

ASSOCIATION  
BETWEEN  
THE EUROPEAN UNION  
AND TURKEY

The Association Council

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UE-TR 4806/21

**COVER NOTE**

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From: Mr Denis REDONNET, Deputy-Director General for Trade, European Commission

date of receipt: 6 July 2021

To: President of the EU-Turkey Association Council

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Subject: Anti-dumping proceeding concerning imports of certain hot-rolled flat products of iron, non-alloy steel originating in Turkey

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Excellency,

I have the honour to inform you that the European Commission has decided to impose a definitive anti-dumping measure in the framework of the anti-dumping proceeding concerning imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Turkey.

In accordance with Article 46 of Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union, I wish to inform the Customs Union Joint Committee that the European Commission has thus decided to impose definitive anti-dumping measures in the form of anti-dumping duties on the imports under investigation. Attached you will find a copy of the relevant Regulation published today in the Official Journal of the European Union.

Yours sincerely,

Denis REDONNET  
Deputy Director General

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Encl.: - Commission Implementing Regulation from the *Official Journal of the European Union*

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## COMMISSION IMPLEMENTING REGULATION (EU) 2021/1100

of 5 July 2021

imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Turkey

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 <sup>(1)</sup>, and in particular Article 9(4) thereof,

Whereas:

## 1. PROCEDURE

## 1.1. Initiation

- (1) On 14 May 2020, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel ('HRRFS' or 'the product under investigation') originating in Turkey ('the country concerned') on the basis of Article 5 of the basic Regulation <sup>(2)</sup>.
- (2) On 12 June 2020, the Commission initiated an anti-subsidy investigation with regard to imports of the same product originating in Turkey <sup>(3)</sup>.

## 1.2. Registration

- (3) Following a request by the complainant supported by the required evidence, the Commission made imports of the product concerned subject to registration by Commission Implementing Regulation (EU) 2020/1686 <sup>(4)</sup> ('the registration Regulation') under Article 14(5) of the basic Regulation.

## 1.3. Provisional measures

- (4) In accordance with Article 19a of the basic Regulation, on 17 December 2020 the Commission provided parties with a summary of the proposed provisional duties and details about the calculation of the dumping margins and the margins adequate to remove the injury to the Union industry. As explained in recitals (215) and (216) of the provisional Regulation, the comments submitted by parties did not result in a change in the margins as these were not considered to be of a clerical nature.
- (5) On 7 January 2021, the Commission imposed a provisional anti-dumping duty by Commission Implementing Regulation (EU) 2021/9 <sup>(5)</sup> ('the provisional Regulation').

## 1.4. Subsequent procedure

- (6) Following the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed ('provisional disclosure'), the complainants, a Consortium representing the interests of some users, a user that imported long steel products, the sampled exporting producers, an importer related to one of the sampled exporting producers, the Turkish Steel Exporters association ('ÇİB') and the Government of Turkey ('GOT') made written submissions making their views known on the provisional findings. Two exporting producers requested and received further details on the calculation of their injury margins.

<sup>(1)</sup> OJ L 176, 30.6.2016, p. 21.

<sup>(2)</sup> OJ C 166, 14.5.2020, p. 9.

<sup>(3)</sup> OJ C 197, 12.6.2020, p. 4.

<sup>(4)</sup> Commission Implementing Regulation (EU) 2020/1686 of 12 November 2020 making imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Turkey subject to registration (OJ L 379, 13.11.2020, p. 47).

<sup>(5)</sup> Commission Implementing Regulation (EU) 2021/9 of 6 January 2021 imposing a provisional duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Turkey (OJ L 3, 7.1.2021, p. 4).

- (7) The parties who so requested were granted an opportunity to be heard. Hearings took place with the three sampled exporting producers and the GOT.
- (8) The Commission continued to seek and verify all the information it deemed necessary for its final findings. When reaching its definitive findings, the Commission considered the comments submitted by interested parties and revised its provisional conclusions when appropriate.
- (9) The Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Turkey ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure.
- (10) Parties who so requested were also granted an opportunity to be heard. Hearings took place with the three sampled exporting producers. In addition, one sampled exporting producer requested the intervention of the Hearing Officer with regard to the application of Article 18 of the basic Regulation.
- (11) Following final disclosure, the Commission found a clerical error in the calculation of the definitive dumping margin of one of the exporting producers. Therefore, an additional final disclosure was sent to the exporting producer in question, which made further comments on the additional disclosure received.
- (12) The comments submitted by the interested parties were considered and taken into account where appropriate in this regulation.

#### 1.5. Sampling

- (13) In the absence of comments concerning sampling, recitals (7) to (18) of the provisional Regulation were confirmed.

#### 1.6. Individual examination

- (14) In the absence of comments concerning this section, recital (19) of the provisional Regulation was confirmed.

#### 1.7. Investigation period and period considered

- (15) In the absence of comments concerning the investigation period (IP) and the period considered, recital (27) of the provisional Regulation was confirmed.

#### 1.8. Change of geographical scope and procedural claims

- (16) Since 1 January 2021, the United Kingdom of Great Britain and Northern Ireland (UK) is no longer part of the European Union. Therefore, this regulation is based on data for the European Union without the UK (EU27). The Commission therefore asked the complainant and the sampled Union producers to submit certain parts of their original questionnaire responses with data for EU27 only. The complainant and the sampled Union producers submitted the requested data. As the difference between the macroeconomic indicators published in the provisional Regulation and the macroeconomic data for EU27 is due to the exclusion of the data from one single UK producer, certain tables in this Regulation are provided in ranges in order not to disclose confidential information related to that interested party.
- (17) In relation to dumping, only the export sales of the sampled exporting producers to EU27 were considered to calculate the definitive dumping margins.
- (18) Finally, for the Union interest assessment, the Commission also enquired about the impact of the UK withdrawal on the questionnaire responses submitted by users and importers, namely Marcegaglia Carbon Steel SpA, San Polo Lamiere and those represented by the Network Steel group. San Polo Lamiere did not react to the Commission's request. The other parties stated that the UK withdrawal had no impact on the information that they had already provided.

- (19) On 12 January 2021, by means of a note to the file <sup>(6)</sup>, the Commission informed companies and associations from the UK that they would no longer qualify as interested parties in trade defence proceedings. Only the International Steel Trade Association, a UK-based party representing the interests of importers and users which was registered as an interested party, reacted to the note by submitting a substantiated request for remaining an interested party in this proceeding. Seen as the party has a hub in Germany representing relevant EU businesses in EU27, the Commission agreed to its request.
- (20) The GOT deemed that the UK withdrawal made the provisional measures imposed on 7 January 2021 unsubstantiated and unlawful because they were based on EU28 data. On 29 January 2021 the GOT asked the Commission to terminate the provisional measures and carry out an analysis based on data excluding the UK. The Commission found the GOT's request unfounded as the provisional measures derived from findings pre-disclosed to interested parties in 2020, at a time when the Union still had 28 Member States.
- (21) Furthermore, the GOT and two of the sampled exporting producers claimed that any provisional measures should not remain in force more than three months in light of Article 11(2) of Agreement between the European Coal and Steel Community and the Republic of Turkey on trade in products covered by the Treaty establishing the European Coal and Steel Community ('the Turkey/ECSC Agreement') <sup>(7)</sup>. The Commission was, however, of the view that the provisions in Article 11 of the Turkey/ECSC Agreement are relevant only if this Article is specifically invoked by the injured Party. In this investigation the Commission did not invoke the provisions of Articles 10 or 11 of the Turkey/ECSC Agreement and, thus, the Commission was not required to impose provisional measures for a shorter duration than six months, as provided in the basic Regulation.

## 2. PRODUCT CONCERNED AND LIKE PRODUCT

### 2.1. Claims regarding the product scope

- (22) At provisional stage, a manufacturer of forklifts and components for forklift-trucks and construction machines requested the exclusion of hot-rolled long bar steel products from the product scope of the investigation. In the provisional Regulation, the Commission had provisionally established that hot-rolled long bar steel products fall outside the scope of this investigation because a 6-12 m long hot-rolled bar is a long product and not a flat steel product.
- (23) Following provisional disclosure, the party reiterated its request. It noted that the products in question were still covered by the product definition and, thus, subject to measures. It therefore requested the exclusion of "products which are longer than 6,000 mm" with a view to excluding the same products, i.e. certain hot-rolled long bar products which fall under CN code 7226 91 91, one of the CN codes subject to measures. The Commission found that the exclusion as proposed by the party was inapplicable as it would include certain HRF5 products aimed to be covered by the measures. In this respect, the complainant noted that a length of 10,000 mm can apply to HRF5 coils and even to certain cut-to-length HRF5 products and was therefore not exclusively a characteristic of the products in the exclusion request. However, the complainant agreed that the hot-rolled long bar steel products in question were not intended to be covered by the scope of the investigation.
- (24) The Commission found the products in the forklifts manufacturer's request have different basic characteristics than HRF5 not because of their length, but rather with regard to their thickness and width, which make them different products, having a different use. Therefore, an exclusion was granted to "products whose (a) width is up to and including 350 mm, and (b) whose thickness is 50 mm or greater, regardless of the length of the product".
- (25) Following provisional disclosure, Erdemir Romania S.R.L. requested the exclusion of so-called 'magnetic' hot-rolled non-grain oriented silicon products falling under CN code 7225 19 10 because it purchases such products only from its mother company Erdemir in Turkey, due to the alleged practices of Union producers (i.e. high prices and limited supply) and the alleged absence of competition with Union producers. Erdemir Romania S.R.L. claimed that, if the products in question are not excluded, there would be a negative impact on the company itself and on the overall Romanian economy.

<sup>(6)</sup> t21.000389.

<sup>(7)</sup> OJ L 227, 7.9.1996, p. 3.

- (26) The above exclusion request concerns the supply of input HRF5 to an electrical steel manufacturer in Romania from its mother company Erdemir in Turkey. The Commission found that such input materials are not distinct but share the same features as other types of HRF5 subject to measures in terms of their basic physical, technical and chemical characteristics, their end-uses and interchangeability. The Commission thus rejected the exclusion request of 'magnetic' hot-rolled non-grain oriented silicon products falling under CN code 7225 19 10. Furthermore, several Union producers produce 'magnetic' hot-rolled non-grain oriented silicon products, which are in direct competition with imported products. As to the impact on the requesting party, the Commission failed to see why the non-exclusion would be "catastrophic", as claimed by the party, given the level of the applicable anti-dumping duty to the mother company.

## 2.2. Conclusion

- (27) In the absence of any other comments with respect to the product scope, the Commission confirmed the conclusions set out in recitals (28) to (33) of the provisional Regulation, as revised in recital (24) above.

## 3. DUMPING

- (28) Following provisional and final disclosures, the Commission received written comments from the three sampled exporting producers and from the complainant on the provisional and the definitive dumping findings.

### 3.1. Application of Article 18 of the basic Regulation

- (29) The details of the application of Article 18 of the basic Regulation to information provided by two related exporting producers, concerning transport costs reported with regard to sales on the domestic market, were set out in recitals (26) and (56) to (59) of the provisional Regulation.
- (30) Following provisional disclosure, the two related exporting producers opposed the provisional application of Article 18 of the basic Regulation with regard to their domestic transport costs and claimed that the conditions for applying this Article were not met in the present case. They also argued that if the Commission concluded otherwise, it could only make an adjustment to the domestic transport costs of those delivery routes for which the companies' information was considered incorrect.
- (31) In its comments submitted after provisional disclosure, the complainant opposed the exporting producers' claim and supported the Commission's provisional application of Article 18 of the basic Regulation in respect to transportation costs incurred by the exporting producers in question.
- (32) Following final disclosure, the exporting producers in question reiterated their claims. First, they argued that the identification of costs incurred for transport of HRF5 between a producer and another company in the group was no longer necessary since the Commission decided to perform separate dumping margin calculations for both exporting producers in the group. Second, they submitted that the Commission should have used the information provided in reply to the Article 18 letter and should have only adapted the transport cost for delivery routes that involved a warehouse/port of a related company within the group as an intermediary sales or delivery point. In this regard, the company also requested the intervention of the Hearing Officer, and a hearing took place on 6 May 2021.
- (33) The Commission analysed the claim and concluded that the application of Article 18 of the basic Regulation with regard to the domestic transport costs incurred by the exporting producers was justified. First, although separate calculations for the two companies were done after their comments on the provisional disclosure, the companies did remain related parties so internal transport costs were still relevant. Second, the documents submitted by the companies in support of their claim did not present any new information, and did not provide a clear and complete breakdown of all delivery routes involved in the domestic sales of the product under investigation that would allow the Commission to clearly identify – and therefore to cross-check – all transactions where a warehouse/port of a related company was involved as an intermediary sales or distribution point. From the information on file, it could not be excluded with sufficient certainty that there were no other delivery routes where some internal transportation costs would also need to be excluded.

- (34) Further to the Hearing Officer's recommendations, the Commission reassessed the proportionality of the adjustment made to the domestic transport costs of the exporting producers. The Commission noted that the application of Article 18 of the basic Regulation concerned only a limited number of sales transactions on the domestic market (around 10 % for one exporting producer, around 20 % for the other exporting producer within the group) and the Commission corrected only sales transactions delivered to the customer. Thus, the allowances for the majority of domestic sales transactions remained unaffected. Moreover, although the Commission applied facts available, it did not reject the transport cost allowance completely. Instead, it used the actual data provided by the companies to estimate the transport costs for routes where the involvement of a related intermediary point was unclear. Consequently, the Commission considered that, given the facts and the need for the exporting producers to substantiate the allowances claimed, the approach taken with regard to the determination of the transport cost allowance for domestic sales transactions was proportionate and not unreasonable.
- (35) Therefore, the claim was rejected, and the Commission confirmed the conclusions set out in recitals (56) to (59) of the provisional Regulation.

### 3.2. Normal value

- (36) The details of the calculation of the normal value were set out in recitals (38) to (49) of the provisional Regulation.
- (37) One exporting producer claimed that in establishing its cost of production, the Commission should reconcile the recalculated cost of a purchased input with its accounting records.
- (38) The Commission assessed the claim and found it justified. The methodology the Commission applied at the provisional stage to reallocate the cost of the purchased input in order to reflect the difference in cost resulting from differences in its technical characteristics led to a higher total cost of that input which did not match with the accounting records of the exporting producer. Therefore, the claim was accepted and the Commission revised the cost of the purchased input accordingly in the definitive calculation.
- (39) One exporting producer claimed that in establishing its cost of production, the Commission should have accepted the electricity offset it had reported. It argued that in its provisional conclusions, the Commission misunderstood the role of the company in the Turkish electricity market and the overall functioning of the YEKDEM system, a support mechanism for renewable energy in Turkey. The exporting producer explained that electricity generated from renewable sources is sold to market participants by the market operator (EPIAS) at a certain price. However, if the market price at which EPIAS had purchased this electricity subsequently turned out to be lower, the difference was reimbursed to the purchasers of electricity. Therefore, the company claimed that an electricity offset is necessary to reflect its net cost of electricity, taking into account the reimbursement.
- (40) The Commission analysed the new explanations provided and concluded that the claim was justified. Therefore, the claim was accepted and the electricity offset was included in the cost of production in the definitive dumping calculation of the company.
- (41) One exporting producer claimed that, for the calculation of cost of production for HRF5, the Commission should only have considered the cost of HRF5 sold domestically, which it had provided separately from the cost of HRF5 exported to the Union, rather than establishing a single HRF5 production cost by merging the two sets of cost data provided. The company claimed that such an approach ignored the fact that the product mix within one product type defined in the Product Control Number (PCN) can be different depending on the market destination.
- (42) In its comments submitted after provisional disclosure, the complainant opposed the exporting producer's claim stating that if two or more products fall within the same PCN, they should have the same cost of production, even if the producer considers them different in its own cost accounting system. Therefore they should be reported in the same cost of production table.

