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⁽¹⁾ Text with EEA relevance

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⁽¹⁾ Text with EEA relevance

I

(Legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) 2015/496

of 17 March 2015

amending Regulation (EEC, Euratom) No 354/83 as regards the deposit of the historical archives of the institutions at the European University Institute in Florence

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 352 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the consent of the European Parliament,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) In accordance with Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community ⁽¹⁾, the historical archives of the Union are preserved and are made available to the public wherever possible after the expiry of a period of 30 years.
- (2) The obligation to establish historical archives and make them available to the public wherever possible is applicable to each of the institutions referred to in Regulation (EEC, Euratom) No 354/83 ('the institutions') under the conditions set out therein.
- (3) Regulation (EEC, Euratom) No 354/83 provides that each institution may hold its historical archives in whatever place it considers most appropriate.
- (4) In 1984, the European Parliament, the Council and the Commission decided to deposit their historical archives at the European University Institute (EUI) in Florence where they are made available to the public. A contract between the European Communities, represented by the Commission, and the EUI was signed for this purpose on 17 December 1984 ('the deposit contract').
- (5) The European Economic and Social Committee and the European Court of Auditors have since agreed to adhere to the terms of the deposit contract. The European Investment Bank deposits its historical archives at the EUI under a separate Convention with the EUI which was signed on 1 July 2005 and under the Rules on historical archives which were adopted by the Bank's Management Committee on 7 October 2005 ⁽²⁾.
- (6) The Italian government has made suitable premises available on a permanent basis and free of charge to the EUI to ensure that the deposited archives are preserved and protected in accordance with recognised international standards and to provide the possibility for on-site consultation.

⁽¹⁾ OJ L 43, 15.2.1983, p. 1.

⁽²⁾ OJ C 289, 22.11.2005, p. 12.

- (7) The purpose of the deposit of the historical archives of the institutions at the EUI is to provide access to these archives from a single location, to promote their consultation and to stimulate research into the history of European integration and the European institutions. The EUI is a renowned centre of academic research and learning with a focus on Europe and European integration. It has almost 30 years of experience in managing the historical archives of the Union, provides state-of-the-art repository and research facilities built expressly for the preservation and consultation of those archives, and has an international reputation as the centre for those archives.
- (8) The continued deposit of the historical archives of the institutions at the EUI should be incorporated into Union legislation in order to reflect the role of the EUI as a partner of the institutions in the management of their historical archives.
- (9) This Regulation should apply to all institutions, and should not alter their responsibility to open their historical archives to the public nor the ownership by each institution of its historical archives.
- (10) However, the specific nature of the activities of the Court of Justice of the European Union (CJEU) and the European Central Bank (ECB) justifies their exclusion from the obligation set out in this Regulation to deposit their historical archives at the EUI. The CJEU and the ECB may deposit their historical archives at the EUI on a voluntary basis.
- (11) The institutions and EUI should, where possible, make the historical archives available to the public in digitised and digital form, so as to facilitate their consultation on the internet.
- (12) Personal data contained in the historical archives of the Union deposited at the EUI should be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽¹⁾.
- (13) The European Data Protection Supervisor was consulted by the Commission in relation to the legislation proposal that has led to this Regulation, in accordance with Regulation (EC) No 45/2001, and delivered an opinion thereon on 10 October 2012 ⁽²⁾.
- (14) Detailed provisions for the management of the historical archives at the EUI, including their deposit, access and public consultation, as well as the mutual roles and responsibilities of the institutions and of the EUI, should be set out in a framework partnership agreement.
- (15) The costs for managing the historical archives of the Union by the EUI should be financed from the general budget of the Union and those costs should be borne by all depositing institutions.
- (16) Regulation (EEC, Euratom) No 354/83 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC, Euratom) No 354/83 is hereby amended as follows:

(1) Article 8 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Each institution, other than the Court of Justice of the European Union (CJEU) and the European Central Bank (ECB), shall deposit at the European University Institute (EUI) in Florence the documents which are part of its historical archives and which it has opened to the public in accordance with this Regulation. The deposit shall take place in accordance with the Annex.

Notwithstanding the first subparagraph, the depositing institutions may, for legal or administrative reasons, exclude the deposit of certain original documents at the EUI. In that case, they shall deposit a microform or digital copy of such documents.’;

⁽¹⁾ OJ L 8, 12.1.2001, p. 1.

⁽²⁾ OJ C 28, 30.1.2013, p. 9.

(b) the following paragraphs are added:

- ‘3. The CJEU and the ECB may deposit their historical archives at the EUI on a voluntary basis.
 4. The depositing institutions shall retain the ownership of their archives, as well as exclusive responsibility for the composition of the documents and files that are deposited at or otherwise made available to the EUI.
 5. The deposit of the historical archives of the institutions at the EUI shall not affect the protection of the archives as provided for in Article 2 of Protocol No 7 on the Privileges and Immunities of the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union.
 6. The EUI shall ensure the preservation and protection of deposited archives. This preservation and protection shall comply with recognised international standards for the physical protection of archives and shall at least respect the technical and security rules that correspond with those used for the preservation and management of public archives in Italy. To this end, the deposited documents shall be preserved in a purpose-built repository.
 7. The EUI shall be solely responsible for the staff called on to manage the historical archives of the Union deposited at the EUI. The EUI shall ensure that the staff assigned to the management of the historical archives has the requisite professional qualifications necessary to carry out the work in this domain.
 8. Each depositing institution has the right to receive information with respect to the management of its archives by the EUI and to carry out an inspection of the archives that it has deposited there.
 9. The EUI shall make available to the public the historical archives that it receives pursuant to paragraphs 1 and 3. The institutions may also make available to the public a copy of the same historical archives.
 10. The costs for the management of the historical archives of the Union shall be financed through contributions by all depositing institutions to the relevant budget line, within the limits of the yearly appropriations made available by the budgetary authority in compliance with Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union (*). Such financial contributions shall not cover costs related to the provision and adaptation of the buildings and repositories to house the archives and its staff.
- The size of the contributions referred to in the first subparagraph shall be proportionate to the size of the respective establishment plans of the depositing institutions. Each contribution shall be recalculated whenever additional institutions begin to deposit their historical archives at the EUI or at least every five years.
11. The EUI shall act as processor in accordance with Article 2 of Regulation (EC) No 45/2001, under instructions from the depositing institutions. The EUI shall process any personal data contained in the historical archives of the institutions in accordance with the guarantees set out in that Regulation.
 12. The European Data Protection Supervisor shall continue to have supervisory powers over the institutions with respect to the processing of personal data contained in the historical archives deposited with the EUI.

(*) OJ L 298, 26.10.2012, p. 1’.

(2) Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

- ‘1. Each institution shall adopt internal rules for the application of this Regulation. These shall include rules for the preservation and opening to the public of historical archives and on the protection of personal data contained therein. Wherever possible, the institutions shall make their archives available to the public by electronic means, including digitised and born-digital archives, and facilitate their consultation on the internet. They shall also conserve documents which are available in forms meeting special needs (such as Braille, large text or recordings).’;

(b) the following paragraph is added:

‘3. On behalf of the depositing institutions, the Commission shall conclude a framework partnership agreement with the EUI. That framework partnership agreement shall include detailed provisions on the mutual roles and responsibilities of the institutions and of the EUI for the management of the historical archives of the Union, including their deposit, preservation, access and public consultation.’

(3) The text in the Annex shall be added, as the Annex, to Regulation (EEC, Euratom) No 354/83.

Article 2

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

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

Done at Brussels, 17 March 2015.

For the Council
The President
E. RINKĒVIČS

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ANNEX

ANNEX

PROVISIONS FOR THE DEPOSIT OF THE HISTORICAL ARCHIVES OF THE INSTITUTIONS AT THE EUROPEAN UNIVERSITY INSTITUTE IN FLORENCE

1. In the case of non-digital archives, the original documents shall be deposited at the EUI for permanent preservation, together with a microform and/or digital copy thereof.

In the case of digital archives, the EUI shall have permanent access to the documents in such a way as to allow it to fulfil its obligation to make the historical archives accessible to the public from a single location and to promote their consultation. The originating institutions shall remain responsible for the permanent preservation of their digital archives.

2. The deposit shall take place in annual instalments and, to the extent possible, under the normal archival processing procedures of the institutions.
 3. The EUI shall not modify the archival classification established by the depositing institutions, or eliminate or alter documents or files.
 4. The EUI shall return to the depositing institutions the originals of any deposited documents and files if requested by these institutions. The depositing institutions shall return the originals to the EUI as soon as they no longer need them.
 5. The EUI shall immediately inform depositing institutions about any circumstances that could put at risk the inviolability of the archives that they have deposited.
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II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) 2015/497

of 20 March 2015

establishing a prohibition of fishing for skates and rays in Union waters of IIa and IV by vessels flying the flag of Germany

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy ⁽¹⁾, and in particular Article 36(2) thereof,

Whereas:

- (1) Council Regulation (EU) 2015/104 ⁽²⁾, lays down quotas for 2015.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2015.
- (3) It is therefore necessary to prohibit fishing activities for that stock,

HAS ADOPTED THIS REGULATION:

Article 1

Quota exhaustion

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2015 shall be deemed to be exhausted from the date set out in that Annex.

Article 2

Prohibitions

Fishing activities for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those vessels after that date.

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ Council Regulation (EU) 2015/104 of 19 January 2015 fixing for 2015 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union vessels, in certain non-Union waters, amending Regulation (EU) No 43/2014 and repealing Regulation (EU) No 779/2014 (OJ L 22, 28.1.2015, p. 1).

*Article 3***Entry into force**

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, 20 March 2015.

*For the Commission,
On behalf of the President,
Lowri EVANS
Director-General for Maritime Affairs and Fisheries*

ANNEX

No	03/TQ104
Member State	Germany
Stock	SRX/2AC4-C
Species	Skates and rays (<i>Rajiformes</i>)
Zone	Union waters of IIa and IV
Closing date	6.3.2015

COMMISSION IMPLEMENTING REGULATION (EU) 2015/498**of 24 March 2015****laying down implementing technical standards with regard to the supervisory approval procedure to use undertaking-specific parameters in accordance with Directive 2009/138/EC of the European Parliament and of the Council****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2009/138/EC of 25 November 2009 of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) ⁽¹⁾, and in particular Article 111(2) thereof,

Whereas:

- (1) Applications to use undertaking-specific parameters by insurance and reinsurance undertakings should be prepared on a prudent and realistic basis, and should include all relevant facts necessary for an assessment by the supervisory authorities. It should include an assessment of how the criteria for completeness, accuracy and appropriateness of the data used will be fulfilled.
- (2) The information to be included by an insurance or reinsurance undertaking in its application should be specified to ensure a consistent basis for decision-making by supervisory authorities.
- (3) The application to use undertaking-specific parameters is a strategic decision for risk management and capital planning purposes. Based on the ultimate responsibility of the administrative, management or supervisory body for compliance as set out in Article 40 of Directive 2009/138/EC, its involvement in the decision-making process on the application should be carefully considered.
- (4) Rules should be set out for supervisory authorities to be in a position to adopt adequate procedures. Detailed rules on the assessment and the approval of the applications by the supervisory authorities should be laid down. They should be adapted proportionate to the complexity of the applications to manage the approval process. The approval process may take less than six months where proportionate to the complexity.
- (5) The decision to apply for the use of undertaking-specific parameters should not be dictated only by lowering the capital requirement. The use of undertaking-specific parameters should however not prevent an undertaking from reverting to the standard parameters, if the undertaking-specific parameters are no longer reflecting its risk profile, in which case the undertaking should inform the supervisory authority of the reasons why these parameters are not appropriate anymore.
- (6) The procedures for approval envisage ongoing communication between the supervisory authorities and insurance and reinsurance undertakings. That includes communication before a formal application is submitted to the supervisory authorities and, after an application has been approved, through the supervisory review process. Such ongoing communication is necessary to ensure that supervisory assessments are based on relevant and up-to-date information.
- (7) As part of the approval process, supervisory authorities should, inter alia, assess the data used to calculate the undertaking-specific parameters and they should verify if the data used comply with the data quality criteria set out in Article 219 of Commission Delegated Regulation (EU) 2015/35 ⁽²⁾. To fulfil the requirement for the completeness of the data under Article 219 of that Regulation, the undertaking should use the undertaking-specific parameter values obtained by using the approved method with the most recent relevant data.
- (8) Insurance and reinsurance undertakings may only replace a subset of standard parameters within the underwriting risk modules by undertaking-specific parameters. This means that some of the inputs used to calculate those parameters will be similar or identical to the inputs used to calculate technical provisions.

⁽¹⁾ OJ L 335, 17.12.2009, p. 1.

⁽²⁾ Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1).

- (9) Due to interdependencies between different approval applications under Directive 2009/138/EC, when applying for approval of undertaking-specific parameters the insurance or reinsurance undertaking should inform the supervisory authority of other applications concerning the items in Article 308a(1) of Directive 2009/138/EC, which are currently ongoing or foreseen within the next six months. Such requirement is necessary to ensure supervisory assessments are based on transparent and unbiased information.
- (10) This Regulation is based on the draft implementing technical standards submitted by the European Insurance and Occupational Pensions Authority to the Commission.
- (11) The European Insurance and Occupational Pensions Authority has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Insurance and Reinsurance Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council ⁽¹⁾.
- (12) In order to enhance legal certainty about the supervisory regime during the phasing-in period provided for in Article 308a of Directive 2009/138/EC, which will start on 1 April 2015, it is important to ensure that this Regulation enters into force as soon as possible, on the day after that of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

Application for approval of the use of undertaking-specific parameters

1. The insurance or reinsurance undertaking shall submit a written application for approval of the use of undertaking-specific parameters to replace a subset of parameters of the standard formula to the supervisory authority.
2. The application shall be submitted in one of the official languages of the Member State in which the insurance or reinsurance undertaking has its head office, or in a language that has been agreed upon with the supervisory authority.
3. The application by the insurance or reinsurance undertaking shall contain the following:
 - (a) documentary evidence of the insurance or reinsurance undertaking's internal decision-making process related to the application;
 - (b) a specific start date from which the use of the undertaking-specific parameters is requested;
 - (c) the subset of standard parameters which are requested to be replaced by undertaking-specific parameter
 - (d) for each segment the standardised method used and the insurance or reinsurance undertaking-specific parameter value obtained by using this method;
 - (e) the calculation of the undertaking-specific parameter the insurance or reinsurance undertaking applies to use and information that the calculation is adequate;
 - (f) evidence that data used to calculate the undertaking-specific parameters are complete, accurate and appropriate and they fulfil the requirements of Article 219 of Delegated Regulation (EU) 2015/35;
 - (g) a justification that each standardised method to calculate the undertaking-specific parameter for a single segment provides the most accurate result for the fulfilment of the requirements set out in Article 101 of Directive 2009/138/EC.
4. In addition to the material specified in paragraph 3, the application shall also list all other applications submitted by the insurance or reinsurance undertaking, or currently foreseen within the next six months, for approval of any of the items listed in Article 308a(1) of Directive 2009/138/EC, together with the corresponding application dates.

⁽¹⁾ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

*Article 2***Accuracy of the results**

When demonstrating the accuracy of the results, insurance and reinsurance undertakings shall assess whether the standardised method is appropriate for the undertaking's data, whether their assumptions are fulfilled and whether data are relevant to the undertaking's risk profile.

*Article 3***Supervisory authority's assessment of the choice of the parameters and the method to calculate the parameters**

1. The supervisory authority shall assess the insurance or reinsurance undertaking's choice of:
 - (a) the parameters to be replaced by considering whether the use of undertaking-specific parameters better reflects the underwriting risk profile of the undertaking;
 - (b) the segments for which parameters have been calculated by considering whether the use of undertaking-specific parameters better reflects the underwriting risk profile of the undertaking.
2. The supervisory authorities shall assess the undertaking's justification for the choice of the standardised method to calculate undertaking-specific parameters. The supervisory authorities, when performing this assessment, shall consider whether the assumptions on standardised methods are satisfied and whether data are relevant to the undertaking's risk profile.

