Council of the European Union

Brussels, 29 June 2020
(OR. en)

9206/20
ADD 2

COMER 50
WTO 110
RELEX 486
UD 104
DELACT 74

COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	25 June 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2020) 116 final
Subject:	COMMISSION STAFF WORKING DOCUMENT METHODOLOGY TO CALCULATE THE THRESHOLDS IN ANNEX 1 OF REGULATION (EU) 2017/821 *Accompanying the document* Commmission Delegated Regulation (EU) ..../.... amending Annex I to Regulation (EU) 2017/821 of the European Parliament and of the Council by establishing volume thresholds for tantalum or niobium ores and concentrates, gold ores and concentrates, tin oxides and hydroxides, tantalates and carbides of tantalum

Delegations will find attached document SWD(2020) 116 final.

Encl.: SWD(2020) 116 final

EUROPEAN
COMMISSION

Brussels, 25.6.2020
SWD(2020) 116 final

COMMISSION STAFF WORKING DOCUMENT

METHODOLOGY TO CALCULATE THE THRESHOLDS IN ANNEX 1 OF REGULATION (EU) 2017/821

Accompanying the document

Commmission Delegated Regulation (EU) ..../....

amending Annex I to Regulation (EU) 2017/821 of the European Parliament and of the Council by establishing volume thresholds for tantalum or niobium ores and concentrates, gold ores and concentrates, tin oxides and hydroxides, tantalates and carbides of tantalum

{C(2020) 4164 final}

METHODOLOGY TO CALCULATE THE THRESHOLDS IN ANNEX 1 TO REGULATION (EU) 2017/821

1. OBJECTIVE

The objective of this Staff Working Document is to set out the way the Commission calculated the thresholds in view completing Annex 1 to Regulation (EU) 2017/821[1] (hereinafter "the Regulation") through the Delegated Commission Regulation referred to in Article 1(4) of the Regulation.

The Staff Working Document enables other EU institutions, Member States and stakeholders to understand how those thresholds were established while at the same time respecting the confidentiality requirements applicable to the underlying customs data used for the calculations.

2. INTRODUCTION

Annex 1 of the Regulation provides annual import volume thresholds, *below which* EU importers are not bound by the requirements set out in the Regulation[2].

Article 1(3) of the Regulation sets out that *"[a]ll volume thresholds are set at a level that ensures that the vast majority, but no less than 95 % of the total volumes imported into the Union of each mineral and metal under the Combined Nomenclature code is subject to the obligations of Union importers set out in the Regulation."*

Hence, the thresholds in Annex 1 to the Regulation are so-called *de minimis* thresholds that exempt small-volume importers from the requirements of the Regulation if their annual import volumes *fall below* those thresholds, while at the same time ensuring the vast majority of total EU imports are covered. This approach safeguards the integrity of the EU approach to responsible sourcing of minerals while at the same time respecting the principle of proportionality.

The 95 % principle is also explicit in Article 18 of the Regulation, which applies to completion or future amendments of the thresholds in Annex 1 through delegated acts. It provides that when calculating the thresholds, "*the Commission shall select the highest annual import volume per importer and per Combined Nomenclature code corresponding to no less than 95 % of the total annual volume of imports […]*". Article 18 also provides that "*the Commission shall [base the calculation on] import information provided for each Union importer provided by the Member States for the previous two years*".

At the time when the Regulation was adopted in 2017, Annex 1 did not include five specific thresholds given due to unavailable import data[3]. Article 1(4) of the Regulation therefore sets

[1] Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for the Union importers of tin, tantalum, tungsten, their ores, and gold originating from conflict-affected and high-risk areas

[2] Article 1(3) of the Regulation.

out that the Commission shall adopt a delegated act to amend Annex 1 by establishing these five volume thresholds. The article also sets out that the Commission is empowered to adopt a delegated act to amend the existing threshold in Annex 1 every three years after 1 January 2021[4].

This Staff Working Document sets out and explains the way the Commission implemented the aforementioned provisions to establish those five thresholds in Annex 1 to the Regulation that were yet to be established through the Delegated Commission Regulation. The approach set out in this Staff Working Document follows that used to establish the thresholds already included in Annex 1 by the Council Presidency during the ordinary legislative procedure that lead to the adoption of the Regulation[5]. The approach set out also ensures full respect of Articles 1 and 18 of the Regulation (which were not in force when the already existing thresholds were established but coherent with the approach applied). The approach was also consulted with the Expert Group for responsible sourcing of tin, tantalum, tungsten and gold, to which the experts of the European Parliament are also invited.

3. THE THREE STEPS TO ESTABLISH THE THRESHOLDS

The general approach to calculating the thresholds that were still to be established is – mutatis mutandis – the same as that applied to establish thresholds already contained in the Regulation:

- *separate calculations for 2018 and 2019 respectively*, to establish the specific limit value that would mean that at least 95 % of total imports would have been covered each year;
- *averaging* the two annual specific limit values resulting from each of the two years;
- *rounding* of the average to obtain the final threshold while ensuring to cover at least 95 %.

