



Brussels, 7 February 2023

## GENERAL DISCLOSURE DOCUMENT

**R758 - Expiry review of the anti-dumping measures applicable to imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in the People's Republic of China and Taiwan**

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## **1. PROCEDURE**

### **1.1. Previous investigation and measures in force**

- (1) By Implementing Regulation (EU) No 2017/141<sup>1</sup>, the Commission imposed definitive anti-dumping duties ranging from 30,7 % to 64,9 % on imports of certain tube and pipe butt-welding fittings originating in the People's Republic of China (the 'PRC') and definitive anti-dumping duties ranging from 5,1 % to 12,1 % on imports originating in Taiwan.

### **1.2. Request for an expiry review**

- (2) Following the publication of a Notice of impending expiry of the measures in force<sup>2</sup>, the Commission received a request for the initiation of an expiry review pursuant to Article 11(2) of 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>3</sup> ('the basic Regulation').
- (3) The request for review was lodged on 26 October 2021 by the Defence Committee of the Stainless steel butt-welding Fittings industry of the European Union ('the applicant') representing more than 25 % of the total Union production of certain tube and pipe butt-welding fittings. The request for review was based on the grounds that the expiry of the measures would be likely to result in continuation or recurrence of dumping and injury to the Union industry.

### **1.3. Initiation of an expiry review**

- (4) Having determined, after consulting the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of an expiry review, on 26 January 2022 the Commission initiated an expiry review with regard to imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in the People's Republic of China and Taiwan on the basis of Article 11(2) of the basic Regulation. It published a Notice of Initiation in the Official Journal of the European Union<sup>4</sup> ('the Notice of Initiation').

### **1.4. Parallel anti-circumvention investigation**

- (5) On 8 June 2022, the Commission initiated an investigation, pursuant to Article 13(3) of the basic Regulation, concerning possible circumvention of the anti-dumping measures in force with regard to imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in the PRC, and made such imports subject to registration<sup>5</sup>.

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<sup>1</sup> Commission Implementing Regulation (EU) 2017/141 of 26 January 2017 imposing definitive anti-dumping duties on imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in the People's Republic of China and Taiwan (OJ L 22, 27.01.2017, p. 14).

<sup>2</sup> Notice of impending expiry of certain anti-dumping measures (OJ C 168, 5.5.2021, p. 5).

<sup>3</sup> OJ L 176, 30.6.2016, p. 21.

<sup>4</sup> Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in the People's Republic of China and Taiwan (OJ C 40, 26.1.2022, p.1).

<sup>5</sup> Commission Implementing Regulation (EU) 2022/894 of 7 June 2022 initiating an investigation concerning possible circumvention of the anti-dumping measures imposed by Implementing Regulation (EU) 2017/141 on imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in the People's Republic of China by imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, consigned from Malaysia, whether declared as originating in Malaysia or not, and making such imports subject to registration (OJ L 155, 8.6.2022, p. 36).

## **1.5. Review investigation period and period considered**

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

## **1.6. Interested parties**

- (7) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. In addition, the Commission specifically informed the applicant, other known Union producers, the known exporting producers, the PRC authorities, the authorities of Taiwan, known importers, users, traders, as well as associations known to be concerned about the initiation of the expiry review and invited them to participate.
- (8) Interested parties had an opportunity to comment on the initiation of the expiry review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. None of the interested parties requested a hearing.

## **1.7. Claims on initiation**

- (9) Zhejiang India Pipeline Industry Co. Ltd., ('Zhejiang India'), an exporting producer of stainless steel butt-welding fittings ('SSTPF'), and the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters ('CCCMC') provided comments on the request for review and the initiation of the investigation.
- (10) Regarding the general claims that the request did not contain sufficient evidence, the Commission noted that the World Trade Organisation ('WTO') jurisprudence quoted by Zhejiang India and the CCCMC is irrelevant, as it does not address the standard of evidence necessary for the initiation of proceedings<sup>6</sup>. The applicant did provide the "sufficient evidence" to justify the initiation of an investigation, within the meaning of Article 11(2) of the basic Regulation, which is the appropriate legal standard. This claim was therefore rejected.
- (11) Zhejiang India and the CCCMC claimed that the application of Article 2(6a) of the basic Regulation was not warranted for the purposes of the request and that there were no significant distortions in the PRC. These claims are addressed in paragraphs (83) to (86) below.
- (12) Zhejiang India and the CCCMC claimed that the applicant proposed Thailand as representative country without providing any evidence that it meets the criteria of Article 2(6a)(a).
- (13) The Commission disagreed. In the expiry review request, the applicant examined four countries as potential representative countries that had a similar level of economic development to the PRC, namely Thailand, Indonesia, Malaysia and Türkiye<sup>7</sup>. All four countries were identified as having an industry that exports at least 500 tonnes per

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<sup>6</sup> United States - Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan - Report of the Panel (WT/DS244/R), paragraph 7.271. United States - Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan - Report of the Appellate Body (WT/DS244/AB/R), paragraph 114 and 168, 177 and 178. European Union - Anti-dumping Measures on Certain Footwear from China - Report of the Panel (WT/DS405/R), paragraph 7.333 and 7.495.

<sup>7</sup> Request for expiry review section B.1.1.2 pg. 8.

year of SSTPFs<sup>8</sup>. The applicants chose Thailand from among the four countries on the basis of the availability of relevant public data<sup>9</sup>. The choice of Thailand as representative country was supported by sufficient evidence, such as import and export statistics, sources used to establish undistorted costs, and evidence of known producers with publicly available financial information.

- (14) Zhejiang India and the CCCMC also claimed that Thailand is not an appropriate choice. Concretely, they claimed that the price of gas in Thailand is distorted as the gas industry is dominated by only two players, and that the Thai company chosen by the applicants for establishing selling, general and administrative ('SG&A') costs and profit also produces other products so its representativeness needs further clarification.
- (15) Regarding natural gas, the evidence provided by Zhejiang India and the CCCMC dates back to 2011, ten years before the review investigation period<sup>10</sup>. Moreover, interested parties did not provide any evidence of distortions in Thailand, they merely stated that, given that the market is dominated by two players, it was distorted. Furthermore, the applicant based the benchmark for gas on the price of imports into Thailand. The interested parties did not explain why the alleged market domination would lead to distorted import prices.<sup>11</sup> Zhejiang India and the CCCMC did not provide any evidence on the product range of the company chosen by the applicant or why it would be not appropriate. In any case, the request provided sufficient evidence that the company it used for establishing SG&A costs and profit is a producer of SSTPF with publicly available information<sup>12</sup>, which was sufficient to justify the initiation of the investigation.
- (16) Zhejiang India and the CCCMC also claimed that the applicant did not calculate normal value correctly because, as the request indicated, Thailand has no information for packaging, other direct costs, production equipment and factory overheads, and therefore the applicant constructed those on the basis of the cost of production of the Union industry.
- (17) The Commission disagreed. Information on packaging, other direct costs, production equipment and factory overheads in Thailand was not readily available to the applicant. The original investigation established that SSTPF produced in the Union and those exported from the PRC share the same basic characteristics. Zhejiang India and the CCCMC provided no evidence justifying a different conclusion. Therefore, for establishing the normal value, and to account for the potential impact of the difference in economic development between Thailand and the Union, rather than using absolute values the applicant used the proportion of those items in the cost of production of the Union Industry, that it subsequently applied to the undistorted values established using Thailand as representative country.
- (18) Zhejiang India and CCCMC also submitted that, in the request, the applicant had failed to provide positive evidence that injury would be likely to continue or recur if measures were allowed to lapse. With regard to continuation of injury, these parties submitted that the consumption on the Union market, the Union industry's production

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<sup>8</sup> Ibid.

<sup>9</sup> Request for expiry review section B.1.1.13 pg. 15.

<sup>10</sup> <https://www.apec.org/publications/2011/01/the-impacts-and-benefits-of-structural-reforms-in-transport-energy-and-telecommunications-sectors>

<sup>11</sup> Request for expiry review, paragraph 80 and Annex C – DM – 02 CN.

<sup>12</sup> Request for expiry review, paragraph 93 and OPEN Annexes 20.1 to 20.4

and production capacity and the Union industry's sales trends as reported in the request were all positive and that, overall, the industry was not injured anymore, whilst also pointing at the exceptional market difficulties caused by COVID-19 pandemic. They further pointed at the published profitability figures of a major Union producer in the three years preceding COVID-19 pandemic, which was in the same range as the target profit set in the investigation that led to the measures. On that basis, they submitted that the Union industry was not suffering injury. With regard to the likelihood of recurrence of injury, Zhejiang India and CCCMC submitted that the request showed that injury was unlikely to recur as the market share of the Union industry was at a consistent high level whereas the market share of imports from the PRC was too small to have any impact on the Union industry state.

- (19) As a preliminary comment, it is recalled that a finding of sufficiency of evidence with regards to material injury requires an examination, inter alia, of the relevant factors as described in Article 5(2)(d) of the basic Regulation. Indeed, the wording of Article 5(2) of the basic Regulation states that a complaint shall contain the information on changes in the volume of the allegedly dumped imports, the effect of those imports on prices of the like product on the Union market and the consequent impact of the imports on the Union industry, as demonstrated by relevant (not necessarily all) factors and indices having a bearing on the state of the Union industry, such as those listed in Articles 3(3) and 3(5). This is applicable *mutatis mutandis* to the likelihood of continuation or recurrence analysis in expiry reviews, where the focus lies on what would happen should the measures lapse.
- (20) As to Zhejiang India's and CCCMC's allegations regarding the positive development of the Union industry's production and production capacity, sales volumes as well as profitability, the Commission noted that anti-dumping measures often have a positive effect on the state of the Union industry — a factor which was of course taken into account in the Commission Services' analysis before initiation.
- (21) According to the evidence provided in the request and analysed by the Commission, the volumes of the product under review from the PRC and Taiwan that would penetrate the Union market in the absence of measures were likely to increase due to the existence of unused capacity in those countries. The request contained sufficient evidence that the effect of such volumes at prices that would in all likelihood continue to undercut the Union industry's prices would likely result in a continuation or recurrence of injury to the Union industry.
- (22) Zhejiang India and CCCMC further claimed that the open version of the request did not allow for a proper understanding of the performance of the Union industry, as several micro-economic indicators concerning the three Union producers were reported in an indexed format only due to confidentiality reasons.
- (23) With regard to this claim, it is considered that the version open for inspection by interested parties of the request contained all the essential evidence and non-confidential summaries of data provided under confidential cover in order for interested parties to exercise their right of defence throughout the proceeding.
- (24) It is recalled that Article 19 of the basic Regulation and Article 6(5) of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade<sup>13</sup>

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<sup>13</sup> "Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information), or which is

allow for the safeguarding of confidential information in circumstances where disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person has acquired the information. The information provided as confidential falls under these categories. The applicant has adequately summarised the contents of these annexes, without disclosing sensitive company-specific data. Indexing of figures in cases where only a very small number of producers in the Union exists is perfectly justified.

- (25) On the basis of the above, the Commission confirmed that the applicant provided sufficient evidence that the expiry of the measures would likely result in a continuation or recurrence of dumping and injury, thereby satisfying the requirements set out in Article 11(2) of the basic Regulation. Therefore, the request met the requirements for initiation.

## **1.8. Sampling**

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

### *1.8.1. Sampling of Union producers*

- (27) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of three Union producers, located in three different Member States. The Commission selected the sample on the basis of the volume of production and sales of the like product in the Union during the period from 1 January 2021 to 31 December 2021 reported by the Union producers in the context of the pre-initiation standing assessment analysis. The sample accounted for [56% - 62%] of the estimated production in the Union of the like product. The Commission informed the interested parties of its provisional sample through a Note to the file on 26 January 2022. In that Note, interested parties were invited to comment on the provisional sample.
- (28) No parties made any comments. During consultations with the applicants subsequent to the placing on the file of the above mentioned Note, it became apparent that Rohrbogen Sp.z.o.o. was not suitable to be included in the sample of Union producers as, for company-sensitive reasons, it could not be considered a representative producer throughout the whole reference period. The Commission, therefore, deemed a change to the sample necessary.
- (29) Interested parties were notified of the revised sample through a Note to the file on 18 February 2022 and invited to comment. The revised sample consisted of the three producers Erne Fittings GmbH (Austria), OSTP Finland Oy and OSTP Sweden AB, which accounted for approximately [44% - 50%] of the estimated total production volumes of the like product in the Union.
- (30) No parties made any comments and the sample was confirmed through a Note to the file on 28 February 2022.

### *1.8.2. Sampling of importers*

- (31) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the

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*provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by the authorities. Such information shall not be disclosed without specific permission of the party submitting it."*

Notice of Initiation. No unrelated importers submitted the requested information. Consequently, the Commission decided that sampling was not necessary.

