II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2022/191

of 16 February 2022

imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ([1]) ('the basic Regulation'), and in particular Article 9(4) thereof,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 21 December 2020, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of certain iron or steel fasteners ('fasteners') originating in the People's Republic of China ('China' or 'the PRC' or 'the country 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 6 November 2020 by the European Industrial Fasteners Institute ('EIFI' or 'the complainant') on behalf of producers representing more than 25 % of the total Union production of iron or steel fasteners (also referred to as the 'complainants'). Furthermore, the complaint was supported by producers accounting for over 58 % of the total Union production in the period from July 2019 to June 2020. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

1.2. Registration

(3) Following a request by the complainant supported by the required evidence, the Commission made imports of fasteners originating in China subject to registration by Commission Implementing Regulation (EU) 2021/970 ([3]) ('the registration Regulation') under Article 14(5) of the basic Regulation.

(4) Following the publication of the registration Regulation, the Commission received comments from several importers, the European Fasteners Distributor Association ('EFDA') and the China Chamber of Commerce of Import and Export of Machinery and Electronic Products ('CCCME'). The Commission noted that, since no provisional measures were adopted, the Commission decided that retroactive collection of duties was not legally possible.

([1]) OJ L 176, 30.6.2016, p. 21.
([2]) OJ C 442, 21.12.2020, p. 6.
([3]) Commission Implementing Regulation (EU) 2021/970 of 16 June 2021 making imports of certain iron or steel fasteners originating in the People's Republic of China subject to registration (OJ L 214, 17.6.2021, p. 53.)

Indeed, Article 10(4) of the basic Regulation provides that "a definitive anti-dumping duty may be levied on products which were entered for consumption no more than 90 days *prior to the date of application of provisional measures*" (emphasis added). Therefore, all claims concerning the registration Regulation became moot and the registration Regulation is hereby repealed in full.

(5) EFDA finally claimed that in case the Commission did not impose provisional measures, the registration Regulation would become void and should be withdrawn, arguing that the sole purpose of the registration Regulation would be to impose definitive measures retroactively and that in case of non-imposition of provisional measures, the retroactive application of definitive measures is not feasible anymore under Article 10(4) of the basic Regulation. The Commission agreed and repealed the registration Regulation. The need to impose definitive anti-dumping duties retroactively is assessed in recitals (591) and following.

1.3. **Interested parties**

(6) 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 authorities, known importers, users, as well as associations known to be concerned by the initiation of the investigation and invited them to participate.

(7) The CCCME requested to be considered as an interested party, arguing that it represented the Chinese fasteners industry. EIFI contested CCCME's status as an interested party claiming that the CCCME did not show any objective link between its activities and the product subject to this investigation; in particular, the CCCME did not submit any Articles of Association or any list of its members showing that it could represent the Chinese fasteners industry. EIFI claimed that to the contrary, the CCCME website lists 25 industry sectors, without specifically mentioning the fasteners industry. EIFI also claimed that although the CCCME provided power of attorneys from several companies, there is no prove that those companies were producers of fasteners. In any event, the CCCME, as a State-run organisation, was merely representing the interests of China and not those of an industry as such.

(8) The Commission confirmed that the CCCME was empowered by a number of fasteners producers in the PRC to act on their behalf. The CCCME could be an interested party to this proceeding only to the extent it was empowered by those specific fasteners producers to represent them.

1.4. **Comments on initiation of the investigation**

(9) Interested parties had an opportunity to comment on the initiation of the investigation and to request hearings with the Commission and/or the Hearing Officer in trade proceedings. None of the interested parties requested a hearing on the initiation of the investigation.

(10) Upon initiation, two importers contested that the investigation period chosen by the Commission (1 July 2019 to 30 June 2020) represented the period immediately prior to the initiation of the investigation and suggested that the appropriate investigation period should be set from 1 October 2019 to 30 September 2020 as required under Article 6(1) of the basic Regulation.

(11) In line with its practice and taking into consideration the specific circumstances of each investigation, the Commission considered that the period 1 July 2019 to 30 June 2020 was appropriate for the purpose of making a representative finding. The Union industry of fasteners is largely composed of small and medium sized enterprises ('SMEs') and the reporting of accounting data not based on half years would have been unduly burdensome. In addition, the product under investigation has many different variations and types that demanded an exceptionally high number of accounting data to be converted and compiled for the purpose of the current investigation. Article 6(1) of the basic Regulation allows for deviation in justified cases such as the current one. Therefore, the claim that the selected investigation period was inappropriate was rejected.

(12) The same two importer claimed that based on the macroeconomic indicators provided in the complaint, the Union industry did not suffer material injury and that there is no causal link between imports from China and the injury suffered by the complainant.

(13) The Commission considered that the information provided by the complainant was sufficient to satisfy the legal standard for initiation under Article 5 of the basic Regulation in respect to both material injury and causation. It is recalled that the standard of evidence at the complaint stage is lower than the one required for the imposition of measures. In particular, the complaint showed a substantial increase in imports from China that almost tripled between 2016 and the investigation period of the complaint, which translated in an increase of market share reaching 15 % during the investigation period of the complaint. The prices of these imports were severely undercutting the sales prices of the Union industry on the Union market. There was a parallel decrease of the Union industry's production and sales volume, loss of employment, decrease in investments and a suppression of price levels that resulted in a significant loss of profitability for the Union industry (around minus 50 % between 2016 and the investigation period of the complaint). Since these developments happened in parallel to the increase of imports from China and since no other factors were identified that could have caused the downturn of the Union industry, the Commission concluded that there was sufficient evidence that the material injury was caused by imports from China.

(14) The CCCME expressed doubts concerning the import volumes in the complaint, in specific the estimations made by the complainant to exclude imports of stainless steel fasteners from the total import volume under certain CN codes. They also noted that no such adjustments were made with regards to imports from other third countries. The CCCME did not offer any alternative methodology in order to estimate import volumes of stainless steel fasteners.

(15) The Commission found the methodology proposed by the complainants reasonable as it was based on historical data and the best market knowledge of the complainant. The fact that no adjustment was made for other import sources potentially resulted in the market share of Chinese imports being underestimated and thus did not put into question the overall assessment in the complaint. Since CCCME did not propose any other methodology which would be more appropriate than the one proposed by the complainants, the Commission dismissed the CCCME claims.

1.5. **Request for anonymity**

(16) Most of the Union producers that were either represented by the complainant – EIFI -, or supporters of the complaint requested to obtain anonymity treatment in order to prevent possible retaliatory actions by customers in the Union that also sourced fasteners from Chinese suppliers. These customers included some large companies with significant market power compared to the Union producers of fasteners that are mostly SMEs.

(17) Two importers contested the decision of the Commission to grant anonymity to these companies as they claimed that there was no evidence of any possible adverse effect.

(18) The Commission disagreed. Considering the asymmetry between the Union fasteners producers and users, it concluded that the risk of retaliation alleged by the Union producers represented by EIFI and supporters indeed existed. ([4]) On this basis, the Commission granted confidential treatment to the name of these companies. The claims against this confidential treatment were therefore rejected.

(19) Following final disclosure the CCCME and EFDA claimed that no proper request was made by the sampled Union producers for anonymity.

(20) The Commission received requests for anonymity from the sampled Union producers on 8 January 2021, after having previously received, on 18 December 2020, a request from the complainant EIFI to continue treating the names of the complainants and supporters confidential after initiation of the investigation and until individual requests from the sampled Union producers could be filed. Given the seriousness of the threats of retaliation, and being aware of the intention of the sampled Union producers to provide the relevant requests, the Commission

([4]) See WTO Panel Report, *European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China*, WT/DS397/R, 3 December 2010, para. 7.453.

considered it appropriate to protect already their identities between the initiation of the investigation on 21 December 2020 and 8 January 2021 when such requests were received. The requests were received and accepted for all Union producers that were finally selected in the sample. EFDA also claimed that EIFI was not entitled to submit such requests that should have been provided on a company individual basis. As EIFI has the mandate to represent both, the complainant Union industry as well as its individual members, and given the EIFI only forwarded the individual requests signed by the companies concerned, this claim was rejected.

(21) The same parties further claimed that there were no grounds to keep the names of the sampled companies confidential because the participation in the sample does not imply whether a company is complainant or supporter, but merely that it is cooperating. In this regard they referred to the Appellate Body Report *EC- Fasteners (China)* ([5]) where the Commission took a similar view. The same parties also asserted that interested parties opposing measures had an interest that as many Union producers as possible cooperated and provided information to the Commission and that therefore the fear for retaliation was unfounded. The Mission of the People's Republic of China to the European Union, similarly, contested that there was any conclusive evidence of a threat of retaliation from customers in the Union. The Commission accepted the requests for anonymity of the sampled Union producers as the threats of retaliation were not only present for the complainants and supporters, but also for the sampled Union producers as evidenced by the requests received. The re-assurances received from EFDA and the CCCME following the final disclosure could not dissimulate the existence of such threats. All claims in this regard were therefore was rejected.

1.6. **Claims on confidentiality**

(22) Following the final disclosure, the CCCME and EFDA reiterated that the non-confidential file was insufficient in parts and that adequate non confidential summaries were not always provided. They submitted that good cause has to be shown for confidential treatment and that non-confidential summaries must contain sufficient detail to permit a reasonable understanding of the information submitted in confidence. Both parties provided a list of examples where such criteria were allegedly not met.

(23) The Commission notes that the examples cited following the final disclosure were either already previously subject to requests for further disclosure by those parties and were duly addressed during the investigation in bilateral communications with these parties and during a hearing held with the Hearing Officer on 29 November 2021 requested by EFDA; or related to information that was not part of the essential facts and considerations on which the Commission based its final findings; or were considered unwarranted because due cause for confidential treatment was shown and non-confidential summaries provided were in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence in accordance with Article 19(2) of the basic Regulation. One of the requests related to the comments of another interested party following disclosure that was made available in the non-confidential file within three days. These claims were therefore rejected.

1.7. **Claims on the management of the non-confidential file**

(24) Following final disclosure, the CCCME and EFDA reiterated their concerns regarding the management of the non-confidential file alleging that (i) certain correspondence with the complainant was missing from the non-confidential file, that (ii) other correspondence was deleted and (iii) that certain documents were only uploaded at a very late stage.

(25) The Commission notes that these claims were already previously subject to clarification by the Commission in bilateral communications with these parties and during a hearing held with the Hearing Officer on 29 November 2021 requested by EFDA. In addition, the claim that certain correspondence with the complainant was missing in the file is also addressed in recital (47)and the claim regarding the alleged late information to interested parties in relation to the revision of the sample of Union producers in recital (44). These claims were therefore rejected.

([5]) Para. 579

1.8. **Sampling**

1.8.1. *Sampling of Union producers*

(26) 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 and sales volumes in the Union reported by the Union producers in the standing form, taking also into account their geographical location and a representation of SMEs. This sample consisted of six Union producers, located in four different Member States. The Commission invited interested parties to comment on the provisional sample.

(27) One of the provisionally sampled Union producers (an SME) informed the Commission that it would not be able to provide a complete questionnaire. The Commission therefore decided to revise the sample of Union producers by replacing this company by the next largest SME in the same Member State.

(28) EFDA claimed that it could not provide meaningful comments on the selected sample, as insufficient time was granted and because of the anonymity granted to the sampled Union producers. The CCCME claimed that the anonymity of the Union producers prevented them to know the product mix produced of the selected companies and to verify publicly available information of those companies. EFDA and the CCCME argued that while anonymity was requested by and granted to the complainants and supporters of the complaint, such treatment could not be automatically extended to the sampled Union producers. They argued that the sampled Union producers were merely cooperating parties and therefore not necessarily complainants or supporters. There was thus no reason for the Commission to treat the identity of the sampled Union producers as confidential. As no separate request for anonymity by the sampled Union producers had been received the Commission unduly granted such treatment to the selected Union producers.

(29) EFDA and the CCCME further argued that in any event, there was no good cause for such treatment as it prevented interested parties to provide meaningful comments on the selected sample and reasoned that in accordance with Article 19 of the basic Regulation, the protection of confidential information must be weighed against the rights of defence of the interested parties.

(30) The British and Irish Association of Fastener Distributors ('BIFAD'), in the name of their Irish members, similarly claimed that insufficient time was granted to provide comments on the provisional sample and that the anonymity granted to the selected companies would prevent them to assess whether the sample was selected in a reasonable and balanced manner. They requested that more information concerning each company's output, capacities, product range and markets serviced should be provided to them.

(31) Concerning the time frame granted to comment on the provisional sample, interested parties were granted 7 days as from the initiation of the investigation which was extended by further 7 days considering the special circumstances of this case that was considered largely sufficient also considering the strict deadlines applicable to anti-dumping investigations. The Commission notes that all interested parties actively cooperating with the investigation provided comments within this time frame. Therefore, the claim that parties had insufficient time to comment on the provisional sample was rejected.

(32) Regarding the anonymity of the sampled Union producers, on 18 December 2020, a request was filed that the anonymous treatment granted to the complainant and supporters at pre-initiation stage should be extended to the investigation. As sampling is part of the investigation the confidential treatment covered thus also the sampling exercise. Furthermore, on 8 January 2021, the Union producers selected in the sample specifically requested anonymity during the investigation.

(33) By granting anonymity to the sampled Union producers the Commission duly balanced the risk of retaliation, on the one hand, and the rights of interested parties, on the other hand, and concluded that there was an overwhelming risk of retaliation that justified granting confidentiality to the sampled Union producers in relation to their identity. The arguments in this regard were therefore rejected.

(34) Regarding the request to provide further information on output, capacities and product ranges manufactured, the Commission considered that disclosing such information per company would enable interested parties to identify the Union producers concerned. However, it is noted that, in view of the high matching between Union prices and export prices, most of the product types produced by the sampled Union producers were disclosed to the sampled exporting producers through the detailed undercutting and underselling calculations. It is also noted that the methodology to select the sample was duly disclosed to interested parties and no comments were received on the methodology as such. This request was therefore rejected.

(35) During the investigation, one of the sampled Union producers informed the Commission that it would not be able to respond to the Commission's full questionnaire. Another sampled Union producer was not in a position to provide sufficient assurance on the data provided for verification. These Union producers were therefore excluded from the sample.

(36) To ensure that the sample remained representative in terms of the criteria set out in Article 17, the Commission decided to revise the sample of Union producers by replacing the above companies with the next two largest producers in terms of volumes and sales, while also taking into account geographical spread and wide product-type mix. As stated in the note to the file of 15 July 2021, the Commission relied on the information provided by the Union producers during the standing phase, which is also used for sampling purposes. In addition, the Commission sought publicly available information and checked the web sites of the companies concerned. The Commission contacted the companies and invited them to cooperate by filling in a questionnaire. Interested parties were given the opportunity to comment.

(37) The Commission received comments from the CCCME, EFDA and one exporting producer Celo Suzhou Precision Fasteners Ltd ('Celo Suzhou').

(38) The CCCME and EFDA claimed that insufficient time was granted to interested parties to provide comments on the amended sample. The Commission noted that neither the CCCME nor EFDA requested an extension of the deadline and that both submitted detailed comments on the amended sample of Union producers; their claim was therefore rejected.

(39) Both parties also reiterated that anonymity should not be granted to the sampled Union producers without, however, providing any further arguments. For the reasons set out in recital (32), these claims were therefore rejected.

(40) The CCCME furthermore argued that other interested parties were treated in a discriminatory way as strict deadlines were imposed on them, while the newly sampled Union producers had been given a deadline to reply to the questionnaire ending almost 6 months after the deadline granted to the originally sampled Union producers. In addition, considering that the Commission had sufficient time to analyse questionnaires received under this extended deadline, it had no reason to impose a much shorter deadline to interested parties to comment on the new sample.

(41) The Commission noted that all sampled Union producers, importers and exporting producers were treated equally and given 30 days plus justified extensions, if applicable to reply to questionnaires from when they were made aware that they had been sampled. Thus, CCCME's claim that some sampled Union producers would have had more than 6 months to reply to the questionnaire is misleading. The Commission also notes that a sample is only finalised after appreciation of the comments received by interested parties and therefore the deadline to comment on the sample is set by the Commission accordingly, taking into consideration the overall deadlines of the investigation. Therefore, the Commission rejected the claim of discriminatory treatment.

(42) The CCCME and EFDA further claimed that the Commission had not informed interested parties of the withdrawal of the cooperation from the Union producers concerned in a timely manner and that it should also have notified interested parties of the amendment of the Union producer sample at an earlier stage. The CCCME referred to Article 6(7) of the basic Regulation, which stipulates that interested parties may 'inspect all information made available by any party to an investigation'. EFDA stated that the Commission has taken a final decision on the Union

producers' sample without adequately taking into consideration comments of the interested parties which would be evidenced by the fact that the additionally selected Union producers were already sent questionnaires prior to the receipt of such comments.

(43) The CCCME and EFDA moreover suggested that instead of amending the Union producers' sample, the Commission should base findings on facts available in accordance with Article 18 of the basic Regulation and terminate the investigation. The CCCME noted that in case exporting producers cease to cooperate during an investigation, facts available in accordance with Article 18 of the basic Regulation would be applied and that the same treatment should therefore be granted to the Union producers. Alternatively, the Commission should provide further information as to the methodology of the selection of the additional companies for the Union producers' sample and in particular how those companies were identified, as well as the impact on the representativity of the final sample. In this regard, both parties also alleged that the Commission selected the additional companies solely on the basis of information provided by the complainant without receiving any input from other interested parties.

(44) Regarding the claim of insufficient disclosure, the Commission notes that it added all relevant information to the file in sufficient time to allow interested parties to comment. The Commission took all comments received into consideration and addressed them adequately. The statement that additional companies were selected solely on the basis of information provided by the complainant is factually wrong as also described in recital (36).

(45) Upon their request, the Commission provided additional information to EFDA and the CCCME regarding the revised sample including the impact on the representativity of the sample. The CCCME reiterated its request for disclosure of additional information regarding the precise share of the production and sale of standard and non-standard fasteners of the Union producers selected in the sample and clarification on the criteria and methodology used for the selection of the additional Union producers. The CCCME also requested disclosure of the communication between the complainant and the Commission concerning the selection of the additional Union producers.

(46) Concerning the claim to terminate the investigation because of lack of cooperation, the Commission emphasises that Article 17(4) of the basic Regulation specifically allows that in case of non-cooperation by some or all parties selected in a sample which is likely to materially affect the outcome of the investigation, a new sample might be selected. As to the claim of discrimination vis-à-vis exporting producers, the Commission notes that in case a sampled exporting producer ceases cooperation in an investigation, this exporter is excluded from the sample and the information provided disregarded. Where still possible, the Commission also substitutes such exporting producer in the sample. This same approach was also followed with regard to the Union producers in question. All claims made in this regard were therefore rejected.

(47) Regarding the request for further information, the Commission refers to recital (36) which sets out the criteria used for the selection of the additional Union producers as well as the methodology applied. The precise share of the production and sale of standard and non-standard fasteners of the Union producers was as such not a criterion for the selection of the sample, nor was the production of standard fastener the sole criterion to be selected in the sample. As set out in recital (110), all product types were considered as one single product. The Union industry produced and sold standard and non-standard fasteners, as well as the exporting producers exported to the Union industry standard and non-standard fasteners and there was an overlap in end use applications. Furthermore, when selecting companies to be included in the sample, this information is not available. The communication between the complainant and the Commission was disclosed in accordance with Article 6(7) of the basic Regulation, while respecting Article 19(1), which provides that information provided in confidence should be treated as such by the authorities. In accordance with Article 19 of the basic Regulation, the Commission made available to the interested parties a non-confidential summary of the information provided in confidence. These requests were therefore rejected.

(48) Celo Suzhou claimed that the sample of exporting producers should have taken into consideration the product types exported in order that export prices would be comparable to the sales prices of the producers selected in the Union industry sample. As noted in recital (36), the Commission selected a sample which ensured a wide product mix. Given the high matching found in this case (over 90 %), the Commission concluded that the sample of Union producers did include the product types most exported to the Union. The claim was therefore rejected.

(49) On the basis of the above, the final sample consisting of six Union producers was considered to be representative of the Union industry.

(50) Following final disclosure, EFDA reiterated that it could not provide meaningful comments on the Union producers' sample given that the identity of the Union producers was kept confidential. They also re-iterated that the Commission failed to inform interested parties on the amendment of the sample during the investigation and that the Commission decided on the additional companies to be included in the sample already prior to informing interested parties and granting them an opportunity to comment. EFDA and the CCCME re-iterated that information was missing from the non-confidential file and that the Commission did not disclose the total production and sales volume of the sampled Union producers. The CCCME re-iterated its concern regarding the revision of the sample and alleged that there would have been no explanation why two of the Union producers dropped out.

(51) Regarding the claim on the anonymity of Union producers, this has already been addressed in recitals (16) to (21). Likewise, the claim on insufficient disclosure regarding the selection of the sample was already addressed in recital (44) as well as the claim on the completeness of the non-confidential file that was addressed in recital (47). The Commission also disclosed the reasons for the revision of the sample in recital (35), in addition this information was also in the non-confidential file prior to disclosure. As no further arguments were provided in this regard, these claims were rejected. Regarding the total production and sales volume of the sampled Union producers, these were as such not part of the analysis because these are macroeconomic indicators and therefore, there was no reason to provide such information to the interested parties. In particular, the Commission indicated in recital (352) how much the sampled companies represented of the total Union production and interested parties were in any event able to deduce total production volume of the sampled Union producers.

(52) EFDA further claimed that the Commission provided contradicting information regarding the number of Union producers' sampled and the representativity of the sampled Union producers. EFDA also re-iterated its concerns relating to the procedure of selecting the sample and the information provided to interested parties in this regard.

(53) Concerning the number of the sampled companies, the general disclosure document contained indeed a clerical error in two paragraphs that indicated that four Union producers were sampled, instead of six. This error was immediately rectified upon notification to the Commission. The correct number of the sampled Union producers was communicated to the interested parties during the investigation in a note placed into the non-confidential file. Regarding the representativity of the sample, the Commission confirmed that all figures provided by the Commission were correct and therefore EFDA's claim is unfounded. While the figure in the general disclosure document (9,5 %) indicated the representativity in relation to the total Union production, the figure provided to EFDA upon request during the investigation (18 %) indicated the representativity in relation to the total production volume of the Union producers that came forward prior to the initiation and provided the information necessary for the sampling exercise. This figure was communicated to EFDA upon request several months prior to disclosure and thus prior to the determination of the total production volume in the Union.

(54) With reference to the procedure followed, the Commission recalls that as set out in recital (46), in accordance to Article 17(4) of the basic Regulation, it had to amend the Union producers' sample due to the non-cooperation of the two initially sampled companies. Regarding the consultation of interested parties and disclosure aspects during this process, this was already explained in detail in the recitals (28) to (47) above. The amendment of the preliminary selected sample at initiation was based on comments received from interested parties as part of the sampling process described in the Notice of initiation.

(55) The CCCME and EFDA finally claimed that the general disclosure document contained contradicting information concerning the methodology for the revision of the Union producer sample and that the information in the general disclosure document, also contradicted the communication sent by the Commission to the newly selected Union producers. In particular, the CCCME alleged that the share of production and sale volume of standard and non-standard fasteners was a key criterion to select the sample of Union producers, as allegedly evidenced by the communication referred to before to the newly selected Union producers. These allegations were factually wrong. The Commission did not indicate to any of the interested parties, including the newly selected Union producers, that the share of production and sale volume of standard and non-standard fasteners would be a key criterion for the selection of the sample. The Commission notes that these data are usually not available at that level of detail at

the stage of the sampling. The same is true for the current investigation. This does not exclude that it was nonetheless possible for the Commission, on the basis of the available information, to determine on a global basis, whether a Union producer produced standard or non-standard fasteners, as explained in recital (36). These claims were therefore rejected.

(56) On a more general basis, EFDA asserted that the sample of Union producers was not representative as one of the two producers of standard fasteners selected in the sample was an SME and therefore only the data of the second would have a sizable impact. This statement was not substantiated any further. The Commission notes that three companies selected in the sample were SMEs while the other three were not. The Commission also noted that the sample ensured a representative product mix as set out in recital (36) and was overall considered representative for the Union industry. This claim was therefore rejected.

1.8.2. *Sampling of importers*

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

(58) Twenty-eight 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 five importers on the basis of the largest volume of imports of the product concerned. In accordance with Article 17(2) of the basic Regulation, interested parties were consulted on the selection of the sample.

(59) EIFI claimed that two of the selected unrelated importers, pertaining to the same group, would be related to a producer of fasteners in China and they were also licensing, through a related company in the Union, the production of certain fasteners in China. They could not, therefore, be considered as unrelated importers. EIFI further claimed that these companies were also related to Union producers of fasteners. Finally, EIFI noted that since these two importers were related, in any event only one of them should remain in the sample, and the other one replaced by another cooperating importer in the Union. In reply to EIFI's submission, EFDA submitted that it would only be relevant whether an importer would be related to a producer that is also exporting to the Union in order to exclude them from the sample. EFDA argued that given the number of product types imported by the importers in question and the various segments supplied in the Union, they should remain in the sample.

(60) The importers in question denied that they had any business contacts with the Chinese producer in question, or that they imported the product concerned from this company, or that they were related to any of the other exporting producer of fasteners in China. The investigation did not confirm the claims made by EIFI and the information that EIFI submitted in support of this claim did also not show that the importers in question were indeed related to any of the exporting producers. Furthermore, the fact that the importers were related to each other was not considered a valid argument to exclude them from the sample. The sample included three other unrelated importers selected based on the largest import volume and spread over different Member States. The sample represented 9 % of the total imports of fasteners from China and was therefore considered to be sufficiently representative. Therefore, EIFI's claims in this regard were rejected.

1.8.3. *Sampling of exporting producers*

(61) In order to decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known exporting producers in China to provide information specified in the Notice of Initiation. In addition, the Commission asked the Mission of People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

(62) Ninety-two exporting producers or groups of exporting producers from China provided the requested information and agreed to be included in the sample. Three exporting producers argued that since they produced a specific product type that would not be comparable to other product types exported from China they should be included in the sample for better representativity.

(63) In accordance with Article 17(1) of the basic Regulation, the Commission selected three exporting producers/group of exporting producers, representing the largest volume of exports, which could reasonably be investigated within the time available. Since the exporting producers requesting to be included in the sample because of the specific product type were not amongst those with the highest export volumes, they were not selected in the proposed sample. In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned and the authorities of the country concerned were informed and invited to comment.

(64) One group of exporting producers not included in the sample requested to be included arguing that (i) it was one of the largest exporters of fasteners; (ii) their inclusion would provide a more accurate picture of the Chinese fasteners industry and (iii) would therefore also give a more accurate picture on how final prices to the Union were determined. On this basis, the exporting producers group argued that import prices based on the sample would not be representative and thus the CIF EU border value to calculate an accurate undercutting and underselling margin based on these prices would not be accurate. The company finally referred to the higher number of Union producers selected in the Union producer sample. Finally, this exporting producer group asserted that adding one more company to the sample would not prevent the Commission from completing the investigation within the statutory time limits.

(65) First, based on the company's reported export volume the inclusion of the exporting producer group concerned would not significantly increase the representativity of the sample. Second, regarding the claims relating to organisation of the Chinese domestic industry, the export price setting to the Union and the determination of the CIF EU border value, the company did not provide any evidence that its inclusion would significantly increase the representativity of the sample. At the same time, due to its company structure, its inclusion would have added a significant additional burden to the investigation. Third, as the selected sample was considered representative, a reliable CIF EU border value could be established, as well as accurate undercutting and underselling calculations. Finally, the specific number of companies selected in the sample of Union producers is irrelevant for the selection of the sample of exporting producers. The Commission is not obliged to select the same number of companies on both sides and the sampling exercise is limited precisely to allow the Commission to investigate a reasonable number of companies within the deadlines to complete the investigation. The arguments made by this group were therefore rejected.

(66) Another group of exporting producers argued that they should be included in the sample, since the whole group consists of numerous producers and traders in China and in the Union, having considerable manufacturing and supplying capacities affecting its home and the Union market.

(67) However, adding this exporting producer group to the sample would have added a significant additional burden to the investigation, without changing the level of representativity of the proposed sample significantly. Also, there were other exporting producers with larger export volumes than the company group in question that provided sampling information. Given that the sample was selected based on the export volume to the Union as mentioned in recital (63), the inclusion in the sample of this exporting producer group was therefore not warranted. The argument made was therefore rejected.

(68) A third exporting producer claimed that the companies selected in sample were all producer of bolts, and that the proposed sample was therefore not representative of Chinese producers of screws. As a producer of screws, this company requested to be included in the sample. They further claimed that findings should be made separately for the two product types, i.e. screws on the one hand and bolts on the other hand.

(69) These concerns were echoed by CCCME, who argued that the sample was not representative in terms of volume and in terms of product types covered.

(70) As explained in recital (63), the sample was selected based on the largest exported volume to the Union, while the specific product types produced by the selected companies was not a criterion. As set out in recital (110), all types of fasteners were considered one single product for the purpose of this investigation. As set out in recital (398), separate findings for individual product types were therefore not warranted. The exporting producer provided furthermore no evidence in support of its claim that findings should be made separately for bolts on the one hand

and screws on the other hand. Finally, there were other cooperating exporting producers with larger export volumes than the exporting producer concerned that provided sampling information and the inclusion of the latter in the sample, therefore, was not warranted. The arguments of this exporting producer were therefore rejected.

(71) Finally, EIFI claimed that one of the selected exporting producers should be removed from the sample, since it would be a trader rather than a manufacturer of fasteners and in any event its principal market would be the United States of America ('the US') and not the Union.

(72) All three exporting producers selected in the sample confirmed that the export volume to the Union, as reported and used by the Commission in selecting the sample, were of their own production. The fact that one of the selected exporting producers was exporting fasteners to the US, even if in larger quantities than to the Union, is irrelevant. The arguments of EIFI were therefore rejected.

(73) Based on the above, the Commission confirmed the originally proposed sample.

(74) Following the revision of the Union producers' sample during the course of the investigation, Celo Suzhou Precision Fasteners Co. Ltd. claimed that the sample of exporting producers should be extended by adding Chinese exporting producers of non-standard fasteners. This company argued that the revision of the Union producers' sample was to increase its representativity in terms of product mix and that such criterion was not taken into consideration when selecting the sample of exporting producers. The exporting producer in question further noted that its exports of fasteners to the Union would be representative for a specific range of products and that it had already provided a full reply to the questionnaire in the context of its request for individual examination that should be taken into account by the Commission. Such course of action would not significantly delay the investigation.

(75) As outlined in recital (63), the three exporting producers/group selected in the sample represented the largest volume of exports, which could reasonably be investigated within the time available. The fact that the Union producer sample was revised did not have any impact on the sample of exporting producers which would justify its revision. Therefore this claim was rejected.

(76) Following final disclosure, Celo Suzhou Precision Fasteners Co. Ltd. reiterated that the sample of exporting producers was not sufficiently representative in terms of product types and requested that the Commission (i) should have taken into consideration not only the volume of exports, but also product ranges exported; and (ii) that the Commission should have included Celo Suzhou Precision Fasteners Co. Ltd. in the sample as it would be representative for a certain product range.

(77) The party also reiterated its claims as set out in recital (74) and claimed that the Commission's approach to the selection of the sample of the Union producers, and the need for the different types of fasteners to be represented therein, is in direct contradiction with its argument that, in selecting the sample of exporting producers, specific product types were not a criterion.

(78) The above claims were already addressed in recital (75). Indeed, the sample of Union producers was selected on the basis of the largest producers in terms of volumes and sales, while also taking into account geographical spread (several Member States) and wide product-type mix. The selection of the sample of exporting producers was based on the largest volumes the Commission could investigate. The selection of the sampled Union producers ensured a wide matching with the export transactions of the sampled exporting producers and thus there was no need to also look into the specific product types for such a selection. Since no new information was provided in this respect they were rejected.

1.9. **Individual examination and requests for a newcomer treatment**

(79) Seven exporting producers of fasteners requested individual examination under Article 17(3) of the basic Regulation by filling in the questionnaire for exporting producers available online ([6]). Given this high number of requests, granting individual examination would have been unduly burdensome and would have prevented the Commission from completing the present investigation in good time. The Commission therefore did not grant any of the requests submitted.

(80) As mentioned in recitals (48) and (74), following the revision of the Union producers' sample, one of the exporting producers (Celo Suzhou Precision Fasteners Co. Ltd) claimed that its request for individual examination should be taken into consideration to increase the representativity of the sample of exporting producers. The claim regarding the representativity of the exporting producers' sample was already addressed in recital (75).

(81) Regarding the request for individual examination, the situation of this exporting producer was not significantly different than the situation of the other exporting producers requesting individual examination that would warranty a different treatment. The Commission therefore concluded that there were no objective reasons justifying to grant the individual examination request of this exporting producer.

(82) Following final disclosure, this exporting producer reiterated its claim that individual examination should be granted to it and asserted that the Commission did not explain the reasons why it was considered discriminatory to accept such request. In support of this argument, the exporting producer highlighted that it produced a specific technical fastener type not comparable to other product types and that its export price would not be made at dumped levels as already established by a previous anti-dumping investigation concerning the same product originating in China where measures were imposed in 2009 ([7]).

(83) As set out in recital (398), separate findings for individual product types were not warranted. Therefore, examining the request for individual examination of this exporting producer based on the fact that it produced and exported a specific product type, while such criterion was not be taken into consideration with regard to the remaining exporting producers requesting individual examination, would have been discriminatory, in addition to burdensome for the Commission to conclude the investigation on time. The reference to findings of the previous investigation that did not establish dumping with regard to this exporters sales to the Union, is irrelevant, since they were based on information pertaining to a different investigation period. The arguments of this exporting producer were therefore rejected.

