ASSOCIATION BETWEEN THE EUROPEAN UNION AND TURKEY

The Association Council

Brussels, 18 January 2024
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UE-TR 4801/24

NOTE

From:	Mr Dennis REDONNET, Deputy-Director General for Trade, European Commission
On:	11 January 2024
To:	President of the EU-Turkey Association Council
Subject:	Anti-dumping proceeding concerning imports of non-alloy steel bulb flat in the range up to 204 mm width originating *inter alia* in Türkiye

Excellency,

I have the honour to inform you that the Commission has decided to impose definitive anti-dumping measures in the framework of the anti-dumping proceeding concerning imports of non-alloy steel bulb flat in the range up to 204 mm width originating inter alia in Türkiye.

In accordance with Article 46 of Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union, I hereby inform the Customs Union Joint Committee about these measures.

Attached you will find a copy of the Note Verbale sent to the Permanent Delegation of Türkiye to the European Union and a copy of the relevant Regulation published in the Official Journal of the European Union.

I take this opportunity to renew to the President of the EU-Turkey Association Council the assurance of my highest consideration.

Denis REDONNET

Deputy Director General

Encl. Note verbale and copy of the Definitive Regulation

Ref. Ares(2024)175786 - 11/01/2024

EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR TRADE

Directorate G – Trade Defence

NOTE VERBALE

The Directorate-General for Trade of the European Commission presents its compliments to the Permanent Delegation of Türkiye to the European Union and has the honour to inform that the Commission has decided to impose definitive anti-dumping measures on imports of non-alloy steel bulb flat originating, inter alia, in Türkiye.

The relevant Regulation published in the *Official Journal of the European Union* is enclosed for your information.

The Directorate-General for Trade of the European Commission takes this opportunity to renew to the Permanent Delegation of Türkiye to the European Union the assurance of its highest consideration.

Brussels, 11 January 2024
TRADE G3/1 ND (2024)170533

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COMMISSION IMPLEMENTING REGULATION (EU) 2024/209

of 10 January 2024

imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of steel bulb flats originating in the People's Republic of China and Türkiye

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 14 November 2022, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of steel bulb flats originating in the People's Republic of China ('China' or 'the PRC') and Türkiye ('the countries concerned') on the basis of Article 5 of the basic Regulation. The Commission published a Notice of Initiation in the *Official Journal of the European Union* [2] ('the Notice of Initiation').

(2) The Commission initiated the investigation following a complaint lodged on 30 September 2022 by Laminados Losal S.A.U. ('the complainant' or 'Losal'). The complaint was made on behalf of the Union industry of steel bulb flats in the sense of Article 5(4) of the basic Regulation. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

1.2. Provisional measures

(3) On 12 July 2023 the Commission published in the *Official Journal of the European Union* Commission Implementing Regulation (EU) 2023/1444 [3] imposing provisional anti-dumping duties on imports of steel bulb flats originating in China and Türkiye ('the provisional Regulation').

1.3. Subsequent procedure

(4) Following the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed ('provisional disclosure'), the Government of Türkiye, the Turkish exporting producer Özkan Demir, the Chinese exporting producer Longteng, and the Union user Fincantieri S.p.A ('Fincantieri') filed written submissions making their views known on the provisional findings within the deadline provided by Article 2(1) of the provisional Regulation. In addition, Losal provided a comment on Özkan Demir's submission after the deadline foreseen in point 8 of the Notice of Initiation.

(5) The parties who so requested were granted an opportunity to be heard. Hearings took place with the Government of Türkiye, Özkan Demir and Fincantieri.

[1] OJ L 176, 30.6.2016, p. 21.
[2] Notice of initiation of an anti-dumping proceeding concerning imports of bulb flat originating in the People's Republic of China and Türkiye (OJ C 431, 14.11.2022, p. 11).
[3] Commission Implementing Regulation (EU) 2023/1444 of 11 July 2023 imposing a provisional anti-dumping duty on imports of steel bulb flats originating in the People's Republic of China and Türkiye (OJ L 177, 12.7.2023, p. 63).

(6) 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.

(7) 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 steel bulb flats originating in the PRC and Türkiye ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure.

(8) Parties who so requested were also granted an opportunity to be heard. Hearings took place with Longteng and Özkan Demir.

1.4. Claims on initiation

(9) Following provisional disclosure, no interested party submitted any further claims or comments on initiation than those referred to in Section 1.4 of the provisional Regulation. The Commission therefore confirmed its findings and conclusions as set out in recitals (8) to (15) of the provisional Regulation.

1.5. Sampling

(10) In the absence of comments regarding the sampling of Union producers, importers and exporting producers, the Commission confirmed recitals (16) to (23) of the provisional Regulation.

1.6. Investigation period and period considered

(11) As stated in recital (28) of the provisional Regulation, the investigation of dumping and injury covered the period from 1 October 2021 to 30 September 2022 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2019 to the end of the investigation period ('the period considered').

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(12) The Commission recalled that, as set out in recital (30) of the provisional Regulation, the product concerned is non-alloy steel bulb flats in the range up to 204 mm width ('steel bulb flats'), originating in the PRC and Türkiye, currently falling under CN code ex 7216 50 91 (TARIC code 7216 50 91 10) ('the product concerned').

(13) Steel bulb flats are mainly used in the shipbuilding industry for the construction of the steel framework of passengers' cruises, ferries, military vessels, and merchant vessels. Steel bulb flats can also be used in the construction of offshore platforms and tram rails, but in the Union this application of steel bulb flats concerns only marginal quantities.

2.2. Like product

(14) In the absence of any related claim or comment, the conclusions in recitals (31) and (32) of the provisional Regulation are hereby confirmed.

3. DUMPING

3.1. China

(15) Following provisional disclosures, the Commission received comments from Longteng on the provisional dumping findings.

3.1.1. *Procedure for the determination of the normal value under Article 2(6a) of the basic Regulation*

(16) In the absence of any related claim or comment, the conclusions in recital (43) of the provisional Regulation are hereby confirmed.

3.1.2. *Normal value*

3.1.2.1. Existence of significant distortions

(17) The details of the existence of significant distortions were set out in Section 3.1.2.1 of the provisional Regulation. In the absence of any comments with respect to this section, the Commission confirmed its provisional conclusions.

3.1.2.2. Representative country

(18) In the absence of any related claim or comment, the conclusions in recital (84) of the provisional Regulation were confirmed.

3.1.2.3. Raw materials, energy, SG&A and profits

(19) Following provisional disclosure, Longteng submitted comments related to the benchmarks used for certain factors of production and to the selling general and administrative ('SG&A') costs used to construct the normal value.

3.1.2.3.1. Factors of production

(20) Longteng reiterated its claims submitted on the Second Note to the file without submitting new elements. These were summarised and rebutted in recitals (92) to (94) of the provisional Regulation. It also claimed that the benchmarks used for oxygen and nitrogen should not be based on the import prices into Malaysia as these imports were mainly based on imports from Singapore, which, allegedly, have a limited industrial production, and those benchmarks could not reflect cost associated to mass production of these products. Longteng also pointed to much lower benchmarks of the 'undistorted value' for oxygen and nitrogen established in other proceedings, where Mexico was selected as an appropriate representative country. Longteng proposed to use cost values of oxygen and nitrogen of the cooperating Turkish exporting producer, Özkan Demir.

(21) The Commission established that Singapore belonged to the world top-10 countries for these factors of production in terms of export quantities (4). Therefore, its exports to Malaysia could be used as a reasonable basis for setting these benchmarks. Moreover, import values into Malaysia, due to competition forces, are meant to reflect the value of the relevant factors of production in Malaysia. General statement with regards to the costs of production in the exporting country are therefore of limited relevance. As for the lower benchmarks used in other proceeding, as explained in recital (90) of the provisional Regulation, Mexico was not considered eligible to establish benchmarks for these inputs as it did not have imports in representative quantities for all three inputs (5). Also, these values did not relate to the same investigation period. Finally, as Özkan Demir did not purchase oxygen and nitrogen due to a different production process, such information was not available.

(22) Longteng claimed that the average import price of argon in Türkiye was artificially high and proposed to use the actual cost of argon reported by Özkan Demir or to move this factor of production to 'consumables'. However, as for oxygen and nitrogen, such information from Özkan Demir was not available. Also, given the representative volumes of imports of argon in Türkiye, there was no objective reason to consider these prices as not representative or to treat argon as consumables.

(23) On this basis, the claims relating to factors of production were rejected.

(4) Available at https://oec.world/en/profile/bilateral-product/nitrogen/reporter/sgp and https://oec.world/en/profile/bilateral-product/oxygen/reporter/sgp, consulted on 15 September 2023.

(5) Limestone, oxygen and nitrogen.

