product type	PT04 - Food and feed area (Disinfectants)
Where relevant, an exact description of the authorised use	-
Target organism(s) (including development stage)	Scientific name: bacteria Common name: Bacteria Development stage: - Scientific name: yeast

	Common name: Yeasts Development stage: - Scientific name: fungi Common name: Fungi Development stage: -
Field(s) of use	Indoor Non-porous surfaces of transport and storage equipment for potatoes, fruits, vegetables and plants without direct contact to potatoes, fruits, vegetables or plants.
Application method(s)	Method: Closed system: cold fogging Detailed description: -
Application rate(s) and frequency	Application Rate: 40 ml product per 1 m ³ (0,04 litre/m ³) room air; median droplet size ≤ 15 µm Dilution (%): undiluted Number and timing of application: Disinfecting before placing new items in the packaging line.
Category(ies) of users	Professional
Pack sizes and packaging material	1 litre bottle (PE) 20 litre can (HDPE) 220 litre drum (HDPE) 1 000 litre IBC container (PE)

4.3.1. Use-specific instructions for use

- 1) 40 ml ready-to-use product per 1 m³ room air (0,04 litre/m³) is distributed for a period of at least 30 minutes. The contact time starts when the required total volume of product (see application rate) is nebulized.

For bactericidal, yeastocidal and fungicidal efficacy let the product take effect at room temperature for 30 minutes contact time. Afterwards, the room should be intensively aerated.

- 2) The product is a ready-to-use solution that must not be diluted with water.
- 3) Disinfecting before placing new items in the packaging line.
- 4) Only for use in dry enclosures of 3 – 5 m³.
- 5) Biological validation shall be performed by the user of the biocidal products for each installation to be used for disinfection by fogging (or in a suitable 'standard' installation in a facility, if applicable) with the devices to be used for the disinfection process, after which a protocol for disinfection in these installations can be made and used thereafter.

4.3.2. Use-specific risk mitigation measures

See general directions for use

4.3.3. 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

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

See general directions for use

4.3.5. *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 loading the product:

The product may only be transferred/loaded with automatic pumps.

5.2. **Risk mitigation measures**

For loading the product:

- 1) Use of eye protection consistent with European standard EN ISO16321 or equivalent during handling of the product. See Section 6 for the full title of the EN standard.

For application of the product:

- 1) Application of the product is only permitted in closed, airtight disinfection systems. Workers must not be present during the disinfection process. No workers are allowed in the disinfection chamber during application.
- 2) The disinfection shall only be started from outside of the disinfection chamber to avoid contact with the disinfectant.
- 3) The chamber must remain hermetically sealed during disinfection and re-entry must be prevented. It shall be indicated that a disinfection process is running.
- 4) After application, the chamber must be completely ventilated by a technical ventilation system.
- 5) Re-entry is only permitted once the product has dried from all surfaces and the air concentrations of peracetic acid and hydrogen peroxide have dropped below their respective reference values (AECs). To ensure sufficient ventilation, either a disinfection system with sensors indicating when the relevant concentrations have dropped below the reference values shall be used, or the required duration of the technical ventilation shall be established by measurement with suitable measurement equipment for each technical installation and after any change in relevant boundary conditions.

For repair or maintenance of dosing pumps:

- 1) Prior to carrying out repair or maintenance of the pumps, existing product residues must be largely removed by flushing the pumps.

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

First aid

- 1) IF INHALED: If symptoms occur call a POISON CENTRE or a doctor.
- 2) IF SWALLOWED: Rinse mouth. Give something to drink, if exposed person is able to swallow. Do NOT induce vomiting. Call a POISON CENTRE or a doctor.
- 3) IF ON SKIN: Wash skin with water. If symptoms occur call a POISON CENTRE or a doctor.
- 4) IF IN EYES: Rinse with water. Remove contact lenses, if present and easy to do. Continue rinsing for 5 minutes. Call a POISON CENTRE or a doctor.

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

Environment

- 5) Avoid direct release of the undiluted product to the environment and sewage system.
- 6) Large spills: cover the liquid with absorbent material. Contain and collect for disposal.

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

- 1) Residues of the biocidal product must be disposed of in accordance with Directive 2008/98/EC of the European Parliament and of the Council and the European Waste Catalogue (EWC) as well as national and regional regulations.
- 2) Do not empty into drains.
- 3) Dispose of contents and container to an authorised waste collection point.
- 4) Leave biocidal products in original containers. Do not mix with other wastes.
- 5) When totally empty, containers are recyclable.

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

- 1) Shelf life: 12 months.
- 2) Protect from frost.
- 3) Store at temperatures below 30 °C.

6. OTHER INFORMATION

- 1) Please be aware of the EU reference value of 0,5 mg/m³ for the active substance peracetic acid (CAS No: 79-21-0) which was used for the risk assessment for this product.
- 2) Please be aware of the EU reference value of 1,25 mg/m³ for the substance of concern hydrogen peroxide (CAS No: 7722-84-1) which was used for the risk assessment for this product.
- 3) Please be aware of the EU reference value of 17,9 mg/kg bw/d for the substance of concern propan-2-ol (CAS No: 67-63-0) which was used for the risk assessment for this product.
- 4) For orientation: relative humidity as tested in adapted EN 17272 for efficacy: 33 - 53 %.

The full titles of the EN standards referenced in this section and in Sections 5.2 'Risk mitigation measures' and 5.4 'Instructions for safe disposal of the product and its packaging' are:

EN 17272 - Chemical disinfectants and antiseptics - Methods of airborne room disinfection by automated process - Determination of bactericidal, mycobactericidal, sporicidal, fungicidal, yeasticidal, virucidal and phagocidal activities.

EN ISO16321 - Eye and face protection for occupational use

Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).

COMMISSION IMPLEMENTING REGULATION (EU) 2023/1455**of 13 July 2023****concerning the urgent provisional authorisation of cobalt(II) acetate tetrahydrate, cobalt(II) carbonate, cobalt(II) carbonate hydroxide (2:3) monohydrate and cobalt(II) sulphate, heptahydrate as feed additives for ruminants with a functional rumen, equidae and lagomorphs****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition ⁽¹⁾, and in particular Article 15 thereof,

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such authorisation. In particular, Article 15 of that Regulation provides that the Commission may provisionally authorise the use of additives in specific cases where urgent authorisation is needed to ensure the protection of animal welfare.
- (2) Commission Implementing Regulation (EU) No 601/2013 ⁽²⁾ authorised for a period of 10 years cobalt(II) acetate tetrahydrate, cobalt(II) carbonate, cobalt(II) carbonate hydroxide (2:3) monohydrate, cobalt(II) sulphate, heptahydrate and coated granulated cobalt(II) carbonate as feed additives belonging to the category 'nutritional additives' and to the functional group 'compounds of trace elements'. Those additives were authorised for use in ruminants with a functional rumen, equidae, lagomorphs, rodents, herbivore reptiles and zoo mammals.
- (3) No application was submitted within the time limit indicated in Article 14(1) of Regulation (EC) No 1831/2003 for the renewal of the authorisation of the additives cobalt(II) acetate tetrahydrate, cobalt(II) carbonate, cobalt(II) carbonate hydroxide (2:3) monohydrate and cobalt(II) sulphate, heptahydrate ⁽³⁾, expiring on 15 July 2023. For those additives, an application for a new authorisation was submitted on 20 October 2022 in accordance with Article 7 of Regulation (EC) No 1831/2003, for use for the same animal species that the previous authorisation concerned and requesting them to be classified in the additive category 'nutritional additives' and in the functional group 'compounds of trace elements'.
- (4) Taking into account the time period needed for the processing of the application for authorisation submitted for the additives cobalt(II) acetate tetrahydrate, cobalt(II) carbonate, cobalt(II) carbonate hydroxide (2:3) monohydrate and cobalt(II) sulphate, heptahydrate, no new authorisation of those additives can be granted by 15 July 2023.
- (5) As a result, a request was submitted by a company to the Commission on 30 May 2023, to grant, in accordance with Article 15 of Regulation (EC) No 1831/2003, a provisional urgent authorisation of the use of the additives cobalt(II) acetate tetrahydrate, cobalt(II) carbonate, cobalt(II) carbonate hydroxide (2:3) monohydrate and cobalt(II) sulphate, heptahydrate, intended for ruminants, horses and rabbits.

⁽¹⁾ OJ L 268, 18.10.2003, p. 29.

⁽²⁾ Commission Implementing Regulation (EU) No 601/2013 of 24 June 2013 concerning the authorisation of cobalt(II) acetate tetrahydrate, cobalt(II) carbonate, cobalt(II) carbonate hydroxide (2:3) monohydrate, cobalt(II) sulphate heptahydrate and coated granulated cobalt(II) carbonate hydroxide (2:3) monohydrate as feed additives (OJ L 172, 25.6.2013, p. 14).

⁽³⁾ An application was submitted for the renewal of the authorisation of coated granulated cobalt(II) carbonate as a feed additive in accordance with Article 14(1) of Regulation (EC) No 1831/2003. That additive is not covered by this Regulation.

- (6) In its opinion of 12 November 2009 ⁽⁴⁾, the European Food Safety Authority ('the Authority') concluded that due to the high ruminal degradation rate of oral vitamin B₁₂, an optimal micronutrient supply of ruminants should include cobalt. The Authority extended that conclusion to horses and rabbits, for which it considered that cobalt supplementation to their diets should also be maintained. In its opinions of 22 May 2012 ⁽⁵⁾ and 12 June 2012 ⁽⁶⁾, the Authority confirmed that the additives cobalt(II) acetate tetrahydrate, cobalt(II) carbonate, cobalt(II) carbonate hydroxide (2:3) monohydrate and cobalt(II) sulphate, heptahydrate are efficacious sources of cobalt as an essential trace element, which is in turn used for the production of vitamin B₁₂ by microbial fermentation in the rumen.
- (7) As mentioned in the Authority's opinion of 12 November 2009, cobalt deficiency in animals results in general in loss of appetite, reduced growth rate, loss of body weight, anaemia, disturbances of lipid metabolism, reduced folate level, accumulation of iron and nickel in liver, compromised neutrophil function and reduced resistance to parasitic infections, which is particularly the case as regards ruminants.
- (8) It appears therefore that such deficiency is likely to cause severe adverse effects on the welfare of animals for which cobalt is essential to synthesise vitamin B₁₂, including a weakening of the immune system, an increase in the frequency of intestinal disorders and ketosis, an impaired reproductive function, an increased risk for ovines of contracting the Ovine White Liver Disease and even possibly an increase in morbidity or mortality ⁽⁷⁾.
- (9) In order to avoid critical deficiencies, animals grazing on soils low in cobalt, or fed with hay or plants produced in those soils, but also certain animal categories with specific needs, such as animals fed with automatic concentrate dispensers with metering pumps or some animals with metabolic disorders, rely on complementary feed in the form of bolus or liquid for their supply in essential nutrients, including cobalt. The alternative for grassland animals to use buckets or mineral licks to administer feed is generally not considered as optimal in all circumstances to guarantee a sufficient, effective and safe supply of cobalt, due to the voluntary and competitive consumption thereof by animals and the derived less controlled and targeted supplementation, the impact of climatic conditions on feed's quality and the additional requirements in terms of handling.
- (10) The additive coated granulated cobalt(II) carbonate, for the use of which an application for renewal has been submitted in accordance with Article 14(1) of Regulation (EC) No 1831/2003 and which is currently authorised as a feed additive in accordance with Regulation (EC) No 1831/2003, cannot be used in the formulation of feed administered in liquid complementary feed, nor as bolus. This is because of the technical specifications of that additive, which contains insoluble particles affecting the homogeneity of the liquid feed, has a very low cobalt concentration and is not very compressible, preventing the manufacture of suitable high-density boluses. Liquid feed should contain cobalt in soluble form, such as the additives cobalt(II) acetate tetrahydrate and cobalt(II) sulphate, heptahydrate, while the manufacturing of suitable boluses providing the animals with the required safe amount of cobalt would include the additives cobalt(II) carbonate and cobalt(II) carbonate hydroxide (2:3) monohydrate. No other cobalt compound is currently authorised as a feed additive pursuant to Regulation (EC) No 1831/2003.
- (11) Commission Regulation (EU) 2020/354 ⁽⁸⁾ establishes as particular nutritional purpose the long-term supply of grazing animals with trace elements and/or vitamins for feed intended for ruminants with a functional rumen, which is allowed to be administered in the form of bolus. A cessation of the use of cobalt compounds as an additive in feed, in particular dietetic feed in the form of bolus for grazing animals, would prevent operators from meeting

⁽⁴⁾ EFSA Journal 2009;7(12):1383.

⁽⁵⁾ EFSA Journal 2012;10(6):2727.

⁽⁶⁾ EFSA Journal 2012;10(7):2791.

⁽⁷⁾ A review of the role of cobalt in animal metabolism, in particular of ruminants, and of the effects of cobalt deficiency, is available in: 'Relationship between Vitamin B12 and Cobalt Metabolism in Domestic Ruminant: An Update', by Jose-Ramiro González-Montaña et al. Animals 2020, 10, 1855; doi:10.3390/ani10101855.

⁽⁸⁾ Commission Regulation (EU) 2020/354 of 4 March 2020 establishing a list of intended uses of feed intended for particular nutritional purposes and repealing Directive 2008/38/EC (OJ L 67, 5.3.2020, p. 1).

that particular nutritional purpose with regard to the specific nutritional needs of ruminants whose process of assimilation, absorption or metabolism can be impaired by a lack of cobalt in their diet. Such lack of feed appropriate to the conditions of grazing ruminants would therefore be detrimental to the welfare of those animals.