*Article 4***Assessment of the application**

1. The supervisory authority shall confirm receipt of the application of the insurance or reinsurance undertaking.
2. The supervisory authority shall confirm whether the application is complete within 30 days of the date of receipt of the application. An application for approval of the use of undertaking-specific parameters shall be considered to be complete by the supervisory authority if it includes all information and the documentary evidence set out in paragraph 3 and 4 of Article 1. Where the supervisory authority determines that the application is not complete, it shall immediately inform the insurance or reinsurance undertaking that the approval period has not begun and specify why the application is not considered to be complete.
3. Where the supervisory authority has confirmed an application to be complete, this shall not prevent that supervisory authority from requesting additional information necessary for carrying out its assessment. The request shall specify the additional information required and the reasons for the request.
4. The assessment of the application may include requests for adjustments from supervisory authorities to the way the undertaking proposes to apply the undertaking-specific parameter. Where the supervisory authority determines that it could be possible to approve the application of an undertaking-specific parameter subject to adjustments being made, it shall, without delay, notify the insurance or reinsurance undertaking in writing, of the adjustments required.
5. The days between the date the supervisory authority requests such information or adjustments, and the date the supervisory authority receives such information shall not be included within the six-month time period stated in paragraph 7.
6. The insurance or reinsurance undertaking shall inform the supervisory authority of any change to the details of its application. Where an insurance or reinsurance undertaking informs the supervisory authority of a change to its application this shall be treated as a new application unless:
 - (a) the change is due to a request from the supervisory authority for additional information or adjustments; or
 - (b) the supervisory authority is satisfied that the change does not significantly affect its assessment of the application.
7. The supervisory authority shall ensure it decides on an application within six months from the receipt of a complete application.

*Article 5***Decision on the application**

1. Where the supervisory authority decides to reject the application, it shall state the reasons on which the decision is based. The supervisory authority shall only approve the application if it is satisfied with the justification to replace a subset of parameters of the standard formula.
2. When the supervisory authority has reached a decision on an application, it shall, without delay communicate this in writing to the insurance or reinsurance undertaking, in the same language as the application.
3. The supervisory authority may decide to approve the application in respect of some but not all of the segments or of the parameters included in the application.

*Article 6***Revocation of approval by the supervisory authority**

The supervisory authority may revoke its approval granted to an insurance or reinsurance to use the USP method, when

- (a) an undertaking which has been granted approval to use undertaking-specific parameters has ceased to comply with the conditions set out in Article 101 of Directive 2009/138/EC and Articles 218, 219 and 220 of Commission Delegated Regulation (EU) 2015/35;
- (b) in duly justified circumstances, an insurance or reinsurance undertaking wishes to revert to the standard parameters, by sending a request to the supervisory authority, stating the reasons for the inappropriateness of the USP and providing documentary evidence for this.

*Article 7***Entry into force**

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, 24 March 2015.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2015/499**of 24 March 2015****laying down implementing technical standards with regard to the procedures to be used for granting supervisory approval for the use of ancillary own-fund items in accordance with Directive 2009/138/EC of the European Parliament and of the Council****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2009/138/EC of 25 November 2009 of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) ⁽¹⁾, and in particular Article 92(3) thereof,

Whereas:

- (1) Insurance and reinsurance undertakings should prepare applications for approval of ancillary own-fund items on a prudent and realistic basis.
- (2) The application for an ancillary own-fund item is a strategic decision for risk management and capital planning purposes. Based on the ultimate responsibility of the administrative, management or supervisory body for compliance as set out in Article 40 of Directive 2009/138/EC, its involvement in the decision-making process on the application should be carefully considered.
- (3) The insurance or reinsurance undertaking should include all relevant facts necessary for an assessment by the supervisory authority, including an assessment by the insurance or reinsurance undertaking of how the item would meet the criteria for an ancillary own-fund item and, on being called up, for classification as a basic own-fund item so that the supervisory authority can make timely decisions based on appropriate evidence.
- (4) The information to be included by an insurance or reinsurance undertaking in its application should be specified to ensure a consistent basis for decision-making by the supervisory authority.
- (5) Due to interdependencies between different approval applications under Directive 2009/138/EC, when applying for approval of an ancillary own-fund item the insurance or reinsurance undertaking should inform the supervisory authority of other applications concerning the items in Article 308a(1) of Directive 2009/138/EC, which are currently ongoing or foreseen within the next 6 months. Such requirement is necessary to ensure supervisory assessments are based on transparent and unbiased information.
- (6) The ability for supervisory authorities and insurance and reinsurance undertakings to assess the status of a group of counterparties as though it were a single counterparty is considered to be particularly relevant where a mutual or mutual-type undertaking has a large number of homogeneous non-corporate members from whom it can make a call for supplementary contributions.
- (7) The ancillary own funds approval process envisages ongoing communication between the supervisory authorities and insurance and reinsurance undertakings. That includes communication before a formal application is submitted to the supervisory authority and after an application has been approved, through the supervisory review process. Such ongoing communication is necessary to ensure that supervisory assessments are based on relevant and up-to-date information.
- (8) When the supervisory authority receives notification from an insurance or reinsurance undertaking that there has been a reduction in the loss-absorbency of an approved ancillary own-fund item, the supervisory authority should revise downward the approved amount or withdraw its approval of the method in order to ensure that it is consistent with that reduced loss-absorbency.
- (9) Article 226 of Directive 2009/138/EC permits a group of insurance or reinsurance undertakings to apply for ancillary own-fund item approval in respect of an intermediate insurance holding company or an intermediate mixed financial holding company. In those cases, the same rules should apply to the intermediate insurance holding company or the intermediate mixed financial holding company as though it were an insurance or reinsurance undertaking. This should also apply where a group is headed by an insurance holding company or a mixed financial holding company in accordance with Article 235 of Directive 2009/138/EC.

⁽¹⁾ OJ L 335, 17.12.2009, p. 1.

- (10) This Regulation is based on the draft implementing technical standards submitted by the European Insurance and Occupational Pensions Authority to the Commission.
- (11) The European Insurance and Occupational Pensions Authority has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Insurance and Reinsurance Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council ⁽¹⁾.
- (12) In order to enhance legal certainty about the supervisory regime during the phasing-in period provided for in Article 308a of Directive 2009/138/EC, which will start on 1 April 2015, it is important to ensure that this Regulation enters into force as soon as possible, on the day after that of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

General features of the application

1. An insurance or reinsurance undertaking shall submit a written application for approval of each ancillary own-fund item to the supervisory authority.
2. The application shall be submitted in one of the official languages of the Member State in which the insurance or reinsurance undertaking has its head office, or in a language that has been agreed upon with the supervisory authority.
3. The application shall consist of a cover letter and supporting evidence.

Article 2

Cover letter

The insurance or reinsurance undertaking shall submit a cover letter. That cover letter shall confirm all of the following:

- (a) any legal or contractual terms governing the ancillary own-fund item or any connected arrangement are unambiguous and clearly defined;
- (b) the amount ascribed to the ancillary own-fund item in the application complies with Article 90(2) of Directive 2009/138/EC;
- (c) the economic substance of the ancillary own-fund item, including how the item provides basic own funds once called up, has been fully reflected in the application;
- (d) taking into account likely future developments as well as the circumstances at the date of the application, the insurance or reinsurance undertaking considers that the ancillary own-fund item complies with the criteria for the classification of own funds;
- (e) no facts have been omitted which if known by the supervisory authority could influence its decision regarding whether to approve an ancillary own-fund item, the amount for which approval of an item shall be granted, or the time period for which approval of a calculation method shall apply.

The cover letter shall also list other applications submitted by the insurance or reinsurance undertaking or currently foreseen within the next 6 months for approval of any items listed in Article 308a(1) of Directive 2009/138/EC, together with corresponding application dates.

⁽¹⁾ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

*Article 3***Supporting evidence regarding the amount or method**

The application submitted by the insurance or reinsurance undertaking shall seek approval of a specified monetary amount for an ancillary own-fund item or a method to determine the amount of an ancillary own-fund item.

Where the insurance or reinsurance undertaking seeks approval of a specified monetary amount, the application shall include an explanation of the calculation of the amount, based on prudent and realistic assumptions in accordance with Article 90(2) of Directive 2009/138/EC.

Where the insurance or reinsurance undertaking seeks approval of a calculation method, it shall provide the following information:

- (a) an explanation of the method and how it reflects the loss-absorbency of the ancillary own-fund item;
- (b) a description of any assumptions upon which the method relies and how these assumptions are prudent and realistic;
- (c) the item's expected initial amount that has been calculated in accordance with the method and a justification of that amount;
- (d) an explanation of the validation processes the insurance or reinsurance undertaking will implement to ensure that the results of the method continue to reflect the loss-absorbing capacity of the item on an ongoing basis.

*Article 4***Supporting evidence regarding the criteria for approval**

The supporting evidence shall contain sufficient information to allow the supervisory authority to assess whether the application complies with the criteria determined in Article 90 of Directive 2009/138/EC and Articles 62 to 65 of Commission Delegated Regulation (EU) 2015/35 ⁽¹⁾. It shall contain at least the information described in the second to seventh paragraphs of this Article.

The insurance or reinsurance undertaking shall provide information regarding the nature of ancillary own-fund item and the loss absorbing capacity of the basic own-fund item into which the ancillary own-fund item converts on being called up, including the following:

- (a) the item's legal or contractual terms, together with the terms of any connected arrangement and evidence that the counterparty has entered into, or will enter into, the contract and any connected arrangement;
- (b) evidence that the contract and any connected arrangements are legally binding and enforceable in all relevant jurisdictions, based on a legal opinion;
- (c) the period during which the contract is in effect and, if different, the period during which the insurance or reinsurance undertaking may call upon the item;
- (d) confirmation that the ancillary own-fund item, once that item has been called up and paid in, would display all of the features of a basic own-fund item classified in Tier 1 in accordance with Article 71 of Delegated Regulation (EU) 2015/35, or all of the features of a basic own-fund item classified in Tier 2 in accordance with Article 73 of the Delegated Regulation (EU) 2015/35;
- (e) confirmation that the item's contractual terms do not contain any provision which might create a disincentive for the insurance or reinsurance undertaking to call upon the item to absorb losses or place any constraint upon its ability to be callable on demand;
- (f) confirmation that the ancillary own-fund item or its benefits would only be available to the insurance or reinsurance undertaking and would not be transferrable or assignable to any other party, or be able to be encumbered in any other way;

⁽¹⁾ Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1).

- (g) any factors which restrict the conditions under which the insurance or reinsurance undertaking might seek to call upon the item, including but not limited to conditions of stress specific to the insurance and reinsurance undertaking or wider market stress;
- (h) whether the insurance or reinsurance undertaking has, or in the future may have, any obligation to, or any expectation or understanding that it will pay funds or provide any other benefit to the counterparty or to a third party in connection with the item, other than in the event of repayment of a basic own-fund item which would satisfy the features in Article 71(1)(h), and Article 73(1)(d) of Delegated Regulation (EU) 2015/35;
- (i) a copy of the medium term capital management plan including how the item will contribute to the insurance or reinsurance undertaking's existing capital structure, and how the item might enable the insurance or reinsurance undertaking to meet its existing or future capital requirements.

Except where Article 63(6) of the Delegated Regulation (EU) 2015/35 applies and the status of a group of counterparties may be assessed as though it were a single counterparty, the insurance or reinsurance undertaking shall provide information regarding the status of each counterparty including the following:

- (a) the names and a description of each counterparty, including the nature of any relationship between the insurance or reinsurance undertaking and the counterparty;
- (b) an assessment of the risk of default of the counterparties in order to support the assessment by the supervisory authority specified in Article 63(2) of the Delegated Regulation (EU) 2015/35;
- (c) an assessment of the liquidity position of the counterparties in order to support the assessment by the supervisory authority specified in Article 63(3) of Delegated Regulation (EU) 2015/35;
- (d) an assessment of the counterparties' willingness to pay in order to support the supervisory assessment specified in Article 63(4) of the Delegated Regulation (EU) 2015/35;
- (e) a description of the range of circumstances in which the insurance or reinsurance undertaking might seek to call upon the item including current expectations as to when the item might be called prior to or at the point of non-compliance with the Solvency Capital Requirement or Minimum Capital Requirement;
- (f) information on any other factors relevant to the status of the counterparties to support the assessment by the supervisory authority specified in Article 63(5) of Delegated Regulation (EU) 2015/35.

Where the counterparties are treated as a group of counterparties in accordance with Article 63(6) of Delegated Regulation (EU) 2015/35, the information in points (a) to (f) of the third paragraph shall be provided in respect of the group of counterparties.

Where the counterparty is a member of the same group or subgroup as the insurance or reinsurance undertaking by virtue of Article 213 of Directive 2009/138/EC and has commitments under ancillary own-fund items to different entities within the group, the information in points (b) to (f) of the third paragraph shall include evidence of the ability of the counterparty to satisfy multiple calls on ancillary own-funds items at the same time, having regard to the circumstances and the entities of the group.

The insurance or reinsurance undertaking shall provide information regarding the recoverability of the funds, including the following:

- (a) details of arrangements which might enhance the recoverability of the item including the availability of collateral;
- (b) details of whether national law, in any relevant jurisdiction, prevents a call being made or satisfied, including in the event of resolution, administration or insolvency proceedings being initiated in respect of the insurance or reinsurance undertaking;
- (c) details of arrangements or circumstances that might prevent a call being made or satisfied in deteriorating financial conditions including non-compliance with the Solvency Capital Requirement or Minimum Capital Requirement.

The insurance or reinsurance undertaking shall provide information regarding past calls including the following:

- (a) information on its experience of past calls or the collection of other funds due from the same or similar counterparties in the same or similar circumstances;
- (b) all relevant available market data relating to past calls or the collection of other funds due from the same or similar counterparties in the same or similar circumstances;

- (c) an assessment as to the relevance and reliability of the information described in points (a) and (b) as regards the expected outcome of future calls by the insurance or reinsurance undertaking.

The insurance or reinsurance undertaking shall provide a description of the processes it has in place to identify any future changes, as specified in Article 62(1)(d) of the Delegated Regulation (EU) 2015/35, which may have the effect of reducing the loss-absorbency of the ancillary own-fund item. The description shall include the following:

- (a) how it intends to identify changes to:
- (i) the structure or contractual terms of the arrangement, including the cancellation or expiry of an ancillary own-fund item or the use or call up partly or wholly of an ancillary own-fund item;
 - (ii) the status of the counterparties concerned, including the default of a counterparty;
 - (iii) the recoverability of the ancillary own-fund item, including calls on other ancillary own-fund items provided by the same counterparties;
- (b) how it intends to inform the supervisory authority of changes identified, including what mechanisms it has put in place to identify when the change should be escalated to the administrative, management or supervisory body of the undertaking and to the supervisory authority.

The insurance or reinsurance undertaking shall include documentary evidence of its internal decision-making process related to the application.

Article 5

Assessment of the application

The supervisory authority shall confirm receipt of the application of the insurance or reinsurance undertaking.

An application shall be considered complete by the supervisory authority if the application covers all the matters set out in Articles 2, 3 and 4.

The supervisory authority shall confirm if the application is considered complete or not on a timely basis and at least within 30 days of the date of receipt of the application.

The supervisory authority shall ensure that the period of time within which it decides on an application is reasonable and does not exceed 3 months from the receipt of a complete application unless there are exceptional circumstances which are communicated in writing to the insurance or reinsurance undertaking on a timely basis.

Where there are exceptional circumstances, the supervisory authority shall not take longer than 6 months from the receipt of a complete application to decide on an application.