### *1.8.3. Sampling of exporting producers in the People's Republic of China and Taiwan*

- (32) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known producers/exporting producers in the PRC and Taiwan to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the People's Republic of China and relevant Taiwanese Authorities to identify and/or contact other producers/exporting producers, if any, that could be interested in participating in the investigation.
- (33) No producers/exporting producers in the PRC provided the requested information and/or agreed to be included in the sample. Therefore, as there was no cooperation from the Chinese producers, the findings with regard to the imports from the PRC are made on the basis of the facts available pursuant to Article 18 of the basic Regulation.
- (34) As only one Taiwanese exporting producer provided the requested information and agreed to be included in the sample, the Commission decided that sampling was not necessary with regard to Taiwan.

## **1.9. Replies to the questionnaire**

- (35) The Commission sent a questionnaire concerning the existence of significant distortions in the PRC within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of the People's Republic of China ('GOC').
- (36) The Commission sent a questionnaire to the sampled Union producers and to the one Taiwanese cooperating exporting producer. The same questionnaires as well as questionnaires for unrelated importers were made available on DG Trade's website<sup>14</sup> on the day of initiation. In the course of the investigation, the Commission sent a questionnaire to the applicant requesting macro-economic data of the Union industry.
- (37) Questionnaire replies were received from one Taiwanese exporting producer, the three sampled Union producers and the applicant.

## **1.10. Verification**

- (38) The Commission sought and verified all the information deemed necessary for the determination of likelihood of continuation or recurrence of dumping and injury and of the Union interest.
- (39) Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

Taiwanese exporting producer:

- Ta Chen Stainless Pipes Co., Ltd ('Ta Chen'), Tainan, Taiwan

- (40) The Commission also carried out Remote Cross Check (RCC) of the questionnaire replies of following companies:

Union producers:

- Erne Fittings GmbH, Schlins, Austria
- OSTP Sweden AB, Örnköldsvik, Sweden

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<sup>14</sup> <https://tron.trade.ec.europa.eu/investigations/case-view?caseId=2574>

- OSTP Finland Oy, Jakobstad, Finland.

Defence Committee of the Stainless steel butt-welding Fittings industry of the European Union (applicant), Brussels, Belgium

Importer in the third country related to the producer in Taiwan:

- Ta Chen International ('TCI'), Long Beach CA, USA

## **2. PRODUCT UNDER REVIEW AND LIKE PRODUCT**

### **2.1. Product under review**

- (41) The product under review is tube and pipe butt-welding fittings, of austenitic stainless steel grades, corresponding to AISI types 304, 304L, 316, 316L, 316Ti, 321 and 321H and their equivalent in the other norms, with a greatest external diameter not exceeding 406,4 mm and a wall thickness of 16 mm or less, with a roughness average (Ra) of the internal surface not less than 0,8 micrometres, not flanged, whether or not finished, originating in the People's Republic of China ('PRC') and Taiwan ('SSTPF' or 'the product under review'), currently classified under CN codes ex 7307 23 10 and ex 7307 23 90 (TARIC codes 7307 23 10 50, 7307 23 10 55, 7307 23 90 50 and 7307 23 90 55).
- (42) The product under review is manufactured essentially by cutting and forming tubes and pipes. It is used to join pipes and tubes of stainless steel and exist in different shapes such as elbows, reducers, tees and caps. Certain tube and pipe butt-welding fittings, as defined above, are used in a wide range of consumer industries and final applications, such as the petro-chemical industry, beverages and food processing and pharmaceuticals industries, shipbuilding, energy generation, power plants, constructions and industrial installations.
- (43) In the context of a hearing held on 3 March 2022, the association Euranimi, representing a group of importers, commented that the market of SSTPF is naturally divided into two specific and almost non-overlapping segments: European and Asian materials. It added that for certain conditions of use, end-users would usually demand European materials. On the other side, Asian materials were used for environments with limited corrosion, reduced temperature and/or pressure of exercise.
- (44) The Commission noted that no specific product exclusion request was linked to this comment. This notwithstanding, the Commission clarified that in the framework of an expiry review investigation under Article 11(2) of the basic Regulation, no such product exclusion requests could be addressed.
- (45) On 23 August 2022, Euranimi reiterated its previous comments adding technical specifications, such as that certain Asian materials required heat treatment whereas European ones did not. These comments were not apt to alter the conclusions made in paragraph (44).



## **2.2. Like product**

(46) As shown in the investigation leading to the imposition of the measures in force<sup>15</sup>, the following products have the same basic physical and technical characteristics as well as the same basic uses:

- the product under review;
- the product produced and sold on the domestic market of the countries concerned (PRC and Taiwan); and
- the product produced and sold in the Union by the Union industry.

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

## **3. DUMPING**

### **3.1. The People's Republic of China**

#### **3.1.1. Preliminary remarks**

(47) During the review investigation period, imports of SSTPF from the PRC continued albeit at lower levels than in the investigation period of the original investigation. According to COMEXT (Eurostat) imports of SSTPF from the PRC accounted for about 5,6 % of the Union market in the review investigation period, as compared to 22,9 % in the original investigation period. In absolute terms, imports of the product under review originating in the PRC amounted to 719 tonnes in the review investigation period compared to 3 238 tonnes in the original investigation.

(48) As mentioned in paragraph (33), none of the known producers/exporting producers from the PRC cooperated in the investigation. Therefore, the Commission informed the authorities of the PRC that, due to the absence of cooperation, the Commission might apply Article 18 of the basic Regulation concerning the findings with regard to the PRC. The Commission did not receive any comments or requests for an intervention of the Hearing Officer in this regard.

(49) Consequently, in accordance with Article 18 of the basic Regulation, the findings in relation to the likelihood of continuation or recurrence of dumping were based on facts available, in particular information contained in the request for review, publicly available data from Thai SSTPF producers, the National Statistics Office, Thailand, data from the Thai Provincial Waterworks Authority, the Thai Ministry of Energy, Eurostat COMEXT database, the ILO Statistical database and Global Trade Atlas (GTA)<sup>16</sup>.

#### **3.1.2. Continuation of dumping during the review investigation period**

*3.1.2.1. Procedure for the determination of the normal value under Article 2(6a) of the basic Regulation for the imports of certain stainless steel tube and pipe butt-welding fittings (SSTPFs) originating in the PRC.*

(50) Given the sufficient evidence available at the initiation of the investigation tending to show, with regard to the PRC, the existence of significant distortions within the

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<sup>15</sup> See footnote 2.

<sup>16</sup> <https://connect.ihsmarket.com/gta/home>

meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission initiated the investigation on the basis of Article 2(6a) of the basic Regulation.

- (51) In order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions, the Commission sent a questionnaire to the GOC. In addition, in point 5.3.2 of the Notice of Initiation, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the Official Journal of the European Union. No questionnaire reply was received from the GOC and no submission on the application of Article 2(6a) of the basic Regulation was received. Subsequently, the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in the PRC.
- (52) In point 5.3.2 of the Notice of Initiation, the Commission also specified that, in view of the evidence available, it may need to select an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks. It also specified that a possible representative third country for the PRC in this case is Thailand, but that it would examine other possibly appropriate countries in accordance with the criteria set out in first indent of Article 2(6a) of the basic Regulation.
- (53) On 24 June 2022, the Commission issued a note for the file on the sources for the determination of the normal value ('Note on sources').
- (54) In the Note on sources, the Commission informed interested parties that in the absence of cooperation, it would need to rely on facts available according to Article 18 of the basic Regulation. Therefore, the Commission intended to use the information contained in the expiry review request, combined with other sources of information deemed appropriate according to the relevant criteria laid down in Article 2(6a) of the basic Regulation in accordance with Article 18(5) of the basic Regulation as specified below in this note.
- (55) By the Note on sources, the Commission also informed interested parties that it intended to use Thailand as representative country and on the relevant sources it intended to use for the determination of the normal value with Thailand as the representative country.
- (56) In the Note on sources, the Commission informed interested parties that, given the absence of cooperation it would base other direct costs and manufacturing overheads on the information regarding the Union industry provided in the expiry review request and express them as percentages.
- (57) It also informed interested parties that it would establish SG&A costs and profits based on publicly available information for two Thai producers, Thai Benkan Co. Ltd., and Thairungrueng Fitting & Value Co. Ltd.
- (58) By the Note on sources, the Commission also invited interested parties to comment on the sources and the appropriateness of Thailand as a representative country and also suggest other countries, provided they submitted sufficient information on the relevant criteria. The Commission received comments from the applicant, Zhejiang India and the CCCMC. The applicant agreed with the Note on sources. The comments of Zhejiang India and the CCCMC are analysed below in the relevant sections.

#### 3.1.2.2. *Normal value*

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

#### 3.1.2.2.1. *Existence of significant distortions*

- (62) In recent investigations concerning the steel sector in the PRC<sup>17</sup>, the Commission found that significant distortions in the sense of Article 2(6a)(b) of the basic Regulation were present.
- (63) In those investigations, the Commission found that there is substantial government intervention in the PRC resulting in a distortion of the effective allocation of resources in line with market principles<sup>18</sup>. In particular, the Commission concluded that in the steel sector, which is the main raw material to produce the product under review, not only does a substantial degree of ownership by the GOC persist in the sense of Article 2(6a)(b), first indent of the basic Regulation<sup>19</sup>, but the GOC is also in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation<sup>20</sup>. The Commission further found that

<sup>17</sup> Commission Implementing Regulation (EU) 2022/802 of 20 May 2022 imposing a provisional anti-dumping duty on imports of electrolytic chromium coated steel products originating in the People’s Republic of China and Brazil, Commission Implementing Regulation (EU) 2022/191 of 16 February 2022 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People’s Republic of China; Commission Implementing Regulation (EU) 2022/95 of 24 January 2022 imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel, originating in the People’s Republic of China, as extended to imports of certain tube and pipe fittings, of iron or steel consigned from Taiwan, Indonesia, Sri Lanka and the Philippines, whether declared as originating in these countries or not, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council; Commission Implementing Regulation (EU) 2021/2239 of 15 December 2021 imposing a definitive anti-dumping duty on imports of certain utility scale steel wind towers originating in the People’s Republic of China; Commission Implementing Regulation (EU) 2021/635 of 16 April 2021 imposing a definitive anti-dumping duty on imports of certain welded pipes and tubes of iron or non-alloyed steel originating in Belarus, the People’s Republic of China and Russia following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council.

<sup>18</sup> See Commission Implementing Regulation (EU) 2022/802 recital 75, Commission Implementing Regulation (EU) 2022/191 recital 208, Commission Implementing Regulation (EU) 2022/95 recital 59, Commission Implementing Regulation (EU) 2021/2239 recitals 67-74, Commission Implementing Regulation (EU) 2021/635 recitals 149-150.

<sup>19</sup> See Commission Implementing Regulation (EU) 2022/802 recital 49-50, Commission Implementing Regulation (EU) 2022/191 recital 192, Commission Implementing Regulation (EU) 2022/95 recital 46, Commission Implementing Regulation (EU) 2021/2239 recitals 67-74, Commission Implementing Regulation (EU) 2021/635 recitals 115-118.

<sup>20</sup> See Commission Implementing Regulation (EU) 2022/802 recitals 51-52, Commission Implementing Regulation (EU) 2022/191 recitals 193-4, Commission Implementing Regulation (EU) 2022/95 recital 47, Commission Implementing Regulation (EU) 2021/2239 recitals 67-74, Commission Implementing Regulation (EU) 2021/635 recitals 119-122. While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding

the State's presence and intervention in the financial markets, as well as in the provision of raw materials and inputs have an additional distorting effect on the market. Indeed, overall, the system of planning in the PRC results in resources being concentrated in sectors designated as strategic or otherwise politically important by the GOC, rather than being allocated in line with market forces<sup>21</sup>. Moreover, the Commission concluded that the Chinese bankruptcy and property laws do not work properly in the sense of Article 2(6a)(b), fourth indent of the basic Regulation, thus generating distortions in particular when maintaining insolvent firms afloat and when allocating land use rights in the PRC<sup>22</sup>. In the same vein, the Commission found distortions of wage costs in the steel sector in the sense of Article 2(6a)(b), fifth indent of the basic Regulation<sup>23</sup>, as well as distortions in the financial markets in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, in particular concerning access to capital for corporate actors in the PRC<sup>24</sup>.

- (64) Like in previous investigations concerning the steel sector in the PRC, the Commission examined in the present investigation whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the request, as well as in the including the Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defense Investigations<sup>25</sup> ('Report'), which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in the PRC's economy in general, but also the specific market situation in the relevant sector including the product under review. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in the PRC as also found by its previous investigations in this respect.

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ownership rights, CCP cells in enterprises, state owned and private alike, represent another important channel through which the State can interfere with business decisions. According to the PRC's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline. In 2017, it was reported that party cells existed in 70% of some 1.86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of the product under review and the suppliers of their inputs.

<sup>21</sup> See Commission Implementing Regulation (EU) 2022/802 recital 53-58, Commission Implementing Regulation (EU) 2022/191 recitals 195-201, Commission Implementing Regulation (EU) 2022/95 recitals 48-52, Commission Implementing Regulation (EU) 2021/2239 recitals 67-74, Commission Implementing Regulation (EU) 2021/635 recitals 123-129.