(84) One exporting producer in the PRC (Ningbo Londex Industrials Co. or 'Londex') requested to be treated as a newcomer, as they only started exporting the product concerned after the investigation period. The Commission noted that it is the established practice that such treatment can only be considered based on a Regulation imposing definitive measures and its relevant provisions. Furthermore, it is recalled that the Commission selected a sample of exporting producers and, as set out in the previous recitals, no requests for the calculation of individual dumping margins were accepted because it was considered unduly burdensome. This is also true for the examination of a newcomer treatment request which would have included a detailed examination of the company structure and its export sales. This request was therefore rejected.

(85) Following final disclosure, Londex reiterated its claim that it should be benefit from a newcomer treatment and be added to the list of cooperating exporting producers. They argued that since they came forward during the investigation and because exports occurred before the end of the investigation, the Commission would not be bound to any specific procedure. The simple assessment whether the company did not export the product concerned during the investigation period albeit after the investigation period would be sufficient which in turn cannot be considered as unduly burdensome. Such approach would also be warranted in the interest of administrative economy. In addition, the Commission already opted for such approach in previous cases. Similarly, Londex argued that cooperating non-sampled exporting producers were not subject to any examination of the company structure or its export sales.

([6]) This questionnaire as well as those for the Union producers, importers and users were available at http://trade.ec.europa.eu/tdi/case_details.cfm?ref=ong&id=2504&sta=1&en=20&page=1&c_order=date&c_order_dir=Down

([7]) Regulation (EC) No 91/2009 of 26 January 2009 imposing anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China (OJ L 29, 31.1. 2009, p. 1).

(86) The Commission noted that in previous investigations ([8]), mentioned by Londex in contrast to what was claimed, the Commission examined whether the conditions set out in Article 11(4) of the basic Regulation were fulfilled. None of the arguments brought forward could reverse the conclusions set out in recital (81) that were therefore rejected.

1.10. **Replies to the questionnaires**

(87) The Commission sent a questionnaire concerning the existence of significant distortions in China within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of the People's Republic of China ('GOC'). The GOC did not provide any reply to the questionnaire.

(88) The Commission made questionnaires available online on the day of the initiation ([9]) and requested the sampled Union producers, the sampled unrelated importers, and the sampled exporting producers in China to fill in the relevant questionnaires. In addition, the Commission requested EIFI to provide information on macroeconomic injury indicators pertaining to the entire Union industry.

(89) The Commission received questionnaire replies from four sampled Union producers, the complainant EIFI, the five sampled unrelated importers, two users and the three exporting producers/groups of exporting producers.

(90) As mentioned in recital (35), two of the sampled Union producers were excluded from the sample during the course of the investigation and their replies to the questionnaire were therefore disregarded. The two Union producers concerned were replaced by two other Union producers. Both companies provided a questionnaire reply.

(91) The Commission sought all the information deemed necessary for a determination of dumping, resulting injury and Union interest. In view of the outbreak of COVID-19 pandemic and the confinement measures put in place by various Member States as well as by various third countries during most of the investigation, the Commission could not in most of the cases carry out verification visits pursuant to Article 16 of the basic Regulation. In those cases, the Commission instead cross-checked remotely all the information deemed necessary for its determinations in line with its Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations ([10]). The Commission was able to carry out one on-spot verification visit.

(92) The Commission carried out remote crosschecks ('RCC') of the following companies/parties:

Union producers

— Company 15 (Italy)

— Company 20 (France)

— Company 33 (Germany, SME)

— Company 37 (Italy, SME)

— Company 61 (Poland, SME)

— Company 4 (Croatia)

([8]) Council Regulation (EC) No 1050/2002 of 13 June 2002 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of recordable compact disks originating in Taiwan (OJ L 160, 18.6.2002, p. 2) and Commission Regulation (EC) No 1412/2002 of 29 July 2002 imposing a provisional anti-dumping duty on imports of polyester textured filament yarn (PTY) originating in India (OJ L 205, 2.8.2002, p. 50).

([9]) *Ibid*.

([10]) Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations (OJ C 86, 16.3.2020, p. 6).

Importers

— F. Reyher NCHFG (Germany)

— Vipa S.P.A. (Italy)

Exporting producers in China

— Jiangsu Yongyi Fastener Co., Ltd. ('Jiangsu');

— Ningbo Jinding Fastening Piece Co., Ltd. ('Ningbo Jinding');

— Wenzhou Junhao Industry Co., Ltd. ('Wenzhou')

(93) The Commission carried out an on spot verification visit at the premises of the following company:

Union producers

— Company 42 (Germany, SME)

(94) The investigation of dumping and injury covered the period from 1 July 2019 to 30 June 2020 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2017 to the end of the investigation period ('the period considered').

1.11. **Hearings**

(95) Interested parties had the opportunity to request a hearing with the Commission and/or the Hearing Officer in trade proceedings in accordance with Articles 6(5) and 6(6) of the basic Regulation. The Commission held hearings with several exporting producers, CCCME and EFDA, as well as the complainant EIFI. One hearing took also place in accordance Article 6(6) of the basic Regulation, between parties with adverse interests, in this case the exporting producer Jiangsu Yongyi Fastener Co., Ltd and EIFI.

1.12. **Withdrawal of the United Kingdom from the Union**

(96) This case was initiated on 21 December 2020, i.e. during the transition period agreed between the United Kingdom ('UK') and the EU in which the UK remained subject to the Union law. This period ended on 31 December 2020. Consequently, as of 1 January 2021, companies and associations from the UK no longer qualified as interested parties in this proceeding.

(97) By a note to the case file of 14 January 2021, the Commission invited UK operators that considered that they still qualified as interested parties to contact it. No company came forward.

1.13. **Non imposition of provisional measures**

(98) For the reasons set out in recitals (35) and (36), the sample of Union producers had to be revised by substituting two initially sampled Union producers by two other Union producers. The Commission sent a questionnaire to these producers inviting them to fill it in within the time limit set out in Article 6(2) of the basic Regulation. This time frame did, however, not allow the Commission to reach provisional conclusions within the time limit set out in Article 7(1) of the basic Regulation. The Commission decided therefore not to impose provisional measures and to continue the investigation.

(99) On 20 July 2021, in accordance with Article 19a(2) of the basic Regulation, the Commission informed the interested parties of its intention not to impose provisional measures.

(100) The CCCME requested that the Commission issued an 'information document' summarising the progress of the investigation and preliminary conclusions based on the information available in the file, so that interested parties would be able to comment thereon.

(101) The basic Regulation does not foresee any disclosure of such information document. In any event, the Commission did not reach any preliminary conclusions within the deadlines set out in Article 7(1) of the basic Regulation and this request was therefore rejected.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(102) The product concerned is certain fasteners of iron or steel, other than of stainless steel, i.e. wood screws (excluding coach screws), self-tapping screws, other screws and bolts with heads (whether or not with their nuts or washers, but excluding screws and bolts for fixing railway track construction material), and washers originating in the People's Republic of China, currently classified under CN codes 7318 12 90, 7318 14 91, 7318 14 99, 7318 15 58, 7318 15 68, 7318 15 82, 7318 15 88, ex 7318 15 95 (TARIC codes 7318 15 95 19 and 7318 15 95 89), ex 7318 21 00 (TARIC codes 7318 21 00 31, 7318 21 00 39, 7318 21 00 95 and 7318 21 00 98) and ex 7318 22 00 (TARIC codes 7318 22 00 31, 7318 22 00 39, 7318 22 00 95 and 7318 22 00 98). The CN and TARIC codes are given for information only.

(103) Fasteners are made of iron or carbon steel and defined by their physical and technical characteristics and different strength/hardness classes. The broader categories are screws, washers and bolts.

(104) Screws are fastener products with an external threading on the shank. They can either be fixed into wood (wood screws) or metal sheets (self-tapping screws) alone, or combined with a nut and washers to form a bolt. Screws may have a variety of head-shapes (cup, socket, flat, oval, hexagonal, etc.), shank lengths and diameters. The shank may be totally or partially threaded. Screws are generally defined by the type of slot provided into the head to enable the screwing operation (e.g. single slot, cross-recessed slot, etc.).

(105) Washers are fasteners with an internal hole allowing pass through, always used in conjunction with a screw and a nut.

(106) Bolts are fastener parts formed by a screw, a nut and one or several washers.

(107) Fasteners can be standards ('standard fasteners') or made on the basis of customer drawings ('non-standard fasteners'). Within the same national or international standards, fasteners should comply with the same basic physical and technical characteristics including notably strength, tolerance, finishing and coating.

(108) Following final disclosure, EFDA and the CCCME contested the above definition of 'non-standard' fasteners. EFDA and the CCCME claimed that the Commission wrongly introduced the notion of 'non-standard' fasteners at a late stage of the proceeding and claimed that the definition in the above recital does not correspond to the definition of 'special fasteners' provided to interested parties in the questionnaire, more precisely in the instructions to create product control numbers ('PCN'). Furthermore they reiterated that fasteners produced with requirements that are more stringent than those of an industry standard should be considered as 'special' or 'non-standard' fasteners (see recital (368)). They also reiterated that certain production certification requirements as mentioned in recital (371) should be considered as classifying all fasteners produced under such production processes automatically as 'special' and alleged that the Union industry itself would agree to such approach, in contrast what the Commission concluded in recital (375).

(109) The Commission disagreed with the claim that the notion of 'non-standard' fasteners was introduced at a late stage of the proceeding and that it is not in line with the instructions given in the questionnaires. Non-standard fasteners and special fasteners are the same, i.e. fasteners that do not fall exactly within a certain industry norm. This is also in line with the questionnaire that refers to special fasteners as 'divergent from an internationally recognised standards'. The Commission used these terms interchangeably and did not receive any comments or requests for clarifications in this regard. The Commission recalled that the claim that fasteners produced with requirements that were more stringent than those of an industry standard should be considered as 'non-standard' fasteners was already addressed in recital (373). Finally, regarding production certification, the Commission confirms that this as such does not classify a fastener as non-standard, although, in practice it may be that fasteners produced under such requirements are

indeed mostly non-standard fasteners. The Union industry does not oppose to this view, as wrongly claimed by EFDA and the CCCME. All above claims in this regard were therefore rejected. Fasteners are used to mechanically join two or more elements in construction, engineering, or other applications. They are used in a wide variety of industrial sectors, as well as by consumers.

(110) Based on their basic physical and technical characteristics and end uses, all fasteners are considered to constitute a single product for the purpose of this proceeding.

2.2. **Like product**

(111) The investigation showed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:

— the product concerned and

— the product produced and sold in the Union by the Union industry.

(112) The Commission decided that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

2.3. **Claims regarding the product scope**

2.3.1. *Structural timber screws/connectors (or wood lag screws)*

(113) Several interested parties claimed that structural timber screws should be excluded from the product scope.

(114) Two exporting producers and two importers ([11]) argued that structural timber screws had similar characteristics and end uses as coach screws (not covered by the product scope) and that they were merely derivative product types from the latter, with improved mechanical performance and considered as an alternative to coach screws. They claimed that structural timber screws were exclusively used in timber constructions and were not interchangeable with other fasteners, while they were fully interchangeable with traditional coach screws. They were made to customer specific requirements and needed a European Technical Assessment ('ETA') certification to be marketed in the Union. Furthermore, they are produced in a specific production process, using different raw materials (i.e. higher quality steel) with specific treatment and machinery and therefore have higher costs and prices.

(115) One of the above exporting producers referring to the anti-dumping measures imposed on imports of certain aluminium road wheels ([12]) suggested that introducing a system of monitoring would mitigate any risk of circumvention when excluding structural timber screws from the product scope. The same exporting producer claimed that, should the Commission not exclude structural timber screws from the product scope, findings with regard to injury and causation should be made separately for these product types.

(116) All above parties claimed that the Union industry did not produce structural timber screws in sufficient quantities to satisfy the demand on the Union market, and there were also only a limited number of exporting producers in China that supplied structural timber screws.

(117) Likewise, the European Consortium of Anchor Producers ('ECAP') claimed that screws for use in timber constructions replacing coach screws, and thus for assembling heavy woodworks, should be excluded from the product scope as they have similar technical, chemical and physical characteristics and similar end-uses than coach screws.

(118) EIFI disagreed with these claims arguing that there would not be any objective criteria to distinguish structural timber screws from other fasteners.

([11]) One of these importers was also a producer of structural timber screws in the Union.

([12]) Council Implementing Regulation (EU) No 964/2010 of 25 October 2010 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium road wheels originating in the People's Republic of China (OJ L 282, 28.10.2010, p. 1).

(119) The Commission considered that structural timber screws do not fall under any specific product standard and cannot be distinguished from other wood screws ([13]) falling within the product scope. The investigation also revealed that at least some of the described special features of structural timber screws can also be found in fasteners falling within the product scope. The Commission also considered that the CE markings and ETA certification merely confirm that timber screws may be non-standard fasteners, but this fact alone does not justify their exclusion from the product scope. Therefore, these claims were rejected.

(120) The claim that findings with regard to injury and causation should be made separately for structural timber screws are addressed in recital (398); and the claim that those product types are not produced and sold by the Union industry in sufficient quantities are addressed in recitals (531) and following.

(121) Following final disclosure, several parties reiterated their claim that structural timber screws should be excluded from the product scope as they would be similar to coach screws and would be clearly distinguishable from other fasteners, in particular wood screws.

(122) Two importers of structural timber screws (one of them was also a producer in the Union) argued that structural timber screws are the result of a product development of coach screws that resulted in a different shape of the head, thus not corresponding to the description in the explanatory note to CN code 7318 11 under which coach screws are imported, and that set out that coach screws differ from wood screws, inter alia, because of a hexagonal head or a square head. These parties argued that the shape of the head should, however, not be considered as a decisive feature when distinguishing structural timber screws from other wood screws. They argued that coach screws are defined as per explanatory note to the CN code 7318 11 as being used 'for assembling rafters and for similar heavy woodwork' which would correspond to the use of 'Screws and threaded rods for use in timber constructions' in the European Assessment Document (EDA) applying to structural timber connectors ([14]).

(123) These parties also argued that the standard applicable to coach screws DIN 1052 (previously DIN 571) enables the ad-hoc certification of structural timber screws thus acknowledging the emerge of structural timber screws on the market as an alternative to coach screws. Likewise, the European standard EN 1995 Eurocode 5 governing the design of timber structures allows certified structural timber connectors to be used in timber structures even if not falling under the definition of coach screws.

(124) On the basis of the above, these parties argued that it would be clear that the decisive factor to distinguish structural timber screws from other wood screws would be the end-use, and they should therefore be considered as coach screws.

(125) Finally, as coach screws and structural timber screws pertain to the same product family, the inclusion of structural timber screws in the product scope would be discriminatory.

(126) Two exporting producers claimed that only the shank diameter should be considered as a distinguishing characteristic, rather than the shape of the head, because this feature determines the end-use of the product. They asserted that fasteners falling within the scope of the investigation have a shank diameter that is less than 5mm. These parties also emphasised that the industry specifically recognises structural timber screws as substitutes of coach screws.

(127) All the above parties claimed that the fact that structural timber screws are classified under the CN code for 'other wood screws (CN code 7318 12), falling within the scope of the investigation would be irrelevant, as CN codes are only provided as an indication when defining the product scope and are not binding in this regard.

(128) Finally, these parties reiterated that there would be insufficient capacity in the Union to supply this product type, that there was no alternative source of supply from other third countries and that it would not be in the Union interest to impose anti-dumping measures on structural timber screws.

([13]) Currently classified under CN code 7318 12 90. CN codes are given for information only.

([14]) EDA 130118-01-0603. EDA is a harmonised technical specification developed by the European Organisation for Technical Approvals (EOTA) as the basis for European Technical Assessments (ETAs)

(129) None of the above claims devaluated the findings set out in recital (119). In particular, none of the parties disputed the fact that there are no product standards for structural timber screws and all of them acknowledged that timber screws do not correspond to the description of the coach screws classified under CN code 7318 11. The fact that structural timber screws may be certified to fulfil the technical requirements to be used for connections in timber constructions as such was not considered sufficient reason to exclude this product type from the scope of the investigation, as it had overlapping physical and technical characteristics with other products falling within the scope as set out in recital (119). On this basis the claims that structural timber screws should be excluded from the scope of the current investigation were rejected.

(130) The arguments related to insufficient supply in the Union are addressed under the determination of the Union interest in recitals (538) to (540).

2.3.2. *Screws and bolts for fixing railway track construction material*

(131) One Union producer of screws and bolts used in railways requested that these were included in the product scope of the investigation. The Commission noted however that these products were not covered by the complaint in this case and therefore no evidence of dumping and resulting injury justifying an investigation has been provided by the Union industry. The claim is therefore rejected.

2.3.3. *Hot forged fasteners*

(132) One of the sampled exporting producer claimed that fasteners manufactured by hot forged process ('hot forged fasteners') should be excluded from the product scope arguing that they had different production processes and cost structures resulting in different physical characteristics and end-uses than fasteners manufactured by cold forged process ('cold forged fasteners'), predominantly used by the Union industry. This exporting producer argued that hot forged fasteners are generally of a larger size than cold forged fasteners and are mainly used in the railway industry and/or machine building. Fasteners resulting from this process would not be produced at all, or only in limited quantities by the Union industry. In addition, it would economically not be viable to switch to hot forged processes, the latter being more labour and energy intensive and having a higher consumption ratio of steel. They requested an adversarial meeting with the presence of EIFI in accordance with Article 6(6) of the basic Regulation which took place on 27 October 2021.

(133) EIFI submitted that the product scope should not be defined based on different production processes. They pointed to the EU customs nomenclature that does not distinguish between products based on different production processes, but on physical, technical and chemical characteristics. EIFI asserted that the Union industry has substantial hot forging production capacity and that there was a significant overlap of dimensions of fasteners that can be produced with both technologies.

(134) The Commission agreed that the fact that a product can be produced by different production processes is in itself not relevant for the definition of the product scope of an investigation. Consequently, all product types falling within the definition of the product concerned in recital (102) are covered by this investigation, whether produced by hot forging processes or cold forging processes. The investigation established that the Union industry had substantial production capacity and spare capacities to produce fasteners under the hot forged process. The investigation also revealed that there were overlapping applications between fasteners produced in both processes. The request for exclusion of hot forged fasteners was therefore rejected.

(135) Following final disclosure, the exporting producer reiterated its requests to exclude hot forged fasteners from the scope of the investigation. In particular, it contested the reliability of EIFI's data provided and claimed that the Commission accepted these data without verifying them and without responding to the legal and factual claims provided by the exporting producers in this regard. This exporting producer claimed that there were no legal grounds that hot forged fasteners were kept in the product scope.

(136) The arguments provided by the exporting producer in this regard were (i) that CN-codes are only indicative when determining the product scope in an anti-dumping investigation and that the investigation needs therefore to establish whether a certain product falling within the same CN-code has the same technical characteristics and end uses and therefore causes injury to the Union industry; (ii) that imports of hot forged fasteners would not cause any injury to the Union industry as there is no or only little production of hot forged fasteners in the Union; and production would not increase as it would economically not be viable to switch to hot forged fasteners production; in this regard it is also irrelevant that there is an overlap of products that are produced under the hot forged process on the one hand and the cold forged process on the other hand; and (iii) that CN code 7318 11 00 ('coach screws') and CN code 7318 15 20 ('Other screws and bolts, whether or not with their nuts or washers'; 'For fixing railway track construction material') recognises the difference between of hot forged fasteners in comparison to cold forged fasteners and therefore CN codes are indeed taking into consideration different production processes.

(137) To further substantiate its claims the exporting producer identified several product types exported by it that could only be produced under hot forged processes and were there was thus no overlap with cold forged processes. It reiterated that those had different end-uses than fasteners produced under the cold forged processes and were sold in different distribution channels.

(138) Regarding the claims that the investigation has to show that imported products have similar physical and technical characteristics and basic end-used and caused injury to the Union industry, this is a matter of defining the like product rather than the product concerned.

(139) Concerning the arguments provided by the exporting producer and summarised in recital (136) the Commission reminds as set out in recital (134) that a product can be produced under various production processes which are therefore as such no determining factor when defining the product scope. The fact that there are different CN codes for coach screws and wood screws were not considered as a prove that differences in production processes were taken into consideration in the CN nomenclature; to the contrary, the production process is not mentioned explicitly in the CN codes, while the explanatory notes to CN code 7318 11 refers explicitly to differences in technical and physical characteristics.

(140) Regarding the argument summarised in recital (137), it is recalled that as set out in recital (134) that the Union industry had substantial production capacity and spare capacities to produce all types of fasteners, including hot forged fasteners. Different distribution channels as such were not considered relevant, as long as the fastener falls within the product description. These arguments were therefore rejected.

(141) The same exporting producer, requested a hearing with the Hearing officer that was held on 17 November 2021 where it reiterated its claim that hot forged fasteners should be excluded from the product scope and requested explanations as to why coach screws had been excluded from the production scope. The interested party considered that it would be discriminatory that no explanations had to be provided by the complainant in this regard. The Commission recalled that in accordance with WTO jurisprudence, the investigating authority has discretion in defining the product under investigation and that complainants are free to define the product scope without a need for any particular justification. Therefore, coach screws never having been included in the product scope were also not 'excluded' therefrom. Once the investigation had been initiated, however, interested parties needed to provide a justification if they claimed that certain product types falling within the scope of the investigation should be "excluded" (properly speaking) from the imposition of measures. Since the two situations are different, there was no discrimination. This claim was therefore rejected.

2.3.4. *Hardware kits*

(142) One exporting producer claimed that hardware kits should be excluded from the product scope, as they contained both the product concerned and other products outside the scope of the investigation. Hardware kits are sold in different packages than fasteners (such as small paper boxes, boxes with PVC windows, etc.). The packages represent, together with the products not included in the scope a large part of their costs and sales price, while costs and prices of the product concerned included in the hardware kits are not distinguishable from the rest. In addition, hardware kits are destined mainly to household uses, while fasteners produced by the Union industry are destined to industrial uses. Hardware kits are distributed via different sales channels, i.e. retailers, while fasteners destined to industrial use are sold via distributers. Finally, this exporting producer claimed that the complainant Union producers did not produce and sell hardware kits.

(143) The Commission notes that any imports of such kits that, following tariff classification rules, are classified under the product definition in recital (102), provided they keep the character of this product, are covered by the investigation and potential anti-dumping measures. In addition, the investigation revealed that Union industry produces and sells fasteners for the do-it-yourself ('DIY') sector, which is mainly sold in form of hardware kits. Several Union producers have their own automatic packaging lines, while others outsource the packaging to unrelated service providers in the Union. There is therefore no ground for exclusion of hardware kits.

2.3.5. *Anchors and structural connections for concrete, masonry, wood and steel*

(144) ECAP claimed that certain products should not fall within the scope of the investigation, as they have different basic end-used and undergo different CE marking processes. These products are iron or steel 'anchors' and 'structural connections for concrete, masonry, wood and steel' and in particular (i) roofing or self-drilling screws with accessories, (ii) structural connections for wood and (iii) metal anchors, concrete screw anchors and nylon anchors or plugs. ECAP referred to Commission Implementing Regulation (EU) No 602/2011 ([15]). They argued that under this Regulation certain products 'comprising a bolt with a washer, an expandable anchor sleeve and a nut, all made of stainless steel' are to be classified under CN code 7318 19 00. By analogy, iron or steel anchors should also be classified under the same CN code, claiming that the logic and principle of Regulation (EU) No 602/2011 should apply to construction anchors of all materials and forms. Therefore, ECAP claimed that iron and steel anchors should not fall within the product scope.

(145) ECAP referred to several European Assessment Documents ('EAD') for the above mentioned products. EADs are harmonised technical specifications for construction products developed by the European Organisation for Technical Assessment ('EOTA') for cases where a product is not fully covered by harmonised European standards. ECAP did not provide any further details, information or evidence to what extend these documents would show that the products described therein would not fall within the definition of the current product scope. However, the fact that certain products fall within a specific EAD does not mean that they would not be covered by the product definition of the current investigation.

(146) Implementing Regulation (EU) No 602/2011 relates to products of stainless steel, which are not covered by this investigation. In any event, this Regulation only specifies that a certain product comprising a bolt with a washer, an expandable anchor sleeve and a nut cannot be considered as a 'composite good' for customs purposes as the components together constitute a single product, i.e. an expansion bolt. In any event, any imports of bolts that, following tariff classification rules, are classified under the product definition in recital (102) are covered by the investigation and potential anti-dumping measures. These claims were therefore rejected.

(147) The Commission highlights that according to Section 2 of the Notice of Initiation only fasteners of iron and steel (other than stainless steel) are covered by the investigation. Thus, products made of stainless steel, plastic or nylon do not fall within the product scope of this investigation.

(148) One Union producer of anchors and its related exporting producer in China claimed, similarly to ECAP, that concrete anchor screws should be excluded from the product scope of the investigation. They argued that concrete anchor screws are specific, highly specialised products having the same purpose than metal anchors, which is to fix structural elements to concrete in the construction sector. In support of this argument, the interested parties highlighted that the product was developed in accordance with the European Technical Approval Guideline ('ETAG') for 'Metal Anchors for Use in Concrete' (ETAG001) of EOTA with the objective of (partially) substituting metal anchors. These parties emphasised that anchors were not specifically mentioned in the complaint and that anchor producers were not represented by the complainant EIFI. Like ECAP, they highlighted that anchors were to be classified under CN code 7318 19 00 not covered by the notice of initiation.

(149) Following final disclosure, this company reiterated its claim that concrete anchor screws should be excluded from the product scope without, however providing any new arguments or information in this regard. This claim was therefore rejected.

([15]) Commission Implementing Regulation (EU) No 602/2011 of 20 June 2011 concerning the classification of certain goods in the Combined Nomenclature (OJ L 163, 23.6.2011, p. 8).

(150) These parties further argued that concrete anchor screws are, due to their specificities, not interchangeable with other fasteners, such as screws, bolts and washers, while they are in competition and interchangeable with wedge anchors or sleeve anchors.

(151) For the same reasons set out above in recital (146), the claim concerning specific certificates was dismissed. Regarding the interchangeability with other product types, the Commission has wide discretion to establish the product scope of an investigation (the product concerned). There is no requirement in the basic Regulation that the product concerned encompasses only product types which are interchangeable and in competition. These elements refer to the definition of the like product.

(152) Finally, the Union producer of anchors mentioned in recital (148) argued that its related exporting producer in China is the only one with an official EU certification (European Technical Assessment or 'ETA') issued by EOTA for concrete anchor screws and therefore the only one exporting this product to the Union. The impact of the exclusion of this product would therefore be limited. They also highlighted that in any event, there were no exports of concrete anchor screws during the IP, thus it could not have caused any injury to the Union industry.

(153) Since this party did not provide any evidence in support of its statements, the Commission decided to reject this claim without analysing it in substance.

(154) Following final disclosure, Simpson Strongtie, an international group manufacturing concrete screw anchors in China and distributing them via related companies in the Union commented that concrete screw anchors should be excluded from the product scope. They justified their late intervention in the proceeding having given for granted that this product type was already excluded. They provided technical characteristics of their concrete screw anchors produced in China and claimed that these do not compete with the other product concerned or the like product.

(155) The late submission of this company could not be taken into consideration. The product scope was defined in the Notice of initiation including the CN codes under which fasteners are imported. The Commission did not indicate that concrete anchor screws would be excluded from the product scope; therefore the interested parties had no reason to believe that they were not included in the scope. For the reasons set out in the preceding recital, the interested parties' claims to exclude concrete anchor screws were rejected.

2.3.6. *Confirmat screws (or self-drive dowels)*

(156) One exporting producer requested that confirmat screws (or self-drive dowels) were excluded from the product scope. This exporting producer claimed that due to their specific end-uses, that is, connecting accessories for the assembly of desks, cabinets, tables or shelves (processed wood materials) in the furniture industry, the physical and technical characteristics of confirmat screws were unique and differed significantly from those of other fasteners. This exporting producer also claimed that should the Commission decide not to exclude confirmat screws from the product scope, findings with regard to injury and causation should be made separately for these product types.

(157) The investigation established that confirmat screws had similar basic physical and technical characteristics and end uses than other fasteners types included in the product scope. Therefore, there is no reason for this product type to be excluded from the investigation. This claim was therefore rejected.

(158) The claim that injury and causation should be assessed separately for this product types is addressed in recital (398).

2.3.7. *Pole screws*

(159) One user of pole screws in the Union claimed that the latter should be excluded from the product scope as they were only used in one specific application, i.e. in industrial battery intercell connectors, and were not produced by any of the Union producers. This company argued that pole screws were special screws and had not only a steel part but also a plastic head and thread-locker. The investigation revealed, however, pole screws had similar basic physical and technical characteristics and end uses than other fasteners types included in the product scope. Therefore, there is no reason for this product type to be excluded from the investigation this claim was therefore rejected.

(160) Following final disclosure, this user reiterated that pole screws are exclusively used as electrical connectors of battery cells, and serve as such in industrial batteries for isolation and protection against acid and acid vapour. Pole screws are therefore not interchangeable with common fasteners. In support of their argument they provided a communication of the German customs authorities dated 7 March 2016 that pole screws do not fall within the scope of Regulation (EC) No 91/2009 imposing anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China and Council Implementing Regulation (EU) No 924/2012 ([16]). Since the current investigation covers the same product scope, the company argued that pole screws should also not be considered as falling within the scope of the current investigation.

(161) The communication submitted by the user in question did not include a reasoned decision of the customs authorities, including factual and legal grounds that motivated such decision and whether it was based on a binding tariff information. The Commission was also not able to verify the authenticity of the document provided. In addition, it also pre-dated the current investigation and could therefore not be considered as having an impact on the product scope. These arguments were therefore rejected.

2.3.8. *Non-standard fasteners used in the automotive industry*

(162) The CCCME claimed that non-standard fasteners used in the automotive industry should be excluded from the scope of the investigation, arguing they would not be exported by the Chinese exporting producers, or only in very limited quantities. Alternatively, the analysis of injury and causality should be carried out separately per market segment, i.e. standard and non-standard fasteners.

(163) Non-standard fasteners used in the automotive industry fall within the product definition in recital (102) and are therefore covered by this investigation. The investigation has shown that exports from China included exports of non-standard fasteners intended for the automotive industry and that there were several producers of automotive fasteners in China. The claim to exclude these product types from the scope of the investigation was therefore rejected.

(164) Following final disclosure, the CCCME claimed that the Commission did not undertake any specific analysis of the unique characteristics of automotive fasteners that would justify the exclusion of these products from the scope of the investigation. They maintained that automotive fasteners are entirely distinct from other fasteners in terms of industry standards and requirements.

(165) As for its claim already prior to final disclosure, the CCCME did not provide any further explanations on the technical and physical characteristics it was referring to and that would distinguishing those types of fasteners from other types. The mere statement that those fasteners were not interchangeable with other fasteners included in the product scope was considered insufficient as to justify an exclusion. It is noted that in the automotive industry fasteners of several types are used and not just one single type. In any event, as already set out in recital (151), regarding the interchangeability with other product types, the Commission has wide discretion to establish the product scope of an investigation. There is no requirement in the basic Regulation that the product concerned encompasses only product types which are interchangeable and in competition. The claims of the CCCME in this regard were therefore rejected.

(166) The claim that the injury and causality analysis should be carried out based on different market segments is addressed in recitals (394) and (398).

([16]) Council Implementing Regulation (EU) No 924/2012 of 4 October 2012 amending Regulation (EC) No 91/2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China (OJ L 275, 10.10.2012, p. 1).

3. DUMPING

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

(167) The evidence available at the initiation of the investigation pointed to the existence of significant distortions in China within the meaning of Article 2(6a)(b) of the basic Regulation. The Commission therefore considered it appropriate to initiate the investigation having regard to Article 2(6a) of the basic Regulation.

(168) In order to collect the necessary data for a possible application of Article 2(6a) of the basic Regulation the Commission invited all exporting producers in the country concerned to provide information regarding the inputs used for producing fasteners. Ninety-two exporting producers submitted the relevant information.

(169) As mentioned above in recital (87), the Commission also requested, the GOC to respond to a questionnaire concerning the alleged existence of distortions in the PRC. However, the GOC did not provide a reply to the questionnaire as requested.

(170) In addition, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the *Official Journal of the European Union*.

(171) In point 5.3.2 of the Notice of Initiation the Commission informed interested parties that based on the information available at that stage possible appropriate representative countries pursuant to Article 2(6a)(a) of the basic Regulation could be Brazil and Turkey if the conditions of application of that provision would be confirmed. The Commission also stated that it would examine other possible appropriate representative countries in accordance with the criteria set out in 2(6a)(a) first indent of the basic Regulation.

(172) On 5 February 2021, the Commission issued a First Note on the sources for the determination of the normal value ('the Note of 5 February' or 'First Note') by which it informed interested parties on the relevant sources it intended to use for the determination of the normal value. In that note, the Commission provided a list of all factors of production such as raw materials, labour and energy used in the production of fasteners. In addition, the Commission identified Brazil, Russia, Thailand and Turkey as possible appropriate representative countries. The Commission gave all interested parties opportunity to comment. The Commission received comments from the complainant EIFI, two sampled exporting producers, the CCCME and EFDA.

(173) On 4 May 2021, after having analysed the comments received, the Commission issued the Second note on the sources for the determination of the normal value ('the Note of 4 May' or 'Second Note'). In that note the Commission established a provisional list of factors of production and informed interested parties of its intention to use Thailand as the representative country under Article 2(6a)(a), first indent of the basic Regulation. It also informed interested parties that it would establish selling, general and administrative costs ('SG&A') and profits based on readily available financial data sourced from Dun & Bradstreet database [17] ('D&B'). The Commission invited interested parties to comment. Comments were received from the complainant, one sampled exporting producer, the CCCME and EFDA.