(24) Following the final disclosure, Longteng claimed that the benchmarks used in the construction of normal value for limestone, nitrogen and oxygen differed significantly from their own unit costs. Furthermore, Longteng proposed to use the import price in Brazil as benchmark for limestone while for nitrogen and oxygen it referred to prices from the largest exporting country as benchmarks.

(25) The Commission rejected these claims on the grounds that Longteng did not provide evidence allowing to positively establish that their values for the factors of production in question were undistorted, within the meaning of the second subparagraph of Article 2(6a) of the basic Regulation. Any argument based on a comparison to values that are distorted is inoperative. In addition, as far as the alternative benchmarks proposed by Longteng are concerned, the Commission noted that Brazil did not have imports of nitrogen and oxygen in sufficiently representative quantities while, as explained in recital (90) of the provisional Regulation and in recital (22) above, the Commission chose Malaysia as the only representative country which had representative quantities for all three factors in production in question. Hence such source was not considered appropriate. On this basis, this claim was rejected.

3.1.2.3.2. SG&A costs and profits

(26) Longteng claimed that certain cost elements of the 'Marketing Sales and Distribution Expenses', such as freight, export, transportation and sales commission, should not be included when calculating the SG&A costs of the representative company because the normal value needed to be calculated on an ex-works basis.

(27) The Commission re-examined the financial statements of the Turkish producer, accepted Longteng's claim and removed such expenses from the calculation of the SG&A. Contrary to what was claimed in recital (109) of the provisional Regulation the financial data was extracted from the financial statements of the company which are publicly available on the company website.

(28) In parallel, the Commission, however, also established that the provisional SG&A and profit margins of the Turkish producer had not been calculated properly as certain items had been included/excluded for the calculation of the SG&A margin but not in the calculation of the profit margin leading to a mismatch in the calculation of the margins. Detailed corrections were disclosed to the cooperating exporting producer in the PRC. The SG&A and profits percentages were consequently recalculated and resulted in percentages of respectively 13,3 % and 16,9 % of the undistorted total cost of manufacturing.

(29) Following final disclosure, Longteng claimed that the Commission when calculating profit margin of the representative company it mistakenly included the transportation expenses, which were removed from the SG&A, into the profit calculus. Furthermore, Longteng claimed that the established SG&A and profit ratio cannot be considered realistic in the steel industry.

(30) The Commission rejected this claim as there were no reasons for disregarding the lines 'other revenues/expenses from main operations' and the 'financing revenues/expenses' when calculating profit ratio as these items were factored in when calculating the total amount of SG&A. Considering these items or not in the calculation of profit and SG&A as no impact on the final dumping determination as any increase/decrease in SG&A will see a corresponding decrease/increase in the profit margin.

(31) Following the final disclosure, Longteng claimed that the Commission should have removed the foreign exchange income and expenses from the SG&A margin calculation as they stem from high fluctuations in Turkish lira valuation during the investigation period.

(32) In this regard, the Commission considered that foreign exchange income and expenses are normally taken into account when calculating SG&A expenses provided that such expenses are related to the product under investigation. Furthermore, had such expenses been excluded, they would have increased the applicable profit margin accordingly, thereby having no effect on the combined level of SG&A and profit. This claim was therefore rejected.

(33) Longteng also claimed that the Commission should not have adapted the profit percentage after deducting transportation expenses as requested by Longteng and noted in recital (29). It also argued that the SG&A and profit percentages used could not be considered realistic for the steel industry.

(34) The Commission considered that the calculations were made in line with the Commission's standard practice and the arguments mentioned by Longteng did not provide any valid reason to proceed otherwise. The Commisson considered that the figures presented by Longteng did not relate to the representative country and could therefore not be considered for this investigation. On this basis, this claim was rejected.

3.1.2.3.3. Energy

(35) After provisional disclosure, the Commission found that the increase in prices of electricity and natural gas in Türkiye outpaced the inflation rate in Türkiye. In addition, the information on prices of electricity and natural gas in the second half of 2022 were not published by the Turkish Statistical Institute. Therefore, the Commission decided to use the undistorted cost of electricity and natural gas in Malaysia. Indeed, Malaysia is a country with a level of economic development similar to the PRC and it was also used to calculate the benchmark for oxygen, nitrogen and limestone. In addition, it was also used as representative country in other similar investigations.

(36) The electricity prices in Malaysia were publicly available on the website of the electricity utility company TNB (*). The Commission used tariffs applicable to customers in the 'medium voltage' category. The natural gas prices in Malaysia were publicly available on the website of the energy commission (†). The Commission used natural gas tariffs applicable to industrial users in the fourth quarter of 2021 and selected a consumption band in line with the complainant's consumption of natural gas.

Energy			
Electricity		Tenaga Nasional – Malaysian price of electricity for industrial users	0,51 CNY/kWh
Natural gas		Energy commission – price of gas for industrial users	2,02 CNY/m^3

3.1.3. *Calculation*

(37) With the exception of the changes described in recitals (26) to (36), the Commission constructed the normal value as set out in recitals (110) to (114) of the provisional Regulation.

3.1.4. *Export price*

(38) The details of the calculation of the export price were set out in recitals (115) and (116) of the provisional Regulation. In the absence of any comments with respect to this section, the Commission confirmed its provisional conclusions.

3.1.5. *Comparison*

(39) The details concerning the comparison of the normal value and the export price were set out in recitals (117) and (118) of the provisional Regulation. In the absence of any comments with respect to this section, the Commission confirmed its provisional conclusions.

(*) Available at https://www.tnb.com.my/commercial-industrial/pricing-tariffs1 (last viewed 15 September 2023).
(†) Available at https://www.st.gov.my/en/web/consumer/details/2/10 (last viewed 15 September 2023).

3.1.6. *Dumping margins*

(40) Following the conclusions upon claims from Longteng described in recitals (23) and (27), and the findings described in recital (28) and (36) the Commission revised the dumping margins.

(41) 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
Changshu Longteng Special Steel Co., Ltd.	23 %
All other companies	23 %

3.2. **Türkiye**

(42) Following provisional disclosure, the Commission received written comments from the Government of Türkiye and Özkan Demir on the provisional dumping findings. Following final disclosure, the Commission received written comments from the Government of Türkiye and Özkan Demir.

3.2.1. *Normal value*

(43) The details of the calculation of the normal value were set out in recitals (122) to (133) of the provisional Regulation.

(44) Following provisional disclosure, Özkan Demir, in the context of its subsidiary claims detailed in recital (74) below, alleged that the 'ordinary course of trade test' ('OCOT test') should have been performed on a quarterly basis. Özkan Demir justified this claim on the basis of the substantial increase in the cost of production, which more than doubled in the investigation period. Özkan Demir explained that this led to some transactions being treated as loss-making whereas, in fact, they were profitable on a quarterly basis. Özkan Demir also claimed that the Commission in the past, when faced with substantial variations in the cost of production, had performed a monthly or quarterly dumping calculation. In support of its allegations, during the hearing, Özkan Demir referred to the panel report in Dominican Republic – AD on Steel Bars (Costa Rica) ([9]).

(45) At the outset, the Commission noted that nothing in the text of Article 2(4) of the basic Regulation mandates for the use of quarterly cost of production data. In fact, Article 2(4) refers to the 'weighted average costs for the period of investigation' as a reasonable period to determine whether prices provide for the recovery of costs. The Commission considered that the use of annual costs of production is generally accepted and appears appropriate in most cases, since it takes out extremes and short-term fluctuations of both costs and prices. It is even the norm in the practice of many investigation authorities. A departure from the use of yearly average costs is only made in very exceptional circumstances. The Commission carefully considered this claim in order to assess if there would be reasons to deviate from the method of performing the OCOT test on the basis of yearly average cost of production. However, it concluded that no exceptional circumstances were present in this case.

(46) First, as explained by Özkan Demir, the company does not produce the product under investigation continuously. Indeed, there were months during the investigation period in which there was no production at all. Using relatively short time intervals (three months in case of quarters) in such a situation would not lead to an average result that accurately represents the costs for the period it covers. In other words, since in some quarters there would be no production data for at least a third of the relevant period, the average obtained would not accurately reflect the relevant costs throughout the quarter. In such a case 'zooming out' the focus to a longer period of one year is more appropriate as the annual average more accurately represents the costs of production in that period.

([9]) DS605: Dominican Republic – Anti-dumping Measures on Corrugated Steel Bars.

