ASSOCIATION BETWEEN THE EUROPEAN UNION AND TURKEY

The Association Council

Brussels, 16 May 2024
(OR. en)

UE-TR 4805/24

NOTE

From:	Mr Dennis REDONNET, Deputy-Director General for Trade, European Commission
On:	14 May 2024
To:	President of the EU-Turkey Association Council
Subject:	Investigation concerning possible circumvention of the anti-dumping measures imposed by Commission Implementing Regulation (EU) 2021/1930 on imports of birch plywood originating in Russia, by imports of birch plywood consigned from Türkiye and Kazakhstan

I have the honour to inform you that the Commission has sent to the Mission of Türkiye to the European Union the enclosed copy of the Regulation concerning circumvention of the anti-dumping measures imposed by Commission Implementing Regulation (EU) 2021/1930 on imports of birch plywood originating in Russia, by imports of birch plywood consigned from Türkiye and Kazakhstan.

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 that the Commission decided to extend the anti-dumping measures on imports of birch plywood originating in Russia, to imports of birch plywood consigned from Türkiye and Kazakhstan, following an anti-circumvention investigation.

I take this opportunity to renew to the President of the EU-Turkey Association Council the assurance of my highest consideration, and to assure you that you will be kept duly informed of any further developments.

Yours sincerely,

(e-signed)

Denis REDONNET

Encl. Note Verbale and Official Journal

Ref. Ares(2024)3464829 - 14/05/2024

EUROPEAN COMMISSION
Directorate-General for Trade

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 extend the anti-dumping measures on imports of birch plywood originating in Russia, to imports of birch plywood consigned from Türkiye and Kazakhstan.

A copy of 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.

COMMISSION EUROPÉENNE DG COMMERCE

Brussels, 14 May 2024
TRADE/G3/AP/cl/ (2024)3944465

Permanent Delegation of Türkiye to the European Union
AVENUE DES ARTS, 36-38,
B-1040 BRUXELLES/Belgique

Encl. Official Journal

Commission européenne, B-1049 Bruxelles / Europese Commissie, B-1049 Brussel - Belgium. Telephone: (32-2) 299 11 11.

Electronically signed on 13/05/2024 14:46 (UTC+02) in accordance with Article 11 of Commission Decision (EU) 2021/2121

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COMMISSION IMPLEMENTING REGULATION (EU) 2024/1287

of 13 May 2024

extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) 2021/1930 on imports of birch plywood originating in Russia to imports of birch plywood consigned from Türkiye and Kazakhstan, whether declared as originating in Türkiye and Kazakhstan or not

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 13 thereof,

Whereas:

1. PROCEDURE

1.1. Existing measures

(1) In November 2021, by Implementing Regulation (EU) 2021/1930 [2], the European Commission ('the Commission') imposed a definitive anti-dumping duty on imports of birch plywood originating in Russia ('the original Regulation'). The measures took the form of an *ad valorem* duty ranging between 14,4 % and 15,8 %, with a residual duty of 15,8 % for non-cooperating Russian companies. The investigation that led to these duties ('the original investigation') was initiated in October 2020 [3].

1.2. Request

(2) The Commission received a request pursuant to Articles 13(3) and 14(5) of the basic Regulation to investigate the possible circumvention of the anti-dumping measures imposed on imports of birch plywood originating in Russia by imports of birch plywood consigned from Türkiye and Kazakhstan, whether or not declared as originating in Türkiye and Kazakhstan and to make such imports subject to registration ('Request').

(3) The request was lodged on 10 July 2023 by the Woodstock Consortium ('the applicant').

(4) The request contained sufficient evidence of a change in the pattern of trade involving exports from Russia, Türkiye and Kazakhstan to the Union that took place following the imposition of measures on birch plywood from Russia. This change appeared to stem from the consignment of birch plywood via Türkiye and Kazakhstan to the Union, a practice for which there was insufficient due cause or economic justification other than the imposition of the duty.

(5) Furthermore, the request contained sufficient evidence that the practice described above was undermining the remedial effects of the existing anti-dumping measures both in terms of quantity and prices. Significant volumes of imports of birch plywood entered the Union market. In addition, there was sufficient evidence that the imports of birch plywood were made at injurious prices. Finally, there was sufficient evidence that the prices of birch plywood consigned from Türkiye and Kazakhstan were dumped in relation to the normal value established for birch plywood.

[1] OJ L 176, 30.6.2016, p. 21.
[2] Commission Implementing Regulation (EU) 2021/1930 of 8 November 2021 imposing a definitive anti-dumping duty and definitely collecting the provisional duty imposed on imports of birch plywood originating in Russia (OJ L 394, 9.11.2021, p. 7).
[3] Notice of initiation of an anti-dumping proceeding concerning imports of birch plywood originating in Russia (OJ C 342, 14.10.2020, p. 2).

1.3. Product concerned and product under investigation

(6) The product concerned by the possible circumvention is plywood consisting solely of sheets of wood, each ply not exceeding 6 mm thickness, with outer plies of wood specified under subheading 4412 33, with at least one outer ply of birch wood, whether or not coated, classified on the date of entry into force of the original Regulation under CN code ex 4412 33 00 (TARIC code 4412330010) and originating in Russia ('the product concerned'). This is the product to which the measures are currently apply.

(7) The product under investigation is the same as that defined in the previous recital, currently falling under CN code 4412 33 10 (*) but consigned from Türkiye and Kazakhstan, whether declared as originating in Türkiye and Kazakhstan (TARIC codes 4412331010 and 4412331020) ('the product under investigation').

(8) The investigation showed that birch plywood exported from Russia and birch plywood consigned from Kazakhstan and Türkiye, whether originating in Kazakhstan and Türkiye, have the same basic physical and chemical characteristics and have the same uses, and are therefore considered as like products within the meaning of Article 1(4) of the basic Regulation.

1.4. Initiation

(9) Having determined, after informing the Member States, that sufficient evidence existed for the initiation of an investigation pursuant to Article 13(3) of the basic Regulation, the Commission initiated, on 21 August 2023, the investigation by Commission Implementing Regulation (EU) 2023/1649 (*) ('the initiating Regulation') and made imports of birch plywood consigned from Kazakhstan and Türkiye, whether declared as originating in Kazakhstan and Türkiye or not, subject to registration.

1.5. Comments on initiation

(10) After initiation, the Kazakh authorities provided a list of companies producing birch plywood and requested that these companies were exempted from the scope of the measures, since they exported birch plywood produced in Kazakhstan. They submitted that certificates of origin in Kazakhstan complied with international standards and as well with all EU requirements and rules regarding the origin of the goods, and that this was controlled by the Ministry of Trade and Integration. Thus, they requested the Commission not to extend the anti-dumping duties to Kazakhstan, since the companies could not be involved in the circumvention of the measures.

(11) The Commission recalled that the exemption requests (assessed in Section 4) were considered in the light of Article 13 of the basic Regulation and that the certificates of origin were not thus the only criteria for the assessment.

(12) After disclosure, both Favorit and Severnyi Fanernyi Kombinat LLP ('SFK') considered that the initiation of the investigation was contrary to Article 5.2 of the WTO Anti-Dumping Agreement ('AD Agreement') because the complaint did not include evidence on dumping, on injury, and on causal link between the dumped imports and the alleged injury, and that the Commission had failed in its duty to examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation.

(*) Until 31 December 2021, the applicable TARIC code was 4412330010. Since 1 January 2022, it was replaced by TARIC code 4412331010. Since 01 September 2022, it was replaced by CN code 4412 33 10.

(*) Commission Implementing Regulation (EU) 2023/1649 of 21 August 2023 initiating an investigation concerning possible circumvention of the anti-dumping measures imposed by Implementing Regulation (EU) 2021/1930 on imports of birch plywood originating in Russia, by imports of birch plywood consigned from Türkiye and Kazakhstan, whether or not declared as originating in Türkiye and Kazakhstan, and making imports of birch plywood consigned from Türkiye and Kazakhstan subject to registration (OJ L 207, 22.8.2023, p. 77).

(13) The Commission disagreed. At the outset, the Commission notes that the AD Agreement does not include any anti-circumvention provision. Morover, as confirmed by the Court of Justice in *Kolachi Raj*, since Article 13 of the basic Regulation does not implement the provisions of the AD Agreement, the wording of Article 13 cannot be interpreted in the light of the provisions of the basic regulation which implement the provisions of that Agreement (*). Article 13(3) of the basic Regulation provides that an anti-circumvention investigation can be initiated on the basis of sufficient evidence regarding the factors set out in Article 13(1). The Commission considered that the request contained sufficient evidence of the factors set out in Article 13(1). In particular, the request contained sufficient evidence of a change in the pattern of trade between Russia Kazakhstan and Türkiye, which was stemming from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty. Furthermore, the request contained sufficient evidence of dumping in relation to the normal values previously established for the like product. Lastly, the Commission noted that Article 13 of the basic Regulation does not foresee an analysis of injury or causal link. The provision requires more broadly to show evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like product. In this respect, the request contained sufficient evidence. The fact that imports caused injury to the Union industry and that there was a causal link between these imports and the injury was already established in the original Regulation. Therefore, the Commission concluded that the request contained sufficient evidence and, hence, found that the initiation of the investigation was justified.

1.6. Investigation period and reporting period

(14) The investigation period covered the period from 1 January 2019 to 30 June 2023 ('the investigation period' or 'IP'). Data were collected for the investigation period to investigate, inter alia, the alleged change in the pattern of trade following the imposition of measures on the product concerned, and the existence of a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty. More detailed data were collected for the period from 1 July 2022 to 30 June 2023 ('the reporting period' or 'RP') in order to examine if imports were undermining the remedial effect of the measures in force in terms of prices and/or quantities and the existence of dumping.

1.7. Investigation

(15) The Commission officially informed the authorities of Russia, Kazakhstan and Türkiye, the known exporting producers in those countries, the Union industry and the President of the EU-Türkiye Association Council of the initiation of the investigation.

(16) In addition, the Commission asked the Mission of the Republic of Kazakhstan to the European Union and the Permanent Delegation of Türkiye to the European Union to provide it with the names and addresses of exporting producers and/or representative associations that could be interested in participating in the investigation in addition to the Turkish and Kazakh exporting producers, which had been identified in the request by the applicant. The Kazakh authorities provided a list of producers of birch plywood, that the Commission contacted.

(17) Exemption claims forms for the producers/exporters in Kazakhstan and Türkiye and questionnaires for importers in the Union were made available on DG TRADE's website.

(18) The following five companies in Kazakhstan submitted exemption claim forms:

— Favorit LLP

— QazFanCom LLP

— Semipalatinsk Wood Processing LLP

(*) See Judgement of 12 September 2019, Commission v Kolachi Raj Industrial, C-709/17 P, EU:C:2019:717, para. 45.

— Severnyi Fanernyi Kombinat LLP ('SFK')

— VFP LLP.

(19) The following four companies in Türkiye submitted exemption claim forms:

— Intur Construction Tourism and Forest

— Murat Şahin Orman Ürünleri

— Petek Kontrplak San ve Tic A.Ş.

— Saglamlar Orman Tarim Urunleri San. Ve. Tic. AS.

(20) In addition, the following unrelated importers submitted a questionnaire reply:

— Aschiero Wood Import SPA

— FOREST TRAFIC

— CASTELLANA LEGNAMI SNC

— IMOLALEGNO spa

— Orlimex CZ s.r.o.

(21) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the initiating Regulation. All parties were informed that the non-submission of all relevant information or the submission of incomplete, false or misleading information might lead to the application of Article 18 of the basic Regulation and to findings based on the facts available. At the request of the companies, hearings with Favorit and SFK were held on 8 February 2024 with the Commission services and subsequently on 14 February 2024 with the Hearing Officer. The Hearing Officer concluded that the issues raised by the two companies did not concern procedural rights as defined by the terms of reference of the Hearing Officer for trade proceedings but concerned the substantive issues of the case, and no specific recommendation was issued.

2. RESULTS OF THE INVESTIGATION

2.1. Level of cooperation

(22) As stated in recitals (18) to (19) five companies established in Kazakhstan and four companies established Türkiye provided exemption claim forms, and requested to be exempted from duties, if measures were to be extended to Kazakhstan and Türkiye.

(23) However, two companies in Kazakhstan (QazFanCom and VFP LPP), and three companies in Türkiye (Murat Şahin Orman Ürünleri, Petek Kontrplak San ve Tic A.Ş. and Saglamlar Orman Tarim Urunleri San. Ve. Tic. AS) provided highly deficient exemption claim forms. Therefore, by letter of 13 October 2023 to VFP LLP and the three Turkish companies, and by letter of 17 November 2023 to QazFanCom, the Commission informed these companies that it intended to apply facts available in accordance with Article 18(1) of the basic Regulation, because these companies had not provided, within the time limits provided for, the necessary information for the Commission to determine whether they were or not involved in the circumvention practices ('Article 18 letter'). The companies were given the opportunity to comment. The company QazFanCom submitted comments. No other company provided comments.

(24) In response to the Article 18 letter, QazFanCom submitted that, contrary to what was mentioned in the Article 18 letter, it cooperated with the investigation since the information it had submitted involved a big amount of work. It also considered that to provide and translate the information into English was time consuming and that the extension to deadlines to provide a reply was too short, given that the procedure lasted nine months. The company also considered that the basic Regulation did not provide the maximum deadline for extension of deadlines.