- (43) Following final disclosure, the exporting producer reiterated the claim that only the cost of production for domestic sales, which was reported separately from the cost of production for sales to the Union, should have been considered in the calculation of the normal value.
- (44) The Commission considered that the exporting producer did not show any factual differences in the production cost per market destination that would justify a separate cost calculation. The alleged cost differences arose because the company provided production costs on the basis of its internal coding instead of on the basis of PCNs. The Commission considered that there is no reason to differentiate between the production cost for products sold domestically and exported if there are no factual differences in the production process. As the exporting producer did not provide any evidence that the production process for export and for domestic sales within the same PCN was different, the Commission concluded that it could not accept two sets of costs. Therefore, the claim was rejected.
- (45) The three exporting producers made comments on the calculation of their domestic SGA, in particular concerning the exclusion or the provisional reallocation of some financial items such as financial incomes, foreign exchange gains and losses and extraordinary revenues and losses for the purpose of calculating SGA.
- (46) In its comments submitted after provisional disclosure, the complainant opposed the exporting producers' claims stating that the excluded amounts were not linked to the production or sales of the product under investigation but the result of other activities performed by the companies like bank deposits and revaluation operations.
- (47) Following final disclosure, the three exporting producers reiterated their claims regarding the calculation of SGA.
- (48) Two related exporting producers questioned the fact that the Commission reclassified some expenses from costs of goods sold to SGA or to the cost of production (such as idle capacity expenses, provision for inactive material) while it did not do the same with certain other expenses reported under costs of goods sold. The companies further argued that the Commission should have taken into account the realised foreign exchange gains/losses as well as those stemming from valuation differences. Finally, the companies claimed that the partial reclassification of transport related SGA expenses to overall SGA expenses should not have been done for the related trader in the group since it did not incur internal transport costs. The latter claim was reiterated after the additional final disclosure. In particular, the exporting producers claimed that the issue could not concern the related trader since it was the last leg in the transportation flow.
- (49) With regard to the reclassification of the expenses reported under costs of goods sold, the company had reported certain expenses, which were included neither in the cost of production nor in SGA. The Commission thus found that those expenses would be incorrectly excluded from the determination of the normal value if not reclassified under either of those categories. At the same time, the Commission considered that those expenses, which were not reclassified, either were not related to production and/or sales of the product under investigation (e.g. derivative transactions) or the connection to the production and/or sales of the product under investigation was unclear (e.g. raw material price differences).
- (50) With regard to the foreign exchange gains/losses, the Commission considered that the valuation gains/losses were a result of closing operations and, therefore, were not linked to the production and/or sales of the product under investigation. Moreover, the companies explained that the foreign exchange gains/losses resulted from operations in EUR or TRY since their accounting currency was USD. As the domestic sales were carried out in USD, the Commission considered that the realised foreign exchange gains/losses could not be attributed to domestic sales and thus should have been taken into account when determining the SGA used in the ordinary course of trade test.
- (51) Finally, with regard to the reclassification of internal transport costs, to which the provisions of Article 18 of the basic Regulation were applied as explained in recitals (29) to (35) above, as far as it concerns the related trader, the Commission considered the issue to be at the level of the company group, including the related trader's operations. With regard to the related trader, the Commission noted that the company had its premises in four locations. Therefore, it could not be excluded that the goods were first transported to one of the other locations before being shipped to or picked up by the customer.

- (52) Consequently, the Commission confirmed its approach at provisional stage and rejected the claims submitted by the two related exporting producers.
- (53) One exporting producer disagreed with the Commission's rejection of foreign exchange gains/losses, extraordinary income, and financial income that the company reported in its SGA. In addition, it claimed that the Commission removed financial income but not financial expenses from SGA.
- (54) Following its accounting practices, the company in question was not able to separately report realised foreign exchange gains/losses, which are directly linked to the production and/or sales of the product under investigation. Therefore, the Commission was not able to determine the actual amount of the reported foreign exchange gains/losses that could be taken into account in the calculation of SGA.
- (55) With regard to the extraordinary income, the Commission noted that in its comments on the provisional disclosure, the company claimed that the extraordinary income concerned sales and production activities of the product under investigation. Yet the company did not provide any evidence substantiating this claim. In addition, the Commission clarified that it only rejected the one item reported under the extraordinary income, whose character could not be established based on the information provided by the company.
- (56) Finally, the Commission also carefully considered the information reported under financial income and financial expense. The Commission rejected the company's claim under financial income since it was not related to the day-to-day production and sales activities of the company, but rather to financial operations unrelated to the production and/or sales of the product under investigation. Contrary to this, based on the information provided by the company, the Commission considered that the financial expenses incurred by the company concerned its production and sales activities of HRF5.
- (57) Consequently, the Commission confirmed its approach at provisional stage and rejected the claims submitted by the exporting producer.
- (58) One exporting producer claimed that the Commission should not have disregarded the information it submitted at the provisional stage, since there is no temporal exception which would permit the Commission to do so, as long as the information is submitted within the time limits of the investigation and the interested party who submitted such information is cooperating with the Commission.
- (59) At provisional stage, the exporting producer in question contested the Commission's provisional corrections made to its cross-checked SGA, and submitted further details in this regard. The Commission had reallocated certain SGA expenses the company had initially allocated to other products, including inputs in the production of HRF5 manufactured by the company itself. The Commission carefully examined the additional information provided and concluded that this information did not prove that the method used by the Commission to reallocate SGA was unreasonable or inappropriate, especially in view of the fact that the producer had failed to disclose and properly allocate these SGA expenses during the remote cross-check (RCC), and that it had agreed, in its comments on provisional disclosure, that the SGA related to the inputs used in the production of the product under investigation could be allocated to the product under investigation. Therefore, the Commission rejected the claim.
- (60) One exporting producers group opposed the provisional decision to merge the cost and sales data of the two producing entities in the group for the calculation of the group's dumping margin. It claimed that the Commission should have instead first calculated individual dumping margins for the two related producers based on their own normal values and export prices, and then should have calculated one weighted average dumping margin for the whole group on that basis.
- (61) In its comments submitted after provisional disclosure, the complainant opposed the exporting producer's claim stating that the Commission was correct in treating the companies as a single entity given the nature of the economic activities of the group.



- (62) The Commission concluded that, since each of the two exporting producers in the group provided its own cost and sales data in a way that made it possible to distinguish and follow the costs and sales flow of the products produced by each of the two exporting producers individually, it was possible and more accurate to calculate two separate dumping margins and only then merge them into one weighted average dumping margin for the whole group. Therefore, the claim of the group was accepted and its dumping margin calculated accordingly.
- (63) One exporting producer claimed that the Commission was wrong in provisionally including some idle capacity expenses in its cost of production, and claimed that such expenses only concerned products other than the product under investigation.
- (64) The Commission analysed the information provided by the exporting producer and found the claim justified. In fact, the provisional inclusion of these idle capacity expenses in the cost of the product under investigation was the result of a misunderstanding regarding the category of products to which these expenses were related. Therefore, the claim was accepted and the related idle capacity expenses were removed from the exporting producer's cost of production.
- (65) One exporting producer reiterated the claim to consider the actual cost of production of the slabs (input material for HRPS) as incurred by its related supplier, rather than the purchase price charged by the related supplier. In addition, the company noted that such an approach was appropriate since at the provisional stage the Commission merged the data provided by the two related producers and carried out a single dumping margin calculation.
- (66) In its comments submitted after provisional disclosure, the complainant opposed the exporting producer's claim stating that the cost of slabs should be reported as incurred by the exporting producer. Given that slabs were not transferred at cost level but above, considering the cost of slabs of the related supplier would be distortive.
- (67) The Commission noted that pursuant to Article 2(5) of the basic Regulation, the costs used in the normal value calculation shall reasonably reflect the costs associated with the production and sale of the product under investigation as recorded in the accounting records of the company. In the accounting records of the exporting producer making the claim, the cost of slabs was booked at the level of the purchase price paid to the related supplier. The sales price of slabs to the exporting producer was comparable to the sales price to unrelated parties and thus the Commission considered them to reasonably reflect the costs associated with the production and sale of the product under investigation. Moreover, the Commission considered the two producers as separate entities and performed two separate dumping calculations, thus the additional argument concerning the merged calculation at provisional stage became irrelevant. Therefore, the Commission confirmed the findings made at provisional stage.
- (68) One exporting producer claimed that the Commission was wrong in provisionally adjusting the cost of iron ore pellets when establishing its cost of production for HRPS – an adjustment which was done because the cost of those pellets was based on the purchase prices from related parties, i.e. not reflecting the actual market price. The exporting producer also claimed that, if an adjustment was to be made, only a part of the resulting additional costs could be allocated to the production of the product under investigation as iron ore pellets are also used in the production of other products.
- (69) In its comments submitted after provisional disclosure, the complainant opposed the exporting producer's claim and supported the Commission's adjustment to the cost of iron ore pellets given that the purchase prices paid to related entities were not at arm's length.
- (70) The Commission confirmed its provisional conclusion that, pursuant to Article 2(5) of the basic Regulation, an adjustment to the exporting producer's cost of iron ore pellets was necessary because these were purchased almost exclusively from related parties at prices which were found not to be at arm's length. These were therefore replaced with the unrelated purchase price, as provided by the company. The claim that only part of the resulting additional costs should be allocated to the production of the product under investigation was not reflected in the company's questionnaire reply and the accuracy of such information could not be cross-checked at such a late stage of the investigation. Therefore, the claim was rejected.

- (71) Following final disclosure, the exporting producer repeated the argument that the purchase price of iron ore pellets from related parties was at arm's length, and contested the way the Commission calculated this adjustment by allocating all additional costs to the product under investigation, while claiming that iron ore pellets are also used in the production of other products. On this last point, the company also contested the Commission's conclusion that the information provided for the expense allocation was new and could not be cross-checked.
- (72) The Commission carefully reassessed the arguments and information provided by the company in its comments on final disclosure. The Commission observed that the related supplier of the iron ore pellets indeed sold the raw material to the exporting producer with a mark-up. Nevertheless, the mark-up was far below the level claimed by the exporting producer and far below the mark-up applied to sales between the group companies in line with the group's transfer pricing policy and therefore it did not appear to reflect the mark-up of an arms-length transaction. Furthermore, the company did not provide any further evidence to show that such mark-up reflected a reasonable level requested by an independent trading company. With regard to the share of purchased iron ore pellets used in the production of HRPS, the Commission noted that the company separately reported the purchase of iron ore in several forms. Yet, the cost of iron ore used in the production of HRPS was reported by the company without further breakdown and thus it was not possible to confirm the more granular consumption of iron ore pellets in the production of HRPS. In addition, the data in the Capacity report submitted by the exporting producer as an annex to its initial questionnaire reply suggested that all purchased iron ore pellets were fully used to produce HRPS in the quantity reported by the company. Therefore, the Commission definitely rejected the claim.
- (73) Following final disclosure, one exporting producer claimed that the Commission should not add additional SGA expenses to its domestic sales made via a related producer in the group, to reflect the involvement of a related trader. In particular, this exporting producer claimed that the related company involved in those domestic sales invoiced the incurred sales and general expenses including a mark-up, in line with the group's transfer pricing policy. Therefore, according to the exporting producer, the costs incurred by the related trader were already reflected in its SGA. To this end, the exporting producer referred to a group service cost charged by the related company.
- (74) The Commission, first, noted that to reflect the SGA of a trader involved in domestic sales, it took a conservative approach by not using the actual SGA of the related exporting producer but the SGA of another related company in the group, which acted as a pure trader for certain domestic sales transactions. In this respect, the Commission considered that the SGA of the related exporting producer would be disproportionately high, while the SGA of the related trader could be considered to be at a reasonable level for the functions that were carried out by the related producer on the domestic sales. In addition, the Commission found that the related exporting producer indeed charged the exporting producer in question for group services. On the basis of the information provided by the companies, the Commission was not able to conclude whether the services invoiced to the exporting producer indeed concerned costs incurred in resales of the product under investigation on the domestic market, as the transactions booked in the accounts and/or the invoices issued were all marked as group services only. Moreover, the expenses for group services booked in the accounts of the exporting producer and allocated to the product under investigation represented a negligible fraction of net sales. In view of the uncertainty concerning the nature of the group services booked in the accounts of the exporting producer in question and the conservative approach taken by the Commission from the beginning, the Commission rejected the claim.

### 3.3. Export price

- (75) The details of the calculation of the export price were set out in recitals (50) and (51) of the provisional Regulation. In the absence of any comments with respect to this section, the Commission confirmed its provisional conclusions.

### 3.4. Comparison

- (76) The details concerning the comparison of the normal value and the export price were set out in recitals (52) to (68) of the provisional Regulation.

- (77) One exporting producer reiterated its claim that it constitutes a single economic entity with its related trader located in Turkey, which sold the product under investigation to the Union during the IP, and therefore contested the adjustments provisionally made to its export price under Article 2(10)(i) of the basic Regulation. The company made reference to previous Court cases, in particular with regard to the presence of some limited direct exports by the producer, claiming that these were insufficient to reject the single economic entity claim. The company also claimed that the presence of direct domestic sales by the producer is irrelevant in the determination whether a single economic entity exists on the export side, and that the fact that the producer controls the related trader is an essential aspect to be considered when assessing the claim.
- (78) In its comments submitted after provisional disclosure, the complainant opposed the exporting producer's claim stating that the existence of direct sales by the producing entity showed that the trader acts as a related reseller, and supported the Commission's adjustments to the export price.
- (79) The Commission analysed the comments and the evidence on file, in particular the framework contract between the producer and its related trader. The Commission noted that this framework contract establishes a commission to be paid on goods sold and noted that duties normally associated with a sales department were retained by the manufacturer, whereas the duties of the related trader corresponded to those of an agent performing a service concerning the manufacturer's exports. This was also consistent with the relatively higher sales expenses incurred by the exporting producer. No further information about the contractual relationship between the producer and the related trader was provided. The Commission thus concluded that the framework contract contained clauses inconsistent with the claim that the economic reality of the relationship between the related trader and the manufacturer reflected the relationship between a manufacturer and an internal sales department. Rather, the manufacturer was dealing with the sales directly, whereas the related trader performed activities concerning exports on behalf of the manufacturer and in exchange for a commission fee. Taken together with the findings at the provisional stage that the manufacturer also made direct sales, the Commission concluded that the single economic entity claim had to be rejected. The Commission therefore confirmed its provisional findings as set out in recitals (54) to (55) of the provisional Regulation.
- (80) In relation to the relevance of direct export sales, following definitive disclosure the exporting producer basically reiterated the arguments made in its comments on the provisional disclosure, which were addressed in recital (54) of the provisional Regulation and in recital (79) above.
- (81) The exporting producer also indicated that those export sales would, for most of them, not constitute real export sales but would be made to domestic purchasers under special legal or customs regimes. The Commission noted that the legal regime attached to export sales is not determinative for the assessment of whether the sales constitute export sales, and that the fact that such direct sales were made, in addition to the those made on the domestic market, were evidence that the producer retained sales functions.
- (82) Furthermore, the exporting producer claimed that the fact that the totality of domestic sales were made directly by the producer without involvement of the related trader, was irrelevant to determine the existence of a single economic entity on the export sales. The Commission noted that this fact showed that the producer has a full-fledged internal sales department, which is a relevant factor and was recognised as such by the General Court. <sup>(\*)</sup>
- (83) The exporting producer raised several arguments in relation to the framework agreement it concluded with its related trader. It argued that the reason why such a contract between the exporting producer and the related trader exists is "to have documentary evidence in case of government/tax audits and transfer pricing rules". In this respect, the Commission noted that, while the agreement between the exporting producer and its related trader might also be of relevance for tax reasons, this does not detract from the fact that the agreement clearly stipulates that the related trader performed export services against the payment of a commission on the basis of sales made. The exporting producer also confirmed that the agreement clearly stipulates that it is the responsibility of the exporting producer

(\*) *PT Perindustrian dan Perdagangan Musim Semi Maz (PT Musim Maz) v Council of the European Union*, Case T-26/12, Judgment of the General Court of 25 June 2015, paragraph 50.

(the manufacturer) to procure customers and to make the necessary contracts and arrangements with these customers. In the Commission's view, this demonstrated that the exporting producer has its own fully functioning sales department for export sales and that, the related trader was thus not operating as the internal sales department of the exporting producer. Furthermore, the exporting producer's argument seem to imply that an adjustment under Article 2(10)(i) of the basic Regulation could only be performed in situations where the related trader is tasked with the set of full activities normally performed by a sales department. This is not correct. Article 2(10)(i) of the basic Regulation deals with "commissions paid in respect of sales under consideration" (in this case export sales) without any further qualification as to the type of services performed. The purpose of an adjustment under Article 2(10)(i) of the basic Regulation is to ensure that any commission paid to an agent for export sales to remunerate the services performed by that agent in relation to those sales activities, whatever those services consist of, is duly adjusted in order to ensure comparability with domestic sales. The claim was therefore rejected.

