Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China

COMMISSION IMPLEMENTING REGULATION (EU) 2017/969

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THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ('the basic Regulation')[(1)], and in particular Article 15 thereof,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 13 May 2016, the European Commission ('the Commission') initiated an anti- subsidy investigation with regard to imports into the Union of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China ('the PRC' or 'the country concerned'). The initiation was based on Article 10 of Council Regulation (EC) 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community[(2)]. It published a Notice of Initiation in the *Official Journal of the European Union* ('Notice of Initiation')[(3)].

(2) The Commission initiated the investigation following a complaint lodged on 31 March 2016 by the European Steel Association ('Eurofer' or 'the complainant') on behalf of Union producers representing more than 90 % of the total Union production of certain hot-rolled flat products of iron, non-alloy or other alloy steel ('HRF'). The complaint contained evidence of subsidisation and of a resulting threat of injury that was sufficient to justify the initiation of the investigation.

(3) Prior to the initiation of the anti-subsidy investigation, the Commission notified the Government of China ('GOC')[(4)] that it had received a properly documented

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complaint, and invited the GOC for consultations in accordance with Article 10(7) of the basic Regulation. The GOC accepted the offer for consultations, which were held on 11 May 2016. During the consultations, due note was taken of the comments submitted by the GOC. However, no mutually agreed solution could be reached.

(4) A few months before the initiation of the present investigation, the Commission initiated, on 13 February 2016[5], an anti-dumping investigation on imports of the same product originating in the PRC ('the parallel anti-dumping investigation').

(5) Shortly after the initiation of the present investigation, the Commission also initiated on 7 July 2016[6], an anti-dumping investigation on imports of the same product originating in Brazil, Iran, Russia, Serbia and Ukraine.

(6) On 5 April 2017 the Commission imposed a definitive anti-dumping duty on imports of the same product originating in the PRC[7] ('the anti-dumping Regulation'). The injury, causation and Union interest analyses performed in the present anti-subsidy and the parallel anti-dumping investigation are similar, since the definition of the Union industry, the representative Union producers and the investigation period are the same in both investigations. They have been up-dated and complemented in order to take account of all factual elements brought forward in the present investigation.

1.1.1. *Comments following initiation*

(7) The GOC argued that the filing of an anti-dumping complaint against the same product from five countries on the basis of the existence of material injury within less than two months of the filing of the present complaint based on a threat of injury raises serious questions as to whether the present anti-subsidy investigation should have been initiated.

(8) The Commission noted that the anti-subsidy case against the PRC and the anti-dumping case against the same product from five other countries are two separate investigations that must be assessed on their own merits. First, the two cases have different investigation periods, which only partially overlap (the second half of 2015). Second, the anti-subsidy complaint was based on a threat of injury to the Union industry whereas the subsequent anti-dumping complaint was based on the existence of injury to the Union industry. In this respect, the Commission recalled that the determination of dumping and injury is made on the basis of an investigation period defined in line with the relevant legal provisions and announced in the Notice of Initiation for each of the two cases. Moreover, without prejudice to the results of the ongoing anti-dumping investigation concerning the other five countries, recitals (549) to (551) show that the sufficient evidence available at the time of initiation has not been invalidated by the evidence found during the investigation.

(9) The Commission thus rejected this claim as unfounded.

(10) The GOC also claimed that the investigation should be terminated because the complaint did not satisfy the evidentiary requirements of Articles 11(2) and 11(3) of the WTO Agreement on Subsidies and Countervailing Measures and of Article 10(2) of the basic Regulation. According to the GOC, there was insufficient evidence of

countervailable subsidies, injury and a causal link between the subsidised imports and the injury.

(11) The evidence submitted in the complaint constituted the information reasonably available to the complainant. It was also sufficient to show, at initiation stage, that the alleged subsidies were countervailable in terms of their existence, amount and nature. The complaint also contained sufficient evidence that there was a threat of injury to the Union industry, which was caused by the subsidised imports. The complaint consists of 166 pages, in which it describes the evidence contained in the 117 annexes. Insofar as the GOC pointed to any deficiencies with respect to the accuracy and adequacy of the complaint, the Commission examined these during the investigation, but found no reason to exclude any of the prima facie claims about the existence and extent of subsidisation when initiating the investigation.

(12) After disclosure, the GOC repeated its claim, but provided no additional grounds to substantiate it. Thus, the Commission maintained its position as described in the recital above.

1.2. **Investigation period and period considered**

(13) The investigation of subsidisation and injury covered the period from 1 January 2015 to 31 December 2015 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2012 to 31 December 2015 ('the period considered') as well as relevant post IP developments.