(25) QazFanCom further submitted that, in its opinion, all the information that the Commission asked to be provided was sensitive and, therefore, could not be provided. At the same time, it alleged that the Commission leaked a confidential information and violated Article 19 of the basic Regulation since its trade partners knew about the fact that the exemption request submitted by QazFanCom would be rejected, already before QazFanCom received the Article 18 letter from the Commission.

(26) The Commission recalled that the deadline of 37 days to provide the exemption claim form was set out in Article 3(2) of the initiating Regulation and it was in line with a general deadline of at least 30 days mentioned in Article 6(2) of the basic Regulation. Extensions may be granted, due account being taken of the time limits of the investigation, provided that the party shows due cause for such an extension in terms of its particular circumstances. In the present case, the Commission granted an extension of seven days which was the maximum it could give in view of the time limits of the investigation. The Commission thus rejected the claim that more time to provide the exemption claim form could be given in the present case.

(27) The Commission further considered that detailed instructions on how to provide the non-confidential version of the exemption claim form were provided to QazFanCom together with the exemption claim form. The information that was sent described in detail how data can be presented to ensure that confidentiality is respected but also preserve the rights of defence of other interested parties. The Commission thus rejected the claim that no information could be provided because of its confidential nature.

(28) Furthermore, with regard to the claim on the alleged breach of confidentiality, QazFanCom did not substantiate the claim; it did not point out to any information published in the open file that would contain information about the status of the exemption request of QazFanCom prior to the Article 18 letter, therefore, the Commission rejected the claim.

(29) Based on the above, the Commission concluded that two companies in Kazakhstan (QazFanCom and VFP LPP), and three companies in Türkiye (Murat Şahin Orman Ürünleri, Petek Kontrplak San ve Tic A.Ş. and Saglamlar Orman Tarim Urunleri San. Ve. Tic. AS) failed to cooperate within the meaning of Article 18 of the basic Regulation and consequently did not demonstrate that they are not engaged in circumvention activities. Therefore, their exemption requests were rejected.

(30) Following disclosure, Qazfancom argued that the Commission had taken an unaccommodating and unconstructive approach regarding the cooperation of Qazfancom and, on strictly procedural grounds, refused to consider the documents presented. Qazfancom requested the Commission to consider documents submitted in December 2023 since, according to Qazfancom, the Commission had sufficient time to do so, as the deadline for taking a final decision was only May 2024. Furthermore, Qazfancom asked for the hearing with the Commission services as well as a hearing with the Hearing Officer. The hearing request with the Commission services, though requested outside the deadline that was given in the disclosure document, was accepted. The hearing with the Hearing Officer took place on 2 April 2024 and on 3 April 2024 during which Hearing Officer concluded that the issues raised by the interested party did not concern procedural rights as defined by the terms of reference of the Hearing Officer for trade proceedings but concerned clarifications regarding application of Article 18(1), and no specific follow-up was recommended.

(31) As explained in recital (26) above, the Commission granted Qazfancom several deadline extensions to submit all the required information in accordance with the Article 3(2) of the initiating Regulation and Article 6(2) of the basic Regulation, as set out in detail in the Article 18 letter of 17 November 2024. Any information provided after these deadlines could no longer be considered by the Commission given the time limits of the investigation and the fact that Qazfancom had not submitted, within the time limits provided for, the necessary information for the Commission to determine whether the company was involved in circumvention practices.

(32) The Commission held a hearing with Qazfancom representatives on 20 March 2024 during which Qazfancom further elaborated on their comments upon disclosure. However, Qazfancom did not put forward any new substantiated claim and mainly repeated that it had cooperated to the best of its abilities. Therefore, the Commission confirmed its conclusion as set out in recital (29) above.

(33) Following disclosure, Saglamlar Orman Tarim Urunleri San. Ve. Tic. AS claimed that it provided a lot of information in October 2023, and the information they did not provide was information that the management considered to be confidential.

(34) As explained in recital (27), the Commission considered that detailed instructions on how to provide the non-confidential version of the exemption claim form were provided to all known exporting producers of birch plywood established in Kazakhstan and in Türkiye. The Commission thus rejected the claim that no information could be provided because of its confidential nature.

(35) The Commission carried out the verification visits on the premises of the following companies:

— Favorit LLP (Kazakhstan)

— Semipalatinsk Wood Processing LLP (Kazakhstan)

— Severnyi Fanernyi Kombinat LLP (Kazakhstan)

— Intur Construction Tourism and Forest (Türkiye).

(36) The Commission also analysed the information in the questionnaire replies of the cooperating importers to crosscheck with the information collected during the verification.

(37) After the on-the spot verifications, the Commission decided to base the findings with regard to the exemption requests of the Kazakh companies Favorit LLP, Semipalatinsk Wood Processing LLP, and Severnyi Fanernyi Kombinat LLP on best facts available, of which the companies were informed on respectively 22 January 2024, 26 January 2024, and 22 January 2024, based on Article 18 of the basic Regulation. A detailed analysis, as well as the assessment of the Turkish company Intur Construction Tourism and Forest is to be found in Section 4 below.

(38) In view of the above (7), the Commission considered that the cooperation in both countries was low, and that the findings for both countries had to be based on Statistics.

2.2. General considerations

(39) In accordance with Article 13(1) of the basic Regulation, the Commission must analyse whether the following conditions are met:

— whether there was a change in the pattern of trade between Russia, Kazakhstan, Türkiye and the Union,

— if this change stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the anti-dumping measures in force,

— if there is evidence of injury or the remedial effects of the anti-dumping measures in force were being undermined in terms of the prices and/or quantities of the product under investigation, and

— whether there is evidence of dumping in relation to the normal values previously established for the product concerned.

(40) In addition to the circumvention practices consisting in transhipment of plywood via Kazakhstan and Türkiye, the Commission also investigated whether the anti-dumping measures were circumvented via practices involving assembly/completion operations. It considered that practices such as producing birch plywood from Russian inputs (birch logs and veneer) constituted assembly or completion operations within the meaning of Article 13(2). The Commission therefore specifically analysed the criteria set out in Article 13(2), in particular:

(7) In the RP, Intur Construction Tourism and Forest (the only cooperating company) exported to the Union [2 000-3 000] m³ which represented between [5-10] % of the total imports from Türkiye.

— whether the assembly/completion operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation and whether the parts concerned are from the country subject to measures, and

— whether the parts constitute 60 % or more of the total value of the parts of the assembled product and whether the value added to the parts brought in, during the assembly or completion operation, was greater than 25 % of the manufacturing costs.

2.3. **Change in the pattern of trade**

2.3.1. *Change in the pattern of trade between the Union, Russia, and Türkiye*

(41) Table 1 shows the development of imports of birch plywood into the Union in the IP:

Table 1

Imports of birch plywood from Russia, Kazakhstan and Türkiye into the Union (m³)

	2019	2020	2021	2022	RP
Russia	809 267	763 783	959 000	503 140	51 398
Index (base = 2019)	*100*	*94*	*119*	*62*	*6*
Market share	44,2 %	41,7 %	52,4 %	31,8 %	4,2 %
Kazakhstan	0	0	0	29 225	97 068
Index (base = 2022)				*100*	*332*
Market share	0	0	0	1,8 %	7,9 %
Türkiye	4 094	3 001	1 536	15 619	33 832
Index (base = 2019)	*100*	*73*	*38*	*381*	*826*
Market share	0,2 %	0,2 %	0,1 %	1,0 %	2,8 %

Source: Comext, complainant's estimates for EU sales.

(42) Table 1 shows that in 2022, after imposition of the anti-dumping duties on imports of birch plywood from Russia in November 2021, the imports from Russia to the Union decreased by almost 40 %, compared to 2019, the period before the start of the original investigation. In the RP, the imports further decreased by 94 % compared to 2019.

(43) In 2019, 2020 and in 2021, there were no imports to the Union of birch plywood from Kazakhstan. The imports to the Union only started in April 2022, after the imposition of the anti-dumping duties on Russia in November 2021. In the RP, the imports more than tripled compared to 2022 and achieved over 97 thousand m³.

(44) In 2019, imports from Türkiye were only around 4 000 m³. Between 2019 and 2021, the volume of imports decreased by more than 60 %. In 2022, after the imposition of anti-dumping duties on Russia in November 2021, the imports increased almost four times compared to 2019, and, in the RP, more than eight times.

2.3.2. *The change of the pattern of trade between Russia and Kazakhstan*

(45) Table 2 shows the development of imports of birch plywood, logs and veneer from Russia to Kazakhstan in the IP (m³):

Table 2

	2019	2020	2021	2022	RP
Birch plywood	0	0	0	171 277	275 899
Index				*100*	*161*

Logs	0	0	0	11 120	27 202
Index				*100*	245
Veneers	0	0	0	4 480	16 686
Index				*100*	372

Source: Global Trade Atlas.

(46) Table 2 shows that imports from Russia to Kazakhstan of birch plywood, and of logs and veneers (main input materials to produce birch plywood) only started in 2022.

(47) In the RP, imports of birch plywood increased more than 60 %. Between 2022 and the RP, also the imports of logs and veneer increased considerably, in case of veneers almost four times.

2.3.3. *The change of the pattern of trade between Russia and Türkiye*

(48) Table 3 shows the development of imports of birch plywood, logs and veneer from Russia to Türkiye in the IP (m^3):

Table 3

	2019	2020	2021	2022	RP
Birch plywood	14 749	21 600	21 620	60 231	120 073
Index	*100*	*146*	*147*	*408*	*814*
Logs			1 752	2 012	
Index			*100*	*115*	
Veneer	10 462	23 260	40 096	71 672	109 977
Index	*100*	*222*	*383*	*685*	*1 051*

Source: Global Trade Atlas

(49) Table 3 shows that birch plywood started to be imported from Russia to Türkiye already in 2019, but in relatively low quantities. Between 2021 in 2022, the imports tripled. The most significant increase took place between 2022 and the RP, when the imports doubled and achieved more than 120 thousand m^3. In terms of volume, compared to 2021 (the period before the imposition of the measures), the imports of plywood increased six times.

(50) In parallel, compared to 2019, imports of logs and veneer also increased. While for logs there was no increase between 2021 and the RP, the imports of veneer increased more than 10 times between 2019 and the RP. In the RP, imports of veneer increased by 2,5 times compared to 2021.

2.3.4. *Conclusion*

(51) The above evolution of imports from Russia, Kazakhstan and Türkiye clearly shows a change in the pattern of trade after the measures on imports of birch plywood were imposed. While the imports from Russia almost disappeared, imports from both Kazakhstan and Türkiye considerably increased. At the same time, trade flows of birch plywood, logs and veneer between Russia and Kazakhstan and Russia and Türkiye substantially increased.

(52) The Commission thus concluded that decrease of Russian imports, the parallel increase on imports from Kazakhstan and Türkiye, constitute a change of pattern of trade between the above-mentioned countries within the meaning of Article 13(1) of the basic Regulation.

2.4. Nature of the circumvention practices

(53) Article 13(1) of the basic Regulation requires that the change in the pattern of trade stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty. The practice, process of work includes, inter alia, the consignment of the product subject to the existing measures via third countries, and the assembly of parts/completion operations in a third country in accordance with Article 13(2) of the basic Regulation.

(54) As concluded in Section 2.1.4 above, because of the low cooperation, findings in respect of the existence and nature of the circumventing practices had to be based on facts available pursuant to Article 18 of the basic Regulation.

(55) The evidence in the request and confirmed by the Commission during the investigation, showed that birch plywood produced in Russia was exported to Türkiye or Kazakhstan. An intermediary party in Türkiye or Kazakhstan re-exported birch plywood to the Union either as a stand-alone batch or by mixing it with locally produced plywood of birch or other wood species. In addition, some of the companies both in Kazakhstan and Türkiye circumvented the anti-dumping measures on birch plywood from Russia, by producing birch plywood out of inputs from Russia which, within the meaning of the conditions of Article 13(2) of the basic Regulation, was found to constitute an assembly/completion operation (see Section 2.7 below) ([8]).

(56) Furthermore, the volume of imports into the Union from both Türkiye and Kazakhstan in the RP exceeded the production in both countries, estimated in the RP to be about 17 to 20 thousand m^3, and around 69 thousand m^3 respectively ([9]). These imports could thus not be entirely constituted of birch plywood of Kazakh or Turkish origin ([10]).

(57) Transhipment practices of Russian plywood in the RP through Türkiye and Kazakhstan were further evidenced by numerous emails and prices offers by importers and traders ([11]). The information submitted by the cooperating importers also proved that plywood from Russia was sold on the Union market, and that the sales were done via a chain of numerous traders ([12]).

(58) In Kazakhstan, circumvention practices were facilitated by the geographical proximity to Russia, and the fact that companies had links to Russian producers of birch plywood or of the input materials. In addition, Kazakh certificates of origin were, according to two exporting producers, traded and misused for the plywood of Russian origin.

