COMMISSION IMPLEMENTING REGULATION (EU) 2016/1329

of 29 July 2016

levying the definitive anti-dumping duty on the registered imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation

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 10(4) thereof,

Whereas:

A. **PROCEDURE**

1. **Introduction**

(1) On 14 May 2015, following a complaint by the European Steel Association ('Eurofer' or 'the complainant'), the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports into the Union of certain flat-rolled products of iron or non-alloy steel, or other alloy steel but excluding of stainless steel, of all widths, cold-rolled (cold-reduced), not clad, plated or coated and not further worked than cold-rolled (cold-reduced) ('cold-rolled flat steel products' or 'CRFS') originating in the People's Republic of China ('PRC') and the Russian Federation ('Russia') (together, referred to as 'the countries concerned') on the basis of Article 5 of the basic Regulation.

(2) The complainant submitted a request for registration pursuant to Article 14(5) of the basic Regulation on 12 November 2015. The Commission, by Commission Implementing Regulation (EU) 2015/2325 [2] (the 'registration Regulation'), made the imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation subject to registration. By Article 1(2) of that Regulation, all interested parties were invited to make their views known in writing, to provide supporting evidence or to request to be heard within a fixed deadline. Comments on the registration were received from the complainant, the China Iron & Steel Association (CISA), the Ministry of Economic Development of the Russian Federation, Russian exporting producers, importers and/or users.

(3) By Commission Implementing Regulation (EU) 2016/181 [3], the Commission imposed a provisional anti-dumping duty on imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation.

(4) The Commission's final analysis and determination with regard to dumping, injury, causation and Union interest are detailed in Commission Implementing Regulation (EU) 2016/1328 [4] ('definitive Regulation'). The present regulation only addresses the issue of registration, the comments received in relation to registration and retroactive levying of the anti-dumping duty in question.

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

[2] Commission Implementing Regulation (EU) 2015/2325 of 11 December 2015 making imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation subject to registration (OJ L 328, 12.12.2015, p. 104).

[3] Commission Implementing Regulation (EU) 2016/181 of 10 February 2016 imposing a provisional anti-dumping duty on imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation (OJ L 37, 12.2.2016, p. 1).

[4] Commission Implementing Regulation (EU) 2016/1328 of 29 July 2016 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain cold rolled flat steel products originating in the People's Republic of China and the Russian Federation (see page 1 of this Official Journal).

2. **Procedure with regard to retroactivity after the imposition of provisional measures**

(5) In order to examine whether the retroactive application of the definitive duties was warranted, the Commission analysed consumption, prices, imports and sales volumes prior and subsequent to the opening of the investigation. In the framework of that analysis the Commission also sent questionnaires to importers and/or users of the product concerned concerning their import volumes, import prices and inventories in the period following the investigation period, i.e. from 1 April 2015 to 31 January 2016. Replies were received from 22 unrelated and related importers and/or users. Furthermore, questionnaires were sent to the complainant and the five sampled Union producers concerning the sales in the period following the investigation period ('IP'), i.e. from 1 April 2015 to 31 January 2016. Replies were received from the complainant and all sampled Union producers.

(6) In order to verify the questionnaires replies mentioned in recital 5 above, on-spot verification visits were carried out of the data submitted by the following parties:

(a) Union producers

— ThyssenKrupp Germany, Duisburg, Germany

— ArcelorMittal Belgium NV, Ghent, Belgium

— ArcelorMittal Sagunto SL, Puerto de Sagunto, Spain

(b) Unrelated importers/users

— Duferco SA, Lugano, Switzerland

— Marcegaglia Carbon Steel, Mantova, Italy

(7) On 3 May 2016 a hearing with the Hearing Officer in trade proceedings was held at the request of Eurofer. This hearing was held within the framework of the anti-dumping proceeding concerning imports of certain cold rolled flat steel products originating in the People's Republic of China and the Russian Federation and one of the issues raised was the possible retroactive collection of the definitive anti-dumping duty.

(8) On the request of importers, the Commission services also held two hearings regarding the issue of retroactive collection of the anti-dumping duty.

(9) The Commission informed all parties of the essential facts and considerations on the basis of which it intended to levy a definitive anti-dumping duty on the registered imports of CRFS ('the additional disclosure'). All parties were granted a period within which they could make comments on the additional disclosure. The comments submitted by the interested parties were considered and taken into account where appropriate.

(10) Following the additional disclosure, several parties submitted comments. On 15 June 2016, one group of importers had a hearing with the Hearing Officer in trade proceedings. Following this hearing, one interested party submitted comments to the post-hearing submission.

B. RETROACTIVE LEVYING OF ANTI-DUMPING DUTIES

1. **General principles for registration and retroactive levying of anti-dumping duties**

(11) According to its Communication 'Steel: Preserving Sustainable Jobs and Growth in Europe' ([1]), the Commission will ensure that the industry gets actual relief significantly before provisional measures are imposed. This is

([1]) COM(2016) 155 final of 16 March 2016

achieved by registering imports prior to the adoption of provisional measures. This allows the Commission to retroactively apply definitive anti-dumping duties three months before the adoption of provisional measures, where the relevant legal conditions are met. Those legal conditions are set out in Articles 10(4) and 14(5) of the basic Regulation, which are based on Articles 10.6 and 10.7 WTO Anti-dumping Agreement ('WTO ADA').

(12) Those legal conditions set out a two-step mechanism to make sure that the remedial effect of the definitive anti-dumping duty to be applied is not undermined.

(13) Because it is the first case in which it is found that the conditions for retroactive collection of anti-dumping duties are met, the Commission considers it necessary to explain in detail the methodology that was applied to reach that conclusion.