- (84) The exporting producer also claimed that the provision in the contract that any profit or loss from the operations related to the export of products cannot remain within the related trader could not be reconciled with the notion that the related trader would have functions similar to those of an agent working on a commission basis, as an agent would not accept that its (full) profits would be transferred back to the production company and that it would only be compensated for expenses linked to checking letters of credit, arranging documents for customs clearance, preparing the necessary export documentation, and ensuring collection of payment. The Commission noted that the financial arrangements between the exporting producer and the related trader reflect the activities and functions that the related trader, as per the agreement, has committed to undertake against remuneration. The adjustment performed by the Commission, applying Article 2(9) of the basic Regulation by analogy, was calibrated to cater for these functions and reflect the proper remuneration for the service rendered on an arm's length basis. Therefore, whether the related trader gets remunerated on the basis of a commission fee which covers the export services rendered to the exporting producer shows that the related trader carries out the agreed services on behalf of the exporting producer but without an adequate remuneration including a reasonable profit. The claim was therefore rejected.
- (85) The exporting producer also claimed that the fact that it retained some duties normally associated with a sales department does not prevent a finding of the existence of a single economic entity. According to the exporting producer, it would be the long-standing case law that a manufacturer and a trading company can still constitute a single economic entity even when the manufacturer performs certain sales functions itself. The Commission noted that, as per the terms of the agreement, the exporting producer actually retained most, if not all, of the duties normally associated with a sales department. As already mentioned in recital (83) above, this contradicts the exporting producer's claim that the related trader is to be treated as its internal sales department. Rather, the related trader, as recalled by the exporting producer itself, performs additional functions concerning export sales against remuneration or commission. It was for these commissions that the adjustment under Article 2(10)(i) of the basic Regulation was performed.
- (86) The Commission noted that the exporting producer made repeated references to the factual circumstances prevailing in the *Musim Mas* investigation and judgment<sup>(9)</sup>. In essence, the exporting producer seemed to imply that, because its own factual situation is not similar to that of *Musim Mas*, the adjustment under Article 2(10)(i) of the basic Regulation is not warranted. The Commission disagreed. The merits of an adjustment under Article 2(10)(i) of the basic Regulation need to be examined on the basis of the facts prevailing in each and every case, and on the basis of the totality of the evidence available to the Commission. The *Musim Mas* judgment did not set a minimum standard that would need to be met in each case. Rather, in *Musim Mas* the Court agreed with the assessment performed by the Council based on the facts observed in that case. In any event, as recalled above, several relevant facts present in *Musim Mas* are also present in the situation of the exporting producer and most pertinently the existence of an agreement that is incompatible with the view that the related trader would *de facto* be the internal sales department of the group.

<sup>(9)</sup> *PT Perindustrian dan Perdagangan Musim Semi Mas (PT Musim Mas) v Council of the European Union*, Case C-468/15R, Judgment of the Court of 26 October 2016.

- (87) The exporting producer also claimed that the existence of control by the exporting producer over the related trader, the fact that the related trader does not purchase from unrelated suppliers, and that the exporting producer and the related trader are located at the same address, constitute relevant factors in the determination of the existence of a single economic entity.
- (88) In this regard, the Commission noted that not all the factors taken individually need to show the absence of a single economic entity between the exporting producer and the related trader. Rather, it is the totality of conditions governing the relationship between the exporting producer and the related trader that must be considered by the Commission. The existence of control is not dispositive for a finding that the related trader is not an internal sales department but rather provides different types of services within the group, in this case export related services. That the related trader provide export services in exchange of a commission fee exclusively for the exporting producer as well as its location only shows that the related trader does not perform the same services for other customers at this stage. This does not mean that the related trader is the internal sales department of the exporting producer.
- (89) On the basis of the above, in this case, the Commission therefore considered that the related trader was performing the functions of an agent dealing with export activities of the exporting producer, in particular checking the letters of credit received, arranging and following up documents related to customs clearance and loading, preparing the necessary export documents after loading and carrying out export related procedures such as ensuring the collection of the cost of the goods. The related trader was paid by means of a commission on the basis of the sales made. Since such remuneration was affected by the intra-group relationship, and applying Article 2(9) of the basic Regulation by analogy, it was considered appropriate to use a reasonable profit margin in order to avoid any distorting effects that may arise from internal arrangements between the exporting producer and the related trader.<sup>(19)</sup>
- (90) In conclusion, for all the reasons set out in recital (54) of the provisional Regulation and in recitals (79) to (88) above, the claim was rejected.
- (91) Two exporting producers reiterated the claim that the Commission should calculate dumping on a quarterly basis.
- (92) In its comments submitted after provisional disclosure, the complainant opposed the exporting producers' claims by stating that a quarterly dumping calculation was not merited in this case as the existence of minor cost fluctuations, as well as the inflation and depreciation of the Turkish lira did not justify using a quarterly approach.
- (93) The Commission concluded that, since the two companies did not provide any new evidence substantiating their claim that would change the Commission's assessment, the provisional findings set out in recitals (64) to (68) of the provisional Regulation were confirmed and the claim was rejected.
- (94) Following final disclosure, the claim for a quarterly calculation of dumping was repeated by one exporting producer. In addition, the company compared the cost fluctuations, and the average rates of inflation and devaluation of the Turkish lira to the undercutting margins found, to show the alleged significance of the former. Finally, the company noted that while the Commission provides for an indexation mechanism of raw material prices in any undertaking procedure, such price fluctuations were not considered in this case for the dumping margin calculation.
- (95) The company did not provide any new information to substantiate its claim. As was set out in recital (68) of the provisional Regulation, the Commission considered that, contrary to the claim of the exporting producer, the fluctuation in the quarterly cost of production affected mainly one quarter of the IP, while the sales of the product under investigation took place throughout the whole IP, and that the overall costs fluctuation, the inflation rate and the devaluation of the Turkish lira were not of such magnitude to deviate from the Commission's consistent practice to calculate dumping margin on an annual basis. The comparison made by the exporting producer between the level of the undercutting margins and the cost differences, the inflation and the devaluation during the IP did not hold, as

<sup>(19)</sup> See in this respect, WTO Panel Report, *European Union – Anti-Dumping Measures on Imports of Certain Fatty Alcohols from Indonesia* (WT/DS442/R), 16 December 2016, para. 7.129.

it concerned two totally different assessments that were not directly related to each other. As concerns the price indexation mechanisms in undertakings, the Commission notes that these are necessary in order to maintain an appropriate minimum import price so as to avoid abuse and circumvention, and thereby to adequately eliminate the established dumping and injury. The establishment of dumping and injury concerns an examination of a past period and the two situations are thus not comparable.

- (96) One exporting producer and two related exporting producers contested the provisional rejection of a currency conversion adjustment, which they claimed on account of hedging contracts related to their sales to the Union. The claim concerns the foreign exchange rate to be used when converting the sales value in foreign currencies (euro in this case) into the currency of the exporting country (Turkish lira or TRY). The companies invoked the provisions of Article 2(10)(j) of the basic Regulation that "(...) when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used".
- (97) In its comments submitted after provisional disclosure, the complainant opposed the exporting producers' claims stating that hedging is an internal process, and the companies cannot argue that without hedging the sales price would have been higher because it is not evident that the customers would have paid a higher price.
- (98) The Commission noted that Article 2(10)(j) of the basic Regulation is applicable in situations where a currency conversion is necessary for the purpose of comparison between the normal value and the export price. It is the standing practice to perform such comparison in the currency of the country concerned. Therefore, in the present case the Commission used the Turkish lira as the currency of comparison. Both companies claiming the currency conversion adjustment hedged those export sales transactions which were denominated in euro. The currency conversion risk stemming from those transactions was in all cases hedged against the US dollar. Since the comparison was done in Turkish lira and all transactions in euro were converted to Turkish lira directly without an intermediate conversion to US dollar, just like all domestic sales were taken in Turkish lira, the Commission considered that the conversion rate between euro and US dollar agreed in the hedging contracts was irrelevant for the purpose of comparison. Consequently, the Commission rejected the claim of the three exporting producers.
- (99) Following final disclosure, the three exporting producers repeated their claims for a currency conversion adjustment on sales to the Union, to account for hedging operations of the currency risk stemming from transactions in euro. They repeated the argument that, regardless of the currency used for price comparison, the gain or loss resulting from the conversion rate at the moment of hedging does have a significant impact on the price comparison. In particular, they provided a theoretical example of a domestic sales order with a unit price in USD agreed on a particular day and an export sales order with the same unit price in EUR equivalent agreed on the same day. The companies' calculation showed that when those sales orders are delivered on the same day and the invoiced value is converted directly from the currency of the invoice to TRY, the comparison would result in dumping although the price agreed in the two sales orders was the same on the date of the sales orders. They then claimed that an adjustment for hedging should be done either on the basis of Article 2(10)(j) or Article 2(10)(k) of the basic Regulation.
- (100) The Commission analysed the claim, in particular the theoretical example, which allegedly proved that the exchange rate in the hedging contracts should be taken into account for the purpose of price comparison. First, the Commission noted that although the example was mathematically correct, it did not reflect the reality of either the companies' business activities or the dumping margin calculations. In particular, the example implied that the dumping margin is calculated by comparison of two individual transactions carried out at the same time, which is not the case as the Commission compares the average normal value and the average export price as determined during the IP for each product type. Second, the example assumed that all sales orders concluded on a certain day are fulfilled at a similar time, which was shown to be incorrect. In fact, one of the exporting producers made a

separate claim that the lead time between finalising the production and the pick-up of the goods by the customer was much longer on the domestic market as compared to the export sales. Therefore, the example given by the companies was found to be inaccurate for the situation at hand. Furthermore, none of the companies provided evidence that their export sales transactions denominated in EUR were originally negotiated on their USD price. On the contrary, sales contracts and/or sales orders of those export sales transactions were directly denominated in EUR without any reference to USD. A conversion from EUR to TRY via USD was therefore considered to be irrelevant. Consequently, the Commission rejected the claimed adjustment on the basis of Article 2(10)(j) of the basic Regulation.

- (101) In addition, although the companies claimed to be able to link the export transactions to individual hedging operations, these could, and in many cases were, adjusted after the sale depending on how the financial outlook developed and in order to maximise the companies' return. The Commission therefore did not consider that the hedge could be directly linked to the export sale involved, and that taking into account the forward sales price would have risked distorting the actual export price.
- (102) The Commission also rejected the claim on the basis of Article 2(10)(k), since the companies did not provide any evidence that its hedging activities resulted in customers consistently paying different prices on the domestic market.
- (103) Two exporting producers opposed the provisional rejection of some adjustments they had claimed on domestic sales, one related to the existence of a duty drawback scheme, and another concerning an inventory carrying cost adjustment. One of them also contested the payment terms used by the Commission to calculate its domestic credit costs.
- (104) In its comments submitted after provisional disclosure, the complainant opposed the exporting producers' claims. With regard to duty drawback, it stated that purely theoretical costs cannot be used as an adjustment since it is not possible to establish a clear link between the exported products and the duties not paid on imported inputs. With regard to inventory carrying cost, the complainant supported the Commission's rejection of such adjustment as the concerned company failed to establish that domestic prices are higher for products that spend more time in the warehouse.
- (105) Since the companies did not provide any new evidence on the duty drawback adjustment changing the Commission's provisional assessment, the findings set out in recitals (60) to (63) of the provisional Regulation were confirmed and the claim was rejected. The inventory carrying cost adjustment claimed by one exporting producer under Article 2(10)(k) of the basic Regulation, relates to the fact that, for some of its domestic sales, the customers were late in picking up the goods, which therefore remained longer in the company's warehouse. With regard to this claim, the Commission concluded that since the company was not able to link this alleged cost to individual sales transactions or to specific customers, neither could it demonstrate that domestic prices were affected by the inventory carrying cost, the claim had to be rejected. With regard to the payment terms used in the calculation of domestic credit costs, the affected company did not provide any new evidence that would change the Commission's provisional approach, i.e. to replace the reported payment terms, which during the RCC were found to be inconsistent with the terms agreed on the related sales contracts, with a more accurate set of payment terms provided by the company and cross-checked during the RCC. Therefore the claim was rejected.
- (106) Following final disclosure, one exporting producer repeated the claim that adjustments for duty drawback and inventory carrying costs should be taken into account with regard to its domestic sales, and contested again the payment terms used by the Commission to calculate its domestic credit costs.
- (107) On the duty drawback adjustment, it repeated the argument that regardless whether an import duty has actually been paid or not, the existence of an import duty on an input material has an effect on the price charged by domestic suppliers of that input material.

- (108) On the adjustment for inventory carrying costs, the company repeated the argument that an adjustment for such costs is similar to an adjustment for credit costs as both are linked to a delay in payment. It further argued that the rejection of such domestic allowance was inconsistent with the acceptance of an export allowance for demurrage costs on its sales to the Union, arguing that in both cases there is a delay in the arrival of the goods that results in additional costs.
- (109) On the payment terms used to calculate domestic credit costs, the company repeated that the Commission should have calculated credit costs based on the agreed payment terms and not on the basis of when payments actually occur, because only agreed payment terms can have an impact on the determination of the price.
- (110) In response to these comments, on the alleged adjustment for duty drawback, further to the Commission's provisional considerations that a theoretical cost cannot be taken into account in the calculation, it appeared that, contrary to the company's allegations, the domestic sales prices charged by the exporting producer did not take into account the amount of the claimed duty drawback, which would otherwise render the sales lossmaking. Therefore, the claim was rejected.
- (111) With regard to the adjustment for inventory carrying costs, the Commission noted that, while additional warehouse expenses for goods that are picked-up late by customers are already included in the overall cost of sales, the adjustment claimed to cover the resulting deferred payment, which the company compared to an adjustment for credit costs, cannot be granted because the company did not take into account the possible late pick-up when it concluded the sales contract nor was it able to link it to any customer or to any specific transaction, thus confirming that the claimed adjustment was not reflected in the sale price. Contrary to the demurrage costs, which were allocated by the company only to those export transactions where demurrage fees were actually paid, the company was not able to show any correspondence between the claimed inventory carrying costs and which actual transactions were allegedly impacted. Therefore, the claim was rejected.
- (112) On the payment terms used for calculating domestic credit costs, the Commission considered that the actual payment terms provided by the company were more accurate, since the payment terms which were reported as those agreed in the sales orders were found to be inconsistent with the payment terms actually agreed in the related sales orders for a sample of transactions. Therefore, the claim was rejected.
- (113) One exporting producers group opposed the provisional rejection of the claim for a billing adjustment on domestic sales made under Article 2(10)(c) of the basic Regulation, in order to reflect rebates allegedly granted after the issuance of the invoices.
- (114) In the course of the investigation, including when requested during the RCC, the company explained that it was unable to link the billing adjustment recorded in its accounts to individual transactions. For instance, it could not identify credit or debit notes related to the specific invoices whose value the billing adjustments were supposed to correct. The Commission therefore concluded that the requested adjustment was not sufficiently substantiated and confirmed the rejection of the claim.
- (115) Two related exporting producers questioned the provisional calculation of credit costs on sales to the Union. In particular, the companies claimed that the Commission was wrong to apply the same interest rates for EUR and USD from the Turkish Central Bank to all the sampled exporting producers, on the grounds that it did not reflect the fact that interest rates for loans depended on the companies' specific characteristics and financial situation. They claimed that the actual interest rates applicable to the loans of the companies should have been used instead.
- (116) In its comments submitted after provisional disclosure, the complainant opposed the exporting producers' claim and stated that the Commission's provisional decision to apply evenly interest rates from the Turkish Central Bank was transparent and objective and should be maintained.
- (117) The Commission examined this claim, and concluded that for the loans obtained by one of the related exporting producers at market price from independent banks, it was indeed justified to use the contractual USD interest rate actually paid by the producer for short-term loans in order to calculate its credit costs. Therefore, the change was implemented in the definitive calculation. However, for the loan obtained from a bank related to the producer, the



Commission concluded that the use of the average EUR interest rate provided by the Turkish Central Bank was justified since the contractual rate did not reflect market conditions. The other exporting producer in the group did not have any outstanding loans in the IP and thus no company specific interest rate was available to be used as proxy for the calculation of credit costs allowance. It was therefore justified to use the average interest rates provided by the Turkish Central Bank.