2.5. Insufficient due cause or economic justification

(59) In addition to the increased transport costs linked to transhipment of birch plywood through Kazakhstan and Türkiye, imports of birch plywood from Russia into Türkiye in the RP were subject to the conventional customs duty of 7 % and, since 2018, to an additional 20 % duty rate. Therefore, transhipping plywood through the two countries involved additional costs, and no economic justification for the change of the pattern of trade and the practices was found to exist.

([8]) Paragraphs 38 to 45 and paragraphs 71 to 77 of the request.
([9]) The production in Türkiye was estimated based on the estimated production capacity (paragraph 32 of the request). The production was thus likely to be lower. The production in Kazakhstan was based on the questionnaire replies of Kazakh producers and information in the request (paragraph 67).
([10]) According to the information provided in the request, in Türkiye there is no production of a wide density of birch species used to produce birch plywood, and the birch ecosystem in Türkiye is not of high productivity.
([11]) Annexes 16 to 24 to the request.
([12]) Open questionnaire replies of importers.

(60) Both Favorit and SFK considered that the Commission did not establish that the circumvention stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and it argued that imports from Kazakhstan started arriving into the Union only following imposition of sanctions on Russian plywood which is the only cause or economic justification for the increased imports ([43]).

(61) The Commission considered that the sanctions were imposed less than 8 months after the imposition of the anti-dumping duties and that the start of the change in the pattern of trade could already be observed before the sanctions were imposed. Imports from Kazakhstan (and Türkiye) started before the sanctions were imposed. In addition, the investigation revealed that SFK set up a related importer in the Union in April 2022 just after the imposition of the anti-dumping duties, and before the sanctions entered into force (10 July 2022).

(62) The Commission thus concluded that there was no other due cause or an economic justification of the consignment of birch plywood via Kazakhstan and Türkiye, other than the circumvention of the duties.

2.6. Start or substantial increase of practices defined in Article 13(2)

(63) Article 13(2) of the basic Regulation requires the assembly/completion operation to have started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation, while the parts concerned are from the country subject to anti-dumping measures.

(64) In view of the low cooperation in both countries, the Commission based its findings about the start or substantial increase of the practices identified as assembly or completion operation, based on best facts available within the meaning of Article 18 of the basic Regulation.

(65) The statistical data, as summarized in Section 2.3 above clearly showed that the assembly and completion operations and subsequent imports into the Union started after the imposition of the anti-dumping duties in November 2021. Therefore, the Commission concluded that the assembly operation started after the imposition of the anti-dumping duties.

2.7. Value of parts and value added

(66) Article 13(2)(b) of the basic Regulation states that, as far as assembly operations are concerned, another condition to establish circumvention is that the parts (from Kazakhstan and Türkiye, in this case) constitute 60 % or more of the total value of the parts of the assembled product and that the added value of the parts brought in, during the assembly or completion operation, is less than 25 % of the manufacturing cost.

(67) Some Kazakh and Turkish producers bought in the RP the main input materials from Russia (birch logs, or birch veneer produced from logs, and resin). As logs, veneer and resin constitute 100 % of the input material, value of the input material (parts brought in) exceeded the 60 % threshold.

(68) This was confirmed by the findings on the cooperating Turkish producer, producing birch plywood from Russian veneer (for details, see Section 4 below). The findings for this company further showed that the value added was below the 25 % threshold set by Article 13(2)(b) of the basic Regulation. It was therefore concluded that the second criterion set out in Article 13(2)(b) of the basic Regulation was also met.

(69) SFK argued that the present investigation was only initiated on the basis of allegedly sufficient evidence regarding the transhipment of Russian origin plywood but there was no evidence in the file that would with regard to change in the pattern of trade stem from an assembly or completion operation. SFK considered that the Commission had no choice but to rely on SFK's data as facts available, which in its view demonstrated that the value added was significantly above 25 % of the total costs of manufacturing.

([43]) The prohibition of importation of Chapter 44 products (including birch plywood) from Russia entered into force on 10 July 2022 (https://eur-lex.europa.eu/eli/reg/2022/576/oj).

(70) The Commission considered that, as set out in the initiating Regulation (Section D), it could also investigate other circumvention practices, should they be identified during the investigation. In this case, and as mentioned in Section 2.2 above, the Commission also investigated assembly/completion operations and concluded that the measures on imports from Russia were, amongst others, circumvented by assembly or completion operations both in Kazakhstan and in Türkiye.

2.8. Undermining of the remedial effect of the anti-dumping duty

(71) In accordance with Article 13(1) of the basic Regulation, the Commission examined whether the imports of the product under investigation, both in terms of quantities and prices, undermined the remedial effects of the measures currently in force.

(72) Regarding quantities, the market share of the imports from Kazakhstan represented around 7,9 % of the Union consumption during the RP while there were no imports in the original investigation period ([14]). For Türkiye, the market share increased from 0,2 % in the original investigation period to 2,8 % in the RP. The Commission considered that the volume of imports was significant.

(73) Regarding prices, the Commission compared the average non-injurious price as established in the original investigation, adjusted for cost increase between the original investigation period and the RP, with the weighted average export CIF prices determined on the basis of the information provided in Eurostat statistics, duly adjusted to include conventional customs duties (7 % for Kazakhstan and none for Türkiye) and post clearance costs, estimated at 5 % ([15]). This price comparison showed the existence of underselling of 66,4 % for Kazakhstan and of 18,9 % for Türkiye.

(74) The Commission also compared the prices of imports as established above with the prices of the Union industry. This price comparison showed undercutting of 36,7 % for Kazakhstan, and of 14,6 % for Türkiye ([16]).

(75) The Commission concluded that in the RP the existing measures were undermined in terms of quantities and prices by the imports from Kazakhstan and Türkiye.

(76) Both Favorit and SFK submitted that, contrary to Articles 3.1 to 3.5 of the AD Agreement, the Commission did not determine material injury or threat of material injury to the Union industry.

(77) The Commission considered that Article 13(1) of the basic Regulation requires an analysis as to whether the imports undermine the remedial effects of the duty, and not to re-establish injury. As mentioned in recital (13), the fact that these imports caused injury to the Union industry and that there was a causal link between these imports and the injury was already established in the original Regulation. Therefore, in an anti-circumvention investigation, the analysis of injury, threat of injury and of the causal link was not necessary. The Commission thus rejected the claim.

2.9. Evidence of dumping

(78) In accordance with Article 13(1) of the basic Regulation, the Commission also examined whether there was evidence of dumping in relation to the normal values previously established for the like product.

(79) To this end, export prices were determined based on data in Eurostat and brought ex works and compared to the normal values established during the original investigation, duly adjusted for inflation.

(80) The comparison of normal values previously established for the like product and export prices showed evidence of dumping for imports from both Kazakhstan and Türkiye.

([14]) The consumption was established based on total EU sales estimates and imports in the IP.
([15]) Annex 26 of the request.
([16]) The Union prices are based on information from the request (Annex 26).

(81) After disclosure, both Favorit and SFK referred to the first sentence of the cover letter to the General Disclosure Document, which mentioned the proposal to '*impose definitive anti-dumping measures on imports of birch plywood consigned from* Kazakhstan'. On this basis, these companies submitted that the dumping determination was illegal, because the dumping margin had to be calculated by comparing the normal value established in Kazakhstan with export prices from Kazakhstan. They also argued that the Commission compared the normal values and export prices determined at different periods. In their view, the adjustment to the normal value for inflation was made by reference to publications on birch plywood prices in a third country, namely in Russia, and it did not thus reflect market conditions in Kazakhstan. Both companies also argued that the Commission compared normal values and export prices at a different level of trade. Finally they argued that the Commission disregarded Product Control Numbers ('PCN') in its dumping calculations.

(82) The Commission clarified that indeed the cover letter erroneously mentioned '*impose*' instead of '*extend*'. However, this was a mere clerical mistake. From the disclosure document itself, it was clear that it concerned findings on the basis of which the Commission intended to extend the anti-dumping duties imposed on imports from Russia to imports from Kazakhstan and Türkiye, and not to impose new anti-dumping duties. As set out in Article 13(1) of the basic Regulation, the basic condition is that there should be evidence of dumping in relation to the normal values previously established for the like product. On this basis, the normal value was based on the normal value established in the original investigation concerning imports from Russia, duly adjusted for inflation, which was compared with export prices from Kazakhstan, adjusted to ex-works level. This was done at country-wide level. There is no requirement in Article 13 of the basic Regulation to conduct such comparison at the level of individual product types. The Commission thus rejected the claims.

3. MEASURES

(83) Based on the above findings, the Commission concluded that the anti-dumping measures imposed on imports of plywood originating in Russia are being circumvented by imports of the product under investigation consigned from Kazakhstan and Türkiye.

(84) Therefore, in accordance with Article 13(1) of the basic Regulation, the anti-dumping measures in force should be extended to imports of the product under investigation.

(85) Pursuant to Article 13(1), second paragraph of the basic Regulation, the measure to be extended should be the one established in Article 1(2) of Implementing Regulation (EU) 2021/1930 for 'all other companies', which is a definitive anti-dumping duty of 15,8 % applicable to the net, free-at-Union-frontier price, before customs duty.

(86) Pursuant to Article 13(3) of the basic Regulation, which provide that any extended measure should apply to imports that entered the Union under registration imposed by the initiating Regulation, duties are to be collected on those registered imports of the product under investigation.

(87) Both Favorit and SFK requested that any Regulation extending the duties should specifically mention that any facts of circumvention as established in the framework of this investigation should not be understood or suggest any finding of circumvention within the meaning of EU restrictive measures in view of Russia's invasion of Ukraine.

(88) The Commission confirmed that the legal basis for the investigation was the basic Regulation, in particular Article 13 thereof, and that the findings detailed in this regulation related to circumvention of the anti-dumping duties imposed on imports of birch plywood from Russia in November 2021.

4. REQUESTS FOR EXEMPTION

(89) As mentioned in Section 1.7 above, the Commission assessed exemption requests of the exporting producers in Kazakhstan and in Türkiye.

4.1. Kazakhstan

4.1.1. *Findings with regard to Favorit*

(90) At the verification visit at the premises of Favorit and its related companies, the Commission services found that the accounting records of Favorit were not reliable since their veracity could not be confirmed by any independently audited document. As a result, the Commission could not reliably establish the scope of the business of Favorit against any official document, also in the absence of independently audited financial statements. The accounting records did not allow the Commission to reliably establish the total purchases of input materials, the total purchases of the finished product, the total production and total sales volumes. All of this information is necessary in order to assess an application for an exemption under Article 13(4) of the basic Regulation. The information which could not be verified concerned a major part of the purchases of the input material and of the product concerned, including quantities and values of purchases and resales of Russian birch plywood and veneer, as well as information related to costs and sales. Consequently, the Commission could not establish and confirm the completeness of the data concerning the volume and source of the birch plywood exported to the Union and therefore, to confirm whether all birch plywood purchased by Favorit in Russia was resold exclusively on the domestic market, as claimed by Favorit.

(91) The Commission then analysed whether it was possible to use some of the information of Favorit, based on Article 18(3) of the basic Regulation. Article 18(3) of the basic Regulation provides that, where the information submitted by an interested party is not ideal in all respects, it should nevertheless not be disregarded, provided that any deficiencies are not such as to cause undue difficulty in arriving at a reasonably accurate finding and that the information is appropriately submitted in good time and is verifiable, and that the party has acted to the best of its ability. Pursuant to settled case-law, it is evident from the wording of that provision that the four conditions are to be applied cumulatively. Accordingly, if just one of them is not satisfied, that provision cannot be applied and the information in question cannot be taken into account ([17]).

(92) In the case at hand, the Commission considered that the entirety of the information submitted by Favorit could not be considered as verifiable. In the absence of reliable accounting, the volume and source of the plywood sold by Favorit on the Union market could not be reliably established. Therefore, using only partially the information submitted by Favorit did not allow arriving at a reasonably accurate finding on whether Favorit was not reselling the birch plywood it purchased in Russia to the Union market.

(93) The Commission considered as well other factors, such as the absence of separate warehouses, or at least clearly distinguished spaces and/or labelling of the finished product, for own-produced and purchased birch plywood, and the fact that birch plywood destined for the domestic market did not have labels at all, and the absence of verifiable records on stock movement in its warehouses. The company purchased most of the Russian birch plywood through domestic traders and therefore, its volume could not be reliably established since these purchases were not recorded in any official document. Resales were done through three traders, two in Kazakhstan, and one outside Kazakhstan. The trader outside Kazakhstan, which resold the birch plywood it purchased from Favorit to the Union did allegedly not have audited accounts and therefore, the information on the volumes and specificities of the resold products could not be verified against any official document. Because of the combination of all these factors, the Commission considered that all the information provided by Favorit had to be rejected.

(94) On this basis, the Commission services informed Favorit of their intention to apply Article 18(1) of the basic Regulation, and make its findings based on 'facts available' used for the country as a whole, summarised in Section 2.

([17]) See judgment of 19 March 2015, City Cycle Industries v Council, T 413/13, not published, EU:T:2015:164, paragraph 120 and the case-law cited.

(95) Favorit disagreed with these findings. It considered that there was no basis to apply either Article 18(1) or Article 18(3) of the basic Regulation, since it fully cooperated with the investigation and since it provided all the necessary data that the Commission requested, and it successfully demonstrated that it did not tranship Russian origin birch plywood to the Union.