(14) The first step, which is based on the idea of preventing the undermining of the remedial effect of duties, is registration pursuant to Article 14(5) of the basic Regulation and Article 10.7 WTO ADA, which besides registering imports also notifies interested parties, in particular importers, that definitive duties might be collected retroactively should the substantive conditions be met. The second step, in case prevention fails to preserve the remedial effect of the definitive duties is the retroactive levying of anti-dumping duties on products which were entered for consumption no more than 90 days prior to the date of application of provisional measures but not prior to the initiation of the investigation, pursuant to Article 10(4) of the basic Regulation and Article 10.6 WTO ADA.

(15) Any of those two steps can only be taken when the conditions set out in Article 10(4) of the basic Regulation and Article 10.6 WTO ADA are met.

(16) The Commission considers it appropriate to set out the manner in which it construes and applies the conditions 'further substantial rise in imports' and 'likelihood of seriously undermining the remedial effect of the definitive anti-dumping duty', set out in Article 10(4)(d) of the basic Regulation, when deciding on the retroactive imposition of anti-dumping duties.

(17) The second of the two alternative conditions of Article 10(4)(c) of the basic Regulation will always be met the moment the initiation of the procedure is published in the *Official Journal of the European Union*. It is therefore not necessary to provide further clarification on Article 10(4)(c) of the basic Regulation.

(18) Article 10(4)(d) of the basic Regulation provides the following:

> '[i]n addition to the level of imports which caused injury during the investigation period, there is a further substantial rise in imports which, in the light of its timing and volume and other circumstances, is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied.'

(19) The Commission interprets Article 10(4)(d) of the basic Regulation as setting two conditions which need to be fulfilled in order to allow the Commission to levy the definitive anti-dumping duty retroactively (in addition to the conditions set out in Article 10(4)(c) of the basic Regulation and in the chapeau of Article 10(4), read in conjunction with Article 14(5) of the basic Regulation). The two conditions are as follows:

(a) in addition to the level of imports which caused injury during the investigation period, there is a further substantial rise in imports; and

(b) this further substantial rise in imports, in the light of its timing and volume and other circumstances, is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied.

1.1. *Further substantial rise in imports*

(20) In order to be able to make any determination concerning whether there is a further substantial rise in imports, a comparison of data is necessary ([1]). In this respect, it has to be determined what periods of time need to be compared.

1.1.1. Periods to be compared

(21) On the one hand, the basic Regulation refers to the level of imports during the investigation period. On the other hand, the words 'further' and 'in addition to' imply that the level of imports in the investigation period should be compared with the level of imports after the investigation period.

(22) At the same time, the period to be compared to the investigation period cannot commence before one of the two alternative conditions in Article 10(4)(c) of the basic Regulation is met. Where importers only become aware of the likely dumping by the publication of the notice of initiation in the *Official Journal of the European Union*, that point should therefore be taken as starting point for the second period.

(23) The overall analysis aims at assessing whether the conditions for an application of the duty prior to the date of application of the provisional measures are met. Therefore, the latter period should end with the imposition of the provisional measures at which moment the registration of imports ([2]) ceases to apply.

(24) Import statistics are only available on a monthly basis. The Commission would therefore use for the latter period the data for the full calendar month following the publication of the initiation in the *Official Journal of the European Union*, where awareness of the importers is triggered by initiation. Where awareness stems from a different basis, for example from a history of dumping over an extended period, it would be the month following the event triggering awareness, but the earliest the first full month after the investigation period. As for the end point, the Commission would establish two values: one including the month in which the provisional measures start, one excluding that month.

(25) The Commission would normally establish a monthly average level of imports for the whole investigation period which in principle lasts 12 months, and a monthly average for the level of imports between awareness and provisional measures. The starting and end points for the latter average are established as explained in the previous paragraph.

(26) Furthermore, the Commission would also establish the evolution of imports in absolute terms, their impact on the evolution of stocks of the product and on the market shares, and consumption of the product during the period considered.

1.1.2. Extent of the rise to be qualified as substantial

(27) Such a determination should be based on a case-by-case analysis. In addition to comparing monthly weighted averages, the Commission will also take all other relevant considerations into account. Those are in particular: the development of the overall consumption of the product concerned in the Union, the evolution of stocks, and the evolution of market shares. Hence, the analysis should be twofold, absolute and relative. A comparison between the two above monthly averages is thus an important, but not necessarily the decisive element in determining whether the further rise in imports is 'substantial'.

1.1.3. Rationale underlying this approach

(28) Imports that enter the Union prior to registration can in no case be subject to anti-dumping duties. They are, however, relevant for determining whether or not imports that enter the Union after registration are likely to

([1]) Panel Report, US — Hot-Rolled Steel, para. 7.166.
([2]) Registration of imports made under Article 14(5) of the basic Regulation is another condition to levy the definitive duty retroactively.

undermine the remedial effect of duties, for the following reason: Due, inter alia, to the existence of stocks, the remedial effect of duties (i.e. an increase of the price of imported products, either due to a price increase or due to the duty) is never immediate, but takes place only once stocks have been sold. A further substantial rise in imports prior to registration should normally lead to a substantial increase in stocks. That means that the remedial effect of duties is further delayed compared to a situation with normal stocks. Any further imports between registration and provisional measures, which come on top of stocks that substantially exceed the normal level, would further delay the remedial effect.

1.2. *The rise in imports is likely to seriously undermine the remedial effect of duties*

(29) The second step is to determine whether this rise is likely to seriously undermine the remedial effect of the definitive duty to be applied. The use of the words 'is likely to' indicates that this is a forward-looking analysis. This will always be a case-specific analysis whose outcome will depend on the concrete circumstances in each and every case in which registration of imports in view of imposing duties retroactively has been ordered.