- (12) The actual impact of the non-availability of the additives cobalt(II) acetate tetrahydrate, cobalt(II) carbonate, cobalt(II) carbonate hydroxide (2:3) monohydrate and cobalt(II) sulphate, heptahydrate can be measured taking into consideration the extent of use of those additives across the Union, although some Member States are more affected by a cobalt deficiency due to the nature of soils and pastures. For instance, in Ireland, 62 % of all complementary feed manufactured for ruminants and equines contains one of those four additives and more than 11,7 million animals could potentially be negatively affected by a lack of access to those products. In France, 11,5 million ruminants are supplemented with one of those four additives in the form of bolus or liquid feed and would be affected in terms of animal welfare in the absence of use of those products. In general, it appears from data received from national competent authorities and operators that the additives concerned are widely used for ruminants, mostly in feed in the form of bolus or liquid, but also for horses and rabbits. It was estimated that, at the end of 2021, there were 76 million head of bovine animals and 71 million head of sheep and goats on Union farms ⁽⁹⁾. Statistical data on rabbit farming ⁽¹⁰⁾ from 2016 show that around 180 million farmed rabbits were reared for meat consumption in the Union.
- (13) Based on the Authority's opinions of 12 November 2009, 22 May 2012 and 12 June 2012, and data on the actual use of the additives cobalt(II) acetate tetrahydrate, cobalt(II) carbonate, cobalt(II) carbonate hydroxide (2:3) monohydrate and cobalt(II) sulphate, heptahydrate in the Union, it derives that the animal species or categories whose welfare would be significantly impaired by the cessation of the use of cobalt in their nutrition are ruminants, horses and rabbits.
- (14) In order to avoid negative effects on the welfare of ruminants, horses and rabbits deriving from an interruption of the authorisation of the use of the additives cobalt(II) acetate tetrahydrate, cobalt(II) carbonate, cobalt(II) carbonate hydroxide (2:3) monohydrate and cobalt(II) sulphate, heptahydrate, as from 15 July 2023, and in the absence of currently available alternative, their use should be urgently provisionally authorised until a decision on the application for their authorisation submitted in accordance with Article 7 of Regulation (EC) No 1831/2003 is taken. The provisional authorisation should be granted for a maximum period of five years, according to Article 15 of Regulation (EC) No 1831/2003.
- (15) In order to ensure that only safe and efficacious additives are used in accordance with the objectives pursued by Regulation (EC) No 1831/2003, the terms of the provisional authorisation should reflect the terms of authorisation provided for by Implementing Regulation (EU) No 601/2013 for the four additives concerned as regards the use intended for ruminants, equidae and lagomorphs.
- (16) The Reference Laboratory set up by Regulation (EC) No 1831/2003 considered that the conclusions and recommendations reached for those additives in the earlier assessment carried out regarding the method of analysis in the context of the authorisation granted by Implementing Regulation (EU) No 601/2013 are valid and applicable to the provisional authorisation.
- (17) Due to the expiry of the authorisation of use of the additives cobalt(II) acetate tetrahydrate, cobalt(II) carbonate, cobalt(II) carbonate hydroxide (2:3) monohydrate and cobalt(II) sulphate, heptahydrate on 15 July 2023, and in order to ensure a high level of protection of the welfare of the animals concerned by the provisional authorisation, this Regulation should enter into force as a matter of urgency.
- (18) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

⁽⁹⁾ Key figures on the European food chain – 2022 edition, Eurostat.

⁽¹⁰⁾ European Commission, Directorate-General for Health and Food Safety, *Commercial rabbit farming in the European Union – Overview report*, Publications Office, 2018, <https://data.europa.eu/doi/10.2772/62174>

HAS ADOPTED THIS REGULATION:

Article 1

Provisional authorisation

The substances specified in the Annex, belonging to the additive category 'nutritional additives' and to the functional group 'compounds of trace elements', are provisionally authorised as additives in animal nutrition, subject to the conditions laid down in that Annex.

Article 2

Entry into force

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, 13 July 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Identification number of the additive	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
					Element (Co) in mg/kg of complete feed with a moisture content of 12 %			

Category of nutritional additives. Functional group: compounds of trace elements

3b301	Cobalt(II) acetate tetrahydrate	<i>Additive composition</i> Cobalt(II) acetate tetrahydrate, as crystals/granules, with a minimum content of 23% cobalt Particles < 50 µm: below 1 % <i>Characterisation of the active substance</i> Chemical formula: $\text{Co}(\text{CH}_3\text{COO})_2 \times 4\text{H}_2\text{O}$ CAS number: 6147-53-1 <i>Analytical methods ⁽¹⁾</i> <i>For the identification of acetate in the additive:</i> — European Pharmacopoeia monograph 01/2008:20301. <i>For the crystallographic characterisation of the additive:</i> — X-Ray diffraction. <i>For the determination of total cobalt in the additive, premixtures, compound feed and feed materials:</i> — EN 15510 - inductively coupled plasma optical (atomic) emission spectrometry (ICP-AES) or	Ruminants with a functional rumen, equidae, lagomorphs	-	-	1 (total)	- The additive shall be incorporated into compound feed in the form of a premixture. - Declarations to be made on the labelling of the additive and premixture: — Cobalt content — 'It is recommended to limit the supplementation with Cobalt to 0,3 mg/kg in complete feed. In this context, the risk for Cobalt deficiency due to local conditions and the specific composition of the diet should be taken into account.' - For users of the additive and premixtures, feed business operators shall establish operational procedures and organisational measures to address potential risks resulting from their use. Where those risks cannot be eliminated by such procedures and measures, the additive and premixtures shall be used with personal skin, eye and breathing protective equipment.	As soon as a decision on the authorisation of the additive has been taken under Article 9 of Regulation (EC) No 1831/2003 and at the latest on 14 July 2028.
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		— CEN/TS 15621 - inductively coupled plasma optical (atomic) emission spectrometry (ICP-AES) after pressure digestion. <i>For the determination of particle size distribution:</i> — ISO 13320 - Particle size analysis - Laser diffraction methods.					4. Declaration to be made in the instructions of use of the compound feed: 'Protective measures to avoid exposure with Cobalt by inhalation or by dermal route should be taken.'	
3b302	Cobalt(II) carbonate	<i>Additive composition</i> Cobalt(II) carbonate, as powder, with a content of 45% - 48% cobalt Cobalt carbonate: minimum 75% Cobalt hydroxide: 3% - 15% Water: maximum 6% Particles < 11 µm: below 90 % <i>Characterisation of the active substance</i> Chemical formula: CoCO_3 CAS number: 513-79-1 <i>Analytical methods (*)</i> <i>For the identification of carbonate in the additive:</i>	Ruminants with a functional rumen, equidae, lagomorphs	-	-	1 (total)	1. The additive shall be incorporated into compound feed in the form of a premixture. This compound feed shall be placed on the market in a non-powder form. 2. Declarations to be made on the labelling of the additive and premixture: — Cobalt content — 'It is recommended to limit the supplementation with Cobalt to 0,3 mg/kg in complete feed. In this context, the risk for Cobalt deficiency due to local conditions and the specific composition of the diet should be taken into account.'	As soon as a decision on the authorisation of the additive has been taken under Article 9 of Regulation (EC) No 1831/2003 and at the latest on 14 July 2028.

		— European Pharmacopoeia monograph 01/2008:20301. <i>For the crystallographic characterisation of the additive:</i> — X-Ray diffraction. <i>For the determination of total cobalt in the additive, premixtures, compound feed and feed materials:</i> — EN 15510 - inductively coupled plasma optical (atomic) emission spectrometry (ICP-AES) or — CEN/TS 15621 - inductively coupled plasma optical (atomic) emission spectrometry (ICP-AES) after pressure digestion. <i>For the determination of particle size distribution:</i> — ISO 13320 - Particle size analysis - Laser diffraction methods.					3. For users of the additive and premixtures, feed business operators shall establish operational procedures and organisational measures to address potential risks resulting from their use. Where those risks cannot be eliminated by such procedures and measures, the additive and premixtures shall be used with personal skin, eye and breathing protective equipment. 4. Declaration to be made in the instructions of use of the compound feed: 'Protective measures to avoid exposure with Cobalt by inhalation or by dermal route should be taken.'	
3b303	Cobalt(II) carbonate hydroxide (2:3) monohydrate	<i>Additive composition</i> Cobalt(II) carbonate hydroxide (2:3) monohydrate, as powder, with a minimum content of 50% cobalt Particles < 50 µm: below 98 %	Ruminants with a functional rumen, equidae, lagomorphs	-	-	1 (total)	1. The additive shall be incorporated into compound feed in the form of a premixture. This compound feed shall be placed on the market in a non-powder form.	As soon as a decision on the authorisation of the additive has been taken under Article 9 of Regulation (EC) No 1831/2003 and at the latest on 14 July 2028.

		<i>Characterisation of the active substance</i> Chemical formula: $2\text{CoCO}_3 \times 3\text{Co(OH)}_2 \times \text{H}_2\text{O}$ CAS number: 51839-24-8 <i>Analytical methods (1)</i> <i>For the identification of carbonate in the additive:</i> — European Pharmacopoeia monograph 01/2008:20301. <i>For the crystallographic characterisation of the additive:</i> — X-Ray diffraction. <i>For the determination of total cobalt in the additive, premixtures, compound feed and feed materials:</i> — EN 15510 - inductively coupled plasma optical (atomic) emission spectrometry (ICP-AES) - or — CEN/TS 15621 - inductively coupled plasma optical (atomic) emission spectrometry (ICP-AES) after pressure digestion. <i>For the determination of particle size distribution:</i> — ISO 13320 - Particle size analysis - Laser diffraction methods.					2. Declarations to be made on the labelling of the additive and premixture: — Cobalt content — 'It is recommended to limit the supplementation with Cobalt to 0,3 mg/kg in complete feed. In this context, the risk for Cobalt deficiency due to local conditions and the specific composition of the diet should be taken into account.' 3. For users of the additive and premixtures, feed business operators shall establish operational procedures and organisational measures to address potential risks resulting from their use. Where those risks cannot be eliminated by such procedures and measures, the additive and premixtures shall be used with personal skin, eye and breathing protective equipment. 4. Declaration to be made in the instructions of use of the compound feed: 'Protective measures to avoid exposure with Cobalt by inhalation or by dermal route should be taken.'	
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3b305	Cobalt(II) sulphate, heptahydrate	<i>Additive composition</i> Cobalt(II) sulphate, heptahydrate, as powder, with a minimum content of 20% cobalt Particles < 50 µm: below 95 % <i>Characterisation of the active substance</i> Chemical formula: $\text{CoSO}_4 \times 7\text{H}_2\text{O}$ CAS number: 10026-24-1 <i>Analytical methods ⁽¹⁾</i> <i>For the identification of sulphate in the additive:</i> — European Pharmacopoeia monograph 01/2008:20301. <i>For the crystallographic characterisation of the additive:</i> — X-Ray diffraction. <i>For the determination of total cobalt in the additive, premixtures, compound feed and feed materials:</i> — EN 15510 - inductively coupled plasma optical (atomic) emission spectrometry (ICP-AES) or — CEN/TS 15621 - inductively coupled plasma optical (atomic) emission spectrometry (ICP-AES) after pressure digestion.	Ruminants with a functional rumen, equidae, lagomorphs	-	-	1 (total)	1. The additive shall be incorporated into compound feed in the form of a premixture. This compound feed shall be placed on the market in a non-powder form. 2. Declarations to be made on the labelling of the additive and premixture: — Cobalt content — 'It is recommended to limit the supplementation with Cobalt to 0,3 mg/kg in complete feed. In this context, the risk for Cobalt deficiency due to local conditions and the specific composition of the diet should be taken into account.' 3. For users of the additive and premixtures, feed business operators shall establish operational procedures and organisational measures to address potential risks resulting from their use. Where those risks cannot be eliminated by such procedures and measures, the additive and premixtures shall be used with personal skin, eye and breathing protective equipment.	As soon as a decision on the authorisation of the additive has been taken under Article 9 of Regulation (EC) No 1831/2003 and at the latest on 14 July 2028.
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		<i>For the determination of particle size distribution:</i> — ISO 13320 - Particle size analysis - Laser diffraction methods.					4. Declaration to be made in the instructions of use of the compound feed: 'Protective measures to avoid exposure with Cobalt by inhalation or by dermal route should be taken.'	
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(¹) Details of the analytical methods are available at the following address of the Reference Laboratory: https://joint-research-centre.ec.europa.eu/eurl-fa-eurl-feed-additives/eurl-fa-authorisation/eurl-fa-evaluation-reports_en

DECISIONS

COUNCIL DECISION (EU) 2023/1456 of 10 July 2023 appointing a member of the Court of Auditors

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 286(2) thereof,

Having regard to the proposal by Hungary,

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

Whereas:

- (1) The term of office of Ms Ildikó GÁLL-PELCZ will expire on 31 August 2023.
- (2) A member should therefore be appointed to the Court of Auditors,

HAS ADOPTED THIS DECISION:

Article 1

Ms Ildikó GÁLL-PELCZ is hereby appointed member of the Court of Auditors for the period from 1 September 2023 to 31 August 2029.

Article 2

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

Done at Brussels, 10 July 2023.

For the Council
The President
P. NAVARRO RÍOS

⁽¹⁾ Opinion of 1 June 2023 (not yet published in the Official Journal).

POLITICAL AND SECURITY COMMITTEE DECISION (CFSP) 2023/1457**of 13 July 2023****on the appointment of the EU Force Commander for the European Union military operation to contribute to maritime security in the West Indian Ocean and in the Red Sea (EUNAVFOR ATALANTA), and repealing Decision (CFSP) 2023/311 (EUNAVFOR ATALANTA/2/2023)**

THE POLITICAL AND SECURITY COMMITTEE,

Having regard to the Treaty on European Union, and in particular Article 38 thereof,

Having regard to Council Joint Action 2008/851/CFSP of 10 November 2008 on a European Union military operation to contribute to maritime security in the West Indian Ocean and in the Red Sea (EUNAVFOR ATALANTA) ⁽¹⁾, and in particular Article 6(1) thereof,

Whereas:

- (1) Pursuant to Article 6(1) of Joint Action 2008/851/CFSP, the Council authorised the Political and Security Committee (PSC) to take the relevant decisions on the appointment of the EU Force Commander for the European Union military operation to contribute to maritime security in the West Indian Ocean and in the Red Sea (EUNAVFOR ATALANTA) (the 'EU Force Commander').
- (2) On 7 February 2023, the PSC adopted Decision (CFSP) 2023/311 ⁽²⁾, appointing Rear Admiral Juan María IBÁÑEZ MARTÍN as the EU Force Commander.
- (3) On 23 May 2023, the Italian military authorities proposed the appointment of Rear Admiral Fabrizio RUTTERI to succeed Rear Admiral Juan María IBÁÑEZ MARTÍN as the EU Force Commander from 17 July 2023.
- (4) On 2 June 2023, the EU Operation Commander of EUNAVFOR ATALANTA supported that proposed appointment.
- (5) On 9 June 2023, the EU Military Committee supported the recommendation made by the Italian military authorities.
- (6) A decision on the appointment of Rear Admiral Fabrizio RUTTERI should be taken.
- (7) Decision (CFSP) 2023/311 should therefore be repealed,

HAS ADOPTED THIS DECISION:

Article 1

Rear Admiral Fabrizio RUTTERI is hereby appointed as the EU Force Commander for the European Union military operation to contribute to maritime security in the West Indian Ocean and in the Red Sea (EUNAVFOR ATALANTA) from 17 July 2023.