(47) Following the final disclosure, Özkan Demir claimed that preferring a yearly calculation, to a quarterly calculation, in the absence of production in at most a third of the relevant period was without merit as the absence of production in given months remains. As mentioned in recital (46), the Commission considered that the use of a yearly average cost of production allows the reflection of the relevant costs throughout the whole year thereby diminishing the impact related to the absence of production in given periods. In other words, an average for a year, even if cost data for some months throughout that year were missing, more accurately reflects the costs of production in the period it covers. Özkan Demir provided no evidence to the contrary. This is clearly not the case for an average for a quarter where there is no cost data for the entire third of that quarter. Therefore, for the quarters where the third of the costs of production data was missing, the average costs of production were not considered by the Commission as representative of the period they were meant to cover. In their comments on the final disclosure Özkan Demir provided no arguments or solutions that would address this obvious deficiency of the quarterly method in this particular case. Furthermore, the Commission noted that, for several product types, there was a mismatch between the quarters where certain models were manufactured and the quarters when they were sold on the domestic market. Therefore, if the quarterly approach was adopted, for those product types it would not be possible to conduct an ordinary course of trade test under Article 2(4) of the basic Regulation. This is because for some of the quarters where sales occurred there would be no cost data at all. In other words, the quarterly approach would not only lead to unrepresentative values when considered generally, but, for specific product types, it would not allow a comparison of the price applicable in that quarter with corresponding costs in the same quarter. On this basis, it was confirmed that the use of a yearly average cost of production for each model would allow the reflection of the relevant costs throughout the whole year and be an appropriate basis for a yearly dumping calculation. The claim was therefore rejected.

(48) Second, the data provided by Özkan Demir does not allow to establish an accurate and verified SG&A for each quarter as this information was only submitted on an annual basis and for the investigation period as a whole. Hence, no quarterly data was available to allow for a quarterly dumping calculation or OCOT test using corresponding information relating to each quarter as far as SG&A are concerned.

(49) Following the final disclosure, Özkan Demir claimed that the SG&A did not fluctuate over the course of the investigation period and referred to the SG&A percentages applicable in 2021 and the investigation period to support its claim. Özkan Demir also claimed that the Commission did not request such information while requesting monthly cost of production.

(50) In this regard, the Commission considered that, when requesting the Commission to perform quarterly dumping calculations, Özkan Demir should have provided all relevant information allowing the Commission to perform such calculations. In the absence of such information, the Commission was not in a position to assess the level of the SG&A applicable in each quarter. In addition, when submitting its comments on the final disclosure, Özkan Demir did not provide SG&A on a quarterly basis either. As far as the 2021 and investigation period SG&A figures are concerned, the Commission noted that, although the applicable percentages may appear similar, they do not relate to the various quarters of the investigation period and hence do not provide an analytical insight into the fluctuation of such values across the investigation period. Furthermore, in view of the uneven fluctuation of the Turkish Lira v the EUR and USD over the investigation period, one can expect that the SG&A, which consist to a great extent of foreign exchange gain and losses, did not develop evenly. This claim was therefore rejected.

(51) Finally, as also set out in recital (77), the domestic sales were not concentrated in a particular period, but were evenly distributed per quarter of the investigation period, with the highest volumes being sold during the third quarter of the investigation period. The export sales followed the same pattern so that sales of the product under investigation were evenly distributed on both domestic and export markets thus allowing for a fair comparison of domestic and export sales covering the same period.

(52) Following the final disclosure, Özkan Demir claimed that domestic sales were concentrated in the fourth quarter of 2021, whereas export sales were concentrated in the first quarter of 2022. However, the methodology of Özkan Demir was flawed as it was based on the order date, not the invoice date. Furthermore, should the Commission perform a quarterly dumping calculation, it would use the date of invoice to distinguish sales by quarter. The pattern of trade needs therefore to be analysed by distributing the sales by quarter according to their invoice date. In doing so, one can note that the highest volumes were sold during the third quarter of the investigation period both for domestic and export sales. This claim was therefore rejected.

(53) The Commission further noted that the panel report in DS605 mentioned by Özkan Demir was appealed by the Dominican Republic and was therefore not adopted by the WTO dispute settlement body. Furthermore, the facts of this case are different. In the investigation in DS605, more than 50 % of the sales were eliminated from the normal value calculation. Also, in DS605 the increase of costs concerned one (main) raw material only, whereas in the present case it concerned a combination of increase of cost of production, inflation and devaluation of the currency. By contrast, in the case of Özkan Demir, the large majority of the domestic sales (around [70–65 %] of the sales volume) were found to be in the ordinary course of trade, and hence used in the calculation of the normal value. This is because, in the present case, the Commission also concluded that the sales of Özkan Demir were not concentrated on a particular quarter but spread throughout the investigation period.

(54) What matters for the purpose of Article 2(4) of the basic Regulation is that sales prices allow for recovery of costs and result in sustainable profitability within a reasonable period of time; profitability at a certain point of time only matters less.

(55) In this regard and when considering relevant adopted WTO jurisprudence, the Commission recalled that the Panel in EC – Salmon (Norway) specifically acknowledged that 'a finding of sales made at prices above weighted average cost for the period of investigation would be sufficient to show that all sales not found to be above weighted average cost for the period of investigation do not provide for the recovery of costs within a reasonable period of time' (9). The panel also discussed the meaning of the terms 'at the time of sale' and noted in paragraph 7.243 that 'Article 2.2.1 [of the Anti-Dumping Agreement] does not explain what is meant by "prices which are below per unit costs at the time of sale". In this regard, we see a similarity between the first and second sentences of Article 2.2.1. Although both sentences envisage a calculation of per unit costs over a period of time, neither specifies exactly what this period of time should be. It is true that the second sentence goes further than the first sentence in that it contemplates an assessment of costs at the "time of sale". However, in our view this means only that the relevant time-period must include "the time of sale". Thus, it would be entirely consistent with the second sentence of Article 2.2.1 for an investigating authority to calculate per unit costs at the "time of sale" over the particular day of sale, or an average including that day, over a week, month or the period of investigation.' The panel further elaborated on its reasoning in footnote 417 where it stated that 'In this regard, we find it significant that whereas the drafters of the AD Agreement used the words "date of sale" in Article 2.4.1, they chose to use "time of sale" in the second sentence of Article 2.2.1. In our view, this difference supports the view that the "time of sale" that is referred to in the second sentence of Article 2.2.1 does not necessarily have to be the "date of sale", and may include other "time" periods.'

(56) The Commission also noted that assessing the profitability of domestic sales on a quarterly basis or yearly basis made no difference for a significant share of the domestic sales as explained in recital (81) below.

(57) Following the final disclosure, Özkan Demir referred again to the panel report in DS605. As mentioned in recital (52), this report was appealed by the Dominican Republic and therefore not adopted by the WTO dispute settlement body. In any event, as noted in recitals (46)–(48) in the case of Özkan Demir, for very specific reasons particular to the investigation period data of the company, a reliable quarterly calculation was impossible. In view of the above considerations, the Commission rejected the request to carry out a quarterly OCOT test.

(9) DS337: European Communities – Anti-Dumping Measure on Farmed Salmon from Norway, para. 7.275.

3.2.2. *Export price*

(58) The details of the calculation of the export price were set out in recitals (134) and (135) of the provisional Regulation. In the absence of any comments with respect to this section, the Commission confirmed its provisional conclusions.

3.2.3. *Comparison*

(59) The details concerning the comparison of the normal value and the export price were set out in recitals (136) to (138) of the provisional Regulation.

(60) Following the publication of the provisional Regulation, Özkan Demir commented on the use of the date of the purchase order to convert the normal value and the export price into Turkish Lira (TRY) in accordance with Article 2(10)(j) of the basic Regulation.

(61) Given the significant devaluation of the TRY during the investigation period and considering that the material terms of sale were set at the time of the purchase order, as explained in recital (138) of the provisional Regulation, when converting the price of both domestic and export sales from euro and USD to TRY under Article 2(10)(j) of the basic Regulation the Commission used the exchange rate of the date of the purchase order (instead of the date of the invoice).

(62) Özkan Demir claimed that the Commission should have used the invoice date for the currency conversion. It argued that the material terms of the sale were not set at the time of the order, as some invoices related to quantities that were outside the tolerance (+/- 5 or 10 %) specified in the purchase order. The Commission, however, noted that none of the sales outside tolerances were contested by the customers pointing to the fact that tolerances do not belong to such material terms of sales unlike the basic quantity and the unit price. In addition, as mentioned in recital (138) of the provisional Regulation, the analysis of the concrete practice of the Turkish exporting producer showed that the material terms of sales including the quantities and the price were settled at the time of the purchase order.

(63) Following the final disclosure, Özkan Demir reiterated its claim that the Commission should have used the invoice date for the currency conversion. In particular, Özkan Demir argued that the material terms of sales and especially the final quantity and price were set at the time of invoice. It also argued that the Commission conceded that tolerances do not constitute material terms of sales, yet still selects the purchase order, wherein the tolerance predominantly governs the quantity, as the determinant for setting the material terms of sales.