(96) Favorit argued that it was a genuine producer and that the company invested a lot of efforts in preparing the questionnaire reply, which was complicated by the fact that it did not have financial statements, and because its accounting system had limitations.

(97) After disclosure, Favorit resubmitted that the Commission disregarded the fact that it faced difficulties, because it was a small company with a limited number of staff, and made allegedly unrealistic requirements, such as for audited financial statements, within 37 days following the initiation.

(98) Favorit further pointed to the fact it was not required under Kazakh legislation to have financial statements and that the Commission was aware of the difficulties Favorit had regarding its accounting, and that it nevertheless proceeded with the investigation and conducted the on-the spot verification. Favorit argued that, when analysing the data, the Commission should apply an objective standard of establishing a reliability of the accounting information, and it referred to Article 15 of the AD Agreement that provides that a special regard must be given to developing country WTO members, and therefore that the Commission cannot apply IFRS or other global standards. It referred to a case of an Algerian producer for which the Commission applied this Article due to the fact it did not have accounting records for half of the investigation period ([12]).

(99) The Commission did not question the fact that Favorit also produced its own birch plywood, but the application of Article 18 was based on a combination of factors, as detailed above in recitals (90) to (93). The purpose of the on-the-spot verification was not only to look into the reliability of the accounting data, but also to verify other information that could only be verified on the spot, such as, among others, an existence of a genuine production, stock of the input material, records that may only exist on paper form, physical location of the stock of birch plywood, and separation between the own production and birch plywood purchased in Russia. The Commission further stressed that the fact that the verification visit took place did not mean that data were to be accepted. The Commission thus disagreed that the fact that data were not rejected from the start meant that the Commission had to accept these data.

(100) The Commission further noted that it did not require companies to provide financial statements if these did not exist and when national legislation did not require to prepare these, nor did it require that the information which was to be provided complied with IFRS or other accounting standards, in situations where it was not required by national legislation of the country in question. Therefore, the reason for the application of Article 18 was not the non-compliance of the accounting of Favorit with accounting standards, but rather the fact that the accounting records kept by Favorit were unreliable and made it impossible to verify the veracity of information that Favorit submitted with its request for an exemption. As a result, Favorit could not demonstrate that it was not involved in circumvention practices.

(101) Without prejudice to the principle that the legality of anti-dumping measures should be assessed by reference to the applicable law, and not by reference to the alleged past administrative practice, the Commission further noted that in the case of the Algerian producer, it decided 'to use data from the company where it was considered to be sufficiently reliable, and in so far as it did not materially affect the outcome' ([13]). The conclusion for data of Favorit was contrary to the situation of the Algerian producer – the Commission did not consider the data of Favorit for any part of the investigation period as sufficiently reliable, and their veracity had a direct impact on the outcome. Therefore, the Commission found the argument of Favorit unsubstantiated.

([12]) Commission Regulation (EC) No 617/2000 of 16 March 2000 imposing provisional anti-dumping duties on imports of solutions of urea and ammonium nitrate originating in Algeria, Belarus, Lithuania, Russia and Ukraine and accepting, on a provisional basis, an undertaking offered by an exporting producer in Algeria (OJ L 75, 24.3.2000, p. 3), rec. 10.

([13]) Commission Regulation (EC) No 617/2000, recital (10).

(102) Favorit also considered that the Article 18 letter did not specify what exactly triggered the application of Article 18(1) and 18(3) of the basic Regulation. It argued that it provided all the requested information, and therefore, that Article 18(1) did not apply. Also, it considered that the Commission could not apply Article 18(3) of the basic Regulation only because Favorit's data was not ideal in all respects. Finally, the Commission was wrong to the extent that Article 18(1) applied because conditions of Article 18(3) were not fulfilled. It considered that Article 18(1) and 18(3) address different situations and their application is not contingent one on another.

(103) Furthermore, Favorit argued that the Commission's intent to disregard Favorit's data in its entirety is manifestly contrary to paragraph 3 of Annex II to the AD Agreement. It referred to the report of Appellate Body in US – Hot-Rolled Steel ([70]), which specified that according to paragraph 3 of Annex II, investigating authorities are directed to use information if three conditions are satisfied, namely that such information is verifiable, appropriately submitted so that it can be used in the investigation without undue difficulties, and is supplied in a timely fashion. It follows that if these conditions are met, investigating authorities are not entitled to reject information submitted, when making a determination. Favorit argued that these conditions were met in this case since the Commission verified several documents that pointed to the absence of circumvention. Because the Commission asked to reconcile information to the trial balance and Favorit and its related companies did that, it was obliged to take such information into account, before resorting to any facts available. Favorit reiterated similar arguments after disclosure.

(104) The Commission reiterated that the reasons to apply Article 18 of the basic Regulation were detailed in the Article 18 letter. In addition, the information collected during the verification visit was mentioned in the mission report shared with the company after the verification visit. As the information provided was clearly not verifiable, as detailed in recitals (90) to (93) above, the Commission concluded that the conditions to use Article 18(3) were not fulfilled ([71]) and the Commission based its findings solely on Article 18(1) of the basic Regulation, not on both articles (Article 18(1) and 18(3)), as alleged by Favorit.

(105) Favorit further argued that it sufficiently demonstrated that it was not engaged in circumvention, which the Commission could have verified. All the information matched to the company's ERP system ([72]), which could not be, in Favorit's view, changed retroactively. It further considered that the Commission could also visually confirm that what was loaded for the Union market was the same as what was seen in the company's warehouse in Uralsk. Favorit reiterated similar arguments after disclosure.

(106) The Commission considered that information submitted by parties must be verifiable, reliable and therefore usable, and presented in a way that it can be checked against audited books and records of the company submitting it, or any other official documents. However, in case of Favorit it was found that the information was unverifiable, unreliable, and unusable and it could not be proven to be accurate. The Commission thus disagreed that Favorit demonstrated that it was not involved in the circumvention practices and namely in that it was not reselling Russian birch plywood to the Union.

([70]) Report of the Appellate Body, United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, WT/DS184/AB/R, paragraph 80.

([71]) The Commission looked if 'deficiencies were not such as to cause undue difficulty in arriving at a reasonably accurate finding whether the information was appropriately submitted in good time and was verifiable, and if the party acted to the best of its ability'. Accordingly, if just one of them is not satisfied, that provision cannot be applied and the information in question cannot be taken into account (see judgment of 19 March 2015, City Cycle Industries v Council, T 413/13, not published, EU:T:2015:164, paragraph 120 and the case-law cited).

([72]) ERP stands for Enterprise Resource Planning and it is a software recording business activities of a company.

(107) The Commission further noted that the quantity of Russian birch plywood, purchased by Favorit, was significant and represented [10-40] % of its sales and was close to the quantity that Favorit exported to the Union. However, as explained above, the absence of reliable and verifiable accounts recording the resales did not allow the Commission to confirm neither the quantities nor the destination of Russian birch plywood. Favorit resold the plywood through traders in Kazakhstan and a trader outside Kazakhstan for which Favorit claimed that officially audited accounts were not required. As explained during the verification visit, these sales channels through traders made it possible for Favorit to export to the Union. Likewise, purchases of Russian inputs to produce plywood and sales of birch plywood when done via traders could not be verified against any official or independently audited document.

(108) The records in the accounts of Favorit were therefore not complete and could not be verified. The Commission also noted that the argument that the ERP system could not be retroactively changed was not based on any concrete evidence but was rather a statement of the company that could not be verified. In any event, the Commission was not able to verify that what was in the ERP system concerned the totality of the transactions of Favorit.

(109) Furthermore, the Commission noted that no records or other evidence allowed to confirm, at the visit of the warehouse in Zubovsk, at the company's premises and in the warehouse in Uralsk, that birch plywood destined for the Union and birch plywood destined for the domestic market was kept separately. At the time of the visit, very little stock was kept, and only some of it was labelled. Neither in Zubovsk, nor in the warehouse in Uralsk the company could show records for stock movements tracing the origin and destination of the birch plywood. To the contrary, in Zubovsk, it was argued that the (only) employee working at the warehouse had the knowledge of the birch plywood to be loaded, therefore no records or labelling on the birch plywood ready to be sold was needed. In Uralsk, even though the warehouse was shared with other companies, no records were allegedly kept either. The Commission thus disagreed with the argument of Favorit that the fact that packages labelled as being for the Union were similar to those the Commission could see at the warehouse in Uralsk constituted evidence that the plywood sold to the Union market was produced by Favorit. To the contrary, since allegedly no records were kept in either warehouse, and there was not a separate space for the production of Favorit and Russian plywood, the company could not show that what was exported to the Union was solely its own production.

(110) Favorit further argued that it had only one set of accounts that is issued for all the purposes, including for the tax accounting. It argued that all the purchases were recorded in Favorit's accounting system and reported in the tax accounting. Furthermore, Favorit argued that the deficiencies in its accounting related to the reliability and verifiability of the data were irrelevant to assess its exemption request. Favorit argued that according to the Court of Justice in Maxcom ([23]), exemption requests should be granted if they are supported by evidence and if such evidence demonstrates that exporters submitting a request have not engaged in circumvention practices. It argued that the Court of Justice did not limit the notion of evidence to be submitted in order to meet the relevant legal standard to a specific type. In particular, there was not a requirement in its view for the applicants to have financial statements, audited financial statements, 'official accounts', and that any evidence in principle would suffice.

(111) The Commission disagreed that only one set of accounts was kept. To the contrary, Favorit's accounts used for tax accounting were not complete. Since the accounts should normally include purchases and resales of Russian birch plywood, the Commission disagreed that their reliability was irrelevant to assess its exemption request. The Commission recalled that its conclusion to apply Article 18 was based on a number of factors, detailed in recitals (90) to (93) and not on one piece of a specific evidence. It thus rejected the claim that the deficiencies in its accounting were irrelevant.

([23]) Judgment of the Court (Fourth Chamber) of 26 January 2017, Joined Cases C-247/15 P, C-253/15 P and C-259/15 P, paragraph 58.

(112) Favorit also argued that the questionnaire and pre-verification letter required to make all reconciliations to the trial balance and to electronic records, which Favorit did. It considered that the Commission failed to 'specify in detail' that Favorit was supposed in addition to tie the data to some 'official accounts'. It also argued that the Commission also failed to articulate the way that information was to be structured. In its view, the Commission thus failed to take account of genuine difficulties that Favorit had experienced (such as lack of financial statements) and that it had made known to the Commission. In its view, the Commission could not then fault Favorit for its alleged lack of cooperation.

(113) The Commission disagreed. It specified in detail the information it required and the way that information should be structured in the questionnaire. It was also in line with its standard practice to verify the veracity of the information by crosschecking it with, among others, official accounts, tax declarations, or records kept in factory. However, Favorit could not provide the reconciliation with any official or independently audited documents. The Commission also reiterated that the reason to apply Article 18 was not that Favorit refused to provide any requested information, but rather due to the facts explained in detail in recitals (90) to (93). The Commission thus rejected the claim.

(114) Favorit argued that during the verification visit, it made a reconciliation of the revenue in its tax accounting module to revenue in VAT declarations and that it also reconciled revenue to the management and tax accounting module. This reconciliation showed that both sets of data came from the same accounts and were thus reliable, accurate and verifiable. The Article 18 letter was thus manifestly wrong and unreasoned by alleging that there was any issue regarding the reconciliation and was also contrary to paragraph 1 of Annex II to the AD Agreement.

(115) The Commission noted that only part of the accounts reconciled to official documents which could not thus constitute evidence that the company reported all the rest of the information correctly. The Commission thus disagreed that because part of the operation matched the official accounts, data had to be accepted. As explained above, the fact that all data could not be reconciled put in question all the information Favorit submitted. It thus rejected the claim.

(116) Favorit further argued that the Article 18 letter did not explain which facts available it intended to apply and whether such facts available were based on Favorit's data or anything else. Nothing on the record pointed to involvement of Favorit in transhipment or other circumvention practices. Even if Article 18(1) applied, the only facts reasonably replacing the missing information would be the data that Favorit has provided. An extrapolation of country-wide circumvention findings to Favorit was in its view unreasonable as such selection of facts would clearly aim at punishing a non-cooperating party, which was not the case of Favorit.

(117) Favorit also considered that any attempt to draw adverse inferences from the alleged non-cooperation was illegal under Article 6.8 of the AD Agreement, as well as Article 48 of the Charter of Fundamental rights. It argued that in line with the ruling in Mexico-Anti-dumping Measures on Rice, and Panel Report, China-GOES, the Commission must find 'best information available' which has to be not simply correct or useful per se but 'the most fitting' or 'most appropriate', and that the non-cooperation does not justify the drawing of adverse consequences ([24]). Favorit repeated the same argument after disclosure.

([24]) Report of the Appellate Body, Mexico – Anti-Dumping Measures on Rice, WT/DS295/AB/R, paragraph 289, and Panel Report, China – GOES, WT/DS414/R, paragraph 7.302.

