COMMISSION IMPLEMENTING REGULATION (EU) 2021/2012

of 17 November 2021

imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ([1]) ('the basic Regulation'), and in particular Article 9(4) thereof,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 30 September 2020, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of stainless steel cold-rolled flat products ('SSCR' or 'the product under investigation') originating in India and Indonesia ('the countries concerned'), on the basis of Article 5 of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ([2]) ('Notice of Initiation').

(2) The Commission initiated the investigation following a complaint lodged on 17 August 2020 by the European Steel Association ('Eurofer' or 'the complainant') on behalf of producers representing more than 25 % of the total Union production of SSCR.

(3) On 17 February 2021, the Commission initiated an anti-subsidy investigation with regard to imports of the same product originating in the countries concerned ('the anti-subsidy investigation') ([3]).

1.2. Registration

(4) Following a request by the complainant supported by the required evidence, the Commission made imports of the product concerned subject to registration by Commission Implementing Regulation (EU) 2021/370 ([4]) ('the registration Regulation') under Article 14(5) of the basic Regulation.

1.3. Provisional measures

(5) In accordance with Article 19a of the basic Regulation, on 30 April 2021 the Commission provided parties with a summary of the proposed provisional duties and details about the calculation of the dumping margins and the margins adequate to remove the injury to the Union industry. As explained in recital (210) of Commission Implementing Regulation (EU) 2021/854 ([5]) ('the provisional Regulation'), the Commission took into account comments that were considered of a clerical nature and, where necessary, corrected the margins accordingly.

([1]) OJ L 176, 30.6.2016, p. 21.

([2]) Notice of Initiation of an anti-dumping proceeding concerning imports of stainless steel cold-rolled flat products originating in India and Indonesia (OJ C 322, 30.9.2020, p. 17).

([3]) Notice of Initiation of an anti-subsidy proceeding concerning imports of stainless steel cold-rolled flat products originating in India and Indonesia (OJ C 57, 17.2.2021, p. 16).

([4]) Commission Implementing Regulation (EU) 2021/370 of 1 March 2021 making imports of stainless steel cold-rolled flat products originating in India and Indonesia subject to registration (OJ L 71, 2.3.2021, p. 18).

([5]) Commission Implementing Regulation (EU) 2021/854 of 27 May 2021 imposing a provisional anti-dumping duty on imports of stainless steel cold-rolled flat products originating in India and Indonesia (OJ L 188, 28.5.2021, p. 61).

(6) On 28 May 2021, the Commission imposed a provisional anti-dumping duty by the provisional Regulation.

1.4. **Subsequent procedure**

(7) Following the disclosure of the essential facts and considerations on the basis of which the provisional anti-dumping duty was imposed ('provisional disclosure'), the complainant, a consortium of importers and distributors ('Euranimi' ([6])), one unrelated importer, one user, the sampled exporting producers, and the Governments of India ('GOI') and Indonesia ('GOIS') made written submissions making their views known on the provisional findings.

(8) The parties who so requested were granted an opportunity to be heard. Hearings took place with the complainant, the consortium of importers and distributors, one unrelated importer, one user and two sampled exporting producers.

(9) The Commission continued to seek and verify all the information it deemed necessary for its final findings. When reaching its definitive findings, the Commission considered the comments submitted by interested parties and revised its provisional conclusions when appropriate.

(10) The Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of SSCR originating in the countries concerned ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure. Comments to the final disclosure were received from Eurofer, Union producer and user Arinox, consortium of importers and distributors Euranimi, unrelated importer LSI, and the cooperating exporting producers. In addition, IRNC (a cooperating exporting producer) provided comments to the comments made by Eurofer regarding the Commission's approach to its purchases (see recitals (71) to (74)).

(11) Parties who so requested were also granted an opportunity to be heard. Hearings took place with the complainant, Euranimi, one unrelated importer, one user that also proved to be a Union producer, and one of the exporting producers. In view of its comments to the final disclosure, additional final disclosure limited to the adjustments made to some of its export sales prices was made to the exporting producer IRNC. The Commission provided IRNC the opportunity to provide comments to that additional final disclosure, but IRNC did not respond.

(12) The comments submitted by the interested parties were considered and taken into account where appropriate in this regulation.

1.5. **Sampling**

(13) In the absence of comments concerning sampling, recitals (6) to (14) of the provisional Regulation were confirmed.

1.6. **Investigation period and period considered**

(14) Following final disclosure, the consortium of importers and distributors and one unrelated importer claimed that the effects of the COVID-19 pandemic needed to be thoroughly investigated because the investigation period ('IP') included an extraordinary pandemic period.

(15) The Commission did take into account the fact that the IP included some months in which the COVID-19 pandemic was present. The Commission thoroughly identified and analysed the effects of the COVID-19 pandemic and concluded that there is injurious dumping on the Union market which is not due to the effects of the pandemic.

([6]) The Association of Non-Integrated Metal Importers and Distributors.

(16) In the absence of any further comments concerning the IP and the period considered, recital (21) of the provisional Regulation was confirmed.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Claims regarding the product scope

(17) At provisional stage, one Union user, Arinox, requested the exclusion of stainless steel cold rolled products with steel grade 200 and 201 from the product scope. The Commission provisionally rejected the request as explained in recitals (25) to (27) of the provisional Regulation.

(18) Following provisional disclosure, the party narrowed its exclusion request to products with steel grade 200 equivalent to Jindal J4 or JSLU DD (1 % Nickel grade) with thickness 0,90 + 0/– 0,060 mm for use in the production of stainless steel precision strips. It stated that the product is easy to identify, so there is no risk of circumvention, there is no interchangeability with other product types, and the product is not produced by the Union industry. Furthermore, according to the company, the end use is easily verifiable.

(19) The updated product scope exclusion request was challenged by the complainant. Eurofer claimed that the grades indicated by the Union user are of commercial designation and are not defined by any international standard. Therefore, there is no possibility for the customs authorities to set any reference and enforce any control on the chemical composition of the excluded product. In addition, the control of the end use would impose an unreasonable burden on the custom authorities. Moreover, the exemption of these products that are only produced by Jindal would create a risk of cross-compensation affecting the remedial effect of the measures.

(20) The investigation has established that such products are interchangeable as far as characteristics are concerned. Also, the Commission came to the conclusion that granting this exclusion request would indeed pose an unreasonable burden for customs authorities, which would need to carry out a laboratory test and check the end use for each shipment. Furthermore, as the product is related to one specific exporting producer, the risk of cross-compensation cannot be excluded.

(21) Following final disclosure, Arinox, reiterated its initial product exclusion request, i.e. to exclude products with a low nickel steel grade of 200 and products with steel grade 201 from the product scope. Arinox argued that low nickel steel grade 200 products and steel grade 201 products are substantially unavailable on the Union market and there is a lack of any interest by Union producers to manufacture these products. It explained that after provisional disclosure, purchasing products with steel grade 201 from the Union industry became economically unviable and that only one producer in the Union could produce low nickel stainless steel grade 200 precision strips. It further claimed that it already suffered economic harm as a result of the inclusion of these products in the current investigation as, because of the price sensitivity of the product, it could not pass on the anti-dumping duty to its customers, and that in a recent case the Commission granted a product exclusion in a similar situation.

(22) Furthermore, the company reiterated that there are significant differences in terms of physical, chemical, and technical characteristics between products with steel grade 200 and 201 and other steel types falling within the product under investigation, especially steel grade 300 products and that the chemical composition of products with steel grade 200 and 201 can be simply verified by customs authorities by using readily available instruments and the mill test certificates. The company further claimed that the exclusion request is tied to one end-use and the company would be likely the only user of the exclusion request.

(23) The company argued that the risk of cross-compensation is limited, as it mainly buys steel grades 200 and 201 from the countries concerned and it sources its supply from various producers in these countries.

(24) Arinox did not provide further evidence on the impossibility of interchanging products with steel grade 200 and 201 by other steel types, except claiming the economic irrationality of doing so. As already set out in recital (20) above, the verification of the chemical composition by customs authorities requires a laboratory test, which would pose a heavy burden on customs authorities, especially as this would be needed for each shipment of the requested excluded product. The risk of cross-compensation is an objective assessment, and the data that the company provided with regard to its purchases of products with steel grade 200 and 201 and other products from the countries concerned showed that it did buy other products falling within the product scope of the current investigation from those countries, which inherently bears the risk of cross-compensation. Furthermore, although the company claims that these steel grades have only one end-use, it cannot be excluded that these steel grades might have other uses.