Where the supervisory authority has considered an application to be complete, this shall not prevent that supervisory authority from requesting additional information necessary for carrying out its assessment. The request shall specify the additional information required and the reasons for the request. The days between the date the supervisory authority requests such information and the date the supervisory authority receives such information shall not be included within the periods of time stated in the fourth and fifth subparagraphs.

The insurance or reinsurance undertaking shall inform the supervisory authority of any change to the details of its application.

Where an insurance or reinsurance undertaking informs the supervisory authority of a change to its application this shall be treated as a new application unless:

- (a) the change is due to a request from the supervisory authority for additional information; or
- (b) the supervisory authority is satisfied that the change does not significantly affect its assessment of the application.

An insurance or reinsurance undertaking may withdraw an application by notification in writing at any stage prior to the decision of the supervisory authority. If the insurance or reinsurance undertaking subsequently resubmits the application or submits an updated application, the supervisory authority shall treat this as a new application.

*Article 6***Decision on the application**

When the supervisory authority has reached a decision on an application, it shall, without delay, communicate this in writing to the insurance or reinsurance undertaking.

Where the supervisory authority approves a lower amount than applied for by the insurance or reinsurance undertaking or rejects an application for approval, it shall state the reasons on which the decision is based.

Where the supervisory approval has been granted on the condition that the contract is entered into, the insurance or reinsurance undertaking shall, without delay, enter into the contract, on the terms on which the approval was based, and provide a copy of the signed contract to the supervisory authority.

The insurance or reinsurance undertaking shall not consider the ancillary own-fund item or method admissible until the contract has been entered into.

*Article 7***Revision of the approved amount or withdrawal of the approval of the method**

1. Where an ancillary own-fund item no longer fulfils the conditions under which the approval of an amount or calculation method was granted, the supervisory authority shall decide on either of the following actions:

- (a) to reduce the amount of an ancillary own-fund item to a lower amount or to nil;
- (b) to withdraw its approval of a calculation method.

2. The supervisory authority shall notify the insurance or reinsurance undertaking, immediately, stating the reasons, where it has made a decision in accordance with paragraph 1.

*Article 8***Entry into force**

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, 24 March 2015.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2015/500**of 24 March 2015****laying down implementing technical standards with regard to the procedures to be followed for the supervisory approval of the application of a matching adjustment in accordance with Directive 2009/138/EC of the European Parliament and of the Council****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2009/138/EC of 25 November 2009 of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) ⁽¹⁾ and in particular Article 86(3) thereof,

Whereas:

- (1) Article 77b of Directive 2009/138/EC allows insurance and reinsurance undertakings to apply a matching adjustment to the relevant risk-free interest rate term structure, subject to prior approval by the supervisory authorities where certain conditions are met. Rules are to be established regarding the procedures to be followed for the approval of the application of a matching adjustment.
- (2) In order for an application to be considered complete, it should include all relevant information necessary for the assessment and decision by the supervisory authorities. To provide a harmonised basis for the assessment and decision by supervisory authorities, an application should include evidence demonstrating that each of the conditions set out in Article 77b of Directive 2009/138/EC have been met.
- (3) The application for a matching adjustment is a strategic decision for risk management and capital planning purposes. Based on the ultimate responsibility of the administrative, management or supervisory body for compliance as set out in Article 40 of Directive 2009/138/EC, its involvement in the decision-making process on the application should be carefully considered.
- (4) In addition to Article 77b of Directive 2009/138/EC, that Directive contains other requirements in Article 44, 45 and 77c which apply to all insurance or reinsurance undertakings using a matching adjustment. An application should therefore include evidence that all of these requirements will be satisfied if approval is granted.
- (5) The procedures to be followed for the approval of the matching adjustment envisage ongoing communication between the supervisory authorities and insurance and reinsurance undertakings. This includes communication before a formal application is submitted to the supervisory authorities and, after an application has been approved, through the supervisory review process. Such ongoing communication is necessary to ensure that supervisory judgements are based on relevant and up-to-date information and evidence.
- (6) To ensure a smooth and efficient process, supervisory authorities should be able to request that insurance and reinsurance undertakings make modifications to an application in order to address areas where the submitted evidence is insufficient to demonstrate compliance with the relevant conditions set by Article 77b of Directive 2009/138/EC, before deciding whether to finally accept or reject the application.
- (7) In addition to considering the evidence included within an application, supervisory authorities should also consider other factors that are relevant when reaching a decision as to whether the requirements of Directive 2009/138/EC have been satisfied.
- (8) Since matching portfolios may be managed on a going concern basis, undertakings that have received approval to use a matching adjustment to value the corresponding liabilities should also be allowed to use that adjustment to value future insurance obligations, to the extent that those obligations and the assets matching them possess the same features as the obligations and assets included in the initial matching portfolio and, consequently, entail the same risks for the undertaking concerned.

⁽¹⁾ OJ L 335, 17.12.2009, p. 1.

- (9) Due to interdependencies between different approval applications under Directive 2009/138/EC, when applying for approval of matching adjustment the insurance or reinsurance undertaking should inform the supervisory authority of other applications concerning items in Article 308a(1) of Directive 2009/138/EC, which are currently ongoing or foreseen within the next six months. Such requirement is necessary to ensure supervisory assessments are based on transparent and unbiased information.
- (10) This Regulation is based on the draft implementing technical standards submitted by the European Insurance and Occupational Pensions Authority to the European Commission.
- (11) The European Insurance and Occupational Pensions Authority has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Insurance and Reinsurance Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council ⁽¹⁾,
- (12) In order to enhance legal certainty about the supervisory regime during the phasing-in period provided for in Article 308a of Directive 2009/138/EC, which will start on 1 April 2015, it is important to ensure that this Regulation enters into force as soon as possible, on the day after that of its publication in the *Official Journal of the European Union*.

HAS ADOPTED THIS REGULATION:

Article 1

Application to use a matching adjustment

1. Insurance and reinsurance undertakings applying to use a matching adjustment shall submit a written application for prior approval to the supervisory authorities.
2. The application shall be submitted in one of the official languages of the Member State in which the insurance or reinsurance undertaking has its head office, or in a language previously agreed by the supervisory authority, and shall contain at least the information required by Articles 3 to 6 of this Regulation.
3. Insurance and reinsurance undertakings shall ensure that the application includes any other relevant information that they consider may be necessary for the assessment and decision by the supervisory authority. The application shall contain documentary evidence of the insurance or reinsurance undertaking's internal decision-making process related to the application.
4. Where an application is submitted in respect of more than one portfolio of insurance or reinsurance obligations, the application shall set out the evidence required by Articles 3 to 6 of this Regulation separately for each portfolio that is covered by the application.

Article 2

Content of the application relating to the assigned portfolio of assets

In relation to the assigned portfolio of assets required by paragraph 1(a) of Article 77b of Directive 2009/138/EC, the application shall include at least the following:

- (a) evidence that the assigned portfolio of assets meets all of the relevant conditions specified in Article 77b(1) of Directive 2009/138/EC;
- (b) details of the assets within the assigned portfolio, which shall consist of line-by-line asset information together with the procedure used to group such assets by asset class, credit quality and duration for the purposes of determining the fundamental spread referred to in paragraph 1(b) of Article 77c of Directive 2009/138/EC;
- (c) a description of the process used to maintain the assigned portfolio of assets in accordance with paragraph 1(a) of Article 77b of Directive 2009/138/EC, including the process for maintaining the replication of expected cash-flows where these have materially changed.

⁽¹⁾ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

*Article 3***Content of the application relating to the portfolio of insurance or reinsurance obligations**

In relation to the portfolio of insurance or reinsurance obligations to which the matching adjustment is intended to apply, the application shall contain at least the following:

- (a) evidence that the insurance or reinsurance obligations meet all of the criteria specified in points (d), (e), (g) and (j) of paragraph 1 of Article 77b of Directive 2009/138/EC;
- (b) where mortality risk is present, quantitative evidence that the best estimate of the portfolio of insurance or reinsurance obligations does not increase by more than 5 % under the mortality risk stress specified in Article 52 of the Commission Delegated Regulation (EU) 2015/35 ⁽¹⁾.

*Article 4***Content of the written application relating to cash-flow matching and portfolio management**

In relation to the cash-flow matching and management of the eligible portfolio of obligations and the assigned portfolio of assets, the application shall contain at least the following:

- (a) quantitative evidence that the criteria of paragraph 1(c) of Article 77b of Directive 2009/138/EC are met, including a quantitative and qualitative assessment of whether any mismatch gives rise to risks which are material in relation to the risks inherent in the insurance business to which the matching adjustment is intended to be applied;
- (b) evidence that adequate processes will be in place to properly identify, organise and manage the portfolio of obligations and assigned portfolio of assets separately from other activities of the undertaking, and to ensure that the assigned assets will not be used to cover losses arising from other activities of the undertaking, in accordance with paragraph 1(b) of Article 77b of Directive 2009/138/EC;
- (c) evidence of how the own funds will be adjusted in accordance with Article 81 of Directive 2009/138/EC to reflect any reduced transferability;
- (d) evidence of how the Solvency Capital Requirement (SCR) will be adjusted to appropriately reflect any reduced scope for risk diversification. Where relevant this shall include evidence of compliance with Articles 216, 217 and 234 of the Delegated Regulation (EU) 2015/35. Where insurance and reinsurance undertakings intend to calculate the Solvency Capital Requirement using an internal model but have not been granted the necessary supervisory approval, the evidence required by this paragraph shall be submitted on the basis of the standard formula result as well as the unapproved internal model.

*Article 5***Additional content of the written application**

In addition to the information specified in Articles 3 to 4 of this Regulation, the application shall also include the following:

- (a) confirmation that the conditions of Article 77b(3) of Directive 2009/138/EC will be met if supervisory approval to apply a matching adjustment is granted;
- (b) the liquidity plan required under Article 44(2) of Directive 2009/138/EC;
- (c) the assessments required under Article 44(2a)(b) of Directive 2009/138/EC;
- (d) the assessments required under Article 45(2a) of Directive 2009/138/EC;
- (e) a detailed explanation and demonstration of the calculation process used to determine the matching adjustment in accordance with the requirements of Article 77c of Directive 2009/138/EC;
- (f) a list of the other applications submitted by the insurance or reinsurance undertaking, or currently foreseen within the next six months, for approval of any of the items of the phasing-in listed in Article 308a(1) of Directive 2009/138/EC.

⁽¹⁾ Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1)

*Article 6***Assessment of the application**

1. The supervisory authority shall confirm receipt of the application of the insurance or reinsurance undertaking.
2. An application shall be considered complete by the supervisory authority if it contains all of the evidence required by Articles 2 to 5 of this Regulation.
3. The supervisory authority shall confirm whether the application is complete within 30 days of the date of receipt of the application.
4. Where the supervisory authority determines that the application is not complete, it shall immediately inform the insurance or reinsurance undertaking that the approval period has not begun and specify why the application is not considered to be complete.
5. The supervisory authority shall ensure that it decides on an application within six months from the receipt of the complete application.
6. Where the supervisory authority has confirmed an application to be complete, this shall not prevent that supervisory authority from requesting additional information necessary for carrying out its assessment. The request shall specify the additional information required and the reasons for the request.
7. The assessment of the application shall involve ongoing communication with the insurance or reinsurance undertaking and may include requests for adjustments from supervisory authorities to the way the undertaking proposes to apply a matching adjustment. Where the supervisory authority determines that it could be possible to approve the application of a matching adjustment subject to adjustments being made, it shall, without delay, notify the insurance and reinsurance undertaking in writing of the adjustments required.
8. The days between the date the supervisory authority requests additional information or adjustments in accordance with paragraphs 6 or 7 and the date the supervisory authority receives such information or adjustments shall not be included within the six-month time period stated in paragraph 5.
9. Insurance and reinsurance undertakings shall ensure that all documentary evidence is made available, including in electronic form whenever possible, to the supervisory authority, throughout the assessment of the application.
10. The insurance or reinsurance undertaking shall inform the supervisory authority of any change to the details of its application. Where an insurance or reinsurance undertaking informs the supervisory authority of a change to its application this shall be treated as a new application unless:
 - (a) the change is due to a request from the supervisory authority for additional information or modifications; or
 - (b) the supervisory authority is satisfied that the change does not significantly affect its assessment of the application.
11. An insurance or reinsurance undertaking may withdraw an application by notification in writing at any stage prior to the decision of the supervisory authority. If the insurance or reinsurance undertaking subsequently resubmits the application or submits an updated application, the supervisory authority shall be this as a new application.

*Article 7***Decision on the application**

1. The supervisory authority may consider other evidence than that listed in Articles 2-5 of this Regulation, where this evidence is relevant for assessing compliance with the conditions set out in Article 77b(1) and 77c of Directive 2009/138/EC when reaching a decision on the approval of the application.
2. The supervisory authority's decision on the approval of the application shall be communicated in writing in the same language as the application.
3. Where a single application has been received in respect of more than one portfolio of insurance or reinsurance obligations, the supervisory authority may decide to approve the application in respect of some but not all of the portfolios included in the application. In that case, the written communication of the decision shall specify to which portfolios of insurance and reinsurance obligations a matching adjustment may be applied.

4. Where the supervisory authority decides to reject an application, for some or all of the portfolios included within an application, it shall state clearly the reasons for that decision.
5. Where insurance and reinsurance undertakings are granted approval to apply a matching adjustment to a portfolio of insurance and reinsurance obligations, the scope of that approval decision shall be considered to cover future insurance and reinsurance obligations and assets that are added to that matching portfolio, provided that undertakings can demonstrate the following:
 - (a) the future obligations and assets have the same features as the obligations and assets included in the matching portfolio for which the approval was granted;
 - (b) the matching portfolio continues to meet the relevant conditions of Directive 2009/138/EC.

Article 8

Revocation of approval by the supervisory authority

Where the supervisory authority considers that an insurance or reinsurance undertaking granted approval to use a matching adjustment has ceased to comply with the conditions set out in Articles 77b(1) or 77c of Directive 2009/138/EC, that supervisory authority shall inform the insurance or reinsurance undertaking immediately and explain the nature of the non-compliance.

Article 9

Entry into force

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, 24 March 2015.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2015/501**of 24 March 2015****imposing a provisional anti-dumping duty on imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ ('the basic Regulation'), and in particular Article 7 thereof,

After consulting the Member States,

Whereas:

1. PROCEDURE**1.1. Initiation**

- (1) On 26 June 2014, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports into the Union of stainless steel cold-rolled flat products originating in the People's Republic of China ('PRC') and Taiwan ('the countries concerned') on the basis of Article 5 of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ⁽²⁾ ('the Notice of Initiation').
- (2) The Commission initiated the investigation following a complaint lodged on 13 May 2014 by Eurofer ('the complainant') on behalf of complaining Union producers of stainless steel cold rolled flat products ('SSCR'). The complainant represents around 50 % of the total Union production of SSCR. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.
- (3) On 14 August 2014, the Commission initiated an anti-subsidy investigation with regard to imports into the Union of SSCR originating in the PRC and commenced a separate investigation. It published a Notice of Initiation on the anti-subsidy proceedings in the *Official Journal of the European Union* ⁽³⁾.

1.2. Registration

- (4) Following a request by the complainant supported by the required evidence the Commission adopted on 15 December 2014 Implementing Regulation (EU) No 1331/2014 ⁽⁴⁾ making imports of stainless steel cold-rolled flat products originating in the PRC and Taiwan subject to registration as of 17 December 2014.

1.3. Interested parties

- (5) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainant, other known Union producers, the known exporting producers and the Chinese and Taiwanese authorities, known importers, suppliers and users, traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate. The Commission also informed producers in the United States of America ('USA') and South Africa about the initiation and invited them to participate. In the Notice of Initiation, the Commission informed interested parties that it envisaged the USA as a third market economy country ('analogue country') within the meaning of Article 2(7)(a) of the basic Regulation.
- (6) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ C 196, 26.6.2014, p. 9.

⁽³⁾ OJ C 267, 14.8.2014, p. 17.