1.3. **Interested parties**

(14) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainant, other known Union producers, the known exporting producers and the GOC, the known importers, suppliers and users, traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.

(15) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.4. **Sampling**

(16) In the Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 27 of the basic Regulation.

1.4.1. *Union producers*

(17) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. In accordance with Article 27(1)(b) of the basic Regulation, the Commission selected a sample on the basis of the highest representative production and sales volumes, which could reasonably be investigated within the time available. The sample also represented a broad geographical spread. The Commission

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invited interested parties to comment on the provisional sample, but no comments were received.

(18) As a result, the final sample consisted of six Union producers located in five different Member States. It accounted for over 45 % of Union production.

1.4.2. *Importers*

(19) The Commission asked unrelated importers to provide the information specified in the Notice of Initiation in order to decide whether sampling was necessary and, if so, to select a sample.

(20) One unrelated importer came forward and an importer questionnaire was sent to this importer.

(21) However, even though the Commission contacted him in an effort to gather relevant information, the unrelated importer only provided an incomplete questionnaire reply.

1.4.3. *Exporting producers*

(22) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission requested the authorities of the PRC to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

(23) Nine exporting producers / group(s) of exporting producers in the country concerned provided the requested information and agreed to be included in the sample. In accordance with Article 27(1)(b) of the basic Regulation, the Commission selected the following sample of four groups of exporting producers on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available:

— Benxi Iron & Steel Group, China

— Hesteel Group, China

— Jiangsu Shagang Group, China

— Shougang Group, China.

(24) The sampled groups of exporting producers represented 68 % of the total imports of the product concerned to the Union.

(25) In accordance with Article 27(2) of the basic Regulation, all known exporting producers concerned, and the GOC, were consulted on the selection of the sample. Comments on the proposed sample were received from the complainant and two exporting producers, one included, one not included in the sample.

(26) The complainant argued that the proposed sample does not reflect the Chinese HRF industry to be investigated. More specifically, the complainant claimed that the Commission should base its sample not only on the volume of the exports, but also

on the inclusion of the full range of subsidies set out in the complaint. In this respect, the complainant considered that two of the sampled companies were not representative recipients of countervailable subsidies.

(27) The Commission observed that the criterion it used for selecting the sample is Article 27(1)(b) of the basic Regulation. According to that provision, the Commission bases the selection on the largest representative volume exported to the Union. The fact that an individual company might not be eligible for a specific type of an alleged subsidy does not render the sample non-representative, as the purpose of the sample is to represent the overall HRF industry in the PRC with regard to eligibility for all types of alleged subsidies. The four sampled groups of exporting producers are representative, in terms of eligibility for the subsidies alleged in the complaint, as the Commission has analysed in a note to the file available in the non-confidential file. Hence, the Commission considered that the selected sample represented a proper basis to examine the existence and the extent of the alleged subsidisation, and complies with Article 27(1)(b) of the basic Regulation.

(28) After disclosure, the complainant insisted that the Commission should have used Article 27(1)(a) instead of Article 27(1)(b) of the basic Regulation for selecting the sample, as this would have allowed to better reflect the subsidy programmes in place. As explained in the previous recital, the Commission considered that the four sampled groups of exporting producers were representative not only in terms of volume, but also in terms of their eligibility for the subsidies alleged in the complaint as well as the subsidy practices investigated as per the Notice of Initiation. Therefore, this claim was rejected.

(29) The first exporting producer, which was sampled, enquired about the reasons for deviating from the sample proposed for the parallel anti-dumping investigation. The Commission recalled that the anti-dumping and the anti-subsidy investigations constitute two separate investigations having a different purpose. In the anti-dumping investigation, the Commission determines whether there is dumping or not (i.e. objective price discrimination), i.e. a binary question. The finding of dumping can be extrapolated from the sample to all other companies. In the anti-subsidy investigation, the Commission establishes the amount of the subsidisation per unit exported of the product concerned. Only those subsidies that are found in the sampled companies can be countervailed. Hence, in order to ensure the effectiveness of the investigation and the protection of the Union industry, the Commission considered that it was appropriate to cover a larger volume of exports in the anti-subsidy investigation than in the antidumping investigation, so as to ensure that the sample is representative of the eligibility for the subsidies alleged in the complaint as well as the subsidy practices mentioned in the Notice of Initiation. The extended sample for the anti-subsidy investigation covers a proper scope of eligibility for the subsidisation alleged in the complaint. Three of the four sampled companies were included in the sample of the parallel anti-dumping investigation. The inclusion of an additional company within the sample was based on the consideration that it was the next largest company in terms of