(25) Therefore, the Commission concluded that granting this product exclusion request would not be appropriate and it was thus rejected.

2.2. **Conclusion**

(26) In the absence of any other comments with respect to the product scope, the Commission confirmed the conclusions set out in recitals (22) to (27) of the provisional Regulation.

3. **DUMPING**

3.1. **India**

3.1.1. *Cooperation and partial application of Article 18 of the basic Regulation*

(27) In recitals (29) to (57) of the provisional Regulation, the Indian Jindal entities involved in the production and sales of the product under investigation are referred to as 'the Jindal Group'. In this Regulation, these entities will be referred to as 'Jindal India' whereas 'the Jindal Group' refers to Jindal India, Jindal Indonesia and relevant Jindal entities in third countries.

(28) As explained in recitals (32) to (35) of the provisional Regulation, the Commission decided to apply Article 18 of the basic Regulation at provisional stage and use facts available with regard to the information that had not been disclosed relating to the role of a related company of the Jindal Group.

(29) Following provisional disclosure, the Jindal Group contested that application of Article 18. It considered that it did not refuse access to or fail to provide the relevant information and that it had acted to the best of its ability. Therefore, the Commission should use the information provided by the company. The Commission duly assessed these comments. As mentioned in recital (33) of the provisional Regulation, the Jindal Group had already been afforded a hearing with the Hearing Officer for this issue on 16 April 2021. In line with the recommendations of the Hearing Officer following that hearing, the Commission also fully assessed the information received from the Jindal Group, on 29 March 2021, in reply to the Article 18 letter.

(30) As a result, the Commission used the information provided by this exporting producer and partly accepted the claim. Moreover, in view of the further analysis of the information provided on 29 March 2021, a further adjustment was deemed appropriate. As the Jindal Group's comments were labelled sensitive, the detailed assessment of the claim was only disclosed to the party concerned.

3.1.2. *Normal value*

(31) The details of the calculation of the normal value were set out in recitals (36) to (47) of the provisional Regulation.

(32) After provisional disclosure, Jindal India and Jindal Indonesia reiterated their claims with reference to Articles 2(5), subparagraphs 3 and 4, and 2(10)(k) of the basic Regulation, that the Commission should adjust normal value for costs relating to COVID-19 lockdowns applied in the countries concerned during part of the IP.

(33) These claims had to be rejected.

(34) With regard to the claims under Article 2(5), subparagraph 3, the Commission notes, first, that subparagraph 3 discusses the proper allocation of costs and the historical utilisation of such allocation, expressing a preference for cost allocation based on turnover. It adds that 'unless already reflected in the cost allocations under this subparagraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production.' In the case at hand, however, the claimed 'COVID-19 costs' do not constitute a separate cost item that can be adjusted with regard to the IP. The claimed costs are the usual fixed costs incurring and recurring for Jindal on a regular basis. Only, they apply to a lower production quantity because of COVID-19. But this scenario is not covered by the quoted last sentence of subparagraph 3. Hence, no adjustment can be granted under Article 2(5), subparagraph 3.

(35) Second, with regard to the claims made under Article 2(5), subparagraph 4, the Commission notes that, as provided under Article 2(5), subparagraph 4, a derogation from the unit costs normally incurred by a company can only be granted in case the use of new production facilities requires substantial additional investment and where subsequent low-capacity utilisation rates are the result of start-up operations which take place within or during part of the IP. In the case at hand, low-capacity utilisation rates, if any, are the result of a temporary production shutdown because of COVID-19. Therefore, Article 2(5), subparagraph 4 does not apply.

(36) Third, with regard to the claims made under Article 2(10)(k), the Commission notes that according to Article 2(10) an adjustment may be made 'for differences in factors if it is demonstrated that they affect price comparability as required under this paragraph, in particular if customers consistently pay different prices on the domestic market because of the difference in such factors.' Jindal India and Jindal Indonesia argued that an adjustment should have been made due to the impact of the COVID-19 lockdowns on cost of production but they failed to demonstrate any impact on price comparability. Therefore, the claim regarding Article 2(10)(k) cannot be accepted.

(37) Following final disclosure, the Jindal Group reiterated the claims on an adjustment for COVID-19 related costs. In relation to a possible adjustment under Article 2(5), subparagraphs 3 and 4, the Jindal Group pointed at 'unusually high' ([7]) costs that should not be attributed entirely to the production and sale of the product under investigation during the IP, but that, instead, the Commission should calculate a representative production cost during the IP.

(38) The claim had to be rejected. The costs in question are incurred during the IP and they concern the production and sale of the product under investigation. In the light of the *Salmon* panel report the Jindal Group cited, and in accordance with the third sentence of Article 2(5), subparagraph 3 of the basic Regulation, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production. The Commission acknowledged that the claimed COVID-19 lockdown related costs are of a non-recurring nature. However, the specific costs incurred during the COVID-19 lockdown are fixed costs only and simply result from an underuse of available and otherwise used capacity. By definition, they cannot benefit future production, such as for instance investment costs could. Neither can they benefit current production since they are rather resulting directly from a one-time force majeure event, the COVID-19 lockdown.

(39) With regard to the claim under Article 2(10)(k) of the basic Regulation, the Jindal Group referred to the Commission's statement under recital (36) and added that it is clear from the chapeau of Article 2(10) that the reference to price comparability covers comparability between normal value (regardless of how it is determined) and export price.

([7]) Panel Report, *EC – Salmon (Norway)*, WT/DS337/R, paras. 7.256, 7.257 and 7.273.

(40) The Commission acknowledged that the chapeau of Article 2(10) refers to price comparability. It is likewise true that some of the adjustments listed from Article 2(10)(a) to (k) may be equally applied to a normal value based on domestic prices, and to a constructed normal value. However, Article 2(10)(k) contains an explicit condition referring to differences in prices paid on the domestic market, that must be satisfied before an adjustment is made. The Jindal group was not able to substantiate such differences but could merely demonstrate the effect on costs. Any cost increase would in any event equally affect domestic and export prices. Therefore, the new claim under Article 2(10)(k) had to be rejected.

(41) After provisional disclosure, Chromeni contested the Commission's adjustments to the raw material cost. In the provisional determination, the Commission had found in the transaction-by-transaction table of purchases of stainless steel hot rolled coils ('SSHR') that the purchase prices of SSHR from related parties were significantly below the prices of the same material from unrelated parties. Therefore, they could not be considered at arm's length and the Commission made an adjustment to these prices. In its comments to the provisional disclosure, Chromeni claimed that the quality of the coils used for the comparison was not always the same and that this should be accounted for when making the comparison. The claim was substantiated with purchase contracts, a quality discount agreement, credit notes, a quality inspection report as well as the accounting entries for the quality claim. The Commission duly assessed the claim and considered it justified. Consequently, the Commission replaced the average SSHR purchase price from related parties in the company's records by the weighted average purchase price from unrelated suppliers, multiplied by the quantities used.

(42) At the provisional stage, the Commission had recalculated the depreciation costs in Chromeni's normal value as it was established that depreciation of certain production equipment had not been reported when it was already in use for commercial production. After provisional disclosure, Chromeni contested that adjustment to the reported depreciation costs, arguing that these costs had been booked in full compliance with the Indian Generally Accepted Accounting Practices and that they should therefore be accepted. The Commission maintained that it was appropriate and reasonable to bring back the start of the depreciation period for the machinery to coincide with the start of the actual production and sales of the product under investigation. In this respect, Chromeni's records did not reasonably reflect the costs associated with the production and sale of the product under investigation and thus needed to be adjusted.

(43) Finally, after provisional disclosure, Chromeni contested the Commission's treatment of the claimed start-up cost adjustments, which concerned depreciation costs and selling, general and administrative expenses. The Commission had limited the period to which an adjustment for depreciation costs could be made to 3 months and rejected the start-up adjustment of SGA expenses. Chromeni submitted that the start-up phase of a steel production line is much longer than 3 months, thereby pointing at the date of issuance of the final acceptance certificate. However, the Commission had established that commercial production had already started well before that date. Moreover, in line with Article 2(5) of the basic Regulation where it is, inter alia, stipulated that the length of a start-up phase shall not exceed an appropriate initial portion of the period for cost recovery, it is the Commission's consistent case practice to limit the duration of a start-up phase to 3 months. Having regard to the circumstances of the present case, the Commission therefore determined that 3 months was an appropriate time period. With regard to the selling, general and administrative expenses, Chromeni provided no evidence that these costs are linked to production and they are therefore not affected by the use of new production facilities requiring substantial additional investment and by low-capacity utilisation rates, which are the result of start-up operations, as required by Article 2(5) fourth paragraph of the basic Regulation.