(64) The Commission noted that the use of tolerance is a general practice when selling bulb flat but also steel product more generally. Companies in this industry agree at the time of the order on quantities and unit prices. The fact that tolerances are used is illustrative of the steel sector where approximate quantities are ordered using tolerances to reflect the inability of producers to deliver exact quantities given the nature of the product. The use of such tolerances does not affect the fact that the material terms of the sale, i.e. quantities and unit prices are set at the moment of the order. Such rebuttal is also confirmed by the fact that none of the sales outside tolerances were contested by the customers, as mentioned in recital (62). On this basis, this claim was rejected.

(65) Özkan Demir also argued that the Commission did not sufficiently substantiate why it deviated from its standard practice and used the order date instead of the invoice date for conversion purposes. The Commission considered that sufficient reasons had been exposed by referring to the moment when the material terms of sales were set, the devaluation of the TRY and the impact of price and price comparison to justify an adjustment. While both domestic and EU sales are priced in foreign currency, the time difference between the date of purchase order and the date of invoice varies from one transaction to another and is on average longer for EU sales than for domestic sales. The variation of the exchange rate can therefore affect the price comparison and a fair comparison requires the use of the date of the sale for the currency conversion into TRY.

(66) Following the final disclosure, Özkan Demir reiterated its claim that the Commission did not meet the burden of proof for making an adjustment and did not demonstrate the impact of the variation of exchange rate on prices and price comparability. The Commission first noted that the adjustment foreseen by Article 2(10)(j) of the basic Regulation is currency conversion that enables a dumping calculation where values for costs and prices in various currencies must be compared. Özkan Demir does not contest the need for this adjustment. Within this adjustment the Commission is to choose a date for a conversion rate. According to Article 2(10)(j), 'purchase order or order confirmation may be used if those more appropriately establish the material terms of sale'. As explained above and in recital (138) of the provisional Regulation, in this particular case, the purchase order more appropriately establishes the material terms of sale. Özkan Demir failed to rebut this fact in their comments on the final disclosure. Indeed, the Commission noted that during the investigation period the devaluation of the Turkish Lira as compared to the Euro was of around 74 %. The Commission also noted that the time lag between the order date and the invoice date varied greatly: between 0 days and 266 days for domestic sales and between 20 days and 219 days for sales to the EU. This means that, had the exchange rate of the date of the invoice been used, the material terms of sales (such as prices) set at the time of the purchase order would have been distorted by a significant difference in the exchange rate that occurred between that date and the date of the invoice due to the devaluation of the Turkish Lira. The Commission also noted that Özkan Demir was using foreign currencies for its domestic and export sales which shows that it anticipated strong variations in the valuation of its domestic currency compared to foreign currencies. Therefore, the company itself was mitigating the effects of the devaluation on the price agreed at the moment of the purchase order and the income that agreed price could secure when invoiced. In other words, Özkan Demir itself used currency-based mechanisms to prevent the distortion of prices agreed in purchase orders by the devaluation of the Turkish domestic currency.

(67) Following final disclosure, Özkan Demir referred to a past investigation ([10]) where two Turkish exporters sought a currency conversion adjustment pursuant to Article 2(10)(j) of the basic Regulation and claimed that the Commission was using a lower standard of proof when 'effecting' a currency conversion adjustment. Based on the facts of the case at hand, the Commission considered that it had demonstrated that there were sufficient elements justifying the use of the purchase date as the date of the currency exchange as referred to in recital (138) of the provisional Regulation and recitals (61) to (66) above. On this basis, this claim was rejected.

(68) Furthermore, Özkan Demir claimed that the use of the order date had led to a change of the investigation period and to the use of an incomplete data set. The Commission disagreed and considered that the investigation period remained unchanged. The investigation period was consistently used to define and base the dumping calculation on a complete set of transactions with an invoice date in the investigation period. The use of the order date was strictly limited to the adjustment under Article 2(10)(j) of the basic Regulation.

(69) Following final disclosure, Özkan Demir reiterated its claim that the Commission used incomplete data sets, because the date of sales changed from invoice date to order date. In the absence of new elements on this point, the Commission referred to recital (68) rebutting Özkan Demir's claim.

(70) In its comments, Özkan Demir also referred to the instructions contained in the anti-dumping questionnaire issued to Özkan Demir claiming that it was instructed to 'use invoice date as the date of sale to determine which sales fall within the investigation period' and indicated that the use of the order date in the calculation was contrary to such instructions and lead to a change in the dataset. In the same respect, Özkan Demir referred to Dominican Republic – AD on Steel Bars (Costa Rica) ([11]) where the EU indicated that 'investigating authorities should match export and domestic prices falling within the same [period of investigation] and on the basis of the same criteria (e.g. the date of the invoice)'. In this regard, reference is made to recital (68) confirming the use of the invoice date to define the investigation period for both domestic and export sales but using the order date as a modality for the adjustment under Article 2(10)(j) of the basic Regulation. On this basis, this claim was rejected.

([10]) Commission Implementing Regulation (EU) 2021/1100 of 5 July 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Türkiye (OJ L 238, 6.7.2021, p. 32).

([11]) Panel Report, Dominican Republic – Anti-Dumping Measures on Corrugated Steel Bars, WT/DS605/R, Annex C-4 Integrated Executive Summary of the Arguments of the European Union.

(71) As all export sales to the EU and most domestic sales were performed in euro, Özkan Demir submitted that the dumping margin calculations could be performed in euro to avoid any effect linked to currency conversion. Özkan Demir noted that the basic Regulation does not mention anything about the currency used for the calculation of the dumping margin. However, the Commission considered that this methodology would also require converting the costs of production and the sales price of certain domestic sales into euro. For this reason, it was considered appropriate to perform dumping calculations in the currency of the exporting country.

(72) On these bases, Özkan Demir's claims were rejected.

(73) The complainant claimed that the date of offer (which precedes the date of order) should be used as a basis for currency conversion. Article 2(10)(j) of the basic Regulation, however, does not provide such basis for conversion. More importantly an offer cannot be considered as an agreement on the material terms of sale between two parties. The claim of the complainant was therefore rejected.

(74) Özkan Demir put forward some subsidiary claims, should the Commission reject its claims related to the use of the date of the purchase order for the purpose of an adjustment under the Article 2(10)(j) of the basic Regulation.

(75) The first subsidiary claim was to exclude the transactions with the order date outside of the investigation period. The Commission considered that this methodology would mean disregarding a significant number of transactions that were invoiced in the investigation period. The investigation period and the associated transactions could not be changed in the course of the investigation, as also rightly recalled by Özkan Demir in its submission. This claim was therefore rejected.

(76) The second subsidiary claim was to perform the dumping calculation on a quarterly basis.

(77) Firstly, Özkan Demir justified this claim by the high devaluation and hyperinflation in Türkiye during the investigation period. However, the Commission noted that there was no substantial difference in the patterns of domestic and export sales that would justify quarterly calculations. In fact, both domestic and export sales were evenly distributed per quarter, with the highest volumes being sold during the third quarter of the investigation period on both the domestic and the export market. Though differences in the distribution of domestic and export sales are bound to occur, it is only in exceptional situations that the Commission may set aside an annual approach and perform quarterly calculations instead of yearly calculations. Such exceptional situation was not observed and this argument could therefore not lead to a change in methodology.

(78) Following final disclosure, Özkan Demir reiterated the same claims as those referred to in recitals (75) and (76). In the absence of new elements on this point, the Commission referred to recital (77) rebutting Özkan Demir's claim.

(79) In addition, before the provisional disclosure, Özkan Demir explicitly stated, in its reply to the second deficiency letter, that a monthly calculation may not be appropriate in this case. The Commission fails to understand why a quarterly dumping calculation should be more accurate than a monthly one, the latter having been rejected by the company. Indeed, at least in theory, a monthly calculation should even further neutralise the effects of a significant cost increase in the investigation period and/or high inflation and a devaluation of the TRY. The Commission cannot be under an obligation to deviate from the standard methodology in line with the basic Regulation whenever an exporting producer requests a different methodology that would improve its dumping margin.

(80) Also, as already set out above in recital (77), both domestic and export sales were evenly distributed per quarter, with the highest volumes being sold during the third quarter of the investigation period on both the domestic and the export market. This showed that a fair comparison was made in respect of sales made as, as closely as possibly, the same time, in line with Article 2(10) of the basic Regulation. The fact that, as claimed by Özkan Demir, percentages of the volumes export sales and domestic sales for certain product types different slightly per quarter, did not change this conclusion. Also, the theoretical examples given by Özkan Demir [15] indeed show that differences in the timing of sales are relevant, but are otherwise simplifications of the reality, as for example the devaluation of the TRY in relation to the EUR are not considered.