(118) The Commission reiterated that the data of Favorit could not be used as a basis for its findings. As explained above, the data supplied by the company was unverifiable and as such it could not be used even under Article 18(3) of the basic Regulation. As confirmed by the Court of Justice, it is for each individual producer-exporter to show that its particular situation justifies an exemption pursuant to Article 13(4) of the basic Regulation ([25]). Accordingly, the Commission concluded that Favorit had not demonstrated that it was a genuine producer not engaged in circumvention activities. In those circumstances, in line with its past practice, the Commission had no choice but to base itself on country-wide circumvention findings. Also, Article 18(6) of the basic Regulation provides that when a party has failed to cooperate partially or entirely, the result 'may be less favourable ... than if it had cooperated'. Accordingly, the fact that the application on Favorit of the country-wide findings were to be less favourable for Favorit did not aim at punishing Favorit but was the only option and the consequence of the fact that its data could not be used.

(119) Favorit further argued that it provided the profit and loss statement of the traders in Kazakhstan through which it exported and therefore, the Commission could carry out a full verification and reconciliation. Also, it argued that these traders had no obligation to provide audited accounts. Favorit also submitted that the Commission was wrong when it considered that it did not provide a profit and loss statement of the trader outside Kazakhstan. It also repeated that the trader outside Kazakhstan was not required to have audited accounts.

(120) The Commission noted that profit and loss statements of the traders only reflected part of the business of Favorit and therefore, did not constitute evidence that all data provided by Favorit were correct. Similarly, the accounts of the trader outside Kazakhstan only captured part of the sales of Favorit and could not be used to establish the veracity of accounts of Favorit. It thus rejected the claim.

(121) Favorit further argued that based on consistent Commission's practice, non-cooperation with the anti-circumvention did not automatically lead to either the finding of circumvention by default or to the total disregard of the data submitted. It referred to the investigation relating to Glass Fiber Fabric from Morocco in which a producer was found non cooperating based on seven issues, but the Commission accepted its data ([26]), and an investigation on Coumarin from India ([27]), where a company misled the Commission with regard to its affiliation to its trading companies but where no Article 18 of the basic Regulation was applied. Therefore, it considered that the intention of the Commission to apply facts available and its intention to reject its data was a violation of the principle of non-discrimination that obliges to treat similar situations in the same manner. Favorit further argued that its situation was similar to that at issue in the Maxcom judgement, and therefore, no findings of circumvention by Favorit could be found by reference to the country wide circumvention. Favorit considered that it provided evidence that it did not circumvent and that therefore, the Commission could not apply the country-wide findings to its situation.

([25]) See for instance of 26 January 2017, Maxcom v Chin Haur Indonesia, C-247/15 P, C-253/15 P and C-259/15 P, EU:C:2017:61, para. 59.

([26]) Commission Implementing Regulation (EU) 2022/302 of 24 February 2022 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) 2020/492, as amended by Implementing Regulation (EU) 2020/776, on imports of certain woven and/or stitched glass fibre fabrics ('GFF') originating in the People's Republic of China ('the PRC') to imports of GFF consigned from Morocco, whether declared as originating in Morocco or not, and terminating the investigation concerning possible circumvention of the anti-dumping measures imposed by Implementing Regulation (EU) 2020/492 on imports of GFF originating in Egypt by imports of GFF consigned from Morocco, whether declared as originating in Morocco or not (OJ L 46, 25.2.2022, p. 49).

([27]) Council Regulation (EC) No 2272/2004 of 22 December 2004 extending the definitive anti-dumping duty imposed by Regulation (EC) No 769/2002 on imports of coumarin originating in the People's Republic of China to imports of coumarin consigned from India or Thailand, whether declared as originating in India or Thailand or not (OJ L 396, 31.12.2004, p. 18), recitals (11) and (12).

(122) The Commission noted that findings are made on a case-by-case basis, and in this case, as extensively explained above, due consideration was given as to whether the entire data set could not be used or only a specific information, as to whether the missing information had a substantial impact on the outcome of the investigation, and as to whether without the information the Commission could arrive to a reasonable finding. Furthermore, the facts of the cases mentioned by Favorit were completely different in many respects. In particular, in the other cases the business model of the concerned companies was different and there was no issue with the absence of audited financial statements. Therefore, the Commission did not agree that because the data were not entirely rejected in the above cases, the same approach had to be taken at the case at hand. It thus found the claim unsubstantiated. Also, the Commission disagreed that there was verified evidence that Favorit did not circumvent – the absence of reliable and verifiable data did not allow the company to demonstrate the absence of circumvention practices.

(123) Based on the above, the Commission concluded that findings on Favorit had to be based on facts available in the sense of Article 18 of the basic Regulation and that Favorit did not demonstrate that it was a producer not engaged in circumvention activities in the sense of Article 13(4) of the basic Regulation. The Commission therefore rejected its exemption request.

(124) After disclosure, Favorit reiterated the same claims. It repeated that it had demonstrated that it did not tranship Russian birch plywood, and that the Commission acted in breach of AD Agreement and of the basic Regulation. It mainly argued that it had a reliable accounting, that the information it submitted was verifiable, that its stocks clearly distinguished its own production from production of third parties, and that it had only one set of accounts. It resubmitted that the Commission verified all the information.

(125) Favorit further argued that the Commission failed to take into account the difficulties that it faced being a small company, situated in a developing country. It also repeated that the use of the facts available had an adverse effect on Favorit, in breach of Article 6.8 of the AD Agreement.

(126) The Commission considered that all the arguments raised by Favorit were already addressed in detail in recitals (91) to (122). Since no new comments of substance were brought forward, the conclusion in recital (123) was confirmed.

4.1.2. *Findings with regard to Semipalatinsk*

(127) In the questionnaire reply Semipalatinsk reported all pressed wood input material to be non-Russian. However, during the verification visit the Commission discovered that the pressed wood from one supplier was from Russia while for the purchases made from Semipalatinsk's biggest supplier the origin could not be established. This information was necessary to establish, based on Article 13 of the basic Regulation, what is the percentage that the Russian origin input material constituted in the production of birch plywood and thus necessary to assess the application for exemption.

(128) In addition, labour costs for the calculation of the added value as required by Article 13 of the basic Regulation could not be established by the Commission services because Semipalatinsk did not include all employees in the table on cost of manufacturing as they were paid in cash, i.e. not present in the official accounts.

(129) Furthermore, Semipalatinsk did not provide complete questionnaire replies for its related companies RKD LLP and RKD Latvia in a timely manner. The submission of questionnaire replies of these related companies was requested both in the questionnaire and in the subsequent deficiency letters as well as with an email on 27 November 2023, prior to the verification visit. During the verification visit, Semipalatinsk submitted only partial data for RKD LLP while for RKD Latvia some partial data were submitted after the verification visit. In both cases, the non-timely submission of data for its related companies prevented the Commission officials from doing a complete and appropriate verification on-spot.

(130) In addition to the above, on the last day of the verification visit the Commission officials were unable to perform the final checks such as verifying contacts with suppliers, customers and related companies.

(131) Even though requested, Semipalatinsk did not provide the Commission services with a comprehensive overview of the communications with its main supplier. A specific email account that was used for communication with Semipalatinsk's suppliers and customers was not disclosed during the verification visit. Nevertheless, the Commission officials found communications that cast doubts on the reliability of the claims of Semipalatinsk about its commercial links and relations.

(132) The investigation revealed that the RKD LLP and Semipalatinsk's warehouses were in the same premises. The labelling of products was manual, and its labels did not contain batch identification information nor QR/bar code that would enable the tracing back to the production. Furthermore, next to Semipalatinsk's warehouse there were warehouses and external storage space for Russian birch plywood purchased by RKD LLP for resale. Thus, the Commission officials could not get the needed assurance concerning RKD LLP's activities in the movement of traded Russian birch plywood. Also, in another warehouse the Commission was unable to verify the movements of the goods since there were no supporting documents nor IT systems in place on site.

(133) During the verification visit, Semipalatinsk explained that Kazakhstan does not have enough birch wood that would make economically sound production of all-Kazakh birch plywood. Therefore, Semipalatinsk was buying Russian 'pressed wood in the form of slabs' as input materials while inserting as top layer own-produced birch veneers from Kazakh logs. This input material was the main input material during the IP. However, the Commission was unable to trace any stock of this input material. Semipalatinsk claimed that during the verification visits there were no new orders and hence no stocks of the input materials in the warehouses. However, this contradicted Semipalatinsk's statements on the importance of the specific input material in their business model.

(134) On the basis of the above, the Commission informed Semipalatinsk of its intention to apply Article 18(1) of the basic Regulation and base its findings on best facts available within the meaning of this Article.

(135) In response to the Article 18 letter Semipalatinsk claimed that the procurement of input material pressed wood slabs was carried out via Kazakh suppliers and that there were no legal obligations for them to provide documentation on the origin. Furthermore, Semipalatinsk emphasized that the information on the origin of input material was not requested earlier by the Commission and that the further processing of this input material amounted to the value added to the costs of manufacturing of 47 % to obtain the final product.

(136) Semipalatinsk claimed that it disclosed during the verification visit the contacts that had taken place with one of its suppliers. Also, the company maintained that the tables of the questionnaire provided reliable information and included all employees including those who are paid in cash. Furthermore, Semipalatinsk argued that they had provided sufficient information about the related companies RKD LLP and RKD Latvia. Finally, Semipalatinsk claimed that RKD LLP and Semipalatinsk have different warehouses since they have different employees and separate lease agreements and loading facilities.

(137) The Commission rejected the above claims. The origin of the input materials was requested by the Commission both in the questionnaire and in the deficiency letters that were sent subsequently. Although Semipalatinsk made an effort to find proof of origin of the input material the Commission could not obtain timely and reliable information on origin for the major proportion of input material. Furthermore, the Commission officials re-calculated value added to the parts brought in, during the assembly or completion operation, and it was less than 1 % of the manufacturing cost.

(138) The Commission also rejected the claim that during the verification visit it was informed of the email account from which the communications with certain suppliers were done. Semipalatinsk informed the Commission officials on the existence of this email account only at the end of the verification visit. Thus, the needed checks could not be performed, on top of the non-availability of IT staff to solve the technical problems that were encountered at the end of the verification visit.

(139) Furthermore, the Commission rejected the claims of Semipalatinsk that it submitted timely and complete questionnaires for RKD LLP and RKD Latvia. For the former, Semipalatinsk submitted some fragmented data during the verification visit, and for the latter it submitted some fragmented data after the verification visit. This was not timely and not complete, and far too late to verify this information. The fact that RKD Latvia also had other unrelated stakeholders was not relevant, because RKD Latvia was a related company and, hence, had to provide the requested information. On 27 November 2023, i.e. one week before the start of the verification visit in a so-called pre-verification letter, the Commission informed Semipalatinsk that it could not submit new information during the verification visit. In this letter, it was also explained that any change to its reported data, which would be provided after this date may give rise to the application of Article 18. The Commission rejected the claim that Semipalatinsk provided reliable information on labour costs. Although the Commission acknowledges that the reported labour costs provided in the table 'Annex 2 – Cost consumption information request' included all employees, because of a part of it being cash-based, it was not possible to verify labour costs in the financial accounts of Semipalatinsk.

(140) Finally, the Commission rejected as immaterial the claims of Semipalatinsk that the two companies have different warehouses and employees. The Commission reiterated that, although the warehouses of the two companies may have separate lease agreements, loading facilities and employees, it could not get the needed assurance concerning RKD LLP's activities in the movement of traded Russian birch plywood.

(141) Based on the above, the Commission concluded that Semipalatinsk did not demonstrate that it was a producer not engaged in circumvention activities in the sense of Article 13(4) of the basic Regulation, and that therefore, the findings with regard to Semipalatinsk had to be based on facts available in the sense of Article 18 of the basic Regulation which was to apply the country-wide circumvention findings. The Commission therefore rejected its exemption request.

(142) After disclosure, Semipalatinsk claimed that their production plant was operating since 2012, which was before the initiation of the original anti-dumping investigation on imports of birch plywood from Russia. Semipalatinsk also claimed that they demonstrated a high level of the cooperation with the Commission during the investigation, and that the Commission's conclusion that they are not a genuine producer of birch plywood were erroneous and untrue.

(143) The Commission considered that the alleged date of start of production did not affect the findings of the investigation with regard to Semipalatinsk. Furthermore, the Commission acknowledged that there was some cooperation from the staff of Semipalatinsk during the investigation and also during the verification, however the company has not provided the necessary information within the time limits provided for in the basic Regulation. Therefore, Semipalatinsk was found not to have demonstrated that it was a genuine producer not engaged in the established circumvention practice.

(144) In view of the above, the Commission considered that in its submission after disclosure, Semipalatinsk did not submit any new substantiated claim and that all arguments raised by Semipalatinsk were addressed in detail in recitals (135) to recitals (140) above.

(145) Since no new comments of substance were brought forward, the conclusion set out in recital (141) above was confirmed.

4.1.3. *Findings with regard to Severnyi Fanernyi Kombinat LLP*

(146) At the verification visit at Severnyi Fanernyi Kombinat LLP and its related companies ('SFK'), the Commission found that SFK did not report its related company in Russia. The company was reported as an unrelated log supplier. SFK therefore did not provide a questionnaire reply for this company. During the verification visit, the Commission also found that a number of transactions selected as a sample for detailed verification, SFK misreported the origin of Russian logs (as being Kazakh) ([28]). On this basis, the Commission considered that SFK significantly impeded the investigation by supplying false and misleading information. Furthermore, and since the information was to be used to establish the percentage of the input material purchased in Russia and calculate the value added, the Commission considered that it could not use the data of SFK to establish that it was not involved in circumvention practices. On this basis, the Commission services informed SFK that it intended to disregard its data and to apply Article 18 of the basic Regulation.