(44) After final disclosure, Chromeni merely reiterated the same claims and argumentation, without providing any new evidence or arguments. In view of the above, Chromeni's claims with regard to depreciation and start-up cost adjustment were rejected.

(45) In recital (175) of the provisional Regulation the Commission confirmed the raw material distortions in the countries concerned alleged in the complaint. After provisional disclosure, Eurofer claimed that because of the existence of government induced distortions on the raw material markets in the countries concerned, the companies' costs should be adjusted under Article 2(5) of the basic Regulation. Eurofer claimed that, in view of the distortions, the costs in the records of the exporting producers do not reasonably reflect the costs associated with the production and sales of the product under investigation, and, in addition, that the raw material distortions had resulted in an abnormal situation.

(46) The Commission rejected this claim as it found that Eurofer did not provide sufficient evidence to fully apply the adjustment under Article 2(5) of the basic Regulation in this case. After final disclosure, Eurofer disagreed, insisting that in the complaint and in several submissions before and after provisional disclosure it had provided sufficient evidence supporting the claim in the complaint. The Commission did not consider it appropriate to further examine the potential adjustment under Article 2(5) of the basic Regulation. Irrespective of whether the evidence submitted in the course of this proceeding constituted sufficient supporting evidence to analyse in substance the claim, the Commission noted that a similar claim about the impact of raw material distortions in the provision of goods was being examined in the context of the anti-subsidy investigation.

3.1.3. *Export price*

(47) The details of the calculation of the export price were set out in recitals (48) to (50) of the provisional Regulation.

(48) After provisional disclosure as well as after final disclosure, Jindal India and Jindal Indonesia contested the approach the Commission had applied to establish the export price of some of its sales through Iberjindal S.L. ('IBJ'), a related trader located in Spain. The claim was for most part rejected. As these comments were labelled sensitive, the reasons underlying the Commission's determinations with regard to the claim were only disclosed to the party concerned.

(49) After final disclosure, the Jindal group submitted that in the calculation of export price, there was a formula error with regard to the freight costs which affected prices of certain Union sales. The Commission verified the issue and found indeed that there was a clerical error in a formula, which it corrected.

(50) No further claims with regard to the calculation of the export price were received. Therefore, recitals (48) to (50) of the provisional Regulation are confirmed.

3.1.4. *Comparison*

(51) The details concerning the comparison of the normal value and the export price were set out in recitals (51) to (54) of the provisional Regulation.

(52) After provisional disclosure, Jindal India and Jindal Indonesia claimed that the Commission should not have deducted SGA costs and profit ('notional commission') from the export price of EU sales routed through its related trader in a third country, as explained in recitals (52) and (81) of the provisional Regulation. The claim was rejected. As these comments were labelled sensitive, the reasons for rejecting the claim were only disclosed to the party concerned.

(53) After final disclosure, the Jindal group submitted additional claims on the export price assessment with regard to that related trader. These comments were again labelled sensitive and Jindal was therefore informed on the Commission's position with regard to those claims on an individual basis.

(54) After final disclosure, the Jindal group claimed that the export price adjustment for EU sales routed through JSL Global Commodities Pte. Ltd ('JGC') should not exceed its SG&A costs, because as per the institutions' past practice and as sanctioned by the Court of First Instance, it would be reasonable to deduct only SG&A costs. ([8]) If the Commission insists on including a profit (which it should not), that profit should be based on JGC's data. According to the Jindal Group, this would be in line with the Commission's recent practice and the Court of First Instance's consideration that it is 'reasonable' to use 'genuine data' ([9]).

(55) The claims had to be rejected. First, deducting only SG&A costs would not take account of the full value of a mark-up that typically consists of SG&A costs plus profit. As to the assessment of such profit the Commission insists that such profit has to be realised under arm's length conditions and it can therefore not rely on a profit that results from a remuneration agreed by related parties. Concerning the judgment of the Court of First Instance, that ruling

([8]) Judgment of 18 March 2009, *Shanghai Excell M&E Enterprise*, T-299/05, EU:T:2009:72, para. 288

([9]) See, e.g., recital (283) to Commission Implementing Regulation (EU) 2021/582 of 9 April 2021 imposing a provisional anti-dumping duty on imports of aluminium flat-rolled products originating in the People's Republic of China, OJ L 124, 12.4.2021, p. 40 (using the profit of 'the trader' at issue); judgment of 18 March 2009, *Shanghai Excell M&E Enterprise*, T-299/05, EU:T:2009:72, para. 287.

approved the deduction of SG&A but clearly did not disapprove of the simultaneous deduction of profits, which was not at issue in that case. Furthermore, in line with that case, in the present investigation, the SG&A was deducted based on the actual data of the related trader, as the reported SG&A costs were not affected by the relationship between the two entities. With regard to the Commission's practice, when the profit margin appears to be affected by the relationship between the trader and the exporting producer, the practice is to deduct a nominal profit margin, based on the data provided by unrelated importers cooperating with the same investigation, as a reasonable proxy. In the recent case referred to by the Jindal Group, the actual profit margin was however considered reasonable in light of the facts of that case and the functions carried out by the related trader. Therefore the actual profit margin was deducted.

(56) After provisional disclosure, Jindal India repeated its claim that the normal value should be adjusted for duty drawbacks. In particular, it claimed that Article 2(10)(k) of the basic Regulation stipulates that all differences affecting price comparability should be accounted for and that therefore the claim should be granted.

(57) This claim was rejected. Jindal India failed to demonstrate that the alleged duty drawback affected price comparability. In particular, Jindal India could not show that the duty drawback resulted in consistently higher domestic prices.

(58) After final disclosure, Jindal India claimed the Commission should ensure that duty drawbacks are not double counted and that offsetting the same subsidy twice by imposing concurrent antidumping and anti-subsidy duties (especially in the case of export subsidies) violates the World Trade Organization law. ([10]) As some Jindal group entities' duty drawbacks are being investigated in the anti-subsidy investigation as potential countervailable subsidies, the Commission should ensure that these duty drawbacks are adjusted in the present case or not countervailed in the anti-subsidy case.

(59) With regard to this claim, the Commission clarified that for the reasons mentioned in recital (53) of the provisional Regulation and in recital (57) of the present Regulation, the scheme used by Jindal India with regard to its export sales to the Union does not meet the conditions of any adjustment under Article 2(10)(b) or (k) of the basic Regulation. In particular, Jindal India failed to show that customers on the domestic market paid consistently different prices in view of the underlying scheme. The Commission therefore deemed the adjustment claims as unsubstantiated and subsequently rejected them.

(60) No further claims with regard to the comparison between normal value and export price were received. Therefore, recitals (51) to (54) of the provisional Regulation are confirmed.

3.1.5. *Dumping margins*

(61) After final disclosure, the Jindal group claimed that in calculating dumping, the Commission had used incorrect CIF values for certain of its Union sales. However, the Commission found that the alleged clerical error had been made by the Jindal group itself in its questionnaire reply, and the Commission was not informed about it before or during the RCC. Also in the comments to the pre-disclosure and the comments to the provisional disclosure, the issue was not raised by Jindal group. The Commission therefore considered that at the time the claim was introduced, it could not anymore be remotely cross-checked and the claim about the alleged error was therefore rejected.

(62) As detailed in recitals (27) to (60) above, the Commission took into account interested parties' comments submitted after provisional and final disclosure. The calculation of Jindal India was also updated in order to correct a clerical error related to the export price (see recital (49)).