(81) Furthermore, performing a dumping calculation on a quarterly basis would only address to a very limited extent the concern of Özkan Demir that domestic sales would be treated as lossmaking, whereas, at a certain point in time they were profitable to a very limited extent, when using quarterly or monthly calculations. Even if the Commission were to carry out quarterly dumping calculation, the share of domestic sales that would be considered profitable would not increase significantly (less than 10 %) when compared with annual dumping calculations.

(82) Therefore, on balance, the Commission concluded that in this case there were no sufficient reasons to depart from the annual dumping calculation and to resort to another method. This claim was therefore rejected.

(83) Secondly, the last subsidiary claim was that the Commission should have recalculated the cost of the allowances booked in TRY, relating mostly to transport costs, by applying the exchange rate on the date of order, instead of the date of the invoice, in line with the calculation of the sales value. The Commission noted that the use of the order date related to an adjustment for currency conversion as per Article 2(10)(j) of the basic Regulation whereas adjustments pertaining to transport, insurance, handling, loading and ancillary costs are governed by Article 2(10)(e) of the basic Regulation whereby the cost incurred shall be used. This claim was therefore rejected.

3.2.4. *Dumping margin*

(84) 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
Türkiye Özkan Demir Çelik Sanayi A.Ş	13,6 %
All other companies	13,6 %

4. INJURY

4.1. Definition of the Union industry and Union production

(85) In the absence of any related claim or comment, the conclusions in recitals (143) to (145) of the provisional Regulation were confirmed.

4.2. Union consumption

(86) In the absence of any related claim or comment, the conclusions in recitals (146) to (149) of the provisional Regulation were confirmed.

[15] Pages 21 and 22 of the submission of 27 July 2023.

4.3. **Imports from the countries concerned**

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

(87) The Government of Türkiye claimed that the examination of imports should be conducted separately for each country concerned. According to the Government of Türkiye, the Commission did a cumulative analysis of the imports 'to be able to determine an increase in imports and to be able to take a measure'. In addition, the Government of Türkiye claimed that an increase of market share of 4 % by the countries concerned is not a significant increase in imports as identified in the WTO Anti-dumping Agreement.

(88) The Commission's decision to examine imports from China and Türkiye cumulatively was in line with Article 3(4) of the basic Regulation and Article 3.3 of the WTO Anti-dumping Agreement. Both these articles have two conditions on which the Commission may perform a cumulative assessment: '(a) the margin of dumping established in relation to the imports from each country is more than *de minimis* as defined in Article 9(3) [of the basic Regulation and paragraph 8 of Article 5 of the WTO Anti-dumping Agreement] and the volume of imports from each country is not negligible; and (b) a cumulative assessment of the effects of the imports is appropriate in the light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like Union [domestic] product'.

(89) A 'significant increase in imports' as referred to by the Government of Türkiye does not form part of these conditions. The Government of Türkiye did not contest that either of those two elements were met in this case. The conclusion of recitals (150) to (153) of the provisional Regulation that the conditions for cumulative assessment were met was therefore confirmed.

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

(90) As mentioned in recital (87) above, the Government of Türkiye claimed that the 4 % increase in market share from the countries concerned between 2019 and the investigation period shown in Table 3 in the provisional Regulation was not to be seen as significant. However, according to the WTO, the word significant should be interpreted as defined in the Oxford dictionary, meaning 'noteworthy; consequential, influential'. In addition, Article 3.2 of the WTO Anti-dumping Agreement (equivalent to Article 3(3) of the basic Regulation) which refers to the need to consider whether there has been a significant increase in dumped imports 'does not set out a minimum threshold for what qualifies as a "significant" increase; whether an increase is "significant" will depend on the specific circumstances of the case' ([13]).

(91) In the case at hand, the Commission considered an increase of 4 % significant, especially in light of the much higher increases in the previous years of the period concerned. As explained in recital (157) of the provisional Regulation, the lower market share in the investigation period as compared with the years 2020 and 2021 was due to a particular situation on the Union market which was not structural or likely to continue after the investigation period. The Commission therefore rejected this claim and confirmed recitals (154) to (157) of the provisional Regulation.

4.3.3. *Prices of the imports from the countries concerned, price undercutting and price suppression*

(92) Following the publication of the provisional Regulation, Özkan Demir disputed the methodology employed by the Commission for calculating undercutting. According to this claim, the Commission performed a 'double conversion' of the EU sales by converting the euro amounts on the invoices of Özkan Demir into TRY using the exchange rate of the date of the order and then converting them back into EUR at a different exchange rate, i.e. the one of the month of the invoice. The Commission acknowledged this error and made the necessary correction by using the euro amounts on the invoices of Özkan Demir (adjusted to the CIF landed value) to calculate the import prices.

([13]) WT Panel Report in Case DS538 – Pakistan – BOPP Film (UAE), para. 7.263.

(93) As a consequence, the average import price for Türkiye in the investigation period as reported in Table 4 in the provisional Regulation was also corrected, as shown in the below table:

Table 4

Import prices (EUR/tonne)

	2019	2020	2021	Investigation period
PRC	[800–900]	[800–900]	[850–1 000]	[1 000–1 200]
Index	*100*	*95*	*108*	*133*
Türkiye	[700–800]	[700–800]	[850–1 000]	[1 100–1 300]
Index	*100*	*92*	*119*	*157*

Source: Cooperating exporting producers.

(94) Following this correction, the average undercutting margin for Türkiye became *de minimis*, with an underselling margin for Türkiye of 15,41 %. As concluded in Section 4.3.3 of the provisional Regulation, the Commission established the existence of price suppression. Due to the significant price pressure caused by the dumped imports on the Union market in very high volumes, the Union industry was prevented from increasing its sales prices to achieve a profitable situation during the period concerned.

(95) The Government of Türkiye asked whether the Commission considered the burden on the imported steel bulb flats caused by the safeguard measures which were in place against steel products [14] including the product concerned during the investigation period. In case the tariff quota is exhausted for the product group which includes steel bulb flats, importers would have to pay 25 % in safeguard duties on the out-of-quota imports.

(96) In analysing the effect of the safeguard duties, the Commission took into account the temporary nature of safeguard duties as explained in recital (252) of the provisional Regulation. In addition, it was found that during the investigation period, safeguard duties were paid on only 18,5 % of all Union imports of steel bulb flats. The available customs data for this period, however, did not allow a differentiation between the product under investigation and other steel bulb flats, which include sizes outside the product scope of the current investigation. However, since the larger sizes of steel bulb flats are not produced in the Union, it is likely that these formed a larger part of the import volumes than the product under investigation. Information provided during the on-spot verification of the cooperating Union user Fincantieri corroborated this.

(97) Since (1) more than 80 % of the imported steel bulb flats from Türkiye were not subject to safeguard duties; (2) it is likely that a large part of the steel bulb flats on which safeguard duties were paid fell outside the scope of the current investigation; (3) no evidence was provided showing the impact of the safeguard duties on the export prices of the Turkish exporting producers; and (4) safeguard duties are temporary by nature, the Commission considered that an adjustment of the CIF prices in order to take safeguard duties into account was not warranted. Regarding the application of the safeguard duties on imports of steel bulb flats from the PRC, the quotas were not exhausted in any of the quarters during the investigation period.

[14] Commission Implementing Regulation (EU) 2022/978 of 23 June 2022 amending Implementing Regulation (EU) 2019/159 imposing a definitive safeguard measure on imports of certain steel products (OJ L 167, 24.6.2022, p. 58).

(98) Following the final disclosure, the Government of Türkiye reiterated its comments on the inclusion of the safeguard measures in the calculation of the injury margin. According to the Government of Türkiye, including safeguards in the calculation could potentially lower the injury margin to below the dumping margin. However, as pointed out in recitals (96)–(97), only a limited volume of exports was subject to safeguard measures during the investigation period. No evidence was provided that such a limited volume would have been subject fully to the payment of the 25 % safeguard duty. Therefore, it is unlikely that the safeguard measure would have had any impact on the export prices.

(99) In addition, the Commission was not provided with any evidence as to the impact of the safeguards on the export prices. After the final disclosure, the Government of Türkiye claimed that neither the Government of Türkiye nor Turkish exporters have information about the influence of the safeguard duties on exporters' prices as only importers would have such information. They argued that the Commission should rely on import transactions and customs declarations instead. However, prices are set between supplier and customer. In case the safeguard duties would have had an impact on export prices, this issue would likely have been part of the price negotiations. Its influence on the export prices would therefore be well-known to the exporting producers. However, no claim for such an adjustment was made by any importer or exporting producer, nor was any evidence provided which could be used for the calculation of such adjustment. This claim was therefore rejected.