Based on this general approach, the Commission followed the three steps set out below to calculate the thresholds that were still to be established, which are further explained by the illustrative example provided in section 4.

Step 1: Ranking of EU importers for 2018 and 2019 separately

Based on the annual import volumes per EU importer for the years 2018 and 2019 submitted by the Member States pursuant to Article 18 of the Regulation, the Commission ranked all EU importers per each of the five product categories and per each of the two years separately in *descending order*. I.e. the importer with the highest imported volumes of a specific product a

[3] This data has subsequently been collected by Member States' customs authorities based on the more disaggregated TARIC subdivisions created by the Regulation; and was subsequently submitted to the Commission pursuant to Article 18 of the Regulation.
[4] Paragraph 5. Without prejudice to those forthcoming Delegated Commission Regulations, the Commission expects to apply the same approach for future amendments.
[5] The thresholds in Annex 1 were not included in the Commission's proposal.

given year was ranked first, and the importer with the lowest imported volumes was ranked last.

In establishing the total annual imports per EU importer, the Commission also considered whether the same importer had declared imports of the same product in more than one Member State a given year. If that was the case, the total import volume for that importer was obtained by adding the import volumes declared in the various Member States by the same importer.

Step 2: Calculation of a "specific limit value" for each of 2018 and 2019

Based on the rankings produced in Step 1 and for each of the two years *separately*, the Commission *accumulated* the share of total imported volumes, starting with the largest importer followed by addition of the imports of the second largest importer, etc. until the total yearly imports of those importers together corresponded to at least 95 % of total imports the given year.

In this step, *the specific limit value* for each of the two years was identified at the level of the specific import volumes of the *last* importer on the ranked list that was necessary to include to reach at least 95 % of total imports that one year. In other words, the specific limit values for each of the two years was set in a way that ensured that the importers with annual volumes above or at the specific limit value *together* represented more than 95 % of the total import volumes that year (or inversely that importers with annual volumes *below* the limit value represented less than 5 % of total imports that year).

In simplified terms, the tow annual specific limit values can be understood as the threshold for that specific year that would meet the "at least 95 %" requirement for that specific year.

It should be recalled that while the Regulation does not apply to importers *falling below* the thresholds, it does apply for those that are importing *at* the threshold[6]. Moreover, the Regulation also provides that that the Commission shall select *the highest* annual import volume per importer so that no less than 95 % is covered[7]. The same logic was applied to calculating the annual specific values in this step, to ensure that the calculation of the final threshold (in step 3) – which is based on the two specific limit values for 2018 and 2019 – would respect the same principles.

Step 3: Calculation of the final threshold

The Commission thereafter calculated the (arithmetic) average of the two annual specific values identified in Step 2 (i.e. for 2018 and 2019) for each of the five product categories.

The final threshold for each of the five product categories was obtained by rounding the averages *downwards* and so that they were expressed with *two significant digits*. The arithmetic average was rounded downwards (and not to the closest integer with two significant digits) to fully respect the principle that *no less than* 95 % of the total volumes

[6] See Article 1(3).
[7] See article 18.

imported into the EU are subject to the obligations of Union importers set out in the Regulation. Hence, any rounding off upwards could at least in theory lead to the threshold being set too high (i.e. not stringent enough) and that *less* than 95 % of total imports would be covered by the Regulation as a consequence.

The approach to round off downwards was also used to provide a certain safety margin to ensure that the 95 % principle was respected. At the same time, maintaining two significant digits (and not round off more[8]) contained the possibility that the rounding as such would result in more stringent thresholds than intended by Articles 1 and 18 of the Regulation.

4. ILLUSTRATIVE EXAMPLE

Strictly for illustrative purposes, this section provides a simplified and hypothetical example of how the approach set out in section 3 would be implemented in practice.

Step 1: Ranking of EU importers for 2018 and 2019 separately

In this example and as set out in Figure 1, it is assumed that there were five EU importers of product X in each of the two years and that the total annual imports were 1000 kg each of the two years. Please note that in this example, importers A to E in 2018 *may or may not* be fully or partially corresponding to importers 1 to 5 in 2019. The extent to which one specific importer imports product X one or both of the two years does not impact the ranking and the following calculations.

In step 1, the importers are ranked in descending order based on annual import volumes.

Figure 1: Example of ranked importers for product X

Importer	Imports 2018		Importer	Imports 2019
Importer A	630 kg		Importer 1	440 kg
Importer B	210 kg		Importer 2	240 kg
Importer C	130 kg		Importer 3	150 kg
Importer D	20 kg		Importer 4	120 kg
Importer E	10 kg		Importer 5	50 kg
Total	1000 kg			1000 kg

Step 2: Calculation of the specific limit value for each of 2018 and 2019

In step 2, an additional column is added for each of the two years, showing the accumulated share of total imports for each importer and those importers importing more (as shown in Figure 2 below).