([10]) Appellate Body Report, *US – Anti-Dumping and Countervailing Duties (China)*, WT/DS379/AB/R, paras. 567, 568 and 583

(63) The definitive dumping margins expressed as a percentage of the cost, insurance and freight (CIF) Union frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin
Jindal India	13,9 %
Chromeni	45,1 %
All other companies	45,1 %

3.2. **Indonesia**

3.2.1. *Preliminary comment*

(64) In recitals (58) to (86) of the provisional Regulation, the Indonesian Jindal entities involved in in the production and sales of the product under investigation are referred to as 'the Jindal Indonesia Group' or 'the Jindal Group'. In this Regulation, these entities will be referred to as 'Jindal Indonesia' whereas 'the Jindal Group' refers to Jindal India, Jindal Indonesia and relevant Jindal entities in third countries.

3.2.2. *Normal value*

(65) The details of the calculation of the normal value were set out in recitals (65) to (76) of the provisional Regulation.

(66) In its submission of 11 June 2021, the GOIS recalled that the sampled Indonesian exporting producers had been cooperating fully and that the Commission must use their actual data in calculating the normal value.

(67) After provisional disclosure, Jindal Indonesia repeated its claim, together with Jindal India, that the Commission should adjust normal value for costs relating to the COVID-19 lockdown. This claim was rejected. It is addressed in recitals (32) to (36) above.

(68) Following provisional disclosure, IRNC contested the Commission's approach to replace the purchase price of SSHR white coils with a constructed market price if this important intermediate product was purchased from related suppliers. In the company questionnaire reply and during the RCC the Commission had found that these products were sourced from related suppliers at a transfer price below its cost of production. In the provisional calculation, the Commission had therefore replaced these prices with a constructed market price consisting of the products' cost of manufacturing, SGA and profit. The company claimed that the transfer prices were arm's length prices, and criticised the lack of analysis in this regard.

(69) The Commission analysed the explanations and supporting documents provided and concluded that the initial approach with regard to purchases of the SSHR white coils from related suppliers needed to be adjusted. Indeed, the sales prices of the related SSHR white coils suppliers to IRNC were comparable to their sales prices of SSHR to unrelated customers. Therefore, it considered it appropriate to accept IRNC's purchase price of these products when that price was equal to or above these suppliers' cost of production and to replace it by their cost of production when the transfer purchase price was found to be lower.

(70) In its comments to final disclosure, Eurofer contested the Commission's revised approach with regard to IRNC's SSHR white coils costs, as explained in recital (69). Eurofer, first, claimed that the Commission should not have made use of IRNC's purchase prices of SSHR from related parties as these prices would not have been arm's length prices. Second, Eurofer found that the Commission's approach was in contradiction with the findings in a recently concluded investigation involving the same group of companies ([11]). In that investigation, the cost of production of a key component for manufacturing the product concerned was rejected by the Commission. Third, it claimed that

([11]) Commission Implementing Regulation (EU) 2020/1408 of 6 October 2020 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of certain hot rolled stainless steel sheets and coils ('SSHR') originating, inter alia, in Indonesia (OJ L 325, 7.10.2020, p. 26).

if the Commission would persist in its approach, it should either add a reasonable profit to the SSHR purchase price when adjusting the value of the transaction between related parties, pursuant to Article 2(5) of the basic Regulation, or increase IRNC's profit on SSCR used in calculating normal value to compensate for transactions at cost or abnormally low profit, in accordance with Article 2(6) of the basic Regulation.

(71) The Commission examined the claims. With regard to the first claim, the Commission found that the information provided by the related IRNC's suppliers of SSHR were complete and sufficient to assess whether the purchase prices of the SSHR were affected by the relationship between IRNC and these suppliers. The Commission found that the related suppliers sold the SSHR not only to their related costumer IRNC during the IP but also to a number of unrelated domestic customers and that the sales prices to IRNC and those to unrelated customers were at arm's length. Therefore, these prices were considered to be unaffected by the relationship between IRNC and their related supplier as per Article 2(1) of the basic Regulation and there is no basis to disregard them overall. Second, without taking any position on the facts and conclusions reached in the SSHR investigation referred to by Eurofer, the Commission recalled that every case is assessed and analysed on its own merits and if the facts established in one investigation are different from the facts established in a previous investigation, also if that is a recent investigation which concerns the same group of companies, a different conclusion may be reached.

(72) The claim to add a reasonable profit to the purchase price of SSHR was rejected as Article 2(5) indeed allows for such adjustment if the costs associated with the production of the product under investigation are not reasonably reflected in the records of the party concerned. However, in the current investigation the Commission has not established that this is the case. With regard to the second leg of the third claim, the Commission recalled that the product under investigation is produced using only the SSHR sourced from the related suppliers in the same industrial zone and the finishing step of the production is performed by IRNC. Article 2(6) of the basic Regulation clearly states that the profit 'shall be based on actual data pertaining to production and sales, in the ordinary course of trade, of the like product by the exporter or producer under investigation'. Therefore this provision only covers the determination of the profit margin for the sale of the like product and does not apply to the establishment of the arm's length price in the sale of raw materials.

(73) In view of the above, Eurofer's claims were rejected.

(74) After provisional disclosure, Eurofer claimed that a normal value adjustment under Article 2(5) of the basic Regulation should be made because of the raw material distortions found in Indonesia. This issue is addressed in recitals (45) and (46) above.

3.2.3. *Export price*

(75) The details of the calculation of the export price were set out in recitals (77) to (79) of the provisional Regulation.

(76) As explained in recital (79) of the provisional Regulation, for the exporting producers that exported the product concerned to the Union through related companies acting as an importer, the export price was established on the basis of the price at which the imported product was first resold to independent customers in the Union, in accordance with Article 2(9) of the basic Regulation. As stipulated in recital (64) of the provisional Regulation, Jindal Indonesia made certain sales through IBJ in Spain.

(77) After provisional disclosure, Jindal Indonesia made with regard to those sales the same comments as those made by the Jindal India which are mentioned in recital (48) above. The claim was rejected. The reasons for rejecting the claim were only disclosed to the party concerned for the reasons mentioned in recital (48).

3.2.4. *Comparison*

(78) The details concerning the comparison of the normal value and the export price were set out in recitals (80) to (83) of the provisional Regulation.

(79) After provisional disclosure, Jindal Indonesia made with regard to the adjustment for notional commission the same comments as those made by the Jindal India which are mentioned in recital (52) above. The claim was rejected. The reasons for rejecting the claim were only disclosed to the party concerned for the reasons mentioned in recital (52).

(80) Jindal Indonesia claimed that the Commission should have used the Bank of Indonesia's published short-term interest rates for USD and IDR loans for the computation of the credit costs instead of the interbank short-term interest rates published by CEIC.

(81) The Commission analysed the explanations and supporting documents provided and considered that is was justified to change the source of the data as claimed by Jindal Indonesia. However, with regard to the application of different interest rates for domestic and export sales, Article 2(10)(g) of the basic Regulation foresees the possibility of an adjustment for differences in the cost of any credit granted for the sales under consideration, provided that it is a factor taken into account in the determination of prices charged. The Commission found during the RCC that the company is financing both its domestic and export operations through short term loans and omnibus trade facilities in USD mainly. The Commission did not find evidence in the company records to justify the use of a different interest rate for borrowing in IDR for the domestic sales. Therefore, the Commission rejected the claim to use the interest rate for IDR loans for financing the domestic sales.

(82) The IRNC group reiterated its claim that the Commission had been inconsistent by adjusting the export price pursuant to Article 2(10)(e) of the basic Regulation for certain transport costs whereas claims for adjusting domestic sales prices for certain transport costs and other related associated costs, in particular the costs incurred for conveying the product concerned from the factory to the domestic warehouse, had been rejected.

(83) The Commission noted that Article 2(10)(e) of the basic Regulation is applicable for the transport costs incurred, subsequent to the sale being made, for moving the goods from the premises of the exporter to the first independent buyer. IRNC's domestic warehouse is part of its premises and the costs incurred for moving the goods from the factory to the domestic warehouse were incurred before the sale.

(84) The IRNC group also claimed that the Commission had not explained why similar associated transport and port charges expenses incurred for the goods transhipped via the Chinese bonded zone should not be equally rejected. The Commission analysed the comments and the evidence on the file, in particular the sales contract between the producer and its related traders involved in the export sales. The Commission noted that in the sales contract the discharging port is clearly identified as being located in the Union and that the transhipment of the goods is allowed. Furthermore, for export sales the transport expenses are incurred directly by the trader and therefore they are affecting the price comparability while in the domestic sales warehousing expenses the cost to transfer the goods to the warehouse are paid by the producer and were incurred prior to the sale. Therefore the claim was rejected.