4.4. Economic situation of the Union industry

4.4.1. *General remarks*

(100) In the absence of any related claim or comment, the conclusions in recitals (164) to (167) of the provisional Regulation were confirmed.

4.4.2. *Macroeconomic indicators*

4.4.2.1. Production, production capacity and capacity utilisation

(101) The Government of Türkiye stated that the Commission 'assumes that Lamonirul's bankruptcy is related to the increase in imports and alleged dumping', and that the causes of Laminorul's bankruptcy should be rigorously analysed by the Commission. In addition, the Government of Türkiye asked whether Laminorul's data were taken into account in the production, capacity and capacity usage rates.

(102) The Commission never made any assertions as to what the causes were for the demise of Laminorul. In fact, the bankruptcy of that company was a fact that was taken into account as such only. As was explained in recitals (11) and (12) of the provisional Regulation, the Commission considered that Laminorul was part of the Union industry during the period considered and the company was therefore included in its data and analysis.

(103) As also explained in recital (12) of the provisional Regulation, the effect of including Laminorul's data in its analysis was explicitly taken into account in multiple sections of the provisional Regulation. This was also the case for production and capacity, where in recitals (169) and (170) of the provisional Regulation the Commission showed that without Laminorul, production volumes and capacity utilisation rates went down during the period considered, while capacity remained stable. These claims were therefore rejected.

(104) In the absence of any other related claim or comment, the conclusion of recitals (168) to (170) of the provisional Regulation were therefore confirmed.

4.4.2.2. Sales volume and market share

(105) In the absence of any related claim or comment, the conclusions in recitals (171) to (172) of the provisional Regulation were confirmed.

4.4.2.3. Growth

(106) In the absence of any related claim or comment, the conclusions in recital (173) of the provisional Regulation was confirmed.

4.4.2.4. Employment and productivity

(107) In the absence of any related claim or comment, the conclusions in recitals (174) to (176) of the provisional Regulation were confirmed.

4.4.2.5. Magnitude of the dumping margin and recovery from past dumping

(108) In the absence of any related claim or comment, the conclusions in recitals (177) to (178) of the provisional Regulation were confirmed.

4.4.3. *Microeconomic indicators*

4.4.3.1. Prices and factors affecting prices

(109) In the absence of any related claim or comment, the conclusions in recitals (179) to (181) of the provisional Regulation were confirmed.

4.4.3.2. Labour costs

(110) In the absence of any related claim or comment, the conclusions in recitals (182) to (183) of the provisional Regulation were confirmed.

4.4.3.3. Inventories

(111) In the absence of any related claim or comment, the conclusions in recitals (184) to (185) of the provisional Regulation were confirmed.

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

(112) In the absence of any related claim or comment, the conclusions in recitals (186) to (190) of the provisional Regulation were confirmed.

4.4.4. *Conclusion on injury*

(113) In view of the above and in the absence of any other related claim or comment, the conclusions in recitals (191) to (198) of the provisional Regulation were confirmed.

5. CAUSATION

5.1. Effects of the dumped imports

(114) The Government of Türkiye put forward that Türkiye's market share decreased during the period concerned, dropping to a level in the investigation period that was below that of 2019. In addition, they pointed out that the Union producer had the ability to increase their sales with a price increase above production costs. According to them this would show that the Union industry is not competitive.

(115) However, the Commission observed that Türkiye's market share was in both 2020 and 2021 above the level of 2019, and only slightly below that level in the investigation period. As already explained in recital (91) above and in recital (157) of the provisional Regulation, this slight drop in market share in the investigation period was largely related to a non-structural occurrence in this period, which was unlikely to continue after the investigation period. In any event, since for the injury analysis the Commission cumulated imports from Türkiye and the PRC, specific changes as regards Turkish imports are not relevant.

(116) After the final disclosure, the Government of Türkiye argued that the Commission should not 'ignore the positive trend in the Union industry's indicators as non-structural elements of the market and claim the industry is facing material injury.' However, as was clear from the conclusions on injury in Section 4.4.4 of the provisional Regulation, there was no positive trend visible in the Union industry's indicators. The non-structural elements of the market the Government of Türkiye referred to only concerned the Union's increase in market share between 2020 and the investigation period, which, as explained, was likely to be of a temporary nature. Moreover, the Union industry's market share in the investigation period was still below that in 2019, the beginning of the period concerned.

(117) As for the price increase above production costs mentioned by the Government of Türkiye, the average unit sales price in the Union was consistently below production costs during the entire investigation period. In addition to the fact that the Commission's analysis was not limited to Turkish imports only, but in combination with Chinese imports, the Commission noted that the continuous influx of low-priced dumped imports from both Türkiye and the PRC prevented the Union industry from raising their prices to the level required to attain a profitable situation. This was not disputed by any interested party. This claim of the Government of Türkiye was therefore rejected.

(118) In light of the above and in the absence of further comments, recitals (200) to (206) of the provisional Regulation were confirmed.

5.2. **Effects of other factors**

(119) The Government of Türkiye urged the Commission to explore the influence of other factors such as changes in technology, customer preferences and the competitive pressure of non-dumped imports which, according to them, were excluded from the Commission's analysis.

(120) First, it was not clear to which changes in technology the Government of Türkiye referred to, nor was any supporting evidence presented by any interested party on this issue.

(121) Second, the influence of customer preferences for imported steel bulb flats versus Union produced steel bulb flats was included in the analysis in Section 2.3 of the provisional Regulation. There it was explained that steel bulb flats both produced in the countries concerned and produced in the Union have the same basic physical, chemical and technical characteristics as well as the same basic uses. Customer preferences may exist though do not play a role in the dumping nor injury analysis. In any case, imposed measures do not have the intention to close the market or to expel parties from the market. This argument was thus irrelevant.

(122) Third, the competitive pressure of non-dumped imports was extensively analysed in Section 5.2.1 in the provisional Regulation. There it was concluded that, due to the particularities in the steel bulb flats production in the United Kingdom and the relatively high import prices, the competitive pressure from those imports was not such as to attenuate the causal link between the Union industry's injury and the dumped imports from the countries concerned.

(123) The cooperating Union user, Fincantieri, claimed that the Commission underestimated the impact of the bankruptcy of Laminorul and of the COVID-19 pandemic on the performance of the Union industry. According to Fincantieri, the Commission erred in considering that these factors were not able to attenuate the causal link between the injury suffered by the Union industry and the dumped imports from the countries concerned. In this respect, Fincantieri especially pointed to the demise of Laminorul as the cause of injury to the Union industry as a whole.

(124) However, as explained in recital (103) above, throughout the provisional Regulation it was shown that injury existed both with and without including Laminorul in the injury analysis. From the data it is clear that it cannot be said that 'the negative indicators of the Union industry's performance in 2019' – or in the rest of the period concerned, for that matter – were caused 'mainly if not exclusively' by the bankruptcy of Laminorul, as claimed by Fincantieri.

(125) For example, both with and without Laminorul, the capacity utilisation rate was below 50 % in 2019 (recital (170) of the provisional Regulation), market share was below 50 % (recitals (171) and (172)), the average sales price in the Union was below cost of production (Table 8 of the provisional Regulation), the complainant was loss-making (Table 11 of the provisional Regulation), and there was a negative return on investment (also Table 11). As also concluded in Section 4.4.4 of the provisional Regulation, this negative injury situation coincided with significant volumes of dumped imports from the countries concerned.

(126) Fincantieri also referred to the statement made in the provisional Regulation in recital (172) that part of the sales of Laminorul were replaced by imports rather than sales of other Union producers.

(127) In this respect Fincantieri claimed that, first, Union producers continued to represent a primary source of supply for the Union's shipbuilding industry.

(128) Second, Fincantieri claimed that the fact that the Union producer Olifer s.p.l. ('Olifer') did not come forward showed that its economic situation was not negatively affected by imports from the countries concerned. This, according to Fincantieri, showed that the problem lies with the complainant, Losal. Fincantieri claimed that Losal's business model was affected by serious structural deficiencies. According to Fincantieri, Losal suffered from the same structural and logistical issues which led to the bankruptcy of Laminorul and which were the result of factors unrelated to imports from the countries concerned.

(129) However, while indeed the Union producers were an important source of supply for the Union's shipbuilding industry, [57,0–64,0 %] of the market was supplied by imports from Türkiye and the PRC during the investigation period. The countries concerned were therefore the primary source of supply for the Union shipbuilders, not the Union industry.