(147) SFK disagreed. It argued that the Commission should have considered the major overall effort that SFK undertook in terms of cooperation, the fact it was a major employer in its region and the fact that it operated in a developing country. SFK further pointed out to its efforts to prepare a detailed questionnaire response, despite its limited staff and no audited financial statements, and it referred to all the information and reconciliations it had provided. Also, SFK argued that the Commission grossly exaggerated by alleging that the non-disclosure of the relation with its related company in Russia and the misdeclaration of origin for one of the sampled transactions meant that SFK supplied false or misleading information and significantly impeded the investigation. It considered that the Commission was legally and factually wrong, violated EU's WTO obligations, was discriminatory and disregarded the hard work of the staff members of SFK Group. SFK also considered that throughout the different reconciliation, and as verified by the Commission during the on-the-spot verification, it demonstrated that it was not involved in any circumvention practices.

(148) SFK considered that the Commission's intent to disregard SFK's data in its entirety was manifestly contrary to Article 6.8 and paragraph 3 of Annex II to the AD Agreement. It referred to the report of Appellate Body in US – Hot-Rolled Steel ([29]), which specified that according to paragraph 3 of Annex II, investigating authorities are directed to use information if three conditions are satisfied, namely that such information is verifiable, appropriately submitted so that it can be used in the investigation without undue difficulties, and is supplied in a timely fashion. It argued that if these conditions were met, investigating authorities were not entitled to reject information submitted, when making a determination. In its opinion, such conditions were met in the present investigation since the Commission verified each and every timely submitted document that points to the absence of circumvention. SFK considered that the Commission conducted its analysis of the data submitted by SFK in wrong order, and it referred to US-Anti-Dumping and Countervailing Duties (Korea) ([30]). The correct order would be considering first all the information in direct response to the Commission, and since the information provided satisfied the criteria under paragraph 3 of Annex II to the AD Agreement, the Commission had thus all the necessary information to accept the exemption request of SFK.

([28]) The detailed information on the discrepancies were explained in the sensitive version of the Article 18 letter.
([29]) Report of the Appellate Body, United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, WT/DS184/AB/R, paragraph 80.
([30]) Panel Report, US – Anti-Dumping and Countervailing Duties (Korea), para. 7.138.

(149) The Commission disagreed. Contrary to the allegations by SFK, it considered that the non-reporting of a related company in Russia and misreporting of the origin of purchased logs seriously impeded the investigation. In the RP, SFK purchased birch logs, veneer, resin, and as well birch plywood in Russia. In these circumstances, the Commission had to determine the exact percentage of the input material from Russia in order to establish if the Russian parts constitute 60 % or more of the total value of the parts of the assembled product and if the added value of the parts brought in was more than 25 % of the manufacturing cost. The information on the value and origin of the input material had thus a direct impact on the assessment of the exemption request. Because the questionnaire reply of the related Russian company could not be verified, and because the accounts of SFK with the related company showed financial transactions beyond the log purchases (that the company explained as 'advance payments'), the Commission could not verify the quantities and values of the logs, and if other input material or the product concerned was purchased. Since the questionnaire reply of the related company was not submitted when requested at the start of the investigation but was only submitted at the very end of the verification visit, the Commission considered that the information on the financial and goods flows between SFK and its Russian related company could not be verified. Therefore, it could not be argued that it was appropriately submitted, in a timely fashion, and that the information was verifiable. Therefore, the conditions under paragraph 3 of Annex II to the AD Agreement were not met.

(150) SFK further considered that the Commission could not disregard all the information provided by SFK. It referred to Article 18(1) of the basic Regulation which stipulates that 'where it is found that any interested party has supplied false or misleading information, that information shall be disregarded, and use may be made of facts available'. On that basis, it considered that the Commission could proceed in its investigation by applying facts available in this regard and thus by treating the Russian company as a related company, and to treat the logs that were wrongly declared as being from Russia. It argued that these facts available however had no bearing on the data that SFK otherwise submitted in the course of the investigation, which showed lack of any circumvention practices. SFK further considered that the Commission did not need the country where parts come from for the calculation of the added value. It considered that it did not matter whether the supplier was related or not, since even if transfer prices for an input had to be adjusted, it would equally affect the total cost of manufacturing, such that the value added would remain the same. Therefore, the Article 18 letter was based on a manifest error of assessment and contrary to Article 13(2) of the basic Regulation.

(151) The Commission disagreed that in the case at hand the only consequence for the provision of false and misleading information should be to treat the Russian company as a related company, and to treat the logs from a sample transaction that were wrongly declared as coming from Russia. The false information on the logs and the fact that the Commission could not verify the Russian related supplier rendered the whole data set of SFK unreliable. SFK declared that it purchased between [6-10 %] from the related Russian supplier. The Commission could not verify the quantities of the logs and that SFK only purchased logs from the company and not the product concerned directly. The Commission noted that SFK had, at the end of 2023, an outstanding debt to the Russian company, which equalled half of the turnover it had with this company. Also, SFK bought in the RP product concerned from Russia, which was initially declared to the Commission as 'unfinished goods'. Therefore, the fact that SFK did not provide the questionnaire reply to the Commission directly affected the outcome of the investigation.

(152) Furthermore, the exact percentage of the input material within the manufacturing costs was relevant not only to establish the percentage of the input material from Russia (the 60 % test) but also applied on the value added (the 25 % test). The allegations of SFK that value added would be the same even if 100 % of the input material came from Russia was thus not correct.

(153) Furthermore, SFK submitted that even assuming SFK's cooperation with the investigation could be considered as less than ideal, the Commission was obliged to comply with Article 18(3) of the basic Regulation stating that '[w]here the information submitted by an interested party is not ideal in all respects, it shall nevertheless not be disregarded, provided that any deficiencies are not such as to cause undue difficulty in arriving at a reasonably accurate finding and that the information is appropriately submitted in good time and is verifiable, and that the party has acted to the best of its ability'. SFK considered that the two points raised by the Commission related to the accuracy of the information on the corporate structure and the origin of logs were not such as to cause undue difficulty in arriving at reasonably accurate findings on the lack of circumvention by means of either transshipment or assembly/completion operations. SFK thus argued that the information was submitted in good time, was verified and reflected SFK's ability to cooperate, and must therefore not be disregarded.

(154) The Commission reiterated that the information that was misdeclared and the fact that the questionnaire of the Russian related company was not submitted before the verification visit were issues that significantly prevented the Commission from reaching a reasonably accurate finding. The misdeclaration seriously impacted the investigation and, as a consequence, the data of SFK could not be used. The Commission thus rejected the claim.

(155) SFK argued that it was SFK who first disclosed to the Commission the existence of affiliation with the Russian related company, and that it was not the Commission who brought this fact forward. It argued that nothing on the records suggested that the Commission was aware of the Russian related company being an affiliate, and as described in the mission report, the Commission asked SFK whether it had affiliates in Russia. And SFK explained that it had an affiliate in Russia that purchased logs and supplied them to SFK. SFK repeated the same argument after disclosure. It considered that the Commission misinterpreted the facts. SFK repeated that it was the first to bring forward the information on the Russian company provided the information about the related company, and that it did not deny its existence.

(156) According to SFK, the fact that the owner mentioned that the Russian company was a dormant company and that SFK did not purchase logs as of 2020 was a mistake which was allegedly understandable, since it was not him who prepared the tables, and the person who prepared the tables did not know about the relationship, and as well because purchases of the logs from the Russian company constituted in the RP only between [6-10 %] of all the log purchases. SFK argued that it did not have enough staff and all the staff acted to the best of their ability, and that what is in essence a clerical mistake could not be classified as false and misleading information. Omission of the Russian company in corporate tables and its designation as unrelated in log purchase tables was unintended and was simply a misunderstanding or a clerical error. SFK repeated the same argument after disclosure. The Commission disagreed that it was SFK who brought forward the information on the existence of the unreported Russian company. To the contrary, it was the Commission that confronted the company with the information that it found with regard to the related company in Russia, a trader in timber products selling, amongst others, birch logs, which SFK initially denied. Once it acknowledged the relationship, initially SFK stated that this company was 'dormant' and that therefore it had ceased purchasing logs from this company a long time ago. However, the investigation revealed that this related company in Russia was an important provider to SFK of logs in the RP, and therefore, this contradicted the explanations by the company that there were no purchases of logs after 2020. The company then admitted that the last transaction it had with this related company took place in April 2023. It was not thus SFK that brought the information forward. Also, it considered that the mis-declaration of the company as unrelated could not be a clerical error by a person filling in tables, since the question was asked to the owner of SFK who was at the same time 100 % owner of the Russian company, and who finally acknowledged its existence. Therefore, the Commission disagreed that it was just a clerical error or omission by the person filling in the tables.

(157) SFK also considered that it was incorrect to allege that the Russian company questionnaire reply could not be verified, and that the Commission made a legal mistake by suggesting that information provided during on-site verification could not be accepted by default. SFK also submitted that the questionnaire reply was submitted in time, was and remained verifiable and could have been crosschecked through the purchase table of SFK. Therefore, it submitted that the questionnaire response was verifiable and could have been verified, since it was submitted the last night before the last day of verification. The questionnaire also remained verifiable without a need for the actual verification.

(158) After disclosure, SFK reiterated the same argument. It argued that the questionnaire reply was not untimely submitted, and that, since it was part of the exhibits, it should be considered by the Commission in full. It further argued that submitting a questionnaire during the verification was also considered as timely by a WTO panel in US – Anti-Dumping and Countervailing Duties (Korea) ([14]) which mentions that the questionnaire was also provided 'within the deadlines established by the USDOC, or upon the USDOC's request at verification'. After disclosure, SFK further argued that the questionnaire response was provided timely and was verifiable. It referred to the Appellate Body Report in United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan which states that: 'In considering whether information is submitted within a reasonable period of time, investigating authorities should consider, in the context of a particular case, factors such as: (i) the nature and quantity of the information submitted; (ii) the difficulties encountered by an investigated exporter in obtaining the information; (iii) the verifiability of the information and the ease with which it can be used by the investigating authorities in making their determination; (iv) whether other interested parties are likely to be prejudiced if the information is used; (v) whether acceptance of the information would compromise the ability of the investigating authorities to conduct the investigation expeditiously; and (vi) the numbers of days by which the investigated exporter missed the applicable time-limit ([15])'. SFK considered that in case of its related company, these criteria were fulfilled. It argued, amongst others, that it provided the questionnaire reply two days after it was alerted on the issue.

(159) The Commission disagreed. The verification planning was based on the number of companies it had to verify, and as well based on the information the companies submitted in advance. The information that companies could not submit new information during the verification and that the company could only correct clerical errors one week before the start of the verification at the latest was communicated to SFK in a so-called pre-verification letter. At the same time, the letter informed companies that any change to reply to the questionnaires, which would be provided after the date may give rise to the application of Article 18. The existence of a Russian related company was only revealed at the start of the verification and could not be considered as a clerical error but an important fact that had an important bearing on the investigation. The fact that it was not reported prevented the Commission from verifying the completeness of the reply.

(160) The Commission also disagreed that the questionnaire reply could be verified because it was submitted electronically after the verification of SFK. The following (and last) day of the verification of the SFK Group was the on-the-spot verification of the related domestic trader of SFK, and if the Commission were to verify remotely the Russian related company, it would have had to skip entirely or partially the verification of the related trader. The Commission thus disagreed that it could verify the questionnaire reply, and that because it was named as an exhibit, this meant that it had been verified. Furthermore, the Commission considered that the findings in the cited Panel Report, US – Anti-Dumping and Countervailing Duties (Korea), according to which a questionnaire reply submitted upon the investigating authority's request during the verification can be accepted, are not pertinent in the case at hand. As noted in recital (159) above, the Commission did inform SFK of the fact that it could not accept during the

([14]) Panel Report, US – Anti-Dumping and Countervailing Duties (Korea), para. 7.138.

([15]) Appellate Body Report, United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, WT/DS184/AB/R, adopted 23 August 2001, DSR 2001:X, para. 85.

verification substantial changes to information previously submitted. In any event, the questionnaire reply of the related company was not submitted during the verification but was provided as an exhibit together with other exhibits at the closure of the verification. The Commission recalled that this type of questionnaires of related companies was already requested at initiation and should have been provided within 37 days after initiation, i.e. by 5 October 2023 at the latest. Therefore, it was not provided two days late, as claimed by SFK, but two months late in the context of an investigation that is limited in time to 9 months.

(161) In relation to the above-mentioned Appellate Body Report, United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, the Commission referred to its detailed explanations in recital (149) as to why the information about a related company in the country subject to measures, i.e. Russia that supplied input material to SFK in Kazakhstan, is, by its nature, crucial in verifying whether SFK was involved or not in the circumvention practices.