(174) After having analysed the comments and information received on the Second Note, the Commission concluded that Thailand was an appropriate choice as representative country from which undistorted prices and costs would be sourced for the determination of the normal value. The underlying reasons for that choice are further described in detail in recitals (220) and following.

[17] Dun & Bradstreet, https://globalfinancials.com/index-admin.html

3.2. **Application of Article 18 of the basic Regulation**

(175) As already mentioned in recitals (87) and (169), the GOC did not provide any reply to the questionnaire concerning the existence of distortions ([18]). The Commission informed the GOC by Note Verbale on 2 June 2021 that it intended therefore to make use of the provisions of Article 18 of the basic Regulation and use facts available with regard to the information covered by the questionnaire. The Commission invited the GOC to submit comments on the application of Article 18 of the basic Regulation. No comments were received.

(176) As mentioned in recital (61), upon initiation, in order to decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known exporting producers in China to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation. Ninety-two exporting producers or groups of exporting producers came forward representing 51 % of the total exports of fasteners from the PRC to the Union during the IP as estimated by the complainant based on Eurostat statistics. The Commission considered that this level of cooperation was low.

(177) The Commission informed the Mission of the People's Republic of China to the European Union by Note Verbale accordingly, highlighting that due to this low cooperation, it intended to make use of the provisions of Article 18 of the basic Regulation with regard to the country-wide margin (i.e. the residual duty). The Commission invited the Mission of the People's Republic of China to the European Union to submit its comment on the application of Article 18 of the basic Regulation.

(178) EFDA claimed that a level of cooperation should not be deemed to be low because:

(a) the Chinese fasteners industry consists predominantly of small companies and SMEs, which faced difficulties, due to their limited resources, to comply with all the requirements and follow the various procedural steps that are necessary for them to participate in the investigation;

(b) the Chinese exporting producers of fasteners, in most cases have only few or no employees who are proficient enough in English to fill out the complex forms that are requested in anti-dumping investigations;

(c) the Chinese exporting producers of fasteners could not understand how an anti-dumping investigation could be initiated, while several Union producers have sourced fasteners from Chinese suppliers and even continue to do so after the investigation period;

(d) the Commission is putting significant efforts in encouraging and facilitating the participation of SMEs in the Union in anti-dumping investigations, while small Chinese exporting producers are treated in the exact same way as large exporting producers, which creates considerable inequality between SMEs in the Union and in third countries in terms of their ability to participate in trade defence investigations and enforce their rights of defence. Therefore, the Commission should remedy this situation in considering the Chinese exporters' level of cooperation as sufficiently high.

(179) The Commission noted that, at the start of the investigation (standing and/or sampling exercise), the same amount of information is requested from Union and exporting producers. This information is mainly limited to the contact details of the company, their sales and production quantities and related companies. Cooperation is established on the basis of this initial reply. Therefore, all companies (including the SMEs) in the Union and in the exporting country are treated equally. The claims of the party were therefore rejected.

(180) During the RCCs, the Commission was unable to verify the actual consumption of labour for any of the three sampled exporting producers. The Commission informed each of the three sampled exporting producers by a letter on 3 June 2021 that it intended to make use of facts available in accordance with the provision of Article 18 of the basic Regulation with regard to the consumption of labour.

([18]) Questionnaire on the existence of significant distortions within the meaning of Article 2(6a) of Regulation (EU) 2016/1036 for the Government of the People's Republic of China

(181) Ningbo Jinding considered that the information on actual working hours was not necessary and that the Commission should rely on standard working hours. They argued that standard working hours could be used to assess labour costs, especially in the absence of any legal obligation to record actual working hours. This exporting producer claimed that it acted to the best of its ability, therefore the Commission could not disregard the labour data provided, since they would still allow for "*a reasonably accurate finding*". They added that standard working hours were the most appropriate facts available, since no other source could possibly be more appropriate for the particular circumstances of Ningbo Jinding's production of the product concerned.

(182) Wenzhou claimed that the actual labour days (later converted to labour hours at the standard number of working hours per day) were indicated on the monthly payroll sheets, and that the standard working hours per day as limited by the Chinese labour law should be regarded as reliable data to be used in the conversion of actual labour days to labour hours. Also, the fact that the company did not record actual labour hours for the production of the product concerned could not be considered as non-cooperation, and therefore it was unreasonable to apply Article 18 of the basic Regulation to labour costs of Wenzhou.

(183) The Commission disagreed. The mere existence of the law delimiting the standard number of hours a worker can work is not sufficient evidence for demonstrating the actual hours worked. During the investigation, the Commission found no evidence that the Chinese labour law was respected or enforced, and that the actual labour days reported by the exporting producers were reflected in the remuneration actually paid to the staff.

(184) In addition, no evidence was found that actual labour days converted to labour hours at the standard number of working hours captured the hours worked relating to the manufacturing process of the product concerned, since no evidence was provided on what basis the standard hours for production of fasteners were established.

(185) Also, the two exporting producers converting their labour days at the standard number of working hours per day had nearly double their labour productivity rate ([19]) in comparison to the exporting producer that recorded the actual labour hours. The high labour productivity would normally indicate higher and more effective use of the labour force reflected in a higher number of actual working hours. Therefore, in this case, standard working hours could not be used for assessment of the labour cost of the product concerned.

(186) Based on this, the claims of the exporting producers were rejected and the Commission, used the best facts available with regard to the consumption of labour in accordance with Article 18 of the basic Regulation.

3.3. **Normal value**

(187) In recent investigations concerning the steel sector in the PRC ([20]), the Commission found that significant distortions in the sense of Article 2(6a)(b) of the basic Regulation were present. Steel is the main raw material used to produce fasteners, hence the fasteners sector is very close to the steel sector. The Commission concluded in this investigation that, based on the evidence available, the application of Article 2(6a) of the basic Regulation was also appropriate.

([19]) Kg of fasteners produced per one employee.

([20]) Commission Implementing Regulation (EU) 2021/635 of 16 April 2021 imposing a definitive anti-dumping duty on imports of certain welded pipes and tubes of iron or non-alloyed steel originating in Belarus, the People's Republic of China and Russia following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 132, 19.4.2021, p. 145), and Commission Implementing Regulation (EU) 2020/508 of 7 April 2020 imposing a provisional anti-dumping duty on imports of certain hot rolled stainless steel sheets and coils originating in Indonesia, the People's Republic of China and Taiwan (OJ L 110, 8.4.2020, p. 3).

(188) In the past investigations on the steel sector, the Commission found that there is substantial government intervention in the PRC resulting in a distortion of the effective allocation of resources in line with market principles ([21]). In particular, the Commission concluded that in the steel sector, which is the main raw material to produce the product concerned, not only does a substantial degree of ownership by the GOC persist in the sense of Article 2(6a)(b), first indent of the basic Regulation ([22]), but the GOC is also in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation ([23]). The Commission further found that the State's presence and intervention in the financial markets, as well as in the provision of raw materials and inputs have an additional distorting effect on the market. Indeed, overall, the system of planning in the PRC results in resources being concentrated in sectors designated as strategic or otherwise politically important by the GOC, rather than being allocated in line with market forces ([24]). Moreover, the Commission concluded that the Chinese bankruptcy and property laws do not work properly in the sense of Article 2(6a)(b), fourth indent of the basic Regulation, thus generating distortions in particular when maintaining insolvent firms afloat and when allocating land use rights in the PRC ([25]). In the same vein, the Commission found distortions of wage costs in the steel sector in the sense of Article 2(6a)(b), fifth indent of the basic Regulation ([26]), as well as distortions in the financial markets in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, in particular concerning access to capital for corporate actors in the PRC ([27]).

(189) Like in previous investigations concerning the steel sector in the PRC, the Commission examined in the present investigation whether it was appropriate to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the complaint, as well as in the country report concerning the PRC (hereinafter 'the Report') ([28]), which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in the PRC's economy in general, but also the specific market situation in the relevant sector including the product concerned. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in the PRC as also found by its previous investigations in this respect.

(190) In addition to the Report, the complaint listed a few additional factors pointing to the presence of distortions in the fasteners sector. It listed firstly the problem of overcapacity on the wire rod market. Secondly, the complaint pointed to the state intervention into energy and electricity. Furthermore, the complaint mentioned distortions in the automotive and construction sectors in China (two important users of fasteners), as evidenced by the two publications by the European Union Chamber of Commerce in China: the 2018/2019 and 2019/2020 Business in

([21]) See Implementing Regulation (EU) 2021/635 recitals 149-150 and Implementing Regulation (EU) 2020/508 recitals 158-159

([22]) See Implementing Regulation (EU) 2021/635 recitals 115-118 and Implementing Regulation (EU) 2020/508 recitals 122-127

([23]) See Implementing Regulation (EU) 2021/635 recitals 119-122 and Implementing Regulation (EU) 2020/508 recitals 128-132: While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights, CCP cells in enterprises, state owned and private alike, represent another important channel through which the State can interfere with business decisions. According to the PRC's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline. In 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of iron or steel fasteners producers and the suppliers of their inputs.

([24]) See Implementing Regulation (EU) 2021/635 recitals 123-129 and Implementing Regulation (EU) 2020/508 recitals 133-138.

([25]) See Implementing Regulation (EU) 2021/635 recitals 130-133 and Implementing Regulation (EU) 2020/508 recitals 139-142.

([26]) See Implementing Regulation (EU) 2021/635 recitals 134-135 and Implementing Regulation (EU) 2020/508 recitals 143-144.

([27]) See Implementing Regulation (EU) 2021/635 recitals 136-145 and Implementing Regulation (EU) 2020/508 recitals 145-154.

([28]) Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 20 December 2017, SWD(2017) 483 final/2

China – Position Papers. The complaint also mentions the two reports prepared by the Think!Desk China Research & Consulting: Final Report "Assessment of the normative and policy framework governing the Chinese economy and its impact on international competition", and Draft Final Report "The China Iron and Steel Association – Government Partner and Information Hub", which show distortions due to the government control over the iron and steel sector, including fasteners. Finally, the complaint pointed to the fact that in the past investigation the Commission already found distortions on the steel market in China.

(191) As indicated in recital (169), the GOC did not comment or provide evidence supporting or rebutting the existing evidence on the case file, including the Report and the additional evidence provided by the complainant, on the existence of significant distortions and/or on the appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand.

(192) Specifically in the steel sector, which is the main raw material to produce fasteners, a substantial degree of ownership by the GOC persists. Many of the largest steel producers are owned by the State. Some are specifically referred to in the 'Steel Industry Adjustment and Upgrading plan for 2016-2020'. For instance, the Chinese State-owned Shanxi Taiyuan Iron & Steel Co. Ltd. ("Tisco") mentions on its website that it is "a super iron and steel giant", which "developed into an extraordinary large-scale iron and steel complex, which is integrated with business of iron mining, iron and steel production, processing, delivery and trading ([29])". Baosteel is another major Chinese State-owned enterprise that engages in steel manufacturing and is part of the recently consolidated China Baowu Steel Group Co. Ltd. (formerly Baosteel Group and Wuhan Iron & Steel) ([30]). While the nominal split between the number of SOEs and privately owned companies is estimated to be almost even, from the five Chinese steel producers ranked in the top 10 of the world's largest steel producers, four are SOEs ([31]). At the same time, while the top ten producers only took up some 36 % of total industry output in 2016, the GOC set the target in the same year to consolidate 60 % to 70 % of steel production to around ten large-scale enterprises by 2025 ([32]). This intention has been repeated by the GOC in April 2019, announcing a release of guidelines on steel industry consolidation ([33]). Such consolidation may entail forced mergers of profitable private companies with underperforming SOEs ([34]). Since the fasteners sector is very fragmented and most producers are SOEs, it is impossible to establish the exact ratio of state owned vs. privately owned fasteners producers, however the investigation showed that some fastener producers are SOEs, for example Zhoushan 7412 Factory.

(193) As to the GOC being in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation, the investigation did not look into individual companies, since the fasteners sectors is very fragmented and mostly consists of SMEs SOEs. However the existence of personal connections between producers of the product concerned and the CCP was established at the level of industry associations. The fastener industry associations underline their personal connection to the CCP, for example the Articles of Association of the Ningbo Fasteners Industry Association require that: 'The president, vice president and secretary-general of this association must meet the following conditions: (1) Adhere to the party's line, principles, policies, and be of a good political quality' ([35]).

([29]) TISCO, 'Company profile', http://en.tisco.com.cn/CompanyProfile/20151027095855836705.html (last viewed 2 March 2020).

([30]) Baowu, 'Company profile', http://www.baowugroup.com/en/contents/5273/102759.html (last viewed 6 May 2021).

([31]) Report – Chapter 14, p. 358: 51 % private and 49 % SOEs in terms of production and 44 % SOEs and 56 % private companies in terms of capacity.

([32]) Available at: www.gov.cn/zhengce/content/2016-02/04/content_5039353.htm (last viewed 6 May 2021); https://policycn.com/policy_ticker/higher-expectations-for-large-scale-steel-enterprise/?iframe=1&secret=c8uthafuthefra4e (last viewed 6 May 2021), and www.xinhuanet.com/english/2019-04/23/c_138001574.htm (last viewed 6 May 2021).

([33]) Available at http://www.xinhuanet.com/english/2019-04/23/c_138001574.htm (last viewed 6 May 2021) and http://www.jjckb.cn/2019-04/23/c_137999653.htm (last viewed 6 May 2021).

([34]) As was the case of the merger between the private company Rizhao and the SOE Shandong Iron and Steel in 2009. See Beijing steel report, p. 58, and the acquired majority stake of China Baowu Steel Group in Magang Steel in June 2019, see https://www.ft.com/content/a7c93fae-85bc-11e9-a028-86cea8523dc2 (last viewed 6 May 2021).

([35]) http://www.fastener-cn.net/reception/association/constitution.jsp

(194) Both public and privately owned enterprises in the fasteners sector are subject to policy supervision and guidance. The following examples illustrate the above trend of an increasing level of intervention by the GOC in the fasteners and steel sectors. While the fasteners industry is very fragmented and consists mostly of SMEs, the investigation revealed connections between the party and the fastener industry associations, which group and represent the fastener producers. For example, the Ningbo Fasteners Industry Association clearly states on its website: 'Over the past few years, the association has been promoting and implementing party and national guidelines and policies'. The close link with the government is also underlined in the Articles of Association of this organisation, for example in Article 3: 'The purpose of this association: to comply with the national constitution, laws, regulations and national policies […], play a role as a bridge and link between the government and members to accelerate the technological progress of the fastener industry and promote the development of the fastener industry. In accordance with the Chinese Communist Party Constitution, this association establishes a party organization and undertakes the responsibilities of ensuring political direction, uniting the masses, promoting development, building advanced culture, serving talent development, and strengthening self-construction.' and further in Article 6.xviii: 'To undertake other tasks entrusted by the government' ([36]). According to the website of the of Fasteners Branch of the China Machinery General Part Industry Association, the fastener industry in Ningbo benefits from various support policies and support work made by the Ningbo Municipal Government (also in Zhejiang) and functional departments at all levels ([37]). The connection between the fasteners industry and the CCP is also evident in the Haiyan County (Zhejiang province): 'Haiyan is one of the three major fastener production bases in the country. In order to ensure the stable and orderly development of the fastener industry, Haiyan County adheres to the leadership of Party building, […], deepens the "industry chain + party building", grasps the "red interaction", and comprehensively promotes the work and production of enterprises producing fasteners. [..] Haiyan County gives full play to the role […] of the County Party committee. […] Hence, Haiyan has listed 15 enterprises of different sizes, […] as pilot demonstration enterprises, and grants a financial guarantee of up to 50 % of the renovation cost.' And further 'Haiyan gives full play to the role of the provincial (county) Fastener Industry Association party organization in coordinating all parties, taking the lead in matching demand and breaking information barriers. […]Impacted by the epidemic, the original steel raw material supply of the enterprises located in the fasteners park of the two innovation centers in Qinshan Street were stopped. After the Party organization of the County Fastener Industry Association was informed of the situation, it immediately coordinated the enterprises producing high-end steel raw materials in the County to provide fasteners producing enterprises with low-standard raw materials and ensure complementarity. In just one month, these enterprises had reached about RMB 100 million. ([38])'

(195) Further, policies discriminating in favour of domestic producers or otherwise influencing the market in the sense of Article 2(6a)(b), third indent of the basic Regulation are in place in the fasteners sector.

(196) A number of policy documents guiding specifically the development of the fasteners industry could be identified during the investigation. The fasteners industry is listed in the Announcement of the Ministry of Industry and Information Technology on the issuance of the Guiding Catalogue for the Promotion and Application of the First (Set) Major Technical Equipment (2019 Edition) ([39]) and also in the Industrial Structure Adjustment Guidance Catalogue (2019 NDRC) ([40]) as an encouraged industry.

(197) Next to the above mentioned documents on the central level, there are a number of guidance documents on the local, provincial or municipal level, which guide and support the development of the fasteners industry. For example, the 2019 Incentive policies for fastener industry in Hayan district, envisages that: 'Haiyan is the "Hometown of Fasteners", and the fastener industry is also one of the important traditional industries in Haiyan. […] In order to […] boost the innovation and development of the fastener industry in our county, our county recently issued the "Three-year Special Action Policy for the Digitalization and Smart Transformation of the Fastener Industry in Haiyan County". The scope of the related special funds covers companies implementing digital and smart transformation in the fastener industry' ([41]). The subsidy fund for the fasteners industry in Haiyan was further increased in 2020 ([42]).

([36]) http://www.fastener-cn.net/reception/association/constitution.jsp
([37]) http://www.afastener.com/news/detail-1795.html
([38]) https://www.cnjxol.com/54/202006/t20200616_631931.shtml
([39]) See https://www.miit.gov.cn/cms_files/filemanager/oldfile/miit/n973401/n5082759/n5084605/c7592204/part/7592209.pdf, page 55 listing strength fasteners
([40]) See http://www.gov.cn/xinwen/2019-11/06/5449193/files/26c9d25f713f4ed5b8dc51ae40ef37af.pdf, page 29
([41]) http://www.haiyan.gov.cn/art/2019/12/6/art_1512856_40973400.html
([42]) http://www.jgjzh.com/html/news/xxdt/2020/0426/625.html

(198) The fasteners industry benefits furthermore from governmental guidance and intervention concerning the main raw material to manufacture fasteners, namely steel. The steel industry is regarded as a key industry by the GOC ([43]). This is confirmed in the numerous plans, directives and other documents focused on steel, which are issued at national, regional and municipal level such as the 'Steel Industry Adjustment and Upgrading plan for 2016-2020', valid during the IP period. This Plan stated that the steel industry is "an important, fundamental sector of the Chinese economy, a national cornerstone ([44])". The main tasks and objectives set out in this Plan cover all aspects of the development of the industry ([45]).The 13th Five-Year Plan on Economic and Social Development ([46]), applicable during the IP, envisaged support to enterprises producing high-end steel product types ([47]). It also focuses on achieving product quality, durability and reliability by supporting companies using technologies related to clean steel production, precision rolling and quality improvement ([48]). The 'Catalogue for Guiding Industry Restructuring (2011 Version) (2013 Amendment)' ([49]) ('the Catalogue') lists steel as an encouraged industry.

(199) As can be seen from the above examples concerning steel, which is an important raw materials to produce fasteners, the GOC further guides the development of the fasteners sector in accordance with a broad range of policy tools and directives and controls virtually every aspect in the development and functioning of the sector. Thus, the fasteners industry benefits from governmental guidance and intervention concerning the main raw materials to manufacture fasteners, namely steel.

(200) In addition to the above, the fasteners producers are also beneficiaries of state subsidies, which clearly indicates the interest of the state in this sector. During the investigation, the Commission established that a number of financial incentive programmes were made available to the fasteners producers, including the 2019 Incentive policies for fastener industry in 2019 in the Haiyan district: 'Vigorously promote the digital and smart transformation of fastener enterprises: For the application of digital management systems and integrated control device softwares, special financial incentives will be granted depending on the implementation year, […], Enterprises implementing digital and smart transformation (or new purchases) and upgrade of their equipment in 2019 will be granted a one-time subsidy of up to 20 % of the actual investment in core equipment and a maximum of RMB 2 million; as for implementation in 2020, they will be granted a one-time subsidy of up to 15 % of the actual investment in core equipment and a maximum of RMB 1,5 million; as for implementation in 2021, they will be granted a one-time subsidy of up to 12 % of the actual investment in core equipment and a maximum of RMB 1 million yuan. ([50])' The subsidies were also available in 2020: 'On the basis of the provincial pilot special fund of 20 million, the county-level matching 1:1 funds are used for the transformation and upgrading of the fastener industry. Together with the "Three-Year Fastener Special Action Policy", the initial basic subsidy amount of 3 % or 6 % of the industry software transformation projects investment was increased to more 12 %, up to a maximum of 20 %, […], the proportion of investment subsidies for pure software projects in the fastener industry has reached more than 30 %, with a maximum of 50 %. Until now, more than RMB 12 million of special funds for fasteners have been paid, benefiting more than 30 enterprises. […] As regards technological transformation (investment) projects, the investment in production equipment must exceed RMB 3 million' ([51]).

(201) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives of supporting encouraged industries, including the production of steel as the main raw material used in the manufacturing of fasteners. Such measures impede market forces from operating freely.

([43]) Report, Part III, Chapter 14, p. 346 ff.
([44]) Introduction to The Plan for Adjusting and Upgrading the Steel Industry.
([45]) Report, Chapter 14, p. 347.
([46]) The 13th Five-Year Plan for Economic and Social Development of the People's Republic of China (2016-2020), available at https://en.ndrc.gov.cn/newsrelease_8232/201612/P020191101481868235378.pdf (last viewed 6 May 2021).
([47]) Report – Chapter 14, p. 349.
([48]) Report – Chapter 14, p. 352.
([49]) Catalogue for Guiding Industry Restructuring (2011 Version) (2013 Amendment) issued by Order No 9 of the National Development and Reform Commission on 27 March 2011, and amended in accordance with the Decision of the National Development and Reform Commission on Amending the Relevant Clauses of the Catalogue for Guiding Industry Restructuring (2011 Version) issued by Order No 21 of the National Development and Reform Commission on 16 February 2013.
([50]) http://www.haiyan.gov.cn/art/2019/12/6/art_1512856_40973400.html
([51]) http://www.jgjzh.com/html/news/xxdt/2020/0426/625.html

(202) The present investigation has not revealed any evidence that the discriminatory application or inadequate enforcement of bankruptcy and property laws according to Article 2(6a)(b), fourth indent of the basic Regulation in the fasteners sector referred to above in recital (188), would not affect the manufacturers of the product concerned.

(203) The fastener sector is also affected by the distortions of wage costs in the sense of Article 2(6a)(b), fifth indent of the basic Regulation, as also referred to above in recital (188). Those distortion affect the sector both directly (when producing the product concerned or the main inputs), as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in the PRC) ([52]).

(204) Moreover, no evidence was submitted in the present investigation demonstrating that the fasteners sector is not affected by the government intervention in the financial system in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, as also referred to above in recital (188). Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

(205) Finally, the Commission recalls that in order to produce fasteners, a number of inputs is needed. When the producers of fasteners purchase/contract these inputs, the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system that applies across all levels of government and sectors.

(206) As a consequence, not only the domestic sales prices of fasteners are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts A and B of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that in itself was produced in the PRC by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth.

(207) No evidence or argument to the contrary has been adduced by the GOC or the exporting producers in the present investigation.

(208) In sum, the evidence available showed that prices or costs of the product concerned, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case. Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as discussed in the following section.

(209) Following final disclosure, the GOC and the CCCME submitted comments in which they, inter alia, contested the legality of Art. 2(6a) of the basic Regulation, as well as the existence of significant distortions described by the Commission. The comments are addressed in detail below.

(210) The GOC submitted, first, with respect to the Report, that there is no evidence that the Report was approved or endorsed by the Commission, for which reason there are doubts whether the Report can represent the official position of the Commission. On the factual side, the Report is, according to the GOC, misrepresentative, one-sided and out of touch with reality. Moreover, according to the GOC the fact that the Commission has issued country reports only for few selected countries raises concerns about the most favoured nation treatment. Further, in the GOC's view, the Commission should not rely on the evidence in the Report, as this would be not in line with the spirit of fair and just law, as it effectively amounts to judging the case before trial.

([52]) See Implementing Regulation (EU) 2021/635 recitals 134-135 and Implementing Regulation (EU) 2020/508 recitals 143-144.

(211) The CCCME similarly argued that Article 2(6a) is applied in a discriminatory way towards China, thus violating the most favoured nation principle as the Commission only issued country specific Reports in the case of China and Russia. The CCCME also contested the evidentiary value of the Report.

(212) Second, the GOC and the CCCME argued that constructing normal value in accordance with Article 2(6a) of the basic Regulation is inconsistent with the ADA, in particular with Article 2.2. of the ADA which provides an exhaustive list of situations where the normal value can be constructed, with "significant distortions" not being listed among such situations. Moreover, using data from an appropriate representative country is, according to the GOC, inconsistent with GATT Article VI.1(b) and Article 2.2.1.1. of the ADA which require using the cost of production in the country of origin when constructing normal value.

(213) In addition, the CCCME recalled that Section 15 of the China's Protocol of Accession to the WTO allowed derogations from the standard methodology in determining normal value and price comparability under Article VI of the GATT 1994 and the ADA, but these derogations were time-limited, as they expired on 11 December 2016. According to the CCCME, after the expiry the Union should not deviate from the standard methodology in establishing the normal value of the exporting country producers and from using only domestic prices and costs of the exporting country, unless other provisions of the WTO agreements, including the ADA, permit otherwise. The CCCME claimed that Article 2(6a) of the basic Regulation, in so far as it allows the Union to use data of an appropriate representative country, goes against the Union's commitment under the WTO agreements, in particular its commitment under Section 15 of China's Protocol of Accession to the WTO.

(214) Third, the GOC claimed that the Commission investigating practices under Article 2(6a) of the basic Regulation are inconsistent with WTO rules insofar as the Commission, in violation of Article 2.2.1.1. of the ADA, disregarded records of the Chinese producer without determining whether those record are in accordance with the generally accepted accounting principles in China. In this connection, the GOC recalled that the Appellate Body in DS473 and the panel in DS494 asserted that according to Article 2.2.1.1 of the ADA, as long as the records kept by the exporter or producer under investigation correspond – within acceptable limits – in an accurate and reliable manner to all the actual costs incurred by the particular producer or exporter for the product under consideration, they can be deemed to "reasonably reflect the costs associated with the production and sale of the product under consideration", and the investigation authority should use such records to determine the production costs of the investigated producers.

(215) The CCCME similarly argued that Article 2(6a) of the basic Regulation is incompatible with WTO rules in that it provides that cost and prices of the exporting producer and in the exporting country must be disregarded due to significant distortions. The CCCME also recalled that the WTO Appellate Body in European Union – Anti-dumping measures on biodiesel from Argentina found that the Union acted inconsistently with Article 2.2.1.1 of the ADA by not using the records kept by the investigated producers as a basis to calculate the cost of production of the product under investigation. The CCCME notably stated that in light of that ruling, distortions in Argentina which were causing a difference between the domestic and international prices of the main raw material of the product concerned were not in itself a sufficient basis under Article 2.2.1.1 for concluding that producer's records did not reasonably reflect the costs of the raw material associated with the production and sale of the product concerned, or for disregarding those costs when constructing the normal value of the product concerned.

(216) With regard to the argument on the status of the Report under the EU legislation, the Commission recalled that Article 2(6a)(c) of the basic Regulation does not prescribe a specific format for the reports on significant distortions, neither does that provision define a channel for publication. The report is a fact-based technical document used only in the context of trade defence investigations. The report was therefore appropriately issued as a Commission staff working document as it is purely descriptive and does not express any political views, preferences or judgements. That does not affect its content, namely the objective sources of information concerning the existence of significant distortions in the Chinese economy relevant for the purpose of the application of Article 2(6a)(c) of the basic Regulation. As to the remarks on the Report being one-sided and misrepresentative, the Commission noted that the Report is a comprehensive document based on extensive objective evidence, including legislation, regulations and other official policy documents published by the GOC, third party reports from

international organisations, academic studies and articles by scholars, and other reliable independent sources. The Report has been publicly available since December 2017 so that any interested party would have ample opportunity to rebut, supplement or comment on it and the evidence on which it is based. The Commission further noted in this connection that while pointing to the Report's flaws in purely generic and abstract terms, the GOC has refrained from ever providing any rebuttal on the substance and evidence contained in the report. In response to the claims concerning the violation of the MFN treatment, the Commission recalled that, as provided for by Article 2(6a)(c) of the basic Regulation, a country report shall be produced for any country only where the Commission has well-founded indications of the possible existence of significant distortions in a specific country or sector in that country. Upon the entry into force of the new provisions of Article 2(6a) of the basic Regulation in December 2017, the Commission had such indications of significant distortions for China. The Commission also published a report on distortions in Russia in October 2020 ([53]), and, where appropriate, other reports may follow. Furthermore, the Commission recalled that the reports are not mandatory for the application of Article 2(6a). Article 2(6a)(c) describes the conditions for the Commission to issue country reports, and according to Article 2(6a)(d) the complainants are not obliged to use the report nor is the existence of a country report a condition to initiate an investigation under Article 2(6a) following Article 2(6a)(e). According to Article 2(6a)(e), sufficient evidence proving significant distortions in any country brought by complainants fulfilling the criteria of Article 2(6a)(b) is sufficient to initiate the investigation on that basis. Therefore, the rules concerning country-specific significant distortions apply to all countries without any distinction, and irrespective of the existence of a country report. As a result, by definition the rules concerning country distortions do not violate the most favoured nation principle.

(217) Concerning GOC's and CCCME's second and third arguments on the alleged incompatibility of Article 2(6a) of the basic Regulation with the WTO law, in particular the provisions of Article 2.2. and 2.2.1.1. ADA, as well as the findings in DS473 and DS494, the Commission reiterated its view expressed in recitals (72) and (73) of the provisional Regulation that Art. 2(6a) of the basic Regulation is fully in line with the EU's obligations under the WTO law. Moreover, concerning the claim that the concept of significant distortions included in Article 2(6a) of the Basic Regulation is not listed among the situations in which it is permissible to construct the normal value pursuant to Article 2.2 ADA, the Commission recalled that domestic law does not need to use the exact same terms as the covered Agreements in order to be compliant with those Agreements, and that it considers Article 2(6a) to be fully compliant with the relevant rules of the ADA (and, in particular, the possibilities to construct normal value provided in Article 2.2 ADA). In addition, with respect to DS494, the Commission recalled that both the EU and the Russian Federation appealed the findings of the Panel, which are not final and therefore, according to standing WTO case-law, have no legal status in the WTO system, since they have not been adopted by the Dispute Settlement Body. In any event, the Panel Report in that dispute specifically considered the provisions in Article 2(6a) of the basic Regulation to be outside the scope of that dispute. In respect of DS473, the relevant ruling did not concern the application of Article 2(6a) of the basic Regulation, but of a specific provision of Article 2(5) of the basic Regulation. It is the Commission's view that WTO law as interpreted by the WTO Panel and the Appellate Body in DS473 permits the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. The existence of significant distortions renders costs and prices in the exporting country inappropriate for the construction of normal value. In these circumstances, Article 2(6a) of the basic Regulation envisages the construction of costs of production and sale on the basis of undistorted prices or benchmarks, including those in an appropriate representative country with a similar level of development as the exporting country. In this respect, a situation existing in respect of the market for the like product or its inputs (such as the one found in China) may amount to a situation where the exporter's domestic sales of the like product do not permit a proper comparison with the exporter's export sales of the product under consideration.

(218) As regards to commitments under Section 15 of China's Protocol of Accession to the WTO, the Commission recalls that in anti-dumping proceedings concerning products from China, the parts of Section 15 of the Protocol that have not expired continue to apply when determining normal value, both with respect to the market economy standard and with respect to the use of a methodology that is not based on a strict comparison with Chinese prices or costs.

(219) Consequently, the Commission rejected the GOC's and the CCCME's arguments.

([53]) Commission Staff Working Document SWD(2020) 242 final, 22.10.2020, available at https://trade.ec.europa.eu/doclib/docs/2020/october/tradoc_158997.pdf

3.4. **Representative country**

3.4.1. *General remarks*

(220) The choice of the representative country pursuant to Article 2(6a) of the basic Regulation was based on the following criteria:

(1) A level of economic development similar to China. For this purpose, the Commission used countries with a gross national income per capita similar to China on the basis of the database of the World Bank ([54]);

(2) Production of the product concerned in that country;

(3) Availability of relevant public data in the representative country;

(4) Where there was more than one possible representative country, preference would be given, where appropriate, to the country with an adequate level of social and environmental protection.

(221) As mentioned in recitals (172) and (173), the Commission made available two notes to the file on the sources for the determination of the normal value on which interested parties were invited to comment: the Note of 5 February ('First Note') and the Note of 4 May ('Second Note'). These notes described the facts and evidence underlying the relevant criteria and addressed the comments received from the parties on those elements and on the relevant sources. The Commission's assessment of the facts and the evidence and conclusions can be summarised as follows.

3.4.2. *A level of economic development similar to China*

(222) In the First Note, the Commission identified fifty-five countries with a similar level of economic development as China. In the investigation period, the World Bank classified these countries as 'upper-middle income' countries on a gross national income basis. However, a sizeable production of the product under investigation was known to take place only in eight of these countries, namely in Brazil, Colombia, Indonesia, Malaysia, Mexico, Russia, Turkey and Thailand.