- (118) Following final disclosure, the two related exporting producers argued that the Commission should have applied the same USD interest rate for both producers in the group as their financing conditions were the same. In particular, one exporting producer provided additional information showing that one of the loans reported by the related exporting producer was actually used by the exporting producer in question.
- (119) The Commission assessed the claim and observed that the financing conditions for the exporting producer in question were not the same as for the other company in the group, shown by the fact that the interest rate applicable to the loan of the exporting producer in question was higher than the average interest rate of the other loans, and this rate did not yet include the mark-up charged for headquarter services, as explained by the companies during the RCC and reiterated in their comments on final disclosure. In view of those facts, the Commission rejected the claim.
- (120) In addition, one exporting producer argued that the Commission should have used the interest rates of the company's loans, since the Commission accepted such an approach for another sampled exporting producer.
- (121) The Commission considered the two cases to be different. The other exporting producer provided information on its own loans in its initial questionnaire reply while the company in question failed to disclose the existence of any short-term loans. Instead, the company proposed to use inter-bank interest rates for the determination of credit costs. The Commission considered that the company would not be able to get a loan at inter-bank interest rates and therefore replaced those interest rates with an average interest rate of commercial short-term loans as published by the Turkish Central Bank.
- (122) In addition, the Commission assessed the new information provided by the exporting producer in question in its comments on provisional disclosure and supplemented in its comments on final disclosure. The Commission considered that in view of the conflicting information provided in the initial questionnaire reply and at a later stage of the investigation, the Commission's provisional decision to use the interest rates published by the Turkish Central Bank for the determination of credit costs could not be considered unreasonable. Therefore, the Commission rejected the claim.
- (123) Two related exporting producers claimed an inconsistency in the currency conversion rates between the costs and sales data. With regard to their sales data, an average monthly currency conversion was used, while an average yearly currency conversion was applied to their costs data.
- (124) In its comments submitted after provisional disclosure, the complainant opposed the exporting producers' claim and supported the Commission's provisional approach on the conversion rates used. In its view, costs (that are set in companies' accounts for longer period of time) should be calculated on a yearly basis and converted using an average exchange rate for the IP, whereas income related to sales should be converted at the moment the income is generated using monthly or even daily exchange rates.
- (125) The Commission analysed the claim and found it justified. Therefore, the claim was accepted and in the definitive calculation average monthly exchange rates were used to convert both costs and sales data of the companies.
- (126) Following final disclosure, the exporting producers argued that, since they reported all data relevant for the dumping calculation in USD, there was no need under Article 2(10)(f) of the basic Regulation to convert them from USD to TRY for the purpose of price comparison. The companies then referred to Article 2(5) of the basic Regulation that "costs shall normally be calculated on the basis of records kept by the party under investigation", while, by converting from USD to TRY, the amounts for cost of production used by the Commission in the calculation of their normal values were different from the amounts reported in their accounting records.

- (127) First, the Commission noted that the exporting producers carried out transactions in USD, EUR and TRY. Therefore, currency conversions were necessary to express the values in one currency that would enable comparison. Second, the Commission did not dispute the fact that the companies converted all values to USD themselves as USD was the accounting currency of the companies. Nevertheless, the Commission considered it appropriate to use the currency of the country concerned for the purpose of comparison between the normal value and the export price. Finally, since the companies reported the cost of production in USD, the Commission found it justified, also following the comments by the companies on provisional disclosure, to convert the data to TRY using monthly conversion rates. Since the companies did not provide a full set of information on cost of production in TRY, any differences to the values in TRY as supplementary currency used in their accounting records could not be taken into account. Consequently, the Commission rejected the claim.
- (128) Following final disclosure, one exporting producer claimed that the Commission should not have deducted certain allowances, i.e. export association fee and export lump sum deduction, when calculating the price of its sales to the Union.
- (129) The Commission noted that the exporting producer made this claim also in its comments on provisional disclosure, and the allowances were discussed in the hearing organised following provisional disclosure.
- (130) In the hearing, the company confirmed that the export association fee was paid for its membership in ÇİB. The company further explained that the fee was paid as a percentage of the value of each export transaction. Therefore, the Commission considered that the export association fee was a cost that the company incurred solely with regard to its export transactions, and its level was dependent on the company's level of exports. Moreover, the value of the allowance could be determined for each export transaction individually, based on its value.
- (131) With regard to the export lump sum deduction, the company claimed that it was not appropriate to deduct its value from the export price since it merely concerned a tax benefit rather than an actual expense of the company. In its comments on final disclosure, the company referred to Turkish legislation <sup>(14)</sup>, which enables any exporter to deduct 0,5 % of its export sales revenue to reflect expenses that were incurred but could not be booked otherwise due to the lack of proper documentation. Therefore, the Commission considered that the export lump sum deduction represented an expense actually incurred with regard to the company's export sales transactions, for which the company did not have proper documentation and which could not be booked under any other expense account. Moreover, the Commission was able to determine the value of the deduction for each transaction individually.
- (132) Consequently, the Commission rejected the claim concerning the deduction of the export association fee and export lump sum deduction.

### 3.5. Dumping margins

- (133) As detailed in recitals (28) to (132) above, the Commission took into account interested parties' comments submitted after provisional disclosure and recalculated the dumping margins accordingly.
- (134) The definitive dumping margins expressed as a percentage of the cost, insurance and freight (CIF) Union frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin
Çolakoğlu Metalurji A.Ş.	7,3 %
Erdemir group: — Ereğli Demir ve Çelik Fabrikaları T.A.Ş. — İskenderun Demir ve Çelik A.Ş.	5,0 %

<sup>(14)</sup> Article 40 of Income Tax Law 193 of January 6, 1961, as amended by Law 4108 of June 1995.

Habaş Sınai Ve Tibbi Gazlar İstihsal Endüstrisi A.Ş.	4,7 %
Ağır Haddencilik	5,7 %
Borçelik Çelik Sanayii Ticaret A.Ş.	5,7 %
All other companies	7,3 %

- (135) The calculations of the individual dumping margins, including corrections and adjustments made following comments by the interested parties submitted after provisional and final disclosures, were disclosed to the sampled exporting producers.

#### 4. INJURY

##### 4.1. Definition of the Union industry and Union production

- (136) During the investigation period, in the EU27 the like product was manufactured by 21 known producers belonging to 14 groups. These producers constitute the "Union industry" within the meaning of Article 4(1) of the basic Regulation.
- (137) For EU27, the total Union production during the investigation period was established within the range of 71 to 74,5 million tonnes, including production for the captive market.
- (138) The three Union producers selected in the sample represented 34 % to 38 % of the total Union production of the like product in the EU27. They accounted for 40 % to 44 % of the Union sales volumes of the producers that came forward in the context of the pre-initiation standing assessment analysis.

##### 4.2. Determination of the relevant Union market

- (139) The GOT considered that the Commission did not satisfactorily explain why it was necessary to examine free market and captive figures separately. In the GOT's view, the explanations put forward by the Commission were contrary to the Panel in Morocco – Hot-rolled-steel (Turkey) and the Appellate Body in US – Hot-rolled steel, according to which investigating authorities should in principle examine in like manner all parts of an industry, as well as the industry as a whole, or provide a satisfactory explanation why not.
- (140) To provide a picture of the Union industry that is as complete as possible, the Commission obtained data for the entire production of the product concerned and determined whether the production was destined for captive use or for the free market. For the injury indicators mentioned in recital (82) of the provisional Regulation, the Commission analysed separately data related to the free and the captive market and made a comparative analysis where possible and where justified. As to the economic indicators mentioned in recital (83) of the provisional Regulation, the Commission could only conduct a meaningful assessment by referring to the whole activity of the Union industry. Therefore, the Commission considered its analysis to be in line with case law of the Union courts and the WTO <sup>(15)</sup>.
- (141) Following final disclosure, the GOT insisted that the Commission had acted inconsistently with WTO jurisprudence because i) it did not analyse separately data for sales prices, cost of production, growth, export volume and prices, profitability, return on investment and cash flow, ii) nor provided any explanation why it only examined free market data instead of making a separate and comparable examination. The Commission disagreed as, further to what is explained in the recital above, the questionnaire responses submitted by sampled Union producers allowed for an analysis of sales prices, sales volumes and profitability in the free market versus other markets. The fact that table 10 shows sales prices in the free market does not mean that sales prices in the captive market were not examined.

<sup>(15)</sup> ECJ, Case C-315/90 Gimelec v Commission, EU:C:1991:447, paragraphs 21 to 29; Report of the WTO Appellate Body 24.7.2001, United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, WT/DG184/AB/R, paragraphs 181 to 215.

(142) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (78) to (83) of the provisional Regulation.

#### 4.3. Union consumption

##### 4.3.1. Free market consumption in the Union

(143) In EU27 the Union consumption on the free market during the period considered developed as follows:

Table 1

#### Free market consumption on the Union market (tonnes)

	2016	2017	2018	IP
Union consumption on the free market	33 – 34 million	32 – 33 million	34 – 35 million	33 – 34 million
Index	100	96	102	99

Source: Eurofer, sampled Union producers and Eurostat

(144) Between 2016 and 2018, the free market consumption went up by 2 % but it consequently went down. Overall, consumption in the free market dropped by 1 % over the period considered.

##### 4.3.2. Captive consumption on the Union market

(145) In EU27 the Union captive consumption over the period considered developed as follows:

Table 2

#### Captive consumption on the Union market (tonnes)

	2016	2017	2018	IP
Captive Union consumption	42,5 – 45,5 million	44 – 47 million	43,5 – 46,5 million	39,5 – 42,5 million
Index	100	103	102	93

Source: Eurofer and sampled Union producers

(146) Captive market consumption went up slightly in the first part of the investigation period, after which it decreased. Overall captive consumption dropped by 7 percentage points during the period considered.

##### 4.3.3. Overall consumption

(147) In EU27, overall consumption – the sum of captive and free market consumption – evolved as follows during the period considered:

Table 3

#### Overall consumption (free and captive market) (tonnes)

	2016	2017	2018	IP
Overall Union consumption	78 – 81 million	78 – 81 million	80 – 83 million	74 – 77 million
Index	100	100	102	95

Source: Eurofer, sampled Union producers and Eurostat

(148) The above table shows that overall consumption went up slightly in 2018 but dropped by 5 % overall as compared to 2016. Captive consumption represented 59 % of overall consumption in the investigation period.

#### 4.4. Imports from Turkey

##### 4.4.1. Volume and market share of the imports from Turkey

(149) Imports from Turkey into EU27 developed as follows:

Table 4

#### Import volume and market share

	2016	2017	2018	IP
Volume of imports from Turkey (tonnes)	934 651	1 738 017	2 779 174	2 767 658
<i>Index</i>	100	186	297	296
Market share on free market (%)	2,8 – 3,1	5,3 – 5,6	7,8 – 8,1	8,2 – 8,5
<i>Index</i>	100	190 – 220	270 – 300	270 – 300

Source: Eurofer, sampled Union producers and Eurostat

(150) Imports from Turkey increased by 196 % over the period considered, almost tripling their share on the free market.

(151) Following provisional disclosure, the GOT stated that imports from Turkey did not take the market share of the Union industry but only took certain share from the third countries, which could not have any effect on Union producers.

(152) Following final disclosure, the GOT added that the Commission analysis on import volume from Turkey was end-point to end-point and invited the Commission to analyse rather the evolution on the basis of quarterly data from 2019 and 2020 and drops in imports after the investigation period. The Commission noted that the GOT's approach cannot put in question the fact that imports from Turkey increased year-on-year between 2016 and 2018, by 196 % over the period considered and that they almost tripled their share on the free market.

(153) Given the nature of these comments, they are addressed in section 5 below.

##### 4.4.2. Prices of the imports from Turkey and price undercutting

(154) The Commission established the prices of imports on the basis of Eurostat data. The weighted average price of imports from Turkey into EU27 developed as follows:

Table 5

#### Import prices (EUR/tonne)

	2016	2017	2018	IP
Turkey	363	490	538	492
<i>Index</i>	100	135	148	136

Source: Eurostat

- (155) The average prices of the imports from Turkey increased from 363 EUR/tonne in 2016 to 492 EUR/tonne during the investigation period, an increase by 36 %. The difference between the average prices of the dumped imports and the Union industry's average Union sales prices during the investigation period, as reflected in Table 10, was significant (7,8 %).
- (156) Following provisional disclosure, the GOT considered that prices of Turkish imports could have not caused injury to Union producers. Given the nature of these comments, they are addressed in section 5 below.
- (157) The undercutting margin calculations have been revised to reflect the situation on an EU27 basis, and the Commission established that the dumped imports of the sampled exporting producers showed weighted average undercutting margins between 1,2 % and 2 %. Since the market for HRFS is very price-sensitive and competition is largely based on price, the Commission considered such undercutting margins to be significant.
- (158) Following final disclosure, Eurofer underlined that, given the nature of the market, and the existence of significant price competition, even a comparatively low level of undercutting can be significant. The GOT however stated that to qualify the undercutting margins found as significant was a mere allegation as it lacked a proper evaluation or criteria establishing what margin should be considered significant. The Commission rejected the claim as unfounded. The evolution in the market and the change in import sources observed in Table 14 confirm the importance of price in the HRFS market. Moreover, as the GOT itself had admitted, a small price difference entailed the increase in the market share of Turkish imports <sup>(19)</sup>.
- (159) Following final disclosure, Erdemir and Colakoglu groups claimed that by establishing undercutting for 66,1 % (Colakoglu group) or 69,5 % (Erdemir group) of the sampled Union producer's sales, the Commission did not establish undercutting for the product as a whole and thereby violated Article 3(3) basic Regulation. In their view, it could not be excluded that the undercutting margins found would have been different if the Commission had examined the price effect on the basis of all of the sampled Union producers' sales. The Commission rejected this claim as unfounded, as the basic Regulation does not require that a finding of undercutting is based on all of the sampled Union producer's sales. Rather, a price analysis is based on a comparison between the models exported to the Union and the like product and it is in the nature of comparing export sales of exporting producers with sales of the Union industry that not all models sold by the (three) sampled Union producers are also exported to the Union by each individual exporting producer. In any event, the Commission recalled that the difference between the average prices of the dumped imports and the Union industry's average Union sales prices during the investigation period, as reflected in Table 10, was significant (7,8 %).

#### 4.5. Economic situation of the Union industry

##### 4.5.1. General remarks

- (160) The Commission recalls that at the initial stage the complainant had requested the Commission to start the analysis of injury trends as of 2017 on the grounds that 2016 (the first year of the period considered in this investigation) was an "unrepresentative year" since the Union industry was found to be injured by dumped and subsidised imports from several sources. The Commission acknowledged that the evolution of the injury indicators starting in 2016 was tainted by the fact that the Union industry's situation was still affected by dumped and subsidised imports in 2016 whilst in 2017 the Union industry clearly showed signs of recovery following the imposition in that year of definitive anti-dumping and countervailing measures against those imports. However, the Commission decided to present the data pursuant to its normal practice, which is to consider in addition to the investigation period the three calendar years prior to the investigation period. Therefore the Commission also included 2016 in the period considered.

<sup>(19)</sup> Last paragraph of page 14 of document reference t21.000916 of the non-confidential file (submission made by the Government of Turkey).