(85) After final disclosure, IRNC also claimed that the Commission had followed an inconsistent approach as it did not carry out an adjustment under Article 2(10)(i) to the normal value, thus mirroring the adjustments it had carried out pursuant to Article 2(10)(i) to the export sales made via related traders.

(86) The Commission recalled that the jurisprudence of the Court of Justice ([12]) clearly establishes that ' (…) a party who is claiming adjustments under Article 2(10) of the basic Regulation in order to make the normal value and the export price comparable for the purpose of determining the dumping margin must prove that this claim is justified (…)'. The submission done in this respect by IRNC is a mere statement requesting an adjustment to the normal value but it lacks any substantive justification or detailed explanation. The Commission further recalled that an adjustment to the export price does not automatically entail an adjustment to the normal value, and that such adjustment to the normal value needs to be duly justified, based on facts and evidence, by the party requesting it.

(87) Accordingly, the Commission established that a mere statement requesting an adjustment without providing any substantiated request in support clearly falls short of the legal standard established by the Court of Justice. This claim was thus rejected as unsubstantiated.

([12]) Judgment of the Court of Justice of 16 February 2012, *Council of the European Union, European Commission v Interpipe Nikopolsky Seamless Tubes Plant Niko Tube ZAT (Interpipe Niko Tube ZAT), C-191/09 P and C-200/09 P, paragraph 58*.

(88) IRNC also claimed that the Commission has the burden to substantiate with evidence its decision to adjust the export price under Article 2(10)(i) and that it had failed to state sufficient reasons in its provisional and final disclosure documents.

(89) Following the comments received from the company after final disclosure, on 16 September 2021 the Commission provided an additional company-specific disclosure explaining in further details the reasons and evidence underpinning such adjustment to the export price. The company did not submit any comments in reaction to this specific disclosure.

3.2.5. *Dumping margins*

(90) As detailed in recitals (65) to (89) above, the Commission took into account the interested parties' comments submitted after provisional disclosure and recalculated the dumping margins accordingly.

(91) The definitive dumping margins expressed as a percentage of the cost, insurance and freight (CIF) Union frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin
Jindal Indonesia	20,2 %
IRNC Group	10,2 %
All other companies	20,2 %

4. **INJURY**

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

(92) Following final disclosure, Arinox, an interested party that was provisionally qualified as a user, argued it should be considered to be a Union producer. It should be noted that the company's data was included in the macroeconomic indicators, as submitted by Eurofer and crosschecked by the Commission and thus the Commission did consider this company to be part of the Union industry described in recital (87) of provisional Regulation. However, the Commission noted that Arinox identified itself as an end user and importer in its initial product exclusion request and the company's claims made at provisional stage were related to the activities it performed as a user on the Union market.

(93) Arinox, Euranimi, and one unrelated importer requested the identity of the 13 Union producers that made up the Union industry during the IP. Aside from the three sampled producers and the companies supporting the complaint (i. e. Acerinox, Outokumpu Nirosta GmbH, Outokumpu Stainless AB), these are Marcegaglia, Acroni, Arinox, Otelinox, and three re-rollers based in Germany (i.e. SAP Precision Metal, BWS, and Waelzholz).

(94) In the absence of any further comments with respect to the definition of the Union industry and Union production, the Commission confirmed its conclusions set out in recitals (87) to (89) of the provisional Regulation.

4.2. **Union consumption**

(95) In the absence of any comments with respect to the Union consumption, the Commission confirmed its conclusions set out in recitals (90) to (92) of the provisional Regulation.

4.2.1. *Cumulative assessment of the effects of imports from the countries concerned*

(96) The consortium of importers and distributors and one unrelated importer contested the cumulative assessment of the effects of the Indian and Indonesian imports on the Union industry's situation. The interested parties argued that the import volumes from both countries are low, the trend in imports from India (decreasing slightly) and Indonesia (increasing rapidly) throughout the period concerned is different and no proper assessment of the conditions of competition between imported products and between the imported products and the like Union products was conducted as requested by Article 3(4) of the basic Regulation.

(97) In its comments submitted after provisional disclosure, the complainant opposed the claim made by the consortium and the unrelated importer setting out that import trends are irrelevant to the application of Article 3(4) of the basic Regulation, that the conditions of competition were duly assessed, and that a cumulated assessment ensures a non-discriminatory application of duties.

(98) The Commission found that the requirements to cumulatively assess the imports were met. The import volume from each of the two countries concerned was not negligible, i.e. over 1 % of market share each, and the conditions of competition justified a cumulative assessment, as the imported products share the same basic physical, chemical and technical characteristics with the products sold by the Union producers and have the same basic uses. This is reflected in the high level of matching of the product types imported from Indian and Indonesia to the product types sold by the Union producers.

(99) Moreover, it was established that the product types imported from the countries concerned are to a large extent similar to each other and the level of their respective prices are comparable.

(100) Furthermore, like the complainant indicated, Article 3(4) of the basic Regulation does not require a comparison of the import trends between the countries concerned.

(101) Following final disclosure, the consortium and one unrelated importer requested the disclosure of the theoretical models used to assess the conditions of competition in the Union market of the product under investigation and the countries concerned, and the confirmation that the competition and economic analysis services of the Commission have been consulted on these conditions of competition.

(102) They further claimed that no statistical analysis is provided to support the findings in recitals (99) and (100) above, and argued that the volume of the market share of imports from the countries concerned was low compared to the market share of the Union industry. With regard to India, the import volumes during the IP were lower than those in 2017 and 2018 and similar to the imports in 2019. Moreover, the import volumes of the product concerned from India are limited by the country quota set by the safeguard measures on steel. Therefore, the consortium and the unrelated importer found it not to be appropriate to apply Article 3(4) of the basic Regulation.

(103) The Commission did perform a theoretical analysis in which it compared the product types sold on the Union market by the exporting producers and the product sold by the Union producers, on the basis of the product control numbers (PCNs) given by the sampled companies. This analysis showed a high level of matching. The level of matching between each of the exporting producers and the sales by the Union industry is provided to the sampled exporting producers in their specific disclosure. Furthermore, the Commission also found a significant level of similarity in the product types sold by the exporting producers from Indonesia compared to the product types sold by the exporting producers from India. Therefore, the Commission concluded that the imported products from the countries concerned and the Union products were in clear competition with each other and a cumulative assessment of the effects of the imports to be appropriate. The consortium and unrelated importer did not provide any substantiated evidence why the analysis done by the Commission would be incorrect or insufficient. The fact that India has a country-specific quota within the safeguard measures does not affect this analysis in light of the conditions listed in Article 3(4). The claim was therefore rejected.

(104) In the absence of any other comments with regard to cumulative assessment of the effects of imports from the countries concerned, the Commission confirmed all other conclusions set out in recitals (93) to (98) of the provisional Regulation.

4.2.2. *Volume and market share of imports from the countries concerned*

(105) The consortium of importers and distributors and one unrelated importer claimed that the imports from Indonesia increased because this country is a new exporter of the product under investigation to the Union and that the imports from India did not increase during the period considered, therefore, a potential increase in market share of the countries concerned had no impact on the market share of the Union industry, but replaced the imports from other third countries.

(106) As set out in recitals (97) to (105) above, the Commission analysed the imports cumulatively and the imports from the countries concerned did show an increasing trend during the period considered. The fact that the market share of the Union industry slightly increased during the period considered and that Indonesia only started to export to the Union at the start of the period considered did not alter the fact that imports from the countries concerned were made at dumped prices, causing material injury to the Union industry. Therefore, the claim had to be rejected.

(107) In the absence of any other comments with regard to imports volumes from the countries concerned and their market shares, the Commission confirmed all other conclusions set out in recitals (99) to (101) of the provisional Regulation.

4.2.3. Prices of the imports from the countries concerned and price undercutting

(108) In recital (105) of the provisional Regulation, the Commission stated that it found undercutting margins of 4,8 % and 13,4 % for the Indian exporting producers.

(109) However, these margins contained a clerical error and should be corrected to undercutting margins of 5,8 % and 13,4 %.

(110) Following final disclosure, Euranimi and one unrelated importer argued that they could not reconstruct how the import prices of the product concerned were determined and how the undercutting margin, including its adjustments, was calculated.