3.4.3. *Availability of relevant public data in the representative country*

(223) In the First Note, the Commission provided information on relevant readily available data, notably financial information of companies producing the product under investigation in Brazil, Russia, Turkey and Thailand, and on the imports into these countries of the raw material to produce the product under investigation. In the Second Note, the Commission confirmed the availability of financial information of one company producing the product under investigation in Malaysia, as identified by the interested parties. No companies producing the product under investigation with readily available financial information were found in Colombia, Indonesia and Mexico.

(224) In the Second Note, the Commission considered that, according to the Global Trade Atlas ('GTA') database, more than 75 % of the imports of wire of alloy steel (HS 722790) into Brazil and Malaysia, were sourced in the PRC and non-WTO countries listed in Annex I to Regulation (EU) 2015/755 of the European Parliament and the Council ([55]). Wire of alloy steel represents more than 45 % in the cost of production of fasteners. Based on this, the Commission considered that the import value of wire of alloy steel was likely undermined and unrepresentative in comparison with the other available representative countries like Turkey or Thailand. Therefore, the Commission concluded that Brazil and Malaysia had a lower quality set of readily available data for undistorted value and were not considered appropriate representative countries within the meaning of Article 2(6a)(a) of the basic Regulation.

(225) In the Second Note, the Commission excluded Russia from its consideration as an appropriate representative country within the meaning of Article 2(6a)(a) of the basic Regulation, because all interested parties agreed that Russia was not a suitable representative country for this investigation.

([54]) World Bank Open Data – Upper Middle Income – https://data.worldbank.org/income-level/upper-middle-income

([55]) Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33).

(226) In the Second Note, the Commission noted that, that Thailand was the biggest market producing standard and non-standard fasteners when compared to all other potential representative countries, and twice as large as Turkey in terms of production value and internal demand. In light of these considerations, the Commission notified its intention to use Thailand as the appropriate representative country and to use the financial data available for the six companies in Thailand listed in the Second Note, in accordance with Article 2(6a)(a), first ident of the basic Regulation.

3.4.4. *Comments of the interested parties*

(227) Following the Second Note, EIFI claimed that Thailand was not an appropriate representative country based on the following arguments:

— There would be evidence of unfair trade practices from Thailand. In support of this claim, EIFI referred to data provided in the complaint and submitted quotations of various actors in Thailand who reported unfair trade practices. In addition, EIFI claimed that many Thai producers had a low profitability.

— Thailand would not meet the requirement of an adequate level of social and environmental protection as set out in Article 2(7) of the basic Regulation.

(228) The alleged unfair trade practices from Thailand have not been confirmed by any ongoing anti-dumping investigation and were therefore not further considered. Regarding the level of social and environmental protection in Thailand, in accordance with Article 2(6a)(a) first indent of the basic Regulation, this is only evaluated in case there is more than one potential representative country available. Since this was not the case in the present investigation as detailed in this section, the arguments of EIFI in this respect were dismissed.

(229) The CCCME argued that a number of fasteners producers in Thailand were owned by Japanese car manufacturers. Those producers would mainly produce non-standard fasteners for the automotive industry in Japan and for this purpose import high quality raw materials from their related companies in Japan. The average import price in Thailand would therefore reflect these higher priced imports and would not be representative for the cost of the Chinese producers that were mainly manufacturing standard fasteners using cheaper raw materials. Furthermore, the CCCME claimed that import prices from Japan would not be at arm's length since they were mainly a result of transactions between related companies. Based on these arguments, the CCCME requested that should Thailand be used as representative country, import data should be adjusted by deducting imports from Japan from the total imports. This claim was supported by the sampled exporting producer Ningbo Jinding and EFDA.

(230) The CCCME did not provide any evidence on the scale of Japanese imports to Thailand of raw materials destined for the production of non-standard fasteners specifically used in the automotive sector. Likewise, there was no evidence provided, that imports were made from related parties or that import prices were distorted. The mere price difference between Japanese imports and other third countries imports into Thailand was not considered sufficient to conclude that import prices from Japan were distorted.

(231) EIFI argued that the information and arguments brought forward by the CCCME and EFDA demonstrated that Thailand was not a suitable representative country. They emphasised, however, that Chinese exporting producers produce and export all types of fasteners to the Union, in particular also non-standard fasteners.

(232) Based on GTA, the Commission analysed Japanese export prices of the four major raw materials (i.e. 7228 30 (Bars and rods of alloy steel (other than stainless), not further worked than hot-rolled, hot-drawn or extruded), 7227 90 (Bars and rods of alloy steel (other than stainless), hot-rolled, in irregularly wound coils), 7213 99 (Bars and rods, hot-rolled, in irregularly wound coils, of iron or non-alloy steel, N.E.S.O.I.), 7213 91 (Bars and rods, hot-rolled, in irregularly wound coils, of iron or non-alloy steel, of circular cross-section measuring less than 14mm in diameter)). During the IP, Thailand was one of the top five Japan's main export markets, representing 17 % of its total exports of these materials, while the top five (excluding China) represented above 60 %. The average export price to Thailand was by 17 % higher than to the other of the top five countries (0,90 EUR/kg price for Thailand and 0,77 EUR/kg to the other of the top five export countries). Based on this information, it cannot be concluded that Japanese export prices to Thailand are unreasonably high and unrepresentative.

(233) Based on the above, the Commission dismissed the argument made by the interested parties that import prices of factors of production into Thailand were unrepresentative or unreasonable.

(234) The CCCME, EFDA and one sampled exporting producer claimed that Malaysia was the most appropriate representative third country, based on the following arguments:

— Malaysia is mainly producing standard fasteners; therefore, its product mix is similar to that of China.

— The financial data available for one Malaysian producer, namely Chin Well Fasteners Co. Sdb. Bhd. covers exactly the IP in contrast to the data available in the D&B database for Thai producers that cover either the year 2019 or the year 2020. In addition, neither year is representative for the IP as data for 2019 had been unaffected by the COVID-19 pandemic, while data for 2020 had been affected in full by it.

— For the Malaysian producer in question audited accounts with accompanying notes and audit report are available and data can be distinguished per business segment, while D&B data might go beyond the product concerned or the relevant business segment. Financial data from the D&B database are therefore less reliable.

— The CCCME contested that import prices for key factors of production into Malaysia were not representative. Namely, import volumes of wire of alloy steel into Malaysia (under HS code 722790) are higher than the combined import volumes under the same HS code into Brazil and Russia, including Chinese and non-WTO countries' imports. The average import price into Malaysia without Chinese and non-WTO countries' imports is similar to the import price into Turkey. Since import prices into Turkey should not be considered as distorted (as there are no imports from China or non-WTO countries), it follows that import price into Malaysia cannot be considered as distorted or unrepresentative either.

(235) The Commission found that imports to Malaysia under HS code 722790 from undistorted sources (i.e. sources other than China and non-WTO countries) were lower than import volumes to other potential representative countries and considered less reliable in terms of prices. Thus, contrary to CCCME's claim, imports under HS code 722790 to Thailand amounted to around 187 000 tonnes and were thus nearly twelve times higher than import volumes to Malaysia that amounted to 16 000 tonnes.

(236) Furthermore, the Commission did not find any company in Malaysia that had financial data for 2019 available. Regarding Chin Well Fasteners Co. Sdn. Bhd. suggested by the interested parties, the annual report of its holding company (Chin Well Holdings Berhad) was indeed available on the company's website. However, the annual report included the statements of the financial position of the Group and of the holding company at 30 June 2020 ([56]). Based on this report ([57]), the Group had the following activities:

(1) fasteners production in Penang, Malaysia and Dong Nai Province, Vietnam;

(2) trading activities in steel bar, screws, nuts, bolts and other fastening products;

(3) manufacturing of precision galvanised wire, annealing wire, bridge wire, hard drawn wire, PVC wire, bent round bar and grill mesh;

(4) investment holding.

(237) The profit and loss statement of the Group included therefore other activities than the production of fasteners in Malaysia, in particular the production of fasteners in Vietnam. Thus, the Commission considered it inappropriate to use the annual report of Chin Well Holdings Berhad for the purpose of this investigation. The arguments of the interested parties concerned in this regard were therefore dismissed.

([56]) https://disclosure.bursamalaysia.com/FileAccess/apbursaweb/download?id=203916&name=EA_DS_ATTACHMENTS, Annual report 2020, Report on the Audit of the Financial Statements, p. 54.

([57]) https://disclosure.bursamalaysia.com/FileAccess/apbursaweb/download?id=203916&name=EA_DS_ATTACHMENTS, Annual report 2020, Report on the Audit of the Financial Statements, p. 10.

(238) EIFI and EFDA proposed Taiwan as a suitable representative country, arguing it was one of the largest producers of fasteners worldwide.

(239) As noted in the recital (220), in accordance with Article 2(6a) of the basic Regulation one of the criteria to select the representative country was a level of economic development similar to China. For this purpose, the Commission used countries with a gross national income per capita similar to China based on the database of the World Bank. Since Taiwan was not among these countries, the proposal made by the interested parties was dismissed.

(240) The CCCME and EFDA also claimed that interested parties could not exercise their rights of defence appropriately given that they could not perform searches in the databases, such as GTA and D&B in the absence of a subscription. Also, the Commission did not provide any extracts from the D&B database nor a description of the methodology used by D&B to obtain the relevant data. As a result, interested parties had not been provided with the data that underlies the determination of an appropriate representative country.

(241) The Commission addressed these concerns by providing on the open case file the extracts from D&B database on the companies in Thailand and from the GTA database on the imports of the major factors of production to Malaysia (since these were missing in the First Note) ([58]). The extract from the D&B database included links to the D&B website referring to the general methodology, namely a collection of the Balance Sheet, Profit/Loss and key ratios from number of companies worldwide, per country, including the explanations of these key ratios.

(242) Finally, the CCCME and EFDA argued that out of the six companies in Thailand listed in the Second Note which financial data was intended to be used for the determination of SG&A and profit for the constructed normal value, several were not appropriate for the following reasons:

— One company (Topy Thailand) mostly produced products that were not the product concerned. The small quantities of the product concerned produced were non-standard fasteners for the automotive sector. Furthermore, SG&A was very low, suggesting that the company did not sell to unrelated customers and sales prices and profit margin were therefore unreliable.

— Another company (TR Formac) did not have a production plant in Thailand.

— Another company (S.J Screwthai) produced a large variety of products that were not product concerned (e.g. anchor bolts) and appeared to be focused on non-standard fasteners.

— Another company (Thaisin Metals Industries Co., Ltd.) appeared to be focused on non-standard fasteners.

(243) EIFI agreed with the assessment by these parties and noted that for some of the companies listed SG&A and profit was too low (i.e. profit margin below the 6 % minimum target profit as established by Article 7(2c) of the basic Regulation).

(244) The Commission reviewed the information available for the six companies in Thailand and based on their websites confirmed that:

— Topy Thailand produced washers, which fall under the product scope, amongst other products that were not covered by this investigation. The Commission kept this company therefore in the analysis.

— TR Formac did not have a production plant in Thailand. The Commission therefore excluded this company from the analysis.

([58]) Document reference t21.003886 of 17/05/2021.

— S.J Screwthai was an anchor bolt manufacturer, and also produced screws, concrete anchors and washers. As detailed in recital (151), anchors, in particular when combined with bolts or screws, fall within the scope of this investigation. The company also produced several other types of fasteners (for example, screws and washers). The Commission kept this company in the analysis.

— Thaisin Metals Industries Co., Ltd. was a bolt screw producer, also producing self-tapping screws, machine screws, hexagon bolts, socket hex cap for a variety of sectors. Since there were several types of fasteners produced by this company, including non-standard fasteners, the Commission kept this company in the analysis.

(245) No substantiated evidence was provided on why the SG&A level of the Thai companies was too low. Moreover, the minimum profit level referred to by EIFI was the level of profitability the Union industry can reasonably expect under normal conditions of competition in the Union, before the increase of dumped imports from the country under investigation (target profit) and is not relevant in the determination of an appropriate representative country.

(246) Based on the analysis above, the Commission decided to use Thailand as the appropriate representative country and use the financial data of five companies ([59]) for the constructed normal value in accordance with the Article 2(6a)(a) of the basic Regulation.

3.4.5. *Level of social and environmental protection*

(247) Having established that Thailand as the appropriate representative country, based on all of the above elements, there was no need to carry out an assessment of the level of social and environmental protection in accordance with the last sentence of Article 2(6a)(a) first indent of the basic Regulation.

3.4.6. *Conclusion*

(248) In view of the above analysis, the Commission decided to consider Thailand as the appropriate representative country for the purpose of Article 2(6a)(a) of the basic Regulation.

3.5. **Sources used to establish undistorted costs for factors of production**

(249) On the basis of the information submitted by interested parties and other relevant information available on the file, the Commission established, in the First Note, an initial list of factors of production, such as materials, energy and labour used for the production of the product under investigation.

(250) In accordance with Article 2(6a)(a) of the basic Regulation, the Commission also identified sources to be used for establishing undistorted prices and benchmarks. The main source that the Commission proposed to use included the GTA. Finally, in the same note, the Commission identified the Harmonised System (HS) codes of factors of production which, on the basis of information provided by the interested parties, were initially considered to be used for the GTA analysis.

(251) The Commission invited the interested parties to comment and propose publicly available information on undistorted values for each of the factors of production mentioned in that Note.

(252) Subsequently, in the Second Note, the Commission updated the list of factors of production based on the comments of the parties and information submitted by the sampled exporting producers in the questionnaire reply.

(253) Considering all the information submitted by the interested parties the following factors of production and their sources were identified with regard to Thailand in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

([59]) Bangkok Fastenings Co. Ltd., Topy Fasteners (Thailand) Ltd, Thai Sin Metal Industries Co. Ltd., S.J Screwthai Co. Ltd., Sangthong Salakphan Co. Ltd.

Table 1

Factors of production and sources of information

No.	Factor of Production ('FOP')	Code in the Thai tariff classification	Undistorted value
	Raw Materials		
1	Bars And Rods, Hot-Rolled, In Irregularly Wound Coils, Of Iron Or Nonalloy Steel, Of Circular Cross-Section Measuring Less Than 14Mm In Diameter, other than used for used for producing soldering sticks and concrete reinforcement	7213 91 90	4,00 CNY/kg
2	Bars And Rods, Hot-Rolled, In Irregularly Wound Coils, Of Iron Or Nonalloy Steel, other than those used for producing soldering sticks	7213 99 90	7,00 CNY/kg
3	Bars And Rods Of Alloy Steel (Other Than Stainless), Hot-Rolled, In Irregularly Wound Coils, Nesoi	7227 90 00	6,00 CNY/kg
4	Other bars and rods, not further worked than hot-rolled, hotdrawn or extruded	7228 30 90	7,93 CNY/kg
5	Petroleum Oils, Oils From Bituminous Minerals (Other Than Crude) & Products Containing By Weight 70 % Or More Of These Oils, Not Biodiesel Or Waste	2710 19	2,43 CNY/L
6	Methanol (methyl alcohol)	2905 11	0,52 CNY/kg
7	Pallets, Box Pallets And Other Load Boards; Pallet Collars;	4415 20	4,99 CNY/kg
8	Cartons, boxes and cases, of corrugated paper or paperboard	4819 10	15,96 CNY/kg
9	Sacks And Bags (Including Cones), Of Polymers Of Ethylene	3923 21	32,47 CNY/kg
10	Zinc, Not Alloyed, Containing 99,9 % Or More By Weight Of Zinc, Unwrought	7901 11	17,12 CNY/kg
11	Corrugated paper and paperboard, whether or not perforated	4808 10	8,14 CNY/kg
	Labour		
12	Labour wages in manufacturing sector	[N/A]	23,63 CNY/hour
	Energy		
13	Natural gas	[N/A]	2,77 CNY/m^3
14	Electricity	[N/A]	Ranges from 0,737 to 1,019 CNY/kWh [60]
15	Water	[N/A]	7,27 CNY/m^3

[60] Company specific and based on respective peak & off-peak consumption.

3.5.1. *Raw materials used in the production process*

(254) In order to establish the undistorted price of raw materials the Commission used as a basis the weighted average import price (CIF) to the representative country, as reported in the GTA, from all third countries excluding the PRC and countries listed in Annex 1 of Regulation (EU) 2015/755 ([61]). The Commission decided to exclude imports from the PRC as it concluded that it was not appropriate to use domestic prices and costs in China due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation (recitals (187) to (208)). Absent any evidence showing that the same distortions did not equally affect products intended for export, the Commission considered that the same distortions affected exports. The weighted average import price was adjusted for import duties, where appropriate. After excluding imports from the PRC and non-WTO Members to Thailand, the volume of imports from other third countries of raw materials remained representative (ranging from 27,1 % to 99,9 %).

(255) For a small number of factors of production the actual costs incurred by the cooperating exporting producers represented a negligible share of total raw material costs in the IP. As the value used for those had no appreciable impact on the dumping margin calculations, regardless of the source used, the Commission treated those factors of production as consumables as explained in recitals (268) and (269). That same approach was followed for steam, used by one of the sampled exporting producers. Whilst steam represented a negligible part of its costs of production, it is generally not internationally traded or publically quoted commodity. As such, an appropriate benchmark was not readily available.

(256) The Commission expressed transport cost incurred by the sampled exporting producers for the supply of raw materials as a percentage of the actual cost of such raw materials and then applied the same percentage to the undistorted cost of the same raw materials in order to obtain the undistorted transport cost. The Commission considered that, in the context of this investigation, the ratio between the exporting producer's raw material and the reported transport costs could be reasonably used as an indication to estimate the undistorted costs of raw materials when delivered to the company's factory.

(257) In their comments on the Second Note, the CCCME argued that the Commission should not include import duties on raw materials paid in the representative country when constructing normal value, because (i) there was no legal basis to do so, and that (ii) the Chinese exporting producers mainly source raw materials domestically in China. The party argued that, according to Article 2(6a)(a) of the basic Regulation, in case the Commission relies on a representative country, the costs relied upon must be *"corresponding costs of production and sale in an appropriate representative country"*. The corresponding costs in China would, however, not include import duties. In addition, the CCCME argued that GTA data is based on CIF prices and therefore already include additional costs such as international transport, insurance, and handling costs, which do not incur in the case of domestic purchases by the Chinese exporting producers.

(258) The Commission considered that, according to Article 2(6a)(a) of the basic Regulation, the normal value should reflect the undistorted price of the raw materials in the representative country (in this case Thailand) as the relevant proxy to construct the normal value in the country of origin. It should therefore reflect the price that a producer of fasteners would pay in Thailand for the raw materials delivered at the factory gate. If import duties were not added, the resulting benchmark would not reflect the undistorted price on the Thai market, but merely the average CIF price in the countries exporting the raw materials in question. This would be contrary to Article 2(6a)(a) of the basic Regulation and thus these claims were rejected.

([61]) Article 2(7) of the basic Regulation provides that domestic prices in those countries cannot be used for the purpose of determining normal value.

3.5.2. *Labour*

(259) To establish the benchmark for labour costs the Commission used the most recent statistics published by the Thai National Statistics Office ([62]), which provided more detailed information on wages and non-wage benefits in different economic sectors by quarter than the International Labour Organisation ('ILO'). The Thai National Statistics Office publishes detailed information on wages in different economic sectors in Thailand. The Commission established the benchmark based on the Manufacturing Industry sector and the information found in a document prepared by KPMG on taxes and levies in Thailand ([63]).The Commission used this information to establish the social security tax payed by the employer. The Commission calculated an hourly salary in manufacturing, to which additional labour related costs borne by the employer were added.

(260) As mentioned in recital (183), during the RCCs the Commission was unable to verify the actual hours the staff in the three sampled exporting producers worked on the product concerned. Therefore, the consumption of labour at all three sampled exporting producers was based on the best facts available in accordance with Article 18 of the basic Regulation. For one of these exporting producers, the Commission was, however, able to gather the information on the difference between the actual hours reported and the actual hours worked by its staff. The average labour hours per kilogram of product under investigation produced were used for all three exporting producers as the best facts available.

3.5.3. *Electricity*

(261) To establish the benchmark price for electricity, the Commission used the quotation of the electricity price for business, industrial and state enterprises available on the website of the Metropolitan Electricity Authority ([64]), 4.2 Time of use tariff (TOU tariff). The benchmark was established based on the price for electricity published for the billing month of November 2018 and the applicable yearly inflation rate ([65]). The Commission used the data on the industrial electricity prices in the corresponding consumption band 4.2.3: Below 12 kV.

(262) The benchmark was established for each sampled exporting producer based on respective peak & off-peak consumption, when available. The resulting usage was allocated to the peak & off-peak rates. If a sampled exporting producer did not distinguish peak & off-peak consumption, peak rates were applied.

(263) The demand charge was established, in kW, based on the number of employees employed in the production of the product concerned to derive an average number of working hours to provide a fixed cost. The weighted average rate for both peak & off-peak was established as a respective benchmark for each sampled exporting producers.

3.5.4. *Gas*

(264) To establish the benchmark for gas, the Commission used the prices of gas for companies (industrial users) in Thailand published by the Energy Policy and Planning Office of the Ministry of Energy ([66]). The prices differed per consumption volume. The Commission used the corresponding prices from Table 7.2-4: Final Energy Consumption Per Capita. The Commission used as benchmark the most recent data relating to 2019.

(265) The Commission converted the consumption from 1 000 Tonnes of oil equivalent to cubic meter ([67]) to establish the natural gas benchmark.

(266) For both, electricity and gas, the Commission used prices at net level (without VAT).

([62]) http://www.nso.go.th/sites/2014en/Pages/Statistical%20Themes/Population-Society/Labour/Labour-Force.aspx
([63]) https://home.kpmg/xx/en/home/insights/2011/12/thailand-other-taxes-levies.html
([64]) http://www.mea.or.th/en/profile/109/114
([65]) https://www.bot.or.th/English/MonetaryPolicy/MonetPolicyComittee/MPR/Monetary%20Policy%20Report/MPR_EN_March2020.pdf p19.
([66]) http://www.eppo.go.th/index.php/en/en-energystatistics/energy-economy-static
([67]) https://www.convert-me.com/en/convert/energy/mcmsgas/mcmsgas-to-toe.html?u=toe&v=8452000

3.5.5. *Water*

(267) The price of water in Thailand is published by the Provincial Waterworks Authority ([68]). To establish the benchmark price for water, the Commission used the average rate across all regions for which the relevant information was publically available.

3.5.6. *Consumables/negligible quantities*

(268) Due to the large number of factors of production of the sampled exporting producers, some of the raw materials that only had a negligible weight in the total cost of production of the exporting producer as well as on a product type level were grouped under consumables.

(269) The Commission calculated the percentage of the consumables on the total cost of raw materials and applied this percentage to the recalculated cost of raw materials when using the established undistorted prices.

3.5.7. *SG&A and profit*

(270) According to Article 2(6a)(a) of the basic Regulation, '*the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits*'.

(271) For establishing an undistorted and reasonable amount for SG&A and profits, the Commission used the SG&A and profit of the five companies in Thailand, which had been identified as producing fasteners as concluded in recital (246). Therefore, as outlined in this recital, the Commission used the figures relating to 2019 and 2020 financial data as those were the most recent available data to the Commission. The five companies used were the following:

(1) Topy Fasteners (Thailand) Limited;

(2) Thaisin Metal Industries Company Limited;

(3) Bangkok Fastening Company Limited;

(4) S.J Screwthai Company Limited;

(5) Sangthong Salakphan Company Limited.

3.5.8. *Calculation of normal value*

(272) Based on the undistorted prices and benchmarks described above, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.

(273) To establish the undistorted costs of manufacturing for each legal entity manufacturing and exporting the product concerned, the Commission replaced, for each exporting producer, factors of production purchased from unrelated parties by the factors of production identified in Table 1.

(274) First, the Commission established the undistorted costs of manufacturing based on the factors of production purchased by each of the companies. It then applied the undistorted unit costs to the actual consumption of the individual factors of production of each of the sampled exporting producers.

(275) Second, to arrive at the total undistorted costs of manufacturing, the Commission added manufacturing overheads. Manufacturing overheads incurred by the sampled exporting producers were increased by the costs of raw materials and consumables referred to in recitals (268) and (269) and subsequently expressed as a share of the costs of manufacturing actually incurred by each of the sampled exporting producers. This percentage was applied to the undistorted costs of manufacturing.

([68]) https://en.pwa.co.th/contents/service/table-price

(276) Finally, the Commission added SG&A and profit, determined on the basis of the five Thai companies (see recitals (486) and (487)). SG&A expressed as a percentage of the cost of manufacturing and applied to the undistorted total cost of manufacturing, amounted to 12,4 %. The profit expressed as a percentage of the costs of goods sold ('COGS') and applied to the total undistorted costs of manufacturing, amounted to 6,2 %.

(277) On that basis, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.

3.6. **Export price**

(278) The three sampled exporting producers exported to the Union directly to independent customers therefore their export price was established on the basis of the export price actually paid or payable, in accordance with Article 2(8) of the basic Regulation.

3.7. **Comparison**

(279) The Commission compared the normal value and the export price of the sampled exporting producers on an ex-works basis. 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. Based upon the actual figures of the cooperating company, adjustments were made for handling charges, freight, insurance, packing, credit costs and bank charges.

3.8. **Dumping margins**

(280) For the sampled exporting producers 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 to calculate the dumping margin, in accordance with Article 2(11) and (12) of the basic Regulation.

(281) For the non-sampled cooperating exporting producers, the Commission calculated the weighted average dumping margin established for the sampled exporting producers, in accordance with Article 9(6) of the basic Regulation.

(282) As set out in recital (176), the level of cooperation from exporting producers in China was considered low. Therefore, for all other exporting producers in China, the Commission considered it appropriate to establish the dumping margin on the basis of the highest dumping margin established for the most representative product type sold by the sampled exporting producers. Therefore, the Commission considered it appropriate to set the country-wide dumping margin applicable to all other non-cooperating exporting producers at the level of 86,5 %.

(283) The definitive dumping margins, taking into account the comments from the interested parties following the final disclosure addressed in the section 3.9 below, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin
Jiangsu Yongyi Fastener Co., Ltd.	22,1 %
Ningbo Jinding Fastening Piece Co., Ltd.	46,1 %
Wenzhou Junhao Industry Co., Ltd.	48,8 %
Other cooperating companies	39,6 %
All other companies	86,5 %

3.9. **Comments from the interested parties following the final disclosure**

3.9.1. *Status of the CCCME*

(284) EIFI has reiterated that the CCCME cannot be considered as a representative organisation and should not be granted the status of interested party in the current investigation due to the following reasons:

(a) the CCCME cannot be a representative organisation for the purposes of the basic Regulation and the EU public policy, because it does not represent the interests of its members in the sense intended by the basic Regulation. Rather it is a body representing the People's Republic of China. EIFI has claimed that the CCCME is an entity with the declared objective of rectifying and regulating national market economic order. The section of the CCCME website dedicated to qualification for membership links the CCCME with the Ministry of Commerce and the State Council;

(b) it is a matter of EU public policy both in relation to the basic Regulation and in relation to EU competition law that representative associations comply with the EU public policy and in particular the EU competition law. An entity like the CCCME, the purpose of which is to prevent competition, both in the domestic and in export markets, cannot, by definition, be a representative association for the purposes of the EU law. Namely, representative associations in the EU are bound by competition law. Most associations, when they meet, have provisions in place to ensure that their members do not engage in anti-competitive behaviour when discussing issues of interest to the industry as a whole. This cannot include discussions on volumes and prices and markets, while the CCCME seeks to control competition and to coordinate the responses of the exporting producers in the current proceeding,

(c) in addition, the CCCME knowingly allows the Commission to consider Shanghai Foreign Trade (Pudong) Co. Ltd. as an exporting producer, when it is in fact a trader and should not appear in the list of other cooperating exporting producers.

(285) The CCCME submitted to the Commission 20 Powers of attorney ([69]) issued by fasteners producers in China empowering the CCCME to represent them in the current investigation. This information has been duly available for inspection by the interested parties. The reasons brought forward by EIFI do not put into question that the CCCME is empowered to represent the producers in this investigation and its claim is therefore dismissed. Thus, the Commission considered that CCCME was an interested party insofar as it represented those specific fasteners producers in China.

3.9.2. *Selection of the representative country*

(286) The CCCME and EFDA reiterated their claim that Malaysia is the most appropriate representative third country within the meaning of Article 2(6a)(a) of the basic Regulation rather than Thailand for a number of reasons. Amongst others they claimed that companies in Malaysia mainly produce standard fasteners and therefore, their product mix is similar to that of Chinese producers.

(287) In relation to the import price of the wire of alloy steel (HS 722790), raw material for production of fasteners to Malaysia, the CCCME has claimed that it is representative, since it is very similar to the level of the import price to other countries, like Turkey or the EU, while the import prices of the same raw material to Thailand (if Japanese imports are included) are not in line with the import price in these other countries and therefore cannot be considered as representative.

(288) The CCCME further claimed that in relation to the import volume of the same raw material (wire of alloy steel (HS 722790)) to Malaysia, in relative terms, the majority of imports to both Malaysia and Thailand are from China and non-WTO countries. The relative quantitative analysis can thus not be a valid reason why the Commission selected Thailand over Malaysia. The fact that the remaining import volume of the wire of alloy steel (after deducting imports from China and other non-WTO sources) is lower in Malaysia than in Thailand does not make it

([69]) Submission t21.000687.

unrepresentative, as it would still amount to 16 000 tonnes which can be considered as sufficient to be considered as representative. In addition, the Commission fails to provide any evidence showing that the import price into Malaysia are not representative on that basis, or that the import price in Thailand would be more representative simply due to a larger import quantity.

(289) The CCCME added that it is unjustified that the Commission has only focused on imports volumes of the wire of alloy steel (HS 722790) to exclude Malaysia, while imports of other raw materials (HS 721391, HS 721399, and HS 722830) together represent around the same percentage of the Chinese fasteners producers' total cost of production. In fact, when taking all four raw materials together, 70 % of imports into Malaysia are from countries other than the PRC and non-WTO Members, while in Thailand only 54 % of imports of these four raw materials come from sources other than the PRC and non-WTO Members.

(290) As explained in the recital (224), more than 75 % of the imports of wire of alloy steel (HS 722790) into Malaysia were sourced in the PRC and non-WTO countries. Furthermore, as stated in the recital (235), imports to Thailand of the same raw material were nearly twelve times higher. The Commission considered that these facts alone are sufficient to conclude that Malaysian imports are less appropriate in terms of prices than Thai imports, since they were seemingly affected by competition with imports from the PRC and non-WTO countries which represented together more than 80 % of all imports of this raw material into Malaysia). Indeed, in the Second Note the Commission stated that the import price from other sources into Malaysia was aligned with the very low import price from the PRC and other non-WTO countries. This price of 4,43 CNY/tonnes was closer to the import price from the PRC and other non-WTO countries (3,9 CNY/tonne) than to import price to Turkey (4,93 CNY/tonne), as claimed by the party.

(291) Furthermore, based on the data of the sampled exporting producers in the PRC, the other three major raw materials collectively (HS 721391, HS 721399, and HS 722830) represented lower share in the cost of production of fasteners than wire of alloy steel (HS 722790) by at least 10 %. Nonetheless, the Commission likewise disclosed the relative weight of imports of these other raw materials from the PRC and non-WTO countries in the Second Note, which was higher in Malaysia than in Thailand, except for one of them (HS 721391). Based on the above, Malaysia was not considered an appropriate representative country within the meaning of Article 2 (6a)(a) of the basic Regulation. The product mix of the fasteners produced in Malaysia was therefore not analysed and the claims made in this regard were rejected.

(292) The CCCME further claimed that the absence of D&B data for Malaysian producers is a gap in the Commission's analysis, namely, the Commission has never provided D&B data for Malaysia to interested parties, like it has done for the countries identified in the First Note. Despite the fact that the CCCME stressed in its comments on the Second Note the importance of relying on companies' audited financial accounts as compared to D&B data, the Commission does not seem to have made any attempt to look for such data for Malaysia or Thailand.

(293) EFDA noted that the alleged absence of financial data for Malaysian companies is due to the Commission's own inaction, as the Commission has provided D&B extractions for several countries, but refused to do so for Malaysia. EFDA also noted that there is no possibility that D&B does not contain any information on Malaysian fasteners producers and has provided that the D&B website indeed lists eighty-five companies under one of the NACE codes relevant to the product under investigation.

(294) The sampled exporting producer Ningbo Jinding has obtained the audited financial accounts of 11 Malaysian fasteners producers from the Malaysian registry and has suggested three of them (which were profitable) to the Commission.

(295) The CCCME added that the data that the Commission now has available of Malaysian companies' audited financial accounts are much more reliable than the D&B data for the Thai companies, because:

(a) the audited financial statements are detailed, comprehensible and provide explanations about the financial data and their interpretation, while the reports accessible via D&B are often general, lack sufficient detail or analysis of the source data. Moreover, D&B database included any available data and "standardises the base reporting data", which adds uncertainty about the exact scope of the data.

(b) there is factual evidence that D&B data is unreliable, as the sampled exporting producer Ningbo Jinding has demonstrated in previous submissions ([70]) that its own data in the D&B do not correspond to the data in its audited accounts.