Article 2

Decision (CFSP) 2023/311 is hereby repealed.

⁽¹⁾ OJ L 301, 12.11.2008, p. 33.

⁽²⁾ Political and Security Committee Decision (CFSP) 2023/311 of 7 February 2023 on the appointment of the EU Force Commander for the European Union military operation to contribute to maritime security in the West Indian Ocean and in the Red Sea (EUNAVFOR ATALANTA), and repealing Decision (CFSP) 2022/2205 (EUNAVFOR ATALANTA/1/2023) (OJ L 40, 10.2.2023, p. 24).

Article 3

This Decision shall enter into force on 17 July 2023.

Done at Brussels, 13 July 2023.

For the Political and Security Committee

The Chairperson

D. PRONK

COMMISSION IMPLEMENTING DECISION (EU) 2023/1458**of 11 July 2023****concerning certain interim emergency measures relating to African swine fever in Greece***(notified under document C(2023) 4794)***(Only the Greek text is authentic)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law') ⁽¹⁾, and in particular Article 259(2) thereof,

Whereas:

- (1) African swine fever is an infectious viral disease affecting kept and wild porcine animals and can have a severe impact on the concerned animal population and the profitability of farming causing disturbance to movements of consignments of those animals and products thereof within the Union and exports to third countries.
- (2) In the event of outbreaks of African swine fever in kept porcine animals, there is a serious risk of the spread of that disease to other establishments of kept porcine animals.
- (3) Commission Delegated Regulation (EU) 2020/687 ⁽²⁾ supplements the rules for the control of the listed diseases referred to in Article 9(1), points (a), (b) and (c), of Regulation (EU) 2016/429, and defined as category A, B and C diseases in Commission Implementing Regulation (EU) 2018/1882 ⁽³⁾. In particular, Articles 21 and 22 of Delegated Regulation (EU) 2020/687 provide for the establishment of a restricted zone in the event of an outbreak of a category A disease, including African swine fever, and for certain measures to be applied therein. In addition, Article 21(1) of that Delegated Regulation provides that the restricted zone is to comprise a protection zone, a surveillance zone, and, if necessary, further restricted zones around or adjacent to the protection and surveillance zones.
- (4) Commission Implementing Regulation (EU) 2023/594 ⁽⁴⁾ lays down special disease control measures regarding African swine fever. In particular, Article 3, point (a), of that Implementing Regulation provides for the establishment of a restricted zone in the case of an outbreak of African swine fever in kept porcine animals, in accordance with Article 21(1) of Delegated Regulation (EU) 2020/687.
- (5) Greece has informed the Commission of the current African swine fever situation on its territory, following the confirmation of one outbreak of that disease in kept porcine animals in the Region of West Macedonia on 5 July 2023 and, in accordance with Delegated Regulation (EU) 2020/687 and Implementing Regulation (EU) 2023/594, it has established a restricted zone, which comprises protection and surveillance zones, where the general disease control measures laid down in Delegated Regulation (EU) 2020/687 are applied, in order to prevent the further spread of that disease.

⁽¹⁾ OJ L 84, 31.3.2016, p. 1.

⁽²⁾ Commission Delegated Regulation (EU) 2020/687 of 17 December 2019 supplementing Regulation (EU) 2016/429 of the European Parliament and the Council, as regards rules for the prevention and control of certain listed diseases (OJ L 174, 3.6.2020, p. 64).

⁽³⁾ Commission Implementing Regulation (EU) 2018/1882 of 3 December 2018 on the application of certain disease prevention and control rules to categories of listed diseases and establishing a list of species and groups of species posing a considerable risk for the spread of those listed diseases (OJ L 308, 4.12.2018, p. 21).

⁽⁴⁾ Commission Implementing Regulation (EU) 2023/594 of 16 March 2023 laying down special disease control measures for African swine fever and repealing Implementing Regulation (EU) 2021/605 (OJ L 79, 17.3.2023, p. 65).

- (6) In order to prevent any unnecessary disturbance to trade within the Union and to avoid unjustified barriers to trade by third countries, it is necessary to identify at Union level the restricted zone, which comprises protection and surveillance zones for African swine fever in Greece in collaboration with that Member State.
- (7) Given the urgency of the epidemiological situation in the Union as regards the spread of African swine fever, it is important that the measures laid down in this Implementing Decision apply as soon as possible.
- (8) Accordingly, pending the opinion of the Standing Committee on Plants, Animals, Food and Feed, the infected zone in Greece should be established immediately and listed in the Annex to this Decision and the duration of that zoning fixed.
- (9) This Decision is to be reviewed at the next meeting of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

Article 1

Greece shall ensure that:

- (a) a restricted zone which comprises a protection zone and a surveillance zone is established immediately by Greece in accordance with Article 21(1) of Delegated Regulation (EU) 2020/687, subject to the conditions laid down in that Article;
- (b) the protection and surveillance zones referred to in point (a) comprise at least the areas listed in the Annex to this Decision.

Article 2

This Decision shall apply until 5 October 2023.

Article 3

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 11 July 2023.

For the Commission
Stella KYRIAKIDES
Member of the Commission

ANNEX

Areas established as the restricted zone in Greece as referred to in Article 1	Date until applicable
Protection zone: 1. In the regional unit of Florina The municipal department of Skopos (Florina municipality)	5 October 2023
Surveillance zone: 1. In the regional unit of Florina The municipal departments of Achlada, Meliti, Lofi, Vevi, Sitaria, Palestra, Neochoraki, Tripotamos, Itea, Papagiannis, Marina, Mesochori and Mesokampos (Florina municipality) The municipal departments of Kelli, Klidi, Petres, Agios Panteleimon and Faraggi (Amintaio municipality) 2. In the regional unit of Pella The municipal departments of Agios Athanasios, Panagitsa, Arnissa and Perea (Edessa municipality) The municipal departments of Orma and Sarakini (Almopia municipality)	5 October 2023

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

DECISION No 1/2023 OF THE JOINT EUROPEAN UNION/SWITZERLAND AIR TRANSPORT COMMITTEE SET UP UNDER THE AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND THE SWISS CONFEDERATION ON AIR TRANSPORT

of 9 June 2023

**replacing the Annex to the Agreement between the European Community and the Swiss
Confederation on Air Transport [2023/1459]**

THE EUROPEAN UNION/SWITZERLAND AIR TRANSPORT COMMITTEE,

Having regard to the Agreement between the European Community and the Swiss Confederation on Air Transport (the 'Agreement'), and in particular Article 23(4) thereof,

HAS DECIDED AS FOLLOWS:

Sole Article

The Annex to this Decision replaces the Annex to the Agreement, as from 15 July 2023.

Done at Bern and Brussels, on 9 June 2023.

For the Joint Committee

The Head of the European Union Delegation
Filip CORNELIS

The Head of the Swiss Delegation
Christian HEGNER

ANNEX

For the purposes of this Agreement:

- By virtue of the Treaty of Lisbon, entered into force on 1 December 2009, the European Union shall replace and succeed the European Community;
- Wherever acts specified in this Annex contain references to Member States of the European Community, as replaced by the European Union, or a requirement for a link with the latter, the references shall, for the purpose of the Agreement, be understood to apply equally to Switzerland or to the requirement of a link with Switzerland;
- The references to Council Regulations (EEC) No 2407/92 and (EEC) No 2408/92 made in the Articles 4, 15, 18, 27 and 35 of the Agreement, shall be understood as references to Regulation (EC) No 1008/2008 of the European Parliament and of the Council;
- Without prejudice to Article 15 of this Agreement, the term ‘Community air carrier’ referred to in the following Union directives and regulations shall include an air carrier which is licensed and has its principal place of business and, if any, its registered office in Switzerland in accordance with the provisions of Regulation (EC) No 1008/2008. Any reference to Council Regulation (EEC) No 2407/92 shall be understood as reference to Regulation (EC) No 1008/2008;
- Any reference in the following texts to Articles 81 and 82 of the Treaty or to Articles 101 and 102 of the Treaty on the Functioning of the European Union shall be understood to mean Articles 8 and 9 of this Agreement.

1. Aviation liberalisation and other civil aviation rules

Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast), OJ L 293, 31.10.2008, p. 3, as amended by:

- Regulation (EU) 2018/1139, OJ L 212, 22.8.2018, p. 1,
- Regulation (EU) 2020/696, OJ L 165, 27.5.2020, p. 1,
- Commission Delegated Regulation (EU) 2020/2114, OJ L 426, 17.12.2020, p. 1; Regulation (EU) 2020/2114 is applicable in Switzerland in its entirety since 18.12.2020,
- Commission Delegated Regulation (EU) 2020/2115, OJ L 426, 17.12.2020, p. 4; Regulation (EU) 2020/2115 is applicable in Switzerland in its entirety since 18.12.2020.

Council Directive 2000/79/EC of 27 November 2000 concerning the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation concluded by the Association of European Airlines (AEA), the European Transport Workers’ Federation (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA) (text with EEA relevance), OJ L 302, 1.12.2000, p. 57.

Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, OJ L 299, 18.11.2003, p. 9.

Regulation (EC) No 437/2003 of the European Parliament and of the Council of 27 February 2003 on statistical returns in respect of the carriage of passengers, freight and mail by air, OJ L 66, 11.3.2003, p. 1.

Commission Regulation (EC) No 1358/2003 of 31 July 2003 implementing Regulation (EC) No 437/2003 of the European Parliament and of the Council on statistical returns in respect of the carriage of passengers, freight and mail by air and amending Annexes I and II thereto, OJ L 194, 1.8.2003, p. 9, as amended by:

- Commission Regulation (EC) No 158/2007, OJ L 49, 17.2.2007, p. 9.

Regulation (EC) No 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators OJ L 138, 30.4.2004, p. 1, as amended by:

- Commission Regulation (EU) No 285/2010, OJ L 87, 7.4.2010, p. 19,
- Commission Delegated Regulation (EU) 2020/1118, OJ L 243, 29.7.2020, p. 1.

Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports, OJ L 14, 22.1.1993, p. 1 (Articles 1-12), as amended by:

- Regulation (EC) No 793/2004, OJ L 138, 30.4.2004, p. 50,
- Regulation (EU) 2020/459, OJ L 99, 31.3.2020, p. 1,
- Commission Delegated Regulation (EU) 2020/1477, OJ L 338, 15.10.2020, p. 4,
- Regulation (EU) 2021/250, OJ L 58, 19.2.2021, p. 1; paragraphs 1 and 4 of Article 10a of Regulation (EEC) No 95/93, as amended by paragraph (6) of Article 1 of Regulation (EU) 2021/250, are applicable in Switzerland since 20.2.2021,
- Commission Delegated Regulation (EU) 2021/1889, OJ L 384, 29.10.2021, p. 20,
- Commission Delegated Regulation (EU) 2022/255, OJ L 42, 23.2.2022, p. 1,
- Regulation (EU) 2022/2038, OJ L 275, 25.10.2022, p. 14.

Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges (Text with EEA relevance), OJ L 70, 14.3.2009, p. 11.

Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports, OJ L 272, 25.10.1996, p. 36, Articles 1-9, 11-23, and 25.

Regulation (EC) No 80/2009 of the European Parliament and of the Council of 14 January 2009 on a Code of Conduct for computerised reservation systems and repealing Council Regulation (EEC) No 2299/89 (text with EEA relevance), OJ L 35, 4.2.2009, p. 47.

2. Competition rules

Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Text with EEA relevance), OJ L 1, 4.1.2003, p. 1 (Articles 1-13, 15-45)

(To the extent that this Regulation is relevant for the application of this Agreement. The insertion of this Regulation does not affect the division of tasks according to this Agreement.)

Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (Text with EEA relevance), OJ L 123, 27.4.2004, p. 18, as amended by:

- Commission Regulation (EC) No 622/2008, OJ L 171, 1.7.2008, p. 3.

Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (text with EEA relevance), OJ L 24, 29.1.2004, p. 1.

(Article 1-18, 19(1)-(2), and 20-23)

With respect to Article 4 (5) of the Merger Regulation the following shall apply between the European Community and Switzerland:

- (1) With regard to a concentration as defined in Article 3 of Regulation (EC) No 139/2004 which does not have a Community dimension within the meaning of Article 1 of that Regulation and which is capable of being reviewed under the national competition laws of at least three EC Member States and the Swiss Confederation, the persons or undertakings referred to in Article 4(2) of that Regulation may, before any notification to the competent authorities, inform the EC Commission by means of a reasoned submission that the concentration should be examined by the Commission.
- (2) The European Commission shall transmit all submissions pursuant to Article 4(5) of Regulation (EC) No 139/2004 and the previous paragraph to the Swiss Confederation without delay.
- (3) Where the Swiss Confederation has expressed its disagreement as regards the request to refer the case, the competent Swiss competition authority shall retain its competence, and the case shall not be referred from the Swiss Confederation pursuant to this paragraph.

With respect to time limits referred to in Articles 4(4) and (5), Articles 9(2) and (6), and Articles 22(2) of the Merger Regulation:

- (1) The European Commission shall transmit all the relevant documents pursuant to Articles 4(4) and (5), Articles 9(2) and (6) and Article 22(2) to the competent Swiss competition authority without delay.
- (2) The calculation of the time limits referred to in Articles 4(4) and (5), Articles 9(2) and (6), and Article 22(2) of Regulation (EC) No 139/2004 shall start, for the Swiss Confederation, upon receipt of the relevant documents by the competent Swiss competition authority.

Commission Regulation (EC) No 802/2004 of 21 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (text with EEA relevance), OJ L 133, 30.4.2004, p. 1 (Articles 1-24), as amended by:

- Commission Regulation (EC) No 1792/2006, OJ L 362, 20.12.2006, p. 1,
- Commission Regulation (EC) No 1033/2008, OJ L 279, 22.10.2008, p. 3,
- Commission Implementing Regulation (EU) No 1269/2013, OJ L 336, 14.12.2013, p. 1.

Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (Codified version) (text with EEA relevance), OJ L 318, 17.11.2006, p. 17.

Council Regulation (EC) No 487/2009 of 25 May 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector (codified version) (text with EEA relevance), OJ L 148, 11.6.2009, p. 1.

3. Aviation safety

Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91, OJ L 212, 22.8.2018, p. 1, as amended by:

- Commission Delegated Regulation (EU) 2021/1087, OJ L 236, 5.7.2021, p. 1.

The Agency shall enjoy also in Switzerland the powers granted to it under the provisions of the Regulation.