(130) Why Olifer did not cooperate is unknown to the Commission, but it could be driven by, for example, the time and effort required for cooperating in an investigation, which is not insignificant especially for a small and medium-sized enterprise such as Olifer. It could also be driven out of fear to antagonise their main customers, one of which is Fincantieri. In any event, there was no evidence that the non-cooperation by Olifer was indicative of its economic situation. In addition, on the Union user side only Fincantieri itself cooperated in the investigation. If Fincantieri's argument holds true for Olifer, the same could be said for the Union's shipbuilding industry which is composed of a large number of companies other than Fincantieri. Moreover, the Commission's analysis was also based on the macroeconomic indicators set out in Section 4.4.2 of the provisional Regulation. For that analysis it was irrelevant who cooperated and who did not.

(131) As for the claim that Losal's current situation was due to structural issues comparable to Laminorul before its bankruptcy, the Commission was not in a position to compare the situation of the two companies. Publicly available information, as well as comments made by both Losal and Fincantieri, showed that there was no consensus on the reasons for Laminorul's demise and its eventual bankruptcy.

(132) What was clear, however, from the information provided by both Losal and Fincantieri, was that there were indeed some issues with deliveries by Losal during the investigation period. However, based on statements both by Fincantieri in their submission on initiation and by Losal during the on-spot verification, these seemed to have been limited to two specific orders, and only affected part of these orders. The problems were mainly due to transportation issues, caused by strikes of certain transport companies and the difficulty of finding companies that would undertake deliveries to Palermo, Italy. In any event, a system was subsequently set in place specifically for Fincantieri, which allowed the user to follow the status of their orders on a weekly basis. In addition, Fincantieri was only one of Losal's many customers, albeit an important one, and no other customer/user came forward to support this claim.

(133) Fincantieri also claimed that Losal did not have a regular rolling schedule and started production only when a sizeable number of orders was placed by its customers. However, based on the evidence gathered during the on-spot verification visit to Losal, this was incorrect.

(134) Following the final disclosure, Fincantieri reiterated its comments regarding Losal's structural issues and stated that the Commission underappreciated the impact of these issues on Fincantieri. In addition, Fincantieri repeated its claim that the negative performance was the result of factors which were unrelated to imports from the countries concerned. No new elements were brought forward to support these statements.

(135) In view of the above, the Commission concluded that the arguments put forward by Fincantieri regarding the effect of Laminorul's bankruptcy and the structural and logistical issues concerning the complainant were not such as to attenuate the causal link between the Union industry's injury and the dumped imports from the countries concerned.

5.2.1. *Imports from third countries*

(136) In the absence of any related claim or comment, other than those addressed in recital (122) above, recitals (207) to (211) of the provisional Regulation were confirmed.

5.2.2. *Export performance of the Union industry*

(137) In the absence of any related claim or comment, the conclusions in recitals (212) to (214) of the provisional Regulation were confirmed.

5.2.3. *COVID-19 pandemic and decreased consumption*

(138) Both the Government of Türkiye and Fincantieri reiterated their claim that the COVID-19 pandemic played an important role in the negative situation of the Union industry, especially with regard to the impact on sales volumes. Since no new elements were brought forward as compared with those addressed in recitals (215) and (216) of the provisional Regulation, the conclusion in those recitals was confirmed.

5.2.4. *Increase in energy prices*

(139) The Government of Türkiye repeated its claim with regard to the influence of increased energy prices on the Union industry's injurious situation. Since no new arguments were brought forward as compared with those addressed in recitals (217) to (220), the conclusion in those recitals was confirmed.

5.2.5. *Product diversification*

(140) In the absence of any related claim or comment, the conclusions in recitals (221) to (225) of the provisional Regulation were confirmed.

5.3. **Conclusion on causation**

(141) The Commission assessed the impact of other factors taking into account the comments of interested parties and concluded that those factors did not attenuate the causal link. Indeed, factors such as the bankruptcy of Laminorul, the COVID-19 pandemic or any of the other factors put forward by the different parties might have had an impact on the performance of the Union industry. However, these factors did not explain the price suppression suffered by the Union industry during the entire period considered and, in particular, during the investigation period. In a normal competitive environment, the Union industry should be able to increase its sales prices to a profitable level or in the very least to cover their production costs. The effect of the factors discussed above, if any, could not explain the Union industry's inability to do so.

(142) Therefore, the Commission confirmed the conclusion in recitals (226) to (228) of the provisional Regulation.

6. **LEVEL OF MEASURES**

6.1. **Injury margin**

(143) In the absence of any related claim or comment, the conclusions in recitals (229) to (235) of the provisional Regulation were confirmed.

(144) As provided by Article 9(4), third subparagraph, of the basic Regulation, and given that the Commission did not register imports during the period of pre-disclosure, it analysed the development of import volumes to establish if there had been a further substantial rise in imports subject to the investigation during the period of pre-disclosure described in Section 1.2 of the provisional Regulation and therefore reflect the additional injury resulting from such increase in the determination of the injury margin.

(145) Based on data from the Surveillance 2 database, import volumes from the PRC and Türkiye during the four weeks period of pre-disclosure were 831,8 % and 13,7 %, respectively, higher than the average import volumes in the investigation period on a four-week basis. On that basis, the Commission concluded that there had been a substantial rise in imports subject to the investigation during the period of pre-disclosure for both countries.

(146) To reflect the additional injury caused by the increase of imports, the Commission decided to adjust the injury elimination level based on the rise in import volume, which was considered the relevant weighting factor based on the provisions of Article 9(4) of the basic Regulation. It therefore calculated a multiplying factor established by dividing the sum of the volume of imports during the four weeks of the pre-disclosure period of [1 400–1 800] tonnes (for the PRC) and [2 100–2 500] tonnes (for Türkiye) and the 52 weeks of the investigation period by the import volume in the investigation period extrapolated to 56 weeks. The resulting figure, 59,3 % for the PRC and 1 % for Türkiye, reflected the additional injury caused by the further increase of imports. The provisional injury margins were thus multiplied by this factor.

(147) As described in recitals (92) and (94), the Commission revised the injury margins. Therefore, the final injury elimination level for the cooperating exporting producers and all other companies is as follows:

Country	Company	Definitive injury margin
The PRC	Changshu Longteng Special Steel Co., Ltd.	34,6 %
	All other companies	34,6 %
Türkiye	Türkiye Özkan Demir Çelik Sanayi A.Ş	15,5 %
	All other companies	15,5 %

6.2. Conclusion on the level of measures

(148) Following the above assessment, definitive anti-dumping duties should be set as below in accordance with Article 7(2) of the basic Regulation:

Country	Company	Definitive dumping margin	Definitive injury margin	Definitive anti-dumping duty
The PRC	Changshu Longteng Special Steel Co., Ltd.	23,0 %	34,6 %	23,0 %
	All other companies	23,0 %	34,6 %	23,0 %
Türkiye	Türkiye Özkan Demir Çelik Sanayi A.Ş	13,6 %	15,5 %	13,6 %
	All other companies	13,6 %	15,5 %	13,6 %

7. UNION INTEREST

7.1. Interest of the Union industry

(149) In the absence of any related claim or comment, the conclusions in recitals (238) to (241) of the provisional Regulation were confirmed.

7.2. Interest of users and unrelated importers

(150) Fincantieri submitted that the fact that the Union industry had spare capacity throughout the period considered did not necessarily show that the Union industry could actually produce more. Fincantieri also complains that the Commission assumed that demand would remain stable while consumption was heavily impacted by the COVID-19 pandemic. In addition, Fincantieri seemed to believe that the Commission alleged in the provisional Regulation that Union producers could produce enough to satisfy the needs of the shipbuilding industry. Similarly, the Government of Türkiye questioned whether the production capacity of the Union industry is sufficient to satisfy domestic consumption.

(151) The Commission established, based on the verified data of Losal and the available information for Olifer, that there was significant spare capacity. The Union industry was using less than half of its capacity to produce steel bulb flats. From an economic perspective it is illogical to have and maintain the capacity to produce and sell more of a product, but to not actually increase production, unless there was not enough demand for the product. Based on the verified facts it was clear that the Union industry was capable and willing to supply larger volumes of steel bulb flats to their customers.

(152) However, the Commission never stated that the Union industry was capable of supplying enough steel bulb flats to fully satisfy the needs of the Union's shipbuilding industry. As was clear from the data shown in Tables 2 and 5 in the provisional Regulation, Union consumption was consistently above Union production capacity throughout the period concerned. Recital (246) of the provisional Regulation also clearly stated that the goal of the anti-dumping measures is not to close the Union market for imports from third countries, but to remove the trade distorting effects of injurious dumping. However, the fact that the Union industry could not meet full Union demand, does not mean that steel bulb flats should be allowed to be imported at dumped prices. This conclusion stands irrespective of the evolution of demand. The Commission therefore rejected these claims.