(296) In relation to the data available for the fasteners producers in Malaysia, as noted in the recital (223), the Commission confirmed the availability of financial information of one company producing the product under investigation in Malaysia in the Second Note. Thus, to provide D&B data of this company was not necessary, since some of the interested parties also identified this company and provided the audited accounts of the group in the file open for all the interested parties of this case. It is noted further that, in line with its standard practice, the Commission is using the databases at its disposal (like Bloomberg and D&B) to identify the producers in all potential representative countries including Malaysia and Thailand. In its' research the Commission seeks to identify producers of the product under investigation with a complete set of financial data relevant to the IP in order to determine the SG&A and profit for the constructed normal value. The fact that interested parties found producers in Malaysia under the NACE codes relevant to the product under investigation does not confirm that these are indeed producers of the product under investigation with a complete set of financial data relevant to the IP. While the Commission does not question the usefulness of the audited accounts, when available, it notes that the CCCME failed to demonstrate how the standardised base reporting data in the D&B database adds uncertainty about the exact scope of the data. The differences in data presented between Ningbo Jinding's audited accounts and the company's data in the D&B are actually due to the fact that the revenue information included in D&B relates to the estimated revenues in 2014, while the revenues in the audited accounts presented relate to the actual revenues in 2014. Finally, the audited accounts of the three Malaysian producers provided following final disclosure were not considered further, since, as concluded in the recital (291) Malaysia was not considered an appropriate representative country within the meaning of Article 2 (6a)(a) of the basic Regulation. The claims of the parties are therefore rejected.

(297) The CCCME and EFDA reiterated their request that should Thailand be used as representative country, import data for the four major raw materials (HS 721391, HS 721399, HS 722790 and HS 722830) should be adjusted by deducting imports from Japan from the total imports, since they are unreasonably high priced. The claim was supported by the sampled exporting producer Wenzhou. Namely, the parties claimed that Japanese imports of wire rod into Thailand concern mainly high quality grades used for automotive fasteners. They are much more expensive than the lower grade wire rod used by the sampled Chinese exporting producers that mainly produce standard fasteners. These parties claimed that Thailand has a strong automotive production, requiring significant volumes of fasteners produced with a special grade wire rod, while there is only one domestic supplier of such special grade in Thailand with only limited capacity. Therefore significant amounts of the special grade wire rod needs to be imported. As there are no other producers of special grade wire rod in the ASEAN region than Japan (except the before mentioned domestic producer in Thailand) imports were necessarily made from that country.

(298) These parties claimed further that import prices of the four main raw materials from Japan to Thailand are unrepresentative, based on the fact that their import prices would be higher than import prices or domestic market prices for these materials in other markets (like Turkey, the EU, the USA, etc.). The CCCME added that the Commission should not have analysed Japanese export prices to different markets, but rather compared Japanese import prices with the import prices from other countries into Thailand. The CCCME has therefore requested that the Commission should either rely on Thai import data excluding the Japanese imports, or rely on ASEAN import data into Thailand, or use Thai domestic price for these materials.

(299) The GOC supported the claim that the wire rods imported from Japan are used for the production of fasteners destined for the automobile industry in Thailand and that their price level is therefore abnormally high. Since there are only few automotive fasteners exported from the PRC to the EU, the benchmark used to establish normal value does not reflect the corresponding costs of wire rod used in fasteners exported from China to the EU.

(300) EFDA also claimed that the difference between HS 721391 and HS 721399 is merely the dimension of the wire rod which as such cannot justify the significant difference in the average import price per HS code. They asserted that this price difference is more likely based on the fact that under the HS code 721391 imports from Japan represented merely 9 %, while under HS code 721399 they represented 65 %. Wenzhou added that their purchase price of the raw materials under HS 721391 and HS 721399 was similar.

([70]) Submission of Ningbo Jinding of 6 April 2021, t21.003137.

(301) None of the above interested parties substantiated their claims regarding the share of special grade wire rod was used for the production of non-standard fasteners used in the automotive sector in total Japanese imports into Thailand, or how to distinguish the special grade raw material out of the four HS codes, even though non-standard fasteners were also covered by this investigation and the special grade raw material may be used for them. Based on the confidential data presented by one of the parties, fasteners for automotive sector represented less than 50 % of the overall industrial fasteners demand in Thailand in 2018, thus demand for the raw materials for standard as well as for non-standard fasteners existed Thailand. At the same time, Japanese imports of the four major raw materials to Thailand represent around 33 % of the total imports of these materials, while the parties lacked evidence in their submissions on how much of it was dedicated for non-standard fasteners, or for fasteners at all (since the material was used for other products too).

(302) In terms of price difference between Japanese imports and other third countries imports into Thailand, first, Thai import prices from Japan compared by the parties included duties, while prices in other markets did not. Second, the Commission considered that the price comparison between the average Japanese import price to Thailand and the average price levels in other markets, as provided by the interested parties, was not meaningful, as it did not compare like with like. While Japanese prices to Thailand, as claimed by these parties, did not include non-special grade wire rod, the average price on other markets included both sides – special and non-special wire rod grades, and therefore such comparison did not lead to meaningful results and was rejected. The Commission therefore, for the sake of comparison, considered the prices of all imports to Thailand (including special and non-special grade wire rod) with the imported or domestic prices in other markets, as submitted by the parties. A comparison based on the average price of all wire rod grades under the respective HS codes showed that significant price differences existed only for two types that were used in smaller quantities by the sampled exporting producer. Therefore the mere price difference was not material. Finally, the parties did not substantiate why the difference in dimension of the wire rod could not have a significant impact on prices. The purchase price of Wenzhou was distorted and could not therefore be considered.

(303) Considering that (i) parties did not present more substantiated data on how much of the imported raw materials from Japan were for non-standard fasteners and how to distinguish the special grade raw material out of the four HS codes, that (ii) there was an adequate demand for the raw materials for the production of both standard and non-standard fasteners in Thailand, and that (iii) the average price difference between imports to Thailand and the average price of the wire rod on other markets was not pertinent, as set out in the above recital, there were no grounds to conclude that Japanese exports to Thailand were not representative and therefore should be excluded. Thus, the claims of the parties in this regard were rejected.

(304) The CCCME reiterated further that the financial data of certain Thai producers should not be used for the determination of SG&A and profit. Namely, Topy Thailand, Thaisin Metals Industries Co., Ltd. and S.J Screwthai did not produce comparable products to Chinese producers, therefore the different product focus of these producers inevitably meant that their costs and financial data was very different and not comparable to the sampled Chinese producers.

(305) EFDA also claimed that Topy Thailand did not produce the product under investigation and therefore should be excluded. Namely, the washers produced by Topy Thailand, as based on the website of the group company in Japan, were thrust washers, which were entirely different to the washers that were subject to the present investigation. Also, the data of Topy Thailand seemed unreliable, since Topy Group's consolidated profit in the annual report of 2020 corresponded to the one used by the Commission for Topy Thailand.

(306) The CCCME claimed that the data in D&B and Orbis database ('Orbis') ([71]), is entirely unreliable, in general, and especially for the selected Thai producers, because there were discrepancies within the two databases. The CCCME claimed that the data included in these databases is an estimate and considered it inappropriate for the Commission to rely on such estimates, since the financial data of private companies in Thailand is not public and it is therefore impossible for these databases to rely on actual figures. The CCCME added that D&B or Orbis can only be reliable in cases where the financial statements have been made public.

([71]) Orbis database, provided by Bureau Van Dijk (https://orbis.bvdinfo.com).

(307) In relation the producers in Thailand, the allegations that they were not producing the product under investigation were not confirmed by the investigation. As noted in the recital (244), there were several types of fasteners produced that fell under the product under investigation in the product mix of these companies. The website of Topy Thailand ([72]) also demonstrated that the company produced standard washers which are part of the product under investigation and not only thrust washers, as claimed. The Commission therefore confirmed that the selected companies in Thailand related directly or indirectly to the manufacturing and sales of the product under investigation and all claims in this regard were rejected.

(308) Moreover, in relation to claim that data in D&B were unreliable, as set out in the recitals above, the Commission notes that the consolidated profit of the Topy Group is a result of the revenue and cost of the group in relation to the parties outside the group and the intra-group profits are eliminated at the group level accounts. Considering this, the similar amount of the profit at the level of one company of the group and the group as a whole is not unusual and does not confirm that D&B data of Topy Thailand is unreliable. The Topy Group annual report submitted by EFDA does not bring any new light into the matter as it only provides consolidated figures of the group and therefore does not put into question the performance of the Thai entity.

(309) The discrepancies between Orbis and D&B data may be the result of the different description of the financial item collected by the database, or different level of the company/group report, and therefore they do not prove as such that the data is unreliable. In addition, this data is collected from the companies and does not necessarily need to be publicly available. The party also failed to prove that Orbis and D&B were only reliable in cases where the financial statements had been made public. The arguments made in this regard were therefore rejected.

(310) Finally, the CCCME claimed that if the Commission used the financial data of the Thai companies, an adjustment needs to be made to the profit margins to reflect raw material costs excluding imports from the PRC and other non-WTO countries. In this regard, the party failed to demonstrate how such adjustment would be pertinent to these specific companies in Thailand and that excluding imports from the PRC and other non-WTO countries were relevant for these particular companies. The claim was therefore rejected.

3.9.3. *Benchmarks used for the calculation of the normal value*

3.9.3.1. Benchmark and the calculation of the labour cost

(311) In relation to the best facts available used with regard to the consumption of labour in accordance with Article 18 of the basic Regulation, Jiangsu claimed that the hours that the Commission used for the calculation were not the time when the employee enters or leaves the production line, but the time when an employee enters or leaves the premises of the factory. The eight hours working day principle should be interpreted as the maximum working hours in a working day and the adjustments applied by the Commission were unreasonable leading absurd results. The Commission should have used the eight-hour working day, because it is enshrined in the Hours of Work (Industry) Convention ([73]), which has been ratified by the EU Member States. In addition, China adopts the eight-hour working day principle and therefore the eight-hours should be interpreted as the maximum working hours in a working day.

(312) The Commission considered that the entry and leave time to and from the factory premises found at Jiangsu was reasonable to calculate actual working hours, since there was no other reason for an employee to be at the factory premises other than actual work, or these other reasons were not provided by Jiangsu. It should be noted that the average number of hours worked per day, as calculated by the Commission, was above the standard of eight working hours, which was reasonable due to the fact that overtime hours were also recorded by Jiangsu itself. The claims of the party in this regard were therefore rejected.

([72]) http://www.topy.co.th/product_Washers.php
([73]) Article 2 of Hours of Work (Industry) Convention, 1919 (No 1).

(313) Jiangsu further claimed that the Commission did not provide any explanation on which basis it established the hourly labour cost, but merely provided a link to the source. The actual hours worked per week for the manufacturing industry in Thailand is much longer than forty hours a week. Jiangsu brought forward that, based on the source used by the Commission, around 67 % of the employees in the manufacturing sector in Thailand worked from forty to forty-nine hours. In addition, the currently effective labour protection act in Thailand provides that the maximum working hours in a week is forty-eight hours, which would therefore be a more appropriate basis to establish the hourly labour cost.

(314) In order to calculate the labour cost per hour the Commission used forty hours per week (i.e. monthly labour cost in the representative country was divided by four weeks, then divided by forty hours per week), which is the standard number of hours worked per week (eight hours per day multiplied by five working days). The fact that 67 % of the employees in the manufacturing sector in Thailand works between forty and forty-nine hours per week do not demonstrate how many employees work forty hours or more than forty hours, while the labour protection act in Thailand provides the maximum working hours, but not the actual ones. The claim of the party in this regard was therefore rejected.

(315) Ningbo Jinding claimed that the Commission should not have used the fixed number of labour hours per kilogram of fasteners produced found at Jiangsu, because the productivity of Jiangsu is significantly higher than that of Ningbo Jinding, due to the fact that Jiangsu uses hot forging in the production process. This party added that the application of facts available by the Commission should be reasonable, in particular, it should not result in entirely unreasonable outcomes, especially when the application of facts available does not result from a lack of cooperation, as in the present case. EFDA supported this claim noting that the Commission inflated labour costs and therefore the dumping margins.

(316) Ningbo Jinding also reiterated its request to rely on standard working hours, claiming that the evidence was provided that the labour law of the PRC defining eight working hours per working day has been respected and enforced by the company. In addition, there is no evidence in the file showing that Chinese labour laws were not respected or enforced and therefore the Commission should presume that the legislation was complied with.

(317) As noted in recital (180), the Commission was unable to verify the actual consumption of labour for any of the three sampled exporting producers and therefore was using facts available in accordance with Article 18 of the basic Regulation in this respect. As noted in the recital (260), the information on the difference between the actual hours reported and the entry/leave times found at Jiangsu did not constitute the actual consumption of labour hours at Jiangsu. The Commission has only used the record of the entry/leave times as the fact available to estimate actual labour hours. As a result, it was not possible for the Commission to establish the difference between the labour hours needed for different methods of production (hot and cold forging) for any of the sampled exporting producer, nor had the claiming party itself provided evidence on how these should be estimated. The seventeen labour hours calculated on the basis of the facts available was similar to the standard labour hours required at some of the production departments at Ningbo Jinding, while, in addition, there was no evidence that the overtime hours were not optional.

(318) Furthermore, as noted in the recital (183), during the investigation the Commission found that the actual labour time was not reflected in the remuneration paid to the staff. To the contrary to what was claimed, the company did not provide any evidence relating working hours to the remuneration and could therefore not show that standard working hours were indeed enforced, but only provided company notices to staff delimiting the maximum number of hours. Therefore, the Commission considered that the methodology to establish actual working hours was reasonable and the claims of the parties in this regard were rejected.

3.9.3.2. Benchmark for electricity cost

(319) Following final disclosure, Jiangsu claimed that the inflation adjustment used by the Commission for adjustment of the electricity tariff from November 2018 has not materialised, as Thai electricity tariff has not changed to reflect any inflation since then. Jiangsu further claimed that the Commission has not provided reasons why the adjustment is necessary. Besides, the Commission has not adjusted the inflation for water and natural gas and has not provided any reasons therefore.

(320) Ningbo Jinding claimed that, as the benchmark for the electricity cost was established on the price for electricity published for the billing month of November 2018, adjusted with the applicable inflation rate to mid-IP, it did not reflect actual cost paid by electricity consumers in Thailand during the IP. The party pointed-out that the conditions relating to electricity tariffs listed on the webpage ([74]) from where the Commission took the electricity price that was applicable during the IP state that "Electricity charges billed for each month comprising the electricity base charge according to the tariffs herein; and an energy adjustment charge". The Commission should have thus applied an energy adjustment charge rather than an inflation adjustment.

(321) The Commission has reviewed the conditions for the electricity tariffs in Thailand and confirmed that the energy adjustment charge (comprising the elements of the changing price) has indeed been periodically adjusted by the electricity provider in Thailand. It therefore adjusted the electricity benchmark used by the energy adjustment charge, rather than the inflation adjustment for the three sampled exporting producers. Unlike the electricity benchmark which was based on the billing for the month of November 2018 and hence needed to be adjusted to the IP as explained above, the benchmarks for water and natural gas applied by the Commission already related to the IP, therefore no further adjustments was applied.

(322) Ningbo Jinding also claimed that the Commission has applied an incorrect voltage level for the electricity tariffs charged to Ningbo Jinding during the IP since the actual voltage level of the company is beyond 12 kV. The Commission reviewed and adjusted the benchmark in relation to the voltage level of Ningbo Jinding, as confirmed by evidence collected in the RCC exercise, relevant for the electricity tariffs charged to Ningbo Jinding during the IP.

3.9.3.3. Inland freight and import duties adjustment applied to the benchmark of the raw materials

(323) Ningbo Jinding claimed that the Commission wrongly calculated inland freight based on a percentage of the value of the raw material, while the freight for the raw material purchases is usually determined on the basis of purchase volume. This party noted that the Commission itself has a consistent practice of allocating transport costs over volume, rather than the value of the material. In addition, the Commission should have taken into account the actual distance of transportation to Ningbo Jinding.

(324) Wenzhou argued that it is sufficient to ensure that the price of the raw materials on an ex works basis is undistorted and that any addition of transportation cost should be consistent with the actual delivery term for purchases of raw materials by the Chinese exporting producers. Consequently, only the actual transportation cost from the suppliers to Wenzhou should be considered on top of the ex-works price. Further Wenzhou considered it unreasonable that the transportation costs for raw materials were expressed as a percentage of the reported cost of raw materials, whereas actual transport cost would be calculated on basis of the quantity instead of the value.

(325) Ningbo Jinding further claimed that, there is no basis to add an import duty to the price of the raw material, since Ningbo Jinding purchased its raw materials in China and did not pay any import duties. Also, the GTA data is based on CIF prices, therefore it includes additional costs such as international transport, insurance, and handling costs, which were not applicable for the domestic purchases and should therefore be deducted.

(326) Wenzhou Junhao also reiterated its comment on the first note that all raw materials for the product under investigation of Wenzhou Junhao were purchased domestically. Wenzhou Junhao argued that the import price (CIF) to Thailand, which the Commission took as a basis to determine an undistorted raw material price, may include higher delivery expenses than domestically purchased raw materials.

(327) The Commission considered that, according to Article 2(6a)(a) of the basic Regulation, the normal value should reflect the undistorted price of the raw materials in the representative country (in this case Thailand) as the relevant proxy to construct the normal value in the country of origin. It should therefore reflect the price that a producer of fasteners would pay in Thailand for the raw materials delivered at the factory gate. If international transport costs or

([74]) http://www.mea.or.th/en/profile/109/114

import duties were not added, the resulting benchmark would not reflect the undistorted price on the Thai market, but merely the average CIF price in the countries exporting the raw materials in question. This would be contrary to Article 2(6a)(a) of the basic Regulation.

(328) Furthermore, in the absence of any benchmark for transport cost (per company, per raw material type, per different transport channel, etc.), the Commission has used the ratio between the transport cost and the raw material cost of the exporting producer. This ratio is applied to the benchmark of the raw material, which is consequently multiplied by the quantity of the raw material consumed by the exporting producer. Such methodology reflects the costs structure of the exporting producer, since the ratio between transport cost and the cost of raw material is maintained and is further applied to the undistorted benchmark.

(329) All claims of the parties with regard with the calculation of inland freight and the import duties adjustment applied to the benchmark of the raw materials were therefore rejected.

3.9.4. *Calculation of the normal value*

(330) Wenzhou claimed that no distinction should be made between the two wire rod types used for the production of fasteners, namely HS 721391 and HS 721399, since they differ in diameter only (above or below 14mm) and their price is almost equal, as per several sources provided. In addition, the diameter above or below 14 mm is not an indicator distinguished in the PCN structure of the product under investigation.

(331) As far as raw materials are concerned, in the questionnaire the exporting producers were requested to identify each type of the raw material used in the production of the product under the investigation at the most accurate customs code (eight or ten digit level). The specified raw material is then matched, as accurately as possible, to the customs code of the benchmark of the same raw material in the representative country. When specifying the raw materials used, the price of these raw materials or the PCN structure are irrelevant, since none is used to match the customs code of the benchmark of the same raw material in the representative country. In this investigation, both types of the raw material used have been identified by Wenzhou. Based on this, both types of the raw materials used by Wenzhou have been matched to the benchmark of the same raw material in Thailand. The Commission therefore, rejected this claim.

(332) Wenzhou further claimed that the SG&A used to construct the normal value was determined on the basis of five Thai companies without providing a breakdown of the SG&A of the individual companies. Also, direct selling expenses such as transportation expenses have not been deducted from the SG&A. Therefore, the Commission's statement in the final disclosure that it constructed normal value per product type on an ex-works basis is inaccurate. As export sales were established on an ex-works basis without transport cost, such cost should also be deducted from the normal value in accordance with Article 2(10) of the basic Regulation.

(333) As indicated in recital (276) the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation, which includes a reasonable amount of SG&A. There is no information available showing that the SG&A of the Thai companies used by the Commission included transport expenses for the delivery to customers. The Commission therefore, rejected this claim.

(334) EIFI considered that the dumping margin established for Jiangsu was based on contradictory information. According to the D&B, Jiangsu had only 15 employees, which correspond to the level of employees typically in a trading company and is not in line with the quantities of the fasteners produced by Jiangsu. Also, the average export price of fasteners of Jiangsu in the IP is lower than the overall average export price from the PRC in the same period. Since the company claimed to produce mainly fasteners under hot forged production processes that yields higher production costs than fasteners produced under other production processes, their sales price should on average, however, be higher than the average export price from China. In addition, Jiangsu is related to two other companies in the PRC producing fasteners that were not reported in the questionnaire reply, and there would therefore be a high risk that these companies will channel their exports via Jiangsu benefitting from the lower duty rates.

(335) As noted in recital (92), the Commission carried out RCCs and confirmed the data submitted by Jiangsu, including the number of employees and the export price. The fact that the average export price of Jiangsu may be lower than the average price of all exports from the PRC may be due to the deviation from the mean, considering the number of the exporting producers in the PRC and the number of types of the product under investigation imported from the PRC that are encompassed in the calculation of the average price of all exports from the PRC. Likewise, the investigation did not reveal any related companies producing the product concerned in China. The claims of EIFI in this regard were therefore rejected.

3.9.5. *Non-sampled cooperating exporting producers*

(336) EFDA claimed that the rate for non-sampled cooperating exporters would be too high in violation of Article 9(6) of the basic Regulation. That is because the Commission used facts available with regard to the consumption of labour in accordance with Article 18 of the basic Regulation, and should therefore have disregarded the margins established in the circumstances referred to in Article 18, when calculating the average dumping margin of the sample. EFDA suggested to use Jiangsu's dumping margin to determine the dumping margin to the non-sampled cooperating exporting producers, as this would have been the only company where facts available were not used.

(337) The Commissions considered that Article 9(6) of the basic Regulation only applies when the margins are fully established in the circumstances referred to in Article 18. The Commissions noted that, as per recital (260), the Commission partially relied on facts available in accordance with Article 18 of the basic Regulation with respect to consumption of labour for all three sampled exporting producers, including Jiangsu. Thus, rather than disregarding all the margins found for the cooperating exporters, the Commission found it appropriate to rely on all those margins to set the dumping margin for the non-sampled cooperating exporting producers. The claim of the party was therefore rejected.

3.9.6. *Level of cooperation*

(338) EFDA reiterated its claim that the level of cooperation from the exporting producers should be considered as high, taking into account the fragmented nature of the fasteners industry that consisted mostly of SMEs exporting through traders; logistical difficulties during the COVID-19 pandemic; the business relations between exporting producers in the PRC and the complainant; the level of cooperation of the exporting producers of above 50 %, being twice as high as the level of cooperation of the Union producers during the previous investigation on fasteners that nonetheless *"constituted major proportion of the Union industry"* ([75]); the Commission's approach in the present case with respect to the lack of cooperation of Union producers and, finally, the Commission's general approach with respect to SMEs in the Union, and in particular the simplified questionnaires intended for SMEs.

(339) As explained in the recital (179), the level of cooperation of the exporting producers is established on the basis of replies of exporting producers in China to the sampling form. The information requested is limited to basic company information such as contact details, global sales and production quantities as well as related companies. This information should be easily and readily available, for all companies including SMEs. None of the exporting producers came forward claiming logistical difficulties in providing the information requested, and EFDA did also not substantiate this claim. EFDA did also not explain to what extend the alleged business relations between the exporting producers and the complainant should have had an impact on the determination of the level of cooperation. Moreover, the level of cooperation of the Union industry in the previous anti-dumping investigation was considered irrelevant in the context of the current investigation. The claim that non-cooperating Union producers would be treated differently than non-cooperating exporting producers is already addressed in recital (46) and was in addition not considered an element having an impact on the level of cooperation of the exporting producers. In any event, the concept of the 'major proportion' of the Union industry is irrelevant when considering the level of cooperation from exporting producers, as both concepts refer to entirely different situations. While the major proportion of the Union industry refers to the standing at initiation, the country wide dumping margin aims to avoid that non-cooperation is unduly rewarded. The argument that SMEs in the Union would benefit from simplified questionnaires, unlike the exporting producers is irrelevant at the stage of sampling. The claims of the party were therefore rejected.

([75]) Regulation (EC) No 91/2009.

(340) EFDA further claimed, referring to WTO case law ([76]), that even if the Commission concluded that the level of cooperation was low, it is not allowed to be punitive in its approach. In this regard EFDA argued that the duty level for 'all other exporting producers' was established on an unrepresentative export volume based on only one product type.

(341) The Commission when applying facts available in accordance with Article 18 it has a wide discretion as long as the method applied is reasonable. In addition, in accordance with Article 18(6) of the basic Regulation, when applying facts available, the results of the investigation may be less favourable to a party than if it had cooperated, in order to avoid that non-cooperation is unduly rewarded. In the present case, the Commission had to base the calculation of the country wide duty level on the facts available in the file. The methodology was reasonable as it was based on actual verified information from the sampled exporting producers and the calculation was based on a selected product type that was the most representative in terms of export volume of that exporting producer. The statement that this specific product type was not exported by the non-cooperating exporting producers was not substantiated by EFDA and could not be verified. This argument was therefore rejected.

3.9.7. *The list of cooperating exporting producers*

(342) EIFI claimed that some of the exporting producers, which had been given the status of cooperating exporting producer, should not be considered as such, because they would not be producers but traders of the product concerned. For some of the exporting producers the names reported in the sampling form did not correspond to the names on the registered VAT number of that company, and some others had an abnormally low export price to the Union. EIFI submitted information based on publicly available sources in support of its claim.

(343) The Commission notes that the information provided by EIFI came very late during the procedure, while the same list of cooperating exporting producers was placed in the case file open for all interested parties on 6 January 2021 ([77]) and could therefore not be verified anymore. Therefore, the Commission could not determine whether the grounds invoked by EIFI to remove certain companies from the list of exporting producers were warranted and these claims had therefore to be rejected.

(344) A trading company in the PRC, Changshu 5. Rich Trading Co., Ltd. ('Changshu Rich') claimed that it should be added to the list of cooperating exporting producers together with its related producer in China, since it was cooperating during the investigation. The Commission notes that none of these parties filled in the sampling form within the deadlines given. Changshu Rich has only provided a sampling reply for unrelated importers in the Union, which was not dedicated to the parties in the PRC and was provided only after the deadlines given. The request to be included in the list of cooperating exporting producers was therefore rejected. Another exporting producer, that Changshu Rich referred to as its 'partner' had provided the sampling form within the deadline provided and was therefore included in the list.

(345) Another exporting producer, Bulten Fasteners (China) Co., Ltd. ('Bulten Fasteners') also requested to be included in the list of cooperating exporting producers, arguing that it was cooperating during the investigation by providing the information on inputs intended for the exporting producers in the PRC within the deadline, as requested in the Notice of initiation. They claimed that the requirements to be considered as a cooperating party were unclear and by providing the information on inputs it confirmed its intention to be willing to cooperate and acted in good faith.

(346) The Commission noted that Bulten Fasteners did not provide a sampling reply as requested in the Notice of Initiation and which included also an agreement to be among the companies to be sampled and investigated. As one of the exporting producers mentioned in the complaint it also received specific instructions at initiation from the Commission by bilateral communication, clearly stating that providing the information for the sampling exercise would be a condition to be considered as cooperating party. The company did also not provide any comments on the list of cooperating exporting producers mentioned in recital (345) that had been in the file since the start of the

([76]) WTO Panel Report, US – Anti-Dumping and Countervailing Duties (Korea), para. 7.36. and WTO Panel report, Canada – Welded Pipe, paras. 7.132 – 7.144.

([77]) Note for the file for inspection by interested parties on the sample of exporting producers in the People's Republic of China, t21.000202.

investigation, once the Commission selected the exporting producers' sample. In this regard, Bulten Fasteners requested to be heard by the Hearing Officer. A hearing took place on 7 December 2021 during which the Hearing Officer concluded that the procedural rights of Bulten Fasteners were not affected in the proceeding, as they had received information by the Commission to which they had not reacted. Based on these considerations, unlike exporting producers submitting the sampling form and agreeing explicitly to cooperate in the investigation in time, Bulten Fasteners cannot be considered as a cooperating exporting producer and the request of this party was rejected.

(347) Following final disclosure, the Commission noted some clerical errors included in the list of cooperating exporting producers that were corrected. These corrections were based on the information provided by the parties concerned in the sampling form. Thus, Shanghai Foreign Trade (Pudong) Co., Ltd. that submitted the sampling information for its related producers Shanghai Rongdun Industry Co., Ltd. and Shanghai Chunri New Energy Technology Co., Ltd., was removed from the list and replaced by its related producers. Likewise, BSC Corporation, a trader exporting the product produced by its related company Liaocheng BSC Metal, was removed from the list and replaced by its related producer.

3.9.8. *Other claims*

(348) Following final disclosure, the user of pole screws mentioned in recitals (154) and (155) claimed that the Commission disregarded its claim that its main competitor in India manufactures pole screws and sells them in the Union at similar price levels than those imported from China. The user argued that this would show that Chinese import prices are not dumped. The user also claimed that the Commission should have compared Indian import prices of pole screws with the normal value. As the Commission however failed to do so, it cannot concluded that Chinese imports of pole screws were dumped.

(349) The Commission first points out that no such claim was provided prior to final disclosure. The mere unsubstantiated statement that price levels of pole screws of Indian manufacturers were at the same level than Chinese resell prices in the Union market does not as such imply a claim that prices of Chinese exports would not be dumped. Second, the dumping margins established as above in section 3 are based on the export prices of the product concerned as a whole and no separate dumping margins for different product types were determined. As set out in detail in section 3, substantial dumping margins were established when comparing the export prices from the Chinese exporting producers to the normal value based on the data of the representative country. No comments on the calculation of the dumping margins as such were provided by this user and none of the elements used for the calculation has been contested by it. Third, it is recalled that the scope of this investigation is limited to exports of the product concerned from China and therefore the Commission was under no obligation or even entitled to investigate alleged dumping from imports from India. Therefore, this claim was rejected.

4. **INJURY**

4.1. **Preliminary remarks**

(350) As indicated in recitals (96) and (97), the transition period for the UK withdrawal ended on 31 December 2020 and the UK ceased to be subject to Union law as of 1 January 2021. Given that the deadline to provide questionnaire replies and other information fell after the transition period, the Commission requested interested parties to provide information on EU-27 basis. Findings on injury, causation and Union interest were therefore assessed on the basis of EU-27 data.

4.2. **Definition of the Union industry and Union production**

(351) The like product was manufactured by more than 70 producers in the Union during the investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

(352) The total Union production during the investigation period was established at 1 060 569 tonnes. The Commission established the figure on the basis of data provided by the complainant and the sampled Union producers. As indicated in recital (49), six Union producers were part of the final sample. They represented 9,5 % of the total Union production of the like product.

4.3. **Union consumption**

(353) The Commission established the Union consumption by adding the total estimated sales volume of the Union industry in the Union market (see table 6) to the total import volume as identified from Eurostat (see tables 3 and 12).

(354) Union consumption developed as follows:

Table 2

Union consumption (in tonnes)

	2017	2018	2019	Investigation period
Total Union consumption	2 134 778	2 093 096	1 959 386	1 748 012
Index	*100*	*98*	*92*	*82*

Source: EIFI and Eurostat

(355) The Union consumption decreased during the period considered. Overall, the Union consumption decreased by 18 %, passing from 2 134 778 tonnes in 2017 to 1 748 012 tonnes in the IP.

4.4. **Imports from the country concerned**

4.4.1. *Volume and market share of the imports from the country concerned*

(356) The Commission established the volume of imports on the basis of Eurostat. The market share of imports was established on the basis of the import volume and total Union consumption.

Table 3

Import volume (in tonnes) and market share

	2017	2018	2019	Investigation period
Volume of imports from China	135 287	171 152	207 946	209 033
Index	*100*	*127*	*154*	*155*
Market share (%)	6	8	11	12
Index	*100*	*129*	*167*	*189*

Source: Eurostat

(357) Import volume from China increased by 54 % between 2017 and 2019 and remained relatively stable between 2019 and the IP. Overall, import volume rose by 55 % during the period considered.

(358) Considering the decreasing Union consumption, the Chinese imports market share rose steadily between 2017 and the IP, passing from 6 % to 12 %.

(359) Following final disclosure, EIFI submitted that based on statistical data available to it, import volumes and market share of imports from China should be higher. EIFI had at its disposal statistical data that included imports of products that were outside the scope of the investigation and estimated total import volumes based on market knowledge. The statistics used by the Commission for the determination of the import volumes in table 3 were, however, based on the actual import volumes of the product concerned as recorded at TARIC code level that only included the product concerned. The volumes in table 3 reflect therefore the actual import volumes of the product concerned during the period considered. This claim was therefore rejected.

(360) Following final disclosure EFDA and the CCCME requested clarification on which data had been used to establish import volumes to the Union. After such clarification was provided these parties requested that precise data per TARIC code should also be disclosed. Due to confidentiality reasons, these data cannot be disclosed and this request was therefore rejected.

4.4.2. *Prices of the imports from the country concerned and price undercutting*

(361) The Commission established the average prices of imports on the basis of Eurostat dividing the total values of Chinese imports by the total volume of those imports.

(362) The average price of imports from the country concerned developed as follows:

Table 4

Import prices (EUR/tonne)

	2017	2018	2019	Investigation period
PRC	1 375	1 529	1 518	1 473
Index	*100*	*111*	*110*	*107*

Source: Eurostat

(363) Import prices from the country concerned rose by 11 % between 2017 and 2018 and decreased in 2019 by 1 % and in the IP by another 3 %. Overall, during the period considered, Chinese import prices rose by 7 %. This increase did however, by far, not cover the price increase in the raw material cost that was 30 % during the same period. Moreover, import prices remained constantly below the Union sales prices as mentioned in Table 8.

(364) The Commission determined the price undercutting during the investigation period by comparing:

(1) 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

(2) the corresponding weighted average prices per product type of the imports from the sampled cooperating Chinese producers to the first independent customer on the Union market, established on a Cost, insurance, freight (CIF) basis, with appropriate adjustments for regular customs duties and post-importation costs.

(365) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. 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 28 % and 46 % by the imports from the country concerned on the Union market.