(30) That analysis should, inter alia, take account of the effect of imports that have entered the Union between registration and provisional measures. Where no or only insignificant imports have taken place, the registration has sufficed to avoid further damage to the Union industry. Hence, there is normally no justification for applying the second step, that is retroactive imposition.

(31) When assessing whether the effect of imports that have entered the Union between registration and provisional measures is likely to seriously undermine the remedial effect of duties, the Commission would, in particular, analyse the following factors:

(a) volume of those imports

(b) timing of those imports

(c) prices of those imports

(d) any other relevant circumstances: The Commission will analyse, inter alia, the following other circumstances:

(i) stocks of the imported product prior to registration

(ii) price trend of the imported product since awareness until provisional measures

(iii) changes in pattern of trade indicating attempts at circumventing registration.

1.3. *Cumulation*

(32) In investigations involving more than one country concerned, whether or not imports from these countries will be cumulated for the purpose of the analysis described in points 1.1 and 1.2 above, will depend on whether the Commission decided to cumulate these imports in the underlying anti-dumping investigation.

2. **Application to the case at hand**

(33) The registration concerns imports that were made between 12 December 2015 and the date of imposition of the provisional anti-dumping measures, namely 12 February 2016. During this period, the imports from the countries concerned were approximately 165 000 tonnes.

(34) As mentioned in recital 5 above, information was provided by the complainant, all sampled Union producers and by 22 unrelated and related importers and/or users. Their imports represented 46 % of all imports from the countries concerned during the period for which the data was collected, namely from April 2015 to January 2016.

(35) In order to decide whether retroactive collection of the duties was warranted, the Commission evaluated the criteria set out in Article 10(4) of the basic Regulation.

(36) Comments were submitted with respect to the registration of imports as well as on the possible retroactive application of the anti-dumping measures, which are analysed below.

2.1. *History of dumping or awareness of the dumping or injury by the importer*

(37) Pursuant to Article 10(4)(c) of the basic Regulation, there needs to be 'a history of dumping over an extended period, or the importer was aware of, or should have been aware of, the dumping as regards the extent of the dumping and the injury alleged or found'. In the present case, the Commission considers that the importers were aware, or should have been aware of, the dumping as regards the extent of the dumping and the injury alleged or found since the date of initiation of the investigation, for the reasons explained above at recital 17 and below.

(38) One importer claimed that the prima facie evidence of dumping in the complaint was not sufficient to demonstrate that importers were aware or should have been aware of the dumping as regards the extent of the dumping and the injury alleged or found. In particular, this party noted that firstly, the complaint does not constitute by itself conclusive evidence that dumping actually took place. Second, if it were to be accepted that the evidence in the complaint is sufficient to conclude that importers should have been aware of dumping, the retroactive imposition of duties would be possible in every single investigation. Finally, it submitted that Eurofer's claim that the existence of dumping could not be ignored by importers given the extremely low prices of Chinese and Russian imports is misleading, as alleged low prices do not by themselves prove that imports were dumped.

(39) Another interested party noted that Eurofer did not provide press reports or other publicly available information accessible to Union importers of CRFS that referred to any dumping by Chinese producers of specific CRFS products. This party stressed that the press articles provided were on steel in general and not specifically on CRFS. In addition, the Indian and American press reports provided by Eurofer were irrelevant with respect to the awareness of importers in the Union.

(40) To start with, it is important to underline that the importers' awareness, in Article 10(4)(c) of the basic Regulation, relates to the extent of the dumping and the injury alleged or found (emphasis added). The Commission considers that importers were aware or should have been aware of the extent of dumping and the injury alleged on the basis of objective factors, not only by means of the non-confidential version of the complaint but also through the notice of initiation for this proceeding which were both available and communicated to all known interested parties including importers, users and their representative associations at initiation. In addition, interested parties had full access to the non-confidential version of Eurofer's request for registration which in fact had already been announced in the complaint itself. The investigation was initiated because it was deemed that the prima facie evidence in the complaint sufficiently demonstrated that the imports from the countries concerned were likely being dumped on the Union market. This prima facie evidence covered the period October 2013 to September 2014, i.e. an extended period of time. In addition, it was provisionally found and also definitively confirmed that dumping was also established for the investigation period of the proceeding, namely April 2014 to March 2015. Therefore, it is confirmed that importers were or should have been aware of the dumping and the injury alleged as of the date of publication of the notice of initiation in the *Official Journal of the European Union*.

(41) It must also be noted that the retroactive levying of anti-dumping duties is only permitted on imports that were subject to registration and only when the criteria, as set out in Article 10(4) of the basic Regulation, are met. Therefore, it is incorrect to claim that the retroactive imposition of duties is possible 'in every single investigation'. Regarding the alleged irrelevance of the press reports provided by Eurofer, the Commission acknowledges that these were not articles on CRFS specifically, but they have given a reliable indication of the pricing behaviour of exporting steel producers in the countries concerned. Furthermore, the press reports should be seen in the light of the other objective facts as set out in the above recitals.

(42) Therefore, the arguments regarding the issue of the awareness of importers are rejected.

(43) In their response to the disclosure certain importers claimed that the awareness of dumping and injury issue should be seen in the light of retroactivity being 'an exceptional measure' and that this sets high standards on the investigating authority and/or that the approach proposed on 'awareness of importers' in respect of Article 10(4)(c) of the basic Regulation is excessively broad. They therefore conclude that the notice of initiation is not sufficient to make importers aware of the existence of dumping and injury or its extent. However, the notice of initiation, which was widely reported in the steel trade press, and the open version of the complaint, which was sent to known importers and/or users and available to all interested parties from day one of the investigation, when taken together clearly stated (in substantial detail) the methodology applied, the source of information used and specified high levels of dumping and injury for both the PRC and Russia. The extent of dumping was thereby communicated in the form of a percentage of the CIF import price. Further, the Commission in recitals 5 to 11 of the registration Regulation reminded all interested parties that it had sufficient evidence on the dumping as regards the extent of the dumping and the injury alleged or found. The Commission therefore concludes that importers were aware, or should have been aware, that dumping and injury was taking place or alleged. The fact that not all investigations result in anti-dumping measures does not mean that prima facie evidence of dumping and injury has not been made available to importers. The Commission is therefore satisfied that the necessary standards relevant to this issue have been met.