(153) Fincantieri also disputed the statement in recitals (249) and (250) of the provisional Regulation that Union producers may re-assess their investment strategies and focus on their other more profitable production lines, since any risk of disappearance of the Union industry is purely hypothetical and not supported by any evidence. However, if an industry is continuously loss-making and there is no possibility of increasing prices to a level that would allow it to cover its costs, let alone achieve a reasonable profit, it is very unlikely that such a situation could continue for a longer period.

(154) In addition, it is equally unlikely that the imposition of anti-dumping measures on imports from the countries concerned would 'drastically reduce the pool of available suppliers' as Fincantieri claimed. As Fincantieri itself mentioned, Union industry capacity is not enough to cover full demand, implying a continued need for a diversified supply of steel bulb flats. It is known that there is only a handful of suppliers of steel bulb flats in the world, mainly the two Union producers, Özkan Demir, and Longteng. An increase in the cost of steel bulb flats will not diminish the need for imports from these suppliers. This is especially so since, as Fincantieri claimed, the demand for steel bulb flats is on an increasing trend. It will also not prevent the Union customers from importing steel bulb flats, albeit at a higher cost. Although after the final disclosure Longteng alleged that the level of anti-dumping duties for China would have a prohibitive effect on the imports from China, no evidence was provided by any interested party that the imposition of anti-dumping duties would be prohibitive to the importation of steel bulb flats from either China or Türkiye. The Commission therefore rejected this claim.

(155) In this respect, Fincantieri also claimed that imposition of anti-dumping duties would clearly be to the detriment of users, since the impact of the measures are not negligible and shipbuilders are unable to pass the cost increase on to their final customers.

(156) Fincantieri pointed out that the Fincantieri group recorded a net loss of EUR 323 million in 2022, and that therefore the negative impact of an increase in the cost of steel bulb flats would be significant. However, the questionnaire reply which Fincantieri submitted in this investigation, and which was verified on spot, showed a sizeable profit of [8–10 %] both in 2021 and during the investigation period for both the company Fincantieri S.p.A., and for the products incorporating steel bulb flats. Fincantieri's financial accounts for 2022 ([25]) showed that the Fincantieri group was still profitable in 2021. To a large extent, the significant losses in 2022 seemed to be related to extraordinary and non-recurring income and expenses that were not related to the product under investigation, such as impairment losses, other intangible assets and litigation.

(157) After the final disclosure Fincantieri argued that it was irrelevant for the Union injury assessment whether such losses were related to the product under investigation. However, even if that argument were accepted, it did not detract from the fact that the losses referred to by Fincantieri related to the Fincantieri group, and not to the verified company Italian Fincantieri S.p.A. The Fincantieri group included a number of non-Union entities, among which shipyards, docks and subsidiaries in Asia, Oceania and the Americas. To take the group results as an indication for the Union entities' financial viability would be imprecise and incorrect at the very least.

(158) In addition, Fincantieri stated in its comments that 'the Commission does not prove that the losses in 2022 were related to "extraordinary and non-recurring income"'. However, the 2022 financial accounts for the Fincantieri group itself mention the following: 'the net result was affected by charges deemed extraordinary for disputes related to asbestos exposure in previous financial years (euro 52 million), impairment of intangible assets (euro 164 million), probable risks related to the non-performance of obligations for offset agreements (euro 20 million) and other charges (euro 2 million)' ([26]). The financial accounts for the Fincantieri Group for the first half of 2023 ([27]) also showed that these costs indeed for a large part no longer played a role, and the Fincantieri Group had reduced its losses to 22 million at the end of June 2023. Also, the outlook was positive given the post-COVID recovery of the cruise sector, and increased investments in both the area of defence due to the global-political situation and in the area of off-shore wind energy production.

(159) Moreover, the additional cost of the anti-dumping duties mentioned by Fincantieri would be only a very small part of the overall costs of the company. As mentioned in recital (248) of the provisional Regulation, the cost of steel bulb flats accounted for a negligible part (less than 0,5 %) of Fincantieri's overall cost of production for products that incorporate steel bulb flats. It could not reasonably be argued that an increase in the costs of such a small part of the overall cost of production would be to the detriment of users.

(160) Fincantieri claimed that it cannot pass on any cost increases to its final customers, since there is no possibility to renegotiate or adjust the contractual terms once the contract has been concluded with the shipowner. However, as mentioned in recital (156), it was clear from the company's questionnaire reply that it remained profitable despite the increase in the cost of raw materials and in energy over the past years. Whether or not the user can pass on any price increase to their customers due to the imposition of anti-dumping duties is therefore not relevant for the question whether Fincantieri can absorb the price increase. In addition, there was no evidence showing that the increased cost could not be passed on to the shipbuilders' customers for future contracts. No new elements were brought forward by Fincantieri on this issue in its comments on the final disclosure. The Commission therefore rejected these claims.

([25]) See Fincantieri's 2022 annual financial report, available at: https://www.fincantieri.com/globalassets/investor-relations/bilanci-e-relazioni/2022/eng_fincantieri_annual_report_2022.pdf.
([26]) Ibid.
([27]) Available at https://www.fincantieri.com/globalassets/investor-relations/bilanci-e-relazioni/2023/half-year-financial-report-at-june-30-2023.pdf.

7.3. Conclusion on Union interest

(161) Considering the above, the Commission confirmed the conclusion in recital (253) of the provisional Regulation that there were no compelling reasons that it was not in the Union interest to impose measures on imports of steel bulb flats originating in the countries concerned.

8. DEFINITIVE ANTI-DUMPING MEASURES

8.1. Definitive measures

(162) In view of the conclusions reached with regard to dumping, injury, causation, level of measures 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.

(163) On the basis of the above, the definitive anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Country	Company	Definitive anti-dumping duty
The PRC	Changshu Longteng Special Steel Co., Ltd.	23,0 %
	All other companies	23,0 %
Türkiye	Türkiye Özkan Demir Çelik Sanayi A.Ş.	13,6 %
	All other companies	13,6 %

(164) 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 in respect to these companies. These duty rates are thus exclusively applicable to imports of the product under investigation originating in the country concerned and produced by the named legal entities. Imports of the product concerned manufactured by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, cannot benefit from these rates and should be subject to the duty rate applicable to 'all other companies'.

(165) 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 ([18]). 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*.

(166) As explained in recitals (95) to (97), steel bulb flats fall in a category of steel products subject to a safeguard measure ([19]). Consequently, once the tariff quotas established under the safeguard measure are exceeded, 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 concerned for the duration of the imposition of the safeguard duty.

([18]) European Commission, Directorate-General for Trade, Directorate G, Wetstraat 170 Rue de la Loi, 1040 Bruxelles/Brussel, BELGIQUE/BELGIË. Email: TRADE-Defence-Complaints@ec.europa.eu.

([19]) Implementing Regulation (EU) 2022/978.

(167) This means that where the above-quota tariff duty referred to in Article 1(6) of Commission Implementing Regulation (EU) 2019/159 [20] becomes applicable to the product concerned and exceeds the level of the anti-dumping duty pursuant to this Regulation, only the above-quota tariff duty referred to in that Article shall be collected. During the period of concurrent application of the safeguard and anti-dumping duty, the collection of the duties imposed pursuant to this Regulation shall be suspended.

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

(168) 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 provisional anti-dumping duties imposed by the provisional Regulation, should be definitively collected up to the levels established under the present Regulation.

9. **FINAL PROVISION**

(169) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council [21], 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.

(170) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of non-alloy steel bulb flats in the range up to 204 mm width, currently falling under CN code ex 7216 50 91 (TARIC code 7216 50 91 10) and originating in the People's Republic of China and Türkiye.

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

Country	Company	Definitive anti-dumping duty	TARIC additional code
The People's Republic of China	Changshu Longteng Special Steel Co., Ltd.	23,0 %	899J
	All other companies	23,0 %	8999
Türkiye	Türkiye Özkan Demir Çelik Sanayi A.Ş	13,6 %	899K
	All other companies	13,6 %	8999

[20] 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).

[21] 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).

3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 131(2) of Commission Implementing Regulation (EU) 2015/2447 ([12]) the amount of anti-dumping duty, calculated on the basis of the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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 Implementing Regulation (EU) 2019/159 becomes applicable to non-alloy steel bulb flats and exceeds the 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 Implementing 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. The suspension referred to in paragraph 2 shall be limited in time to the period of application of the above-quota tariff duty referred to in Article 1(6) of Implementing Regulation (EU) 2019/159.

Article 3

The amounts secured by way of the provisional anti-dumping duty under Implementing Regulation (EU) 2023/1444 shall be definitively collected.

Article 4

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, 10 January 2024.

For the Commission
The President
Ursula VON DER LEYEN

([12]) Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).