⁽⁴⁾ OJ L 359, 16.12.2014, p. 90.

(a) *Sampling*

- (7) In its Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 17 of the basic Regulation.

Sampling of Union producers

- (8) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of production volume. This sample consisted of four Union producers. The sampled Union producers accounted for around 50 % of production volume. The Commission invited interested parties to comment on the provisional sample. No comments were made on the provisional sample and the provisional sample was confirmed. The sample is representative of the Union industry.

Sampling of importers

- (9) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (10) Thirty-one unrelated importers provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of four on the basis of the largest volume of imports into the Union. In accordance with Article 17(2) of the basic Regulation, all known importers concerned were consulted on the selection of the sample.
- (11) Comments were received concerning the ownership structure of one of the selected importers. Interested parties argued that one importer should not be included in the sample as they are related to a Union producer. However, this importer was not related to any Union producer during the investigation period, but only became related subsequently. Furthermore, the term 'unrelated importer' means not related to exporting producers. An unrelated importer can indeed be related to a Union producer.

Sampling of exporting producers in Taiwan

- (12) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked all exporting producers in Taiwan to provide the information specified in the Notice of Initiation. In addition, the Commission asked the representatives of Taiwan to the EU to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (13) A total of nine allegedly exporting producers in the country concerned provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of four (of which three are related) on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available. In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned, and the authorities of the country concerned, were consulted on the selection of the sample. No comments were made.
- (14) The investigation has shown that two sampled companies and two cooperating companies not selected in the sample do not fulfil the definition of exporting producer, as they only operate as service centres and use the product concerned as their production input. It was established that these companies do not have any hot-rolling or cold-rolling facilities and their added value is minor in relation to the cost of their inputs. In fact, they buy and sell the product concerned in different types (see recitals 26 to 28 below).
- (15) However, one of these companies is related to a sampled exporting producer. Therefore, it was considered in the investigation as belonging to that group of companies. After exclusion from the sample of the company which did not fulfil the definition of exporting producer, the remaining sample represents at least around 48 % of the total volume of exports from Taiwan to the Union and around 80 % of domestic sales in Taiwan. Therefore, the sample was still representative.
- (16) The Commission excluded from any individual dumping margin and injury elimination level calculation the other three companies. As a result, no duty rate was established for these three companies.

Individual examination

- (17) One exporting producer in Taiwan requested and was granted an individual examination under Article 17(3) of the basic Regulation.

Sampling of exporting producers in the PRC

- (18) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked all exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked the authorities of the PRC to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (19) Eight exporting producers in the PRC provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of four companies belonging to two groups on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available. In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned, and the authorities of the country concerned, were consulted on the selection of the sample. No comments were made.

(b) *Market economy treatment ('MET') claim forms for exporting producers in the PRC*

- (20) For the purposes of Article 2(7)(b) of the basic Regulation, the Commission sent MET claim forms to all the cooperating exporting producers in the PRC selected to be in the sample and to non-sampled cooperating exporting producers that wished to apply for an individual examination under Article 17(3) of the basic Regulation, to known association of exporting producers, and to the authorities of the PRC. None of the exporting producers has claimed MET.

(c) *Questionnaire*

- (21) The Commission sent questionnaires to the sampled Chinese and Taiwanese exporting producers, to exporting producers wishing to claim individual examination, to producers in two potential analogue countries, as well as to the sampled Union producers, the sampled unrelated importers, as well as to users that made themselves known.
- (22) Questionnaire replies were received from four sampled Chinese exporting producers, four sampled Taiwanese exporting producers (including two that turned out not to be exporting producers), one Taiwanese exporting producer requesting individual examination, two producers in the USA (analogue country), four sampled Union producers, four sampled unrelated importers and six users.

(d) *Verification visits*

- (23) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

Union producers

- Acciai Speciali Terni SpA, Terni, Italy
- Acerinox Europa SAU, Palmones-Los Barrios and Madrid, Spain
- Aperam Stainless Europe, La Plaine Saint Denis, France

Related service centre of Acciai Speciali Terni SpA

- Terninox, Ceriano Laghetto, Italy

Complainant

- Eurofer, Brussels, Belgium

Exporting producers in Taiwan

- Chia Far Industrial Factory Co., Ltd, Taipei city

- Tang Eng Iron Works Co., Ltd, Kaohsiung city
- YC Inox Co., Ltd, Chang-Hua Hsien city
- Yieh Mau Corporation, Kaohsiung city
- Yieh United Steel Corporation, Kaohsiung city

Exporting producers in the PRC

- Baosteel Stainless Co., Ltd, Shanghai
- Ningbo Baoxin Stainless Co., Ltd, Ningbo
- Shanxi Taigang Stainless Steel Co., Ltd, Taiyuan City

Related importer in the Union

- Baosteel Europe GmbH, Hamburg, Germany

- (24) The Commission held hearings, including hearings with the Hearing Officer with exporting producers, associations and importers.

1.4. Investigation period and period considered

- (25) The investigation of dumping and injury covered the period from 1 January 2013 to 31 December 2013 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2010 to the end of the investigation period ('the period considered').

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (26) The product concerned is flat-rolled products of stainless steel, not further worked than cold-rolled (cold-reduced) originating in the PRC and Taiwan, currently falling within CN codes 7219 31 00, 7219 32 10, 7219 32 90, 7219 33 10, 7219 33 90, 7219 34 10, 7219 34 90, 7219 35 10, 7219 35 90, 7220 20 21, 7220 20 29, 7220 20 41, 7220 20 49, 7220 20 81 and 7220 20 89 ('the product concerned').
- (27) Stainless steel cold-rolled flat products are used in a wide range of applications, for example in the production of household appliances (for example the interior of washing machines and dishwashers), welded tubes and medical devices as well as in the food processing and automotive industries.
- (28) The investigation has shown that the different types of the product concerned all share the same basic physical, chemical and technical characteristics and are basically used for the same purposes.

2.2. Like product

- (29) Stainless steel cold-rolled flat products produced and sold in the Union by the Union industry and stainless steel cold-rolled flat products produced and sold in the countries concerned and the analogue country were found to have essentially the same physical, chemical and technical characteristics and the same basic uses of the stainless steel cold-rolled flat products produced in the countries concerned and sold for export to the Union. They are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

2.3. Claims regarding product scope

- (30) Interested parties claimed that some product types (including narrow and precision strips) should be excluded from the scope of the investigation, as Union producers cannot fully supply these market segments. However, the Union industry provided evidence that they are indeed able to fully supply these market segments.

- (31) Regarding precision strips, the same parties further argued that Directorate-General for Competition of the European Commission had decided to exclude this product type from the relevant product market in its analysis of the Outokumpu/Inoxum merger case⁽¹⁾. However, the market definition in a merger case focuses on demand-side and supply-side substitution. In an anti-dumping case, the market is defined by the physical characteristics of the product under investigation. Therefore, in an anti-dumping case product types can be different in respect of some parameters (width, tolerances, mechanical properties). In addition, this product type formed from the very beginning part of the investigation as Union producers of precision strips were contacted in the standing exercise.
- (32) The Commission therefore rejected the claim and maintained the product scope of the investigation unchanged.

3. DUMPING

3.1. The PRC

3.1.1. Normal value

3.1.1.1. Market economy treatment ('MET')

- (33) Pursuant to Article 2(7)(b) of the basic Regulation the Commission determines normal value in accordance with Article 2(1) to (6) of that Regulation for the exporting producers in the PRC which claimed and showed that they comply with the criteria in Article 2(7)(c) of that Regulation and could therefore be granted MET.
- (34) For the determination whether the criteria in Article 2(7)(c) of the basic Regulation are met, the Commission sought the necessary information by asking the exporting producers concerned to fill in the MET claim form. None of them claimed MET.

3.1.1.2. Analogue country

- (35) According to Article 2(7)(a) of the basic Regulation normal value was determined on the basis of the price or constructed value in a market economy third country for the exporting producers not granted MET. For this purpose, an analogue country had to be selected.
- (36) In the Notice of Initiation, the Commission informed interested parties that it envisaged the USA as an appropriate analogue country and invited interested parties to comment.
- (37) The Commission contacted a number of potential analogue countries (India, South Africa, South Korea, Taiwan and the USA) and on the basis of the information received asked 32 known producers of the like product in South Africa, South Korea and the USA to provide information. No information about producers in India was received and, therefore, India could not be considered as potential analogue country. Taiwan is subject to the same investigation and, therefore, information provided by the investigated producers was considered for this purpose.
- (38) Only two producers in the USA replied to the analogue country producers' questionnaire. The Commission had thus to choose between the USA and Taiwan.
- (39) In the USA, there are at least four big producers of the like product (three are vertically integrated and one is not), and the total production and consumption are comparable to those of the PRC. In Taiwan, there is one big vertically integrated group of producers which is driving the market, irrespective of the existence of a couple of small not integrated producers. The production process in the USA is similar to that in Taiwan and at least to that of some exporting producers in the PRC. The raw materials used in the USA and Taiwan are mainly the same. There are anti-dumping duties against Japan, South Korea and Taiwan in the USA and against the PRC and South Korea in Taiwan. However, imports of the like product into the USA and Taiwan are substantial, representing about 17 % and 37 % respectively of their total consumptions during the investigation period. Major countries exporting into the USA include: Mexico, the PRC, Taiwan, France, Finland, Japan and Germany and into Taiwan: the PRC, South Korea, Japan, Finland and Vietnam.

⁽¹⁾ COMP/M.6471.

- (40) In the light of these circumstances, the USA is considered more suitable as analogue country for two main reasons:
- (i) whilst the market in the USA is very competitive, the market and SSCR prices in Taiwan are driven, to a large extent, by one group of companies;
 - (ii) the domestic market in Taiwan is much smaller than that of the PRC and the USA.
- (41) Interested parties opposed the use of the USA as analogue country mainly because of the alleged different production process and different type of raw materials used in the production. They claimed that in this respect Taiwan, which is also subject to this investigation, will be a more appropriate analogue country than the USA.
- (42) The Commission concluded at this stage that the USA is an appropriate analogue country under Article 2(7)(a) of the basic Regulation.

3.1.1.3. Normal value (analogue country)

- (43) The information received from the cooperating producers in the analogue country was used as a basis for the determination of the normal value for the exporting producers not granted MET, pursuant to Article 2(7)(a) of the basic Regulation.
- (44) The Commission first examined whether the total volume of domestic sales of the two cooperating producers in the analogue country were representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales are representative if the total domestic sales volume of the like product to independent customers on the domestic market represented at least 5 % of total export sales volume of the product concerned to the Union of each sampled Chinese exporting producer during the investigation period. On this basis, the total sales of the two cooperating producers of the like product on the domestic market of the analogue country were representative.
- (45) The Commission subsequently identified the product types sold domestically that were identical or comparable with the product types sold for export to the Union for the sampled exporting producers.
- (46) The Commission next defined the proportion of profitable sales to independent customers on the domestic market for each product type during the investigation period in order to decide whether to use actual domestic sales for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.
- (47) The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if:
- (i) the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of this product type; and
 - (ii) the weighted average sales price of that product type is equal to or higher than the unit cost of production.
- (48) In this case, the normal value is the weighted average of the prices of all domestic sales of that product type during the investigation period. The Commission took into consideration all the transactions reported as domestic sales, as there was no reason to doubt that they were for domestic consumption.
- (49) The normal value is the actual domestic price per product type of only the profitable domestic sales of the product types during the investigation period, if:
- (i) the volume of profitable sales of the product type represents 80 % or less of the total sales volume of this type; or
 - (ii) the weighted average price of this product type is below the unit cost of production.

3.1.2. Export price

- (50) The sampled exporting producers sold for export to the Union either directly to independent customers or, in the case of one exporting producer, through a related company acting as an importer.

- (51) If the exporting producers sold for export the product concerned directly to independent customers in the Union, the export price was established on the basis of prices actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.
- (52) If the exporting producer sold for export the product concerned to the Union through a related company acting as an importer, the export price was established on the basis of the price at which the imported product was first resold to independent customers in the Union, in accordance with Article 2(9) of the basic Regulation. In this case, adjustments to the price were made for all costs incurred between importation and resale, including selling general and administrative ('SG&A') expenses, and for profits accruing.

3.1.3. Comparison

- (53) The Commission compared the normal value and the export price of the sampled exporting producers on an ex-works basis.
- (54) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for transport, insurance, handling, loading and ancillary costs, packing, credit, bank charges and commissions.

3.1.4. Dumping margins

- (55) For the sampled exporting producers, the Commission compared the weighted average normal value of each type of the like product in the analogue country (see recitals 43 to 49 above) with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.
- (56) On this basis, the provisional weighted average dumping margins expressed as a percentage of the cost, insurance, freight ('CIF') Union frontier price, duty unpaid, are as follows:

Table 1

Dumping margins, the PRC

Company	Provisional dumping margin (%)
Baosteel Group: Baosteel Stainless Steel Co., Ltd; Ningbo Baoxin Stainless Steel Co., Ltd	34,9
TISCO Group: Shanxi Taigang Stainless Steel Co., Ltd; Tianjin TISCO & TPCO Stainless Steel Co Ltd	29,2

- (57) For the cooperating exporting producers outside the sample, the Commission calculated the weighted average dumping margin, in accordance with Article 9(6) of the basic Regulation. Therefore, that margin was established on the basis of the weighted average of the dumping margins of the sampled exporting producers.
- (58) On this basis, the provisional dumping margin of the cooperating exporting producers outside the sample is 30,0 %.
- (59) For all other exporting producers in the country concerned, the Commission established the dumping margin on the basis of the facts available in accordance with Article 18 of the basic Regulation. To this end, the Commission determined the level of cooperation of the exporting producers. The level of cooperation is the volume of exports of the cooperating exporting producers to the Union expressed as a proportion of the total export volume — as reported in Eurostat import statistics — from the country concerned to the Union.
- (60) The level of cooperation was considered high and on this basis, the Commission decided to base the residual dumping margin at the level of the sampled company with the highest dumping margin.

- (61) The provisional dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Table 2

Dumping margins, the PRC

Company	Provisional dumping margin (%)
Baosteel Group: Baosteel Stainless Steel Co., Ltd; Ningbo Baoxin Stainless Steel Co., Ltd	34,9
TISCO Group: Shanxi Taigang Stainless Steel Co., Ltd; Tianjin TISCO & TPCO Stainless Steel Co Ltd	29,2
Other cooperating companies	30,0
All other companies	34,9

3.2. Taiwan**3.2.1. Normal value**

- (62) The Commission first examined whether the total volume of domestic sales for each investigated exporting producer was representative, in accordance with Article 2(2) of the basic Regulation. By investigated exporting producers the Commission considered the exporting producers selected in the sample, together with one exporting producer that was granted individual examination. The domestic sales are representative if the total domestic sales volume of the like product to independent customers on the domestic market per exporting producer represented at least 5 % of its total export sales volume of the product concerned to the Union during the investigation period.
- (63) The Commission found that domestic sales reported by the investigated exporting producers included significant amounts of the like product sold to distributors, who further exported it. A calculation based on production data available from the cooperating companies and statistics on imports and exports of the like product in Taiwan confirmed that the domestic sales reported by the cooperating exporting producers included around 50 % indirect export sales which were not for domestic consumption.
- (64) In addition, the Commission found that a system of discounts existed on the domestic market in Taiwan. One of the sampled exporting producers explained that this system was invented in order to give incentive to local services centres (distributors) that further exported their steel products. As prices set on the domestic market by the two main producers, including discounts, are widely communicated on a monthly basis to all distributors, even in the absence of discounts granted by other producers to their customers, the price fixing for goods that end on the domestic market and those further exported was highly influenced by the pricing system that existed in Taiwan.
- (65) In the light of the findings of the on-spot verifications, three of the exporting producers were requested to re-examine the sales they had reported for the domestic market in Taiwan and remove all sales which were not for domestic consumption. However, they only confirmed that they were not aware of the final destination of the like product they sell to their customers.
- (66) As explained in recital 63 above and in order to ensure that the normal value was based on prices set for domestic consumption only, the Commission took a conservative approach for the provisional dumping calculations by using the reported sales to end users in Taiwan. The Commission considered as end user any operator that further transformed the like product into another product that was not the like product anymore. Sales to distributors or traders have been excluded from the domestic sales because the Commission found in the course of the investigation that one of the main distributors in Taiwan that acquired a large volume of the like product reported as domestic sales by its suppliers, exported most of these purchased volumes.
- (67) On this basis, the total sales by each investigated exporting producer of the like product on the domestic market were representative.