4.4.2.1. Claims on price comparability

(366) EFDA and the CCCME claimed that standard fasteners are not interchangeable with non-standard fasteners and that they do not compete with each other. They emphasised that non-standard fasteners are usually more expensive than standard fasteners. While Chinese exporting producers mainly export standard fasteners, the Union industry predominantly produces and sells non-standard fasteners. Therefore, any price comparison should be based on a careful distinction between standard and non-standard fasteners. Likewise, the CCCME highlighted that the three main product types covered by this investigation, i.e. screws, bolts and washers, are different from each other which should be duly taken into consideration in the price comparison.

(367) Similarly, European DIY Retail Association ('EDRA') claimed that a price comparison between the Union sales price in the Union market and the Chinese import price should take into consideration the distinction between standard and non-standard fasteners. One of the importers alleged that the Union industry producers' internal product codes would not distinguish between standard and non-standard fasteners and that therefore, a comparison between the sales prices of the Union industry and the Chinese imports would be inadequate.

(368) EFDA argued that fasteners, even in case they are produced based on an internationally recognised standards, may also comply with specific additional customer requirements, i.e. requirements that differ from the ones laid down in the standard; or that are not addressed by such standard; or that are more stringent than the ones defined in the standard. These fasteners should be considered as non-standard fasteners. In the same vein, the CCCME argued that not only fasteners that are produced based on customer drawings should be considered as non-standard fasteners, but also those that take into account other customer requirements, even if such fastener is fully in line with international product standards.

(369) EFDA also pointed to a difference between 'product standards' and 'inspection standards' and between 'basic' product standards and 'special' product standards. They argued that while fasteners complying with basic product standards can be considered as standard fasteners, fasteners that comply with inspection standards and special product standards should be considered as non-standard fasteners for the purpose of this investigation, since these requirements fulfil the same role as customer specific requirements.

(370) Moreover, EFDA and the CCCME highlighted that fasteners produced by the Union industry are often produced with their standard production set-ups, while they have requirements going beyond internationally recognised standards. These fasteners should be considered as non-standard fasteners.

(371) Finally, EFDA and the CCCME referred to specific certification requirements in certain industries (mainly the automotive industry). These are compliance requirements for suppliers of fasteners and include for instance the obligation of documentation of the manufacturing process of fasteners, the recording of certain data and quality control steps ([78]). EFDA claimed that the necessary investments in the suppliers' manufacturing process to comply with such requirements are reflected in higher costs and prices and therefore, fasteners produced under such conditions should be considered as non-standard fasteners. The CCCME claimed that all fasteners used in the automotive industry should be considered as non-standard fasteners.

(372) The Commission noted that standard fasteners are described in detail by industry standards, such as, for example, Deutsches Institut für Normung (DIN), International Organization for Standardization (ISO) or European Norms (EN) drafted and maintained by the European Committee for Standardization (CEN). Non-standard fasteners on the other hand, are those that show differences to the industry-recognised standards and often conform to a particular user's design and/or requirements. Therefore customer drawings that deviate from a recognised international standard makes a fastener special, or non-standard. Likewise, fasteners that are produced on standard production lines were considered as special fasteners when they do not fully comply with a specific internationally recognised industry standard.

([78]) Production Part Approval Process ('PPAP') and Production Process and Production Approval ('PPA') level 3 or higher used in the automotive industry.

(373) The Commission noted that all claims made as to which types of fasteners should be considered as non-standard fasteners, with the exception of those mentioned in recitals (374) and (375) were in fact non-disputed by the Union industry and also corresponded to the understanding that as soon as a standard fasteners does not comply exactly with an industry product standard, it should be considered as non-standard/special fastener.

(374) Regarding special product standards and inspection standards mentioned in recital (369), the Commission considered that as long as a fastener is produced exactly to the technical specifications of an internationally recognised standard, it should be considered as a standard fastener, and the claims made in this regard were therefore rejected.

(375) Certification requirements mentioned in recital (371) are customer specific compliance requirements that may not have a direct impact to the technical requirements of the fastener itself as set out in internationally recognised standards. Thus, compliance requirements as long as they do not interfere with the physical and technical characteristics of the fastener or do not constitute a specific customer drawing, but refer mainly to issues such as documentation requirements in the manufacturing process or the recording of quality checks for instance were not considered a criterion for differentiating standard and non-standard fasteners and the claims made in this regard were rejected.

(376) The CCCME further argued that fasteners are sold almost exclusively via distributors to end-users and that this should be taken duly into consideration in the price comparison that should be made at the level of trade of distributors. As mentioned in recital (278), all export sales were made directly to independent customers in the Union and the therefore, prices paid or payable were taken into consideration in the comparison rather than constructed export prices. Also, the Union industry sold most of its sales via distributors and price comparison between the import prices and the sales prices of the Union industry on the Union market were made at the same level of trade. This argument was therefore not relevant in the present investigation.

(377) Following final disclosure, EFDA, the CCCME and the Mission of the People's Republic of China to the European Union claimed that an adjustments for costs of quality control and document management should have been made when calculating the undercutting margins. EFDA and the CCCME claimed that the Union industry was subject to specific certification requirements mentioned in recital (371), while the Chinese exporting producers typically had no such requirements. EFDA and the CCCME referred to Article 3(2) of the basic Regulation that the injury assessment must be based on an objective examination and positive evidence (including the examination of the price effect in accordance with Article 3(2) of the basic Regulation) and to Article 3.1. of the WTO Anti-dumping Agreement that refers to price comparability. As certification requirements have a significant impact on costs and prices, EFDA, the CCCME and the Mission of the People's Republic of China claimed that an appropriate adjustment should be made when calculating the undercutting margin.

(378) These parties referred to publicly available information and to the information provided by one of the sampled Union producers showing that at least one of the sampled Union producers was subject to PPAP certification, and therefore wrongly declared part of its production as standard fasteners.

(379) Regarding the claims with regard to publicly available information for one of the allegedly sampled Union producers, the Commission noted that all sampled Union producers were granted anonymity and therefore any comment on such information is unwarranted. The Commission confirmed, however, that the investigation could not establish any substantial cost differences between production processes under certification requirements and other production processes. Therefore, even if such an adjustment would be substantiated and warranted, its impact on the undercutting margin would be negligible, so the Commission's findings about significant undercutting would remain in place. These claims were therefore rejected.

(380) Regarding the claim that one of the sampled Union producers wrongly declared non-standard fasteners as standard fasteners, it is recalled that as set out in recital (375) that certification requirements on their own do not determine whether a fastener is to be considered as non-standard. Thus, in the same recital the Commission found that compliance requirements as long as they do not interfere with the physical and technical characteristics of the fastener or do not constitute a specific customer drawing, but refer mainly to issues such as documentation

requirements in the manufacturing process or the recording of quality checks for instance were not considered a criterion for differentiating standard and non-standard fasteners. The Commission verified that the product types of all sampled Union producers were correctly reported. This claim was therefore rejected.

(381) Following final disclosure, EFDA and the CCCME alleged that the Union industry sales were mostly done via related distributors to end users. Since Chinese exporting producers sell directly to unrelated distributors in the Union, appropriate adjustments should have been made for differences in the level of trade. This claim was not based on any information included in the file, nor was it substantiated by any evidence. During the investigation, EFDA and the CCCME requested additional information as to the share of sales of the sampled Union producers to distributors that was provided by the Commission and that confirmed the findings set out in recital (376). The Commission also clarifies that sales of the sampled Union producers taken into consideration in the undercutting calculations were made to unrelated customers in the Union. This claim was therefore rejected.

4.5. **Economic situation of the Union industry**

(382) 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.

(383) As mentioned in recitals (26) to (49), sampling was used for the determination of possible injury suffered by the Union industry.

(384) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data provided by the complainant, cross-checked with the data provided by the sampled Union producers. The macroeconomic data related to all Union producers.

(385) Following final disclosure, the CCCME and EFDA submitted that the Commission did not disclose production and sales volume of Union producers that provided data included in the macroeconomic indicators. During the investigation, upon request, the Commission explained that these data were provided on a company specific level and therefore confidential. EFDA further claimed that the Commission refused to provide information as to how the data were extrapolated, whereas this would be a crucial aspect given that only a small part of the total Union producers had provided macroeconomic data.

(386) The sources used and methodology applied by the Commission to establish macroeconomic data is set out in recital (384). Macroeconomic data was collected from individual Union producers in the Union and provided to the Commission via the complainant. The total amount for macroeconomic data was estimated by the complainant by extrapolating data based on the share of these producers in the total Union production. The complainant based total Union production on the information available in Prodcom. The data submitted were adjusted based on cross check carried with data provided by the sampled Union producers. The adjustments only took into account some inconsistencies in the data, but did not substantially change the data submitted by the complainant.

(387) EFDA also criticised that the data were not sufficiently verified by the Commission and that non confidential summaries of the macroeconomic data were only provided one day prior to final disclosure. As set out in recital (384), the Commission cross checked the data provided with the information available from the sampled Union producers and through a thorough deficiency process on EIFI's reply to the macro indicators questionnaire. The nature of questions that were raised to EIFI were made available for parties in the open file. The Commission was satisfied with the accuracy of the data and therefore considered it was an appropriate basis for the determination of macroeconomic indicators. The claim of insufficient verification was therefore rejected. The non-confidential summary of the individual contributions of the Union producers was disclosed in sufficient time to provide comments. In addition, an exceptional deadline extension to provide comments was granted to EFDA and the CCCME. This claim was therefore rejected.

(388) The Commission evaluated the microeconomic injury indicators on the basis of data contained in the questionnaire replies from the sampled Union producers.

(389) Both sets of data were found to be representative of the economic situation of the Union industry.

(390) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.

(391) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

(392) As set out in recital (68), one exporting producer claimed that the sample of exporting producers was mainly composed of companies producing bolts (as opposed to producers of screws) and therefore it would not be representative for the Chinese industry and exports overall. The injury analysis should therefore be carried out separately for screws, on the one hand, and bolts, on the other hand.

(393) In addition, as set out in recitals (115) and (156) one exporting producer of structural timber screws and one exporting producer of confirmat screws claimed that these product types were not included in the scope of this investigation. Alternatively, these interested parties argued that the injury analysis should be carried out separately for these product types.

(394) As mentioned in recital (162), the CCCME requested that macroeconomic injury indicators are collected and assessed separately for standard fasteners, on the one hand, and non-standard fasteners, on the other hand, on the basis that the Union industry produces and sells predominantly non-standard fasteners, while the exporting producers from China predominantly produce and export standard fasteners.

(395) Following final disclosure, the Mission of the Peoples Republic of China to the European Union claimed that interested parties had no means to verify the aggregated data of the Union industry used for the determination of macroeconomic indicators due to the anonymity granted to the sampled Union producers.

(396) As set out in recitals (16) to (20), the Commission considered the request for anonymity were duly substantiated and well founded. All claims against this confidential treatment were therefore rejected. Therefore, the Commission can also not disclose the information per company name that contributed to the macroeconomic injury indicators. The methodology is explained in recitals (384). The claim of the Mission of the People's Republic of China to the European Union was therefore rejected.

(397) The comments regarding the representativity of the sample of exporting producers were already addressed in recital (70). Likewise, comments and claims of interested parties regarding the product scope of the investigation were already addressed in recitals (113) to (166).

(398) Regarding the claims that the injury analysis should be carried out separately per product types, the Commission recalls that recital (110) concluded that all product types were considered as one single product for the purpose of this investigation as they shared the same basic physical and technical characteristics and the same basic end-uses. Any determination of dumping, injury and causation was therefore based on the product as a whole. No evidence was provided that would have justified a separate analysis per product type. These claims were therefore rejected.

(399) The CCCME and EFDA submitted that weighing of microeconomic injury indicators of the sampled Union producers that were SMEs would be against the basic Regulation and WTO provisions and should therefore not be applied. They argued that such methodology would artificially increase the weight of data supplied by SMEs, while artificially lowering the weight of data provided by large companies. As the Commission did not weight injury indicators, no further analysis of this claim was necessary.

(400) Following final disclosure, the CCCME and EFDA claimed that the injury analysis should have been carried out separately for standard fasteners on the one hand and non-standard fasteners on the other hand. They also claimed that a separate injury analysis should have been carried out for each of the product categories, i.e. wood screws, self-tapping screws, bolts and washers and referred in this regard to the Appellate Body Report US- Hot-rolled Steel ([79]) and Appellate Body Report China – HP-SSST ([80]) as well as to jurisprudence of the Court of Justice ([81]).

(401) Regarding standard and non-standard fasteners, the CCCME and EFDA first re-iterated that special and standard fasteners belong to two separate markets, in terms of physical characteristics and quality differences as well as end uses and that they were not interchangeable. Second, they reiterated that Chinese exporting producers focus on standard fasteners, whereas the Union producers are mostly engaged in manufacturing special fasteners. The CCCME and EFDA highlighted that the Court of Justice in Case T-254/18 confirmed that "an assessment by segment may be justified where the products covered by the investigation are not interchangeable and where one or more segments are more likely to be concerned than others by the dumped imports".

(402) As set out in recitals (109) and (110), all fasteners had similar physical and technical characteristics and the same basic end uses. As also already pointed out in in recital (151), it is not required that all product types are fully interchangeable as long as all types have the same basic physical and technical characteristics and same basic end-uses. Moreover, the investigation revealed as set out in recital (47) that the Union industry produced and sold standard and non-standard fasteners, as well as the exporting producers exported to the Union industry standard and non-standard fasteners. The investigation further revealed that there was an overlap in end use applications. The Union industry sold fasteners for a variety of applications and sectors. Despite the low cooperation, the Commission established that the dumped imports compete with Union industry sales on the same uses and applications. Even if the presence of special fasteners in the sample of cooperating exporters was low, evidence in the file showed that the Chinese exporting producers have capacities to produce and export non-standard fasteners (for instance during fairs, Chinese exporting producers offered a range of non-standard fasteners and a number of Chinese producers were producing fasteners to the automotive sector). The sample of Union producers was composed of companies evenly representing both, sales of standard fasteners and non-standard fasteners. In fact, the majority of the companies in the sample were producing both standard and special fasteners; only one company was focussed on special fasteners while another one on standard fasteners. As mentioned in recital (36), the Union industry sample ensured therefore a wide product-type mix. The product types imported from the Chinese exporting producers matched to over 90 % with product types produced and sold by the sampled Union producers and included a comparison of prices of standard and non-standard fasteners which invariably showed significant undercutting and underselling. Without prejudice to the fact that the injury analysis needs to be conducted at the level of the Union industry, the Commission observed that all Union producers, including the ones producing special fasteners irrespective of product mix, had decreasing trends in production and sales volume as well as profit margins. This showed that all Union producers selected in the sample were affected by the imports from China. In addition, as set out in recital (552), there is evidence on file that Union producer were unable to expand their production and sales on standard fasteners because of the Chinese imports exercising price pressure on the Union market. At macroeconomic level, most of the Union producers that were providing individual data were producing both, standard and special fasteners. The deterioration of the macroeconomic injury indicators in parallel with the increase of imports from China, as well as the downward trend of the micro economic indicators of all sampled Union producers, shows that there was competition in the market between the Union industry and the imports from China at the level of the like product and the investigation did not confirm the claims to the contrary made in this regard. This as such is prove of the material injury suffered by the Union industry. Neither the CCCME nor EFDA provided any additional information or evidence that would have justified to carry out a separate analysis for standard fasteners on the one hand and non-standard fasteners on the other hand. These claims were therefore rejected.

(403) Regarding wood screws, self-tapping screws, bolts and washers, the same parties argued that since these products are classified under different CN subheadings, this would indicate that they had each specific characteristics and were not comparable with each other. EFDA also argued that this would be confirmed by the fact that one wood screw producer in the Union had opposed the complaint on the grounds that it would not see any positive impact of measures.

([79]) Appellate Body report, US – Hot-Rolled Steel, para. 204.
([80]) Appellate Body report, *China – HP-SSST*, para. 5.211.
([81]) Case T-254/18, CCCME v Commission, judgement of 19 May 2021, ECLI:EU:T:2021:278, para. 377. See also, Case T-35/01, Shanghai Teraoka Electronic v Council, judgment of 28 October 2004, EU:T:2004:317, and Case T-500/17, *Hubei Xinyegang Special Tube v Commission*, judgment of 24 September 2019, EU:T:2019:691.

(404) The conclusions set out in recitals (109) and (110) are also valid with respect to the above mentioned product categories. No evidence was provided that markets would be segregated for these categories other than the fact that they were classified under different CN codes. This as such, however, cannot be considered as sufficient evidence as, while products may fall under different CN codes, they may still be competing with each other. The fact that one Union producer opposed to the complaint as such, does not prove or show that there is a segmentation of the market per product type. These claims were therefore rejected.

4.5.1. *Macroeconomic indicators*

4.5.1.1. Production, production capacity and capacity utilisation

(405) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 5

Production, production capacity and capacity utilisation

	2017	2018	2019	Investigation period
Production volume (tonnes)	1 421 735	1 346 720	1 238 982	1 060 569
Index	*100*	*95*	*87*	*75*
Production capacity (tonnes)	2 317 772	2 256 337	2 247 276	2 310 557
Index	*100*	*97*	*97*	*100*
Capacity utilisation (%)	61	60	55	46
Index	*100*	*97*	*90*	*75*

Source: EIFI, verified questionnaire replies

(406) During the period considered, the Union industry production volume decreased steadily and overall by 25 %.

(407) Production capacity remained stable over the period considered at roughly 2 300 000 tonnes. However, capacity utilisation decreased significantly due to the significant reduction of the production volumes, and decreased from 61 % in 2017 to only 46 % during the IP.

(408) Following final disclosure, EFDA observed that the indices in table 5 for production capacity and capacity utilisation during the IP differ slightly from the non-confidential summary of the macroeconomic indicators as submitted by EIFI and that this would indicate that the Commission made adjustments to the data provided by EIFI.

(409) As mentioned in recital (386), the information provided by the complainant was cross checked with the data submitted by the sampled Union producers and some corrections on this basis lead to slightly different indices.

4.5.1.2. Sales volume and market share

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

Table 6

Sales volume and market share

	2017	2018	2019	Investigation period
Sales volume on the Union market (tonnes)	1 414 956	1 303 730	1 199 408	1 038 934
Index	*100*	*92*	*85*	*73*
Market share (%)	66	62	61	59
Index	*100*	*94*	*92*	*90*

Source: EIFI, verified questionnaire replies

(411) The Union industry sales volume decreased by 27 % over the period considered, significantly faster than the decrease of consumption that decreased by 18 % during the same period.

(412) As a consequence, the Union industry market share fell from 66 % in 2017 to 59 % during the IP, i.e. a decrease of 10 % or 7 percentage points.

4.5.1.3. Growth

(413) In a context of decreasing consumption, the Union industry not only lost sales volumes in the Union but also market share.

4.5.1.4. Employment and productivity

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

Table 7

Employment and productivity

	2017	2018	2019	Investigation period
Number of employees (FTE)	22 004	20 960	21 060	21 134
Index	*100*	*95*	*96*	*96*
Productivity (tonne/employee)	65	64	59	50
Index	*100*	*99*	*91*	*78*

Source: EIFI, verified questionnaire replies

(415) The Union industry employment decreased over the period considered, due to the reduction in production and sales. This resulted in a reduction of workforce by 4 % without taking into consideration any indirect employment.

(416) As the production volume decreased even faster than the number of employees, the productivity of the Union industry fell by 22 % over the period considered.

(417) Following the final disclosure, the CCCME and EFDA, claimed that the Commission did not provide clear information on how these indicators have been computed.

(418) During the investigation, upon request of the above mentioned parties, the Commission clarified that the macroeconomic indicators were based on the individual input of Union producers represented by EIFI that was cross checked by data provided by the sampled Union producers. The methodology regarding macroeconomic indicators is also described in recital (384). This claim was therefore rejected.

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

(419) The dumping margins established during this investigation were all 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 country concerned.

4.5.2. *Microeconomic indicators*

4.5.2.1. Prices and factors affecting prices

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

Table 8

Sales prices in the Union

	2017	2018	2019	Investigation period
Average unit sales price in the Union on the total market (EUR/tonne)	2 467	2 664	2 810	2 738
Index	100	108	114	111
Unit cost of production (EUR/tonne)	2 354	2 482	2 673	2 709
Index	100	105	114	115

Source: Questionnaire replies of the sampled Union producers

(421) The unit sales prices of the Union industry rose by 11 % between 2017 and the IP. This was significantly lower than the increase in the unit cost of production of the Union industry (+ 15 %) over the period considered. As a result, the Union sales prices went below the unit cost of production during the IP, due to the significant price pressure operated by the Chinese imports that were undercutting the Union industry's sales price by 37 % during the IP.

(422) Following final disclosure, the CCCME and EFDA contested these figures and noted that it was unclear how unit costs were established. They also pointed to a mistake in the table disclosed that was corrected by the Commission. Unit costs were established as per Commission practice as full costs including the cost of manufacturing and the SG&A.

4.5.2.2. Labour cost

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

Table 9

Average labour costs per employee

	2017	2018	2019	Investigation period
Average wages per employee (EUR)	42 341	44 784	44 016	39 891
Index	*100*	*106*	*104*	*94*

Source: Questionnaire replies of the sampled Union producers

(424) During the period considered the average labour cost per employee decreased by 6 %.

4.5.2.3. Inventories

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

Table 10

Inventories

	2017	2018	2019	Investigation period
Closing stocks (tonnes)	39 021	40 191	45 398	41 638
Index	*100*	*103*	*116*	*107*

Source: Questionnaire replies of the sampled Union producers

(426) The level of closing stocks increased by 16 % between 2017 and 2019 and fell by 9 % between 2019 and the IP. Overall, during the period considered, the volumes of closing stocks rose by 7 %.

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

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

Table 11

Profitability, cash flow, investments and return on investments

	2017	2018	2019	Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	6	5	4	- 1
Index	*100*	*78*	*61*	*- 15*
Cash flow (EUR)	39 458 582	29 914 473	23 776 496	14 621 456
Index	*100*	*76*	*60*	*37*

Investments (EUR)	26 709 539	20 090 697	17 534 570	11 400 254
Index	*100*	*75*	*66*	*43*
Return on investments (%)	10	9	6	- 1
Index	100	86	62	- 8

Source: Questionnaire replies of the sampled Union producers

(428) 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.

(429) Profitability decreased every year between 2017 and the IP, when it became negative. This trend is mainly due to the fact that the Union industry was not able to reflect the increase in cost of production in their sales prices due to pressure from dumped imports which undercut the Union industry sales prices on average at 37 %.

(430) The net cash flow is the ability of the Union producers to self-finance their activities. The net cash flow decreased steadily during the period considered, and with an overall drop of 63 %, mainly due to the deteriorated of profit before tax, during the same period.

(431) The return on investments is the profit in percentage of the net book value of investments. It fell even faster than the profitability and the cash flow, decreasing each year during the period considered and becoming negative in the IP, as an effect of the negative profitability. Over the same period, the Union industry more than halved the level of its investments resulting in a drop of 57 %. The ability of the Union industry to raise capital had been severely affected by the erosion of the profitability as well as of the cash flow incurred over the period considered.

4.5.3. *Conclusion on injury*

(432) All main injury indicators showed a negative trend during the period considered. The production volume of the Union industry decreased by 25 % and its sales volume decreased by 27 %. With the decrease in consumption of 18 %, the market share of the Union industry fell by 10 % reaching 59 % during the IP.

(433) While the sales price increased by 11 % over the period considered, this was not enough to offset the increase in the unit cost of production (+ 17 %), resulting in a continuous erosion of the profitability over the period considered. Such price depression lead to a loss during the IP. A similar decreasing trend was observed for the employment, average labour costs, investments, return on investment and cash flow which decreased over the period considered.

(434) Based on the above, the Commission concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

(435) EFDA and the CCCME claimed that the Union industry was not suffering any injury and referred to publicly available information indicating positive profitability for certain Union producers in 2019, or positive trends in some of the injury indicators.

(436) The injury analysis carried out by the Commission was based on aggregated data of the sampled Union producers relating to the production and sales of the like product in the Union for microeconomic indicators, and on data pertaining to the entire Union industry for macroeconomic indicators. In contrast, the information provided by EFDA and the CCCME was based on publicly available data pertaining to only individual Union producers. It was therefore not considered representative. Likewise, the Commission's analysis covered all injury indicators over several years (the period considered), while the information provided by EFDA and the CCCME covered only one financial year, or only certain specific injury indicators, such as profitability. Finally, the data collected by the Commission pertained to the product under investigation only and were subject to verification. The information

provided by EFDA and the CCCME was therefore not considered adequate to determine the situation of the entire Union industry during the period considered and did not devaluate the findings based on the more precise data verified by the Commission. The claims made by EFDA and the CCCME in this regard were therefore rejected.

(437) Following final disclosure, the CCCME and EFDA noted that the profitability of the Union industry reported in Table 11 could not be reconciled with the unit sales price and unit cost of production reported in Table 8. As set out in recital (422), the Commission corrected the clerical error in the unit production cost. The negative trend in profitability which passed from 6 % in 2017 to -1 % in the IP was nevertheless confirmed.

5. **CAUSATION**

(438) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the country 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 country concerned was not attributed to the dumped imports. These factors are imports from other third countries, decrease in Union consumption, structural changes in the automotive sector, imports of fasteners by the Union industry, development of raw material prices and possible competitive advantages of the Chinese exporting producers, the COVID -19 pandemic and the alleged mismanagement by the Union industry.

5.1. **Effects of dumped imports**

(439) The deterioration in the situation of the Union industry coincided with the significant increase of imports from China, which consistently undercut the Union industry's prices and suppressed Union market price during the IP. As mentioned in recital (421) import prices of the sampled exporting producers undercut Union prices by 37 % on average during the investigation period.

(440) The volume of imports from China increased from around 135 000 tonnes in 2017 to around 209 000 in the investigation period, an increase of 55 %. Market share increased by 6 percentage points from 6 % in 2017 to 12 % in the investigation period. Over the same period, the Union industry sales decreased by 27 % and its market share fell from 66 % to 59 %, i.e. by 7 percentage points.

(441) The prices of the dumped imports increased by 7 % over the period considered, significantly less than the parallel price increase of the raw material (mainly wire rod). The low import prices lead to a price pressure on the Union market that were consistently below Union industry prices throughout the period considered. The Union industry was therefore not able to raise its prices to sustainable levels which resulted in a decreasing profitability and to losses during the IP.

(442) On the basis of the above, the Commission concluded that imports from China caused material injury to the Union industry. Such injury had both volume and price effects.

(443) EFDA and the CCCME referring to the prima facie evidence in the complaint, asserted that certain Union producers filed for bankruptcy already in 2016 and 2017, i.e. prior to the increase of Chinese imports. The CCCME emphasised that the anti-dumping measures in force on imports of fasteners originating in China were only lifted in March 2016 ([82]) and no imports from China were entering the Union market before that date. This would demonstrate that any injury suffered by the Union industry already existed prior to the increase of imports from China between 2017 and the IP. Therefore, any injury suffered by the Union industry cannot be attributed to the Chinese imports.

([82]) Commission Implementing Regulation (EU) 2016/278 of 26 February 2016 repealing the definitive anti-dumping duty imposed on imports of certain iron or steel fasteners originating in the People's Republic of China, as extended to imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not (OJ L 52, 27.2.2016, p. 24).

(444) Furthermore, EFDA, referring to publicly available information claimed that several Union producers were in a healthy financial situation despite Chinese imports. They argued that since all Union producers should have been affected by such imports in the same way, any material injury of the Union industry as a whole cannot be attributed to the Chinese imports, but necessarily must have been caused by other factors.

(445) The above claims were not confirmed during the investigation. As outlined in recital (439) to (441), there was a clear coincidence in time between the increase of dumped imports and the deterioration of the Union industry. The increase of imports continued well beyond the repeal of the measures that were in force against Chinese imports and such increase was therefore not considered as a mere consequence of the repeal. The Commission also notes that the situation of the Union industry as a whole has been assessed and that the situation of individual Union producers may vary which cannot, however, be considered as representative for the whole Union industry. These claims were therefore rejected.

(446) Following final disclosure, the CCCME and EFDA requested further disclosure of the development of wire rod prices on which basis the Commission draw above conclusions. These parties contested the appropriateness of the source used claiming that the data relate to a different period than the period considered. The Commission based its assessment on publicly available data ([83]) showing import price levels of wire rod during the IP which confirmed the conclusions set out in the recital above. This claim was therefore rejected.

(447) Following final disclosure, the CCCME and EFDA claimed that the volumes and price effect of the Chinese imports were not impacting the material injury suffered by the Union industry. First, they considered that 2017 is not an appropriate basis to determine an increase in import volume as anti-dumping measures on imports of fasteners originating in China were imposed in 2009 ([84]) and remained in force until 2016, and therefore the Chinese import volumes in 2017 had not resumed and were unusually low. The Commission notes that in 2017 Chinese imports represented 6 % of the Union consumption, which cannot be considered as insignificant, being the second largest export to the Union market after Taiwan. Moreover, this increasing trend is not only visible between 2017 and 2018, but also between 2018 and 2019 where there imports from China grew by around 50 %, which is by far the most significant growth compared to other third countries.

(448) These parties also asserted that the price increase of the Chinese imports was in the same range as the price increase of the Union industry's sales on the Union market. Chinese import prices, as shown in table 4 increased by 7 % during the period considered, while Union industry's sales prices on the Union market, as shown in table 8 increased by 11 % during the same period. It is also noted that Chinese import prices were substantially undercutting the Union industry prices and there was price pressure on the Union market that did not allow the Union industry to increase its prices in line with its cost increases (+ 15 % during the period considered). Therefore, the mere fact that prices increased in the same range, could not devaluate the findings set out in recital (441) and the claims of these parties in this regard were rejected.

(449) As mentioned in recital (152), an anchor producer in the Union argued that its related exporting producer in China is the only one with an official EU certification for concrete anchor screws and therefore the only one exporting this product type to the Union. Since it did not export this product during the investigation period, it could not have caused any injury to the Union industry.

(450) As set out in recitals (115), (152) and (156), one exporting producer of structural timber screws, one exporting producer of confirmat screws and one exporting producer group of concrete anchor screws claimed that these product types were not included in the scope of this investigation. Alternatively, these interested parties claimed that causality should be determined separately. In the case of confirmat screws and constructional timber screws the parties argued that they were not in competition with any of the product types produced by the Union industry, while in the case of concrete anchor screws, the exporting producer group affirmed that it did not export the product during the investigation period and therefore, it could not have caused any injury to the Union industry.

([83]) https://www.schraubenverband.de/downloads. Under the section "Vormaterial": publicly available statistics on wire rod price evolution from 2008 to 2021 (see the chart) and during the last 12 months (see table below the chart).

([84]) Regulation (EC) No 91/2009.

(451) As outlined in recital (110), all product types were considered as one single product for the purpose of this investigation as they shared the same basic physical and technical characteristics and the same basic end-uses. As already outlined in recital (398), any determination of dumping, injury and causation was therefore based on the product as a whole. No evidence was provided that would have justified a separate analysis per product type. It is also irrelevant whether all product types were exported during the investigation period. Finally, as already outlined in recital (151) it is not relevant that all product types are fully interchangeable as long as all types have the same basic physical and technical characteristics and same basic end-uses. These claims were therefore rejected.

(452) The CCCME argued that sales of the Union industry did not compete with Chinese imports, because the Chinese exporting producers predominantly produced and exported standard fasteners, while the Union industry produced and sold predominantly non-standard fasteners. On this basis, the CCCME argued that any injury suffered by the Union industry cannot be attributed to the imports of Chinese fasteners.

(453) The investigation has shown that exports from China included exports of non-standard fasteners and that there were several producers of non-standard fasteners in China. In addition, several Union producers are producing standard fasteners, including two sampled Union producers. There was therefore competition between the imports from China and the Union industry's sales and this claim was rejected.

(454) Following final disclosure, the Mission of the Republic of China to the European Union submitted that almost the entirety of exports from China were standard fasteners, while the Union industry predominantly produced and sold non-standard fasteners and that therefore there would not be any competition between the Chinese imports and the sales of the Union industry on the Union market. The analysis of causation cannot therefore be based on the product as a whole. The Mission of the People's Republic of China to the European Union alleged that less than 20 % of the sales made by the sampled Union producers were used to calculate undercutting margins which confirms that there is no competitive relationship between the Chinese imports and the sales of the Union industry on the Union market.

(455) Following final disclosure, EFDA and the CCCME claimed that the investigation had shown price effects (undercutting) of Chinese imports only for a small part of the Union industry, i.e. for those producers selected in the sample that produced standard fasteners. On the other hand, the injury was assessed for the entire Union industry that is however, focused on non-standard fasteners. The small volume of Chinese imports of non-standard fasteners can be attributed to imports of the Union industry. Therefore, any price effect on these imports has to be considered as self-inflicted injury. Consequently, any injury suffered by the Union industry cannot be attributed to the dumped imports from China. The same would be true for washers, screws and bolts.

(456) These arguments and claims are similar to the ones brought forward in relation to the determination of the injury set out in recitals (400) and (401) and were fully addressed already in recitals (402) to (404). With regard to the undercutting calculations, the Commission disagrees with the arguments provided. The investigation has shown that there is a substantial overlap between the product types imported from the sampled Chinese exporting producers and those produced and sold by the Union industry on the Union market. Thus, around 90 % of the product types exported from China were also produced and sold by the sampled Union industry on the Union market. This argument was therefore also rejected.