<sup>22</sup> See Commission Implementing Regulation (EU) 2022/802 recital 59, Commission Implementing Regulation (EU) 2022/191 recital 202, Commission Implementing Regulation (EU) 2022/95 recital 53, Commission Implementing Regulation (EU) 2021/2239 recitals 67-74, Commission Implementing Regulation (EU) 2021/635 recitals 130-133.

<sup>23</sup> See Commission Implementing Regulation (EU) 2022/802 recital 60, Commission Implementing Regulation (EU) 2022/191 recital 203, Commission Implementing Regulation (EU) 2022/95 recital 54, Commission Implementing Regulation (EU) 2021/2239 recitals 67-74, Commission Implementing Regulation (EU) 2021/635 recitals 134-135.

<sup>24</sup> See Commission Implementing Regulation (EU) 2022/802 recitals 61-62, Commission Implementing Regulation (EU) 2022/191 recital 204, Commission Implementing Regulation (EU) 2022/95 recital 55, Commission Implementing Regulation (EU) 2021/2239 recitals 67-74, Commission Implementing Regulation (EU) 2021/635 recitals 136-145.

<sup>25</sup> Commission staff working document SWD(2017) 483 final/2, 20. 12. 2017, available at: [https://trade.ec.europa.eu/doclib/docs/2017/december/tradoc\\_156474.pdf](https://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156474.pdf)

- (65) The request alleged that the Chinese State engages in an interventionist economic policy in pursuance of goals, which coincide with the political agenda set by the Chinese Communist Party ('CCP') rather than reflecting the prevailing economic conditions in a free market. The request pointed out in this connection not only to the distortions in the stainless steel market (stainless steel accounting for some 50% of the cost of production of the product under review) but it claimed that all other factors of production – land, capital, labour - are equally distorted. As a consequence, the request concluded that not only the domestic sales prices of stainless steel are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs, including raw materials, energy, land, financing or labour, are also affected because their price formation is affected by substantial government intervention.
- (66) To support its position, the request referred to a number of publicly available information sources, such as the Report, the conclusions reached by the EUCCC<sup>26</sup>, the Commission's recent investigations of the Chinese steel sector<sup>27</sup> as well as the trade defence investigations of the relevant authorities in Canada and Australia,<sup>28</sup> or the conclusions of the G20 Global Forum on Steel Excess Capacity<sup>29</sup>.
- (67) On this basis, the request emphasized that:
- the CCP has designed and implemented the China socialist market economy model. In that model, the actions of Chinese steel producing enterprises are not determined by commercial market considerations. Rather the State/CCP controls the allocation of resources to achieve the overall objectives of the CCP and the State which are set out in the five-year plans ('FYPs'). Compliance with the FYPs, such as the Steel Industry Adjustment and Upgrade Plan of the 13<sup>th</sup> planning cycle, is the measure of success for enterprises in China rather than the traditional measures of commercial success in a market economy;
  - the China Iron and Steel Association assists enterprises in price setting and in production coordination. State-owned enterprises are exempted from the application of competition law and, in accordance with the Steel Industry Adjustment and Upgrade Plan for 2016-2020, '*cut throat competition should be avoided*' and '*it should be prevented that numerous companies rush headlong into action and engage in disorderly competition*'. Consequently, according to the request, the overarching control of the government prevents free market forces from prevailing in the steel sector in China, not least with respect to the issue of overcapacity which has not been addressed to date.

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<sup>26</sup> European Union Chamber of Commerce in China, Overcapacity in China : an impediment to the Party's reform agenda, available at: [Overcapacity in China \(european-chamber.com.cn\)](http://european-chamber.com.cn) (accessed on 7 September 2022).

<sup>27</sup> Commission Implementing Regulation (EU) 2021/635 of 16 April 2021 imposing a definitive antidumping duty on imports of certain welded pipes and tubes of iron or non-alloyed steel originating in Belarus, the People's Republic of China and Russia following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 132, 19.4.2021, p. 145) and Commission Implementing Regulation (EU) 2020/508 of 7 April 2020 imposing a provisional anti-dumping duty on imports of certain hot rolled stainless steel sheets and coils originating in Indonesia, the People's Republic of China and Taiwan (OJ L 110, 8.4.2020, p. 3).

<sup>28</sup> Final determinations with respect to the dumping and subsidizing of Certain Silicon Metal originating in or exported from the PRC (CBSA, Dumping case number: AD/1400), Report no. 543, Inquiry into the continuation of anti-dumping and countervailing measures applying to aluminium extrusions exported to Australia from the People's Republic of China, 14 September 2020.

<sup>29</sup> Global Forum on steel excess capacity, Ministerial Report, 20 September 2018.

- the costs of raw-materials and energy in the PRC are not the result of free market forces as they are affected by substantial government interventions; significant systemic distortions exist also with respect to access to capital, land and labour.
- (68) As indicated in paragraph (51), the GOC did not comment or provide evidence supporting or rebutting the existing evidence on the case file, including the Report and the additional evidence provided by the applicant, on the existence of significant distortions and/or on the appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand.
- (69) Specifically in the sector of the product under review, i.e. the steel sector, a substantial degree of ownership by the GOC persists. While the nominal split between the number of state-owned enterprises ('SOEs') and privately owned companies is estimated to be almost even, from the five Chinese steel producers ranked in the top 10 of the world's largest steel producers, four are SOEs<sup>30</sup>. At the same time, while the top ten producers only took up some 36% of total industry output in 2016, the GOC set the target in the same year to consolidate 60% to 70% of steel production to around ten large-scale enterprises by 2025<sup>31</sup>. This intention has been repeated by the GOC in April 2019, announcing a release of guidelines on steel industry consolidation<sup>32</sup>. Such consolidation may entail forced mergers of profitable private companies with underperforming SOEs<sup>33</sup>. Since there was no cooperation from Chinese exporters of the product under review, the exact ratio of the private and state owned steel producers could not be determined. However, while specific information may not be available for the product under review, the sector represents a sub-sector of the steel industry and the findings concerning the steel sector are therefore deemed indicative also for the product under review.
- (70) The latest Chinese policy documents concerning the steel sector confirm the continued importance which GOC attributes to the sector, including the intention to intervene in the sector in order to shape it in line with the government policies. This is exemplified by the Ministry of Industry and Information Technology's draft Guiding Opinion on Fostering a High Quality Development of Steel Industry which calls for further consolidation of the industrial foundation and significant improvement in the modernization level of the industrial chain<sup>34</sup> or by the 14<sup>th</sup> Five Years Plan on Developing the Raw Material Industry according to which the sector will “*adhere to the combination of market leadership and government promotion*” and will “*cultivate a group of leading companies with ecological leadership and core competitiveness*”.<sup>35</sup> Similar examples of the intention by the Chinese authorities to supervise and guide the developments of the sector can be seen at the provincial level, such as in Shandong

<sup>30</sup> Report – Chapter 14, p. 358: 51 % private and 49 % SOEs in terms of production and 44 % SOEs and 56 % private companies in terms of capacity.

<sup>31</sup> Available at: [www.gov.cn/zhengce/content/2016-02/04/content\\_5039353.htm](http://www.gov.cn/zhengce/content/2016-02/04/content_5039353.htm); [https://policy.cn/policy\\_ticker/higher-expectations-for-large-scale-steel-enterprise/?iframe=1&secret=c8uthafuthefra4e](https://policy.cn/policy_ticker/higher-expectations-for-large-scale-steel-enterprise/?iframe=1&secret=c8uthafuthefra4e), and [www.xinhuanet.com/english/2019-04/23/c\\_138001574.htm](http://www.xinhuanet.com/english/2019-04/23/c_138001574.htm) (accessed on 7 September 2022).

<sup>32</sup> Available at [http://www.jjckb.cn/2019-04/23/c\\_137999653.htm](http://www.jjckb.cn/2019-04/23/c_137999653.htm) (accessed on 7 September 2022).

<sup>33</sup> As was the case of the acquired majority stake of China Baowu Steel Group in Magang Steel in June 2019, see <https://www.ft.com/content/a7c93fae-85bc-11e9-a028-86cea8523dc2> (accessed on 4 August 2022).

<sup>34</sup> See: [https://www.miit.gov.cn/gzcy/vjzj/art/2020/art\\_af1bef04b9624997956b2bff6cdb7383.html](https://www.miit.gov.cn/gzcy/vjzj/art/2020/art_af1bef04b9624997956b2bff6cdb7383.html) (accessed on 7 September 2022).

<sup>35</sup> See Section IV, Subsection 3 of the Plan, available at: [https://www.miit.gov.cn/zwgk/zcwj/wjfb/tz/art/2021/art\\_2960538d19e34c66a5eb8d01b74cbb20.html](https://www.miit.gov.cn/zwgk/zcwj/wjfb/tz/art/2021/art_2960538d19e34c66a5eb8d01b74cbb20.html) (accessed on 7 September 2022).

which not only foresees “building a steel industry ecology [...], establish manufacturing parks, extend the industrial chain and create industrial clusters” but want the steel industry to “provide a demonstration for the transformation and upgrading [...] in our province and even the whole country”.<sup>36</sup>

- (71) As to the GOC being in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation, due to the lack of cooperation from the side of the exporting producers, it was impossible to systematically establish existence of personal connections between producers of the product under review and the CCP. However, given that the product under review represents a subsector of the steel sector, information available with respect to steel producers is relevant also to the product under review. To provide an example, Baowu’s Chairman of the Board of Directors serves at the same time as the Party Committee Secretary with the General Manager being the Deputy Secretary of the Party Committee.<sup>37</sup> Similarly, the Chairman of Baosteel’s Board of Directors occupies the position of the Party Committee’s secretary while the Executive Manager is the Deputy Secretary of the Party Committee.<sup>38</sup> More generally, in view of the general applicability of the legislation on CCP presence in companies, it cannot be assumed that the ability of the GOC to interfere with prices and costs through State presence in firms would be different with relation to the product under review compared to the steel sector in general.
- (72) Both public and privately owned enterprises in the tubes or pipe fitting sector are subject to policy supervision and guidance. The following examples illustrate the above trend of an increasing level of intervention by the GOC in the sector of the product under review. Tube or pipe fittings producers emphasise Party building activities in their corporate documents, such as for example Zhejiang Good Fittings Co., Ltd which considers in its corporate social responsibility report CCP building as an action undertaken to develop the corporate social culture<sup>39</sup>: The CCP interference can be also observed at the level of regional industry associations, for example the Shanghai Tube industry association.<sup>40</sup> As reported on the association’s website in 2019: “On the afternoon of 17 April, [...] Deputy Secretary of the Party Committee of the Shanghai Federation of Industry and Economics, and relevant personnel from the Party Committee Office visited the association to investigate the party building and the work of the association [...] Next, President [of the association] reported to [CCP] Secretary [...] on the party building work of the association. President [of the association] said that the party building of the association focuses on two levels. One the one hand, at vertical level, that is on the establishment of the association’s party branch. [...]. The development of the number of new party members has achieved initial results. The second is at horizontal level, so as to do a good job of party building at directors’ level. In recent years, the association president’s office, together with the Board of Directors have organized exchanges to study the spirit of the central government [and], convey the Municipal party committee’s requirements for the party building”<sup>41</sup> Similarly, according to the association’s recent report: “In 2021, the party

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<sup>36</sup> See the 14<sup>th</sup> Five-Years Plan on the Steel Industry development, Foreword.

<sup>37</sup> See the group’s web, available at: [http://www.baowugroup.com/about/board\\_of\\_directors](http://www.baowugroup.com/about/board_of_directors) (accessed on 7 September 2022).

<sup>38</sup> See the company’s web, available at: <https://www.baosteel.com/about/manager> (accessed on 7 September 2022).

<sup>39</sup> See at: [www.goodfittings.cn/newsview.asp?id=21](http://www.goodfittings.cn/newsview.asp?id=21) (accessed on 7 September 2022).

<sup>40</sup> See at: <http://www.gghy.org/> (accessed on 24 November 2022).