(162) SFK also argued that the financial transactions in the RP between SFK and the Russian related company were of a lesser magnitude than what the Commission alleged, and that they made perfect sense. It maintained that it was a dormant company which was confirmed by information reported in various tables and because the last transaction took place in April 2023.

(163) The Commission considered that the argument that the company was dormant was not supported by the facts. Although SFK claimed that it had no business with the company anymore, and that the last purchase took place in April 2023, the receivable accounts of SFK showed a significant outstanding debt with that company which, in terms of value, was significative, compared to the purchase value of the logs the IP. Since SFK explained that these were advance payments for input material to be delivered, it contradicted the claim that it stopped the business with this company.

(164) With regard to the logs, SFK argued that the Commission's allegations were based on a manifest error of assessment and that they were totally misplaced. It argued that the Commission reviewed six invoices, and not only three, and that out of the six invoices, five were correct. Second, the volume of the logs where the origin was not reported correctly was very minor (of [50-100] m^3), and this could not affect the correctness of the remaining 99,9 % of purchases. SFK also argued that it had explained that to provide the information in the questionnaire, it primarily relied on the country of registration of the supplier, so if the supplier was registered in Kazakhstan, SFK assumed that the logs were of the Kazakh origin which was in its view a reasonably accurate method. Therefore, SFK did not mislead the Commission or provided any false information. Establishing the origin based on transaction-to-transaction basis would not be possible given a significant volume of purchase. SFK repeated the same arguments after disclosure.

(165) The Commission disagreed. During the on-the-spot verification, it indeed collected altogether six invoices with evidence on the log origin. There were two additional transactions (invoices) from the same supplier that were misreported. Therefore, out of the eight invoices, only five were correct. The Commission also disagreed that the value of the misreported invoices was minor. The correctness of the data could not be expressed on the total value of transactions (that could be thousands in some cases) but on the value of the sample. In the case at hand, the incorrect transactions represented more than 18 % of the sampled logs. The Commission also considered that the fact that the rest of the sample was not reported based on verification of the log certificate but on the place where the supplier was registered put even more doubts on the reliability of the data.

(166) After disclosure, SFK further argued that the Commission exaggerated the importance of the misreported logs, and that 93 % of the selected sample, by volume, confirmed the correct origin. SFK also pointed to the fact that the Article 18 letter mentioned that the misreported transactions concerned one of the three invoices, whereas in its findings in the General Disclosure Document, the Commission mentioned eight invoices. Therefore, in its view, the Commission came with new facts and it should have provided SFK with a right to comment. It also repeated that the Commission sampled six invoices, and not eight.

(167) The Commission indeed reviewed the number of the selected invoices, after comments submitted by SFK on the Article 18 letter. The Commission confirmed the eight invoices, as mentioned in the General Disclosure Document, because there were two additional invoices from the same supplier of the logs of Russian origin. This correction did by no means affect the conclusions reached in the Article 18 letter. In addition, the number of eight invoices was mentioned in the General Disclosure Document, which was sent to all parties for comments. The Commission thus disagreed that SFK was not given the right to comment.

(168) Similarly to arguments by Favorit (see recital (121)), SFK submitted that based on consistent Commission's practice, non-cooperation with the anti-circumvention did not automatically lead to either the finding of circumvention by default or to the total disregard of the data submitted and it referred to investigations on *Glass Fiber Fabric from Morocco*, and on *Coumarin from India*. Therefore, it considered that the intention of the Commission to apply facts available and its intention to reject its data was a violation of the principle of non-discrimination that obliges to treat similar situations in the same manner. SFK further argued that in any event the Commission acknowledged that the related Russian supplier was not involved with the production or sales of the product concerned and its affiliation had no impact on the outcome of the investigation.

(169) The Commission reiterated that findings were made on a case-by-case basis, and due consideration was made as to whether the entire data set could not be used or only a specific information, as to whether the missing information had a substantial impact on the outcome of the investigation, and as to whether without the information the Commission could arrive to a reasonable finding. Furthermore, the facts and figures of the cases mentioned by SFK were completely different in many respects. In particular, in the other cases the business model of the concerned companies was different and there was no issue with misreporting of the origin of input material. Therefore, the Commission did not agree that because the data were not entirely rejected in the above cases, the same approach had to be taken at the case at hand. It thus found the claim unsubstantiated. Also, the Commission disagreed that there was verified evidence that SFK did not circumvent – the absence of reliable and verifiable data did not allow the company to demonstrate the absence of circumvention practices.

(170) SFK further argued that regardless of any alleged non-cooperation by SFK, in light of the findings of the Court of Justice in *Maxcom* and consistent with Commission Implementing Regulation (EU) 2018/28 [13], no findings of circumvention by SFK can be found by reference to the country-wide circumvention, and that SFK's company's data precludes the finding of company-specific circumvention practices. In that context, whether there is country-wide circumvention by means of imports from Kazakhstan was irrelevant since such evidence was not capable of overriding specific, verified evidence provided by SFK that is not involved in any circumvention practices.

(171) The Commission considered that the facts of this case are different. In the case mentioned in the previous recital there was no issue with hiding links or misreporting information with regard to the country subject to measures. The Commission was not able to come to the conclusion that there was verified evidence that SFK did not circumvent. It found thus the claim unsubstantiated.

(172) Similarly to Favorit, SFK also considered that any attempt to draw adverse inferences from the alleged non-cooperation was illegal under Article 6.8 of the AD Agreement. It argued that in line with the ruling in Mexico-Anti-dumping Measures on Rice, and Panel Report, China-GOES, the Commission must find 'best information available' which has to be not simply correct or useful per se but 'the most fitting' or 'most appropriate', and that the non-cooperation does not justify the drawing of adverse consequences.

(173) The Commission reiterated its conclusion that the data of SFK could not be used as a basis for its findings. Accordingly, the Commission concluded that SFK had not demonstrated that it was a producer not engaged in circumvention activities. In those circumstances, in line with its past practice, the Commission had no choice but to base itself on country-wide circumvention findings. Also, Article 18(6) of the basic Regulation provides that when a party has failed to cooperate partially or entirely, the result 'may be less favourable ... than if it had cooperated'. Accordingly, the fact that the application on SFK of the country-wide findings were to be less favourable for SFK was the only option and the consequence of the fact that its data could not be used.

(174) SFK further argued that the Commission in the context of the ongoing anti-circumvention investigation (or otherwise) has no jurisdiction to enforce sanctions and to establish that SFK or for that purpose any other party has circumvented the sanctions. The investigation was solely a possibility to extend a 15,8 % duty on imports from Kazakhstan and not any sanctions violations.

(175) SFK therefore suggested that the Commission should accept SFK' price undertaking offer, and terminate an anti-circumvention investigation with regard to SFK, in line with Article 8.5 of the basic Regulation and, in addition, any Commission decision accepting SFK's price undertaking should specify that the acceptance of the price undertaking should not be taken to mean that SFK is facilitating infringements of the prohibition against circumvention of the provisions of this Regulation, or of Council Regulations relating to sanctions on the Russian federation.

(176) The Commission considered that in general, undertakings in circumvention investigations could not be considered. The Commission has discretion in accepting undertakings; in this case, the Commission could not accept an undertaking offer from a company that could not demonstrate not to be involved in circumvention practices and for which findings had to be based on facts available. In any event, undertakings were also refused in the original investigation for the non-compliance with criteria specified in Article 8(2) of the basic Regulation [14].

(177) Based on the above, the Commission concluded that SFK did not demonstrate that it was a producer not engaged in circumvention activities in the sense of Article 13(4) of the basic Regulation, and that therefore, the findings with regard to SFK had to be based on facts available in the sense of Article 18 of the basic Regulation which was to apply the country-wide circumvention findings. The Commission therefore rejected its exemption request.

[13] Commission Implementing Regulation (EU) 2018/28 of 9 January 2018 re-imposing a definitive antidumping duty on imports of bicycles whether declared as originating in Sri Lanka or not from City Cycle Industries (OJ L 5, 10.1.2018, p. 27), recitals (20) and (21).

[14] See recitals (247) to (254) of the original Regulation.

(178) After disclosure, SFK submitted that it disagreed with the findings disclosed to SFK in the General Disclosure Document. It repeated that the Commission's findings were in breach with AD Agreement and that the Commission illegally applied the facts available. SFK repeated that it did not refuse access to and did not otherwise fail to provide necessary information within a reasonable period, nor did it significantly impede the investigation. According to SFK, contrary to paragraph 3 of Annex II to the AD Agreement, the Commission failed to take into account for the purpose of its determinations all information which was verifiable and appropriately submitted, so that it could have been used in the investigation without undue difficulties, and which was supplied in a timely fashion.

(179) The Commission considered that all the arguments raised by SFK were already addressed in detail in recitals (146) to (176) above. Since no new comments of substance were brought forward, the Commission confirmed the conclusion set out in recital (177) above.

4.1.4. *Additional claims by Favorit and SFK after disclosure*

(180) After disclosure, Favorit and SFK further argued that the Commission failed to determine their individual dumping margins, contrary to Article 6.9 of the AD Agreement.

(181) The Commission considered that Article 13(1) of the basic Regulation does not have any corresponding provision in the AD Agreement and requires the Commission to find evidence of dumping in relation to the normal values previously established for the like product. The Commission complied with this obligation. In any event, the Commission noted that, in view of the unreliable and unverifiable nature of the data provided by SFK and Favorit, the findings with regard to these two companies had to be based on facts available in the sense of Article 18 of the basic Regulation, which was to apply the country-wide circumvention findings. SFK and Favorit therefore failed in their applications under Article 13(4) and cannot be exempted from the duties.

(182) After disclosure, Favorit reiterated that Kazakhstan was a developing country and that the Commission should have applied Article 15 of the AD Agreement and accept constructive remedies such as price undertakings, which it submitted.

(183) The Commission considered Article 15 of the AD Agreement as not relevant in the case at hand since it applies 'when considering the application of anti-dumping measures under [that] Agreement'. Since, as explained above in recital (13), the AD Agreement does not provide for a specific anti-circumvention provision, Article 15 of the AD Agreement is not pertinent. Furthermore, as mentioned in Section 4.1.2 above, undertakings in circumvention investigations could not be considered, and the Commission could not accept an undertaking offer from companies that failed to demonstrate that they were not involved in the circumvention practices found for the country as a whole and for which findings had to be based on facts available.

(184) Favorit and SFK further argued that the Commission failed to inform them of the reasons not to accept the evidence or information they supplied. They also claimed that they were deprived of an opportunity to provide further explanations within a reasonable period. In their view, the allegations that they were engaged in circumvention activities was based on a pure speculation, and the Commission had no facts, either based on 'facts available' or otherwise, to allege that they were engaged in such activities.

(185) The Commission disagreed that it did not inform Favorit and SFK of the reasons not to accept evidence or information and that both companies did not have opportunity to provide further explanations within the reasonable period. To the contrary, the Commission informed both companies of the reasons for the rejection of their exemption requests in Article 18 letters. The Commission further provided very detailed explanations in the General Disclosure Document and the individual disclosure to Favorit, to which both both Favorit and SFK had an opportunity to provide comments. The Commission also disagreed that its decision not to exempt Favorit and SFK from the extended duties was based on a speculation. Indeed, as explained in recital (118), it is for each individual producer-exporter to show that its particular situation justifies an exemption pursuant to Article 13(4) of the basic Regulation, and the Commission concluded that neither Favorit nor SFK had demonstrated that they were genuine producers not engaged in circumvention activities.

(186) Both Favorit and SFK pointed to the cover letter accompanying the General Disclosure Document which mentioned that the Commission intended to 'impose' anti-dumping duties on imports consigned from Kazakhstan, and on this basis, they both considered that General Disclosure Document was illegal and contrary to EU's WTO obligations.

(187) The Commission considered that the fact the cover letter contained a clerical mistake and mentioned 'impose' instead of 'extend' did not put in question the legality of the General Disclosure document and of the investigation. The legal basis and the proposed conclusions were explained in great level of detail, and it could not be interpreted beyond its scope, which was defined in the initiating Regulation. There could not be any doubt or misinterpretation about the fact that the findings concerned an extension of the definitive anti-dumping duty imposed by Implementing Regulation (EU) 2021/1930 on imports of birch plywood originating in Russia to imports of birch plywood consigned from Türkiye and Kazakhstan, whether declared as originating in Türkiye and Kazakhstan or not, and that was based on Article 13 of the basic Regulation. The Commission thus dismissed the claim.

4.1.5. *Comments by the Kazakh authorities after disclosure*

(188) The Ministry of Trade and Integration of the Republic of Kazakhstan ('the Ministry') claimed that the Commission ignored domestic sales prices and cost of production in Kazakhstan, which is contrary to Articles 2(1), 2(2), 2(3) and 2(4) of the AD Agreement. According to the Ministry, the General Disclosure Document did not contain determination of likeness between birch plywood exported from Kazakhstan to the EU and the one sold in the domestic market, which is contrary to Articles 2(1), 2(2) and 2(6) of the AD Agreement.

(189) These Commission rebutted these claims in recital (82) above.

(190) Following disclosure, the Ministry claimed that the initiation of the investigation was contrary to Article 5.2 of the AD Agreement because there was no complaint coming from the domestic industry meeting the requirements of Article 5(2) of the AD Agreement. Furthermore, contrary to Article 5.3 of the AD Agreement, the Commission failed in its duty to examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation.