(111) The prices of the imports from the countries concerned, as given in Table 3 of the provisional Regulation, are based on Eurostat. This information is publicly available. As explained in recital (104) of the provisional Regulation, the undercutting margin was based on a comparison between the sales prices of the sampled Union producers charged to unrelated customers on the Union market and the corresponding prices of the sampled exporting producers to the first independent customer on the Union market, differentiated per product type and adjusted to be at equal sales terms. As the detailed sales prices per company is by definition business confidential, it was only provided to the companies concerned in their respective specific disclosures.

(112) In the absence of any further comments with regard to the prices of imports from the countries concerned and price undercutting, the Commission confirmed all conclusions set out in recitals (102) to (105) of the provisional Regulation, with the correction done as explained in recital (71) above.

4.3. **Economic situation of the Union industry**

4.3.1. *General remarks*

(113) In the absence of any comments, the Commission confirmed its conclusions set out in recitals (106) to (110) of the provisional Regulation.

4.3.2. *Macroeconomic indicators*

(114) Following provisional disclosure, Eurofer claimed that the market share of the Union industry declined over the period considered rather than increased as concluded in the recital (116) of the provisional Regulation.

(115) However, this statement would be correct only if Eurofer's observation concerning allegedly inflated third countries import volumes was factually correct. As explained in recital (135) below, the provisional Regulation provided correct figures concerning the import volumes. Thus, the market share of the Union industry was also correct.

(116) Following provisional disclosure, the consortium of importers and distributors and one unrelated importer pointed out that the provisional Regulation showed a discrepancy of around 300 thousand to 400 thousand tonnes between the production figures of the Union industry in the period considered, reported in recital (111) of the provisional Regulation, and the corresponding sales, stocks and export figures reported in recitals (114), (126) and (152) of the provisional Regulation. Following final disclosure, they contested the level of capacity of the Union

industry and requested evidence of the nominal, actual and effectively used production capacity and the quantity actually produced by each individual producer, the data of the sales volumes and prices of the individual European producers, and the import volumes of each Union producer from the countries concerned.

(117) However, the above figures cannot be fully matched as production, sales and export volumes refer to the total Union industry while inventory figures, reported in recital (126) of the provisional Regulation, are a microeconomic indicator, referring only to the sampled Union producers. All figures were crosschecked by the Commission and found to be reliable. As the individual figures per producer are business confidential, the Commission only provided the aggregated information in the provisional Regulation.

(118) Furthermore, almost half of the alleged discrepancy is related to captive sales of the Union industry to the related users. Those volumes were included in production figures reported in recital (111) of the provisional Regulation but were not included in the Union industry sales volumes reported in recital (114) of the provisional Regulation. The captive sales of the Union industry accounted for around 5 % of the total Union industry sales and this ratio was stable over the whole period considered.

(119) Following final disclosure, the consortium of importers and distributors and one unrelated importer argued that the increase in market share of the Union industry indicated an absence of injury and that the increase of market share of the countries concerned did not negatively affect the market share of the Union industry.

(120) As explained in recital (107), the slight increase in the market share of the Union industry during the period considered did not alter the fact that imports from the countries concerned did show an increase of 86 % and were made at dumped prices, causing material injury to the Union industry. Therefore, the claim had to be rejected.

(121) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (111) to (121) of the provisional Regulation.

4.3.3. *Microeconomic indicators*

(122) Following final disclosure, the consortium of importers and distributors and one unrelated importer argued that the negative profitability trend of the Union industry could not be linked to imports from the countries concerned, since their volumes are low and cannot have influenced the market in such a marked way. The consortium of importers and distributors and the unrelated importer claimed that the Union industry have seen an increase in profits since the IP.

(123) The import volumes from the countries were above *de minimis* and their low prices, which were found to be dumped, did cause a price pressure on the Union market, as set out in recital (141) of the provisional Regulation. Therefore, the Commission concluded that the increase in dumped imports from the countries concerned could be linked to the negative profitability trend of the Union industry. An eventual rise in profitability level of the Union producers after the IP does not alter this conclusion, as the investigation is limited to the IP.

(124) In the absence of any further comments with respect to this section, the Commission confirmed its conclusions set out in recitals (122) to (133) of the provisional Regulation.

4.4. **Conclusion on injury**

(125) Following provisional disclosure, the consortium of importers, one unrelated importer, as well as the GOIS claimed that some injury indicators developed positively during the period considered, putting emphasis on the increase in market share of the Union industry, the increase in employment and the decrease in stocks.

(126) The level of stocks has remained constant as a percentage of the sales volumes and therefore did not constitute a clear injury indicator. The other two indicators in question indeed developed positively during the period considered. However, the increase in market share happened at the expense of profitability of the Union producers, as explained in recital (134) of the provisional Regulation. Employment increased slightly although labour costs nevertheless were reduced. These findings however did not invalidate the main findings on injury, i.e. the negative development of profitability and all of the financial indicators of the Union industry.

(127) The consortium of importers and distributors, and the unrelated importer further argued that according to data available for the first quarter of the year 2021 the financial situation of the sampled Union producers is improving and therefore the industry does not need further protection.

(128) The analysis of the economic situation of the Union industry was based on the period considered, which ended in June 2020. As indicated in recitals (128) to (133) of the provisional Regulation, all the financial indicators of the Union producers deteriorated in the period considered. The conclusion in this regard cannot be invalidated by the alleged short-term improvement of the Union producers' situation after the period considered, supported by non-audited reports referring to the first quarter of 2021.

(129) On the basis of the above, the Commission definitely concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. **CAUSATION**

5.1. **Effects of the dumped imports**

(130) Following provisional disclosure, the GOIS claimed that injury could not have been caused by imports from Indonesia because of its low market share and the fact that its prices were increasing over the period considered.

(131) The Commission first recalled that the Indonesian imports and their market share was assessed cumulatively with the Indian imports. Moreover, the Commission noted that the market share of Indonesia was in any event increasing rapidly in the period considered from 0,4 % in 2017 to 2,8 % in the IP. As to prices, even though increasing throughout the period considered, the Indonesian prices were always below Union industry prices.

(132) In the absence of any other comments with respect to causal link between the dumped imports from the countries concerned and the injury suffered by the Union industry, the Commission confirmed its conclusions set out in recitals (141) to (143) of the provisional Regulation.

5.2. **Effects of other factors**

(133) Following provisional disclosure, Eurofer indicated discrepancy between the figures concerning import volumes from third countries provided in table 11 of the provisional Regulation and Eurostat data.

(134) However, the figures referred to by Eurofer do not contain imports reported in Eurostat under the customs regimes of inward and outward processing, which were taken into account in table 11 of the provisional Regulation.

(135) Following final disclosure, Eurofer doubted the accuracy of the import volumes used by the Commission and argued that the approach, as set out in recital (99) above, departs from the Commission's usual practice and is inconsistent with the objective of the injury and causal link assessment in the investigation. Eurofer claimed that imports under the customs regimes of inward and outward processing are not subject to anti-dumping duties and do not compete with Union industry goods.

(136) The Commission did consider that goods imported under the inward and outward processing regimes do not just transit through the Union but also undergo added value processing operations, such as assembly and transformation, in the Union. Consequently, these imports do clearly compete with the products manufactured by the Union industry. For example, a company located in the Union whose activity would be precisely to carry out these processing operations, has the possibility either to buy the product from the Union industry or to import it under the inward processing regime. Therefore, imports under these special custom regimes should be taken into account for the injury assessment. Indeed, they are also subject to the collection of duties in accordance to Article 76 of the Commission Delegated Regulation (EU) 2015/2446 ([13]).

([13]) Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ L 343, 29.12.2015, p. 1).

(137) Furthermore, Eurofer argued that the import volumes from different countries were not consistent as the import volumes from certain third countries did not include the customs regimes of inward and outward processing.

(138) The import volumes were the official figures from Eurostat and did for both the countries concerned and all other third countries, include the normal customs regime and the inward and outward processing customs regimes.

(139) Moreover, Eurofer referred to the import volumes in the expiry review on imports of the same product from China and Taiwan with the same IP and period considered, where the Commission has assessed the Union consumption and market shares without accounting for imports under the inward and outward processing custom regimes. Therefore, the figures between the expiry review and the current investigation on imports, consumption, and market share differ, resulting in a manifest error in one of the two investigations.