<sup>41</sup> See at: <http://www.gghy.org/members/shownews.php?id=11744&lang=cn>

*branch of the association has been transferred to the party committee of the Municipal Federation of Industry and Economics. The association should take the initiative to accept the leadership and guidance of the Federation of Industry and Economics, both in terms of party and government-related work. After President [of the federation] went to the association to investigate and guide the work last year, the association increased the intensity of the joint work, and used it to lead the technological progress and innovative development of the member units, realizing the win-win development of the members and the association.*<sup>42</sup>

- (73) Further, policies discriminating in favour of domestic producers or otherwise influencing the market in the sense of Article 2(6a)(b), third indent of the basic Regulation are in place in the sector of the product under review. Even though no policy documents guiding specifically the development of the tubes or pipe fittings industry as such could be identified during the investigation, the industry benefits from governmental guidance and intervention into the steel sector, given that the product under review represents one of its subsectors.
- (74) The steel industry keeps being regarded as a key industry by the GOC<sup>43</sup>. This is confirmed in the numerous plans, directives and other documents focused on steel, which are issued at national, regional and municipal level. Under the 14<sup>th</sup> Five Years Plan adopted in March 2021, the GOC earmarked the steel industry for transformation and upgrade, as well as optimization and structural adjustment<sup>44</sup>. Similarly, the 14th Five Years Plan on Developing the Raw Materials Industry, applicable also to the steel industry, lists the sector as the “*bedrock of the real economy*” and “*a key field that shapes China’s international competitive edge*” and sets a number of objectives and working methods which would drive the development of the steel sector in the time period 2021-2025, such a technological upgrade, improving the structure of the sector (not least by means of further corporate concentrations) or digital transformation.<sup>45</sup> Moreover, the Guiding Catalogue for Industry Restructuring (2019 Version)<sup>46</sup> lists steel as an encouraged industry. In sum, the GOC has measures in place to induce operators to comply with the public policy objectives of supporting encouraged industries, including the production of the main raw materials used in the manufacturing of the product under review. Such measures impede market forces from operating freely.
- (75) The present investigation has not revealed any evidence that the discriminatory application or inadequate enforcement of bankruptcy and property laws according to Article 2(6a)(b), fourth indent of the basic Regulation in the tubes or pipe fittings sector referred to above in paragraph (63) would not affect the manufacturers of the product under review.

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(accessed on 24 November 2022).

<sup>42</sup> See at: <http://www.gghy.org/newslist/shownews.php?id=12987&lang=cn> (accessed on 24 November 2022).

<sup>43</sup> Report, Part III, Chapter 14, p. 346 ff.

<sup>44</sup> See People’s Republic of China 14<sup>th</sup> Five-Year Plan for National Economic and Social Development and Long-Range Objectives for 2035, Part III, Article VIII, available at: <https://cset.georgetown.edu/publication/china-14th-five-year-plan/> (accessed on 7 September 2022).

<sup>45</sup> See in particular Sections I and II of the Plan.

<sup>46</sup> Guiding Catalogue for Industry Restructuring (2019 Version), approved by Decree of the National Development and Reform Commission of the People’s Republic of China No. 29 of 27 August 2019; available at: <http://www.gov.cn/xinwen/2019-11/06/5449193/files/26c9d25f713f4ed5b8dc51ae40ef37af.pdf> (accessed on 7 September 2022).



- (76) The tubes or pipe fittings sector is also affected by the distortions of wage costs in the sense of Article 2(6a)(b), fifth indent of the basic Regulation, as also referred to above in paragraph (63). Those distortions affect the sector both directly (when producing the product under review or the main inputs), as well as indirectly (when having access to inputs from companies subject to the same labour system in the PRC)<sup>47</sup>.
- (77) Moreover, no evidence was submitted in the present investigation demonstrating that the sector of the product under review is not affected by the government intervention in the financial system in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, as also referred to above in paragraph (63). Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.
- (78) Finally, the Commission recalls that in order to produce the product under review, a number of inputs is needed. When the producers of tubes or pipe fittings purchase/contract these inputs, the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system that applies across all levels of government and sectors.
- (79) As a consequence, not only the domestic sales prices of SSTPF are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts I and II of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that in itself was produced in the PRC by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth.
- (80) No evidence or argument to the contrary has been adduced by the GOC. However, on 9 March 2022, in their submissions regarding the initiation of the investigation, Zhejiang India and CCCMC submitted a parallel set of comments, arguing, first, that Article 2(6a) of the basic Regulation is WTO incompatible and, second, that in any event, no significant distortions exist in the steel sector in China. Both parties reiterated their views in their comments of 7 July 2022, submitted in response to the Note on sources.
- (81) More specifically, concerning the first argument, the parties took the position that WTO Anti-Dumping Agreement ('ADA') does not recognise the concept of significant distortions in Article 2.2 of ADA, which only allows the construction of the normal value if there are no sales in the ordinary course of trade or in the case of a particular market situation. The parties observed that the concept of significant distortions does not fall under either of those categories allowing for the construction of normal value. The EU thus, in the view of the parties, introduced a concept that does not exist in the WTO law. In this connection, the parties referred to concerns raised also by other WTO members, in particular to the *EU - Cost Adjustment*

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<sup>47</sup> See Commission Implementing Regulation (EU) 2021/635, recitals 134-135 and Commission Implementing Regulation (EU) 2020/508, recitals 143-144.

*Methodologies II (Russia)* (DS494) case. Consequently, the parties considered that the application of Art. 2(6a) of the basic Regulation is WTO inconsistent.

- (82) As to the second argument, the parties pointed to the alleged lack of evidence with regard to the significant distortions. According to the parties, the Report relied on by the Applicant and the Commission is non-objective and outdated. Moreover, using the Report as basis for a conclusion of significant distortions caused, according to the parties, circular reasoning. Furthermore, the parties pointed out that not all companies in the sector are state-owned and even those controlled by the government in some way still operate in the free market. In this connection, the parties referred to Article 6 of the Law of the PRC on State-owned Assets in Enterprises ('Chinese SOE Law') which foresees separation between government and enterprises. The parties also disputed the fact that the bankruptcy and property laws of China would be related to the present investigation, while, with respect to the 13<sup>th</sup> FYP for Mineral Resources, the parties claimed that it is just a guideline without binding effect.
- (83) The Commission rejected these claims. Concerning the first argument, the Commission considered that the provisions of Article 2(6a) of the basic Regulation are fully consistent with the European Union's WTO obligations. The fact that the concept of 'significant distortions' as such is not explicitly used in the WTO ADA does not restrict the Union's use of that concept. The existence of significant distortions renders costs and prices in the exporting country inappropriate for the construction of normal value. In these circumstances, Article 2(6a) envisages the construction of costs of production and sale on the basis of undistorted prices or benchmarks, including those in an appropriate representative country with a similar level of development as the exporting country. In relation to the DS 494 case, the Commission recalled that both the EU and the Russian Federation appealed the findings of the Panel, which are not final and therefore, according to standing WTO case-law, have no legal status in the WTO system, since they have not been endorsed by the Dispute Settlement Body through a decision by the WTO Members. In any event, the Panel Report in this dispute specifically considered the provisions in Article 2(6a) of the basic Regulation to be outside the scope of the dispute.
- (84) With respect to the second argument, the Commission noted that the Report is a comprehensive document based on extensive objective evidence, including legislation, regulations and other official policy documents published by the GOC, reports from international organisations, academic studies and articles by scholars, and other reliable independent sources. It was made publicly available since December 2017 so that any interested party would have ample opportunity to rebut, supplement or comment on it and the evidence on which it is based, and neither the GOC nor other parties have submitted arguments or evidence rebutting the sources included in the Report. Moreover, the Commission noted in particular that the main policy documents and evidence contained in the Report, including the relevant FYPs and legislation applicable to the product under review, that were successively replaced by the corresponding documents of the 14<sup>th</sup> planning cycle, were relevant during the review investigation period.
- (85) Concerning the claim that companies in China, whether state-owned or not, operate in the free market, the Commission disagreed. The Commission noted that the facts and features of the Chinese system as described above in the analysis in paragraphs (62) and (63) and (69) to (80), in combination with the evidence brought by the Applicant, shows that the significant distortions exist throughout the country and across the sectors of the economy, irrespective of the ownership of the companies in question.

Consequently, the reference to Article 6 of the Chinese SOE Law<sup>48</sup> in support of the parties' argument is misplaced. Suffice to say that rather than separation between government and enterprises, Article 7 of the PRC Constitution<sup>49</sup> stipulates that “*the State-owned economy, namely, the socialist economy under ownership by the whole people, is the leading force in the national economy. The State ensures the consolidation and growth of the State-owned economy*”, while Art. 7 of the Chinese SOE Law mandates the State to “*take measures to promote the centralisation of state-owned capital to the important industries and key fields that have bearings on the national economic lifeline and state security, optimize the layout and structure of the state-owned economy, promote the reform and development of state-owned enterprises, improve the overall quality of the state-owned economy, and strengthen the control force and influence of the state-owned economy*”. In combination with Article 36 of the Chinese SOE Law, according to which “*a state-invested enterprise making investment shall comply with the national industrial policies*” these – and other<sup>50</sup> - provisions in fact create a legal environment in which a separation between government and enterprises is all but impossible. The Commission also failed to understand how bankruptcy or property laws, which are universally applicable and to which the parties are therefore also subject, could not be related to the present investigation. The Commission also disagreed that the 13<sup>th</sup> FYP for Mineral Resources would merely represent a non-binding guideline. To the contrary, the objectives set by the planning instruments in China are of binding nature and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government, thereby driving resources to sectors designated as strategic or otherwise politically important by the government, rather than allocating them in line with market forces<sup>51</sup>.

- (86) In sum, the evidence available showed that prices or costs of the product under review, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation, as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case. Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as described in the following section.

#### 3.1.2.2.2. *Representative country*

- (87) The choice of the representative country was based on the following criteria pursuant to Article 2(6a) of the basic Regulation:

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<sup>48</sup> Available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=7195&CGid> (accessed on 23 November 2022).

<sup>49</sup> Available at: [www.npc.gov.cn/zgrdw/englishnpc/Constitution/node\\_2825.htm](http://www.npc.gov.cn/zgrdw/englishnpc/Constitution/node_2825.htm) (accessed on 23 November 2022).

<sup>50</sup> See for instance Art. 14 of the Interim Regulations on Supervision and Management of State-owned Assets of Enterprises, available at: <http://en.pkulaw.cn/display.aspx?cgid=02b98fb0efda657abdfb&lib=law> (accessed on 23 November 2022).

<sup>51</sup> Report – Chapter 4, p. 41-42, 83.

- A level of economic development similar to the PRC. For this purpose, the Commission used countries with a gross national income per capita similar to the PRC on the basis of the database of the World Bank<sup>52</sup>;
- Production of the product under review in that country<sup>53</sup>;
- Availability of relevant public data in the representative country.
- Where there is more than one possible representative country, preference should be given, where appropriate, to the country with an adequate level of social and environmental protection.

- (88) As explained in paragraph (53), the Commission issued a Note on sources that described the facts and evidence underlying the relevant criteria, and informed interested parties of its intention to use Thailand as an appropriate representative country in the present case if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation would be confirmed.
- (89) In the Note on sources, the Commission explained that, due to the absence of cooperation, it would need to rely on facts available according to Article 18 of the basic Regulation. The choice of representative country was based on the information contained in the expiry review request, combined with other sources of information deemed appropriate according to the relevant criteria laid down in Article 2(6a) of the basic Regulation in accordance with Article 18(5) of the basic Regulation, including GTA, the World Bank “Doing Business”<sup>54</sup>, Thai Ministry of Energy<sup>55</sup>, the Thai Provincial Waterworks Authority<sup>56</sup> and the National Statistics Office, Thailand<sup>57</sup>.
- (90) Regarding the level of economic development, in the expiry review request, the applicant examined four countries as potential representative countries that had a similar level of economic development to the PRC. The countries examined were Thailand, Indonesia, Malaysia and Türkiye<sup>58</sup>.
- (91) Regarding production of the product under review, all four countries were identified as having an industry that exports at least 500 tonnes per year of SSTPF<sup>59</sup>.
- (92) Regarding the availability of relevant public data in the representative country, in its request for review the applicant identified Thailand as appropriate from among the four countries on the basis of the availability of relevant public data, such as official import statistics, energy prices and known producers with publicly available financial information. The applicant identified four companies who produced SSTPF in Thailand<sup>60</sup>.
- (93) As explained in the Note on sources, two of the companies were loss making in the two years prior to the review investigation period and therefore could not be used to establish a reasonable profit as per Article 2(6a) of the basic Regulation. The other two companies identified in the request, Thai Benkan Co. Ltd., and Thairungrueng Fitting

<sup>52</sup> World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>.

<sup>53</sup> If there is no production of the product under review in any country with a similar level of development, production of a product in the same general category and/or sector of the product under review may be considered.

<sup>54</sup> <https://www.doingbusiness.org/content/dam/doingBusiness/country/t/thailand/THA.pdf>

<sup>55</sup> <http://www.eppo.go.th/index.php/en/en-energystatistics/energy-economy-static>

<sup>56</sup> <https://en.pwa.co.th/contents/service/table-price>

<sup>57</sup> <http://www.nso.go.th/sites/2014en/Pages/Statistical%20Themes/Population-Society/Labour/Labour-Force.aspx>

<sup>58</sup> Request for expiry review section B.1.1.2 pg. 8.

<sup>59</sup> Ibid.

<sup>60</sup> Request for expiry review section B.1.1.13 pg. 15.

& Value Co. Ltd., had readily available data for year 2020, which showed profits estimated at 1,2 % and a level of SG&A at 32,6 %.