- (161) After provisional disclosure, ÇİB argued that the certain aspects of the injury analysis appeared to exclude 2016 data and that this had misled the Commission's injury assessment. After final disclosure, the party clarified that it contested the lack of assessment of indicators from 2016, in particular the ones showing a positive trend after 2016 (e.g. Union industry free market sales volume and market share), which are to be seen a demonstration of lack of material injury to the Union industry. After provisional disclosure, the GOT claimed, in the same vein, that the examination of the alleged injury on the domestic industry should be based on the period 2016-2019, which it claimed was not case for all injury indicators. In particular, the GOT considered that in the recent past it was impossible to link any improvement or deterioration of the industry to an existence or non-existence of trade defence measures. The GOT criticised recital (104) in fine of the provisional Regulation because, in its view, the fact that definitive anti-dumping measures and countervailing duties against China were published in April and June 2017 <sup>(14)</sup> and that definitive anti-dumping measures against Brazil, Iran, Russia and Ukraine were imposed in October 2017 <sup>(15)</sup> entailed that all injurious effects of dumped imports from these countries were still present in 2017. In support of this claim the GOT underlined that in 2017, imports from these five countries still represented 26 % of HRFPS imports.
- (162) As to claims relating to the inclusion or not of the year 2016 as concerns some of the injury indicators, the Commission clarified that the relevant tables, section 1.8 and the other findings in the provisional Regulation, covered the period 2016-2019, as stated in the Regulation. The comments under the tables relating to the period considered take stock of trends starting in 2016, no matter whether they are positive or negative. This remains the case even where, as in the present case, the Commission took stock of and considered events occurring in a specific timeframe within the period considered, including trade defence measures.
- (163) As regards the anti-dumping measures against Brazil, Iran, Russia and Ukraine, the investigation covered the period from 1 July 2015 to 30 June 2016. As to the anti-dumping and countervailing measures against China, the investigation of dumping, subsidisation and injury covered the period from 1 January 2015 to 31 December 2015. The comments by the GOT that the five countries still accounted for 26 % of imports of the product concerned in 2017 and that therefore they still injured the Union industry is misleading. As Table 14 in the provisional Regulation demonstrates, the volume of imports from the five countries concerned dropped by 68 % (i.e. from 5 724 303 tonnes to 1 810 518 tonnes) between 2016 and 2017 and their combined market share from 16,1 % to 5,2 %. These trends are confirmed on an EU27 basis. Table 14 in this Regulation demonstrates that the volume of imports from the five countries concerned dropped significantly (i.e. from 5 611 020 tonnes to 1 565 303 tonnes) between 2016 and 2019, similar to their combined market share (i.e. from 16 – 17 % to 4 – 5 %). The Commission thus considered as unfounded the claim that previous investigations had revealed that all injurious effects of dumped imports from China, Brazil, Iran, Russia and Ukraine were still present in 2017.
- (164) Following final disclosure the GOT recalled its comments regarding the timing of the definitive anti-dumping measures and countervailing duties against China and the definitive anti-dumping measures against Brazil, Iran, Russia and Ukraine. It alleged that the decrease in imports from these countries does not change the fact that these imports still constituted a significant part of the EU27 imports and were injurious in 2017. In the GOT's views the Commission tried to avoid the examination of such injurious effects by relying on figures showing an absolute decrease. The Commission considered the claim unfounded. The investigation periods of the previous investigations did not establish injurious dumping in 2017, at which point, as already recalled, the market shares of the subject countries had already dramatically decreased. In addition, the section 5.2.1 of the present regulation includes an analysis of the evolution in the market and of the market shares of the different import sources.
- <sup>(14)</sup> 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).
- <sup>(15)</sup> Commission Implementing Regulation (EU) 2017/1795 of 5 October 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 Brazil, Iran, Russia and Ukraine and terminating the investigation on imports of certain hot-rolled flat product of iron, non-alloy or other alloy steel originating in Serbia (OJ L 258, 6.10.2017, p. 24).

## 4.5.2. Macroeconomic indicators

## 4.5.2.1. Production, production capacity and capacity utilisation

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

Table 6

## Production, production capacity and capacity utilisation

	2016	2017	2018	IP
Production volume (tonnes)	74 – 77,5 million	77 – 80,5 million	76 – 79,5 million	71 – 74,5 million
Index	100	104	102	96
Production capacity (tonnes)	88 – 93 million	89 – 94,5 million	90 – 95,5 million	91 – 96 million
Index	100	102	103	104
Capacity utilisation (%)	84	86	84	78
Index	100	102	99	93

Source: Eurofer, sampled Union producers and Eurostat

- (166) During the period considered, the Union industry's production volume decreased by 4 %, while the production capacity increased by 4 %. Consequently, the capacity utilisation decreased by 7 %, from 84 % in 2016 to 78 % in the investigation period.
- (167) Following provisional disclosure, the GOT considered that the fact that the Union industry increased its capacity every year since 2016 showed that it was in in good condition. The Commission disagreed, noting, as stated in recital (107) of the provisional Regulation, that the increase in capacity between 2016 and 2017 reflects the improvement of the Union market conditions following the imposition of definitive anti-dumping and countervailing measures against imports from five countries and that the capacity increases since 2017 were rather the result of increased efficiencies and debottlenecking.
- (168) The GOT criticised the absence of a separate analysis between captive and free market under this paragraph, an absence that would not allow the identification of the origin of the overall decrease in production. The Commission considered that a split of table 6 between captive and free market would be meaningless. Indeed Union producers use the same production equipment and lines for the production of the product under investigation, no matter whether it is for captive use or not. However, more details with regard to the captive market volume are provided in Table 8 below.

## 4.5.2.2. Sales volume and market share

- (169) The Union industry's sales volume and market share on the free market in EU27 developed over the period considered as follows:

Table 7

## Free market sales volume and market share

	2016	2017	2018	IP
Union industry EU sales (tonnes)	24 – 27 million	24 – 27,5 million	25 – 28,4 million	24,5 – 27,5 million
Index	100	101	103	103



Market share (%)	75 – 76	79 – 80	76 – 77	78 – 79
Index	100	105	102	104

Source: Eurofer, sampled Union producers and Eurostat

(170) The Union industry's sales volume on the free market increased by 3 % over the period considered and its market share by 4 %.

(171) In EU27, the Union industry's captive volume and market share on the Union market developed over the period considered as follows:

Table 8

Captive volume and market share

	2016	2017	2018	IP
Captive Union market volume (tonnes)	42,5 – 45,5 million	44 – 47 million	43,5 – 46,5 million	39,5 – 42,5 million
Index	100	103	102	93
Total production of Union industry (tonnes)	73 – 76 million	76 – 79 million	75 – 78 million	70 – 73 million
Index	100	104	102	96
Share of captive market over the total Union production (%)	61	61	61	59
Index	100	99	99	96

Source: Eurofer, sampled Union producers and Eurostat

(172) The captive market of the Union industry (composed of HRFS kept by the Union industry for downstream use) in the Union decreased by 7 %, or about 3 million tonnes, over the period considered. The Union industry's captive market share (expressed as a percentage of total Union production) decreased from 61 % in 2016 to 59 % in the investigation period.

(173) Following provisional disclosure, the GOT criticized the fact that the Commission, in recital (109) of the provisional Regulation, explained the increase of free market share by the Union industry between 2018 and 2019 by the fact that significant sales volumes shifted from the captive market to the free market due to divestment. It considered that this explanation demonstrated a biased approach by the Commission in distinguishing between these markets "as it sees fit". The GOT reiterated its claim after final disclosure and questioned the objectivity of the way the evolution of the Union industry's market share was established. The Commission rejected the allegation of a biased approach. The Commission deems legitimate, and indeed, necessary, to re-characterise captive production as free market in the event of a divestment. Even if, as stated by the GOT, the free market share of Union producers increased over the period considered, the Commission noted that such increase was of a significantly lower magnitude than the increase of the market share of Turkish imports during the same period. In a context of a rather stable consumption in the Union, Turkish imports filled the gap left by some other third countries subject to trade anti-dumping and/or countervailing duties since 2017.

- (174) Following provisional disclosure, the GOT stated that there was no analysis regarding the production volume of the production lines that were sold as explained in recital (111) of the provisional Regulation. ÇİB submitted that this sale was due to strategic and commercial reasons. The Commission noted that the sale concerned a change of ownership between Union producers which has no impact on table 6. The Commission found no link between the sale in question and Turkish imports.
- (175) Following provisional disclosure, ÇİB stated that key injury indicators like sales volume and market share in the free market showed that the Union industry was not performing poorly. The Commission found the statement unfounded because recitals (109) and (150) of the provisional Regulation already explained that the Union industry's market share increased due to a divestment which resulted in an important number of transactions that would previously have been considered as captive became transactions in the free market. Also, the determination of injury is based on an evaluation of all relevant economic factors and indices having a bearing on the state of the industry considered together, as provided for in Article 3(5) of the basic Regulation.
- (176) Following final disclosure, ÇİB said that the Commission's comments under this section did not explain why the Union industry grew nor why an increase in market sales volume and share lack importance in this particular case. Given their nature, these comments are addressed in recital (217) below.

#### 4.5.2.3. Growth

- (177) Following provisional disclosure, the GOT stated that recital (112) of the provisional Regulation consisted of unsupported allegations and criticised some of the wording. The Commission found the claims unfounded as the recital in question makes explicit reference to data and findings in the provisional Regulation.
- (178) Figures for the EU27 in respect of production show a strongly decreasing trend as from 2017, while sales and market share were stable against a slight increase in free market consumption over the same period. The Union industry in the EU27 only grew, and very modestly, if 2016, a year in which it had been found injured by dumped imports from other countries, is taken as a starting point.
- (179) Following final disclosure, the GOT wondered whether certain conclusions on growth were objective as the Commission had previously qualified the decrease in production as "strong" but the increase in free market sales as "slight". The Commission noted first, that the percentages cited in by the GOT in its claim were not those for EU27, and hence outdated; and second, that in any event, a comparative discussion of how to qualify a percentage change must factor in the relative size of the underlying value subject to that change.

#### 4.5.2.4. Employment and productivity

- (180) For EU27, employment and productivity developed over the period considered as follows:

Table 9

#### Employment and productivity

	2016	2017	2018	IP
Number of employees	38 – 40 thousand	42 – 44 thousand	38 – 40 thousand	37 – 39 thousand
Index	100	112	103	100
Productivity (tonnes per staff)	1 900 – 2 000	1 700 – 1 800	1 900 – 2 000	1 800 – 1 900
Index	100	92	99	96

Source: Eurofer and sampled Union producers

- (181) The level of Union industry employment related to the production of HRF5 fluctuated over the period considered but remained stable overall. In view of the decrease in production, productivity of the Union industry's workforce, measured as tonnes per employee produced per year, decreased by 4 % over the period considered.
- (182) Following provisional and final disclosure, ÇIB stated that key injury indicators like employment showed that the Union industry was not performing poorly. The Commission noted however, that, despite the stability in the number of employees over the period considered, the number of employees decreased strongly between 2017 and 2019. The material injury suffered by the Union industry was in any case patent, as demonstrated in section 4.5.4 of the provisional Regulation and section 4.6 below.
- (183) Following provisional disclosure, ÇIB stated that a finding on material injury attributed to the sole fact of a decrease in the number of employees is inconsistent with WTO case law and that the decrease in the number of employees from 2017 could not be attributed to dumped imports from Turkey. The Commission rejected the claims. Nowhere did the Commission attribute a finding on material injury to the sole fact of a decrease in the number of employees. As to the evolution in the number of employees, it closely followed production.
- (184) Following provisional disclosure, the GOT stated that productivity should not be examined single-handedly as productivity dropped in 2017 due to the significant increase in employment between 2016 and 2017. Productivity being one of the factors accounted for in the injury analysis, the Commission confirmed that no factor was considered single-handedly.
- (185) Following final disclosure, the GOT considered that the last sentence in the recital above was tantamount to confirming that the decrease in productivity is caused by the increase in employment in 2017. The Commission disagreed with the GOT, although it acknowledged that the increase in employment between 2016 and 2017 played a role in the decrease in productivity between 2016 and 2017. It is nevertheless notable that productivity again decreased between 2018 and the investigation period at a time when employment was also decreasing, leading to an overall 4 % loss in productivity over the period considered as pointed out in recital (181).

#### 4.5.2.5. Magnitude of the dumping margin and recovery from past dumping

- (186) For the EU27, all dumping margins were significantly above the *de minimis* level. The impact of the magnitude of the actual margins of dumping on the Union industry was substantial, given the volume and prices of imports from Turkey.
- (187) Following provisional disclosure, the GOT contested the Commission's comments regarding the recovery of the Union industry in 2017 as a result of trade remedies. As this section covers "recovery from past dumping", the Commission found it justified to recall that, given the findings of previous investigations on the same product, the Union industry's situation was affected by dumping practices in 2016, showed signs of recovery as of 2017 and that the healthier profitability levels achieved disappeared in the investigation period.
- (188) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (115) to (117) of the provisional Regulation.

#### 4.5.3. Microeconomic indicators

##### 4.5.3.1. Prices and factors affecting prices

- (189) 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

	2016	2017	2018	IP
Average unit sales price on free market (EUR/tonne)	393	532	574	534
<i>Index</i>	100	135	146	136
Unit cost of production (EUR/tonne)	413	497	540	560
<i>Index</i>	100	121	131	136

Source: Sampled Union producers

- (190) Average unit sales prices increased significantly in 2017 as compared to 2016, and then again in 2018. However, the average unit sales price of the Union industry fell from 574 EUR/tonne in 2018 to 534 EUR/tonne in the investigation period, while its cost of production increased from 540 EUR/tonne in 2018 to 560 EUR/tonne in the investigation period. Therefore, whereas in 2017 and 2018 the Union industry had been able to pass on the cost increases which it incurred to its customers and remain profitable, it could no longer do so in the investigation period. The information about cost of production in this table and in table 10 of the provisional Regulation is identical.
- (191) Following provisional disclosure, the GOT noted that both the unit cost of production and the unit average sales prices of the Union industry on the free market had increased to the same extent (+36 %) over the period considered, so that the Union industry could reflect raw material price increases in its prices. The Commission notes that the GOT's assessment is a mere end-point to end-point analysis without considering the yearly evolutions, and does not account for the fact that the anti-dumping investigation that led to measures against Brazil, Iran, Russia and Ukraine in 2017 found injury during the period running from 1 July 2015 to 30 June 2016. Indeed, whereas sales prices in the Union were depressed still in 2016 <sup>(4)</sup> by dumped imports from Brazil, Iran, Russia and Ukraine, the Union industry could only restore its sales prices to normal levels in 2017 <sup>(5)</sup>. The Commission also notes that the sales prices of the Union industry fell from 574 EUR/tonne in 2018 to 534 EUR/tonne in the investigation period, while unit costs increased by from 540 EUR/tonne to 560 EUR/tonne in the same period. Therefore, whereas in 2017 and 2018 the Union industry had been able to pass on cost increases incurred to its customers and remain profitable, it could no longer do so in the investigation period.
- (192) Following final disclosure, the GOT stated that the Commission failed to demonstrate how the Union industry was able to reflect the cost increases incurred in 2017 in its sales prices. The Commission disagreed. The remote cross-checks of the questionnaire responses of the sampled Union producers and Table 10 above confirmed that the cost increases between 2016 and 2017 translated into higher selling prices on the free market in EU27 between 2016 and 2017.

## 4.5.3.2. Labour costs

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

<sup>(4)</sup> See, inter alia, tables 3 and 7 and recital (339) of the Implementing Regulation (EU) 2017/1795 imposing a definitive anti-dumping duty on imports of certain hot rolled flat products of iron, non-alloy or other alloy steel originating in Brazil, Iran, Russia and Ukraine and terminating the investigation on imports of certain hot-rolled flat product of iron, non-alloy or other alloy steel originating in Serbia.

<sup>(5)</sup> Implementing Regulation (EU) 2017/1795 (see footnote 10 above). Since October 2016, Union producers could benefit from protection via the Commission Implementing Regulation (EU) 2016/1778 of 6 October 2016 imposing a provisional anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 272, 7.10.2016, p. 33).

Table 11

## Average labour costs per employee

	2016	2017	2018	IP
(EUR)	74 295	78 101	79 241	83 187
Index	100	105	107	112

Source: Sampled Union producers

- (194) During the period considered, the average labour costs per employee went up by 12 %. This table is identical to table 11 in the provisional Regulation.
- (195) Following provisional disclosure, the GOT stated that the increase of labour costs could not be single-handedly linked to imports from Turkey. The party complained that the provisional Regulation lacked an examination of the reasons behind the evolution of labour costs. The Commission reassured the GOT that, labour costs being one of the factors accounted for in the injury analysis, the Commission did not consider any factor in isolation. The reasons for the increase in labour costs were manifold, including commitments incurred with trade unions representing labour. However, the Commission recalled that the important issue in this analysis is to what extent the Union industry could pass on costs increases, as examined in the section before.

## 4.5.3.3. Inventories

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

Table 12

## Inventories

	2016	2017	2018	IP
Closing stocks (tonnes)	1 033 364	1 207 363	843 448	862 918
Index	100	117	82	84
Closing stocks as a percentage of production (%)	4,5 – 5,5	5 – 6	4 – 5	4 – 5
Index	100	110	81	85

Source: Sampled Union producers

- (197) During the period considered the level of closing stocks decreased by 16 %. As to the evolution of the closing stocks as a percentage of production, this indicator remained relatively stable over the period considered at around 5 % of the production volume. This table is identical to table 12 of the provisional Regulation.
- (198) Following provisional disclosure, the GOT considered the Commission's duly elaborated findings in recital (125) of the provisional Regulation that stocks were not considered to be an important injury indicator biased. The Commission disagreed. As explained in the provisional Regulation, most types of the like products are produced based on specific orders, and are therefore supplied after production and not held in stock. The Commission came to a similar conclusion on stocks in previous investigations concerning the same product<sup>(19)</sup>. In addition, the present investigation confirmed that most types of the like product are indeed produced based on specific orders of users.