(44) The Russian exporting producers and an importer claimed that the Commission's determination under Article 10(4)(c) of the basic Regulation certainly did not meet the standard set out in Article 10(6)(i) of the ADA which states the importer should have been aware that the exporter practices dumping and that such dumping causes injury. In addition, it was claimed that using the Commission's interpretation, the 'awareness' condition is met on every occasion when a notice of initiation is published, which is unacceptable. It was further claimed that the assessment of dumping is a complex process which entails having access to business secrets that cannot be disclosed.

(45) First of all, it should be pointed out that each WTO Member has the right to establish its anti-dumping procedures and practices to suit its own circumstances as long as they do not breach WTO standards. The Commission considers that it has very high standards for opening investigations and as mentioned at recital 43 above a very detailed examination of dumping and injury based on the evidence available was carried out and made available to interested parties. This data includes company specific domestic and export prices which importers could have easily compared with the prices at which they were buying from the countries concerned in order to establish if such prices were dumped and to what extent. It is also noted that as indicated in recital 5, some of the replies were received from related importers that had access to the relevant information with regard to domestic and export prices. It is also noted that the WTO law does not provide that importers should be able to perform a detailed dumping calculation but rather that they should be aware of the extent of such dumping. Further, the analysis of the various injury indicators together with detailed undercutting and underselling calculations were also made available and indicated such dumped imports would cause injury.

(46) One importer also claimed that its suppliers had assured him that they did not engage in dumping practices without, however, substantiating it. Therefore, this claim has to be rejected.

(47) The Russian exporting producers contested the finding of dumping and indicated that importers became only aware of the application of Article 18 of the basic Regulation and the extent of the dumping on 12 February 2016. In this regard it is noted that the above mentioned information on file, namely the notice of initiation and the non-confidential version of the complaint that was sent to or made available to importers gave a clear indication of the extent of dumping and that the imposition of provisional measures only confirmed such information. This claim has therefore to be rejected.

(48) The Commission therefore confirms, in this particular case, that the importers clearly had evidence that the Chinese and Russian exporters were practising injurious dumping.

2.2. *A further substantial rise in imports likely to undermine the remedial effect of the definitive anti-dumping duty*

(49) Pursuant to Article 10(4)(d) of the basic Regulation, there needs to be 'a further substantial rise in imports in addition to the level of imports which caused injury during the investigation period'.

2.2.1. A further substantial rise in imports

(50) According to Eurostat data ([1]) (which at the time of the assessment were available up to and including March 2016), the average monthly import volume from the countries concerned during the investigation period was 118 912 tonnes. The average monthly import volume from the countries concerned in the period starting in the first full month after publication of the initiation of the investigation in the *Official Journal of the European Union* and ending in the last full month preceding the imposition of provisional measures (June 2015-January 2016) was 162 457 tonnes, i.e. 37 % higher than in the investigation period. In the same period, the total volume of imports was 1 299 658 tonnes, that is, 721 386 tonnes from the PRC and 578 272 tonnes from Russia. When comparing the average monthly import volume from the PRC and Russia separately, an increase of 48 % and 25 % in the average monthly import volumes is found for the PRC and Russia respectively.

(51) Taking the period as from the first full month following initiation and including the month in which provisional measures were imposed (i.e. June 2015-February 2016) renders a monthly average import volume of 150 673 tonnes, which is 27 % higher than the monthly average in the investigation period. As for the monthly import volumes from the PRC and Russia, these shown an increase of 34 % and 19 % respectively.

(52) The imports of the 22 importers and/or users which provided information on the imports during the period after initiation (from June 2015 to January 2016) represented 46 % of all imports from the countries concerned. The information thus obtained showed, overall for these cooperating importers and/or users, a 22 % increase in stocks of the product concerned at the end of 2015 as compared to the end of 2014. This finding not only corroborates the finding of a strong increase of imports based on statistics, but it also suggests stock-piling.

(53) Both analyses demonstrate that indeed there was a substantial increase in import volumes after initiation.

(54) Several Russian exporting producers contested the conclusion that the increase in imports was substantial, referring to 'leading commentators and practitioners' which maintain that the increase in the volume of imports has to be truly massive. In this regard it is first noted that the literature that was referred to does not constitute hard law and that it does not give any specific guidance as to what should be regarded as massive or substantial, which is anyway a case-by-case analysis.

(55) On this basis, the Commission is satisfied that the increase in imports can be regarded as substantial and this claim is hereby rejected.

(56) Several Russian exporting producers as well as an importer submitted that the Commission, in its assessment of Eurofer's request for registration, did not properly consider the temporary effect of Union sanctions on trade with Russia. In this respect, at the time of registration, there were no 'sanctions' on the product concerned, nor were there such sanctions during or following the investigation period, until provisional measures were imposed on 12 February 2016. This argument is therefore rejected.

(57) The Russian exporting producers returned to this issue in their comments to the disclosure stating that even though there were no 'sanctions' on the product concerned there was a 'knock-on effect' to the product concerned because of a general reluctance of Union customers to buy goods from Russia. This argument was unsubstantiated. In addition, it is clear that the development of imports of the product concerned after the investigation period has been affected by issues relating to this proceeding rather than the alleged 'knock-on effects' resulting from sanctions on other products. The goods subject to sanctions were clearly defined and therefore, it cannot be concluded that sanctions had any major impact on the large swings in volume development experienced post investigation period.