- (68) The Commission subsequently identified the product types sold domestically that were identical or comparable with the product types sold for export to the Union for the investigated exporting producers with representative domestic sales.
- (69) The Commission then examined whether the product types sold by the investigated exporting producers on their domestic market compared with product types sold for export to the Union were representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the investigation period represents at least 5 % of the total volume of export sales of the identical or comparable product type to the Union.
- (70) The Commission next defined the proportion of profitable sales to independent customers on the domestic market for each product type during the investigation period in order to decide whether to use actual domestic sales for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.
- (71) The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if:
- (i) the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of this product type; and
 - (ii) the weighted average sales price of that product type is equal to or higher than the unit cost of production.
- (72) In this case, the normal value is the weighted average of the prices of all domestic sales of that product type during the investigation period.
- (73) The normal value is the actual domestic price per product type of only the profitable domestic sales of the product types during the investigation period, if:
- (i) the volume of profitable sales of the product type represents 80 % or less of the total sales volume of this type; or
 - (ii) the weighted average price of this product type is below the unit cost of production.
- (74) The analysis of domestic sales showed that for some product types, some domestic sales were profitable and that the weighted average sales price was higher than the cost of production. Accordingly, the normal value was calculated as a weighted average of prices of all domestic sales during the investigation period where conditions set under recital 71 above were met, or as a weighted average of the profitable sales only, where those conditions were not met. As there were no or insufficient sales of certain product types of the like product or where no sales were found in the ordinary course of trade, the Commission constructed the normal value in accordance with Article 2(3) and (6) of the basic Regulation.
- (75) Normal value was constructed by adding the following to the average cost of production of the like product of the investigated exporting producers during the investigation period:
- (i) the weighted average selling, general and administrative ('SG&A') expenses incurred by the investigated exporting producers on domestic sales of the like product, in the ordinary course of trade, during the investigation period; and
 - (ii) the weighted average profit realised by the investigated exporting producers on domestic sales of the like product, in the ordinary course of trade, during the investigation period.
- (76) For one of the investigated exporting producers, the cost of production was adjusted. As a significant volume of the inputs being used for the production of the like product was also procured by a related supplier, the Commission replaced the cost of purchases of these inputs with the cost of production of the inputs by the investigated exporting producer.
- (77) For the same exporting producer, the Commission also found that an adjustment for scrap value has been double counted because the volume of inputs converted into finished products has been accounted net of scrap. The Commission therefore rejected the deduction of the scrap value from the cost of production of the finished product.

- (78) For the product types not sold in representative quantities on the domestic market, the average SG&A expenses and profit of transactions made in the ordinary course of trade on the domestic market for those types were added. For the product types not sold at all on the domestic market, or where no sales were found in the ordinary course of trade, the weighted average SG&A expenses and profit of all transactions made in the ordinary course of trade on the domestic market were added.

3.2.2. *Export price*

- (79) The investigated exporting producers sold the product concerned for export either directly to independent customers in the Union or via independent distributors in Taiwan. The export price was, thus, established on the basis of prices actually paid or payable, in accordance with Article 2(8) of the basic Regulation.

3.2.3. *Comparison*

- (80) The Commission compared the normal value and the export price of the investigated exporting producers on an ex-works basis.
- (81) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for transport, insurance, handling, loading and ancillary costs, packing, credit, bank charges and commissions.
- (82) Sampled exporting producers failed to use the foreign exchange rates provided to them in the anti-dumping questionnaires sent prior to the verification visits. The Commission therefore recalculated the transaction values using the rates given in the questionnaires.

3.2.4. *Dumping margins*

- (83) For the investigated exporting producers, including two related sampled companies and one which was granted individual examination, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.
- (84) On this basis, the provisional weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Table 3

Dumping margins, Taiwan

Company	Provisional dumping margin (%)
Chia Far Industrial Factory Co., Ltd (individual examination)	12,0
Tang Eng Iron Works Co., Ltd and Yieh United Steel Corporation	10,9

- (85) For the cooperating exporting producers outside the sample, the Commission calculated the weighted average dumping margin, in accordance with Article 9(6) of the basic Regulation. Therefore, that margin was established on the basis of the margins of the sampled exporting producers.
- (86) On this basis, the provisional dumping margin of the cooperating exporting producers outside the sample is 10,9 %.

- (87) For all other companies in the country concerned, the Commission established the dumping margin on the basis of the facts available, in accordance with Article 18 of the basic Regulation. To this end, the Commission determined the level of cooperation. The level of cooperation is the volume of exports of the cooperating companies to the Union expressed as proportion of the total export volume — as reported in Eurostat import statistics — from the country concerned to the Union.
- (88) The level of cooperation in this case was considered high and on this basis, the Commission decided to base the residual dumping margin at the level of the company with the highest dumping margin.
- (89) The provisional dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Table 4

Dumping margins, Taiwan

Company	Provisional dumping margin (%)
Chia Far Industrial Factory Co., Ltd	12,0
Tang Eng Iron Works Co., Ltd and Yieh United Steel Corporation	10,9
Other cooperating companies	10,9
All other companies	12,0

4. INJURY**4.1. Definition of the Union industry and Union production**

- (90) The like product was manufactured by nine known producers in the Union during the investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (91) The total Union production during the investigation period was established at over 3 million tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry, such as information collected from the sampled producers and the data from the complaint for the other Union producers. The largest Union producer neither cooperated, nor opposed to the complaint. Six Union producers accounting for approximately 55 % of sales and production in the Union cooperated with the investigation. As indicated in recital 8 above, four Union producers were selected in the sample representing around 50 % of the total Union production of the like product.
- (92) Interested parties argued that one sampled Union producer should be excluded from the definition of the Union industry, as it imported significant quantities of the product concerned. However, the Union producer's imports from the countries concerned accounted for less than 5 % of the total imports of the product concerned, and less than 2 % of their sales volume in the Union. On this basis it is maintained at this stage that this Union producer formed part of the Union industry.
- (93) Interested parties argued that not including the largest Union producer in the sample makes the sample non-representative. As already indicated, the sampled four Union producers represent around 50 % of the total Union production of the like product. The Commission therefore concluded that the sample was representative. In any event, this largest producer did not come forward.

4.2. Union consumption

- (94) The Commission established the Union consumption on the basis of the sales volumes of the Union industry's own production collected from the sampled producers, the data from the complaint for the other Union producers and the import volumes data on the Union market obtained from Eurostat statistics.

- (95) Union consumption developed as follows:

Table 5

Union consumption

	2010	2011	2012	Investigation period
Union consumption (tonnes)	3 161 737	3 250 977	3 256 438	3 300 127
<i>Index</i>	100	103	103	104

Source: Sampled Union producers, complaint, Eurostat

- (96) Union consumption has continuously grown by 4 % throughout the period considered.

4.3. Imports from the countries concerned

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

- (97) The Commission examined whether imports of the product concerned originating in the countries concerned should be assessed cumulatively, in accordance with Article 3(4) of the basic Regulation.
- (98) The margin of dumping established in relation to the imports from the PRC and Taiwan was above the *de minimis* threshold laid down in Article 9(3) of the basic Regulation. The volume of imports from each of the countries concerned was not negligible within the meaning of Article 5(7) of the basic Regulation. Market shares in the investigation period were 5,1 % for Taiwan and 4,3 % for the PRC.
- (99) The conditions of competition between the dumped imports from the PRC and Taiwan and the like product were similar. More specifically, the imported products competed with each other and with the like product produced in the Union because all products comply with the same global standards and are therefore interchangeable. Also, they are sold through the same sales channels and to similar categories of customers.
- (100) The Taiwan Steel & Iron Industries Association ("TSIIA") argued that the Commission should not cumulatively assess the effects of the dumped imports from the PRC and Taiwan. It claimed that although SSCR may be considered as alike in the sense of the basic Regulation, Taiwanese sales on the Union market do not share the same conditions of competition with those of Chinese imports. They would differ mainly with regard to grades and quality, with Taiwanese products being of a higher quality.
- (101) The claim regarding different grades only refers to speciality products accounting for less than 1 % of imports. Moreover, all products (EU, Chinese and Taiwanese) comply with the same worldwide standards and no claims quantifying differences in physical properties between the like product produced in the Union and imports were brought forward, leaving this argument unsubstantiated. Consequently, the claim was rejected.
- (102) Therefore, all the criteria set out in Article 3(4) of the basic Regulation were met and imports from the PRC and Taiwan were examined cumulatively for the purposes of the injury determination.

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

- (103) The Commission established the volume of imports on the basis of volume of imports obtained from Eurostat statistics. The market share of the imports was established on the same basis.
- (104) Imports into the Union from the countries concerned developed as follows:

Table 6

Import volume and market share

	2010	2011	2012	Investigation period
Volume of imports from the PRC (tonnes)	56 477	95 876	87 759	143 420
<i>Index</i>	100	170	155	254
Market share (%)	1,8	2,9	2,7	4,3
<i>Index</i>	100	165	151	243
Volume of imports from Taiwan (tonnes)	127 664	173 968	132 392	169 097
<i>Index</i>	100	136	104	132
Market share (%)	4,0	5,4	4,1	5,1
<i>Index</i>	100	133	101	127
Volume of imports from the countries concerned (tonnes)	184 140	269 845	220 151	312 517
<i>Index</i>	100	147	120	170
Market share (%)	5,8	8,3	6,8	9,5
<i>Index</i>	100	143	116	163

Source: Eurostat

- (105) Cumulated imports from the countries concerned have risen by 70 % from 184 140 tonnes to 312 517 tonnes between 2010 and the investigation period. Imports steadily increased throughout the period considered, with the exception of 2012 where import volumes were higher than in 2010 but below the level of 2011.
- (106) The cumulative market share has risen by 63 % from 5,8 % to 9,5 % during the period considered. Similar to the import volume, the market share steadily increased throughout the period considered, with the exception of 2012.

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

- (107) The Commission established the prices of imports on the basis of value and volume of imports obtained from Eurostat statistics. Price undercutting of the imports was established on the basis questionnaire replies submitted by the sampled Union producers, the sampled exporting producers and the exporting producer granted individual examination referred to in recital 17 above.

(108) The weighted average price of imports into the Union from the countries concerned developed as follows:

Table 7

Import prices

	2010	2011	2012	Investigation period
PRC (EUR/tonne)	2 175	2 280	2 253	2 008
<i>Index</i>	100	105	104	92
Taiwan (EUR/tonne)	2 268	2 414	2 143	1 897
<i>Index</i>	100	106	94	84
The countries concerned (EUR/tonne)	2 239	2 366	2 187	1 948
<i>Index</i>	100	106	98	87

Source: Eurostat

- (109) Import prices of the PRC and Taiwan initially increased by 6 percentage points between 2010 and 2011. Subsequently, they have decreased by 19 percentage points for an overall decrease of 13 %. Import prices from the PRC and Taiwan followed a similar trend, with the exception of 2012 which still showed comparably high prices for the PRC, but already comparably low prices for Taiwan. For both countries, prices further decreased between 2012 and the investigation period.
- (110) The Commission determined the price undercutting during the investigation period by comparing:
- (i) the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and
 - (ii) the corresponding weighted average prices per product type of the imports from the investigated Chinese and Taiwanese producers to the first independent customer on the Union market, established on a 'CIF' basis, with appropriate adjustments for post-importation costs.
- (111) The price comparison was made on a type-by-type basis for transactions duly adjusted where necessary, and after deduction of discounts, commissions and delivery costs. The result of the comparison was expressed as a percentage of the sampled Union producers' turnover during the investigation period. It showed a weighted average undercutting margin of between 9,6 % and 11,3 % for the imports from the countries concerned on the Union market.
- (112) The investigation has shown that exporting producers almost exclusively sell to independent distributors or steel service centres, while the Union industry sold to distributors, steel service centres and end users. The investigation has however not shown that this difference of level of trade had an impact on prices. On the contrary, independent distributors and steel service centres claimed that they do not obtain more favourable sales terms from the Union producers than users.

4.4. Economic situation of the Union industry

4.4.1. General remarks

- (113) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

- (114) As mentioned in recital 8 above, sampling was used for the determination of possible injury suffered by the Union industry. Four producers have been sampled.
- (115) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data collected from the sampled producers and the data from the complaint for the other Union producers. The data related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. The data related to the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.
- (116) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity and magnitude of the dumping margin.
- (117) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.
- (118) Interested parties argued that the data of the sampled Union producers should be consistently used for the injury assessment instead of dividing the indicators into macroeconomic indicators and microeconomic indicators. They argued that the separate analysis of macroeconomic and microeconomic indicators was subject to manipulation by the complainant, as the complainant could steer the data collection at the macroeconomic level, as the decision whether a specific indicator was a macroeconomic or a microeconomic indicator was based on the availability of information.
- (119) The Commission established and analysed macroeconomic indicators as they were found at Union level and not only at the level of the sampled Union producers. It is considered that as far as macroeconomic indicators are concerned, complete data of the whole Union industry, which also includes the data from the sampled companies, reflect better the situation during the period considered than data for only part of the industry.
- (120) The data provided by the complainant for the evaluation of the macroeconomic indicators was considered accurate and reliable. The validity of the data was checked against the information submitted by the sampled Union producers. For the sake of the argument, an injury analysis consistently using only the data provided by the sampled Union producers would show a more negative picture for the macroeconomic indicators. There were no grounds to establish that the complainant deliberately withheld information to manipulate the injury analysis. There is therefore no reason to disregard the information provided by the complainant concerning the macroeconomic indicators. Therefore, the argument that the analysis of all injury indicators should be limited to the information submitted by the sampled Union producers only cannot be accepted.

4.4.2. Macroeconomic indicators

4.4.2.1. Production, production capacity and capacity utilisation

- (121) The total Union production, production capacity (at cold-rolling level) and capacity utilisation developed over the period considered as follows:

Table 8

Production, production capacity and capacity utilisation

	2010	2011	2012	Investigation period
Production volume (tonnes)	3 195 908	3 159 359	3 222 857	3 036 688
<i>Index</i>	100	99	101	95
Production capacity (tonnes)	4 174 027	4 261 161	4 284 261	4 330 161
<i>Index</i>	100	102	103	104

	2010	2011	2012	Investigation period
Capacity utilisation (%)	77	74	75	70
<i>Index</i>	100	97	98	92

Source: Sampled Union producers, complaint

- (122) The production volume remained stable between 2010 and 2012. Between 2012 and the investigation period, the production volume significantly decreased by 6 percentage points for an overall decrease of 5 % despite stable demand.
- (123) At the same time, the production capacity moderately increased by 4 % in the period considered. The small increase in production capacity could be attributed to better utilisation of machinery due to efficiency programmes carried out by Union industry.
- (124) As a result, the capacity utilisation decreased by 8 % throughout the period considered. It is known that a 100 % capacity utilisation is not achievable and sustainable in the long run in the SSCR industry. However, the capacity utilisation achieved by the Union industry during the period considered is far below the capacity utilisation in excess of 90 % that is considered achievable in a sustainable long run level of production. In addition, since the difference between the production capacity and the sustainable long run level of production is minor, it cannot have had an impact on the decreasing trend shown by the Union industry.