The Commission shall enjoy also in Switzerland the powers granted to it for decisions pursuant to Article 2(6),(7), Article 41(6), Article 62(5), Article 67(2),(3), Article 70(4), Article 71(2), Article 76(4), Article 84(1), Article 85(9), Article 104(3)(i), Article 105(1) and Article 106(1),(6).

Notwithstanding the horizontal adaptation provided for in the second indent of the Annex to the Agreement between the European Community and the Swiss Confederation on Air Transport, the references to the 'Member States' made in the provisions of Regulation (EU) No 182/2011 mentioned in Article 127 of Regulation (EU) 2018/1139 shall not be understood to apply to Switzerland.

Nothing in this Regulation shall be construed so as to transfer to the EASA authority to act on behalf of Switzerland under international agreements for other purposes than to assist in the performance of its obligations pursuant to such agreements.

The text of the Regulation shall, for the purposes of this Agreement, be read with the following adaptations:

- (a) Article 68 is amended as follows:

- (i) in paragraph 1(a), the words 'or Switzerland' shall be inserted after the words 'the Union';

(ii) the following paragraph is added:

‘4. Whenever the Union negotiates with a third country in order to conclude an agreement providing that a Member State or the Agency may issue certificates on the basis of certificates issued by the aeronautical authorities of that third country, it shall endeavour to obtain for Switzerland an offer of a similar agreement with the third country in question. Switzerland shall, in turn, endeavour to conclude with third countries agreements corresponding to those of the Union’.

(b) In Article 95, the following paragraph shall be added:

‘3. By way of derogation from Article 12(2)(a) of the Conditions of Employment of Other Servants of the European Union, Swiss nationals enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Agency.’

(c) In Article 96, the following paragraph is added:

‘Switzerland shall apply to the Agency the Protocol on the Privileges and Immunities of the European Union, which is set out as Annex A to the present Annex, in accordance with the Appendix to Annex A.’

(d) In Article 102, the following paragraph is added:

‘5. Switzerland shall participate fully in the Management Board and shall within it have the same rights and obligations as European Union Member States, except for the right to vote’.

(e) In Article 120, the following paragraph shall be added:

‘13. Switzerland shall participate in the financial contribution referred to in paragraph 1(b), according to the following formula:

$$S (0,2/100) + S [1 - (a+b) 0,2/100] c/C$$

where:

S = the part of the budget of the Agency not covered by the fees and charges mentioned in paragraph 1 (c) and (d)

a = the number of Associated States

b = the number of EU Member States

c = the contribution of Switzerland to the ICAO budget,

C = the total contribution of the EU Member States and of the Associated States to the ICAO budget.’

(f) In Article 122, the following paragraph is added:

‘6. The provisions relating to financial control by the Union in Switzerland concerning the participants in the activities of the Agency are set out in Annex B to the present Annex.’

(g) Annex I to the Regulation shall be extended to include the following aircraft as products covered by Article 3(1)(a) of Commission Regulation (EU) No 748/2012 of 3 August 2012 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations ⁽¹⁾:

A/c - [HB-JES] – type Gulfstream G-V

A/c - [HB-ZDF] – type MD900.

(h) In Article 132(1), the reference to Regulation (EU) 2016/679 shall be understood, regarding Switzerland, as a reference to relevant national legislation.

(i) Article 140(6) does not apply to Switzerland.

⁽¹⁾ OJ L 224, 21.8.2012, p. 1.

Commission Delegated Regulation (EU) 2022/1645 of 14 July 2022 laying down rules for the application of Regulation (EU) 2018/1139 of the European Parliament and of the Council, as regards requirements for the management of information security risks with a potential impact on aviation safety for organisations covered by Commission Regulations (EU) No 748/2012 and (EU) No 139/2014 and amending Commission Regulations (EU) No 748/2012 and (EU) No 139/2014, OJ L 248, 26.9.2022, p. 18.

Commission Implementing Regulation (EU) 2023/203 of 27 October 2022 laying down rules for the application of Regulation (EU) 2018/1139 of the European Parliament and of the Council, as regards requirements for the management of information security risks with a potential impact on aviation safety for organisations covered by Commission Regulations (EU) No 1321/2014, (EU) No 965/2012, (EU) No 1178/2011, (EU) 2015/340, Commission Implementing Regulations (EU) 2017/373 and (EU) 2021/664, and for competent authorities covered by Commission Regulations (EU) No 748/2012, (EU) No 1321/2014, (EU) No 965/2012, (EU) No 1178/2011, (EU) 2015/340 and (EU) No 139/2014, Commission Implementing Regulations (EU) 2017/373 and (EU) 2021/664 and amending Commission Regulations (EU) No 1178/2011, (EU) No 748/2012, (EU) No 965/2012, (EU) No 139/2014, (EU) No 1321/2014, (EU) 2015/340, and Commission Implementing Regulations (EU) 2017/373 and (EU) 2021/664, OJ L 31, 2.2.2023, p. 1.

Commission Regulation (EU) No 1178/2011 of 3 November 2011 laying down technical requirements and administrative procedures related to civil aviation aircrew pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, OJ L 311, 25.11.2011, p. 1, as amended by:

- Commission Regulation (EU) No 290/2012, OJ L 100, 5.4.2012, p. 1,
- Commission Regulation (EU) No 70/2014, OJ L 23, 28.1.2014, p. 25,
- Commission Regulation (EU) No 245/2014, OJ L 74, 14.3.2014, p. 33,
- Commission Regulation (EU) 2015/445, OJ L 74, 18.3.2015, p. 1,
- Commission Regulation (EU) 2016/539, OJ L 91, 7.4.2016, p. 1,
- Commission Regulation (EU) 2018/1065, OJ L 192, 30.7.2018, p. 21,
- Commission Regulation (EU) 2018/1119, OJ L 204, 13.8.2018, p. 13,
- Commission Regulation (EU) 2018/1974, OJ L 326, 20.12.2018, p. 1,
- Commission Regulation (EU) 2019/27, OJ L 8, 10.1.2019, p. 1,
- Commission Implementing Regulation (EU) 2019/430, OJ L 75, 19.3.2019, p. 66,
- Commission Implementing Regulation (EU) 2019/1747, OJ L 268, 22.10.2019, p. 23,
- Commission Implementing Regulation (EU) 2020/359, OJ L 67, 5.3.2020, p. 82,
- Commission Delegated Regulation (EU) 2020/723, OJ L 170, 2.6.2020, p. 1,
- Commission Implementing Regulation (EU) 2020/2193, OJ L 434, 23.12.2020, p. 13,
- Commission Implementing Regulation (EU) 2021/1310, OJ L 284, 9.8.2021, p. 15,
- Commission Implementing Regulation (EU) 2021/2227, OJ L 448, 15.12.2021, p. 39,
- Commission Implementing Regulation (EU) 2022/844, OJ L 148, 31.5.2022, p. 24,
- Commission Implementing Regulation (EU) 2023/203, OJ L 31, 2.2.2023, p. 1.

Commission Delegated Regulation (EU) 2020/723 of 4 March 2020 laying down detailed rules with regard to the acceptance of third-country certification of pilots and amending Regulation (EU) No 1178/2011, OJ L 170, 2.6.2020, p. 1.

Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation, OJ L 373, 31.12.1991, p. 4 (Articles 1-3, 4(2), (5-11, and 13), as amended by:

- Regulation (EC) No 1899/2006, OJ L 377, 27.12.2006, p. 1,
- Regulation (EC) No 1900/2006, OJ L 377, 27.12.2006, p. 176,
- Commission Regulation (EC) No 8/2008, OJ L 10, 12.1.2008, p. 1,
- Commission Regulation (EC) No 859/2008, OJ L 254, 20.9.2008, p. 1.

In Accordance with Article 139 of Regulation (EU) 2018/1139, Regulation (EEC) No 3922/91 is repealed from the date of application of the detailed rules adopted pursuant to point (a) of Article 32(1) of Regulation (EU) 2018/1139 on flight and duty time limitations and rest requirements with regard to air taxi, emergency medical service and single pilot commercial air transport operations by aeroplanes.

Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC (text with EEA relevance), OJ L 295, 12.11.2010, p. 35, as amended by:

— Regulation (EU) No 376/2014, OJ L 122, 24.4.2014, p. 18,

— Regulation (EU) 2018/1139, OJ L 212, 22.8.2018, p. 1.

Commission Regulation (EC) No 104/2004 of 22 January 2004 laying down rules on the organisation and composition of the Board of Appeal of the European Aviation Safety Agency, OJ L 16, 23.1.2004, p. 20.

Regulation (EC) No 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of directive 2004/36/EC (text with EEA relevance), OJ L 344, 27.12.2005, p. 15, as amended by:

— Regulation (EU) 2018/1139, OJ L 212, 22.8.2018, p. 1.

Commission Regulation (EC) No 473/2006 of 22 March 2006 laying down implementing rules for the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council (text with EEA relevance), OJ L 84, 23.3.2006, p. 8.

Commission Regulation (EC) No 474/2006 of 22 March 2006 establishing the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council, OJ L 84, 23.3.2006, p. 14, as last amended by:

— Commission Implementing Regulation (EU) 2022/2295, OJ L 304, 24.11.2022, p. 53.

Commission Regulation (EU) No 1332/2011 of 16 December 2011 laying down common airspace usage requirements and operating procedures for airborne collision avoidance (text with EEA relevance), OJ L 336, 20.12.2011, p. 20, as amended by:

— Commission Regulation (EU) 2016/583, OJ L 101, 16.4.2016, p. 7.

Commission Implementing Regulation (EU) No 646/2012 of 16 July 2012 laying down detailed rules on fines and periodic penalty payments pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (text with EEA relevance), OJ L 187, 17.7.2012, p. 29.

Commission Regulation (EU) No 748/2012 of 3 August 2012 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations, OJ L 224, 21.8.2012, p. 1, as amended by:

— Commission Regulation (EU) No 7/2013, OJ L 4, 9.1.2013, p. 36,

— Commission Regulation (EU) No 69/2014, OJ L 23, 28.1.2014, p. 12,

— Commission Regulation (EU) 2015/1039, OJ L 167, 1.7.2015, p. 1,

— Commission Regulation (EU) 2016/5, OJ L 3, 6.1.2016, p. 3,

— Commission Delegated Regulation (EU) 2019/897, OJ L 144, 3.6.2019, p. 1,

— Commission Delegated Regulation (EU) 2020/570, OJ L 132, 27.4.2020, p. 1,

— Commission Delegated Regulation (EU) 2021/699, OJ L 145, 28.4.2021, p. 1,

— Commission Delegated Regulation (EU) 2021/1088, OJ L 236, 5.7.2021, p. 3,

— Commission Delegated Regulation (EU) 2022/201, OJ L 33, 15.2.2022, p. 7,

— Commission Implementing Regulation (EU) 2022/203, OJ L 33, 15.2.2022, p. 46,

- Commission Implementing Regulation (EU) 2022/1253, OJ L 191, 20.7.2022, p. 45,
- Commission Delegated Regulation (EU) 2022/1358, OJ L 205, 5.8.2022, p. 7,
- Commission Implementing Regulation (EU) 2022/1361, OJ L 205, 5.8.2022, p. 127,
- Commission Delegated Regulation (EU) 2022/1645, OJ L 248, 26.9.2022, p. 18,
- Commission Implementing Regulation (EU) 2023/203, OJ L 31, 2.2.2023, p. 1.

Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, OJ L 296, 25.10.2012, p. 1, as amended by:

- Commission Regulation (EU) No 800/2013, OJ L 227, 24.8.2013, p. 1,
- Commission Regulation (EU) No 71/2014, OJ L 23, 28.1.2014, p. 27,
- Commission Regulation (EU) No 83/2014, OJ L 28, 31.1.2014, p. 17,
- Commission Regulation (EU) No 379/2014, OJ L 123, 24.4.2014, p. 1,
- Commission Regulation (EU) 2015/140, OJ L 24, 30.1.2015, p. 5,
- Commission Regulation (EU) 2015/1329, OJ L 206, 1.8.2015, p. 21,
- Commission Regulation (EU) 2015/640, OJ L 106, 24.4.2015, p. 18,
- Commission Regulation (EU) 2015/2338, OJ L 330, 16.12.2015, p. 1,
- Commission Regulation (EU) 2016/1199, OJ L 198, 23.7.2016, p. 13,
- Commission Regulation (EU) 2017/363, OJ L 55, 2.3.2017, p. 1,
- Commission Regulation (EU) 2018/394, OJ L 71, 14.3.2018, p. 1,
- Commission Regulation (EU) 2018/1042, OJ L 188, 25.7.2018, p. 3, as amended by:
 - Commission Implementing Regulation (EU) 2020/745, OJ L 176, 5.6.2020, p. 11,
- Commission Implementing Regulation (EU) 2018/1975, OJ L 326, 20.12.2018, p. 53,
- Commission Implementing Regulation (EU) 2019/1387, OJ L 229, 5.9.2019, p. 1, as amended by:
 - Commission Implementing Regulation (EU) 2020/1176, OJ L 259, 10.8.2020, p. 10,
- Commission Implementing Regulation (EU) 2019/1384, OJ L 228, 4.9.2019, p. 106,
- Commission Implementing Regulation (EU) 2020/2036, OJ L 416, 11.12.2020, p. 24; paragraphs 4 to 6 of the Annex to Regulation (EU) 2020/2036 are applicable in Switzerland since 31.12.2020,
- Commission Implementing Regulation (EU) 2021/1062, OJ L 229, 29.6.2021, p. 3,
- Commission Implementing Regulation (EU) 2021/1296, OJ L 282, 5.8.2021, p. 5,
- Commission Implementing Regulation (EU) 2021/2237, OJ L 450, 16.12.2021, p. 21,
- Commission Implementing Regulation (EU) 2022/414, OJ L 85, 14.3.2022, p. 4,
- Commission Implementing Regulation (EU) 2022/790, OJ L 141, 20.5.2022, p. 13,
- Commission Implementing Regulation (EU) 2022/2203, OJ L 293, 14.11.2022, p. 3,
- Commission Implementing Regulation (EU) 2022/2502, OJ L 325, 20.12.2022, p. 56,
- Commission Implementing Regulation (EU) 2023/203, OJ L 31, 2.2.2023, p. 1,
- Commission Implementing Regulation (EU) 2023/217, OJ L 30, 2.2.2023, p. 11.

Commission Implementing Regulation (EU) No 628/2013 of 28 June 2013 on working methods of the European Aviation Safety Agency for conducting standardisation inspections and for monitoring the application of the rules of Regulation (EC) No 216/2008 of the European Parliament and of the Council and repealing Commission Regulation (EC) No 736/2006 (text with EEA relevance), OJ L 179, 29.6.2013, p. 46.