5.2. **Effects of other factors**

5.2.1. *Imports from other third countries*

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

Table 12

Imports from third countries

Country		2017	2018	2019	Investigation period
Taiwan	Volume (tonnes)	286 454	292 726	261 244	236 636
	Index	*100*	*102*	*91*	*83*

	Market share (%)	13	14	13	14
	Average price	2 176	2 233	2 358	2 387
	Index	*100*	*103*	*108*	*110*
Vietnam	Volume (tonnes)	94 275	107 243	91 329	84 595
	Index	*100*	*114*	*97*	*90*
	Market share (%)	4	5	5	5
	Average price	1 428	1 530	1 632	1 591
	Index	*100*	*107*	*114*	*111*
Turkey	Volume (tonnes)	45 863	50 691	43 498	38 919
	Index	*100*	*111*	*95*	*85*
	Market share (%)	2	2	2	2
	Average price	2 700	2 706	2 615	2 654
	Index	*100*	*100*	*97*	*98*
Other third countries	Volume (tonnes)	157 942	167 555	155 962	139 895
	Index	7 %	8 %	8 %	8 %
	Market share (%)	8	9	9	9
	Average price	3 177	3 133	3 302	3 321
	Index	*100*	*99*	*104*	*105*
Total of all third countries except China	Volume (tonnes)	584 535	618 214	552 032	500 045
	Index	*100*	*106*	*94*	*86*
	Market share (%)	27	30	28	29
	Average price	2 367	2 394	2 525	2 534
	Index	*100*	*101*	*107*	*107*

Source: Eurostat

(458) Imports from other third countries were mainly from Taiwan, Vietnam and Turkey. Total imports volume from all third countries except China decreased by 14 %, between 2017 and the IP, passing from around 585 000 to around 500 000 tonnes. The corresponding market share rose from 27 % in 2017 to 29 % in the IP, in a context of decreasing consumption in the Union market. Overall, the average import prices increased by 7 % during the period considered and were on average considerably higher than the prices of imports from China (72 % higher in the IP), in line with the prices of the Union industry. The only exception was Vietnam, whose prices were only 8 % higher than the Chinese imports. Nevertheless, the market share of Vietnamese imports during the investigation period (5 %) was

significantly lower than the market share of Chinese imports during the same period (12 %). Moreover, between 2017 and the investigation period, import volumes from Vietnam decreased by 10 %, whilst Chinese import volumes rose by 55 %.

(459) On the basis of the above, the Commission concluded that imports from other third countries were not the source of the material injury suffered by the Union industry.

(460) At initiation, the CCCME claimed that there was a coincidence in time between the increase of imports from other third countries between 2017 and 2018 and the injury suffered by the Union industry and that therefore, any injury should be attributed to the imports from other third countries rather than China.

(461) This argument does not take into account the development of the Union industry throughout the entire period considered but only focused on two years of this period, while the injurious situation of the Union industry cannot be limited to only 2017 and 2018. It is also in contrast to the findings of the current investigation which has shown that there was, over the period considered, a gradual and substantial increase of dumped Chinese imports that coincided with a loss of sales of the Union industry and a negative development of injury indicators. In addition, prices from other third country imports were considerably higher than prices of Chinese imports. This claim was therefore rejected.

5.2.2. *Decrease of the Union consumption*

(462) During the period considered Union consumption decreased by 18 %. The Commission therefore examined whether this decrease in consumption could attenuate the causal link between the dumped imports and the material injury suffered by the Union industry. However, as shown in Table 3, despite the decrease in consumption, Chinese export sales increased steadily over the period considered and in total by 55 %. This increase translated in an increase of market share from 6 % to 12 %, i.e. 6 percentage points. In parallel, and as set out in recital (365), Chinese import prices were undercutting the Union industry sales prices on the Union market by 37 % on average. As shown in Table 6, the Union industry's market share shrank by 7 percentage points during the period considered, which corresponded roughly to the gain of market share by the Chinese imports, whilst the market share of other third countries increased by merely 2 percentage points and decreased in absolute terms. On this basis, the Commission concluded that the decrease in consumption did not cause the material injury to the Union industry

5.2.3. *Structural changes in the automotive sector*

(463) Several interested parties claimed that the global automotive market has been shrinking over the past years and has in addition, also gone through important structural changes. They asserted that these developments were mainly due to an increasing trend towards vehicle electrification away from diesel powered engines. Since the electric powered engines require lower specification fasteners there has been a drop in demand of non-standard fasteners. This situation was further accentuated by a general downsizing of vehicles requiring a reduced number of fasteners. In addition, the automotive sector has known a number of consolidations through major mergers and acquisitions, which led to product rationalisation which, in turn impacted the demand of fasteners negatively. These parties claimed that this development affected in particular the Union industry who is predominantly producing non-standard fasteners for the automotive industry.

(464) The investigation revealed that the Union consumption of fasteners destined for the automotive sector between 2008 and the IP did not exceed [25-32 %] of the total Union production. This estimation was based on evidence provided by EIFI based on data on the total production volume of Light Vehicles (LV) and the fasteners used in the production of LV (including electric, hybrid and internal combustion vehicles) over a period from 2008 and the IP ([85]). The claim that the Union industry as a whole is predominantly producing for the automotive industry could therefore not be confirmed by the current investigation. To the contrary, the investigation has shown that Union producers were supplying to various industry sectors including those using standard fasteners. The downturn in the automotive sector therefore did not affect the entire Union industry in equal terms, and a large part of the Union production was not affected at all. In addition, the investigation has also shown that the decrease in production of LV did also not have automatically have a negative effect on the Union producers supplying the automotive

([85]) HIS Markit Inc https://ihsmarkit.com/index.html and A2Mac1 https://portal.a2mac1.com/

industry. In particular, the information available has shown that the production of powertrains for fully electric cars is still relatively low while there has been a substantial growth in hybrid powertrains. The consumption of fasteners in hybrid vehicles is, however, higher than the consumption of fasteners in gasoline cars. Therefore, while part of the Union industry may have been negatively affected by the development in the automotive industry, this was not the case for large part of the Union industry that is not supplying the automotive industry and therefore, this could not attenuate the causal link between the dumped Chinese imports and the material injury suffered by the whole Union industry. The claims in this regard were therefore rejected.

5.2.4. *Imports by the Union industry*

(465) EFDA and one of the sampled importers claimed that the Union industry is importing standard fasteners from other third countries including China to establish themselves as traders of standard fasteners in the Union. They alleged that imports would be necessary to maintain their production capacities of the non-standard fasteners that are more lucrative than standard fasteners. In addition, one importer claimed that these imports are mainly from other third countries, in order to avoid anti-dumping duties in the future and therefore position themselves in a better competitive situation than traditional importers of fasteners whose suppliers are mostly in China.

(466) The investigation did not confirm these allegations. Imports of fasteners from China by the sampled Union producers represented less than 1 % of their total production of fasteners; and imports from other third countries less than 3 %. In addition, as mentioned in recital (458), imports from other third countries had price levels similar to those of the Union industry. Therefore, the Commission concluded that imports of fasteners from China or other third countries did not break the causal link between the material injury suffered by the Union industry and the dumped imports from China.

(467) Following final disclosure, EFDA reiterated the claim made in recital (465) alleging that imports of fasteners from China by the sampled Union producers represented 5 % of total Chinese imports and have therefore to be considered as significant. EFDA also alleged that the conclusions set out in recital (466) do not include imports by the Union industry via distributors, but only direct imports and therefore the real import volume by the Union industry would be much higher than the one indicated in that recital. To support its argument, EFDA takes the example of one of the sampled Union producers which reported in its questionnaire reply that it purchased fasteners either directly or via distributors from China.

(468) The statement of EFDA that imports by the sampled Union producers represented 5 % of the total Chinese imports during the IP is factually wrong and was therefore dismissed. The Commission based its findings set out in recital (466) on the verified information of the sampled Union producers, including the one referred to by EFDA in the above recital. The verification of the Commission included also the suppliers of the Union producers, i.e. whether purchases were made directly from a Chinese supplier or via a distributor. Therefore, EFDA's claims in this regard were rejected and the conclusions set out in recital (466) were confirmed.

5.2.5. *Competitive advantages of the Chinese exporting producers*

(469) One of the sampled importers claimed that the Chinese producers would have competitive advantages, such as access to lower raw material prices, lower labour costs, less stringent legal environmental requirements and export subsidies.

(470) As established in recital (187) and following, the alleged competitive advantages were in reality significant distortions on the Chinese market with regard to domestic prices and costs and normal value for the sampled exporting producer was therefore constructed in accordance with Article 2(6a) of the basic Regulation. The existence of those distortions in China cannot be considered a factor attenuating the causal link between dumped imports and the material injury suffered by the Union industry. Rather, those elements confirm that those distortions lead to artificially low export prices and dumping. The claims in this regard were therefore rejected.

5.2.6. *COVID-19 pandemic*

(471) EFDA argued that the COVID-19 pandemic that started in the first half of 2020 caused the material injury suffered by the Union industry.

(472) As shown in Table 2, Union consumption already started decreasing in 2019, i.e. before the COVID-19 pandemic. This decrease continued during the investigation period, which covered the first half of 2020. Nevertheless, as mentioned in recital (462), Chinese imports increased during the same period, both in absolute terms and in terms of market share, penetrating the Union market at dumped prices undercutting substantially the Union industry sales prices. This is in contrast to imports from other third countries, import volumes of which decreased in absolute terms and their import prices were overall on average in the same range than those of the Union industry.

(473) As shown in Table 3, the dumped Chinese imports had already increased steadily on a year-on-year basis in the period 2017-2019 leading to an increase of 54 % by 2019, i.e. until the start of the COVID-19 pandemic. In other words, the material injury caused to the Union industry by the dumped imports had already materialised as evidenced by the negative development of most macro – and microeconomic indicators in the period 2017-2019 when the COVID-19 came into the equation.

(474) In this context, it cannot be denied that the COVID-19 pandemic, and the following decrease in consumption, contributed to further aggravate the already deteriorated Union industry's situation. However, this development does not attenuate the causal link between the material injury found and the dumped imports from China. As noted above, the Union industry was materially injured by dumped imports from China that increased by 54 % during the three-year period before the pandemic outbreak so it is clear that material injury already occurred before and regardless of the pandemic.

(475) Following final disclosure, the CCCME and EFDA reiterated the claim that the COVID-19 pandemic was the major cause for the material injury suffered by the Union industry during the IP, arguing that main injury indicators deteriorated mainly between 2019 and the IP, in parallel to the COVID-19 pandemic while Chinese imports remained unchanged and their market share only increased by 1 percentage point between 2019 and the IP. These parties also made reference to a declaration by one of the sampled Union producers in the open version of the questionnaire reply indicating that the COVID-19 pandemic impacted their business; as well as to a statement of EIFI in its correspondence with the Commission that certain changes in production and sales volume would be attributed to the COVID-19 pandemic.

(476) None of the arguments provided after final disclosure contradicted or devaluated that conclusions set out in recitals (472) to (474), in particular that the COVID-19 pandemic, and the following decrease in consumption, contributed to further aggravate the already deteriorating Union industry's situation. The Commission also notes that production and sales volume of the Union industry deteriorated already between 2018 and 2019, i.e. prior to the COVID 19 pandemic when the Chinese imports increased by 38 %. The Commission considered therefore that the negative trends observed between 2019 and the IP are a continuation of the already negative trends observed since 2017 and that the COVID 19 pandemic only exacerbated this clear existing trend. The Commission confirmed therefore the conclusions expressed in recital (474) and rejected all claims made in this regard.

5.2.7. *Mismanagement by the Union industry*

(477) One of the sampled importers claimed that the injury of the Union producers that are also active in the production and sale of standard fasteners was due to bad business and investments decisions and internal structural difficulties and cannot be attributed to the Chinese exports of fasteners.

(478) This claim was made on a very general basis, without any further details and without providing any evidence in its support. It was therefore rejected.

5.3. **Conclusion on causation**

(479) The increase of dumped imports from China coincided with the decline of the Union industry's situation. The Chinese imports gained significant market share in the context of a decreasing consumption, at the expense of the Union industry that lost sales volume and market share. In terms of prices, the increasing market share of the Chinese imports continuously undercut those of the Union industry sales prices on the Union market, created substantial price pressure and prevented the Union industry to increase its prices to sustainable levels necessary to achieve reasonable profit margins.

(480) Possible other factors were also examined, but none of them could attenuate the causal link between the dumped imports and the material injury suffered by the Union industry. 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.

(481) On the basis of the above, the Commission concluded that the dumped imports from China caused material injury to the Union industry and that other factors, considered individually or collectively, did not attenuate the causal link between the dumped imports and the material injury. The injury is clear in particular in the evolution of production, capacity utilisation, sales volume in the Union market, market share, productivity, profitability and return on investments.

6. **LEVEL OF THE MEASURES**

(482) Based on the conclusions reached by the Commission on dumping, injury, causation and Union interest, definitive measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.

(483) To determine the level of the measures, the Commission examined whether a duty lower than the margin of dumping would be sufficient to remove the injury caused by dumped imports to the Union industry.

6.1. **Injury elimination level (injury margin)**

(484) The Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry. In this case, the injury would be eliminated if the Union industry was able to cover its costs of production, including those costs resulting from multilateral environmental agreements, and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia of the basic Regulation, and was able to obtain a reasonable profit ('target profit') by selling at a target price in the sense of Articles 7(2c) and 7(2d) of the basic regulation.

(485) In accordance with Article 7(2c) of the basic Regulation, for establishing the target profit, the Commission took into account the level of profitability before the increase of imports from the country concerned and the level of profitability to be expected under normal conditions of competition. Such profit margin should not be lower than 6 %.)

(486) The Commission established a basic profit covering full costs under normal conditions of competition. The Commission took the profits achieved by the sampled Union producers before increase of imports from China. Such profit margin was established at 5,9 %, which corresponds to the level of profit achieved by the Union industry in 2017. As this was lower than the minimum 6 % required by Article 7(2c) of the basic Regulation, this profit margin was replaced by 6 %.

(487) No claims were made that the Union industry's level of investments, research and development (R & D) and innovation during the period considered would have been higher under normal conditions of competition.

(488) Likewise, no claims were made concerning the future costs resulting from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party and that the Union industry will incur during the period of the application of the measure pursuant to Article 11(2), in accordance with Article 7(2d) of the basic Regulation.

(489) On this basis, the Commission calculated a non-injurious price of the like product for the Union industry by applying the target profit margin of 6 % to the cost of production of the sampled Union producers during the investigation period.

(490) The Commission then determined the injury elimination level on the basis of a comparison of the weighted average import price of the sampled exporting producers in the country concerned on a type-by-type basis, 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 free Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.

(491) Following final disclosure, two of the sampled exporting producers contested the calculation of the target price. They claimed that some of the product types were sold in very small quantities by the Union industry and that therefore the average price of these types would not be representative. One of these exporters asserted in addition, that certain product types sold by the Union industry were not comparable to those exported by them. The same exporting producer observed that the Commission should have disclosed the adjustments made under Article 7(2d) of the basic Regulation and the methodology how they were calculated.

(492) While the quantities sold of the product types concerned were indeed low, the Commission observed that the quantities exported by the Chinese exporting producer concerned of the same PCN were also low and there were no elements in the file that lead to the conclusion that these prices were not representative. In any event, even if the Commission would have excluded these sales transactions from the underselling calculations, this would only have had a minor impact, and the underselling margins would have still remained significantly above the dumping margins calculated for these exporting producers. These claims were therefore rejected.

(493) Regarding, the adjustments made under Article 7(2d) of the basic Regulation, the general disclosure document contained an error and falsely indicated that such adjustments were made, despite the fact that as set out in recital (488) no claims for such adjustments were received. There was therefore no need for further disclosure.

(494) 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.

Company	Definitive dumping margin	Definitive injury margin
Jiangsu Yongyi Fastener Co., Ltd.	22,1 %	79,0 %
Ningbo Jinding Fastening Piece Co., Ltd.	46,1 %	85,3 %
Wenzhou Junhao Industry Co., Ltd.	48,8 %	125,0 %
Other cooperating companies	39,6 %	94,0 %
All other companies	86,5 %	196,9 %

7. **UNION INTEREST**

(495) 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, retailers in the do-it-yourself ('DIY') sector and users.

7.1. **Interest of the Union industry**

(496) The imposition of measures will improve market conditions for the Union producers that will be able to improve its competitive position in the market, and recover lost sales volume and market share. As the price pressure from unfair imports would be lifted, the Union industry will be able to increase their sales prices and reach a sustainable profitability.

(497) The absence of measures would have significant negative effects for the Union industry, as imports would continue to increase leading to further price depression in the Union having a negative impact on the Union industry's production and sales volume as well as market share. This in turn would negatively affect the Union industry's financial indicators and in particular, the already loss making situation would be further aggravated with negative consequences for investments and employment in the Union.

(498) Therefore, the imposition of measures would be clearly in the interest of the Union industry.

(499) EFDA and other interested parties claimed that the Union industry would not be able to benefit from the imposition of anti-dumping duties; and that ultimately third country producers will increase their exports to the Union and thus benefit from anti-dumping measures against China rather than the Union industry.

(500) The Commission considered this claim was speculative, as it was not substantiated by any evidence. The fact alone that imports from other third countries may increase as a consequence of the anti-dumping measures is not a sign that the Union industry does not benefit from such measures. In this regard, the current investigation established that import volumes from other third countries did not increase during the period considered, but substantially decreased, and that import prices from these sources were also overall not undercutting Union industry prices. On this basis, the information in the file suggested that these imports may also have been negatively affected from the price pressure of the Chinese imports on the Union market, as dumped imports from China were on average also below the prices of imports of the other third countries and were increasing, while third country import volumes decreased. It is recalled that anti-dumping measures aim merely to restore the level playing field in the Union market, and not to restrict imports under fair market conditions. The Commission therefore rejected this claim.

(501) Following final disclosure, the exporting producer CELO Suzhou, claimed that the Commission's decision to deny an individual examination to it will likely cause injury to its related manufacturers in the Union that were importing specific product types from its related company in China. Therefore measure would not be in the interest of the Union industry.

(502) The interest of the Union industry is based on the aggregated data of the Union industry as a whole. The situation of individual Union producers can therefore not be taken into consideration as such, when it is not representative for the whole Union industry. This argument was therefore rejected.

7.2. **Interest of importers**

(503) As mentioned in recital (58) twenty-eight importers cooperated in the investigation and provided the information requested in the notice of initiation for sampling purposes. They represented 18 % of the total imports from China during the IP. These importers imported 46 % fasteners from China, while they sourced 54 % from other third countries.

(504) The Commission sampled five importers that provided questionnaire replies. For the sampled companies imports from China represented between approximately 10 % and 50 % of their total imports of fasteners. Only one of the sampled importers purchased over 90 % from China. All except one were profitable during the IP, with profit margins between [2 %-5 %] and [4 %-9 %]. One of the importers was slightly below break-even during the IP.

(505) The Commission assessed the impact of anti-dumping duties on the profitability of the sampled importers. Under the assumption that duties would be fully absorbed those importers that showed profit margins during the IP were found to remain profitable, despite the duties. This assessment was based on a worst case scenario, i.e. it did not take into account that price increases will very likely be either fully or at least partly passed on to the customers, in particular, in view of the findings in recital (520) and following, that in general, the cost of fasteners only represent very little part of the users' total cost of production. This is also true regarding the importer that was already below break-even during the IP, i.e. this importer will also be able to pass on any price increase to a large part to its customers. The duties as such are therefore not expected to have a significant negative effect on this company and thus worsen its situation.

(506) Several interested parties claimed that the imposition of anti-dumping duties would lead to significant price increases for importers. They also claimed that the imposition of anti-dumping measures in the past, resulted in severe losses for importers that should be taken into account in the current analysis. One importer claimed that it would not be possible to pass on the price increase to customers at least not in short term.

(507) As set out in recital (505), the expected price increase would not have severe negative effects on the importer's situation, as in general, they would remain profitable. The claim that importers realised losses in the past due to the previous measures could not be verified and also, no evidence was submitted in support of this claim. Finally, the claim that importers would not be able to pass on the price increase to its customers, likewise, no evidence was provided. The investigation revealed that given that the share of fasteners in the total costs of the users is in general very low, it is expected that price increases of importers will be passed on at least partly to the end-customer. These claims were therefore rejected.

(508) Following final disclosure, EFDA reiterated that the imposition of duties would severely impact the profitability of importers and would lead to significant losses. They contested the methodology used by the Commission to assess the impact on profitability on an aggregated basis and claimed such assessment should be made individually per sampled importer, and in relation to the turnover and profit of imports of the product concerned from China only. Furthermore, EFDA claimed that the impact of the duties should also have been assessed on cash flow. Finally, they contested that the duty can be passed on to the final customer.

(509) The Commission assessed the profitability of the importers on an aggregate level, similarly to what was done at Union producers' level. This is considered appropriate because the situation of the importers in the Union as a whole is analysed and not the situation of individual companies. This argument was therefore rejected.

(510) The Commission's assessment was based on actual company specific data provided by the sampled importers themselves. In contrast, EFDA did not substantiate its general statements by any factual evidence and therefore they could not be verified. Furthermore, the Commission considered that the assessment of the impact of the duty for each company was more appropriate on a global company level because it corresponded better to the economic realities. In this regard, the Commission notes that importers chose various sources of supply and as the duties only have an effect on one of these sources (China), not all importers are impacted the same way. An analysis of only part of the operation would not be conclusive in this regard. These claims were therefore rejected.

(511) With regard to the claim that the Commission should have analysed the impact of duties on the importers' cash flow, this statement was not supported by any factual evidence. The sampled importers also did not provide any information on cash flow to the Commission, nor was there any evidence on file that importers would have to increase their stock quantities due to long delivery times with impact on cash flow, as claimed. This claim was therefore also rejected.

(512) EFDA also claimed that importers would not be able to pass on the increase of costs to their customers. EFDA did, however, not provide any further explanations or evidence to put in question the findings set out in recital (520) that the cost of fasteners for users is generally very low suggesting a limited price elasticity of the fasteners demand. In addition, the assessment in recital (505) is based on the assumption that duties would be fully absorbed by the importers, i.e. that they will not pass on even partially their increased cost, which is very unlikely. As mentioned in the same recital, even under this assumption, the impact on importers, based on the information provided by the sampled importers was expected not to be significantly adverse.

(513) Finally, EFDA noted that the Commission did not address the claim that there would be an increased risk of circumvention of anti-dumping measures given the high difference between the duty rates. Since importers would be the main victims of such circumvention practices, anti-dumping measures would be against the interest of importers.

(514) The Commission addressed the risk of circumvention in recitals (606) and following by introducing a special monitoring clause that allows for observation of trade patterns and timely counteraction in case circumvention practices are confirmed. This claim was therefore rejected.

(515) One importer argued that anti-dumping measures would be in contradiction to the measures taken by the European Commission to support companies affected by the COVID-19 pandemic and added that the Commission should take into consideration the exceptional circumstances caused by the pandemic and the direct negative impact on importers.

(516) The interested party in question only referred in very general terms to the measures taken following the COVID -19 pandemic without providing any further details and without explaining to what extend anti-dumping measures would be in contradiction to those measures. In any event, the Commission considered that none of those measures would exclude per se that appropriate measures are taken in accordance with the basic Regulation to counteract injurious dumping. The investigation has also shown as set out in recital (471) and following, that the COVID-19 pandemic did not have an impact on the import volumes from China that continued to increase during the entire period considered at dumped levels, severely undercutting the Union industry's sales prices. This claim were therefore rejected.

7.3. **Interest of retailers – Do-it-yourself (DIY) sector**

(517) EDRA claimed that measures would have a significant negative impact on the DIY sector. They claimed that the DIY sector is mainly purchasing low-end standard fasteners not produced by the Union industry. They also explained that fasteners in the DIY sector were sold in small (consumer-friendly) packaging that constitutes large part of the sales price. Due to the much higher packing cost in the Union as compared to Asia, it would not be viable for the Union industry to produce products for the DIY sector. EFDA supported these claims and argued furthermore that the price increase would also harm the international competitiveness of DIY retailers as they would not be able to sell their own labels anymore to other third countries.

(518) As mentioned in recital (142), one exporting producer of hard ware kits destined mainly to household uses also claimed that this type of product would not be produced by the Union industry and was distributed via different sales channels, i.e. retailers, while fasteners destined to industrial use produced by the Union industry were sold via distributers.

(519) None of the above claims was supported by evidence. None of the retailers in the DIY sector cooperated in the investigation by providing a questionnaire reply or any other information on prices and costs or profitability and suppliers. The Commission was therefore not in the position to analyse the impact of measures on this sector in specific. On the other hand, the investigation revealed that the Union industry had significant spare capacities and would therefore be able to increase its production volume significantly. The Union industry is composed of producers of various types of fasteners, including standard fasteners and is able to produce all types of fasteners, including those for the DIY sector. The Union industry affirmed that there were several Union producers and distributors with their own automatic packaging lines for large quantities and there are also service providers in the Union market for medium-small quantities. The claim that certain products were distributed via different sales channels was considered irrelevant for the question whether the Union industry would be able to supply specific fastener types. All claims made in this regard were therefore rejected.

7.4. **Interest of users**

(520) Two users came forward in the investigation and provided a reply to the questionnaire. Both produced anchors screws using fasteners in their production processes. The reply of both users was significantly deficient and none of the companies replied to the Commission's request to provide additional information. As a result, for one of the users, the Commission was not able to assess the impact of the anti-dumping duties at all, while for the other user, despite the lack of information, the Commission observed that this company reported that the cost of fasteners in its total cost represented less than 1 %. On this basis, the Commission concluded that duties would not have a significant impact.

(521) ECAP and the association representing European manufacturers of metal and plastic anchors, Construction Fixing Europe ('CFE'), supported by EFDA, claimed that duties would have a negative impact on the producers of metal and plastic anchors and their competitiveness in the Union and worldwide. Anchor producers import standard fasteners and use them as semi-finished products in their production process. CFE asserted that such standard fasteners are not produced in the Union.

(522) None of the anchor producers cooperated in the present investigation and none of them replied to a questionnaire intended for users. Therefore, there was no evidence or any other information in the file concerning the cost of fasteners in the production process of anchors, profitability of anchor producers, their suppliers and/or the impact of duties on their profitability. This is also true for the claim made regarding the competitiveness of anchor producers in the Union and worldwide. These claims were therefore rejected.

(523) Regarding the claim that this type of standard fastener was not produced by the Union industry, the Commission notes that the Union industry is producing standard fasteners and has substantial spare capacities to produce all types of fasteners. This claim was therefore rejected.

(524) EFDA also claimed that duties would have a negative impact on industrial sectors such as construction, railway, and renewables as well as manufacturers of grain bins in the agricultural sector. They provided some assertions on the representativity of fasteners in the total costs in these sectors and argued that there would be a negative effect on the economic situation of companies in this sector and on their competitiveness in the Union.

(525) None of these allegations were supported by any evidence. In addition, none of the interested parties representing any of those sectors made themselves known or cooperated during the investigation. The Commission also observed that on the basis of the allegations made by EFDA, the cost of fasteners in the end products of these industries were between 3 % and a maximum of 12 %. Although these claims were not supported by any evidence or otherwise substantiated, this shows a limited impact of duties, in particular considering that is was also not shown to what extend these specific sectors were using fasteners imported from China. Therefore, the claims made by EFDA in this regard could not be accepted.

(526) Finally, one manufacturer of industrial battery intercell connectors, supported by EFDA, highlighted the specificity of the fasteners used in its production process (pole screws) and that they were not produced by the Union industry. It also claimed that duties would have a negative impact on its competiveness vis-à-vis third country producers of industrial battery intercell connectors. This company claimed that pole screws should not be included in the product scope.

(527) The claim that pole screws should be excluded from the product scope is addressed in recital (159). The company did not provide any supporting evidence or any information regarding the alleged impact of the measures on its financial situation. Regarding the lack of supply in the Union reference is made to the conclusions set out in recitals (530) and following. In particular, the Union industry was found to have significant spare capacity to produce special and standard fasteners. The claims made by this company were therefore rejected.

(528) Following final disclosure, this party objected to the findings that the Union industry had sufficient spare capacities to produce pole screws claiming that the Union industry is not able to produce pole screws. In support of this claim the company provided correspondence with five Union producers that confirmed that they were not able to supply pole screws. These Union producers were not complainants and did not come forward during the investigation. The Commission had therefore no information available in the file concerning the activities of these companies and the products produced. Based on the publicly available information, two of the five producers appeared to be specialised in fasteners for window frames and machine and plant constructions; therefore it would not appear unusual that they could not provide pole screws used in industrial batteries. The information provided could therefore not be considered as conclusive or representative for the Union industry as a whole. On the other hand, the Union industry representing cooperating Union producers in the investigation confirmed that they had capacity to produce all types of fasteners, including pole screws. This claim was therefore rejected.

(529) Based on the above, the Commission concluded that there were no significantly adverse effects of the anti-dumping duties on the situation of the users in the Union.

7.5. **Shortage of supply of fasteners**

(530) Several interested parties claimed that the Union industry does not have sufficient capacities to produce standard fasteners to satisfy the demand on the Union market. EFDA and one of the sampled importers claimed that the Union industry would be unable or unwilling to supply standard fasteners and that many users rely on imports from China. They also claimed that supply from other third countries is limited as exporting producers in these countries would not have sufficient capacities. One exporting producer added that the Union industry would be reluctant to enter mass production of standard fasteners due to the investments to be made in fully automated production lines.

(531) Several parties claimed that certain product types (structural timber screws, confirmat screws, hot forged fasteners, pole screws, hardware kits and fasteners used in the DIY sector) were not produced by the Union industry or only in limited quantities and therefore, should measures be imposed there would be a shortage of these product types on the Union market. In some cases, these parties claimed that the Union industry is not expected to switch to the production of these types, and that there would also be a worldwide shortage of these types so they cannot be sourced from other suppliers either.

(532) EDRA claimed on a more general basis that the fastener market has seen an increase in demand worldwide while during the COVID 19 pandemic, manufacturers were producing below their capacities. Any further disruption of the market by imposing anti-dumping duties would aggravate the situations for retailers.

(533) Several interested parties also claimed that there was a shortage of shipping containers for shipments from Asia and that lead times between order and delivery takes up to several months, as a consequence of the COVID-19 pandemic. Shipping costs have multiplied which would have to be added to expected price increase due to anti-dumping measures. Moreover, it was claimed that there was a shortage of raw material (mainly steel) worldwide which had an impact on the production volume of fasteners worldwide.

(534) The investigation revealed that the Union industry was producing both, standard and non-standard fasteners and had substantial spare capacities available to meet an increased demand from users that decide to switch their supplier. Thus, during the investigation period the Union industry only used 46 % of their total capacity and could therefore increase its production by more than 1 million tonnes in short term. The spare capacity concerned the production of all types of fasteners, standard fasteners included. The claims that the Union industry was not able or not willing to produce standard fasteners was not supported by sufficient evidence. EFDA provided correspondence of individual Union producers that were, however, not considered representative for the entire Union industry. Also, temporary difficulties observed to supply new customers due to the consequences of the COVID-19 pandemic, were not considered to be of a structural nature and did not devaluate the findings that there was a large available spare capacity on the Union market that could satisfy the demand. These claims were therefore rejected.

(535) The claims with regard to the lack of supply of certain specific product types were not supported by any verifiable evidence. On the other hand, as outlined in the above recital, there were large spare capacities available in the Union that covered all product types, including special fasteners. The information in the file collected from the Union producers did not suggest that the Union industry was not able to provide all types of fasteners. These claims were therefore rejected.

(536) Following final disclosure the exporting producer of hot forged fasteners reiterated that the Union industry did not produce hot forged fasteners in sufficient quantities in the Union market. The exporting producer argued that this would be substantiated by the detailed undercutting calculations carried out per product type that confirmed that only low quantities produced and sold by the Union industry pertained to product types produced under the hot forged process. In addition, the Union industry appears to produce less product types which in itself shows that they cannot provide a wide range of different product types, including hot forged fasteners. Finally, the exporting producer claimed that the burden of prove of sufficient production capacity in the Union would lie with the Union industry.

(537) It is noted that based on the sample of Union producers although representative for the Union industry, the precise production volume of fasteners produced under hot forged processes cannot be extrapolated. Also, the production volume of the Union industry during the investigation period does not reflect the full production capacity, as the Union industry, being confronted to unfair imports and low price levels in the Union, have not been fully utilising their production capacities. Regarding the burden of proof, the Commission considered that the investigation has shown that there is sufficient production capacity of all types of fasteners in the Union. This conclusion was based on the large spare capacity established during the investigation as set out in table 5, as well as on the information collected during the investigation related to the macroeconomic indicators. This claim, as well as the claims with regard to insufficient production capacity in the Union, were therefore rejected.

(538) Following final disclosure, ECAP provided information from certain Union producers confirming that they were unable to supply structural timber screws. ECAP also asserted that certain types of timber screws require further processing (special heat treatment, coating) that would not be available in the Union. They argued finally that the fact that one Union importer and producer of non-standard fasteners explicitly supported the exclusion of timber screws would prove that imports of these products are needed to satisfy the demand on the Union market.

(539) The additional information provided by ECAP related to Union producers that were not complainants and did not come forward during the investigation. The Commission had therefore no information available in the file concerning the activities of these companies and the products produced. Based on the publicly available information, no conclusion could be drawn as to whether they were producing fasteners for the construction sector. In addition, these companies could not be considered representative for the Union industry as a whole. On the other hand, as above, the Union industry representing cooperating Union producers in the investigation confirmed that they had capacity to produce all types of fasteners. This claim was therefore rejected.

(540) The claim that certain processing activities were not available in the Union was not made prior to the final disclosure and was not substantiated by any evidence. This claim could therefore not be verified and was rejected. Finally, the fact that one Union importer and producer of non-standard fasteners explicitly supported the exclusion of timber screws, does not prove as such that imports from China are needed to satisfy the demand in the Union. Likewise, this claim was therefore rejected.