- (94) Zhejiang India and the CCCMC claimed that Thailand was not an appropriate representative country and that Malaysia would be a more appropriate choice.
- (95) At the outset, the Commission notes that neither Zhejiang India nor the CCCMC did not claim that Thailand would not be an appropriate choice. They simply stated Malaysia would be a more appropriate choice. However, neither Zhejiang India nor the CCCMC provided or even suggested any sources or publicly available information on undistorted values for Malaysia for many of the factors of production mentioned in the note. Therefore, the claim is unsubstantiated.
- (96) Also, according to Global Trade Alert<sup>61</sup>, anti-dumping duties have been in place for a number of years in the USA on imports of the product under review from Malaysia. Also, on 8 June 2022 the Commission initiated an investigation concerning possible circumvention of the anti-dumping measures imposed by Implementing Regulation (EU) 2017/141 on imports of the product under review, originating in the PRC and consigned from Malaysia. Although this latter proceeding is still ongoing at this stage, it could not be excluded that these two factors may have an impact on the appropriateness of Malaysia as a representative country, for instance with regard to the SG&A and profit of the companies operating on the Malaysian market, to their potentially unfair trade behaviour on large export markets such as the USA and/or the Union, and more in general on the correct functioning of the Malaysia market of the product under review and potentially of its inputs. The Commission considered that these elements render Malaysia inappropriate as a representative country.
- (97) Zhejiang India and the CCCMC also submitted that the Commission had offered no indication about the volumes produced in Thailand.
- (98) As explained at paragraph (91), the Commission noted that the request for expiry review provided export statistics showing that Thailand (and the other three potential representative countries) had significant exports of the product under review<sup>62</sup>. The Commission further noted that these parties did not provide any evidence about the volumes actually produced in Thailand, let alone any comparison with the volumes produced in Malaysia or other potential representative countries. Therefore, this claim was considered unsubstantiated and irrelevant.
- (99) Zhejiang India and the CCCMC also claimed that the profit ratio in Thailand was too low to be considered reasonable. Following this claim, they submitted that Malaysia would be a better choice and identified a producer with publicly available financial data that coincided with the review investigation period.
- (100) More recent data related to the profitable companies in Thailand has become available in the course of the investigation. Therefore, the Commission revised the data. The updated data for 2021, the review investigation period for this investigation, for the two Thai companies showed, on average, profits at 1,22 % and a level of SG&A at 19,64 %.
- (101) In the Note on sources, the Commission acknowledged that such a small profit could not be considered reasonable. However, in an expiry review there is no need to

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<sup>61</sup> [https://www.globaltradealert.org/data\\_extraction](https://www.globaltradealert.org/data_extraction).

<sup>62</sup> Request for expiry review – Annexes St -01 to 05.

establish the exact level of dumping as the investigation has to determine whether dumping would be likely to continue or recur should the measures not be prolonged. Therefore, the Commission may use a low level of profit if dumping is already established on this basis. This also applies to the more recent, revised data of the Thai companies. As seen below in section 3.1.2.4, the investigation has established dumping on the basis of financial data from Thailand. The claim was therefore rejected. Furthermore, the profit of the Malaysian company suggested by the interested parties is higher than the profit of the Thai companies<sup>63</sup>. Therefore, accepting the claim and using the data from the Malaysian company would only lead to an increase of the normal value and higher levels of dumping.

- (102) Zhejiang India and the CCCMC claimed that the calculation of other direct costs, expressed as a percentage on the basis of the cost of production of the Union industry as provided in the request, was unreasonable because the production process is different in Thailand and the Union.
- (103) Zhejiang India and the CCCMC provided no evidence regarding the production process in Thailand so the claim was unsubstantiated. More so since Zhejiang India and the members of the CCCMC could have cooperated in the investigation by providing their cost of production and their consumption of factors of production in the PRC, to which the Commission could apply the benchmarks. Instead they chose not to cooperate, despite Zhejiang India being an exporting producer that exported significant quantities of SSTPF to the Union in the review investigation period<sup>64</sup>.
- (104) The Commission therefore relied on the information provided by the applicant in the request for review. The original investigation established that the product concerned exported from China and the like product produced in the Union, have the same basic physical, technical and chemical characteristics. There is no evidence that the production of the product under review follows a different process in the Union, China and in the appropriate representative third countries.
- (105) Zhejiang India and the CCCMC claimed that Thailand is not an appropriate choice as the average price of imports of seamless pipes into Thailand is not reasonable. The interested parties claimed that the price is “unusual” due to the significant variation between average prices of imports into Thailand from various supplying countries. They argued that the average price is unreasonably high when compared to the prices of imports into other SSTPF producing countries or blocks such as Malaysia, India and the Union. They also argued that the benchmark price is higher than prices between Union Member States, not only of the input but also of the finished like product. According to the interested parties, “*the Commission should find out the reason why the import prices of seamless pipe of Thailand from certain countries are abnormal and exclude or adjust these abnormal prices*”.
- (106) The Commission disagreed. For the reasons outlined in paragraphs (90) to (93), Thailand is an appropriate representative country. The interested parties failed to demonstrate that the data used by the Commission did not relate to “corresponding costs of production” within the meaning of Article 2(6a) of the basic Regulation. They merely argued that the price is “abnormal”, by reference to other sources, without any

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<sup>63</sup> [https://pantech-group.com/wp-content/uploads/Pantech\\_AR2022.pdf](https://pantech-group.com/wp-content/uploads/Pantech_AR2022.pdf)

<sup>64</sup> Zhejiang India was one of the sampled exporting producers in the original investigation. Therefore, its individual imports (identified by its TARIC additional code) are available in the 14(6) database. It exported significant quantities to the Union in the review investigation period.

explanation, tasking the Commission with finding the reason for this alleged abnormality. Meanwhile, none of the producers in the PRC cooperated in the investigation, and, as noted in paragraph (33), factors of production had to be established based on facts available in accordance with Article 18(1) of the basic Regulation. In view of the volume of imports of the input in question into Thailand, and the information on the file, the Commission had no evidence that the data used is distorted or that it related to inputs which do not correspond to the costs in the PRC. Moreover, the mere fact that the prices vary across sources and that the average price is high compared to other sources does not make that price unreasonable. Based on the above, the claim was dismissed as unsubstantiated. Furthermore, although Zhejiang India and the CCCMC did not provide any basis or suggestion for an adjustment or an alternative, the Commission noted that even using the lowest import value into Thailand (32,81 CNY per kilogram, from Indonesia) would lead to a finding of dumping.

- (107) Zhejiang India and the CCCMC further claimed that ocean freight and insurance should be deducted from the import price.
- (108) The Commission disagreed. The import price of inputs into representative countries is used as a proxy of an undistorted price in the domestic market of the representative country in line with Article 2(6a)(a) of the basic Regulation. This price is included in GTA at a CIF level. Therefore, the ocean freight and insurance – if any – should not be deducted, otherwise it would no longer represent the proxy on the domestic market of the price of inputs. This claim was therefore rejected.
- (109) In light of all the above and of the discretion that the Commission has in choosing the appropriate representative country, the Commission confirmed its choice of Thailand as appropriate representative country according to the criteria laid down in Article 2(6a)(a) of the basic Regulation.
- (110) Having established Thailand as an appropriate representative country based on all of the above elements, and after analysing the comments from interested parties, there was no need to carry out an assessment of the level of social and environmental protection in accordance with the last sentence of Article 2(6a)(a) first indent of the basic Regulation.
- (111) In view of the above analysis, Thailand met the criteria laid down in Article 2(6a)(a), first indent of the basic Regulation in order to be considered as an appropriate representative country.

3.1.2.2.3. *Undistorted costs and benchmarks and sources used to establish them.*

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

*Table 1*

**Factors of production of certain stainless steel tube and pipe fittings.**

<b>Factor of Production</b>	<b>Commodity Code in Thailand</b>	<b>Undistorted value</b>	<b>Unit of measurement</b>	<b>Source of information</b>
<b>Raw materials</b>				

Mother pipes of stainless steel - Welded	7306 11	CNY 25.13	KGs	GTA
Mother pipes of stainless steel - Seamless	7304 11	CNY 114.74	KGs	GTA
All mother pipes of stainless steel - Welded and seamless	7306 11 and 7304 11	CNY 68.58	KGs	GTA
All other raw materials - packaging costs, utilities, consumables	N/A		Fixed amount (% of direct costs)	Request for review
<b>Labour</b>				
Direct labour		CNY 18.59	Hours	National Statistics Office, Thailand, International Labour Organisation (ILO)
<b>Energy /Utilities</b>				
Electricity		CNY 0.88	kWh	World Bank “Doing Business”
Gas		CNY 2.35	M <sup>3</sup>	Energy, Policy & Planning, Ministry of Energy
Water		CNY 5.80	M <sup>3</sup>	Thai Provincial Waterworks Authority
<b>By products/Waste</b>				
Scrap	7204 21	CNY 8.80	KG	GTA

### 3.1.2.2.3.1. Raw Materials

(113) In order to establish the undistorted price of raw materials as delivered at the gate of a representative country producer, the Commission used as a basis the weighted average import price to the representative country as reported in the GTA to which import duties and transport costs were added. An import price in the representative country was determined as a weighted average of unit prices of imports from all third countries



excluding the PRC and countries which are not members of the WTO, listed in Annex 1 of Regulation (EU) 2015/755 of the European Parliament and the Council.<sup>65</sup>

- (114) The Commission decided to exclude imports from the PRC into the representative country as it concluded in section 3.1.2.2.1 that it is not appropriate to use domestic prices and costs in the PRC due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected export prices. After excluding imports from the PRC and countries which are not members of the WTO into the representative country, the volume of imports from other third countries remained representative.
- (115) As explained on the note on sources, the Commission excluded a statistical anomaly with imports from Japan into Thailand under HS subheading 7306 11 (welded pipes) in the first half of 2021. No comments from interested parties were received in this regard.
- (116) In order to establish the undistorted price of raw materials, delivered at the gate of the producers factory, the Commission applied the import duty of the representative country, at the respective levels, depending on the country of origin of the imported volume. The Commission added domestic transport cost in Thailand on the basis of the World Bank Doing Business Report<sup>66</sup>.
- (117) The Commission grouped items with negligible weight in the cost of production, such as other raw materials, packaging costs, utilities and consumables and expressed them as a percentage of direct costs.

#### 3.1.2.2.3.2. *By-products*

- (118) According to the information in the request for review, only one by-product, scrap, is obtained in the production of SSTPF. To establish its undistorted price, the Commission also added import duties and internal transport costs to the average import price into Thailand, following the same methodology as for raw materials.

#### 3.1.2.2.3.3. *Labour*

- (119) To calculate the value for labour, the Commission used available data from the National Statistics Office ('NSO'), Thailand and the International Labour Organisation ('ILO'). The NSO publishes detailed quarterly information on wages by industry, region and area in Thailand. The Commission also used the latest available statistics, 2020, from the ILO<sup>67</sup> to calculate the average weekly and monthly hours worked in Thailand.

#### 3.1.2.2.3.4. *Energy/utilities*

- (120) The Commission used the data on the industrial electricity prices in the corresponding consumption band in kWh<sup>68</sup> as published in the World Bank "Doing Business" study dated 2020, which was the latest data available.

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<sup>65</sup> Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33). Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value.

<sup>66</sup> <https://www.doingbusiness.org/content/dam/doingBusiness/country/t/thailand/THA.pdf>

<sup>67</sup> [https://www.ilo.org/shinyapps/bulkexplorer17/?lang=en&segment=indicator&id=HOW\\_TEMP\\_SEX\\_ECO\\_NB\\_A](https://www.ilo.org/shinyapps/bulkexplorer17/?lang=en&segment=indicator&id=HOW_TEMP_SEX_ECO_NB_A)

<sup>68</sup> <https://www.doingbusiness.org/content/dam/doingBusiness/country/t/thailand/THA.pdf>

- (121) The price of natural gas for companies (industrial users) in Thailand is published by the Energy, Policy and Planning Unit in the Ministry of Energy<sup>69</sup>. The Commission used the data available for 2021 which covered the review investigation period.
- (122) The price for water consumption for industrial use in Thailand was obtained from the Provincial Waterworks Authority<sup>70</sup>. For businesses, water is priced between a specific range depending on the monthly consumption. The Commission chose an average figure from the range to calculate the water cost.

#### 3.1.2.2.3.5. *Other direct costs*

- (123) Other direct costs were based on the information regarding the Union industry provided in the expiry review request (see paragraphs (56) and (102) to (104)).

#### 3.1.2.2.4. Manufacturing overhead costs, SG&A costs, profits and depreciation

- (124) According to Article 2(6a)(a) of the basic Regulation, “the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits”. In addition, a value for manufacturing overhead costs needs to be established to cover costs not included in the factors of production referred to above.
- (125) In order to establish an undistorted value of the manufacturing overheads and given the absence of cooperation from producers/exporting producers, the Commission used facts available in accordance with Article 18 of the basic Regulation. Therefore, the Commission established the ratio of manufacturing overheads to the total manufacturing and labour costs based on the data provided by the applicant in the expiry review request.
- (126) For SG&A costs and profit, the Commission used the financial data, for the review investigation period of two Thai producers, as established in paragraph (100).