(58) In addition, the same Russian exporting producers as well as the Russian authorities argued that in the assessment on the further substantial rise in imports, Eurofer's arguments were based on comparisons of arbitrarily selected time periods. Another interested party submitted that due to the extreme volatility in the volume of imports of CRFS from one month to the other, the selection of any given period compared to another could produce dramatically different results. In other words, the data in Eurofer's request did not reflect the existence of a 'substantial rise in imports'.

([1]) As done in order to establish Union consumption at provisional stage (see recital 99 of Implementing Regulation (EU) 2016/181), import volumes of the CN ex codes have been accounted fully to establish import volumes because the product concerned falls mostly in full CN codes.

(59) The time periods taken for comparison in the complaint that led to registration covered substantial periods of time both after the investigation period and overlapping with the investigation period. In addition, other time periods for the comparative analysis on further substantial rise in imports were suggested by various interested parties and all of them rendered the same conclusion (i.e. a further substantial rise in imports as compared to the import volume during the investigation period). The argument is therefore rejected.

(60) Several Russian exporting producers argued that there was no further substantial rise in imports by submitting figures for January 2016, February 2016 and March 2016 as far as they were concerned. It is not clear to the Commission why figures for only certain Russian exporting producers were presented in the submission and not imports from Russia as a whole.

(61) It is true that lower monthly import volumes in the statistical data referred to in recital 50 above are recorded for January, February and March 2016, i.e. after registration of imports and — for part of February and March — provisional measures had taken effect. In this respect, the following should be noted. Firstly, as indicated in recital 9 of the registration Regulation, the Commission had analysed the registration request on the basis of an analysis of a period up to and including September 2015. That analysis demonstrated that there was, inter alia, and prima facie, a substantial increase in the level of imports, even following initiation, which would seriously undermine the remedial effect of the anti-dumping duty (recital 5 of the registration Regulation). The substantial increase on the basis of which the imports were registered concerns thus only partially the same imports on the basis of which the Commission determines whether a retroactive levying of the duty should be made. The latter period, it is recalled, is the period from the first full month following initiation, i.e. June 2015 up, to and including the last full month before provisional measures, i.e. January 2016 or including the month in which provisional measures were imposed, i.e. February 2016. Also over that much longer period, there is, again, a further substantial rise in imports as compared to the investigation period. The fact that the import volumes from the countries were relatively low in January, February and March 2016 does not change that conclusion.

(62) Secondly, by far the highest import volume from the countries concerned was recorded for October 2015, i.e. after the analysis period for registration, and very high import volumes as compared to the investigation period were still recorded for November 2015. The relatively moderate level of imports after registration, at which the exporting producer pointed, should thus be assessed in relation to that peak just before registration which can only be explained by the upcoming registration. It is likely that, if no registration had been requested and made, an overall volume in the same order of magnitude would have been observed, but the monthly average increase would have been more consistent instead of the sudden spike observed in October and November 2015. The Commission cannot, in its analysis as to whether the conditions of Article 10(4)(d) are met, ignore the strong increase of imports in this period subsequent to the period of analysis for registering the imports but prior to the actual registration itself.

(63) One interested party submitted that while the comparison of import figures between May 2014-September 2014 and May 2015-September 2015 indeed show an absolute increase in imports, Eurofer failed to take into account the cyclical nature of imports of the product concerned and the development of Union consumption. This argument was not substantially evidenced. It is fair to say that the product concerned follows to a certain extent the economic conjuncture, which can be volatile. However, this does not imply that the imports of CRFS follow a cyclical pattern. The argument is rejected.

(64) It should also be added that, regarding the trend of the Union consumption, as explained in recitals 103 to 106 of the provisional Regulation, captive consumption increased slightly by 4 %, while the free market consumption decreased by 9 %. As imports of the product concerned compete on the free market, the Commission fails to understand this argument.

(65) The China Iron & Steel Association (CISA) also disagreed with the periods selected by Eurofer. CISA submitted that it takes at least four to five months upon order confirmation for the import of steel products from the PRC to actually take place. Therefore, the product concerned imported during May-September 2015 is actually linked to contracts concluded before the case was initiated.

(66) Pursuant to the basic Regulation, such a further substantial rise occurs in addition to the level of imports causing injury during the investigation period. Therefore, the assessment of this matter is based on a representative

period between initiation and provisional measures and the investigation period. The finding that there was a further substantial rise in imports during May-September 2015 is even strengthened by the argument made by CISA, as despite the time lag due to running contracts, there was still a further substantial rise in imports observed during the aforementioned period. The argument is thus rejected.

(67) Several interested parties also noted that CFRS is not a product that is stockpiled, but a product that is produced to order accordingly.

(68) Indeed, the product concerned is usually not stocked for a long period as a result of its characteristics. For example, certain weather conditions could have a detrimental effect on the quality of the product. However, the Commission did not receive evidence against the finding that stockpiling indeed did occur in this case following the initiation of the proceeding. It needs to be underlined that stockpiling is often not a usual practice and occurs when there are special circumstances and/or expectations in the market, for example as regards future prices of the product at hand. The fact that a product *usually* is not stocked does not mean that no stock piling can take place, when such circumstances and expectations come into play. Based on the figures submitted by the unrelated and related importers and/or users after the imposition of provisional measures, it was found that the stocks at the end of 2015 were 22 % higher than at the end of 2014. Therefore, without evidence against the finding that the further substantial rise in imports could be an indication of stockpiling, this argument is rejected.