(191) The Commission rebutted this claim in recital (13) above.

(192) According to the Ministry, the General Disclosure Document contained no determination of material injury or threat thereof which is contrary to Articles 3(1), 3(2), 3(4) and 3(5) of the AD Agreement.

(193) As explained in recital (13), Article 13 of the basic Regulation does not strictly require an analysis of injury or causal link. Therefore, the Commission rejected this claim.

(194) According to the Ministry, several Kazakhstani producers did not refuse access to, and did not otherwise fail to provide, necessary information within a reasonable period. Nor did they significantly impede the investigation such that the Commission's decision to apply facts available instead of their actual data on the cost of production and sales prices is contrary to Article 6(8) of the AD Agreement.

(195) The Commission addressed this comment in detail in Section 2.1 and in Section 4.1.2 above.

(196) The Ministry claimed that, contrary to paragraph 1 of Annex II to the AD Agreement, in case of one Kazakhstani exporting producer, the Commission failed after the initiation to specify in detail the information required and the manner in which that information should be structured in its response.

(197) The Commission addressed this comment in Section 2.1. All exporting producers were informed of the information that had to be provided, in which format and the applicable deadlines. Deadlines were extended where warranted, and replies to any procedural and practical questions that were raised, were provided by the Commission services.

(198) The Ministry claimed that contrary to paragraph 3 of Annex II to the AD Agreement, the Commission failed to take into account all information which was verifiable and appropriately submitted so that it could have been used in the investigation without undue difficulties and which was supplied in timely fashion. Furthermore, according to the Ministry, the Commission failed to respect paragraph 5 of Annex II to the AD Agreement as it wrongfully disregarded data of cooperating Kazakhstani exporters, while it is undisputed that they acted to the best of their ability. The Ministry also claimed that the Commission failed to inform Kazakhstani exporters of the reasons not to accept evidence or information supplied by them, thus depriving them of an opportunity to provide further explanations within a reasonable period, which is not in line with paragraph 6 of Annex II to the AD Agreement. Finally, the Ministry claimed that the Commission failed to take into account difficulties experienced by Kazakhstani exporters being small companies in supplying information requested and to provide practicable assistance which is not in line with Article 6(13) of the AD Agreement.

(199) The Commission addressed these comments in great level of detail in Section 2.1 and in Section 4.1.2 above.

(200) According to the Ministry, the Commission drew adverse inferences and claimed that Kazakhstani producers are engaged in circumvention practices while Commission is obliged to base its findings on information from secondary source with special circumspection. The Ministry claimed that the Commission's allegations were based on a pure speculation and in breach of paragraph 7 of Annex II and Article 6(8) of the AD Agreement.

(201) The Commission considered that, while it is true that the burden of proof of circumvention practices of anti-dumping measures at country-wide level lies on the Commission, it is for each and every individual exporting producer to show that their particular situation justifies an exemption pursuant to Article 13(4) of the basic Regulation. As set out in Sections 2.1 and 4.1.2 above, the exporting producers failed to do so as they did not demonstrate that they were genuine producers not engaged in circumvention practices. The Commission addressed in great level of detail the conclusion that the conditions in Article 13(1) of the basic Regulation were considered to be met. Accordingly, such a conclusion was by no means based on speculation. Furthermore, the Commission rebutted similar comments in recital (118) above. Therefore, this claim was rejected.

(202) The Ministry stated that the Commission failed to provide information on individual dumping margin for cooperating Kazakhstani exporters, which is contrary to Article 6.9 of the AD Agreement.

(203) The Commission rebutted this claim in recital (181) above.

(204) The Ministry claimed that the Commission failed to explore possibilities of constructive remedies before applying anti-dumping duties where they would affect the interests of Kazakhstan as a developing country, which is not in line with Article 15 of the AD Agreement. In that context, the Ministry expressed readiness to discuss with the Commission a proper monitoring system for the undertakings that would exclude a possibility for the Kazakhstani exporting producers to tranship birch plywood originating in Russia. In order for this scheme to be possible and in line with Article 8 of the basic Regulation, Commission's definitive Regulation should foresee the possibility to offer (and accept) price undertakings after the deadline for the imposition of definitive anti-dumping measures.

(205) This comment was addressed in recital (176) and in recital (183). In view the above, the Commission concluded, after careful consideration, that the comments brought forward by the Kazach authorities did not lead to a change in the conclusions as set out in the General Disclosure Document.

4.2. Türkiye

4.2.1. *Findings on Intur Construction Tourism and Forest ('Intur')*

(206) Intur claimed that there was due cause and an economic justification for its establishment in March 2020. After several decades in the wood industry with a focus on African wood, and after having detected inefficiencies of a family led business, the company for plywood production was established. Its primary objective was the procurement of input materials for plywood production, both domestically and internationally, followed by processing and transforming these materials into finished plywood products for distribution in both domestic and international markets. The investigation revealed that Intur started production at the end of 2019, which was before the initiation of the original anti-dumping investigation on imports of birch plywood from Russia.

(207) The investigation revealed that Intur substantially increased its export sales to the Union and input materials purchases from Russia in 2021, after the anti-dumping investigation was initiated. Therefore, the Commission concluded that the operation substantially increased since, or just prior to, the initiation of the anti-dumping investigation and the parts concerned are from the country subject to measures, as required by Article 13(2)(a) of the basic Regulation.

(208) The main input material to produce birch plywood for Intur are birch veneers, which were all purchased from Russia. According to the submitted and verified information by Intur, over 75 % of the total value of the input materials purchases were from Russia. The Commission therefore concluded that the 60 % criterion set out in Article 13(2)(b) of the basic Regulation was met.

(209) The Commission concluded that the value added to the parts brought in, during the assembly or completion operation, was less than 25 % of the manufacturing cost, as required by Article 13(2)(b) of the basic Regulation for these operations to constitute circumvention.

(210) With a communication on 30 January 2024, Intur requested the Commission to take into account two further revisions, concerning the exchange rates impacting the depreciation of machinery as well as the allocation of certain labour costs.

(211) The Commission informed the company, that it was not possible to revise the cost elements after the verification visit as such claims could no longer be verified.

(212) Based on the submitted and verified tables by Intur, there was no export in 2019 while in the RP it exported [2 000-3 000] m³. Regarding prices, the Commission compared the average non-injurious price as established in the original investigation, adjusted to reflect the cost increase, with the weighted average export CIF prices determined on the basis of the information provided by Intur, duly adjusted to include post clearance costs. This price comparison showed that the imports from Intur undersold the Union prices by more than 37 %.

(213) The Commission also examined whether there was evidence of dumping in relation to the normal values previously established for the like product. To this end, export prices of Intur on an ex-works basis were compared to the normal values established during the original investigation, duly adjusted for inflation. The comparison of normal values and export prices showed evidence of dumping during the reporting period.

(214) Based on the above, the Commission concluded that Intur was found to be engaged in circumvention practices within the meaning of Article 13(2) of the basic Regulation. The Commission therefore rejected its exemption request.

4.3. Conclusion

(215) The Commission thus concluded that none of the exemption requests could be accepted.

5. DISCLOSURE

(216) On 1 March 2024, the Commission disclosed to all interested parties the essential facts and considerations leading to the above conclusions and invited them to comment. Comments received from interested parties were addressed above. Further comments that were received from the Woodstock Consortium, the European Panel Federation and Orlimex CZ were addressed in Section 6 below.

6. ADDITIONAL COMMENTS AFTER DISCLOSURE

(217) The Woodstock consortium provided additional comments on several points confirming circumvention practices at country-wide level. It also stressed the importance of strict monitoring and follow-up measures on imports in the future.

(218) The European Panel Federation endorsed the findings of the Commission and requested the Commission to promptly proceed to making it a binding Regulation and to continue monitoring closely to stop any attempts of circumventing.

(219) After disclosure, Orlimex CZ, an unrelated importer, claimed that the logistical and administrative expenses associated with transiting from Russia to Kazakhstan and then to the EU far exceed the savings from avoiding the 16 % duty. Therefore, it was deemed to be economically irrational.

(220) The Commission considered that anti-dumping measures may be extended to third countries when circumvention of the measures in force is taking place. As explained in this Regulation, the Commission established that circumvention practices took place. The question to which extent such practices are beneficial was not relevant and went beyond the scope of this investigation.

(221) According to Orlimex CZ the Commission's determination failed to account for the significant impact of sanctions imposed on Russia, which Orlimex CZ believe is the actual cause of the reduced imports from Russia to the Union, not the imposition of anti-dumping duties. The legal prohibitions implemented from April 2022 already fundamentally altered the trade landscape, making it impossible to continue business with Russia, irrespective of any anti-dumping duties. The sanctions, not the anti-dumping measures, created a market void that producers from Kazakhstan, Türkiye, and other regions sought to fill.

(222) The Commission rebutted this claim in recital (61). In addition, the Commission considered that Orlimex CZ explanation according to which the producers from Kazakhstan and Türkiye sought to fill an alleged market void that occurred in the Union, was irrelevant in view of the fact that none of the producers could actually demonstrate that it was entitled to benefit from an exemption pursuant to Article 13(4) od the basic Regulation.

(223) Orlimex CZ also argued that the SFK was a producer long established on the Kazakhstani market well before the imposition of sanctions or anti-dumping duties, primarily serving the domestic demand. Following the imposition of sanctions, Russian producers entered the Kazakhstani market with products they could no longer sell in the Union due to the sanctions, leading to a price drop locally. In contrast, prices for birch plywood in the Union surged. It was therefore entirely logical for a manufacturer to redirect its output to fill the gap in the Union market. In addition, Orlimex CZ claimed that the Commission's generalization unfairly grouped all exporters, ignoring clear differences between legitimate business operations and those violating sanctions.

(224) The findings regarding SFK were elaborated in Section 4.1.3 above. In addition, the Commission assessed the situation of each and every exporting producer that came forward individually and on the basis of its merits, so no generalization or grouping took place, neither during the investigation nor in the conclusions.

(225) Orlimex CZ also commented that in case of SFK the Commission inverted the burden of proof. According to Orlimex CZ, this reversal of the burden of proof undermined legal certainty and confidence in the integrity of the investigative process.

(226) This claim was addressed in recital (118). It is for each individual exporting producer to show that its particular situation justifies an exemption pursuant to Article 13(4) of the basic Regulation. In general, in case an exporting producer has its own production facility with a capacity to, at least, produce what it actually exports, does not have multiple links with the country subject to measures in terms of related companies and/or supplies, and can be held accountable, it is neither unduly burdensome nor difficult to show that such producer is not engaged in the circumvention practice. In view of the above, the claims brought forward by Orlimex CZ were rejected.

7. CONCLUSION

(227) Based on the above, the Commission maintained that the definitive anti-dumping duty against imports of birch plywood from Russia, imposed by Implementing Regulation (EU) 2021/1930, has to be extended to imports of birch plywood consigned from Kazakhstan and Türkiye, whether declared as originating in Kazakhstan and Türkiye or not. The Commission also maintained that the exemption requests that were made, should be rejected.

(228) 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. The definitive anti-dumping duty imposed by Implementing Regulation (EU) 2021/1930 imposing a definitive anti-dumping duty and definitely collecting the provisional duty imposed on imports of birch plywood originating in Russia, is hereby extended to imports of plywood consisting solely of sheets of wood, each ply not exceeding 6 mm thickness, with outer plies of wood specified under subheading 4412 33, with at least one outer ply of birch wood, whether or not coated, currently classified under CN code ex 4412 33 10, and consigned from Kazakhstan and Türkiye, whether declared as originating in Kazakhstan and Türkiye or not (TARIC codes 4412331010 and 4412331020).

2. The extended duty is the anti-dumping duty of 15,80 % applicable to 'all other companies' in Russia.

3. The duty extended by paragraphs 1 and 2 of this Article shall be collected on imports registered in accordance with Article 2 of Implementing Regulation (EU) 2023/1649.

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

Article 2

Customs authorities are directed to cease the registration of imports established in accordance with Article 2 of Implementing Regulation (EU) 2023/1649.

Article 3

The exemption requests submitted by Favorit LLP, QazFanCom LLP, Semipalatinsk Wood Processing LLP, Severnyi Fanernyi Kombinat LLP, VFP LLP, Intur Construction Tourism and Forest, Murat Şahin Orman Ürünleri, Petek Kontrplak San ve Tic A.Ş and Saglamlar Orman Tarim Urunleri San. Ve. Tic. AS are rejected.

Article 4

1. Requests for exemption from the duty extended by Article 1 shall be made in writing in one of the official languages of the European Union and must be signed by a person authorised to represent the entity requesting the exemption. The request must be sent to the following address:

European Commission
Directorate-General for Trade
Directorate G Office:
CHAR 04/39
1049 Bruxelles/Brussel
BELGIQUE/BELGIË.

2. In accordance with Article 13(4) of Regulation (EU) 2016/1036, the Commission may authorise, by decision, the exemption of imports from companies which do not circumvent the anti-dumping measures imposed by Implementing Regulation (EU) 2021/1930, from the duty extended by Article 1.

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, 13 May 2024.

For the Commission
The President
Ursula VON DER LEYEN