(541) Following final disclosure, EFDA reiterated their claim on the shortage of supply of standard fasteners if high import duties had to be imposed, while for numerous industrial sectors it would be crucial to have sufficient, predictable and timely supply of standard fasteners. EFDA claimed that since the Union industry does not produce standard fasteners in sufficient quantities or experienced technical difficulties, distributors were obliged to turn to other sources of supply, in particular China.

(542) EFDA claimed that the Commission rejected the evidence provided by it in this regard without giving sufficient reason for such rejection. They maintained that the information provided mainly in form of several e-mails of Union producers refusing to supply fasteners was substantial and has proven the unwillingness of the Union industry to provide standard fasteners and that the Commission should therefore take this information into consideration.

(543) Regarding the information provided by EFDA in support of its claim that the Union industry is unable or unwilling to provide standard fasteners, the Commission notes that this information related mainly to the period after the IP and could therefore not be taken into consideration.

(544) EFDA also reiterated that the Commission did not disclose the precise share of production of standard and non-standard fasteners by the Union industry, or the sampled Union producers. The Commission noted that the precise share of production of standard fasteners and non-standard fasteners by the Union industry was not available, as not all Union producers cooperated in the investigation and no precise statistical data are available in this regard. This was also communicated to EFDA during the investigation in a bilateral correspondence.

(545) Furthermore, EFDA asserted that the Commission would have had difficulties to identify producers of standard fasteners in the Union and was obliged to extend the original sample of Union producers in order to include two additional producers of standard fasteners. In any event, these two producers would only produce small quantities of standard fasteners. The allegations and claims with regard to the selection of the Union producers' sample were already addressed in detail in recitals (26) to (56). Thus, the statement that the Union industry sample was amended due to the fact that it did not include any Union producer of standard fasteners, ignores the repeated explanations and clarifications provided in this respect and is misleading. It was therefore rejected.

(546) Finally, EFDA reiterated that the Commission did not explain on what basis it concluded that the Union industry produced both standard and special fasteners. This conclusion was based on the facts in the file, collected from the complainant and the cooperating Union producers duly cross checked with publicly available information where available. The information provided in this regard was also available in the non-confidential file. This claim was therefore rejected.

(547) EFDA further claimed that the Union industry will also not increase its production of standard fasteners in the event duties are imposed. EFDA alleged in this regard that the Union industry between 2009, when anti-dumping measures on imports of fasteners from China were imposed previously, and 2016, when such measure were repealed ([86]), the Union industry did not increase its production of standard fasteners and specialised instead in the production of non-standard fasteners. The unwillingness to switch to standard fasteners would also be evidenced by the information provided by one of the sampled Union producers indicating that it would not be able to produce standard fasteners at the prevailing market price.

(548) The argument that the Union industry did not increase its production of standard fasteners and specialised instead in the production of non-standard fasteners between 2009 and 2016 was not supported by any evidence. The production and sales figures collected during the investigation relate to the period considered and does not therefore include data between 2009 and 2016. In any event, this allegation was not confirmed during the investigation. The fact that one of the Union producers was not able to engage in production of standard fasteners at prevailing market conditions rather shows that the price pressure of the Chinese imports prevents the Union industry to fully utilise their production capacities and confirms that material injury is suffered from these imports. It does, however, not show that the Union industry under fair market conditions would not revert to an increase of its production, including standard fasteners sold at sustainable price levels on the Union market, as also concluded in recital (496). The arguments of EFDA in this regard were therefore rejected.

(549) EFDA further claimed that distributors usually purchase non-standard fasteners from the Union industry while standard fasteners are imported mainly from China. They argued that also the Union industry purchased standard fasteners from distributors in the Union being aware that these products come from China; and that in addition a number of Union producers have their own trading subsidiaries that are also members of EFDA and are as such importing standard fasteners from China and distributing them to end users. In support of this claim EFDA provided a list of Union producers that allegedly purchased standard fasteners from a distributor, member of EFDA and a list of further Union producers that allegedly are related to distributors in the Union that import standard fasteners from China. EFDA also asserted that based on the information in the non-confidential file, at least one of the sampled Union producers confirmed that it is importing fasteners from China.

(550) As concluded in recitals (466) and (468), based on the information provided by the sampled Union producers, the volumes purchased by them from China, either directly or via distributors, were negligible compared to the total volume produced and sold by the Union industry on the Union market and to the total volume of fasteners imported from China. The information provided by EFDA did not devaluate these findings and the claims made in this regard were is therefore rejected.

(551) EFDA finally submitted that distributors, during the COVID-19 pandemic and the consequent supply chain disruptions have approached the Union industry with request to supply standard fasteners that was refused. According to EFDA this would prove that the Union industry is unwilling to supply standard fasteners in increased quantities and that the spare capacities available in the Union would not be used to increase the production of standard fasteners. This is due to the fact that a switch of the Union producers from non-standard to standard fasteners would involve significant investments and a change in the business model and would therefore economically not make sense. This would have been also confirmed by one of the cooperating Union producers. EFDA concluded that the complainant had not submitted any proof of the contrary.

(552) The above claim was based on assumptions that were not confirmed by the investigation. To the contrary, the investigation revealed that the Union producers had spare capacities to manufacture standard fasteners. As mentioned above the complainant provided information that there were several Union producers of standard fasteners. The reason that some of the producers may have refused to produce and sell standard fasteners during the investigation period or after, can be seen in the fact that such production was not viable or economically rentable in view of the price pressure from the Chinese low priced imports in the Union market. In other words, the Union producers were unable to expand their production and sales on standard fasteners because of the Chinese imports exercising price pressure on the Union market. This as such is prove of the material injury suffered by the Union industry. This claim was therefore rejected.

([86]) Implementing Regulation (EU) 2016/278.

(553) The Commission therefore confirmed its findings that the Union industry produced both standard and non-standard fasteners and that it had large spare capacities to increase the production of both type of fasteners.

(554) The Commission also considered that more than half of the fasteners imported by the cooperating importers during the investigation period came from other sources than China, such as Taiwan, Vietnam and Turkey as well as other third countries. The share of these imports in the total imports to the Union was substantial throughout the period considered. EFDA claimed that exporting producers in these third countries would not have sufficient capacity to replace imports from China or even only partly increase their import volumes to the Union. The information provided by EFDA in this regard was however not considered as representative and not verifiable. As above, it concerned correspondence with individual companies not necessarily representing the situation of other exporting producers in those countries. These claims were therefore rejected.

(555) Following final disclosure, EFDA reiterated that imports of fasteners from other third countries will not be sufficient to replace imports from China. In particular, the Commission's findings in recital (554), that large part of the imports of fasteners were from other third countries would confirm that no further spare capacities are available in those markets. EFDA also claimed that due to import restrictions in the US for Chinese fasteners, in place since 2018, buyers in the US would have increasingly turned to suppliers in other third countries and therefore major part of these capacities would be shipped to the US. This would also be supported by the import statistics that show a significant decrease of imports from other third countries to the Union as from 2018, while imports from these countries increased significantly to the US during the same period.

(556) As above, EFDA claimed that the Commission disregarded the information provided on the lack of supply from third countries without giving sufficient reason for such rejection.

(557) The Commission refers to recital (554) which shows that imports from China represented less than one half of the imported fasteners in the Union. In other words, spare capacity available in the Union as well as existence of other sources of supply in other third countries, do not indicate a possible shortage of supply, should measures be adopted against fasteners from China. This claim was therefore rejected. The fact that imports from other third countries decreased overall during the period considered cannot as such be considered as proof that spare capacities in these countries were insufficient. The Commission considered that the price pressure of Chinese low priced imports causing unsustainably low price levels in the Union market, made other markets more attractive for those imports; especially the US that had much lower import volumes from China and was therefore not affected by unfair trading practice from China. The evidence provided by EFDA in this regard as spelled out in recital (554), was not considered representative and not verifiable. As above, the information related to the period after the IP and mostly indicated delivery problems related to the shipping crisis and the COVID-19 pandemic, rather than the lack of spare capacities as such and did also not indicate whether these problems were of a structural nature.

(558) EFDA asserted that in accordance with Article 9(4) of the basic Regulation, the Commission had an obligation to determine positively that 'the Union interest calls for intervention in accordance with Article 21' and should therefore have suggested to the interested parties what type of evidence would have been considered as representative and verifiable. EFDA contested its obligation to collect information and data pertaining to the entire Union market and the Commission was free to verify the information provided by EFDA. EFDA reiterated also in this context that it did not consider the information provided by the sampled Union producer as sufficiently representative.

(559) The Notice initiating the current investigation invited all interested parties to participate in the investigation, and to provide the Commission with the information indicated in the Notice of initiation. This is also true for importers and users. While twenty eight importers came forward, none of the users cooperated and provided any information. The questionnaires indicated in great detail which information is necessary and which documentary prove should be submitted. Questionnaires are essential for Commission to collect the necessary information and all interested parties are given the opportunity to provide the Commission with such information. The Commission based its findings with regard to importers on the verified questionnaire replies. No questionnaire reply was received for any of the users in the Union and findings with regard to these group of interested parties had to be established on the facts available in accordance to Article 18 of the basic Regulation. Likewise, the findings with regard to the injury

aspects were based on the information requested from and provided by the sampled Union producers and the complainant. In particular, the Commission was entitled to select a representative sample of Union producers in accordance with Article 17 of the basic Regulation. None of the comments received from EFDA on the sample devaluated the conclusion that it was representative for the Union industry, as set out in detail in recitals (26) to (56).

(560) Interested parties that are not willing to fill in a questionnaire have the right to nonetheless provide any information to the Commission they consider important. In this regard, the Commission notes that, the Notice of Initiation also indicated that information submitted pursuant to Article 21 will only be taken into account if supported by factual evidence at the time of submission. In the current investigation, the Commission duly analysed the information and evidence submitted has thus taken duly into consideration all information collected from and provided by the interested parties in this proceeding; in particular the Commission sought and verified all the information it deemed necessary for the determination of dumping, resulting injury and Union interest as already spelled out in recital (91) and EFDA's claims in this regard were therefore rejected.

(561) Regarding the claims in relation to a worldwide decrease in production due to the COVID19 pandemic, the Commission notes that imports increased significantly after the initiation of the current investigation, as established in the registration Regulation. Based on Eurostat statistical data this increase continued ([87]). Therefore, the arguments made in this regard were rejected.

(562) Regarding the shipping crises and the interruption of the supply chains observed after the investigation period, including raw materials, the Commission notes that this situation was not of a structural nature but is expected to be temporary. Thus, a certain relief of the situation is expected in 2022, after the imposition of definitive measures in the current investigation. Indeed, overall trade statistics show a fast growth of imports in general during 2021 ([88]), including a growth in raw material imports (33 %), in the first eight months of 2021, compared to the same period in 2020. Therefore, the Commission considers that the current shipping crises and interruption of the supply chains are not sufficient a reason for not imposing duties in terms of Union interest. In particular duties are imposed for a period of five years, while a relief of the current situation may already occur in the second half of 2022, i.e. shortly after the imposition of measures. The claims made in this regard were rejected accordingly.

(563) Following final disclosure, ECAP emphasised the prolonged delivery terms due to the shipping crisis and the increase of cost of ocean transport. ECAP also pointed to the lack of supply of construction raw material in general in the Union and the substantial increase in raw material costs in the construction sector that was adversely affecting construction companies. The situation would be aggravated should anti-dumping duties be imposed and in turn would have a significant negative impact on the realisation of the goals of the Green Deal as timber and concrete-timber structures use organic building materials (wood) thus contributing significantly to the reduction of carbon emissions. ECAP noted the growing market for timber construction to achieve environmentally sustainable housing and emphasised the wood furniture sector's collaboration with research institutes to improve and increase sustainably produced wood.

(564) As mentioned in recital (562), the Commission considered that the shipping crises and the interruption of the supply chains observed after the investigation period, including raw materials, was not of a structural nature but expected to be temporary. None of the arguments brought forward by ECAP could devaluate these findings. In addition, as set out in recital (525), the expected impact of the duties was not substantial in none of the downstream sectors, including the construction sector, given that the cost of fasteners in the overall cost of these industries was generally low. None of the users in the construction sector cooperated during the investigation by providing information concerning its costs overall and the representation of fasteners in their cost. The arguments brought forward by ECAP concerning the construction sector were not specifically limited to fasteners but referred to the overall raw material supply. Therefore, the claims made by ECAP in this regard were rejected.

([87]) Data available until July 2021.
([88]) Source Eurostat: https://trade.ec.europa.eu/doclib/docs/2013/december/tradoc_151969.pdf

7.6. **Switch of suppliers**

(565) Several interested parties claimed that importers would not be able to switch suppliers easily because of the travel restrictions due to the COVID19 pandemic, while there is a need for a manufacturer approval by the customer which would require an audit of the production processes at the factory of the third country supplier. In any event, a switch in supplier would be costly. EFDA raised specifically the case for fasteners used in the railway sector.

(566) No further evidence was submitted in this regard. As mentioned above, more than half of the imports of the cooperating importers were made from other third country suppliers, not including China. In addition, the claim that the Union industry was not able or not willing to provide fasteners to new customers was not confirmed during the investigation. Finally, anti-dumping measures, do not aim to ban access of Chinese imports to the Union market, but their purpose is merely to restore the level playing field. As mentioned above, even if importers were to fully absorb the anti-dumping duty, their businesses will still remain mostly at profitable levels. Likewise, it has been established that the cost of fasteners in the users' total cost of production is not significant and price increases of imports can be passed on to the final customers. These claims were therefore rejected.

(567) Following disclosure several interested parties that were importing structural timber screws from China re-iterated that they would not be able to switch suppliers based on close links with them established over time. These parties argued that as orders are subject to production agreements containing precise technical specifications, producers need specific trainings as well as specific machineries and tools and must be audited in order to maintain product certification. They noted that importers of structural timber screws were not merely distributors but had specialised in-house product development departments and were working closely together with the manufacturers of timber wood screws in order to meet the technical specifications required to obtain product certification in the Union. Therefore a switch in suppliers would be very difficult and for some projects even impossible.

(568) These parties did not provide any evidence showing the claimed special relationship with the suppliers, or any specific contracts or production agreements. There was also no evidence provided that the companies had internal product development departments. As indicated in recital (539), the investigation did not confirm the claim that the Union industry was not able or not willing to supply this specific product type to customers in the Union. As also mentioned in recital (566), anti-dumping measures, do not aim to ban access of Chinese imports to the Union market, but their purpose is merely to restore the level playing field. Also as established in recitals (505) and (529), the impact of anti-dumping measures on the importers' and users' financial situation is not expected to be significant and price increases of imports are expected to be at least partly passed on to the final customers. These claims were therefore rejected.

7.7. **Other**

(569) EFDA emphasised that fasteners are used in many different applications. While the share of the cost in the production process of the individual users is not always significant and the impact on individual companies is not always substantial, EFDA argued that the Commission should therefore assess the combined effects of the duties on the Union economy as a whole. The losses incurred by various companies using fasteners in their production process should be considered on an aggregate basis.

(570) The investigation revealed that the impact of duties on the users overall is not expected to be significant, as the share of fasteners in the production process is very low. This fact is also recognised by EFDA. Therefore, this claim was rejected.

(571) Following final disclosure, the user of pole screws mentioned in recitals (159) and (160) argued that the Commission did not address its claim that industrial batteries produced by them are used for energy storage in critical infrastructures such as data centres and hospitals. Following final disclosure, the user further asserted that there is an overwhelming interest of consumers in the Union to rely on the secure functioning of hospitals and data centres through reliable power supply, in particular during the COVID-19 pandemic where hospitals need to rely also on emergency power supply and where data traffic significantly increased through the shift to home office. This party claimed that the Commission did not take these aspects into account in the analysis of the Union interest.

(572) The Commission notes that no such claim was made prior to final disclosure where the user in question merely explained what were the applications of pole screws and in which industries they were used. As mentioned above, the investigation revealed that the impact of duties on the users overall is not expected to be significant, as the share of fasteners in the production process is very low. The user of pole screws did not provide any information regarding its production costs, the cost of pole screws in the overall costs, its profitability or the expected impact of any cost increase on the profitability. There was therefore no evidence available that the duties would have a significant negative impact on this user and this claim was rejected.

(573) Following final disclosure the Mission of the People's Republic of China to the European Union claimed that after the imposition of anti-dumping measures on imports of fasteners in 2009 ([89]), imports from China were merely replaced by imports from Taiwan and Vietnam. The Union industry did not change its structure and therefore the Mission of the People's Republic of China to the European Union therefore concluded that duties did no benefit the Union industry at that time, while it had a detrimental effect on downstream industries. None of the statements was supported by any evidence. The information in the file did also not confirm these allegations that were therefore rejected.

7.8. **Conclusion on Union interest**

(574) Based on 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 fasteners originating in China.

7.9. **Price undertaking offers**

(575) Following final disclosure, within the deadline specified in Article 8(2) of the basic Regulation, six exporting producers submitted an offer for a price undertaking:

— Wenzhou Junhao Industry Co., Ltd

— Jiangsu Yongyi Fastener Co. Ltd.

— Zhejiang Excellent Industries Co. Ltd ('Zhejiang')

— Yuyao Alfirste Hardware Co., Ltd ('Yuyao Alfirste')

— Celo Suzhou Precision Fasteners Co. Ltd

— Shanghai Chaen Chia Fasteners Co., Ltd. ('Chaen Chia')

(576) According to Article 8 of the basic anti-dumping Regulation, the price undertaking offers must be adequate to eliminate the injurious effect of dumping and their acceptance must not be considered impractical. The Commission assessed the offers in view of these criteria and considered that its acceptance would be impractical for the following overarching reasons.

(577) First, there are around 100 exporting producers involved in this proceeding. The number of actual and potential exporting producers was considered too great for an undertaking to be workable, as it would render any type of price undertaking very difficult to monitor.

(578) Second, the product concerned is very variable in its nature. It consists of more than 100 PCN's and is classified under no less than 10 CN codes, thus establishing and monitoring the minimum import price ('MIP') would in general not be practicable. The product types exported to the Union vary significantly in prices and cannot be easily distinguished from one another by a physical inspection. In particular, elements with high impact on price such as strength is effectively indistinguishable by a physical inspection alone. Without a detailed laboratory analysis and using destructive methods the customs authorities would not be able to determine whether the imported product corresponds to what is being declared, which would be undermining the enforceability of a potential undertaking, and rendering it impractical within the meaning of Article 8 of the basic Regulation.

([89]) Regulation (EC) No 91/2009.

(579) Third, the high number of product types entails a high risk of cross-compensation among the different product types, with more expensive product types possibly being misdeclared as cheaper product types also subject to the undertaking. This renders any undertaking unenforceable and thus impractical within the meaning of Article 8 of the basic Regulation.

(580) Fourth, some companies have in addition a number of related companies directly involved in production or sales of the product under investigation and a part of some companies' turnover in the EU are other products than the product concerned. Such structure of companies and their turnover implies a high risk of cross-compensation. The Commission would not be able to monitor and ensure compliance with the undertaking. This, on its own, would make the offers impractical. In this respect, the standard of Article 8 of the basic Regulation is not fulfilled either.

(581) The Commission sent a letter to all six applicants, setting out the above reasons for rejecting their undertaking offers. Five applicants submitted comments thereto. These comments were made available to interested parties on the case file.

(582) Celo Suzhou has reiterated its' request for the Commission to review the MIPs offered, as well as the non-injurious character of Celo Suzhou's offer. First, it claimed that the Commission cannot reject its undertaking offer on the basis that the company has not been investigated during the current procedure, since nothing in the basic antidumping Regulation implies that an individual examination is necessary for an undertaking offer to be accepted. The Article 8 of the basic antidumping Regulation establishes that the only requirement for an undertaking to be accepted is that the injurious effect of the dumping is eliminated, which Celo Suzhou has ensured. Second, Celo Suzhou has claimed that the Commission has failed to examine the prices offered, which avoided the risk of cross-compensation, because all the MIPs offered ensured the non-injurious price level and were at the ex-works level, which means that these prices will be even higher upon an entry to the Union. Third, Celo Suzhou has claimed that the Commission has failed to examine the conditions offered by Celo Suzhou to alleviate any risk of cross-compensation in relation to its related companies, as well as to decrease the associated monitoring costs, since the party offered to change the manner in which it currently operates, which took into account the Commission's concern about monitoring costs, cross-compensation and circumvention risks. Fourth, Celo Suzhou has claimed that the Commission has ignored its' willingness to modify and adapt the terms of its undertaking to the expectations of the Commission, as well as all the available evidence (based on the EIFI letter submitted to the Commission) that suggests that Celo Suzhou's undertaking cannot harm the Union industry.

(583) Chaen Chia has claimed that there is no high number of the different product types in its undertaking offer, since the only difference between the product types offered is the length, which has no impact on calculating the unit price per kilogram and can be easily distinguished by physical inspection. Then, Chaen Chia has claimed that its customers import under specific TARIC codes, therefore there is no risk of cross-compensation. In addition, every package of Chaen Chia products exported to the Union must present the unique European Technical Assessment certification, ensuring the essential performance characteristics of its products, which makes it easy for customs authorities in the Union to ensure that there is no circumvention or cross-compensation. Finally, the turnover of Chaen Chia in the Union concerns only the product under investigation.

(584) Wenzhou did not agree with the Commissions conclusion on the risk of cross-compensation in its undertaking offer, since it offered to export only certain product types that are classified under less than 10 CN codes that cover full product under investigation. Furthermore, the MIP calculation offered included the reference price of the raw material used to calculate the MIP for the first quarter, which was still unknown, since the investigation was ongoing, thus a concrete MIP was not calculated in the undertaking offer. Besides, MIP calculation method was based on the method of the calculation of a normal value, which was adequate to eliminate the injurious effect of dumping. Wenzhou has claimed that the reasons regarding related companies and exports of non-product concerned are not warranted for the rejection of the undertaking offer, since its related companies do processing for some of the production stages and do not sell fasteners to the Union and Wenzhou turnover includes almost no sales of product other than the product under investigation.

(585) Yuyao Alfirste claimed that the calculation of the MIP offered proposed to use the weighted average data of the three sampled exporters to calculate it, thus it was adequate to eliminate the injurious effect of dumping. The party has also objected the conclusion of the risk of cross-compensation caused by different product types, since specifications of the products (such as the strength class) can be indicated on the export documents (invoices, contracts, etc.) and the product types exported by Yuyao Alfirste are not classified under all the CN codes covering

the product under investigation. Finally, the reasons regarding related companies and exports of non-product concerned are not warranted for the rejection of undertaking offer, because Yuyao Alfirste will strictly follow the requirement not to sell any other type of products produced or traded by it to the same customer to which it sells the product covered by the undertaking and the monitoring mechanism of undertaking by the Commission is effective enough.

(586) Zhejiang claimed that the MIP calculation offered included the reference price of the raw material used to calculate the MIP for the first quarter, which was still unknown, since the investigation was ongoing, thus a concrete MIP was not calculated in the undertaking offer. Besides, MIP calculation method was based on the method of the calculation of a normal value, which is adequate to eliminate the injurious effect of dumping. The party has also objected the conclusion of the risk of cross-compensation caused by different product types, since specifications of the products (such as the strength class) can be indicated on the export documents (invoices, contracts, etc.) and the product types exported by Zhejiang are not classified under all the CN codes covering the product under investigation. Finally, the reasons regarding related companies and exports of non-product concerned are not warranted for the rejection of undertaking offer, because Zhejiang does not have related companies, it will strictly follow the requirement not to sell any other type of products produced or traded by it to the same customer to which it sells the product covered by the undertaking and the monitoring mechanism of undertaking by the Commission is effective enough.

(587) In response to these claims the Commission notes in relation to the specificity of the product, as set out above, it is characterised by a considerable number of product types, with significantly different prices and some characteristics not easily discernible upon importation. Even if the specifications of the products are indicated on the export documents or specific product types are imported under specific TARIC codes, the customs authorities in the Member State cannot easily distinguish one product type from another on physical inspection. While some of the parties concerned claimed that they have limited the types of products covered by their undertaking offer, or produce only a limited number of types of the product covered by the undertaking offer, this still means that these parties may sell or eventually produce other types of the product under the investigation than the types included in their undertaking offer. Therefore the risk of cross-compensation between the different types of products remain valid for all of these parties.

(588) Furthermore, the variety of the characteristics of the product makes it virtually impossible to establish the minimum prices for each product type which would be meaningful and could be properly monitored by the Commission and by the customs authorities of the Member States upon importation. This is supported in the undertaking offer by one exporting producer, where by the highest offered MIP for a particular product type was more than hundred times higher than the lowest MIP offered. Finally, even if the MIPs offered were adequate to eliminate the injurious effect of dumping, as set out in the recital above, they could not be properly monitored by the Commission due to the variety of the characteristics of the product under investigation, implying the risk that these parties may sell or eventually produce other types of the product under the investigation than the types included in their undertaking offer.

(589) In relation to the structure of companies and their turnover including other products than the product concerned, which implies a high risk of cross-compensation, even if the parties commit to follow the requirements of the undertaking offer or to adapt their sales patterns to one related company, the risk of cross-compensation remains. The Commission would not be able to monitor and ensure compliance with the undertaking of the sales of the product not covered by these undertakings. The same argument applies with regard to potential cross-compensation within the group of companies. This renders all the proposed undertaking offers impracticable.

(590) Based on this, the Commission considered the undertaking offers unenforceable and thus impractical within the meaning of Article 8 of the basic Regulation, and therefore rejected all the offers.

8. **RETROACTIVE IMPOSITION OF ANTI-DUMPING MEASURES**

(591) As stated in recital (3), the Commission made imports of the product concerned originating in China subject to registration by the registration Regulation in view of the possible retroactive application of any anti-dumping measures under Article 14(5) of the basic Regulation.

(592) Pursuant to Article 10(4) of the basic Regulation, duties may be levied retroactively on products which were entered for consumption no more than 90 days prior to the date of application of provisional measures'. The Commission observes that no provisional measures were imposed in this case.

(593) On that basis, the Commission considers that one of the legal conditions under Article 10(4) of the basic Regulation is not met and therefore the duties should not be levied retroactively on the registered imports. Thus, the registration of imports should be discontinued.

(594) EIFI contested that the imposition of provisional measures would be a legal condition to impose duties retroactively pursuant to Article 10(4) of the basic Regulation claiming that it does not specifically list such condition. EIFI also referred to case law of the General Court (T-749/16 Stemcor) and the WTO Dispute Settlement Body (US- Hot-Rolled Steel) that would confirm its view. EIFI requested therefore that the definitive anti-dumping measures should be imposed retroactively for a period of 9 months. EFDA and two importers disagreed with this view and argued that the legal conditions for the retroactive imposition of duties were not met, given that no provisional measures were imposed. One importer argued that duties should not be levied retroactively, as this would be in contrast to the legal principle of legitimate expectation.

(595) The General Court and the WTO case law cited by EIFI do not support its interpretation that the imposition of provisional measures is not a condition for retroactive collection of duties. Both cases are limited to the interpretation of the substantive conditions required for the retroactive collection of duties laid down respectively in Article 10(4) of the basic Regulation and Article 10.6 of the WTO Anti-dumping Agreement. The underlying factual situation is also different in both cases, where, unlike the current investigation, provisional duties were imposed and therefore the issue of non-imposition of provisional measures was not addressed. Therefore this claim was rejected.

(596) Following final disclosure EIFI reiterated its claim that duties should be imposed retro-actively, claiming that all legal conditions under Article 10(4) of the basic Regulation were met and that the imposition of provisional measures was not a criterion under that same Article. No further arguments were provided in support of this claim that was therefore, for the reasons set out in recital (595) rejected.

9. **DEFINITIVE MEASURES**

(597) Definitive anti-dumping measures should be imposed on imports of fasteners originating in China in accordance with the lesser duty rule in Article 9(4) of the basic Regulation. The amount of the duty should be set at the level of the lower of the dumping and the injury margin.

(598) Therefore, the definitive anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Dumping margin	Injury margin	Definitive anti-dumping duty
Jiangsu Yongyi Fastener Co., Ltd.	22,1 %	79,0 %	22,1 %
Ningbo Jinding Fastening Piece Co., Ltd.	46,1 %	85,3 %	46,1 %
Wenzhou Junhao Industry Co., Ltd.	48,8 %	125,0 %	48,8 %
Other cooperating companies listed in Annex	39,6 %	94,0 %	39,6 %
All other companies	86,5 %	196,9 %	86,5 %

(599) 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 country 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.

(600) 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. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a regulation about the change of name will be published in the *Official Journal of the European Union*.

(601) One exporting producer requested that a new exporter status is granted to it and that it is not treated differently from the companies that cooperated in the investigation. This exporting producer argued that although it did not export the product concerned during the IP, it started exporting it shortly afterwards, i.e. in July 2020.

(602) Since this Regulation foresees expressively in Article 2 the legal basis and procedure to follow for new exporting producers from the People's Republic of China to be added to the Annex of this Regulation, this request was rejected as premature.

(603) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.

(604) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies should apply not only to the non-cooperating exporting producers in this investigation, but also to the producers which did not have exports to the Union during the investigation period.

(605) In order to ensure equal treatment between any new exporters and the cooperating companies not included in the sample, mentioned in Annex to this Regulation, provision should be made for the weighted average duty imposed on the latter companies to be applied to any new exporters which would otherwise be entitled to a review pursuant to Article 11(4) of the basic Regulation.

9.1. **Special monitoring clause**

(606) To minimise the risks of circumvention due to the high difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this Regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.

(607) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this Regulation, the customs authorities of Member States should carry out their usual checks and should, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the lower rate of duty is justified, in compliance with customs law.

(608) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.

(609) Following final disclosure, EIFI claimed that the monitoring of measures should be extended to all imports of all exporting producers. The monitoring should not only include import volumes and prices, but also products exported to the Union. EIFI referred to past circumvention practices and the wide range of duties applicable to imports from China in support of its claim.

(610) EIFI did not further substantiate its claim. The Commission considers that a monitoring system as described in recital (608) sufficiently guarantees that circumvention practices to be discovered in time to be counteracted if appropriate. The claim made in this regard was therefore rejected.

10. **FINAL PROVISIONS**

(611) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([90]) when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.

(612) On 16 November 2021, the Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure. The Commission received comments from several exporting producers, the Mission of the People's Republic of China to the European Union, the CCCME, EFDA, EIFI, two importers and one Union producer of structural timber connections.

(613) On 14 December 2021, the Commission provided interested parties with an additional final disclosure of on the basis of which it intended to impose a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China. All parties were granted a period within which they could make comments. The Commission received comments from EFDA.

(614) Following final disclosure and additional final disclosure, interested parties were granted an opportunity to be heard according to the provisions stipulated under point 5.7 of the Notice of initiation. Hearings took place with several exporting producers, EFDA, the CCCME, the Chinese Mission to the European Union, two importers and one Union producer of structural timber connections and EIFI. In addition, three hearings were held with the Hearing Officer, one with the sampled exporting producer Jiangsu Yongyi Fastener Co., Ltd. ('Jiangsu'), one with the CCCME and one with EIFI.

(615) The Committee established by Article 15(1) of Regulation (EU) 2016/1036 did not deliver an opinion,

([90]) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of certain fasteners of iron or steel, other than of stainless steel, i.e. wood screws (excluding coach screws), self-tapping screws, other screws and bolts with heads (whether or not with their nuts or washers, but excluding screws and bolts for fixing railway track construction material), and washers originating in the People's Republic of China, currently classified under CN codes 7318 12 90, 7318 14 91, 7318 14 99, 7318 15 58, 7318 15 68, 7318 15 82, 7318 15 88, ex 7318 15 95 (TARIC codes 7318 15 95 19 and 7318 15 95 89), ex 7318 21 00 (TARIC codes 7318 21 00 31, 7318 21 00 39, 7318 21 00 95 and 7318 21 00 98) and ex 7318 22 00 (TARIC codes 7318 22 00 31, 7318 22 00 39, 7318 22 00 95 and 7318 22 00 98).

2. The rates of the definitive 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:

Company	Definitive anti-dumping duty rate (%)	TARIC additional code
Jiangsu Yongyi Fastener Co., Ltd.	22,1	C856
Ningbo Jinding Fastening Piece Co., Ltd.	46,1	C857
Wenzhou Junhao Industry Co., Ltd.	48,8	C858
Other cooperating companies listed in Annex	39,6	
All other companies	86,5	C999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: '*I, the undersigned, certify that the (volume) of (product concerned) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in [country concerned]. I declare that the information provided in this invoice is complete and correct.*' If no such invoice is presented, the duty applicable to all other companies shall apply.

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

Article 2

Article 1(2) may be amended to add new exporting producers from the People's Republic of China and make them subject to the appropriate weighted average anti-dumping duty rate for cooperating companies not included in the sample.

A new exporting producer shall provide evidence that:

(a) it did not export the goods described in Article 1(1) originating in People's Republic of China during the period of investigation (1 July 2019 to 30 June 2020);

(b) it is not related to an exporter or producer subject to the measures imposed by this Regulation; and

(c) it has either actually exported the product concerned or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the period of investigation.

Article 3

1. Customs authorities are hereby directed to discontinue the registration of imports established in accordance with Article 1 of Implementing Regulation (EU) 2021/970 which is hereby repealed.

2. No definitive anti-dumping duty will be levied retroactively for registered imports.

3. Data collected in accordance with Article 1 of Implementing Regulation (EU) 2021/970 shall no longer be kept.

Article 4

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

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

Done at Brussels, 16 February 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Cooperating exporting producers not sampled

Country	Name	TARIC additional code
People's Republic of China	ZHEJIANG DONGHE MACHINERY TECHNOLOGY CORPORATION LIMITED	C850