#### 3.1.2.2.5. Calculation of the normal value

- (127) On the basis of the above, the Commission constructed the normal value on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (128) SSTPF can be made from either welded or seamless pipes. The Commission established a normal value for seamless fittings using the benchmark for seamless pipes, and a normal value for welded fittings using the benchmark for welded pipes. The Commission also established a normal value for all fittings using as benchmark the weighted average import price of both welded and seamless pipes into Thailand. The methodology, explained in the following paragraphs, is the same in all three cases, with the undistorted value of the main factor of production being the only difference.
- (129) First, the Commission established the undistorted manufacturing costs. In the absence of cooperation by the exporting producers, the Commission relied on the information provided by the applicant in the review request on the usage of each factor for the production of SSTPF.
- (130) Items with negligible weight in the cost of production, such as other raw materials, packaging costs, utilities and consumables were grouped and expressed as a percentage of direct costs based on the information provided in the request for review.

<sup>69</sup> [www.eppo.go.th/index.php/en/en-energystatistics/energy-economy-static](http://www.eppo.go.th/index.php/en/en-energystatistics/energy-economy-static)

<sup>70</sup> <https://en.pwa.co.th/contents/service/table-price>

These percentage was applied to the undistorted manufacturing costs as established in paragraph (129).

- (131) Other direct costs were established on the same basis. Their percentage on total direct costs based on the information provided in the expiry review request was applied to the undistorted direct costs.
- (132) The Commission then added the following items to the undistorted costs of manufacturing:
- Manufacturing overheads, which accounted in total for 29,1 % of the direct costs of manufacturing according to the information provided in the request (see paragraph (125)),
  - SG&A and profit, which amounted to 19,64 % and 1,22 % (see paragraph (100)).
- (133) The normal value, calculated as described in paragraphs (129) to (132), was reduced by the undistorted value of the by-product.
- (134) On that basis, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.

#### 3.1.2.3. Export price

- (135) In the absence of cooperation by exporting producers from the People's Republic of China, the export price for all SSTPF imports was determined based on CIF data from Eurostat adjusted to ex-works level by deducting sea freight, insurance and domestic transport costs. The average sea freight and insurance cost from China was based on the request for review<sup>71</sup>. The domestic transport in China was based on the country report of China in Doing Business<sup>72</sup>.
- (136) The Commission has no information on the product mix due to the absence of cooperation, and the figures from Eurostat include all SSTPF without distinguishing types. The Commission therefore also used the export prices for seamless and welded fittings provided in the request, adjusted to ex-works level on the same basis as the Eurostat CIF price.

#### 3.1.2.4. Comparison and dumping margins

- (137) The Commission compared the average export price from Eurostat on an ex-works basis as established above to the normal value for all fittings. On this basis, the weighted average dumping margin, expressed as a percentage of the CIF Union frontier price, duty unpaid, was above 100 %.
- (138) The Commission also compared the export prices of seamless and welded fittings, based on the request for review and adjusted to ex-works level, to the normal values for seamless and welded fittings. On this basis, the dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are 63,3% for welded fittings and over 100 % for seamless fittings. This calculation is conservative as the Commission used the highest export prices provided in the request.
- (139) Therefore, the Commission concluded that dumping continued during the review investigation period.

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<sup>71</sup> Request for expiry review, Annex-C-DM-02CN.

<sup>72</sup> <https://www.doingbusiness.org/content/dam/doingBusiness/country/c/china/CHN.pdf>

### 3.1.3. Likelihood of continuation of dumping

(140) Further to the finding of the existence of dumping during the review investigation period, the Commission investigated, in accordance with Article 11(2) of the basic Regulation, the likelihood of continuation of dumping should the measures be repealed. The following additional elements were analysed: the production capacity and spare capacity in the PRC and the attractiveness of the Union market.

#### 3.1.3.1. Production capacity and spare capacity in the PRC

(141) In the absence of cooperation, the Commission established production capacity and spare capacity in the PRC on the basis of information provided in the request for the expiry review<sup>73</sup>, where production was estimated at 119 000 tonnes per year and production capacity at 170 000 tonnes per year minimum. Spare capacity in the PRC is therefore estimated at 51 000 tonnes. This is almost four times the total EU consumption during the review investigation period.

(142) Based on the above, the Commission concluded that Chinese exporting producers have significant spare capacities, which they could use to produce SSTPF for export to the Union, making an increase of exports at dumped prices highly likely if the measures were allowed to expire.

#### 3.1.3.2. Attractiveness of the Union market

(143) To determine the attractiveness of the Union market, the Commission first compared the Chinese export prices to the Union with the export prices to third country markets.

(144) In the absence of cooperation, the Commission used GTA statistics<sup>74</sup> for Chinese exports of HS subheading 7307 23 (Stainless Steel Butt Welding Fittings) at FOB level to compare Chinese export prices to the Union with those to third markets as well as with the average sales price of the Union producers on the Union market. The average Chinese export price to the Union in the review investigation period was 12% higher than prices to other third country markets. When adding the average sea freight and insurance cost from China to the Union based on the request for review<sup>75</sup> to adjust it to Union CIF border level, the average Chinese export price to other third country markets in the review investigation period was 15,9 % lower than the average sales prices of the Union producers on the Union market. Therefore, without duties, the Chinese exporters could export to the Union at prices higher than those to other third country markets but still below the Union industry's prices, making an increase of exports at dumped prices highly likely if the measures were allowed to expire.

(145) The Union market is also attractive in view of its size, with a total consumption of 12 819 tonnes.

(146) Despite the anti-dumping measures in force, imports from China still held a market share of 5,6 % in the review investigation period (see paragraph (47)), another indication that the Union market is attractive for Chinese exporting producers.

#### 3.1.3.3. Conclusion on the likelihood of continuation of dumping

(147) In view of its findings on the continuation of dumping during the review investigation period as established in paragraph (139) and on the likely development of exports

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<sup>73</sup> Request for expiry review, section C.4.1 pg. 41 & Open Annex –D-08.

<sup>74</sup> <https://connect.ihsmarket.com/home>

<sup>75</sup> Request for expiry review, Annex-C-DM-02CN

should the measures lapse as explained in paragraphs (141) to (146), the Commission concluded that there is a strong likelihood that the expiry of the anti-dumping measures on imports from the PRC would result in the continuation of dumping.

## **3.2. Taiwan**

### **3.2.1. Preliminary remarks**

- (148) During the review investigation period, imports of the product under review from Taiwan continued albeit at lower levels than in the investigation period of the original investigation (i.e. 1 October 2014 to 30 September 2015). According to Comext (Eurostat) statistics, imports of SSTPF from Taiwan accounted for 203 tonnes in the review investigation period, compared to 1 102 tonnes during the original investigation period. Imports of SSTPF from Taiwan accounted for about 1,6 % of the Union market in the review investigation period compared to 7,8 % market share during the original investigation period.
- (149) Only one Taiwanese company (Ta Chen<sup>76</sup>) cooperated in the review providing a full reply to the anti-dumping questionnaire. The sales of Ta Chen accounted for 91 % of the Taiwanese imports of SSTPF into the Union in the review investigation period.

### **3.2.2. Continuation of dumping during the review investigation period**

#### *3.2.2.1. Normal value*

- (150) Due to the lack of domestic sales of the product under review, the normal value for Ta Chen was constructed in line with Article 2(3) and (6) of the basic Regulation by adding to the cost of production of the relevant product types SG&A costs incurred and a reasonable profit.
- (151) The amount of SG&A expenses and profit were determined, in accordance with Article 2(6)(b) of the basic Regulation, on the basis of the company domestic sales of the same general category of products.

#### *3.2.2.2. Export price*

- (152) The cooperating exporting producer made export sales to the Union directly to independent customers located in the Union.
- (153) Export price was therefore established on the basis of the prices actually paid or payable for the product under review when sold for export from the exporting country in accordance with Article 2(8) of the basic Regulation.

#### *3.2.2.3. Comparison and Dumping margin*

- (154) The normal value and export price of the cooperating exporting producer was compared on an ex-works basis.
- (155) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation.

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<sup>76</sup> In the original investigation two Taiwanese companies cooperated – Ta Chen and King Lai. The latter received an individual dumping margin of 0 % and therefore is not part of this investigation. According to import data from the 14(6) database, that has data at the level of individual producers, there were no imports from King Lai in the period considered.

- (156) On this basis, adjustments were made for transport, ocean freight and insurance costs, handling, loading and ancillary costs, packing costs, credit costs, discounts and commissions which were demonstrated to affect price comparability. The total adjustments were based on actual values reported by Ta Chen and verified on spot. Those figures are the ones reported for the relevant cost items by the company, and were disclosed in the specific disclosure.
- (157) It is noted that in the calculation, the Commission rejected an adjustment for currency conversion requested by Ta Chen. The company asked the Commission to use instead of the exchange rate on the date of invoicing the exchange rate on the day of payment. The basic Regulation stipulates that normally, the date of invoicing is used for establishing the exchange rate, but that in extraordinary situations, an earlier date can be used (date of contract for example). However, the basic Regulation does not provide any legal basis for using a date after the date of invoicing.
- (158) As provided by Article 2(11) and (12) of the basic Regulation, the weighted average normal value of each type of the SSTPF was compared with the weighted average export price of the corresponding type of the product under review.
- (159) On this basis, the weighted average dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, was found at the level of 39,67%.

### **3.2.3. Likelihood of continuation of dumping should measures be repealed**

- (160) The Commission investigated in accordance with Article 11(2) of the basic Regulation the likelihood of continuation of dumping, should the measures be repealed. The following additional elements were analysed: the existence of dumped exports to third countries, the production capacity and spare capacity in Taiwan and the attractiveness of the Union market.

#### **3.2.3.1. Exports to third countries**

- (161) The Commission calculated dumping margins with regard to Ta Chen sales to the three main third export markets of the company, i.e. Australia, Canada and the United States.
- (a) Normal value*
- (162) Normal value was constructed as explained above in paragraphs (150) and (151).
- (b) Export price*
- (163) The cooperating exporting producer made export sales to Australia and Canada directly to independent customers located in these countries. The export price was therefore established on the basis of the prices actually paid or payable for the product under review when sold for export from the exporting country in accordance with Article 2(8) of the basic Regulation.
- (164) As export sales to the United States were done via a related importer, the export price for the purpose of this calculation was constructed on the basis of re-sale prices to the first independent buyer, in accordance with Article 2(9) of the basic Regulation.
- (c) Comparison and Dumping margin*
- (165) The Commission compared the constructed normal value and the average export prices to third countries on an ex-works basis.
- (166) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting

prices and price comparability in accordance with Article 2(10) of the basic Regulation.

- (167) On this basis, adjustments were made for transport, ocean freight and insurance costs, handling, loading and ancillary costs, packing costs, credit costs, discounts and commissions which were demonstrated to affect price comparability.
- (168) With regard to sales to the United States additional adjustments were done for costs incurred between the importation and re-sale and for profits accruing.
- (169) As provided by Article 2(11) and (12) of the basic Regulation, the weighted average normal value of each type of the SSTPF was compared with the weighted average export price of the corresponding type of the product under review.
- (170) On this basis, sales of Ta Chen to its main third countries' markets were found to be dumped.

#### 3.2.3.2. Production capacity and spare capacity in Taiwan

- (171) Given the limited cooperation regarding production and capacity in Taiwan by the Taiwanese producers, the production capacity and spare capacity in Taiwan were established on the basis of facts available and in particular the information provided by the applicant and by the sole cooperating Taiwanese producer.
- (172) According to this information, there are at least 9 manufacturers of SSTPF in Taiwan with total production capacity of more than 22 000 tonnes and estimated spare capacity of 13 000 tonnes, which exceeds the entire Union consumption<sup>77</sup>.

#### 3.2.3.3. Attractiveness of the Union market

- (173) The investigation revealed that the Taiwanese exporting producer exported to its main third markets at prices 25 % to 45 % lower as compared to the average sales prices of the Union producers on the Union market. They are also lower as compared to Taiwanese exporting producer prices in export to the Union. Taking into account this price level, exporting to the Union is potentially much more attractive for the exporting companies than exporting to all other countries.
- (174) The Union market is also attractive in view of its size, with a total consumption of 12 819 tonnes.

#### 3.2.3.4. Conclusion on the likelihood of continuation of dumping

- (175) The investigation showed that Taiwanese imports continued to enter the Union market at dumped prices during the review investigation period. Volumes of imports were much lower than during the original investigation period but still sufficient to give a fair indication of future price behaviour should the measures be allowed to lapse.
- (176) In addition, an analysis of exports to third countries showed that dumping practices also occurred on the third country markets.
- (177) Moreover, the spare capacity in Taiwan is very significant and exceeds the total Union consumption during the review investigation period.
- (178) Finally, the attractiveness of the Union market in terms of size and prices as demonstrated above, points to the likelihood that Taiwanese exports and spare

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<sup>77</sup> Request for expiry review, section C.4.2.

capacity would be (re)directed towards the Union, should the measures be allowed to lapse.