(140) The expiry review on imports of SSCR from China and Taiwan indeed has the same IP and period considered for the injury analysis. However, the analysis made in that investigation is of a different nature, i.e. continuation or likelihood of recurrence of dumping and injury, and any conclusion drawn in that investigation is not automatically valid in the investigation at hand. So although the import figures in that expiry review did not include the imports under the inward and outward processing regimes, the conclusions found in that investigation still hold. Therefore, the Commission did not consider this divergent data to constitute a manifest error.

(141) Following provisional disclosure, the consortium of importers and distributors, and one unrelated importer claimed that the financial indicators of the Union industry were not worsening due to dumped imports but due to the impact of the COVID-19 pandemic. In its comments submitted after provisional disclosure, the complainant opposed this claim stating that the injury trend over the period considered showed the opposite.

(142) The Commission found that the prices of imports from the countries concerned greatly influenced the prices of the Union industry and its financial indicators. As established in recital (103) of the provisional Regulation, the average import prices from both countries concerned were consistently lower than Union producers' prices throughout the whole period considered, before the COVID-19 pandemic. The pandemic could potentially have affected the consumption on the Union market but such an impact could have only materialised in the last quarter of the IP (April-June 2020), while a substantial decline in consumption was already noted in 2019.

(143) Moreover, the Commission analysed the decrease in consumption (whether partially related to COVID-19 or not) as a potential other factor that could have caused injury in recitals (150) to (151) of the provisional Regulation and provisionally concluded that it did not attenuate the causal link between the dumped imports from the countries concerned and the material injury suffered by the Union industry. This conclusion is confirmed.

5.3. **Conclusion on causation**

(144) On the basis of the above and in the absence of any other comments, the Commission concluded that none of the factors, analysed either individually or collectively, attenuated the causal link between the dumped imports and the injury suffered by the Union industry to the effect that such link would no longer be genuine and substantial, confirming the conclusion in recitals (160) to (163) of the provisional Regulation.

6. **LEVEL OF MEASURES**

6.1. **Underselling margin**

(145) Following the imposition of provisional measures, the complainant raised two technical issues with regard to the calculation of the injury margin, concerning the depreciation of the estimated investments forgone and the future environmental costs compliance for one of the sampled Union producers. To calculate the investments foregone, the Commission considered it reasonable to base itself on the depreciation of the foregone investments within the IP as provided by the sampled Union producers. The complainant did not provide any supporting evidence why

such approach would be unreasonable. Based upon supporting data and information submitted by the complainant, the Commission accepted the claim concerning the future environmental costs compliance which led to a slight increase in the definitive injury margins.

(146) Following final disclosure, one exporting producer group claimed that costs caused by the COVID-19 lockdown incurred by the Union industry should be disregarded in calculating the non-injurious price for determining the injury margin, because such costs exceptionally increased the Union industry's cost per unit and do not reflect the normal cost of production of the Union producers.

(147) The Commission requested the Union industry to split all of the requested data in their questionnaire reply to the two semesters in the IP, to see any possible effects of the COVID-19 pandemic on their sales and costs data. However, the crosschecked data did not show any additional costs caused by the COVID-19 lockdown which would warrant the claimed adjustment. Therefore, the Commission rejected the claim.

(148) Euranimi and one unrelated importer contested the higher injury margin applied to the Indian exporting producers, while they had higher sales prices to the Union market.

(149) The injury margin is calculated on the basis of the product types sold by the exporting producers. As the product types between producers can vary in price, there does not have to be a correlation between the general level of import prices and the level of the injury margin calculated for each exporting producer specifically.

(150) The result of the revised calculations is shown in the table below:

Country	Company	Dumping margin	Underselling margin
India	Jindal Stainless Limited and Jindal Stainless Hisar Limited	13,9 %	25,2 %
	Chromeni Steels Private Limited	45,1 %	35,3 %
	All other companies	45,1 %	35,3 %
Indonesia	IRNC	10,2 %	32,4 %
	Jindal Stainless Indonesia	20,2 %	33,1 %
	All other companies	20,2 %	33,1 %

(151) In the absence of any other comments with respect to the level of measures, the Commission confirmed its findings and conclusions set out in recitals (165) to (173) of the provisional Regulation as modified in the table above.

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

(152) Following provisional disclosure, Eurofer submitted that the Commission had erroneously concluded that Chromeni did not use raw materials subject to distortions. It argued that it was 'abundantly clear' that Chromeni relies on intermediate inputs affected by the raw material distortions either in India or in Indonesia and that this should thus be accounted for. It claimed that the Commission for this purpose should use the cooperation in this investigation of an alleged supplier of hot rolled stainless steel in Indonesia or recent findings on raw materials with regard to that raw material ([14]).

([14]) Commission Implementing Regulation (EU) 2020/1408 of 6 October 2020 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of certain hot rolled stainless steel sheets and coils originating in Indonesia, the People's Republic of China and Taiwan (OJ L 325, 7.10.2020, p. 26).

(153) Eurofer further argued that the Commission's interpretation of Article 7(2a) strongly limits the possibility to tackle the impact of raw material distortions on downstream sectors and that it would prevent the Commission from assessing the impact of raw material distortions within a corporate group (such as the Jindal Group). In the same vein, it also pointed to the risk of circumvention through the company with the lower duty (in this case, either located in India or in Indonesia) and therefore claimed that the Commission should extend the highest level of applicable duty to all companies of the group, irrespective of the country of production of the product concerned.

(154) As explained in recital (176) of the provisional Regulation, Chromeni did not use the raw materials subject to the distortion found in India, i.e. chromium ore and stainless steel scrap. Furthermore, in the context of the imposition of a definitive anti-dumping duty, it is not possible to address potential future circumvention by extending the anti-dumping found for one related producer to related producers in another country. In this regard, the Commission also refers to recitals (175) to (177) below.

(155) Therefore, Eurofer's claims had to be rejected.

(156) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (174) to (178) of the provisional Regulation.

6.3. **Conclusion**

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

Country	Company	Definitive anti-dumping duty
India	Jindal Stainless Limited and Jindal Stainless Hisar Limited	13,9 %
	Chromeni Steels Private Limited	35,3 %
	All other companies	35,3 %
Indonesia	IRNC	10,2 %
	Jindal Stainless Indonesia	20,2 %
	All other companies	20,2 %

7. **UNION INTEREST**

7.1. **Interest of the Union industry**

(158) No party contested that the measures would be in the interest of the Union industry. The conclusions set out in recitals (181) to (183) of the provisional Regulation were thus confirmed.

7.2. **Interest of unrelated importers and users**

(159) Following provisional disclosure, Euranimi and one unrelated importer claimed that the Union imposition of measures on the countries concerned would create a shortage of SSCR on the Union market as the Union production would be insufficient to supply the market in full and other sources of supply are limited, mainly due to the anti-dumping measures on imports from China and Taiwan. According to the parties these shortages and delays in supplies can already be observed on the Union market.

(160) The parties alleged that some other potential sources of imports, namely Brazil, Malaysia and South Africa, are controlled by the Union producers who own the companies in these countries manufacturing SSCR. According to the parties, this has led to an abuse of protection by Union producers and will result in high prices on the Union market.

(161) Furthermore, the parties claimed that they do not have the possibility to pass-on prices to their customers and therefore their profitability would be adversely affected.

(162) Euranimi and the unrelated importer reiterated these claims following final disclosure.

(163) Eurofer opposed those statements, arguing that the claimed increased lead-time has resulted from changes in demand and disruption of global supply chains by the COVID-19 pandemic, which is not specific to the SSCR supply chain. Eurofer stated that in normal conditions, the Union industry has sufficient capacity to accommodate almost 150 % of the Union consumption in the IP. Furthermore, Eurofer argued that the price increase in raw materials that took place after the IP has been a reflection of a major worldwide increase in the costs of raw material, affecting not only prices in the Union. In addition, Eurofer claimed that SSCR could be sourced from third countries with significant SSCR capacities that have not been limited by the safeguard measures on steel.

(164) As indicated in provisional Regulation, there are indeed sources of supply of SSCR from other third countries, the biggest of them being Taiwan and Korea. Imports from Taiwan have still been entering the Union, having relatively low anti-dumping duties. Korea managed in the period considered to increase its export to the Union both in absolute and relative terms. South Africa also remains present on the Union market despite the alleged control of the European companies over its SSCR production. Moreover, anti-dumping duties imposed on the countries concerned are not aimed at closing the Union market for the countries concerned, but are aimed at raising prices to a fair level.