<sup>(19)</sup> See, inter alia, recital (292) of Implementing Regulation (EU) 2017/1795 (see footnote 10 above).

- (199) Following final disclosure, the GOT questioned the Commission's comments on the decrease in closing stocks as a percentage of production. The Commission recalled that closing stocks as a percentage of production volume remained relatively stable at around 5 % over the period considered and that this factor is not deemed an important indicator. For the Commission, as most types of the like product are produced based on specific orders of users, it would be unjustified to consider stable stocks (as a percentage of production volume) tantamount to a lack of injury on the Union industry's side.

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

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

Table 13

#### Profitability, cash flow, investments and return on investments

	2016	2017	2018	IP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	-3,4	6,8	6,7	-6,1
<i>Index</i>	-100	197	197	-178
Cash flow (EUR)	- 140 233 454	441 132 791	621 327 297	- 308 067 291
<i>Index</i>	-100	315	443	-220
Investments (EUR)	144 626 230	234 309 366	210 822 274	156 161 956
<i>Index</i>	100	162	146	108
Return on investments (%)	-3,1	9,7	10,2	-13,0
<i>Index</i>	-100	317	331	-424

Source: Sampled Union producers

- (201) Profitability developed negatively over the period considered, despite the initial increase of profits in 2017 and 2018. Profitability went down from 6,8 % in 2017 to -6,1 % in the investigation period.
- (202) The net cash flow was positive from 2017 to 2018, with a peak in 2018, and turned negative in the investigation period, when profitability was at the lowest point in the period considered. The ability to raise capital was hindered by the drop in profits.
- (203) The level of yearly investments increased over the period considered by 8 %, but shrank in the investigation period to levels barely above those in 2016. The return on investments followed the same trend as the profitability. This part of table 13 is identical in respect of investments and return of investments to table 13 of the provisional Regulation.
- (204) Following provisional disclosure, the GOT claimed that the investment levels in table 13 of the provisional Regulation were huge and a clear proof of lack of injury. The Commission disagreed with the GOT's conclusion as investments occurred mostly in 2017 and 2018, that is to say, once the Union industry started recovering from past dumping practices. As explained in recital (167) of the provisional Regulation, Union producers could not invest as much as they wished during the period considered. The Union industry being a very capital-intensive business, investments were not huge in relative terms. The ability to raise capital was hindered by the drop in profits.

- (205) Following final disclosure, the GOT asked for an explanation of the 62 % increase in investments between 2016 and 2017 as measures on HRFS against five third countries came into force in October 2017. At the outset, the Commission noted that, as a matter of principle, the fact that there are dumped imports on the market that injure the Union industry cannot be used to disqualify investment decisions by the Union industry as that would implicitly reward the unfair trade practice in question. On substance, the Commission recalled that the provisional anti-dumping measures against one of the main sources of HRFS imports at the time, China, were published on 7 October 2016 <sup>(49)</sup>, while the definitive measures followed early April 2017 <sup>(50)</sup>. In addition, table 14 of this Regulation shows a clear decrease of dumped imports from China, Russia, Brazil, Ukraine and Iran between 2016 and 2017, which favoured the implementation of delayed investments in 2017.
- (206) Following provisional disclosure, the GOT stated that certain investments linked to health, safety and environmental matters do not result in profit or return on investment. The Commission considered that the Union industry should have been able to make profit even when complying with its health, safety and environmental commitments. Investments linked to health, safety and environmental matters do not prevent businesses from making healthy profits in normal market circumstances. While agreeing with this conclusion, following final disclosure the GOT deemed that the Commission had failed to make an objective examination on profitability and return on investments as investments linked to health, safety and environmental matters cost dearly in the year when the investments take place and no company expects a return on these investments. The Commission disagreed as a healthy Union industry should show solid levels of profitability and return on investments that allow for expenses absent of a pecuniary return on investment but completely necessary for health, safety and environmental reasons.
- (207) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (126) to (131) of the provisional Regulation.

#### 4.6. Conclusion on injury

- (208) Although consumption in the free market slightly decreased during the period considered (-1 %), the Union industry's sales volumes in the free market increased with its market share going from [75 - 76 %] to [78 - 79 %]. However, these small improvements in terms of sales volumes and market share can only be observed when compared with 2016, when the Union industry was suffering injury from dumping caused by imports from other countries. Yet, the Union industry's production output and capacity utilisation decreased respectively by 4 % and 7 % over the period considered. Between 2018 and the investigation period there were more pronounced drops in production and capacity utilisation, and sales in the free market also decreased. The Union industry grew as of 2017, recovering from the unfair imports subject to anti-dumping and anti-subsidy measures, but its situation deteriorated during the investigation period.
- (209) The cost of production of the Union industry went up significantly during the period considered (+36 %), mainly because of a strong increase in the raw material prices.
- (210) The Union industry's sales prices increased more than costs in 2017 and 2018, which allowed Union producers to recover from previous injurious dumping practices and reach a profitability of 6,7 %. However, between 2018 and the investigation period, to preserve its market share when faced with dumped Turkish imports, the Union industry had to decrease its sales prices in spite of increasing costs (+4 %). This had a devastating effect on the Union industry's profitability, which dropped from +6,7 % in 2018 to -6,1 % in the investigation period.
- (211) Other financial indicators (cash flow, return on investments) followed a similar trend, especially during the investigation period, and consequently the level of investments decreased strongly in the investigation period as compared to the previous years.

<sup>(49)</sup> Implementing Regulation (EU) 2016/1778.

<sup>(50)</sup> Implementing Regulation (EU) 2017/649.

- (212) As explained in recital (16) above, the UK withdrawal entailed a revision of macroeconomic indicators and a few other data. The differences between tables 1-13 of the provisional Regulation and tables 1-13 this Regulation are however insignificant, both in terms of units and trends. The undercutting levels remained significant. Consequently, the Commission concluded that the UK withdrawal does not alter the conclusion on injury reached in the provisional Regulation.
- (213) On the basis of the above, the Commission definitely concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

## 5. CAUSATION

### 5.1. Effects of the dumped imports

- (214) Following provisional disclosure, ÇIB and the GOT disagreed with the conclusions in section 5.1 of the provisional Regulation. The GOT submitted that the explanations therein could not justify a causal link between the dumped imports and the alleged injury between 2018 and 2019 on the grounds that Turkish import volumes were stable and that both the prices of Turkish imports and the Union industry cost of production dropped in that period. The Commission noted the inaccuracy of the GOT's statements. On the one hand, the Union industry's cost of production did not go down in that period. Rather, it increased from 540 EUR/tonne in 2018 to 560 EUR/tonne in 2019, as shown in table 10 of the provisional Regulation and Table 10 of this Regulation. On the other hand, between 2018 and 2019 Turkish import volumes remained rather stable (although at higher levels compared to 2016 and 2017), while their prices dropped by 8,5 % as shown in tables 4 and 5 of this Regulation. The Commission noted that the GOT deemed the undercutting levels found in the provisional Regulation insignificant but did not dispute, however, that HRFS is a very price-sensitive product. Indeed, the GOT itself admitted that a small price difference explained the increase in the market share of Turkish imports<sup>(14)</sup>. The claims are thus rejected. In any event, regardless of the existence of undercutting, during the investigation period the Union industry had to keep its prices well below its costs of production in order to preserve its market share due to the price depression exerted by the volumes of Turkish imports at lower prices.
- (215) The GOT also stated that imports from Turkey did not take the market share of the Union industry but only took certain share from the third countries, which could not have any effect on Union producers. In the same vein, ÇIB claimed that the Commission had overlooked that imports from Turkey filled the gap left by other supplying countries. The party alleged as well a lack of correlation in time between the Union industry's performance and the evolution of Turkish imports, because, when the Union producers' situation deteriorated between the second and third quarters of 2019, as claimed by the complainant, Turkish imports dropped and their prices did not change. Following final disclosure, the GOT stated that a quarterly analysis showed that imports from Turkey started to decrease significantly since the beginning of 2019. In the same vein, following provisional and final disclosure ÇIB stated that the Commission had not explained why some key economic indicators of the Union industry improved or remained stable in the period of 2016-2019 while imports from Turkey were gradually increasing. Following final disclosure, ÇIB stated that material injury was to be attributed to factors other than imports from Turkey as between 2016 and 2018 Turkish import volumes grew but also their prices.
- (216) The Commission agreed that Turkish imports filling in a gap would have been unproblematic; however, such imports arrived into the Union at unfair dumped prices. As to the lack of correlation in time, the Commission disagreed. Indeed, ÇIB ignored in its analysis the effects of the price pressure exerted by Turkish imports. The fact that injury is patent rather in price-related indicators does not undermine an overall conclusion on injurious dumping. As stated in recital (139) of the provisional Regulation, it was in 2019 that the Union industry was driven to set its prices well below costs in order to keep its market share due to the price pressure exerted by the Turkish imports at lower prices. There is thus a clear correlation between the dumped imports and the injury suffered by the Union industry.

<sup>(14)</sup> Last paragraph of page 14 of t21.000916.



- (217) Following final disclosure, the GOT noted that it is essentially in the free market that the Union industry competes with imports. The GOT alleged that the increase in the market share of the Union industry in the free market proves the absence of injury derived from imports from Turkey. ÇİB said that the increase in sales of the Union industry on the free market and the increase of their market share despite the presence of Turkish imports does not support the conclusion that the Union industry suffered material injury over the period considered. In the Commission' view, the claims made by both parties neglect the effects of the price pressure exerted by Turkish imports and that the price-related indicators show clear and demonstrable injury. In the investigation period the Union industry gained some of the market shares left by certain import sources. However, this was done with selling prices well below costs as a result of the price pressure exerted by the Turkish imports and their lower prices.
- (218) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (138) to (139) of the provisional Regulation.

## 5.2. Effects of other factors

### 5.2.1. Imports from third countries

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

Table 14

#### Imports from third countries

Country		2016	2017	2018	IP
Russian Federation	Volume (tonnes)	1 935 269	720 339	1 587 740	1 340 462
	Index	100	37	82	69
	Market share (%)	5 – 6	2 – 3	4 – 5	3– 4
	Index	100	39	81	70
	Average price (EUR/tonne)	335	468	496	443
	Index	100	140	148	132
Serbia	Volume (tonnes)	348 619	465 158	733 711	860 953
	Index	100	133	210	247
	Market share (%)	0 – 1	1 – 2	2– 3	2– 3
	Index	100	139	207	249
	Average price (EUR/tonne)	386	498	547	479
	Index	100	129	142	124
India	Volume (tonnes)	430 713	1 098 632	884 455	847 584
	Index	100	255	205	197
	Market share (%)	1 – 2	3– 4	2– 3	2 – 3
	Index	100	266	202	199
	Average price (EUR/tonne)	403	494	531	464
	Index	100	122	132	115

Brazil	Volume (tonnes)	654 633	369 251	266 555	114 142
	Index	100	56	41	17
	Market share (%)	1-2	1-2	0-1	0-1
	Index	100	59	40	18
	Average price (EUR/tonne)	362	494	531	485
	Index	100	136	147	134
Ukraine	Volume (tonnes)	1 078 716	606 830	131 928	106 797
	Index	100	56	12	10
	Market share (%)	3-4	1-2	0-1	0-1
	Index	100	59	12	10
	Average price (EUR/tonne)	331	466	472	424
	Index	100	141	142	128
Iran	Volume (tonnes)	917 783	76 707	56 026	3 377
	Index	100	8	6	0
	Market share (%)	2-3	0-1	0-1	0-1
	Index	100	9	6	0
	Average price (EUR/tonne)	305	428	489	504
	Index	100	140	160	165
China	Volume (tonnes)	1 024 619	8 456	579	525
	Index	100	0,83	0,06	0,05
	Market share (%)	2-3	0-1	0-1	0-1
	Index	100	1	0	0
	Average price (EUR/tonne)	325	667	3 760	3 177
	Index	100	205	1 158	978
Other third countries	Volume (tonnes)	935 804	1 560 157	1 507 414	1 242 177
	Index	100	167	161	133
	Market share (%)	2-3	4-5	4-5	3-4
	Index	100	174	159	134
	Average price (EUR/tonne)	384	493	562	523
	Index	100	128	146	136
Total of all third countries except Turkey	Volume (tonnes)	7 326 155	4 905 531	5 168 408	4 516 016
	Index	100	67	71	62
	Market share (%)	21-22	15-16	15-16	12,5-13,5
	Index	100	70	69	62
	Average price (EUR/tonne)	344	480	530	477
	Index	100	141	154	139

Source: Eurostat

- (220) During the period considered, imports from countries other than Turkey decreased by 38 %; their market share decreased from 21 – 22 % to 12,5 – 13,5 %.
- (221) Following provisional disclosure, the GOT considered that the provisional Regulation overlooked the (low) price of imports from certain third countries and that prices of Turkish imports could not have caused injury to Union producers. The GOT based this conclusion on the fact that, first, in view of the data presented in Table 14 of the provisional Regulation, overall import prices decreased more than prices of imports from Turkey alone from 2018 to the investigation period and, second, that there was strong volatility in the prices of HRFS. The GOT stated that the cumulated volume of imports of all third countries except Turkey was almost twofold the volume of Turkish imports. As their prices were lower than the prices of Turkish imports, the GOT submitted that their effect could not be ignored. In this respect, ÇIB stated that the rapid drop in price of Indian imports coincided with the decrease of profitability of Union producers.
- (222) The Commission analysed the volumes, values and trends of imports from other third countries, but found that their impact did not attenuate the causal link between dumped Turkish imports and material injury suffered by Union producers. As to the price comparison made by the GOT between import prices from Turkey and import prices from other sources, the Commission notes that the latter are understated as the GOT disregarded the fact that Eurostat data on prices do not include anti-dumping and countervailing duties paid. As far as Indian imports are concerned, as noted in recital (144) of the provisional Regulation, the exact product mix of these imports and hence whether they in fact undercut the Union industry prices cannot be established based on Eurostat average prices only. No party provided evidence per product type suggesting significant undercutting from Indian imports. More importantly, no party contested that the volumes of Indian imports amounted to one quarter of that of the Turkish imports and, thus, were not capable of attenuating the causal link between the dumped imports and the injury found in this case. Following provisional disclosure, the complainant claimed to be unaware of any information that would suggest the imports from India were sold at dumped prices in the Union or causing any injury to Union producers. Thus, bearing in mind the relatively modest market share of Indian imports, these imports could not exert pressure on Union producers to the same extent as dumped imports from Turkey.
- (223) Following final disclosure, the ÇIB contested the analysis and the conclusions made under this section and the GOT stated that the Commission “chose not to examine the effects” of imports from other third countries and failed to show that these imports did not cause any injury to Union producers. The Commission disagreed with the parties as it did examine all the relevant information on the matter on file. For instance, no party, not even the GOT or the ÇIB, provided at any stage of the investigation evidence per product type suggesting significant undercutting by Indian imports (or by Serbian imports, as claimed by ÇIB). The Commission concluded that the evidence on file did not support the claim concerning the alleged effects of imports from other third countries. That conclusion does not undermine the finding about the extent of the pressure of such imports on Union producers in parallel with dumped imports from Turkey. The finding that imports from third countries could not attenuate the causal between dumped imports from Turkey and the injury suffered by the Union industry was confirmed. Based on these considerations, the overall conclusion on causation was also confirmed.
- (224) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (140) to (146) of the provisional Regulation.

#### 5.2.2. Export performance of the Union industry

- (225) The volume and prices of exports of the Union industry to unrelated parties developed over the period considered as follows:

Table 15

#### Export sales

	2016	2017	2018	IP
Export volume (tonnes)	1 – 2 million	1 – 2 million	1 – 2 million	1 – 2 million
Index	100	102	102	121

Average price (Euro/tonne)	376	502	554	468
Index	100	133	147	124

Source: Eurofer (volumes) and sampled Union producers (average prices)

- (226) Union producers increased export volumes by 21 % over the period considered to remain below 2 million tonnes in 2019. Overall, the volumes exported by the Union industry represented less than 6 % of its sales volume on the Union free market.
- (227) In the absence of any comments with respect to this section, the Commission confirmed its conclusions set out in recitals (147) to (149) of the provisional Regulation.