Commission Regulation (EU) No 139/2014 of 12 February 2014 laying down requirements and administrative procedures related to aerodromes pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (text with EEA relevance), OJ L 44, 14.2.2014, p. 1, as amended by:

- Commission Regulation (EU) 2017/161, OJ L 27, 1.2.2017, p. 99,
- Commission Regulation (EU) 2018/401, OJ L 72, 15.3.2018, p. 17,
- Commission Implementing Regulation (EU) 2020/469, OJ L 104, 3.4.2020, p. 1, as amended by:
 - Commission Implementing Regulation (EU) 2020/1177, OJ L 259, 10.8.2020, p. 12,
- Commission Delegated Regulation (EU) 2020/1234, OJ L 282, 31.8.2020, p. 1,
- Commission Delegated Regulation (EU) 2020/2148, OJ L 428, 18.12.2020, p. 10,
- Commission Delegated Regulation (EU) 2022/208, OJ L 35, 17.2.2022, p. 1,
- Commission Delegated Regulation (EU) 2022/697, OJ L 130, 4.5.2022, p. 1,
- Commission Delegated Regulation (EU) 2022/1645, OJ L 248, 26.9.2022, p. 18,
- Commission Delegated Regulation (EU) 2022/2074, OJ L 280, 28.10.2022, p. 4,
- Commission Implementing Regulation (EU) 2023/203, OJ L 31, 2.2.2023, p. 1.

Commission Implementing Regulation (EU) 2019/2153 of 16 December 2019 on the fees and charges levied by the European Union Aviation Safety Agency, and repealing Regulation (EU) No 319/2014, OJ L 327, 17.12.2019, p. 36.

Regulation (EU) No 376/2014 of the European Parliament and of the Council of 3 April 2014 on the reporting, analysis and follow-up of occurrences in civil aviation, amending Regulation (EU) No 996/2010 of the European Parliament and of the Council and repealing Directive 2003/42/EC of the European Parliament and of the Council and Commission Regulations (EC) No 1321/2007 and (EC) No 1330/2007 (text with EEA relevance), OJ L 122, 24.4.2014, p. 18, as amended by:

- Regulation (EU) 2018/1139, OJ L 212, 22.8.2018, p. 1.

Commission Implementing Regulation (EU) 2021/2082 of 26 November 2021 laying down the arrangements for the implementation of Regulation (EU) No 376/2014 of the European Parliament and of the Council as regards the common European risk classification scheme, OJ L 426, 29.11.2021, p. 32.

Commission Regulation (EU) No 452/2014 of 29 April 2014 laying down technical requirements and administrative procedures related to air operations of third country operators pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (text with EEA relevance), OJ L 133, 6.5.2014, p. 12, as amended by:

- Commission Regulation (EU) 2016/1158, OJ L 192, 16.7.2016, p. 21.

Commission Regulation (EU) No 1321/2014 of 26 November 2014 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks (text with EEA relevance), OJ L 362, 17.12.2014, p. 1, as amended by:

- Commission Regulation (EU) 2015/1088, OJ L 176, 7.7.2015, p. 4,
- Commission Regulation (EU) 2015/1536, OJ L 241, 17.9.2015, p. 16,
- Commission Regulation (EU) 2017/334, OJ L 50, 28.2.2017, p. 13,
- Commission Regulation (EU) 2018/750, OJ L 126, 23.5.2018, p. 1,
- Commission Regulation (EU) 2018/1142, OJ L 207, 16.8.2018, p. 2,
- Commission Implementing Regulation (EU) 2019/1383, OJ L 228, 4.9.2019, p. 1,
- Commission Implementing Regulation (EU) 2019/1384, OJ L 228, 4.9.2019, p. 106,
- Commission Implementing Regulation (EU) 2020/270, OJ L 56, 27.2.2020, p. 20,
- Commission Implementing Regulation (EU) 2020/1159, OJ L 257, 6.8.2020, p. 14,

- Commission Implementing Regulation (EU) 2021/685, OJ L 143, 27.4.2021, p. 6,
- Commission Implementing Regulation (EU) 2021/700, OJ L 145, 28.4.2021, p. 20; point (1) of Article 1 and points (5), (6) and (8) of Annex I of Regulation (EU) 2021/700 are applicable in Switzerland since 18.5.2021,
- Commission Implementing Regulation (EU) 2021/1963, OJ L 400, 12.11.2021, p. 18,
- Commission Implementing Regulation (EU) 2022/410, OJ L 84, 11.3.2022, p. 20,
- Commission Implementing Regulation (EU) 2022/1360, OJ L 205, 5.8.2022, p. 115,
- Commission Implementing Regulation (EU) 2023/203, OJ L 31, 2.2.2023, p. 1.

Commission Regulation (EU) 2015/340 of 20 February 2015 laying down technical requirements and administrative procedures relating to air traffic controllers' licences and certificates pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, amending Commission Implementing Regulation (EU) No 923/2012 and repealing Commission Regulation (EU) No 805/2011 (text with EEA relevance), OJ L 63, 6.3.2015, p. 1, as amended by:

- Commission Implementing Regulation (EU) 2023/203, OJ L 31, 2.2.2023, p. 1.

Commission Regulation (EU) 2015/640 of 23 April 2015 on additional airworthiness specifications for a given type of operations and amending Regulation (EU) No 965/2012, OJ L 106, 24.4.2015, p. 18, as amended by:

- Commission Implementing Regulation (EU) 2019/133, OJ L 25, 29.1.2019, p. 14,
- Commission Implementing Regulation (EU) 2020/1159, OJ L 257, 6.8.2020, p. 14,
- Commission Implementing Regulation (EU) 2021/97, OJ L 31, 29.1.2021, p. 208; article 1 of Regulation (EU) 2021/97 is applicable in Switzerland since 26.2.2021, except for point (1) of Annex I, which is applicable in Switzerland since 16.2.2021,
- Commission Implementing Regulation (EU) 2022/1254, OJ L 191, 20.7.2022, p. 47.

Commission Implementing Regulation (EU) 2015/1018 of 29 June 2015 laying down a list classifying occurrences in civil aviation to be mandatorily reported according to Regulation (EU) No 376/2014 of the European Parliament and of the Council (text with EEA relevance), OJ L 163, 30.6.2015, p. 1, as amended by:

- Commission Implementing Regulation (EU) 2022/3, OJ L 1, 5.1.2022, p. 3.

Commission Decision (EU) 2016/2357 of 19 December 2016 regarding the lack of effective compliance with Regulation (EC) No 216/2008 of the European Parliament and of the Council and its implementing rules in respect of certificates issued by the Hellenic Aviation Training Academy (HATA), and Part-66 licenses issued on the basis thereof (notified under document C(2016) 8645), OJ L 348, 21.12.2016, p. 72.

Commission Regulation (EU) 2018/395 of 13 March 2018 laying down detailed rules for the operation of balloons as well as for the flight crew licensing for balloons pursuant to Regulation (EU) 2018/1139 of the European Parliament and of the Council, OJ L 71, 14.3.2018, p. 10, as amended by:

- Commission Implementing Regulation (EU) 2020/357, OJ L 67, 5.3.2020, p. 34,
- Commission Implementing Regulation (EU) 2021/1874, OJ L 378, 26.10.2021, p. 4.

Commission Implementing Regulation (EU) 2018/1976 of 14 December 2018 laying down detailed rules for the operation of sailplanes as well as for the flight crew licensing for sailplanes pursuant to Regulation (EU) 2018/1139 of the European Parliament and of the Council, OJ L 326, 20.12.2018, p. 64, as amended by:

- Commission Implementing Regulation (EU) 2020/358, OJ L 67, 5.3.2020, p. 57,
- Commission Implementing Regulation (EU) 2021/1874, OJ L 378, 26.10.2021, p. 4.

Regulation (EU) 2019/494 of the European Parliament and of the Council of 25 March 2019 on certain aspects of aviation safety with regard to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the Union (text with EEA relevance), OJ L 85 I, 27.3.2019, p. 11.

Commission Delegated Regulation (EU) 2019/945 of 12 March 2019 on unmanned aircraft systems and on third-country operators of unmanned aircraft systems, OJ L 152, 11.6.2019, p. 1, as amended by:

— Commission Delegated Regulation (EU) 2020/1058 of 27 April 2020, OJ L 232, 20.7.2020, p. 1,

— Commission Delegated Regulation (EU) 2022/851 of 22 March 2022, OJ L 150, 1.6.2022, p. 21.

Insofar as products listed in Article 2(1) of Regulation (EU) 2019/945 are concerned, Switzerland shall apply the acts referred to in this Regulation as they are included in this Annex, including as set out below, it moreover being understood that the second indent of the Annex shall apply also to these acts:

— Regulation (EC) No 765/2008 ⁽²⁾, as referred to in Articles 3 point (9), 15, 19(2), 39(1)(a) of Regulation (EU) 2019/945,

— Regulation (EU) No 1025/2012 ⁽³⁾, as referred to in Articles 3 point (20) and 37(3) of Regulation (EU) 2019/945,

— Directive 2009/48/EC ⁽⁴⁾, as referred to in Articles 4(2) and 13(2)(c) as well as point (10) of Part 1 of the Annex to Regulation (EU) 2019/945,

— Directive 2006/42/EC ⁽⁵⁾, as referred to in Article 4(2) of Regulation (EU) 2019/945, including:

— Directive 73/23/EEC ⁽⁶⁾, as referred to in Article 1(2)(k) of Directive 2006/42/EC and paragraph 1.5.1 of Annex I thereto, bearing in mind that Directive 73/23/EEC has been repealed and the references thereto are to be construed as references to the relevant provisions of Directive 2014/35/EU ⁽⁷⁾,

— Regulation (EU) 2019/1020 ⁽⁸⁾, including the references thereto in Article 5(3) of Regulation (EU) 2019/945 and in Articles 35 and 36 thereof, bearing in mind that references to the deleted provisions of Regulation (EC) No 765/2008 are to be construed as references to the relevant provisions of Regulation (EU) 2019/1020 ⁽⁹⁾, and including as well:

— Regulation (EU) 2019/515 ⁽¹⁰⁾, as referred to in Article 8(2) of Regulation (EU) 2019/1020, insofar as product contact points are concerned,

⁽²⁾ Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30), as amended by Regulation (EU) 2019/1020 (OJ L 169, 25.6.2019, p. 1).

⁽³⁾ Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012, p. 12), as last amended by Directive (EU) 2015/1535 (OJ L 241, 17.9.2015, p. 1).

⁽⁴⁾ Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys (OJ L 170, 30.6.2009, p. 1), as last amended by Commission Directive (EU) 2021/903 (OJ L 197, 4.6.2021, p. 110).

⁽⁵⁾ Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC (OJ L 157, 9.6.2006, p. 24), as last amended by Regulation (EU) 2019/1243 (OJ L 198, 25.7.2019, p. 241).

⁽⁶⁾ Council Directive 73/23/EEC of 19 February 1973 on the harmonization of the laws of Member States relating to electrical equipment designed for use within certain voltage limits (OJ L 77, 26.3.1973, p. 29), as repealed by

— Directive 2006/95/EC of the European Parliament and of the Council of 12 December 2006 (OJ L 374, 27.12.2006, p. 10), as repealed by

— Directive 2014/35/EU of the European Parliament and of the Council of 26 February 2014 (OJ L 96, 29.3.2014, p. 357).

⁽⁷⁾ Directive 2014/35/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of electrical equipment designed for use within certain voltage limits (OJ L 96, 29.3.2014, p. 357).

⁽⁸⁾ Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011 (OJ L 169, 25.6.2019, p. 1).

⁽⁹⁾ See Article 39 of Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011.

⁽¹⁰⁾ Regulation (EU) 2019/515 of the European Parliament and of the Council of 19 March 2019 on the mutual recognition of goods lawfully marketed in another Member State and repealing Regulation (EC) No 764/2008 (OJ L 91, 29.3.2019, p. 1).

- Regulation (EC) No 765/2008, as referred to in Article 11(5) of Regulation (EU) 2019/1020,
- Directive 2001/95/EC ⁽¹¹⁾, as referred to in Articles 20(4) and 34(4) of Regulation (EU) 2019/1020.

References made to the 'Union' in Articles 1(1) (last part of the sentence), 3(1), 3(2), 3(9), 3(12) (first part of the sentence), 3(21), 4(1) (last part of the sentence), 4(2)(a), 4(2)(b), 4(2)(d), 5(2), 6, 21(1) (last part of the sentence), 29(2), 31(2)(p) of Regulation (EU) 2019/1020 shall be understood to equally apply to Switzerland.

References to Union law in Articles 14(2) and 17 of Regulation (EU) 2019/1020 shall be understood, regarding Switzerland, as referring to its relevant national legislation.

References made to the 'Union' in Articles 1(2), 2(3), 3(14), 3(15), 3(18), 3(19), 6(1), 7(2)(a), 8(1), 8(2), 9(1), 35(1), 36(3), 38(2), 41(3) and in the first reference in the title of Section 5 of Regulation (EU) 2019/945 shall be understood to equally apply to Switzerland.

Commission Implementing Regulation (EU) 2019/947 of 24 May 2019 on the rules and procedures for the operation of unmanned aircraft, OJ L 152, 11.6.2019, p. 45, as amended by:

- Commission Implementing Regulation (EU) 2020/639 of 12 May 2020, OJ L 150, 13.5.2020, p. 1,
- Commission Implementing Regulation (EU) 2020/746 of 4 June 2020, OJ L 176, 5.6.2020, p. 13,
- Commission Implementing Regulation (EU) 2021/1166 of 15 July 2021, OJ L 253, 16.7.2021, p. 49,
- Commission Implementing Regulation (EU) 2022/425 of 14 March 2022, OJ L 87, 15.3.2022, p. 20,
- Commission Implementing Regulation (EU) 2022/525 of 1 April 2022, OJ L 105, 4.4.2022, p. 3.

Insofar as unmanned aircraft systems are concerned, Switzerland shall apply the acts referred to in this Regulation as they are included in this Annex, including as set out below, it moreover being understood that the second indent of the Annex shall apply also to this act:

- Directive 2009/48/EC ⁽¹²⁾, as referred to in Articles 9(2)(a) and 14(5)(a)(ii) of Regulation (EU) 2019/947.

The reference made to Regulation (EU) 2016/679 ⁽¹³⁾ in UAS.SPEC.050 point (1)(a)(iv) of Part B of the Annex to Regulation (EU) 2019/947 shall be understood, regarding Switzerland, as referring to its relevant national legislation.