(69) In their response to the disclosure interested parties reiterated that the product concerned is not normally stockpiled but rather is purchased to order. First, CRFS is not exclusively produced to order and even for those types that are mainly produced to order this does not prevent importers and/or users anticipating future price increases from buying larger quantities in order to stock-pile. Further, the initiation of this investigation impacted import behaviour whereby, according to the evidence, stockpiling of the standard grades normally imported substantially increased. It is also recalled that the 22 importers and/or users which provided information on the imports during the period after initiation represented only 46 % of all imports from the countries concerned. In the light of the fact that importers and/or users representing more than half of the imports did not provide the Commission with the requested information and in view of the high volume of imports that entered the Union in the months following the initiation, the Commission can rely on sufficient satisfactory evidence to conclude that substantial stockpiling actually took place and that the information obtained and used resulted in a rather conservative estimation of the level of stockpiling.

(70) On the basis of the above, the Commission concludes that there has been a substantial rise in imports subsequent to the investigation period.

(71) In their response to the disclosure interested parties claimed that a well-established Commission practice existed to compare imports in the investigation period with imports in the registration period which would mean that there was no rise in imports. The same parties indicated that the Commission had failed to provide reasons for this alleged change in practice.

(72) The Commission, first, observes, that it is not bound by previous practice (if such practice were to exist, *quod non*, see following recital), but only by the objective norms of the Treaties and secondary law. In any event, the Commission may at any point in time, for example given the specific circumstances arising in an investigation, refine or evolve its analysis accordingly, provided that it explains sufficient reasons for doing so. The Commission has provided in the general disclosure document in an extensive manner the economic, legal and policy reasoning that underlies the approach taken in the present case (see above recitals 11 to 32).

(73) In any event, second, the importer could only point to two previous cases (*Solar Panels* and *Stainless Steel Cold Rolled Flat products*) as alleged evidence of such practice and in neither case were duties imposed retroactively. Under these circumstances it therefore cannot be regarded as a well-established practice. In addition, contrary to what these interested parties claimed, in Commission Implementing Regulation (EU) 2015/1429 ([1]) the Commission analysed periods after the initiation of the investigation when assessing whether anti-dumping duty should be levied retroactively. Furthermore in those cases, the full set of circumstances was not comparable to the circumstances in this case. For example, although the level of imports in the registration period was on a monthly average basis lower than in the preceding period after the initiation of the investigation, the level in

([1]) Commission Implementing Regulation (EU) 2015/1429 of 26 August 2015 imposing a definitive anti-dumping duty on imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan (OJ L 224, 27.8.2015, p. 10).

absolute terms was still very significant in the case at hand. Bearing in mind that this is the first instance where the Commission concludes that in view of the facts of the case at hand duties should be levied retroactively, the principles set out in recitals 11 to 32 were strictly followed in this investigation. Therefore, the Commission did not only analyse the level of imports in the registration period but also took into account imports in the period between initiation and registration. This is in line with the provisions of Article 10(4)(d) of the basic Regulation which, as explained in recital 21 to 25 above mandates the Commission to analyse the period subsequent to the investigation period which is, in our practice, as from the initiation of an investigation until the moment that registration ceases to apply. The analysis period thus established in full compliance with the law, allows that a complete assessment could be made on the rise of imports and their subsequent impact and their ability to undermine the remedial effects of the measures.

(74) In its response to the disclosure, the Russian exporting producers and the Ministry of economic development of the Russian Federation challenged the Commission's approach of a cumulative assessment (covering both Chinese and Russian imports) in order to meet the requirements of Article 10(4) of the basic Regulation. However, the basic Regulation does not prohibit a cumulative interpretation of Article 10(4) and the conditions for cumulation clearly apply in this case. Further, where appropriate a separate analysis of Russian and Chinese imports was made, which led also to the conclusion that there was a further substantial rise in imports (see recital 50 above) and did not demonstrate that a different approach was necessary for the Russian Federation. Therefore this claim was rejected.

2.2.2. The undermining of the remedial effect of the definitive ant-dumping duty

2.2.2.1. Volumes and market shares

(75) In order to assess the impact of the substantial rise in imports on the remedial effect of the definitive anti-dumping duty, questionnaires on the sales after the investigation period were sent to Eurofer and the 5 sampled Union producers. The period for which post-investigation period figures were requested was April 2015 to January 2016 (at the time of sending the post-investigation period questionnaire, this was the most recent period).

(76) The information thus received shows that Union consumption on the free market, in that period, increased by 14 % while sales volumes achieved by the Union producers remained rather stable with only a slight increase of 3 %. Consequently, the Union industry's market share further decreased by 7 percentage points (from 71 % to 64 %). This is a clear sign of further injury to the Union industry.

(77) In terms of volumes it should be made clear that imports in the registration period were included in the assessment of the 'further increase in imports' and that imports in the registration period in isolation fell as compared to pre-registration levels but were still in substantial volumes.

(78) It was claimed by several parties that this fall in imports in the registration period demonstrated that the registration step had succeeded. However, the substantial level of imports during the registration period (approximately 165 000 tonnes) clearly shows that importers and/or users had not been deterred by the registration step and as explained below the retroactive imposition of duties is necessary in order not to undermine the remedial effects of the measures.

2.2.2.2. Prices and price undercutting

(79) When comparing the average monthly import price using Eurostat data, it is established that during the 11 months following the investigation period, the average monthly import prices from the PRC and Russia have decreased by 13 % and 12 % respectively when comparing with the average monthly import prices during the investigation period.

(80) It is true that in the same period prices of raw materials have decreased as well. However, the analysis made demonstrates that the drop in raw material prices could not justify more than a 4 % drop in sales prices. The fact that these significantly lower import prices undermine the remedial effect of the anti-dumping duty is illustrated by an overall comparison of the average import price from the countries concerned with the average sales price from the Union industry during the investigation period and post investigation period. That comparison results in 7 % undercutting during the investigation period while after that period the undercutting increased to 14 %.