### 5.2.3. Captive consumption

- (228) Following provisional disclosure, the GOT asked the Commission to collect more data and further examine demand in the captive market. The GOT noted certain breakdowns in the complainant's publication "European Steel in Figures 2020" and the bad results published by the European Automobile Manufacturers Association in its 2019 report.
- (229) There are two main uses of the hot-rolled flat steel products. First, they are the primary material for the production of various value-added downstream steel products, starting with cold-rolled flat and coated steel products. Second, they are used as an industrial input purchased by end-users for a variety of applications, including in construction (production of steel tubes), shipbuilding, gas containers, cars, pressure vessels and energy pipelines. Data put forward by the GOT did not allow for an assessment of demand in the wide range of consuming sectors concerned. The Commission found that total production activity in the steel-using sectors in the Union fell by 0,2 % in 2019 – further to an increase of 2,9 % in 2018 – which was the first drop in output since 2013. The 2019 negative growth was the result of an increase in construction output and a drop in all other steel-using sectors (the most pronounced being recorded by the automotive sector)<sup>(14)</sup>. The Commission conceded that the negative growth in numerous steel-using sectors in 2019 entailed a challenge for HRFS producers. However, this situation was not found to attenuate the causal link between dumped imports from Turkey and the injurious situation of the Union industry in the investigation period, in view of the increase in volumes of those imports, their effect on the Union Industry's prices and other injurious factors identified above.
- (230) Following final disclosure, the GOT alleged a WTO-incompatible lack of examination of the effects of captive consumption. The GOT stated that the Commission 'chose not to examine' the 'extraordinary deterioration in steel user industries in the EU'. The Commission disagreed. The GOT provided no evidence to substantiate its claim. The publications in footnote 16 of the provisional Regulation do not show the alleged 'extraordinary deterioration in steel user industries in the EU'. In the course of the investigation, no users made similar claims. As highlighted in recital (195) of the provisional Regulation, users in major downstream markets, such as the automotive industry, industrial appliances or the construction sector did not come forward.
- (231) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (150) to (151) of the provisional Regulation.

<sup>(14)</sup> Economic Report, Economic and Steel Market Outlook 2020-2021, Second quarter report – Data up to, and including, full year 2019, 12 May 2020, Eurofer, downloadable via <http://www.eurofer.eu/assets/Uploads/REPORT-Economic-and-Steel-Market-Outlook-Quarter-2-2020.pdf>, and Worldsteel Short Range Outlook October 2019, 14 October 2019, World Steel Association, available at <https://www.worldsteel.org/media-centre/press-releases/2019/worldsteel-short-range-outlook-2019.html>

#### 5.2.4. Evolution of demand

- (232) Following final disclosure, ÇİB attributed injury to an overall decline in Union consumption, while the GOT stated that the decrease in consumption caused a decrease in the Union industry's production volumes. The Commission noted that, as shown in table 1, free market consumption, i.e. the market where competition with imports essentially takes place, fell by 1 % over the period considered. The Commission does not consider that the magnitude of the drop in Union consumption attenuated the causal link between dumped imports from Turkey and the injurious situation of the Union industry in the investigation period.
- (233) In light of the considerations in the section above and in the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (152) to (153) of the provisional Regulation. The evolution of demand on the basis of EU27 data does not change these conclusions.

#### 5.2.5. Raw material prices

- (234) In the absence of any comments with respect to this section, the Commission confirmed its conclusions set out in recitals (154) to (155) of the provisional Regulation.

#### 5.2.6. Other factors

- (235) Following final disclosure, ÇİB argued that material injury was to be attributed to changes in the Union market, restructuring and rationalisation efforts made by Union producers, a certain purchase policy and low-priced imports from other third countries. The claims were unsupported and thus dismissed.
- (236) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (147) to (149) of the provisional Regulation.

### 5.3. Conclusion on causation

- (237) On the basis of the above and in the absence of any other comments, the Commission concluded that none of the factors, analysed either individually or collectively, attenuated the causal link between the dumped imports and the injury suffered by the Union industry to the effect that such link would no longer be genuine and substantial, confirming the conclusion in recitals (159) to (161) of the provisional Regulation.

## 6. LEVEL OF MEASURES

### 6.1. Underselling margin

- (238) Following provisional disclosure, the complainant opposed the Commission's use of the average profit achieved over the year 2017, namely 6,8 %, as a basis for the target profit used for calculating the underselling margin. The complainant argued that in 2017 the Union industry was still suffering from dumped imports from other origins, that the Commission had failed to follow its standard practice and that even ÇİB had proposed a higher profit margin. The complainant insisted that the target profit should be in the range 10-15 %, like the 12,9 % used in an earlier investigation concerning imports of the same product<sup>(3)</sup>, although conceded that the minimum basis for the target profit could also be 7,9 %, which was the target profit used in the latest investigation on this product.
- (239) The Commission assessed the claim. As explained in recitals (164) and (166) of the provisional Regulation, the Commission based the determination of the target profit on the provisions of Article 7(2c) of the basic Regulation, although a year with "normal conditions of competition" prior to the increase of imports from Turkey could not be identified within a reasonable time-span. In addition, as already pointed out in section 4.5.1 above, the Commission

<sup>(3)</sup> Commission Decision No 284/2000/ECSC of 4 February 2000 imposing a definitive countervailing duty on imports of certain flat rolled products of iron or non-alloy steel, of a width of 600 mm or more, not clad, plated or coated, in coils, not further worked than hot-rolled, originating in India and Taiwan and accepting undertakings offered by certain exporting producers and terminating the proceeding concerning imports originating in South Africa (OJ L 31, 5.2.2000, p. 44).

was unable to conclude that in 2017 the Union industry was still suffering from dumped imports as claimed by the complainant. In the anti-dumping investigation against Brazil, Iran, Russia and Ukraine, the investigation of dumping and injury covered the period from 1 July 2015 to 30 June 2016. The fact that definitive protective measures against imports from those origins were imposed in October 2017 does not mean that injurious dumping practices continued to exist in 2017. This is corroborated by the sharp fall of imports from those five countries in 2017, as already mentioned in recital (163) above. Consequently, the Commission confirmed that the year 2017 was the best basis to establish the target profit in the context of the current investigation. In any event, in view of the dumping margins found in this case, even accepting the claim to use a higher target profit would not have any impact on the level of the measures.

- (240) At the provisional stage, the Commission used data from Bloomberg New Energy Finance to establish projected EU's emission trading system (ETS) allowance prices to calculate future environmental costs. These prices have been updated at the definitive stage with data extracted on 15 February 2020.
- (241) Recital (216) of the provisional Regulation refers to comments regarding the injury calculations received from one sampled Union producer in the context of Article 19a of the basic Regulation. The party claimed that the average of future quantity of HRPS to be produced should be used instead of the average of future upstream products used in HRPS production to assess the future compliance costs of the Union Industry to adhere to the environmental and social costs of production resulting from multilateral environmental agreements or social obligations. In this proceeding, considering the information available provided by the three sampled Union producers and verified by the Commission, the Commission found that it was the upstream products that directly generated the emission of pollutants and therefore that was the proper level to assess the future compliance costs. These costs were subsequently applied to the production of the product under investigation based on the consumption ratio of the downstream product generating the emissions in the production of the product under investigation.
- (242) As explained in section 1.8 above, the composition of the Union changed in 2021, a fact that also entailed a change in the dataset used to establish the underselling margin. The injury elimination level for EU27 is shown in the table below:

Country	Company	Dumping margin	Underselling margin
Turkey	Çolakoğlu Metalurji A.Ş.	7,3 %	19,5 %
	Erdemir group: — Ereğli Demir ve Çelik Fabrikaları T.A.Ş. — İskenderun Demir ve Çelik A.Ş.	5,0 %	21 %
	Habaş Sınai Ve Tıbbi Gazlar İstihsal Endüstrisi A.Ş.	4,7 %	20,5 %
	Ağır Haddecilik A.Ş.	5,7 %	20,3 %
	Borçelik Çelik Sanayii Ticaret A.Ş.	5,7 %	20,3 %
	All other companies	7,3 %	21 %

- (243) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (163) to (170) of the provisional Regulation as modified in the table above.

## 6.2. Examination of the margin adequate to remove the injury to the Union industry

- (244) In the absence of any comments with respect to this section, the Commission confirmed its conclusions set out in recitals (171) to (172) of the provisional Regulation.

## 6.3. Conclusion

- (245) Following the above assessment, the Commission concluded that it is appropriate to determine the amount of definitive duties in accordance with the lesser duty rule in Article 7(2) and Article 9(4), second paragraph, of the basic Regulation. As a consequence, definitive anti-dumping duties should be set as below:

Country	Company	Definitive anti-dumping duty
Turkey	Çolakoğlu Metalurji A.Ş.	7,3 %
	Erdemir group: — Ereğli Demir ve Çelik Fabrikaları T.A.Ş. — İskenderun Demir ve Çelik A.Ş.	5,0 %
	Habaş Sınai Ve Tıbbi Gazlar İstihsal Endüstrisi A.Ş.	4,7 %
	Ağır Haddecilik A.Ş.	5,7 %
	Borçelik Çelik Sanayi Ticaret A.Ş.	5,7 %
	All other companies	7,3 %

## 7. UNION INTEREST

### 7.1. Interest of the Union industry

- (246) Following provisional disclosure, the complainant stated that the recently announced expansion plans of Turkish exporters were an additional reason why anti-dumping measures were in the Union interest. No party contested that the measures would be in the interest of the Union industry. The conclusions set out in recitals (175) to (179) of the provisional Regulation were thus confirmed.

### 7.2. Interest of unrelated importers

- (247) Following provisional disclosure, the GOT and ÇİB stated that Union producers were already protected from imports. ÇİB argued that Turkish imports had dropped significantly in the last quarter of 2019 as compared to the first quarter of that year. In this respect, the GOT pointed at the definitive safeguard measures with quantitative ceilings (quotas' or 'Tariff Rate Quotas/TRQ's) and the additional duties of 25 % to be paid once the quota is exhausted. The GOT recalled that importers and users had stated before provisional measures that trade remedies heavily affected security of supply and made the importers' activities more challenging. The GOT added that, due to the provisional anti-dumping measures and the country-specific quotas within the context of safeguard measures in force until the end of June 2021, importers and users would not be able to find a new import source to meet demand in the Union.
- (248) The Commission considered that recitals (188) to (193) of the provisional Regulation abundantly rebut claims related to any alleged shortages of supply, including the ones above made by the GOT following provisional disclosure. The Commission also noted that safeguard and anti-dumping measures address different situations. In this case, safeguard measures have indeed been imposed under the form of a TRQ, but that does not prevent the imposition measures to remove unfair trade practices, in particular within the limits of the TRQ, i.e. before any safeguard duty would apply.

- (249) Also, as explained in recital (192) of the provisional Regulation, the imposition of anti-dumping measures does not mean that imports from Turkey will cease, or even that they will decrease in a meaningful way. The findings of the investigation support this conclusion. Following provisional disclosure no importer submitted quantitative data that would show that the anti-dumping measures stemming for the current proceeding would have a disproportionate impact on their activities. The level of the measures should not prevent Turkish steelmakers from selling their HRFS in the Union and to the Union importers. Indeed, a 2021 press report by Steel Business Briefing highlighted that in 2020 the Union remains Turkey's main hot rolled coil export market <sup>(14)</sup>. The same source reports on additional HRFS capacity in Turkey <sup>(15)</sup>.
- (250) In the absence of any other comments regarding the interest of unrelated importers, the conclusions set out in recitals (180) to (182) of the provisional Regulation were confirmed.

### 7.3. Interest of users

- (251) The GOT's comments following provisional disclosure relating to users were common to comments relating to unrelated importers and they have been already addressed in section 7.2.
- (252) Following provisional disclosure, ÇİB expressed concern about a drop of quality and innovation in the Union market as a result of the measures. The Commission deemed the claim, which was very general and unsupported by any evidence, unfounded. The Commission found that, despite the difficult market circumstances, Union producers had kept offering high quality products during the whole period considered. The Commission expects anti-dumping measures to create a level playing field that allows the Union industry to offer more high quality and innovative products to the benefit of all actors.
- (253) The Consortium of users and importers of HRFS (the Consortium) submitted comments on the provisional regulation <sup>(16)</sup>. First, the Consortium argued that following the investigation period, Union producers allegedly reduced the production volume that they make available in the Union free market. The Consortium pointed that this alleged practice, together with the trade defence measures currently in place against other origins, led to an 'unprecedented' price increase in the Union market. The Consortium claimed that independent users in the Union were thus not in a position to source an essential raw material (HRFS) from Union producers. In turn, the price increase would have allowed the Union producers to improve their margins of profit to a point where they would have recovered from any alleged injury suffered in the investigation period. The Consortium considered that EU Courts' jurisprudence allowed the Commission to assess post-IP developments in the framework of the Union interest analysis, and that in this case, such developments would call for the termination of the measure. In connection to this argument, the Consortium further argued that, as a result of the alleged scarcity of supply from Union producers and the ensuing increased prices, independent users in the Union had no choice but to rely on imports in relevant amounts. In this respect, the Consortium stated that trade defence measures in place against certain origins, and the provisional measure against Turkish imports, threaten the ability to obtain HRFS from third countries. The Consortium pointed that other third countries could not replace Turkey as the most reliable supplying country. The Consortium also contested the Commission's finding regarding the ability of users to adjust to regulatory changes and to switch suppliers. The Consortium claimed that, in practice, this is rarely possible and that purchasing limited volumes from other third country producers cannot be seen as a sign that users can swiftly change suppliers. The Consortium cast doubts on the ability, and even willingness, of the Union industry to supply any additional relevant volumes to independent downstream users in the Union and the ability of countries, other than Turkey, to supply meaningful amounts of HRFS into the Union. All these elements, the Consortium argued, would lead to an unsustainable increase in costs of a key raw material for users, affecting them disproportionately.
- (254) Following provisional disclosure, ÇİB expressed concern about an increase in HRFS prices in the Union market as a result of the measures and contested recital (191) of the provisional Regulation, according to which Union producers could use their spare capacity to satisfy the demand of unrelated users.

<sup>(14)</sup> t21.000701, Annex 2.

<sup>(15)</sup> t21.000701, Annex 1 and Annex 3.

<sup>(16)</sup> t21.000721.



- (255) The complainant contested these claims<sup>(27)</sup>. In particular, it referred to sources pointing to increased production capacity in 2021, including by restarting certain furnaces and to the existence of sufficient sources of supply, both within the Union and from third countries. The complainant acknowledged that any supply chain imbalance in the market would have been only of temporary nature and caused by the disruptive effect of the COVID-19 pandemic, including the shutdown of some furnaces. The complainant further submitted that there are plenty of alternative sources in the Union and elsewhere to satisfy any increases in Union demand, including the existence of abundant spare capacity in the Union and worldwide. It also argued that Turkey is likely to continue its supplies to the Union market given the moderate anti-dumping duties imposed. Lastly, the complainant reiterated that the anti-dumping duty would not have any significant impact on users' costs, referring to simulations it had provided at an earlier stage of the proceeding.
- (256) Following final disclosure, the GOT claimed that if the Commission imposed a definitive safeguard measure, on top of the existing safeguard measure and other anti-dumping and countervailing duties in place against other origins for imports of the product concerned, there was a possibility of shortage in supply. The GOT further claimed that its imports started decreasing in 2019 as a result of the safeguard measure in place and that 'it believed that any further measure will cause the imports from Turkey to cease' and asked how the Commission would be certain that imports from Turkey would not cease.
- (257) The Commission first addressed the claims on scarcity of supply, availability of other sources and ability to adjust to regulatory changes and switch suppliers. Subsequently, it addressed the claim on the use of post-IP data.
- (258) The Commission found that the Consortium's and the GOT's argument of scarcity of supply is at odds with the figures and trends that the investigation established. This is the case both at general level and at the level of the data shown by cooperating users. On a general level, the Commission first noted that under the steel safeguard measure<sup>(28)</sup> there have been very large amounts of free-of-duty TRQ consistently, and increasingly, available during the investigation period<sup>(29)</sup>. Therefore, had demand for larger volumes of imports existed in the Union, it could have been met free-of-duty. Second, the investigation confirmed that the Union industry has sufficient spare capacity<sup>(30)</sup> that would allow it to increase further its output in the Union. There is no economic justification for Union producers not to use their (spare) capacities to satisfy demand in the Union, whether the users are related or not, notably when it finds itself in a less than optimal economic situation. Third, the Commission reiterated its findings at provisional stage<sup>(31)</sup> regarding the ability of third countries to supply HRFPS in relevant amounts and recalled that they could increase their presence in the Union market further, as some of them had already, if demand exists. Lastly, the Commission referred to its finding in recital (192) of the provisional Regulation concerning the unfounded assumption that Turkey's imports would disappear from the Union market if the Commission imposed a defensive duty. The Commission recalled in this regard that some of the countries subject to measures continued exporting to the Union, and in certain cases, in substantial amounts<sup>(32)</sup>.
- (259) Moreover, the Consortium's claim is also at odds with the data supplied by independent users themselves in the framework of the investigation. First, the share of Turkish imports in these users' portfolio is rather limited (below 15 % overall). Turkish purchases account for less than half the share of imports from other origins, and they are nearly five times smaller than their purchases from Union producers, the users' main supplier by far. Furthermore, the Commission confirmed that the figures available in the questionnaire replies from unrelated users clearly show, not only that they can (and in fact have), from one year to another, significantly changed the configuration of their sources of supply, but also that they can do that in substantial volumes. In this regard, the Commission noted that the cooperating users doubled and even tripled the imports from certain origins in the investigation period

<sup>(27)</sup> t21.000931.