Commission Implementing Decision (EU) 2019/1128 of 1 July 2019 on access rights to safety recommendations and responses stored in the European Central Repository and repealing Decision 2012/780/EU (Text with EEA relevance), OJ L 177, 2.7.2019, p. 112.

Commission Delegated Regulation (EU) 2020/2034 of 6 October 2020 supplementing Regulation (EU) No 376/2014 of the European Parliament and of the Council as regards the common European risk classification scheme (Text with EEA relevance), OJ L 416, 11.12.2020, p. 1.

Commission implementing Regulation (EU) 2021/664 of 22 April 2021 on a regulatory framework for the U-space, OJ L 139, 23.4.2021, p. 161, as amended by:

- Commission Implementing Regulation (EU) 2023/203, OJ L 31, 2.2.2023, p. 1.

⁽¹¹⁾ Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety, OJ L 11, 15.1.2002, p. 4, as last amended by Regulation (EC) No 596/2009 of the European Parliament and of the Council (OJ L 188, 18.7.2009, p. 14).

⁽¹²⁾ Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys, OJ L 170, 30.6.2009, p. 1, as last amended by Commission Directive (EU) 2021/903 (OJ L 197, 4.6.2021, p. 110).

⁽¹³⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

4. Aviation Security

Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002 (text with EEA relevance), OJ L 97, 9.4.2008, p. 72, as amended by:

— Commission Regulation (EU) No 18/2010, OJ L 7, 12.1.2010, p. 3.

Commission Regulation (EC) No 272/2009 of 2 April 2009 supplementing the common basic standards on civil aviation security laid down in the Annex to Regulation (EC) No 300/2008 of the European Parliament and of the Council, OJ L 91, 3.4.2009, p. 7, as amended by:

— Commission Regulation (EU) No 297/2010, OJ L 90, 10.4.2010, p. 1,

— Commission Regulation (EU) No 720/2011, OJ L 193, 23.7.2011, p. 19,

— Commission Regulation (EU) No 1141/2011, OJ L 293, 11.11.2011, p. 22,

— Commission Regulation (EU) No 245/2013, OJ L 77, 20.3.2013, p. 5.

Commission Regulation (EU) No 1254/2009 of 18 December 2009 setting criteria to allow Member States to derogate from the common basic standards on civil aviation security and to adopt alternative security measures (text with EEA relevance), OJ L 338, 19.12.2009, p. 17, as amended by:

— Commission Regulation (EU) 2016/2096, OJ L 326, 1.12.2016, p. 7.

Commission Regulation (EU) No 72/2010 of 26 January 2010 laying down procedures for conducting Commission inspections in the field of aviation security (text with EEA relevance), OJ L 23, 27.1.2010, p. 1, as amended by:

— Commission Implementing Regulation (EU) 2016/472, OJ L 85, 1.4.2016, p. 28.

Commission Implementing Regulation (EU) 2015/1998 of 5 November 2015 laying down detailed measures for the implementation of the common basic standards on aviation security (text with EEA relevance), OJ L 299, 14.11.2015, p. 1, as amended by:

— Commission Implementing Regulation (EU) 2015/2426, OJ L 334, 22.12.2015, p. 5,

— Commission Implementing Regulation (EU) 2017/815, OJ L 122, 13.5.2017, p. 1,

— Commission Implementing Regulation (EU) 2018/55, OJ L 10, 13.1.2018, p. 5,

— Commission Implementing Regulation (EU) 2019/103, OJ L 21, 24.1.2019, p. 13, as amended by:

— Commission Implementing Regulation (EU) 2020/910, OJ L 208, 1.7.2020, p. 43,

— Commission Implementing Regulation (EU) 2019/413, OJ L 73, 15.3.2019, p. 98,

— Commission Implementing Regulation (EU) 2019/1583, OJ L 246, 26.9.2019, p. 15, as amended by:

— Commission Implementing Regulation (EU) 2020/910, OJ L 208, 1.7.2020, p. 43.

— Commission Implementing Regulation (EU) 2020/111, OJ L 21, 27.1.2020, p. 1,

— Commission Implementing Regulation (EU) 2020/910, OJ L 208, 1.7.2020, p. 43,

— Commission Implementing Regulation (EU) 2021/255, OJ L 58, 19.2.2021, p. 23; points 15, 18 to 19 and 32 of the Annex to Regulation (EU) 2021/255 are applicable in Switzerland since 11.3.2021,

— Commission Implementing Regulation (EU) 2022/421, OJ L 87, 15.3.2022, p. 1,

— Commission Implementing Regulation (EU) 2022/463, OJ L 94, 23.3.2022, p. 3,

— Commission Implementing Regulation (EU) 2022/1174, OJ L 183, 8.7.2022, p. 35 with the exception of the new point 11.1.1 (b) of the Annex of Regulation (EU) 2015/1998, as provided for in Number 35 of the Annex of Regulation (EU) 2022/1174,

— Commission Implementing Regulation (EU) 2023/566, OJ L 74, 13.3.2023, p. 47.

Commission Implementing Decision C(2015) 8005 of 16 November 2015 laying down detailed measures for the implementation of the common basic standards on aviation security containing information, as referred to in point (a) of Article 18 of Regulation (EC) No 300/2008 (not published in the OJ) as amended by:

- Commission Implementing Decision C(2017) 3030,
- Commission Implementing Decision C(2018) 4857,
- Commission Implementing Decision C(2019) 132, as amended by:
 - Commission Implementing Decision C(2020) 4241,
- Commission Implementing Decision C(2021) 0996,
- Commission Implementing Decision C(2022) 4638,
- Commission Implementing Decision C(2023) 1569.

Commission Decision (EU) 2021/2147 of 3 December 2021 on the approval of civil aviation security equipment with 'EU Stamp' marking, OJ L 433, 6.12.2021, p. 25.

5. Air traffic management

Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the Single European Sky (the Framework Regulation) (text with EEA relevance), OJ L 96, 31.3.2004, p. 1, as amended by:

- Regulation (EC) No 1070/2009, OJ L 300, 14.11.2009, p. 34.

The Commission shall enjoy in Switzerland the powers granted to it pursuant to Articles 6, 8, 10, 11 and 12.

Article 10 shall be amended as follows:

In paragraph 2, the words 'at Community level' should be replaced by words 'at Community level, involving Switzerland'.

Notwithstanding the horizontal adjustment referred to in the second indent of the Annex to the Agreement between the European Community and the Swiss Confederation on Air Transport, the references to the 'Member States' made in Article 5 of Regulation (EC) No 549/2004 or in the provisions of Decision 1999/468/EC mentioned in that provision shall not be understood to apply to Switzerland.

Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the Single European Sky (the Service Provision Regulation) (text with EEA relevance), OJ L 96, 31.3.2004, p. 10, as amended by:

- Regulation (EC) No 1070/2009, OJ L 300, 14.11.2009, p. 34.

The Commission shall enjoy towards Switzerland the powers granted to it pursuant to Articles 9a, 9b, 15, 15a, 16 and 17.

The provisions of the Regulation shall, for the purposes of this Agreement, be amended as follows:

- (a) Article 3 shall be amended as follows:

In paragraph 2, the words 'and Switzerland' shall be inserted after the words 'the Community'.

- (b) Article 7 is amended as follows:

In paragraph 1 and paragraph 6, the words 'and Switzerland' shall be inserted after the words 'the Community'.

- (c) Article 8 is amended as follows:

In paragraph 1, the words 'and Switzerland' shall be inserted after the words 'the Community'.

- (d) Article 10 is amended as follows:

In paragraph 1, the words 'and Switzerland' shall be inserted after the words 'the Community'.

(e) Article 16(3) is replaced by the following:

‘3. The Commission shall address its decision to the Member States and inform the service provider thereof, in so far as it is legally concerned.’

Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the Single European Sky (the Airspace Regulation) (text with EEA relevance), OJ L 96, 31.3.2004, p. 20, as amended by:

— Regulation (EC) No 1070/2009, OJ L 300, 14.11.2009, p. 34.

The Commission shall enjoy in Switzerland the powers granted to it pursuant to Articles 3a, 6 and 10.

Regulation (EC) No 552/2004 of the European Parliament and of the Council of 10 March 2004 on the interoperability of the European Air Traffic Management network (the Interoperability Regulation) (text with EEA relevance), OJ L 96, 31.3.2004, p. 26, as amended by:

— Regulation (EC) No 1070/2009, OJ L 300, 14.11.2009, p. 34.

— The Commission shall enjoy in Switzerland the powers granted to it pursuant to Articles 4, 7 and 10(3).

The provisions of the Regulation shall, for the purposes of this Agreement, be amended as follows:

(a) Article 5 is amended as follows:

In paragraph 2, the words ‘or Switzerland’ shall be inserted after the words ‘the Community’.

(b) Article 7 is amended as follows:

In paragraph 4, the words ‘or Switzerland’ shall be inserted after the words ‘the Community’.

(c) Annex III shall be amended as follows:

In section 3, second and last indents, the words ‘or Switzerland’ shall be inserted after the words ‘the Community’.

In accordance with Article 139 of Regulation (EU) 2018/1139, Regulation (EC) No 552/2004 is repealed with effect from 11 September 2018. However, Articles 4, 5, 6, 6a and 7 of that Regulation and Annexes III and IV thereto shall continue to apply until the date of application of the delegated acts referred to in Article 47 of Regulation 2018/1139 and insofar as those acts cover the subject matter of the relevant provisions of Regulation (EC) No 552/2004, and in any case not later than 12 September 2023.

Commission Regulation (EC) No 2150/2005 of 23 December 2005 laying down common rules for the flexible use of airspace (text with EEA relevance), OJ L 342, 24.12.2005, p. 20.

Commission Regulation (EC) No 1033/2006 of 4 July 2006 laying down the requirements on procedures for flight plans in the pre-flight phase for the Single European Sky (text with EEA relevance), OJ L 186, 7.7.2006, p. 46, as amended by:

— Commission Implementing Regulation (EU) No 923/2012, OJ L 281, 13.10.2012, p. 1,

— Commission Implementing Regulation (EU) No 428/2013, OJ L 127, 9.5.2013, p. 23,

— Commission Implementing Regulation (EU) 2016/2120, OJ L 329, 3.12.2016, p. 70,

— Commission Implementing Regulation (EU) 2018/139, OJ L 25, 30.1.2018, p. 4.

Commission Regulation (EC) No 1032/2006 of 6 July 2006 laying down requirements for automatic systems for the exchange of flight data for the purpose of notification, coordination and transfer of flights between air traffic control units (text with EEA relevance), OJ L 186, 7.7.2006, p. 27, as amended by:

— Commission Regulation (EC) No 30/2009, OJ L 13, 17.1.2009, p. 20.

Council Regulation (EC) No 219/2007 of 27 February 2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR), OJ L 64, 2.3.2007, p. 1, as amended by:

— Council Regulation (EC) No 1361/2008, OJ L 352, 31.12.2008, p. 12,

— Council Regulation (EU) No 721/2014, OJ L 192, 1.7.2014, p. 1.

Commission Regulation (EC) No 633/2007 of 7 June 2007 laying down requirements for the application of a flight message transfer protocol used for the purpose of notification, coordination and transfer of flights between air traffic control units (text with EEA relevance), OJ L 146, 8.6.2007, p. 7, as amended by:

— Commission Regulation (EU) No 283/2011, OJ L 77, 23.3.2011, p. 23.

Commission Implementing Regulation (EU) 2017/373 of 1 March 2017 laying down common requirements for providers of air traffic management/air navigation services and other air traffic management network functions and their oversight, repealing Regulation (EC) No 482/2008, Implementing Regulations (EU) No 1034/2011, (EU) No 1035/2011 and (EU) 2016/1377 and amending Regulation (EU) No 677/2011 (text with EEA relevance), OJ L 62, 8.3.2017, p. 1, as amended by:

— Commission Implementing Regulation (EU) 2020/469, OJ L 104, 3.4.2020, p. 1, as amended by :

— Commission Implementing Regulation (EU) 2020/1177, OJ L 259, 10.8.2020, p. 12,

— Commission Implementing Regulation (EU) 2021/665, OJ L 139, 23.4.2021, p. 184,

— Commission Implementing Regulation (EU) 2021/1338, OJ L 289, 12.8.2021, p. 12,

— Commission Implementing Regulation (EU) 2022/938, OJ L 209, 10.8.2022, p. 1,

— Commission Implementing Regulation (EU) 2022/2345, OJ L 311, 2.12.2022, p. 58,

— Commission Implementing Regulation (EU) 2023/203, OJ L 31, 2.2.2023, p. 1.

Commission Regulation (EC) No 29/2009 of 16 January 2009 laying down requirements on data link services for the Single European Sky (text with EEA relevance), OJ L 13, 17.1.2009, p. 3, as amended by:

— Commission Implementing Regulation (EU) 2015/310, OJ L 56, 27.2.2015, p. 30,

— Commission Implementing Regulation (EU) 2019/1170, OJ L 183, 9.7.2019, p. 6,

— Commission Implementing Regulation (EU) 2020/208, OJ L 43, 17.2.2020, p. 72.

The text of the Regulation shall, for the purposes of this Agreement, be read with the following adaptation:

‘Switzerland UIR’ is added in Annex I, part A.

Commission Regulation (EC) No 262/2009 of 30 March 2009 laying down requirements for the coordinated allocation and use of Mode S interrogator codes for the Single European Sky (text with EEA relevance), OJ L 84, 31.3.2009, p. 20, as amended by:

— Commission Implementing Regulation (EU) 2016/2345, OJ L 348, 21.12.2016, p. 11.

Commission Regulation (EU) No 255/2010 of 25 March 2010 laying down common rules on air traffic flow management (text with EEA relevance), OJ L 80, 26.3.2010, p. 10, as amended by:

— Commission Implementing Regulation (EU) No 923/2012, OJ L 281, 13.10.2012, p. 1,

— Commission Implementing Regulation (EU) 2016/1006, OJ L 165, 23.6.2016, p. 8,

— Commission Implementing Regulation (EU) 2017/2159, OJ L 304, 21.11.2017, p. 45.

Commission Decision No C(2010)5134 of 29 July 2010 on the designation of the Performance Review Body of the Single European Sky (not published in the OJ).

Commission Regulation (EU) No 176/2011 of 24 February 2011 on the information to be provided before the establishment and modification of a functional airspace block, OJ L 51, 25.2.2011, p. 2.

Commission Decision No C(2011) 4130 of 7 July 2011 on the nomination of the Network Manager for the air traffic management (ATM) network functions of the single European sky (text with EEA relevance) (not published in the OJ).