- (179) Consequently, the Commission concluded that there was a likelihood of continuation of dumping, if measures would not be extended.

#### 4. INJURY

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

(180) Based on the information available in the request, the like product was manufactured by 14 producers in the Union during the review investigation period. They constitute the ‘Union industry’ within the meaning of Article 4(1) of the basic Regulation.

(181) The total Union production during the review investigation period was established at 9 867 tonnes. The figure was computed on the basis of the questionnaire replies from the three sampled Union producers and the macro-indicators questionnaire reply submitted by the applicant.

(182) As mentioned in paragraphs (27) to (30), sampling was applied for the determination of possible continuation of injury suffered by the Union industry. The Union producers selected in the sample represented approximately [44% - 50%] of the total estimated Union production of the like product.

(183) As two of the three sampled Union producers are related, all data concerning micro indicators had to be indexed to protect confidentiality under Article 19 of the basic Regulation.

##### 4.2. Union consumption

(184) The Commission established the Union consumption on the basis of: (a) The applicant’s data concerning Union industry’s sales of the like product, partly cross-checked with the sales volumes reported by sampled Union producers; and (b) imports of the product under investigation into the Union from all third countries as reported in the Comext database (Eurostat).

(185) On this basis, Union consumption developed as follows:

<b>Table 2 — Union consumption (tonnes)</b>				
	2018	2019	2020	RIP
Total Union consumption	11 323	12 165	11 283	12 819
Index (2018 = 100)	100	107	100	113
<i>Source: Eurostat, Applicant</i>				

(186) The review showed that Union consumption has increased by 13 % during the period considered. Union consumption was negatively affected by the outbreak of COVID-19 in 2020, but strongly rebounded during the review investigation period.

##### 4.3. Imports from the countries concerned

###### 4.3.1. Volume and market share of the imports from the countries concerned

(187) The Commission established the volume of imports from the countries concerned on the basis of Eurostat statistics, as duly explained in paragraph (184) above. Their



market shares were established by comparing imports to the Union consumption as set out in table 2.

(188) Imports from the countries concerned developed as follows:

<b>Table 3 — Import volume and market share</b>				
	2018	2019	2020	RIP
Volume of imports from the PRC (tonnes)	523	693	708	719
<i>Index (2018 = 100)</i>	<i>100</i>	<i>133</i>	<i>135</i>	<i>138</i>
Market share of imports from the PRC	4,6 %	5,7 %	6,3 %	5,6 %
<i>Index (2018 = 100)</i>	<i>100</i>	<i>123</i>	<i>136</i>	<i>121</i>
Volume of imports from Taiwan (tonnes)	240	337	330	203
<i>Index (2018 = 100)</i>	<i>100</i>	<i>140</i>	<i>137</i>	<i>84</i>
Market share of imports from the Taiwan	2,1 %	2,8 %	2,9 %	1,6 %
<i>Index (2018 = 100)</i>	<i>100</i>	<i>131</i>	<i>138</i>	<i>75</i>
Volume of imports from the countries concerned (tonnes)	763	1 030	1.038	922
<i>Index (2018 = 100)</i>	<i>100</i>	<i>135</i>	<i>136</i>	<i>121</i>
Market share of imports from the countries concerned (%)	6,7%	8,5%	9,2%	7,2%
<i>Index (2018 = 100)</i>	<i>100</i>	<i>126</i>	<i>136</i>	<i>107</i>
<i>Source: Eurostat</i>				

(189) The volumes of imports from Taiwan do not include imports from the company with a 0 % dumping margin, King Lai (see footnote 76).

(190) The volume of imports from the countries concerned was stable during the period considered, with volumes at around 1 000 tonnes during 2020 and the review investigation period. However, whereas imports from the PRC increased both in volume and in market share, imports from Taiwan decreased.

#### 4.3.2. *Prices of the imports from the countries concerned and price undercutting.*

##### 4.3.2.1. Prices

(191) The Commission established the average prices of imports on the basis of Eurostat statistics and the verified questionnaire reply of the sole cooperating exporting

producer from Taiwan whose exports to the Union constitute the overwhelming majority of imports from Taiwan in the period considered. For reason of confidentiality, the import values from Taiwan and accumulated figures for the countries concerned have been put in ranges.

- (192) The weighted average price of imports from the countries concerned developed as follows:

<b>Table 4 — Import prices (EUR/tonne)</b>				
	2018	2019	2020	RIP
PRC	6.707	7.830	7.271	7.557
<i>Index (2018 = 100)</i>	<i>100</i>	<i>117</i>	<i>108</i>	<i>113</i>
Taiwan	[6.300 – 6.900]	[6.300 – 6.900]	[5.700 – 6.300]	[6.900 – 7.900]
<i>Index (2018 = 100)</i>	<i>100</i>	<i>100</i>	<i>91</i>	<i>111</i>
Countries concerned	[6.300 – 6.900]	[6.900 – 7.900]	[6.300 – 6.900]	[6.900 – 7.900]
<i>Index (2018 = 100)</i>	<i>100</i>	<i>112</i>	<i>103</i>	<i>114</i>
<i>Source: Eurostat, questionnaire reply of Ta Chen</i>				

- (193) Prices from the countries concerned increased during the period considered by 14 %, reflecting a higher overall price level in particular during the review investigation period.

#### 4.3.2.2. Price undercutting

- (194) There was no cooperation from any producer in China, whereas there was cooperation from one Taiwanese exporting producer.

#### *PRC*

- (195) Since there was no cooperation from exporting producers in the PRC, the Commission determined the price undercutting by comparing (a) the weighted average statistical prices of imports from the PRC during the review investigation period, as explained in paragraph (135), established on a CIF basis, with appropriate adjustments for the conventional rate of customs duty, anti-dumping duty and post-importation costs, and (b) the weighted average sales prices of the three Union producers charged to unrelated customers in the Union market, adjusted to an ex-works level.
- (196) The result of the comparison was expressed as a percentage of the Union producers' turnover during the review investigation period. It showed no undercutting.
- (197) In line with the approach for the dumping calculations as explained in paragraph (136), in the alternative for the weighted average statistical import prices which do not distinguish between seamless and welded fittings, the Commission also used the export prices for seamless and welded, elbow-shaped, fittings provided in the request, adjusted to EU border CIF level with appropriate adjustments for the conventional rate of customs duty, anti-dumping duty and post-importation costs, in order to perform

complementary undercutting calculations distinguishing between these two product groups. Using those prices and comparing them with the average price of the corresponding quality and shape manufactured by the Union industry, Chinese imports did not undercut Union industry prices.

- (198) The Commission also calculated the undercutting in absence of anti-dumping duties. The undercutting margins without applying the anti-dumping duties amounted to 17,7 % and 16,4 %, respectively.

*Taiwan*

- (199) As mentioned in paragraph (149), imports from the cooperating exporting producer Ta Chen accounted for 91 % of imports of the product under review from Taiwan in the review investigation period. The Commission therefore assessed the price undercutting by Taiwanese imports during the review investigation period by comparing: (a) the weighted average prices at CIF Union frontier level per product type of the imports from Ta Chen to the first independent customer on the Union market, with appropriate adjustments for post-importation costs, import duties and anti-dumping duties (if applicable), and (b) the weighted average sales prices charged to unrelated customers in the Union market of the same product types of the three sampled Union producers, adjusted to an ex-works level.
- (200) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted on the basis of the actual costs where necessary, and after deduction of rebates and discounts as reported by the sampled Union producers. The result of the comparison was expressed as a percentage of the Union producers' turnover during the investigation period.
- (201) On the basis of the above, imports from Taiwan were found to undercut the Union industry prices by more than 60 %.

**4.4. Volumes and prices of imports from third countries**

- (202) The Commission established the volumes and prices of imports from third countries applying the same methodology as for the PRC and Taiwan (see section 4.3.1)
- (203) The volume of imports from third countries developed over the period considered as follows:

<b>Table 5 — Imports from third countries</b>					
Country		2018	2019	2020	RIP
Malaysia	Import volume (tonnes)	1 120	1 414	1 290	1 626
	<i>Index (2018 = 100)</i>	<i>100</i>	<i>126</i>	<i>115</i>	<i>145</i>
	Market share	9,9 %	11,6 %	11,4 %	12,7 %
	<i>Index (2018 = 100)</i>	<i>100</i>	<i>118</i>	<i>116</i>	<i>128</i>

	Average price (EUR/tonne)	6.872	6.878	6.263	6.327
	<i>Index (2018 = 100)</i>	100	100	91	92
Switzerland	Import volume (tonnes)	1 737	2 040	1 459	1 113
	<i>Index (2018 = 100)</i>	100	117	84	64
	Market share	15,3 %	16,8 %	12,9 %	8,7 %
	<i>Index (2018 = 100)</i>	100	109	84	57
	Average price (EUR/tonne)	6.674	6.946	6.578	8.641
	<i>Index (2018 = 100)</i>	100	104	99	129
Thailand	Import volume (tonnes)	184	202	92	82
	<i>Index (2018 = 100)</i>	100	110	50	45
	Market share	1,6 %	1,7 %	0,8 %	0,6 %
	<i>Index (2018 = 100)</i>	100	102	50	40
	Average price (EUR/tonne)	27.305	26.382	31.507	37.802
	<i>Index (2018 = 100)</i>	100	97	115	138
Other third countries	Import volume (tonnes)	129	313	139	289
	<i>Index (2018 = 100)</i>	100	242	107	224
	Market share	1,1 %	2,6 %	1,2 %	2,3 %
	<i>Index (2018 = 100)</i>	100	226	108	198
	Average price (EUR/tonne)	18.903	10.247	16.271	11.877

	<i>Index (2018 = 100)</i>	<i>100</i>	<i>54</i>	<i>86</i>	<i>63</i>
Total imports excluding PRC and Taiwan	Import volume (tonnes)	3 170	3 969	2 979	3 110
	<i>Index (2018 = 100)</i>	<i>100</i>	<i>125</i>	<i>94</i>	<i>98</i>
	Market share	28,0 %	32,6 %	26,4 %	24,3 %
	<i>Index (2018 = 100)</i>	<i>100</i>	<i>117</i>	<i>94</i>	<i>87</i>
	Average price (EUR/tonne)	8.438	8.172	7.659	8.503
	<i>Index (2018 = 100)</i>	<i>100</i>	<i>97</i>	<i>91</i>	<i>101</i>
<i>Source: Eurostat</i>					

- (204) Among imports from third countries, import from Malaysia and Switzerland are important sources of imports. Imports from Malaysia have increased by 45 % during the period considered. As mentioned in paragraph (5), the Commission is carrying out an anti-circumvention investigation on imports from Malaysia.
- (205) Imports from Switzerland, which also constituted an important source of imports in the original investigation, decreased by 36% over the period considered.

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

##### *4.5.1. General remarks*

- (206) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (207) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data and information contained in the questionnaire reply of the applicant, duly cross-checked with the information in the request and the questionnaire replies of the sampled producers, and Eurostat statistics. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers.
- (208) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.

- (209) The microeconomics indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.
- (210) For the reasons set out in paragraph (183) above, in order to respect confidential business information, it has been necessary to present information concerning the sampled Union producers in ranges. Presenting the exact figures would allow either Union producer to calculate the exact production figures of the other producer, and there would be a risk that other market operators possessing market data would be able to do so likewise.

#### 4.5.2. *Production, production capacity and capacity utilisation*

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

<b>Table 6 — Production, production capacity and capacity utilisation</b>				
	2018	2019	2020	RIP
Production volume (tonnes)	8 757	8 758	8 631	9 867
<i>Index (2018 = 100)</i>	<i>100</i>	<i>100</i>	<i>99</i>	<i>113</i>
Production capacity (tonnes)	17 979	17 903	17 972	18 724
<i>Index (2018 = 100)</i>	<i>100</i>	<i>100</i>	<i>100</i>	<i>104</i>
Capacity utilisation (%)	48,7 %	48,9 %	48 %	52,7 %
<i>Index (2018 = 100)</i>	<i>100</i>	<i>100</i>	<i>99</i>	<i>108</i>
<i>Source: Applicant</i>				

- (212) The production of the Union industry increased by 13 % over the period considered, with a stabled production from 2018 to 2020 and an increase during the review investigation period due to increased Union consumption.
- (213) The production capacity of the Union industry remained stable over the period considered at between 18 000 and 19 000 tonnes.
- (214) It follows that the capacity utilisation rate remained low during the period considered, at around 50 %. The Commission noted an increase by four percentage points over the period considered, in line with the observed increase of production volumes.