<sup>(28)</sup> In July 2018, the Commission imposed a provisional safeguard measure, which became definitive in February 2019 and which was in place throughout the whole investigation period. Under this measure, HRFPS largely corresponds in scope to product category 1. Therefore, the evolution of TRQ use under the safeguard measure is relevant for the purpose of this investigation.

<sup>(29)</sup> Recitals (45) to (50) of Commission Implementing Regulation (EU) 2020/894 of 29 June 2020 amending Implementing Regulation (EU) 2019/159 imposing definitive safeguard measures against imports of certain steel product (OJ L 206, 30.6.2020, p. 27).

<sup>(30)</sup> Table 6 of the Regulation imposing provisional anti-dumping measures.

<sup>(31)</sup> Recitals (188) and (189) of the Regulation imposing provisional anti-dumping measures.

<sup>(32)</sup> Recitals (21) to (23) of Commission Implementing Regulation (EU) 2019/1590 of 26 September 2019 amending Implementing Regulation (EU) 2019/159 imposing definitive safeguard measures against imports of certain steel products (OJ L 248, 27.9.2019, p. 28).

(increasing overall, by 40 % the imports from these third countries). Users also started purchasing in the investigation period from origins they did not purchase from in the year prior to the investigation period, while they stopped purchasing from certain origins that they used to in 2018. The data available in the file thus contradicts the Consortium's statement that users are only able to purchase limited volumes of HRP5 from other third countries, and that in practice switching to other suppliers is rarely possible.

- (260) With regard to the other claims brought forward by the GOT, the Commission noted that regarding the decline in imports in 2019, Turkey was unable to fulfil the global TRQ that was available until 1 July 2020 <sup>(19)</sup>. Furthermore, the Commission did not see any link between, and the GOT has not supplied any evidence in support of, a reduction in imports in a given year and the claim that these imports will cease as a result of the imposition of a definitive anti-dumping duty. In addition, the Commission noted that Turkey's level of imports since the imposition of a provisional anti-dumping duty show that these imports did not cease. Rather, Turkey made a very large use (92 %) of its country-specific TRQ in the period January-March 2021, and it continued exporting relevant volumes in the quarter April-June 2021. These data show that despite a provisional anti-dumping duty in place, Turkey continued supplying volumes commensurate with the in quota volumes allocated to it under the safeguard measure.
- (261) In reaction to the claim of the ÇİB, the Commission again noted, in connection to the alleged reduction in imports that the Association referred to (first quarter in 2019 versus fourth quarter in 2019), that Turkey could have supplied additional volumes under the free-of-duty in quota regime <sup>(20)</sup> in the last quarter of 2019. The Commission nevertheless failed to see how a reduction of imports from Turkey would, on its own, amount to a shortage of supply in the market. The Commission recalled that the Union market has shown its capability of adjusting to different sources of supply depending on the regulatory changes, such as the imposition of trade defence measures.
- (262) Therefore, in view of the above facts, the Commission rejected the Consortium's, the GOT's and the ÇİB's claims.
- (263) With regard to the request that the Commission extends its findings to take into account post-IP developments, in its submission the Consortium pointed to an unprecedented increase in prices that would have taken place between the end of 2020 and during the first quarter of 2021. The Consortium added that such an increase in prices threatened their operations in the Union and that at these prices, Union producers would have increased their profits and hence, they would have recovered from any injury suffered in the investigation period.
- (264) Following final disclosure, the ÇİB and the GOT criticised the Commission's finding in this respect. For its part, the complainant argued that the Commission should not assess post-IP developments, as the circumstances present in this case are not of exceptional nature and in any event, they would be only of a short-term and not of structural nature.
- (265) The Commission considered that an allegation that a price increase may have taken place at a certain point in time after the investigation period, cannot by itself put into question the findings established by the investigation at the provisional and definitive stage. The Commission noted that the claim made by the Consortium lacks any meaningful context and supporting evidence that would clearly demonstrate that the findings on the investigation based on IP data are invalidated by such a development alone. Furthermore, the allegation that the Union industry would have recovered from its injurious situation is unfounded and not supported by any evidence whatsoever. The Commission recalled that Article 6(1) of the basic Regulation notes that information relating to a period subsequent to the investigation period shall, normally, not be taken into account.

<sup>(19)</sup> This statement is valid for both periods, i.e. when Turkey was subject to a global TRQ (2 February to 30 September 2019), and when Turkey was subject to a 30 % cap under a global TRQ as of 1 October 2019.

<sup>(20)</sup> In the last quarter of 2019, Turkey had used 73 % of the overall TRQ volume it was entitled to supply free-of-duty, leaving around 170,000 tonnes unused in that quarter.

- (266) Regarding the comments received following final disclosure, the Commission notes that neither party provided any additional evidence regarding how the price increase that took place after the investigation period would, in itself, render the imposition of definitive anti-dumping duties unwarranted under the Union interest test.
- (267) The Commission thus confirmed its conclusions set out in recitals (183) to (198) of the provisional Regulation.

#### 7.4. Other factors

- (268) Following provisional disclosure, the GOT stated that Union steelmakers were consistently trying to keep their oligopoly in the Union market and remove international competition. The GOT noted that Union producers served already 79 % of the sales in free market and that such a percentage did not include captive volumes, which were significant. ÇİB referred as well to the high market share of Union producers and feared a monopoly.
- (269) The Commission found the oligopoly claim unjustified, as already explained in recital (200) of the provisional Regulation. Following provisional disclosure, no party disputed that, as stated in recitals (75) and (200) of the provisional Regulation, there are over 20 known producers belonging to 14 different groups that show healthy competition amongst them and with imports from third countries. In the absence of evidence of uncompetitive practices, the market share they currently hold is irrelevant to support these claims of oligopoly, let alone a monopoly.
- (270) Following final disclosure, ÇİB submitted that the above did not assess in a detailed, sufficient and transparent manner the claim of enhanced oligopoly by the Union industry in the Union market nor that the claim of such enhanced oligopoly was unjustified. For ÇİB, the claim should have been assessed taking into account other factors such as existing measures, shortage of supply, reduction of quality and innovations, etc. According to the party, the General Court requires that, for the purpose of Article 21(1) of the basic Regulation, special consideration is given to restore effective competition. The party repeated, without adding any new evidence, its claim that the Union industry holds an 'enhanced oligopoly' in the Union market.
- (271) The Commission refers to its recent Staff Working Document <sup>(19)</sup>, where it noted that '[i]n the recent consolidation wave, merger control enforcement contributed to keeping vibrant competition in the European steel markets to the benefit of the many downstream industries that use steel, rely on affordable materials to compete globally and employ millions of Europeans. By prohibiting anti-competitive mergers (e.g. Tata Steel/ThyssenKrupp) or approving mergers subject to conditions, such as structural divestitures (e.g. ArcelorMittal/Ilyva), merger enforcement ensured that European steel customers are not left with less choice, higher prices, or less innovation.' The Commission found ÇİB 's claims unfounded, including as regards shortages in HRFS supply, as explained in section 7.3. Therefore the Commission confirmed its findings at provisional stage.
- (272) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (199) to (200) of the provisional Regulation.

#### 7.5. Conclusion on Union interest

- (273) Following provisional disclosure, the GOT stated that in its view anti-dumping duties were both unnecessary and detrimental for the Union market and that they would play a negative role against the Union interest as a whole. Following final disclosure, ÇİB submitted that the Commission had not balanced the different interests at stake in a transparent manner nor justified its findings. The Commission found those statements to be unfounded in light of the findings of the investigation, namely the existence of dumping, of resulting material injury to the Union industry and the result of balancing the different interests at stake.
- (274) On the basis of the above and in the absence of any other comments, the conclusions set out in recital (201) of the provisional Regulation were confirmed.

<sup>(19)</sup> Commission's Staff Working Document "Towards Competitive and Clean European Steel", SWD(2021) 353 final, 5.5.2021, p. 4-5.

## 8. DEFINITIVE ANTI-DUMPING MEASURES

## 8.1. Definitive measures

(275) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports of the product concerned. For the reasons set out in section 6, and in particular sub-section 6.3, of this Regulation, anti-dumping duties should be set in accordance with the lesser duty rule.

(276) On the basis of the above, the rates at which such duties will be imposed are set as follows:

Country	Company	Definitive anti-dumping duty
Turkey	Çolakoğlu Metalurji A.Ş.	7,3 %
	Erdemir group: — Ereğli Demir ve Çelik Fabrikalari T.A.S. — İskenderun Demir ve Çelik A.Ş.	5,0 %
	Habaş Sınai Ve Tıbbi Gazlar İstihsal Endüstrisi A.Ş.	4,7 %
	Ağır Haddencilik A.Ş.	5,7 %
	Borçelik Çelik Sanayii Ticaret A.Ş.	5,7 %
	All other companies	7,3 %

(277) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflect the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imports of the product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.

(278) 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 <sup>(16)</sup>. 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*.

(279) 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'.

(280) 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

<sup>(16)</sup> European Commission, Directorate-General for Trade, Directorate H, Wetstraat 170 Rue de la Loi, 1040 Brussels, Belgium.

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.

- (281) 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.
- (282) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for "all other companies" should apply not only to the non-cooperating exporting producers in this investigation, but to the producers which did not have exports to the Union during the investigation period.

### 8.2. Definitive collection of the provisional duties

- (283) In view of the dumping margins found and given the level of the injury caused to the Union industry, the amounts secured by way of the provisional anti-dumping duty imposed by the provisional Regulation should be definitively collected.
- (284) The definitive duty rates being lower than the provisional duty rates, the amounts secured in excess of the definitive anti-dumping duty rates should be released.

### 8.3. Retroactivity

- (285) As mentioned in section 1.2, following a request by the complainant, the Commission made imports of the product under investigation subject to registration pursuant to Article 14(5) of the basic Regulation.
- (286) During the definitive stage of the investigation, the data collected in the context of the registration was assessed. The Commission analysed whether the criteria under Article 10(4) of the basic Regulation were met for the retroactive collection of definitive duties.
- (287) The Commission's analysis showed no further substantial rise in imports in addition to the level of imports which caused injury during the investigation period, as prescribed by Article 10(4d) of the basic Regulation. For this analysis, the Commission compared the monthly average import volumes of the product concerned during the investigation period with the monthly average import volumes during the period from the month following the initiation of this investigation until the last full month preceding the imposition of provisional measures. Also when comparing the monthly average import volumes of the product concerned during the investigation period with the monthly average import volumes during the period from the month following the initiation of this investigation up to and including the month in which provisional measures were imposed, no further substantial increase could be observed:

	IP		June 2020 to December 2020		June 2020 to January 2021	
	tonnes	tonnes/ month	tonnes	tonnes/ month	tonnes	tonnes/month
HRFS imports from Turkey	2 767 658	230 638	1 031 186	147 312	1 194 329	149 291

Source: Eurostat (EU 27)

- (288) The Commission therefore concluded that the retroactive collection of the definitive duties for the period during which imports were registered was not justified in this case.

#### 9. UNDERTAKING OFFER

- (289) Following final disclosure, one of the exporting producers submitted a price undertaking offer in accordance with Article 8 of the basic Regulation.
- (290) The Commission evaluated this offer and concluded that the acceptance of such undertaking would be impractical within the meaning of Article 8 of the basic Regulation. This is mainly because of the multitude of indistinguishable product types covered by the offer, the fact that some product types falling into the same CN/TARIC code have different minimum import prices, the fact that the minimum import prices offered would not be sufficient to remove the injurious effects of dumping for the majority of product types, and the inappropriateness of the offered indexation to incorporate fluctuations in the price of raw materials.
- (291) In its comments on the price undertaking proposed by the exporting producer, the complainant gave arguments in favour of its rejection, which supported the Commission's own analysis.
- (292) The Commission sent the exporting producer a letter setting out the reasons to reject the undertaking offer and giving the company the opportunity to comment.
- (293) The Commission did not receive any comments from the exporting producer concerning its conclusion that the proposed undertaking would be inadequate and impracticable.
- (294) Therefore, for the reasons set out in recitals (290) to (293) above, the price undertaking offer was rejected.

#### 10. FINAL PROVISIONS

- (295) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council <sup>(17)</sup>, 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.
- (296) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A definitive anti-dumping duty is imposed on imports of flat-rolled products of iron, non-alloy steel or other alloy steel, whether or not in coils (including 'cut-to-length' and 'narrow strip' products), not further worked than hot-rolled, not clad, plated or coated, originating in Turkey, currently falling under CN codes 7208 10 00, 7208 25 00, 7208 26 00, 7208 27 00, 7208 36 00, 7208 37 00, 7208 38 00, 7208 39 00, 7208 40 00, 7208 52 10, 7208 52 99, 7208 53 00, 7208 54 00, ex 7211 13 00 (TARIC code 7211 13 00 19), ex 7211 14 00 (TARIC code 7211 14 00 95), ex 7211 19 00 (TARIC code 7211 19 00 95), ex 7225 19 10 (TARIC code 7225 19 10 90), 7225 30 90, ex 7225 40 60 (TARIC code 7225 40 60 90), 7225 40 90, ex 7226 19 10 (TARIC code 7226 19 10 95), ex 7226 91 91 (TARIC code 7226 91 91 19) and 7226 91 99.

The following products are excluded:

- (i) products of stainless steel and grain-oriented silicon electrical steel;
- (ii) products of tool steel and high-speed steel;

<sup>(17)</sup> 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).

- (iii) products, not in coils, without patterns in relief, of a thickness exceeding 10 mm and of a width of 600 mm or more; and
- (iv) products, not in coils, without patterns in relief, of a thickness of 4,75 mm or more but not exceeding 10 mm and of a width of 2 050 mm or more;
- (v) products whose (a) width is 350 mm or less, and (b) whose thickness is 50 mm or more, regardless of the length of the product.

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

Country	Company	Definitive anti-dumping duty rate	TARIC additional code
Turkey	Çolakoğlu Metalurji A.Ş.	7,3 %	C602
	Erdemir group: — Ereğli Demir ve Çelik Fabrikaları T.A.S. — İskenderun Demir ve Çelik A.Ş.	5,0 %	C603
	Habaş Sınai ve Tıbbi Gazlar İstihsal Endüstrisi A.Ş.	4,7 %	C604
	Ağır Haddecilik A.Ş.	5,7 %	C605
	Borçelik Çelik Sanayii Ticaret A.Ş.	5,7 %	C606
	All other companies	7,3 %	C999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: *'I, the undersigned, certify that the (volume) of (product concerned) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct'*. If no such invoice is presented, the duty applicable to all other companies shall apply.

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

#### Article 2

The amounts secured by way of the provisional anti-dumping duty under Implementing Regulation (EU) 2021/9 shall be definitively collected. The amounts secured in excess of the definitive rates of the anti-dumping duty shall be released.

#### Article 3

No definitive anti-dumping duty will be levied retroactively for registered imports. Data collected in accordance with Article 1 of Implementing Regulation (EU) 2020/1686 shall no longer be kept.

#### Article 4

Article 1(2) may be amended to add new exporting producers from Turkey 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 Turkey during the period of investigation (1 January 2019 to 31 December 2019);

- (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 concerned or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the period of investigation.

*Article 5*

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

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

Done at Brussels, 5 July 2021.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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