(81) Further, import prices in the registration period continued to fall more than those of the Union producers. The average import price in that period ([1]) was EUR 408 for China (19 % below the average import price in the investigation period and 6 % below the average import price in the period from initiation to registration ([2])) and EUR 371 for Russia (24 % below the average import price in the investigation period and 15 % below the average import price in the period from initiation to registration). For the two countries together, the average import price during registration was EUR 386 (22 % below the average import price in the investigation period and 11 % below the average import price in the period from initiation to registration). Consequently, undercutting in the registration period further increased to almost 20 % on average.

(82) In view of the above, the Commission concludes that the further substantial rise in imports, in light of its timing and volume, as well as its further decreasing average prices, is likely to seriously undermine the remedial effect of the definitive anti-dumping duty.

2.2.2.3. Stockpiling

(83) As indicated in recital 52, the Commission found evidence of stockpiling after the initiation of the investigation. Given that it is likely that the products that are stockpiled will ultimately enter the Union market, the Commission considers that such stockpiling is an additional indication that imports that take place even after registration will undermine the remedial effect of the duties.

(84) Certain interested parties challenged the stockpiling argument claiming that the finding of stockpiling was not supported by evidence. However, it is clear that imports post investigation period increased substantially as compared to pre initiation levels and that cooperating importers and/or users reported increases in stocks. In addition, the cold rolled market is characterised by imports by both traders and final users. Despite the fact that prices were falling in the months following the initiation of this investigation the traders and users were motivated to increase their monthly average import levels and stock levels, which they did. Therefore, it is clear that stockpiling took place.

(85) One group of importers claimed that it had provided evidence that the level of its stocks showed a decreasing trend and that its purchases in the period following the initiation were not aimed at stockpiling. The same interested party claimed that the periods for comparing the level of stock were not appropriate as stocks at the end of 2014 were abnormally low in view of the banks' unwillingness to finance stocks. Eventually it claimed that the Commission has not demonstrated that the goods concerned are still in stock and indicated that it expected that the material purchased in the registration period would be sold before provisional measures were imposed. In this regard, it is first noted that the assessment with regard to the level of stock may show individual differences among the companies importing the product concerned. However the Commission's assessment shall not be limited to individual companies and the information on the file, including that of this group of importers, shows that there was increase by 22 %. Second it is noted that this claim is not substantiated by supporting evidence as far as banks or the volumes on stock are concerned. Should the claim regarding the availability of finance still be true, the Commission wonders how importers could finance the significant increase in imports that took place after the initiation of the investigation without the availability of finance. On the basis of the above, these claims have to be rejected.

2.2.2.4. Conclusion

(86) On the basis of the above, the Commission concludes that the substantial rise in imports subsequent to the investigation period has seriously undermined the remedial effect of the definitive anti-dumping duty.

([1]) In the absence of more precise statistics and in order to ensure fair comparison with other statistical data sources, import statistics for the registration period were assessed on the basis of imports in December 2015 and January 2016.

([2]) In the absence of more precise statistics and in order to ensure fair comparison with other statistical data, import statistics for the period from initiation to registration were assessed on the basis of imports from June to November 2015.

2.3. *Other comments*

(87) Several Russian exporting producers submitted that Article 10(4) of the basic Regulation does not indicate support for a cumulative assessment as regards the conditions stipulated in Article 10(4) of the basic Regulation. They further submitted that in their view conditions for retroactive imposition of anti-dumping duties are not fulfilled as far as Russian imports of CRFS are concerned. Without a reference in Article 10(4) of the basic Regulation to cumulative assessment, there would be no legal basis for the Commission to retro-actively apply definitive anti-dumping duties on imports from Russia. In this light, reference was also made to the fundamental principle of non-discrimination.

(88) It needs to be reiterated that the Commission does not agree with the argument that the conditions as stipulated in Article 10(4) are not met. In this case, it is underlined that in both the cumulative assessment of the countries concerned as well as in the individual assessment of the countries concerned, the conditions of Article 10(4) are met for both countries. The argument is therefore rejected.

(89) Various interested parties submitted that due to the registration, importers and/or users found themselves in a situation of legal uncertainty and that this has had a detrimental impact on the business of importers and/or users. They further submitted that a retroactive imposition of anti-dumping duties on registered imports would further exacerbate the detrimental effect on Union importers and/or users, who reasonably relied on their suppliers, under the assumption that they are not involved in dumping. It was further argued that the retroactive measures would hurt importers and/or users as regards imports linked to contracts concluded before the initiation of the proceeding.

(90) In this regard, the Commission firstly notes that the right of the investigating authority to register imports when certain conditions are met, is stipulated in the basic Regulation under which this investigation was initiated and that it proceeds with registration only in exceptional cases as it interprets the legal conditions, as set out in Article 14(5) of the basic Regulation, strictly. As already explained, the Commission considers that in this case the conditions for registration were clearly met. Secondly, the actual registration only took place seven months after the initiation of this investigation. Therefore, it relates to imports that have been made under the full knowledge of an on-going anti-dumping investigation and the resulting possibility of imposition of anti-dumping duties. Furthermore, the Commission underlines that the basic Regulation as well as the WTO ADA allow for an eventual retroactive application of anti-dumping measures if certain conditions are met.