4.4.2.2. Sales volume and market share

- (125) The Union industry's sales volume and market share developed over the period considered as follows:

Table 9

Sales volume and market share

	2010	2011	2012	Investigation period
Sales volume on the Union market (tonnes)	2 641 033	2 637 819	2 732 237	2 631 508
<i>Index</i>	100	100	103	100
Market share (%)	84	81	84	80
<i>Index</i>	100	97	100	95

Source: Sampled Union producers, complaint

- (126) Sales volume of the Union industry was stable throughout the period considered, with slightly higher sales volumes in 2012.
- (127) Since the Union consumption has grown throughout the period considered as stated in recital 96 above the rather stable sales volumes led to a decrease of 5 % in the market share held by the Union industry throughout the period considered. Similar to the sales volume, year 2012 showed a more positive picture.

4.4.2.3. Growth

- (128) As described above, throughout the period considered the sales volume of the Union industry was rather stable in a growing market. At the same time, imports from the countries concerned significantly increased. As a result, the market growth of around 140 000 tonnes throughout the period considered almost exclusively benefitted the imports from the countries concerned, which increased their volumes by around 128 000 tonnes throughout the same period. Therefore, the Union industry could not benefit from the market growth at all.

4.4.2.4. Employment and productivity

(129) Employment and productivity developed over the period considered as follows:

Table 10

Employment and productivity

	2010	2011	2012	Investigation period
Number of employees	13 223	12 978	12 471	11 820
<i>Index</i>	100	98	94	89
Productivity (tonne/employee)	242	235	258	257
<i>Index</i>	100	97	107	106

Source: Sampled Union producers, complaint

- (130) The number of employees of the Union industry decreased by 2 percentage points in 2011, by further 4 percentage points in 2012 and yet by another 5 percentage points in the investigation period, which clearly showed a falling tendency. Rationalising the number of employees could be attributed to implementation of diverse 'effectiveness' plans by the Union producers and the decrease in production volume.
- (131) The SSCR industry is generally considered a capital intensive industry. Nevertheless, the amount of employment provided by the Union industry is significant. Also, labour costs are the second most important cost factor after raw materials, on average accounting for around 10 % — 15 % of total costs. Employment is therefore a relevant injury indicator for this industry.
- (132) Productivity of the Union industry slightly decreased in 2011 by 3 percentage points, then in 2012 increased by 10 percentage points to further decrease by 1 percentage point in the investigation period. Overall, it raised by 6 percentage points from 242 tonnes per employee to 257 tonnes per employee in the period concerned, despite the diminishing number of employees, which showed higher effectiveness.

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

- (133) All dumping margins were significantly above the *de minimis* level. The impact of the magnitude of the actual margins of dumping on the Union industry was substantial, given the volume and prices of imports from the countries concerned.
- (134) This is the second anti-dumping investigation regarding the product concerned. Imports of the same product originating in the PRC, South Korea and Taiwan were already subject to an investigation in 2008-2009 ⁽¹⁾. Even though this investigation did not result in the imposition of anti-dumping measures, the investigation provisionally established the existence of dumping already at that time ⁽²⁾.

4.4.3. Microeconomic indicators

4.4.3.1. Prices and factors affecting prices

- (135) The weighted average unit sales prices of the sampled Union producers to unrelated customers in the Union developed over the period considered as follows:

⁽¹⁾ Notice of initiation of an anti-dumping proceeding concerning imports of stainless steel cold rolled flat products originating in the People's Republic of China, the Republic of Korea and Taiwan (OJ C 29, 1.2.2008, p. 13).

⁽²⁾ Commission Decision 2009/327/EC of 16 April 2009 terminating the anti-dumping proceeding concerning imports of stainless steel cold-rolled flat products originating in the People's Republic of China, the Republic of Korea and Taiwan (OJ L 98, 17.4.2009, p. 39).

Table 11

Sales prices in the Union

	2010	2011	2012	Investigation period
Average unit sales price in the Union (EUR/tonne)	2 428	2 572	2 358	2 159
<i>Index</i>	100	106	97	89
Unit cost of production (EUR/tonne)	2 247	2 345	2 149	1 939
<i>Index</i>	100	104	96	86

Source: Sampled Union producers

- (136) The sales prices of the sampled Union producers to unrelated customers decreased by 11 % over the period considered. While in 2011 prices increased by 6 %, they subsequently fell by 17 percentage points until the end of the period considered.
- (137) Unit cost of production for the total production of SSCR (including goods eventually exported) largely followed the trend of sales prices, decreasing by 14 % throughout the period considered. However, as the sales prices and unit cost of production are not directly comparable as there is a certain time difference between production and sale. As the average level of inventories of the Union industry accounted for around 15 % of turnover, on average there is a time lag of almost two months between production and sale.
- (138) Generally, both production costs and sales prices are driven by the development of raw material costs, mainly chromium and nickel. Indeed, the prices charged by the Union industry are following a so-called 'alloy-surcharge' mechanism. Under this mechanism, prices consist of a fixed 'base price' and an 'alloy surcharge' which fluctuates depending on the chemical composition of the steel grade and the quotations of the alloys on the London Metal Exchange ('LME'). Therefore, prices are linked to the steel grade and the corresponding raw material costs.
- (139) Interested parties suggested that sales price trend of the Union industry should be analysed excluding the 'alloy surcharge'. Since the Union industry does not influence the price of nickel, interested parties claimed that the Commission should look only at the 'base price'.
- (140) The total price indeed consists of the base price and the alloy surcharge, and customers are normally aware of this split. However, the investigation has shown that during the investigation period these two price elements were normally not stated separately on the invoice. In such cases, commercial documents predating the invoice such as the order or the order confirmation normally neither indicate these two elements separately.
- (141) Therefore, the development of the base price was analysed on the basis of publicly available information submitted by interested parties. This information shows a detailed break-down of the total price charged for commodity grade 304 ⁽¹⁾ products in Germany ⁽²⁾ into the base price and the alloy surcharge. While the alloy surcharge fluctuated according to the development of raw material costs, the base price continuously decreased throughout the period considered by around 20 % from around 1 200 EUR/tonne in 2010 to around 1 000 EUR/tonne in the investigation period. While the level of the decrease may not necessarily be representative for all products and all Union producers, the magnitude of the decrease supports the conclusion that not only the level of the alloy surcharge, but also the level of the base price followed a downward trend.

⁽¹⁾ The closely related grades 304 and 304L are the most common products accounting for more than 50 % of the sales of the Union industry.

⁽²⁾ Outokumpu Annual Report 2013, p. 11 (graph).

4.4.3.2. Labour costs

- (142) The average labour costs of the sampled Union producers developed over the period considered as follows:

Table 12

Average labour costs per employee

	2010	2011	2012	Investigation period
Average labour costs per employee (EUR)	57 071	58 068	59 684	61 826
<i>Index</i>	100	102	105	108

Source: Sampled Union producers

- (143) Average labour costs per employee were increasing throughout the period considered and overall increased by 8 % between 2010 and the investigation period.

4.4.3.3. Inventories

- (144) Stock levels of the sampled Union producers developed over the period considered as follows:

Table 13

Inventories

	2010	2011	2012	Investigation period
Closing stocks (tonnes)	242 166	238 818	208 021	225 418
<i>Index</i>	100	99	86	93
Closing stocks as a percentage of production	15	16	14	15
<i>Index</i>	100	103	90	99

Source: Sampled Union producers

- (145) The volume of stocks remained rather stable between 2010 and 2011, then decreased by 13 percentage points in 2012 and slightly increased by 7 percentage points in the investigation period. Overall, it has decreased by 7 % during the period considered. Since most production is done on order, stocks are not a meaningful indicator in this industry.

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

- (146) Profitability, cash flow, investments and return on investments of the sampled Union producers developed over the period considered as follows:

Table 14

Profitability, cash flow, investments and return on investments

	2010	2011	2012	Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	- 0,6	- 1,3	- 2,1	- 1,6

	2010	2011	2012	Investigation period
<i>Index</i>	- 100	- 214	- 330	- 253
Cash flow (million EUR)	- 199	107	- 10	- 39
<i>Index</i>	- 100	54	- 5	- 20
Investments (million EUR)	1 504	1 375	1 279	1 244
<i>Index</i>	100	91	85	83
Return on investments (%)	- 1,2	- 2,9	- 4,3	- 3,1
<i>Index</i>	- 100	- 246	- 370	- 269

Source: Sampled Union producers

- (147) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. The profitability of the sampled producers was negative during the whole period considered — it has decreased by 1,5 percentage points between 2010 and 2012 and slightly recovered in the investigation period by 0,5 percentage points reaching -1,6 %. As explained in recital 141 above, the negative profitability was mainly due to a constantly decreasing base price and not due to fluctuating prices for raw materials such as nickel.
- (148) The net cash flow is the ability of the Union producers to self-finance their activities. Cash flow was negative in three out of the four years considered — it improved in 2011, but then started to decrease again. The temporary improvement in 2011 was largely due to a significant decrease in stocks of semi-finished products.
- (149) Investments have shown a decreasing tendency — in 2011 they have decreased by 9 %, in 2012 by further 6 % and further 2 % in the investigation period. Overall, they decreased by 17 percentage points during the period considered.
- (150) The return on investments is the profit in percentage of the net book value of investments. It was negative in all four years considered. In 2011 it has decreased by 146 %, in 2012 by further 124 % and reached -3,1 % in the investigation period.
- (151) The ability to raise capital of all four sampled producers was negatively affected, as due to their negative profitability figures they were not in a position to obtain financing from banks. The producers had to use funds provided by other group companies.

4.4.4. Conclusion on injury

- (152) Most of the injury indicators of the Union industry showed a negative trend during the period considered. Production volume decreased by 5 %, leading to a decrease in capacity utilisation of 8 %. Stable sales volumes in a growing market led to a decrease of market share of 5 %. Employment decreased by 11 % while labour cost increased by 8 %. Investments decreased by 17 % while return on investments remained negative throughout the period considered and showed a worsening trend.
- (153) The only injury factors which have clearly shown a slightly positive trend are production capacity and productivity. In any event, this increase in production capacity is in line with the increase of consumption during the period considered. The rising productivity was a consequence of the reduction of number of employees.
- (154) Certain injury factors had a temporarily more positive development in 2011 or 2012 in comparison to the previous year and then decreased again — as market share, sales prices, cost of production. Profitability was negative in all four years, cash flow in three out of four years.

- (155) On the basis of the above, the Commission concluded at this stage that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

- (156) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the countries concerned caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the dumped imports from the countries concerned was not attributed to the dumped imports. These factors are: imports from third countries, export performance of the Union industry, energy cost, overcapacity, and competition within the Union.

5.1. Effects of the dumped imports

- (157) Union consumption increased by 4 % during the period considered, but at the same time the volume of imports from the countries concerned increased by 70 % while the market share of the Union industry revealed a decreasing trend. The pattern in which the imports gained market share and the Union industry lost market share was found corresponding. The increasing market share of imports slowed down in 2012 and picked up in the investigation period, whilst the decreasing market of the Union industry also slowed down in 2012 and dropped again in the investigation period. It is therefore clear that the lost market share of the Union industry was in correlation with the increase of the dumped imports.
- (158) Import prices from the countries concerned decreased by 13 % during the period considered. The Union industry prices decreased by 11 % during the same period. During the investigation period the dumped imports from the countries concerned undercut the Union industry prices by 9,6 % — 11,3 %, thereby exerting price pressure on the Union industry. The price behaviour of the increasing dumped imports from the countries concerned has not allowed the Union industry either to maintain its market share or to become profitable.
- (159) Interested parties claimed that the imported products from the countries concerned are not competing with the products sold by the Union industry. Allegedly, imports from the countries concerned are predominantly thin products with a thickness of less than 2 mm, while products above this thickness are mainly supplied by the Union industry. This allegation has not been confirmed by the facts established by the investigation. Indeed, the exporting producers and the Union industry sell thick products with a thickness exceeding 2 mm as well as thin products with a lower thickness. Also, on average the ratio of thick products v thin products is similar at around 30 % — 35 % for both the Union industry and the sampled exporting producers from the countries concerned.
- (160) Interested parties claimed that there was no correlation between the level and prices of imports from the PRC and the profitability of the Union industry. In particular, they referred to the decrease of imports and stable prices from the PRC in 2011-2012 which allegedly cannot have caused the decrease of average prices on the Union market. At the same time, Union industry's losses increased and the sales volume was rather stable.
- (161) However, this analysis selectively focusses on only two years in isolation instead of on the whole period considered. When analysing the whole period, it was clear that the strong increase of dumped imports led not only to deteriorating profitability but also to lost market share by the Union industry and drop in production, capacity utilisation, employment, investments and return on investments. While the year 2012 did not strictly follow the overall trend, the trend remained negative. The purpose of assessing the injury indicators over a longer period of four years is namely to avoid reaching conclusions on the basis of isolated developments, if any. In any event, the effects of the dumped imports from both countries concerned were assessed cumulatively for the reasons explained in recitals 97 to 102 above. Therefore, it was not warranted to assess the independent effects of the dumped imports from the PRC alone.
- (162) Interested parties claimed that the market share that the Union industry lost to imports from Taiwan was insignificant. Taiwanese imports according to the information provided in the complaint accounted for a market share of 4,98 % in the investigation period, and increased by 1,09 % between 2010 and the investigation period. Interested parties claimed that it was therefore impossible that Taiwanese exports caused the injury that the complainants claimed to have suffered.

- (163) According to the findings of the investigation, the Taiwanese imports' market share increased overall during the period considered and reached 5,1 % during the investigation period. The investigation also clearly established that these dumped imports substantially undercut the sale prices of the Union industry. Therefore, contrary to the claim of the interested party, the dumped imports from Taiwan exercised price pressure and together with the Chinese dumped imports caused injury to the Union industry as discussed above. It is recalled that the effects of the imports from both countries concerned were assessed cumulatively for the reasons explained in recitals 97 to 102 above. Therefore, the effects of the dumped imports only from Taiwan were not assessed independently.
- (164) Interested parties claimed that the quantity of Taiwanese imports was overstated, as it allegedly included significant quantities of Chinese or Korean origin SSCR wrongfully declared as Taiwanese. However, this allegation was not supported by evidence.
- (165) However, cooperating Taiwanese companies (producers and other cooperating parties) reported exports accounting for the vast majority of total Taiwanese imports. Therefore, the issue of allegedly wrongly declared non-Taiwanese products could have a very limited impact, if any.
- (166) Interested parties claimed that the prices of Chinese and Taiwanese exporting producers, just like those of the Union industry followed the price of nickel. While it may indeed be the case that over time the price trend of the exporting producers followed the trend of raw material prices, this does not address the question of the absolute level of the price. In this respect, the investigation found that both Chinese and Taiwanese prices undercut the Union industry's price by 9,6 % — 11,3 %. If valid, the argument that Chinese, Taiwanese and Union industry prices developed in a similar trend throughout the period considered would merely lead to the conclusion that Chinese and Taiwanese exports were undercutting Union industry's prices by a similar margin throughout the whole period considered.
- (167) Interested parties claimed that allegedly increasing investments do not demonstrate that the Union industry was suffering material injury. However, this allegation was not confirmed by the investigation. Indeed, investments steadily decreased by 17 % throughout the period considered, as indicated in recital 149 above.
- (168) The Commission concluded at this stage that the increased low priced dumped imports from the countries concerned caused the material injury suffered by the Union industry.