Commission Implementing Regulation (EU) No 1206/2011 of 22 November 2011 laying down requirements on aircraft identification for surveillance for the single European sky (text with EEA relevance), OJ L 305, 23.11.2011, p. 23, as amended by:

— Commission Implementing Regulation (EU) 2020/587, OJ L 138, 30.4.2020, p. 1.

The text of Implementing Regulation (EU) No 1206/2011 shall, for the purposes of this Agreement, be read with the following adaptation:

‘Switzerland UIR’ is added in Annex I.

Commission Implementing Regulation (EU) No 1207/2011 of 22 November 2011 laying down requirements for the performance and the interoperability of surveillance for the single European sky (text with EEA relevance), OJ L 305, 23.11.2011, p. 35, as amended by:

— Commission Implementing Regulation (EU) No 1028/2014, OJ L 284, 30.9.2014, p. 7,

— Commission Implementing Regulation (EU) 2017/386, OJ L 59, 7.3.2017, p. 34,

— Commission Implementing Regulation (EU) 2020/587, OJ L 138, 30.4.2020, p. 1,

— Commission Implementing Regulation (EU) 2022/2, OJ L 1, 5.1.2022, p. 1.

Commission Implementing Regulation (EU) No 923/2012 of 26 September 2012 laying down the common rules of the air and operational provisions regarding services and procedures in air navigation and amending Implementing Regulation (EU) No 1035/2011 and Regulations (EC) No 1265/2007, (EC) No 1794/2006, (EC) No 730/2006, (EC) No 1033/2006 and (EU) No 255/2010 (text with EEA relevance), OJ L 281, 13.10.2012, p. 1, as amended by:

— Commission Regulation (EU) 2015/340, OJ L 63, 6.3.2015, p. 1,

— Commission Implementing Regulation (EU) 2016/1185, OJ L 196, 21.7.2016, p. 3,

— Commission Implementing Regulation (EU) 2017/835, OJ L 124, 17.5.2017, p. 35,

— Commission Implementing Regulation (EU) 2020/469, OJ L 104, 3.4.2020, p. 1, as amended by :

— Commission Implementing Regulation (EU) 2020/1177, OJ L 259, 10.8.2020, p. 12,

— Commission Implementing Regulation (EU) 2020/886, OJ L 205, 29.6.2020, p. 14,

— Commission Implementing Regulation (EU) 2021/666, OJ L 139, 23.4.2021, p. 187.

Commission Implementing Regulation (EU) No 1079/2012 of 16 November 2012 laying down requirements for voice channels spacing for the single European sky (text with EEA relevance), OJ L 320, 17.11.2012, p. 14, as amended by:

— Commission Implementing Regulation (EU) No 657/2013, OJ L 190, 11.7.2013, p. 37,

— Commission Implementing regulation (EU) 2016/2345, OJ L 348 , 21.12.2016, p. 11,

— Commission Implementing Regulation (EU) 2017/2160, OJ L 304, 21.11.2017, p. 47.

Commission Implementing Regulation (EU) No 409/2013 of 3 May 2013 on the definition of common projects, the establishment of governance and the identification of incentives supporting the implementation of the European Air Traffic Management Master Plan (text with EEA relevance), OJ L 123, 4.5.2013, p. 1, as amended by:

— Commission Implementing Regulation (EU) 2021/116, OJ L 36, 2.2.2021, p. 10.

Commission Implementing Regulation (EU) 2021/116 of 1 February 2021 on the establishment of the Common Project One supporting the implementation of the European Air Traffic Management Master Plan provided for in Regulation (EC) No 550/2004 of the European Parliament and of the Council, amending Commission Implementing Regulation (EU) No 409/2013 and repealing Commission Implementing Regulation (EU) No 716/2014 (Text with EEA relevance), OJ L 36, 2.2.2021, p. 10.

For the purposes of this Agreement, the Annex to the Regulation shall be read with the following adaptations:

- (a) The following point is added after point 1.2.1.r): 's) Zürich Kloten'
- (b) The following point is added after point 2.2.1.r): 's) Zürich Kloten'
- (c) The following point is added after point 2.2.2.r): 's) Zürich Kloten'
- (d) The following points are added after point 2.2.3.bb): 'cc) Geneva; dd) Zürich Kloten'.

Commission Implementing Regulation (EU) 2018/1048 of 18 July 2018 laying down airspace usage requirements and operating procedures concerning performance-based navigation, OJ L 189, 26.7.2018, p. 3.

Commission Implementing Regulation (EU) 2019/123 of 24 January 2019 laying down detailed rules for the implementation of air traffic management (ATM) network functions and repealing Commission Regulation (EU) No 677/2011 (text with EEA relevance), OJ L 28, 31.1.2019, p. 1.

Commission Implementing Regulation (EU) 2019/317 of 11 February 2019 laying down a performance and charging scheme in the single European sky and repealing Implementing Regulations (EU) No 390/2013 and (EU) No 391/2013 (text with EEA relevance), OJ L 56, 25.2.2019, p. 1, as amended by:

— Commission Implementing Regulation (EU) 2021/1880, OJ L 380, 27.10.2021, p. 1.

Commission Implementing Decision (EU) 2019/709 of 6 May 2019 on the appointment of the network manager for air traffic management (ATM) network functions of the single European sky (notified under document C(2019) 3228), OJ L 120, 8.5.2019, p. 27.

Commission Implementing Decision (EU) 2021/891 of 2 June 2021 setting revised Union-wide performance targets for the air traffic management network for the third reference period (2020-2024) and repealing Implementing Decision (EU) 2019/903 (Text with EEA relevance), OJ L 195, 3.6.2021, p. 3.

Commission Implementing Decision (EU) 2019/2167 of 17 December 2019 approving the Network Strategy Plan for the air traffic management network functions of the single European sky for the period 2020-2029, OJ L 328, 18.12.2019, p. 89.

Commission Implementing Decision (EU) 2019/2168 of 17 December 2019 on the appointment of the chairperson and the members and their alternates of the Network Management Board and of the members and their alternates of the European Aviation Crisis Coordination Cell for the air traffic management network functions for the third reference period 2020-2024, OJ L 328, 18.12.2019, p. 90.

Commission Implementing Decision (EU) 2019/2012 of 29 November 2019 on exemptions under Article 14 of Commission Regulation (EC) No 29/2009 laying down requirements on data link services for the single European sky (Text with EEA relevance), OJ L 312, 3.12.2019, p. 95.

Commission Implementing Regulation (EU) 2020/1627 of 3 November 2020 on exceptional measures for the third reference period (2020-2024) of the single European sky performance and charging scheme due to the COVID-19 pandemic, OJ L 366, 4.11.2020, p. 7.

6. Environment and noise

Directive 2002/30/EC of the European Parliament and of the Council of 26 March 2002 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports (text with EEA relevance) (Articles 1-12, and 14-18), OJ L 85, 28.3.2002, p. 40.

(The amendments to Annex I, arising from Annex II, Chapter 8 (Transport policy), Section G (Air transport), point 2 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, shall apply).

Directive 2006/93/EC of the European Parliament and of the Council of 12 December 2006 on the regulation of the operation of aeroplanes covered by Part II, Chapter 3, Volume 1 of Annex 16 to the Convention on International Civil Aviation, second edition (1988) (codified version) (text with EEA relevance), OJ L 374, 27.12.2006, p. 1.

7. Consumer protection

Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours, OJ L 158, 23.6.1990, p. 59 (Articles 1-10).

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ L 95, 21.4.1993, p. 29 (Articles 1-11), as amended by:

— Directive 2011/83/EU, OJ L 304, 22.11.2011, p. 64.

Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in respect of the carriage of passengers and their baggage by air in the event of accidents, OJ L 285, 17.10.1997, p. 1 (Articles 1-8), as amended by:

— Regulation (EC) No 889/2002, OJ L 140, 30.5.2002, p. 2.

Regulation (EC) No 261/2004 of the Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (text with EEA relevance), OJ L 46, 17.2.2004, p. 1.

(Articles 1-18).

Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the right of disabled persons and persons with reduced mobility when travelling by air (text with EEA relevance), OJ L 204, 26.7.2006, p. 1.

8. Miscellaneous

Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (text with EEA relevance), OJ L 283, 31.10.2003, p. 51.

(Article 14(1)(b), and Article 14(2).

9. Annexes:

A: Protocol on the Privileges and Immunities of the European Union

B: Provisions on financial control by the European Union as regards Swiss participants in activities of the EASA

ANNEX A

PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN UNION

THE HIGH CONTRACTING PARTIES,

CONSIDERING that, in accordance with Article 343 of the Treaty on the Functioning of the European Union and Article 191 of the Treaty establishing the European Atomic Energy Community ('EAEC'), the European Union and the EAEC shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of their tasks,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community:

CHAPTER I

PROPERTY, FUNDS, ASSETS AND OPERATIONS OF THE EUROPEAN UNION*Article 1*

The premises and buildings of the Union shall be inviolable. They shall be exempt from search, requisition, confiscation or expropriation. The property and assets of the Union shall not be the subject of any administrative or legal measure of constraint without the authorisation of the Court of Justice.

Article 2

The archives of the Union shall be inviolable.

Article 3

The Union, its assets, revenues and other property shall be exempt from all direct taxes.

The governments of the Member States shall, wherever possible, take the appropriate measures to remit or refund the amount of indirect taxes or sales taxes included in the price of movable or immovable property, where the Union makes, for its official use, substantial purchases the price of which includes taxes of this kind. These provisions shall not be applied, however, so as to have the effect of distorting competition within the Union.

No exemption shall be granted in respect of taxes and dues which amount merely to charges for public utility services.

Article 4

The Union shall be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of articles intended for its official use: articles so imported shall not be disposed of, whether or not in return for payment, in the territory of the country into which they have been imported, except under conditions approved by the government of that country.

The Union shall also be exempt from any customs duties and any prohibitions and restrictions on import and exports in respect of its publications.

CHAPTER II

COMMUNICATIONS AND LAISSEZ-PASSER

Article 5

For their official communications and the transmission of all their documents, the institutions of the Union shall enjoy in the territory of each Member State the treatment accorded by that State to diplomatic missions.

Official correspondence and other official communications of the institutions of the Union shall not be subject to censorship.

Article 6

Laissez-passer in a form to be prescribed by the Council, acting by a simple majority, which shall be recognised as valid travel documents by the authorities of the Member States, may be issued to members and servants of the institutions of the Union by the Presidents of these institutions. These *laissez-passer* shall be issued to officials and other servants under conditions laid down in the Staff Regulations of officials and the Conditions of Employment of other servants of the Union.

The Commission may conclude agreements for these *laissez-passer* to be recognised as valid travel documents within the territory of third countries.

CHAPTER III

MEMBERS OF THE EUROPEAN PARLIAMENT

Article 7

No administrative or other restriction shall be imposed on the free movement of Members of the European Parliament travelling to or from the place of meeting of the European Parliament.

Members of the European Parliament shall, in respect of customs and exchange control, be accorded:

- (a) by their own government, the same facilities as those accorded to senior officials travelling abroad on temporary official missions;
- (b) by the government of other Member States, the same facilities as those accorded to representatives of foreign governments on temporary official missions.

Article 8

Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties.

Article 9

During the sessions of the European Parliament, its Members shall enjoy:

- (a) in the territory of their own State, the immunities accorded to members of their parliament;
- (b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.

Immunity shall likewise apply to Members while they are travelling to and from the place of meeting of the European Parliament.

Immunity cannot be claimed when a Member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its Members.

CHAPTER IV

REPRESENTATIVES OF MEMBER STATES TAKING PART IN THE WORK OF THE INSTITUTIONS OF THE EUROPEAN UNION

Article 10

Representatives of Member States taking part in the work of the institutions of the Union, their advisers and technical experts shall, in the performance of their duties and during their travel to and from the place of meeting, enjoy the customary privileges, immunities and facilities.

This Article shall also apply to members of the advisory bodies of the Union.

CHAPTER V

OFFICIALS AND OTHER SERVANTS OF THE EUROPEAN UNION

Article 11

In the territory of each Member State and whatever their nationality, officials and other servants of the Union shall:

- (a) subject to the provisions of the Treaties relating, on the one hand, to the rules on the liability of officials and other servants towards the Union and, on the other hand, to the jurisdiction of the Court of Justice of the European Union in disputes between the Union and its officials and other servants, be immune from legal proceedings in respect of acts performed by them in their official capacity, including their words spoken or written. They shall continue to enjoy this immunity after they have ceased to hold office;
- (b) together with their spouses and dependent members of their families, not be subject to immigration restrictions or to formalities for the registration of aliens;
- (c) in respect of currency or exchange regulations, be accorded the same facilities as are customarily accorded to officials of international organisations;
- (d) enjoy the right to import free of duty their furniture and effects at the time of first taking up their post in the country concerned, and the right to re-export free of duty their furniture and effects, on termination of their duties in that country, subject in either case to the conditions considered to be necessary by the government of the country in which this right is exercised;
- (e) have the right to import free of duty a motor car for their personal use, acquired either in the country of their last residence or in the country of which they are nationals on the terms ruling in the home market in that country, and to re-export it free of duty, subject in either case to the conditions considered to be necessary by the government of the country concerned.

Article 12

Officials and other servants of the Union shall be liable to a tax for the benefit of the Union on salaries, wages and emoluments paid to them by the Union, in accordance with the conditions and procedure laid down by the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure and after consultation of the institutions concerned.

They shall be exempt from national taxes on salaries, wages and emoluments paid by the Union.

Article 13

In the application of income tax, wealth tax and death duties and in the application of conventions on the avoidance of double taxation concluded between Member States of the Union, officials and other servants of the Union who, solely by reason of the performance of their duties in the service of the Union, establish their residence in the territory of a Member State other than their country of domicile for tax purposes at the time of entering the service of the Union, shall be considered, both in the country of their actual residence and in the country of domicile for tax purposes, as having maintained their domicile in the latter country provided that it is a member of the Union. This provision shall also apply to a spouse, to the extent that the latter is not separately engaged in a gainful occupation, and to children dependent on and in the care of the persons referred to in this Article.

Movable property belonging to persons referred to in the preceding paragraph and situated in the territory of the country where they are staying shall be exempt from death duties in that country; such property shall, for the assessment of such duty, be considered as being in the country of domicile for tax purposes, subject to the rights of third countries and to the possible application of provisions of international conventions on double taxation.

Any domicile acquired solely by reason of the performance of duties in the service of other international organisations shall not be taken into consideration in applying the provisions of this Article.

Article 14

The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure and after consultation of the institutions concerned, shall lay down the scheme of social security benefits for officials and other servants of the Union.

Article 15

The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, and after consulting the other institutions concerned, shall determine the categories of officials and other servants of the Union to whom the provisions of Article 11, the second paragraph of Article 12, and Article 13 shall apply, in whole or in part.