(91) In view of the above, the Commission does not contest that registration of imports as such may bring certain legal uncertainty to importers and/or users concerned as it is not automatically resulting in a retroactive collection of the definitive duties, if any. The Commission neither contests that if duties are eventually levied retroactively on registered imports, this may negatively affect parties that have imported the subject merchandise during the two months period of registration, which ended with the imposition of provisional duties. However, the Commission recalls that the purpose of registration is to avoid the undermining of the remedial effect of duties, which could occur, for example, by significant imports during registration, following a substantial increase in imports and stock-piling that already took place prior to registration. Where registration remains ineffective, because operators ignore the warning in the form of registration, it is necessary to retroactively apply duties in order to ensure that the remedial effect of duties is not further delayed due to imports that take place after registration. It is likely that in respect of this case a number of importers and/or users, aware of the clear warning that retroactive duties may be imposed, stopped importing but that others decided to take the risk. The Commission therefore is satisfied that it has not breached the principle of legal certainty.

(92) In addition, where dumping stops after registration, importers can request the refund of duties paid.

2.4. *Conclusion on retroactive levying*

(93) Pursuant to Article 10(4) of the basic Regulation, anti-dumping duties may be levied retro-actively, provided that imports have been registered in accordance with Article 14(5), the Commission has given the importers concerned an opportunity to comment whether the criteria laid down in Article 10(4) of the basic Regulation are met.

(94) After having analysed the submitted comments, the Commission concludes that the importers and/or users were or should have been aware of the alleged dumping and injury since the publication of the notice of initiation on 14 May 2015. In addition to imports which caused injury during the investigation period, further significantly increased volumes of the product concerned have been imported after initiation, at prices even lower than during the investigation period. These large and low priced quantities of the product concerned have already had a further negative bearing on the prices and Union market share of the Union industry. As the import volumes, combined with the above described pricing behaviour and the market share developments are substantial and come on top of significantly increased stocks, the imports that were imported after registration are likely to seriously undermine the remedial effect of the definitive anti-dumping duty.

(95) On this basis, the Commission concludes that the conditions as set out in Article 10(4) of the basic Regulation for the retro-active application of the definitive anti-dumping duty are met. A definitive anti-dumping duty should therefore be levied on the product concerned, which was made subject to registration by Implementing Regulation (EU) 2015/2325.

(96) In accordance with article 10(3) of the basic Regulation, the level of the duty to be collected retroactively should be set at the level of the provisional duties imposed under Implementing Regulation (EU) 2016/181, to the extent that they are lower than the level of the definitive duties imposed under Implementing Regulation (EU) 2016/1328.

(97) The Committee established by Article 15(1) of Regulation (EU) 2016/1036 did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is levied on imports of flat-rolled products of iron or non-alloy steel, or other alloy steel but excluding of stainless steel, of all widths, cold-rolled (cold-reduced), not clad, plated or coated and not further worked than cold-rolled (cold-reduced), currently falling within CN ex 7209 15 00 (TARIC code 7209 15 00 90), 7209 16 90, 7209 17 90, 7209 18 91, ex 7209 18 99 (TARIC code 7209 18 99 90), ex 7209 25 00 (TARIC code 7209 25 00 90), 7209 26 90, 7209 27 90, 7209 28 90, 7211 23 30, ex 7211 23 80 (TARIC codes 7211 23 80 19, 7211 23 80 95 and 7211 23 80 99), ex 7211 29 00 (TARIC codes 7211 29 00 19 and 7211 29 00 99), 7225 50 80 and 7226 92 00 and originating in the People's Republic of China and the Russian Federation, which have been registered by Implementing Regulation (EU) 2015/2325.

The following product types are excluded from the definition of the product concerned:

— flat-rolled products of iron or non-alloy steel, of all width, cold-rolled (cold-reduced), not clad, plated or coated, not further worked than cold-rolled, whether or not in coils, of all thickness, electrical,

— flat-rolled products of iron or non-alloy steel, of all width, cold-rolled (cold-reduced), not clad, plated or coated, in coils, of a thickness of less than 0,35 mm, annealed (known as 'black plates'),

— flat-rolled products of other alloy steel, of all width, of silicon-electrical steel, and

— flat-rolled products of alloy steel, not further worked than cold-rolled (cold-reduced), of high-speed steel.

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 duty rate (%)	TARIC Additional Code
PRC	Angang Steel Company Limited, Anshan	13,7	C097
	Tianjin Angang Tiantie Cold Rolled Sheets Co. Ltd, Tianjin	13,7	C098
	Other cooperating companies listed in Annex	14,5	
	All other companies	16	C999

Country	Company	Definitive duty rate (%)	TARIC Additional Code
Russia	Magnitogorsk Iron & Steel Works OJSC, Magnitogorsk	18,7	C099
	PAO Severstal, Cherepovets	25,4	C100
	All other companies	26,2	C999

Article 2

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

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

Done at Brussels, 29 July 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Chinese cooperating exporting producers not sampled:

Country	Name	TARIC additional code
PRC	Hebei Iron and Steel Co., Ltd, Shijiazhuang	C103
PRC	Handan Iron & Steel Group Han-Bao Co., Ltd, Handan	C104
PRC	Baoshan Iron & Steel Co., Ltd, Shanghai	C105
PRC	Shanghai Meishan Iron & Steel Co., Ltd, Nanjing	C106
PRC	BX Steel POSCO Cold Rolled Sheet Co., Ltd, Benxi	C107
PRC	Bengang Steel Plates Co., Ltd, Benxi	C108
PRC	WISCO International Economic & Trading Co. Ltd, Wuhan	C109
PRC	Maanshan Iron & Steel Co., Ltd, Maanshan	C110
PRC	Tianjin Rolling-one Steel Co., Ltd, Tianjin	C111
PRC	Zhangjiagang Yangtze River Cold Rolled Sheet Co., Ltd, Zhangjiagang	C112
PRC	Inner Mongolia Baotou Steel Union Co., Ltd, Baotou City	C113