5.2. Effects of other factors

5.2.1. Imports from third countries

- (169) The volume of imports from other third countries developed over the period considered as follows:

Table 15

Imports from third countries

Country		2010	2011	2012	Investigation period
India	Volume (tonnes)	17 568	29 437	33 763	61 855
	<i>Index</i>	100	168	192	352
	Market share (%)	0,6	0,9	1,0	1,9
	Average price (EUR/tonne)	1 912	2 421	2 218	2 098
	<i>Index</i>	100	127	116	110

Country		2010	2011	2012	Investigation period
South Korea	Volume (tonnes)	72 256	70 297	62 047	92 189
	<i>Index</i>	100	97	86	128
	Market share (%)	2,3	2,2	1,9	2,8
	Average price (EUR/tonne)	1 932	2 112	1 891	1 839
	<i>Index</i>	100	109	98	95
South Africa	Volume (tonnes)	66 142	51 788	50 718	51 907
	<i>Index</i>	100	78	77	78
	Market share (%)	2,1	1,6	1,6	1,6
	Average price (EUR/tonne)	2 302	2 355	2 102	1 943
	<i>Index</i>	100	102	91	84
USA	Volume (tonnes)	94 923	82 387	82 624	90 947
	<i>Index</i>	100	87	87	96
	Market share (%)	3,0	2,5	2,5	2,8
	Average price (EUR/tonne)	2 695	2 943	2 646	2 304
	<i>Index</i>	100	109	98	85
Other third countries	Volume (tonnes)	85 674	109 406	74 897	59 204
	<i>Index</i>	100	128	87	69
	Market share (%)	2,7	3,4	2,3	1,8
	Average price (EUR/tonne)	2 450	2 659	2 715	2 669
	<i>Index</i>	100	109	111	109
Total of all third countries except the countries concerned	Volume (tonnes)	336 564	343 313	304 049	356 102
	<i>Index</i>	100	102	90	106
	Market share (%)	10,6	10,6	9,3	10,8
	Average price (EUR/tonne)	2 351	2 549	2 371	2 156
	<i>Index</i>	100	108	101	92

Source: Eurostat

- (170) The third countries with the highest import volumes were India, South Korea, South Africa and the USA with market shares ranging between 1,6 % and 2,8 % during the investigation period. The market share of all other third countries was 10,8 %.
- (171) Imports from India were negligible at 1 % or less throughout most of the period considered. They only exceeded the 1 % threshold once, during the investigation period where they held a market share of 1,9 %.
- (172) The market share of South Korea was rather stable during the period considered, decreasing from 2,3 % to 1,9 % from 2010-2012 and finally increasing to only 2,8 % during the investigation period.
- (173) Imports from South Africa and the USA show a decreasing trend throughout the period considered. The market share of South African imports decreased from 2,1 % to 1,6 % while the market share of USA imports decreased from 3,0 % to 2,8 %.
- (174) Concerning prices based on Eurostat, it can be observed that only the South Korean import price was lower than the import price of the PRC and Taiwan, while imports from South Africa had similar prices and imports from India and the USA higher prices. It should be noted nevertheless that the product concerned/like product consists of various steel grades leading to significant price differences that could not be taken into account in the average price from Eurostat.
- (175) Interested parties referred to imports from other third countries, including the USA, South Korea, India and South Africa. They claimed that those imports must have influenced the situation of the Union industry and since there are substantial imports from other third countries, not subject to the Commission's investigation, imports from the PRC and Taiwan should not be found responsible for any injury caused by imports from other countries.
- (176) As described above, in the investigation period, among other countries being sources of SSCR imports to the Union, Taiwan and the PRC have the highest market shares (5,1 % and 4,3 %, respectively). No other country's imports exceeded a 3 % market share during the period considered. Also, while the market share from the countries concerned increased by 3,7 percentage points during the period considered, altogether the market share of imports from third countries other than the countries concerned remained stable increasing by only 0,2 percentage points during the period considered.
- (177) Due to the stable trend in import volumes, the Commission thus provisionally concluded that imports from other third countries did not contribute to the injury suffered by the Union industry to any significant degree.

5.2.2. *Export performance of the Union industry*

- (178) The volume of exports of the sampled Union producers developed over the period considered as follows:

Table 16

Export performance of the sampled Union producers

	2010	2011	2012	Investigation period
Export volume (tonnes)	185 377	188 431	182 370	178 010
<i>Index</i>	100	102	98	96
Average price (EUR/tonne)	2 148	2 353	2 082	1 915
<i>Index</i>	100	110	97	89

Source: Sampled Union producers

- (179) The export volumes of the sampled Union producers are decreasing after single increase in 2011 in both volumes and sales prices. Overall the export volumes of the sampled producers represented around 12 % of their combined production. Although the decreased exports may have contributed to the drop in production, given the low level of exports in relation to sales in the Union, any contribution of exports to the injury suffered by the Union industry would be very limited.

5.2.3. Energy cost, overcapacity

- (180) Interested parties claimed that the injury suffered by the Union industry was due to high energy costs, which are said to be 20 % higher than in the PRC. However, energy is only a minor cost factor for the production of SSCR, typically accounting for less than 10 % of total costs. Leaving aside the issue whether energy costs in the PRC reflect market values or not, the price difference for energy cannot have caused the injury suffered by the Union industry.
- (181) Interested parties claimed that contrary to the information provided in the complaint, the Union industry suffered from significant overcapacity. The Commission observed capacity utilisation of the Union Industry decreasing from 77 % in 2010 to 70 % in the period considered. However, the production capacity of the Union industry and the consumption on the Union market developed in parallel, both increasing by 4 % during the period considered. The loss in capacity utilisation is therefore caused by the inability of the Union industry to take advantage of the growing market, as this growth was absorbed by dumped imports from the countries concerned. The resulting alleged overcapacity is therefore more a result of the dumped imports than a cause of the injury suffered by the Union industry.
- (182) The Commission concluded that both the Union industry's energy cost and the alleged overcapacity could not have caused the injury it suffered.

5.3. Competition concerns

- (183) Interested parties claimed that imports of SSCR from the PRC have risen in response to the concentration of capacities in the Union down to a small number of suppliers, where the users in the Union were left with a limited number of Union producers. However, in the last 10 years there have always been four medium-sized and a number of smaller suppliers on the Union market. While the ownership of some of these companies has changed during that period, the number of suppliers has remained stable. Therefore, the increase in dumped Chinese imports cannot have been caused by a reduction in the number of suppliers in the Union.
- (184) Interested parties claimed that the Union market was highly concentrated and imports from the countries concerned could not have caused any injury suffered by the Union industry. They claimed that the volume of imports from Asia was insufficient to constrain competition and could not prevent Union industry from increasing its prices. In this regard, the same parties made reference to the Commission's merger decision to approve the merger (subject to commitments) between Outokumpu and Inoxum ⁽¹⁾ in November 2012 (the 'Outokumpu Merger Decision').
- (185) However, the analysis in a merger procedure and an anti-dumping investigation concern different legal frameworks which have different objectives. While a merger procedure analyses whether a proposed merger would raise competition concerns, an anti-dumping investigation analyses whether the Union industry is exposed to injurious dumping.
- (186) In any event, in the framework of the Outokumpu Merger Decision, it was examined whether the acquisition of Inoxum by Outokumpu would lead to a dominant player on the Union market. The combined entity of Outokumpu and Inoxum would have held a combined market share of over 50 % and reduced the number of main producers from four to three. This merger decision obliged Outokumpu to divest part of Inoxum including the production company Acciai Speciali Terni ('AST'). The aim of this divestiture was precisely to maintain competition on the SSCR market in the Union, and the planned merged entity (Outokumpu and all assets of Inoxum including AST) holding a market share of above 50 % on the Union market never materialised. Instead, there are still four medium-sized players and a number of smaller players competing with each other without any of these parties holding the level of market power that the proposed merged entity analysed in the merger case would have held.

⁽¹⁾ Commission Decision of 7 November 2012 addressed to: Outokumpu OYJ declaring a concentration to be compatible with the internal market and the EEA agreement (Case COMP/M.6471 — Outokumpu/INOXUM).

- (187) Interested parties also referred to the discussion in the Outokumpu Merger Decision of the fact that Union producers were not restricted by Asian imports during those periods of time when fluctuations in nickel prices, currency exchange rate and low LME nickel prices made Asian imports less competitive. It was noted in the Outokumpu Merger Decision that 'even if the constraint posed by imports may not be strong at present, it would be possible that it will increase in the future' ⁽¹⁾, which then led to an assessment of the likely developments of the market. The current investigation has shown the following: dumped imports from the countries concerned reached in the investigation period a market share of 9,5 % and increased by 70 % compared to 2010. It was also established that these dumped imports undercut the Union industry prices by 9,6 % — 11,3 %.
- (188) In addition, the fact that the demand on the Union market is comparably stable even in case of significant price fluctuations does not mean that buyers are not price sensitive. While lower prices offered by exporters do not lead to increased consumption on the Union market, the investigation has clearly shown that buyers are willing to purchase increasing quantities of low-priced imports. As these low-priced imports do not generate any additional demand, these sales are at the expense of the sales of other market players, mainly at the expense of the Union industry.
- (189) The investigation has confirmed that the Union industry sells a wider product range than the cooperating exporting producers. However, during the investigation period around 75 % of the Union industry's sales related to the four most common steel grades (304, 304L, 316L and 430). All these grades are sold by the exporters from the countries concerned in a large variety of widths, thicknesses and finishes. Also products beyond these commodity grades are in direct competition as they were also sold by the exporters from the countries concerned.
- (190) None of the interested parties has raised any issues concerning product quality in the present investigation. The Outokumpu Merger Decision has established that while on average the quality produced by the non-European producers can be considered comparable with that of European producers ⁽²⁾, it also has identified that customers with specific requirements cannot purchase in Asia ⁽³⁾. However, as described above, the vast majority of the Union industry's sales are commodity products where quality is comparable.
- (191) Other issues preventing some customers from buying imported SSCR are the longer lead times due to the long transport from the countries concerned and the less favourable payment terms offered by producers in the countries concerned. However, these issues are mainly relevant for the customers buying directly from the mill, which accounts only for around one third of the Union market.
- (192) At the same time, the majority of sales were made via steel service centres, which account for around two thirds of the Union market. Indeed, almost all sales from the countries concerned are made via independent service centres, which also buy from the Union industry. In this case, the payment term offered by the distributor is relevant for the user. As these sales are typically made from the stock of the distributor, the relevant lead time is also the time needed to ship the goods from the distributor to the user. Therefore, the majority of the sales is not affected by these issues.
- (193) Therefore, the majority of sales of the Union industry are directly affected by the dumped imports from the countries concerned.
- (194) The Commission therefore concluded that the competition conditions in the Union could not have prevented the dumped imports for the countries concerned to cause injury to the Union industry.

5.4. Effect of raw material prices

- (195) Interested parties claimed that the decision whether to buy the product concerned originating in the countries concerned or the like product produced by the Union industry is driven by the development of raw material prices, in particular nickel. This is because the exporters charge a single price and the Union industry charges a base price plus alloy surcharge.

⁽¹⁾ Outokumpu Merger Decision, paragraph (587).

⁽²⁾ Outokumpu Merger Decision, paragraph (546).

⁽³⁾ Outokumpu Merger Decision, paragraph (550).

- (196) Therefore, it would allegedly more beneficial for importers to buy from the countries concerned when raw material prices increase (as the Union industry's prices will be revised upwards while the exporters' prices will remain stable). On the other hand, if raw material prices decrease, it would allegedly be less beneficial for importers to buy from the countries concerned (as the Union industry's prices will decrease while the exporters' prices will remain stable).
- (197) In the Outokumpu Merger Decision, the impact of the expected development of the nickel price on the purchasing decisions of importers was analysed ⁽¹⁾. In the present investigation, it was analysed whether the development of imports did indeed follow the development of actual nickel prices and follow the pattern described above. Nickel prices ⁽²⁾ dropped by 31 % from 16 453 EUR/tonne 2010 to 11 327 EUR/tonne during the investigation period. According to the claim put forward by interested parties described in recital 196 above, this decrease in nickel prices should have led to a decrease of imports from the countries concerned. The investigation has however shown that despite the significant decrease in nickel prices, exports from the countries concerned have increased by 70 % during the same period, as described in recital 104 above.
- (198) While the development of raw material prices may have had some effect on the development of import volumes, other factors such as the low price level of the exporting producers have clearly outweighed this effect. The development of nickel prices is therefore considered to not have a lasting impact on the overall increasing trend of dumped imports from the countries concerned during the period considered.

5.5. Changes in the patterns of consumption

- (199) In the Outokumpu Merger Decision, it was established that both the absolute nickel price level and the volatility of the nickel prices is likely to decrease the attractiveness of stainless steel as a material and drive the demand to non-nickel stainless steel ⁽³⁾.
- (200) As regards the attractiveness of stainless steel as a material, it was also argued that a number of trends might have a possible impact on substitution to/from stainless steel, including the need for using lighter materials, e.g. in cars (negative impact on stainless; move from steel to composites), shorter product life cycles in consumer goods (negative impact on stainless; cheaper materials are used), increased need for water treatment and green energy production (positive impact on stainless; hard to replace in many applications) and the development of the prices of possibly competing materials (iron ore, aluminium, copper) ⁽⁴⁾.
- (201) In this respect, the present investigation has confirmed the findings of the Outokumpu Merger Decision ⁽⁵⁾ that the demand for stainless steel in general and SSCR in particular is fairly inelastic. The bulk of the growth of consumption took place between 2010 and 2011 when prices were increasing. During the period of decreasing prices from 2011 until the investigation period, the consumption remained stable and grew by only 1 %. The substitution to/from stainless steel, including the factors mentioned above, did therefore not have a measurable impact on the total consumption of SSCR.
- (202) As regards the shift of demand towards non-nickel grades of stainless steel which are also the like product, a detailed analysis of the sales transactions reported by the sampled Union producers confirms the findings of the Outokumpu Merger Decision.
- (203) However, as described in recital 138 above, the prices charged by the Union industry are directly linked to the steel grade and the corresponding raw material costs. A shift of demand from one steel grade to the other therefore has a neutral impact on the performance of the Union industry.
- (204) It is therefore concluded at this stage that the changes of the patterns of consumption did not have a negative impact on the performance of the Union industry.

5.6. Conclusion on causation

- (205) The low-priced dumped imports from the countries concerned increased both in absolute and relative to the consumption in the Union terms at the time when the most of the injury factors of the Union industry (production, capacity utilisation, market share, employment, sales prices, labour cost, profitability, investments, return on investments) deteriorated. The dumped imports from the countries concerned undercut the Union industry prices by 9,6 % — 11,3 % during the investigation period.

⁽¹⁾ Outokumpu Merger Decision, paragraph (567).

⁽²⁾ Nickel, melting grade, LME spot price, CIF European ports, Euro per Metric Ton. Source: World Bank

⁽³⁾ Outokumpu Merger Decision, paragraph (96).

⁽⁴⁾ Outokumpu Merger Decision, paragraph (97).

⁽⁵⁾ Outokumpu Merger Decision, paragraph (98).

- (206) Other factors such as energy cost, capacity and competition conditions in the Union market did not contribute to the injury suffered by the Union industry. Factors like imports from other third countries and exports of the Union industry may have contributed to the injury but to a very limited extent.
- (207) On the basis of the above, the Commission provisionally concluded that the material injury to the Union industry was caused by the dumped imports from the countries concerned and the other factors considered individually did not break the causal link. The injury consists mainly of the fragile financial situation of the Union industry and the drop in production, capacity utilisation, employment and market share.
- (208) The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports. The effect of other imports, exports of the Union industry, energy cost, capacity and the competition conditions on the Union industry's negative developments in terms of its financial situation, production and market share was either very limited or non-existent.

6. UNION INTEREST

- (209) In accordance with Article 21 of the basic Regulation, the Commission examined whether it could clearly conclude that it was not in the Union interest to adopt measures in this case, despite the determination of injurious dumping. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users.