[8] The thresholds included in Annex 1 already when the Regulation was adopted were rounded off to 1 or 2 significant digits.

The largest importer in 2018 was Importer A, whose share of total imports of product X in that year was 63 %. Given that no other importer imported more that year, the accumulated share of total imports is indicated at 63 %. The second largest importer that year was Importer B, that itself represented 21 % of total imports. The accumulated share at the line of importer B is however not 21 % but 84 %, which is the accumulated share of Importers A and B (63 +21 = 84), etc. Hence, the column "Acc. share of total" showed the percent of total imports that year that were made by that specific importer and importers that were larger.

Figure 2 demonstrates that to ensure that no less than 95 % of total imports are done by importers that are at or above the specific limit value, importers A, B and C (in 2018) and Importers 1, 2, 3, and 4 (in 2019) would have to be included.

Hence, the specific limit value would be 130 kg for 2018 (so that Importer C does not fall below the threshold), and 120 kg for 2019 (so that Importer 4 does not fall below the threshold).

Figure 2: Example of ranked importers for product X, including the accumulated share of total imports

Importer	Imports 2018 (kg)	Acc. share of total		Importer	Imports 2019 (kg)	Acc. share of total
Importer A	630	63 %		Importer 1	440	44 %
Importer B	210	84 %		Importer 2	240	68 %
Importer C	**130**	**97 %**		Importer 3	150	83 %
Importer D	20	99 %		**Importer 4**	**120**	**95 %**
Importer E	10	100 %		Importer 5	50	100 %

As can be seen in figure 2, in this example the relative share of each importer in 2018 does not make it possible to set the specific limit value for that year so that *exactly* 95 % of total imports are at or above it. Setting the specific limit value for 2018 at the level of Importer C (i.e. at 130 kg) leads to *97* % (not 95 %) of total imports being at or above specific limit value that year. However, if the specific limit value for 2018 is set at any level that is *higher* (i.e. less stringent) than 130 kg then Importer C would fall below it. In that case only 84 % of the total imports would fall at or above the specific limit value.

Hence, for *at least 95 %* of total imports to be covered, the specific limit value for 2018 is set at the level that ensures that also importer C is included, even though this leads to more than 95 % being covered.

Why was the specific limit value for each of the two years not simply set at 5 % of the total imports (so that 95 % would fall above it)?

To respect the 95 % principle, the relative shares and the relative importance of all the importers compared to the total imports have to be considered. In the example used in this section, simply setting the annual limit value at 5 % of total imports would have resulted in 50

kg each of the two years. Such a limit value would in 2019 also have covered Importer 5 (as it is at and not below the threshold) and hence 100 % rather than 95 % of total imports would have been at or above the limit value (i.e. *too stringent*).

One can also envisage a situation where small scale importers together represent a much larger share of the total imports than in the example used. If, for example, in a given year there were two importers each representing 4 % of the total annual imports, three importers each representing 3 % of the total and two importers each representing 1 % of the total; simply setting the specific limit value at 5 % of total imports would result in all these importers falling below the limit, and less than 95 % of the total imports would have been covered that year as a consequence (i.e. *not stringent enough*).

Hence, the only way to respect the "at least 95 %" principle is to rank and accumulate the shares of the totals until more than 95 % is achieved, as explained above.

Step 3: Calculation of the average thresholds for each product category and rounding

In this step, the arithmetic average of the two specific limit values for each of the two preceding years (2018 and 2019) resulting from step 2 is calculated as follows:

(130 + 120) / 2 = 125 kg

Rounding the arithmetic average downwards (to respect the "at least 95 % principle) so that it is expressed with two significant digits, results in the final annual volume threshold for product X to be **120 kg** in this example.

In this example, the final threshold equals the lower of the two annual specific limit values calculated in step 2, but this is only due to the rounding rules and the fact that the two annual specific limit values are close in this example. If the two annual specific limit values for 2018 and 2019 had been – for example – 140 and 110, the arithmetic average and the resulting final threshold after rounding would still have been 125 and 120 kg respectively, but the final threshold would not have been identical to the lower of the two annual specific limit values.

The table below provides other illustrative, strictly hypothetical examples on how other arithmetic averages would have been rounded to reach the final threshold, with the same methodology based on rounding *downwards* to *two significant digits*.

Figure 3: Other hypothetical examples of the approach to rounding

Arithmetic average of years X and Y (kg)	Final threshold after rounding (kg)
1.25	1.2
12.5	12
125	120
1 250	1 200
12 500	12 000
125 000	120 000
1 250 000	1 200 000

1.2	1.2
12	12
122	120
1 222	1 200
12 222	12 000
122 222	120 000
1 222 222	1 200 000

* * *