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

COMMISSION IMPLEMENTING REGULATION (EU) 2020/1408

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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

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 12 August 2019, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports into the Union of certain hot rolled stainless steel sheets and coils ('SSHR' or 'the product under investigation') originating in Indonesia, the People's Republic of China ('PRC' or 'China') and Taiwan ('the countries concerned'), on the basis of Article 5 of Regulation (EU) 2016/1036 of the European Parliament and of the Council ('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 28 June 2019 by the European Steel Association ('Eurofer' or 'the complainant') on behalf of four Union producers representing the entirety of Union production of the product under investigation. The complaint contained evidence of dumping from the countries concerned and resulting material injury that was sufficient to justify the initiation of the investigation.

1.2. Registration

(3) The Commission made imports of the product under investigation originating in and consigned from the countries concerned subject to registration by Commission Implementing Regulation (EU) 2020/104[(3)]. The registration of imports ceased with the entry into force of the provisional measures referred to in recital (5) below.

1.3. Provisional measures

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(4) In accordance with Article 19a of the basic Regulation, on 18 March 2020 the Commission provided parties with a summary of the proposed duties and details about the calculation of the dumping margins and the margins adequate to remove the injury to the Union industry. Interested parties were invited to comment on the accuracy of the calculations within three working days. In view of the comments received, corrections were made to the calculations of one Taiwanese exporting producer. The comments submitted by the Indonesian and Chinese exporting producers did not alter the calculations.

(5) On 8 April 2020, the Commission imposed a provisional anti-dumping duty on imports into the Union of SSHR originating in Indonesia, the PRC and Taiwan by Commission Implementing Regulation (EU) 2020/508[(4)] ('the provisional Regulation').

(6) As stated in recital (27) of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2018 to 30 June 2019 ('the investigation period' or 'IP') and the examination of trends relevant for the assessment of injury covered the period from 1 January 2016 to the end of the investigation period ('the period considered').

1.4. **Subsequent procedure**

(7) Following the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed ('provisional disclosure'), the complainant, one user of the product concerned, one importers' association, two Indonesian, three Chinese and two Taiwanese exporting producers, as well as the Governments of China ('GOC') and Indonesia ('GOI') filed written submissions making their views known on the provisional findings within the deadline provided by Article 2(1) of the provisional Regulation.

(8) The parties who so requested were granted an opportunity to be heard. Hearings took place with the complainant on 5 May 2020 and with the exporting producer Walsin Lihwa Co. ('Walsin') on 22 April 2020. On 19 May 2020, the Commission sent to one Union producer an additional disclosure regarding its individual target price calculation. Comments further to that additional disclosure were received on 25 May 2020.

(9) The Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports into the Union of SSHR originating in Indonesia, the PRC and Taiwan ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure.

(10) Comments were received from the GOC and GOI, two Indonesian, two Chinese and one Taiwanese exporting producers, from the complainant and from one user. The complainant was afforded two hearings, one with the Commission services and one on 12 August 2020 in the presence of the Hearing Officer. Further to that hearing, the complainant was provided with additional final disclosure on an element of the analysis concerning the effect on supply chains for European

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companies under the Union interest test under Article 7(2b) of the basic Regulation (see section 6.2.3.3 below). In addition, in view of the comments received an additional final disclosure on the undercutting and underselling calculations was provided to the Chinese exporting producers Fujian Fuxin Special Steel Co., Ltd ('FSS') and Shanxi Taigang Stainless Steel Co., Ltd ('STSS'). Furthermore, an additional final disclosure with a revised dumping margin calculation was sent to FSS as the Commission accepted the company's claim mentioned in recital (143) below.

1.5. **Sampling**

(11) In the absence of comments concerning sampling, recitals (9) to (19) of the provisional Regulation were confirmed.

1.6. **Investigation period and period considered**

(12) In the absence of comments concerning the investigation period and period considered, recital (26) of the provisional Regulation was confirmed.

1.7. **Completeness of provisional and final disclosure**

(13) The Chinese exporting producer FSS requested the disclosure of the percentage of selling, general and administrative costs used in establishing the target price of the Union industry. Furthermore, FSS as well as the exporting producer STSS requested to disclose the Union producers' sales volumes, unit sales prices and non-injurious prices and undercutting and underselling amounts per model, claiming that this was common practice in trade defence investigations. Those claims were rejected, as most product types are produced by one or two of the sampled producers. Therefore to disclose the sales volumes or prices per product type would reveal company confidential data. With regard to SG&A costs of the sampled producers, such data, as provided by the cooperating Union producers and verified by the Commission, was by nature confidential and therefore cannot be disclosed in the light of Article 19 of the basic Regulation.

(14) After final disclosure, the Chinese exporting producers FSS and STSS reiterated their request to provide more details on the undercutting and underselling calculations, in particular they requested product type specific information with regard to Union industry sales volumes and sales prices and undercutting and underselling rates per product type. Within the limits of protection of confidential data submitted by other parties, additional disclosure was provided to the two requesting parties in the form of indexes or ranges. Subsequently, no further comments were received.