6.1. Interest of the Union industry

- (210) The majority of the Union industry supports the imposition of measures. The largest Union producer did not cooperate with the investigation, but it did not oppose to the complaint. Six Union producers accounting for approximately 55 % of sales and production in the Union cooperated with the investigation and supported the complaint.
- (211) The Union industry suffered material injury. All financial indicators (profitability, cash-flow, return on investment) were mostly negative throughout the period considered. Other indicators such as production, capacity utilisation, employment and market share developed negatively throughout the period considered. The Union industry just managed to maintain the low post-crisis sales volume and could not benefit from the market growth.
- (212) In the absence of measures, the dumped imports from the countries concerned will continue to force Union industry to sell at loss-making prices. This accumulation of additional losses will lead to a further deterioration of the situation of the Union industry. It is therefore in the interest of the Union industry to impose the measures.

6.2. Interest of unrelated importers and distributors

- (213) Importers and distributors (including steel service centres) were very active in this investigation. Thirty-one importers and distributors came forward and expressed opposition to the imposition of measures.
- (214) Importers and distributors claimed that their possible sources of supply will be limited by the imposition of measures. They argued that if measures were imposed, they would no longer be able to source SSCR from the PRC and Taiwan.
- (215) However, the investigation has shown that all importers and distributors buy from multiple sources including the Union industry, the countries concerned and other third countries. They therefore only depend to a certain extent on supplies from the countries concerned.
- (216) These parties can continue to buy SSCR from the Union industry and from other countries not subject to this investigation (e.g. India, South Africa, South Korea or the USA), which cumulatively hold a market share of 11 %. Both the Union industry and the imports from other third countries are therefore credible alternatives to Chinese and Taiwanese imports.

- (217) It is therefore concluded at this stage that the imposition of measures can only have a minor negative impact on the situation of unrelated importers and distributors.

6.3. Interest of users

- (218) A number of interested parties, including exporting producers and distributors raised concerns regarding possible negative effects of measures on users. Users themselves did not share these concerns. Indeed, the degree of participation of users in this case was very low. Six users (including one group of four companies) expressed an opinion, of which only one opposed the imposition of measures. Other users and their associations either did not participate or explicitly refrained from taking a position.
- (219) It is therefore provisionally concluded that the imposition of measures is not against the interest of users.

6.4. Competition concerns

- (220) In the Outokumpu Merger Decision, the Commission established that the proposed Merger of Outokumpu and Inoxum would likely result in a significant impediment to effective competition through non-coordinated effects, by means of the creation of a dominant position in the European Economic Area (EEA) market for SSCR ⁽¹⁾. To avoid such an impediment, the Commission accepted that a divestiture package including AST is sufficient to remedy the competition concerns ⁽²⁾. Indeed, the remedy accepted by the Commission maintained the number of four medium-sized Union producers.
- (221) This remedy has already been implemented and is now fully effective. Also, the imposition of anti-dumping measures does not reduce the number of medium-sized Union producers. It is therefore concluded at this stage that the imposition of measures is not reducing or eliminating the effect of the commitment accepted by the Commission in the Outokumpu Merger Decision.

6.5. Conclusion on Union interest

- (222) On the basis of the above, the Commission concluded that there were no compelling reasons that it was not in the Union interest to impose measures on imports of the product concerned originating in the PRC and Taiwan at this stage of the investigation.

7. PROVISIONAL ANTI-DUMPING MEASURES

- (223) On the basis of the conclusions reached by the Commission on dumping, injury, causation and Union interest, provisional measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.

7.1. Injury elimination level (injury margin)

- (224) To determine the level of the measures, the Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry.
- (225) The injury would be eliminated if the Union industry was able to cover its costs of production and to obtain a profit before tax on sales of the like product in the Union market that could be reasonably achieved under normal conditions of competition by an industry of this type in the sector, namely in the absence of dumped imports.
- (226) The profitability of the Union industry was negative during the whole period considered, that is to say for years 2010 to 2013. The preceding years 2008 and 2009 were affected by a collapse in demand during the global economic crisis, and the profit achieved in these years can therefore not be considered to be achieved in normal conditions of competition. While the previous investigation as described in 134 above provisionally established existence of dumping for the year 2007, no material link between these imports and the situation of the Union industry could be established. To that end, the target profit was set at 8,1 % which was the profit achieved by the

⁽¹⁾ Outokumpu Merger Decision, paragraph (883).

⁽²⁾ Outokumpu Merger Decision, paragraph (1 296).

Union industry in 2007. This was the last representative year marked by normal conditions of competition before the collapse in demand in 2008 and 2009. Indeed, the market size in 2013 almost reached the level of consumption in 2007.

- (227) On this basis, the Commission calculated a non-injurious price of the like product for the Union industry by removing from the Union sales prices the actual loss incurred during the investigation period and adding the above-mentioned profit margin of 8,1 %.
- (228) The Commission then determined the injury elimination level on the basis of a comparison of the weighted average import price of the sampled cooperating exporting producers in the countries concerned, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the sampled Union producers on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.
- (229) The injury elimination level for 'other cooperating companies' and for 'all other companies' is defined in the same manner as the dumping margin for these companies (see recitals 57, 60, 85 and 88 above).

7.2. Provisional measures

- (230) Provisional anti-dumping measures should be imposed on imports of stainless steel cold-rolled flat products originating in the PRC and Taiwan, in accordance with the lesser duty rule under Article 7(2) of the basic Regulation. The Commission compared the injury margins and the dumping margins. The amount of the duty rates should be set at the level of the lower of the dumping and the injury margins.
- (231) As mentioned in recital 4 above the Commission made imports of the product concerned originating in the PRC and Taiwan subject to registration by Regulation (EU) No 1331/2014 in view of the possible retroactive application of any anti-dumping and countervailing measures under Article 10(4) of the basic Regulation and Article 16(4) of Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community ⁽¹⁾ ('basic anti-subsidy Regulation').
- (232) As far as the current anti-dumping investigation is concerned and in view of the above findings, the registration of imports for the purpose of the anti-dumping investigation in accordance with Article 14(5) of the basic Regulation should be discontinued.
- (233) As far as the parallel anti-subsidy investigation is concerned (see recital 3 above), the registration of imports from the PRC pursuant to Article 24(5) of the basic anti-subsidy Regulation should continue.
- (234) No decision on a possible retro-active application of anti-dumping measures can be taken at this stage of the proceeding.
- (235) On the basis of the above, the provisional anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Country	Company	Dumping margin (%)	Injury margin (%)	Provisional anti-dumping duty (%)
PRC	Baosteel Stainless Steel Co., Ltd	34,9	25,2	25,2
	Ningbo Baoxin Stainless Steel Co., Ltd	34,9	25,2	25,2
	Shanxi Taigang Stainless Steel Co., Ltd	29,2	24,3	24,3

⁽¹⁾ OJ L 188, 18.7.2009, p. 93.

Country	Company	Dumping margin (%)	Injury margin (%)	Provisional anti-dumping duty (%)
	Tianjin TISCO & TPCO Stainless Steel Co Ltd	29,2	24,3	24,3
	Other cooperating companies	30,0	24,5	24,5
	All other companies	34,9	25,2	25,2
Taiwan	Chia Far Industrial Factory Co., Ltd	12,0	23,9	12,0
	Tang Eng Iron Works Co., Ltd	10,9	22,9	10,9
	Yieh United Steel Corporation	10,9	22,9	10,9
	Other cooperating companies	10,9	22,9	10,9
	All other companies	12,0	23,9	12,0

- (236) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflected the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the countries concerned and produced by the named legal entities. Imports of product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.
- (237) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ⁽¹⁾. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a notice informing about the change of name will be published in the *Official Journal of the European Union*.
- (238) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty rate for 'all other companies' should apply not only to the non-cooperating exporting producers in this investigation, but to the producers which did not have exports to the Union during the investigation period.
- (239) As of 26 March 2015, a provisional antidumping duty provides for the protection against dumped imports. It is therefore no longer necessary to register imports for the purpose of protection against dumped imports. Article 1(1) of Regulation (EU) No 1331/2014 needs therefore to be amended accordingly.

8. FINAL PROVISIONS

- (240) In the interests of sound administration, the Commission will invite the interested parties to submit written comments and/or to request a hearing with the Commission and/or the Hearing Officer in trade proceedings within a fixed deadline.
- (241) The findings concerning the imposition of a provisional duty are provisional and may be amended at the definitive stage of the investigation,

⁽¹⁾ European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170, 1040 Brussels, Belgium.

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is imposed on imports of flat-rolled products of stainless steel, not further worked than cold-rolled (cold-reduced), currently falling within CN codes 7219 31 00, 7219 32 10, 7219 32 90, 7219 33 10, 7219 33 90, 7219 34 10, 7219 34 90, 7219 35 10, 7219 35 90, 7220 20 21, 7220 20 29, 7220 20 41, 7220 20 49, 7220 20 81 and 7220 20 89 and originating in the People's Republic of China and Taiwan.

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

Country	Company	Provisional anti-dumping duty (%)	TARIC additional code
People's Republic of China	Baosteel Stainless Steel Co., Ltd, Shanghai	25,2	C022
	Ningbo Baoxin Stainless Steel Co., Ltd, Ningbo	25,2	C023
	Shanxi Taigang Stainless Steel Co., Ltd, Taiyuan City	24,3	C024
	Tianjin TISCO & TPCO Stainless Steel Co Ltd, Tianjin City	24,3	C025
	Other cooperating companies listed in Annex I	24,5	
	All other companies	25,2	C999
Taiwan	Chia Far Industrial Factory Co., Ltd, Taipei City	12,0	C030
	Tang Eng Iron Works Co., Ltd, Kaohsiung City	10,9	C031
	Yieh United Steel Corporation, Kaohsiung City	10,9	C032
	Other cooperating companies listed in Annex II	10,9	
	All other companies	12,0	C999

3. The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security deposit equivalent to the amount of the provisional duty.

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

Article 2

1. Within 25 calendar days of the date of entry into force of this Regulation, interested parties may:

- (a) request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted;
- (b) submit their written comments to the Commission; and
- (c) request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

2. Within 25 calendar days of the date of entry into force of this Regulation, the parties referred to in Article 21(4) of Regulation (EC) No 1225/2009 may comment on the application of the provisional measures.

Article 3

Article 1(1) of Implementing Regulation (EU) No 1331/2014 is replaced by the following:

'1. The Customs authorities are hereby directed, pursuant to Article 24(5) Regulation (EC) No 597/2009 to take the appropriate steps to register the imports into the Union of flat-rolled products of stainless steel, not further worked than cold-rolled (cold-reduced), currently falling within CN codes 7219 31 00, 7219 32 10, 7219 32 90, 7219 33 10, 7219 33 90, 7219 34 10, 7219 34 90, 7219 35 10, 7219 35 90, 7220 20 21, 7220 20 29, 7220 20 41, 7220 20 49, 7220 20 81 and 7220 20 89, and originating in the People's Republic of China.'

Article 4

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

Article 1 shall apply for a period of six months.

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

Done at Brussels, 24 March 2015.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX I

Chinese cooperating exporting producers not sampled

Country	Name	TARIC additional code
People's Republic of China	Lianzhong Stainless Steel Corporation, Guangzhou	C026
	Ningbo Qi Yi Precision Metals Co., Ltd, Ningbo	C027
	Tianjin Lianfa Precision Steel Corporation, Tianjin	C028
	Zhangjiagang Pohang Stainless Steel Co., Ltd, Zhangjiagang City	C029

ANNEX II

Taiwanese cooperating exporting producers not sampled

Country	Name	TARIC additional code
Taiwan	Jie Jin Material Science Technology Co., Ltd, Tainan City	C033
	Yuan Long Stainless Steel Corporation, Kaohsiung City	C034

COMMISSION IMPLEMENTING REGULATION (EU) 2015/502**of 24 March 2015****concerning the authorisation of the preparation of *Saccharomyces cerevisiae* NCYC R404 as a feed additive for dairy cows (holder of the authorisation Micro Bio-System Ltd)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition ⁽¹⁾, and in particular Article 9(2) thereof,

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such authorisation.
- (2) In accordance with Article 7 of Regulation (EC) No 1831/2003 an application was submitted for the authorisation of a preparation of *Saccharomyces cerevisiae* NCYC R404. That application was accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003.
- (3) That application concerns the authorisation of a preparation of *Saccharomyces cerevisiae* NCYC R404 as a feed additive for dairy cows to be classified in the additive category 'zootechnical additives'.
- (4) The European Food Safety Authority ('the Authority') concluded in its opinion of 11 September 2014 ⁽²⁾ that, under the proposed conditions of use, the preparation of *Saccharomyces cerevisiae* NCYC R404 does not have an adverse effect on animal health, human health or the environment. It was also concluded that the additive has the potential to improve milk production of dairy cows. The Authority does not consider that there is a need for specific requirements of post-market monitoring. It also verified the report on the method of analysis of the feed additive in feed submitted by the Reference Laboratory set up by Regulation (EC) No 1831/2003.
- (5) The assessment of the preparation of *Saccharomyces cerevisiae* NCYC R404 shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied. Accordingly, the use of that preparation should be authorised as specified in the Annex to this Regulation.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

The preparation specified in the Annex, belonging to the additive category 'zootechnical additives' and to the functional group 'gut flora stabilisers', is authorised as an additive in animal nutrition, subject to the conditions laid down in that Annex.

⁽¹⁾ OJ L 268, 18.10.2003, p. 29.

⁽²⁾ EFSA Journal 2014; 12(9):3830.

Article 2

This Regulation shall enter into force on the twentieth 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, 24 March 2015.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Identification number of the additive	Name of the holder of authorisation	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
						CFU/kg of complete feedingstuff with a moisture content of 12 %			

Category of zootechnical additives. Functional group: gut flora stabilisers

4b1871	Micron Bio-Systems Ltd	<i>Saccharomyces cerevisiae</i> NCYC R404	<p><i>Additive composition</i></p> <p>Preparation of <i>Saccharomyces cerevisiae</i> NCYC R404 containing a minimum of:</p> <p>solid form 1×10^{10} CFU/g additive</p> <p><i>Characterisation of the active substance</i></p> <p><i>Saccharomyces cerevisiae</i> NCYC R404</p> <p><i>Analytical method</i> ⁽¹⁾</p> <p>Identification: Polymerase Chain Reaction (PCR)</p> <p>— Enumeration: Pour plate method using yeast extract dextrose chloramphenicol (CGYE) agar — EN 15789</p>	Dairy cows	—	$4,4 \times 10^8$	—	<ol style="list-style-type: none"> 1. In the directions for use of the additive and premixture, indicate the storage conditions and stability to pelleting. 2. Recommended dose of the additive: 1×10^{10} CFU/head/day. 3. For safety: breathing and skin protection shall be used during handling. 	14 April 2025
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⁽¹⁾ Details of the analytical methods are available at the following address of the European Union Reference Laboratory for Feed Additives: <https://ec.europa.eu/jrc/en/eurl/feed-additives/evaluation-reports>

COMMISSION IMPLEMENTING REGULATION (EU) 2015/503**of 24 March 2015****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾,

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ⁽²⁾, and in particular Article 136(1) thereof,

Whereas:

- (1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.
- (2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day 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, 24 March 2015.

*For the Commission,
On behalf of the President,
Jerzy PLEWA*

Director-General for Agriculture and Rural Development

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	MA	91,6
	TR	115,6
	ZZ	103,6
0707 00 05	JO	206,0
	MA	176,1
	TR	162,7
0709 93 10	ZZ	181,6
	MA	113,3
	TR	162,2
0805 10 20	ZZ	137,8
	EG	44,7
	IL	71,5
0805 50 10	MA	53,7
	TN	54,3
	TR	70,2
0808 10 80	ZZ	58,9
	TR	46,6
	ZZ	46,6
0808 30 90	AR	94,0
	BR	92,5
	CL	78,4
	CN	105,5
	MK	25,2
	US	218,4
	ZA	123,7
	ZZ	105,4
	AR	108,8
	CL	139,2
CN	102,1	
ZA	133,1	
ZZ	120,8	

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EU) No 1106/2012 of 27 November 2012 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards the update of the nomenclature of countries and territories (OJ L 328, 28.11.2012, p. 7). Code 'ZZ' stands for 'of other origin'.

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