The names, grades and addresses of officials and other servants included in such categories shall be communicated periodically to the governments of the Member States.

CHAPTER VI

PRIVILEGES AND IMMUNITIES OF MISSIONS OF THIRD COUNTRIES ACCREDITED TO THE EUROPEAN UNION*Article 16*

The Member State in whose territory the Union has its seat shall accord the customary diplomatic immunities and privileges to missions of third countries accredited to the Union.

CHAPTER VII

GENERAL PROVISIONS*Article 17*

Privileges, immunities and facilities shall be accorded to officials and other servants of the Union solely in the interests of the Union.

Each institution of the Union shall be required to waive the immunity accorded to an official or other servant wherever that institution considers that the waiver of such immunity is not contrary to the interests of the Union.

Article 18

The institutions of the Union shall, for the purpose of applying this Protocol, cooperate with the responsible authorities of the Member States concerned.

Article 19

Articles 11 to 14 and Article 17 shall apply to Members of the Commission.

Article 20

Articles 11 to 14 and Article 17 shall apply to the Judges, the Advocates-General, the Registrars and the Assistant Rapporteurs of the Court of Justice of the European Union, without prejudice to the provisions of Article 3 of the Protocol on the Statute of the Court of Justice of the European Union relating to immunity from legal proceedings of Judges and Advocates-General.

Article 21

This Protocol shall also apply to the European Investment Bank, to the members of its organs, to its staff and to the representatives of the Member States taking part in its activities, without prejudice to the provisions of the Protocol on the Statute of the Bank.

The European Investment Bank shall in addition be exempt from any form of taxation or imposition of a like nature on the occasion of any increase in its capital and from the various formalities which may be connected therewith in the State where the Bank has its seat. Similarly, its dissolution or liquidation shall not give rise to any imposition. Finally, the activities of the Bank and of its organs carried on in accordance with its Statute shall not be subject to any turnover tax.

Article 22

This Protocol shall also apply to the European Central Bank, to the members of its organs and to its staff, without prejudice to the provisions of the Protocol on the Statute of the European System of Central Banks and the European Central Bank.

The European Central Bank shall, in addition, be exempt from any form of taxation or imposition of a like nature on the occasion of any increase in its capital and from the various formalities which may be connected therewith in the State where the bank has its seat. The activities of the Bank and of its organs carried on in accordance with the Statute of the European System of Central Banks and of the European Central Bank shall not be subject to any turnover tax.

*Appendix to ANNEX A***PROCEDURES FOR THE APPLICATION IN SWITZERLAND OF THE PROTOCOL ON PRIVILEGES AND IMMUNITIES OF THE EUROPEAN UNION****1. Extension of application to Switzerland**

Wherever the Protocol on the privileges and immunities of the European Union (hereinafter called 'the Protocol') contains references to Member States, the references are to be understood to apply equally to Switzerland, unless the following provisions determine otherwise.

2. Exemption of the Agency from indirect taxation (including VAT)

Goods and services exported from Switzerland are not to be subject to Swiss value added tax (VAT). In the case of goods and services provided to the Agency in Switzerland for its official use, in accordance with the second paragraph of Article 3 of the Protocol, exemption from VAT is by way of refund. Exemption from VAT shall be granted if the actual purchase price of the goods and services mentioned in the invoice or equivalent document totals at least 100 Swiss francs (inclusive of tax).

The VAT refund is to be granted on presentation to the Federal Tax Administration's VAT Main Division of the Swiss forms provided for the purpose. As a rule, refund applications must be processed within the three months following the date on which they were lodged together with the necessary supporting documents.

3. Procedures for the application of the rules relating to the Agency's staff

As regards the second paragraph of Article 12 of the Protocol, Switzerland shall exempt, according to the principles of its national law, officials and other servants of the Agency within the meaning of Article 2 of Regulation (Euratom, ECSC, EEC) No 549/69 ⁽¹⁴⁾ from federal, cantonal and communal taxes on salaries, wages and emoluments paid to them by the European Union and subject to an internal tax for its own benefit.

Switzerland shall not be considered as a Member State within the meaning of point 1 above for the application of Article 13 of the Protocol.

Officials and other servants of the Agency and members of their families who are members of the social insurance system applicable to officials and other servants of the European Union are not obliged to be members of the Swiss social security system.

The Court of Justice of the European Union shall have exclusive jurisdiction in any matters concerning relations between the Agency or the Commission and its staff with regard to the application of Council Regulation (EEC, Euratom, ECSC) No 259/68 ⁽¹⁵⁾ and the other provisions of the European Union law laying down working conditions.

⁽¹⁴⁾ Regulation (Euratom, ECSC, EEC) No 549/69 of the Council of 25 March 1969 determining the categories of officials and other servants of the European Communities to whom the provisions of Article 12, the second paragraph of Article 13 and Article 14 of the Protocol on the Privileges and Immunities of the Communities apply (OJ L 74, 27.3.1969, p. 1). Regulation last amended by Commission Regulation (EC) No 1749/2002 (OJ L 264, 2.10.2002, p. 13.)

⁽¹⁵⁾ Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (Conditions of Employment of Other Servants) (OJ L 56, 4.3.1968, p. 1). Regulation last amended by Commission Regulation (EC) No 2104/2005 (OJ L 337, 22.12.2005, p. 7.)

ANNEX B

FINANCIAL CONTROL AS REGARDS SWISS PARTICIPANTS IN ACTIVITIES OF THE EUROPEAN AVIATION AGREEMENT*Article 1***Direct communication**

The Agency and the Commission shall communicate directly with all persons or entities established in Switzerland and participating in activities of the Agency, as contractors, participants in Agency programmes, recipients of payments from the Agency or the Community budget, or subcontractors. Such persons may send directly to the Commission and to the Agency all relevant information and documentation which they are required to submit on the basis of the instruments referred to in this Decision and of contracts or agreements concluded and any decisions taken pursuant to them.

*Article 2***Checks**

1. In accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁶⁾ and the Financial Regulation adopted by the Management Board of the Agency on 26 March 2003, with Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁷⁾ and with the other instruments referred to in this Decision, contracts or agreements concluded and decisions taken with beneficiaries established in Switzerland may provide for scientific, financial, technological or other audits to be conducted at any time on the premises of the beneficiaries and of their subcontractors by Agency and Commission officials or by other persons mandated by the Agency and the Commission.
2. Agency and Commission officials and other persons mandated by the Agency and the Commission shall have appropriate access to sites, works and documents and to all the information required in order to carry out such audits, including in electronic form. This right of access shall be stated explicitly in the contracts or agreements concluded to implement the instruments referred to in this Decision.
3. The European Court of Auditors is to have the same rights as the Commission.
4. The audits may take place until five years after the expiry of this Decision or under the terms of the contracts or agreements concluded and the decisions taken.
5. The Swiss Federal Audit Office is to be informed in advance of audits conducted on Swiss territory. This information will not be a legal condition for carrying out such audits.

*Article 3***On-the-spot checks**

1. Under this Agreement, the Commission (OLAF) is authorised to carry out on-the-spot checks and inspections on Swiss territory, under the terms and conditions set out in Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities. ⁽¹⁸⁾
2. On-the-spot checks and inspections shall be prepared and conducted by the Commission in close cooperation with the Swiss Federal Audit Office or with other competent Swiss authorities appointed by the Swiss Federal Audit Office, which shall be notified in good time of the object, purpose and legal basis of the checks and inspections, so that they can provide all the requisite help. To that end, the officials of the competent Swiss authorities may participate in the on-the-spot checks and inspections.

⁽¹⁶⁾ OJ L 248, 16.9.2002, p. 1.

⁽¹⁷⁾ OJ L 357, 31.12.2002, p. 72.

⁽¹⁸⁾ OJ L 292, 15.11.1996, p. 2.

3. If the Swiss competent authorities concerned so wish, the on-the-spot checks and inspections may be carried out jointly by the Commission and the Swiss competent authorities.
4. Where the participants in the programme resist an on-the-spot check or inspection, the Swiss authorities, acting in accordance with national rules, shall give the Commission inspectors such assistance as they need to allow them to discharge their duty in carrying out an on-the-spot check or inspection.
5. The Commission shall report as soon as possible to the Swiss Federal Audit Office any fact or suspicion relating to an irregularity which has come to its notice in the course of the on-the-spot check or inspection. In any event the Commission is required to inform the aforementioned authority of the result of such checks and inspections.

Article 4

Information and consultation

1. For the purposes of proper implementation of this Annex, the competent Swiss and Community authorities shall exchange information regularly and, at the request of one of the Parties, shall conduct consultations.
2. The competent Swiss authorities shall inform the Agency and the Commission without delay of any fact or suspicion which has come to their notice relating to an irregularity in connection with the conclusion and implementation of the contracts or agreements concluded in application of the instruments referred to in this Decision.

Article 5

Confidentiality

Information communicated or acquired in any form whatsoever pursuant to this Annex will be covered by professional confidentiality and protected in the same way as similar information is protected by the national legislation of Switzerland and by the corresponding provisions applicable to the Community institutions. Such information shall not be communicated to persons other than those within the Community institutions, in the Member States, or in Switzerland whose functions require them to know it, nor may it be used for purposes other than to ensure effective protection of the financial interests of the Contracting Parties.

Article 6

Administrative measures and penalties

Without prejudice to application of Swiss criminal law, administrative measures and penalties may be imposed by the Agency or the Commission in accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 and Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 and with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests. ⁽¹⁹⁾

Article 7

Recovery and enforcement

Decisions taken by the Agency or the Commission within the scope of this Decision which impose a pecuniary obligation on persons other than States shall be enforceable in Switzerland.

⁽¹⁹⁾ OJ L 312, 23.12.1995, p. 1.

The enforcement order must be issued, without any further control than verification of the authenticity of the act, by the authority designated by the Swiss government, which must inform the Agency or the Commission thereof. Enforcement must take place in accordance with the Swiss rules of procedure. The legality of the enforcement decision is subject to control by the Court of Justice of the European Union.

Judgments given by the Court of Justice of the European Union pursuant to an arbitration clause are enforceable on the same terms.

DECISION No 2/2023 OF THE SPECIALISED COMMITTEE ON SOCIAL SECURITY COORDINATION ESTABLISHED BY ARTICLE 8(1)(P) OF THE TRADE AND COOPERATION AGREEMENT BETWEEN THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY COMMUNITY, OF THE ONE PART, AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, OF THE OTHER PART,

of 28 June 2023

as regards the designation of the financial institution to serve as reference to determine the interest rate for late payments and the exchange rate for currency conversions, as well as the date to be taken into consideration for determining the rates of currency conversion [2023/1460]

THE SPECIALISED COMMITTEE ON SOCIAL SECURITY COORDINATION,

Having regard to the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part ⁽¹⁾, and in particular Articles SSCI.53(2) and SSCI.73 of its Protocol on Social Security Coordination,

Whereas:

- (1) Pursuant to Article SSCI.53(2) of the Protocol on Social Security Coordination (the 'Protocol') to the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (the 'Trade and Cooperation Agreement'), the interest for late payments is to be calculated on the basis of the reference rate applied by the financial institution designated for this purpose by the Specialised Committee on Social Security Coordination (the 'Specialised Committee') to its main refinancing operations.
- (2) Many provisions, such as Articles SSC.6(a), SSC.19(1), SSC.26, SSC.47 and SSC.64, SSCI.22(4) and (5), SSCI.23(7), SSCI.56, SSCI.57, SSCI.62 and SSCI.64 of the Protocol, contain situations where, for the purposes of the payment, calculation or recalculation of a benefit or contribution, a reimbursement, or for the purposes of offsetting and the recovery procedures, the exchange rate needs to be determined.
- (3) Pursuant to Article SSCI.73 of the Protocol, for the purposes of the Protocol and its Annex SSC-7, the exchange rate between two currencies is to be the reference rate published by the financial institution designated for this purpose by the Specialised Committee. The date to be taken into account for determining the exchange rate is to be fixed by the Specialised Committee.
- (4) The Specialised Committee notes that, while the rules on social security coordination laid down in the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ⁽²⁾ are legally separate from those laid down in the Trade and Cooperation Agreement, using the same financial institution for both agreements, as well as the same fixed date to be taken into account for determining the exchange rate, would be preferable, as it would avoid complications for the social security institutions implementing those agreements and mitigate the risk of errors,

HAS ADOPTED THIS DECISION:

Article 1

The European Central Bank shall be the financial institution designated for the purposes of Articles SSCI.53(2) and SSCI.73.

⁽¹⁾ OJ L 149, 30.4.2021, p. 10.

⁽²⁾ OJ L 29, 31.1.2020, p. 7.

Article 2

For the purpose of this Decision, the rate of conversion shall be understood as a daily conversion rate published by the European Central Bank.

Article 3

If not otherwise stated in this Decision, the rate of conversion shall be the rate published on the day when the operation is performed.

Article 4

An institution of a State, which for the purpose of the establishment of an entitlement, and for the first calculation of the benefit, has to convert an amount, shall use:

- (a) when, according to national legislation or the Protocol, an institution takes into account amounts, such as earnings or benefits, during a certain period before the date for which the benefit is calculated, the rate of conversion published on the last day of that period;
- (b) when, according to national legislation or the Protocol, for the purpose of calculation of the benefit an institution takes into account one amount, the rate of conversion published on the first day of the month immediately preceding the month when the provision must be applied.

Article 5

Article 4 shall apply *mutatis mutandis* when an institution of a State for the recalculation of the benefit due to changes in the factual or legal situation of the person concerned, has to convert an amount.

Article 6

An institution of a State which pays a benefit that is regularly indexed in accordance with the national legislation, and where the amounts in other currency have an impact on that benefit, shall, when recalculating it, use the rate of conversion published on the first day of the month preceding the month when the indexation is due, unless provided for differently in the national legislation.

Article 7

For the purposes of Article SSCI.73 of the Protocol, the date to be taken into account for determining the applicable exchange rate between two currencies shall be:

- (a) in the case of a request for offsetting from arrears/ongoing payments, the working day immediately preceding the day on which the applicant party sent the final request for offsetting from arrears/ongoing payments; or
- (b) in the case of a request for recovery, the working day immediately preceding the day on which the applicant party sent the first request for recovery.

For the purposes of this Article, working day shall refer to a working day of the European Central Bank on which it publishes a daily reference rate for currency exchange.

Article 8

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

Done at London, 28 June 2023.

*For the Specialised Committee on Social Security
Coordination*

The Co-chairs

Jordi CURELL GOTOR

Ronan O'CONNOR

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