(165) Increases in prices are normally driven by the increase in the cost of raw materials and were also observed in third markets. Therefore, there is no element of abuse of the protection of the market by the Union producers. Moreover, with 13 Union producers of the product under investigation, there is strong internal competition on the Union market.

(166) Furthermore, the claims of the interested parties with regard to the lack of possibility of passing on prices to their customers and the lack of possibility to replace imported products cannot be properly assessed by the Commission in view of the lack of proper cooperation of the parties in question in this investigation. Unlike the two unrelated importers referred to in recitals (184) to (193) of the provisional Regulation, the parties in question came with their claims after disclosure, without submitting a questionnaire reply. This prevented the Commission from making a more thorough assessment by verifying their purchase and sales channels, types of products traded, costs and financial situation.

(167) On that basis, the Commission confirmed the conclusion that the effects of a potential imposition of duties on importers and users do not outweigh the positive effects of measures on the Union industry.

(168) In the absence of any other comments regarding the interest of unrelated importers and users, the conclusions set out in recitals (184) to (195) of the provisional Regulation were confirmed.

7.3. **Conclusion on Union interest**

(169) On the basis of the above and in the absence of any other comments, the conclusions set out in recital (196) of the provisional Regulation were confirmed.

8. DEFINITIVE ANTI-DUMPING MEASURES

8.1. Definitive measures

(170) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports of the product concerned. For the reasons set out in Section 6, and in particular subsection 6.2, of this Regulation, anti-dumping duties should be set in accordance with the lesser duty rule.

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

Country	Company	Definitive anti-dumping duty
India	Jindal Stainless Limited and Jindal Stainless Hisar Limited	13,9 %
	Chromeni Steels Private Limited	35,3 %
	All other companies	35,3 %
Indonesia	IRNC	10,2 %
	Jindal Stainless Indonesia	20,2 %
	All other companies	20,2 %

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

(173) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ([15]). The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a regulation about the change of name will be published in the *Official Journal of the European Union*.

(174) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this Regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.

(175) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this Regulation, the customs authorities of Member States must carry out their usual checks and may, like in all other

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

cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the lower rate of duty is justified, in compliance with customs law.

(176) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. That investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.

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

8.2. **Definitive collection of the provisional duties**

(178) In view of the dumping margins found and given the level of the injury caused to the Union industry, the amounts secured by way of the provisional anti-dumping duty imposed by the provisional Regulation should be definitively collected.

(179) Some definitive duty rates being lower than the provisional duty rates, the amounts secured in excess of the definitive anti-dumping duty rates should be released.

8.3. **Retroactivity**

(180) As mentioned in Section 1.2, following a request by the complainant, the Commission made imports of the product under investigation subject to registration pursuant to Article 14(5) of the basic Regulation.

(181) During the definitive stage of the investigation, the data collected in the context of the registration was assessed. The Commission analysed whether the criteria under Article 10(4) of the basic Regulation were met for the retroactive collection of definitive duties.

(182) The Commission's analysis showed no further substantial rise in imports in addition to the level of imports which caused injury during the IP, as prescribed by Article 10(4d) of the basic Regulation. For this analysis, the Commission compared the monthly average import volumes of the product concerned during the IP with the monthly average import volumes during the period from the initiation of this investigation until the imposition of provisional measures, and no further substantial increase could be observed:

	Investigation period (tonnes/month)	Post-IP period, i.e. 1 October 2020 to 28 May 2021 (tonnes/month)	Increase in imports (%)
SSCR imports from India	8 956	6 036	–33 %
SSCR imports from Indonesia	7 353	8 439	15 %
Total SSCR imports from the countries concerned	16 308	14 475	–11 %

Source: Surveillance 2 (EU-27).

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

9. **FINAL PROVISIONS**

(184) In view of Article 109 of Regulation (EU/Euratom) 2018/1046 of the European Parliament and of the Council ([16]), when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.

(185) By Commission Implementing Regulation (EU) 2019/159 ([17]), the Commission imposed a safeguard measure with respect to certain steel products for a period of 3 years. By Commission Implementing Regulation (EU) 2021/1029 ([18]), the safeguard measure was prolonged until 30 June 2024. The product under review is one of the product categories covered by the safeguard measure. Consequently, once the tariff quotas established under the safeguard measure are exceeded, both the above-quota tariff duty and the anti-dumping duty would become payable on the same imports. As such cumulation of anti-dumping measures with safeguard measures may lead to an effect on trade greater than desirable, the Commission decided to prevent the concurrent application of the anti-dumping duty with the above-quota tariff duty for the product under review for the duration of the imposition of the safeguard duty.

(186) This means that where the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 becomes applicable to the product under review and exceeds the level of the anti-dumping duties pursuant to this Regulation, only the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 shall be collected. During the period of concurrent application of the safeguard and anti-dumping duties, the collection of the duties imposed pursuant to this Regulation shall be suspended. Where the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 becomes applicable to the product under review and is set at a level lower than the level of the anti-dumping duties in this Regulation, the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 shall be collected in addition to the difference between that duty and the higher of the level of the anti-dumping duties imposed pursuant to this Regulation. The part of the amount of anti-dumping duties not collected shall be suspended.

(187) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of flat-rolled products of stainless steel, not further worked than cold-rolled, currently falling under CN codes 7219 31 00, 7219 32 10, 7219 32 90, 7219 33 10, 7219 33 90, 7219 34 10, 7219 34 90, 7219 35 10, 7219 35 90, 7219 90 20, 7219 90 80, 7220 20 21, 7220 20 29, 7220 20 41, 7220 20 49, 7220 20 81, 7220 20 89, 7220 90 20 and 7220 90 80 and originating in the countries concerned.

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

([17]) Commission Implementing Regulation (EU) 2019/159 of 31 January 2019 imposing definitive safeguard measures against imports of certain steel products, (OJ L 31, 1.2.2019, p. 27).

([18]) Commission Implementing Regulation (EU) 2021/1029 of 24 June 2021 amending Commission Implementing Regulation (EU) 2019/159 to prolong the safeguard measure on imports of certain steel products, (OJ L 225I, 25.6.2021, p. 1).

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

Country	Company	Definitive anti-dumping duty	TARIC additional code
India	Jindal Stainless Limited	13,9 %	C654
	Jindal Stainless Hisar Limited	13,9 %	C655
	Chromeni Steels Private Limited	35,3 %	C656
	All other Indian companies	35,3 %	C999
Indonesia	IRNC	10,2 %	C657
	Jindal Stainless Indonesia	20,2 %	C658
	All other Indonesian companies	20,2 %	C999

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

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

Article 2

1. Where the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 becomes applicable to flat-rolled products of stainless steel, not further worked than cold-rolled, referred to in Article 1(1), and exceeds the equivalent ad valorem level of the anti-dumping duty set out in Article 1(2), only the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 shall be collected.

2. During the period of application of paragraph 1, the collection of the duties imposed pursuant to this Regulation shall be suspended.

3. Where the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 becomes applicable to flat-rolled products of stainless steel, not further worked than cold-rolled, referred to in Article 1(1), and is set at a level lower than the equivalent ad valorem level of the anti-dumping duty set out in Article 1(2), the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 shall be collected in addition to the difference between that duty and the higher of the equivalent ad valorem level of the anti-dumping duty set out in Article 1(2).

4. The part of the amount of anti-dumping duty not collected pursuant to paragraph 3 shall be suspended.

5. The suspensions referred to in paragraphs 2 and 4 shall be limited in time to the period of application of the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159.

Article 3

The amounts secured by way of the provisional anti-dumping duty under Implementing Regulation (EU) 2021/854 shall be definitively collected. The amounts secured in excess of the definitive rates of the anti-dumping duty shall be released.

Article 4

No definitive anti-dumping duty will be levied retroactively for registered imports. Data collected in accordance with Article 1 of Implementing Regulation (EU) 2021/370 shall no longer be kept. Implementing Regulation (EU) 2021/370 is hereby repealed.

Article 5

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

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

Done at Brussels, 17 November 2021.

For the Commission
The President
Ursula VON DER LEYEN