#### 4.5.3. *Sales volume and market share*

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

<b>Table 7 — Sales volume and market share</b>				
	2018	2019	2020	RIP

Total sales volume on the Union market – unrelated customers	7 390	7 166	7 266	8 787
<i>Index (2018 = 100)</i>	<i>100</i>	<i>97</i>	<i>98</i>	<i>119</i>
Market share	65,3 %	58,9 %	64,4 %	68,5 %
<i>Index (2018 = 100)</i>	<i>100</i>	<i>90</i>	<i>99</i>	<i>105</i>
<i>Source: Eurostat, Applicant</i>				

- (216) Sales volumes of the Union industry to unrelated customers increased by 19 % during the period considered. The increase was in particular accentuated during the review investigation period, when the Union industry increased its Union sales volumes by 1 521 tonnes or 20 % compared to 2020.
- (217) The Union industry has kept its share of the Union market overall. A sudden loss of market share in 2019 was regained the following year, and during the review investigation period, the Union industry held a market share of 68,5 %.

#### 4.5.4. Growth

- (218) During the period considered, the Union consumption increased by 13 %, whereas the Union industry's volume of sales to unrelated customers in the Union increased by 19 %. Consequently, the Union industry has grown both in terms of market share and in absolute terms.

#### 4.5.5. Prices and factors affecting prices

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

	2018	2019	2020	RIP
Weighted average unit sales price in the Union (Index, 2018 = 100)	<i>100</i>	<i>100</i>	<i>96</i>	<i>107</i>
Unit cost of production (Index, 2018 = 100)	<i>100</i>	<i>110</i>	<i>100</i>	<i>108</i>
<i>Source: Sampled Union producers</i>				

- (220) Unit sales prices remained stable from the start of the period considered and until 2020. During the review investigation period, due to increased consumption, prices increased by 7 % compared to the level of 2018. However, this price increase not fully reflected the increase in cost of production over the period considered, as those went up by 8 % from 2018 to the review investigation period.

#### 4.5.6. *Employment and productivity*

(221) Employment, productivity and average labour costs of the Union producers developed over the period considered as follows:

<b>Table 9 — Employment and productivity</b>				
	2018	2019	2020	RIP
Number of employees	504	512	493	513
<i>Index (2018 = 100)</i>	<i>100</i>	<i>102</i>	<i>98</i>	<i>102</i>
Labour Productivity (tonne/employee)	17	17	18	19
<i>Index (2018 = 100)</i>	<i>100</i>	<i>99</i>	<i>101</i>	<i>111</i>
Average labour costs per employee (Index, 2018 = 100)	100	100	101	111
<i>Source: Applicant, Sampled Union producers</i>				

(222) The number of employees and labour productivity have remained stable during the period considered. The Union industry has been employing around 500 staff throughout the period considered, with output per employee at around 18 tonnes.

(223) The average labour costs increased towards the end of the period considered, but with 11 % increase in labour costs over 4 years, this is not a dramatic increase.

#### 4.5.7. *Inventories*

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

<b>Table 10 — Inventories</b>				
	2018	2019	2020	RIP
Closing stocks (ranges)	[800 – 1 200]	[800 – 1 200]	[800 – 1 200]	[800 – 1 200]
<i>Index (2018 = 100)</i>	<i>100</i>	<i>90</i>	<i>103</i>	<i>85</i>
Closing stocks as a percentage of production (ranges)	[15 % - 25 %]	[15 % - 25 %]	[15 % - 25 %]	[15 % - 25 %]
<i>Index (2018 = 100)</i>	<i>100</i>	<i>91</i>	<i>102</i>	<i>78</i>
<i>Source: Sampled Union producers</i>				



- (225) The Union industry has kept its level of stock at around the same level in absolute terms during the period considered.
- (226) During the review investigation period, due to increase production, the level of stock kept in relation to production decreased.

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

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

<b>Table 11 — Profitability, cash flow, investments and return on investments</b>				
	2018	2019	2020	RIP
Profitability (Index, 2018 = 100)	100	60	53	97
Profitability of sales in the Union to unrelated customers (% of sales turnover – ranges)	[10 % - 15 %]	[5 % - 10 %]	[5 % - 10 %]	[10 % - 15 %]
Cash flow (Index, 2018 = 100)	100	124	85	176
Investments (Index, 2018 = 100)	100	68	75	53
Return on investments (Index, 2018 = 100)	100	59	56	110
<i>Source: Sampled Union producers</i>				

- (228) The Commission established the profitability of the Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. The Union industry's profitability in the review investigation period was close to its 2018 level, but it had dropped significantly in 2019 and 2020. The Union industry was making a healthy level of profit of 10 % - 15 % in the review investigation period.
- (229) The net cash flow is the ability of the Union producers to self-finance their activities. The cash flow development during the period considered was positive, with cash flow generated from its operations at 76 % higher during the review investigation period compared to 2018.
- (230) The Union industry's level of investment was on a decreasing trend during the period considered. As seen above under capacity utilization, the Union industry has no immediate need to invest in new production capacity.
- (231) The return on investments is the profit in percentage of the net book value of investments, and the trend follows that of the profitability.

4.5.9. *Ability to raise capital*

- (232) None of the sampled Union producers reported any difficulties in their ability to raise capital.

4.5.10. *Magnitude of the dumping margin and recovery from past dumping*

- (233) As concluded in paragraphs (147) and (179) for PRC and Taiwan respectively, there is clear evidence for continuation of dumping from both of the countries concerned. In

addition, the Union industry has provided *prima facie* evidence of Chinese circumvention of the measures by transshipment through Malaysia<sup>78</sup>.

- (234) The indicators presented above, however, demonstrate that, in spite of the continued dumping, the Union industry managed to recover from past dumping practices.

4.5.11. *Export performance of the Union industry*

- (235) The volume of exports of the Union producers developed over the period considered as follows:

<b>Table 12 — Export performance of the Union producers</b>				
	2018	2019	2020	RIP
Export volume (tonnes)	1 326	1 445	1 188	1 303
<i>Index (2018 = 100)</i>	<i>100</i>	<i>109</i>	<i>90</i>	<i>98</i>
Average price (index, 2018 = 100)	100	101	100	103
<i>Source: Applicant, Sampled Union producers</i>				

- (236) Export volumes of the Union industry to the unrelated customers decreased during the period considered, in particular during 2020 when the COVID 19 pandemic broke out. During the review investigation period, the Union industry’s export performance has recovered almost to the level as during 2018.

- (237) Average export prices have been stable during the period considered. On the export market, being selective due to fierce competition, the Union industry is focusing more on the high-end of the market.

4.5.12. *Conclusion on the situation of the Union industry*

- (238) The volume of imports from the countries concerned have not be negligible during the period considered and they continue to undercut the Union industry’s average sales prices by a wide margin.

- (239) However, most injury indicators, such as production, sales, employment, profitability and cash flow developed positively and/or were at satisfactory levels. The indicators examined therefore demonstrate that the anti-dumping measures have achieved their intended result of removing the injury suffered by the Union producers.

- (240) On the basis of the above, the Commission concluded at this stage that the Union industry has recovered from previous injury and did not suffer material injury within the meaning of Article 3(5) of the basic Regulation during the review investigation period.

<sup>78</sup> Commission Implementing Regulation (EU) 2021/2230 of 7 June 2022 initiating an investigation concerning possible circumvention of the anti-dumping measures imposed by Implementing Regulation (EU) 2017/141 on imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in the People’s Republic of China by imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, consigned from Malaysia, whether declared as originating in Malaysia or not, and making such imports subject to registration (OJ L 155, 8.6.2022, p. 36).

## **5. LIKELIHOOD OF RECURRENCE OF INJURY IF THE MEASURES WERE TO BE REPEALED**

- (241) As the Commission concluded that the Union industry did not suffer material injury during the review investigation period, the Commission assessed, in accordance with Article 11(2) of the basic Regulation, whether there would be a likelihood of recurrence of injury from the dumped imports from the PRC and Taiwan if the measures were allowed to lapse.
- (242) In that regard, the Commission had to rely on the limited information made available by co-operating parties and any other information of file on production capacity and spare capacity in the countries concerned to examine the attractiveness of the Union market, and the likely impact of imports from the countries concerned on the situation of the Union industry should the measures be allowed to lapse.
- (243) As concluded in paragraphs (141)-(142) and (171)-(172), spare capacities in the PRC and Taiwan are significant and they together represent five times annual consumption in the Union. Moreover, as concluded in paragraphs (143)-(146) and (173)-(174), the Union market is an attractive market for Chinese and Taiwanese producers in view of the prices on the Union market and its size. On that basis, there is a strong likelihood that the expiry of the anti-dumping measures would result in an increase of exports to the Union.
- (244) The Commission analysed the likely effects of such increase of imports by examining their likely price levels should measures be allowed to lapse. In this regard, the Commission considered, with regard to China, the import price levels during the review investigation period without anti-dumping duty to be a reasonable indication as Chinese imports still held a market share of 5,6 % in the review investigation period. On this basis, and as explained in paragraph (198), the Commission established significant undercutting of the Union industry prices by up to 17,7 % or 16,4 %, depending on the method, for the PRC in the review investigation period if there would have been no anti-dumping duty. Undercutting levels in the same order are therefore likely in the absence of measures.
- (245) With regard to Taiwan, the Commission had cooperation from one exporting producer only, but as this party accounted for more than 90 % of imports from Taiwan in the review investigation period, it has based its undercutting calculation on the verified export prices of that party. However, imports from Taiwan held overall only a small market share of 1,6 % during the review investigation period (whereas dumped imports from Taiwan held a 7,8 % market share in the investigation period of the original investigation). In the complaint to the original investigation and in the expiry review request, ten Taiwanese exporting producers had been identified by the applicant. This renders a prospective analysis of price undercutting on the basis of data from Ta Chen meaningless, as the likely pricing behaviour of the bulk of Taiwanese exporting producers, which disappeared from the Union market after the imposition of the measures, would not have been reflected, whereas they were present, in large volumes, before the measures were imposed.
- (246) Moreover, the data obtained in the framework of the expiry review showed that most of the spare capacity among the Taiwanese exporting producers are among those that are subject to the higher residual anti-dumping duty, and during the review investigation period they were close to fully absent from the Union market. This shows that the measures in place are effective in preventing dumped imports from entering the Union market. At the same time, this is a strong indication that if these

measures are allowed to lapse, exports now shielded by the residual anti-dumping duty are likely to resume.

- (247) In the period considered, the Union industry has been overall in a sound financial situation whereby most of the injury indicators showed positive trends and/or values. It should however be underlined that the Union market was effectively shielded from the presence of large volumes of dumped imports in that period due to the anti-dumping measures in place and the Union industry could clearly take advantage of it. In the absence of the measures, however, as explained above, it is likely that Chinese and Taiwanese producers would rapidly increase their market shares. They would exercise significant price pressure on the Union industry's sales prices and at the same time gain market share to the detriment of the Union industry. Indeed, the Union industry would not be able to cope with the price pressure from the Chinese and Taiwanese exporters and thus the economic situation of the Union industry would quickly deteriorate resulting in material injury.
- (248) On this basis, the Commission concluded that the absence of measures would in all likelihood result in a significant increase of dumped imports from the PRC and Taiwan at injurious prices and material injury would be likely to recur.

## **6. UNION INTEREST**

### **6.1. Introduction**

- (249) In accordance with Article 21 of the basic Regulation, the Commission examined whether the maintenance of the measures would be against the Union interest as a whole. The determination of the Union interest was based on an appreciation of the various interests involved, namely those of the Union industry, of importers and users.
- (250) All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.
- (251) On this basis, the Commission examined whether, despite the conclusions on the likelihood of continuation of dumping and the likelihood of recurrence of injury, compelling reasons existed which would lead to the conclusion that it was not in the Union interest to maintain the existing measures.

### **6.2. Interest of the Union industry**

- (252) As concluded in paragraph (240), the Union industry is no longer suffering from material injury. However, as concluded in paragraph (248) the Union industry would not be able to cope with a removal of the measures, as that is likely to result in a strong increase of dumped imports. A repeal of the measures would therefore put the industry's long term financial viability at stake. The continuation of the measures, therefore, is in the interest of Union industry.

### **6.3. Interest of unrelated importers and users**

- (253) All known unrelated importers and users were informed about the initiation of the review. However, the Commission received no cooperation from unrelated importers and users.
- (254) Therefore, there were no indications that the maintenance of the measures would have a negative impact on the users and/or importers outweighing the positive impact of the measures.

#### **6.4. Conclusion on Union interest**

- (255) On the basis of the above, the Commission concluded that there were no compelling reasons showing that it was not in the Union interest to maintain measures on imports of stainless steel tube and pipe butt-welding fittings originating in the PRC and Taiwan.

#### **7. ANTI-DUMPING MEASURES**

- (256) On the basis of the conclusions reached by the Commission on likelihood of continuation of dumping, likelihood of recurrence of injury and Union interest, the anti-dumping measures on certain stainless steel tube and pipe butt-welding fittings originating in the People's Republic of China and Taiwan should be maintained.

#### **8. DISCLOSURE**

- (257) The Commission hereby informs all parties of the essential facts and considerations on the basis of which it is intended to maintain the anti-dumping measures on imports of certain stainless steel tube and pipe butt-welding fittings originating in the People's Republic of China and Taiwan. Interested parties are also granted a period within which they can make representations subsequent to this disclosure.