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. **Claims regarding the product scope**

(15) After provisional and final disclosures, the user Marcegaglia Specialities S.p.A. ('Marcegaglia') reiterated its claim referred to in recital (39) of the provisional Regulation, which is to exclude black coils from the scope of the investigation. Marcegaglia recalled differences in surface roughness and surface finishing and distinctions in the aesthetic appearance between black and white coils. With reference

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to the last sentence of recital (44) of the provisional Regulation, Marcegaglia argued that with regard to interchangeability, black coils could not replace white coils for relevant industrial applications. On this point, Marcegaglia added that black coils did not withstand high pressure and corrosion requirements of white coils.

(16) In addition, Marcegaglia claimed that any risk of circumvention, as referred to in recital (44) of the provisional Regulation, seemed remote since black and white coils target different categories of customers, thus are not in direct competition with each other and are directly recognisable, and the Commission could introduce specific TARIC codes for the two product codes to avoid any possible risk of circumvention.

(17) With reference to recital (45) of the provisional Regulation, Marcegaglia requested the Commission to disclose the volumes of black coils that the Union industry sold to customers other than Marcegaglia. The Commission does not have information at product type level for the whole Union industry; it only has this information with regard to the sampled producers. In any event, sales information at product type level is by nature confidential within the meaning of Article 19(1) of the basic Regulation and therefore it cannot be disclosed.

(18) In the same context, the Indonesian exporters ITSS and GCNS claimed that the Commission should use the Union industry's profit margin concerning black coils only for the purpose of calculating a separate injury margin calculation, as Indonesian exports consisted almost exclusively of black coils, for which the profit margin was lower as black coils were semi-finished products.

(19) With regard to the above claims, the Commission noted that the product under investigation has been defined under Section 2 of the Notice of initiation, based on the definition provided in the complaint. The complainant has identified the products which the concerned industry has produced and sold and whose imports from the countries concerned have been dumped and caused injury.

(20) As concerns the claims for exclusion of black coils, in recitals (44) to (46) of the provisional Regulation the Commission had explained why such exclusion is not warranted.

(21) Further to the reasoning in the provisional Regulation, during the investigation period the black coils free market sales accounted for [20 to 30] %[(5)] of the entire free market sales. Moreover, the exclusion of black coils from the scope of the investigation would jeopardize the entire 'green' circular business model of the Union industry, which is to produce the product concerned from stainless steel scrap for sale or for further processing into downstream products. Indeed, under such circumstances also the viability of the production of stainless steel white coils and further downstream products by the Union industry is likely to be fundamentally affected in a negative way as white coils would be increasingly produced in the Union from dumped black coils produced less environmentally-friendly in the countries concerned. In view of the rapid increase of dumped imports, such development would, in the medium to long-term, force the Union industry to shut down important production lines. These severe consequences would thus not remain limited to the production of black coils from stainless steel scrap,

as users of white coils and also of further downstream products would continue to have the possibility to purchase these products with a significant dumped content. Therefore, fair conditions of competition on the Union's SSHR market and its downstream markets would be dramatically reduced if black coils were to be excluded, to the detriment of the Union industry.

(22) In addition, the Commission noted that it is its consistent case practice in trade defence investigations to divide a product under investigation into different models and types (product control numbers 'PCNs') to allow for a fair comparison for the determination of dumping and injury. The resulting PCNs usually distinguish models of different size and with different features but each of them is part of the product under investigation. In the current case, the finishing of SSHR is likewise identified by the second-last character of the PCN, i.e. B stands for black and W for white. Therefore, for the determination of undercutting, underselling and dumping, a fair comparison is ensured as black coils are not compared with white coils and vice versa.

(23) Finally, the Commission noted that Union producers as well as exporting producers in the countries concerned have a vertically integrated business model that includes the production of both black and white coils. This means that any such producer has a choice as to whether to sell black or white coils to the free market.

(24) Further to final disclosure, Marcegaglia reiterated the request to disclose the number of Union producers' customers and the quantities of black coils sold by the Union industry to re-rollers other than Marcegaglia in 2018 and the investigation period. The Commission recalled that this information is by nature confidential. The Commission could however provide a meaningful summary, which is that during the investigation period [1-2] sampled Union producers sold to [2-4] customers [150 000 – 180 000][(6)] tonnes of black coils.

(25) Marcegaglia further claimed that the investigation had confirmed that, with the sole exception of Marcegaglia, there was virtually no free market in the Union for black coils, and it criticized the Commission for not drawing any conclusion from this crucial circumstance. This criticism was found groundless. The mere fact that Marcegaglia is the most important user of black coils on the Union market cannot be inferred to justify a special treatment with regard to black coils or an exclusion of black coils from the scope of the product concerned.

(26) After final disclosure Marcegaglia also referred to recital (21) above and argued that the black coils imported by them were exclusively used as a raw material for the production of downstream products (SSCR, stainless steel tubes). Black coils were not used by Marcegaglia to produce white coils in order to be sold on the Union free market. In view of the above, it claimed that the relevance of the Commission's assertion that, should black coils be excluded from the scope of the measures, white coils would be increasingly produced in the Union from dumped black coils produced less environmentally-friendly in the countries concerned was difficult to perceive.

(27) This claim had to be rejected. Should no duties be imposed on black coils, Union producers are likely to get at least indirectly harmed on the downstream market